

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

RECEIVED

JUN 26 2015

Circuit Court Case No. 2010-CP-40-1249
S.C. Court of Appeals Case No. 2013-001581
Unpublished Opinion No. 2015-UP-201, Filed April 15, 2015

S.C. Supreme Court

James W. Trexler,

Petitioner,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting,
Inc.; The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.,

Respondents.

APPENDIX

Volume 1 of 3

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ATTORNEYS FOR RESPONDENTS

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The South Carolina Court of Appeals

James W. Trexler, Appellant,

v.

The Associated Press, Barrington Broadcasting South
Carolina Corp., Raycom TV Broadcasting, Inc., The
Spartanburg Herald Journal, Inc. and the Pacific &
Southern Co., Inc., Respondents.

Appellate Case No. 2013-001581

The Honorable Joseph M. Strickland
Richland County
Trial Court Case No. 2010CP4001249

ORDER

Appellant has failed to provide proof of ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

William H. Johnson

Jerry Jay Bender

Matthew David Hamrick

Warren W. Wills, III

FILED

10 - 18 - 13 JSP

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2012-CP-40-1249

James W. Trexler

Appellant,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting, Inc.;
The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.

Respondents.

MOTION TO REINSTATE APPEAL

Pursuant to South Carolina Appellate Court Rule 260, James W. Trexler ("Petitioner") hereby petitions this Court for an Order reinstating Petitioner's appeal, which was dismissed by the clerk on October 18, 2013 and an Order entered to that effect stating Appellant failed to provide proof of ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of

the South Carolina Appellate Court Rules ("SCACR"). A true and accurate copy of the Order is attached hereto as Exhibit "A." Appellant/Petitioner respectfully requests the Court reinstate the appeal based on the grounds as set out in South Carolina Appellate Rule 260 (a), and as discussed in Appellant/Petitioner's Memorandum of Law accompanying this motion, and shows this Court as follows:

- 1) On July 18, 2013, Appellant/Petitioner timely filed his Notice of Appeal from two Orders of the Honorable Joseph M. Strickland, a) October 25, 2012 Order Granting Defendants' Motion for Summary Judgment, and b) April 29, 2013 Order denying Plaintiff's Motion to Reconsider, Alter or Amend the Order of October 25, 2012. A true and accurate copy of Appellant/Petitioner's Notice of Appeal is attached hereto as Exhibit "B."
- 2) On July 31, 2013, counsel for Appellant/Petitioner contacted the court reporter who took down the hearing at issue for the appeal, Robin Reibold, to inquire as to the proper procedure for ordering a copy of the hearing transcript. Counsel for Appellant/Petitioner explained to Ms. Reibold that he was requesting the transcript because to appeal the ruling from the hearing, and needed to request the transcript in a manner so as to comply with the notice requirements under SCACR, Rule 207(a)(1). Ms. Reibold instructed counsel to send her an e-mail request for the transcript, and copy opposing counsel and Desiree Allen with the Office of Court Administration (dallen@sccourts.org) to be in compliance with the applicable South Carolina Appellate Rules. See Affidavit of W. Westbrook Wills III attached hereto as Exhibit "C."

- 3) Later on July 31, 2013, counsel for Appellant/Petitioner e-mailed Ms. Reibold, as instructed, to order a copy of the transcript of the hearing from which the appeal is being taken. As instructed, counsel for Appellant/Petitioner copied opposing counsel and Ms. Allen at the Office of Court Administration with the e-mail transcript request, understanding that to be the proper procedure for giving the required notice to the necessary parties under the Appellate Court Rules. A true and accurate copy of counsel for Appellant/Petitioner's July 31, 2013 e-mail transcript request to Robin Reibold is attached to the Affidavit of W. Westbrook Wills as Affidavit Exhibit "A."
- 4) The same day, on July 31, 2013, Mr. Reibold responded to counsel for Appellant/Petitioner, with a copy to all parties to the original e-mail transcript request, including Ms. Allen at the Office of Court Administration, that she would be out of the office the following week but hopes to have the requested transcript ready shortly thereafter and would e-mail him with the cost of preparing the transcript. A true and accurate copy of Ms. Reibold's e-mail response is attached to the Affidavit of W. Westbrook Wills as Affidavit Exhibit "B."
- 5) On September 20, 2013, Mr. Reibold sent an e-mail to counsel for Appellant/Petitioner indicating she thought she had sent him the transcript invoice, but realized she never did. She attached the invoice to the September 20, 2013 e-mail. A true and accurate copy of Ms. Reibold's September 20, 2013 e-mail to counsel for Appellant/Petitioner is attached to the Affidavit of W. Westbrook Wills attached as Affidavit Exhibit "C."

- 6) On September 30, 2013, co-counsel for Appellant/Petitioner, William H. Johnson, paid Ms. Reibold for the invoice. A true and accurate copy of the paid invoice for the transcript with corresponding check stub is attached to the Affidavit of W. Westbrook Wills as Affidavit Exhibit "D."
- 7) On October 3, 2013, co-counsel for Appellant/Petitioner, William H. Johnson's office received a copy of the transcript. A true and accurate copy of the cover of the transcript showing stamped received date is attached to the Affidavit of W. Westbrook Wills as Affidavit Exhibit "E."
- 8) SCACR, Rule 207 (a)(1) provides an Appellant must order the transcript of a hearing resulting in an order from which Appellant is appealing within ten (10) days of the notice of appeal. Rule 207 (a)(1) further provides Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.
- 9) SCACR, Rule 207 (a)(2) provides the court reporter shall transcribe and deliver the transcript to appellant no later than sixty (60) days after the date of the request.
- 10) SCACR, Rule 208 (a)(1) provides that Appellant must file its initial brief within thirty (30) days of receiving the transcript and shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.
- 11) Despite the time provided under the rules for filing his initial brief following the order of the transcript not yet having expired, on October 18, 2013, the

Clerk of the Court of Appeals entered an Order dismissing Appellant's appeal on the grounds that Appellant/Petitioner has failed to provide proof of ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules.

- 12) As of the date of filing this Motion to Reinstate Appeal, the time period provided under SCACR, Rule 208(a) for Appellant/Petitioner to file his initial brief after ordering the transcript has not expired, and Appellant/Petitioner is prepared to timely file that initial brief.

Based on the foregoing and accompanying Memorandum of Law, and because Appellant/Petitioner either complied with, or believed in good faith to have complied with, the Appellate Rules regarding the provision of notice to the Courts of the ordering of the transcript, and because denying reinstatement of the appeal would deprive Appellant/Petitioner his important right to appellate review, Appellant/Petitioner respectfully requests the Court grant his motion, and reinstate his appeal.

Dated this 31st of October 2013
CHARLESTON, SC

Respectfully submitted,



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In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2012-CP-40-1249

James W. Trexler

Appellant,

v.

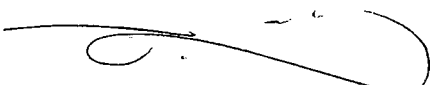
The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting, Inc.;
The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of Appellant/Petitioner's *Motion To Reinstate Appeal* on The Associated Press; Barrington Broadcasting South Carolina Corp.; Raycom TV Broadcasting, Inc.; The Spartanburg Herald Journal, Inc.; and The Pacific & Southern Co., Inc., by depositing a copy of it in the United States Mail, postage prepaid, on

October 31, 2013, addressed to their attorneys of record, Jay Bender, Baker, Ravenel & Bender LLP, Post Office Box 8057, Columbia, South Carolina 29202.



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ATTORNEY FOR RESPONDENTS

The South Carolina Court of Appeals

James W. Trexler, Appellant,

v.

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Carolina Corp., Raycom TV Broadcasting, Inc., The
Spartanburg Herald Journal, Inc. and the Pacific &
Southern Co., Inc., Respondents.

Appellate Case No. 2013-001581

The Honorable Joseph M. Strickland
Richland County
Trial Court Case No. 2010CP4001249

ORDER

Appellant has failed to provide proof of ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
William H. Johnson
Jerry Jay Bender
Matthew David Hamrick
Warren W. Wills, III

FILED

10 - 18 - 13 AP

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

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James W. Trexler,

Appellant,

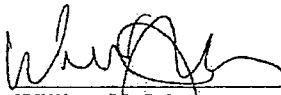
v.

The Associated Press;
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Inc.; The Spartanburg Herald
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NOTICE OF APPEAL

James W. Trexler appeals the orders of the Honorable Joseph M. Strickland dated October 25, 2012 and April 29, 2013, respectively. The April 29, 2013 order was a denial of Appellant's motion to reconsider, alter or amend the October 25, 2012 order, pursuant to Rule 59(e), SCRCP. Appellant received written notice of entry of the April 29, 2013 order denying Appellant's Rule 59(e) motion on June 19, 2013.



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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2010-CP-40-1249

James W. Trexler,

Appellant,

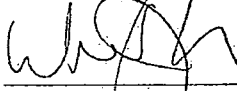
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Associated Press; Barrington Broadcasting South Carolina Corp.; Raycom TV Broadcasting, Inc.; The Spartanburg Herald Journal, Inc.; and The Pacific & Southern Co., Inc., by depositing a copy of it in the United States Mail, postage prepaid, on July 18, 2013, addressed to their attorneys of record, Jay Bender, Baker, Ravenel & Bender LLP, Post Office Box 8057, Columbia, South Carolina 29202.



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Attorney at Law

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(843) 278- 9333 (facsimile)

-and-

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Attorney at Law
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ATTORNEYS FOR APPELLANT

Other counsel of record:

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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Joseph M. Strickland, Special Circuit Court Judge

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Appellant,

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South Carolina Corp.;
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Respondents.

**AFFIDAVIT OF
W. WESTBROOK WILLS III**

PERSONALLY APPEARED before me W. Westbrook Wills III, Attorney for
the Appellant/Petitioner, James Trexler, who, being first duly sworn, deposes and says as
follows:

- 1) I am the attorney for Appellant/Petitioner, James Trexler in the above captioned
Appeal.

- 2) I was admitted to the South Carolina Bar in 2007. Since that time I have been engaged in the private practice of law, and operate the Law Office of W. Westbrook Wills III.
- 3) I am an active member in good standing of the South Carolina and Charleston Bars and the Georgia Bar. I am engaged in practice in the State Courts of Georgia and South Carolina with approximately 90% of my practice devoted to civil litigation.
- 4) This matter is my first appeal in South Carolina, and my first occasion to deal with the rules and procedures of the South Carolina Court of Appeals.
- 5) On July 18, 2013, Appellant/Petitioner timely filed his Notice of Appeal from two Orders of the Honorable Joseph M. Strickland, a) October 25, 2012 Order Granting Defendants' Motion for Summary Judgment, and b) April 29, 2013 Order denying Plaintiff's Motion to Reconsider, Alter or Amend the Order of October 25, 2012.
- 6) On July 31, 2013, I contacted Robin Reibold, the court reporter who took down the hearing at issue in this appeal, to inquire as to the proper procedure for ordering a copy of the hearing transcript. I explained to Ms. Reibold I was requesting the transcript because we were appealing the ruling from the hearing and therefore needed to request the transcript in a manner so as to comply with the notice requirements under South Carolina Appellate Rules, Rule 207(a)(1). Ms. Reibold instructed that I send her an e-mail request for the transcript, and that I copy opposing counsel and Desiree Allen with the Office of Court

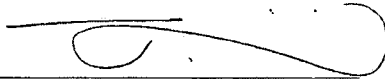
Administration (dallen@sccourts.org) on the e-mail to be in compliance with the applicable South Carolina Appellate Rules.

- 7) Later on July 31, 2013, I e-mailed Ms. Reibold, as instructed, to order a copy of the transcript of the hearing at issue. In the body of the e-mail I state that I am copying opposing counsel and Desiree Allen as required by the Appellate Court Rules. A true and accurate copy of my July 31, 2013 e-mail transcript request to Robin Reibold is attached hereto as Affidavit Exhibit "A."
- 8) The same day, Mr. Reibold responded to my e-mail request with a copy to all parties to the original e-mail, including Ms. Allen at the Office of Court Administration, indicating she would be out of the office the following week, but hoped to have the requested transcript ready shortly thereafter and would e-mail me with the cost of preparing the Transcript. A true and accurate copy of Ms. Reibold's e-mail response is attached hereto as Affidavit Exhibit "B."
- 9) On September 20, 2013, Mr. Reibold sent me an e-mail indicating she thought she had sent me the transcript invoice, but realized she never did. She attached the invoice to the September 20, 2013 e-mail. A true and accurate copy of Ms. Reibold's September 20, 2013 e-mail is attached hereto as Affidavit Exhibit "C."
- 10) On September 30, 2013, co-counsel for Appellant/Petitioner, William H. Johnson, paid Ms. Reibold for the invoice. A true and accurate copy of the paid invoice for the transcript with corresponding check stub is attached hereto as Affidavit Exhibit "D."

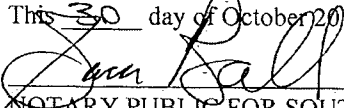
- 11) On October 3, 2013, co-counsel for Appellant/Petitioner, William H. Johnson's office received a copy of the transcript. A true and accurate copy of the cover of the Transcript showing stamped received date is attached hereto as Affidavit Exhibit "E."
- 12) After making inquiry as to the proper practice and procedure for requesting a copy of the hearing transcript, and copying Ms. Allen with the Office of Court Administration, I believed in good faith I was not in contravention of the notice requirements of the South Carolina Appellate Court Rules, Rule 207.
- 13) Following my July 31, 2013 request to Ms. Reibold for a copy of the transcript of the hearing at issue, and after copying Ms. Allen, as instructed, I had no reason to believe I had not complied with the Appellate Court Rules until such time as I received the Order dismissing Appellant/Petitioner's appeal shortly after October 13, 2013.

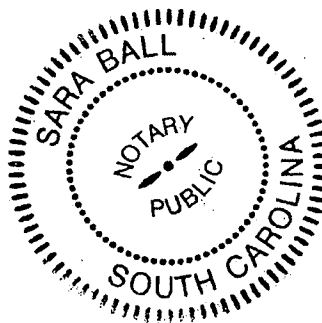
FURTHER AFFIANT SAYETH NOT.

Dated this 30th day of October 2013
CHARLESTON, SC


W. Westbrook Wills III
Attorney for Appellant/Petitioner

SUBSCRIBED and SWORN TO before me
This 30 day of October 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: Nov 4, 2020



AFFIDAVIT
EXHIBIT
A

From: W. Westbrook Wills III wwills@wwillslaw.com
Subject: Hearing Transcript Request
Date: July 31, 2013 at 11:39 AM
To: Robin Reibold ReiboldR@rcgov.us
Cc: William H. Johnson william@whjohnsonlaw.com, Matt Hamrick matt@matthamricklaw.com, Jay Bender, Esq. JBender@brblegal.com, dallen@sccourts.org

Ms. Reibold:

By this e-mail I would like to request a transcript of the hearing before Judge Strickland on Plaintiff's Motion for Reconsideration heard by the Court on March 13, 2013 (case number 2010-CP-40-1249). Please let us know the cost. Per the Appeals Court Rules, I am copying all counsel and Desirre Allen with the Office of Court Administration. Thank you in advance.

Best regards,

W. Westbrook Wills III
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38 Broad St.
Suite 200
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Tel. (843) 805-6300
Fax (866) 922-8596

Confidentiality Note: This e-mail, and any attachment to it, contain privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this e-mail message and any attachment to it is strictly prohibited. We do not waive attorney-client or work product privileges by the transmission of this e-mail. If you have received this message in error, please immediately notify us by return e-mail and/or telephone (843-805-6300) and delete the message in its entirety.

AFFIDAVIT
EXHIBIT
B

From: Robin Reibold ReiboldR@rcgov.us
Subject: RE: Hearing Transcript Request
Date: July 31, 2013 at 11:54 AM
To: W. Westbrook Wills III wwills@wwillslaw.com
Cc: William H. Johnson william@whjohnsonlaw.com, Matt Hamrick matt@matthamricklaw.com, Jay Bender, Esq. JBender@brblegal.com, dallen@sccourts.org

Thank you, Mr. Wills. Just by way of information, I will be out of the office next week but will return on 8/11. I hope to have your transcript ready shortly thereafter and will email you with a cost.

Robin Reibold

-----Original Message-----

From: W. Westbrook Wills III [mailto:wwills@wwillslaw.com]
Sent: Wednesday, July 31, 2013 11:38 AM
To: Robin Reibold
Cc: William H. Johnson; Matt Hamrick; Jay Bender, Esq.;
dallen@sccourts.org
Subject: Hearing Transcript Request

Ms. Reibold:

By this e-mail I would like to request a transcript of the hearing before Judge Strickland on Plaintiff's Motion for Reconsideration heard by the Court on March 13, 2013 (case number 2010-CP-40-1249). Please let us know the cost. Per the Appeals Court Rules, I am copying all counsel and Desirre Allen with the Office of Court Administration. Thank you in advance.

Best regards,

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Fax (866) 922-8596

Confidentiality Note: This e-mail, and any attachment to it, contain privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this e-mail message and any attachment to it is strictly prohibited. We do not waive attorney-client or work product privileges by the transmission of this e-mail. If you have received this message in error, please immediately notify us by return e-mail and/or telephone (843-805-6300) and delete the message in its entirety.

From: Robin Reibold ReiboldR@rcgov.us
Subject: RE: Hearing Transcript Request
Date: September 20, 2013 at 12:13 PM
To: W. Westbrook Wills III wwills@wwillslaw.com

**AFFIDAVIT
EXHIBIT
C**

Good afternoon, Mr. Wills. I'm so sorry, I thought I sent this last week but apparently I never did. Attached is a copy of the invoice for the requested transcript. I'll put it in the mail just as soon as I receive payment. Thanks a bunch, and have a great weekend.

Robin

-----Original Message-----

From: W. Westbrook Wills III [mailto:wwills@wwillslaw.com]
Sent: Wednesday, July 31, 2013 11:38 AM
To: Robin Reibold
Cc: William H. Johnson; Matt Hamrick; Jay Bender, Esq.;
dallen@sccourts.org
Subject: Hearing Transcript Request

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Best regards,

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**AFFIDAVIT
EXHIBIT
D**

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Facsimile 803-435-2858

William H. Johnson*

Christopher R. DuRant

September 30, 2013

Robin K. Reibold
Official Court Reporter
Master In Equity, Richland County
Post Office Box 192
Columbia, South Carolina 29202

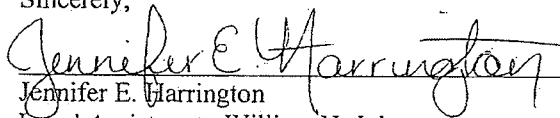
RE: James W. Trexler v. The Associated Press, et al
Richland County Docket No. 2010-CP-40-1249
Our File No. 10-108WM

Dear Ms. Reibold:

Enclosed herewith, please find our firm's check no. 4389 made payable to you in the amount of Eighty-one and 30/100ths (\$81.30) Dollars for the transcript fee for the hearing held on January 19, 2012, pursuant to your invoice dated September 13, 2013 in regard to the above captioned case.

Thank you for your attention to this matter.

Sincerely,


Jennifer E. Harrington
Legal Assistant to William H. Johnson

/jeh
Enclosure(s)

cc: W. Westbrook Wills, III, Esquire

•Also Admitted to Practice in North Carolina

10-108wm

September 13, 2013

W. Westbrook Wills, III, Esquire
The Law Office of W. Westbrook Wills III
38 Broad St., Suite 200
Charleston, SC 29401

RE: James W. Trexler v. The Associated Press, et al.
2010-CP-40-1249

Transcript Fee for hearing held on January 19, 2012
(25 pages at \$3.25/page)

TOTAL \$ 81.30

Payment is due upon receipt of transcript. Please make
check payable to Robin K. Reibold.

Thank you,

Robin K. Reibold

The Law Offices of William H. Johnson
Expense Account
Robin K. Reibold

4389

Date Type Reference
9/13/2013 Bill

Original Amt: Balance Due
81.30 81.30

9/27/2013
Discount Payment
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Check Amount 81.30

WHJ - Expense - chec 10-108WM-Trexler

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2010-CP-40-1249

James W. Trexler,)
Plaintiff,)
v.)
The Associated Press,)
Barrington South Carolina)
Corp., Raycom TV Broadcasting,)
Inc., and the Pacific &)
Southern Co., Inc.,)
Defendants.)

**PLAINTIFF'S MOTION
FOR RECONSIDERATION**



**THE
SECURITY TITLE
GUARANTEE CORPORATION OF BALTIMORE**
Six South Calvert Street
Baltimore, Maryland 21202-1388

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HEARING

Monday, March 11, 2013
4:03 p.m. to 4:37 p.m.

The hearing before the Honorable Joseph M. Strickland, Special Circuit Court Judge for Fifth Circuit, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 11th day of March, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2012-CP-40-1249

James W. Trexler

Appellant,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting, Inc.;
The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.

Respondents.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO REINSTATE APPEAL

COMES NOW Appellant/Petitioner, James Trexler, pursuant to South Carolina Appellate Court Rule 240 (c) and hereby submits his Memorandum of Law in Support of Motion to Reinstate Appeal, showing this Honorable Court as follows:

South Carolina Appellate Rules ("SCAR"), Rule 207(a)(1) provides that where a transcript of the proceeding must be prepared by the court reporter, Appellant shall,

within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal, and Appellant must contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. See id.

SCAR, Rule 208 (a)(1) provides that within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, Appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.

SCAR, Rule 260 (a) provides for dismissal of an appeal where it appears that an appellant has failed to comply with the requirements of the Appellate Rules, and indicates that a case shall not be reinstated except by leave of the Court, upon good cause shown, and after notice to all parties. In the context of setting aside a default judgment, which a trial court may, in its discretion, do upon a showing of good cause, the South Carolina Court of Appeals has indicated the following factors be considered to determine whether “good cause” is shown: “1. the timing of the . . . motion for relief; 2. whether the defendant has a meritorious defense; and 3. the degree of prejudice to the plaintiff if relief is granted.” Stark Truss Co., Inc., v. Superior Constr. Co., 360 S.C. 503, 510, 602 S.E. 2d 99, 102 (Ct. App. 2004).

Here, the Clerk dismissed Appellant/Petitioner's appeal on October 18, 2013 on the grounds that Appellant/Petitioner had failed to provide proof of ordering the transcript or to serve and file his initial brief and designation of matter as required by Rules 207(a), 208(a) and 209(a) of the South Carolina Appellate Court Rules ("SCACR"). As set forth more fully in Appellant/Petitioner's accompanying Motion for Reinstatement of Appeal and attached affidavit of W. Westbrook Wills III, counsel for Appellant/Petitioner believed, in good faith, he had complied with the notice requirement under SCACR, Rule 207 for requesting a transcript of the hearing at issue in the appeal from the court reporter. After reading the Appellate Rules, counsel for Appellant/Petitioner called Robin Reibold, the court reporter who took down the hearing at issue for the appeal to inquire as to the standard or preferred way for requesting a transcript and explaining that because the transcript was for an appeal he needed to comply with the notice requirements mandated under the Appellate Court Rules. Counsel for Appellant/Petitioner understood Ms. Reibold's instructions to send her an e-mail request for the transcript with a copy to opposing counsel and to Desire Allen at the Office of Court Administration as being in compliance with the Appellate Rules. Counsel for Appellant/Petitioner, not knowing Ms. Allen's function, believed giving notice to her of ordering the transcript was, in effect, giving the Court of Appeals notice.

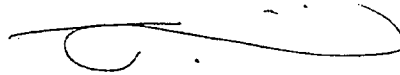
In this appeal, counsel for Appellant/Petitioner timely filed his Notice of Appeal and gave the requisite notice of that appeal to opposing counsel. (See Exhibit "B" to Appellant/Petitioner's Motion to Reinstate Appeal). Counsel made a timely request to the court reporter to prepare the transcript of the hearing at issue in the appeal, and copied who he believed, in good faith, were the proper parties to comply with the notice

requirement under SCACR, Rule 207. (See Exhibit "C" to Appellant/Petitioner's Motion to Reinstate Appeal). Counsel for Appellant/Petitioner paid for and received the transcript from the court reporter. (See Exhibit "C" to Appellant/Petitioner's Motion to Reinstate Appeal). The first indication counsel for Appellant/Petitioner had of non-compliance with Rule 207 was when he received the Order from the Court of Appeals dismissing the appeal on October 21, 2013. (See Exhibit "C" to Appellant/Petitioner's Motion to Reinstate Appeal). Appellant/Petitioner hereby and immediately submits his Motion to Reinstate the appeal, within the 15 days provided under Rule 260 for doing so. Furthermore, Appellant/Petitioner has cured the error by giving providing the required correspondence with the court reporter to the clerk of the Court of appeals, and has completed and is prepared to file his initial brief within the original time period provided under the Rule 208 (a), which initial brief details the merits of Appellant/Petitioner's defenses. Lastly, Appellant/Petitioner would be severely prejudiced were this Court to deny his motion to Reinstate Appeal because he would not only be deprived of his right to appellate review of the decision of the lower court on matters of significant legal importance, but the decision of the lower court, arguable based on errors of law, would become the "law of the case" in two associated matters pending in the Circuit Court [Civil Action Nos. 2012-CP-40-1343 and 2012-CP-40-4652], extending the effects of the prejudice to those cases, too. On the other hand, the Respondents would suffer no prejudice were the Court to reinstate Appellant/Petitioner's appeal.

For the foregoing reasons and those set forth in Appellant/Petitioner's Motion for Reinstatement of Appeal, Appellant/Petitioner respectfully requests the Court reinstate the appeal and allow the issues therein to be decided on the merits.

Dated this 31st of October 2013
CHARLESTON, SC

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Case No. 2012-CP-40-1249

James W. Trexler

Appellant,

v.

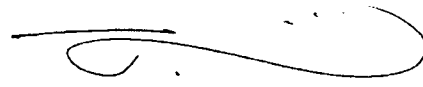
The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting, Inc.;
The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of Appellant/Petitioner's *Memorandum in Support of Motion to Reinstate Appeal* on The Associated Press; Barrington Broadcasting South Carolina Corp.; Raycom TV Broadcasting, Inc.; The Spartanburg Herald Journal, Inc.; and The Pacific & Southern Co., Inc., by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2013, addressed to their attorneys of record, Jay

Bender, Baker, Ravenel & Bender LLP, Post Office Box 8057, Columbia, South Carolina
29202.



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The South Carolina Court of Appeals

James W. Trexler, Appellant,

v.

The Associated Press, Barrington Broadcasting South
Carolina Corp., Raycom TV Broadcasting, Inc., The
Spartanburg Herald Journal, Inc. and the Pacific &
Southern Co., Inc., Respondents.

Appellate Case No. 2013-001581

The Honorable Joseph M. Strickland
Richland County
Trial Court Case No. 2010CP4001249

ORDER

On October 18, 2013, this appeal was dismissed for failure to provide proof of ordering the transcript or to serve and file the appellant's initial brief and designation of matter. Along with a motion to reinstate, counsel for the appellant provided satisfactory proof of having ordered the transcript. Counsel also filed the appellant's initial brief and designation of matter. The appeal is hereby reinstated and the appellant's initial brief and designation of matter are accepted as filed. The respondent's initial brief and designation of matter are due to be served by December 04, 2013.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED

11-21-13 *AS*

Columbia, South Carolina

cc:

William H. Johnson, Esquire

Jerry Jay Bender, Esquire

Matthew David Hamrick, Esquire

Warren W. Wills, III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Circuit Court Case No. 2010-CP-40-1249
S.C. Court of Appeals Case No. 2013-001581

James W. Trexler,

Appellant,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting
Inc.; The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The Trial Court Erred in Finding Appellant's Amended Complaint did not Relate Back to the Date of his Original Complaint and was Therefore Time-Barred by the Statute of Limitations.

2. The Trial Court Erred in Finding Appellant was a "Public Official" for Purposes of Defamation as a Matter of Law.

3. The Trial Court Erred in Finding Appellant was Required to Show Respondents Acted with "Actual Malice" in Publishing Allegedly Defamatory Statements about him, and that Appellant Failed to Make such a Showing.

4. The Trial Court Erred in Finding as a Matter of Law that Allegedly Defamatory Publications by Respondents were True or Substantially True, Providing Respondents with an Absolute Defense to Appellant's Defamation Claims.

5. The Trial Court Erred in Finding as a Matter of Law that the Fair Report Privilege Applied to Defeat Appellant's Defamation Claim against Respondents where Appellant Presented Evidence Demonstrating Respondents Abused the Privilege.

6. The Trial Court Erred in Failing to Consider the Evidence Appellant Submitted in Opposition to Respondents' Motion for Summary Judgment.

7. The Trial Court Erred in Applying the "Single Publication" Rule in Finding the Appellant's Defamation Claims are Barred by the Statute of Limitations where Respondents Continued to Publish Defamatory Content on the Internet.

STATEMENT OF THE CASE

Appellant, James W. Trexler (referred to herein as "Appellant"), was formerly employed as an Executive Assistant III by the South Carolina Department of Agriculture. Respondents, The Associated Press; Barrington Broadcasting, Inc.; Pacific & Southern Company, Inc.; and Raycom TV Broadcasting, Inc. (collectively referred to herein as "Respondents") are media entities that deliver news through media channels including print, television, and the Internet.

This is a defamation case that arises out of numerous broadcasts and publications by Respondents concerning Appellant's alleged involvement in the mistreatment of certain horses. On February 27, 2008, and thereafter, each Respondent published through its respective media channels reports concerning Appellant's alleged involvement with the horses, including information the Respondents obtained from a February 28, 2008 publication by the Sheriff of Richland County (hereinafter referred to as "SRC") of an e-mail press release (hereinafter referred to as the "Press Release"). The SRC's Press Release purportedly provided the media official information concerning the arrest of Appellant and his mother and brother following a collaborative investigation of animal cruelty by the SRC and the Humane Society for the Prevention of Cruelty to Animals (hereinafter referred to as the "HSPCA"), and the Press Release mistakenly reported that Plaintiff had been charged with kidnapping.

Appellant alleges in this case that as a direct result of the publication of the Press Release by the SRC, and the repeated publication by the Respondents of allegedly false statements associating him with extreme animal cruelty both in South Carolina and Georgia, and accusing him of felony kidnapping, Appellant lost his job, salary, pension, retirement benefits, his ability to obtain like employment, and has suffered irreparable harm to his personal and professional reputation.

Appellant filed his original Complaint on February 23, 2010. (R. pp. 27-31). Appellant filed his

Amended Complaint on June 23, 2010. (R. pp. 33-40). Respondents moved for summary judgment on August 11, 2011. (R. 451-470; R. pp. 479-487; R. pp. 488-502; R. pp. 503-663). Appellant opposed the motion for summary judgment. (R. pp. 664-845; R. pp. 846-1028).

A hearing was held on January 19, 2012 before Honorable Joseph M. Strickland on Respondents' motion for summary judgment. (R. pp. 69-134). The trial court granted summary judgment in favor of the Respondents on October 30, 2012. (R. pp. 1-16). Appellant received written notice of the filing of the Order granting summary judgment on November 12, 2012. On November 20, 2012 Appellant filed his Motion for Reconsideration. (R. pp. 1029-1031; R. pp. 1032-1045). A hearing was held on March 11, 2013 before Honorable Joseph M. Strickland on Respondents' motion for reconsideration. (R. pp. 135-159). The trial court denied Appellant's motion for reconsideration on April 30, 2013. (R. pp. 17-26). Appellant received written notice of the entry of the order denying his motion for reconsideration on June 19, 2013. Appellant served his Notice of Appeal on July 18, 2013.

ARGUMENT

- 1. The Trial Court Erred in Finding Appellant's Amended Complaint did not Relate Back to the Date of his Original Complaint and was Therefore Time-Barred by the Statute of Limitations.*

When Appellant filed his original Complaint on February 23, 2010, he was unaware of the precise legal identity of the media entities that published the allegedly defamatory statements at issue in this action. Therefore, Appellant named as defendants in his Complaint "all media companies that produced or reported on any event relating to Plaintiff in 2008, 2009, and 2010." (R. pp. 27-31). On June 23, 2010, prior to serving the Complaint, Appellant filed his Amended Complaint in which he more specifically named as defendants those parties to which he broadly referred in his original Complaint, to wit, the above-named Respondents. (R. pp. 33-40). Appellant served Respondents the same day with the Amended Complaint. (See R. pp. 880-884).

Respondents claim Appellant's causes of action are barred by the statute of limitations because Respondents claim Plaintiff added them as parties more than two years after the publications which form the basis of Appellant's Complaint and Amended Complaint. The trial court erroneously found that the Amended Complaint did not relate back pursuant to Rule 15(c), SCRPC. First, Respondents are proper parties to the original action, and not "added" parties to Appellant's Amended Complaint, as Respondents suggest. However, even were Respondents somehow to qualify as different parties than those Appellant announced in his Complaint, Appellant properly substituted Respondents as proper parties in his Amended Complaint pursuant to Rule 15 (c), SCRPC.

Rule 15 (c), SCRPC provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, that action would have been brought against him.

"A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing." S.C. Code Ann. § 15-3-20 (b) (2005); see also Rule 3(a)(2), SCRPC. Thus, the period of commencement of an action includes the 120 day service period.

The South Carolina Supreme Court in Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994) adopted a four-part test to aid in interpreting the requirements of Rule 15(c): 1) the basic claim must have arisen out of the conduct set forth in the original pleading; 2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defenses; 3)

that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and 4) the second and third requirements must have been fulfilled within the prescribed limitations period. Id. at 214, 586.

Here, Appellant timely filed his original Complaint on February 23, 2010 naming as defendants all media companies that produced or reported on any event relating to Plaintiff in 2008, 2009, and 2010. On June 23, 2010, pursuant to Rule 4, SCRCP, Appellant filed his Amended Complaint more specifically identifying those media defendants he anticipated in his original Complaint. Each party defendant specifically named in his Amended Complaint was a media company that produced or reported on events relating to Plaintiff in 2008, 2009, and 2010. Appellant then served his Amended Summons and Amended Complaint on each of the Respondents within the original 120 days provided under Rule 3(a)(2), SCRCP for the service of his original Complaint.

Because Appellant's Amended Complaint did not change parties to the lawsuit, but rather simply defined them more accurately within the original commencement period, Appellant's Amended Complaint relates back to the filing of the original Complaint, and his causes of action with regard to the Respondents were commenced within the statute of limitations.

Even if the Court determines Appellant's original Complaint too broadly identified the media defendants, Appellant properly and timely substituted the specific media companies as defendant parties in his Amended Complaint. In fact, in that alternative, Appellant's naming "all media defendants . . ." is analogous to naming a John Doe defendant in an action where a plaintiff knows a cause of action exists against one or more defendants the true identity of whom is yet unknown to the plaintiff. While this situation arises primarily in hit and run auto accident cases, the underlying legal tenants are the same for other civil actions. S.C. Code Ann. § 38-77-180 permits an injured person to file suit against an unknown driver, and specifically allows that party to instigate an action against the real tortfeasor if he

discovers his real identity.

“The language of Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant to an already existing defendant.” Jackson v. John Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (citing Kraly v. Vannewkirk, 69 Ohio St. 3d 627, 635 N.E. 2d 323 (Ohio 1994) (determining that Ohio’s Rule 15(c), which is similar to South Carolina’s Rule 15(c), allows for relation back when a party is *substituted* but not when a party is added while retaining a party named in the original suit)).

In Jackson, the plaintiff filed her original complaint against an unknown driver pursuant to the statutory scheme established by state law. Nearly four and a half years later the court allowed Jackson to amend her complaint to add Milligan as a defendant. However, Jackson’s amended complaint retained John Doe as a named party, and identified him as an unknown driver. The Jackson court recognized, “the addition of a party is not the same as a substitution or change of party.” Id. That court, therefore, disallowed the relation back of Jackson’s amended complaint with regard to the added party.

Here, if Appellant’s Amended Complaint cannot be construed as naming the same parties as in his Complaint, then his Amended Complaint clearly substitutes, rather than adds, the specifically named media defendants for the broader description of “all media companies . . . [.]”

Unlike in Jackson, Appellant did not add Respondents as new parties while also retaining as defendants “all media companies . . . [.]” Rather, Appellant replaced “all media companies . . .” with those presently named in the action, the more-specifically identified Respondents.

In the present case Appellant’s amendment to his Complaint satisfies the four-part test announced in Hughes: 1) Appellant’s basic claims against Respondents arose out of the conduct set forth in his original pleading; 2) each Respondent received notice of Appellant’s claims and have answered them, have all engaged in discovery, and have, therefore, not been prejudiced in maintaining its defenses; 3) by virtue of the Appellant’s serving each Respondent with the action, each naturally knew the action would

have been brought against it but for the misnomer, 4) each Respondent received notice of Appellant's action against them within the 120 days provided by Rule 3(a)(2), SCRPC for the service of Appellant's original Complaint. As such, under Jackson Appellant properly substituted Respondents and his Amended Complaint legally relates back to the filing of his original Complaint.

2. The Trial Court Erred in Finding Appellant was a "Public Official" for Purposes of Defamation as a Matter of Law.

Respondents contend that Appellant was a public official and therefore that he was required to demonstrate that Respondents acted with "actual malice" in publishing allegedly defamatory statements about him. Appellant asserts that he is a private figure and is therefore not required to demonstrate Respondents acted with actual malice in publishing false statements about him.

For purposes of defamation, whether a person is a private figure or a public official is a question of law for the court. See Rosenblatt v. Baer, 383 U.S. 75, 87, 86 S.Ct. 669, 677, 15 L.E.d.2d 597, 606 (1966). However, this determination must be made on a case-by-case basis after careful examination of the facts and circumstances. Id. Of course, for purposes of summary judgment, the trial court must view those facts and circumstances, and all inferences that may be drawn therefrom, in the light most favorable to the nonmoving party. Rule 56, SCRPC; Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991).

The United States Supreme Court, in New York Times Co. v. Sullivan, 376 U.S. 254, 11 L. Ed. 2d 686 (1964) established the rule that a public official must provide clear and convincing proof of "actual malice" to recover damages for defamatory falsehood relating to his or her official conduct. The Supreme Court further specified in Rosenblatt supra that a "public official" for purposes of the New York Times rules is not to be determined by state law standards. That is not to say, however, that South Carolina courts are required to turn a blind eye to its own definitions of "public official" when determining whether an individual meets the definition of a "public official" for purposes of defamation.

The definition of a public officer appears more than once in the South Carolina Code. S.C. Code Ann. § 8-1-10 provides “public officers” are “all officers of the State that have heretofore been commissioned [. . .], members of various State boards, and other persons whose duties are defined by law.” § 8-13-100 (27) defines a “public official” as being “an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for office.” § 16-3-1040 defines a “public official” as “any elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.”

Neither the U.S. Supreme Court nor the Supreme Court of South Carolina has provided an all-encompassing definition of public official, “although it is clear the category **does not** include all public employees.” Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 469, 629 S.E.2d 653, 666 (2006), see also Hutchinson v. Proxmire, 443 U.S. 111, 133-34, 99 S.Ct. 2675, 2687 (1979) (emphasis added).

The U.S. Supreme Court and South Carolina case law instructs that a public official is a person who, among the hierarchy of government employees, has or appears to the public to have “substantial responsibility for or control over the conduct of governmental affairs.” Erickson, 368 S.C. 444 at 469 (2006); Holtzscheiter v. Thompson Newspapers, Inc., 332, S.C. 502, 520 n.4, 506 S.E.2d, 497, 507 n.4 (Toal, J. concurring) (quoting Rosenblatt, 383 U.S. at 85, 86 S.Ct. at 676). Importantly, for defamation purposes, a governmental employee’s status as a public official must not be determined by that person’s place on the totem pole but rather because of the public interest in a government employee’s activity in a particular context.” Id. Moreover, “[i]n considering the question of whether one is a public official, the employee’s position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charge in controversy.” Id.

The Supreme Court of South Carolina has held that a public officer is “one who is charged by

law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). Moreover, criteria the South Carolina Supreme Court has considered when distinguishing between public officers and public employees include “whether the position was created by the Legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required [and] whether the one occupying the position is a representative of the sovereign.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). South Carolina Code Ann. § 8-3-10 provides it “shall be unlawful for any person to assume the duties of any public office until he has taken the oath provided by the Constitution and been regularly commissioned by the Governor.”

South Carolina courts have reviewed various types of public employees to determine whether they meet the definition of a “public official” for purposes of defamation. In South Carolina, police officers are deemed public officials in part because they are charged with the discretionary exercise of the sovereign power to enforce the laws of the South Carolina, their positions were created by the Legislature, and their duties established by statute. See State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994). Furthermore, police officers are required to file a bond conditioned on the faithful performance of their duties and they must swear an oath before assuming their positions, and their duties are of great public concern. See S.C. Code Ann § 23-3-20; see also State v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948). Because police officers are elected or appointed, they are public officials for the purpose of § 16-3-1040. State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996). “The greater the duty to the public at large, the more likely it is that the individual will be a public official.” Thrift at 309, 356.

“Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though

the employment be in or about public work or business, is a mere employee.” Sanders, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907).

Here, Appellant's job at the Department of Agriculture meets none of the criteria for qualifying as a public official set out by either statute or case law. Appellant was neither elected nor appointed to his position, obtaining his first job as a state employee over 27 years ago by filling out an application for employment. (R. pp. 995-997). Appellant's employment at the Department of Agriculture was consistent with that of a state employee. (R. pp. 995-997). Appellant's performance at the Department was regularly evaluated under the Employee Performance Management System (“EPMS”) created by the Office of Human Resources of the Budget and Control Board. (R. pp. 995-997), while elected or appointed officials at the Department were not evaluated using that system. (R. pp. 995-997). Appellant's job at the Department was neither created by the Legislature, nor were his duties defined by statute. In fact, in April and again in July of 2007, Commissioner Weathers, at his own discretion, unilaterally modified Appellant's job duties and responsibilities at the Department. (R. pp. 1058-1061; R. pp. 1005-1010; 1021-1022). Appellant was not required to post any bond or swear an oath before taking his job at the Department. (R. pp. 1046-1057). Appellant had no relation to or contact with the public in his job at the Department. (R. pp. 1046-1057).

Appellant was essentially a staff accountant and information technology coordinator at the Department of Agriculture. His job performance was neither the subject of public scrutiny, nor was he vested with the power to exercise any part of sovereign power. (R. pp. 1046-1057; R. pp. 1005-1010; 1021-1022). Also, in sharp contrast to public officials, Appellant had no independent decision-making authority to act on behalf of the Department in any way concerning the Department's overall functioning and purpose in state affairs. (Id.; R. pp. 1005-1010; 1021-1022). In fact, Commissioner Weathers often referred to Appellant's responsibilities as “back office functions of the Agency.” (R. pp. 1046-1057).

Appellant merely performed duties assigned to him by Commissioner Weathers.

The term "Assistant Commissioner of Agriculture" was Appellant's internal, informal title created not by the Legislature, but by Commissioner Weathers. (R. pp. 1046-1057; R. pp. 1063-1071¹). Prior to 2007, no Assistant Commissioner of Agriculture existed in the history of the South Carolina Department of Agriculture (R. pp. 1046-1057). Likewise, nowhere does the South Carolina Code make any mention whatsoever of any Assistant Commissioner of Agriculture, much less define the duties of any such position.

Despite contradictions contained in the Affidavit², Commissioner Weathers swore that the statements therein were correct, truthful, and his own. However, he admitted to only having briefly looked over the affidavit before signing it, and did not write it himself (R. pp. 1005-1010; 1021-1022). As such, words in the affidavit such as "appointed," "authority," "directed," and "management of the agency" are not likely those of the Commissioner, but those of lawyers familiar with the critical language needed to semantically transform Appellant from an employee of a state agency into a full blown public official.

Commissioner Weathers testified Appellant's role at the Department of Agriculture was to advise the Commissioner with regard to the Department budget (R. pp. 1005-1010; 1021-1022), keep an accounting of Department funds (R. pp. 1005-1010; 1021-1022), and help the Commissioner accomplish the goals the Commissioner set for the Department (R. pp. 1005-1010; 1021-1022). Commissioner Weathers further testified decision-making authority in the Department was his (R. pp. 1005-1010; 1021-1022), and in making decisions he would take advice, as needed, from any staff member of the Department, and even his wife. (R. pp. 1005-1010; 1021-1022). Commissioner Weathers also

¹ The Affidavit of Georgette Rivers, Exhibit "U" was submitted by Respondents in support of their motion for summary judgment. However, the affidavit was not signed.

² In paragraph 4 of Commissioner Weather's affidavit he claims to have appointed Appellant as Assistant Commissioner of Agriculture, while in paragraph 6 Commissioner Weathers states Appellant was already Assistant Commissioner of Agriculture when he arrived at the Department.

recognized Appellant's job required no real interaction with the Press. (R. pp. 1005-1010; 1021-1022). Commissioner Weathers's deposition testimony characterizes Appellant's job functions at the Department as those of a staff member as opposed to the functions characteristic of a public official as defined by South Carolina law. Moreover, the Affidavit of Georgette Rivers, submitted in support of Respondents' motion for summary judgment actually supports Appellant's argument he was a mere employee of the Department of Agriculture.

The law designates whether a person is or is not a public official. That the Respondents, or affidavits they submit in support of their argument, merely state Appellant is a public figure does not automatically make it so. Because Appellant's position at the South Carolina Department of Agriculture did not meet the criteria to qualify him as a public official, the trial court should have denied Respondent's motion for summary judgment.

3. *The Trial Court Erred in Finding Appellant was Required to Show Respondents Acted with "Actual Malice" in Publishing Allegedly Defamatory Statements about him, and that Appellant Failed to Make such a Showing.*

Because Respondents contend that Appellant was a public official, they contend that he was required to demonstrate that Respondents acted with "actual malice" in publishing allegedly defamatory statements about him. Appellant asserts that he is a private figure and is therefore not required to demonstrate Respondents acted with actual malice in publishing false statements about him.

"A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him"

Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998)

(Holtzscheiter II) (quoting Lésésne v. Willingham, 83 F. Supp. 918, 921 (E.D.S.C. 1949)).

If the defamatory meaning of a statement is obvious on the face of the statement, the statement is defamatory *per se*. Id. Defamation is actionable *per se* if it involves "written or printed words which

tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous . . .” Id. “If a defamation is actionable *per se*, then under common law principles the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages.” Fleming v. Rose, 338 S.C. 524, 533 526 S.E.2d 732, 737 (Ct. App. 2000).

The United States Supreme Court in New York Times Co. v. Sullivan, 376 U.S. 254, 11 L. Ed. 2d 686 (1964) established the rule that a “public official” must provide clear and convincing proof of “actual malice” to recover damages for defamatory falsehood relating to his or her official conduct. As discussed above, Appellant asserts that he was not a public official, but even if he were a public official summary judgment was not appropriate because the evidence presented to the trial court showed that there was a genuine issue of material fact regarding whether the Respondents acted with actual malice, because “[w]here the defendant finds internal consistencies or apparently reliable information that contradicts its libelous assertions, but nevertheless publishes those statements anyway, the New York Times actual malice test can be met.” Tomblin v. WCHS-TV8, 434 Fed. Appx. 205 (4th Cir. 2011) (quoting Schiavone Constr. Co. v. Time, Inc., 847 F.2d 1069; 1090 (3d Cir. 1988) (citing Curtis Publ’g Co. v. Butts, 388 U.S. 130, 161 n.23 (1967))).

Whether or not Appellant is a public official for purposes of defamation, the evidence shows that Respondents published or broadcast statements alleging that Appellant engaged in multiple acts of felony-class cruelty to animals, and that he was a kidnapper. Those statements were false and misleading, and constituted defamation which is actionable *per se*. Moreover, evidence exists Respondents were aware of information which contradicted information they received from officials when they published allegedly defamatory material concerning Appellant’s alleged involvement with the mistreatment of horses. Specifically, evidence shows that Respondents had knowledge that

Appellant claimed he did not own any horses or the land on which the horses were found. (R. pp. 1023-1028). Evidence also shows that Respondents were aware that Appellant's mother freely claimed ownership of all the horses and the property on which the horses were found. (R. pp. 1023-1028). As such, the trial court should have held that sufficient evidence exists so as to create a genuine question of material fact with regard to whether Respondents published the statements with conscious disregard for Appellant's rights and the truth of the statements they published or broadcasted. Taking the facts, circumstances, and evidence in the light most favorable to the Appellant, the trial court should have denied the Respondents' motion for summary judgment.

4. The Trial Court Erred in Finding as a Matter of Law that Allegedly Defamatory Publications by Respondents were True or Substantially True, Providing Respondents with an Absolute Defense to Appellant's Defamation Claims.

Respondents contend that Appellant's Amended Complaint failed to state a cause of action for defamation because the statements they published concerning Appellant were substantially true and therefore not actionable as defamatory.

To establish a claim for defamation Appellant must prove "1) a false and defamatory claim was made; 2) the unprivileged statement was published to a third party; 3) the publisher was at fault; and 4) either the statement was actionable regardless of harm or the publication of the statement caused special harm." Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Truth is an affirmative defense to a libel claim. Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 221 S.E.2d 770 (1976).

Respondents claimed they were entitled to summary judgment because any statements they published concerning Appellant were substantially true in that they reported on Appellant's arrest and indictment on charges of felony animal abuse. Appellant contends Respondents published statements which were either totally false, or which misrepresented and distorted the truth such as to convey a false

message.

On February 27, 2008, Appellant was arrested and charged with five counts of misdemeanor ill-treatment of animals. (R. pp. 1088-1092). On March 13, 2008, Appellant was indicted on 4 counts of felony mistreatment of animals. (R. pp. 1093-1100). On July 15, 2010, all charges against Appellant were dismissed. (R. pp. 900).

Between February 27, 2008 and March 13, 2008, Respondents published articles and broadcasted statements indicating that Appellant had been charged with felony class mistreatment (See S.C. Code Ann. § 47-1-40 (B)) of dozens of animals in South Carolina and Georgia, and that he had been charged with kidnapping. (R. pp. 902-910; R. pp. 912-922; R. pp. 925-950; and R. pp. 952-977). While it is true that Appellant was eventually charged with felony ill-treatment of animals, the evidence demonstrates that prior to March 13, 2008 Appellant faced misdemeanor ill-treatment charges. Furthermore, it is undisputed that all charges against Appellant related to only five horses in South Carolina, not dozens of horses both in South Carolina and Georgia. It is also undisputed that Appellant was never charged with kidnapping.

The trial court should have held, given the timing of Respondents' publications concerning Appellant, when viewed in the light most favorable to the Appellant, that a reasonable jury could find the subject publications concerning the level and severity of Appellant's involvement with ill-treated horses to be false, or at least substantially untrue. Furthermore, the trial court should have held that the question of whether statements published by Respondents could be construed in a particular context as being substantially true was a genuine issue of material fact to be decided by a jury and not appropriately decided on summary judgment. Therefore, the trial court should not have granted summary judgment on the basis that the subject publications were substantially true.

5. The Trial Court Erred in Finding as a Matter of Law that the Fair Report Privilege Applied to Defeat Appellant's Defamation Claim against Respondents where Appellant

Presented Evidence Demonstrating Respondents Abused the Privilege.

Respondents incorrectly assert that the allegedly defamatory publications concerning Appellant were protected communications under the fair reporting privilege. The fair reporting privilege “protects fair and accurate reports of ‘judicial records and proceedings and other official acts, reports, and records.’” S.C. Jur. Libel and Slander §61 (1993), White v. Wilkerson, 328 S.C. 179, 186, 493 S.E.2d 345, 347 (1997). The privilege “extends only to reports of the content of the public record, and any matter added to the report by the publisher, which is defamatory of the person named in the public record, is not privileged.” West v. Morehead, 2001 S.C. App. Lexis 263 (2001) (citing Jones v. Garner, 250 S.C. 479, 487, 158 S.E.2d 909, 913 (1968)). Furthermore, under a defense of fair report privilege, “one who publishes defamatory matter concerning another is not liable for the publication if 1) the matter is published upon an occasion that makes it [qualifiedly or] conditionally privileged, and the privilege is not abused.” Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) (citing Restatement (Second) of Torts §593 (1977)(emphasis added)). “Where there is conflicting evidence, the question whether [a qualified] privilege has been abused is one for the jury.” Swinton Creek, 334 S.C. at 485, 514 S.E.2d at 134.

Respondents argue that any statements they published or broadcast concerning Appellant’s level and degree of involvement with the ill-treatment of horses and charges of kidnapping were fair and accurate reports of the contents of the Press Release, which Respondents claim is a public record. Appellant asserts that the Press Release is not a public record and therefore the fair reporting privilege does not apply to protect Respondents’ publications. A public record includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics, prepared, used, in the possession of, or retained by a public body. S.C. Code Ann. §30-4-20. Editorialized, e-mail communications containing statements of opinion do not qualify as a public

record under the foregoing definition.

However, Appellant asserts that even if the Press Release were to qualify as a public record for purposes of the fair report privilege, Respondents are not entitled to its protection because 1-) their publications concerning Appellant were not fair and accurate reports of the contents of the Press Release; and 2) Respondents' liberties in misrepresenting the facts to aggrandize Appellant's alleged involvement with horses here and in Georgia amounts to an abuse of the privilege. Appellant further argues that, if any, only Respondents' initial publications or broadcasts purporting to be fair and accurate republication of contents of the Press Release are subject to the fair reporting privilege. Any and all subsequent publications are not reports of a public record and are afforded no protection.

Appellant also asserts that even Respondents' initial publications based on the Press Release were not fair and accurate reports of the contents of that document, and Respondents are therefore not entitled to protection under the fair reporting privilege. Even a cursory reading of Press Release and Respondents' publications reveal Respondents' publications not only misstated facts but added information not contained in the Press Release. (R. p. 875; R. pp. 902-977). In addition to attributing the kidnapping charge to Appellant, the Press Release does seem to implicate Appellant in felony class abuse ("severe and barbaric treatment"), and implies Appellant was involved with 28 or more horses. Respondents' publications add to the information contained in the Press Release: The Respondents' publications implicate Appellant in felony class abuse of "dozens of horses both here and in Georgia" (R. p. 979), "James Trexler is accused of mistreating dozens of horses" (R. p. 981; R. pp. 983-984), "[t]hree people accused of starving horses to the point of near death" (R. p. 986; R. pp. 988-991). A February 27, 2008 WXLt report immediately following the Press Release states "Weathers [Commissioner of Agriculture] says they will make more decisions regarding Trexler's future with the department after the investigation has complete. No charges have been filed, but 28 horses have been

taken.” (R. p. 993).

The trial court should have held, with all inferences in favor of Appellant, there was sufficient evidence to create a question of fact with regard to whether Respondents' publications were only based on the Press Release and, if so, whether they were fair and accurate reports of the content of that document.

Appellant provided to the trial court evidence of articles or broadcasts containing allegedly defamatory material for months after the SRC disseminated the Press Release and which contained allegedly defamatory statements not contained in the Press Release. (R. pp. 902-977). The trial court should have found that when viewed in the light most favorable to the Appellant, sufficient evidence existed as to whether Respondents abused the fair report privilege to allow a jury to decide the question. See Swinton Creek, 334 S.C. at 485, 514 S.E2d at 134 (citing 50 Am. Jur. 2d Libel and Slander § 276 (1995)) (question of whether privilege has been abused is one for jury). Therefore, the trial court should have denied Respondents' motion for summary judgment based on the fair report privilege.

6. The Trial Court Erred in Failing to Consider the Evidence Appellant Submitted in Opposition to Respondents' Motion for Summary Judgment.

In its Order granting Respondents' motion for summary judgment, the trial court indicates Appellant failed to meet his burden under Rule 56, SCRPC because he “filed nothing with the court which identified specific facts in dispute relative to his libel claim, relying entirely on counsel's description of materials not before the court to argue questions of material fact existed.” (R. p. 3). However, the trial court was mistaken, as Appellant submitted to the trial court over 150 pages of evidentiary materials including, inter alia, copies of published news articles, numerous deposition transcript excerpts, affidavits, and documents related to the prosecution of the Appellant and the dismissal of the prior criminal charges against him. The supporting evidence Appellant submitted demonstrates that genuine issues of material fact exist as to every element of and defense to his libel

claim, including the level of falsity of the publications, the extent of Respondents' knowledge of the falsity of the publications, Respondents' degree of fault in publishing the articles at issue, and Respondents' continued publication the false and misleading material.

During the summary judgment hearing, counsel for Appellant made specific reference to articles published by each of the Respondents. Contemporaneously, counsel for Appellant asked the trial court's permission to pass up the articles as submissions of evidence demonstrating specific material facts in dispute with regard to his claims and Respondents' defenses thereto. However, instead of receiving the documents at the bench, the trial court indicated it would rather Appellant not pass the evidence up, and would take counsel's representations of the material. The transcript of the hearing reads, in pertinent part, as follows:

Mr. Wills: If the Court would not mind, I'd like to pass up some of the articles that have been written to address my next point, which is that the articles are not fair and accurate reports of the public record, and that they actually mischaracterize, mislead, and are false

The Court: Mr. Wills, I'll accept your representation.

Mr. Wills: Okay.

The Court: I'm sure that your position is supported. I'll accept your representation.

(R. p. 97; R. p. 99).

The trial court judge concluded the hearing by asking each side to submit proposed orders. This is a typically-used procedure whereby each party has an opportunity to set forth his respective arguments in the form of a proposed order. See e.g., Allen v. South Carolina Alcoholic Beverage Control Commission, 321 S.C. 188, 191, 467 S.E. 2d 450, 452 (Ct. App. 1996). Because the trial court declined to accept at the bench the numerous evidentiary documents counsel for Appellant attempted to

submit as evidence, counsel for Appellant understood the trial court preferred he attach the supporting evidence as exhibits to the proposed order the trial court requested.

On February 1, 2012 Appellant submitted his proposed order to the trial court's office setting forth his factual and legal arguments, citations to authority, and attached as exhibits the supporting evidence he attempted to hand up at the summary judgment hearing. Appellant also served all parties with a copy of his proposed order and accompanying exhibits.

Over nine months after Appellant submitted his proposed order with the more than 150 pages of supporting evidence as exhibits thereto, the trial court finally issued its Order granting Respondents' motion for summary judgment. The trial court's Order stated "[p]laintiff made no submission in response to defendants' motion to demonstrate the existence of genuine issues of fact with respect to the falsity of the publications, and his allegations alone are insufficient to overcome defendants' showing." (R. p. 8). The trial court further found in the Order, "[t]here can be no libel claim for the publication of reports that are true or substantially true, and plaintiff in responding to the motion failed to provide any support by affidavit or otherwise for his contention that false publications had been made." (R. p. 10).

On November 20, 2012 Plaintiff filed his motion for reconsideration reminding the trial court of the voluminous evidence he had submitted nearly a year earlier in defense of Respondents' motion for summary judgment, and asked the court to reconsider its grant of summary judgment based on the supporting documentation already in the court's possession. (R. pp. 1029-1031). Again, at the hearing on Appellant's motion for reconsideration, counsel for Appellant reminded the trial court of the material submitted previously in opposition to Respondents' motion for summary judgment.

Because Appellant, in fact did submit evidence, affidavits, and deposition testimony demonstrating the existence of genuine issues of material fact with regard to each of Respondents' defenses and grounds for summary judgment, the trial court erred in granting summary judgment to

Respondents without considering Appellant's submission of evidence. (R. pp. 135-159).

7. The Trial Court Erréd in Applying the "Single Publication" Rule in Finding the Appellant's Defamation Claims are Barred by the Statute of Limitations where Respondents Continued to Publish Defamatory Content on the Internet:

The trial court ruled that Appellant's Amended Complaint was filed after the two-year statute of limitations had expired. In addition to Appellant's arguments regarding the Amended Complaint's relation back to the date of the original Complaint, discussed above, Appellant asserts that the trial court overlooked the continuously-published and republished news articles which were offered at the summary judgment hearing and were then attached as exhibits to Appellant's proposed order denying summary judgment. While the statute of limitations for libel begins to run from the date of the first publication, under South Carolina law material which remains on a website or is searchable on a website constitutes a republication and separate and distinct dissemination of that material. See Taub v. McClatchy Newspapers, Inc., 504 F. Supp. 2d 74 (D.S.C. 2007). In Taub, the District Court of South Carolina pointed out that South Carolina, in light of Moosally v. W.W. Norton & Co., 358 S.C. 320, 594 S.E. 2d 878 (Ct. App. 2004), adheres to the continuing publication rule. In Taub a media company initially published defamatory content from the Associated Press on its website, and then moved the article to its online web archive, where it was no longer being actively pushed out to the public. However, the public could search for and find the article online. The Taub court found the "A.P. article continued to be published, or it was accessible through a search of the website up until the article was removed from the...website...." The Taub court held that under the continuing publication rule the archived article constituted a continuing publication. In the instant case each Respondent disseminated several continuing publications and republications of the defamatory articles at issue, all less than two years before Appellant filed his Complaint and also less than two years before Appellant filed his Amended Complaint.

CONCLUSION

For the reasons discussed herein, Appellant respectfully requests that the Court reverse the trial court's grant of summary judgment in favor of Respondents.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Court of Appeals No. 2013-901531
Civil Case No. 2010-CP-20-1249

James W. Traylor

Appellant

vs.

The Associated Press, Barrington Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. and The Pacific & Southern Co.
Inc.

Respondents

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. WAS THE COURT BELOW CORRECT IN FINDING THAT THE ALLEGATIONS IN APPELLANT'S PURPORTED AMENDED COMPLAINT DID NOT RELATE BACK TO AN EARLIER FILED COMPLAINT WHICH DID NOT NAME RESPONDENTS AS DEFENDANTS AND OF WHICH APPELLANT TESTIFIED HE HAD NO KNOWLEDGE?

II. WAS THE COURT BELOW CORRECT IN FINDING THAT ALL BUT FOUR OF APPELLANT'S LIBEL CLAIMS WERE EITHER BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS OR BASED ON PUBLICATIONS SUBSEQUENT TO THE DATE OF APPELLANT'S PURPORTED AMENDED COMPLAINT?

III. WAS THE COURT BELOW CORRECT IN RULING THAT PUBLICATIONS REPORTING THAT APPELLANT HAD BEEN CHARGED WITH KIDNAPPING WERE PRIVILEGED REPORTS OF THE CONTENTS OF AN OFFICIAL RECORD OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

IV. WAS THE COURT BELOW CORRECT IN RULING THAT APPELLANT COULD NOT PROVE THE FALSITY OF PUBLICATIONS REPORTING THAT HE HAD BEEN ARRESTED AND CHARGED WITH ABUSING HORSES WHEN APPELLANT HAD BEEN ARRESTED AND SUBSEQUENTLY INDICTED FOR ABUSING HORSES?

V. WAS THE COURT BELOW CORRECT IN RULING THAT APPELLANT FAILED TO DEMONSTRATE THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO THE ELEMENTS OF HIS LIBEL CLAIMS FOR WHICH HE HAD THE BURDEN OF PROOF?

STATEMENT OF THE CASE

Respondents object to Appellant's assertion in his Statement of the Case that "Appellant filed his original Complaint on February 23, 2010," (Br. of App. p. 5) on grounds that this assertion is contested and its inclusion in the Statement is inconsistent with the provisions of Rule 208(b)(1), SCACR which provides "The statement shall not contain contested matters...." Respondents were first identified as defendants in an action initiated by Appellant with the filing of an "Amended Summons" and "Amended Complaint" on June 23, 2010. The "Amended Complaint" purported to amend the allegations of a Complaint filed on February 23, 2010 having as plaintiffs Hazelene E. Trexler, Terry A. Trexler and James W. Trexler. This Complaint identified none of Respondents as among the thirteen individually named defendants or defendants identified collectively as "ALL MEDIA COMPANIES THAT PRODUCED OR REPORTED ON ANY EVENT RELATING TO THE PLAINTIFFS IN 2008, 2009 AND 2010." This Complaint did not indicate, as allowed by Rule 10(a)(1), SCRCP, that allegations were being made with respect to unknown parties, and in the allegations relating to defamation identified the cause of action as one for "DEFAMATION, SLANDER AND LIBEL." This Complaint in its entirety alleged with respect to the attempted defamation claim, "In late February 2008 and numerous times before and thereafter, Plaintiffs [sic] defamed the Plaintiffs." (R. pp. 27-31) The Complaint filed February 23, 2010 was not served on any of Respondents.

Respondents answered the allegations of the purported Amended Complaint, engaged in discovery and moved for summary judgment supporting their motion with pleadings, Answers to Interrogatories, affidavits of Chris Cowan, Hugh E. Weathers and Georgette Rivers and Appellant's deposition transcript. (R. pp. 160-391) Appellant's response to the motion was an affidavit addressing only his status as a public official. (R. pp. 1046-48) Following the hearing

on the motion for summary judgment Appellant submitted with his proposed order denying the motion material which his counsel characterized as evidence "creating a direct and substantial issue of material fact." (R. p. 140 line 14 to p. 141 line 7) Summary judgment was granted for Respondents by order filed October 30, 2012. (R. pp. 1-16) Appellant moved for reconsideration of the grant of summary judgment pursuant to Rule 59(e), SCRCP. This motion, was denied by order filed April 30, 2013 (R. pp. 17-24) and the within appeal was initiated.

ARGUMENT

- I. THE COURT BELOW WAS CORRECT IN FINDING THAT THE ALLEGATIONS IN APPELLANT'S PURPORTED AMENDED COMPLAINT DID NOT RELATE BACK TO AN EARLIER FILED COMPLAINT WHICH DID NOT NAME RESPONDENTS AS DEFENDANTS AND OF WHICH APPELLANT TESTIFIED HE HAD NO KNOWLEDGE.

Appellant's contention is that his "Amended Complaint" was merely an effort to identify unknown defendants who had been identified collectively as "ALL MEDIA COMPANIES" in the Complaint filed February 23, 2010. This contention is unsupportable for two reasons: First, the naming of "ALL MEDIA COMPANIES" does not satisfy the requirements of Rule 10(a)(1), SCRCP for identifying unknown parties, and second because Appellant testified in his deposition that he had no knowledge of the action initiated by the Complaint filed February 23, 2010 which did not include Respondents by name as defendants. (R. p. 367 line 22 – p. 370 line 2) Asked about a suit filed against Frank Fusco, the Commissioner of Agriculture, the attorney for the Commissioner of Agriculture, and other defendants named in the February 23, 2010 Complaint, Appellant answered:

Whoever filed that must've included me. I have no knowledge of that. Must've taken as a class action suit or something. I don't know, but I'm not aware of that, no sir.

(R. p. 369 line 1 – p. 370 line 2)

Rule 10(a)(1), SCRCP allows a pleading to indicate that the true identity of an adverse party is unknown by providing:

Unknown Parties. When a party does not know the name of an adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words "whose true name is unknown," and when his true name is discovered the pleadings must be amended accordingly.

Rule 10(a)(1), SCRCP.

Complaint did not relate back to the allegations of the February 23, 2010 Complaint because plaintiff's own testimony established that there was no misnomer by him of defendants and the allegations of the February 23, 2010 Complaint did not conform to the requirements for identifying unknown defendants.

II. THE COURT BELOW WAS CORRECT IN FINDING THAT ALL BUT FOUR OF APPELLANT'S LIBEL CLAIMS WERE EITHER BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS OR BASED ON PUBLICATIONS SUBSEQUENT TO THE DATE OF APPELLANT'S PURPORTED AMENDED COMPLAINT

The time for bringing a libel action in South Carolina is two years from the date of publication of the material which is the basis of the action. S.C. Code Ann. §15-3-550 (Rev. 2005). Appellant's "Amended" Complaint was filed June 23, 2010, and, because the allegations of this document cannot be read to "relate back" to the February 23, 2010 Complaint of which Appellant had no knowledge, Appellant's libel claims were barred as to all publications prior to June 22, 2008. Asked in interrogatories to identify by date and publisher those publications contended by Appellant to be defamatory, Appellant listed fifty-nine publications made by Respondents between February 26, 2008 and March 21, 2008. These fifty-nine publications are barred by application of the statute of limitations. (R. pp. 1076-1083) Appellant also identified two publications made after June 23, 2010. (R. p. 1083) Four publications, two, on August 14, 2008 and January 22, 2009, by Respondent The Associated Press, one on December 15, 2008 by Respondent the Pacific & Southern Co., Inc. and one on July 13, 2009 by Respondent Barrington Broadcasting were within the statutory period and not barred. (R. pp. 1082-83) The propriety of summary judgment with respect to these four unbarred publications will be discussed fully below.

The two publications made subsequent to June 23, 2010 were not before the court below as the rights of the parties are determined as of the date of the commencement of an action, *Brown v. Coastal States Life Ins. Co.*, 264 S.C. 190, 213 S.E.2d 726 (1975), and leave of the court must be sought to file supplemental pleadings. *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999). Appellant did not move to supplement the allegations made on June 23, 2010.

The court below was correct in concluding that the fifty-nine publications made between February 26, 2008 and March 21, 2008 were barred by the statute of limitations for libel actions in South Carolina. The legal and policy issues influencing the court's decision are whether South Carolina will follow the "single publication" rule for libel actions whether a publication is broadcast, printed or on the Internet. Turning first to the policy question, it is clear that South Carolina favors a shorter limitation period for libel than for other torts. The limitation period for defamation established by Section 15-3-550(1) of the South Carolina Code of laws is two years. In contrast to this truncated period in which a defamation action must be brought, other actions must be commenced within three years of accrual, S.C. Code Ann. §15-3-530 (Rev. 2005), and in some actions, the limitation period is extended by application of the "discovery" rule, *e.g.*, *Santee Portland Cement Co. v. Daniel Int'l. Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989); *overruled on other grounds Atlas Food Sys. & Servs. v. Crane Nat'l. Vendors*, 319 S.C. 556, 462 S.E.2d 858 (1995) and S.C. Code Ann. §§15-3-530(5) and 15-3-535 (Rev. 2005). Significantly, the shortened durational limitation applicable to libel actions is maintained as the South Carolina Court of Appeals held in *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770, 775 (Ct. App. 1997), because "South Carolina has not adopted the discovery rule in libel and slander cases."

A majority of jurisdictions follow the "single publication" rule with respect to defamation claims and this rule provides "that if only one work is involved, its distribution constitutes but a single publication on the date of the first publication of the work." Restatement (Second) of Torts §577A (1977). The Appellate Division of the Superior Court of New Jersey analyzed the application of the single publication rule and found it to be consistent with modern practices of mass communications:

The decisions developing the single publication rule suggest the following reasons for its development: To prevent the constant tolling of the statute of limitations, and thereby support the legislative determination for a short period of limitation for libel, [citations omitted]; convenience to the parties and courts in consolidating into one action all the damage to plaintiff. [citations omitted].

Barres v. Holt, Rinehart and Winston, Inc., 131 N.J. Super. 371, 330 A.2d 38, 43 (1974).

The New Jersey court also considered the application of the single versus multiple publication rule with respect to Internet publications and noted “other jurisdictions are almost unanimous in holding that the single publication rule should be applied to Internet publications,” citing *Firth v. State*, 98 N.Y.2d 365, 747 N.Y.S.2d 69, 775 N.E.2d 463 (2002).¹

The seminal case on the application of the single publication rule to Internet publications is *Firth v. State of New York*, 98 N.Y.2d 365, 747 N.Y.S.2d 69, 775 N.E.2d 463 (2002). The plaintiff in *Firth* brought a defamation action based on a website publication and argued that as a consequence of the publication remaining available continually on the Internet each day resulted in a new publication thereby continually tolling the statute of limitations.. In rejecting this proposition the New York Court of Appeals noted that the policy behind a statute of limitations would be negated and the open and robust dissemination of ideas and information over the Internet would be inhibited if mere presence on the Internet constituted a daily republication. As the United States District Court of Minnesota noted just last year, “Every court to consider the issue [of the application of the single publication rule to Internet publications] after *Firth* has

¹ The New Jersey Superior Court surveyed the application of the single publication rule to Internet publications and cited the following as applying the single publication rule: *Van Buskirk v. N.Y. Times Co.*, 325 F.3d 87, 89-90 (2d. Cir. 2003); *Lane v. Strang Communications Co.*, 297 F.Supp.2d 897, 899-900 (N.D. Miss. 2003); *Mitàn v. Davis*, 243 F.Supp.2d 719, 721-724, (W.D. Ky. 2003); *Simon v. Ariz. Bd of Regents*, 28 Media Law Rptr. 1240, 1245-1246 (Ariz. Sup. Ct. 1999); *Traditional Cat Ass’n., Inc. v. Gilbreath*, 118 Cal.App. 4th 392, 13 Cal. Rptr. 3d 353, 355, 358-363 (2004); *McCandliss v. Cox Enter., Inc.*, 265 Ga. App. 377, 593 S.E.2d 856, 858 (2004), *reconsid. denied* (February 2, 2004), *cert. denied* (May 24, 2004); *Abate v. Me. Antique Digest* 2004 WL 293903, 1-2 (Mass. Sup.Ct. January 26, 2004); *E.B. v. Liberation Publ/nss, Inc.*, 7 A.D. 3d 566, 777 N.Y.S.2d 133, 134 (2004).

followed suit.” *Shepard v. THEHUFFINGTONPOST.COM, INC.*, 2012 WL 5584615, 40 Media L. Rep. 2605 (D. Minn. 2012). In support of its assertion that all other courts applying the single publication rule in the context of Internet publications had followed *Firth* the Minnesota District Court cited in addition to the authorities cited by the New Jersey court in *Barres, In re Philadelphia Newspapers, LLC*, 690 F.3d 161 (3rd Cir. 2012); *Oja v. Army Corps of Eng’rs*, 440 F.3d 1122 (9th Cir. 2006); *Churchill v. State*, 378 N.J. Super. 471, 876 A.2d 311 (2005); *Traditional Cat Ass’n. v. Gilbreath*, 118 Cal.App 4th 392, 13 Cal.Rptr.3d 353 (2004).

The decision of the South Carolina Court of Appeals in *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 594 S.E.2d 878 (Ct. App. 2004) interpreting South Carolina’s “door closing” statute, S.C. Code Ann. §15-5-150 (1977), is not authority for a rejection of the single publication rule in the context of application of the statute of limitations in a libel action. The reference to “continuing publication...in South Carolina upon each sale and upon each dissemination” of a book refers to events taking place in South Carolina for purposes of determining where a cause of action arises rather than when it arises. The court below correctly applied the single publication rule to effectuate South Carolina’s two year statute of limitations governing defamation actions.

III. THE COURT BELOW WAS CORRECT IN RULING THAT PUBLICATIONS REPORTING APPELLANT HAD BEEN CHARGED WITH KIDNAPPING WERE THE PRIVILEGED REPORTS OF THE CONTENTS OF AN OFFICIAL RECORD OF THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Appellant argues in his brief that the news reports that appellant had been charged with kidnapping were not privileged because these reports were based on a press release disseminated by the Richland County Sheriff's Department. (Br. of App. pp. 20-23) The press release upon which the news reports of the kidnapping charge were based was submitted to the court below along with the affidavit of Chris Cowan in support of Respondents' motion for summary judgment. (R. pp. 1072-1074) The Cowan affidavit and the press release stated that Appellant was charged with "5 counts of ill treatment of animals" and 1 count of kidnapping." Rule 56(c), SCRPC allows a party against whom a motion for summary judgment is made to submit affidavits in opposition to the motion provided that the affidavits are filed not less than two days in advance of a hearing on the motion. As discussed above, the only affidavit filed by Appellant in advance of the hearing addressed his status as a public official, and not the contents of the news reports. (R. pp. 1046-48) Rule 56(e), SCRPC provides that the court "may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits." Appellant neither sought nor obtained leave of the court to supplement his affidavit, and did not direct the court's attention to any deposition, answers to interrogatories or further affidavits which would disclose the existence of a genuine issue of material fact with respect to the privilege claimed by Respondents for the news reports that Appellant had been arrested for kidnapping.

Appellant argues that the press release is not a public record; therefore, the fair report privilege does not attach. (Br. of App. pp. 20-21) Even the most cursory reading of the South Carolina Freedom of Information Act definition of "public record" demonstrates the

speciousness of Appellant's claim. Under the statutory definition a "public record" includes all papers or other documentary materials regardless of physical form or characteristics prepared or used by a public body. S.C. Code Ann. §30-4-20(c) (Rev. 2007). As the Cowan affidavit indicates without challenge, the press release was prepared by the Richland County Sheriff's Department and disseminated by the Department. (R. pp. 1072-73 ¶¶ 4-6) As this court held in *Burton v. York Sheriff Dept.*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), a sheriff's department is a public body as defined by the South Carolina Freedom of Information Act; therefore, a document prepared and used by a sheriff's department, such as a press release, is a public record as a matter of law.

Application of the fair report privilege is not dependent upon the method of transmission of public or official information. The fair report privilege was held to apply to insulate a radio station from libel liability when a public official, speaking on the air, made false and defamatory statements about a lawyer who had initiated several civil actions against the official's city. *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997). Accordingly, the court below was correct in ruling that no genuine issue of material fact existed with respect to the application of the fair report privilege to news reports that relied on erroneous information in the sheriff's department press release stating that Appellant had been charged with kidnapping, and Respondents were entitled to judgment in their favor as a matter of law.

IV. THE COURT BELOW WAS CORRECT IN RULING THAT APPELLANT COULD NOT PROVE THE FALSITY OF PUBLICATIONS REPORTING THAT HE HAD BEEN ARRESTED AND CHARGED WITH ABUSING HORSES WHEN APPELLANT HAD BEEN ARRESTED AND SUBSEQUENTLY INDICTED FOR ABUSING HORSES.

The first requirement of a libel claim is proof of publication of false statements of fact. In his purported Amended Complaint Appellant alleged with respect to defamation that Respondents had published "false and defamatory statements...including statements...that authorities had removed horses from the plaintiff, that the plaintiff's horses were starved, and other false and misleading statements." (R. p.35 ¶ 18) It is clear from Appellant's own allegations that horses were seized due to "alleged charges of mistreatment of animals," and, notwithstanding Appellant's assertion that he had no ownership interest in the horses, "the Richland County Sheriff's Department charged the Plaintiff as if he were an owner." (R. p. 35 ¶¶ 14, 15) These allegations alone should establish the truth of the publications, but moving beyond his allegations Appellant acknowledges in his brief that he was arrested and charged with ill treatment of animals and indicted on four counts of felony mistreatment of animals. (Br. of App. pp. 18, 19). Respondents submitted arrest warrants and indictments to the court below in support of establishing the truth or substantial truth of their publications, and these materials were not disputed below or in this court. Clearly, news reports that Appellant had been charged with mistreatment of horses could not be proven by Appellant to be false because he had been arrested and so charged. While Appellant in his brief acknowledges that it "is true that Appellant was eventually charged with felony ill-treatment of animals," he seeks to argue that the charges "related to only five horses in South Carolina, not dozens of horses both in South Carolina and Georgia." (Br. of App. p. 19) Here again Appellant misstates the record from the court below. Respondents submitted to the court below eight True Bills indicting Appellant for "Ill Treatment

of Animals” with respect to forty-nine horses and one True Bill indicting Appellant for “Criminal Conspiracy” with respect to the ill treatment of animals between October 1, 2007 and March 3, 2008. (R. pp. 1093-1110) Appellant’s attempts to minimize the criminal charges against him to support his argument “that a reasonable jury could find the subject publications concerning the level and severity of Appellant’s involvement with ill-treated horses to be false or substantially untrue” was rejected by the court below and should be rejected by this court. Plaintiff’s burden at the summary judgment stage required him to come forward with counter affidavits, depositions or answers to interrogatories to “set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC. This rule states clearly that “an adverse party may not rest upon the mere allegations...of his pleading,” *Id.*, but such was Appellant’s strategy below and in this court. Nothing before this court or the court below establishes that Respondents’ publications were false.

Respondents were entitled to judgment in their favor as a matter of law. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1976) (private figure libel plaintiff required to prove falsity of publication when publication concerns a matter of public interest); *Parker v. Evening Post Pub. Co., Inc.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994), *cert. denied* 516 U.S. 1172 (1996) (truth or substantial truth is absolute defense to libel claim). It is irrelevant to the truthfulness of the publications that the charges against Appellant were subsequently dropped as the news reports reflected the state of affairs at time of publication, and liability cannot be imposed for libel because the situation subsequently changed. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1980).

in the South Carolina Department of Agriculture, is a public official for libel purposes. (R. p. 1058 ¶¶ 4-6, R. p. 1065 ¶ 11) Appellant, as he did with respect to the criminal charges against him, seeks to minimize his standing in the Department of Agriculture to support his argument that he is a private figure plaintiff for purposes of this litigation, stating, "Appellant was essentially a staff accountant and information technology coordinator at the Department of Agriculture." (Br. of App. p. 14) The Commissioner of Agriculture characterized Appellant's position as being in the "top tier of career, as distinguished from elected, managers of the agency." (R. p. 1058 ¶ 5) At the time of his resignation from the Department of Agriculture Appellant believed himself to be a leader within the agency stating in his resignation letter, "First let me begin by saying thank you to Commissioner Weathers who gave me this opportunity to help lead this agency as Assistant Commissioner of Agriculture." (R. p. 1061) Appellant's status as a public or private plaintiff is a matter of law to be determined as the threshold step of evaluating the efficacy of Appellant's claim. *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). One is a public official if one "has or appears to the public to have 'substantial responsibility for or control over the conduct of governmental affairs.'" *Erickson, supra*, 629 S.E.2d at 666 quoting *Holtzscheiter II*, 506 S.E.2d at 507 n.4 (Toal, J., concurring) quoting *Rosenblatt v. Baer*, 383 U.S. 75 (1996)).

As a public official, Appellant is required to prove by clear and convincing evidence that Respondents acted with actual or constitutional malice. The question of whether there is sufficient evidence to establish actual malice is a question of law, and, as the Supreme Court of South Carolina held in *McClain v. Arnold*, 275 S.C. 124, 270 S.E.2d 124, 125 (1980), the appropriate setting for that finding to be made is on a motion for summary judgment:

The presence or absence of actual malice is a constitutional issue and "where a publication is protected by the *New York Times*

immunity rule, summary judgment, rather than trial on the merits, is a proper vehicle for affording constitutional protection in the proper case.” *Bon Air Hotel, Inc. v. Time, Inc.*, 426 F.2d 858, 864-865 (5th Cir. 1970). Unless the trial court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant. *Wasserman v. Time, Inc.*, 424 F.2d 920, 922 (D.C. Cir. 1970) (Wright, J., concurring).

To overcome Respondents’ motion for summary judgment Appellant was obligated to demonstrate that he could prove constitutional or actual malice by clear and convincing evidence as the Supreme Court of South Carolina held in *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868, 875 (2001):

[I]t is implicit in *McClain* that the appropriate inquiry at summary judgment on the issue of actual malice relates to what the plaintiff must prove at trial. See *McClain*, 275 S.C. at 284, 270 S.E.2d at 125 (“Unless the trial court finds...that the plaintiff *can prove* actual malice, it should grant summary judgment for the defendant”) (emphasis added [by court]). Thus, we hold that the appropriate standard at the summary judgment phase on the issue of constitutional actual malice is the clear and convincing standard.

Appellant made no effort to demonstrate he could prove actual malice, and before this court asserts that “Respondents had knowledge that Appellant claimed he did not own any horses or the land on which the horses were found” to attempt to satisfy his burden of proof. (Br. of App. p. 17) While it was true that Appellant claimed he owned neither horses nor land, his own allegations demonstrate that his claim was disregarded by the Richland County Sheriff’s Department, (R. p. 35 ¶¶ 13-16) and unsupported in arrest warrants and indictments before the court below. (R. pp. 1088-1110) A criminal defendant’s protestation of innocence is neither unusual nor sufficient to establish that Respondents entertained serious doubts about the accuracy of their publications. *Elder, supra*.

Even if Appellant were a private figure plaintiff, his obligation at the summary judgment stage was to demonstrate that he could prove the requisite level of fault on the part of Respondents. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Baughman v. American Tel. & Tel.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In South Carolina a private figure libel plaintiff must prove that the publication of false and defamatory statements was occasioned by the publisher's common law malice directed toward the plaintiff. *Erickson, supra*. Asked in his deposition if he could identify any journalist or any person in Respondents' organizations who might bear ill will toward him, Appellant answered "No," (R. p. 388 line 11 to p. 389 line 24) and did not identify any witness in his responses to Respondents' Interrogatories who would provide such evidence. (R. p. 1075-76 ¶¶ 1 and 5).

A party resisting a motion for summary judgment in a libel case may not rely on allegations in pleadings, but must come forward with evidence to demonstrate that the burden of proof can be met. As discussed above, Appellant cannot prove the falsity of the publications, and, as discussed in this section, did not supply the court below with any material that would demonstrate that he could prove fault on the part of respondents. For these reasons Appellant has failed to satisfy his burden at the summary judgment stage regardless of his status as a public or private plaintiff; therefore, summary judgment for Respondents was appropriate.

CONCLUSION

Appellant who was arrested and indicted for ill treatment of horses has alleged that Respondents defamed him by publishing news reports which described his arrest and indictment. These news reports were accurate and supported by public records with the exception of news reports which relied on a misidentification of Appellant by the Richland County Sheriff's Department as the Trexler brother who had been arrested for kidnapping. (R. p. 35 ¶ 16) These news reports, based on a public record, were privileged.

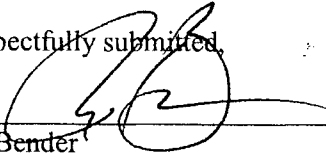
Appellant claims in the within appeal that the allegations of his purported Amended Complaint should relate back to a complaint filed on February 23, 2010 notwithstanding his testimony that he knew nothing about that Complaint and none of Respondents was named as a defendant therein. The court below properly and correctly ruled that the amendments of the purported Amended Complaint did not relate back and that Appellant's claims with respect to the bulk of the publications were barred by the two-year statute of limitations for libel actions. Several of the publications identified as the basis for Appellant's suit were made after the Appellant initiated his suit against Respondents; therefore, they were not encompassed within the action.

Respondents have demonstrated that Appellant was a public official for purposes of this action, and the court below correctly ruled as a matter of law that a person occupying the public position occupied by Appellant and having the duties that Appellant had within an agency of the State of South Carolina was a public official who would be required to prove that Respondents acted with actual or constitutional malice in publishing the news reports of which he complains. But, even if Appellant's assertion that he is a private figure plaintiff is accepted by this court, Appellant has nevertheless failed to demonstrate that he can prove that Respondents acted with

common law malice toward him in publishing their news reports of his arrest and matters related to the arrest.

For the reasons and upon the authorities stated herein, the grant of summary judgment to Respondents was correct as a matter of law, and should be affirmed by this court.

Respectfully submitted,



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February 3, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Court of Appeals No. 2013-001581
Civil Case No. 2010-CP-40- 1249

James W. Trexler.....Appellant

v.

The Associated Press, Barrington Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. and The Pacific & Southern Co.,
Inc.....Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

February 3, 2014


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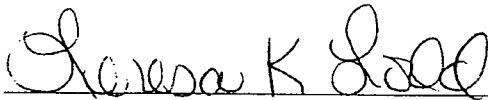
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

Circuit Court Case No. 2010-CP-40-1249
S.C. Court of Appeals Case No. 2013-001581

James W. Trexler,

Appellant,

v.

The Associated Press;
Barrington Broadcasting
South Carolina Corp.;
Raycom TV Broadcasting,
Inc.; The Spartanburg Herald
Journal, Inc.; and The Pacific
& Southern Co., Inc.,

Respondents.

RECORD ON APPEAL

Volume 1 of 3

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James W. Trexler,

Plaintiff,

v.

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-40-1249

ORDER GRANTING
SUMMARY JUDGMENT

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 OCT 30 PM 3:34

RICHLAND COUNTY
FILED

This matter came before the court on defendants' motion for summary judgment. A hearing on the motion was held in open court on January 19, 2012 with all parties appearing through counsel.

Plaintiff's Amended Complaint, filed June 23, 2010, initially included an additional defendant, the *Herald-Journal* newspaper of Spartanburg and, in addition to the defamation claim before the court, claims for civil conspiracy, outrage and negligence. Plaintiff voluntarily dismissed the suit against the newspaper and dismissed with prejudice all claims but the defamation claim prior to the hearing on defendants' motion for summary judgment.

Defendants advanced as grounds for summary judgment the bar of the statute of limitations, absence of falsity, and lack of proof of the requisite level of fault, either "actual malice" or common law malice. Defendants supported their motion with the pleadings, responses to interrogatories and requests for admission together with affidavits, certified copies of records and excerpts of

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plaintiff's deposition. Plaintiff's counter-affidavits addressed only his status as a public official.

Rule 56(e), SCRCP requires a party responding to a properly supported motion for summary judgment to set forth by affidavit or otherwise "specific facts showing that there is a genuine issue for trial." A nonmoving party who bears the burden of proof on an issue, responding to a motion that points out that there is an absence of evidence to support the nonmoving party's action, "may not rest upon the mere allegations...of his pleadings." Rule 56(e), SRCP. As the Supreme Court of South Carolina held in *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991), the nonmoving party is charged with the responsibility of coming forward with specific facts demonstrating a genuine issue of fact for trial, saying:



Once moving party carries its initial burden, opposing party must, under Rule 5(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original).

Baughman, supra, 410 S.E.2d at 545.

A nonmoving party who fails to make a showing of facts sufficient to establish an essential element of that party's claim on which that nonmoving party bears the burden of proof cannot establish that a genuine issue of material fact exists, and the moving party is entitled to summary judgment as a matter of law. *Id.*

Plaintiff filed nothing with the court which identified specific facts in dispute relative to his libel claim, relying entirely on counsel's description of material not before the court to argue that questions of material fact existed.

STATUTE OF LIMITATIONS

Turning first to the statute of limitations issue, it is undisputed that the allegations challenged in this motion are contained in an Amended Complaint which together with an Amended Summons was filed on June 23, 2010.

Defendants take the position that the applicable two-year statute of limitations bars plaintiff's claim with respect to all publications prior to June 22, 2008 because prior to the filing of the Amended Complaint no defendant identified in the Amended Complaint had been named in any action initiated by plaintiff. S.C. Code Ann. §15-3-550(1) (Rev. 2005). Two legal issues are presented by the statute of limitations defense: (1) when did plaintiff's libel claim accrue, and (2) did the allegations in the Amended Complaint "relate back" to an earlier filed Complaint?

First, a cause of action for libel accrues so as to commence the running of the statute with publication of the material upon which the claim is based. As the South Carolina Court of Appeals has held, a plaintiff's claim for defamation "accrues at the moment when the plaintiff has a legal right to sue on it. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)." *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770, 774 (Ct. App. 1997). As the Court of Appeals explained in its holding in *Jones*, *supra*, a defamation claim accrues upon publication whether or not a plaintiff is aware of the publication "because South Carolina has not adopted the discovery rule in libel and slander cases." *Id.*, 775. In response

to defendants' interrogatory number 6, filed by defendants in support of their motion, plaintiff identified by date, publisher and headline publications contended to be defamatory occurring between February 26, 2008 and February 1, 2011. For all but three publications, plaintiffs claim for defamation accrued between February 26, 2008 and March 21, 2008. The Amended Summons and Amended Complaint were filed June 23, 2010. Application of the statute bars plaintiff's action for all publications prior to June 22, 2010 unless the allegations in the Amended Complaint "relate back" to an earlier filed complaint.

The second issue then is, did the Amended Complaint which for the first time identified these defendants as parties "relate back" to an earlier filed complaint which did not name these defendants, but listed thirteen (13) defendants identified individually by name and "ALL MEDIA COMPANIES THAT PRODUCED OR REPORTED ON ANY EVENT RELATING TO THE PLAINTIFFS IN 2008, 2009 AND 2010?" The Complaint, which was purported to be amended by the Amended Complaint that is the subject of this motion, named as plaintiffs Hazelene E., Terry A. and James W. Trexler. This Complaint was filed on February 23, 2010 and was never served on any of the defendants now appearing before the court. If the allegations of the Amended Complaint "relate back" to this Complaint, there is no statute of limitations bar as the statute would have been tolled by the filing of the February 23, 2010 Complaint. At the motion hearing counsel for plaintiff argued that the Amended Complaint should relate back as the naming in the February 23 Complaint of "ALL MEDIA COMPANIES" as defendants was the equivalent of naming unknown "John Doe" parties and providing names when the identities of these unknowns became

available. There are two problems with counsel's assertion. Plaintiff testified in his deposition that he had no knowledge of the earlier-filed Complaint, and that Complaint did not comply with the applicable procedural rule for designating unknown parties.

The South Carolina Rules of Civil Procedure provide a mechanism for designating unknown parties, stating in the applicable part:

Unknown Parties. When a party does not know the name of an adverse party he may state that fact in the pleadings and designate such adverse party by any name and the words "whose true name is unknown," and when his true name is discovered the pleadings must be amended accordingly.

Rule 10(a)(1), SCRCP.



The plaintiffs in the February 23, 2010 filing failed to comply with the requirements of this rule and did not state that any party's true name was unknown. There is nothing in the record to indicate that the designation "ALL MEDIA COMPANIES" was a designation of adverse parties "whose true name[s] were unknown" or perhaps more significantly, that the defendants now before the court were being identified in the Amended Complaint in place of previously unknown parties. The record does reflect in contrast to counsel's argument that the Amended Complaint bears all the attributes of a new, separate litigation with a single plaintiff, rather than three plaintiffs, bringing an action against parties which had not been identified previously, while each of the previously named defendants was dropped. The addition of new parties, such as defendants herein, is not an amendment that relates back to a period prior to the running of a statute of limitations. *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009). Similarly destructive to plaintiff's argument that the Amended Complaint was

filed to correct his misidentification of defendants against which he had intended to bring an action, is his deposition testimony that he was not aware of the February 23, 2010 Complaint in which he was named as a plaintiff along with his mother and brother, and that he had no knowledge of such a suit. If plaintiff did not know about the Complaint naming "ALL MEDIA COMPANIES" as defendants he could not have by that document misidentified these defendants later named in the Amended Complaint. It seems obvious plaintiff did not misidentify any defendant in a suit he did not know existed.

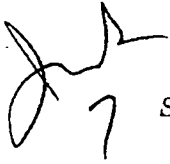
 The action against these defendants was commenced with the filing of the Summons and Complaint on June 23, 2010. Applying the limitation of section 15-3-550(1), plaintiff is barred from asserting a libel claim for any publication prior to June 22, 2008. Asked in defendants' interrogatories to "Identify by date, publisher and headline any publication plaintiff contends to be defamatory" plaintiff identified only three publications subsequent to June 22, 2008. These publications were made on December 15, 2008 and two on February 1, 2011 on WLTX-TV (operated by defendant Pacific & Southern Company, Inc.). Since two of these publications occurred subsequent to the filing of the Amended Summons and Amended Complaint, they are not before the court. Allegations in a complaint must relate to the facts existing at the time of the filing of the complaint, and the issues raised by the allegations are to be determined as of the date of the complaint; therefore, the publications identified in response to defendants' interrogatories, which were made subsequent to the date of the Amended Complaint, can provide no support for plaintiff's libel claim. See 71 C.J.S. Pleading §327. All other publications identified by plaintiff in his response

to interrogatories, with the exception of a publication on WLTX on December 15, 2008, are barred by the operation of section 15-3-550(1).

FALSITY

The clearest official statement of South Carolina libel law is contained in then Justice Jean H. Toal's concurring opinion in *Holtzscheiter v. Thomson Newspapers, Inc.* [*Holtzscheiter II*], 332 S.C. 502, 506 S.E.2d 497 (1998). Justice Toal started her analysis with an articulation of the elements of defamation:

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. See Restatement [2d Torts] §558.

 *Supra*, 506 S.E.2d at 506.

Plaintiff complains in his Amended Complaint that defendants published falsely that he was a kidnapper, and that authorities had removed from his property horses that had been starved and abused. Defendants acknowledge that the news report that plaintiff had been charged with kidnapping was false, but, as will be discussed more fully below, rely on the common law fair report privilege to defeat plaintiff's claim in this regard. With respect to the other publications claimed to be false, defendants point to plaintiff's deposition testimony wherein he admitted that it was true that he had been arrested for mistreatment of horses and that the warrants by which plaintiff had been arrested stated that plaintiff owned the horses that were mistreated. When a publication concerns a matter of public interest, such as an accusation of the commission of criminal acts, or when

the publisher is a media defendant, a plaintiff must prove the falsity of the publications upon which the libel claim rests. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). Plaintiff made no submission in response to defendants' motion to demonstrate the existence of genuine issues of fact with respect to the falsity of the publications, and his allegations alone are insufficient to overcome defendants' showing.

Beyond plaintiff's failure to offer evidence to indicate that a genuine issue of material fact existed with regard to the falsity of the publications, defendants demonstrated that the publications were true or substantially true. In the context of a libel claim, truth or substantial truth of the publication is an absolute defense. *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994), cert. denied 516 U.S. 1172 (1996). In analyzing a claim of falsity, a court is to examine the "gist" or "sting" of the publication, and if either is substantially true, other inaccuracies in the publication will not constitute the requisite falsity to support a libel claim. *Hearst-Argyle Television, Inc.*, 561 F.Supp. 2d 546 (D.S.C. 2008) (applying South Carolina law); *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976); *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (1967). The "gist" and the "sting" of the publications regarding plaintiff were that plaintiff had been arrested for mistreatment of horses he owned, and the mistreatment consisted of depriving the horses "of necessary quantities of wholesome foodstuff suitable for the species and age." These publications were true or substantially true as borne out by the arrest warrants submitted to the court by defendants in support of their motion as these

warrants authorized the arrest of plaintiff for the abuse of horses which the warrants said he owned.



Plaintiff's counsel without submitting any supporting affidavits, or even filing with the court the news reports upon which this action rests, argued that the publications were false because they reported that the horses were "starved" and plaintiff was associated with the mistreatment of more horses than were identified in the arrest warrants. The difference between "starved" and deprived "of necessary quantities of wholesome foodstuff" is insufficient to make the reports false. A common definition of "starve" includes, "To suffer from deprivation," *Webster's II New College Dictionary* (1995), and plaintiff was charged in five arrest warrants with intentionally and knowingly depriving horses of food. Plaintiff's counsel also argued that the publications were false because they connected plaintiff with far more horses than were identified in the arrest warrants. Even without the publications before the court it may be assumed that the publications did connect plaintiff with more horses than were identified in the five arrest warrants before the court. The arrest warrants identified but five horses which were said to have been owned and mistreated by plaintiff whereas the eight True Bills, submitted to the court by defendants in support of their motion, returned by the Richland County Grand Jury indicting plaintiff for felony "Ill-treatment of animals" identified forty-eight (48) horses upon which the Grand Jury found plaintiff had inflicted "excessive or repeated unnecessary pain or suffering." Plaintiff must meet his burden of proof on falsity by demonstrating by evidence rather than conjecture or allegation that there is a genuine issue of material fact for trial. Plaintiff's arguments that there is a difference between

starved and deprived of food and he was tied in the publications to more horses than were mentioned in the arrest warrants do not create a genuine issue of material fact for trial. Based on the record before the court, defendants have shown the news reports as characterized by plaintiff were true or substantially true. There can be no libel claim for the publication of reports that are true or substantially true, and plaintiff in responding to the motion failed to provide any support by affidavit or otherwise for his contention that false publications had been made.

FAIR REPORT PRIVILEGE



As discussed above, defendants reported that plaintiff had been arrested for kidnapping, and this report was not true. That having been said, the report of the kidnapping charge by these defendants cannot be the basis for a libel claim as the reports were based on the contents of a press release prepared and disseminated by the Richland County Sheriff's Department. Defendants filed the affidavit of Sheriff's Department Captain Chris Cowan to establish that he prepared the press release that identified plaintiff as having been arrested for kidnapping, and that he disseminated the press release to defendants herein and others. It has long been the law of South Carolina that fair and accurate reports of official acts, records and reports are privileged. *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982); *Reinhardt v. State-Record Co.*, 235 S.C. 480, 112 S.E.2d 500 (1960); *Lybrand v. The State Co.*, 179 S.C. 208, 184 S.E. 580 (1936). Plaintiff argued that a press release was not a "public" record, thereby making inapplicable defendants' fair report privilege claim. Plaintiff cited no authority for this

proposition and plaintiff's argument was not persuasive. The privilege urged by defendants attaches to official acts and records, and the dissemination by the Sheriff's Department of a press release describing criminal charges leveled against plaintiff and his family members is beyond doubt an official record. Plaintiff argues that since the press release was disseminated by e-mail rather than facsimile or paper copy it cannot be a record, but cited no authority for this proposition. The scope of the fair report privilege does not turn on the method of delivery or presentation of the official record or act. The official, privileged communication in *White, supra*, was a statement by the mayor at a press conference and on a radio talk show. The fair report privilege attaches to the communication and not the method of its delivery. But, plaintiff's narrow view of what constitutes a record notwithstanding, under the South Carolina Freedom of Information Act a press release prepared and used by the Sheriff's Department is a public record regardless of its physical form or characteristics. S.C. Code Ann. §30-4-20(c) (Rev. 2007). The Sheriff's Department got the facts wrong on the kidnapping charge in the press release, but the Department's error does not defeat defendants' privilege which attached to defendants' accurate publications of the charges contained in the press release.

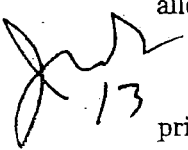
FAULT ON THE PART OF THE PUBLISHER

At common law libel was a strict liability tort with an accompanying presumption of fault in the form of common law malice, but the law of libel has undergone significant changes since 1964, and the common law presumption of malice no longer applies placing on plaintiffs the burden of proving the requisite level of fault on the part of a defendant. The fault burden, as Justice Toal has

explained is influenced by a plaintiff's status as a private or public person, "The degree of fault a plaintiff must establish depends upon his status as a public or private figure." *Holtzscheiter II*, *supra*, 506 S.E.2d at 507. A public official or public figure must prove "actual" or "constitutional" malice. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000). A private figure plaintiff bringing a libel action based on a publication related to a matter of public interest and published by a media defendant cannot rely on the common law presumption of common law malice, but must prove that a publisher acted with common law malice. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006).

12 Each of the defendants before the court is a "media" defendant, and undoubtedly the arrest and felony indictment of the state's Assistant Commissioner of Agriculture on charges of abusing horses is a matter of public interest. *Philadelphia Newspapers, Inc.*, *supra*; see, *Doe v. Berkeley Publishers*, 329 S.C. 412, 496 S.E.2d 636 (1998). At a minimum, since plaintiff is not entitled to rely on the common law presumption of malice, he is obligated to come forward with evidence in the form of specific facts to support the proposition that a genuine issue of material fact exists with respect to fault, malice, on the part of the publishers. Plaintiff has pointed to nothing in the record that would satisfy this burden with respect to either common law malice or constitutional malice. Nothing filed by plaintiff in response to defendants' motion addresses either version of malice, and no witness listed by plaintiff in response to defendants' interrogatories is identified as one who will provide evidence on

malice. Since the burden of proof on the malice issue rests with plaintiff, his failure to demonstrate the existence of specific facts showing that there is a genuine issue for trial relative to either variety of malice is fatal to his claim for libel. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Baughman v. American Tel. & Tel. Co.*, *supra*. Plaintiff's attempt to cite comments posted by third parties on defendants' websites as evidence of malice is unavailing. Congress has by statute insulated those who provide interactive websites from liability as publishers of the comments posted by third parties. *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997); 47 U.S.C. §230. Plaintiff has failed to demonstrate by reference to the material before the court specific facts in dispute on either type of malice, and, as discussed above, he may not rely on mere allegations in his pleadings to meet his burden. *Baughman*, *supra*.

 Plaintiff contends that he is a private figure. Even if plaintiff were a private figure for purposes of this litigation, he has failed to carry his burden on the fault issue in opposition to defendants' motion. Plaintiff has pointed to nothing in the record that demonstrates he has evidence to establish at trial that defendants acted with common law malice, *e.g.*, hatred, ill will, spite or conscious disregard of plaintiff's rights, in publishing the news reports of which he complains. Asked in his deposition if he could identify any journalist or any person in defendants' organizations who might bear ill will toward plaintiff, he testified no.

Even assuming plaintiff's private figure status is at variance with the material before the court. It seems clear beyond doubt that plaintiff is a public official in the context of this litigation. He acknowledged in his letter of

resignation, filed by defendants in support of their motion, that he was an Assistant Commissioner of Agriculture, and that he helped to lead the agency. Plaintiff testified in his deposition, and the Commissioner of Agriculture testified in his deposition, that plaintiff was the department's liaison with the General Assembly, the State Budget and Control Board and the Board of Trustees of the University of South Carolina as project manager for the relocation of the State Farmer's Market.

Plaintiff sought to minimize the significance of his title as Assistant Commissioner, but the title, acknowledge by plaintiff in his resignation letter signified to those with whom plaintiff came in contact that he had responsibility for the operation of a state agency. Plaintiff himself acknowledged in his deposition that he had an important position in the agency, saying, "I went there as legislative liaison and I ran the agency." Had plaintiff's title been "head bookkeeper" or something similarly limited, he might be considered a private figure for some cases, but in the context of publications concerning his arrest and indictment for mistreatment of horses, public interest in his activity in this particular context, apart from his title, makes him a public official. *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980). As a public official, plaintiff was obligated in response to the motion for summary judgment to demonstrate that he had clear and convincing evidence of actual malice. *Anderson v. Liberty Lobby, supra*; *New York Times Co. v. Sullivan, supra*; *Elder v. Gaffney Ledger, supra*. Plaintiff was obligated to demonstrate with specific facts that the persons making the decisions to publish the reports of which he complains in fact entertained serious doubts as to the truth of the publications or had a high degree

of awareness of probable falsity of the publications. *Elder, supra*. Plaintiff made no such demonstration, nor did he identify in his responses to defendants' interrogatories any witness who could address the issue of constitutional or actual malice on the part of any defendant. Plaintiff's counsel noted at argument that many depositions had been taken in the case, including the depositions of numerous reporters from defendant organizations, but none of these depositions was either filed or identified as containing testimony that would establish actual malice. Plaintiff has failed to make the requisite showing on actual malice.

CONCLUSION

Based on the foregoing, it is clear that plaintiff has failed to meet his burden in responding to a properly supported motion for summary judgment. Each publication cited by plaintiff as the basis of his libel claim, save one, is either barred by the statute of limitations or outside the scope of his Amended Complaint. But, beyond the statute of limitations issue, defendants have demonstrated with the material filed in support of their motion that he publications complained of by plaintiff relative to his arrest and his indictment for mistreatment of horses are true or substantially true. Plaintiff had the burden of presenting evidence to demonstrate specific, material facts in dispute, but failed to do so. The publications concerning plaintiff's arrest for kidnapping while untrue are privileged as a matter of law. Finally, plaintiff has not come forward with any evidence to demonstrate the existence of a genuine issue of material fact on the malice component of his claim. Plaintiff was a public official for purposes of this action, but his response to the motion would not have been

adequate to establish the existence of a genuine issue of material fact on the malice of the defendants even if he were a private figure.

For the reasons stated herein, IT IS HEREBY ORDERED that defendants' motion for summary judgment be, and the same hereby is, granted, and the within-captioned action is dismissed.

AND IT IS SO ORDERED.

Columbia, South Carolina

Oct. 25, 2012



JOSEPH M. STRICKLAND
SPECIAL CIRCUIT COURT JUDGE
SITING BY DESIGNATION OF THE
CHIEF JUSTICE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
James W. Trexler,	)	Civil Action No.: 2010-CP-40-1249
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING MOTION FOR
	)	RECONSIDERATION
The Associated Press, Barrington	)	
Broadcasting South Carolina Corp.,	)	
Raycom TV Broadcasting, Inc. The	)	
Spartanburg Herald Journal, Inc. and the	)	
Pacific & Southern Co., Inc.,	)	
	)	
Defendants.	)	

FILED
2013 MAR 20 PM 1:08
CLERK OF COURT
RICHLAND COUNTY

This matter came before the court on plaintiff's motion for reconsideration pursuant to Rule 59(e), SCRCP. Notwithstanding the requirement of Rule 7(b), SCRCP, that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought," plaintiff's notice made only the most general of statements:

This motion is based upon the pleadings and memoranda filed in this case, Plaintiff's proposed order denying Defendants' Motion for Summary Judgment, with exhibits, the transcript of the January 19, 2012 hearing on Defendants' Motion for Summary Judgment, Rules of Court, Plaintiff's Memorandum of Law supporting this Motion to be submitted before or at a hearing of this Motion, and other such matters as may be properly presented to the Court.

Plaintiff's Notice of Motion and Motion for Reconsideration.

A hearing was held in open court on March 11, 2013 at which time the parties appeared through counsel. At the hearing, plaintiff argued that the court had erred in finding that the bulk of the publications complained of by plaintiff were barred by the statute of limitations and that the court erred in not recalling evidence submitted by plaintiff in opposition to defendants'

motion for summary judgment, stating in his Memorandum in Support of Motion for Reconsideration:

The Court granted summary judgment to the defendants because apparently the Court mistakenly did not recall that Plaintiff had submitted 150 pages of evidence, including *inter alia*, copies of published news articles, numerous deposition transcript excerpts, affidavits and documents related to the prosecution of the Plaintiff and the dismissal of the prior criminal charges against him.

In support of their motion for summary judgment on the statute of limitations issue, defendants submitted plaintiff's deposition testimony wherein plaintiff testified that he had no knowledge of a civil action initiated in his name, as well as the names of his brother and mother against thirteen named defendants and "ALL MEDIA COMPANIES THAT REPRODUCED OR REPORTED ON ANY EVENT RELATING TO THE PLAINTIFFS IN 2008, 2009, AND 2010." The action so captioned had docket number 2010-CP-40-1249 and was filed on February 23, 2010. Plaintiff contends that his amended summons brought solely in his name and against none of the defendants named in the action filed February 23, 2010 was an effort to identify parties who were unknown at the time of the initial filing, thereby permitting the allegations of the amended complaint to relate back to the February 23, 2010 filing in order to avoid the bar of the statute of limitations. Plaintiff argued that it was not necessary to use the "magic words" contained in Rule 10(a)(1), SCRCP, to indicate that the defendants named in the June 23, 2010 amended summons and amended complaint were identical to the unspecified "ALL MEDIA COMPANY" defendants in the caption of the February 23, 2010 filing.

The South Carolina Rules of Civil Procedure do not require "magic words" to identify parties, but Rule 10 does require a caption on a summons and complaint to "include the names of all parties." Rule 10(a)(1) further provides with respect to unknown parties a procedure for designating those parties:

- (1) *Unknown Parties.* When a party does not know the name of an adverse party, he may state that fact in the pleadings and designate such adverse party by any name and the words "whose true name is unknown" and when his true name is discovered, the pleadings may be amended accordingly.

Of course, nothing in the February 23, 2010 caption indicated that there were unknown parties, and no allegation in the complaint makes any reference to actions by unknown parties. With respect to the defamation claim, the initial complaint alleged "in late February 2008, and numerous times before and thereafter, plaintiffs [sic] defamed the plaintiffs."

Since the plaintiff's unequivocal testimony was that he knew nothing of the February 23, 2010 action, the June 23, 2010 summons and complaint were not properly identified as "Amended," but commenced a new action. If the June 23 filing was not a new action, at a minimum it added entirely new defendants, and as a consequence, the allegations do not relate back so as to toll the statute of limitations. *Gause v. Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct.App., 2009); *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000). It seems obvious that plaintiff's summons and complaint of June 23, 2010 could not be supplying the names of unknown parties as allowed in Rule 10(a)(1), SCRPC in connection with the February 23, 2010 action, because plaintiff's unchallenged testimony was that he did not file the February 23, 2010 action and had no knowledge of it.

Further, with respect to the statute of limitations, plaintiff argued that the inclusion of published articles on defendants' websites resulted in a continuous publication thereby precluding the application of the "single publication" rule for determining the date of publication from which the South Carolina statute of limitations in libel actions, S.C. Code Ann. §15-3-550(1), (rev. 2005) commences to run. The South Carolina Court of Appeals in *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770 (Ct. App. 1997) held that a defamation claim accrues and the limitation period commences, upon publication. Plaintiff argued that South Carolina will

not follow the majority view that the continued existence of a published work does not constitute continuous republication. In support of his argument, plaintiff cited a United States District Court case, *Taub v. McClatchey Newspapers, Inc.*, 504 F.Supp.2d 74 (D.S.C. 2007) for the proposition that South Carolina law would not apply the single publication rule. The single publication rule applicable to libel claims provides "that if only one work is involved, its distribution constitutes but a single publication on the date of the first publication of the work." Restatement (Second) of Torts §577 A (1977). The District Court said it could not determine if South Carolina would adhere to the single publication rule for work posted on the Internet. In reaching this conclusion, the District Court relied not on a statute of limitations case, but on a door-closing case which *in dictum* suggested that each time a book containing allegedly defamatory material was checked out of a library, there was a new republication of the work. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 594 S.E.2d 878 (Ct.App. 2004). In relying on *Moosally*, the District Court questioned the decision stating:

The court does have some issues with the South Carolina Court of Appeals' determination that each distribution of a library book constitutes a separate libel. As a practical matter, the determination seems to render futile South Carolina's statute of limitations for defamation claims....

Taub, Supra, 504 F.Supp.2d 74, 80 n.6.

This court is not bound by the District Court's forecast of South Carolina law, nor is it bound in this action by the Court of Appeals' discussion with reference to this state's door-closing statute. Had the Court of Appeals been dealing with a statute of limitations issue in *Moosally, Supra*, this court would be bound, but that decision does not address the limitation on a libel action, and nothing suggests a policy basis to render the state's statute of limitations a nullity..

This court concludes that considering the important public policy considerations underlying statutes of limitation, *Anonymous Taxpayer v. S.C. Dept. of Revenue*, 377 S.C. 425, 661 S.E.2d 73 (2008), citing *Moates v. Bobb*, 322 S.C. 172, 470 S.E.2d 402 (Ct.App. 1996), and the rejection of the “discovery rule” with respect to statutes of limitation in libel cases, *Jones v. City of Folly Beach*, *supra*, together with the General Assembly’s choice to make the limitations period for defamation two years rather than the three years for most other torts, when presented with the question of the application of the single publication rule with respect to publications posted on the Internet, South Carolina will follow the single publication rule. The Appellate Division of the Superior Court of New Jersey analyzed the application of the single publication rule generally, finding it to be consistent with modern practices of mass communications:

The single publication rule prevents the constant tolling of the statute of limitations, effectuating express legislative policy in favor of a short statute of limitations period for defamation. It also allows ease of management whereby all the damages suffered by a plaintiff are consolidated in a single case, thereby preventing potential harassment of defendants through a multiplicity of suits. *Id.* [*Barres v. Holt, Rhinehart & Winston, Inc.*, 131 N.J. Super. 371, 330 A.2d 38 (Law Div. 1974)], accord *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 777, 104 S.Ct. 1473, 1480, 70 L.Ed.2d 790, 799 (1984); *Gregorie v. G.P. Putnam’s Sons*, 298 N.Y. 119, 81 N.E.2d 45, 47-49 (1948); *Restatement (Second) of Torts* §577A. Finally, the single publication rule is more consistent with modern practices of mass production and wide-spread distribution of printed information than the multiple publication rule. *Barres*, *supra*, 131 N.J. Super. at 380-381, 330 A.2d 38 (citing, *Gregorie*, *supra*, 81 N.E.2d at 46-47).

The New Jersey court also considered the application of the single versus multiple publication rule with respect to Internet publications and noted “other jurisdictions are almost unanimous in holding that the single publication rule should be applied to Internet publications,” citing *Firth v. State*, 98 N.Y.2d 365, 747 N.Y.S.2d 69, 775 N.E.2d 463 (2002).¹

¹ The New Jersey Superior Court surveyed the application of the single publication rule to Internet publications and cited the following as applying the single publication rule: *Van Buskirk v. N.Y. Times Co.*, 325 F.3d 87, 89-90 (2d. Cir. 2003); *Lane v. Strang Communications Co.*, 297 F.Supp.2d 897, 899-900 (N.D. Miss. 2003); *Mitan v. Davis*, 243 F.Supp.2d 719, 721-724, (W.D. Ky. 2003); *Simon v. Ariz. BD of*

Accordingly, this court concludes that South Carolina's statute of limitations bars plaintiff's libel claims for publications prior to June 22, 2008. S.C. Code Ann. §15-3-550(1)(Rev. 2005). Only three publications identified by plaintiff as the basis for his claim were made subsequent to June 22, 2008. One of those publications was made on December 15, 2008 and two on February 1, 2011. The February 1, 2011 publications are not encompassed within the allegations of the amended complaint as the allegations in a complaint must relate to facts existing at the time of the filing of the complaint and not those occurring subsequently. 71 C.J.S. Pleading §327.

Plaintiff is in error when he asserts that this court did not recall that he had submitted more than 150 pages of material in opposition to defendants' motion for summary judgment. The only material submitted by plaintiff in response to defendants' motion in advance of the hearing that was held on January 19, 2012 was an affidavit addressing the question of whether the plaintiff was a private figure or public official libel plaintiff. Rule 56, SCRCP, requires a response by affidavit to a properly supported motion for summary judgment and specifies that the affidavits are to be made on personal knowledge, set forth facts as would be admissible in evidence and demonstrate that the affiant is competent to testify to the matters stated in the affidavit. Opposing affidavits are to be filed not later than two days prior to the hearing. Nothing offered by the plaintiff at the hearing satisfied the requirements of Rule 56. At the hearing, plaintiff's counsel offered copies of the publications complained of and other materials which plaintiff's attorney represented demonstrated that the coverage of plaintiff overstated the charges against him. Without reviewing the documents offered by plaintiff, the court accepted

Regents, 28 Media Law Rptr. 1240, 1245-1246 (Ariz. Sup. Ct. 1999); *Traditional Cat Ass'n., Inc. v. Gilbreath*, 118 Cal.App. 4th 392, 13 Cal. Rptr. 3d 353, 355, 358-363 (2004); *McCandliss v. Cox Enter., Inc.*, 265 Ga. App. 377, 593 S.E.2d 856, 858 (2004), *reconsid. denied* (February 2, 2004), *cert. denied* (May 24, 2004); *Abate v. Me. Antique Digest* 2004 WL 293903, 1-2 (Mass. Sup.Ct. January 26, 2004); *E.B. v. Liberation Publ'nss, Inc.*, 7 A.D. 3d 566, 777 N.Y.S.2d 133, 134 (2004).

counsel's representation. Even with the acceptance of plaintiff's representation, there is nothing in the record to indicate that the reports were false. The entirety of plaintiff's allegations regarding defamation were that defendants published statements that "plaintiff had been charged with kidnapping, and that authorities had removed horses from him that had been abused." Amended Complaint ¶25. Material submitted in support of defendants' motion established conclusively that plaintiff was arrested and ultimately indicted on charges that he had abused horses. It is irrelevant to the truth of the publication that the criminal charges against plaintiff were subsequently dismissed. *See, Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982).

And, as demonstrated by plaintiff's deposition testimony submitted by defendants in support of their motion, reports that plaintiff had been arrested and charged with mistreatment of horses were true. Nothing submitted by plaintiff in response to defendants' supported motion altered the fact that the news reports of plaintiff's arrest and indictments were true or substantially true. Truth or substantial truth is an absolute defense to a libel claim. *Parker v. Evening Post Pub. Co., Inc.*, 317 S.C. 236, 452 S.E.2d 640 (Cl. App. 1994), *cert. denied* 516 U.S. 1172 (1996).

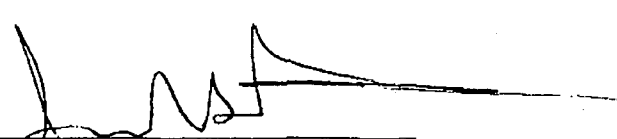
As noted in the order granting summary judgment, the report on the kidnapping charge was false, but privileged as the report of the contents of an official record. Plaintiff's motion did not address the court's ruling on this point. With respect to the only publication not barred by the statute of limitations, the publication on December 15, 2008, by WLTX-TV, operated by defendant Pacific & Southern Company, Inc., plaintiff offered no evidence to demonstrate that a genuine issue of fact existed with respect to either the falsity of the publication or fault on the part of the publisher. Plaintiff was obligated to prove the falsity of the publication,

Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986), and fault on the party of the publisher leading to the publication of a false statement of fact.. *Gertz v. Robert Welch, Inc.*, 418 US. 323 (1974); *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006). Plaintiff in response to defendants' motion for summary judgment failed to demonstrate the existence of a genuine issue of material fact as to either element of his libel claim..

This court has carefully considered plaintiff's motion for reconsideration, and even relying on the characterization by plaintiff's counsel of the material submitted in opposition to the motion, concludes that no grounds exist to alter or amend its order granting summary judgment to defendants.

Based on the foregoing, plaintiff's motion for reconsideration is hereby denied.

AND IT IS SO ORDERED.



JOSEPH M. STRICKLAND
SPECIAL CIRCUIT COURT JUDGE
SITTING BY DESIGNATION OF THE
CHIEF JUSTICE

Columbia, South Carolina

April 29, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS

COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT

HAZELENE E. TREXLER, TERRY A. TREXLER
AND JAMES W. TREXLER

CASE NO: 2010-CP-

PLAINTIFFS,

VS.

SUMMONS

RICHARD RALPHS, JAMES QUINN, HOLLY WAGNER,
CHRIS COWAN, RICHLAND COUNTY SHERIFF'S
DEPARTMENT, RICHLAND COUNTY, MARY ELLEN
TOBIAS, LEON LOTT, HUGH WEATHERS, BETH CROCKER,
KAY RIKE, FRANK FUSCO, SOUTH CAROLINA
DEPARTMENT OF AGRICULTURE, ALL MEDIA
COMPANIES THAT PRODUCED OR REPORTED
ON ANY EVENT RELATING TO THE PLAINTIFFS IN
2008, 2009 AND 2010

DEFENDANTS.

RICHLAND COUNTY
FILED
2010 FEB 23 PM 12:44
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint, a copy of
which is hereby served upon you, and to serve a copy of your Answer to the said
Complaint on the subscriber at P.O. Box 12603, Columbia, South Carolina within thirty (30) days after
service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within
the time aforementioned, the Plaintiffs in this action will apply to the Court for a
default judgment and for the relief demanded in the complaint and an Order of Default
will be rendered against you for the relief so demanded in the Complaint.

2/23/2010
Handwritten E. Greiner
Handwritten

February 23, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS

COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT

HAZELENE E. TREXLER, TERRY A. TREXLER
AND JAMES W. TREXLER

CASE NO: 2010-CP-

PLAINTIFFS,

VS.

COMPLAINT

RICHARD RALPHS, JAMES QUINN, HOLLY WAGNER
CHRIS COWAN, RICHLAND COUNTY SHERIFF'S
DEPARTMENT, RICHLAND COUNTY, MARY ELLEN
TOBIA, LEON LOTT, HUGH WEATHERS, BETH CROCKER
KAY RIKE, FRANK FUSCO, SOUTH CAROLINA
DEPARTMENT OF AGRICULTURE, ALL MEDIA COMPANIES
THAT PRODUCED OR REPORTED ON ANY EVENT
RELATING TO THE PLAINTIFFS IN 2008, 2009 AND 2010

DEFENDANTS.

RICHLAND COUNTY
FILED
2010 FEB 23 PM 12:44
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff complaining of the Defendant alleges and says:

1. Plaintiffs are residents of South Carolina.
2. The Defendant are residents of Richland County, South Carolina or engaged in tortuous activities in Richland County.
3. Jurisdiction is held in richland County via the residence of the Defendants or it is the place of acts complained of.

BACKGROUND FACTS

4. The Plaintiff, Hazelene E. Trexler, was engaged in the business and agricultural practice of raising, breeding, and caring for horses on property owned and/or leased by

Hazelene E. Trexler and doing business as Carolina Arabian Show Horses, LLC.

5. Defendants committed acts of defamation, slander, civil conspiracy and other violations of law against the Plaintiffs in and about late February 2008. Such wrongful acts will detailed at trial.

FOR A FIRST CAUSE OF ACTION
(DEFAMATION, SLANDER, LIBEL)

6. In late February 2008 and numerous times before and thereafter, Plaintiffs defamed the Plaintiffs.

FOR A SECOND CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

7. Each and every allegation in the foregoing paragraphs of this Complaint is realleged as if repeated verbatim to the extent that such allegations are not inconsistent with this cause of action.

8. In February 2008 and numerous times before and thereafter, Defendant intentionally, willfully, recklessly and wantonly inflicted severe emotional distress upon the Plaintiffs by defamation, public humiliation, contributions to imprisonment and malicious prosecution, degradation and dehumanization.

9. Defendant knew or was substantially certain that such emotional distress would result from Defendant's conduct as described hereinabove.

10. Defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as outrageous and intolerable in a civilized community.

11. Defendant intended to humiliate, degrade, harass, intimidate and frighten the Plaintiffs.

12. Defendant's conduct was willful, wanton, malicious and done in reckless disregard of the Plaintiffs' rights.

13. Defendant's conduct has and will cause the Plaintiffs to suffer from severe emotional

distress and adverse psychological effects.

14. The severity of the emotional distress suffered by the Plaintiffs are such that a reasonable person in the Plaintiffs' position would be similarly affected, and no reasonable person could be expected to endure it.

15. As a direct and proximate result of Defendant's conduct, the Plaintiffs suffered severe emotional distress and adverse psychological effects, and further suffered the injuries as set forth hereinabove, in a sum of actual and punitive damages in an amount of no less than \$10,000,000.00. The Plaintiff is informed and believes he is entitled to an award of said damages from the Defendant.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENCE)

16. To the extent they are not inconsistent with this cause of action, Plaintiffs reallege and incorporate the foregoing paragraphs of this Complaint as if repeated verbatim.

17. Defendant owed and/or assumed a duty of care to Plaintiffs to properly and thoroughly investigate the allegations against Plaintiffs in order to ensure that any accusations brought against them sustained by all relevant facts sufficient to provide proof of their guilt.

18. Defendant knew or should have known and/or discovered that there might exist evidence easily available to the Defendant which would exonerate the Plaintiff of the charges brought against them.

19. Despite Defendant's knowledge of the possible existence of said evidence, Defendant failed to inquire about said evidence or to locate same, when in fact, said evidence was in the possession of the Defendant or was readily known at the time of the accusation against the Plaintiffs.

20. Defendant was negligent, grossly negligent, willful, and wanton, and breached her duty to the Plaintiffs in one or more of the following ways:

- a.) In failing to exercise due care in the investigation of the allegations against the Plaintiff; and
- b.) In failing to exercise due care during the investigation of the allegations against the Plaintiff prior to bringing the accusations against him and contributing to their peril.

21. As a direct and proximate result of Defendant's conduct, the Plaintiffs suffered severe emotional distress and adverse psychological effects, and further suffered the injuries as set forth hereinabove, in a sum of actual and punitive damages in an amount no less than \$10,000,000.00. The Plaintiffs are informed and believes he is entitled to an award of said damages from Defendant.

FOR A FOURTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

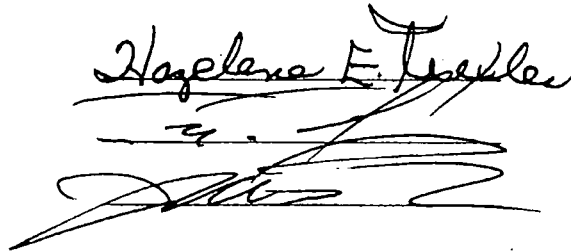
22. To the extent they are not inconsistent with this cause of action, Plaintiffs reallege and incorporate the foregoing paragraphs of this Complaint as if repeated verbatim.

23. At all times relevant to this Complaint, Defendant along with others, intended to injure the Plaintiffs by making false, misleading allegations against the Plaintiffs; by constantly harassing the Plaintiffs by withholding exonerating evidence prior to and after their arrest so that the Plaintiffs would be faced with public humiliation.

24. As a direct and proximate result of Defendant's conduct, the Plaintiffs suffered special damages, to wit: severe emotional distress and adverse psychological effects, and further suffered the injuries as set forth hereinabove in a sum of actual and punitive damages in an amount of no less than \$10,000,000.00. The Plaintiff is informed and believe they are entitled to an award of said damages from Defendant.

WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- a.) As to the First, Second, Third and Fourth Cause of Action against the Defendant, actual, consequential and punitive damages, attorney fees, and costs in an amount of no less than \$10,000,000.00 for each Cause.
- b.) As to all causes of action, for such other and further relief as the Court deems just and proper.

A handwritten signature in cursive script, appearing to read "Hazelena E. Taylor", is written over two horizontal lines. Below the signature, there are several more horizontal lines, some of which are crossed out or scribbled over.

February 23, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case Number; 2010-CP-40-1249

James W. Trexler,
Plaintiff,

vs.

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Gannett Company, Inc., Raycom TV
Broadcasting, Inc., and The Spartanburg
Herald, Journal, Inc.

Defendants.

AMENDED SUMMONS

JEANETTE W. McBRIDE
C.C.P. & G.S.

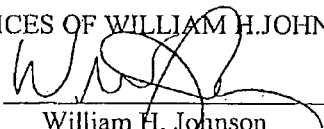
2010 JUN 23 AM 11:38

RICHLAND COUNTY
FILED

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your answer to the said Amended Complaint on the subscribers, Law Offices of William H. Johnson, L. L.C., at their offices at 2 North Brooks Street, Manning, South Carolina, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint.

LAW OFFICES OF WILLIAM H. JOHNSON, LLC

By: 

William H. Johnson
P.O. Box 137
Manning, SC 29102
Phone: 803-435-0909
Fax: 803-435-2858
william@whjohnsonlaw.com

June 23, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
) Case Number; 2010-CP-40-1249

James W. Trexler,
Plaintiff,

vs.

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
The Pacific and Southern Company, Inc.
, Raycom TV Broadcasting, Inc., and
The Spartanburg Herald-Journal, Inc.

Defendants.

AMENDED COMPLAINT

JEANETTE M. MCGRIDE
S.C.P. & G.S.

2010 JUN 23 AM 11:38

RICHLAND COUNTY
FILED

The Plaintiff, complaining of the Defendants above name, respectfully allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina.
2. The Defendant, The Associated Press (hereinafter "AP") is a corporation organized and pursuant to the laws of a state other than South Carolina, but is licensed to do business in South Carolina.
3. The Defendant, Barrington Broadcasting South Carolina Corp. (hereinafter "Barrington") is a corporation organized and pursuant to the laws of a state other than South Carolina, but is licensed to do business in South Carolina.
4. The Defendant, The Pacific and Southern Company, Inc., (hereinafter "Pacific

and Southern”) is a corporation organized and pursuant to the laws of a state other than South Carolina, but does business and owns property in South Carolina.

5. The Defendant, Raycom TV Broadcasting Inc., (hereinafter “Raycom”) is a corporation organized and pursuant to the laws of a state other than South Carolina, but is licensed to do business in South Carolina.

6. The Defendant, The Spartanburg Herald-Journal, Inc. (hereinafter “the Herald-Journal”) is a corporation organized and pursuant to the laws of a state other than South Carolina, but is licensed to do business in South Carolina.

7. The matters alleged in this Amended Complaint arise from publications that occurred within the state of South Carolina, and therefore this Court has jurisdiction over the parties and subject matter herein.

FACTUAL BACKGROUND

8. The Associated Press provides information to various media outlets for publication in the broadcast, print, and internet media.

9. Barrington owns and operates WACH TV, which broadcasts from Columbia, South Carolina, and also publishes through an internet website identified as “MidlandsConnect.com.

10. Raycom owns WIS TV, which broadcasts from Columbia, South Carolina.

11. Pacific and Southern, upon information and belief, is a subsidiary of The Gannett Company, Inc., and owns WLTX, which broadcasts from Columbia, South Carolina.

12. The Herald-Journal publishes a newspaper from Spartanburg, South Carolina, and also owns and publishes information through a website identified as “GoUpstate.com.”

13. Prior to the month of March 2008, the Plaintiff's mother operated a business in Richland County, South Carolina, in which the Plaintiff's mother bred for profit, Arabian horses.

14. During February of 2008, the horses owned by the Plaintiff's mother were seized, due to alleged charges of mistreatment of animals. In addition, the Plaintiff's mother and brother were charged with various crimes.

15. Although the Plaintiff had no ownership interest whatsoever in the ownership of the horses or the operation of his mother's business, the Richland County Sheriff's Department charged the Plaintiff as if he were an owner.

16. As the result of an associated incident that occurred between the Plaintiff's brother and an individual trespassing upon the property where the horses were maintained, which trespassing was done for the furtherance of supporting the allegations of mistreatment of animals, the Plaintiff's brother was charged with the crime of kidnapping.

17. At the time of these events, the Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration. His position was not an elected or appointed position, but rather earned as the result of twenty-seven years of service to state government.

18. On dates subsequent to the seizure of the Plaintiff's mother's horses, each of the defendants, through the actions of the publications or broadcasting stations owned by each of them, published as fact false and defamatory statements about the Plaintiff, including statements that the plaintiff was a kidnapper, that authorities had removed horses from the plaintiff, that the plaintiff's horses were starved, and other false and misleading statements.

19. At the times of the publications, the statements were false and the Defendants

either knew or should have known that the statements were false.

20. As a result of the publications, the Plaintiff suffered an enormous adverse financial impact, which impact included being forced to resign from his job, which caused him to lose substantial benefits for which he worked diligently during a successful career with the State of South Carolina.

21. As a further result of the publications, the Plaintiff is unable to obtain employment in which he can utilize his talents and experience.

22. As a further result of the publications, the Plaintiff has suffered extreme humiliation and damage to his reputation in the community and state government.

23. Publications of the statements concerning the kidnapping charge, and also the statements associating the Plaintiff with the operation of the horse business owned and operated by his mother created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Defamation)

24. Each and every factual allegation above is incorporated herein by reference.

25. On February 28, 2008, and subsequent dates, each of the defendants published statements to millions of citizens of the state of South Carolina and worldwide that the Plaintiff had been charged with kidnapping, and that authorities had removed horses from him that had been abused.

26. At the time of the publications, the statements were false.

27. At the time of the publications, the Defendants either knew that the statements were false, or through the exercise of professional journalism should have known that the statements were false, and therefore acted with malice, intentional and reckless disregard for the truth or falsity of the statements.

28. In addition to being actionable, irrespective of the harm caused by the publication of the statements, the publication of the statements did in fact cause special harm, in the form of the loss of the Plaintiff's twenty-seven year career with the state government, extreme humiliation in the community, and irreparable damage to his reputation.

29. As a result of the defamation of the Plaintiff by the Defendants, the Plaintiff is entitled to actual and punitive damages as determined by a jury.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Civil Conspiracy)

30. Each and every factual allegation above is incorporated herein by reference.

31. The Defendants, through their agents, combined one with another to publish false statements about the Plaintiff.

33. The combination was for the purpose of injuring the Plaintiff.

34. The actions of the Defendants caused the Plaintiff special damages in the form of the loss of his career and unrecoverable damage to his reputation.

35. As a result of the civil conspiracy of the Defendants, the Plaintiff is entitled to actual and punitive damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Outrage)

36. Each and every factual allegation above is incorporated herein by reference.
37. By recklessly publishing to third parties that the Plaintiff had been charged with kidnapping, the Defendants intentionally and recklessly inflicted severe emotional distress upon the Plaintiff.
38. By publishing that the Plaintiff was charged with kidnapping when the Defendants knew or should have known that the same was totally untrue, the Defendants' conduct was so extreme and atrocious as to exceed all possible bounds of decency and must be regarded as outrageous and utterly intolerable in a civilized society.
39. The actions of the Defendants have caused the Plaintiff severe emotional distress.
40. The emotional distress suffered by the Plaintiff was so severe that no reasonable person could be expected to endure it.
41. As a result of the tort of outrage on the part of the Defendants, the Plaintiff is entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Negligence)

42. Each and every factual allegation above is incorporated herein by reference.
43. The Defendants owed a duty of care to the Plaintiff to properly and thoroughly investigate the allegations against the Plaintiff in order to ensure that any statements published concerning the Plaintiff were correct and true.

44. Information was readily available to each of the Defendants that the Plaintiff had no ownership interest in the horses that were removed, and that he had not been charged with the crime of kidnapping.

45. The Defendants breached their duty to thoroughly investigate the allegations, due to the fact of the sensationalism of the allegations, particularly as they related to the Plaintiff, an employee of the South Carolina Department of Agriculture.

46. The Defendants were negligent, grossly negligent, willful and wanton, and breached their duties to the Plaintiff in one or more of the following specifics:

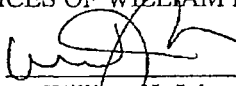
- (a) In failing to exercise due care in the investigation of the allegations against the Plaintiff;
- (b) In publishing statements without verifying the truth or veracity of the statements with reference to readily available information;
- © In accepting as truth statements made by malicious and biased individuals with ulterior motives toward the Plaintiff.

47. As a direct and proximate result of the Defendants' conduct, the Plaintiff suffered substantial economic damages, as well as severe emotional distress.

48. As a result of the negligence and gross negligence on the part of the Defendants, the plaintiff is entitled to actual and punitive damages as determined by a jury.

WHEREFORE, having fully stated his claim for relief, the Plaintiff prays for judgment against the Defendants, jointly and severally, for actual and punitive damages in an amount to be determined by a jury, and for such other and further relief as the Court may deem just and proper.

LAW OFFICES OF WILLIAM H. JOHNSON, LLC

By: 

William H. Johnson

P.O. Box 137

Manning, SC 29102

Phone: 803-435-0909

Fax: 803-435-2858

william@whjohnsonlaw.com

June 23, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

James W. Trexler,) Civil Action No.: 2010-CP-40-1249

Plaintiff,)

v.)

ANSWER OF DEFENDANT THE
ASSOCIATED PRESS
(Jury Trial Demanded)

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 AUG 27 PM 2:49

FILED
RICHLAND COUNTY

Defendant, The Associated Press (AP), responding to the allegations of the amended complaint, alleges:

AS AND FOR A FIRST DEFENSE TO THE DEFAMATION CLAIM

1. As to the allegations of paragraph 1, AP admits the same.
2. As to the allegation of paragraph 2, AP admits the same, and alleges in connection therewith that it is a not-for-profit news cooperative organized under the laws of the State of New York, doing business in South Carolina.
3. As to the allegations of paragraphs 3, 4, 5, and 6, AP lacks information sufficient to form a belief as to the truth or falsity thereof, denies the same.
4. As to the allegations of paragraph 7, AP is informed and believes the same to be true, and admits the same.

5. As to the allegations of paragraph 8, AP admits the same and alleges in connection therewith that it is a news cooperative and that it provides news reports and other services to its members.

6. As to the allegations of paragraph 9, AP admits so much thereof as alleges that WACH-TV broadcasts from Columbia, South Carolina, but denies the remaining allegations thereof.

7. As to the allegations of paragraph 10, AP admits so much thereof as alleges that WIS-TV broadcasts from Columbia, South Carolina, but denies the remaining allegations thereof.

8. As to the allegations of paragraph 11, AP admits so much thereof as alleges that WLTX-TV broadcasts from Columbia, South Carolina, but denies the remaining allegations thereof.

9. As to the allegations of paragraph 12, AP admits that the Herald-Journal newspaper is published in Spartanburg, South Carolina, and denies the remaining allegations of thereof.

10. As to the allegations of paragraphs 13, 14 and 15, AP lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

11. As to the allegations of paragraph 16, AP lacks information sufficient to form a belief as to the truth or falsity thereof, denies the same, and alleges in connection therewith that the Richland County Sheriff's Department on February 29, 2008 issued a statement indicating that plaintiff had been arrested on one count of kidnapping.

12. As to the allegations of paragraph 17, AP admits so much thereof as alleges that plaintiff was an assistant commissioner of the South Carolina Department of Agriculture, lacks

information sufficient to form a belief as to the truth or falsity of the remaining allegations and denies the same. AP is informed and believes plaintiff was a public official at the time of the publications complained of.

13. As to the allegations of paragraphs 18, 19, 20, 21, 22 and 23, AP denies the same.

14. As to the allegations of paragraph 24, AP reasserts and realleges the facts and matters contained in paragraph 1 through 13 above, as fully and completely as if restated herein verbatim.

15. As to the allegations of paragraph 25, AP denies that it published any information on February 28, 2008 regarding kidnapping charges against plaintiff, but alleges in connection therewith that subsequent to February 29, 2008, in response to a press release issued by the Richland County Sheriff's Department, AP disseminated a news report that stated, as the press release had, that plaintiff had been arrested for kidnapping.

16. As to the allegations of paragraphs 26, 27, 28, and 29, AP denies the same.

AS AND FOR A SECOND DEFENSE TO THE DEFAMATION CLAIM

17. The allegations of paragraph 1 through 29 fail to state a cause of action for defamation in that plaintiff, a public official at the time of the publication, has failed to allege constitutional malice.

AS AND FOR A THIRD DEFENSE TO THE DEFAMATION CLAIM

18. The publication of a news report by AP stating that plaintiff had been charged with kidnapping was privileged at common law as the fair and accurate report of a public record.

AS AND FOR A FOURTH DEFENSE TO THE DEFAMATION CLAIM

19. Plaintiff's defamation claim is time barred by the statute of limitations imposed by S.C. Code Ann. §15-3-550 (Rev. 2005).

AS AND FOR A FIRST DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

20. As to the allegations of paragraph 30, AP reasserts and realleges the facts and matters contained in paragraph 1 through 19 above, as fully and completely as if restated herein verbatim.

21. As to the allegations of paragraphs 31, 33, (there is no paragraph 32), 34, and 35, AP denies the same.

22. All allegations in the civil conspiracy claim not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

23. The allegations of paragraphs 30, 31, 33, 34, and 35 fail to state a cause of action for civil conspiracy in that an action by a public official for damages flowing from a publication requires allegations of and proof of constitutional malice, neither of which is alleged in the amended complaint.

AS AND FOR A THIRD DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

24. Publication of news reports of and concerning public officials in South Carolina is privileged at common law and under the constitutions of South Carolina and of the United States.

AS AND FOR A FIRST DEFENSE TO THE OUTRAGE CLAIM

25. As to the allegations of paragraph 36, AP reasserts and realleges the facts and matters contained in paragraphs 1 through 24 above, as fully and completely as if restated herein verbatim.

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26. As to the allegations of paragraph 37, AP denies that it was reckless in publishing any news report regarding the plaintiff being charged with kidnapping in that the information was provided to AP in a public record.

27. As to the allegations of paragraphs 38, 39, 40, and 41, AP denies the same.

28. All allegations in paragraphs 36, 37, 38, 39, 40 and 41 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE OUTRAGE CLAIM

29. The allegations of paragraphs 36, 37, 38, 39, 40 and 41 fail to state a cause of action for intentional infliction of emotional distress in that they fail to allege constitutional malice, an essential element of a claim for intentional infliction of emotional distress brought by a public official or public figure.

AS AND FOR A DEFENSE TO THE NEGLIGENCE CLAIM

30. As to the allegations of paragraph 42, AP reasserts and realleges the facts and matters contained in paragraph 1 through 29 above, as fully and completely as if restated herein verbatim.

31. As to the allegations of paragraph 43, AP denies the same.

32. As to the allegations of paragraph 44, AP denies the same, and alleges in connection therewith that a public record stated that plaintiff had been charged with ill-treatment of animals and kidnapping.

33. As to the allegations of paragraph 45, AP denies the same, and alleges in connection therewith that it had no duty other than to report fairly and accurately the contents of a public record which it did.

34. As to the allegations of paragraphs 46, 47 and 48, AP denies the same.

35. All allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48, not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE NEGLIGENCE CLAIM

36. The allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48 fail to state a cause of action against AP in that negligence is not the appropriate standard of fault for a claim of a public official or public figure for injuries said to have been caused by a publication.

WHEREFORE, this defendant having fully responded to the allegations of the amended complaint, prays that the same be dismissed with costs assessed against the plaintiff, together with such other relief as may be appropriate.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
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Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant The Associated Press

Columbia, South Carolina

August 26, 2010

#6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

James W. Trexler,

Plaintiff,

v.

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.

Civil Action No.: 2010-CP-40-1249

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.

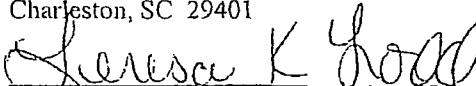
2010 AUG 27 PM 2:49

FILED

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with an Answer by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

William H. Johnson, Esquire
2 North Brooks Street
Manning, SC 29102

Edward T. Fenno, Esquire
171 Church St., Suite 160
Charleston, SC 29401


Teresa K. Todd

August 27, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
)

James W. Trexler,

) Civil Action No.: 2010-CP-40-1249
)

Plaintiff,

)

v.

)

) ANSWER OF DEFENDANT
) BARRINGTON BROADCASTING
) SOUTH CAROLINA CORP.
) (Jury Trial Demanded)
)

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.

)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 AUG 27 PM 2:49

FILED
RICHLAND COUNTY

Defendant, Barrington Broadcasting South Carolina Corp., (Barrington) responding to the
allegations of the amended complaint, alleges:

AS AND FOR A FIRST DEFENSE TO THE DEFAMATION CLAIM

1. As to the allegations of paragraph 1, Barrington is informed and believes the same to be true, and admits the same.
2. As to the allegations of paragraph 2, Barrington is informed and believes the same to be true and admits the same.
3. As to the allegations of paragraph 3, Barrington admits the same and alleges in connection therewith that it is a corporation organized and existing under the laws of the State of Delaware with authority to do business in the State of South Carolina.
4. As to the allegations of paragraphs 4, 5 and 6, Barrington lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

5. As to the allegations of paragraph 7, Barrington is informed and believes the same to be true and admits the same.

6. As to the allegations of paragraph 8, Barrington admits the same.

7. As to the allegations of paragraph 9, Barrington denies the same.

8. As to the allegations of paragraphs 10, 11, and 12, Barrington lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

9. As to the allegations of paragraph 13, Barrington lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

10. As to the allegations of paragraph 14, Barrington admits so much thereof as alleges that in February 2008, plaintiff's mother and brother were charged with crimes, but lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations thereof, and denies the same.

11. As to the allegations of paragraph 15, Barrington lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

12. As to the allegations of paragraph 16, Barrington lacks information sufficient to form a belief as to the truth or falsity thereof, denies the same, and alleges in connection therewith that on February 29, 2008, the Richland County Sheriff's Department announced in a press release that plaintiff had been charged with kidnapping.

13. As to the allegations of paragraph 17, Barrington admits the same and alleges in connection therewith that plaintiff was at the time of the publication complained of herein a public official or public figure.



14. As to the allegations of paragraphs 18, 19, 20, 21, 22 and 23, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

15. As to the allegations of paragraph 24, Barrington reasserts and realleges the facts and matters contained in paragraph 1 through 14 above, as fully and completely as if restated herein verbatim.

16. As to the allegations of paragraph 25, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding the plaintiff. Further, Barrington alleges that any broadcasts made by any defendant were based on a press release from the Richland County Sheriff's Department on February 29, 2008 which reported that plaintiff had been charged with five counts of ill-treatment of animals and kidnapping.

17. As to the allegations of paragraphs 26, 27, 28, and 29, Barrington denies the same.

18. All allegations of paragraphs 1 through 29 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE DEFAMATION CLAIM

19. The allegations of paragraphs 1 through 29 fail to state a cause of action for defamation in that they fail to allege constitutional malice, the threshold for recovery by a public official or public figure such as plaintiff.

AS AND FOR A THIRD DEFENSE TO THE DEFAMATION CLAIM

20. While Barrington denies that it published any information regarding plaintiff, any publication complained of by plaintiff was privileged in that it was a fair and accurate report of the contents of a public record.

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AS AND FOR A FOURTH DEFENSE TO THE DEFAMATION CLAIM

21. Plaintiff's defamation claim is time barred by the statute of limitations imposed by S.C. Code Ann. §15-3-550 (Rev. 2005).

AS AND FOR A FIRST DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

22. As to the allegations of paragraph 30, Barrington reasserts and realleges the facts and matters contained in paragraphs 1 through 21 above, as fully and completely as if restated herein verbatim.

23. As to the allegations of paragraphs 31, 33, (there is no paragraph 32), 34, and 35, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

24. All allegations in the civil conspiracy claim not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

25. The allegations of paragraphs 30, 31, 33, 34, and 35 fail to state a cause of action for civil conspiracy in that publications regarding public officials or public figures do not constitute civil conspiracy in a democracy.

AS AND FOR A FIRST DEFENSE TO THE OUTRAGE CLAIM

26. As to the allegations of paragraph 36, Barrington reasserts and realleges the facts and matters contained in paragraphs 1 through 25 above, as fully and completely as if restated herein verbatim.

27. As to the allegations of paragraphs 37, 38, 39, 40 and 41, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

28. All allegations in paragraphs 36, 37, 38, 39, 40 and 41 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE OUTRAGE CLAIM

29. The allegations of paragraphs 36, 37, 38, 39, 40 and 41 fail to state a cause of action for intentional infliction of emotional distress in that there are no allegations of constitutional malice, a threshold requirement for such claims by a public official or public figure.

AS AND FOR A FIRST DEFENSE TO THE NEGLIGENCE CLAIM

30. As to the allegations of paragraph 42, Barrington asserts and realleges the facts and matters contained in paragraphs 1 through 29 above, as fully and completely as if restated herein verbatim.

31. As to the allegations of paragraph 43, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

32. As to the allegations of paragraph 44, Barrington denies the same, and alleges in connection therewith that a public record stated that plaintiff had been charged with ill-treatment of animals and kidnapping.

33. As to the allegations of paragraph 45, Barrington denies the same, and alleges in connection therewith that it owed no duty to plaintiff.

34. As to the allegations of paragraphs 46, 47 and 48, Barrington denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

35. All allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48, not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE NEGLIGENCE CLAIM

36. The allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48 fail to state a cause of action against Barrington in that negligence is not the appropriate standard of fault for a claim of a public official or public figure for injuries said to have been caused by a publication.

WHEREFORE, this defendant having fully responded to the allegations of the amended complaint, prays that the same be dismissed with costs assessed against the plaintiff, together with such other relief as may be appropriate.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
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Attorneys for Defendant Barrington Broadcasting South
Carolina Corp.

Columbia, South Carolina

August 26, 2010

#6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
)

James W. Trexler,

) Civil Action No.: 2010-CP-40-1249
)

Plaintiff,

)

v.

)

CERTIFICATE OF SERVICE

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)

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

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Defendants.

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JEANETTE W. McBRIDE
C.C.P. & G.S.

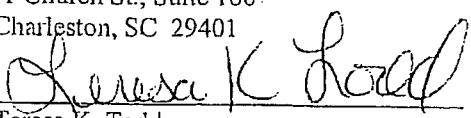
2010 AUG 27 PM 2:49

FILED

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with an Answer by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

William H. Johnson, Esquire
2 North Brooks Street
Manning, SC 29102

Edward T. Fenno, Esquire
171 Church St., Suite 160
Charleston, SC 29401


Teresa K. Todd

August 27, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

James W. Trexler,) Civil Action No.: 2010-CP-40-1249

Plaintiff,)

v.)

ANSWER OF DEFENDANT PACIFIC &
SOUTHERN CO., INC. TO AMENDED
COMPLAINT
(Jury Trial Demanded)

The Associated Press, Barrington)
Broadcasting South Carolina Corp.,)
Raycom TV Broadcasting, Inc. The)
Spartanburg Herald Journal, Inc. and the)
Pacific & Southern Co., Inc.,)

Defendants.)

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JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Defendant, Pacific & Southern Co., Inc. (Pacific & Southern) responding to the allegations of the amended complaint, alleges:

AS AND FOR A FIRST DEFENSE TO THE DEFAMATION CLAIM

1. As to the allegations of paragraph 1, Pacific & Southern is informed and believes the same to be true, and admits the same.
2. As to the allegations of paragraph 2, Pacific & Southern is informed and believes the same to be true and admits the same.
3. As to the allegations of paragraph 3, Pacific & Southern lacks sufficient information sufficient to form a belief as to the truth or falsity thereof and denies the same.
4. As to the allegations of paragraphs 4, 5 and 6, Pacific & Southern admits the same the same.

5. As to the allegations of paragraph 7, Pacific & Southern is informed and believes the same to be true and admits the same.

6. As to the allegations of paragraph 8, Pacific & Southern admits the same.

7. As to the allegations of paragraph 9, Pacific & Southern denies the same.

8. As to the allegations of paragraph 10, Pacific & Southern denies the same.

9. As to the allegations of paragraph 11, Pacific & Southern denies the same.

10. As to the allegations of paragraph 12, Pacific & Southern admits the same.

11. As to the allegations of paragraph 13, Pacific & Southern lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

12. As to the allegations of paragraph 14, Pacific & Southern admits so much thereof as alleges that in February 2008, plaintiff's mother and brother were charged with crimes, but lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations thereof, and denies the same.

13. As to the allegations of paragraph 15, Pacific & Southern lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

14. As to the allegations of paragraph 16, Pacific & Southern lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same and alleges in connection therewith that on February 29, 2008, the Richland County Sheriff's Department announced in a press release that plaintiff had been charged with kidnapping.

15. As to the allegations of paragraph 17, Pacific & Southern admits the same and alleges in connection therewith that plaintiff was at the time of the publication complained of a public official or public figure.

16. As to the allegations of paragraphs 18, 19, 20, 21, 22 and 23, Pacific & Southern denies the same.

17. As to the allegations of paragraph 24, Pacific & Southern reasserts and realleges the facts and matters contained in paragraphs 1 through 16 above, as fully and completely as if restated herein verbatim.

18. As to the allegations of paragraph 25, Pacific & Southern denies the same, and alleges in connection therewith that based on a press release from the Richland County Sheriff's Department on February 29, 2008, it reported that plaintiff had been charged with five counts of ill-treatment of animals and kidnapping.

19. As to the allegations of paragraphs 26, 27, 28, and 29, Pacific & Southern denies the same.

20. All allegations of paragraphs 1 through 29 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE DEFAMATION CLAIM

21. The allegations of paragraphs 1 through 29 fail to state a cause of action for defamation in that they fail to allege constitutional malice, the threshold for recovery by a public official or public figure such as plaintiff.

AS AND FOR A THIRD DEFENSE TO THE DEFAMATION CLAIM

22. The publication complained of by plaintiff was privileged in that it was a fair and accurate report of the contents of a public record.

AS AND FOR A FOURTH DEFENSE TO THE DEFAMATION CLAIM

23. Plaintiff's defamation claim is time barred by the statute of limitations imposed by S.C. Code Ann. §15-3-550 (Rev. 2005).

AS AND FOR A FIRST DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

24. As to the allegations of paragraph 30, Pacific & Southern reasserts and realleges the facts and matters contained in paragraphs 1 through 23 above, as fully and completely as if restated herein verbatim.

25. As to the allegations of paragraphs 31, 33, (there is no paragraph 32), 34, and 35, Pacific & Southern denies the same.

26. All allegations in the civil conspiracy claim not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

27. The allegations of paragraphs 30, 31, 33, 34, and 35 fail to state a cause of action for civil conspiracy in that publications regarding public officials or public figures do not constitute civil conspiracy in a democracy.

AS AND FOR A FIRST DEFENSE TO THE OUTRAGE CLAIM

28. As to the allegations of paragraph 36, Pacific & Southern reasserts and realleges the facts and matters contained in paragraphs 1 through 27 above, as fully and completely as if restated herein verbatim.

29. As to the allegations of paragraphs 37, 38, 39, 40 and 41, Pacific & Southern denies the same.

30. All allegations in paragraphs 36, 37, 38, 39, 40 and 41 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE OUTRAGE CLAIM

31. The allegations of paragraphs 36, 37, 38, 39, 40 and 41 fail to state a cause of action for intentional infliction of emotional distress in that there are no allegations of

constitutional malice, a threshold requirement for such claims by a public official or public figure.

AS AND FOR A FIRST DEFENSE TO THE NEGLIGENCE CLAIM

32. As to the allegations of paragraph 42, Pacific & Southern asserts and realleges the facts and matters contained in paragraphs 1 through 31 above, as fully and completely as if restated herein verbatim.

33. As to the allegations of paragraph 43, Pacific & Southern denies the same.

34. As to the allegations of paragraph 44, Pacific & Southern denies the same, and alleges in connection therewith that a public record stated that plaintiff had been charged with ill-treatment of animals and kidnapping.

35. As to the allegations of paragraph 45, Pacific & Southern denies the same, and alleges in connection therewith that it had no duty other than to report fairly and accurately the contents of a public record which it did.

36. As to the allegations of paragraphs 46, 47 and 48, Pacific & Southern denies the same.

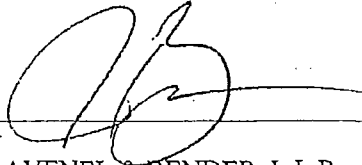
37. All allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48, not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE NEGLIGENCE CLAIM

38. The allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48 fail to state a cause of action against Pacific & Southern in that negligence is not the appropriate standard of fault for a claim of a public official or public figure for injuries said to have been caused by a publication.

WHEREFORE, this defendant having fully responded to the allegations of the amended

complaint, prays that the same be dismissed with costs assessed against the plaintiff, together with such other relief as may be appropriate.



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant Pacific & Southern Co., Inc.

Columbia, South Carolina

August 27, 2010



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
James W. Trexler,	)	Civil Action No.: 2010-CP-40-1249
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
	)	
The Associated Press, Barrington	)	
Broadcasting South Carolina Corp.,	)	
Raycom TV Broadcasting, Inc. The	)	
Spartanburg Herald Journal, Inc. and the	)	
Pacific & Southern Co., Inc.,	)	
	)	
Defendants.	)	

JEANETTE W. McBRIDE
C.C.P. & G.S.

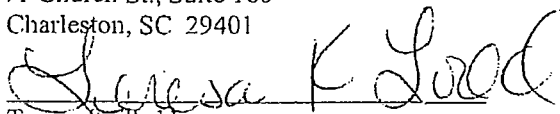
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FILED

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with an Answer by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

William H. Johnson, Esquire
2 North Brooks Street
Manning, SC 29102

Edward T. Fenno, Esquire
171 Church St., Suite 160
Charleston, SC 29401


Teresa K. Todd

August 27, 2010

Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS
)
)

) Civil Action No.: 2010-CP-40-1249

)

)

) ANSWER OF DEFENDANT RAYCOM
) TV BROADCASTING, INC. TO THE
) AMENDED COMPLAINT.
) (Jury Trial Demanded)

$$\left. \begin{array}{l}) \\) \\) \\) \end{array} \right\}$$

i)

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JEANETTE W. HOBRIE
C.C.C. G.S.
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7. As to the allegations of paragraph 9, Raycom denies the same.

8. As to the allegations of paragraphs 10, 11, and 12, Raycom denies the same.

9. As to the allegations of paragraph 13, Raycom lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

10. As to the allegations of paragraph 14, Raycom admits so much thereof as alleges that in February 2008, plaintiff's mother and brother were charged with crimes, but lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations thereof, and denies the same.

11. As to the allegations of paragraph 15, Raycom lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same.

12. As to the allegations of paragraph 16, Raycom lacks information sufficient to form a belief as to the truth or falsity thereof, and denies the same and alleges in connection therewith that on February 29, 2008, the Richland County Sheriff's Department announced in a press release that plaintiff had been charged with kidnapping.

13. As to the allegations of paragraph 17, Raycom admits the same and alleges in connection therewith that plaintiff was at the time of the publication complained of herein a public official or public figure.

14. As to the allegations of paragraphs 18, 19, 20, 21, 22 and 23, Raycom denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

15. As to the allegations of paragraph 24, Raycom reasserts and realleges the facts and matters contained in paragraphs 1 through 14 above, as fully and completely as if restated herein verbatim.

16. As to the allegations of paragraph 25, Raycom denies that it published any information regarding plaintiff, and alleges in connection therewith that any publications regarding plaintiff were based on a press release from the Richland County Sheriff's Department on February 29, 2008 reported that plaintiff had been charged with five counts of ill-treatment of animals and kidnapping.

17. As to the allegations of paragraphs 26, 27, 28, and 29, Raycom denies the same.

18. All allegations of paragraphs 1 through 29 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE DEFAMATION CLAIM

19. The allegations of paragraphs 1 through 29 fail to state a cause of action for defamation in that they fail to allege constitutional malice, the threshold for recovery by a public official or public figure such as plaintiff.

AS AND FOR A THIRD DEFENSE TO THE DEFAMATION CLAIM

20. While Raycom denies that it published any information regarding plaintiff, any publication complained of by plaintiff was privileged in that it was a fair and accurate report of the contents of a public record.

AS AND FOR A FOURTH DEFENSE TO THE DEFAMATION CLAIM

21. Plaintiff's defamation claim is time barred by the statute of limitations imposed by S.C. Code Ann. §15-3-550 (Rev. 2005).

AS AND FOR A FIRST DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

22. As to the allegations of paragraph 30, Raycom reasserts and realleges the facts and matters contained in paragraph 1 through 21 above, as fully and completely as if restated herein verbatim.

23. As to the allegations of paragraphs 31, 33, (there is no paragraph 32), 34, and 35, Raycom denies the same, and alleges in connection therewith that it never published any information regarding plaintiff.

24. All allegations in the civil conspiracy claim not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE CLAIM FOR CIVIL CONSPIRACY

25. The allegations of paragraphs 30, 31, 33, 34, and 35 fail to state a cause of action for civil conspiracy in that publications regarding public officials or public figures do not constitute civil conspiracy in a democracy.

AS AND FOR A FIRST DEFENSE TO THE OUTRAGE CLAIM

26. As to the allegations of paragraph 36, Raycom reasserts and realleges the facts and matters contained in paragraphs 1 through 25 above, as fully and completely as if restated herein verbatim.

27. As to the allegations of paragraphs 37, 38, 39, 40 and 41, Raycom denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

28. All allegations in paragraphs 36, 37, 38, 39, 40 and 41 not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE OUTRAGE CLAIM

29. The allegations of paragraphs 36, 37, 38, 39, 40 and 41 fail to state a cause of action for intentional infliction of emotional distress in that there are no allegations of constitutional malice, a threshold requirement for such claims by a public official or public figure.

AS AND FOR A FIRST DEFENSE TO THE NEGLIGENCE CLAIM

30. As to the allegations of paragraph 42, Raycom asserts and realleges the facts and matters contained in paragraph 1 through 29 above, as fully and completely as if restated herein verbatim.

31. As to the allegations of paragraph 43, Raycom denies the same and alleges in connection therewith that it never broadcast any information regarding plaintiff.

32. As to the allegations of paragraph 44, Raycom denies the same, and alleges in connection therewith that a public record stated that plaintiff had been charged with ill-treatment of animals and kidnapping.

33. As to the allegations of paragraph 45, Raycom denies the same, and alleges in connection therewith that it owed no duty to plaintiff.

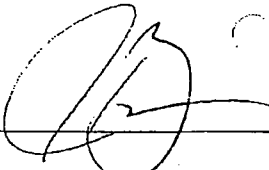
34. As to the allegations of paragraphs 46, 47 and 48, Raycom denies the same, and alleges in connection therewith that it never broadcast any information regarding plaintiff.

35. All allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48, not hereinabove admitted, qualified or explained are hereby denied.

AS AND FOR A SECOND DEFENSE TO THE NEGLIGENCE CLAIM

37. The allegations of paragraphs 42, 43, 44, 45, 46, 47 and 48 fail to state a cause of action against Raycom in that negligence is not the appropriate standard of fault for a claim of a public official or public figure for injuries said to have been caused by a publication.

WHEREFORE, this defendant having fully responded to the allegations of the amended complaint, prays that the same be dismissed with costs assessed against the plaintiff, together with such other relief as may be appropriate.



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Columbia, South Carolina

August 24, 2010

#6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

James W. Trexler,

Plaintiff,

v.

Civil Action No.: 2010-CP-40-1249

CERTIFICATE OF SERVICE

The Associated Press, Barrington
Broadcasting South Carolina Corp.,
Raycom TV Broadcasting, Inc. The
Spartanburg Herald Journal, Inc. and the
Pacific & Southern Co., Inc.,

Defendants.

JEANETTE W. McBRIDE
C.C.P. & G.S.

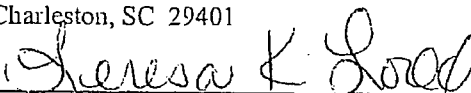
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FILED

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with an Answer by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

William H. Johnson, Esquire
2 North Brooks Street
Manning, SC 29102

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171 Church St., Suite 160
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Teresa K. Todd

August 27, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2010-CP-40-1249

James W. Trexler,)
Plaintiff,)
v.)
The Associated Press,)
Barrington South Carolina)
Corp., Raycom TV Broadcasting,)
Inc., and the Pacific &)
Southern Co., Inc.,)
Defendants.)

MOTION FOR SUMMARY
JUDGMENT

COPY

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HEARING

Thursday, January 19, 2012
2:45 p.m. to 4:57 p.m.

The hearing before the Honorable Joseph M. Strickland, Special Circuit Court Judge for Fifth Circuit, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 19th day of January, 2012, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES

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EXHIBITS

(There were no exhibits marked.)

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1 THE COURT: Okay. Please bear with me, you all know me as
2 Master in Equity for Richland County. Today I'm
3 sitting as a Special Circuit Court Judge pursuant to
4 a standing order of the Chief Justice. There are
5 actually two cases, and I think one of them was
6 disposed of, is that correct?

7 MR. BENDER: I think the motions in one of the cases got
8 disposed of, because they were discovery motions,
9 right, in your case, the case against the sheriff's
10 department, I think those were only discovery
11 motions and I think those were resolved, if I'm not
12 ...

13 MR. GARFIELD: That's my understanding, Your Honor.

14 THE COURT: Okay.

15 MR. BENDER: We're here today on the 2010-CP-40-1249.

16 THE COURT: Motion for summary judgment?

17 MR. BENDER: Yes, sir.

18 THE COURT: All right.

19 MR. BENDER: We did resolve some of the issues last time.
20 The plaintiff had a number of causes of action in
21 the complaint, but everything has been dismissed
22 voluntarily with prejudice with the exception of the
23 libel claims, is that correct?

24 MR. WILLS: That's correct, Your Honor.

25 THE COURT: Okay. And the other ... I got your order from

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1 the other ruling, I just haven't signed it yet. I'm
2 going to read it a little bit more closely.

3 MR. WILLS: Okay.

4 THE COURT: Yeah, but that's forthcoming. Maybe I'll ask
5 the lawyers, for clarity of the record, because I
6 get the feeling that no matter how I rule somebody's
7 going to appeal it, now tell me how this case came
8 about. Who's suing who for what and what do you
9 want me to ... okay, Mr. Bender, you can start.

10 MR. BENDER: Your Honor, if I might since it's my motion.
11 James W. Trexler was one of three assistant
12 commissioners of agriculture in the South Carolina
13 Department of Agriculture. In February, I believe
14 it was, of 2006, Mr. Trexler, his brother Terry, who
15 you may have encountered when he was a member of the
16 bar, he's been disbarred, and their mother,
17 Hazelene, were arrested on warrants issued in
18 Richland County for abusing horses. And horses were
19 seized from property in Richland County and Sumter
20 County, and ultimately this got started when the
21 sheriff's department sent out a press release
22 announcing that James Trexler, Terry Trexler and
23 Hazelene Trexler had been arrested for abusing
24 animals, horses, and that horses had been seized.
25 This press release also reported that James Trexler

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1 had been arrested for kidnapping for blocking the
2 exit of a Humane Society investigator from property
3 where horses were being investigated. That was not
4 true. Certainly the arrests were true, the seizure
5 of the horses true. But James Trexler was not
6 arrested for kidnapping; his brother Terry was the
7 one arrested, but Terry told the investigating
8 officer that he was James. So somehow, when the
9 sheriff's department issued its press release, the
10 name James is substituted for Terry. And it's
11 reported in these news organizations I represent,
12 The Associated Press, WLTX, WACH and WIS, that
13 horses had been seized, the Trexlers had been
14 arrested for these offenses. Then ultimately the
15 matter gets to the grand jury and James Trexler is
16 indicted on felony counts of abuse of horses. No
17 indictment for kidnapping because he wasn't involved
18 in that. In 2010, June 23rd, James Trexler files
19 what's styled as an Amended Summons and Complaint.
20 Now, there had been an action filed by Hazelene
21 Trexler, Terry Trexler and James Trexler on February
22 23rd, 2010, against a number of defendants, 13 of
23 them I think, including all media companies that
24 produced or reported on any event relating to the
25 plaintiffs in 2008, 2009 and 2010. None of the

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1 defendants in today's case were named in that
2 initial complaint. The case has gone through
3 discovery. I asked James Trexler at his deposition
4 if he had been involved in the filing of this suit
5 in February of 2010. He said no, he didn't know
6 anything about it. And I've attached to the booklet
7 that I provided last time, at Tab O, James Trexler's
8 deposition where he ... an excerpt from his
9 deposition where he testified he didn't know
10 anything about that action and his only connection
11 with it was when he retained Mr. William Johnson and
12 filed the case that's currently before us, the
13 Amended Complaint. So the motion today is based on
14 the statute of limitations. We have a two-year
15 statute of limitations for libel in South Carolina,
16 so any publication prior to June 2nd, 2008, is
17 exempt under the statute of limitations, which has
18 been raised by all these defendants from liability.
19 And I've asked the plaintiff in interrogatories to
20 identify by date, publisher and headline, any
21 publication Plaintiff contends to be defamatory.
22 And most of the publications identified as
23 defamatory occurred prior to June of 2008 and are
24 barred by the statute of limitations. I think there
25 are three publications that would not be barred by

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1 the statute of limitations. They're all by WLTX, in
2 December of 2008, February of 2011 ... two
3 publications in February of 2011. The remaining
4 publications complained of by the plaintiff are
5 barred by the statute of limitations. But to go
6 beyond the statute, it's the position of these
7 defendants, that the plaintiff is a public official.
8 The determination of status as a public official in
9 a libel case is a matter of law to be determined by
10 the Court. And the description of what a public
11 official is is perhaps best set out in a United
12 States Supreme Court case entitled *Rosenblatt*, but
13 it's discussed fully in a case called *Holtzscheiter*
14 *II*, a South Carolina Supreme Court case, in a
15 concurring opinion written by the Chief Justice.
16 And I've cited in the memorandum, and I've given
17 them to you, the concurring opinion by the Chief
18 Justice where she detailed the history of libel law
19 in South Carolina. The most recent discussion of
20 public official status and how libel law is to be
21 treated in South Carolina is found in *Erickson v.*
22 *Jones Street Publishers*, which is also cited in the
23 memorandum, 629 S.E.2d 653. The plaintiff, if he's
24 a public official, has an elevated burden because
25 the constitution protects the discussion of public

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1 affairs involving public officials. And in that
2 instance that public official plaintiff, here I
3 believe Trexler, must prove that what was published
4 about him was false, that it was known by the person
5 making the decision to publish it to be false, or
6 there was reckless disregard of potential falsity.
7 The Supreme Court of the United States and the
8 Supreme Court of South Carolina have both discussed
9 reckless disregard and they've made it clear that it
10 has nothing to do with our common concept of
11 recklessness; it has to do with the person making
12 that decision was required to have serious doubt
13 about the accuracy of what was being published and
14 failed to resolve those doubts before publishing.

15 THE COURT: Now, let me back up a little bit. You said
16 that the issue of whether or not the plaintiff is a
17 public official is a matter of law?

18 MR. BENDER: Yes, sir.

19 THE COURT: It's not a matter of fact?

20 MR. BENDER: Well, in reality I suppose it's a matter of
21 fact to be decided by the Court as a matter of law.
22 It's not a jury question, it's a question for the
23 Court. And you would look at the totality of the
24 circumstances.

25 THE COURT: All right. I'm sorry to interrupt.

8

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1 MR. BENDER: No. That's a question we're going to have to
2 focus on. So, whatever it is, it's a question for
3 the Court and it's a question for the Court today.
4 And I think it's ... the South Carolina Supreme
5 Court has made it clear that in these cases where
6 you have a public official plaintiff bringing a
7 libel claim, the place for resolution of this issue
8 is in this forum, in a motion for summary judgment.
9 So we have ... does the plaintiff have any evidence
10 in the record in response to this motion to
11 demonstrate that he can, by clear and convincing
12 evidence, because there is an elevated burden here,
13 by clear and convincing evidence prove this actual
14 malice that became part of the law of libel when the
15 United States Supreme Court decided the case of *New*
16 *York Times Company v. Sullivan* back during the Civil
17 Rights era. But let's assume for a second that the
18 plaintiff is not a public official. I think the
19 record demonstrates quite clearly he is. The
20 Supreme Court in *Erickson* talks about public
21 official in terms of how somebody has a position
22 responsible for the affairs of government, and we
23 have an affidavit from Hugh Weathers, who is the
24 Commissioner of Agriculture for whom the plaintiff
25 worked. We have the job description of the

9

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1 plaintiff attached to this motion. We also have the
2 plaintiff's own letter of resignation, where he
3 thanks the commissioner for giving him an
4 opportunity to help lead the agency as an assistant
5 commissioner of agriculture. So I think if you look
6 at the record, it's clear that this is a person who
7 had substantial authority over the affairs of
8 agriculture in South Carolina. Now, the plaintiff
9 wants to contend that his activity was entirely
10 internal in the agency, but I note that in his
11 testimony in his deposition, in an excerpt included
12 here, he said, I ran the agency. He doesn't make
13 any bones about it. He was the guy who ran the
14 agency. He's responsible for the affairs of this
15 agency. But beyond that, the public has an interest
16 in how agriculture officials relate to agriculture
17 in South Carolina I think, and here you have a high
18 ranking agriculture official arrested for abusing
19 horses. That's going to draw attention to this
20 official. And I think these facts conclude that
21 Trexler is a public official and required to prove
22 this elevated standard under *Times v. Sullivan*. But
23 let's say he's not. Let's say he is, as he
24 contends, a private figure. Again, Erickson talks
25 about private figure plaintiffs. At common law,

10

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1 libel was easy. Plaintiff proves the publication,
2 proves that it was about him and proves that it was
3 on an unprivileged occasion. The Supreme Court has
4 changed all of that, starting with *Times v. Sullivan*
5 in '64. Where there is a private figure plaintiff
6 and the matter concerns something of public
7 interest, the plaintiff must prove falsity. At
8 common law, falsity was presumed. Injury was
9 presumed. No more. The Constitution protects
10 publications so that the plaintiff must prove that
11 what was published was false and that it was
12 published with common law malice, which is hatred,
13 ill will or spite. Now, when I submitted
14 interrogatories to the plaintiff and asked what it
15 was that was being complained about in these cases,
16 the response: Each of the publications contained a
17 statement of inference that James Trexler owned
18 horses that were malnourished or owned property
19 where horses were kept; at the time of the
20 publication James Trexler owned no horses, nor did
21 he own or control any property where horses were
22 kept. I think that's irrelevant, whether he owned
23 the horses or owned the property. What was reported
24 was that he was arrested for abuse of horses, and I
25 think it's undisputed. If you look at the arrest

11

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1 warrants, clearly the arrest warrants say Trexler
2 was arrested for abusing horses he owned. So his
3 saying I didn't own any horses is beside the point.
4 The sting of the publication is - here's a guy who's
5 been arrested for abusing horses. I don't think he
6 can prove falsity because he was in fact arrested.
7 Now, if he can prove that he was not arrested for
8 kidnapping ... but that's privileged because it was
9 contained in a public record. And South Carolina
10 has a long history of protecting publications of the
11 contents of a public record. So the publications
12 that said James Trexler had been arrested for
13 kidnapping were based on a public record. Now, I
14 have an admission by the plaintiff that the press
15 release by the sheriff's department was a public
16 record. That was withdrawn last time. I don't
17 think it makes any difference. What's a public
18 record in South Carolina? If you look at the
19 Freedom of Information Act, Section 30-4-20 defines
20 public record as any document, book, paper, map,
21 regardless of physical form or characteristic,
22 prepared, owned, used by or in the possession of a
23 public body. This press release was prepared by the
24 sheriff's department, by Captain Chris Cowan, whose
25 affidavit is in here, testifying that he prepared

12

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1 the affidavit and he disseminated it. So while it's
2 not true that James Trexler was not arrested for
3 kidnapping, it is true that that publication was
4 privileged. Now, what is the report in the public
5 record, or an official record, in South Carolina?
6 In *White v. Miller*, the official publication which
7 was privileged was a comment by the mayor of West
8 Columbia on a radio talk show. That's not even a
9 document, but it is the official position of West
10 Columbia. And the Supreme Court of South Carolina
11 said that that is privileged and a radio station
12 which published that was insulated from liability
13 for that. So the plaintiff has to prove falsehood;
14 I don't think he can. He has to prove an
15 unprivileged publication; I don't think he can.
16 Even if he's a private figure. But I think it's
17 clear that he's a public official and has this
18 elevated proof requirement, even if we get past the
19 statute of limitations. And I think the statute of
20 limitations is the first line of inquiry here
21 because, while it's true that amendments sometimes
22 can relate back, the amendments can't relate back to
23 add parties that were not in the lawsuit at the
24 first time. And there's no intention by the
25 plaintiff here of correcting a mis-named defendant

13

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1 in the initial suit because this plaintiff didn't
2 know the initial suit had been filed. For all of
3 these reason, it's clear there's no disputed issue
4 of material fact, and these defendants are entitled
5 to summary judgment as a matter of law in their
6 favor.

7 THE COURT: On the statute of limitations argument, you're
8 just saying there's a bright line that would
9 prohibit the plaintiff from prevailing on some of
10 the causes of action?

11 MR. BENDER: On the libel cause of action with respect to
12 all but three of the publications, which occurred
13 after June 22nd of 2008. Because the plaintiff ...
14 the amended complaint was filed June 23rd, 2010. So
15 we have a two-year statute, anything within two
16 years would be June 22nd, 2008, forward. And there
17 are only three of those. I think those are all
18 covered by the other defenses very clearly.

19 THE COURT: There's a relatively old case, *True v.*
20 *Monteith*.

21 MR. BENDER: I'm sorry?

22 THE COURT: *True v. Monteith*, is that ...

23 MR. BENDER: I'm not familiar with that.

24 THE COURT: Okay. Maybe I have the citation wrong. If I
25 recall, this was a case with 'a ... this was a legal

14

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1 malpractice case, and the alleged malpractice took
2 place some 25 years before the lawsuit was filed.
3 And I believe the Supreme Court said ... I'll have
4 to go back and read it. I apologize. I don't have
5 a law clerk. That's my excuse for everything I
6 don't know. But I believe that the appellate court
7 determined that the statute didn't start to run
8 until the plaintiff knew he had a cause of action.

9 MR. BENDER: That's never been the rule with respect to
10 libel. It's from the date of publication. The
11 discovery rule applies in medical malpractice cases
12 I think because the statute was written that way.
13 The libel statute of limitations is not written that
14 way.

15 THE COURT: Okay. This is legal malpractice, I think it
16 was. A lawyer ...

17 MR. BENDER: And the discovery rule was applied ... I'm
18 familiar with a case that applied the discovery rule
19 in legal malpractice. But the common law rule and
20 the interpretation of the statute of limitations for
21 libel is that the clock begins to run when the cause
22 of action arises. And the cause of action arises at
23 the publication, because libel occurs with the
24 publication of a false statement of fact concerning
25 someone on an unprivileged occasion. And in this

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1 instance those would have had to occur prior to June
2 22nd, 2008, to be timely. Thank you.

3 THE COURT: All right. Thank you.

4 MR. WILLS: Your Honor.

5 THE COURT: Yes, sir.

6 MR. WILLS: May it please the Court, Brook Wills
7 representing James Trexler. This is William Johnson
8 here with me. Nice to see you again.

9 THE COURT: Okay, thank you.

10 MR. WILLS: Your Honor, as you may recall, last time we
11 convened here there was a question about whether
12 there was some surprise in the memorandum of the
13 defendants. Everybody decided to reschedule the
14 hearing, and we have modified our brief to
15 accommodate those new causes of action. I thought
16 I'd pass one up to you if I may.

17 THE COURT: Okay. Thank you.

18 MR. WILLS: Your Honor, I'd like to address this statute
19 of limitations issue, and then maybe adjust some of
20 the facts that we've heard so far to give a more
21 complete view of the situation. But with regard to
22 the statute of limitations issue, Your Honor, Mr.
23 Trexler filed his original complaint ... we now have
24 an amended complaint in and we've got, in the other
25 case we've got a second amended complaint, but not

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1 in this case. But Mr. Trexler filed his original
2 complaint on February 23rd, 2010. As Mr. Bender
3 said, that was within the two-year statute of
4 limitations. The issue was whether or not the
5 plaintiff named precisely enough the defendants in
6 order to put them on notice that a law suit had been
7 filed against them. Mr. Trexler, for lack of
8 knowledge of exactly who to sue at that point, named
9 as a precautionary measure, named all media
10 defendants that produced or reported on any event
11 relating to the plaintiff in 2008, 2009 and 2010,
12 which is the time period that we're speaking of in
13 the law suit. It's certainly a narrow scope and it
14 certainly names within a narrow purview the
15 defendants who may be affected. But, importantly
16 ... and that was filed. Now, under the Rules, the
17 South Carolina Rules, Mr. Trexler then had 120 days
18 from that date in order to serve, to get his
19 complaint served. Within the original 120 days that
20 Mr. Trexler's allowed to serve the complaint, Mr.
21 Trexler was able to discover the true identity of
22 the defendants, or the legal identity of the
23 defendants, and Mr. Trexler, on June 23rd, filed his
24 amended complaint to more specifically define and
25 identify those defendants that he had named more

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1 broadly in his original complaint. And he served
2 that amended complaint on the defendants within the
3 120 days allowed for the service of the original
4 complaint. So, Mr. Trexler's position is that, and
5 the law of South Carolina says that, by serving this
6 amended complaint more specifically naming, more
7 specifically defining the defendants, where he'd
8 named them broadly before, there was no change in
9 defendants at all in the lawsuit, that these were
10 the original parties to the lawsuit, now just more
11 specifically defined. If for some reason the Court
12 believes that the original naming of the defendants
13 was too broad, then Rule 15(c) of the South Carolina
14 Rules of Civil Procedure allow substitutions of
15 parties where the basis of the claim arises out of
16 the same conduct set forth in the original pleading.
17 The parties to be brought in must have received
18 notice that it will not be prejudiced in maintaining
19 its defenses and that the party must or should have
20 known that, but for the mistake, the action would
21 have been brought against it. And, fourth, the
22 second and third requirements must have been
23 fulfilled within the prescribed limitations period.
24 Well, even under that scenario, all of the
25 conditions are met, particularly with regard to

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1 notice because this lawsuit was, this amended
2 lawsuit more specifically defining the defendants
3 who are now parties to the action, was served within
4 the original 120 days for the service of the
5 complaint, therefore the parties have not been
6 prejudiced in maintaining their defense. The cause
7 of action arises out of the same occurrences in the
8 original complaint, and all of these, within the
9 prescribed limitations as set forth in the Rules.
10 So with regard to this issue, the statute of
11 limitations has not expired on the plaintiff's
12 original complaint as amended to more specifically
13 name the defendants who are a party to the action
14 currently. With regard to the facts of the
15 situation, Your Honor, on February the 27th of 2008,
16 Mr. Trexler was home at his residence in another
17 county from any of these properties where any of the
18 subject horses were seized. He received a call, you
19 know, in the evening and the officer said that his
20 mother and his brother were being arrested and that
21 he needed to come to the house to put up the animals
22 that were left in the yard. When he arrived, the
23 sheriff's department arrested him too. He was
24 unaware of what was going on. He was then charged
25 with, not felony cruelty of animals, but he was

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1 charged with five counts of misdemeanor cruelty
2 towards animals. His mother and his brother were
3 also charged with several other counts of cruelty
4 towards animals, but Mr. Trexler, my client, was
5 only charged with five counts of misdemeanor cruelty
6 towards animals. At that time, Mr. Trexler was
7 working at the South Carolina Department of
8 Agriculture as an employee. This is going to be
9 important when we're discussing the public official
10 issue, which is complex in itself. He was a long
11 time employee at the Department of Agriculture. He
12 had worked in the capacity of an employee, he was
13 paid as an employee, he had benefits as an employee.
14 He had the title, his official title at the
15 Department of Agriculture, and this is supported in
16 his affidavit we've submitted, his official title
17 was Executive Assistant III. Now, Mr. Weathers,
18 Commissioner Weathers, created an informal, internal
19 title for Mr. Trexler's position, and that was
20 Assistant Commissioner of Agriculture for
21 Administration. It was not his official title. Mr.
22 Trexler was obviously discharged when he was
23 arrested and when the media began reporting on his
24 arrest for abuse of animals, but also the reports in
25 the news that Mr. Trexler was a kidnapper. Now, the

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1 kidnapping incident was purportedly a result of Mr.
2 Trexler's brother, who allegedly told the
3 investigators who arrested him that he was his
4 brother James. And that has been the excuse for why
5 the sheriff's department published to the world that
6 James was the kidnapper. The evidence shows that in
7 fact the Richland County Sheriff's Department knew
8 well before the publication of the press release
9 that it was Terry, his brother, who was the
10 kidnapper. But that's for another day. The
11 critical part is that the publications by the
12 defendants did not accurately or truthfully report
13 the occurrences that surrounded Mr. Trexler's arrest
14 and his prosecution. And I will ... as my
15 presentation goes along I'd like to pass up to you
16 some of these articles that were written about him
17 so that Your Honor might take a look for yourself
18 and see exactly what was said.

19 THE COURT: Let me ask you though. Were any of the
20 reporters acquainted with your client before the
21 stories came out?

22 MR. WILLS: Your Honor, none of them knew my client at
23 all, as is apparently in each and every one of their
24 deposition testimony. I asked each of them, and we
25 have a stack, a literal stack of depositions. Your

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1 Honor, we've had to take a lot of depositions in
2 this case. I asked each and every one of them if
3 they had ever heard of my client before these
4 occurrences, and not one of them had.

5 THE COURT: What I'm driving at though, they had nothing
6 against your client personally, or did they?

7 MR. WILLS: They had nothing against my client personally.
8 What the defendants stood to gain is that they did
9 ... they had knowledge as the progression of the
10 articles were written. Your Honor, what we have to
11 keep in mind is this is not one single incident as
12 well. These are publications over several months by
13 each of the defendants that were ... as this took
14 place and as the investigations took place with
15 regard to Mr. Trexler's brother and mother, and this
16 is going to be an issue in the associated case, is
17 exactly how much those investigators knew of Mr.
18 Trexler's employment with the agriculture
19 department. Which I will make mention as well that
20 the agriculture department does not have anything to
21 do with regulation of livestock horse industry.
22 That's a separate entity that regulates that,
23 Clemson University that regulates livestock horses.
24 And so this area of industry has nothing at all to
25 do with the Department of Agriculture or Mr.

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1 Trexler's position. What the defendants stood to
2 gain is that they envisioned Mr. Trexler as someone
3 who is a high profile person who was going to make a
4 big splash on the front page. And if they could
5 somehow report and continue to report on somebody
6 who they're willing to create in the eyes of the
7 public a public official, if they could ... this is
8 not undisputed fact, but if they can create a
9 scandal out of Mr. Trexler and the Department of
10 Agriculture, well, they're going to sell papers. It
11 makes much more of a splash than, say, his brother
12 who nobody knows, nobody cares about and is a
13 farmer, or a livestock horse breeder and nobody
14 knows him and not going to make that, so.
15 THE COURT: Is that what they said in their deposition?
16 MR. WILLS: Nobody said that specifically, Your Honor.
17 What they didn't ... nobody said that specifically.
18 What they did say is that they have an interest in
19 creating and presenting material to the public that
20 is more than factual, that has an appeal. And
21 that's obvious. But I'm getting off of my ...
22 THE COURT: Sorry.
23 MR. WILLS: ... off my presentation. And I want to make
24 sure I say everything.
25 THE COURT: Yes, sir.

23

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1 MR. WILLS: Outside the statute of limitations issue,
2 there are really three other issues. One is whether
3 these reports were truthful or false against my
4 client, Mr. Trexler. One of them is whether they
5 were substantially true or whether they were totally
6 false. We've got ... one of the primary issues here
7 is whether Mr. Trexler is a public official for the
8 purposes of defamation. That's going to be central
9 to our decision because, as Mr. Bender has pointed
10 out, there is a heightened standard for public
11 officials. And under the *New York Times v. Sullivan*
12 case, a public official must show that the
13 defendants published articles with knowledge of the
14 falsity or reckless disregard for the truth. The
15 publication must be, first of all must be about the
16 public official in his public capacity. Now, these
17 reports had to do with Mr. Trexler, his alleged
18 abuse of horses. That has nothing to do with Mr.
19 Trexler in his public capacity. The defendants have
20 raised the issue of fair reporting privilege in
21 their brief. And the fair reporting privilege says
22 that a true and accurate report on public record is
23 a conditionally privileged communication and that
24 those who publish true and accurate reports on a
25 public record are not liable for defamation.

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1 There's also another prong to that, that is that the
2 privilege can't be abused. So, in other words, a
3 defendant can't claim that he's reporting on a
4 public record and then for months on down the road
5 report whatever he wants, in whatever fashion he
6 wants, and then try to hide behind the original
7 publication behind a public record. The public
8 record that the defendants speak of is the press
9 release that was disseminated by the Richland County
10 Sheriff's Department. And this press release ...
11 may I hand a copy up to Your Honor?

12 THE COURT: Please.

13 MR. WILLS: Now, it's not very easy to read, but the press
14 release is, as you'll see, in the form of an email.
15 And this is an email that was sent out by the
16 Richland County Sheriff's Department. In the top
17 portion we've got a contact list, a distribution
18 list. And then in the middle portion here we've got
19 a text that is the press release. And then down
20 here, circled, is a list of the charges against each
21 of these defendants in this press release, against
22 my plaintiff. Now, this email communication is what
23 the defendants are claiming is a public record. The
24 email is not a public record. This is an email
25 communication that is editorialized, that is ...

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1 depositions show that the person at the Richland
2 County Sheriff's Department who compiled this press
3 release made reference to none of the official
4 arrest records or warrants, but only wrote the press
5 release based on what he was told by investigators
6 from the Richland County Sheriff's Department and
7 investigators from the HSPCA, which is the Humane
8 Society for Prevention of Cruelty to Animals.
9 Deposition testimony has also shown that the person
10 who compiled this press release had only had one
11 occasion to deal with the HSPCA before this one.
12 HSPCA is a private organization. It's a private
13 cause-based organization with an agenda. So the
14 source is not totally reliable. Anyway, because
15 this email communication is comprised of mostly
16 editorialized opinion, with just dabbles of the
17 circumstances of the arrest, and because it doesn't
18 fit into the definition of a public record, as was
19 cited earlier as being any record or book or map or
20 document that's kept by a public body, this is an
21 email communication. So, firstly, it's not a public
22 record.
23 THE COURT: Now, are there any cases that resolve that
24 issue, whether or not an email from a government
25 agency or a law enforcement officer or law

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1 enforcement officer's staff that is a public record
2 or not, any cases in that regard in South Carolina?

3 MR. WILLS: I have not found any either.

4 THE COURT: Okay. In the case of technology ... the law's
5 not kept up with technology I guess. Mr. Bender, do
6 you have any insight on that?

7 MR. BENDER: Yes, sir. The definition in the statute
8 talks about document, regardless of physical form or
9 characteristic. And that's been interpreted since
10 the earliest days of the Freedom of Information Act,
11 mid 1970s, to include electronic records. And the
12 recent discussion with the governor about the
13 preservation of her emails addresses that question,
14 and archives addresses the question. And electronic
15 communications are considered public records under
16 South Carolina law. I don't think there's any
17 question about it. There's no specific case that I
18 can recall where that was an issue, but the
19 preservation of email and electronic records, there
20 was a case in the early days where somebody wanted
21 the electronic file of the Election Commission and
22 the case was tried and the Supreme Court said that's
23 a record you're entitled to.

24 THE COURT: Of course, I'd feel more comfortable if the
25 statute said emails.

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1 MR. BENDER: Sure. It says regardless of physical form or
2 characteristic.

3 THE COURT: Well, not to get everybody off track, but I've
4 heard the argument in this courtroom that electronic
5 transmission's not physical, it's not a physical
6 transmission.

7 MR. BENDER: I think it relates to how it's maintained.

8 THE COURT: Okay. Whether you print it out or not, is
9 what you're saying.

10 MR. BENDER: Right.

11 THE COURT: If you can print it, it becomes physical.

12 MR. BENDER: Right.

13 THE COURT: So maybe ... I don't know.

14 MR. WILLIS: Now, for what it's worth, it is an email. In
15 discovery we've asked for ... the person who
16 compiled this email communication that is a press
17 release, we asked for his emails, the production of
18 the emails during a specific period of time. And
19 that was objected to as being an infringement of his
20 privacy rights, so that cuts against the idea that
21 maybe this email communication is somehow public or
22 accessible to the public. But nonetheless, even if
23 the Court were to decide that for the purposes of
24 the fair report privilege, that the email is a
25 public record, the defendant's published defamatory

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1 material based on that public record one time, and
2 thereafter, over the course of the following months,
3 and even years, every publication by those
4 defendants was not based on public record but was
5 based on information gathered from other arenas. As
6 a matter of fact, all of the defendants have moved
7 already for summary judgment based on the fair
8 reporting privilege, with the exception of one of
9 the defendants, McClatchy, who is no longer in the
10 case. The court denied that motion for summary
11 judgment based on the fair report privilege. The
12 court did grant leave to the defendants to renew
13 that motion if discovery produced a ... or, if after
14 discovery there were no new publications that were
15 unprivileged under this act. But that's not been
16 the case. We've got now months of publications from
17 each of the defendants which were not based on
18 public record at all but were based on just regular
19 information gathering through whatever the sources
20 were, primarily the HSPCA. Again, we've got a prior
21 organization with a pretty stiff agenda. If the
22 Court wouldn't mind, I'd like to pass up some of
23 these articles that have been written to address my
24 next point, which is that the articles are not fair
25 and accurate reports of the public record, and that

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1 they actually mischaracterize, mislead and are false
2 in the sense where they accuse Mr. Trexler of crimes
3 well beyond what he was accused of.

4 THE COURT: Those articles, they're reporting what they
5 got from the sheriff's department, is that what
6 you're saying?

7 MR. WILLS: Your Honor, they began by reporting on what
8 was said in the original press release. From there
9 on, these reports took on a life of their own. The
10 reports were mixed up. They included information
11 that ... they implicated Mr. Trexler in all of the
12 incidences of horse abuse, instead of just the five
13 that he was arrested for and accused of ill
14 treating. What's important here is that ... is the
15 timing of the arrests versus the indictments. Mr.
16 Bender has informed the Court that Mr. Trexler was
17 arrested on February 27th and then indicted on
18 felony charges on March 13th. What's important for
19 the Court to know is that Mr. Trexler was arrested
20 and charged with only five counts of misdemeanor ill
21 treatment of animals. It was only later, in the
22 middle of March, that he was indicted on four counts
23 of felony cruelty to animals. All those charges
24 were later dismissed, by the way. But the reporting
25 that was done, that was false, reported on Mr.

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1 Trexler as if he had committed the felony level of
2 these crimes. Instead of saying ... merely
3 reporting that he was involved with five counts of
4 misdemeanors, the defendants took a hold of his
5 status, or what they wanted to create as a status
6 for him, to aggrandize the situation and inflate it,
7 the charges against Mr. Trexler. Now ...

8 THE COURT: Mr. Wills, I'll accept your representation.

9 MR. WILLS: Okay.

10 THE COURT: I'm sure that your position is supported.
11 I'll accept your representation.

12 MR. WILLS: Yeah, I don't want to inundate Your Honor with
13 all these articles. But just to give you an idea of
14 what we're dealing with here, Mr. Trexler, like I
15 say, was arrested on February 27th, 2008, for
16 misdemeanor ill treatment of animals. This was a
17 situation where Mr. Trexler was not charged as one
18 who was directly involved, but he was really charged
19 because somebody along the investigation mistook him
20 as being the person who lived where the horses were
21 found. So this was almost a passive involvement, it
22 wasn't his direct involvement with these horses.
23 And consequently he was charged with five
24 misdemeanor counts of ill treatment of animals. But
25 the AP, on February 29th, reports, large headline,

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1 Agriculture Official Charged with Horse Abuse. And
2 ...
3 THE COURT: Who wrote the article?
4 MR. WILLIS: This is The Associated Press, Your Honor.
5 THE COURT: Did it say what reporter or?
6 MR. WILLIS: This is Meg Kinnard ... this is Seanna Adcox,
7 her name is. The first line reads, A top South
8 Carolina agriculture official and two of his
9 relatives are accused of mistreating dozens of
10 horses here and in Georgia, where authorities
11 describe some of the animals as looking like someone
12 draped a hide over bones. And then there's a
13 picture here of a horse in a stall, and the caption
14 reads, An Arabian horse rescued by the HSPCA bows
15 his head in a stall in Horrell Hill, South Carolina,
16 Wednesday; One of the state's top agriculture
17 officials, James Trexler, is accused of mistreating
18 dozens of horses. Well, that's simply false. And
19 not only is it false, but it represents the
20 situation to reflect that he's ... to reflect the
21 level of abuse that is reserved for felony types of
22 cruelty towards animals instead of just the
23 misdemeanor neglect by a failure to provide enough
24 food or shelter to an animal. And this goes on for
25 months and months and months. What's important to

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1 know, all these defendants are reporting, even down
2 through March, Investigators remove horse bones from
3 Ag official's former farm. Well, he didn't own any
4 farm.

5 THE COURT: Now, what publication was that? Was that ...
6 that's still The Associated Press or is it ...

7 MR. WILLIS: This is The Associated Press still. And I
8 could give examples as well from the other media
9 defendants. Here's one from August of that year:
10 Expert, More of South Carolina Ag Official's Horses
11 Starve. What's important is that, one of the things
12 that's important here is that Mr. Trexler, before he
13 was arrested, when he was being investigated, told
14 the press when they were interviewing him, and it
15 was on the TV, told the press that he didn't own any
16 horses and that he was not involved with his mother
17 and his brother's business of raising horses. Also
18 important is his mother, Hazelene Trexler, who, when
19 she was being investigated and the seizure of the
20 horses was taking place, announced to the media as
21 well and was on TV saying, The horses all belong to
22 me; none of them belong to my son; I own the
23 property where my son ... where the horses were
24 confiscated; they all belong to me. Well, this
25 creates at least the idea that there is a conflict

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1 in the information that the media defendants have
2 readily available to them. So when we get to the
3 analysis, and this is a long analysis, when we get
4 to the analysis of the public official, as is well
5 settled, if Mr. Trexler is a public official for the
6 purposes of defamation, then we've got to prove
7 actual malice. Now, actual malice is publication of
8 defamatory statement with knowledge of its falsity
9 or with reckless disregard for the truth. Now, case
10 law says that recklessness may be found where there
11 are obvious reasons to doubt the veracity of the
12 information or the accuracy of the report. That's
13 one of the ways that we can get ... meet the
14 reckless standard under the New York Times
15 heightened actual malice standard. There's also
16 case law that says that the defendants, while
17 there's a heightened standard that a plaintiff must
18 prove actual malice and must prove that the
19 defendants had a reckless disregard for the truth,
20 that doesn't allow the defendants to hide behind
21 that privilege with the intent of purposely avoiding
22 the truth. In other words, if the defendants have
23 reason to think that there may be a problem with
24 their information that they're reporting, and they
25 purposely avoid finding out the truth, then that can

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1 constitute a reckless disregard or an obstinate
2 refusal to accept what may be an alternate story.
3 Now, it is true that courts have found that a mere
4 failure to investigate does not rise to the level of
5 reckless disregard for the truth. However, where
6 there is conflicting information that is available
7 to the defendants, there is reason for them to
8 believe that the story that they have is not true,
9 and they still refuse to investigate in order to
10 find out whether they're printing the right story,
11 that can amount to a reckless disregard for the
12 truth. The law that I've just cited, Recklessness
13 may be found where there's an obvious reason to
14 doubt the veracity of the information or the
15 accuracy of its report, comes from a very recent
16 case ... no, that doesn't come from a recent case,
17 that comes from an older case. Mr. Trexler was not
18 a public official. Mr. Trexler was a career
19 employee of the South Carolina Department of
20 Agriculture. And as a career employee and not a
21 public official, Mr. Trexler is not held to the
22 height and standard of having to prove actual malice
23 and Mr. Trexler only has to prove common law malice.
24 The question of whether an individual is a public
25 official for the purposes of defamation law is true,

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1 is a matter of law. It is a standard that's set out
2 by the U.S. Supreme Court in *New York Times v.*
3 *Sullivan* and its progeny, *Rosenblatt*, said that the
4 courts are to look at their standard as opposed to
5 relying on the states' standards for what's the
6 definition of a public official in order to make the
7 determination. The courts in those cases announced
8 that, without giving a precise definition of what a
9 public official is, they did give this criteria -
10 that a public official must have or appear to the
11 public to have substantial responsibility,
12 substantial responsibility or control over the
13 conduct of government affairs. And that's ... the
14 substantial part of this is important. Substantial
15 responsibility for the conduct of public affairs,
16 and it must appear to the public that he has this
17 power, this control. Now, Mr. Trexler does not fit
18 that definition. Mr. Trexler has submitted his
19 affidavit in which he informs the Court that he was
20 a mere employee, that he had no independent decision
21 making power at the department, that he was referred
22 to by Mr. Weathers as ... or his duties were
23 considered back office functions of the agency. He
24 had no public presence there. Mr. Weathers
25 submitted an affidavit in which he says that Mr.

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1 Trexler was ... had a substantial role in the
2 department. Well, we took Commissioner Weathers'
3 deposition, and in his deposition Commissioner
4 Weathers states unequivocally that Mr. Trexler had
5 ... that all the decision making authority at the
6 department lie with him and that he relied on the
7 staff of the department to provide advice only. And
8 when asked if he, you know, what he relies on, he
9 said, I rely on the advice of my staff in making
10 decisions. And he listed a ... he said, I rely on
11 advice from everybody, from my staff; and he even
12 included his wife in there, and said he relied on
13 the advice of his wife. But he makes the final
14 decisions on everything. He said that Mr. Trexler
15 had decision making authority with regard to the
16 functions of his tasks, but no final decision making
17 authority with regard to the Department of
18 Agriculture. Certainly nothing that would represent
19 or amount to any kind of substantial control over
20 the agency. If Mr. Trexler is a public official at
21 the agency, then everybody is a public official at
22 that agency, down to the, you know, down to the
23 maid.
24 THE COURT: Mr. Bender's going to jump up and say that's
25 true. I don't know if he ..."

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1 MR. BENDER: I hadn't thought about that.

2 MR. WILLS: The ...

3 THE COURT: The definition of what a public official is,
4 which justice wrote the *New York Times v. Sullivan*?
5 I don't remember which one.

6 MR. BENDER: Justice Brennan, I'm sure.

7 THE COURT: Brennan? Because, if I recall, *New York Times*
8 *v. Sullivan* was about an ad, wasn't it?

9 MR. BENDER: Yes.

10 THE COURT: It was about an ad that was put in the New
11 York Times and named some public, well, public
12 officials, elected people, public office holders,
13 and they thought that some of the things that were
14 said in the ad were defamatory.

15 MR. BENDER: Not true.

16 THE COURT: Yeah, were not true. And the ad was signed by
17 Civil Rights people, including, as an aside, I.S.
18 Leevy Johnson's grandfather was one of the people
19 who signed the ad.

20 MR. BENDER: Several South Carolinians signed it.

21 THE COURT: Yeah, several South Carolinians. So it ...
22 that's an important, from where I sit, an important
23 issue of fact and/or law. But it's something ...
24 Mr. Bender, you'll get a chance to respond, but
25 something that maybe a jury needs to hear about or

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1 make a decision. It may be premature to make that
2 decision at the summary judgment stage.

3 MR. BENDER: Well, actually I think it's crucial to be
4 made at the summary judgment stage. I don't think
5 that's a question that the jury considers at all,
6 Your Honor. And there's a South Carolina Supreme
7 Court case on that. I hope I've cited it here.
8 *Kane v. Arnold* is the name of it. I hope I've given
9 you the cite. Where it says very clearly that these
10 cases are to be decided on summary judgment and it's
11 a matter of law. It's *McClain v. Arnold*, 270 S.E.2d
12 124.

13 THE COURT: Well, I'm not sure the court says you have to
14 rule a certain way, though. That's not what they're
15 saying.

16 MR. BENDER: No, no, no. But it says that the
17 determination is one for the court, not one for the
18 jury.

19 THE COURT: Okay.

20 MR. WILLS: The second part would be a question for the
21 jury. But to finish with the public official
22 analysis, under the substantial control language,
23 Mr. Trexler didn't have any substantial control.
24 The other important part of that is that he had to
25 appear to the public to have the substantial

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1 control. And Mr. Trexler, as is affirmed in his
2 deposition ... I mean, in his affidavit, and in Mr.
3 Weathers' deposition, he didn't have any presence in
4 public. So he didn't appear in public at all, much
5 less appear to have substantial control over the
6 agency. Now, this is the language of the Supreme
7 Court. Now, the Supreme Court says that we are
8 supposed to look at their definition in determining
9 public official, but it doesn't say that we're not
10 allowed to consider what South Carolina has to say
11 about public officials when determining whether or
12 not there's substantial control. And there's
13 nothing to prohibit the Court to look at South
14 Carolina law to get an idea of what it is, what are
15 the foundations of this public official definition.
16 Now, South Carolina, we have a few places where
17 public official arises in South Carolina. In Code
18 Section 8-1-10, a public official's somebody who's
19 been commissioned and their duties are defined by
20 law. And Section 8-13-100, a public official's
21 defined as somebody who's elected or an appointed
22 official of the state, county or municipality. And
23 then again, in Section 16-3-1040 it's defined, a
24 public official's defined as an elected or an
25 appointed official of this state or of the United

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1 States. So there's a lot of ... in South Carolina
2 as well it gives a lot of criteria, whether a
3 person's job is created by the legislature or
4 whether their duties are prescribed by law, whether
5 they've sworn an oath to uphold the Constitution,
6 whether their duties are of great public concern,
7 whether ... and importantly, whether they have
8 authority to make decisions regarding the
9 functioning of a state body.

10 THE COURT: Now, in this case though, Mr. Weathers, I
11 think the affidavit, if I remember correctly, your
12 client said Mr. Weathers, Commissioner Weathers,
13 gave him a title.

14 MR. WILLS: He did, Your Honor. He gave him a title. And
15 more importantly, and to address that, the Supreme
16 Court cases say that we don't need to look at where
17 somebody is on the totem pole, we need to look at
18 what their appearance is to the public and whether
19 they have substantial control. The title in an
20 informal title that he gave Mr. Trexler and three
21 other people in the department, that was not used on
22 the outside of the agency. It was an internal title
23 that was unofficial. There'd never been an
24 Assistant Commissioner of Agriculture previously in
25 the history of South Carolina. It's just something

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1 he made up.

2 **THE COURT:** Do you concede that Mr. Weathers was a public
3 figure?

4 **MR. WILLS:** Commissioner Weathers is a public figure. And
5 in South Carolina the law says that one who merely
6 performs duties required of him by a person
7 employing him, though such person may themselves be
8 a public official, is a mere employee. So even
9 where a public official employs somebody who does
10 not meet the substantial control test and just
11 performs the duties required of him by the public
12 official, he's a mere employee for the purposes of
13 being a public official. So, Mr. Trexler was an
14 accountant. He was an IT guy. He was in charge of
15 procurement, which was buying stuff for the agency.
16 His job was to run the office basically. He was ...
17 he had no independent decision making authority.
18 None of his tasks had to do with the overall
19 functioning of the agency, it just had to do with
20 whether the office had pencils or not. Well, he did
21 a little more than that, but essentially he was not
22 in a position to be controlling the agency. He gave
23 advice on finances to Commissioner Weathers. And he
24 was certainly not ... did not appear to the public
25 in any fashion, much less in one that conveyed the

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1 idea that he had any kind of control over the
2 functioning of the agency. Now, even if the Court
3 were to consider Mr. Trexler a public official,
4 first of all, the substantialness of Mr. Trexler's
5 involvement with the Department of Agriculture, now
6 that is a question of fact, whether his involvement
7 rose to the level of being substantial enough to
8 qualify, that should ... that is a question of fact.
9 But even if he is a public official, the standard
10 then raises for him. He's got to show that there
11 was actual malice, reckless disregard for the truth.
12 And even if he were a public official, Mr. Trexler
13 is able to do that by showing that the media
14 defendants published countless articles with
15 knowledge that ... including that he was a
16 kidnapper, with knowledge of that falsity, and that
17 falsity was out on the Internet longer than beyond
18 the period that the defendant knew that that was
19 false. They kept it on there several hours after
20 that. And the fact that they recklessly disregarded
21 the contrary evidence that was in front of them in
22 the form of Mr. Trexler himself saying I don't own
23 any horses. But even more telling and more proof of
24 veracity is somebody who speaks against themselves
25 and totally against their own interest and says,

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1 We're being arrested for horse abuse, they're all
2 mine, none of them are my sons', they all belong to
3 me and I accept the responsibility. That has an
4 element of veracity to it in itself that we even
5 allow an exception to the hearsay rule for.

6 THE COURT: I'm sorry to interrupt. Can we take a brief
7 recess for ten minutes, please?

8 MR. WILLS: Sure.

9 THE COURT: All right. Let's stand in recess for ten
10 minutes.

11 (Off the record from 3:59 p.m. to 4:21 p.m.)

12 THE COURT: Okay, Mr. Wills, you may proceed.

13 MR. WILLS: Thank you, Your Honor. When we left off I was
14 giving an extended analysis of public official. I
15 don't want to belabor the point, but I would like to
16 make a few closing remarks just as a recap. Mr.
17 Trexler doesn't meet the criteria under the New York
18 Times standard for a public official. He doesn't
19 meet the criteria under South Carolina's multiple
20 definitions of a public official. His position at
21 the Department of Agriculture is not one that
22 invites public scrutiny. The public has no great
23 concern with his job as they would the official of
24 the Department of Agriculture, Mr. Weathers.
25 There's the strong distinction between a public

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1 official who is in the public's eye and someone who
2 is performing the back office functions of the
3 agency. For that reason, we submit that we are not
4 held to the heightened burden of proving actual
5 malice, that the defendants acted in actual malice,
6 but rather the common law malice. And since this
7 type of defamation concerns a crime, we are speaking
8 about a type of defamation that is defamation per
9 se. Now, defamation per se, there's been an
10 evolution of the effect of it, but it basically ...
11 the malice is presumed, except that we must show
12 that there is some negligent act on the part of the
13 defendant. We've got the deposition testimony of
14 each of these defendants that says that they just,
15 they relied on reports from the Richland County
16 Sheriff's Department or from the investigator for
17 the Humane Society, and that they didn't feel the
18 need to go and verify the facts. We spoke about the
19 actual malice standard; failure to verify the facts
20 or investigate does not rise to the level of actual
21 malice but it sure arises to the level of plain
22 negligence with regard to common law, particularly
23 when we consider that the source of the information,
24 in the context of conflicting data, the source of
25 the information that is the basis of the

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1 client was neither ... he owned none of the property
2 on which the horses were found, owned none of the
3 horses that he was charged with mistreating, and not
4 only ... even talk to my client to even ask him what
5 the story was, so that's certainly evidence of
6 negligence there. However, given the status of the
7 Humane Society as being a cause-oriented group, we
8 submit that it's even reckless to take their word
9 without any investigation in the matter whatsoever,
10 particularly in the context of disputed and
11 conflicting data that they were aware of,
12 information that they were aware of that gave them
13 the idea that maybe they didn't have the right
14 story. Again, the level of their disregard, whether
15 it was a reckless disregard, again is a matter of
16 fact for a jury to decide. This is not something
17 that can be ... the level of disregard is not
18 something, without presenting evidence, without
19 hearing evidence, that can be decided on the summary
20 judgment level. So to sum up, Mr. Trexler is not a
21 public official for the purposes of defamation.
22 He's not required to prove the heightened standard
23 of actual malice against the media defendants. His
24 causes of action are within the statute of
25 limitations for the reasons I've already discussed.

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1 And certainly, the publications were false and
2 nowhere near substantially true. When viewed in the
3 light most favorable to the plaintiff, given all
4 inferences towards the plaintiff, we respectfully
5 ask the Court to deny Defendants' motion for summary
6 judgment on those grounds. Thank you.

7 THE COURT: Thank you. Mr. Garfield, anything?

8 MR. GARFIELD: No, Your Honor. I did want to just point
9 out from a factual standpoint, and this just may be
10 more for housekeeping, Your Honor, Mr. Trexler was
11 charged and arrested pursuant to a facially valid
12 arrest warrant, several arrest warrants, for ill
13 treatment of animals, whether that's under the
14 misdemeanor or felony level, but it's under the
15 Abuse and Neglect statute. It is undisputed in this
16 particular case, and I say this as a little bit of a
17 preface to whatever Your Honor may be considering
18 from this particular argument, but it's undisputed
19 in this case that the magistrate is a Richland
20 County magistrate who's neutrally detached from the
21 criminal investigation, that he returned several
22 arrest warrants. And in that arrest warrant, the
23 magistrate found that Mr. Trexler was an owner
24 and/or operator of the property and the owner and/or
25 operator of these particular horses. Subsequent to

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1 this, Your Honor, there was a second, independent
2 determination of a lawful basis for the arrest for
3 ill treatment or abuse or neglect of horses, and
4 that's by the Richland County grand jury. They true
5 billed all of these indictments. None of these were
6 no billed. They were all considered, and they were
7 true billed and they were indicted for the abuse.
8 And we're talking about James Trexler, the plaintiff
9 in this case. So, again, taking that as a, when I
10 say a fact, that's just ... I wanted Your Honor to
11 be clear about what the record was. He could
12 obviously take the argument, Mr. Wills, is that ...
13 he says his client claims to have not owned the
14 horses and claims no link or connection to the
15 property. I understand that, but I think Your Honor
16 is ... it's a critical factor to when you have two
17 either judicial or quasi-judicial determinations of
18 these things. And it's just the fact in this
19 particular case, and I just wanted to state that for
20 the record. Thank you.

21 THE COURT: All right, thank you. Mr. Bender?

22 MR. BENDER: Thank you, Your Honor. If I might respond
23 here. And I think Mr. Garfield points out something
24 that should be obvious here. The public record in
25 this file includes much more than the press release.

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1 For example, under Tab H in the booklet I provided,
2 in the affidavit for the first arrest warrant, One
3 James Trexler did commit the crime of III/Treatment
4 of Animals in that he is the owner of a two-year-old
5 bay female with a body score of 1.5; he knowingly
6 and intentionally deprived the animal of necessary
7 quantities of wholesome foodstuff suitable for the
8 species and age. Second, He is the owner of a six-
9 year-old bay stallion with a body score of 4; he
10 knowingly and intentionally deprived the animal of
11 necessary quantities of wholesome foodstuff. The
12 third one, He is the owner of a 15 to 20-year-old
13 bay stallion with a body score of 3; he knowingly
14 and intentionally deprived the animal of necessary
15 quantities of wholesome foodstuff. He is the owner
16 of a seven-year-old black stallion with a body score
17 of 4; he knowingly and intentionally deprived the
18 animal of necessary quantities of wholesome
19 foodstuff. The next one, He is the owner of a 20-
20 year-old gray stallion with a body score of 3.5; he
21 knowingly and intentionally deprived the animal of
22 necessary quantities of wholesome foodstuff suitable
23 for the species, and so on and so forth. And in
24 each instance the magistrate found probable cause to
25 have James Trexler arrested? The grand jury in

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1 turn, under Tab I, indicted Mr. James Trexler,
2 willfully and unlawfully, combining with Hazelene
3 Trexler and/or Terry Trexler for the purpose of
4 committing the crime of ill treatment of animals, a
5 felony. That between the dates of August 1, 2007,
6 and February 25, 2008, James Trexler did, at 412
7 Derby Lane in Richland County, inflict excessive or
8 repeated unnecessary pain or suffering upon animals;
9 to wit, by omission or commission, James W. Trexler
10 did cause repeated unnecessary suffering upon a 20-
11 year-old gray stallion, and/or a seven-year-old
12 black stallion, and/or a 15 to 20-year-old bay
13 stallion, and/or a six-year-old bay stallion, and a
14 two-year-old bay filly, this in violation of Section
15 47-1-40 of the South Carolina Code. That between
16 the dates of August 1, 2007, and 2008, James Trexler
17 did, at 1248 Zeigler Road in Richland County,
18 inflict excessive or repeated unnecessary pain or
19 suffering upon animals. That between the dates of
20 August 1, 2007, and February 2008, James Trexler
21 did, at 1248 Zeigler Road, inflict excessive or
22 repeated unnecessary pain or suffering upon animals,
23 and then it lists the animals. Each of those
24 indictments points out that James Trexler was
25 indicted for felony counts of mistreatment of

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1 animals. He was arrested for mistreatment of
2 animals. The threshold question here is not whether
3 James Trexler is a public official. The threshold
4 question is what was published about him that was
5 false, and it doesn't have to be absolutely true
6 under South Carolina law; it has to be substantially
7 true, and you have to look at the sting of the
8 publication. The terrible thing that was published
9 about James Trexler was he was arrested for
10 mistreating all these horses, and he was indicted
11 for mistreating all of those horses. And those
12 facts are true because he was arrested and he was
13 indicted, so what is the false statement here? The
14 only false statement made was that he was arrested
15 for kidnapping, and that was in the press release
16 that was sent by the sheriff's department, created
17 by the sheriff's department. And the news
18 organizations are entitled to rely on that. So
19 there is no falsity in this case to start with.
20 Now, I have to say that as I understand the rule on
21 summary judgment, a party resisting a summary
22 judgment motion is not entitled to create a question
23 of fact by miscasting the record and
24 mischaracterizing their own party's testimony. Now,
25 with respect to the public official status, had

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1 James Trexler been called head bookkeeper of the
2 Department of Agriculture, there wouldn't be a
3 question; he would not be a public official. The
4 title he had was Assistant Commissioner. Now, if an
5 assistant police chief is a public official in South
6 Carolina, seems to me that the Assistant
7 Commissioner of Agriculture, a state agency, would
8 be portrayed by that title alone to the public as a
9 public official. Now, James Trexler said he led the
10 agency, helped lead the agency. That's in his own
11 letter of resignation. This fellow wasn't fired,
12 this guy resigned. So what is his injury? But
13 let's assume he's not a public official and he
14 doesn't have this elevated standard. Under South
15 Carolina law the standard is not, as Mr. Wills has
16 attempted to suggest, negligence. It's common law
17 malice. Hatred, ill will, or spite. I asked Mr.
18 Trexler in his deposition who his witnesses were.
19 He's listed himself, his brother and Oliver Wood.
20 Do you know anybody at The Associated Press? I know
21 one person over there. Who do you know? Megan
22 Kinnard. Does Meg Kinnard have any ill will toward
23 you? Not that I know of. Do you know anybody else
24 at the AP who has ill will towards you? No, sir.
25 Do you know anybody at Barrington Broadcasting? I

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1 don't know who that is. Do you know any broadcast
2 journalist? I know one; I don't know if he's still
3 around or not, his name is J.R. Berry. All right,
4 does J.R. Berry bear any ill will towards you? No,
5 sir. How do you know J.R.? We grew up over in
6 Sumter County, that's where I grew up. How about at
7 Raycom, do you know anybody at Raycom? Who is
8 Raycom? WIS. No, sir. Barrington's WACH, do you
9 know anybody there? No, sir. And J.R. Berry is at
10 WLTX. So you know Meg Kinnard at the AP? I met her
11 one time. And you know J.R. Berry at WLTX? Yes,
12 sir. But you don't know any other journalists? No,
13 sir. Do you know of anybody in any of those
14 organizations who might bear ill will towards you?
15 No, sir. Now, with respect to what was published
16 about you, it's true that you were arrested? Yes,
17 sir. It's true that you were arrested for
18 mistreatment of animals? Yes, sir. And it's true
19 that the Richland County Sheriff's Department sent
20 out a press release that said you had been arrested
21 for kidnapping? Yes, sir. And when you were
22 arrested, the arrest warrant said it was for horses
23 you owned that were mistreated, is that correct?
24 Yes, sir. What was published about the plaintiff
25 was true, with the exception of the kidnapping

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1 charge, which was published by the sheriff's
2 department. And under the law, the news
3 organizations are entitled to rely on that. The
4 only ... now, with respect to the statute of
5 limitations defense, I think Mr. Wills misstated
6 when he said the plaintiff filed a suit in February
7 of 2010. And that's under Tab A. Because the
8 plaintiff, in his own sworn testimony said, I didn't
9 know anything about that, I didn't file that
10 lawsuit; the only lawsuit I filed was the one that
11 William Johnson filed for me which started with an
12 amended complaint filed in June, 2010. So when did
13 this case start? What if the plaintiff had gotten a
14 judgment against all media companies that produced
15 or reported on any event relating to the plaintiffs
16 in 2008, 2009, and 2010? Now, who's that judgment
17 going to be executed against? That's not the
18 designation of a real party in interest. That's
19 somebody throwing something up against the wall,
20 sees what sticks, and it's not even James Trexler.
21 So his amended complaint doesn't related back, and
22 to say that it does mischaracterizes James Trexler's
23 own testimony. There are plenty of bases on which
24 summary judgment should be granted. The statute of
25 limitations, the privilege. Are there other

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1 documents which would support the publication,
2 certainly. The indictments and the arrest warrants.
3 In the first motion for summary judgment we relied
4 on the admission by counsel for the plaintiff that
5 this was a public record and the publications were
6 privileged. That's been withdrawn. You can make a
7 determination from looking at the law what a public
8 record is. Is there any witness who can testify
9 about common law malice? No. The plaintiff has not
10 identified a single witness who can address common
11 law malice, because when you look at what the
12 plaintiff says these witnesses will testify to ...
13 excuse me just a minute while I get to it. He says
14 his ... Oliver Wood's going to talk about his loss
15 of income. I don't know how you can get a loss of
16 income when you've resigned your employment, but
17 that may be their case. The witnesses listed, James
18 Trexler, Terry Trexler, and then Oliver Wood as the
19 expert. James Trexler will provide testimony to
20 support the allegations in the amended complaint.
21 Well, his testimony is that everything that was
22 published about him was true, because he was
23 arrested and he was indicted and he was charged with
24 a felony. Terry Trexler will provide testimony that
25 James Trexler had no involvement with the management

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1 or care of horses. Neither of those witnesses have
2 any testimony that addresses common law malice, much
3 less actual malice. And if you look at what the
4 plaintiff has said in answers to interrogatories
5 that is false, it all has to do with his arrest and
6 the charge that he owned horses, and that's
7 supported fully by public records beyond dispute.
8 Arrest warrants and indictments. There is nothing
9 false that's been published about this plaintiff
10 except that he was arrested for kidnapping, which
11 was said by the Richland County Sheriff's Department
12 in its press releases. There's no libel case here
13 because there's no falsity. Summary judgment is
14 appropriate for these defendants. Thank you.

15 THE COURT: All right. Thank you. Mr. Wills, I'll give
16 you the last word.

17 MR. WILLS: Thank you, Your Honor. Regarding the statute
18 of limitations issue again, Mr. Trexler, it doesn't
19 matter who filed the case, Mr. Trexler was a
20 plaintiff; the other defendants voluntarily
21 dismissed. Mr. Trexler was still a plaintiff.
22 Named broadly the defendants, just like we would in
23 a John Doe case where you don't know who it is, who
24 is the defendant, and then you substitute. That's
25 the process. Obviously there was no judgment

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1 against all media defendants; it was cured before
2 he, Mr. Trexler, was even required to serve the
3 original complaint. So that's moot. But with
4 regard to the public records, well, the indictments
5 and the arrest warrants, I'll point out again, the
6 arrests were for misdemeanors. Then several months
7 later, the indictments were felonies. There's all
8 that space between, that the media defendants
9 published articles about, about Mr. Trexler, as if
10 they were felonies; and he wasn't charged with
11 felonies yet, he was charged with misdemeanors.

12 THE COURT: Did any of them say he was charged with
13 felonies?

14 MR. WILLS: What they did, Your Honor, is they
15 characterized the crime as starving horses, abusing
16 horses, and they ... and also, they increased the
17 number of offenses that he was ... that they alleged
18 were accused against him. They also implicated him
19 in across state lines and other ... and into other
20 states, into Georgia. That has nothing at all to do
21 with five misdemeanor counts of ill treatment of
22 animals. That's like saying ... that'd be the same
23 as saying to kill somebody is the same as murdering.
24 It's ... the semantics are important here. Starving
25 a horse is not the same thing as not giving him food

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1 for one day. But what is important about the
2 indictments and the arrest warrants is that each of
3 these media defendants has testified that they
4 didn't even check into that. They took the word of
5 the investigators. They didn't go look at the
6 arrest warrants. They didn't go look at the
7 indictments. So that has no bearing about whether
8 the public ... whether they were reporting on a
9 public record. And if in fact they did go look at
10 those, those arrest warrants, and they saw that Mr.
11 Trexler was only accused of five misdemeanor counts
12 of ill treatment of animals, now we do have actual
13 malice because now they know exactly what Mr.
14 Trexler's charged with and they reported
15 differently. As to the common law malice, as
16 opposed to the actual malice, this analysis does not
17 line up. We imposed a higher standard on public
18 officials, and that is just reckless disregard for
19 the truth. Reckless disregard. Now, common law, it
20 doesn't make sense that now you have to go find, for
21 a private figure, have to go find somebody that
22 hates you and that's why we did it. But these
23 people did hate Mr. Trexler. They all hate him.
24 Because he was a horse abuser. So now you've got
25 people out there in the world who are spiteful, who

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1 ... the articles, all of the articles that are
2 published have a section on the bottom where
3 comments could be put in. And these comments are
4 scathing. They're not from the defendants,
5 obviously.

6 MR. BENDER: Your Honor, those comments are not published
7 by the defendants, and those comments are
8 privileged. These defendants are not the publishers
9 of those, as a matter of federal law. When you
10 operate an interactive web service and allow people
11 to post comments you are not a publisher, and these
12 defendants have no liability under anything any of
13 those persons said. Now, I have not popped up to
14 object to Mr. Wills' constant misrepresentation of
15 the record, but I object strenuously to his attempt
16 to bootstrap somebody's comments into this case.

17 THE COURT: Well, actually I thought the law was that if
18 you put a story on the Internet, comments by a third
19 party were not actionable. Comments by people who
20 weren't connected with the media outlet are not
21 actionable. Is that your understanding of the law
22 as well?

23 MR. WILLS: My point wasn't that that was actionable. My
24 point is that these stories generated a lot of ill
25 will and a lot of spite.

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1 THE COURT: On behalf of ...

2 MR. WILLS: I'm not saying that the defendants are liable
3 for those comments, I'm just saying that the nature
4 of these allegations generate ill will and spite.
5 And because Mr. Trexler can't say I don't know of
6 anybody from the past who might have ill will or
7 spite against me, well, that all changed possibly
8 after he was publicly ... after the defendants
9 published to the world that he was a horse abuser
10 and a kidnapper. That's the whole nature of damage
11 to your reputation. That's the crux of the
12 argument. So, Mr. Trexler can't say that, without a
13 trial, this is a question of fact, Mr. Trexler can't
14 say in his deposition I don't know of anybody from
15 before who might have had ill will against me, and
16 that's the end of the story.

17 MR. BENDER: No. Your Honor, again, that's a misstatement
18 of the law. The question is, did the people
19 reporting have ill will, hatred, spite, or conscious
20 indifference to the plaintiff's rights. Not, did
21 that change the mind of anybody who thought Mr.
22 Trexler abused horses. And, Mr. Trexler was
23 arrested for abusing horses. I don't think there's
24 any question about that. Mr. Wills is constantly
25 misstating both the law and the record here in an

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1 effort to show that something that was not true was
2 published. And there isn't anything except that
3 Trexler was never charged with kidnapping.

4 MR. WILLIS: And there's nothing to say that just because
5 these people who were writing the articles, because
6 they're journalists, they don't have feelings and
7 don't take on ill will with regard to the stories
8 that they're writing.

9 THE COURT: Do you have any evidence of that? In their
10 depositions do they say that, do they say they
11 didn't like Mr. Trexler and they hated him and ...

12 MR. WILLIS: No. We have ... there is no deposition
13 testimony that says that any of those people hated
14 Mr. Trexler. But the idea is that, you know, in a
15 defamation per se case we don't have to prove these
16 people hated him; the malice is presumed. And we're
17 not going to hold a public figure to a higher
18 standard than a public official. That's the whole
19 point.

20 THE COURT: Well, as you know though, since *New York Times*
21 *v. Sullivan*, it's very, very difficult for a public
22 official to win a defamation case because of the
23 heightened standard. So I think necessarily when I
24 look at this case ... I'm not going to rule today,
25 I'm going to take it under advisement and ask the

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1 parties to submit proposed orders, but that issue of
2 whether or not Mr. Trexler's a public figure is
3 something I'm going to look at very, very closely.
4 Let me, and again for clarity of the record ... I
5 get a reputation of coming out of left field with
6 questions that don't seem relevant, but I'm curious,
7 what happened to the charges?

8 MR. WILLS: They were dismissed, Your Honor.

9 THE COURT: All the charges were dismissed?

10 MR. WILLS: All the charges dismissed. And that is ...
11 that's what's going to form the basis of our
12 malicious prosecution claim that we are asserting
13 against the sheriff of Richland County. In that
14 portion of the case, not in the media defendant
15 portion of the case. Our allegation is that,
16 obviously to address briefly what Mr. Garfield said,
17 was that a Humane Society officer took ... went down
18 and swore out a warrant in front of a magistrate,
19 said whatever she wanted, and he didn't have any
20 reason not to believe her; he signed off on it. And
21 then the indictment of that, well, you know,
22 indictments, we've got testimony from the witness
23 who presented the indictment, said she didn't spend
24 one minute with the grand jury presenting the case.
25 She read the indictment and they said true bill,

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1 just like they true bill everything. So I don't
2 think we're going to hang our hat on that. But ...
3 and for that ... that answers your question I think.

4 THE COURT: All right. Thank you. I'm sorry.

5 MR. WILLS: Yeah. So to conclude, the reports against Mr.
6 Trexler were not true. He was arrested for
7 misdemeanor ill treatment of animals. He was not
8 arrested for severe cruelty to animals in both
9 Georgia and in South Carolina, dozens of horses. He
10 was not arrested for that. And he wasn't indicted
11 for that. And so the reports are not true. And in
12 the end Mr. Trexler was guilty of nothing. But at
13 the time period of the report, that was not even
14 what he was arrested for and not what he was charged
15 with. There was no truth to any of the reports.
16 Thank you, Your Honor.

17 THE COURT: All right. Thank you. I think, as I said
18 earlier, I'd like all sides to submit a proposed
19 order. Please make it a proposed order, not a
20 brief. I would write it in such a style that if you
21 had your druthers, I'd just read it and sign it
22 without any changes. So I'm asking each side to
23 submit proposed orders. All right. Any questions
24 on that? How much time do you need to submit the
25 proposed order? Today's the 19th of January.

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1 MR. BENDER: I can get it to you by the end of the month
2 certainly.
3 THE COURT: Okay, that's a little more than a week. The
4 end of the month is a week from Sunday. Today's
5 Thursday. That's a short turnaround, but you can do
6 it, Mr. Wills, you think?
7 MR. WILLS: Yes, Your Honor, I can do that.
8 THE COURT: All right, Mr. Bender, you think you can do
9 that?
10 MR. BENDER: Yes, sir. The 31st?
11 THE COURT: Yes.
12 MR. BENDER: That's not a problem.
13 THE COURT: Okay. Anything further today?
14 MR. GARFIELD: Well, the only question I had, and I direct
15 this dialogue to Mr. Wills before the Court, I think
16 ~~that there was proposed orders that may or may not~~
17 have been considered by the Court.
18 THE COURT: I have them here.
19 MR. GARFIELD: Okay. That was just me trying to ask
20 because, if and when you sign your order, Your
21 Honor, as far as permitting them to amend their
22 complaint, I just wanted to make sure I duly
23 calendar that so that we'd be able to file an
24 answer.
25 THE COURT: Okay. Yeah, I just haven't finished reading

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1 the proposed order. I did rule though. I mean, is
2 my memory correct on that?

3 MR. GARFIELD: Yes, Your Honor.

4 THE COURT: Okay, so.

5 MR. BENDER: We do not yet have an order or a stipulation
6 with respect to the causes that were voluntarily
7 dismissed.

8 THE COURT: That would be good for clarity of the record.

9 MR. BENDER: We'll get one of those.

10 THE COURT: Okay. Anything further?

11 MR. BENDER: No, Your Honor.

12 (There being nothing further, the hearing was concluded
13 at 4:57 p.m.)

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CERTIFICATE

I certify that the foregoing transcript, consisting of 66 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on January 19, 2012, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



January 3, 2013

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

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COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2010-CP-40-1249

James W. Trexler,)
Plaintiff,)
v.)
The Associated Press,)
Barrington South Carolina)
Corp., Raycom TV Broadcasting,)
Inc., and the Pacific &)
Southern Co., Inc.,)
Defendants.)

**PLAINTIFF'S MOTION
FOR RECONSIDERATION**

HEARING

Monday, March 11, 2013
4:03 p.m. to 4:37 p.m.

The hearing before the Honorable Joseph M. Strickland, Special Circuit Court Judge for Fifth Circuit, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 11th day of March, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

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1 THE COURT: This is Civil Action Number 2010-CP-40-1249,
2 James Trexler against The Associated Press. The
3 matter before the Court today, I believe, is a
4 motion I guess to reconsider the Court's previous
5 order granting summary judgment to the plaintiffs.
6 Are we all on the same page?
7 MR. BENDER: Yes, sir.
8 MR. WILLS: Yes, Your Honor.
9 THE COURT: All right. Let me make sure I know
10 everybody's name. Starting with the left, the one
11 with the most gray hair.
12 MR. BENDER: I'm Jay Bender, representing the defendants.
13 MR. WILLS: Your Honor, I'm Brook Wills, representing the
14 plaintiff.
15 THE COURT: Good to see you again.
16 MR. HAMRICK: Matt Hamrick, also with the plaintiff.
17 THE COURT: All right.
18 MR. JOHNSON: William Johnson for the plaintiff as well.
19 THE COURT: All right. And are you one of the parties?
20 MR. DeMASTERS: Your Honor, my name's David DeMasters,
21 here on behalf of Robbie Garfield, representing the
22 Sheriff's Department.
23 THE COURT: Okay. Thank you very much. Please proceed.
24 MR. WILLS: Your Honor, thank you. We won't take up much
25 of the Court's time today. We've just got a couple

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1 of issues we want to raise in support of the motion
2 for reconsideration. Thank you for hearing us.
3 Your Honor, as you may recall, this case has been
4 going on for some time. We had a hearing on
5 Defendant's motion for summary judgment on January
6 19, 2012. That was Mr. Bender's motion. He
7 represents several media companies against Mr.
8 Trexler in a defamation action. The parties
9 presented it at that hearing, on January 19th, 2012,
10 and in October of 2012 the Court's order came down.
11 The Court's order, as we read it, states in several
12 instances that a large part of the reason the Court
13 granted summary judgment in favor of Mr. Bender and
14 his clients was that the plaintiff had not submitted
15 any evidence in support of his arguments. In fact,
16 the plaintiff had submitted evidence, 150 pages'
17 worth of evidence, at the hearing. More
18 specifically, included with Plaintiff's proposed
19 order. The confusion, if there was confusion, that
20 arose occurred during the hearing, and it was some
21 time back so what I've done is I've brought a
22 transcript of the hearing for Your Honor, which is
23 attached to a brief that I'd like to hand up, if the
24 Court ...
25 THE COURT: Sure. Thank you.

1 MR. WILLIS: You're welcome. And to the brief, we just
2 wanted to outline our legal points made today, I've
3 also attached a copy ... the relevant portions of
4 the copy of the transcript of the hearing to the
5 back. At the hearing, Your Honor, we had a pretty
6 good stack of evidence that we had brought to submit
7 to the Court in support of our arguments. And at
8 that time, I attempted to hand these pieces of
9 evidence to the Court, and there was a lot of
10 evidence. At that time, the Court decided that it
11 would rather take me on my representation of the
12 material, at which time ... and that's what's
13 reflected in this transcript.

14 THE COURT: Now, was the Court's ruling based on the lack
15 of evidence or the lack of issues of material fact,
16 deemed issues of material fact?

17 MR. WILLIS: Your Honor, the Court, throughout its order,
18 mentions that the ... and in its primary ruling,
19 mentions that the plaintiff offered no evidence
20 whatsoever in support of its position. Here in the
21 transcript it reads ... Your Honor, I would like, if
22 the Court wouldn't mind, I'd like to pass up some of
23 these articles that have been written ...

24 THE COURT: Sure.

25 MR. WILLIS: ... to address my next point, which is that

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1 the articles are not fair and accurate reports of a
2 public record, which happened to be at that point in
3 the argument. "And that they actually
4 mischaracterize and mislead and are false in the
5 sense where they accuse Mr. Trexler of crimes well
6 beyond what he's accused of." And I'm just reading
7 the transcript. And the Court responded, "Those
8 articles there are reporting what they got from the
9 sheriff's department, is that what you're saying?"
10 I'll skip over the next little dialogue, but on the
11 following pages the Court says, "Mr. Wills, I'll
12 accept your representation." I say, "Okay." "And,
13 of course, as I'm sure that your position is
14 supported. I'll accept your representation." Your
15 Honor, at that point we had assumed that the Court
16 was preferring not to have a deluge of documents
17 come in and that ... and at the end of the hearing,
18 Your Honor asked both sides to submit proposed
19 orders. And we were under the understanding that if
20 we submitted our evidentiary material with our
21 proposed orders, that those would be part of the
22 record and submitted with our arguments. Throughout
23 the order it mentions that we ... that the
24 plaintiffs had submitted no evidence whatsoever in
25 support of their arguments. This evidentiary

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1 material was selected and supports our arguments,
2 but also they achieve creating a direct and
3 substantial issue of material fact with regard to
4 all of the plaintiff's claims and the defenses
5 against it. But we believe that those elements of
6 evidentiary material may not have been taken into
7 consideration. Those elements specifically refer to
8 the level of ... and just to give the context, we
9 were, in our summary judgment hearing, were speaking
10 of the falsity of the publications that are the face
11 of the claims, were speaking of the level of
12 knowledge that the publisher had of the falsity of
13 the claims, and were speaking of whether there was
14 actual malice involved with the publication of the
15 claims. All of these elements of evidentiary
16 material raise genuine issues of material fact with
17 regard to each of those elements. Even with regard
18 to whether Mr. Trexler, in this case our client, is
19 a public official, we submit it's evidence to the
20 effect that he is not. That was a question of law
21 that was separate. But those elements were also
22 included in our exhibits to your proposed order. So
23 our first issue here today is to ask the Court to
24 reconsider his grant of summary judgment. And after
25 having considered the evidence of record and taking

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1 into light and with all inferences towards the
2 plaintiff of the facts that are presented in the
3 evidentiary material and, based on that, to deny
4 summary judgment to Defendants. Second, second is
5 our request to the Court to reconsider its finding
6 that the plaintiff filed a claim ... all the
7 plaintiff's claims were outside of the statute of
8 limitations, which was a threshold issue. We
9 submitted in our original brief, which we
10 incorporate in our argument and we won't rehash it,
11 but we submitted that according to Rule 15(c),
12 Plaintiff's Amended Complaint, which was filed on
13 the last day of the permitted period during which a
14 plaintiff can serve a complaint, that the amended
15 complaint related back to the original complaint,
16 which was filed within the statute of limitations
17 for these defamation claims. And the basis of our
18 argument was that the plaintiff named generally all
19 media companies that reported on him during 2008,
20 2009, and 2010. That was one of the named groups of
21 entities in the original complaint. Now, within the
22 120 days permitted to serve the lawsuit on them, on
23 the defendants, Mr. Trexler, who was pro se at the
24 time, retained counsel who amended the complaint,
25 cut out the unnecessary parties and specifically

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1 named each media company on which the lawsuit was to
2 be served. And within that time, served the amended
3 complaint within the time period permissible for
4 serving the original complaint, within the 120 days
5 allowed the original complaint. The Court found
6 that essentially the amended complaint was
7 essentially a new lawsuit and did not relate back to
8 the original complaint. And in the Court's order,
9 specifically one of the supporting pieces of
10 argumentation, was that the pro se plaintiff, who
11 had drawn the original complaint up, did not use
12 what was referred to as the magic words. Under the
13 rule that says that where you're going to name
14 generally a group of defendants whose identity is
15 not known precisely, that the magic words saying
16 whose identity is not known precisely must be used
17 in order to trigger the rule that allows for this
18 type of pleading. And we would ask the Court to
19 consider that, firstly, that that rule applies in
20 situations where none of the defendants is known and
21 there's going to be some diligence to go out and
22 find out who it is, and then they can rename once
23 they find out who the real defendants are. In this
24 case, several of the defendants were known. The
25 magic words ... to require a literal application of

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1 the rule that says that one must put, after a group
2 of generally named defendants, that their identity
3 is yet unknown, here would be too strict of an
4 application. In this case, to put those words would
5 have no affect whatsoever since the lawsuit was
6 never served in the first place, and it was amended
7 before it ever got to the defendants, firstly. The
8 words would have no application here. It would not
9 have changed anything. And secondly, by stating all
10 media defendants that reported on James Trexler
11 during the period of 2008, 2009, 2010, substantially
12 complies with the rule. It is essentially saying,
13 Whose identities are not yet known. And that's the
14 purpose of the rule, that's the essence of the rule.
15 If we look at Rule 8(f), of South Carolina Rules of
16 Procedure, it says that the pleadings are to be
17 construed so as to do substantial justice. If we
18 were to apply such a literal meaning of the rule,
19 wherein the magic words have to be applied to
20 essentially a pro se plaintiff, then we would not be
21 comporting with the rule that pleadings must be
22 construed to do substantial justice.

23 THE COURT: Now, let's back up a little bit. Your
24 position is that Mr. Trexler's not a public figure,
25 is that ... that's accurate?

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1 MR. WILLIS: Your Honor, there's a separate issue ...
2 THE COURT: Well, I understand. I'm taking you ... well,
3 if you'd rather address that later, that's fine. I
4 was going to ...
5 MR. WILLIS: No, I'll be happy to answer your question.
6 THE COURT: Okay, but I want to make clear, your position
7 is that Mr. Trexler is not a public figure?
8 MR. WILLIS: That has been our position, yes.
9 THE COURT: Because obviously, if he is a public figure,
10 then there's a different standard, or higher
11 standard that ...
12 MR. WILLIS: That's correct. Yeah, that's correct, Your
13 Honor. There's a higher standard to prove ... for
14 the proof of malice.
15 THE COURT: That's right.
16 MR. WILLIS: But with regard to serving of the complaint
17 and the relation back to the original complaint, it
18 would be the same, whether Mr. Trexler were a public
19 official or a private individual. Under the
20 understanding of the rule that we have laid out in
21 the order, it seems to suggest that if Mr. Trexler
22 had served the original complaint and made effective
23 service on the defendants who are now named in the
24 suit, and the original complaint named all media
25 defendants who reported on Mr. Trexler between 2008,

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1 2009, 2010, and those entities were able to
2 recognize that that lawsuit applied to them, even
3 though they weren't specifically named, and then one
4 day after, Mr. Trexler amended the complaint to name
5 them specifically, under this understanding that
6 would be a correct procedure. Here, we amended the
7 complaint before serving them, but within the time
8 period for serving the original complaint. And that
9 seems to be a step in the spirit of cleaning things
10 up, not taking extra steps. So we would ask that
11 the Court reconsider, based on the relation back to
12 the original complaint, its ruling that Mr. Trexler
13 had filed his claims outside of the statute of
14 limitations. Now, importantly, even if the Court
15 decides to maintain its ruling, even if the Court
16 decides that it had applied the proper analysis with
17 regard to the relation back, we still have a
18 situation where the statute of limitations has not
19 been exceeded with regard to the articles that are
20 at issue in this case. And this becomes clearer for
21 the Court when the exhibits that we submitted are
22 considered. Under the ... the reason behind this is
23 because, and as the Court properly stated in its
24 order, that in a defamation action the statute of
25 limitations, the time period begins to run at the

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1 moment of publication, and not ... there's no
2 discovery rule attached with defamation. But that's
3 not the end of the analysis. The statute of
4 limitation begins to run at first publication, but
5 it's re-triggered with each new publication. And
6 here we have a situation where the original
7 publications, or many of these articles, came before
8 the amended complaint was filed, which according to
9 the Court's order as it stands now, was the
10 initiating action. And the Court found that the
11 statute of limitations had run on any publications
12 that came before the filing of the amended
13 complaint, which was in June of 2010. Under South
14 Carolina law, specifically in Taub versus McClatchy,
15 the court found that each new re-publication of the
16 defamatory material constituted a new dissemination
17 and a new trigger for the statute of limitations.
18 In that case, The Associated Press had given
19 defamatory material to a news agency who had
20 published it on its website, and then had moved the
21 publication into an archive that was still
22 searchable but it wasn't pushed out to the public.
23 And the court found that, in that case, that South
24 Carolina doesn't apply the single publication rule,
25 but it abides by a continuous publication rule,

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1 which means that any republication of the material
2 is a new dissemination. Now, in the evidentiary
3 material that we have submitted to the Court are
4 several examples of each article that was published
5 before the amended complaint was filed, but also was
6 republished, in the spirit of Taub versus McClatchy,
7 over the next several months, and even years. And I
8 won't go through all these; I'll leave these to Your
9 Honor, but I can point out that here's one from The
10 Associated Press that was published on 8/14 of 2008.
11 That's subsequent to the amended complaint. Here's
12 another one that was published on August 15th of
13 2008. These are either new publications or these
14 are updates of previous publications. And the court
15 in Taub said that updates constitute republications.
16 Any time there's a new dissemination or the
17 possibility of a new dissemination from this
18 material, that that becomes a new publication. So
19 we would ask the Court respectfully to reconsider
20 the statute of limitations ruling granting the
21 defendants a summary judgment based on the statute
22 of limitations; one, based upon the relation back
23 under Rule 15(c), and secondly, if the Court doesn't
24 find that that's appropriate, then to realize after
25 examining the evidence of record, that the

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1 republication of these materials takes all of the
2 causes of action out of the bar of the statute of
3 limitations. And we would ask that the Court
4 consider those aspects of the case, and based on
5 those to deny the defendant's motion for summary
6 judgment. Thank you, Your Honor.

7 THE COURT: You're welcome. Mr. Bender?

8 MR. BENDER: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. BENDER: This case has to be put in the context of the
11 allegations in the amended complaint. And this was
12 Tab B in the folder that I handed up. The ...
13 paragraph 15, "Although the plaintiff had no
14 ownership interest whatsoever in the ownership of
15 the horses or the operation of his mother's
16 business, Richland County Sheriff's Department
17 charged the plaintiff as if he were owner." And
18 then it goes on to talk about there were
19 publications relating to horses seized and to
20 arrests, and that it was false. In fact, the
21 plaintiff acknowledged in his deposition, and I
22 handed excerpts up in support of the summary
23 judgment motion, that he was in fact arrested for
24 abusing horses. He was in fact indicted for abusing
25 horses. And he was in fact identified by the

15

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1 Richland County Sheriff's Department as having been
2 arrested for kidnapping. Now, the kidnapping charge
3 was in error, but the truth is he was arrested. The
4 truth is he was indicted. And the truth is the
5 kidnapping information was privileged. Now, what is
6 a defendant's obligation responding to a summary
7 judgment motion? Rule 56 provides that, where
8 there's a properly supported motion, the party
9 responding must file affidavits and those affidavits
10 must be filed at least two days in advance of the
11 hearing. And if they are unavailable, then the
12 party can ask for additional time to provide
13 affidavits. I'm not sure what the plaintiff was
14 trying to accomplish by handing up 150 pages of
15 material to you, and I'll take Mr. Wills' word that
16 it was 150 pages. But I think the Court got it
17 right. The material did not establish that there
18 was a genuine issue of material fact with regard to
19 the falsity of the publications. It could not
20 establish falsity with respect to the publications
21 because the publications said the plaintiff had been
22 arrested; there was an arrest warrant in five cases
23 I think. The plaintiff was indicted. So the
24 material that had been published was true. And then
25 with respect to the kidnapping charge, that was

16

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1. privileged. Now, with respect to the claim that the
2. statute of limitations never runs on material that
3. can be obtained from a library, that's a bizarre
4. notion, and it's not South Carolina law. The case
5. cited by the plaintiff here today is not a South
6. Carolina court decision. It's the United States
7. District Court for the District of South Carolina.
8. And we all know that the federal courts don't
9. necessarily apply South Carolina law. They take a
10. guess at what it is if there's no South Carolina
11. authority, and that's what happened here. But, more
12. important, if this was an amended complaint, where
13. the plaintiff, at the time the original complaint
14. was filed, didn't know who the appropriate
15. defendants were, then it would be incumbent upon the
16. plaintiff to have some idea that that lawsuit was
17. filed. But if you look at Tab O in the material I
18. submitted in support of the motion for summary
19. judgment, I ask the plaintiff about the original
20. summons and complaint. "The original suit brought
21. by you also included as plaintiffs your mother and
22. your brother, is that correct?" "Not that I'm aware
23. of." "You're not aware that the suit was initially
24. brought by you, your brother and your mother against
25. a number of people, including Frank Fusco and a

17

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1 number of other people?" "We're dealing with
2 something that is prior." "I'm talking about the
3 current issues we have before you." And it goes on.
4 I ask him again, "I'm asking you about the initial
5 summons and complaint filed in this action that's
6 now pending against my client." "I don't know
7 anything about that. I mean, I took and I filed
8 basically on my own, with William Johnson, these
9 lawsuits that are before you." "And it was
10 initiated by an amended summons and an amended
11 complaint. What I want to know is amended from
12 what?" "I don't know, sir." "You didn't have
13 anything to do with the first complaint that was
14 filed in this case that ...", and it goes on to say,
15 "Whoever filed it must have included me. I have no
16 knowledge of that." So, I think it's absurd for the
17 plaintiff to come in here and argue that there is a
18 relation back to a complaint he did not know about
19 and had no participation in. So, the statute of
20 limitations ran, and South Carolina does follow the
21 rule that the date of publication is the date the
22 statute runs, as you cited in Jones v. City of Folly
23 Beach. Under the plaintiff's current argument,
24 somebody who knows nothing about a prior case can
25 evade the statute of limitations and amend the

18

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1 complaint to add parties. Now, there was no
2 misidentification indicated. There were parties
3 added, and they are my defendants. And if you
4 believe that the plaintiff's argument is correct,
5 that every time you go to Google and pull up one of
6 these articles as a fresh publication, the statute
7 of limitations never runs, and that's contrary to
8 public policy of South Carolina. I think Your Honor
9 was correct, the plaintiff did not submit evidence
10 in advance of the hearing or at hearing to indicate
11 a genuine issue of material fact as to falsity or,
12 more importantly, to either level of malice he would
13 have been required to prove, whether he were a
14 public official or private figure. For these
15 reasons, summary judgment was appropriate and
16 reconsideration should be denied. Thank you.

17 THE COURT: All right. Mr. Bender, let me ask you though,
18 the Google example you gave, are there any cases on
19 that? I know that sometimes technology outpaces the
20 law as far as certain ...

21 MR. BENDER: Well, I think the concept has been consistent
22 in South Carolina; we follow the single publication
23 rule. And under the plaintiff's theory, I can go to
24 the library and check out any book, and the date I
25 checked out the book is a new publication, because

19

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1 that's what online searches are the equivalent of
2 today, libraries. So I think you appropriately
3 applied the statute of limitations without respect
4 to whenever it starts, because nothing complained of
5 by the plaintiff occurred within two years of the
6 date of the action that he initiated, and that was
7 the one initiated by the amended summons and
8 complaint, because he didn't know anything about the
9 former action. And then anything after the amended
10 complaint would be the basis for a supplemental
11 complaint. That left one article, which was based
12 on the kidnapping, and that's clearly privileged as
13 the fair and accurate report of an official record.
14 Thank you.

15 THE COURT: Any response?

16 MR. WILLIS: Briefly, Your Honor. Mr. Bender has suggested
17 that Mr. Trexler was on a complaint, or part of a
18 complaint, part of a lawsuit that he didn't know
19 anything about, and he read some deposition
20 testimony, which was murky at best as to what Mr.
21 Trexler's understanding was of which lawsuits had
22 been filed even though Mr. Bender had specified a
23 case number. Mr. Trexler has been ... well, has a
24 brother who filed several lawsuits before Mr.
25 Trexler's lawsuit. And, at best, Mr. Trexler was

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1 confused about which of the lawsuits he was
2 referencing. Mr. Trexler was named on the lawsuit,
3 he signed the lawsuit, he was a part of the lawsuit
4 from the beginning, whether he was confused or not.

5 MR. BENDER: Your Honor, I object to the representation
6 that James Trexler signed anything. There is
7 absolutely nothing in the record that indicates
8 that.

9 MR. WILLS: Except the ...

10 MR. BENDER: There's nothing in the record that indicates
11 that, Your Honor.

12 MR. WILLS: Well, we just look at the pleading.

13 THE COURT: Hold on one second.

14 MR. WILLS: There's also nothing in the record to suggest
15 he didn't sign it. But that, notwithstanding, you
16 know, if we amend a complaint we take ... there's
17 nothing in the rules to suggest and/or limits how
18 much a complaint can be amended. Mr. Trexler's on
19 there ... was a named plaintiff in the original
20 complaint and he remained in the amended complaint.
21 So he was ... this has been his case, and he has
22 never given any indication that this is not his
23 case. Secondly, with regard to the new publication
24 Mr. Bender's talked about, Mr. Bender likened a
25 search or checking out a book at the library as

21

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1 being not a new publication. But the law ... but
2 this is actually what Taub versus McClatchy
3 addresses. And as a matter of fact, even though
4 Taub versus McClatchy was a district court case, it
5 cites and bases its finding on a state court case,
6 which is Moosally versus WW Norton and Company,
7 which is a 2004 South Carolina Court of Appeals
8 case. And it states that, The dissemination of a
9 book in South Carolina is a continuing libel in each
10 and every instance. The tort of libel occurs
11 wherever the material is circulated. The checkout
12 process and procedure constitutes a separate and
13 distinct dissemination of books, which is in
14 actuality a republication. I've got a copy of this
15 case, if Your Honor would like me to hand it up.

16 THE COURT: Please.

17 MR. WILLS: This case addresses exactly the situation
18 where an AP article was put on a web site, and every
19 time it's republished or updated it's considered a
20 new publication. And that's exactly the situation
21 that we have here with these articles that we've
22 submitted as evidentiary material. Thank you, Your
23 Honor.

24 THE COURT: All right. Thank you. Mr. Bender?

25 MR. BENDER: Your Honor, even if the statute of

22

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1 limitations does not apply here, the plaintiff still
2 hasn't met its burden of proof with respect to its
3 defamation claims. There's no genuine issue of
4 material fact as to falsity. There's no genuine
5 issue of material fact as to any level of malice the
6 plaintiff could show based on the presentation to
7 the Court. Thank you.

8 THE COURT: Mr. Wills, your motion's denied. Now, before
9 we ... Mr. Bender, if you'll write a brief, non-
10 argumentative order.

11 MR. BENDER: Yes, Your Honor.

12 THE COURT: I'm a little ... well, I expect there's a
13 strong possibility you may appeal this case to the
14 next level. I want to make sure the record though
15 is complete. Are you satisfied that the information
16 that you were going to hand up, that I took your
17 representation, are you satisfied that's part of the
18 record, or do you want to amend the order to allow
19 that be made part of the record?

20 MR. WILLS: Well, Your Honor, this is material that we had
21 submitted originally, on February 1st, with our
22 proposed order. And ... however Your Honor would
23 find it most appropriate for us to do. We'd like
24 for it to be a part of the record, obviously. We
25 were under the understanding that it was a part of

23

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1 the record.

2 THE COURT: Okay. That's fine. Mr. Bender?

3 MR. BENDER: Yes, sir?

4 THE COURT: Yeah, I wanted to make sure about that. All

5 right, anything else today?

6 MR. WILLS: Just to be clear, Your Honor, should we go

7 file this as a precaution, or your having it ...

8 and, matter of fact, I brought this for you in case

9 you didn't have a copy still.

10 THE COURT: It was never filed because I told you I'd

11 accept your ... I think maybe for clarity of the

12 record, you should go ahead and file it.

13 MR. WILLS: Okay, that's what we'll do.

14 THE COURT: Mr. Bender, anything to say about that?

15 MR. BENDER: No, I think that's the way to do it, Your

16 Honor.

17 THE COURT: All right. Thank you so much.

18 MR. BENDER: I'll draft an order, and I'll send it to

19 Plaintiff's attorneys and to you.

20 THE COURT: All right.

21 (There being nothing further, the hearing was concluded at

22 4:37 p.m.)

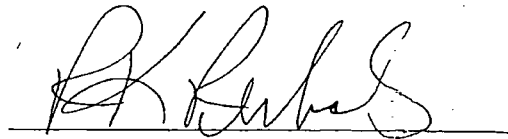
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CERTIFICATE

I certify that the foregoing transcript, consisting of 24 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on March 11, 2013, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



September 13, 2013

ROBIN K. REIBOLD
MY COMMISSION EXPIRES: 4-28-2021

25

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Southern Reporting, Inc.

Transcript of the
Deposition of

James W. Trexler

9/14/2011

Trexler vs. McClatchy Newspapers, Inc., et al.

10-CP-40-1343

Trexler vs. The Associated Press, et al.

2010-CP-40-1249

COPY

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State of South Carolina	)	
	)	
County of Richland	)	
James W. Trexler,	)	10-CP-40-1343
	)	
Plaintiff,	)	
vs.	)	
	)	Deposition
McClatchy Newspapers, Inc.,	)	
Richland County and the	)	of
Richland County Sheriff's	)	
Department,	)	James W. Trexler
Defendants.	)	
	)	
James W. Trexler,	)	
	)	2010-CP-40-1249
Plaintiff,	)	
vs.	)	
	)	
The Associated Press,	)	
Barrington Broadcasting, a	)	
South Carolina Corp.,	)	
Pacific & Southern Company,	)	
Inc., and Raycom TV	)	
Broadcasting, Inc.,	)	
	)	
Defendants.	)	

Deposition of James W. Trexler, taken before Sandra J. Ayers, a notary public in and for the State of South Carolina, commencing at the hour of 4:41 p.m., Wednesday, September 14, 2011, at the office of Davidson & Lindemann, P.A., 1611 Devonshire Drive, Second Floor, Columbia, South Carolina.

Reported by
Sandra J. Ayers

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Also Present:

Courtney Young
Shelley Stafford
Scott J. Hayes

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EXHIBITS

Defendants' Exhibit No. 1, Article from "The State" newspaper entitled "Assistant ag chief faces kidnap charge," dated 02/28/08; 2 pages.	74
Defendants' Exhibit No. 2, Letter to Robert D. Garfield, Esquire from Terry H. Ridgeway, dated 07/27/11, including "Preliminary Appraisal of Financial Loss Due to the Alleged Wrongful Discharge from Employment of Mr. James W. Trexler," dated 07/14/11; 7 pages.	74
Defendants' Exhibit No. 3, "Assessor Data View," dated 12/31/09; 3 pages.	74
Defendants' Exhibit No. 4, List of names; 1 page.	74
Defendants' Exhibit No. 5, Arrest report, dated 07/22/10; 2 pages.	74
Defendants' Exhibit No. 6, Internet search page for James W. Trexler; 3 pages.	74
Defendants' Exhibit No. 7, "Equine Infectious Anemia Laboratory Test," dated 05/24/07; 1 page.	75
Defendants' Exhibit No. 8, "GlobalVetLink - Equine Infectious Anemia Laboratory Test," dated 11/22/07; 3 pages.	75
Defendants' Exhibit No. 9, Incident report, dated 02/13/08; 2 pages.	75
Defendants' Exhibit No. 10, Statements, dated 02/13/08 through 03/10/08; 3 pages.	75
Defendants' Exhibit No. 11, "Search Warrant," dated 02/26/08, including "Affidavit," dated 02/26/08, "Exhibit A" and "Return," dated 02/26/08; 5 pages.	75

Defendants' Exhibit No. 12, "Single Arrest Report," dated 02/27/08; 1 page.	75
Defendants' Exhibit No. 13, Detainee status, dated 02/28/08; 1 page.	75
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Defendants' Exhibit No. 19, Property list, dated 02/29/08; 3 pages.	76
Defendants' Exhibit No. 20, "Amended Complaint," dated 06/23/10; 7 pages.	102
Defendants' Exhibit No. 21, "3 Year Driver Record," dated 03/04/08; 2 pages.	189

1 STIPULATIONS

2 It is stipulated by and between counsel for
3 the respective parties that all objections are
4 reserved until the time of trial, except as to
5 the form of the questions.

6 This deposition is being taken pursuant to the
7 South Carolina Rules of Civil Procedure.

8 - - - -

9 The reading and signing of this deposition is
10 waived by the deponent and counsel for the
11 respective parties.

12 Whereupon,

13 James W. Trexler, being duly sworn and
14 cautioned to speak the truth, the whole truth,
15 and nothing but the truth, testified as
16 follows:

17 EXAMINATION

18 BY MR. GARFIELD:

19 Q Okay, Mr. Trexler, we met just a few moments ago.
20 My name is Robbie Garfield, and you are here at our
21 law firm in Columbia, Davidson & Lindemann, for the
22 purposes of taking your deposition. Do you
23 understand that?

24 A Yes, sir.

25 Q Very good. Have you ever given a deposition

1 before?

2 A No, sir.

3 Q Because it's your first time -- and even if it
4 wasn't your first time, the rules of court require
5 me to go over a few things that's listed under the
6 rules to make sure that you and I are on the same
7 page and we conform to what we're supposed to do.
8 So I'm going to go over a few things.

9 A Okay.

10 Q You have been sworn to tell the truth under oath.
11 You understand that?

12 A I do.

13 Q Very good. If today you give testimony and the
14 testimony is being taken down in a transcript. And
15 I'm sure you've seen transcripts in the past where
16 there's question and answer -- Q/A in the left
17 column and your testimony. If that differs in any
18 way during the time -- if and when we try this
19 case, you may be impeached on the inconsistencies.
20 Or, in other words, if it's different than it is
21 today, then we'd be able to reveal for the judge or
22 jury that there have been, you know, changes in
23 your testimony. Do you understand that?

24 A I do.

25 Q Very good. You're doing very good so far, and when

1 I say "very good," you're answering out loud.

2 You're giving audible answers. Everything that you
3 and I say is taken down by both of these court
4 reporters here today. Head gestures and "uh-huhs"
5 essentially are not recorded, so at times I might
6 just prompt you: "Is that a 'yes' or is that a
7 'no,'" and that kind of thing and that's just to
8 get something on the record. Is that fair?

9 A Good.

10 Q All right. If you don't understand my question,
11 for whatever reason -- someone just mentioned we're
12 getting on the witching hour. It's quite possible
13 I'm going to ask you horrible questions today --
14 questions you won't understand. Just simply tell
15 me you don't understand it; I'll gladly rephrase.
16 Is that fair?

17 A Good. Yeah. Very good.

18 Q Similarly, if you do attempt to answer my question,
19 I'm just going to assume that you understood it.
20 Is that fair enough?

21 A Yes, sir.

22 Q Very good. This is not supposed to be any kind of
23 punishment for you. We may go kind of late.
24 Again, it is a little bit of an unconventional hour
25 to start a deposition. For whatever reason, Mr.

1 Trexler, if you need to take a break, we have a
2 soda bar, a water bar set up outside. If you need
3 to go to the bathroom or for whatever reason, can I
4 count on you just to tell me you'd like to take a
5 break and --

6 A Yes, sir.

7 Q -- and we'll --

8 A Certainly.

9 Q -- definitely do that. Very good.

10 The only other rule I could think of is that
11 if you have any questions of me or you want
12 clarifications, you need to direct your dialogue
13 directly to me and not your attorney --

14 A Okay.

15 Q -- okay? So, essentially, this is the equivalent
16 of you being on the witness stand. That's --
17 that's the only other rule I could think of, okay?

18 A (Nods head up and down.)

19 Q Very good. Are you on any medication that could
20 affect or impair your ability to fully participate
21 and give your deposition?

22 A No, sir. No medication.

23 Q Okay. Have you taken any prescription or over-the-
24 counter medications in the past 12 hours?

25 A No, sir.

1 Q Are you under a doctor's care in which a decision
2 would have given you a prescription of some sort in
3 which you are not complying with, for whatever
4 reason?

5 A No, sir.

6 Q Okay. What is your current address?

7 A 925-B Nabors Drive, Charleston, South Carolina
8 29412.

9 Q 29412, is that James Island or Johns Island?

10 A That's James Island in the City of Charleston.

11 Q That's one of the annexed areas on the James
12 Island?

13 A Yeah. It has been for awhile. Yes, sir.

14 Q Okay. What neighborhood is that in?

15 A That's in the Harbor Woods.

16 Q Okay. As you go down Folly Road, is that -- and
17 you're going over the Wappoo -- going over Folly
18 Road, is that before or after you would've taken a
19 left on Harbor View? Is that continued on towards
20 Folly Beach or is that on the --

21 A It's on the Harbor View Road side.

22 Q Oh, it is? Okay.

23 A If you get off and connect there and get off on
24 Harbor View, go up Harbor View till you come to
25 Li'l Cricket and a Piggly Wiggly.

1 Q Sure.

2 A Take a right there and you going into the back end
3 of Harbor Woods. That's where it's located.

4 Q I know exactly where that is. Is the -- you live
5 in an apartment complex?

6 A A duplex, yes.

7 Q In a duplex?

8 A Yes, sir.

9 Q Is that a duplex that you rent?

10 A Yes, sir.

11 Q And do you rent from an individual landlord or a
12 leasing company?

13 A Leasing company.

14 Q What is the name of the leasing company?

15 A Bohicket Realty.

16 Q Sounds about right for that area.

17 Who lives at your residence currently with you
18 now?

19 A No one but me and a bulldog.

20 Q How old is your bulldog?

21 A Two years.

22 Q And I understand you've owned bulldogs in the past?

23 A Not personally. I've never owned a bulldog, but my
24 associates have had them -- friends and family have
25 had them.

1 Q This is the first bulldog you've ever owned?

2 A First one.

3 Q What's its name?

4 A Orleans.

5 Q Okay. That's a good gender-neutral name. It's a
6 boy dog?

7 A It's a girl dog.

8 Q Oh, okay. Orleans. Interesting.

9 How long have you lived at this apartment?

10 A Three and a half years.

11 Q Continuously?

12 A Yes, sir.

13 Q Anybody live with you at this duplex, other than
14 you and Orleans, in the last 3 1/2 years?

15 A No, sir.

16 Q Did your wife, Julie Trexler, ever live with you at
17 this location?

18 A No, sir.

19 Q And you are divorced from Julie Trexler?

20 A I am.

21 Q Okay.

22 A Now, let me make one correction about somebody that
23 lived with me. My mother did have open-heart
24 surgery. She had it about three months ago, and
25 during her recovery and recuperation, she lived

1 with me for a period of -- well, she's still there
2 right now because she has to go to the doctor and
3 do the exercises and stuff, so she's lived with me
4 there probably about three months. But that's not
5 her residence. Her residence is in Clarendon
6 County. Because I live about three miles from the
7 hospital, it's convenient for her to have the
8 surgery done there.

9 Q She had her surgery at MUSC?

10 A Yes, sir.

11 Q Where are you currently employed?

12 A I'm employed for Borden Dairy Company of South
13 Carolina.

14 Q Where are they headquartered?

15 A North Charleston, South Carolina.

16 Q Is that an individually-owned or like a -- a
17 shareholder corporation?

18 A I'm not real sure. I know it's owned by a Mexican
19 holding company, Lala, and they bought 29 dairies
20 in the country, and Coburg was one of those and so
21 Borden Dairy of U.S.A. is part of Lala.

22 Q All right. And what is your title or your role --

23 A Route --

24 Q -- in your job?

25 A Route sales driver.

1 Q How long have you worked with Borden Dairy?
2 A One month.
3 Q What is the name of your immediate supervisor?
4 A Tim Johnson.
5 Q Mr. Johnson, is he -- would he be roughly in his
6 mid-40s?
7 A He would be. About 48, I believe.
8 Q He wouldn't have a gap between his two front teeth,
9 would he?
10 A I couldn't tell you that.
11 Q I think I might know him. Anyway, so Mr. Johnson,
12 is he head of all the -- the -- the sales -- the
13 route sales --
14 A Route --
15 Q -- drivers?
16 A -- sales drivers. Yes, sir.
17 Q What is your route?
18 A James Island, Johns Island, Folly Beach, Seabrook,
19 Kiawah Islands.
20 Q And do you work mostly for -- is your route
21 primarily residential or commercial sales?
22 A Commercial.
23 Q So you would go to local area grocery stores and --
24 Grocery stores, convenience stores. Yes, sir.
25 Q And what is your salary?

1 A Salary is \$32,000.

2 Q Thirty-two thousand annually?

3 A Yes, sir.

4 Q And if you could just briefly tell me what kind of

5 benefits -- health care benefits, 401(k) or

6 anything?

7 A They have health care benefits that you pay for:

8 dental, vision, et cetera.

9 Q What -- Lou Holtz said "et cetera." It drove me

10 crazy. What --

11 A It did.

12 Q -- what is it --

13 A Well -- well --

14 Q -- what is "et cetera"?

15 A -- I won't say it anymore, then.

16 Q What?

17 A I won't say it anymore, then.

18 Q Okay. What's "et cetera"?

19 A Et cetera means, you know, like, life insurance,

20 supplemental health, disability.

21 Q Is there a 401(k) or some sort of matching plan?

22 A There is a 401(k). I'm not sure how it works. I

23 don't participate.

24 Q Okay. And where did you work previous to last

25 month? So we'll just kind of work backwards.

1 A Right. I worked at Lowe's.

2 Q Which Lowe's location?

3 A James Island.

4 Q Folly Road?

5 A Yes, sir.

6 Q How long did you work at Lowe's?

7 A Three years.

8 Q When did you part ways with Lowe's?

9 A That was June 27th.

10 Q June 27th of 2011?

11 A Yes, sir.

12 Q And you began work with them in 2008?

13 A That's correct.

14 Q Was it continuous?

15 A Yes, sir.

16 Q And what was the name of your immediate supervisor

17 at the time?

18 A Kirk Poulnot.

19 Q I'll do her a favor. Could you spell that?

20 A P-o-u-l-n-o-t.

21 Q And what was your reason for leaving?

22 A There was a reorganization and re-staffing to lower

23 levels of staff. Had a new manager come in.

24 Q What was your role or your title?

25 A Title was a "delivery driver."

1 Q Had you been a delivery driver for Lowe's for the
2 entire three years --

3 A Yes --

4 Q -- Mr. Trexler?

5 A -- sir.

6 Q So with the restructuring, was this a restructuring
7 nationally or just this particular Lowe's --

8 A Both.

9 MR. WILLIS: And, Jim, I forgot to mention:

10 You want to let him finish his entire question
11 before you begin --

12 THE DEPONENT: Okay.

13 MR. WILLIS: -- just so --

14 THE DEPONENT: Cool.

15 Q So --

16 MR. GARFIELD: (To Mr. Willis) And thank you.

17 Q So this was a local and a national or a corporate
18 restructuring?

19 A There was a corporate restructuring first and then
20 there was a local restructuring.

21 Q So were you -- did you part ways based on a
22 reduction in force, or was this voluntary or a
23 dismissal? How would you care to --

24 A It was --

25 Q -- characterize it?

1 A -- dismissal.

2 Q So they -- they fired you?

3 A Correct. Terminated me.

4 Q They terminated you. And was this because of a not

5 necessarily a forced reduction or employment

6 reduction but the restructuring, they phrased it to

7 you how? Base -- the best you can understand it.

8 A Well, the best that I can understand it is --

9 Q Yes, sir.

10 A -- my entire team, from the manager right on

11 through to every delivery driver, were relieved of

12 duties for two reasons: one, to reduce the cost

13 and, secondly, to younger folks based on reduce the

14 cost and the overhead of the delivery operation.

15 Q Was there any kind of severance or any kind of --

16 A I had a --

17 Q -- package?

18 A I had a 401(k) with them.

19 Q So what does that mean? Is that something they

20 allowed you to, obviously, you know, keep whatever

21 was your balance in your 401(k)?

22 A Yes, sir.

23 Q Okay. Because that was your personal 401(k)?

24 A Yes, sir.

25 Q All right. But over and above that, was there any

1 kind of agreement or severance or post-employment
2 kind of compensation for you?

3 A No, sir.

4 Q Did you file for unemployment compensation?

5 A Yes, sir.

6 Q Did you collect unemployment benefits?

7 A No, sir.

8 Q And I see that you started your job, could we say,
9 at Borden in August of this year?

10 A August 29th, I believe it was.

11 Q Is the reason why you never collected benefits is
12 because you found a job in the meantime, or was it
13 that you never pursued that any farther?

14 A Both.

15 Q Okay. And when did your mother have the open-heart
16 surgery?

17 A She had a triple -- four -- quadruple bypass. It
18 was -- Lord, I don't really remember, probably
19 early part of this year.

20 Q Okay. How's her -- best to your understanding,
21 how's her state of health now?

22 A Not real good.

23 Q And to --

24 A Not what it was.

25 Q And describe it for me.

1 A Weak.

2 Q How old is she?

3 A Sleepy.

4 Q How old is she? I'm sorry.

5 A Seventy-five years old.

6 Q She's weak; she's sleepy?

7 A Yeah. No energy. She's been -- always been a very
8 energetic person but not there now.

9 Q Okay. Were they able to take care of the -- when
10 they did the open heart and the -- did they clear
11 the passageways?

12 A From my understanding.

13 Q Okay. During your time at Lowe's, was there any
14 kind of disciplinary actions? suspensions? with
15 respect to your employment?

16 A No, sir.

17 Q And to the best of your knowledge, you -- when you
18 worked there in 2008, do you remember which month
19 this was?

20 A I don't understand the question.

21 Q Sure. That's not a good question.

22 When did you start work at Lowe's? It was
23 2008. Do you know what month?

24 A It was May of 2008.

25 Q Would this correspond to about the time that you

1 moved into your current duplex?

2 A That would be correct. About the same time. Yes,
3 sir.

4 Q The duplex where you live now, has there been a
5 reason -- well, let me -- let me ask this:

6 If the police were to come out to your
7 residence, would that be the City of Charleston
8 Police Department since --

9 A Yes.

10 Q -- it's part of the municipality of city?

11 A Yes, sir.

12 Q Has the City of Charleston Police Department or the
13 Charleston County Sheriff's Department respond to
14 your duplex since you've lived there, for whatever
15 reason?

16 A Have they responded to my duplex? What do you mean
17 by that?

18 Q Have they come? Has a deputy or a police officer
19 come to your duplex, for -- for any reason --

20 A Yes, sir.

21 Q -- since you've been there? Okay.

22 Do you know about how many times?

23 A Twice.

24 Q Okay. Can you tell me about those two times?

25 A Certainly. One of them was at Firestone when I

1 left my car there to be repaired.

2 Q Uh-huh.

3 A A flat tire, whatever, rotation of tires. They
4 rotated them, and they assumed that I had backed
5 into someone there that I did not. And when I got
6 home, I called the police, and I told them that
7 some gentleman out there -- not the owner of the
8 vehicle but a employee of Firestone said I had
9 backed into a vehicle. I wanted to be clear I had
10 not. They came out and talked, and I followed up
11 with them closely, and I come to find out they also
12 wrote me a -- wrote something -- a ticket or
13 something like that, and told me that: "We'll see
14 you in court." The individual never showed up to
15 court. The officer didn't show to court, and they
16 never filed an insurance claim on the vehicle. So,
17 basically, it never happened. But I called them,
18 and they responded to my call about the incident
19 and came out and took an incident report.

20 The second time was I had an incident with my
21 son. He's a 16-year-old boy.

22 Q Well, let me --

23 A Yes, sir.

24 Q -- just talk about the first time.

25 A Yes, sir.

1 Q You've been -- you're very forthright with me, and
2 I appreciate it.

3 A Yes, sir.

4 Q This first time, do -- which Firestone location was
5 this?

6 A That was on Harbor View.

7 Q Do you remember about when this was as far as
8 the --

9 A Probably about April.

10 Q April of this year?

11 A Yes, sir.

12 Q No good deed goes unpunished, huh?

13 So you went and -- so was this the City of
14 Charleston or the Charleston County --

15 A As far as I know, City of Charleston.

16 Q Okay.

17 A Yeah. City of Charleston.

18 Q All right. Have you filed any kind of complaint
19 against anyone or any entity as a result of
20 this event?

21 A Absolutely not. No.

22 Q Okay. Now, this -- and I appreciate you sharing
23 that with me. Tell me about the second time.

24 A The second time -- I have a 16-year-old son; has no
25 discipline from his mother. I have him every other

1 weekend and two weeks in the summertime. And he
2 got into a little situation with me one Friday
3 evening, and, basically, I told him he has to
4 straighten himself up. And he pushed me and I
5 disciplined him and then he walked out and went to
6 the store and called his mom. His mom called the
7 police, and I was not at home. I was looking for
8 him when they pulled up behind me and asked me
9 about what had happened, and I told him he ran out
10 on me for no particular reason.

11 Q How did you -- you said -- I'm trying to
12 understand. You punished -- you disciplined him --

13 A Correct.

14 Q -- you stated. What -- how did you discipline him?

15 A I told him to sit on the couch and not get up, and
16 he didn't like the way I talked to him, so he
17 decided he was going to do different.

18 Q So he left the house?

19 A Correct.

20 Q And he called his mother?

21 A Correct.

22 Q From the store --

23 A I don't know.

24 Q -- or did he say?

25 A I -- he called his mother, is all I know.

1 Q Does he have his own --

2 A He does.

3 Q -- or the use -- well, let me finish my question

4 and then --

5 A All right.

6 Q And - and some of these questions are probably easy

7 to anticipate, but, frankly, I might not even know

8 what I'm asking --

9 A I know.

10 Q -- until I get to the question mark --

11 A And -- and -- and part of it, it's probably me.

12 I -- I'm the type person I just answer the

13 question. And part of me is that I'm a real

14 aggressive-type person, so that's probably a

15 combination of both, so excuse me --

16 Q Oh, that's fine.

17 A -- I'm sorry.

18 Q And -- and I -- and I get slower as the night goes,

19 so --

20 A And I need to slow down.

21 Q -- just let me finish. Well, that's -- that's

22 good. And if it isn't for me and you, it's for

23 these nice ladies --

24 A Absolutely.

25 Q -- because they need to take it all down.

1 A We always want to look out for the ladies.

2 Q That's right.

3 So you said you do know that he has a use
4 of his cell phone?

5 A He does.

6 Q All right. So you didn't know where he was; the
7 police were called out; is that correct?

8 A That's correct.

9 Q And this was the City of Charleston Police
10 Department?

11 A That's correct.

12 Q And what happened at that point?

13 A As far as I can determine -- because I really
14 haven't had a whole lot of communication with him
15 in the last three months. From what I can tell
16 about it is that he called his grandmother. His
17 grandmother called his mother, and then they called
18 -- she called, from what I can determine, the
19 police. And -- and then she -- as far as I know,
20 that's all that had happened to it. It's -- that's
21 it.

22 Q Do you remember about when this was? Your best
23 estimate's fine. I'm not going to hold you to a
24 certain date or month.

25 A About June 24th.

1 Q Oh, you do remember?

2 A Yeah.

3 Q On or about June 24th, 2011?

4 A Yep.

5 Q Is that before or after your divorce was final?

6 A Oh, well after.

7 Q Okay. When you say that he called his grandmother,
8 would that be Julie Trexler's mother?

9 A That'd be correct.

10 Q And what is her name?

11 A Peg Corbett.

12 Q What -- what city or town does she reside in?

13 A Summerville.

14 Q What does Peg Corbett do for a living?

15 A She's retired.

16 Q Do you remember where she's retired from?

17 A I don't believe she ever worked. She's was a
18 homemaker.

19 Q Okay. Okay. Any other reason or situation or
20 circumstance in which law enforcement would've been
21 out to your duplex that you know of?

22 A No, sir. There hadn't never been any reports filed
23 on any of them.

24 Q Okay. Have you been -- since the events giving
25 rise to this lawsuit in February or March of 2008,

1 have you been arrested since?

2 A No, sir.

3 Q Have you -- had you ever been arrested at any other
4 time in your life?

5 A Yes, sir.

6 Q All right. Let's go with that first. How many
7 times?

8 A Once.

9 Q And when was that?

10 A Boy, that was probably about -- I don't really
11 remember to be honest with you. My long-term
12 memory don't serves me -- don't serve me well.

13 Q Just -- do -- do the best you can.

14 A It was probably about 19 -- probably about 1993.

15 Q Okay. And what police agency?

16 A That would've been the City of Columbia, I believe.

17 Q And what was the charge?

18 A Charge was assault and battery with intent to kill.

19 Q All right. And what was the circumstances giving
20 rise to that charge?

21 A My ex-wife -- I'd just started to date her. Been
22 dating her about two weeks, and off of Greystone
23 Boulevard, she had an apartment. I was there one
24 evening -- second-floor apartment. In the window
25 there, heard a car keep rounding the building and

1 bumping the horn, rounding the building and bumping
2 the horn. I thought some kid or something. Went
3 out a flight of stairs. Her ex-boyfriend was down
4 there -- met us. We were going to dinner. He
5 pushed me against the --

6 Q Met -- you said "METT-is"?

7 A Met us downstairs.

8 Q Oh, he met you downstairs. I understand. Okay.

9 A Excuse my low country brogue.

10 Q No. I understand.

11 A But met us downstairs, and he had pushed me against
12 the wall. He's about six-two and weighed about 200
13 pounds. I was about five-eight and about a 135,
14 wet. And he pushed me against the wall and
15 threatened me and said, "I'm going to kill you,"
16 and this and that.

17 And I said, "No, you're not." And I
18 punched him below the belt. I ran to the car; the
19 glove compartment of my car had a pistol. I fired
20 it twice in the air. I told her to get in the
21 car -- stay. She jumped in the car. He followed
22 me downtown, down Greystone Boulevard on Huger
23 Street, and the police department used to be there
24 at the foot of Huger Street. I pulled in there. I
25 raised my hands in the air like this. Told the

1 officer -- I said, "If you just got a call somebody
2 firing two shots in the City of Columbia, that's
3 me; I'm turning myself in. This gentleman just
4 followed me down here in that car right there."
5 And I said, "He accosted me, and I'm coming down
6 here to turn myself in and help me get some
7 protection." I said, "I'm scared."

8 And they said, "Okay. You're under
9 arrest."

10 Well, this dude goes downtown there and
11 sees a magistrate and swears I had a warrant on me
12 for assault with intent to kill. I spend a night
13 overnight. Judge hears me the next morning. She
14 comes down there; a few witnesses come down there -
15 - friends, character witnesses --

16 Q For you?

17 A For me. Judge looks at the entire situation, she
18 says -- her words her were, "I understand what
19 happened here." And she let me out on my personal
20 recognizance. Mr. Harpootlian was the solicitor
21 then.

22 Q Uh-huh.

23 A He basically looked at it, said, "I understand what
24 happened." He said, "I'm going to put you on
25 pretrial intervention." I did 30 hours of

1 community services -- I believe it was 30 hours. I
2 did the community service. Anyway, the charges
3 were dismissed.

4 Q You went through PTI despite the fact that were
5 innocent?

6 A Absolutely. Yeah. I didn't want to spend the
7 money on a lawyer, and Harpootlian told me the best
8 way out was to go ahead and do the PTI and move on.
9 So I took his advice and moved on.

10 Q Do you know if that charge -- obviously, at the
11 completion or the graduation of the pretrial
12 intervention, the charge was dismissed?

13 A Correct.

14 Q Do you know if it was ever submitted to the
15 Richland County Grand Jury?

16 A I don't know any of that.

17 Q Okay. Did you subsequently take steps to have this
18 assault with intent to kill or assault and battery
19 with intent to kill -- which one was it?

20 A I don't really remember. Assault and battery with
21 intent to kill far as what I remember.

22 Q Did you take steps to have it expunged?

23 A Oh, absolutely. I hadn't done anything, so why
24 wouldn't I take the steps. Absolutely. Yes, sir.

25 Q So -- all right. We'll get back to that. Thank

1 you.

2 All right. Any other time you've ever been
3 arrested

4 A No, sir.

5 Q Any other time other than those two -- two
6 occasions -- in other words, again, back in March
7 of 2008 and this time in 1993?

8 A Yes, sir.

9 Q Other than those two occasions, have you ever been
10 detained or handcuffed by law enforcement --

11 A No, sir.

12 Q -- for whatever reason?

13 Have you ever brought a lawsuit --

14 A Wait. The only other time I was is what we're
15 going to talk about as far as Richland County is
16 concerned. I was handcuffed.

17 Q Uh-huh.

18 A I was arrested by Richland County in 2008. All
19 right, if you're talking about any time -- if
20 you're talking about my previous history. Now, if
21 you're going to talk about any time, I'll talk
22 about -- yeah. If any time between there and this,
23 yes. That was by Richland County, and back --

24 Q As a result of the horse --

25 A Yes, sir.

1 Q -- issue? Okay.

2 A Well, a -- a result of something. I was arrested
3 by -- and it was related to a horse issue, yes,
4 sir.

5 Q Okay. Is this -- is this the one with the five ill
6 treatment of animals?

7 A That would be correct.

8 Q Okay. Any other time other than the issue -- the
9 arrest for the ill treatment of animals or the
10 assault intent to kill? At any other time, have
11 you ever been detained or handcuffed by law
12 enforcement?

13 A That -- the answer that question would be no.

14 Q Okay. Thank you.

15 Have you ever brought a lawsuit before or
16 anyone bring a lawsuit in your behalf at any time
17 in your life other than this one?

18 A No, sir.

19 Q Have you ever been sued?

20 A No, sir.

21 Q Have you ever filed a claim with an insurance
22 company, for whatever reason, to the best of your
23 knowledge?

24 A Insurance claim with an insurance company outside
25 of the horse issue?

1 Q Well, let's break it down. I don't care really
2 about homeowners' for damage to the house or damage
3 to a car, that kind of thing. But have you ever
4 filed a claim with insurance company -- we can
5 start with horses.

6 A Personally, no.

7 Q Okay.

8 A Now, when I did file insurance claim for as
9 executor of the -- my father's estate which
10 included the horses, because I was court appointed
11 to be an executor. Now, I didn't want anything to
12 do with it, but I was appointed. I did have to
13 file paperwork on the mortality of horses that
14 deceased during the time I was the executor of the
15 estate.

16 Q I understand that. Okay. Have you ever filed a
17 workers' compensation claim?

18 A No, sir.

19 Q Have you ever brought an administrative complaint
20 or any kind of complaint to -- to any law
21 enforcement agency?

22 A No, sir.

23 Q Or how about any state or government agency or
24 entity?

25 A No, sir.

1 Q Okay. Okay. Tell me about your educational
2 background. Where did you go to high school?
3 A Manning Christian Academy.
4 Q Did you graduate there?
5 A Yes, sir.
6 Q What year?
7 A 1978.
8 Q What was your education beyond Manning Christian
9 Academy, if any?
10 A University of South Carolina
11 Q In Columbia?
12 A Sumter and Columbia
13 Q Okay. Did you receive a degree in either of those
14 locations?
15 A Sumter was a A.S. and Columbia was a B.S.
16 Q What was your major at Columbia?
17 A Columbia was management and finance.
18 Q Any education beyond the undergraduate level?
19 A Yes, sir.
20 Q And what is that?
21 A Golden Gates (as spoken) University, San Francisco,
22 California; master's of public administration.
23 Q Did you go out there, or was that a correspondence
24 course?
25 A It was through the United States Air Force at Shaw

1 Air Force Base.

2 Q So when you say it was through there, you were able
3 to take courses with Golden Gates (as spoken)
4 University while still living in Sumter?

5 A That is correct.

6 Q Or the Sumter area?

7 A That's correct.

8 Q Okay. And did you do that in the civilian
9 capacity, or do you have a military background?

10 A Civilian.

11 Q Okay. Do you have any military experience?

12 A No, sir.

13 Q Did you receive a master's degree?

14 A Yes, sir.

15 Q And when was that?

16 A That was probably about 1985.

17 Q And could you just give me an estimate as to when
18 you received your B.S. in --

19 A That was 19 --

20 Q -- Carolina --

21 A -- 1982.

22 Q Okay. Any other education?

23 A Other than the correspondence courses and
24 accounting classes at Midlands Tech and Central
25 Carolina Technical College.

1 Q What licenses have you held that would be -- would
2 have had to have been certified or licensed with
3 the department -- the LLR in South Carolina?

4 A None.

5 Q When you worked for -- in the capacity as an
6 agricultural -- what was your role as agricultural
7 commissioner? Was it assistant agricultural --

8 MR. WILLS: Object --

9 Q -- commissioner?

10 MR. WILLS: Object to form.

11 MR. GARFIELD: (To Mr. Wills) That's fine.

12 That's a terrible question.

13 Q Tell -- tell me what you did for the agricultural
14 commission.

15 A Finance budget, payroll, procurement, as
16 commissioner termed them, "back-room" -- "back-
17 office functions" of the agency.

18 Q Okay. And what was your title when you worked
19 there?

20 A I started out there under a previous commissioner.
21 And I was a legislative liaison, which is basically
22 is a support for the -- Charlie Sharpe, who I knew,
23 and errand boy for him.

24 Q All right. I'm sort of back-dooring into that
25 issue. I was -- I was hoping to get a -- you've

1 done good answering my questions. I'm going to ask
2 more questions about that --

3 A Okay.

4 Q -- in a moment. I'm still trying to get a
5 background.

6 Do you have any children other than your current
7 16-year-old son?

8 A No, sir.

9 Q And Julie Trexler has custody?

10 A Yes, sir.

11 Q Do you know her current address, please?

12 A No, sir.

13 Q Okay. Do you know what area of town she lives in?

14 A Summerville.

15 Q Okay. What is your agreement as far as child
16 custody or visitation, or what kind of court order
17 is there?

18 A Every other weekend and two weeks in the summer and
19 holidays -- like, we have to work the holidays out.

20 Q Okay. Did he spend two weeks this summer with you?

21 A No, sir.

22 Q Okay. And why not?

23 A His mother.

24 Q To your knowledge, when you say "his mother,"
25 you're saying that she did not comply with the

1 court order to provide you two weeks with your son?

2 A Yes, sir.

3 Q Did you challenge that, or did you pursue any
4 measures against her with any court as a result of
5 that?

6 A I have a lawyer working on that now.

7 Q Okay. Who is your lawyer?

8 A William Austin.

9 Q Okay. Is he with Brook Wills' firm?

10 A He is.

11 Q Did he assist you during the divorce proceedings?

12 A He did.

13 (Ms. Stafford enters the deposition
14 at 5:14 p.m.)

15 MR. GARFIELD: And just walking in is Shelley
16 Stafford. She's with our office.

17 THE DEPONENT: Hey, Shelley.

18 MR. GARFIELD: She keeps me straight.

19 Q When is the last time -- is your son's name "Trey"?

20 A That's correct.

21 Q Okay. Do -- when's the last time --

22 A His name is James Trey Trexler.

23 Q James Trey Trexler.

24 A Yes.

25 Q Does he go by "Trey"?

1 A He does.

2 Q Okay. When's the last time Trey has been over to
3 your duplex?

4 A June 24th.

5 Q This event that you discussed?

6 A Uh-huh.

7 Q Is that "yes"?

8 A Yes, sir.

9 Q Okay. Previous to June 24th, when there was a
10 visitation, would this be typically something you
11 would go to the Summerville area to pick him up or
12 his mother would drop him off with you?

13 A Summerville area.

14 Q Okay. So you must have some indication as to
15 whether -- where your son lives in Summerville,
16 wouldn't --

17 A No --

18 Q -- you?

19 A -- sir.

20 Q You don't know where your son lives?

21 A No, sir, I do not.

22 Q Do you know what neighborhood or what community or
23 what part of town?

24 A I think central downtown Summerville, but I -- I do
25 not know where he lives, no, sir.

1 Q Do you know what -- I don't want to know the name
2 of it, but do you know what school he attends?
3 A Summerville High School.
4 Q Okay. So it's not a private school? It's
5 Summerville --
6 A No, sir.
7 Q Okay. Where does -- to the best of your knowledge,
8 where does Julie work?
9 A College of Charleston.
10 Q What does she do for the college?
11 A She's some sort of administrative assistant, human
12 resource specialist of some sort.
13 Q How long were you and Julie married?
14 A From about 1994 to two thousand and -- 2008.
15 Q Okay. Did you have any physical separations during
16 that time?
17 A What do you mean by "physical separations"?
18 Q Separate living arrangements.
19 A She left probably early November 2007, and we did
20 not live together since then.
21 Q So the grounds for your divorce was one-year
22 separation?
23 A That's correct.
24 Q Was there ever a situation -- well, let me ask it
25 way: 1994 to 2008 -- it may be easier to ask it

1 this way: Before you lived at the duplex where you
2 currently reside, what was, at that time, your most
3 recent residence just prior to that?

4 A Prior to the --

5 Q -- you living at your duplex now.

6 A 412 Derby Lane, Hopkins.

7 Q How long had you lived at 412 Derby Lane?

8 A I don't really remember. Probably about ten years.

9 That'd be an estimation. I can't tell you
10 precisely but something like that.

11 Q That was your marital home with Julie?

12 A That's correct.

13 Q What part of -- 412 Derby Lane's in Richland
14 County?

15 A That'd be correct.

16 Q Okay. What part of Richland County is that in?

17 A Lower Richland.

18 Q That's a house that the two of you owned together?

19 A What's that, now?

20 Q It's a house that you and Julie had both co-owned
21 or had some sort of --

22 A At one time we co-owned a home together, yes.

23 Q Was it this 412 Derby Lane?

24 A It was.

25 Q All right.

1 A But -- but -- we co-owned it, but then I did not
2 own it in the later -- in the last two years that I
3 lived in the home at 412 Derby Lane. She owned it
4 and -- and that was the way it was. I mean, her
5 and an L.L.C. owned that home. I didn't own it the
6 last two years I resided there.

7 Q All right. Well, let's just talk about this 1994
8 to -- well, let's talk about the home, and then
9 we'll talk about the marriage a little bit.

10 You believe you lived or you resided at 412
11 Derby Lane for roughly ten years?

12 A Correct.

13 Q Okay. Do you remember about when you moved into
14 412 Derby Lane?

15 A It probably had to be about, I'm thinking, maybe
16 '97, somewhere like that, maybe.

17 Q Okay. So --

18 A I don't really remember, to be honest with you.

19 Q So your best estimate would be 1997 or 1998 through
20 ten years?

21 A Something like that, yes, sir.

22 Q Late 1990s through 2008?

23 A I'd say, yes, sir. Like I said earlier, I'm not
24 real good with background history.

25 Q Okay. Well, let's use as a -- as a watermark, a

1 little bit, your -- your arrest in this case.

2 A Okay.

3 Q Do you remember what date you were arrested? Would
4 this have been early March 2008?

5 A No. This would've been February 27th/26th,
6 somewhere in there.

7 Q Okay. How long after February 27, 2008, were you
8 living at 412 Derby Lane? So I'm trying to --

9 A How long after that?

10 Q Yes, sir.

11 A And, see, this gets rather complicated, so let me
12 back up again.

13 Q Sure.

14 A And -- and I'm trying to answer your questions
15 directly, but -- and I don't want to get into a
16 whole lot of verbiage in regards to it, but to
17 answer your question, see, I lived there in that
18 residence until -- from late '90s to 2008 -- yeah,
19 2008. And -- and before that point in time, I was
20 put out of that home. I was put out of that home
21 by Julie because she owned it; I didn't. And she
22 told me I had to get out or either --

23 (Conference room telephone rings.)

24 MR. GARFIELD: Sorry about that.

25 A So I got out in, like, December -- mid-December --

1 Q Of what year?

2 A 2008.

3 Q Okay.

4 A -- and I was living with my aunt, commuting to

5 Columbia. And so from that point, mid-December --

6 mid-December, right before Christmas, until March,

7 probably after these arrests in February 27/28 --

8 probably right after that, the twenty -- the first

9 of March, I lived back in the home because there

10 was no one in the home. And -- and Julie told me

11 at that time it was okay for me to live in the

12 home, to care for the home because she didn't want

13 the -- the place to deteriorate because she wanted

14 to sell it. And we were in divorce court, and the

15 judge had pretty much told us we need to sell it.

16 So the basics of what -- what happened in that case

17 was I lived there in that residence until mid-

18 December 2007, and then until -- I was out of it

19 until March 1st, 2008. Then I lived in it from

20 March 1st, 2008, to April 15th, somewhere in that

21 period of time, and then I moved to Charleston and

22 moved in a duplex.

23 Q Okay. You lived at 412 Derby Lane until, you said,

24 mid-December 2007?

25 A That would be correct.

1 Q And then, as of mid-December 2007, where'd you move
2 to?

3 A With my aunt. I lived with her.

4 Q And where was that?

5 A --

6 Q And what is the name of this aunt?

7 A McDonald -- Aunt Ann McDonald.

8 Q What city is that?

9 A --

10 Q What county is that in?

11 A Clarendon.

12 Q Okay. And what was your reason for leaving 412
13 Derby Lane in mid-December 2007?

14 A My wife put me out.

15 Q And you lived in Clarendon County with your aunt
16 for how long, again? Just breaking this down a
17 little bit.

18 A Probably about mid-December to about first of
19 March.

20 Q First of March of 2008?

21 A Yes, sir.

22 Q You did not live -- so your testimony is in January
23 and February of 2008, you were not living at 412
24 Derby Lane?

25 A Not a permanent residence, no, sir.

1 Q When -- in mid-December 2007, tell me the
2 circumstances in which you left. You said your
3 wife put you out.

4 A Correct.

5 Q Describe what happened.

6 A She found out, during the research or whatever
7 these -- you -- you -- you guys do as far as
8 attorneys, that I had --

9 Q Don't loop me into that group.

10 A Okay.

11 Q That's fine.

12 A Excuse me.

13 Q That's okay.

14 A -- that I had transferred the deed, my part, to my
15 mother's L.L.C.

16 Q Okay.

17 A But I had left her part alone, so the -- so the
18 deed read "Julie C. Trexler and Carolina Arabian
19 Show Horses, L.L.C." And she found out I didn't
20 have a part of the property, and since she did and
21 since I had done that, she wanted me out. And
22 that's what happened.

23 Q Did she express to you what -- what distressed her
24 about that, the fact that you didn't have part of
25 the property? I mean, you -- you -- you did

1 something and she's putting you out.

2 A Uh-huh.

3 Q Was it just based -- the fact that you went behind
4 her back to do that, or were there other reasons?

5 A You'd have to ask her.

6 Q All right. To your knowledge, were there other
7 reasons?

8 A I -- I really don't know.

9 Q All right. In the year 2007, how would you
10 describe your -- your marital relationship --

11 A Not very good.

12 Q All right. To --

13 MR. WILLIS: (To the deponent) Let me -- let
14 him finish the question.

15 THE DEPONENT: All right.

16 Q All right. To -- did the -- to your knowledge, did
17 the police -- when I say "the police" -- the
18 Richland County Sheriff's Department or any -- any
19 law enforcement officer come out to 412 Derby Lane,
20 for whatever reason, in the -- in the year 2007?

21 And I'll give you time to sort of go back and --

22 A I need you to rephrase that question. I don't
23 really understand, exactly.

24 Q Sure. You -- up until mid-December 2007 --

25 A Yes.

1 Q -- 412 Derby Lane was your marital home, correct?

2 A That's correct.

3 Q All right. During the calendar year 2007, did law
4 enforcement come out to that residence, for
5 whatever reason?

6 A Not that I'm aware of, except one occasion when --
7 that's when she put me out of the house. That's it
8 far as I know.

9 Q Tell me about that occasion, the -- why law
10 enforcement would be involved with --

11 A I don't really know. She had stuff in the home,
12 and she had left there probably about before
13 Thanksgiving, maybe first of November. And -- and
14 she had lots of stuff in the house, her clothes and
15 everything. And she wanted the stuff. It's cool.
16 She can have the stuff.

17 Basically, I got up one morning -- a Saturday
18 morning, I believe it was -- and she had pulled in
19 the garage and come in the backdoor into the
20 kitchen, and I said, "Hey. How" -- whatever, you
21 know, pleasantries, whatever. She went to her
22 bedroom, and I was on the computer there, and we
23 talked a little bit. And Trey was there with me.
24 I didn't want to cause a confusion with him in the
25 house, and -- and she -- next thing, I look out the

1 window -- the front -- front windows of the home,
2 and I notice the Richland County Sheriff's officer
3 car -- car -- black and white car in the front
4 yard. I said -- I asked her, I said, "Did you
5 bring the police here?"

6 And she said -- she didn't say anything. And
7 she then went to the door and let him in. And the
8 officer said, "She's accusing you of physical
9 abuse."

10 I said, "That's a" -- you know, "That's a lie.
11 I've never touched a woman. It's unfounded,
12 untrue."

13 And he said, "Well, let me inspect her." Two
14 of them came up and said -- one of them took her in
15 the back room, looked at her and everything, and
16 then she -- she -- he said, "She wants you out."

17 I said, "Okay. Well, what does that mean to
18 do? What" --

19 He said, "So you going to have to leave."

20 I said, "Okay. That's cool."

21 He said, "So leave for a couple hours. Let
22 her get her stuff out, and then you can come back,
23 and you can get your stuff."

24 And I said, "Okay." So I left for about three
25 hours, and I came back, and her stuff was gone.

1 And then she had told me pretty much, "Either
2 get out, or I'm going to get a court order and have
3 you put out." So I got my stuff and I got out.

4 Q Okay.

5 A And -- but her whole thing was that she wanted to
6 come there and she wanted to put me out the house
7 in December, so she called the police to come help
8 her. She wanted to claim physical abuse, which was
9 unfounded, untrue. Police looked at her. In their
10 police report, no evidence of such, because there
11 was no such. And -- but she was trying to get out
12 of my marriage because she wanted a 90-day divorce
13 or whatever it is, however it works. She wanted a
14 quick divorce, and -- and I know why now. But it's
15 just one of those things that happens, so that's
16 the reason why they responded.

17 Q Why do you -- what do you know now that --

18 A She --

19 Q -- you --

20 A -- was --

21 Q -- didn't --

22 A -- running --

23 Q -- know --

24 A -- around.

25 Q -- then?

1 A She was running around on me.

2 Q You knew this before or after you filed for
3 divorce?

4 A Before.

5 Q And you filed for divorce based on one-year
6 separation and not adultery?

7 A No, sir. I don't remember exactly what my attorney
8 then filed for. Mr. Austin could best tell you
9 that, but I just left it to the attorneys. Man, I
10 went through a lot, okay? And so my mind fades me.
11 So, basically, I don't remember exactly what it was
12 for. I know she filed for physical cruelty. I
13 probably filed for adultery. If I remember
14 correctly, I did, yes.

15 Q You -- but this was an -- since this was an
16 unfounded allegation, Mr. Trexler, you weren't
17 arrested or anything --

18 A No --

19 Q -- like --

20 A -- sir.

21 Q -- that by law enforcement?

22 A No. No.

23 Q Okay.

24 A No. No.

25 Q All right. So -- but -- so you left voluntarily?

1 A Yes, sir.

2 Q And you went to live with your aunt in Clarendon
3 County?

4 A Yes, sir.

5 Q Did you have any intention -- did you have any
6 intention, at the time you left in mid-December
7 2007, of ever returning back to 412 Derby Lane?

8 A Probably in my mind I thought I might at one time
9 or sometime, because I knew we had a long way to go
10 in the divorce.

11 Q Uh-huh.

12 A And I didn't know what my situation was going to
13 be. I knew that if I continued to be employed in
14 my capacity with South Carolina Department of
15 Agriculture, that I could probably afford to buy
16 her part out and I could probably take the
17 residence. Because my father had helped me build
18 that home, and, basically, I would probably try to
19 retain it. Certainly, I mean, it was in my mind,
20 but at that point in time, I didn't realize that I
21 would lose my job and that I would wind up in the
22 predicament I wound up in. And so at that point in
23 time, I realized I had no options but to sell it.
24 So in my mind when I moved out, I figured the
25 divorce has got a ways to go, and, yes, I will,

1 maybe, because we'd put a lot of blood, sweat, and
2 tears into it. I'd like to retain it. And all she
3 wanted was money out of it anyway, so, yeah, it was
4 in my mind that I might return there. But after
5 everything happened, I realized it wasn't going to
6 happen.

7 Q When did you part with your own title or ownership
8 in the house?

9 A That was two years prior, so it was probably about
10 2006.

11 Q So what gave you reason that made you think that
12 you were still going to end up as having some share
13 of ownership in the house at the time you didn't
14 own it?

15 A Because the basics of it is my father had put a lot
16 of work into it. I knew Julie wanted to sell it.
17 I loved the home. The basics of it is, man, I had
18 lived there a long time. My father put a lot of
19 money in it, and so, basically, I figured at some
20 point I'd be able to buy her out and -- and had
21 been -- I could pay the L.L.C. payments over a
22 period of time, and I could retain the home. It
23 was a nice piece of property, and, certainly, you'd
24 want to retain if you could. But didn't have own -
25 - have ownership of it, and I -- but I -- I knew

1 that I could probably work it out where I could
2 retain ownership of it.

3 Q Tell me a little bit about the property. What
4 square footage is the actual structure or dwelling?

5 A 3200 square feet.

6 Q Okay. And could you just tell me about the inside
7 of it as far as how many bedrooms, bathrooms, that
8 kind of thing?

9 A Three bedrooms, two and a half, living room, dining
10 room, sunroom, kitchen.

11 Q How many floors?

12 A One floor.

13 Q Is it like a ranch-style house? Similar?

14 A No, sir.

15 Q Okay.

16 A It's a colonial-style house with front porch,
17 columns.

18 Q Okay. And the property in which the dwelling sits,
19 what is the acreage?

20 A Four.

21 Q Okay. At the time you left 412 Derby Lane in mid-
22 December of 2007, that had been your home for many
23 years?

24 A It had been where I had resided for --

25 Q Is your --

1 A -- a number of years, yes, sir.

2 Q That you reside. Would you have not called that
3 "home," for whatever reason? I'm talking about
4 mid-December of 2007.

5 A Up until that point in --

6 Q Yes.

7 A -- time, I -- just like this duplex I rent, I
8 would've considered that home, yes.

9 Q Okay. Were -- lack of a better word, were you
10 hanging your hat somewhere else, other than 412
11 Derby Lane, in December -- mid -- by mid-December
12 2007?

13 A No, sir.

14 Q Okay. Why would you have paused to say that that
15 was your home at that time?

16 A Depends how -- I mean, there's lots of definitions
17 for "homes" and "domiciles," and some people, you
18 know, have a place at Seabrook, and they have a
19 place in Columbia. And it depends on what you mean
20 by "home," you know.

21 Q Okay.

22 A Some people would say, "A place in Seabrook is my
23 home," and, "A place in Columbia's my home." Some
24 people have many homes.

25 Q Fair enough. Tell me all the places in December

1 2007 that you had ownership interest in as far as
2 real property.

3 A I had no ownership in any property.

4 Q Okay. So your father -- at that time your father
5 was deceased?

6 A Yes, sir.

7 Q Your -- how many siblings do you have?

8 A By "siblings," you mean brothers and sisters?

9 Q Yes.

10 A One brother.

11 Q Okay. So your -- you had Hazelene, your mom --

12 A (Nods head up and down.)

13 Q -- Terry, your brother?

14 A (Nods head up and down.)

15 Q Is that "yes"?

16 A Yes, sir.

17 Q Okay. Would you have considered Hazelene's
18 residence your home?

19 A No, sir.

20 Q Okay. So in mid-December when you leave your --
21 that was your primary residence that you stated,
22 correct?

23 A December 17th at 412 Derby Lane, right. Yes, sir.

24 Q All right.

25 A If you just talking about home, that's what I

1 considered home, yes, sir.

2 Q I understand. And that's fair, and I appreciate
3 the -- you -- you explaining that.

4 Now, there's -- there's a -- an allegation in
5 the complaint about ownership or any kind of
6 relationship that you may or may not have had to
7 certain animals. Tell me, in -- by December 17th,
8 2007, the time you were put out of your home or you
9 voluntarily left, whichever, tell me what kind of
10 animals were on that property.

11 A I really couldn't tell you, to be honest with you.
12 As far as December 17th, I had a dog. Julie had a
13 dog, but she had left there, just deserted and
14 gone.

15 Q Well, let's talk about each of those. You had a
16 dog and Julie had a dog?

17 A Yes.

18 Q What breed was your dog?

19 A My dog was a German shepherd.

20 Q What was this German shepherd's name?

21 A Blue.

22 Q Blue?

23 A Blue.

24 Q Blue?

25 A (Nods head up and down.)

1 Q Okay. How long had you had this German shepherd?
2 A About ten years.
3 Q Has it since passed?
4 A Yes, sir.
5 Q Okay. When did -- when did Blue pass?
6 A It was probably two thousand and -- no. Ten --
7 probably 2010.
8 Q Okay. And your wife's dog, what breed was this?
9 A It was a -- hmm. It was poodle mix -- some sort of
10 poodle mix. Poodle something. Some kind of poodle
11 mix.
12 Q Like a standard --
13 A Pekepoo --
14 Q -- poodle mix --
15 A Pekingese poodle's what it was.
16 Q -- standard poodle mix or like a toy --
17 A Small --
18 Q -- poodle --
19 A -- one.
20 Q -- mix? Okay.
21 A Very small dog.
22 Q And what was the name of this dog? Do you
23 remember?
24 A Tyke.
25 Q Tyke?

1 A Yes, sir.

2 Q Is Tyke still alive?

3 A I don't know.

4 Q All right. When you left, did Blue leave with you
5 to go to your aunt's house, or did Blue stay at 412
6 Derby --

7 A Stayed.

8 Q -- Lane?

9 Okay. Let's just talk about, generally, the
10 calendar year 2007, the time that you called 412
11 Derby Lane "home" and you lived there in your
12 marital -- your capacity as man and wife, with your
13 son, correct?

14 A Yes. Correct.

15 Q All right. What other animals, that you recall,
16 lived on that property?

17 A In 2007 there was a -- one horse. It was a horse -
18 - it was a gelding and it belonged to my mother.
19 And I had him there for one reason and one reason
20 only: Cut the grass so I didn't have to cut 4
21 acres. Only had to cut a acre. And he did a
22 pretty good job with it. But, anyway, name was
23 Nova, N-o-v-a.

24 Q Uh-huh. And it belonged to your mother?

25 A Correct.

1 Q Okay. Any other horses that you knew that was on
2 that property?

3 A No, sir. Not until late 2007.

4 Q Okay. Tell me what happened in late 2007.

5 A I -- my mother --

6 (Sotto voce between Mr. Garfield and
7 Mr. Hayes.)

8 A I think the farm was foreclosed on, and --

9 MR. GARFIELD: Excuse me.

10 A -- when it was foreclosed on, she had not many
11 options in regards to -- to how she was going to
12 keep a stud horse, and she had four stud horses.
13 And all four horses, she moved to 412 Derby Lane
14 probably about end of October '07, and put them in
15 four stalls out there. My daddy had built a four-
16 stall barn out there.

17 Q Okay.

18 A And she put them in there, and she -- I didn't know
19 anything about them; didn't care for them. So,
20 basically, those were out there, that I knew of, at
21 least four, and -- through at least two -- end of
22 2007.

23 Q Okay. When you said you didn't know anything about
24 them and you didn't care for them --

25 A Nope.

1 Q -- why are you disassociating yourself with it to
2 just volunteer that to me?

3 A Because I didn't care for them. I mean, basically
4 of it, I mean, they came there, but as far as me
5 knowing anything about them or anything like that,
6 I mean, like I knew about my dog or about Julie's
7 dog, I didn't know anything about the horses. All
8 I knew is the -- that she had put horses on the
9 property.

10 Q Did you have any kind of practical training or --
11 or formal training in -- in caring for horses?

12 A No, sir.

13 Q Okay. Have you ever owned any horses?

14 A Yes, sir.

15 Q When you said you didn't know anything about them
16 and care about them, you allowed your mom to put --
17 to put these horses on your property, correct?

18 A Not my property.

19 Q Oh. It wasn't your property anymore.

20 A No, sir.

21 Q That's right. Well, do you know if Julie had an
22 opinion or a say as to whether these horses would
23 come on the property? Do --

24 A You would have to ask her if she had an opinion. I
25 don't know.

1 Q Well, back then, do you know if she, you know,
2 provided you any resistance, or did she agree to
3 it? Did --

4 A I think she had her mind on other things.

5 Q Well, was -- do you remember a conversation or
6 discussion with --

7 A No --

8 Q -- her --

9 A -- sir.

10 Q -- about, "Look, your mother's putting certain
11 horses on my" -- you don't remember one way or the
12 other?

13 A No, sir.

14 Q So she may have been for it? She may have been
15 against it? You just don't remember? Is that what
16 you're saying?

17 A We never had a discussion about it.

18 Q Okay. So the answer is you never did have a
19 discussion about it?

20 A We never had a discussion about it. She never
21 mentioned any pros or cons or negatives or
22 positives to me about it.

23 Q Do you know if these four -- any of these four stud
24 horses -- any or all of them -- were the ones that
25 were ultimately seized?

1 A All four.

2 Q Okay. Well, if you didn't know anything about them
3 and didn't take care of them, who did?

4 A Be my mother and be my brother.

5 Q And you're saying you didn't necessarily permit it
6 -- you didn't permit it? You're just saying it
7 wasn't your property --

8 A I --

9 Q -- to --

10 A I don't understand the question.

11 Q Well, it wasn't your property to give consent for
12 them to --

13 A That's --

14 Q -- come --

15 A -- correct.

16 Q -- in? All right.

17 So did you ever approach your mother and your
18 brother to say, "I give you permission," or, "It's
19 not my property. You can't do this. You have to
20 ask the owner"? Or did they just sort of plop the
21 horses down and just assume everybody would agree?

22 A No. I expressed concerns that I didn't want the
23 horses on the property, that I had a lifestyle
24 there and, basically, I did not want the horses on
25 the property.

1 Q You expressed your concern to both your mother and
2 your brother?

3 A That's correct.

4 Q And this was back in -- between --

5 A -- late two -- uh-huh.

6 Q -- late 2007?

7 A That'd be correct.

8 Q Okay. And -- and exactly what concerns did you
9 express to them about your lifestyle and any
10 objections you had?

11 A I mean, they had a commercial farming operation,
12 and, basically, I was living in a residential
13 subdivision, and they're bringing stud horses to a
14 residential subdivision. That was my concern.

15 Q Okay. Well, specifically, to somebody who might
16 not know as much about horses as --

17 A Yes --

18 Q -- you --

19 A -- sir.

20 Q -- do, tell me what your --

21 A I don't know anything about horses, but I'll answer
22 your question.

23 Q Well, to -- to the degree you do know something
24 about horses, tell me what concerns you would have
25 about having bay stud horses in a residential

1 subdivision.

2 A Anybody that knows about stud horses, you got to
3 keep them stalled up. Anybody knows about stud
4 horses, I mean, in the springtime, I mean, you
5 know, I used to hear them talking about it -- my
6 brother talking about the horses being bred and how
7 the horses would cut up and how stud horses could
8 have -- excuse me, ladies -- stud horses that have
9 a certain genital parts --

10 Q Uh-huh.

11 A -- go proactive in the springtime.

12 Q Okay.

13 A And I was concerned in a residential subdivision,
14 if one of those horses broke out and there's kids
15 in our neighborhood and me not knowing -- I mean,
16 are -- are they like dogs? Are they going to bite
17 somebody? Going to kick somebody? What they going
18 to do, you know?

19 Q Uh-huh.

20 A I mean, you got kids in a residential subdivision
21 on bicycles, and they bringing a stud horse to a
22 property, I'm going to raise a certain concern
23 about it.

24 Q Okay. So what about your lifestyle did you think
25 that impacted that unfavorably?

1 A Well, maybe I used the wrong word, "my lifestyle."
2 I'm talking about I had a family there, you see? I
3 was trying to raise a son, and I was trying to get
4 my marriage back together. And the basics of it is
5 I felt like with them moving into -- onto the
6 property with the horses, that -- and I had a -- a
7 -- a young son there that was 11 years old -- 10 or
8 11 -- that I didn't want him around those type of
9 horses if they -- if they were as proactive as I
10 heard that they were.

11 Q Okay. Well, what did you do over and above or in
12 addition to voice your concerns to your mother and
13 your brother?

14 A That's all I could do, yeah.

15 Q Well, what did -- what did they say back to you?

16 A It wasn't my property.

17 Q Well, whose -- whose consent did they -- did they
18 get or receive?

19 A Nobody's.

20 Q Okay.

21 A They didn't have to get any, I suppose. They owned
22 the property.

23 Q Okay. Other than voice your concerns or objections
24 to them and you felt like you didn't have any
25 standing to object to it because it wasn't your

1 property, what, if anything, did you do, as far as
2 did you contact law enforcement? Did you try to
3 contact anybody to help out?

4 A For what reason?

5 Q Well, you were concerned about --

6 A Yeah.

7 Q -- your son living in a house, correct?

8 A Yep.

9 Q He may have friends over, or there may be other
10 children around, correct?

11 A (Nods head up and down.)

12 Q Is that "yes"?

13 A That's correct.

14 Q All right. And you were thinking that maybe that
15 there was an inherent danger about these horses,
16 based on their breed or maybe their demeanor,
17 correct?

18 A That'd be correct.

19 Q All right. Well, I'm saying what, if anything, did
20 you do except -- or in addition to express your
21 concern to your mother and your brother?

22 A What do mean what else did I do?

23 Q What could you -- what did you do?

24 A What --

25 Q I --

1 A -- could --

2 Q -- mean --

3 A -- I have done?

4 Q Well, the -- we're going to -- just want to make
5 sure you didn't try to do something else.

6 A I felt like -- I mean, what else could I do? You -
7 - I mean, there's no law being broken, so you don't
8 call the police unless when you -- unless you
9 suspect there's a law being broken. As far as I
10 knew and far as I could determine, there was no
11 legal standing in regards to calling the law
12 enforcement or having anybody come out and do
13 anything.

14 Q And who technically owned the property in -- at
15 this time, late 2007?

16 A Carolina Arabian Show Horses, L.L.C., and Julie C.
17 Trexler.

18 Q And you don't know if Julie Trexler, your wife, had
19 any sort of objections to this?

20 A I do not know.

21 Q Okay. So when you moved out into Clarendon County
22 and you lived there -- now let's go and talk about
23 January and February 2008 -- those four stud horses
24 stayed on that property, to your knowledge?

25 A To my knowledge.

1 Q Okay. Blue stayed on that property, correct?

2 A Absolutely.

3 Q Okay. Did Blue have an area that he was
4 essentially confined to, or was he more in the
5 house itself?

6 A House and yard.

7 Q Do you know if he would have any kind of
8 interaction with any of the horses?

9 A Blue, no.

10 Q Okay. And who took care of Blue during this time?

11 A My brother. And I took care of him as well. I
12 mean, it wasn't like I just deserted him. I mean,
13 you know, I'd stop by there and check on the dog on
14 the way. I mean, it's right on the route right
15 into Clarendon County. Through Sumter into
16 Clarendon, it's right on the route, so I'd stop
17 there, check on my dog or whatever, check on her
18 dog. And it's just, like, I didn't desert them.

19 Q Okay. Well, how about your son? Did you check on
20 your son?

21 A My son wasn't there. My son had moved --

22 Q Okay.

23 A -- to Summerville.

24 Q In January of 2008?

25 A Absolutely.

1 Q Who was living in Summerville?

2 A He was.

3 Q With his mom?

4 A Absolutely.

5 Q Okay. When did she leave the residence? The same

6 time you did?

7 A She left about November, and then she came, put me

8 out in December.

9 Q Hold on. She left 412 Derby Lane, but she put you

10 out of 412 Derby Lane in December?

11 A She left in November. As far as I know, she was

12 commuting back and forth to Columbia in her job.

13 And then in December she came back and put me out

14 about mid-December and got her stuff on that day,

15 and then that was the end of her. I hadn't seen

16 her since, really, except in court.

17 Q Let's just talk about January of 2008. How often

18 would you -- or how many times would you say you

19 have gone by that house, 412 Derby Lane?

20 A Since two thousand --

21 Q No. In January of 2008. Let's just --

22 A Yeah.

23 Q -- take that month, for example.

24 A Okay.

25 Q How many times would you have gone to 412 Derby

1 Lane, for whatever reason, which would include
2 seeing --

3 A Okay.

4 Q -- your German shepherd?

5 A Yeah.

6 Q Or checking on him.

7 A Sure. I got Trey every other weekend, so probably
8 every other weekend. I didn't want to upset him
9 and drag him to Clarendon County. He was already
10 going through a divorce, his mom and me, so every
11 other weekend I'd take him back to his home, the
12 only home he knew, 412 Derby Lane. Every other
13 weekend.

14 Q So we had, more -- more probably than --

15 A Four --

16 Q -- not, two weekends in January?

17 A That's correct.

18 Q Okay. Other than taking your son -- your 11-year-
19 old son back to 412 Derby Lane for two weekends,
20 tell me any other instances in January of 2008 you
21 would've gone by 412 Derby Lane.

22 A I'd have probably gone by there a couple of times a
23 week for breakfast. I'd have went by there for --
24 my mom might've called and said, "Come by and have
25 dinner." I might've come by there once or twice,

1 so I think if you count them all up, less than ten
2 in a whole month.

3 Q But you would've spent two entire weekends there?

4 A Concentrating on my son, yes, sir.

5 Q Okay. And it wouldn't have been unusual for you
6 two times a week in addition to that for -- for a
7 meal or to check on your --

8 A That'd --

9 Q -- dog?

10 A -- be about right, yes, sir.

11 Q All right. So about two weekends and then eight
12 additional brief visits?

13 A That'd be fair.

14 Q All right. Let's talk about February of 2008. I
15 don't -- not even talking about the time that there
16 was a -- not talking about your -- before your
17 arrest, obviously. Let's just talk about that
18 month. Did your son similarly have two weekends
19 where he would come up --

20 A Yes, sir.

21 Q -- to 412 Derby Lane?

22 A Yes, sir.

23 Q Would you also characterize it to say that in
24 February of 2008, you would've spent an additional
25 two weekends at that house?

1 A In February 2008?

2 Q Yes, sir.

3 A That'd be correct.

4 Q All right. And then more or less eight brief
5 visits that may include meals with your family or
6 to check on your dog?

7 A Estimation.

8 Q Is that -- is that a --

9 A That'd be fair.

10 Q -- a fair estimation?

11 A That'd be fair.

12 Q All right. And then after your arrest, the next
13 time you went to 412 Derby Lane when you said was
14 where you would deem it as a primary residence or
15 you staying there for any length of time would've
16 begun when?

17 A Probably about March 1st. I was probably arrested
18 on the 27th, so about March 1st, somewhere --
19 that'd be an estimation.

20 Q Okay. And did you live anywhere between March 1st,
21 2008, to the time you moved into your duplex?

22 A No, sir.

23 Q Then, it was primarily 412 Derby Lane?

24 A Yes, sir.

25 MR. GARFIELD: Let's just take a five-minute

1 break.

2 THE DEPONENT: Okay.

3 (Off the record from 5:48 p.m. to
4 6:09 p.m.)

5 THE EXAMINATION BY MR. GARFIELD CONTINUES.

6 Defendants' Exhibit No. 1, Article from
7 "The State" newspaper, entitled
8 "Assistant ag chief faces kidnap charge,"
9 dated 02/28/08; 2 pages.

10 Defendants' Exhibit No. 2, Letter to
11 Robert D. Garfield, Esquire, from Terry
12 H. Ridgeway, dated 07/27/11, including
13 "Preliminary Appraisal of Financial Loss
14 Due to the Alleged Wrongful Discharge
15 from Employment of Mr. James W. Trexler,"
16 dated 07/14/11; 7 pages.

17 Defendants' Exhibit No. 3, "Assessor Data
18 View," dated 12/31/09; 3 page.

19 Defendants' Exhibit No. 4, List of names;
20 1 page.

21 Defendants' Exhibit No. 5, Arrest report,
22 dated 07/22/10; 2 pages.

23 Defendants' Exhibit No. 6, Internet
24 search page for James W. Trexler; 3
25 pages.

1 Defendants' Exhibit No. 7, "Equine
2 Infectious Anemia Laboratory Test," dated
3 05/24/07; 1 page.
4 Defendants' Exhibit No. 8, "GlobalVetLink
5 - Equine Infectious Anemia Laboratory
6 Test," dated 11/22/07; 3 pages.
7 Defendants' Exhibit No. 9, Incident
8 report, dated 02/13/08; 2 pages.
9 Defendants' Exhibit No. 10, Statements,
10 dated 02/13/08 through 03/10/08; 3 pages.
11 Defendants' Exhibit No. 11, "Search
12 Warrant," dated 02/26/08, including
13 "Affidavit," dated 02/26/08, "Exhibit
14 'A'," and "Return," dated 02/26/08; 5
15 pages.
16 Defendants' Exhibit No. 12, "Single
17 Arrest Report," dated 02/27/08; 1 page.
18 Defendants' Exhibit No. 13, Detainee
19 status, dated 02/28/08; 1 page.
20 Defendants' Exhibit No. 14, "Affidavit,"
21 dated 02/26/08, including "Indictment for
22 Ill Treatment of Animals," dated 03/13/08
23 and "Indictment"; 3 pages.
24 Defendants' Exhibit No. 15, "Affidavit,"
25 dated 02/26/08; 1 page.

1 Defendants' Exhibit No. 16, "Affidavit,"
2 dated 02/26/08, including "Indictment for
3 Ill Treatment of Animals," dated 03/13/08
4 and "Indictment"; 3 pages.

5 Defendants' Exhibit No. 17, "Affidavit,"
6 dated 02/26/08, including "Indictment for
7 Ill Treatment of Animals," dated 03/13/08
8 and "Indictment"; 3 pages,

9 Defendants' Exhibit No. 18, "Affidavit,"
10 dated 02/26/08, including "Indictment for
11 Ill Treatment of Animals," dated 03/13/08
12 and "Indictment"; 3 pages.

13 Defendants' Exhibit No. 19, Property
14 list, dated 02/29/08; 3 pages.

15 MR. GARFIELD: All right, we're back on the
16 record. Brook, did you want to have an
17 opportunity to talk to your client? I provide
18 you copies of -- with maybe 19 exhibits in
19 this case.

20 MR. WILLS: Yeah, I think that -- that all of
21 these things are things that he's familiar
22 with and --

23 MR. GARFIELD: Okay.

24 MR. WILLS: -- and we don't need to have any
25 kind of conference about them.

1 MR. GARFIELD: Okay. Thank you.

2 Q I'm going to show you the -- the Defendants'
3 Exhibit No. 1, is a "State" newspaper article.
4 It's a two-page, and you and I will talk about that
5 in a moment. But I'm going to first ask you about
6 Exhibit No. 2, this is a document in which your
7 attorney sent to the other counsel. It's entitled,
8 "Preliminary Appraisal of Financial Loss Due to the
9 Alleged Wrongful Discharge From Employment of Mr.
10 James W. Trexler." And, essentially it's a report
11 done by a gentlemen named "Oliver Wood"; he's an
12 economist, okay?

13 A Okay.

14 Q He's relying -- I'll represent to you, is relying
15 on certain facts in order to -- to lack of a better
16 term, crunch numbers to understand what kind of
17 economic loss you allege in this case.

18 A Okay.

19 Q Okay? If you could just turn one more page, yeah,
20 I think it is. Where it says, "Facts Taken Into
21 Consideration." Do you see where it says that?

22 A Yes, sir.

23 Q And it says, "At the time of termination, Mr.
24 Trexler was employed as an Executive Assistant III
25 with the Department of Agriculture." Is that a

1 factual statement?

2 A Yes, sir.

3 Q All right. It says, "He began employment with the
4 Department of Agriculture on January 15th of 2003."

5 Is that a true statement?

6 A Yes, sir.

7 Q All right. Not going to hold you to that date, but
8 on or about January 15th --

9 A Yes, sir.

10 Q -- of 2003?

11 A (Nods head up and down.)

12 Q Okay. All right. And that the -- the -- your --
13 let's talk a little bit about the organizational
14 chart with the Department of Agriculture. When --
15 at the time that you were hired, tell me how you
16 would've fallen down in the chain of command?

17 A When I was hired, I was hired away from the Ways
18 and Means Committee. And I was sent over there on
19 a temporary basis, and Mr. Sharpe, the
20 commissioner, since he wasn't very well versed in
21 the operation of state government, asked me to stay
22 on and as support, and as a -- to take care of him
23 basically, be an errand boy, whatever. So I
24 accepted his position. I made an application and
25 accepted his position. And at that point in time,

1 I really had no -- in the organizational chart, I
2 really didn't know where I fell in the
3 organizational chart. All I knew is I worked for
4 him.

5 Q All right. You answered directly to Mr. Sharpe.

6 A That's correct.

7 Q Who was the -- would it -- what would be the
8 commissioner of the Department of Agriculture?

9 A Yes, sir.

10 Q All right. And you -- let's talk a little bit
11 about your work history up until that point. In
12 other words, up until January of 2003, all right?

13 A Okay.

14 Q Tell -- tell me what your professional background
15 was as far as working in government, and what have
16 you.

17 A I was a career bureaucrat, career state employee.
18 I had worked for the Public Service Commission as
19 an auditor.

20 Q What -- what commission?

21 A The Public Service Commission --

22 Q Oh.

23 A -- as an auditor. I'd worked for the Budget and
24 Control Board as a budget analyst. I'd worked for
25 the Ways and Means Committee as a research analyst.

1 Dropping back before the Public Service Commission,
2 I'd worked at the University of South Carolina as a
3 intern, what else. And -- but then after the Ways
4 and Means Committee, I went to work for the
5 Department of Agriculture, and that was pretty much
6 it. Most -- most of my background was in budgets,
7 finance, accounting.

8 Q Okay. So at the time you began your stint with the
9 Department of Agriculture in January of 2003, you
10 had previously worked for the Public Service
11 Commission?

12 A Correct.

13 Q The Budget Control Board?

14 A Correct.

15 Q The University of South Carolina?

16 A Not in that order. The University of South
17 Carolina would've been before the Public Service
18 Commission.

19 Q As an intern?

20 A Yes, sir.

21 Q Okay. So you did -- let's just go back and -- and
22 I appreciate you trying to get it in chronological
23 order, so it would've been initially the University
24 of South Carolina --

25 A Yes, sir.

1 Q This is after -- after college, correct?

2 A Yes, sir.

3 Q Then the Public Service Commission?

4 A Well, that was during college, during --

5 Q Oh, during college?

6 A -- during college.

7 Q And then upon your graduation from USC, you went to
8 work thereafter with the Public Service Commission?

9 A Yes, sir.

10 Q And then the Budget Control Board?

11 A Yes, sir.

12 Q And then the Ways and Means Committee?

13 A Yes, sir.

14 Q Okay. Who did -- who was your immediate
15 supervisor? Who did you report to in the Ways and
16 Means Committee?

17 A Frank Fusco.

18 Q Okay. And you worked with the Department of
19 Agriculture continuously from January of 2003 to
20 February of 2008?

21 A Yes, sir.

22 Q Can you tell me in the best of your ability -- and,
23 like I said, I'm not going to hold actual dates.

24 But just walk me through a little bit of your
25 history as far as your employment with the

1 Department of Agriculture, including promotions and
2 that sort of thing.

3 A Okay. Went there, like I said, as support for
4 Charlie Sharpe. Basically, errand fellow for him,
5 doing whatever -- whatever he needed, whatever that
6 was. Wasn't much to the job other than the fact of
7 taking care of him. He had -- at that point in
8 time, he had hired a lady that was in charge of the
9 accounting, budgeting, procurement and all that
10 stuff. And he had another gentleman who's in
11 charge of over all the legislative stuff; the
12 lobbying and all that stuff, you know, out on -- on
13 a contract. He had to resign, and, basically,
14 another guy was appointed by the Governor, and that
15 was Mr. Weathers. And Mr. Weathers basically came
16 in -- I think it was in 2004, I believe, late 2004.
17 And he immediately set out to do a -- to do a study
18 of -- of the agency and how it ought to be
19 organized. And so he got feedback from the
20 employees, and after he got through with his
21 analysis and everything, I was working as a --
22 well, the terminology on the thing was a
23 "legislative liaison." Even though I never -- even
24 though I didn't do any lobbying, it was just a
25 title Sharpe gave me. He looked at it and said,

1 "No, I don't think this is the way we ought to do
2 business," so then he reorganized.

3 In his reorganization, he looked at my
4 background, and my application, résumés and
5 everything, and said, "Jim, I think you've better -
6 - could serve me better in the function of finance
7 and budget, since that's where primarily your
8 background's been with where -- where -- where
9 you've worked." So he made some changes and put me
10 into the finance and budget area of the agency.
11 And --

12 Q This would've been sometime in 2004/2005, maybe?

13 A I don't -- like I said, dates escape me. It's
14 probably 2005, probably.

15 Q Okay.

16 A So we did that and for -- for the duration of my
17 tenure there. He had some other folks he wanted to
18 promote, and, basically, in the hierarchy of stuff,
19 I think initially he said, "I don't really know
20 what we're going to name you, what your title's
21 going to be, but I'll come up with something along
22 the line that fits what you're doing."

23 "Cool." So we went down the road with that,
24 and then, after a while, he found two employees
25 there, one other, two of them, and said, "Those two

1 folks been here like 15/16 years; we need to
2 promote those guys."

3 "Okay."

4 "You're to help me get that done."

5 "Okay." So we worked out to whereby he got
6 those in a position, and he said, "Oh, okay. What
7 we're going to name you now is assistant
8 commissioner."

9 I said, "Okay. What exactly does that mean?"

10 He says, "What that's going to do is you're
11 going to be in charge of what he termed "the back-
12 room functions" of the agency."

13 And I said, "Okay." So he let me do that. My
14 responsibilities primarily were to make sure that
15 the organization paid its bills, that we procured
16 under the state procurement law, and that the IT
17 section ran like it ought to run. And then the
18 Commissioner Weathers, being from the farm, didn't
19 know a whole lot about budget and finance. So
20 whenever he had to go to a meeting in regards to,
21 let's say, a legislator initially early on, in the
22 first -- my -- my first tenure in this job, he
23 would take me with him. Because he wouldn't know
24 the budget, and, periodically, once a month we'd
25 meet on the budget.

1 Then after a while, he -- we -- we had one
2 legislative lobbyist, then he hired another one,
3 which used to be the director of PRT, and brought
4 him on as -- as a lobbyist. We had two lobbyists,
5 and my primary support function was to support him,
6 the commissioner, and the two lobbyists in regards
7 to the financial information they needed, and the
8 accounting information they needed, to inform
9 legislators so that they could make the appropriate
10 decisions in regards to where the budget was at,
11 running a deficit; not running a deficit. Paying
12 your bills; not paying your bills. What's your
13 projects. And as we moved on in this thing, he
14 said, "Look, you've got all this experience; we're
15 trying to move this farmers' market. We need you
16 to go over here, and I need you to help me"; and,
17 basically, I want you to be the project manager for
18 relocating the farmers' market.

19 And it was kind of like, What does that mean?

20 "Well, you're going to keep up with the
21 accounting. When the bond bill comes out, we got a
22 bond bill, you keep up accounting on the bond bill.
23 You keep up accounting on the projects, and if I've
24 got questions, and I've got to go meet with someone
25 about money, you go with me."

1 So the basics of it is, I just financially ran
2 the -- the program in relocating the -- the
3 farmers' market.

4 Primarily, that's what I did. I mean, it
5 sounds like a glorified position: assistant
6 commissioner. It wasn't anything but a back-room
7 accountant, and that's all I did. And I ran the
8 agency internally from back-room function; I had no
9 public presence. The basics of it is, he was the
10 one I was giving the information to. So my whole
11 career was that. And when I got there and worked
12 for the Department of Agriculture, it was the same
13 thing. Commissioner Weathers, like I say, he was
14 from a farm; he didn't know. And so, basically, he
15 asked me to make sure the bills were paid, and to
16 make sure the lights stayed on, and make sure he
17 had plenty of money in his gas tank to go where he
18 needed to go across the state. And that was my
19 function.

20 Q To the best of your recollection, about when were
21 you named assistant commissioner?

22 A It was probably about the same year; probably two -
23 - I -- I'd -- really, like I said, I don't
24 remember; it's probably about 2005.

25 Q Okay.

1 A I mean, title is one thing; doing the duties -- I
2 was doing the same thing I'd always been doing.

3 Q Okay. Well, with the title, did you also get a
4 promotion to this executive assistant III level?

5 A You know, I don't know how that -- all that
6 happened. All I know is that based on the fact
7 that I was the only employee in the agency, and I
8 had come to that agency -- that agency had
9 historically been a very low-paying agency. The
10 previous commissioner had not done very well at
11 retaining funds for that agency. What -- the
12 equipment was antiquated. All I know, when I came
13 in, I had a ton of experience, so that I'd been
14 there 27 years. I had a ton of experience in
15 regards of the fact that I had a great education.
16 And I -- a master's in public administration. So
17 the basics of it is, he didn't decide that; who
18 decided that was the office of human resources,
19 which is under the Budget and Control Board.

20 Q When you say "he" didn't decide that --

21 A No. The Commissioner didn't decide that. What --
22 what he did, he submitted my stuff to the Budget
23 and Control Board. And the Budget and Control
24 Board make that decision about where I should be
25 classified, and based on my years of experience, my

1 education, and my level of experience. Service,
2 education, and experience, they decided that the
3 only person the agency, period, that could assume
4 or -- that's where I should be classified. So I
5 just happened to be the only guy in there that had
6 that kind of level of experience that had
7 transferred in. The Budget and Control Board said,
8 "Here, you're an executive assistant III." I mean,
9 he really had no control over that. I mean, that's
10 really a regulation of the Budget and Control
11 Board.

12 Q It's sounds like you're downplaying your role a
13 little bit with the --

14 A No --

15 Q -- Department of Agriculture.

16 A Not at all. No. I'm just telling you the way it
17 was. I went there as a legislative liaison and I
18 ran the agency. And far as background -- and when
19 I say "run the agency," I mean I kept the lights
20 on; I kept his gas tank full. As far as going out
21 and -- or glad-handing, or going to functions, or
22 going to agency head meetings, or any of these type
23 of things? No, never. My whole career was built
24 on working behind the man. I never wanted to be
25 "the man"; it was always: I support whoever the

1 man is. And a lot of good career employees are
2 that way.

3 Q But your official title in the years 2006/'7, to
4 the time you were terminated, or the time you left,
5 for whatever reason. I'm not going to characterize
6 the legal term for -- for your -- your parting-of-
7 the-ways with the Department of Agriculture, was
8 assistant commissioner.

9 MR. WILLS: Object to the form.

10 Q Was it not assistant commissioner, your title
11 for --

12 A My title internally, but externally was executive
13 assistant III. If you're looking at the -- if you
14 look at what I was I evaluated on, you'll see it
15 says, "Executive Assistant III." It doesn't say
16 assistant commissioner. Assistant commissioner is
17 something that Hugh Weathers came up with. And if
18 you look at -- if you look at -- I've got it
19 somewhere; you may probably have it. If you look
20 at his letter, that, basically, when reorganized
21 the agency --

22 Q Whose letter?

23 A Commissioner Hugh Weathers. When you look at the
24 letter and he says he's going to look at the
25 evaluation of the agency and how it ought to be

1 organized, then he organized it. And then he says
2 to me in the letter -- he says, basically, "I have
3 not yet decided on a job title." He's the one
4 decided that; not me, and not -- and not human
5 resources, the Budget and Control Board. That was
6 an internal thing.

7 Q Well, let me -- let's just look at this with this
8 Exhibit No. 1, and I'm just reading here:
9 "Assistant ag chief." Were you not the assistant
10 agricultural chief? Would that be one way to -- a
11 fair way to describe --

12 A No. I don't think so. Assistant ag chief sounds
13 like you're in charge of something.

14 Q Well, I'm not asking what it sounds like.

15 A Yes, sir.

16 Q But, I mean, would it not be true that you assisted
17 the -- the commissioner to the Department of
18 Agriculture?

19 A It would be true I assisted him, yes.

20 Q And it's true that, internally, the commissioner of
21 the Department of Agriculture was calling you an
22 "assistant commissioner"?

23 A He had the right to call me whatever he wanted to
24 call me.

25 Q I understand.

1 A Yes, sir. He was calling me that.

2 Q But -- but you've -- you -- well, I'm just trying

3 to understand. You were -- you were working there

4 on your own free will, correct?

5 A That's correct.

6 Q All right. You voluntarily took that job, correct?

7 You voluntarily --

8 A Yeah. Well --

9 Q -- undertook those duties?

10 A -- well, if I wanted to be employed, I had to take

11 those duties, yes, sir.

12 Q I understand. So if anyone was calling you an

13 "assistant commissioner," referring to you in the

14 years, let's say, 2006, 2007, and 2008, you

15 wouldn't correct them, would you?

16 A And to be honest with you, Robbie, nobody ever

17 called me "assistant commissioner."

18 Q Nobody did?

19 A No, sir.

20 Q Including Mr. Weathers?

21 A No, sir. He never did.

22 Q Okay. Do you -- have you ever seen anything in

23 writing where someone would've called you an

24 "assistant commissioner" in any form or fashion?

25 This could be correspondence; it could be something

1 from human resources.

2 A It wouldn't come from human resources. Maybe --
3 maybe something somewhere. I -- I couldn't tell
4 you for a fact one way or the other. No.

5 Q So you would never put down -- on your own
6 volition, when you described your relationship with
7 the Department of Agriculture, you would never have
8 put down assistant commissioner?

9 A Oh, absolutely, I would, because the basics of it
10 is that was the internal title, and if there's an
11 internal memorandum in the agency or if the
12 commissioner saw me sending something else other
13 than -- if I put down I was the director of
14 administration, he may have corrected me. He's the
15 one -- he's the boss. He had put the assistant
16 commissioner title on me. So if I sent out
17 official correspondence, which I can't remember if
18 I did or not, the basics of it is I had to use the
19 title as a signature block.

20 Q Okay. And if you ever characterized during this
21 time frame your title with the Department of
22 Agriculture, such as if you were applying for a
23 loan and someone asked you what you did, it
24 wouldn't be unusual for you to characterize your
25 title as "assistant commissioner," would it?

1 A Say -- say that again.

2 Q It wouldn't be unusual for you to characterize your
3 title as "assistant commissioner" --

4 A What do you mean?

5 Q -- when you described your relationship with the
6 Department of Agriculture?

7 A That would be correct.

8 Q All right. Now, during this time one of the things
9 that -- that you allege in this lawsuit is
10 defamation. Do you understand that?

11 A I -- I -- I don't know -- all -- all I know is that
12 what happened to me, I can understand those facts.
13 When it comes to the legal aspect of the stuff, I
14 really can't get -- I don't know anything about
15 that.

16 Q That's fair enough. Well, let's -- let's talk
17 about that. What I'm going to show you here, and
18 we can mark this as an exhibit in a moment that is
19 the amended complaint that's been filed by your
20 lawyers in your behalf, okay? And I understand
21 this is a -- a legal document, but I'd represent to
22 you that this more or less --

23 MR. GARFIELD: (To Ms. Young) Sorry.

24 Q -- kick-starts a lawsuit --

25 MR. BENDER: (To the court reporter) Thank

1 you.

2 THE COURT REPORTER: (To Mr. Bender) You're
3 welcome.

4 Q -- and I'm going to ask you questions about what's
5 been filed. In other words, this document's been
6 filed in the Richland County Clerk of Court by your
7 lawyers in your behalf, and this initiates a
8 lawsuit. So let's just show you a little bit about
9 this.

10 A Wait. I -- did you say by "lawyers"? I see one
11 signature back here that says "William Johnson."

12 Q Okay. Was -- William Johnson was your lawyer at
13 the time this --

14 A Okay. A lawyer?

15 Q -- lawsuit --

16 A Yes. Yeah.

17 Q Oh. A lawyer. Okay.

18 A Okay.

19 THE DEPONENT: (To Mr. Wills) You familiar
20 with this?

21 MR. WILLIS: Uh-huh.

22 THE DEPONENT: All right. Yeah.

23 MR. WILLIS: You can't -- can't ask me --

24 THE DEPONENT: Oh, I'm sorry. I don't know
25 the rules of this thing. I --

1 MR. GARFIELD: That's fine. I kind of wanted
2 to know what you were going to say.

3 Q So you have -- so the second page right here, the
4 "Factual Background" --

5 A Yes, sir.

6 Q All right? Let's just talk about this.

7 A Okay.

8 Q All right? This -- again, this was filed before
9 Mr. Wills got involved with this particular case,
10 okay?

11 A Okay.

12 Q This was filed by Mr. Johnson --

13 A Correct.

14 Q -- again, in your behalf. This is not a written
15 statement by you.

16 A Right.

17 Q No one's saying that you adopt any of these things
18 --

19 A Okay.

20 Q -- verbatim.

21 A Okay.

22 Q Do you understand that?

23 A Yes, sir.

24 Q This is just allegations that's been filed.

25 A Yes, sir.

1 Q This is my opportunity, now you and I are talking,
2 which you answer me, is what's truthful and
3 accurate to you; your sworn statement under oath
4 here. You understand that?

5 A Yes, sir.

6 Q So now I'll ask you questions about this.

7 A Okay.

8 Q Let's go to paragraph No. 7 where it says "Factual
9 Back -- Background." Prior to the month of March
10 of 2008, the Plaintiff's mother operated a business
11 in Richland County, South Carolina, in which the
12 Plaintiff's mother bred for profit, Arabian horses.

13 A (Reads softly to himself.) I don't know where she
14 operated the business. I don't know if that was
15 Sumter County or Richland County, but she did
16 operate a business and it was for profit, yes, for
17 Arabian horses.

18 Q Okay. So other than not knowing what county she
19 was doing it in, the rest of that what I just read
20 out in the record, this is paragraph No. 7, that's
21 correct?

22 A That'd be correct.

23 Q All right. Now, I would also just put on the
24 record that there is a motion in your lawyer's --
25 from Mr. Wills. Mr. Wills has made a motion to --

1 to amend or modify or change somehow this
2 complaint, okay, that may or may not be granted by
3 a judge, and that could be changed, because, as you
4 said, that's what lawyers do. That's what it -- me
5 as a lawyer, I may have to take on it too. But
6 this is just what's -- what was filed by Mr.
7 Johnson.

8 A Okay.

9 Q Okay. Number -- paragraph No. 8. "During February
10 of 2008, the horses owned by the Plaintiff's mother
11 were seized, due to alleged charges of mistreatment
12 of animals." You see where I read that?

13 A Yes, sir.

14 Q Is that a true statement, to your knowledge?

15 A Yes, sir.

16 Q Okay. I continue reading. "In addition, the
17 Plaintiff's mother and brother were charged with
18 various crimes." That's a true statement, wasn't
19 it?

20 A "In addition, the Plaintiff's mother" I
21 don't really know what they were charged with.

22 Q They were charged with something?

23 A That's my understanding, yes, sir.

24 Q Okay. Paragraph No. 9. "Although the Plaintiff
25 had no ownership interest whatsoever in the

1 ownership of the horses or the operation of his
2 mother's business. The Defendant, the Richland
3 County Sheriff's Department, charged the Plaintiff
4 as if he were an owner." Now, take a moment and
5 just read paragraph 9 to yourself that I just read
6 out.

7 A That'd be correct.

8 Q Absolutely correct. The Richland County Sheriff's
9 Department charged you as if you were an owner?

10 A That'd be correct.

11 Q Okay. Paragraph No. 10. "As the result of an
12 associated incident that occurred between the
13 Plaintiff's brother and an individual trespassing
14 upon the property where the horses were maintained,
15 which trespassing was done for the furtherance of
16 supporting the allegations of mistreatment of
17 animals, the Plaintiff's brother was charged." It
18 says "changed." I'd submit to you. I meant to say
19 charged -- "was charged with the crime of
20 kidnapping."

21 A That'd be correct.

22 Q Okay. Paragraph No. 11. "Despite actual knowledge
23 that the only kidnapping charges associated with
24 the entire series of events were charged against
25 the Plaintiff's brother, the Defendants published

1 to various media outlets statements that the
2 Plaintiff had been charged with kidnapping." Now,
3 my question to you is: Is that a true statement,
4 to your knowledge?

5 A I don't know what was published/not published, but
6 as far as I know, I'd have to say yes.

7 Q Okay. What actual knowledge that the defendants
8 had about you and your brother?

9 A Come again.

10 Q It says "Despite actual knowledge that the only
11 kidnapping charges associated with the events were
12 dealing with your brother." I just wonder what
13 actual knowledge anyone had. Would you really know
14 what actual knowledge anyone had?

15 A I don't know anything about that.

16 Q Okay. Paragraph 12. "At the time of these events,
17 the Plaintiff was a veteran employee of the South
18 Carolina Department of Agriculture." Let's stop
19 there. That's true.

20 A Yes.

21 Q "Working at that time as an Assistant Commissioner
22 for Administration." That's true, correct?

23 A That'd be correct.

24 Q It also says "His position was not an elected or
25 appointed position, but rather earned as the result

1 of twenty-seven years of service to state
2 government." Is that true?

3 A (Reads softly to himself.) That'd be correct.

4 Q Okay. Now, let's shortcut this somewhat. I want
5 you to look at page 4, if you would; it's the very
6 next page and I want you to look at the -- in the
7 left column; these are the paragraph numbers. And
8 I'm going to ask you about paragraph 24. It says
9 "As a result of the publication, the Plaintiff has
10 suffered serious damages, including the loss of his
11 employment and a severe diminution" (as spoken) --
12 "diminution," excuse me -- "of his ability to
13 provide for his family, and extreme damage to his
14 reputation." Is that a true statement?

15 A That'd be correct.

16 Q Okay. You suffered -- part of your lawsuit -- you
17 don't have to necessarily be a legal scholar for
18 lawyers or non-lawyers to -- to try to understand
19 -- the allegation you have here, in this lawsuit --
20 one of the allegations is that you had suffered
21 "extreme damage" to your reputation?

22 A Yes, sir.

23 Q All right. Let's talk about that. You had -- up
24 until February 2008, you had worked as a faithful
25 and loyal government servant for 27 years?

1 A Yes, sir.

2 Q And at the time of your arrest, I would imagine
3 that you would've enjoyed a very good reputation.
4 Is that true?

5 A I would hope so, yes, sir.

6 Q Okay. And you -- and you would -- when you say you
7 "hope so," you believe in your heart that you had
8 an extremely good reputation --

9 A Yes, sir.

10 Q -- at the time you were arrested, February 2008?

11 A I know I did, yes, sir.

12 Q All right. And as a result of the things that
13 happened concerning your arrest and the publication
14 of certain information, in which, this extremely
15 good reputation suffered extreme damage?

16 A Yes, sir.

17 Q Okay.

18 THE COURT REPORTER: (To Mr. Garfield) Did
19 you want to mark that?

20 MR. GARFIELD: Oh, that's yours?

21 THE COURT REPORTER: Thank you.

22 MR. GARFIELD: (To the court reporter) Was
23 that yours? No, that was -- Exhibit 20; we
24 can mark that.

25 THE COURT REPORTER: Okay.

1 MR. GARFIELD: (To the court reporter) Thank
2 you.

3 Defendants' Exhibit No. 20, "Amended
4 Complaint," dated 06/23/10; 7 pages.

5 MR. BENDER: (To Mr. Garfield) What number is
6 that?

7 MR. GARFIELD: That was 20. The amended
8 complaint's just 20.

9 MR. BENDER: Thank you.

10 MR. GARFIELD: Sure.

11 MR. WILLS: (To Mr. Garfield) Twenty?
12 Exhibit No. 20?

13 MR. GARFIELD: Uh-huh. Yeah.

14 Q Now, I apologize for going back and forth, but --
15 but, believe it or not, we've shortcut some of the
16 questions to some degree. I'm going to show you
17 Defendants' Exhibit No. 3, and I want to see if
18 this sheds light, in any way, on the time line of
19 who had ownership interest in 412 Derby Lane. Do
20 you know a Joseph Bauman?

21 A I really can't say I do or don't; I don't really
22 know.

23 Q Okay. Does this appear to be a printout of the
24 Richland County Assessor information with respect
25 to 412 Derby Lane, when I say that, Exhibit No.3?

1 A I mean, I would suppose. I mean, the heading up
2 here says it's from the government -- Richland
3 County Government, so I would assume that it would
4 be.

5 Q All right. And let's go to that second page. And
6 I'm going to show you where it says "Sales
7 History." It says "Current Owner Name" -- the
8 first one is Joseph H. Bauman, Sr., and you said
9 that name doesn't have any -- doesn't ring any
10 bells, not particularly?

11 A No, sir.

12 Q And then the next name -- and I guess we're going
13 backwards in time, it looks like it was sold to Mr.
14 Baughman in May of 2010; not asking you to verify
15 that. But the one before it, it says that somebody
16 bought the house on August 11th of 2008, and that
17 appears to be somebody by the last name of Bradley.

18 A Uh-huh.

19 Q This may or may not be William or Jennifer Bradley.
20 Do you know those individuals? Have you ever met
21 those individuals? Have you ever heard of those
22 individuals in connection to this house?

23 A Like I said, dates and names escape me, but I may
24 remember Jennifer Bradley; I'm not sure.

25 Q All right. Then, the owner just before them was

1 Bobby William Bradley. Does that name hold --
2 names -- do those names hold any significance?
3 A No, sir. I don't really have -- not that I know
4 of.
5 Q And then the one before it, it says "Julie C.
6 Trexler &," and it doesn't show what the "and" was.
7 And it looks like that Julie and whoever bought the
8 house in June of 2006. You see where, at least, it
9 says that?
10 A I see that, yeah.
11 Q All right. Is -- do you remember about when you
12 sold your interest in the house? Could that have
13 been in June of 2006?
14 A That would be June 2006, yes, sir.
15 Q Okay. Do you know what -- how much compensation or
16 monies that you netted from the sale of your
17 interest in the property?
18 A You talking about in June of 2006?
19 Q Yes, sir.
20 A I didn't know I net any.
21 Q Okay. You said you sold your interest, I thought.
22 A No, sir.
23 Q Did you just relinquish your interest?
24 A Yes, sir.
25 Q And -- and help me out with this. Why did you

1 relinquish your interest?

2 A Because my father had put a substantial amount of
3 money into that residence and I was having marital
4 problems, and I didn't mind her having her piece,
5 but I didn't think my daddy ought to get put out of
6 his piece. So I transferred it into Carolina
7 Arabian Show Horses, L.L.C., which was my mother's
8 company, which meant she owned it and my wife owned
9 it.

10 Q And it's this L.L.C. in which the reference is made
11 in the amended complaint in paragraph 7, as far as
12 your mother's -- mother having operated this
13 business?

14 A Yes, sir.

15 Q Okay. Well, let's talk about this business. It
16 was a business that was duly incorporated with the
17 South Carolina Secretary of State's Office, to your
18 knowledge?

19 A As to the best of my knowledge, she had an L.L.C..
20 I don't know what incorporate -- I don't know what
21 you got to do to do all that, but she had an L.L.C.

22 Q Do you know if she was the registered agent?

23 A I do know my brother was.

24 Q All right. Did you have any -- did you assist her
25 at all in obtaining this L.L.C.?

1 A No, sir.

2 Q Okay. Did you have any kind of -- helped her with
3 any of the paperwork or did you have any
4 involvement at all in this L.L.C.?

5 A No, sir.

6 Q Okay. Is -- is there a reason why you didn't have
7 any sort of dealings with this L.L.C.? Would it
8 have been prohibited from your -- in your capacity
9 as a -- a government employee?

10 A I don't -- I don't know the answer about that. As
11 far as being prohibited, I don't know. I just
12 never had any interest in it, no.

13 Q Did they ever ask you or approach you to help out
14 with this?

15 A They did.

16 Q And when was this?

17 A Now, in relationship to the L.L.C. --

18 Q Yes, sir.

19 A -- they never -- approached me or asked me to help
20 in their relationship to establish, nor
21 participate, nor being a member of --

22 Q Okay.

23 A -- L.L.C.

24 Q All right. Do you know about when this L.L.C. was
25 -- was formed?

1 A No, sir.

2 Q Do you remember -- it would've been before 2006?

3 A Yes, sir.

4 Q Okay. Do you know the -- the purpose of this
5 L.L.C. or what it was designed to -- to do or
6 accomplish?

7 A I don't know what my dad's reasoning was for it or
8 what his reasonings were -- was for doing an L.L.C.
9 or any of that stuff. I don't really know what his
10 reasons were.

11 Q Oh, so it was your father that begun the L.L.C.?

12 A It was my mother and father.

13 Q Okay.

14 A It was my father's business. When he deceased, it
15 became my mother's business. What all that
16 entailed or how they got to here to there, I don't
17 know.

18 Q To your knowledge -- well, let me ask you this way.
19 When did your father pass?

20 A December of 2002.

21 Q Okay. What was the nature of his business at that
22 time?

23 A When you say "nature of business," you --

24 Q Well, I mean, tell me what the -- what the L.L.C.
25 did or what was the -- was it a business for profit

1 selling horses or --

2 A That his idea. He was a country boy. He had been
3 in the military and worked in the telephone
4 industry, and he always had a fascination with
5 horses. And he decided, since there was no real
6 what you call "commercial horse farms of the
7 Arabian breed of any substance" -- he decided, from
8 my understanding, conversations with him, that he
9 wanted to start a -- a -- a horse -- for-profit
10 horse business where you bred horses and trained
11 horses and sold horses. And so he started this
12 thing and -- and that's all I know. That's the
13 reason why he wanted to do it: for profit.

14 Q Okay. And he passed in December of 2002?

15 A Yes, sir.

16 Q And you began work with the Department of
17 Agriculture in 2003?

18 A That'd be correct, yes, sir. It was like
19 2003/2004. It was the end of 2000 -- no, it was
20 2000 -- it was 2002. At the end of 2002, I was
21 asked to go over there and -- and help Charlie
22 Sharpe, because Charlie wanted somebody to help
23 him. So I went over there with intentions of going
24 back to the Ways and Means Committee. So it was
25 the end of 2007 when I actually went over there,

1 but I was working for the Ways and Means Committee
2 over there. And then go back -- he wanted me to
3 stay and -- and -- and run his errands for him, so,
4 basically, to get out of the night work, I took the
5 job. And that was probably in 2003 that I went for
6 the Department of Agriculture.

7 Q And at around the time you began work with the
8 Department of Agriculture, would it be fair to say
9 that Hazelene, your mother, took over the -- her
10 interest in the L.L.C. of this Arabian horse
11 business?

12 A Yes, sir.

13 Q Okay. Not knowing anything about selling Arabian
14 horses, what kind of licenses or what kind of
15 certifications or of -- of anything of that nature
16 is it that someone would need to obtain in order to
17 breed and sell certain kinds -- certain breeds of
18 horses?

19 A I don't know the answer to that question, but I
20 know she didn't have any.

21 Q She didn't have any. Okay.

22 Is it regulated, to your knowledge? Does the
23 Department of Agriculture, for instance, regulate
24 the -- the business of breeding or selling horses?

25 A No, sir. That's Clemson PSA.

1 Q Okay. Explain the -- what Clemson's PSA role is in
2 that.

3 A Livestock and poultry. I'm not sure they have any
4 regulation in it other than to make sure you're
5 sanitary. I don't really know what they do. All I
6 know is the Department of Agriculture's function
7 was marketing. Have a whole division nothing but
8 marketers, and all they do is market the products
9 that are produced in South Carolina which would
10 include horses. I assume they had a horseman
11 something, or with a horseman's council or
12 something over there. So, basically, they had no
13 regulation, Department of Agriculture, in regards
14 to any industry that is producing livestock.
15 That's Clemson PSA. Now, what authority they have,
16 what their regulations are, I don't know.

17 Q Okay. Okay.

18 (Sotto voce discussion between Mr.
19 Garfield and Mr. Hayes.)

20 Q We do see that there it says an "and" -- or there's
21 an ampersand, and there's not a name after "Julie
22 C. Trexler." Is it your understanding that that
23 name would probably be the L.L.C. that it was sold
24 to or that the ownership transferred title to in
25 June of 2006?

1 A It wasn't sold. It was a --

2 MR. WILLS: Object to the form.

3 THE DEPONENT: Okay.

4 Q Okay. Go ahead. Do the best you can with the
5 answer.

6 A I don't really know other than the fact that I
7 transferred my ownership of the property, and I
8 would assume that it'd be Julie C. Trexler and
9 Carolina Arabian Show Horses because --

10 Q Okay.

11 A -- when the property was sold, I got no money out
12 of it. Of course, I wasn't supposed to get no
13 money out of that. The base -- my -- my wife did,
14 and, from my understanding, the L.L.C. did.

15 (Sotto voce discussion between Mr.
16 Garfield and Mr. Hayes.)

17 Q And who is the registered agent for this L.L.C.?
18 You said Terry?

19 A It'd be my brother. That's correct.

20 Q Okay. Well, could you help me out on why the
21 interest would be transferred to your mother
22 instead of your brother if he was the registered
23 agent?

24 A It was my understanding, when I went through some
25 other stuff in the court here recently and all this

1 stuff was being beat around -- and I have a couple
2 of lawyers working on it -- it was my understanding
3 that my brother was the L.L.C. agent -- current
4 registered agent, I think. He was the registered
5 agent for it.

6 Q Okay.

7 A And that -- when the L.L.C. was developed, it went
8 from -- when my father deceased, through a will it
9 went to my mother, and they were minimally
10 educated, so, basically, they asked him to be the
11 registered agent.

12 Q Okay. I'm going to show you Exhibit No. 4. And I
13 -- I'd purport or represent to you that that was
14 also taken from the assessor's site, but I'm not
15 quite sure what all this means. Maybe you could
16 help me out. If you look midway down --

17 THE DEPONENT: (To Mr. Wills) What is this --
18 what is this here? Let me -- I know you can't
19 help me. What is this all right here? I
20 mean, what is --

21 MR. WILLS: Hold on. Let -- let him -- well,
22 he'll --

23 THE DEPONENT: Okay.

24 MR. WILLS: -- have to ask --

25 Q Well, I can --

1 MR. WILLIS: -- you and see if you --

2 Q I -- I'll tell you where I got it from. I got it
3 from another -- see, what this is, is -- Exhibit 3
4 and 4 is just literally going online and just
5 pulling things off their computer screen.

6 A Okay.

7 Q Okay? It's like a public index search. So I've
8 asked you Exhibit 3, but if you go into another
9 number, then they have a whole list of names, and
10 this is Exhibit 4. What it appears to me -- but
11 I'm not telling you what it is. Just appears to
12 me, if you look at the dates starting with Joseph
13 Bauman in May 4th of 2010 and you go to each one,
14 it looks like it goes backwards chronologically as
15 to, perhaps, what the owner information was with
16 the Richland County Assessor, or, in other words,
17 that's the person being taxed for it. I don't
18 know. It's what it just appears to me. So if --
19 if -- if I show you where it says "Julie C. Trexler
20 &," on June 2nd of 2006, for \$285,000 -- do you see
21 where it says that?

22 A Uh-huh.

23 Q All right. Do you know if \$285,000 changed hands
24 sometime around that time?

25 A Never did. No, sir.

1 Q So you don't know what that could mean as far as --

2 A All I know that --

3 Q -- a sale of the property of -- or representation
4 this property got sold?

5 A I don't know how -- I don't know anything about it
6 other than I know that in 2006 the property was
7 transferred.

8 Q Okay. Could -- could you help me out -- is your
9 middle name William?

10 A It is.

11 Q All right. So you see the next one where it says -
12 - I guess I'm inverting the names -- "James William
13 Trexler &" -- and it doesn't show who the "and" is
14 -- the month before or a couple weeks before May
15 22nd, 1996, for \$5. Do you know what the deal is
16 with that?

17 A I have no idea.

18 Q Okay. You see other names here such as Elizabeth
19 Martin. Do you know Elizabeth Martin?

20 A No, sir.

21 Q Okay. And this is a house that you said you -- you
22 lived in for that many years, and you don't know
23 this person's name that's --

24 A This --

25 Q -- attached to this property?

1 A Elizabeth Martin?

2 Q Uh-huh.

3 A No, sir, I do not.

4 Q Do you know what this "Digby Alma Switzer etal"
5 could mean?

6 A No, sir.

7 Q Okay. That's why I'm asking you about it. I don't
8 know either.

9 Okay. Didn't you say your mother had a
10 particular bay -- bay stud named "Nova"?

11 A He was a gelding.

12 Q Oh, a gelding. I apologize.

13 And I'm going to show you Exhibit No. 7.

14 A Yeah.

15 Q Can you tell me anything about what's on that
16 exhibit? Like what it means or does it look
17 familiar to you? That kind of thing.

18 A Oh, yeah. Sure.

19 Q Okay. Tell -- tell me what this is.

20 A This is what they call a "Coggins test." She
21 wanted to sell this horse, and so what you have to
22 do in order to sell a horse in the state of South
23 Carolina or advertise a horse in the state of South
24 Carolina for a sale it's my understanding you have
25 to have a Coggins on the horse, okay? So she asked

1 me -- she told me that, and then she said, "You
2 need to get a Coggins on this horse so I can sell
3 it."

4 And I said, "Okay."

5 So she said, "I got a vet coming out there" --
6 the only horse was out there -- some vet's coming
7 out there. "I want you to meet the vet out there,
8 and I want you to sign off on whatever needs signed
9 off on and get the Coggins test done."

10 So when she showed up, I did what she asked me
11 to do and processed it for her -- for my mother.

12 Q When you say "she showed up" --

13 A The vet.

14 Q Would that be Elizabeth Cuttino?

15 A I believe that would be correct, yes.

16 Q And she would've showed up on May 24th of 2007?

17 A I don't remember if that's the exact date, but, if
18 she's got it on the report, that'd have to be
19 correct.

20 Q And have you ever -- up until that time, had you
21 ever participated or been present during a Coggins
22 test on a horse? You had owned horses before,
23 right?

24 A Yes.

25 Q All right.

1 A Not that I can remember. I mean, I may've had a --
2 well, see, a Coggins test is only required if
3 you're going to sell a horse. It's not required if
4 you're just keeping a horse, so I can't really
5 remember any particular reason why -- I may've had
6 one done. I think I may've tried to sell a mare I
7 had one time, and I may've had one done, but I
8 really don't recollect, to be honest with you, if I
9 did or didn't. But if --

10 Q Okay.

11 A -- I had, it'd have been on my personal horse.

12 Q Okay. You gave about six different answers there.
13 Did you or did you not have a Coggins test or be
14 present during a Coggins test --

15 A For this one?

16 Q -- before May of 2007?

17 A I don't remember.

18 Q Okay. You see where it says number -- there's a
19 part of here where it says "Name and address or
20 stable, slash, market"?

21 A Where's that at?

22 Q It's where -- it's listed "412 Derby Lane." Top
23 part --

24 A Yeah.

25 Q Right. All right. Whose handwriting is this: 412

1 Derby Lane? Would that be yours or -- or --
2 A That would be hers.
3 Q -- the veterinarian?
4 A That'd be this Cuttino.
5 Q Okay. In other words -- but you would've been on
6 your own property on 412 Derby Lane during the time
7 of this Coggins test?
8 A I would've been on the property. It wouldn't be a
9 property I owned, but I'd have been on the
10 property, yes, in 2007.
11 Q The -- the property that you lived in. The --
12 the --
13 A My home.
14 Q The property of your primary residence, correct?
15 A That'd be correct.
16 Q All right. All right. So if you go to the next
17 one -- this is No. 8 -- "Name and address of owner,
18 Jim Trexler." Is that you?
19 A That's me.
20 Q Okay. And what's this - .? Is that
21 your own personal P.O. box?
22 A No. That was a family post office box.
23 Q Okay. is the ZIP Code?
24 A That'd be correct.
25 Q Am I reading that correctly?

1 What part of town was the -- was that based
2 in?

3 A About two blocks from the capital.

4 Q So the one on Assembly Street?

5 A No, sir. That'd be on Lady Street.

6 Q Oh, Lady Street.

7 A (Nods head up and down.)

8 Q Right.

9 A Yes, sir.

10 Q Okay. And this phone number, can you identify
11 that: 578-6123?

12 A Yes. That'd have been my telephone number.

13 Q Your work telephone number?

14 A No, sir. That'd be my cell phone number.

15 Q Okay. Is there a reason why they would put your
16 name down as the owner of the horse?

17 A No. I happened to be there. Somebody has to be
18 there to take the information when the Coggins test
19 is performed, is my understanding. My mother asked
20 me to be there, and, therefore, she just put it on
21 there. I -- you know, I didn't think about it.
22 She didn't ask me, I suppose, but I just -- she
23 said -- just put a name down, so I just told her to
24 put my name down.

25 Q Would it be reasonable to think that somebody

1 without the knowledge that you do about Coggins
2 tests or horses that see this -- would it be
3 reasonable to think that they thought you were the
4 owner of the horse?

5 MR. WILLS: Object to the form.

6 MR. GARFIELD: Okay.

7 Q Go ahead and --

8 A I don't know what somebody would think. I don't
9 know.

10 Q Okay. Well, you're looking at a piece of paper.
11 It does say that you're the owner of the horse,
12 correct?

13 A Correct. But --

14 Q And it does have a -- a P.O. box that extends to
15 your family --

16 A Right.

17 Q -- post office box.

18 A But let me explain one thing to you. I own an
19 English bulldog. The English bulldog is registered
20 to someone else other than me, even though I have
21 never registered the horse (as spoken).

22 Q Okay.

23 A So, basically, it doesn't mean because you're here
24 and you show up as a owner that you're the actual
25 owner. The basics of it is -- is it depends on how

1 much knowledge you have about livestock. And I've
2 owned horses, I've owned dogs, and I know a man
3 that breeds dogs and he -- and people buy dogs from
4 him, and they never register the dogs. They -- and
5 if somebody goes looking at the paperwork, they
6 think the dog still belongs to him, and it doesn't.
7 So I can't assume what somebody would look at and
8 think whether I owned or didn't own the horse.

9 Q Okay. Did you tell Dr. Cuttino or the veterinarian
10 -- I don't know if she goes -- if she's a doctor or
11 not. I guess it's a doctor of veterinary medicine.
12 Did you tell Dr. Cuttino that you didn't own the
13 horse?

14 A No, sir.

15 Q Okay. And you provided her the information: this
16 P.O. box and this phone number?

17 A Yes, sir.

18 Q That's your -- I mean, that was your own personal
19 cell?

20 A That is correct.

21 Q Okay.

22 A This particular horse is --

23 Q Uh-huh.

24 A -- listed in the amortization schedules of my
25 mother's business, and so the basics of it is: I

1 don't know what somebody would think by looking at
2 this Coggins test but --

3 Q Okay. Okay. Let me show you Defendants' Exhibit
4 No. 8, and it looks like something that's been
5 copied over a few times, so, unfortunately, we
6 don't have a real clear copy of it, but we'll get
7 through it the best we can. Look at this first
8 page, if you would. Are you -- are you familiar
9 with this horse named "Triumph"?

10 A I don't know any horses' names.

11 Q All right. Are you familiar with this six-year-old
12 -- at this time six-year-old Arabian mare?

13 A I'm trying to look at this report and figure out
14 what this is all about here, and then I'll be able
15 to help you.

16 Q Sure. Take your time.

17 A Okay.

18 Q Have you ever seen these kind of reports before?

19 A No, sir. I've never seen this report.

20 Q Well, I'm not asking if you've seen this report.
21 Have you just ever seen these kind of reports?

22 It --

23 A No, sir.

24 Q -- looks like Equine Infectious Anemia lab tests --
25 laboratory tests?

1 A No, sir.

2 Q All right. Then let me go back to my original
3 question. It says "Name and address" -- well,
4 let's go this way: "Name & address of
5 stable/market, Hazel Trexler."

6 A Okay.

7 Q There's a -- that's your mother, correct?

8 A That's correct.

9 Q And that says "Louisville, Georgia."

10 A Correct.

11 Q Does she have some connection with Louisville,
12 Georgia?

13 A It's my understanding, on these particular horses -
14 - and I -- and on these particular horses -- yes.
15 She had a relationship with Louisville, Georgia, in
16 that she inherited horses from a gentleman that was
17 sick with terminal cancer and could not care for
18 the horses, and, basically, she found a dairy farm
19 down there and put them on the farm until she could
20 build them up, is my understanding from what she
21 told me, and -- and, basically, yes, she had a
22 relationship with Lewisville (phonetic), Georgia,
23 yes. Louisville/Lewisville (phonetic), whatever it
24 is.

25 Q Have you ever been to Louisville, Georgia, before?

1 A Yes. Never until -- probably one time in my life.

2 Q Well, you said "yes" and then "never" and then you
3 said "until." So let's just slow down --

4 A All right.

5 Q -- and you're -- you're under oath, and I want a
6 clear expression of, you know, what's true to you.
7 So let's start it again. Have you ever been to
8 Louisville, Georgia?

9 A Yes, sir.

10 Q All right. What part of Georgia is that in?

11 A That'd be the other side of Augusta; probably about
12 50 miles.

13 Q Okay. You were there one time. What was the
14 occasion why you were in Louisville, Georgia, or
15 Lewisville (phonetic), Georgia?

16 A My mother and my brother both called me, said they
17 inherited these horses in Georgia from a friend,
18 and they needed to get Coggins tests done on the
19 horses in order to either sell them or move them
20 and -- to South Carolina.

21 And I said, "Okay. If you don't have anybody
22 else, and they said they had a couple Hondurans
23 they were going to take and wanted me to go and
24 help them, and I -- and the vet was coming, it's my
25 understanding, if I remember, for one day, and they

1 had to get all the horses done in one day and --
2 and that I'd be benefitting the horses by going.
3 And so, basically, I -- I went with my brother and
4 two Hondurans to Lewis -- whatever this thing is --
5 Lewisville (phonetic), Georgia, and helped them
6 hold horses so that they could be Coggins'd.
7 Capture them --

8 Q So they can -- right. Go --

9 A Capture them and hold them.

10 Q Sorry for interrupting. Okay. So capture them,
11 hold them so they can draw blood?

12 A That'd be -- yes, sir.

13 Q And this was -- would you agree with me that this
14 was done on or about November 18th of 2007?

15 A That'd be correct.

16 Q All right. And if -- if we could look at those
17 three pages of this -- this particular exhibit --
18 if you could move your hand just real quick --
19 Exhibit No. 8. Thank you. Look at the third page
20 of Exhibit 8.

21 A Third -- okay.

22 Q All right. And do you see where this -- it says
23 date was -- blood was drawn on November 18th, 2007.
24 And I can show you just what I'm reading. Right
25 here.

1 A Yep.

2 Q All right? And looks like that there's a light-
3 color horse. It's a -- or a grey. It says "9-
4 year-old Arabian mare" with the signature name, it
5 says, is the -- owner is Hazel Trexler. Do you see
6 these three pictures of this horse?

7 A Yes, sir.

8 Q Is -- is that not you in the middle picture?

9 A Yes, sir.

10 Q Okay.

11 A It could be me. I mean, it looks like me.

12 Q Well, you said "yes" and "it could be" and "it
13 looks like" you.

14 A Well, my brother looks a lot like me, and the --

15 Q All right. Well --

16 A -- basics of it is: It very well could be. It's
17 not a very good picture, so I don't want to be
18 untruthful, so it may or may not be. I don't know.

19 Q Well, it more probably than not --

20 A More probably than not, yes, sir.

21 Q -- that that is a picture of you in the middle
22 picture in --

23 A Yes, sir.

24 Q -- the third page of Exhibit No. 8?

25 A More probably than not.

1 Q Okay. Okay. Now, again, if I jump around, I
2 apologize, but I think I'm going in some sort of
3 forward order. I'm going to show you Defense
4 Exhibit No. 9. I represent to you that that's the
5 incident report that was taken -- or, excuse me,
6 that was prepared by the Richland County Sheriff's
7 Department when they responded to the Zeigler Road,
8 okay? Have you ever seen this report before?

9 A No, sir.

10 Q This is the first time you've looked at this --

11 A Yes.

12 Q -- incident report? Okay. Well, let's go over it.
13 Now, it says "Incident date, February 13th of
14 2008." And if you're familiar with sheriff's
15 department reports, it's the upper left-hand
16 corner, and it looks like it says "24 Hour Clock,
17 11:30," okay?

18 A Yeah. Okay.

19 Q All right. You weren't present at Zeigler Road --
20 excuse me, , on February
21 13th, 2008, were you?

22 A No, sir.

23 Q Okay. It says, "Reporting officer" -- and I'm
24 looking at the narrative portion right here --
25 "Reporting officer responded to the incident

1 location in reference to an act of civil
2 disturbance. Upon arrival reporting officer was
3 met by Hazelene and James Trexler who state that
4 Hart was trespassing on their land and taking
5 pictures of their horses."

6 Now I stopped reading. Did you read along
7 with what I just said?

8 A I don't know what the hell that means. I mean, the
9 basics of it is that James Trexler -- I don't know
10 nothing about that, but I see my name on there,
11 yes, sir.

12 Q Okay. You've given three answers again.

13 A Well, I'm sorry.

14 Q With all due --

15 A But --

16 Q No. It's fine. But I -- but when I say that to
17 you, it's not a criticism, or I'm not trying to say
18 anything negative. I want what you know to come
19 out. I mean, I want -- I want a clear expression
20 of your sworn statement today.

21 A Okay. Sure.

22 Q So I'll go back to this.

23 A Okay.

24 Q I just read that out loud. Did I --

25 A And please --

1 Q -- read it carefully?

2 A And please excuse me. I've had minimal sleep --

3 Q I understand.

4 A -- and I'm working a tough job, and I'm tired. And

5 so I'm sorry if I'm responding that way.

6 Q Okay.

7 A I don't mean to.

8 Q All right.

9 A But just bear with me and we'll get there.

10 Q Well, that's fine. Do you think that you're -- I

11 think -- I think a lot of us are tired and --

12 A I understand.

13 Q -- and overworked and all, but -- so I'm not

14 meaning to -- to minimize what you -- what you have

15 gone through.

16 A I understand.

17 Q My questions is: Do you think that you're awake

18 enough or capable to participate --

19 A Oh, yes, sir.

20 Q -- in the deposition?

21 A Yes, sir. I just got to think clearly through it

22 and take my time.

23 Q That's what I'd like for you to do.

24 A Okay.

25 Q I want you to take your time. Every time I ask you

1 something, take as much time as you need --

2 A Okay.

3 Q -- to think about your answer before you answer,
4 okay?

5 A Okay.

6 Q Very good. My question to you was -- I read a
7 statement or a sentence out from this incident
8 report. I just wanted to know if I read that
9 carefully -- or, excuse me, read that correctly.

10 A Yes, sir.

11 Q All right. The truth is: You were not out at this
12 location on this day?

13 A No, sir.

14 Q But this police officer, according to this report,
15 somehow got the notion that James Trexler was. You
16 ever heard -- I mean, is this -- is this news to
17 you that this -- that there is an allegation or a
18 contention that on this day that someone told the
19 police that they were you?

20 A That someone told the police that they were me?

21 Q Yeah. Have you ever heard of that before?

22 A I don't know about it -- I don't know anybody about
23 telling him I was me -- I mean that they were me.

24 I mean, I've heard about this incident taking place
25 with all this other stuff I went through in the

1 court up there, but as far as me being out there --
2 as far as me hearing about this incident, yes. I
3 was not out there, and -- and -- I ever hear
4 anybody ever say about this incident coming up?
5 Yes. Did I ever hear anybody say they claim they
6 were me? No.

7 Q Okay. So sitting here today, this is the first
8 time you've become aware that someone at
9 was purportedly telling law
10 enforcement that they were you?

11 A I never heard anybody say that, no, sir.

12 Q Okay. Well, let's keep reading. Maybe we'll get
13 to the bottom of this.

14 "Reporting officer then made contact with
15 Hart" -- and, according to this, it's a Michele
16 Hart. Do you know a Michele Hart?

17 A No, sir.

18 Q All right. "... made contact with Hart, a
19 cruelty investigator with the Humane Society, who
20 states that she was on the property of Dr. Lori
21 Stokes."

22 A "... she was on the property of Dr. Lori Stokes."

23 Q All right. Do you know a Dr. Lori Stokes?

24 A Yes, sir.

25 Q Okay. It says "a veterinarian," has a number.

1 ". . . Dr. Lori Stokes, a veterinarian, who gave
2 her permission to enter onto her property in order
3 to conduct her investigation."

4 Do you -- do you see where I'm reading that?
5 Am I reading that correctly?

6 A Yes, sir.

7 Q "Hart added that she was investigating a complaint
8 of cruelty to horses which belonged to the
9 Trexlers."

10 Do you know, in fact, of whether cruelty
11 investigator or anyone from the Humane Society went
12 to this particular location on this day to check
13 into alleged cruelty to animals?

14 A Secondhand, I understand through the process and
15 the court -- previous process that there was a --
16 someone -- must've been this Michele Hart --

17 Q Uh-huh.

18 A -- that was related to some charge my brother had.

19 Q Okay. Well, let's -- let's keep reading.

20 MR. GARFIELD: Excuse me. I'm going to shut
21 that door.

22 MR. BENDER: I got it.

23 MR. GARFIELD: You sure? Thank you.

24 Q It says "James Trexler stated that the property
25 Hart was actually on was that which he rented from

1 James Quinn."

2 Now, again, since we know you weren't --

3 A (Reads softly to himself.)

4 Q -- out there, do you have any information as to who
5 this individual was that was parading around as you
6 making statements to law enforcement?

7 MR. WILLS: Object to the form.

8 Q Do you have any information as to this individual -
9 - any information whatsoever who this individual
10 could be that's representing themselves as you to
11 law enforcement?

12 A No, sir.

13 Q Whoever is providing this information to law
14 enforcement would be incorrect, wouldn't it?

15 MR. WILLS: Object to the form.

16 A They'd be --

17 MR. GARFIELD: And the basis of your objection
18 is?

19 MR. WILLS: Well, this is all hearsay. We
20 don't know if anybody made any -- any
21 representations that they were anybody.

22 MR. GARFIELD: Fair enough.

23 Q If, in fact, someone was representing themselves as
24 you -- if, in fact, hypothetically -- on this day
25 to law enforcement, that would be incorrect,

1 wouldn't it?

2 A Yes, sir.

3 Q Okay. That would be a lie, wouldn't it?

4 A Yes, sir.

5 Q Okay. They would be giving false information to
6 the police, wouldn't they?

7 A Yes, sir.

8 Q And that would be illegal, wouldn't it?

9 A I don't know the law on it, but it wouldn't be
10 right.

11 Q Certainly wouldn't be right, would it?

12 A No, sir.

13 Q Okay. Now, don't read ahead because this is like a
14 book.

15 A Okay. All right.

16 Q We'll -- we'll -- we'll just go read it. It says,
17 "Both Hazelene and James Trexler requested a
18 report."

19 So you additionally see this person wants a --
20 is saying they're you and they want a report.

21 A (Nods head up and down.)

22 Q I'm just saying this is what it says. Not asking
23 you to say this is true, okay? Now -- now you can
24 flip your page. I'd --

25 A Okay.

1 Q Just interesting reading, so didn't want you to get
2 ahead.

3 It says, "All other responses

4 ." Don't know about that. It says,

5 "When reporting officer first arrived, Hazelene

6 Trexler was yelling that she wanted a warrant

7 right then for Hart trespassing," okay? It says,

8 ". . . because her son eats with Sheriff Lott all

9 the time and if I didn't give it to her, she was

10 going to call Sheriff Lott."

11 Now, stop for a moment. I'm going to --

12 A Yes, sir.

13 Q -- ask you a question about that. Did I read that
14 correctly?

15 A Yes, sir.

16 Q All right. Does --- does -- do you or any member of
17 your immediate family, such as Hazelene or your
18 brother or anybody -- does any of y'all have a
19 personal relationship with Leon Lott?

20 A When you say "y'all" --

21 Q Let's see --

22 A -- you talking about --

23 Q Does Hazelene have a personal relationship --

24 A No.

25 Q -- with Leon Lott? Do you have a personal

1 relationship?

2 A No.

3 Q Does your brother have a relationship with him that
4 you --

5 A Not that I know of.

6 Q All right. If, in fact, your mother -- if, in
7 fact, your mother, then, was saying that her son
8 "eats with Sheriff Lott all the time," that would
9 be incorrect, wouldn't it?

10 A To my knowledge, it would be.

11 Q To your knowledge, if she said -- told law
12 enforcement officer that her son "eats with Sheriff
13 Lott all the time," that would be a lie, wouldn't
14 it?

15 A I couldn't --

16 Q To your knowledge.

17 A I couldn't tell you what my brother does, but if
18 that -- I mean, I couldn't tell you what he does.

19 Q So -- your brother?

20 A Right.

21 Q Her other son, right?

22 A That's correct.

23 Q Right. So you don't know what he does, but you
24 don't eat lunch -- or, excuse me, eat --

25 A I don't, no, sir.

1 Q What meals were -- it says "eats with him all the
2 time." Okay.

3 It says, "She was going to call Sheriff Lott.
4 Hazelene Trexler was very uncooperative at first,
5 even telling reporting officer that she was not
6 giving any identification cards or her information
7 because I did not need it." Now, you don't know,
8 one way or the other, because you weren't there,
9 right?

10 A No, sir.

11 Q All right. "She would then say that an
12 investigator better contact her and that she wanted
13 a report. Hazelene Trexler finally listened to
14 reporting officer and understood why that
15 information was needed and provided it." You see
16 that?

17 A Yes, sir.

18 Q All right. "Hart also stated that Hazelene Trexler
19 had called her a" -- it looks like it's trying to
20 say or alluding to the word "bitch" -- "numerous
21 times. Hazelene Trexler admitted that she did call
22 her that because she would not -- she should not
23 have been on their property."

24 So it appears from this your mom was pretty
25 hot about things.

1 A She can get that way, yes, sir.

2 Q All right. It says, "James Trexler stated he did
3 not have any form of identification"

4 Let's stop there. It's pretty interesting,
5 wouldn't it? Because this -- if this were true,
6 then somebody who's parading around as you, doesn't
7 have any false information or false identification
8 they were you. It's -- do -- do you know who this
9 person could be?

10 A I have no idea.

11 Q All right. Well, let's keep going. ". . . but did
12 provide a name and a date of birth. Reporting
13 officer checked the South Carolina Department of
14 Motor Vehicle files after leaving the scene for his
15 additional information which revealed the name was
16 not on file, but the name Terry Alfred Trexler with
17 the same date of birth appeared with the status of
18 wanted."

19 Now let's flip to the first page. And right
20 here it say, "Gave a date of birth of " --
21 looks like it says " " Whose date of
22 birth is that?

23 A That would be my brother's.

24 Q Okay. Let's go back to see if we can solve this
25 puzzle. It says, "The profile matched that of

1 James Trexler. The status of wanted was from the
2 Sumter County Sheriff's Department for fraudulent
3 checks and cruelty to animals. Reporting officer
4 then contacted Investigator Wagner to make her
5 aware of the situation. Hart stated that she had
6 already been in contact with Investigator Wagner in
7 reference to the Trexlers' animals." Am I reading
8 that correctly?

9 A Yes, sir.

10 Q All right. And it says, "The Trexlers' were riding
11 in a navy blue Ford truck, South Carolina tag:

12 "

13 Does your mother or do you have a navy blue
14 Ford truck?

15 A I did at one time.

16 Q Okay. Now, it -- it -- it appears from looking at
17 this that this may have been -- just looking at it.

18 I'm just going to ask you a question. This may
19 have been your brother Terry that was representing
20 to law enforcement that he was you, right?

21 A Uh-huh.

22 Q Is that the --

23 MR. WILLS: Object to the form.

24 MR. GARFIELD: All right. It's fair enough.

25 Q And -- is this the first time you've ever heard

1 that on this particular day in question -- because
2 you said you've heard things secondhand -- that
3 Terry told the authorities that he was you?

4 A I never heard that before, no, sir. Now it -- all
5 I knew is that -- but I did not -- I knew something
6 had gone on out there, and I knew that there'd --
7 there'd been some trespassing out there.
8 "Trespassing" was the way it was put to me. That's
9 all I knew about it.

10 Q Okay. Well, you allege in this particular case
11 that you were never charged with kidnapping as we
12 see here that's been headlined on Exhibit 1,
13 correct?

14 A Say that again, sir.

15 Q You were never charged with kidnapping, were you?

16 A No, sir.

17 Q So if -- if anyone released information or
18 published information with which to suggest that
19 you faced a kidnapping charge, that'd be incorrect;
20 is that --

21 A Yes, sir.

22 Q -- correct? You'd agree with me that your brother
23 Terry was criminally charged with kidnapping?

24 A Yes, sir.

25 Q Okay. And you've never heard before today that

1 Terry purportedly was saying he was you?

2 A No, sir.

3 Q If someone confused you and your brother, quite
4 frankly down the stretch, and looked at y'all and
5 your charges and confused the two and got one
6 wrong, if, hypothetically, Terry was parading
7 around as you, would you say that somebody who
8 heard that information, that could be a reasonable
9 mistake?

10 MR. WILLS: Object to the form.

11 MR. GARFIELD: That's fine.

12 Q Go ahead.

13 A You'll have to say that again.

14 Q If Terry is going around saying he's you to law
15 enforcement, hypothetically, and law enforcement
16 confuses you and your brother Terry, could that be
17 an honest mistake on the part that somebody trying
18 to figure out who you are and your brother is?

19 A Yes, sir.

20 Q All right. Now, in this particular case, there was
21 a report written. This is Defendants' Exhibit No.
22 10.

23 MR. BENDER: (To Mr. Garfield) Is this 10?

24 MR. GARFIELD: This is 10, yes, sir.

25 MR. BENDER: All right. So I have two 9's,

1 then.

2 MR. GARFIELD: You might. Yeah. That's
3 right. Sorry.

4 MR. BENDER: No. You're fine. I just want --

5 MR. GARFIELD: Papers are just flying here.

6 MR. BENDER: -- to keeping numbers straight.

7 MR. GARFIELD: I appreciate it.

8 Q Okay. It says -- the first note, it says
9 "2/13/08," and I represent to you that this was a
10 law enforcement investigator's report, and it's a
11 summary of -- of her investigation, okay?

12 MR. WILLS: Same objection with regard to
13 hearsay.

14 MR. GARFIELD: Sure. And I would --
15 absolutely.

16 Q Everything here is hearsay, and I'm asking you
17 questions about -- not the -- the truth of what's
18 in here. Just going to talk to you about it and
19 see if you have any personal information about it,
20 okay? So it's not designed to trick you; it's just
21 to ask what you know.

22 "February 13th of 2008, I received a call from
23 Deputy Simpson. She told me she had been out on a
24 call on Zeigler Road and the complainant gave her
25 the wrong name. She said he told her his name was

1 James Alfred Trexler"

2 Is that you?

3 A No, sir.

4 Q Is your middle name not Alfred?

5 A No, sir.

6 Q What's your middle name?

7 A William.

8 Q Okay. ". . . date of birth 7/16/1963." Is that
9 your brother's date of birth?

10 A Yes, sir.

11 Q Okay. "He would not provide her with any
12 identification."

13 Has your brother ever -- your brother, Terry,
14 ever called himself "James" or gone by "James"?

15 A No, sir.

16 Q Okay. To your knowledge, has your brother -- to
17 your knowledge, has your brother ever purported to
18 be you?

19 A No, sir.

20 Q To your knowledge, has your brother ever purported
21 to work for the Department of Agriculture?

22 A No, sir.

23 Q Your brother, on the other hand, has somewhat of a
24 legal history, does he not?

25 A Yes, sir.

1 Q Okay. He went to law school?

2 A Yes, sir.

3 Q And did he -- he's not a member of the bar now?

4 A No, sir.

5 Q Okay. But he does have experience as a practicing

6 lawyer?

7 A Yes, sir.

8 Q All right. On the other hand, have you ever stated

9 or represented that you had any kind of legal

10 background?

11 A Yes, sir.

12 Q Have you stated that you were a lawyer?

13 A No, sir.

14 Q Have you ever stated that you were a legal

15 assistant or a paralegal?

16 A Yes, sir.

17 Q Okay. And what -- tell me, what kind of legal

18 training that you have had that would allow you to

19 truthfully say or represent that you are a legal

20 assistant or a paralegal?

21 A When my brother started practicing law back in 1993

22 and I worked with him, for him researching

23 documents at the RMC office and assessor's office

24 and divorce filings and filing paperwork for him

25 and doing research and stuff like that. So I have

1 had a paralegal background. In regards to legal
2 training, no, but I had a college education, and I
3 helped him and assisted him paralegal work.

4 Q So you had a college education in your finance
5 background, correct?

6 A That's correct.

7 Q And -- but you did not do --

8 A And a master's degree in public
9 administration/organizational management, and I
10 took some legal courses in regards to that -- law
11 courses both in business and in public
12 administration in the course study.

13 Q All right. Do you have any special or specialized
14 training to -- to be a practical legal assistant or
15 paralegal?

16 A Not a legal assistant, but a paralegal.

17 Q A paralegal?

18 A I can type and --

19 Q Well, I -- I'm talking about formal education to be
20 like -- did you go to paralegal school or anything
21 like that?

22 A No.

23 Q Okay. So it was based -- if you have ever
24 represented yourself to be -- you represented
25 yourself to be a paralegal?

1 A I never represented myself to the public to being a
2 paralegal.

3 Q Okay.

4 A I mean, I may have on occasion told someone I was a
5 paralegal, just in the aspect of I had a background
6 and I had worked in that area. But as far as
7 coming out and saying, "Hey, I'm a paralegal,"
8 putting it on a card, no.

9 Q Or representing yourself as a paralegal kind of
10 thing?

11 A I have.

12 Q And -- and what occasion would you --

13 A Only -- huh?

14 Q -- would you represent yourself as a paralegal?

15 A When I was scared.

16 Q When you were scared?

17 A Yeah.

18 Q Who would scare you?

19 A People that are stalking you. People that are
20 following you. People that are hemming you up in a
21 cul-de-sac and you got your mother on one side
22 screaming she's been raped and you got two
23 derelicts on the other side.

24 Q You're talking about the Harmon -- you're talking
25 the --

1 A Yes, sir.

2 Q Oh, okay. All right. Well, we'll -- we'll get to
3 that in just a little bit. But -- so during that
4 occasion you represented that you were a lawyer or
5 paralegal?

6 A Paralegal.

7 Q Okay.

8 A Which was the truth.

9 Q All right. And so when -- when you were scared,
10 you say that you're a paralegal?

11 A No, sir. In that particular case I did, because I
12 did not want any more harm coming to my mother,
13 one, and, two, I was scared for myself.

14 Q Okay.

15 A And I had -- when I was standing between my mother
16 and two guys that had a pickup truck and a gun rack
17 in the back, and all I was trying to do was let
18 them think I had some sort of legal background and
19 they'd get in trouble if they did anything else.

20 Q Okay. Let's keep reading. "He would not provide
21 her with any ID. After she left the I, slash, L."
22 I'd say that's "incident location."

23 "She ran the information in NCIC" -- and I
24 would just say that that's a database where they
25 check peoples' personal information and criminal

1 history, that sort of thing -- "and it came back as
2 Terry Alfred Trexler who is wanted out of Sumpter
3 County." Now, is that your brother's middle name:
4 Alfred?

5 A Correct.

6 Q Okay. "She told me she called me because the
7 Humane Society was involved in the call and after
8 she left she found out the complainant was wanted.
9 I told her I would follow up on the incident. She
10 gave me the incident number."

11 Oh, before I forget: How long had you worked
12 for your brother as a paralegal or a legal
13 assistant in --

14 A Probably about --

15 Q -- 1993?

16 A -- two years.

17 Q Ninety-three to 2000 -- excuse me. Ninety-three to
18 ninety-five?

19 A I'm thinking that's about right, yeah. It was --
20 it was in the mid-'90s, yes.

21 Q And how many hours a week did you work?

22 A Probably 15 to 20.

23 Q Okay. At the same time you were working with the
24 Department of Education?

25 A For -- no, sir. I didn't work Department of

1 Education. I worked at -- during that time I
2 worked for the Public Service Commission and
3 probably the Budget and Control Board.

4 Q Okay. So you sort of had dual -- two jobs at that
5 time?

6 A Yes, sir.

7 Q Okay. It says, "A short time later Investigator
8 Michele Hart of the HSPCA called, told me she was
9 investigating a complaint about some neglected
10 horses on Zeigler Road South."

11 Now, let me ask you about that. Were you
12 familiar with whether they were -- at this time in
13 February 2008, any horses on Zeigler Road South?

14 A Yes, sir.

15 Q Do you know the condition of those horses?

16 A No, sir.

17 Q Do you know whether they were taken well care of or
18 poorly care of?

19 A No, sir.

20 Q Don't know one way or the other, do you?

21 A No, sir.

22 Q They -- they could've been well cared for; they --

23 A Yes, sir.

24 Q -- could've been neglected.

25 A Yes, sir.

1 Q Okay. "Michele told me she was on DVM Lori Stokes'
2 property trying to take pictures of the horses on
3 the adjoining property when a man and older woman
4 showed up and started to yell -- started to yelling
5 and cussing at her." Did I read that correctly?

6 A Yes, sir.

7 Q "The woman stood between her and the horses and
8 waived her hands in the air and shouted profanity
9 at her. They told her she was trespassing and
10 tried to get her to give them her camera."

11 Now, secondhand -- you said you heard some
12 secondhand information about some of this. What
13 did you hear secondhand?

14 A What did I hear secondhand?

15 Q Sure.

16 A Nothing really other than that my brother had a
17 kidnapping charge on him, and it was from this
18 incident that basically had occurred on Zeigler
19 Road. And I didn't know when it happened or -- or
20 why it happened, but I knew that I had let them
21 borrow a pickup to go get feed to feed the horses
22 and that my pickup had been involved in it. And
23 that was -- I didn't even know that until we got
24 into all this stuff -- other stuff in the
25 courthouse and -- and that's when I found all this

1 out.

2 Q Your pickup was involved in it?

3 A Yes, sir.

4 Q And what was the make and model of your pickup?

5 A It was that one. Whatever -- whatever it was on
6 the previous page there.

7 Q This navy blue Ford truck was your truck?

8 A Yes, sir.

9 Q You were the registered owner?

10 A Yes, sir.

11 Q It was titled to you?

12 A Yes, sir.

13 Q The DMV, the information that they would've had at
14 this time --

15 A Yes, sir.

16 Q -- would've come back to you?

17 A Yes, sir.

18 Q And that's South Carolina tag 323TMP?

19 A Yes, sir. So I don't know why there's a mistake
20 here in regards to the identification of someone.
21 The basics of it is -- they see a truck there and
22 the basics of it is -- but then I understand what
23 happened through the process is: They had a
24 meeting, and they identified my brother as the
25 kidnapper. So the basics of it is: This pickup

1 was used to go feed those horses that supposedly
2 were neglected and -- because their truck was
3 broke.

4 Q Okay. Let's keep reading. "Michele tried to
5 explain to them that she was with the Humane
6 Society and that she was on Lori Stokes' property
7 with Stokes' permission to be there. Michele said
8 when she realized she was not going to get any more
9 pictures or any cooperation from the two people,
10 she decided to leave. While she was walking thru
11 the pasture back to her truck the man drove his
12 truck over behind her truck and blocked her in. He
13 actually told her there was no way she was going to
14 leave. He told her he had called the police and
15 the police had told him to keep her there."

16 Okay. Again, you don't know anything about
17 this because you weren't there.

18 A No, sir.

19 Q Do you know which truck allegedly was involved in
20 blocking Michele Hart in?

21 A No, sir. I don't know and -- no, sir. I don't
22 know.

23 Q So you don't know one way or the other? It
24 could've been your navy blue pickup truck.

25 A I'm pretty sure it was, to be honest with you, yes,

1 sir, based on this and based on this.

2 Q Okay. Okay. So, hypothetically, again, if someone
3 used your car -- excuse me, your vehicle that was
4 registered to you and committed a criminal act with
5 that truck and then represented to law enforcement
6 that he was James Trexler, that could confuse
7 people, couldn't it?

8 A If they committed a --

9 MR. WILLS: Object to the form.

10 A If they committed a criminal act.

11 Q Okay. Well, if somebody was trying to find out who
12 that person was that committed an alleged act to
13 figure out who they were and they say they were
14 James Trexler and they were driving a vehicle that
15 came back to James Trexler, that could confuse
16 people, couldn't it?

17 A It could.

18 Q Okay. In fact, it probably would, wouldn't it?

19 A Unless they did --

20 MR. WILLS: Object to the form.

21 A Unless they did additional research on it, yes.

22 Q Okay. Do you --

23 A And you would assume that they would.

24 Q Huh?

25 A And you would assume that they would.

1 Q Okay. At some point they would find out the truth?

2 A Correct.

3 Q Okay. But no help to the person that gave the
4 false information?

5 A No help --

6 MR. WILLIS: Object to the form.

7 A I don't know.

8 Q You don't know, do you?

9 A Unh-unh.

10 Q Okay. Do you know what's proper or required for a
11 law enforcement officer to do due diligence during
12 the course of an investigation?

13 A No, sir.

14 Q Do you have any law enforcement background?

15 A No, sir.

16 Q Do you have any formal training as a law
17 enforcement officer?

18 A No, sir.

19 Q In all the paralegal or legal assistant work that
20 you did, did you -- do you consider having any kind
21 of qualifications or training and -- or experience
22 working with law enforcement?

23 A No, sir.

24 Q Okay. Have you ever made a citizen's arrest?

25 A No, sir.

1 Q Did you ever have to attend the South Carolina
2 Criminal Justice Academy during the course of all
3 the work you did in government to take a legal or
4 anything like that -- legal course?

5 A No, sir.

6 Q Let's go to where it says "2/19/08." Looks like it
7 says "10 a.m."

8 (Sotto voce discussion between Mr.
9 Garfield and Mr. Hayes.)

10 Q Well, let me ask you this: Do you know what the
11 term or the initial "CLE" means?

12 A No, sir.

13 Q Do you know if that is a -- is anything that has to
14 do with the legal -- the legal world or the South
15 Carolina Bar or anything like that?

16 A (No response.)

17 Q It's a continuing legal education.

18 A Oh, yes.

19 Q Does that ring a bell?

20 A Yes, it --

21 Q Have you ever attended any continuing legal-
22 education --

23 A No, sir.

24 Q -- sponsored classes? Okay. And you see here
25 where it says "2/19/2008 at 10 a.m."? It says --

1 this is, again -- it's the words of this
2 investigator. This investigator, she says, "I met
3 with Investigator Michele Hart, Investigator Liz
4 Perry and Mary Ellen Tobias at the HSPCA to discuss
5 getting a SW" -- I'd represent that's "search
6 warrant" -- "to evaluate the horses on Zeigler
7 Road."

8 But I'm just reading this at face value. Did
9 it -- does it appear that I read that -- read that
10 correctly?

11 A Yes.

12 Q I continue. "Michele told me the first time she
13 went to investigate the property on Zeigler Road no
14 one was around and the gate was locked so she
15 posted the property." Okay. "Then she received a
16 call from a man who said he was James Trexler with
17 the South Carolina Department of Agriculture. He
18 was very belligerent and told her he owned the
19 horses and she could not go on his property to look
20 at the horses."

21 Did you -- question: Did you ever have a
22 conversation with anyone from the HSPCA around this
23 time?

24 A No, sir.

25 Q Somebody out there's not doing you a whole lot of

1 favors, are they?

2 A Doesn't look like it.

3 Q All right. I continue. "That is why she had gone
4 on Lori Stokes' property to try to take pictures of
5 the horses. Michele also gave me a written
6 statement about how the man calling himself James
7 Trexler blocked her in and would not let her
8 leave."

9 Did I read that correctly?

10 A Yes, sir.

11 Q "I showed her DMV pictures of James Trexler and
12 Terry Trexler. She immediately pointed to Terry
13 Trexler and said that is the man who told me he was
14 James Trexler and would not let me leave." You see
15 that?

16 A Yes, sir.

17 Q Okay. So, to some degree, it looks like that the -
18 - the confusion was rectified.

19 A Yes, sir.

20 Q Okay. Do you have any idea why Terry would go tell
21 the authorities, if it were, in fact, true, the
22 HSPCA and the Richland County Sheriff's Department
23 that he was you, that worked at the Department of
24 Agriculture?

25 A I don't know whether he did or he didn't. I see

1 this written. I don't know what he did and what he
2 didn't do. All I can tell you is that -- that if
3 he did that, I have no knowledge of it other than
4 just what I've read here.

5 Q Well, if he did that to you, knowing all that
6 happened -- look at Exhibit No. 1 where they had
7 you -- someone thought that you faced kidnapping
8 charges -- wouldn't you want to know answers to
9 that?

10 A Yeah. Well, I look at 2/19/08 and I look at
11 2/28/08, nine days later, yeah.

12 Q Uh-huh. All right. Well, I'm not saying a mistake
13 wasn't made.

14 A Yeah.

15 Q I'm not saying a mistake was made. I'm just
16 saying: If your brother set this ball in motion,
17 wouldn't you think he'd have a little explaining to
18 do out of all this?

19 MR. WILLIS: Object to the form.

20 MR. GARFIELD: Sure. You --

21 Q I mean, he's -- he can object all he wants.

22 A Like I said, I don't know if he did or he didn't.
23 I can't tell you if this report is accurate and
24 fair and is truthful.

25 Q Would that upset you if your brother was out there

1 doing this, telling -- telling the authorities that
2 he's James Trexler with the Department -- South
3 Carolina Department of Agriculture, if that were,
4 in fact, true?

5 A If, in fact, true, which we don't know if it is or
6 isn't --

7 Q I understand.

8 A -- the basics of it is: Yes. It would upset
9 anyone.

10 Q Okay. It wouldn't have done your reputation a
11 whole lot of favors either, would it?

12 A No, sir.

13 Q Okay. Okay. Let's go to the second page, and I'll
14 show you the third paragraph where it starts, "The
15 HSPCA had also received information" You
16 there where I got it?

17 A Yes, sir.

18 Q All right. "The HSPCA also received information
19 that there were horses in a barn at the home of
20 James Trexler 412 Derby Lane Hopkins South
21 Carolina." You see where it's written there?

22 A Where are you at, exactly?

23 Q Sure. I'm sorry.

24 A Oh, I'm in the wrong paragraph.

25 Q "The HSPCA" --

1 A Okay.

2 Q It's easy to do. I'm sorry. I'll start over.

3 "The HSPCA had also received information that there
4 were horses in a barn at the home of James Trexler
5 412 Derby Lane Hopkins South Carolina." You don't
6 know whether they received information or no? You
7 don't know one way or the other?

8 A No, sir.

9 Q Okay. And this was the -- the home in February
10 2008 that you -- was not your -- not where you hung
11 your hat at that particular time, right, because
12 you were in Clarendon County?

13 A On that date, correct.

14 Q Okay. Well, around that time -- scratch that.

15 "The HSPCA obtained a warrant for that
16 property. On 2/26/08 Richland County Sheriff's
17 Department assisted the HSPCA in serving that
18 warrant. One horse was in a pasture. Four horses
19 were found in stalls in the barn. The horses were
20 standing" -- well, let's just stop there.

21 Do you know -- were you present when the --
22 when a warrant was served on February 26th of 2008?

23 A Was I present when a warrant was served? On who?

24 Q On -- or, excuse me. A search warrant was executed
25 on 412 Derby Lane in Hopkins on February 26th,

1 2008?

2 A I can't tell you whether I was. I wasn't living
3 there, and I can't tell you whether I'd stopped
4 there, but, no, sir. The best of my knowledge I
5 was not.

6 Q You could've been there for breakfast that morning
7 and then left?

8 A Yes, sir.

9 Q All right. And you don't know at the time, if
10 anyone did come on that property, whether one horse
11 was in a pasture or not, do you?

12 A No, sir.

13 Q You don't know one way or the other, correct?

14 A Correct.

15 Q All right. And -- and, similarly, you don't know
16 one way or the other as to whether upwards of four
17 horses were found in stalls in the barn, do you?

18 A No, sir.

19 Q Okay. And you also don't know whether "horses were
20 standing in mud soaked with urine and feces," do
21 you?

22 A No, sir.

23 Q Okay. You also don't know as far as the feeding
24 conditions such as whether "There was no food, hay
25 or clean water" that could be seen, do you?

1 A "There was no food, hay or clean water seen on the
2 property."

3 Q You don't know whether -- one way or the other if
4 that's true, do you?

5 A That one there's a little tricky because I know
6 they kept feed in the garage and -- because when I
7 stopped there for breakfast, go through the garage,
8 there might be something there. So whether they
9 saw any food or not, I cannot tell you.

10 Q So you -- so your memory is on February 26th,
11 2008 --

12 A Oh, I don't know about -- I don't know about
13 February 26th. I know on a steady, consistent
14 basis, there was food in there in the garage. Now,
15 whether -- whether -- what day that was -- whether
16 that was on the 26th -- but I can tell you, during
17 that period of time, when they were occupying that
18 residence, that they kept feed in that garage.
19 That's all I know.

20 Q Okay. In your best estimate, how soon before
21 February 26th, 2008, have you personally seen horse
22 food in that garage?

23 A It was there all the time.

24 Q All the time?

25 A All the time.

1 Q Okay. How about hay or clean water on February
2 26th, 2008?

3 A I don't know about that.

4 Q Okay. "One of the horses was in an emaciated state
5 with ribs and hipbones protruding." You don't know
6 that because you weren't checking on the horses,
7 were you?

8 A No, sir.

9 Q "The other horses were slightly under nourished."
10 You don't know that either because you weren't
11 checking on the day-to-day well-being of the
12 horses, correct?

13 A That's correct.

14 Q And it says, "The horses were taken into custody by
15 the HSPCA." And you don't know -- you found that
16 out later, correct?

17 A Yes, sir.

18 Q All right. But you don't know specifically how the
19 horses were seized or taken --

20 A No, sir.

21 Q -- do you? Okay.

22 It said, "The horses were taken to Mike
23 Privett's to be evaluated and cared for." Do you
24 know Mike Privett?

25 A Yes, sir.

1 Q Okay. Who is Mike Privett?

2 A He's a veterinarian.

3 Q And have you had much personal/professional

4 dealings with him?

5 A Only other time I had known Mike Privett was when a

6 bankruptcy trustee asked me to be the executor of

7 my father's estate, and -- and he came out to do an

8 evaluation of the horses. And I met him out there

9 because I had to -- the bankruptcy court asked me

10 to go out there.

11 Q Okay. What was your impressions of him as a

12 veterinarian at that time?

13 A At that time?

14 Q Yeah.

15 A Back then? First -- first impression first time --

16 Q Yes, sir.

17 A -- I met him?

18 Q Yes, sir.

19 A Good vet from what I could tell.

20 Q Okay. And what is your impressions of him

21 professionally currently?

22 A Honestly, not very good.

23 Q Okay. And -- and how -- when you say you don't own

24 any of these horses and you didn't know anything

25 about them, what do you base your opinion --

1 professional opinion of him as not being very good?

2 A Based on the criminal activity that I was charged
3 with and my family was charged with. You go back
4 and you look at his evaluations of the horses five
5 years earlier, the horses were in actually a worse
6 state than what they were when they were seized in
7 2008. He's got two reports out there, and all his
8 reports say is that the horses were in the same
9 condition as they were in 2003. If there was a
10 problem in 2003, the horses should've been taken in
11 2003. Actually, if you look at the statistics and
12 his evaluation of the horses, from the criminal
13 aspects of the case that my attorney went over with
14 me, those horses were in better condition in 2008
15 than what they were in 2003. So my impression of
16 him dropped in regards to the fact that -- how can
17 he be an expert witness for the bankruptcy court
18 and be an expert witness here but yet his opinion's
19 -- his opinion hasn't changed but yet he says
20 they're in better shape now than they were then,
21 but yet he's -- I don't understand where he comes
22 from as a professional saying two different --
23 saying the same thing but yet being on two separate
24 situations.

25 Q Where -- where, to your knowledge, does he say in

1 2008 that the horses' conditions were as -- as good
2 or had improved?

3 A Before a magistrate in Lower Richland County.

4 Q He testified to that?

5 A Yes, sir.

6 Q Okay. Is there -- do you know if there's any kind
7 of transcript or recording --

8 A Yes, sir.

9 Q -- or court record?

10 A Yes, sir.

11 Q And you've heard this?

12 A I've seen this. My attorney shared it with me,
13 yes, sir.

14 Q Oh, okay.

15 MR. GARFIELD: If that exists, Brook, I'd like
16 to have a copy of it. I think that in part of
17 supplemental discovery, so --

18 MR. WILLS: I've -- I've -- I've never heard
19 of it.

20 MR. GARFIELD: Okay. Well, is this --

21 MR. WILLS: I -- I'm sorry. I wasn't the
22 attorney that handled that.

23 Q So would this be Mr. Johnson?

24 A No, sir. It'd be -- it was Lourie and then it was
25 Mr. Austin --

1 Q -- who's -- who's Mr. Wills' law partner?

2 A Yes, sir.

3 Q Okay.

4 MR. GARFIELD: (To Mr. Wills) Well, to the
5 extent it's available and to the extent you
6 can get it, I'd like a copy of it, please.

7 Q And you --

8 MR. WILLS: Could -- could you ask him to
9 restate the name just so I can mark it?

10 MR. GARFIELD: Sure.

11 MR. WILLS: I mean, what --

12 MR. GARFIELD: It's a --

13 MR. WILLS: -- a description.

14 MR. GARFIELD: Well -- well, it's a -- let's
15 try to understand.

16 Q It is a magistrate's court transcript --

17 A It's my --

18 Q -- transcript from a hearing --

19 A That's my understanding.

20 Q -- that Mike Privett testified --

21 A That's my understanding, yes, sir.

22 Q -- as an expert witness --

23 A That's my understanding, yes, sir.

24 Q -- based on the criminal allegations in this 2008
25 event?

1 A Yes, sir.

2 Q Okay. So it's based on that that you have a --
3 more of a presently unfavorable opinion of him as a
4 veterinarian or as a horse doctor?

5 A I don't know how his skills are as a veterinarian,
6 but I know that his skills are -- as an expert --
7 just my opinion --

8 Q Oh, sure. And that's all I'm asking you for.
9 Yeah.

10 A I have a little less of a opinion of him, yes, sir.

11 Q Okay. But the truth is you don't know the
12 conditions of these horses that were seized.

13 A No, sir.

14 Q Okay.

15 A Well, I -- I -- I -- I did not know the conditions
16 of them when they were seized. No, sir.

17 Q Okay. It says -- after the Mike Privett line, it
18 says, "All the horses were numbered and
19 photographed." It says "DVM Mike Privett evaluated
20 and documented the body condition of all the horses
21 seized." Okay.

22 Do you know the numbering system for body
23 conditions -- evaluations of horses?

24 A No, sir.

25 Q If -- if I said that it's a one to five, for

1 example, would you know if five would be better
2 than one or vice versa?

3 A Just in, again, back to the criminal aspects of the
4 case that I was involved in where the charges were
5 dismissed on me, going back it was my understanding
6 that a five was supposed to be good.

7 Q Okay. So you do know something about --

8 A Something. I don't know what -- how they put the
9 criteria that's established to grade a horse. I
10 don't know that. I don't know what the scale is,
11 what's -- how you get these scores, I don't know.

12 Q I understand.

13 A All I know is that a five is supposed to be good.

14 Q And if five is supposed to be good, what is your
15 impression of what a one is supposed to be?

16 A It wouldn't be so good.

17 Q All right. "On February 27th, 2008" -- I continue
18 reading, "I received the warrants from the Humane
19 Society. I received a tip that Hazelene and Terry
20 were in the house at 412 Derby Lane." It says, "I
21 called Captain Lanier of the Fugitive Team and told
22 him about the tip. The Fugitive Team responded to
23 the location and observed a man matching the
24 description of Terry Trexler in the house. He
25 would not answer the door. I faxed a SW" -- the

1 search warrant -- "to bond court. Once I received
2 the search warrant, I called Captain Lanier. I
3 responded to 412 Derby Lane and served the search
4 warrant. Hazelene and Terry Trexler were arrested.
5 James Trexler was arrested a short time later when
6 he returned to the house at 412 Derby Lane." Now,
7 I'm adding that or I'm assuming that it's 412 Derby
8 Lane. Were you arrested on the property of 412
9 Derby Lane?

10 A Yes, sir.

11 Q And what was your purpose for being at this
12 residence that you no -- no longer live at --

13 A When --

14 Q -- on February 27th, 2008?

15 A I got a call. I was in Sumter County, heading to
16 New Zion, and I got a call from Richland County
17 Sheriff's Department, and they said my mother and
18 brother had been arrested --

19 Q Uh-huh.

20 A -- and I needed to turn around and come back.

21 Q Okay.

22 A And I needed to be back in 45 minutes. There were
23 dogs in the yard and the house that needed to be
24 cared for. If I didn't get back in 45 minutes,
25 they were going to take and confiscate the animals.

1 Q Uh-huh.

2 A I told the officer I was coming back. I came back.
3 He was in an Excursion or Expedition or something
4 across the street. I got out, walked over, talked
5 to him. He said, "Go on and take care of the
6 animals. Your mother is going to the hospital.
7 She's complaining of heart failure, and they've
8 been arrested. But go on to the house and take
9 care of the dogs. I'll be back with you in 30
10 minutes." I went in the house, and it was about 15
11 to 20 minutes somebody knocked on the backdoor of
12 the garage. And I opened the door. And it's
13 Richland County police and they -- deputy sheriff
14 and they -- two of them -- and they asked me if I
15 was James Trexler. I told them I was.

16 Q Uh-huh.

17 A And they arrested me. And asked me -- well, first
18 they asked me if I own a grey stallion. I said,
19 "No." And then they asked me if I owned another
20 type horse, and I said, "No."

21 And then they said, "Well, you're under arrest
22 for these warrants." And they arrested me and took
23 me to the detention center.

24 Q Okay. They served you with five warrants, correct?

25 A That's correct.

1 Q I'm showing you exhibits -- Defendants' Exhibits
2 14, 15, 16, 17, and 18. The top page of all of
3 these exhibits are arrest warrants with your names
4 on it -- with your name on it. I'm going to ask
5 you questions about it.

6 Now, these particular warrants, Mr. Trexler,
7 when you were -- when these two sheriff's deputies
8 served these on you, did you have the chance to
9 read these warrants at that time?

10 A No, sir.

11 Q When you went to bond court, did you -- were you
12 informed of the basic information that was on
13 these warrants? Did you receive copies of these
14 warrants --

15 A Yes, sir.

16 Q -- at any time? At the time you were arrested or
17 the time you of your bond, did you receive copies
18 of these warrants?

19 A Yes, sir.

20 Q Okay. All five warrants?

21 A Yes, sir.

22 Q And can you just tell me in these five warrants --
23 so we'll spread them out for ease of viewing, all
24 right? Can you tell me on the left-hand column
25 where it says "Prosecuting Agency/Prosecuting

1 Officer" -- you see where it says that?

2 A Yes, sir.

3 Q Look at each warrant carefully and tell me if it's
4 the same prosecuting agency and the same
5 prosecuting officer in each warrant.

6 A From what I can tell, yes, sir.

7 Q And who is the prosecuting agency that prosecuted
8 you for these charges?

9 A The prosecuting agency?

10 Q Yes, sir.

11 A On the paper it says "Humane Society."

12 Q Okay. The HSPCA/The Humane Society?

13 A That's correct.

14 Q It says "Elisabeth Perry"?

15 A That's correct.

16 Q Does it also appear that Elisabeth Perry's name is
17 on every one of these warrants, is signing under
18 the narrative --

19 (Sotto voce discussion between Mr.
20 Garfield and Mr. Hayes.)

21 A Yes, sir.

22 Q -- as the affiant where it says "Signature of
23 Affiant"?

24 A Yes, sir.

25 Q Do you know who Elisabeth Perry is?

1 A I do not know her. No, sir.

2 Q Do you know which entity or agency she's affiliated
3 with?

4 A No, sir.

5 Q Okay. Do you know if it says "Officer Elisabeth
6 Perry" under where it says "The HSPCA"?

7 A Yes, sir.

8 Q Okay. Does it appear that the affiant in -- for
9 these warrants -- in other words, the person who
10 swore out these warrants were -- was somehow
11 affiliated with the Humane Society?

12 A Yes, sir.

13 Q Have you ever swore out a warrant on someone?

14 A No, sir.

15 Q Have you ever -- do you know, even with a limited
16 knowledge, just being a man of the world, that you
17 would have know the -- the protocol or the
18 procedure in which warrants were taken out in South
19 Carolina?

20 A No, sir.

21 Q Okay. Well, let's just take a look at this. One
22 second.

23 (Sotto voce discussion between Mr.
24 Garfield and Mr. Hayes.)

25 Q Let's just, for instance, look at Defendants'

1 Exhibit 18. It looks like Elisabeth Perry was the
2 affiant in this case who works for the Humane
3 Society. Does it not appear that way to you?

4 A Yes, sir.

5 Q And it looks like she went to this particular
6 magistrate. And it looks like it says "Harold A.
7 Cuff." Do you know Judge Cuff?

8 A No, sir.

9 Q Have you ever heard of Judge Cuff?

10 A No, sir.

11 Q Okay. It says here that he is with the Olympia
12 Magistrate's Office, the Richland/Olympia
13 Magistrate's Office. And he signed the warrant for
14 your arrest. Does it appear that way to you?

15 A Yes, sir.

16 Q All right. And the affiant -- it looks like she --
17 under the statement, "I further state that there is
18 probable cause to believe that the defendant named
19 above did commit the crime set forth, and that
20 probable cause is based on the following facts."
21 It looks like she's representing to Judge Cuff that
22 "On February 26th, 2008, while at 412 in Derby Lane
23 in the Olympia Magisterial District of Richland
24 County, one James Trexler did commit the crime of
25 ill/treatment of animals, and that he is the owner

1 of a 2 year old bay female with a body score of
2 1.5." It says -- looks like it says "Horse No.
3 35." Did I read that correctly?

4 A Yes, sir.

5 Q That is -- that is incorrect. I mean, your -- your
6 allegation or your -- your testimony is that is an
7 incorrect statement on her part.

8 A Yes, sir.

9 Q Okay. "He knowingly and intentionally deprived the
10 animal of necessary quantities of wholesome food
11 stuff suitable for the species and age at suitable
12 intervals and sufficient to maintain a reasonable
13 level of nutrition to allow for proper growth and
14 weight." That wouldn't be true as it applies to
15 you because they weren't -- this wasn't your horse,
16 for instance, No. 35, correct?

17 A Correct.

18 Q But you don't know as to whether No. 35 did
19 objectively 1.5. You don't know one way or the
20 other?

21 A No, sir.

22 Q Okay. And you don't know one way or the other as
23 to whether Horse No. 35 was deprived of necessary
24 quantities of wholesome foodstuff suitable for its
25 species and age, do you?

1 A No, sir.

2 Q And you also don't know as to whether Horse No. 35
3 had suitable intervals and sufficient to maintain a
4 reasonable of nutrition to allow for proper growth
5 and weight, do you?

6 A No, sir.

7 Q It continues to say, "There was no feed or hay
8 found on the property." Now, you say that there
9 was food in the garage.

10 A On that date -- on that date, I do not know. I
11 know on a -- on a consistent basis, there was feed
12 in the garage. Yes, sir.

13 Q Okay. And you don't know anything about the hay
14 one way or the other.

15 A No, sir.

16 Q "The animal was separately confined in a barn with
17 three other horses." Again, you don't know one way
18 or the other, right?

19 A No, sir.

20 Q "Standing in 4 or more inches of feces, urine, and
21 mud." You don't know whether that's true or not,
22 do you?

23 A No, sir.

24 Q "The water bucket was filled with feces and other
25 organic debris." You don't know whether that's

1 true or not, do you?

2 A No, sir.

3 Q "One horse was also found wandering the muddy, wet
4 property." You don't know whether that's true or
5 not, do you?

6 A No, sir.

7 Q "Affiant and others are witness to prove same." It
8 has this. Do you see where all this is written?

9 A Uh-huh.

10 Q Okay.

11 A Yes, sir.

12 Q Is that "yes"?

13 A Yes, sir.

14 Q And so the HSPCA or Elisabeth Perry swore out these
15 warrants, right?

16 A Yes, sir.

17 Q The Richland County magistrate, according to what
18 they're saying down here, "Having found probable
19 cause and the above affiant having sworn before
20 me," it says, "You are empowered to arrest and
21 directed to arrest the defendant." Do you see
22 where it says that?

23 A Yes, sir.

24 Q So you -- you see where the Richland County
25 magistrate Judge Cuff found probable cause for your

1 arrest, true?

2 MR. WILLIS: Object to form.

3 Q Do you have any reason to -- to doubt that Judge
4 Cuff, on the basis of this testimony from the
5 affiant, found probable cause for your arrest?

6 MR. WILLIS: Object to form. He had no
7 probable causes.

8 Q Okay. Do you have any reason to doubt that Judge
9 Cuff signed this part right here under where it
10 says, "Having found probable cause" -- I'm not
11 asking you what probable cause is -- Judge Cuff is
12 directing and empowering the authorities to arrest
13 you; do you see where it says that?

14 A I see where he's empowering them to arrest me,
15 because he's a judge. Yes.

16 Q Okay. And so you see where Judge Cuff issued these
17 arrest warrants, correct?

18 A Yes.

19 Q And -- now, you were prosecuted at some point by
20 the attorney general's office, right?

21 A That's correct.

22 Q But before then, for a limited time, you were
23 prosecuted by the Fifth Circuit Solicitor's Office.

24 A If you call -- if you want to call a year and a
25 half a limited time, yes, sir.

1 Q Okay. And I apologize. I wasn't trying to say it
2 was -- so let me rephrase that.

3 Initially, you were prosecuted by the Fifth
4 Circuit Solicitor's Office.

5 A That's correct.

6 Q Subsequently, you were prosecuted by the South
7 Carolina Attorney General's Office.

8 A That's correct.

9 Q Okay. Sometime during this time, a Richland County
10 Grand Jury looked at these charges, did they not?

11 A That would be correct.

12 Q And the Richland County Grand Jury is supposed to
13 be a neutral and detached group of individuals who
14 are considered to be your peers; are they not?

15 A I couldn't tell you. I don't know how that -- I
16 don't know how that stuff works.

17 Q Do you know whether -- have any information whether
18 you knew anyone on the grand jury?

19 A I couldn't tell you. I don't know who the grand
20 jury -- I don't know anything about it.

21 Q Okay. Well, let's -- let's look at this a little
22 bit. Are you aware that the grand jury of Richland
23 true-billed -- in other words, returned a true-
24 billed indictment against you on five counts of ill
25 treatment of animals; is that your understanding?

- 1 A That's my understanding.
- 2 Q And they did that on or about March 13th of 2008?
- 3 A Evidently.
- 4 Q Okay. Now, and do you understand what a "true-
- 5 billed indictment" means?
- 6 A No, sir.
- 7 Q Okay. Do you understand that they can't -- they,
- 8 the prosecution, can't try your case until the
- 9 grand jury looks at this?
- 10 A No, sir. I did not know that.
- 11 Q Okay. And you were prosecuted on these charges by
- 12 one or two prosecutorial agencies, fifth circuit
- 13 solicitor, the attorney general, from February 2008
- 14 to December 2009, correct?
- 15 A The dates on that would probably be February '08
- 16 through July of '010 -- '10. Yeah. July '10.
- 17 Yeah. July '10. This is '11. It'd be July 10th -
- 18 - July of '10 -- July of 2010.
- 19 Q Okay. Then I -- then I appreciate the correction.
- 20 March, April, May, June. So you've got two years
- 21 and three months you were being prosecuted for
- 22 this?
- 23 A Yes, sir.
- 24 Q Or thereabouts.
- 25 A Yes, sir.

1 Q Okay. I'll just show you Defendants' Exhibit No.

2 19. You okay? You want to take a break?

3 A I'm cool.

4 Q Okay.

5 MR. WILLS: (To the deponent) What time do
6 you have to be at work?

7 THE DEPONENT: Don't worry about it. I got to
8 be at work in the morning at three to three-
9 thirty.

10 Q I thought I had an extra copy. I'll just look over
11 yours.

12 MR. GARFIELD: All right. Let's show --

13 MR. WILLS: Sorry.

14 MS. STAFFORD: Yeah.

15 MR. GARFIELD: (To Ms. Stafford) What's
16 going?

17 MS. STAFFORD: The -- the clock that --

18 MR. GARFIELD: Oh. Yeah. That's not right.

19 MR. WILLS: Yeah. Sorry.

20 (The off-the-record discussion
21 continues.)

22 THE EXAMINATION BY MR. GARFIELD CONTINUES:

23 Q Friday, February 29, 2008, it says here on Defense
24 Exhibit No. 18 --

25 MR. WILLS: Nineteen.

1 Q Excuse me, No. 19.

2 MR GARFIELD: Thank you, Brook.

3 Q It says -- it looks like that this was an
4 evaluation of several horses that was done February
5 29th, 2008. That would have been the day after or
6 two days after your arrest?

7 A Yes, sir.

8 Q Okay. And it says -- do you see where it says,
9 "Place: Dr. Mike Privett's Practice, Hopkins,
10 South Carolina"?

11 A Yes, sir.

12 Q Do you know one way or the other as to whether he
13 evaluated and assessed all these horses that were
14 seized? Do you know that secondhand?

15 A Secondhand.

16 Q Okay. You weren't present when he was --

17 A No, sir.

18 Q -- evaluating the horses.

19 A No, sir.

20 Q And -- and you -- your limited knowledge of horses,
21 you wouldn't know how to evaluate a horse for
22 bodily condition or anything?

23 A No, sir.

24 Q Okay. You see where this Horse No. 35 we've been
25 discussing? See where it says "35: Chestnut

1 Filly, 2 years old? Body condition. BCS: 1, The
2 worst"? It says "The worst of the bunch"?

3 A Yes, sir.

4 Q Okay. The worst of all of these. Someone thought
5 -- Liz Perry or someone -- was a horse attributable
6 to you. I'm not saying it's true. I'm saying that
7 someone believed that. Do you know how they could
8 have come to believe that?

9 A No, sir.

10 Q She believed it. The Richland County magistrate
11 believed it. There were others that believed that
12 too. Is that true?

13 MR. WILLS: Object to form.

14 Q This is the basis of your lawsuit, that some people
15 believed certain things that were not true, to take
16 in as true.

17 A I don't know how anybody arrived at the deductions
18 they arrived at in regards to this whole matter, to
19 be honest with you. The basics of is it I did not
20 own that horse.

21 Q Okay. But there were people out there that said
22 you did.

23 A Evidently.

24 Q Okay. There was, again, the HSPCA who took out the
25 warrants. They -- you were just looking at that.

1 They must have thought you owned it.

2 A Evidently.

3 Q And evidently the magistrate believed that the
4 HSPCA was giving him truthful and accurate
5 information, to your knowledge.

6 A Yes, sir.

7 Q And the grand jury believed that as well.

8 A Evidently.

9 Q Okay. And one or more prosecutors believed that
10 for over two years, did they not?

11 A Yes, sir.

12 Q Now, let's just look at what was -- what was
13 printed. Defendants' Exhibit No. 1, where it says
14 "Assistant ag chief faces kidnap charge." All
15 right. It says "Horse Mistreatment Investigation"
16 up here. This was the headline in "The State"
17 newspaper, February 28th, 2008, okay? It says,
18 "Horse Mistreatment Investigation." Well, they
19 were investigating horse mistreatment; were they
20 not, to your knowledge --

21 A Yes, sir.

22 Q -- the authorities? Okay.

23 And we knew your brother faced a kidnap
24 charge, not you, right?

25 A Yes, sir.

1 Q And whether you want to call yourself or like to
2 call yourself an "assistant ag chief," you were, in
3 fact, the assistant commissioner of the South
4 Carolina Department of Agriculture.

5 A I was a assistant commissioner of agriculture.
6 There are several assistant commissioners of
7 agriculture depending on their duties and their
8 responsibilities.

9 Q Okay. There could be several assistant ag chiefs.

10 A Absolutely.

11 Q All right. And you see where it says "Trexler
12 jailed, suspended from state post"?

13 A Yes, sir.

14 Q That would be you, would it not?

15 A Yes, sir.

16 Q It says, "An assistant state agriculture
17 commissioner is in jail -- charged with kidnapping
18 after police say he threatened and detained a Human
19 Society" -- "a Humane Society," excuse me --
20 "investigator looking into allegations of abused
21 horses at the farm where he lives." That's true,
22 isn't it? You were charged with -- no. Excuse me.
23 Your -- it's true -- I'm sorry. Let me -- let me
24 strike that.

25 "An assistant state agriculture commissioner

1 is in jail." That was true, correct?

2 A Yes.

3 Q You were not charged with kidnapping, correct?

4 A Correct.

5 Q Okay. So part of that first paragraph is true,
6 part of that first paragraph is not true, correct?

7 A Correct.

8 Q Let me go to the second paragraph, "James W.
9 Trexler, 48, also is charged with five counts of
10 ill treatment of animals." Did I read that
11 correctly?

12 A That's correct.

13 Q That is a true statement; was it not?

14 A That's correct.

15 Q "His mother and brother also face charges of ill
16 treatment of animals." That is also a true
17 statement as well; is it not?

18 A Correct.

19 Q Okay. "'Trexler and his mother and brother,
20 Hazelene E. Trexler, 70, and Terry A. Trexler, 44,
21 were arrested at 8 p.m. Wednesday by the Richland
22 County Sheriff's Fugitive Task Force at James
23 Trexler's home on Derby Lane in Hopkins,' Sheriff
24 Leon Lott said." Now, let's stop there.

25 Other than the fact that whether you want to

1 say that was your permanent residence or not, all
2 of that is true, correct?

3 A I don't know what time they were arrested.

4 Q Would it have been Wednesday evening?

5 A I don't remember.

6 Q Would it have been the evening of February 27th on
7 which you were arrested?

8 A That would be correct.

9 Q Okay. And if this newspaper article ran Thursday,
10 February 28th, and they're talking about the day
11 before, wouldn't you have been arrested the night
12 before this newspaper article came out?

13 A That would be correct.

14 Q Okay. Would it be legitimate for anyone to believe
15 that you resided at 412 Derby Lane on February
16 27th, 2008?

17 MR. GARFIELD: (To Mr. Wills) You can go
18 ahead. I'll object to form. You object to
19 the form of that question.

20 Q Go ahead and answer.

21 A I mean, if I'd lived there for a number of years,
22 it'd be reasonable to assume that that was my home.

23 Q Would it be legitimate for the authorities -- would
24 it be legitimate for the authorities to conclude --
25 let's say it this way: Would it be legitimate for

1 authorities in Charleston County to conclude that
2 you live at the duplex you live in now?

3 A Yes.

4 Q Would it be legitimate for authorities to conclude
5 that you lived on 412 Derby Lane in Hopkins, South
6 Carolina, on February 27th, 2008?

7 A Yes.

8 MR. WILLS: Objection.

9 MR. GARFIELD: Okay. Well, I don't know how
10 to get around the objection without just doing
11 this, then. Let's go ahead and mark this as
12 an exhibit.

13 MR. WILLS: Let me see --

14 MR. GARFIELD: And if you want to -- if you
15 want to -- if you're not a -- if you want to
16 take this out and talk to him, that's fine.

17 Defendants' Exhibit No. 21, "3 Year

18 Driver Record," dated 03/04/08; 2 pages.

19 Q It's your driving record that was printed out March
20 4th, 2008.

21 MR. BENDER: (To Mr. Garfield) And this would
22 be?

23 MR. GARFIELD: This would be No. 21.

24 Q Is that your picture?

25 A Yes, it is.

1 Q Does this appear to be your three-year driving
2 record with the Department of Motor Vehicles?

3 A It would appear to be.

4 Q All right. What information would DMV have had in
5 late February of 2008 as to what your permanent,
6 physical address would be?

7 A Be the driving record, 412 Derby Lane.

8 Q Okay. In fact, 412 Derby Lane had been the
9 information that the Department of Motor Vehicles
10 would have had for you all the way since March of
11 2005; is that true?

12 A Yes, sir.

13 Q So upwards of three years, there'd been no changes,
14 and the only information the Department of Motor
15 Vehicles would have had to get in touch with you
16 would be Derby Lane -- 412 Derby Lane; is that
17 correct, to your knowledge?

18 A I don't know how you go about doing stuff like
19 that, but if that's the only way you do it, I would
20 suppose it would be.

21 Q Okay. Well, did you ever register with anyone
22 saying that you moved to Clarendon County?

23 A No, sir.

24 Q Or moved to anywhere else?

25 A No, sir.

1 Q Now, let's get back to the -- Exhibit No. 1.

2 "Hazelene Trexler is charged with 28 counts of ill
3 treatment of animals. Terry Trexler is charged
4 with 23 counts of ill treatment of animals." Do
5 you see where I'm reading that?

6 A Yes, sir, I do.

7 Q Okay. That's true, correct?

8 A Yes, sir.

9 Q "Lott called the treatment of the horses 'severe
10 and barbaric.'" Let's stop there. You don't know
11 whether that's true or not?

12 A No, sir.

13 Q All right. "Adding, 'The Trexlers have proven time
14 and again that they have no business owning any
15 animals.'"

16 Do you have an opinion one way or the other?

17 A No, sir.

18 Q All right. You don't know whether that's true or
19 not, do you?

20 A No, sir.

21 Q All right. "The fugitive task force" --

22 A Now, wait a second. Let me -- ask me that question
23 again because I'm getting a little -- getting
24 fogged up here. I might need to take a break.

25 MR. GARFIELD: Let's take a break, then.

1 THE DEPONENT: Okay.

2 MR. GARFIELD: Sure. I told you, any time you
3 need to take a break.

4 THE DEPONENT: I need to get some chocolate or
5 something. Yeah.

6 MR. WILLS: Just to -- just to make sure
7 that's -- just to make sure we're clear on
8 this: He wanted to revisit that question.
9 And then we talked about taking a break. Do
10 you -- you could do it --

11 THE DEPONENT: I mean, I need to revisit that
12 question because my mind's in a fog.

13 MR. GARFIELD: I will ask you -- once you've
14 had something to stimulate your blood sugar or
15 whatever, we can take a break, I'll come back
16 and ask you that same question again.

17 THE DEPONENT: All right.

18 MR. GARFIELD: And let you withdraw the
19 earlier question.

20 THE EXAMINATION BY MR. GARFIELD CONTINUES.

21 Q The question --

22 MR. GARFIELD: (To the court reporter) You
23 good?

24 Q The question I had that we wanted to revisit -- let
25 me kind of back up and look at it.

1 You can -- in this particular paragraph -- I'm
2 just going to kind of point over you. This is the
3 third main paragraph where it starts "Trexler and
4 his mother and brother" This paragraph
5 right here -- he's talking about your mother and
6 your brother, correct?

7 A Correct.

8 Q And you could see right here, the next paragraph
9 that starts, "Hazelene Trexler is charged with
10 certain counts"

11 A Correct.

12 Q That's talking about your mother and your brother?

13 A Correct.

14 Q And then looks like Sheriff Lott makes a comment --

15 A Correct.

16 Q -- and he's talking about "the Trexlers," here,
17 "have proven time and again that they have no
18 business owning any animals." Did I read that
19 correctly?

20 A You did, yes, sir.

21 Q Okay. And he's making this statement that comes
22 after two paragraphs -- he's talking about your
23 mother and your brother, correct?

24 A Correct.

25 Q Okay. Do you know -- do you have an opinion as to

1 whether your brother and your mother had business
2 owning any animals?

3 A I cannot say whether they do or don't. I -- I -- I
4 can't, but I -- I know when they say "Trexlers" --
5 I don't know what he means there. Is he talking
6 about me? Well, I can tell you, I have no --
7 proven I've mistreated an animal. I mean, whether
8 they have or have not, I don't know. I know I have
9 never mistreated an animal.

10 When you say "Trexlers," I mean, that -- that
11 -- that's what caught me. I -- I don't know
12 exactly what he means by "Trexlers." If he
13 includes me as a Trexler, then I've never proven --
14 you know, I've ever hurt anything, much less an
15 animal.

16 Q Okay. Well, let me -- let me pause it there on
17 this article. And let me ask you a few questions,
18 and then we may suspend my questioning so we can
19 get moving on.

20 Does the fact that you -- the HSPCA swore out
21 a warrant against you; that a Richland County
22 magistrate issued the warrant; that you were
23 prosecuted for over two years; that a grand jury
24 true-billed indictments -- had returned true-billed
25 indictments against you; did all of those things

1 affect your job standing and your status?

2 A My job standing and status? Yes. I lost my job.

3 And as far as getting back into the system -- which
4 is a fish bowl, so it'd've been impossible. So
5 yes. It did affect my job status and my ability to
6 be re-employed with the state.

7 Q It -- and it was -- and, in fact, it was because
8 the HSPCA swore out the warrant, and the Richland
9 County Magistrate issued the arrest warrant. Those
10 were public records, weren't they?

11 A I don't know what a public record is, but I -- I --
12 I know when they swore that out, that was the
13 beginning of the process. The prosecuting of the
14 situation, the arrest -- and the prosecuting of the
15 situation was the rest of the story.

16 Q Okay. Well, these exhibits -- 14, 15, 16, 17, and
17 18 -- these five warrants that kicked off -- you're
18 right -- the prosecution, the grand jury true
19 bills, and all those things -- based on those, is
20 the result of this legal process -- is what
21 proximately caused or caused your negative or
22 unfavorable impact to your job standing and your
23 job status?

24 A It certainly contributed to it, yes, sir.

25 Q In fact, it didn't just contribute to it. The fact

1 that there were legal authorities out there that
2 believed this and was promoting these ideas and
3 were authorizing your arrest and prosecution
4 affected your job standing and status, did it not?

5 A It certainly contributed to it, yes, sir.

6 Q It probably contributed -- and you say "contributed
7 to it," it's -- it's what actually caused you to
8 lose your job?

9 A Well, I think a lot of things were in -- caused me
10 to lose my job. I think that was part of it. I
11 think the other part of it was the arrest. The
12 other part of it was the prosecution, and the other
13 part of it was the media frenzy that fed off of it.
14 I think all of those -- when you're a public
15 official like Mr. Weathers is -- certainly when you
16 dealing with state employees under you in that kind
17 of position, they are a liability, and you have to
18 get rid of them. So I think everything contributed
19 to it, including that.

20 Q All right. So the arrest and the prosecution of it
21 and the arrest warrant being served and all the
22 things that came out in this -- these -- these
23 arrest warrants, that also contributed to you
24 having an adverse financial impact?

25 A Absolutely.

1 Q And it impaired, in many ways, your ability to
2 obtain other employment, correct?

3 A Yes, sir.

4 Q And it caused you a great amount of humiliation?

5 A Absolutely.

6 Q And it damaged your reputation?

7 A Yes, sir.

8 Q Okay. And I'm talking about the arrest and the
9 prosecution and all the things that stemmed from
10 Exhibits 14 through 18 --

11 A Yes, sir.

12 Q -- correct?

13 I'm not even talking about the media frenzy --

14 A Correct.

15 Q -- that's another question.

16 A Correct.

17 Q Your media frenzy didn't help you on all those
18 counts either --

19 A No --

20 Q -- did it?

21 A -- sir.

22 Q All right.

23 A No, sir. They all contributed.

24 Q They all contributed. Okay.

25 Do you know as to the -- whether the arrest

1 and the prosecution contributed (as spoken) --
2 contributed less or more to the damage of your job
3 standing and your job status?

4 MR. WILLIS: Object to form.

5 MR. GARFIELD: Well, he's --

6 Q You're bringing a lawsuit.

7 MR. GARFIELD: -- bringing a lawsuit based on
8 damage to his reputation.

9 Q I need to know: What damaged your reputation? Was
10 it the arrest --

11 MR. WILLIS: You can ask him what his damage to
12 his reputation is, but I don't think you can
13 say which one -- if he -- he's not going to
14 know which one caused more.

15 Q Well, do you know which one caused more than the
16 other?

17 A I think they all contributed.

18 Q All right. Well, do you have any idea as to
19 whether one caused or contributed more than the
20 other? If you don't know --

21 A I think the arrest and the prosecution did, to be
22 honest with you. I think this is a piece of paper.
23 You can either enforce this or not enforce this.

24 That's my understanding of it. My lawyer told me -
25 - Mr. Lourie -- that this thing could've been

1 enforced or not enforced, and what should've
2 happened, there should've been an investigation to
3 see whether or not you actually owned this horse
4 before it was done. He says a piece of paper --
5 until you are arrested and until you are
6 prosecuted, this is just a piece of paper. He says
7 lots of warrants outstanding on people that never
8 are served on people.

9 And the basics of it is, I think, it
10 contributed, but I think probably the arrest and
11 the prosecution contributed more, because once I
12 was arrested, that put the commissioner in a bad
13 position. He had an employee that had been
14 arrested. He had an employee, also, that was going
15 to be prosecuted. Because he told me in so many
16 words, "Because you've been arrested and you're
17 going to be prosecuted, when this thing comes to a
18 close, we'll reconsider your situation." Four days
19 later, based on the media frenzy, which also
20 contributed to it, he called me and said, "Look, I
21 have no options. You're going to have to resign."
22 And I resigned.

23 Q So while the arrest and the prosecution played a
24 larger role with your job standing and job status -
25 - you believe -- does it also play a larger role in

1 your adverse financial impact?

2 A The arrest and the prosecution?

3 Q Yes.

4 A Yes, sir.

5 Q Than the -- than the publicity surrounding your
6 arrest and prosecution?

7 A Well, I think they both contributed -- they all
8 contributed. And I think they were hand in glove.
9 I had never got arrested, there'd never been any
10 publicity. If I hadn't been prosecuted for two and
11 half years, I might've been able to get clean on
12 this thing and -- and, basically, instead of being
13 two and half years after the fact, a lot earlier.
14 So I think -- like I said, once you got arrested
15 and you got prosecuted and the media, they all
16 contributed.

17 Q If this headline read, "Assistant ag chief faces
18 ill treatment of horses charge" on Exhibit 1 rather
19 than "Assistant ag chief faces kidnap charge" --

20 A Uh-huh.

21 Q -- would that have changed things for you?

22 A I can't -- I don't know. I can't answer that
23 question. I don't know what someone else -- see,
24 somebody else held my future in their hands. What
25 they're going to think or how they're going to

1 feel, I don't know. So I really can't -- I don't
2 know.

3 Q So I guess my question is: I need to understand
4 how the arrest and prosecution impacted you with
5 respect to, or in comparison to, if you know, the -
6 - the publicity surrounding your arrest and
7 prosecution. And if this read, "Ill treatment of
8 horses" in which there -- there was legal authority
9 early on, or the prosecution to believe that to be
10 true, I need to know if that would've damaged you.

11 A I think --

12 MR. WILLIS: He -- he can't speculate.

13 A I --

14 MR. GARFIELD: That's --

15 A I --

16 MR. GARFIELD: -- fine.

17 A -- don't know.

18 MR. WILLIS: He's --

19 MR. GARFIELD: You just --

20 A I mean --

21 MR. GARFIELD: -- object. I -- objection's --

22 A I mean, I --

23 MR. GARFIELD: -- fine.

24 A I -- I -- I don't really know. I -- I think they
25 all contributed. I think -- who knows when

1 somebody's mind? Somebody may say getting arrested
2 is a lot worse than the publicity on it. Somebody
3 may say the publicity is a lot worse than getting
4 arrested. I -- I don't know what played into it,
5 you know. They may all have been equal in
6 somebody's mind. One may have had heavier weight.
7 I don't know.

8 All I know is that this piece of paper, along
9 with the arrest, and along with the prosecution --
10 and the arrest and prosecution probably played
11 heavier in it than this piece of paper -- and the
12 publicity that came out of it, I was doomed --

13 Q And --

14 A -- and still am.

15 Q And the reason is because someone is representing
16 that you owned horses, correct?

17 A That's correct.

18 MR. WILLS: Object to form.

19 Q All right. And part of the -- your belief in some
20 of this, Mr. Trexler, is that the -- there were
21 people out there -- that it was publicized that you
22 owned horses and these horses were ill-treated?

23 A There were people that publicized that?

24 Q In other words, this is publicized to certain
25 people that you owned horses and they were ill-

1 treated, because you were arrested for ill
2 treatment of horses.

3 A And publicized to who?

4 Q Publicized to whoever.

5 My -- my question is: Is some of the
6 embarrassment or the humiliation or all the bad
7 things that happened to you as a result of all this
8 -- is part of that because you allegedly owned
9 these horses that were allegedly ill-treated and
10 abused?

11 A That's what it all stemmed from. I allegedly owned
12 them -- that somebody thought I owned them and then
13 somebody thought I abused them. And -- which was
14 neither -- neither one was the case, but somebody
15 thought that without doing an investigation,
16 evidently. Somebody assumed -- you know what
17 assumption gets you. They assumed that I owned
18 them, and they assumed that I mistreated them.

19 Q Okay. These two sheriff's deputies that came out
20 to your -- to 412 Derby Lane -- they served you
21 with arrest warrants. Can you describe them for
22 me?

23 A No, sir. I really can't, honestly.

24 Q Don't remember if it was male or female?

25 A I think one was a female, to be honest with you.

1 Yes, sir.

2 Q Okay. Black female? Do you recall?

3 A If I had to say yes or no, I'd say, yes, sir.

4 Q Okay.

5 A I'll tell you what's -- I tell you, I -- I've tried
6 to put a lot of this stuff out of my mind, because
7 a lot of it was bad. And the basics of it is, I
8 don't really remember, but there were two of them.
9 And I think one of them was a black female.

10 Q Okay. Were they ugly to you? Did they -- did they
11 treat you badly?

12 A I thought -- I thought, you know, you see the
13 movies and I don't know if it's true or not true.
14 I'm not a lawyer, but you'd think, you know, they'd
15 read you your memorandum (as spoken) rights. That,
16 you know, you're under arrest, you had the right to
17 an attorney, whatever that stuff says. They never
18 did that.

19 Q Okay. Absent not reading you the Miranda rights
20 based on what you think they should do -- based on
21 the movies -- my question is: Were they rude or
22 they ugly to you?

23 A No, sir. No.

24 Q Okay. They had these arrest warrants --

25 A That's --

1 Q -- Exhibits --

2 A -- correct.

3 Q -- 14 through 18 --

4 A That's correct.

5 Q -- that was already issued by the magistrate,
6 right?

7 A Yes, sir.

8 Q And they served them on you --

9 A That's correct.

10 Q -- right?

11 And they handcuffed you?

12 A Correct.

13 Q And they took you to the Alvin S. Glenn Detention
14 Center?

15 A Yes, sir.

16 Q They transported you in a patrol car?

17 A Yes, sir.

18 Q Okay. And they turned you over to booking at Alvin
19 S. Glenn, correct?

20 A Correct.

21 Q Okay. They didn't have to use force with you or do
22 anything -- they didn't --

23 A No --

24 Q -- have --

25 A -- sir.

1 Q -- to, like --

2 A Nope.

3 Q Okay. They were essentially doing their jobs?

4 A Correct.

5 Q Those deputies were just doing their jobs?

6 A Correct.

7 Q Okay.

8 MR. GARFIELD: (To Mr. Wills) Brook, as we
9 talked about during the break, I think we've -
10 - I've come to a stopping point where I'm just
11 going to suspend, by agreement, the
12 questioning in this case. I reserve the right
13 to ask to reconvene at a mutually convenient
14 time so we can try -- I can finish my
15 questioning, if at all. But this will give
16 Mr. Bender an opportunity to ask questions
17 before it gets too terribly late.

18 MR. BENDER: (To Mr. Garfield) That's
19 certainly acceptable to me. (To Mr. Wills)
20 Is it -- that's acceptable to you --

21 MR. WILLIS: That's --

22 MR. BENDER: -- and Mr. --

23 MR. WILLIS: -- acceptable --

24 MR. BENDER: -- Trexler?

25 MR. WILLIS: -- to us, yes.

1 MR. BENDER: Because we want to get him back
2 down to Charleston at a decent hour.

3 EXAMINATION

4 BY MR. BENDER:

5 Q Mr. Trexler, I'm Jay Bender. I represent the
6 Associated Press, Barrington Broadcasting, the
7 Pacific & Southern Company, and Raycom TV
8 Broadcasting in defense of the suit --

9 (Sotto voce discussion between Mr.
10 Garfield and Mr. Hayes.)

11 Q -- brought by you through an amended complaint.
12 You've done an excellent job answering Mr.
13 Garfield's questions out loud. I'd ask you to do
14 the same here, and if you don't understand a
15 question I ask, ask me to repeat or rephrase it,
16 and I'll be happy to do so. If you provide an
17 answer, we'll proceed on the belief that your
18 answer is to my question; is that fair?

19 A Yes, sir.

20 Q And you're doing a good job of answering out loud
21 still.

22 The original suit brought by you also included
23 as plaintiffs, your mother and your brother; is
24 that correct?

25 A Not that I'm aware of.

1 Q Okay. You're not aware that the suit was initially
2 brought by you, your brother, and your mother
3 against a number of people, including Frank Fusco -
4 - and a number of other people?

5 A Are we -- we dealing with something that is prior -
6 - we're I'm talking about the current -- the
7 current issues we had before you -- currently, are
8 we?

9 Q No.

10 A We're --

11 Q I'm --

12 A -- talking about --

13 Q I'm --

14 A -- something happened before?

15 Q I'm asking about the initially summons and
16 complaint filed in this action that's now pending
17 against my clients.

18 A I don't know anything about that. I mean, I -- I -
19 - I took and I filed, basically, on my own with
20 William Johnson -- these lawsuits that are before
21 you, sir.

22 Q Okay. And it was initiated by an amended summons
23 and an amended complaint. What I want to know is:
24 amended from what?

25 A I don't know, sir.

1 Q Okay. You didn't have anything to do with the
2 first complaint that was filed in this case that
3 bears the --

4 A When --

5 Q -- case --

6 A -- was that filed --

7 Q -- number --

8 A -- sir?

9 Q It was in --

10 MR. WILLS: (To the deponent) Let him --

11 Q -- 2010.

12 MR. WILLS: -- let him finish his question.

13 Q It's 2010-CP-40-1249. That's the case number.

14 Do you -- You didn't have anything to do with
15 filing the initial complaint in that action?

16 A Well -- and it was against who?

17 Q Against a number of defendants, but none of the
18 ones in this action, identified by name. The
19 number of individuals, including Frank Fusco, who I
20 understand was at the Budget and Control Board, the
21 commissioner of agriculture, the attorney for the
22 commissioner of agriculture, and a number of other
23 people.

24 A Whoever filed that must've included me. I have no
25 knowledge of that. Must've taken as a class action

1 suit or something. I don't know, but I'm not aware
2 of that, no, sir.

3 Q All right. So you went to William Johnson and
4 said, "I want to sue," and he filed an amended
5 complaint for you?

6 A I don't know what he filed. I asked him to take
7 cases for me.

8 Q Okay. Do you know Mary Ellen Tobias?

9 A Yes, sir.

10 Q And how do you know Mary Ellen Tobias?

11 A She was an employee of the Department of
12 Agriculture.

13 Q What was her area of responsibility at the
14 Department of Agriculture?

15 A She was a equine marketing person.

16 (Sotto voce discussion between Mr.
17 Garfield and the court reporter.)

18 Q So her area was horses?

19 A Yes, sir.

20 Q All right. Did you ever have a conversation with
21 Mary Ellen Tobias before the events leading to your
22 arrest about horses on property owned or controlled
23 by you?

24 A I had conversation with Mary Ellen Tobias about
25 horses, yes, sir.

1 Q All right. Horses that you had a connection with
2 in her mind?

3 A I don't know what she was thinking, but evidently
4 she thought I had something to do with it to talk
5 to me about it, yes, sir.

6 Q And what did Mary Ellen Tobias say to you?

7 A There were several occasions -- probably three in
8 nature, totality -- that we conversed in regards to
9 the horses.

10 One of them was in -- when we was in the
11 middle of that severe drought -- hundred-year
12 drought we had -- and they're talking about
13 bringing hay in from Texas and this place and that
14 place and dropping the regulations in regards to
15 bringing -- and bringing it into the state. And at
16 the end of that conclusion of that meeting, while
17 the commissioner was there and I was there and the
18 marketing people were there, and he had me there
19 trying to figure out how you can figure out some
20 kind of way financially to get money from Point A
21 to Point B to help the farmers. And how we could
22 do this to help bring in hay from a budgetary
23 standpoint. And she, after the meeting, approached
24 me about complaints she had in regards to horses,
25 and that -- and I told her at that point in time,

1 "Mary Ellen, I don't own these horses." I said,
2 "These horses belong to my mother and, as far as I
3 know, my brother. I'm not involved in that. Have
4 nothing to do with that."

5 And she -- I tell her, I said, "If you got
6 concerns, what you need to do, is contact them and
7 Sumter County and converse with them and go over
8 there and see what's going on, but I have nothing
9 to do with this." That was the first conversation.

10 Q Okay.

11 A Second conversation was: She came to my office and
12 she said, "I'm still getting complaints about these
13 horses." This was like in October or November
14 sometime.

15 Q What year?

16 A 2007. And I said, "Mary Ellen, I don't own the
17 horses, as we've discussed before. If you've got
18 problems with the horses, you need to call or go
19 over there."

20 And she tells me, "I'm not going over there."

21 I said, "Well, then, don't come to me and
22 bother me with this. I don't own them. I don't
23 own anything over there. Leave me alone with it."

24 I said, "You need to go to who owns the stuff."

25 Those are the conversations I had with her in

1 regards to the horses.

2 Q All right. You said you had three. That was two.

3 A And the third one: She came to me, again, into my
4 office and some kind of situation with horses and
5 brought my situation up again.

6 (Sotto voce discussion between Mr.
7 Garfield and Mr. Hayes.)

8 A I said, "Mary Ellen, I don't have anything to do
9 with horses, okay? I don't own any horses. I
10 don't know anything about it. What -- what's going
11 on with that?" I said, "It ain't nothing of my
12 concern, really. I don't own the business. I'm
13 not going to get involved in the business. I'm
14 trying to stay out of that situation. Whatever it
15 is, it's her and my brother. Go there."

16 Q "Her" --

17 A But I --

18 Q "Her," being your mother?

19 A Correct. And I also had this conversation with --
20 with her -- that was it. Those three were the
21 three.

22 Q Did Mary Ellen Tobias tell you why she believed you
23 had a connection with those horses?

24 A No, sir.

25 Q Did Commissioner Weathers ever have a conversation

1 with you about horses he believed you had a
2 connection with prior to your arrest?

3 A We had a conversation. We had a couple of
4 conversations. One was in regards to someone
5 called the agency, and it got transferred to me by
6 accident. And this guy lived over in Lee County,
7 close to Sumter, and he got on the phone with me
8 and before I could say, "Look, man, you got the
9 wrong person. You need to be talking with Mary
10 Ellen Tobias," he went off. And he went off hard
11 on my mother and my brother, and I stood there and
12 I listened to him. I couldn't get a word in
13 edgewise. I said, "Okay. Just let him talk."

14 And he talked. And the whole time he talked,
15 he was just criticizing the hang out of my mother
16 and my brother, and it's hard to sit there and let
17 somebody talk about your mom. So, basically, we
18 sat there and listened to it, got through, hung up,
19 went up front, and told his executive assistant who
20 sits in the same office with him. She sits there,
21 he sits there --

22 Q Now, "him" -- "his" would be Hugh Weathers?

23 A That's correct.

24 Q Okay.

25 A And I told her -- I said, "Look" -- Kay Rike -- I

1 said, "Look, this dude --

2 (Sotto voce discussion between Mr.

3 Garfield and Mr. Hayes.)

4 A -- just called. He's mad with my family about the
5 horses over there. The commissioner needs to be
6 aware of it, that he called, made a complaint.
7 Mary Ellen probably needs to know about it. That's
8 the deal.

9 So he come up there later on and asked me what
10 happened. And I told --

11 Q "He" --

12 A -- him --

13 Q "He," being the --

14 A The --

15 Q -- commissioner?

16 A -- commissioner. Came up later and said, "What
17 happened with that deal?"

18 And I told him.

19 And he said, "What's going on over there?"

20 And I said, "Commissioner, I don't own horses.

21 That's my family's business."

22 He says, "Are they feeding them?"

23 I said, "Commissioner, I don't know."

24 He says, "Do you know where they buy their
25 food?"

1 I said, "I think they've been dealing -- I
2 think, sometimes with Orangeburg Milling, sometimes
3 with this place and that place," I said. "But
4 where they're buying food from now, I don't know.
5 But, yes, sir, it's their business. And why don't
6 you call my brother and talk to him about that?"

7 And whether he did or not, I don't know. I
8 don't think so.

9 Then the other time was, he came to my office
10 and he says, "Whatever happened to the horses?"

11 And I said, "Sir, I don't know. I really
12 don't know what's going on with that stuff."

13 He says, "Well, I'm just wondering about it."

14 I said, "Well, what you want me to do?"

15 He said, "If you can, just make sure
16 everything is okay."

17 I said, "Well, I will go over there this
18 weekend, and I'll talk to my brother and mother and
19 they'll come over here or something." I said,
20 "I'll talk to them."

21 He said, "Man, do what you're supposed to be
22 doing. If you need help, call somebody and get
23 help."

24 I said, "I'll look into it." I talked to them
25 about it. They said there was no problem. I said,

1 "Okay. Cool." I got my family and my wife -- and
2 then having to mess with them -- my son -- I'm --
3 got my mind on other things.

4 And so, basically, he comes later, and I'm
5 leaving one day to go somewhere and he calls me in
6 the garage. And the phone rings and he says,
7 "Where are those horses?"

8 And I said, "Commissioner, they're not over
9 there now." I said, "They lost the farm and they
10 moved them."

11 And -- and he said, "Moved them where?"

12 I told him, "I think over here in Richland
13 County. They got some over there where I used to
14 stay until I was kicked out."

15 And he said, "Okay. I was just wondering
16 whatever happened to them."

17 That was three conversations I had with him on
18 it.

19 Q Did the commissioner ever offer to assist you in
20 getting food for those horses?

21 A No, sir.

22 Q Did you follow up when he told you to check on the
23 horses?

24 A Yes, sir. I had that conversation with my brother.

25 Q All right. Where was that conversation?

1 A That conversation was at 412 Derby Lane.

2 Q Okay. And what did you say in the conversation?

3 A I told him to come -- someone had called and
4 complained. I thought there was a number of
5 complaints, that he needed to look into it. Make
6 sure he was doing what he needed to do over there;
7 that -- because there could be some liability there
8 for my mother and that she was older. And they
9 really needed to sell those horses because she
10 couldn't take care of them. And, basically, the
11 vest and -- and -- and then take whatever you got
12 to with them, but make sure you're doing what
13 you're supposed to do which is right.

14 Q And when was that conversation?

15 A That was probably November -- no, it was earlier
16 than that. It was probably about September --
17 August or September. It was right after I talked
18 with Mary Ellen about the hay business, so it was
19 probably about August or September of '07.

20 Q All right. Did you tell your brother that your
21 boss -- the commissioner of agriculture --

22 A Yes, sir.

23 Q -- was concerned about you and horses?

24 A Yes, sir.

25 Q And that concern by the commissioner of agriculture

1 about you and horses went back to 2007?

2 A Yes, sir.

3 Q Let me show you Defendants' Exhibit 7 in this
4 deposition. This is the form on -- and you knew
5 the name of the testing, but I don't. What's the
6 name of that test?

7 A Coggins.

8 Q Coggins?

9 A Coggins.

10 Q Coggins. You wrote your name on that form, didn't
11 you?

12 A Sir, that's not my writing.

13 Q Did you write your name on that form?

14 A No, sir.

15 Q Did you tell the veterinarian that you were the
16 owner of that horse?

17 A No, sir.

18 Q Then, how did your name get in that form as the
19 owner of that horse?

20 (Sotto voce discussion between Mr.
21 Garfield and Mr. Hayes.)

22 A I do not know. She probably asked me who I was,
23 what my address was, what my telephone number was,
24 and I provided it to her.

25 Q Did you get a copy of that form?

1 A I did, and I forwarded it to my mother.

2 Q Okay. But under oath, here tonight, your testimony

3 is: You did not write your name on that form as

4 the owner of that horse?

5 A No, sir.

6 Q Did you see anybody else write a name on there?

7 A Did I see anybody else? No, sir. I didn't watch

8 what she wrote and didn't write.

9 Q Do you refer to yourself as "Jim Trexler"?

10 A Yes, sir.

11 Q Okay. That's my copy. Let me have that back.

12 Do you have your driver's license with you?

13 (Sotto voce discussion between Mr.

14 Garfield and Mr. Hayes.)

15 A Yes, sir.

16 Q Can I see it?

17 A (Complies.)

18 Q Is this a CDL?

19 A Yes, sir.

20 Q Do you have any other driver's licenses?

21 A No, sir.

22 Q How long have you had a CDL?

23 A Since November -- November of '08.

24 Q All right. What was the address on your CDL

25 license when you got it in November of '08?

1 A 925-B Nabors Drive.

2 Q All right. When did you -- was that when you
3 changed your driver's license address from 412
4 Derby Lane?

5 A I don't remember, sir.

6 Q Okay. Did every driver's license you had up --
7 from the time you moved to Derby Lane until you got
8 your CDL in 2008 have 412 Derby Lane as your
9 address?

10 A Up until I got my CDL?

11 Q Yes.

12 A I don't remember, sir.

13 Q Do you ever remember changing your address?

14 A Change it on my license?

15 Q Yes.

16 A No, sir.

17 (Sotto voce discussion between Mr.
18 Garfield and Mr. Hayes.)

19 Q When you transferred your one-half interest in 412
20 Derby Lane to Carolina Arabian Show Horses, L.L.C.,
21 was there a deed doing that?

22 A Yes, sir.

23 Q Who prepared the deed?

24 A I think my brother did.

25 Q Was there any consideration for that transfer?

1 A No, sir. Because I owed them money. I didn't --
2 they didn't, like -- they owed me any money for
3 anything.

4 Q How much money did you owe them?

5 A It ain't like I owed it to them. My daddy had put
6 the money into it, and, basically, I felt an
7 obligation. It's the kind of person I am. I felt
8 an obligation that if it was -- he put forty, fifty
9 thousand dollars into my place, that basically, it
10 wasn't mine, it was his. And instead of a woman
11 that was running around on me getting it, I felt
12 like my mother ought to get it.

13 Q Did you file a declaration of financial interest in
14 connection with your divorce case?

15 A Yes, sir.

16 Q Did you disclose at that time you had transferred
17 your one-half interest in 412 Derby Lane?

18 A I think it -- I don't remember what it asked me,
19 sir. I don't remember.

20 Q Okay. Do you have a copy of that form still?

21 A My attorney might. I don't know if I do.

22 Q And your attorney in your divorce was?

23 A I had a couple of -- three. The last one was
24 Austin -- William Austin.

25 Q Okay. Did the state farmers' market get moved?

1 A To my knowledge, yes, sir.

2 Q Oh. And you were the project manager for that?

3 A I don't know exactly what he termed it, but I
4 helped him with the financial figures, and to --
5 and if different people -- players -- and in
6 relationship to the government, I helped him get
7 involved with that and understand the process. I
8 was -- I -- I, kind of -- it was a couple of us
9 guys. It was Wayne Mack, who was the director of
10 marketing and myself. Mack, from the aspect of
11 knowing the vendors and the marketing systems of
12 the state, and myself, from the financial aspects
13 of the state. It wasn't -- I was a lone project
14 manager by myself. It was a couple of us guys
15 involved in that. One of them was Wayne Mack and
16 then it was myself, and, of course, the
17 commissioner was the driver.

18 Q Now, the -- that was the farmers' market that was
19 by the football stadium here in Columbia?

20 A Yes, sir.

21 Q And the university bought that?

22 A To my knowledge, yes, sir.

23 Q Okay. Were you involved in that?

24 A I was involved with the commissioner when he met
25 with the trustees in regards to the financial

1 aspect of it; in regards to what we could and
2 couldn't do in relationship to the Budget and
3 Control Board; in regards to a bond bill; in
4 regards to the proceeds of the money when it was --
5 how it was going to be deposited, how they would
6 pay it over a number of years, etc.

7 Q Where was that meeting?

8 A It was in the Department of Agriculture.

9 Q Who was there?

10 A Commissioner Weathers, Wayne Mack, myself, and
11 several members of the board of trustees.

12 Q Do you recall the names of any of those trustees?

13 A Buyck --

14 Q Mark Buyck?

15 A Yes, sir. Another gentleman, Floyd, from Florence.

16 Q Okay.

17 A I think a guy from Sumter -- I think Bahnbueller, I
18 think might've --

19 Q Bahnmuller?

20 A -- been one of them.

21 Yes, sir.

22 Q At the time, I think.

23 A Yes, sir. I think the --

24 Q I think he's gone now. I think he's dead --

25 A Oh.

1 Q -- but I could --

2 MR. GARFIELD: (To Mr. Bender) Arthur?

3 THE DEPONENT: Really?

4 MR. BENDER: I could be wrong. Art

5 Bahnmuller?

6 MR. GARFIELD: Art? Yeah.

7 MR. BENDER: I -- I think.

8 Q Did you talk at that meeting?

9 A No, sir.

10 Q Just sat there?

11 A Yes, sir.

12 Q Okay. Did the commissioner introduce you?

13 A Yes, sir.

14 Q What'd he introduce you as?

15 A Just Jim Trexler. "This is Jim Trexler."

16 Q Okay. And did you have a role to play in how the
17 money would be used that came from the university?

18 A No, sir.

19 Q Who had the role to play in that?

20 A Commissioner.

21 Q But -- did you give him any advice on that?

22 A No, sir.

23 Q So why'd you go?

24 A Because when you look at a bond bill, how much bond
25 bill do you have? And what is the cycles in which

1 you can get the money drawn down by the Budget and
2 Control Board, and how does the Budget and Control
3 Board operate? Because when I was at Budget
4 Control -- when I was with the Budget and Control
5 Board and with the Ways and Means Committee, I had
6 intrical (as spoken) knowledge in regards to how
7 that system worked financially. So, basically,
8 when you start drawing up bond bills, you just
9 can't go over to the Budget Control and Board and
10 say, "Give me all this money." There's draw
11 schedules, there's CIB schedules, there's all these
12 schedules you got to work through. And so from a
13 financial standpoint, my background -- have worked
14 in all that. He needed me, because when it come
15 down to Budget and Control Board asking, "Well, how
16 soon can you get off the property?" And you've got
17 to look at the schedules and understand where you
18 can draw money. And then what authorizations you
19 got to go through to get that money spent. And
20 then, as well as, if they -- when they buy the
21 market, where's the money going to go? Into what
22 accounts -- and how do you restrict these accounts
23 from it being confiscated in a budget shortfall?
24 I mean, all this stuff is real complicated,
25 and unless you know it from financial and worked in

1 it for 27 years and understand it, and you cold
2 turkey walking in off the farm, you don't
3 understand how this stuff works and, therefore, you
4 needed somebody like me to sit beside him and give
5 him the financial advice and the accounting
6 background he needed to get the job done. And it -
7 - and -- and -- and that's what I served as, was
8 his accountant, basically.

9 Q And you were the guy that knew how to do all of
10 that?

11 A Yes, sir.

12 Q And helped him make the decisions to do what was
13 done?

14 A He made the decision, and I put the money where he
15 said put it once he got my advice --

16 (Sotto voce discussion between Mr.
17 Garfield and Mr. Hayes.)

18 A -- in where to put it.

19 Q Sure. But you helped him get to that point where
20 he could do that?

21 A Yes, sir.

22 Q And because he was just off the farm, he couldn't
23 have done it without you?

24 A I think he probably could've done it. There'd've
25 been somebody, but the basics of it is, he needed

1 somebody that understood the system to help him,
2 like they all do.

3 Q And that somebody was you?

4 A Yes, sir.

5 Q You have listed in responses to interrogatories
6 that your witnesses will be you and your brother?

7 A I don't know what he's listed as, sir.

8 Q Okay. Do you know of any other witnesses that you
9 plan to call besides Oliver Wood?

10 A Left up to my attorneys. I don't know.

11 Q Okay. Do you know anybody at the Associated Press?

12 A I know one person over there.

13 Q Who do you know?

14 A Meg Kinard.

15 Q All right. Does Meg Kinard have any ill will
16 towards you?

17 A Not that I know of.

18 Q Okay. Do you know anybody at the AP who has ill
19 will towards you?

20 A No, sir.

21 Q All right. Do you know anybody at Barrington
22 Broadcasting?

23 A I don't know who that is.

24 Q Do you know any broadcast journalists?

25 A I know one. I don't know if he's still around or

1 not. His name is J. R. Berry.

2 Q All right. Does J. R. Berry bear any will -- ill
3 will towards you?

4 A No, sir.

5 Q Okay. How do you know J. R.?

6 A He grew up over in Sumter County. That's where I
7 grew up.

8 Q Okay. How about at Raycom? Do you know anybody at
9 Raycom?

10 A Who is Raycom?

11 Q WIS.

12 A No, sir.

13 Q Barrington's WACH -- do you know anybody there?

14 A No, sir.

15 Q And J. R. Berry is at WLTX.

16 So you know Meg Kinard at the AP?

17 A I met her one time.

18 Q Okay. And you know J. R. Berry at WLTX?

19 A Yes, sir.

20 Q But you don't know any other journalists?

21 A No, sir.

22 Q Do you know anybody in any of those organizations
23 who might bear ill will towards you?

24 A No, sir.

25 Q All right. Now, with respect to what was published

1 about you, it's true that you were arrested?

2 A Yes, sir.

3 Q It's true that you were arrested for mistreatment
4 of animals?

5 A Yes, sir.

6 Q And it's true that the Richland County Sheriff's
7 Department sent out a press release that said you
8 had been arrested for kidnapping?

9 A Yes, sir.

10 Q And when you were arrested, the arrest warrant said
11 that it was for horses you owned that were
12 mistreated; is that correct?

13 A Yes, sir.

14 Q Okay.

15 MR. BENDER: I'll recess now.

16 REEXAMINATION

17 BY MR. GARFIELD:

18 Q Just one question or two questions: Do you have
19 any knowledge as to anyone who's affiliated with
20 the Richland County Sheriff's Department that bears
21 any ill will towards you?

22 A Not that I know of.

23 Q Okay.

24 MR. GARFIELD: (To the deponent) Thank you.

25 MR. BENDER: (To the deponent) Thank you very

1 much.

2 FURTHER DEPONENT SAITH NOT.

3 Signing waived.

4 (Whereupon, there being no further

5 questions, the deposition was

6 adjourned at 9:03 p.m.)

7 (*This transcript may contain quoted material.

8 Such material is reproduced as read or quoted

9 by the speaker.)

10 (**Certificate accompanies sealed original

11 only.)

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THURSDAY, FEBRUARY 28, 2008

DLSCN 04/04/

IRGEON'S SUIT

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TUOMEY PATENT

TAX RETURNS

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**IS IT
STILL
FREE?**

Some South Carolinians still can file

can file their state income taxes for free electronically by using one of the services listed on ectax.org

Page A8

Page 28

HORSE MISTREATMENT INVESTIGATION

Assistant ag chief faces kidnap charge



These two mares were with horses seized from a pasture in Eastover by the Humane Society for the Prevention of Cruelty to Animals.

Trexler jailed, suspended from state post

By ISHMAEL TATE
ishmaeltate.com

An assistant state agriculture commissioner is in jail — charged with kidnapping after police say he threatened and detained a Humane Society investigator looking into allegations of abused horses at the farm where he lives.

James W. Trexler, 48, also is charged with five counts of ill treat-

ment of animals. His mother and brother also face charges of ill treatment of animals.

Trexler and his mother and brother — Hazelene E. Trexler, 70, and Terry A. Trexler, 44 — were arrested at 8 p.m. Wednesday by the Richland County Sheriff's Fugitive Task Force at James Trexler's home on Derby Lane in Hopkins, Sheriff Leon Lott said.

Hazelene Trexler is charged with

28 counts of ill treatment of animals; Terry Trexler is charged with 23 counts of ill treatment of animals.

Lot called the treatment of the horses "severe and barbaric," adding, "the Trexlers have proven time and again that they have no business owning any animals."

The fugitive task force was called in to apprehend the Trexlers

'SEE HORSES' PAGE A5

JAMES TREXLER

Assistant Commissioner
of the S.C. Department
of Agriculture

Current Job: Director of administration, overseeing budgeting, procurement and information technology for Department of Agriculture

Residence: Hopkins
Salary: \$84,000

DEFENDANT'S
EXHIBIT
1 TREXLER

RECEIVED 1998

9/14/1

46

WILLIAM F. BUCKLEY | 1925-2008

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FROM PAGE ONE

THE ALLEGATIONS

Administrators at Tuomey Regional Medical Center, when asking doctors to affiliate with the hospital, also asked them to refer their patients to Tuomey for services. Such self-referrals stifle competition and drive up costs, the Justice Department says. And they violate Medicare and Medicaid regulations hospitals must follow to receive federal and state money for treating low-income patients, children, seniors and the disabled.

Sumter surgeon Michael Drakeford did not sign an agreement with Tuomey and later sued. The U.S. Justice Department has taken over as lead plaintiff in the case.

ABOUT TUOMEY

Tuomey (pronounced "too-me") Hospital, now Tuomey Regional Medical Center, was founded in Sumter in 1914 with an endowment from the late Timothy Tuomey. It is a private, nonprofit facility serving patients from Sumter and surrounding counties. The Tuomey Healthcare System includes Tuomey Medical Park in Sumter, which offers non-emergency outpatient care. Tuomey has:

- 266 beds
- 150 affiliated doctors
- 10 operating suites
- 47-bed outpatient surgery department; on-campus outpatient testing facilities

ral, the hospital got money and the doctor got money," Acker said.

Drakeford's suit was filed under seal in federal court in Columbia in October 2005. Since then, the federal government has investigated Drakeford's claims.

Last year, the government announced the claims had merit and said it would take over the case.

This type of federal intervention is allowed where private individuals, mostly whistle-blowers, bring suits alleging companies are defrauding the government.

In addition to paying fines should it lose, Tuomey might also have to pay Drakeford up to 25 percent of the fine.

The lawsuit is brought under an ancient legal doctrine, called *qui tam*, a reference to a Latin phrase for "acting on behalf of the king as well as for yourself." It lets an individual initiate a suit on behalf of the government against a company or individual that does business with the government.

The government intervenes only if a case has merit, said Charles Miller, a Department of Justice spokesman. The department gets involved in less than 25 percent of *qui tam* actions filed each year, he said.

In *qui tam* cases, the government nearly always gets a settlement or wins in a jury trial, Miller said. If the government doesn't join a *qui tam* action, "very few of these are successful," he said.

Dart Daniel, a former U.S. attorney for South Carolina and one of Tuomey's lawyers, said businesses often settle this kind of case to avoid monstrous legal fees. "A hospital must always consider what is best for patients," he said.

Carl Muller, one of the few S.C. lawyers to win a *qui tam* lawsuit in recent years, said the government's involvement means it believes a lot of money is involved.

In 2000, Muller and the Justice Department won a \$5.2 million settlement involving questionable billing against University Medical Associates, a group of doctors affiliated with MUSC, the state's largest medical school.

HORSES

FROM PAGE A1

Because investigators "received information that they were getting ready to flee," Lott said, but he wouldn't elaborate.

James Trexler's kidnapping charge stems from a Feb. 13 incident during which a Humane Society investigator was parked on property adjacent to the Hopkins farm where he lives to investigate allegations of mistreatment of horses there, Lott said.

When Trexler saw she had a camera, Lott said, he threw his truck onto the other property and blocked the drive so she couldn't leave. He then threatened and tried to intimidate her into giving him the camera, Lott said.

Trexler refused to let her leave until a sheriff's deputy arrived, Lott said.

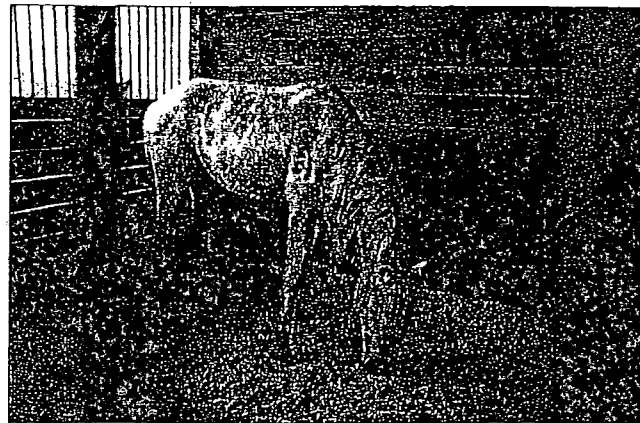
The kidnapping charge, a felony, is punishable by up to 30 years in prison. Ill-treatment of animals is a misdemeanor punishable by up to two years in prison and a fine up to \$2,000.

All three are in the Richland County jail, awaiting bail hearings.

Earlier Wednesday James Trexler had been suspended by S.C. Agriculture Commissioner Hugh Weathers from his \$84,000 job as assistant commissioner of administration pending the outcome of the Humane Society's investigation.

The suspension came a day after Humane Society investigators say they removed five malnourished horses found at the Hopkins farm in southeast Richland County where Trexler lives with his wife, Julie Trexler.

When reached earlier in the day, James Trexler's attorney,



This Arabian horse is one of a group seized by Humane Society officials from the family of suspended Department of Agriculture assistant commissioner of administration James W. Trexler from a pasture in Eastover and a farm near Hopkins.

Richard Blackmon, declined comment. He could not be reached after the Trexlers were arrested.

Efforts to reach Hazelene Trexler and Terry Trexler earlier in the day were unsuccessful.

Hazelene Trexler told Humane Society investigators she owned the five horses found at the Hopkins farm and 23 more malnourished horses seized on Monday from property on Zelger Road in Eastover, Humane Society for the Prevention of Cruelty to Animals executive director Josh Gowans said.

The 23 horses taken Monday had no food or shelter and only a 15-gallon trough of water, Gowans said. The five seized Tuesday from a stable at the Hopkins farm were "knee-deep" in manure, had no

food and were in worse condition than the horses seized Monday, he said.

"There was very little evidence they were let out" of the stable, Gowans said.

The horses seized in Hopkins Tuesday were evaluated by a veterinarian and given an initial score — "5" is ideal, "1" is considered very poor — based on the condition of their bodies.

None was scored a "5," but two were scored "4," one was scored "3½," one was scored "3," and one was scored "1½."

Based on the makeup of both groups seized — including four stallions, a pregnant mare, and three foals — Gowans suspects the horses were being bred and sold.

After further evaluation by veterinarians, the horses will be sent to foster homes across the state.

Hazelene and Terry Trexler also are wanted in Georgia on a total of 61 misdemeanor counts of abuse and neglect involving nearly 70 horses, Jefferson County, Ga., code enforcement officer Jimmy Kitchens said. The majority of those horses are in the state's custody.

The horses officials discovered there in October were in worse condition than those found in Hopkins and Eastover.

Most were scored as "1," Kitchens said. "It was the same thing — not feeding them, not taking care of them."

Reach Tate at (803) 771-8549.

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*The Law Offices of William H. Johnson**411 North Brooks Street**William H. Johnson**Post Office Box 137**Telephone: 803-435-0909**Manning, South Carolina 29102**Facsimile: 803-435-2858*

July 27, 2011

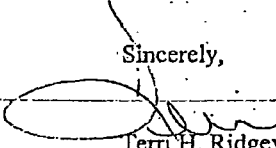
Robert D. Garfield, Esquire
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568
VIA FACSIMILE NUMBER: (803) 806-8855

RE: James W. Trexler vs. McClatchy Newspapers, Inc., Richland County, and the
Richland County Sheriff's Department
Docket Number: 2010-CP-40-1343

Dear Mr. Garfield:

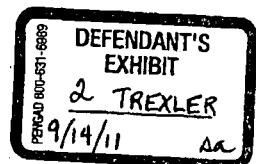
Attached please find Dr. Oliver Wood's report that was omitted from the discovery submitted
on July 25, 2011.

Sincerely,


Terri H. Ridgeway, Legal Assistant to
William H. Johnson

/thr

cc: James W. Trexler
Jay Bender, Esquire
W. Brook Wills, Esquire - Via email

Also admitted to practice in North Carolina

PRELIMINARY
APPRAISAL OF FINANCIAL LOSS
DUE TO THE ALLEGED WRONGFUL DISCHARGE
FROM EMPLOYMENT
OF
MR. JAMES W. TREXLER

Prepared
for
Mr. William H. Johnson
Attorney at Law

Prepared
by
Dr. Oliver G. Wood, Jr.
July 14, 2011

1

Mr. James W. Trexler sustained a financial loss because of his alleged wrongful discharge from employment on February 28, 2008, from his position as an Executive Assistant III with the South Carolina Department of Agriculture (Department of Agriculture). The elements of loss considered in this preliminary report are earning capacity and income from the South Carolina Retirement System (SCRS). Each element is appraised for the before- and after-trial periods with the after-trial losses discounted to present value as of October 3, 2011.

Mr. Trexler was born on January 14, 1960, and was 48.12 years old at the time of termination. According to South Carolina Code Section 19-1-150, his life expectancy was an additional 30.97 years to age 79.09 on 2039.13. According to Mr. Trexler, he intended to work to age 67 (his normal Social Security retirement age).

FACTS TAKEN INTO CONSIDERATION

At the time of termination, Mr. Trexler was employed as an Executive Assistant III with the Department of Agriculture. He began employment with the Department of Agriculture on January 15, 2003. At the time of termination, his annual salary was \$84,000. According to Mr. Trexler, from approximately May 2008 to June 27, 2011, he was employed as a Delivery Driver with Lowe's Home Centers, Inc. (Lowe's). According to Mr. Trexler, since June 27, 2011, he has not worked. From 2008 through 2010, Mr. Trexler earned \$14,378, \$31,320, and approximately \$32,000, respectively, from his employment with Lowe's.

As an employee of the Department of Agriculture, Mr. Trexler was a member of the SCRS and contributed 6½ percent of his annual income to the SCRS.

Dr. Charles Vander Kolk, Licensed Counseling Psychologist and Certified Rehabilitation Counselor, evaluated Mr. Trexler's after-termination earning capacity. According to Dr. Vander Kolk, "Based on all of the information provided, It is concluded that Mr. Trexler's current earning capacity most probably is in the range of \$32,000 to \$40,000 per year. It is less probable, though possible, that Mr. Trexler may eventually find a job earning in the range of \$40,000 to \$50,000 per year in 2010 dollars."

LOSS IN EARNING CAPACITY

For purposes of this report, it is assumed that \$84,000 per year (in 2008 dollars) is a reasonable measure of Mr. Trexler's before-termination earning capacity. For purposes of this report, it is assumed that \$32,000 to \$40,000 per year (average = \$36,000 per year) in 2010 dollars is a reasonable measure of Mr. Trexler's after-termination earning capacity (beginning in the after-trial period).

The before-trial loss in earning capacity is \$302,400. The before-trial contributions to the SCRS are \$19,656. The before-trial mitigating earning capacity is \$93,377. The before-trial net loss in earning capacity is \$189,367.

The present value of the after-trial loss in earning capacity is \$1,034,047. The present value of the after-trial contributions to the SCRS is \$67,213. The present value of the after-trial loss in income from the SCRS is \$186,940. The present value of the after-trial mitigating earning capacity is \$443,163. The present value of the after-trial net loss in earning capacity is \$710,611.

TOTAL FINANCIAL LOSS

The present value of the total financial loss is \$899,978. Elements of this loss are contained in Exhibit 1. This report does not contain an evaluation of any loss in health, dental, and/or life insurance provided through Mr. Trexler's employment with the Department of Agriculture. This report is subject to revision to reflect any additional information that may become available.

Oliver S. Wood Jr.
7/14/11

Exhibit 1
Present Value of Total Financial Loss

	Before-Trial Loss	After-Trial Loss	Total Financial Loss
Earning Capacity	\$302,400	\$1,034,047	\$1,336,447
Less: Contr. to the SCRS @ 6 1/2%	(19,656)	(67,213)	(86,869)
Income from the SCRS	0	186,940	186,940
Subtotal Earning Capacity and Income from the SCRS	282,744	1,163,774	1,438,518
Less: Mitigating Earning Capacity	(93,377)	(443,163)	(536,540)
Net Loss in Earning Capacity	\$189,367	\$710,611	\$899,978

hp LaserJet 4345mfp series



Fax Call Report

1

DAVIDSON & LINDEMANN, P.A.
803-806-8222
Jul-27-2011 03:18 PM

Job	Date/Time	Type	Identification	Duration	Pages	Result
940	Jul-27-2011 03:15 PM	Receive	8034352858	1:47	6	Success
07/27/2011 10:21		LAW OFFICES OF WILLIAM H JOHNSON		(FAX)8034352858	P.001/006	

The Law Offices of William H. Johnson
411 North Brooks Street
William H. Johnson Post Office Box 137
Manning, South Carolina 29102 Telephone: 803-833-0209
Facsimile: 803-835-2858

July 27, 2011

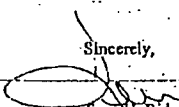
Robert D. Garfield, Esquire
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Post Office Box 8568
Columbia, South Carolina 29202-8568
VIA FACSIMILE NUMBER: (803) 806-8855

RE: James W. Trexler vs. McClatchy Newspapers, Inc., Richland County, and the
Richland County Sheriff's Department
Docket Number: 2010-CP-40-1343

Dear Mr. Garfield:

Attached please find Dr. Oliver Wood's report that was omitted from the discovery submitted
on July 25, 2011.

Sincerely,


Terri H. Ridgeway, Legal Assistant to
William H. Johnson

/s/ James W. Trexler
cc: Jay Bender, Esquire
W. Brook Wills, Esquire - Via email

Also admitted to practice in North Carolina

Assessor Data View

The information provided on this page reflects data as of **December 31, 2009** and should be used for reference only. For official assessment information, please contact the Richland County Assessor's Office.

Information presented on the Assessor's Database is collected, organized and provided for the convenience of the user and is intended solely for informational purposes. **ANY USER THEREOF OR RELIANCE THEREON IS AT THE SOLE DISCRETION, RISK AND RESPONSIBILITY OF THE USER.** While every attempt is made to provide information that is accurate at the date of publication, portions of such information may be incorrect or not current. **RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.** All official records of the County and the countywide elected officials are on file in their respective offices and may be viewed by the public at those offices.

Owner Information

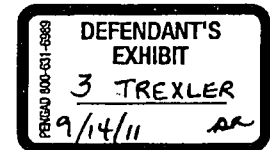
Tax Map Number: R24600-01-45
Owner: BAUMAN JOSEPH H SR
Address 1:
Address 2:
Address 3:
City/State/Zip: HOPKINS
SC 29061
Property Location/Code:

Tax Information

Year: 2010
Property Tax Relief: (\$2,777.72)
Local Option Sales Tax Credit: (\$312.70)
Tax Amount: \$1,988.32
Paid: Yes
Homestead: No
Assessed: \$11,800.00

APP. 491

401



Assessment Information

Year Of Assessment:	2011	Legal Residence:	Yes
Tax District:	1HF	Sewer Connection:	NONE
Acreage Of Parcel:	0.00	Water Connection:	NONE
Non-Agriculture Value:	\$80,100.00	Agriculture Value:	\$0.00
Building Value:	\$201,700.00	Improvements:	\$500.00
Taxable Value:	\$282,300.00		
Zoning:	RU	RURAL DISTRICT	

Property Information

Legal Description:	LOT 1 AND LOT 2 BLOCK G	#SU HUNTING CREEK FARM
	400X416.7X400X455.7	#PR X-1629-1629A
Land Type:	RESIDENTIAL LAND	

Sales History

Current Owner Name	Sale Date	V/I	Book/Page	Sale Price	Qual Code *
BAUMAN JOSEPH H SR	05/04/2010	I	R1603/ 1742	\$282,341.00	A
BRADLEY WILLIAM K & JENNIFER L	08/11/2008	I	R1454/ 2335	\$295,000.00	A
BRADLEY BOBBIE J & WILLIAM K	04/16/2008	I	R1420/ 2436	\$295,000.00	Q
TREXLER JULIE C &	06/02/2006	I	R1189/ 3066	\$285,000.00	9

* Qualification Code Definitions

Structure Information

Building Number	Year Structure Was Assessed	Building Description	Actual Year Built	Number Of Bathrooms	Number Of Bedrooms	Total Number Of Stories	Heated Square Footage	Total Square Footage
1	2011	SGL FAM - WALL GROUP 3	1997	2.50	3	1.0	2857	4663

APP. 492

402

Structure Details

Structure Type	Structure Description	Building Number
Misc Improvement	BARN	0
Building Element	AC TYPE...HEAT PUMP	1
Building Element	ARCHITECTURAL STYLE...CONVENTIONAL	1
Building Element	BUILDING SHAPE...RECTANGLE	1
Building Element	ELECTRICAL...AVERAGE	1
Building Element	EXTERIOR WALL 1...FACE BRICK VENEER	1
Building Element	FOUNDATION...PIERS	1
Building Element	HEAT TYPE/FUEL...FORCED AIR DUC/ELEC	1
Building Element	INSULATION...AVERAGE	1
Building Element	INTERIOR FLOOR 1...HARDWOOD	1
Building Element	INTERIOR WALL 1...3- PLASTER/DRYWALL	1
Building Element	ROOF COVER...ASPHALT SHINGLE	1
Building Element	ROOF STRUCTURE...GABLE OR HIP	1
Misc Improvement	FIREPLACE-1 STY SGL/COMMERCIAL	1

Exemptions

Exemption Year	Exemption Description

APP. 493

403

BAUMAN JOSEPH H SR.
05/04/2010
IR1603/ 1742
\$282,341.00

BRADLEY WILLIAM K & JENNIFER L
08/11/2008
IR1454/ 2335
\$295,000.00

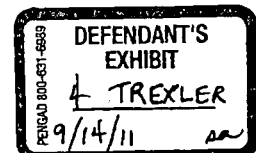
BRADLEY BOBBIE J & WILLIAM K
04/16/2008
IR1420/ 2436
\$295,000.00Q

TREXLER JULIE C &
06/02/2006
IR1189/ 3066
\$285,000.00

TREXLER JAMES WILLIAM &
05/22/1996
VD1317/ 578
\$5.00

MARTIN ELIZABETH J
11/10/1993
VD1169/ 284
\$20,000.001

DIGBY ALMA SWITZER ETAL
09/03/1993
VD1159/ 301
\$16,000.001



7/22/2010 2:38:26 PM

Offender is not currently detained

Demographic

OffenderID: 113079
Last Name: TREXLER
First Name: JAMES
Middle Name: WILLIAM
SSN:
Sex: Male
Race: White
DOB: 01/14/1960
Hair: Brown
Eyes: Blue
Weight: 165
Height: 69

Contact Information

Home Phone: 8035186123
Home Address: 412 DERBY LN
Contact Name: JULIE TRAXLER
Contact Phone:
Contact Address:
Occupation: SC DEPT OD AGRICULTURE
Employer Name:
Employer Phone:
Employer Address: COLA SC

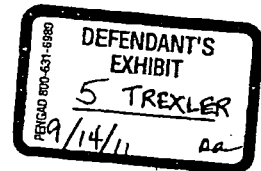
Visual



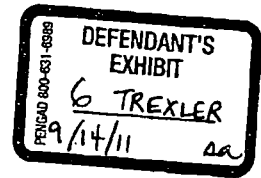
Current Charges Criminal History Image History

1894847	PR	COUNTY	RCGS	2/27/2008 9:33:00 PM	2/28/2008 3:04:00 PM	ILL TREATMENT OF ANIMALS
1891848	PR	COUNTY	RCGS	2/27/2008 9:33:00 PM	2/28/2008 3:04:00 PM	ILL TREATMENT OF ANIMALS
1891849	PR	COUNTY	RCGS	2/27/2008 9:33:00 PM	2/28/2008 3:04:00 PM	ILL TREATMENT OF ANIMALS
1891850	PR	COUNTY	RCGS	2/27/2008 9:33:00 PM	2/28/2008 3:04:00 PM	ILL TREATMENT OF ANIMALS
1891851	PR	COUNTY	RCGS	2/27/2008 9:33:00 PM	2/28/2008 3:04:00 PM	ILL TREATMENT OF ANIMALS

Bond Types: SB-Surety Bond · CB-Cash Bond · PR-Personal Recognizance · BD-Bond Denied



Date Received: 03/13/2008 Arrest Date: 03/13/2008 Law Enf. Case: True Bill Date: 03/13/2008



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Last Name	First Name	Middle Name	SSN	City	State	Zip	County	Radius	Relationship	Inv
TREXLER	JAMES	W			SC					

Output Type: ☐ Standard HTML ☐ Custom Report (Print Friendly, Text, No Report)

Click icons below to run a report. The icons represent different types of information available for each record. The icons are:
 - Person icon: Basic information about the person.
 - Business icon: Information about the person's current and former employers.
 - Assets icon: Information about the person's current and former assets.
 - Licenses icon: Information about the person's current and former licenses.
 - Phones icon: Information about the person's current and former phone numbers.
 - Courts icon: Information about the person's current and former court records.
 - Relationships icon: Information about the person's current and former relationships.
 - Invitations icon: Information about the person's current and former invitations.

Search completed

Records: 1 to 27 of 27

SEARCH: Last Name: TREXLER First Name: JAMES Middle Name: W State: SC

[Edit Search](#) | [New Search](#)

Click Icons Below To Run a Report		Export to Excel		Click Icons Below To Run a Report	
All	Full Name	Age/DOB	Address	Dates	Phone Information
	JAMES W TREXLER	48	615 GRANBY XING CAYCE SC 29033-4361	Jun 93	
	JAMES W TREXLER		E BREWINGTON RD COLUMBIA SC 29153	Oct 01 - Jan 02	
	JAMES W TREXLER	48	3900 BENTLEY DR COLUMBIA SC 29210-7880 Rooming or boarding house.	Mar 94	
	JAMES W TREXLER		CAPITAL STA COLUMBIA SC 29211	May 95	
	JAMES W TREXLER	48	1412 DERBY LN COLUMBIA SC 29211	Nov 98 - Jan 95	
	JAMES W TREXLER		PO BOX 12693 COLUMBIA SC 29211-2603	Dec 02 - Jan 95	
	JAMES W TREXLER		PO BOX 12693 COLUMBIA SC 29211-2603	Sep 97 - Jan 95	
	JAMES W TREXLER	48	241 BRAEWICK RD COLUMBIA SC 29212-8209	Jan 97	
	JAMES W TREXLER	48	812 VALLEYWOOD CT COLUMBIA SC 29212-9819		
	JAMES W TREXLER	48	113 DERBY HOPKINS SC 29061	Jan 97	
	JAMES W TREXLER		112 DERBY LN HOPKINS SC 29061-2485	Sep 97 - Dec 96	
	JAMES W TREXLER	48	615 GRALLEY IRMO SC 29062	Jul 94	

8441-A-044

	JAMES W TREXLER	42	512 VALLEYWOOD CT IRMO SC 29153	Mar 94	
	JAMES W TREXLER		PO BOX 249 SUMTER SC 29153-0249	May 04 - Dec 07	
	JAMES W TREXLER		PO BOX 249 SUMTER SC 29153-0249	Nov 04 - Jan 08	
	JAMES W TREXLER	48	920 E BREWINGTON RD SUMTER SC 29153-0197	Aug 00	
	JAMES W TREXLER	72	925 E BREWINGTON RD SUMTER SC 29153-2196	Mar 04 - Jun 06 (EC3) 534-E268	
	JAMES W TREXLER	48	2323 WEDGEFIELD RD SUMTER SC 29154-4644		
	JAMES WILLIAM TREXLER	48	815 GRANBY KING CAYCE SC 29032-4361	Feb 97	
	JAMES WILLIAM TREXLER		804 WHALEY ST COLUMBIA SC 29201-4231		
	JAMES WILLIAM TREXLER		3000 BENTLEY DR APT 1524 COLUMBIA SC 29210-7990 Rooming or boarding house.		
	JAMES WILLIAM TREXLER	48	412 DERBY LN COLUMBIA SC 29211	May 96 - 2003	
	JAMES WILLIAM TREXLER	48	PO BOX 12603 COLUMBIA SC 29211-2603	May 96 - Jan 05	
	JAMES WILLIAM TREXLER		PO BOX 12003 COLUMBIA SC 29211-2603	Sep 87 - Jan 05 (B03) 776-0506	
	JAMES WILLIAM TREXLER		512 VALLEYWOOD CT COLUMBIA SC 29212-0819		
	JAMES WILLIAM TREXLER	48	412 DERBY LN HOPKINS SC 29061-9480	Sep 87 - 2005 (B03) 776-0506	
	JAMES WILLIAM TREXLER		2323 WEDGEFIELD RD SUMTER SC 29154-4644		

Export to Excel

Records: 1 to 27 of 27

SEARCH: Last Name: TREXLER First Name: JAMES Middle Name: W State: SC

Edit Search: New Search

8441-A-045

People | Businesses | Assets | Licenses | Phones | Courts



Last Name First Name Middle Name SSN
Street Address City State Zip County Radius Reference Code:
Inv
412 DERBY LANE HOPKINS SC
Phone DOB Age Range

☐ Search for other possible name spellings

Output Type: ☒ Formatted HTML ☐ Cut and Paste (Printer Friendly Text (No Reports))

Important: The Public Records and commercially available data located used in this system have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data the system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Search completed

Records: 1 to 7 of 7

SEARCH: Street: 412 DERBY LANE City: HOPKINS State: SC

[Edit Search](#) | [New Search](#)

Click Icons Below To Run a Report

Export to Excel

Icon Legend

Click Icons Below To Run a Report

All	Full Name	Age/DOB	Address	Dates	Phone Information
	JAMES WILLIAM TREXLER	48	412 DERBY LN HOPKINS SC 29061-9480	Sep 87 - Dec 08	
	JAMES W TRAXLER		412 DERBY LN HOPKINS SC 29061-9480	Sep 87 - Sep 04	
	JULIE ANN BROOME		412 DERBY LN HOPKINS SC 29061-9480	Nov 00 - Jul 06	
	JULIE C TREXLER		412 DERBY LN HOPKINS SC 29061-9480	May 98 - Jul 05	
	JULIE C TREXTER		412 DERBY LN HOPKINS SC 29061-9480	Jan 04 - May 04	
	JULIE C TRAXLER		412 DERBY LN HOPKINS SC 29061-9480	Feb 04	
	JULIE C TRUXLER	41	412 DERBY LN HOPKINS SC 29061-9480	Oct 01	

Export to Excel

Records: 1 to 7 of 7

SEARCH: Street: 412 DERBY LANE City: HOPKINS State: SC

[Edit Search](#) | [New Search](#)

8441-A-046

See reverse for more OMB information.



FORM APPROVED - OMB NUMBER 0570 - 0127

U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
EQUINE INFECTIOUS ANEMIA LABORATORY TEST
(VS Memorandum 355.10)

SERIAL NO.

I 0159280

1. RECEPTION NUMBER

106440405

2. DATE BLOOD

DRAWN

5/24/07

Forms Without Adequate Descriptions Of The Horse and Complete Addresses Including Zip Codes, Counties, and Telephone Numbers Will Not Be Processed.

3. REASON FOR TESTING ☐ Market ☐ Change of Ownership ☒ Show ☐ Final Test ☐ Export		7. NAME AND ADDRESS OR STABLE/MARKET (Please print or type)	
4. REGISTRATION INFORMATION SYSTEMS (OAS): LAT: LONG:		5. VETERINARY LICENSE OR ACCREDITATION NO. 2180	
6. NAME AND ADDRESS OF OWNER (Please print or type) Jim Trexler PO Box 12603 Columbia SC Tel No: 3 Zip Code: 29211 County:		8. NAME AND ADDRESS OF VETERINARIAN (Please print or type) 412 Derby Lane Hodges, SC Tel No: Zip Code: 29052 County: Richland	

CERTIFICATION OF FEDERALLY ACCREDITED VETERINARIAN

I certify the specimen submitted with this Form was drawn by me from the horse described below on the date indicated above.

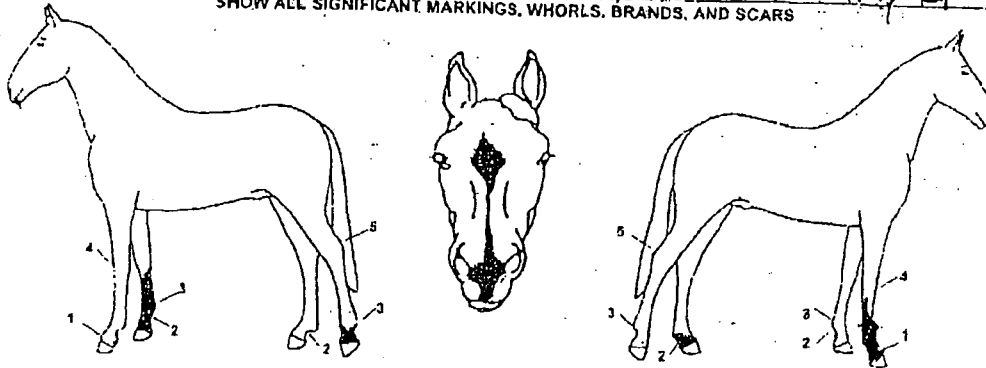
10. SIGNATURE OF FEDERALLY ACCREDITED VETERINARIAN <i>Elizabeth Cuthbert</i>	11. TYPE OR PRINT SIGNATURE NAME Elizabeth Cuthbert DVM	12. SIGNATURE DATE 5/24/07

CERTIFICATION OF OWNER OR OWNER'S AGENT

I cordly that I have examined this form and, to the best of my knowledge and belief, this form is true, correct and complete.

13. SIGNATURE OF OWNER OR OWNER'S AGENT		14. TYPE OR PRINT SIGNATURE NAME		15. SIGNATURE DATE	
16. Tube No.	17. Official Tag No.	18. Tattoo/Brands	19. Name of Horse Nora	20. Color chest	21. Breed Arab
			22. Electronic I.D. No.	23. Age or DOB 14y 6	24. Sex M - Male F - Female G - Gelding H - Neuter

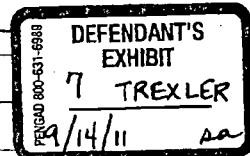
SHOW ALL SIGNIFICANT MARKINGS, WHORLS, BRANDS, AND SCARS



1 - Coronet 2 - Pastern 3 - Fetlock 4 - Knee 5 - Hock

NARRATIVE DESCRIPTION AND REMARKS

25. HEAD Star Strip Smo	26. OTHER MARKS AND BRANDS none
27. LEFT FORELIMB none	28. RIGHT FORELIMB sock
29. LEFT HINDLIMB pastern	30. RIGHT HINDLIMB none



FOR LABORATORY USE ONLY

31. LABORATORY HANDOUT/STATE KITCH DIVERSITY 485 S ATLANTA RD STE ATLANTA GA 30320 404-387-8111	32. DATE RECEIVED 5/25/07	33. DATE REPORTED OUT 5/27/07	34. TEST RESULTS ☒ Negative ☐ Positive ☐ AGID ☐ ELISA
35. SIGNATURE OF TECHNICIAN <i>[Signature]</i>		36. REMARKS	

Falsification of this form or knowingly using a falsified form is a criminal offense and may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both (U.S.C. Section 1001).

VS FORM 10-11 (MAY 2003) 052907

PART 1-VETERINARIAN/SUBMITTER

8441-A-0110