

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**RECEIVED**

Honorable Alison Renee Lee, Circuit Court Judge

DEC 02 2015

SC Court of Appeals

Appellate Case No.: 2015-000613

Jeffrey Kennedy.....Respondent,

v.

Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants.

**APPENDIX TO THE RECORD ON APPEAL**

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**INDEX FOR APPENDIX TO THE RECORD ON APPEAL**

**III. TRANSCRIPTS**

Excerpt of Transcript of Record, pp. 950-972 (September 29 to October 3, 2014).....1042

**VI. CERTIFICATE OF COUNSEL.....1066**

1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF RICHLAND

3  
4 JEFFREY KENNEDY,

Plaintiff,

-vs-

6 RICHLAND TWO COUNTY  
7 SCHOOL DISTRICT,  
8 ET AL,

Defendants.

TRANSCRIPT OF RECORD

13-CP-40-1460

10 September 29 to October 3, 2014  
11 Columbia, South Carolina

12  
13 B E F O R E:

14 HONORABLE ALISON R. LEE, Judge; and a jury.

15  
16 A P P E A R A N C E S:

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Circuit Court Reporter  
25 Transcribed by: L. COCONUT PANTSARI, RPR  
Circuit Court Reporter

1 I think I was incorrect when I indicated that it should  
2 remain in the case.

3 The Tort Claims Act, I think I've stated the  
4 reasons why I think they both should stay in. I think  
5 that there isn't -- there is an immunity under the Act,  
6 but I think there would have to be some finding and  
7 maybe some interrogatory to the jury that talks about if  
8 there is a recovery against the defendants, whether they  
9 acted with actual malice.

10 I think once that's determined, then I think  
11 then that would be clear and would be a clear statement  
12 as to whether or not the individuals in the School  
13 District should be responsible in the event there is a  
14 verdict. So I'll deny the motion on that basis.

15 MR. GOODWYN: Just as a practical matter, are  
16 you going to let the jury know kind of what the case has  
17 been boiled down to before we get to closing?

18 THE COURT: I will. So having said all of  
19 that, on the charge I'll tell you what I will charge and  
20 we can go from there.

21 As I indicated, I think there are several  
22 issues that the jury has to decide. First, they have to  
23 decide whether -- and I'm talking generally -- whether  
24 the statement or conduct was defamatory. Secondly,  
25 whether or not it was published. Third, whether as

1 to -- whether the qualified privilege was exceeded and  
2 then damages from there.

3 I will charge them that they have to determine  
4 facts based upon the evidence. They have to consider  
5 the credibility of the witnesses, including whether or  
6 not a witness's testimony has been impeached or  
7 challenged by prior inconsistent statements. I will  
8 charge them on the burden of proof.

9 Then as to the defamation claim, I'll charge  
10 them that the plaintiff claims that the defendant  
11 communicated a defamatory statement. It could be in  
12 words, accomplished by written words, or by actions or  
13 by spoken words.

14 This action is based upon the violation of the  
15 plaintiff's right to enjoy a good reputation without  
16 false and defamatory attacks. Defamatory language is  
17 language that tends to injure or adversely affect the  
18 plaintiff's reputation.

19 In order to recover, the plaintiff must prove  
20 that the defamatory language was communicated by the  
21 defendants against the plaintiff. A defamatory  
22 statement is one that tends to attack the honesty,  
23 integrity, and virtue of the reputation of a person and  
24 exposes the person to disgrace, public hatred,  
25 avoidance, contempt, or ridicule.

1           A defamatory statement does not have to be a  
2 direct or open or positive attack. It may be merely a  
3 suggestion or hint which is false and malicious as long  
4 as the meaning is plain.

5           In deciding whether the statement is  
6 defamatory, you must give the words their ordinary and  
7 popular meaning. The intended meaning of the words must  
8 be determined from the words themselves and the context  
9 in which they're used.

10           All parts of the statement must be considered  
11 together to determine what is the statement's true  
12 meaning. Individual words cannot be singled out as  
13 defamatory. In addition, the statement must be  
14 considered in light of the facts known to the persons to  
15 whom the statement was made and not in light of the  
16 facts known to the parties.

17           The defendant must prove that the statement  
18 was substantially true. The statement is not defamatory  
19 if it is substantially true. Even if the defendant made  
20 a statement for no good purpose, was inspired by ill  
21 will towards the plaintiff and made the statement solely  
22 for the purpose of harming the plaintiff, if the  
23 statement is true, the plaintiff cannot recover for  
24 defamation.

25           Next, the plaintiff must prove that the

1 statement was communicated to someone other than the  
2 plaintiff. The plaintiff must prove that the statement  
3 was heard by another person who understood that the  
4 statement or statements referred to the plaintiff. The  
5 plaintiff must also prove that the defendant made the  
6 statement knowingly or reasonably expecting it to reach  
7 a third person.

8           Finally, the plaintiff must prove that his  
9 reputation was damaged by the defamatory statement. The  
10 plaintiff must prove that the damages naturally and  
11 proximately resulted from the defendant's statement.

12           Actual damages are damages to compensate the  
13 injured party, put them in the same position they would  
14 have been in before the statement was made as much as  
15 that is possible.

16           General damages would include humiliation,  
17 hurt feelings, mental suffering, injury to reputation,  
18 and other types of injuries for which you cannot place a  
19 value.

20           The plaintiff must also prove any special  
21 damages resulting from the defamatory statement.  
22 Special damages are monetary damages with respect to  
23 property, business, profession, or occupation of the  
24 plaintiff, such as a loss of job, loss of customers,  
25 loss of business relationship as a result of the injury

1 to the plaintiff's reputation.

2           If you find the plaintiff is entitled to  
3 actual damages, then you may consider whether the  
4 defendant should be required to pay punitive damages.  
5 Punitive damages are to punish the defendant, to attempt  
6 to ensure that neither the defendant or anyone else  
7 commits similar conduct in the future.

8           In order to recover punitive damages, the  
9 plaintiff must prove by clear and convincing evidence  
10 that the defendant acted with actual malice in making  
11 the defamatory statement. Clear and convincing evidence  
12 is more than a mere preponderance or greater weight of  
13 the evidence.

14           Actual malice involves a malicious intent or  
15 recklessness, willfulness, or wantonness. That means  
16 the defendant's statement was motivated by ill will with  
17 the intent to injure the plaintiff or that the statement  
18 was made with such recklessness as to show a conscious  
19 disregard or disregard of the plaintiff's rights. In  
20 considering punitive damages, you may also consider the  
21 defendant's ability to pay.

22           In considering the statements that were  
23 made -- and I'm sure I'll probably rearrange some of  
24 this at the time that I give it to the jury -- certain  
25 statements are considered to be slanderous per se or

1    defamation per se.

2           In the statement that's slanderous per se,  
3   injury to the plaintiff is presumed. The plaintiff does  
4   not have to prove those special damages. Statements  
5   which charge the plaintiff with the commission of a  
6   crime of moral turpitude, contraction of a sexually  
7   transmitted disease or adultery and chastity or  
8   unfitness in the plaintiff's business or profession are  
9   slanderous per se.

10           In deciding whether a crime is one of moral  
11   turpitude, it's generally described as one that involves  
12   dishonestly. If you find that the statement was  
13   slanderous per se or defamation per se, then you would  
14   return a verdict for the plaintiff, and you must award  
15   at least nominal damages, which may be only a small or  
16   trivial sum.

17           Nominal damages are required because the law  
18   presumes some actual damage to the plaintiff's  
19   reputation and character directly and proximately  
20   resulting from the defendant's defamatory statement.

21           If you find that the statement was defamatory,  
22   then the defendant claims it was under a qualified  
23   privilege. In order to prove that the qualified  
24   privilege exists, the defendant must prove by a  
25   preponderance or greater weight of the evidence that the

1 defendant made the statement in good faith.

2           If the statement was made with actual malice,  
3 that is with knowledge that the statement was false or  
4 with reckless disregard of whether it was true or false,  
5 the defendant cannot claim a qualified privilege.

6           The defendant must also prove that there was  
7 an interest to be upheld and that the statement was made  
8 solely to uphold the interest of the defendant or a  
9 third party.

10           I will tell them that the memorandum that was  
11 e-mailed is subject to a qualified privilege. The  
12 question that they have to determine is whether or not  
13 the privilege was exceeded by publishing it to  
14 individuals who did not have an interest in the matters  
15 that were discussed within the memorandum.

16           In addition, the defendant must prove that the  
17 statement was proper at the time that it was made and  
18 that it was communicated in a proper manner only to  
19 proper parties.

20           In connection with that, I will charge them  
21 that the privilege may be lost when it's published to  
22 persons other than those to whom the privilege applied.

23           I will instruct -- I believe that the  
24 defendant presented a charge that talks about  
25 self-publication?

1 MR. BARLOW: We did, Your Honor. It would be  
2 number 11.

3 THE COURT: Thank you.

4 MR. GOODWYN: If I may, do you want a response  
5 on that or...

6 THE COURT: Yes, sir, I'll be happy to hear  
7 from you on that one.

8 MR. GOODWYN: I think the only evidence in the  
9 record was that Mr. Kennedy told some people that he was  
10 under investigation, which is not -- if, A, it's true,  
11 it's not defamatory. It has nothing to do with the  
12 allegations in the case.

13 He never said, "They think I'm responsible for  
14 the crime." He never told anybody that, "They think I'm  
15 untrustworthy or they took my keys away." The only  
16 evidence is he told then he was under investigation. So  
17 there is no evidence in the record to support this kind  
18 of charge.

19 THE COURT: I may not charge this specific  
20 language, but I will probably charge something to the  
21 nature of: In considering whether there was a  
22 publication of a defamatory statement, then you may also  
23 consider whether the plaintiff published or repeated any  
24 of the statements himself.

25 I will emphasize that the defendant is only

1 responsible for the damage, if any, that has been caused  
2 by its publication of defamatory statements. So if you  
3 find that the plaintiff has, in fact -- and I probably  
4 will charge it just like it's written now that I'm  
5 looking at it.

6 If you find that the plaintiff has contributed  
7 or increased any damage to his reputation by repeating  
8 or republishing any alleged defamatory statements or  
9 meanings, then you may reduce any amount of damages  
10 accordingly. I think that's appropriate.

11 Then they will be told that their verdict must  
12 be unanimous. It must be the verdict of all 12 of them.  
13 They have to determine the evidence and determine the  
14 facts -- I mean -- determine the facts based upon the  
15 evidence and apply the law as I've instructed it to them  
16 to do so.

17 When they have done so, then no one can  
18 complain about their verdict. Their verdict should not  
19 be based upon sympathy, passion, or prejudice. I've  
20 proposed two verdict forms.

21 MR. GOODWYN: Your Honor, may I ask a question  
22 about the charges before we talk about the verdict form?

23 THE COURT: Let me finish and we can talk  
24 about it all at one time.

25 One verdict form will be as to the School

1 District: We the jury unanimously find for the  
2 plaintiff actual damages. I'll tell them that the only  
3 cause of action remaining is the slander. We find  
4 punitive damages or we find for the defendant School  
5 District.

6 Then another verdict form has both of the  
7 individuals listed -- if I can get them all on one  
8 sheet -- which says that on the claim against Eric  
9 Barnes: We the jury unanimously find for the plaintiff,  
10 actual damages or punitive damages, or we find for the  
11 defendant Eric Barnes. It's the same for Chuck Earles.

12 I will be happy to add a question afterwards,  
13 after the verdict -- and maybe I'll do three forms --  
14 after the verdict form as to Eric Barnes, but at the  
15 end, do you the jury unanimously find that -- the  
16 question will be: Did Eric Barnes -- if you return a  
17 verdict in favor of the plaintiff, do you unanimously  
18 find that Eric Barnes acted with actual malice? Yes or  
19 no? And it's the same with Chuck Earles.

20 MR. GOODWYN: Can you print a copy for us to  
21 review?

22 THE COURT: I have to retype them all.

23 MR. GOODWYN: I can help you if you need it.  
24 I have my computer. I know you're without a clerk.

25 THE COURT: Let me hear from you as to the

1 charges.

2 MR. GOODWYN: There is one charge that we  
3 included in our package on the mortality table: Damages  
4 in a libel action to include humiliation, wounded  
5 feelings, and injury to reputation.

6 These elements of damage may extend into the  
7 future. A libel action does not err in charging the  
8 jury on the mortality tables consistent with determining  
9 these damages. I think it's appropriate because we're  
10 alleging permanent injury to his reputation and would  
11 like to make a per diem argument on it.

12 MR. BARLOW: We would object to that on a  
13 couple of bases. First, the Court has already ruled  
14 that the termination is not a part of the damages. In  
15 addition, I think the ruling --

16 THE COURT: I'm sorry. Say that again.

17 MR. BARLOW: The termination is not to be part  
18 of the damages in the case. In addition, I think the  
19 Court's ruling on the SCANA evidence basically limits  
20 our ability to challenge future defamation beyond the  
21 current February of 2014.

22 I don't think it's fair to charge that he can  
23 recover future defamation damages, but we can't put up  
24 evidence to mitigate future defamation damages. So I  
25 don't think that's an appropriate charge.

1           THE COURT: I did read that in the case law.  
2 I read that for the first time today when I had a copy  
3 of it. Had I understood that that was going to be part  
4 of the issues, that you wanted to seek damages into the  
5 future -- it was always my understanding that there was  
6 an award for damages to reputation, and they could make  
7 an award -- but that it's not always presumed to run  
8 into the future.

9           So I did not understand that that would be  
10 part of what was going to be argued, and it wasn't  
11 argued at the time. So I think that would severely  
12 prejudice the defendant at this point.

13           MR. GOODWYN: I understand, Your Honor. Thank  
14 you, Your Honor.

15           THE COURT: Anything else?

16           MR. GOODWYN: I'm assuming you've gone through  
17 our requests and considered them and chosen the ones  
18 that you wanted to give.

19           THE COURT: Yes, sir. I've looked through  
20 them and I found that if I have left out something that  
21 you -- I understand the mortality table. I did see that  
22 earlier.

23           MR. GOODWYN: I think you captured pretty much  
24 everything that needs to be in there in what you've  
25 already said.

1 THE COURT: For the defense?

2 MR. BARLOW: Yes. On the charges, Your Honor,  
3 we're pretty much okay with everything except we believe  
4 the Court ought to charge defendant's number 22, which  
5 is injury to reputation lessens if persons to whom the  
6 statements are made don't believe them.

7 He put up three witnesses who testified that  
8 he is a great guy, and they didn't believe anything  
9 about it. There has been actually no witness that  
10 testified that they believed Jeffery Kennedy's  
11 reputation had been lessened by anything. So I think  
12 that's an appropriate charge.

13 In addition, Your Honor --

14 THE COURT: One moment.

15 MR. BARLOW: Oh, sorry.

16 MR. GOODWYN: I would like to respond. It's  
17 an Eighth Circuit Case.

18 THE COURT: Yes, sir, I'm looking at that. I  
19 have not -- I have not seen that in South Carolina that  
20 you reduce the amount of damages because somebody didn't  
21 believe defamatory statements.

22 I think that goes -- to me and my view --  
23 whether or not there was defamation and whatever the  
24 statements were defamatory in nature. So I would not be  
25 inclined to charge that particular one.

1 MR. BARLOW: Okay. Well, can we just note an  
2 objection for the record on that charge?

3 THE COURT: Yes, sir.

4 MR. BARLOW: The other additional charge would  
5 be number 25, just a mitigation of damages charge.

6 THE COURT: And what's the information about  
7 mitigation?

8 MR. BARLOW: Basically the plaintiff took  
9 another job, you know, quit the job, that sort of thing.

10 THE COURT: I don't think that's mitigation.  
11 I think that goes to whether or not he suffered damages.  
12 You can argue as to whether or not he has lost wages and  
13 all of those things.

14 I don't think that's -- apparently, the  
15 testimony was there was a window of time where he was  
16 not able to get a job and then subsequently got a job,  
17 and he has been employed since.

18 So I think you can certainly talk about, you  
19 know, how much he has in terms of damages; but getting a  
20 job, the testimony was he was not able to find a job.  
21 So I'm not so sure mitigation of damages would fall  
22 under those circumstances.

23 MR. BARLOW: Your Honor, just to clarify, I  
24 think the testimony was he got a job quickly, then  
25 resigned from the job; and then he took his current job.

1 So that's what I -- I can argue that. I just note the  
2 objection. Thanks.

3 THE COURT: Anything else?

4 MR. BARLOW: Are we going to talk about the  
5 instructions there, the verdict form?

6 THE COURT: Sure.

7 MR. BARLOW: Do you want me to go ahead?

8 THE COURT: Yeah, you can tell me what your  
9 problems are.

10 MR. GOODWYN: I'd like to see a copy before we  
11 argue.

12 MR. BARLOW: I can tell you my general  
13 problems with it, Your Honor, hearing it, while we're  
14 formulating it, I suppose. First of all, I don't think  
15 there is any scenario where the plaintiff gets a double  
16 recovery, a recovery from the School District, as well  
17 as from the individuals.

18 THE COURT: Oh, certainly not.

19 MR. BARLOW: Sure. So I think we need one  
20 charge against the individual defendants: Do you find  
21 actual malice? Yes? No?

22 Do you find actual malice? Yes? No? If  
23 there is actual malice, then it's on the individuals.  
24 If it's not, then it's on the School District if there  
25 is defamation.

1 THE COURT: You mean charge the jury that?

2 MR. BARLOW: Yes.

3 THE COURT: Basically what I tell the jury is  
4 that in these situations, I'm asking them to -- I would  
5 ask them if they decide to return a verdict, to  
6 determine all the damages that they deem are  
7 appropriate; and they are not to be concerned about  
8 whether there is a double recovery.

9 MR. BARLOW: Okay.

10 THE COURT: The law doesn't allow a double  
11 recovery. That's for the Court to address, and they  
12 need not be concerned with that.

13 MR. BARLOW: Sure. I just don't want to send  
14 to the jury the impression that they can award damages  
15 against the School District and then award damages  
16 against the individuals as well.

17 THE COURT: I'm going to send them a verdict  
18 form that allows them to do that. Whether or not they  
19 are actually able by law to do that is a different  
20 story.

21 MR. BARLOW: As long as we are clear on that.

22 THE COURT: I will explain that the law does  
23 not allow a double recovery. That's a legal issue and  
24 it's not for them to be concerned about. If they  
25 determine that they want to make an award based upon the

1 evidence and their view of what the facts are, they  
2 should award whatever damages are appropriate against  
3 whatever the appropriate party is.

4 MR. BARLOW: I think that's fair. Just one  
5 other thing, punitive damages are not available against  
6 a governmental entity.

7 THE COURT: You're right. I just thought  
8 about it as you stood up to say it.

9 MR. BARLOW: Sure.

10 THE COURT: So there would be no punitive  
11 damages against the School District.

12 MR. BARLOW: Correct.

13 MS. PEAVY: Your Honor, we are entitled to a  
14 charge as to the individual defendants; correct? On the  
15 verdict form it should reflect that they could award  
16 punitives against the individual defendants; correct?

17 THE COURT: Yes, ma'am.

18 MR. BARLOW: I guess on the punitive damages  
19 issue, I don't think there's evidence here of any  
20 conduct that is willful and wanton enough to submit to  
21 the jury on punitive damages.

22 MR. GOODWYN: If the question of malice is on  
23 there and they answered yes, then punitives are  
24 appropriate. If they answer no -- maybe put that as a  
25 yes or no to the malice question.

1 THE COURT: Well, I was really asking the  
2 malice question under the Tort Claims Act.

3 MR. BARLOW: Right. Malice has a special  
4 defamation meaning that is not punitive damages.

5 THE COURT: Well, malice under the Tort Claims  
6 Act has a special one.

7 MR. BARLOW: Sure.

8 THE COURT: But malice under defamation  
9 basically does have the same for punitive because that's  
10 the only way you can get punitive damages is if you find  
11 actual damages, which means it has to be willful,  
12 reckless, or wanton and a conscious disregard.

13 It's the exact same evidence for punitive  
14 damages for malice. I mean, there has to be evidence of  
15 malice. Malice is defined as being willful, reckless,  
16 wanton.

17 MR. BARLOW: All right. I would just renew my  
18 argument on that.

19 THE COURT: Are there any revisions to the  
20 verdict form or to the manner in which the verdicts are  
21 listed?

22 MR. GOODWYN: None from the plaintiff, Your  
23 Honor.

24 MR. BARLOW: I guess I just have a question of  
25 the effect, you know, hypothetically. Let's say we get

1 a verdict for the defendant Chuck Earles, defendant Eric  
2 Barnes, and then there is a verdict on this other form  
3 for plaintiff against defendant Richland School District  
4 Two.

5 I assume that's a no verdict because the  
6 School District itself cannot defame. It can do it  
7 through its employees. If there is a finding that Chuck  
8 Earles and Eric Barnes have not defamed plaintiff, then  
9 that is effectively a finding that Richland School  
10 District Two has not defamed the plaintiff.

11 MR. GOODWYN: They have other employees that  
12 could have defamed.

13 MR. BARLOW: But they're not --

14 THE COURT: There's not been any allegations  
15 of that.

16 MR. BARLOW: Right.

17 THE COURT: That's fine.

18 MR. BARLOW: As long as that's the effect of  
19 it,

20 THE COURT: Yes.

21 MR. BARLOW: Because the entity cannot be  
22 liable.

23 THE COURT: Sure. I'm making myself a note  
24 right now so I make sure that I explain that to them.

25 MR. BARLOW: Okay.

1 MS. PEAVY: So then why is there a form with  
2 Richland Two?

3 THE COURT: Under the Tort Claims Act.

4 MS. PEAVY: Okay.

5 THE COURT: It really goes to who is  
6 responsible for paying the verdict if there is a  
7 verdict.

8 MR. BARLOW: Correct.

9 THE COURT: And that's the only way I know to  
10 make it clear for the record so they don't come back and  
11 say, "If there is a general verdict, we are going to  
12 argue back and forth as to who is responsible for  
13 paying."

14 This way either the individuals are going to  
15 be personally responsible if it's done with malice. If  
16 not, then if there's a verdict, it would be the School  
17 District.

18 MR. GOODWYN: So for us to argue, if we say  
19 Chuck Earls has defamed him, we'd ask that you put an  
20 amount here for damages, but also be sure to include the  
21 District?

22 I mean, how about this? If you don't even  
23 have anything on here for the District, if they find  
24 Eric or Chuck was liable, whether the District is  
25 liable, it depends on the yes or no question. That's

1 what you're saying.

2 MR. BARLOW: Right.

3 THE COURT: Well, I'm happy to do it that way  
4 too.

5 MR. GOODWYN: It's kind of redundant to have  
6 the District on here. It might confuse the jury.

7 MR. BARLOW: No, I think that's fair. I think  
8 if they're saying you have a verdict form against Chuck  
9 Earles and Eric Barnes, if there's an award for  
10 plaintiff, do we the jury find that Eric Barnes acted  
11 with actual malice? If the answer is no, then the  
12 verdict would be against --

13 THE COURT: -- the School District.

14 MR. BARLOW: Can we -- well, go ahead.

15 THE COURT: I'm listening.

16 MR. GOODWYN: She had a good point here. We  
17 don't want the jury to necessarily think that Chuck  
18 Earles or Eric Barnes is going to be personally  
19 responsible.

20 THE COURT: And I don't tell them that.

21 MR. BARLOW: Right. But if the District is  
22 not listed on here as an option, that's probably what  
23 they're going to think.

24 MS. PEAVY: Can we put in some verbiage like  
25 Eric Barnes as an employee of Richland Two County School

1 District, something that links them. So when they are  
2 looking at this, they're saying, "Oh, it's Eric Barnes  
3 as an employee."

4 THE COURT: I'll be happy to charge them that  
5 the School District can only act through its employees.  
6 Therefore the question is whether these two individuals  
7 committed a defamation.

8 MR. BARLOW: Right. The only concern I have  
9 with that is we have a car wreck, Smith v. Jones, you  
10 don't get to have something in there that Smith has car  
11 insurance, you know, has auto insurance or anything like  
12 that.

13 THE COURT: I guess because the School  
14 District is listed in the caption and I've removed the  
15 others...

16 MR. GOODWYN: Well, that's a good point too.  
17 If they're listed in the caption, there has to be  
18 something...

19 THE COURT: I will handle it. If you all  
20 don't like it, you can tell me about it at the end after  
21 I charge them. If I need to correct it, I will correct  
22 it. I'm going to leave them with just two verdict forms  
23 and not the third one.

24 MR. BARLOW: Sounds good.

25 THE COURT: And have the interrogatory at the

1 bottom on the verdict form as to whether or not the  
2 District will be responsible for paying it if there's a  
3 verdict or whether the individuals are.

4 I will still emphasize to them that even if  
5 they were to find actual malice, they could still only  
6 award punitive damages if it's proven by clear and  
7 convincing evidence.

8 MR. GOODWYN: All right.

9 THE COURT: Basically they can decide there's  
10 actual malice and not award punitive damages because it  
11 may be a preponderance of the evidence.

12 MR. BARLOW: Sure.

13 THE COURT: Are we all clear?

14 MR. BARLOW: All clear.

15 THE COURT: Thank you for your patience.

16 MR. BARLOW: Thank you, Your Honor. May we  
17 have a couple of minutes for a bathroom break?

18 THE COURT: Sure. I'll let y'all regroup.

19 Please tell my jury to hold on and it will be  
20 just a few minutes. I haven't forgotten about them and  
21 I appreciate their patience.

22 (Whereupon there is a recess.)

23 MR. GOODWYN: Your Honor, one other thing. We  
24 are prepared to close. It may be a hair longer than 15  
25 minutes. We may try to cull it down.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SC Court of Appeals

Honorable Alison Renee Lee, Circuit Court Judge

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Appellate Case No.: 2015-000613

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Jeffrey Kennedy.....Respondent,

v.

Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants.

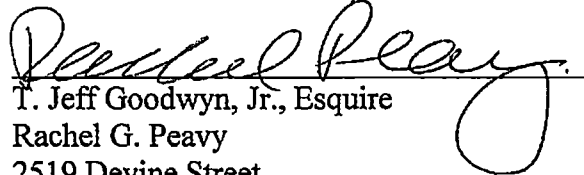
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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that this Appendix to the Record on Appeal, submitted with the consent of all attorneys of record pursuant to Rule 212(b), SCACR, contains all materials proposed to be included by any of the parties and not any other material.

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