RECEIVED
APR 04 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

22677

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

APPELLANTS' RECORD ON APPEAL
Volume II of III

Allan P. Sloan, III, SC Bar #006914
Joseph C. Wilson, IV
Kristen B. Fehsenfeld
PIERCE, HERNS, SLOAN & WILSON, LLC
321 East Bay St.
Charleston, SC 29401
T: (843)722-7733; F: (843)722-7734
chipsloan@phswlaw.com
joewilson@phswlaw.com

kristenfehsenfeld@phswlaw.com

and

Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
JEFF ANDERSON & ASSOCIATES, P.A.
366 Jackson Street Suite 100
Saint Paul, MN 55101
T: (651) 227-9990; F: (651) 297-6543
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com
Attorneys for Appellants

M. Dawes Cooke, Esq.
Randell C. Stoney, Jr., Esq.
John W. Fletcher, Esq.
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, SC 29402-0197
Attorneys for Respondent

INDEX

Index 0001

Form 4 Order Denying Motion for Summary Judgement
(Filed 02/02/2015) 0003

Formal Order Denying Motion for Summary Judgement
(Filed 05/29/2015) 0004

Plaintiff's Motion to Alter or Amend
(Filed 06/15/2015) 0016

Order Denying Motion to Alter or Amend
(Filed 08/06/2015) 0024

Transcript of Hearing on January 26-27, 2015 0025

Renewed Motion for Summary Judgement
(Filed 01/26/2015) 0326

Formal Order Denying Defendant's Motion for Summary Judgement
(Filed 12/01/2014) 0431

Form 4 Order Denying Motion for Summary Judgement
(Filed 09/24/2014 – Formal Order to Follow) 0507

Plaintiff's Memorandum in Opposition to Motion for Summary Judgement
(Filed 9/22/2014)
.....0508

Defendant's Memorandum in Support of Motion for Summary Judgement
(Filed 09/18/2014) 0859

Plaintiff's Memorandum in Opposition to Motion for Summary Judgement
(Filed 04/25/2014) 0924

Reply Brief to Defendant's Memorandum in Support of Summary Judgement
(Filed 04/25/2014) 1264

Defendant's Motion for Summary Judgment
(Filed 05/02/2014) 1284

Transcript of Hearing on June 6, 2014 1289

Amended Complaint of Mother Doe A 1321

Answer to Amended Complaint 1393

Complaint of John Doe 201 1433

Certificate of Counsel 1462

(Exhibit 6, Margolis Deposition, Vol. I., p. 18-19). Mr. Margolis further opined that an individual accused of sexually abusing minors in the past is a current threat to children wherever he goes:

> Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
>
> A. I would agree with you, yes.
>
> Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
>
> A. I would agree that that's a reasonable assumption.

(Exhibit 8, Margolis Deposition, Vol. I., p. 19-20). Margolis likewise admits that another investigator looking at the facts presented could conclude that there was a cover up. He further admits that his investigation **did not** uncover any evidence that Defendant and others at The Citadel **did not** engage in a cover up of ReVille's sexual abuse:

> Q. [C]an you point me to any evidence that The Citadel did not engage in a cover-up to make sure that Skip ReVille's name appeared nowhere with regard to any allegations that Doe had made?
>
> A. In terms of the civil defense sheets that were created?
>
> Q. In terms of anything.
>
> A. I cannot.

(Exhibit 6, Margolis Deposition, Vol. I, p. 109:7-13, 278:17-25, 279:2-3).

In sum, the evidence presented by Plaintiff supports a finding that each of the separate and distinct negligent acts and/or omissions of The Citadel outlined herein, standing alone, are a proximate cause of the injuries and losses suffered by Plaintiff, constituting numerous separate

RWO/71

occurrences as contemplated by S.C. Code Ann. §§ 15-78-30(g) and 15-78-120. Furthermore, in addition to the independent acts of gross negligence above, each day The Citadel actively concealed the known allegations and other knowledge of ReVille's sexual abuse constitutes separate and distinct negligent acts and/or omissions giving rise to hundreds of occurrences as contemplated by S.C. Code § 15-78-120.

Thus, when the SCTCA is applied to the evidence in this case, the following inferences can be made: (1) multiple separate and distinct acts of neglect were committed by The Citadel and its officials, agents and/or employees from 2001-2011; and (2) each of these acts resulted in a separate occurrence--*i.e.*, an "unfolding sequence of events which proximately flow from a *single act* of negligence." S.C. Code § 15-78-120 (emphasis added). Consequently, Plaintiff's total limit on liability as contemplated by the SCTCA is $300,000/$600,000 multiplied by the number of occurrences.[5] Accordingly, summary judgment on the issue of a single occurrence is

[5] Plaintiff has identified over thirty-three separate occurrences of negligence as pleaded in the complaint and supported by the evidence. These include: 1) Failing to close the Summer Camp upon learning of the Arpaio allegations in 2001; 2) Failing to interview all campers after the Arpaio allegations in 2001 to determine whether any campers were abused by any counselors, including ReVille; 3) Failing to take any action in response to Srgt. Middleton's August 6, 2007 letter highlighting concerning practices at The Camp (deposition testimony by Margolis and Shapiro confirm this action should have been taken). 4) Allowing The Camp to operate from 2001 to 2005 without enforcing sufficient supervision and safety measures post-Arpaio to prevent to their best ability abuses by a child sexual predator, including failing to ensure the methods used by Arpaio to carry out his abuse (having minors alone in his room) were not capable of being repeated; 5) Failing to interview all campers after learning that ReVille needed to "distance himself from campers" in 2001 to determine whether ReVille had been inappropriate with them in any manner; 6) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2002 when ReVille was caught alone in his room with a camper contrary to Citadel policy (See Exhibit 2, Deposition of ReVille at 597:22—598:10); 7) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2003 when ReVille was caught alone in his room with Camper Doe 6 rubbing "Icy Hot" on the minor's leg contrary to Citadel policy (See Exhibit 2 at 597:22—598:10); 8) Failing to take Camper Doe 6's report in 2005 and failing to take any action to frustrate ReVille's ability to continue abusing children despite knowledge that Camper Doe 6 was abused and was attempting to report ReVille; 9) Failing to report ReVille's 2002 and 2003 abuse after adopting and implementing the Summer Camp Policy Regarding Sexual Misconduct Issues, which emphasized the lack of time period restrictions regarding reporting and mandated that all sexual misconduct allegations be reported (See Exhibit 2 at 597:22—598:10); 10) Failing to exercise slight care

72

in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to Garrott's discovery in 2002 and 2003 of ReVille alone in a room with a minor and failing to ascertain the appropriate action mandated by those policies, including termination, reprimand, internal documentation of the violation and reporting of the abuse to law enforcement (See Exhibit 2 at 597:22—598:10); 11) Failing to check ReVille's references at Pinewood Prep prior to hiring ReVille for the 2006-2007 school year as such a call would have revealed the reasons for ReVille's termination—inappropriate conduct with minors—and such would have been an immediate red flag on April 23, 2007; 12) Failing to immediately report Doe's call on April 23, 2007 to Citadel Public Safety, the Charleston Police or SLED (See Exhibit 37, Deposition of Patricia Kinard, p. 30:9-20; 13) Referring Doe's call on April 23, 2007 to Mark Brandenburg instead of reporting to Colonel Trez and Citadel Public Safety; 14) Failing to report to Colonel Trez, Citadel Public Safety and other law enforcement authorities after Mark Brandenburg spoke with Doe and his father on April 23, 2007; 15) Failing to report Doe's complaint alleging improper and immoral conduct to Citadel Public Safety, pursuant to Citadel policy, after Trez was informed of the allegations; 16) Failing to follow Citadel policies and procedures requiring the disclosure of Doe's complaint of sexual abuse to the Title IX coordinator and/or SARC, who was required to file an anonymous report of the allegations; 17) Establishing a close-hold policy regarding Doe's complaint with the goal of keeping the complaint from leaking outside the chain of command to individuals required to report the allegations to law enforcement and child protective services; 18) Filtering the complaint to a settlement matter with a focus on clocking the statute of limitations; 19) Failing to conduct a thorough and impartial investigation (see Exhibit 38, Addison Deposition, p. 113-115—"I don't know if Brandenburg investigation was gross incompetence or trying to corroborate.....his investigation was pathetically bad."); 20) Meeting with ReVille on April 24, 2007, and alerting him to the allegations prior to law enforcement involvement; 21) Advising ReVille to "lay low;" 22) Failing to contact Pinewood Prep after learning from Jenni Garrot that "Skip was asked to leave Pinewood Prep" and that the reason for his termination was likely inappropriate conduct with children (see Brandenburg notes and Exhibit 12, Brandenburg Deposition, p. 115:3-9, "...she looked at me like, oh goodness, could this be another Arpaio case? Which, of course, is exactly what we were worried about."); 23) Failing to report to Colonel Trez and Citadel Public Safety the abuse of eyewitness Doe or the other campers referenced in Doe's report after learning, between April 23, 2007 and May 1, 2007, that the eyewitness and others who were abused were cadets on the Citadel campus in 2007; 24) Failing to take appropriate action to investigate the allegations against eyewitness Doe and the many others by neglecting to take any action other than sending an email to these victims (See Exhibit 12, Brandenburg Deposition at 151-152); 25) Failing to immediately report the allegations to public safety when Rosa received the May 16, 2007 letter informing him of the abuse and the existence of many other victims or, in the alternative, failing to exercise slight care in carrying out his official duties by neglecting to read his mail; 26) During the May 2007 Board of Visitors meeting, each board member was grossly negligent in failing to ask a single question about the allegations, Brandenburg was negligent in not informing the Board of the details of Doe's report, and President Rosa was negligent in failing to correct Brandenburg to ensure the Board was aware of all allegations including the allegations implicating many other victims; 27) Failing to report to law enforcement or take any action with regard to eyewitness Doe and other involved campers after taking Doe's July 1, 2007 statement containing new information identifying these victims by name and photograph; 28) Failing to document and update ReVille's personnel file with Doe's allegations as to Doe, eyewitness Doe and the many others; 29) Failing to inform employers who were conducting background checks or reference checks on ReVille; 30) Failing to investigate whether ReVille was working around children after 2007; 31)Defendant Garrott was grossly negligent and deliberately indifferent to ReVille's abuse in failing to inform Brandenburg during or after their meeting on April 24, 2007, of ReVille's inappropriate acts and sexual misconduct in 2001, 2002 and 2003 and in failing to inform him of Camper Doe 6's attempt to report in 2005, or in the alternative, Garrott did inform

Rule 73

unsupported by the evidence and is inconsistent with South Carolina jurisprudence as applied in the context of this case. Moreover, the determination of the number of occurrences is a question of fact.

CONCLUSION

In sum, Defendant's motion involves a host of factual issues not appropriately resolved at the summary judgment stage. The evidence including admissions by Citadel witnesses and experts, supports the reasonable inference that The Citadel had a common law duty pursuant to four of the referenced five exceptions applicable to these cases. The evidence further reveals, and Citadel witnesses and experts have admitted, to multiple occurrences of gross negligence by The Citadel arising from the institution's extreme indifference for the safety and well-being of children. Likewise, summary judgment on the statute of limitations, the tort of outrage, and the issue of damages is unsupported by the facts as applied to the well-settled legal framework guiding these matters. On this basis, Defendant's motion is hereby DENIED in its entirety.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge

Brandenburg about the 2001, 2002, 2003 and 2005 incidents, and he ignored or concealed the information; 32) Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to the April 23, 2007 report and the July 1, 2007 statement as to Doe, eyewitness Doe and the many others, and failing to ascertain the appropriate action mandated by those policies, including internal documentation of the abuse and reporting of the abuse to law enforcement; and 33) Failing to know and comply with South Carolina law with regard to reporting allegations of child sexual abuse to law enforcement. In addition, each separate act of sexual abuse by ReVille constitutes a separate occurrence of negligence. In total, Plaintiff's child was abused at least forty-five (45) times. (Exhibit 2, Deposition of ReVille at 595:25—597:15). Moreover, each act of abuse by ReVille at The Citadel constitutes a separate occurrence of negligence. (Exhibit 2 at 597:16-21).

R 10/74

November 24, 2014
Charleston, South Carolina

FAQ 75

11-9200

Sealed exhibits attached to order denying defendants motion for summary judgment are in locked cabinet for sealed cases

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-9200

Mother Doe A — PLAINTIFF(S)

The Citadel — DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2014 SEP 24 AM 11:48
JULIE ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motion for Summary Judgment by Defendant, filed on 5/2/2014, is DENIED; Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

R. Markley Dennis

Circuit Court Judge | 2060 **Judge Code** | 9/22/2014 **Date**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	Civil Action No.: 2011-CP-10-9200
Mother Doe A,)	
)	
Plaintiff,)	
)	
v.)	
)	
The Citadel,)	
)	
Defendant.)	
)	

FILED
2014 SEP 22 AM 9:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff, Mother Doe A, submits the instant memorandum in opposition to The Citadel's motion for an order granting summary judgment. As set forth herein, summary judgment is improper because the testimony of Citadel fact and expert witnesses, together with Citadel records, summer camp files, emails, notes and other relevant discovery documents, establishes genuine issues of material fact requiring resolution by the fact-finder.

Viewed in the light most favorable to the plaintiff, the record reflects fact issues for the jury as to whether the law imposes a duty of care on The Citadel based upon its special relationship with ReVille and/or its actions in voluntarily undertaking certain duties, in creating the danger for the plaintiff, or in violating statutorily imposed duties. Similarly, the record establishes factual issues as to Plaintiff's intangible loss of services, the tolling of Plaintiff's claims based upon the discovery rule and The Citadel's concealment of its knowledge of ReVille's sexually abusive conduct, the outrageousness of The Citadel's conduct in concealing such knowledge, and the number of occurrences of negligence. For these reasons, as detailed herein, The Citadel's motion must be denied.

TABLE OF CONTENTS

INTRODUCTION....4

BACKGROUND AND PROCEDUARL HISTORY....6

STANDARD OF REVIEW....14

LAW/ANALYSIS....15

I. Summary judgment on the issue of common law and statutory duty is improper....15

a. Doe v. Marion is inapplicable to the instant matter....16

b. The Citadel had a duty to control the conduct of another or to warn Plaintiff under the exception for voluntarily undertaking a duty....17

i. Duty voluntarily undertaken by adoption of Citadel policies and procedures....18

ii. Duty voluntarily undertaken by investigation....23

c. The Citadel owed a common law duty to Plaintiff under the exception for negligently or intentionally creating the risk....25

d. The Citadel had a duty of care under the special relationship exception based on The Citadel's relationship with ReVille....29

e. The Citadel had a duty to report and to prevent the threat of harm by sexual abuse under the statutory duty exception....33

i. Title IX....34

ii. South Carolina Mandatory Reporter Statute....39

iii. Jessica Horton Act....41

iv. Clery Act....42

f. The Citadel's duty argument fails....43

i. The question of duty is one of fact in the instant case....43

ii. *Doe v. Marion* is not controlling....44

iii. Exceptions of Voluntarily Undertaking a Duty and Creation of the Risk Do Not Require a Specific Threat of Harm to the Victim.....44

iv. The Evidence Establishes The Citadel Voluntarily Undertook a Duty to Report ReVille to Citadel Public Safety/Law Enforcement.....46

v. The Evidence Reveals The Citadel Undertook the Duty to Investigate Doe's Claims and to Prevent Harm to Other Young Boys and Potential Victims.....46

vi. Duty Owed Pursuant to Negligent or Intentional Creation of Risk.....47

vii. *Oblachinski v. Reynolds* Does Not Apply to the Exceptions at Issue.....48

II. Plaintiff's damages are cognizable under South Carolina law.....50

III. Plaintiff's claims are timely under the discovery rule and *Doe v. Bishop of Charleston*.....56

IV. Plaintiff is entitled to recovery for the tort of outrage.....60

a. Plaintiff's outrage claim is not barred by the South Carolina Tort Claims Act.....61

b. Plaintiff's outrage claim is not barred by other potential available remedies.....63

c. Plaintiff has presented sufficient evidence that The Citadel acted with the requisite culpability to support Plaintiff's outrage claim.....64

V. Summary judgment on the issue of a single occurrence is improper and premature.....66

a. A finding of multiple occurrences is supported by the SCTCA's statutory scheme and by South Carolina jurisprudence.....66

b. The evidence establishes multiple separate "occurrences" of negligence by The Citadel, entitling Plaintiff to recovery of the limit of liability for each separate occurrence.....69

CONCLUSION.....77

INTRODUCTION

Defendant prematurely and inappropriately submits The Citadel is entitled to summary judgment on several critical disputed issues—including, the existence of a duty of care and the number of "occurrences" under the South Carolina Tort Claims Act. These issues, being mixed questions of law and fact, are not appropriately resolved at summary judgment. See e.g. Miller, 329 S.C. at 314, 494 S.E.2d at 815 (noting that where there are factual issues regarding whether the law imposes a duty, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder); Hurd v. Williamsburg County, 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005) ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."). Moreover, Plaintiff need only submit a mere scintilla of evidence to withstand Defendant's motion. Indeed, the evidence supporting Plaintiff as to the existence of a duty of care and the presence of multiple occurrences far exceeds this burden.

In particular, as set forth herein, Citadel witness and expert testimony reveals that not only did The Citadel have a statutory duty to take action in response to numerous reports regarding ReVille's child sexual abuse, but The Citadel voluntarily undertook various duties of care pursuant to its policies and procedures, and the failure to take the appropriate action required by these policies in 2001, 2002, 2003, 2005 and 2007 created the danger for the Plaintiff. Citadel witnesses and experts have likewise admitted that The Citadel had a special relationship with ReVille and that Citadel officials, employees and/or agents were more than acutely aware of a specific threat of harm to Plaintiff by ReVille. At a minimum, the evidence herein creates a triable issue as to whether the law imposes a duty of care on The Citadel based

upon its special relationship with ReVille and/or its actions in voluntarily undertaking certain duties, in creating the danger for the Plaintiff, or in violating statutorily imposed duties.

Moreover, within the repeated failures and neglect of duty by The Citadel through the acts of President Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott and others, the evidence reveals at least thirty-three separate and distinct occurrences of gross negligence beginning in 2001 and ending in 2011. Such evidence established by The Citadel's own witnesses and experts surely meets (and far exceeds) the mere scintilla burden of proof.

Furthermore, The Citadel's assertion that the instant matter is time-barred ignores the well-settled rubric of the discovery rule, which extends the commencement of the limitation period until the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises. See Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) ("The discovery rule is applicable to actions brought under the Tort Claims Act."). Similarly, Defendant's contention that Plaintiff's damages are not recoverable is likewise inconsistent with South Carolina jurisprudence and the weight of the evidence supporting recovery for Plaintiff's intangible injuries as well as out of pocket expenses. Defendant's assertion that Plaintiff is not entitled to recovery for the tort of outrage is equally misguided and unsupported by the facts.

As addressed in turn below, The Citadel is not entitled to summary judgment on these critical disputed issues because there are genuine issues of material fact requiring further inquiry to clarify application of the law. See Grooms v. Marlboro County School Dist., 414 S.E.2d 802, 803 (Ct. App. 1992) ("Summary judgment should not be granted except where it is perfectly

clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law.").

BACKGROUND AND PROCEDURAL HISTORY

Mother Doe A is the parent of one among numerous child victims sexually abused by former cadet and Citadel employee, Louis "Skip" ReVille. The sexual abuse of Mother Doe A's child occurred in 2007 and 2008, after The Citadel was on notice that ReVille had displayed a sexual interest in children, and that he had, in fact, abused other children on The Citadel campus. The relevant facts are as follows.

From 1957 until 2006, The Citadel operated a residential summer camp for children ages ten to fifteen wherein The Citadel employed Citadel cadets, college students, and former campers as counselors. Among the counselors selected, employed and supervised by The Citadel was Louis ReVille, who was recommended and hired by The Citadel as Head Counselor in Charge of Quarters ("CCQ") in 2001 and Senior Counselor for the summers of 2002 and 2003.

In 2001, during ReVille's first summer at The Camp, The Citadel was notified that a highly regarded volunteer counselor, former Citadel Cadet, Citadel Graduate and United States Marine Corps Captain, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's First Session. In addition, The Citadel learned that campers attending The Camp had been exposed to pornography, profanity, alcohol, and inappropriate touching. The Citadel was later informed that additional minor campers were sexually abused by Michael Arpaio while attending The Camp between 1995 and 2000.

Following the criminal investigation of the Arpaio matter, Sergeant Dale Middleton of the Charleston Police Department advised The Citadel by letter dated August 8, 2001, of certain activities and practices occurring at The Camp that warranted attention. These activities and practices included counselors allowing campers to leave their rooms at night, campers watching movies and sleeping in the same bed as counselors, counselors engaging in sexual conversation in the presence of campers, campers viewing alcohol and tobacco products belonging to counselors in the barracks, and counselors taking campers off campus on unrelated camp functions without parental consent. (See Exhibit 1, Middleton Letter, August 8, 2001). Sergeant Middleton indicated in his letter that "[t]hese are the most serious findings that were brought to [his] attention during [his] investigation," and concluded the correspondence with an invitation to The Citadel to contact him regarding the matter. (See Exhibit 1). However, no one at The Citadel ever contacted Sergeant Middleton regarding the letter, his concerns, or the other findings that warranted attention. Rather, following notice of Arpaio's acts of sexual abuse at The Camp and of the concerning practices and activities highlighted in Sergeant Middleton's letter, The Citadel neglected to implement new policies and procedures to eliminate the threat of harm posed by child sexual predators and instead placed increased emphasis on the pre-existing anti-cohabitation policy which prohibited counselors from being alone with a minor behind closed doors.

After the abuses perpetrated by Arpaio, The Citadel opened its doors for the second camp session of 2001. Initially, increased emphasis was placed by staff on The Camp's long standing rule restricting counselors from being alone with minors behind closed doors. But within days, The Camp reverted back to operating as it had in the past—with "laxity." According to ReVille, "After I saw that everything was going back to the laxity – the laxity that this was before, then I

started – I resumed my selecting and grooming the campers." (Exhibit 2, ReVille Deposition, 152:7-11). In fact, ReVille admitted to committing at least a dozen acts of abuse during the month long session immediately following Arpaio's termination. (Exhibit 2, ReVille Deposition, 152:21-23). Absent additional safety precautions, ReVille, like Arpaio, was able to utilize The Camp to sexually abuse and molest at least seventeen boys during the summers of 2001, 2002, and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers* . . ." (Exhibit 3, 2001 Employee Evaluation). These individuals, as well as other Citadel officials and staff, were likewise aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus.

In particular, during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring immediate termination for such a violation. Additionally, neither Garrott nor Bates followed up with the minor camper or other counselors to investigate any inappropriate or suspicious behavior involving ReVille and minor campers, and no written report of ReVille's infraction was ever recorded in his employee file. Instead, when faced with notice of ReVille's inappropriate behavior, The Citadel took no

action, and as a result, at least four young boys were sexually abused and molested by ReVille at The Camp in 2002.

In 2003, ReVille was asked back to The Camp to again serve as Senior Counselor.[1] At least six times during the 2003 Camp, ReVille was confronted by Camp staff member, Anna Bronk, for violating the rules against having minors in his room at night. However, no formal action was taken and laxity continued to reign over enforcement of the rules.

Furthermore, in July 2003, at the beginning of The Camp's Second Session, Camp Director Garrott caught ReVille alone in his room rubbing "Icy-Hot" on the leg of a minor identified in this litigation as Camper Doe 6 or Doe 6. Upon discovering ReVille and Doe 6 alone, Garrott ignored, neglected and disregarded The Camp's policy requiring immediate termination for such behavior and further neglected to even draft a report or memorandum to document the violation. (Exhibit 2, ReVille Deposition, 163:10-164:4). ReVille, who at the time had not yet succeeded in abusing Camper Doe 6, went on to abuse Doe 6 repeatedly and on numerous separate occasions throughout the remainder of the three-week camp session. ReVille has since stated that he considered his conduct in applying the sports cream to be "a sexual act." (Exhibit 33, Deposition of ReVille, Volume III at 559:2-5).

Despite declining to take appropriate remedial action at the time, Garrott now concedes that, pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Garrott has likewise

[1] Notably, ReVille was hired as Senior Counselor despite a clearly deficient application which The Citadel's own experts agree was cause for concern. (See Exhibit 6, 2003 Application, referencing as qualifications: "5'11"; brown hair; brown eyes; athletic; can cook; recite poetry; dance; enjoys walks on the beach."; Exhibit 7, Shapiro Deposition, p. 185-187; Exhibit 8, Margolis Deposition, p. 226-228)

conceded that had ReVille been terminated, Doe 6 would not have been subjected to ReVille's sexual abuse and molestation. (Exhibit 4, Deposition of Jennifer Garrott, p. 57:10-13).

In the summer of 2005, Doe 6 returned to work at The Camp as a Junior Counselor. After completing pre-camp counselor training in June of 2005, which included a section on mandatory reporting of child sexual abuse, Doe 6 felt compelled to report ReVille's sexual abuse to Director Garrott. However, as soon as Doe 6 explained to Garrott that he wanted to talk about "Skip ReVille," her demeanor immediately changed. She abruptly called off the meeting, claiming she had another obligation. No less than an hour later, Doe 6 was fired and instructed to leave the premises within two hours. (Exhibit 5, Deposition of Camper Doe 6, p. 142-144). Because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college.

In 2007, The Citadel received yet another report of abuse regarding ReVille—this time involving multiple children. Specifically, on April 23, 2007, the father of a former camper called President John W. Rosa and reported that his son had been sexually abused while attending The Camp in 2002. The call was forwarded to The Citadel's General Counsel, Mark Brandenburg who followed up with the former camper ("Camper Doe" or "Doe") that evening. The allegations of the complaint reported to The Citadel were memorialized in a letter from Mark Brandenburg to The Citadel's insurance carrier, the Internal Reserve Fund ("IRF"), and copied to President Rosa. The letter, dated May 16, 2007, stated:

> Both allege that during one summer, [Doe] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [Doe] alleges the

> counselor watched the movies and masturbated as well. Importantly, however, [Doe] specifically said that the counselor never touched him or the other camper. [Doe] does allege that the counselor *engaged in this activity frequently, though, and with many other campers.*

The letter further noted that Doe's father "wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (Exhibit 9, May 16, 2007 Letter to IRF).

Thereafter, Brandenburg was dispatched to Dallas, Texas on July 1, 2007, to take the former camper's statement. The statement was transcribed by a court reporter and revealed the following:

i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights, ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.

ii. On one occasion, ReVille invited the 2002 Camper and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When the camper refused, ReVille "got a little aggressive" and asked the boy to come back to the computer and join him, which he did.

iii. ReVille also insisted that the 2002 Camper and the other camper spend the night with him in his room. When the 2002 Camper tried to leave, ReVille coerced him into staying and masturbating in front of him.

iv. ReVille abused the other camper who accompanied the 2002 Camper to ReVille's dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.

v. Furthermore, the 2002 Camper personally observed younger boys going into ReVille's room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: "I know there are about five other kids that experienced it a few times."

(See Exhibit 10, July 1, 2007 Statement at 73-75, 80-81, 83). When asked by Brandenburg whether "there [was] anything [he] want[ed] the Citadel to do as a result of this," Doe expressed

his foremost desire to put an end to the abuse, stating: "Most of all, the thing I want the most is just to make sure that [ReVille] doesn't have a chance to do this to anyone else." (Exhibit 10, July 1, 2007 Statement, p. 109).

In an email to the IRF, dated August 8, 2007, Brandenburg summarized his findings from the interview, stating, "In short. . . I found [the 2002 Camper] to be believable." (Exhibit 11, Aug. 8, 2007 Email to IRF). In this same email, Mr. Brandenburg called attention to ReVille's emphatic denial of the allegations, and likened his statements to similar comments made by Arpaio during the 2002 sexual abuse investigation. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Citadel Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or other authorities as mandated by clearly established campus policies and procedures, accepted professional standards, and state and federal law.

Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children, including victims presently residing on The Citadel campus enrolled as cadets. (Exhibit 10, July 1, 2007 Statement, p. 105). Alarmingly, outside of sending one email to these former campers—one of which was the eyewitness to Doe's abuse—Brandenburg never spoke with the alleged victims. In fact, he never even walked the short distance from his office to the barracks were the eyewitness resided to corroborate Doe's complaint. (Exhibit 19, Brandenburg Deposition, Vol. I, 143:25—145:3). Rather, after taking Doe's statement on July 1, 2007, Brandenburg and The Citadel took no further action regarding the investigation of the matter.

Not long after Doe's statement, ReVille obtained employment as a coach and tennis instructor in Mt. Pleasant through which he was provided access to other minor victims, including Mother Doe A's son. In late 2007, ReVille began grooming Mother Doe A's child for what would progress into sexual abuse and molestation which occurred on multiple separate occasions throughout a two year period.

Pursuant to The Citadel's policies and procedures, the sexual abuse and molestation suffered by Doe and Camper Doe 6, who were minors under the age of 18 when the abuse occurred, constitutes sexual assault, sexual harassment, immoral conduct, illegal activity, unlawful sexual behavior, contact which is not mutually agreed upon, sexual misconduct, and prohibited sexual activity. These same policies mandate prompt actions such as reporting of the conduct to Citadel Public Safety or law enforcement, as well as termination where, as here, the conduct involves an employee. (Exhibit 12, Sexual Assault Crisis Intervention Policy; Exhibit 13, Sexual Harassment Policy; Exhibit 14, Serious Incidents Policy; Exhibit 15, Camp Policies Regarding Sexual Misconduct Issues; Exhibit 16, College Regulations; Exhibit 17 Counselor Code of Conduct).

Despite The Citadel's duties and obligations pursuant to these policies and procedures, however, the Citadel concealed its knowledge of ReVille's child sexual abuse until October of 2011, when ReVille was finally arrested on charges of molestation and sexual abuse of twenty-three boys, including Doe, Camper Doe 6 and Mother Doe A's child. ReVille has since testified that "close to 30" young men—including the Plaintiff's child—would have been spared had The Citadel contacted law enforcement in 2007. (Exhibit 2, ReVille Deposition, 177:11-17).

By December, 2011, within less than two months of learning in late October 2011 that her son had been abused in part by The Citadel's silence about ReVille, the Plaintiff filed the

present action. The claims alleged in the Complaint are gross negligence/failure to warn; negligent hiring, retention and supervision; violation of the Jessica Horton Act; civil conspiracy; violation of the Mandatory Reporting Statute; outrage; and loss of services.

The Citadel filed for summary judgment, arguing:

(1) The Citadel owed no common law or statutory duty of care to Plaintiff pursuant to Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007);

(2) Mother Doe A has no evidence of cognizable damages or, in the alternative, that her recovery is limited to out of pocket medical expenses and loss of services;

(3) Mother Doe A's claims are barred by S.C. Code § 15-78-110, the two-year statute of limitations of the South Carolina Tort Claims Act ("TCA");

(4) The Plaintiff's outrage claim is barred by 15-78-30(f) and by the presence of "other potential remedies;"

(5) Mother Doe A "cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim; and

(6) The Plaintiff's claims involve a single "occurrence" as defined by the TCA, limited to a potential recovery to $300,000.

For the reasons summarized above and stated below, the motion must be denied.

STANDARD OF REVIEW

Summary judgment is a drastic remedy which should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). As such, summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Madison ex rel. Bryant, at 134, 638 S.E.2d at 655. Summary judgment should be denied if more than one inference can be drawn from the evidence. Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)).

The party moving for summary judgment has the initial burden of showing an absence of evidentiary support for the opponent's case, and the non-moving party must show more than the allegations or denials contained in the pleadings. Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). The non-moving party must come forward with specific facts showing a genuine issue for trial. Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). As set forth in detail herein, there are more than sufficient facts establishing a genuine issue for trial on all causes of action.

LAW/ANALYSIS

I. SUMMARY JUDGMENT ON THE ISSUE OF COMMON LAW AND STATUORY DUTY IS IMPROPER.

Defendant's motion asks this Court to resolve a factual dispute as to whether The Citadel, after failing to take action in response to numerous complaints about ReVille from 2001-2011, had a duty to protect the Plaintiff and the Plaintiff's child from ReVille. The evidence reveals such a duty existed. An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Jensen v. Anderson County Dept. of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991); Miller v. City of

Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994). While there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger, South Carolina recognizes the following five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). As detailed herein, the evidence, including Citadel witness and expert testimony, reveals four of the above five exceptions apply in the instant matter so as to create such a duty on the part of The Citadel.

a. Doe v. Marion is inapplicable to the instant matter.

In maintaining Defendant owed no common law or statutory duty of care to Plaintiff, The Citadel incorrectly relies on Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007), as the governing law in this case. Absent the common theme of sexual abuse, Marion is entirely inapposite. Specifically, at issue in Marion was whether the Child Abuse Reporting Statute (presently S.C. Code § 63-7-310) created either a private cause of action for *negligence per se* or a common law duty to warn where a doctor who treated a pedophile patient failed to warn future victims of the patient's predilection for child sexual abuse. Here, Plaintiff does not assert a private cause of action under § 63-7-310, or that § 63-7-310 created a duty of care. Rather, Plaintiff's actions are rooted in the Citadel's negligence in creating the harm for Plaintiff through numerous acts of gross negligence, including the failure to report or warn.

The Citadel's reliance on Marion likewise overlooks the relevant exceptions to the rule that there is no general common law duty to control the conduct of another or to warn a third

person or potential victim of danger. Only one of these exceptions was addressed in Marion; the instant case involves at least four. Indeed, Marion, which cited these exceptions with favor, did **not** overturn the well-established duties provided by these exceptions—exceptions which, when applied to the facts herein, support the reasonable inference that The Citadel, unlike Dr. Marion, owed a duty of care to Plaintiff. Id., at 249 (citing the recognized exceptions set forth in Faile v. S.C. Dept. of Juvenile Justice, 566 S.E.2d at 546). Accordingly, Doe v. Marion is not controlling.

b. The Citadel had a duty to control the conduct of another or to warn Plaintiff under the exception for voluntarily undertaking a duty.

While The Citadel maintains it had no duty to warn or to control the conduct of ReVille, a review of Citadel policies and procedures, as well as the various services undertaken by The Citadel, reveals otherwise. "[I]t has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care." Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136-37, 638 S.E.2d 650, 656-57 (2006) (citing Sherer v. James, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986); Roundtree Villas Assn. v. 4701 Kings Corp., 282 S.C. 415, 423, 321 S.E.2d 46, 50-51 (1984); Miller v. City of Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994)). "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." Id. (quoting Restatement (Second) of Torts § 323 (1965)).

Although a volunteer assumes the duty to use due care, the question whether a duty of care arises in a given case may depend on the existence of particular facts. Miller v. City of Camden, 329 S.C. 310, 314-15, 494 S.E.2d 813, 815-16 (1997) (citing Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997)). Evidence, such as prior conduct or internal memoranda, could serve as evidence of a voluntary undertaking. Id. (citing Vaughan v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631, 637–38 (2006) (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes; there were town ordinances regulating sidewalks; town was aware of complaints about the sidewalks and did not report these to any other authority; and the town had previously handled complaints about sidewalks); Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110, 116 (Ct. App. 2007) (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks was used by a court as evidence to assess whether there was a voluntary undertaking)). "Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder. Id. Here, the evidence leads to the reasonable inference that The Citadel voluntarily undertook the duty to report, to investigate and to protect Plaintiff from harm.

i. Duty voluntarily undertaken by adoption of Citadel policies.

The evidence revealed in discovery establishes The Citadel undertook various duties pursuant to its policies and procedures, including, the duty to report ReVille to law enforcement. Citadel expert Anne Franke testified that an institution can self-impose mandatory reporter duties by undertaking policies obligating certain officials to report. (Exhibit 18, Deposition of Anne Franke, Vol. I, p. 176:6-18). Thus, by adopting policies for the protection and well-being of

prospective and foreseeable victims, the Citadel acquired a duty under state common law to provide Plaintiff with adequate protection against that danger. See e.g. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 202, 109 S. Ct. 998, 1006, 103 L. Ed. 2d 249 (1989) (observing that by voluntarily undertaking to provide petitioner with protection against a danger it played no part in creating, the state may have acquired a duty under state tort law to provide petitioner with adequate protection against that danger). Here, The Citadel acquired such a duty through its policies aimed at preventing harm and imposing reporter duties.

In particular, The Citadel's "Serious Incidents Memorandum," dated April 2000, defines "serious incident" as "unexpected occurrences directly or indirectly involving The Citadel, which require a response or action from the college administration; or which have the potential to generate positive or negative publicity regarding the college." (Exhibit 14, Serious Incidents Memo, p. 1). Among the non-exclusive list of examples of serious incidents are "allegations concerning illegal or immoral activities at the college." (Exhibit 14, p. 12). The policy directs that when an individual is in receipt of allegations concerning illegal or immoral activities at the college, they are required to notify the Executive Assistant to the President, *i.e.* Colonel Trez, who is, in turn, required to alert the President and, if criminal activity is alleged, to contact the Department of Public Safety. (Exhibit 14, p. 12). Further, if criminal activity involving someone affiliated with the Citadel occurs, as in the instant case, the "first member of the Citadel community learning of the occurrence" is required to report it to the Citadel Public Safety Department.

Mark Brandenburg, The Citadel's Rule 30(b)(6) witness with the most knowledge about Citadel policy and procedure relating to Doe's 2007 complaint of child sexual abuse, has testified that if the Serious Incidents policy was in effect--which it was--it applied to him.

(Exhibit 19, Brandenburg Deposition, p. 261:5-11). Brandenburg also acknowledged that per the policy, Col. Trez was required to report allegations of illegal or immoral activities involving ReVille to the Citadel Department of Public Safety:

Q So it's Colonel Trez's job to report the ReVille allegations to the Department of Public Safety and he didn't do it?
A According to this memo, he is to report allegations of illegal or immoral activities, right.
Q There's just no question that what ReVille did with those 14-year-old boys was illegal and immoral?
A It's clear now, yes.
Q It was immoral when it came in, wasn't it?
A The allegations -- It was allegations of immoral activity, yes.

(Exhibit 19, Brandenburg Deposition, p. 264:5-17). Citadel expert Gary Margolis likewise conceded that the Serious Incidents Policy required reporting to law enforcement and that the Citadel voluntarily undertook the duty to report ReVille:

Q. Would you agree with me that if The Citadel had a policy and procedure that applied to those [Doe] allegations that required The Citadel to report ReVille to law enforcement, that The Citadel had voluntarily undertaken the duty to report a child sexual predator to law enforcement?
A. If there was a policy that existed to that effect, I would agree with you.

(Exhibit 8, Margolis Deposition, Vol. I, p. 57).

Q. So when Wanda Milligan or Mark Brandenburg were notified that the crime had been committed on the Citadel campus, they should have notified Public Safety, according to this policy [Serious Incidents Policy], right?
A. According to this policy, correct.

(Exhibit 8, Margolis Deposition, Vol. I, p. 286-287).

Q. Okay. And so, now, you have and I have established that under the serious incidents memo, which applies to everybody at The Citadel and was in effect in April of 2007, that there are two separate parts of that serious incidents memo which required reporting the allegations to law enforcement, correct?
A. Correct.

(Exhibit 8, Margolis Deposition, Vol. I, p. 290). However, no report to the Citadel Public Safety was ever made.

Furthermore, The Citadel self-imposed a duty to report pursuant to its "Summer Camp Policies Regarding Sexual Misconduct Issues." This policy unambiguously requires that, "[r]egardless of validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp will be turned over to the Citadel Public Safety Department and a thorough investigation will be conducted." (Exhibit 15, Camp Policies Regarding Sexual Misconduct Issues). The policy likewise makes clear that "[t]here are no time period restrictions regarding sexual misconduct investigations," stating, "[a]ll sexual misconduct allegations disclosed *at any time* concerning *any individual(s)*, currently or *formerly*, associated with the camp, will be investigated upon disclosure." Despite the duty imposed by this policy, no member of The Citadel administration reported the child sexual abuse complaint by Doe to the Citadel Public Safety Department.

In addition to self-imposing the duty to report to law enforcement, The Citadel had disseminated policies against sex discrimination and harassment that obligated Citadel officials, employees and/or agents to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator. (Exhibit 12, Memorandum Number 4, August 15, 2005; Exhibit 13, Memorandum Number 51, June 30, 2000 at p. 13; Exhibit 40, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). The sexual assault policy also provides that "The Citadel will punish any individual who is found to have committed a sexual assault." Brandenburg admitted that the 2007 complaint against ReVille constituted a sexual assault. (Exhibit 19, Brandenburg Deposition, p. 265-266). However, he does not recall ever considering

contacting The Citadel's sexual response coordinator. (Exhibit 19, Brandenburg Deposition, p. 267:5-8).

The Citadel also undertook various duties pursuant to its Employee Misconduct Policy, which include: 1) not expunging molestation findings from the employee's record; 2) not terminating any investigation in exchange for resignation by the employee; 3) providing factual and candid responses to inquiries by potential employers; and 4) fully cooperating with law enforcement. (Exhibit 20, In the Event of Employee Misconduct Policy). The Citadel failed to impose any of these requirements with regard to ReVille. In fact, The Citadel's actions in instructing ReVille to lay low and to leave Citadel employment with no record of the sexual abuse report were in direct violation of this policy.

That the duties undertaken by these policies extended to the Plaintiff victims is also clear under The Citadel's core values and college regulations. In fact, President Rosa testified that The Citadel's core value of duty, *i.e.* the moral obligation of responsibility for the welfare of others, applies to The Citadel's policies and procedures:

> Q And under core values under -- this is the statement of vision, under core value, it says, "Duty, we emphasize the importance of individual accountability and a moral obligation of responsibility for the welfare of others." Is that correct, what it says?
> A Right.
> Q Do you agree with that?
> A Right.
> Q Would you agree with me that some of The Citadel's policies and procedures and guidelines, when they're written, they take into account the duty of a moral obligation of responsibility for the welfare of others?
> A Right.

(Exhibit 21, Deposition of President Rosa, Vol. I, p. 53). Thus, based on The Citadel's own witness and expert testimony, The Citadel had a duty to report ReVille to law enforcement and

the reason for reporting was for the welfare of others—namely, victims and future victims of ReVille.

The evidence therefore reveals that by virtue of adopting policies and procedures, The Citadel undertook a duty to report ReVille to law enforcement and to warn plaintiff, the community, and potential employers of ReVille's dangerous propensities and known acts of abuse. See Miller, 329 S.C. at 314-15, 494 S.E.2d at 815-16 (stating "[e]vidence such as . . . internal memoranda, could serve as evidence of a voluntary undertaking."). Despite the duties undertaken pursuant to the above policies in effect, The Citadel ensured that none were followed, and that the child sexual abuse was instead concealed. In other words, by its very own policies and procedures, The Citadel failed to exercise due care. See Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

ii. Duty voluntarily undertaken by investigation.

Citadel witness and expert testimony confirms the existence of a duty by The Citadel to protect foreseeable victims, such as the Plaintiff's child, by undertaking an investigation into the 2007 report of sexual abuse. Brandenburg admitted that "preventing harm to other young boys or victims" was a goal of the investigation. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 31:4-7). He further agreed that "by undertaking the investigation . . . The Citadel was aiming to prevent harm to potential victims." (Exhibit 19, Brandenburg Deposition, Vol. I, p. 31:8-11). Similarly, Brandenburg testified that The Citadel's core values apply to him and that the moral sense of duty and obligation of responsibility for the welfare of others would apply to his investigation of an alleged sexual offense. (Exhibit 19, Brandenburg Deposition, Vol. II, p. 259, lines 11-19; Exhibit 16, College Regulations, defining "Duty" as "individual accountability and

moral *obligation of responsibility for the welfare of others.*"). For instance, Brandenburg—The Citadel's 30(b)(6) witness with the most knowledge regarding the investigation into Doe's allegations—testified as follows:

Q Would you agree with me that preventing harm to other young boys or victims was a goal of the investigation?
A Sure.
Q Would you agree with me that by undertaking the investigation, that The Citadel was aiming to prevent harm to potential victims?
A I assume so.

(Exhibit 19, Brandenburg Deposition, Vol. I, p. 31)

Q Under Core Values, could you read what No. 2 says about duty?
A "We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."
Q Would you agree that that moral sense of duty would apply to investigating an alleged sexual offense?
A Yes.

(Exhibit 19, Brandenburg Deposition, Vol. II, p. 259). Thus, not only did The Citadel voluntarily undertake the duty of investigating Doe's report of sexual abuse, it did so with the "goal of preventing harm to other young boys or victims," *i.e.* the Plaintiff's child. Moreover, Brandenburg conceded that the "moral obligation of responsibility for the welfare of others," *i.e.* the Plaintiff and her child, applied to the investigation. Therefore, by voluntarily undertaking an investigation guided by the "moral obligation of responsibility for the welfare of others" and with the goal of "preventing harm to other young boys or victims," The Citadel owed a common law duty of care to Plaintiff.

Having undertaken the investigation (the *only* investigation conducted in 2007), The Citadel was obligated to act with due care. It did not. In fact, by its own policies and procedures, The Citadel failed to exercise due care. Indeed, if The Citadel had conducted an impartial investigation and not one led by its General Counsel as part of an attempt to conceal

ReVille's sexual abuse, The Citadel would have taken action in accordance with, rather than in opposition to, its own policies and procedures and state and federal law requiring reporting to law enforcement, child protective services and the school's Title IX coordinator. Instead, The Citadel neglected to follow these well-established policies and intentionally concealed the matter from law enforcement, the Citadel community, the Board of Visitors and the public at large. The Citadel's deviation from its own policies and procedures demonstrates its lack of due care under the relevant circumstances. See Peterson v. National Railroad Passenger Corporation, CSX, and Southco Sweeping and Maintenance, Co., 618 S.E.2d 903, 906 (2005) (holding company's deviation from internal maintenance policies admissible to show breach of duty owed); Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

In sum, The Citadel undertook the duty to report ReVille to law enforcement; to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator; to punish any individual who is found to have committed a sexual assault; to not expunge molestation findings from the employee's record; to not terminate an investigation in exchange for resignation by the employee; to provide factual and candid responses to inquiries by potential employers; to fully cooperate with law enforcement; and to prevent harm to future victims by undertaking an investigation. By voluntarily undertaking these duties, The Citadel owed a duty to Plaintiff to use reasonable care to protect them from the risk of harm created thereby. Whether The Citadel exercised such care is a question of fact for the jury.

c. The Citadel owed a common law duty to Plaintiff under the exception for negligently or intentionally creating the risk.

Defendant will maintain that The Citadel is not liable for Plaintiff's injuries and damages under the statutory exception to the waiver of governmental immunity for "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20). However, any argument as to this exception is unpersuasive. The fact that ReVille, as a third party, sexually abused the Plaintiff's child does not affect the common law duty The Citadel owed to Plaintiff to not negligently or intentionally create the risk that ReVille would commit acts of sexual abuse against her child. See Madison ex rel Bryant, 638 S.E.2d at 660 (holding facts that independent contractor directly provided services to plaintiff or that third party committed criminal act against plaintiff did not affect the government's common law duty to plaintiff to exercise reasonable care in supervising and providing appropriate care to plaintiff).

The concept of duty based on conduct that "creates a risk" has been adopted as black letter law under the Restatement (third), which explains that "[w]hen the actor's conduct is a factual cause of physical harm, the actor's conduct necessarily 'created a risk' of harm." Restatement (Third) of Torts: Phys. & Emot. Harm § 7 (2010), Comment (a) to Section 7(a) ("An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm"). As explained in the Comment to Section 7(a), the Restatement observes that "[c]onduct may also create risk by exposing another to the improper conduct of third parties." Comment (o) to Section 7(a). Thus, pursuant to Section 7(a) and Comment a, where a defendant's conduct caused the plaintiff physical harm, the defendant owed a duty to have acted reasonably in so doing. W. Jonathan Cardi, Purging Foreseeability the New Vision of Duty and Judicial Power in the Proposed Restatement (Third) of Torts, 58 Vand. L. Rev. 739, 769-70 (2005).

Also instructive on the issue of duty in this context is Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546, 547 (1990). There, the plaintiff alleged that a public auditorium was negligent in adequately securing and maintaining its premises during a concert where the plaintiff was injured by a bottle thrown by an unknown individual from the auditorium's balcony. The Court held that the exception to the waiver of immunity for a loss resulting from the act or omission of a person other than an employee did not apply because Martin did not allege the auditorium was liable for the third party's actions. Id.; S.C. Code § 15-78-60(20). Rather, the complaint alleged that the auditorium was liable for its own negligence in creating a reasonably foreseeable risk of such third party conduct. In upholding the jury verdict for the plaintiff, the Supreme Court reasoned:

> [The auditorium] cannot successfully defend that [plaintiff's] injuries were caused by the wrongful criminal act of a third party, where the very basis upon which [the auditorium] is claimed to be negligent is that [it] created a reasonably foreseeable risk of such third party conduct.

Id. at 547-548.

As in Martin, The Citadel is liable for its own negligence in creating a reasonably foreseeable risk of sexual abuse by ReVille. Specifically, The Citadel's deliberate concealment of its knowledge of ReVille as a child molester, which began as early as 2001 and extended until ReVille's arrest in 2011, included repeatedly ignoring known acts of abuse at the Citadel Summer Camp, directing ReVille to "lay low" and permitting ReVille to leave The Citadel with no record of the 2007 complaint or prior abuses. Such acts in concealing a known serial molester created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys. Additionally, alerting ReVille to the allegations on April 24, 2007, served to create and

exacerbate the risk of harm to Plaintiff's child by allowing ReVille to revise his tactics so as to better allay suspicions and escape detection.

The evidence also establishes that Citadel leaders, including President Rosa, who had a wealth of experience dealing with sexual harassment and abuse, were well aware that sexual predators continue to abuse and pose a threat to the community. (Exhibit 22, Culture Change at Air Force Academy, October 14, 2003, regarding sexual assault reporting policies implemented by Rosa at the U.S. Air Force Academy; Exhibit 21, Rosa Deposition, Vol. I, p. 168:7-169;13; Exhibit 23, Trez Deposition, p. 54:23-25). The Citadel's own expert further confirms that ReVille had a propensity to abuse victims within a discrete class of society, calling him a preferential child molester, and even opining as to the foreseeability that ReVille would continue molesting boys once he left Citadel campus. (Exhibit 8, Margolis Deposition, p. 19-20; 188).

Indeed, Defendant's own expert witness testimony supports the inference that The Citadel created the dangerous condition by providing ReVille access to his victims:

> Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
> A. I would agree with you, yes.
> Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
> A. I would agree that that's a reasonable assumption.

(Exhibit 8, Deposition of Margolis, Vol. I, p. 19-20). At a minimum, the evidence creates an issue of fact for the jury that The Citadel's negligent disregard of duty and intentional concealment of ReVille's sexual abuse from 2001-2011 created the reasonably foreseeable risk that the Plaintiff's child would be abused by ReVille.

Thus, The Citadel's own negligence allowed ReVille to remain undetected in the Charleston community as a decorated Citadel alumnus and former employee using his unblemished record at The Citadel to gain continued employment with children. But for these actions by The Citadel, ReVille would not have had the opportunity to abuse Plaintiff's child. At a minimum, the evidence leads to the reasonable inference that The Citadel owed a duty of reasonable care to Plaintiff.

There is substantial evidence from which a reasonable juror could conclude that The Citadel's conduct in negligently and intentionally concealing a known child sexual predator and in failing to take the required action—actions required by Citadel policy and state and federal law—to report ReVille to law enforcement and put an end to the abuse created the risk of harm to Plaintiff and her child.

d. The Citadel had a duty of care under the special relationship exception based on The Citadel's relationship with ReVille.

At all times relevant herein, The Citadel was aware of a specific threat by ReVille and had the ability to monitor, supervise and control ReVille so as to create a duty to warn Plaintiff and/or to report ReVille to law enforcement. A common law duty to warn potential victims of an individual's dangerous conduct arises under the special relationship exception where, as here, the defendant "has the ability to monitor, supervise and control an individual's conduct" and the defendant is aware of a specific threat of harm to potential victims by the individual. Bishop v. S. Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). A duty to warn under this exception does not require the threat to be made while under the control of or in the custody of the defendant; instead, all that is required is that the defendant was aware or should have been aware of the specific threat by the individual. Id. at 88, 502 S.E.2d at 82.

Turning first to the existence of a special relationship, the evidence more than supports a reasonable inference that The Citadel had a special relationship with ReVille while he was a Citadel cadet, Citadel employee, alumnus using campus facilities, invited guest speaker and prospective job applicant. ReVille has testified that he worked in the writing center until April 30, 2007, during which period he was also in line to assume a new position at The Citadel's Krause Center set to begin once funding was obtained. (Exhibit 2, ReVille Deposition, 172:9-16; 184:19--185:15; 197:6-10). Testimony from Citadel General Counsel, Mark Brandenburg similarly indicates ReVille was on campus working in the writing center on April 24, 2007, when Brandenburg contacted ReVille to alert him of the allegations. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 44:10-22; p. 131:10-12, 132:4-8).

In fact, the call to the writing center on April 24, 2007 turned into a face-to-face meeting with Brandenburg and Colonel Trez in Bond Hall, where ReVille was instructed to "lay low and stay off campus" while Brandenburg and Trez conduct their own investigation into the sexual abuse report. (Exhibit 24, ReVille Affidavit, May 21, 2013; Exhibit 2, ReVille Deposition, 135:1-19; Exhibit 19, Brandenburg Deposition, Vol. I, p. 98:20-99:4, 101:4-102:14; 130:24-131:12). Directing ReVille to lay low and stay off campus not only confirms that ReVille had unfettered access to campus but further demonstrates The Citadel's ability to "supervise, monitor and control" ReVille's conduct.

As additional evidence of ReVille's relationship with The Citadel, ReVille's application to the South Carolina Employment Security Commission, Unemployment Insurance Division, notes his "last day worked for the school was 04/30/07." (Exhibit 25, ReVille Unemployment Application, dated 6/7/07, p. 19). ReVille's 2008 job application for a position as a coach in Mt. Pleasant similarly references his employment with The Citadel as extending to May 2007.

(Exhibit 26, Velocity Sports Application, p. 2). ReVille also had a Citadel email address on April 23, 2007, that he continued to maintain until at least June 2007. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 45:14-18).

What's more, ReVille continued to have access to the campus after May 2007 by returning to The Citadel numerous times to speak to the Honor Committee, to incoming freshman, and in 2010 at the unveiling of the remodeled Honor Court. (Exhibit 24, ReVille Affidavit, May 21, 2013, p. 3). Given ReVille's demonstrated access to, and affiliation with, the institution, President Rosa and Colonel Trez further admit that ReVille had a "different relationship" with The Citadel than the ordinary graduate. (Exhibit 23, Trez Deposition, Vol. I, p. 81:2-82:6; Exhibit 21, Rosa Deposition, Vol. II, p. 230:10-14;). Thus, while The Citadel contends ReVille was no longer affiliated with the college after April 20, 2007, the evidence suggests otherwise.

As to knowledge by The Citadel of a specific threat of harm to victims, The Citadel, including President Rosa and Colonel Trez, was well aware in 2007 that a child molester is a threat to the community at large:

> Q: Is a child sexual predator an ongoing threat to the community at large?
>
> A: It could—yes.

(Exhibit 23, Trez Deposition, Vol. I, p. 54:23-25).

> Q: . . . Skip ReVille is on campus, the next day when he tries to find ReVille, he's on The Citadel Campus, wouldn't you agree that if that person who has been accused of being a pedophile is on The Citadel campus, that that's a current threat to not only The Citadel, but the public at large?
>
> A: Possibly . . .

(Exhibit 21, Rosa Deposition, Vol. I, July 29, 2013, p. 168:10-16).

Despite this knowledge, Citadel officials and employees designated the matter "close hold", intentionally concealing Doe's 2007 report of sexual abuse from law enforcement, the Board of Visitors, the Citadel community, and the public at large. (Exhibit 27, Deposition of Jennifer Shiel, p. 36:9-20). The Citadel's concealment of the sexual abuse by ReVille enabled ReVille to continue his abusive acts on unwitting boys in the community, including the Plaintiff's child. Likewise, The Citadel's concealment of its knowledge of ReVille as a child molester, which included alerting ReVille to the allegations, directing him to "lay low" and permitting him to leave The Citadel with no record of the 2007 complaint, created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys in the Charleston community. Indeed, as conceded by The Citadel's own expert, allowing a sexual molester to leave campus means that he is a threat to minors wherever he goes off campus. (Exhibit 8, Margolis Deposition, Vol. I, p. 20:6-11). By unleashing a known sexual predator into the community, there can be no dispute that The Citadel was well aware of a specific threat of harm to Plaintiff's child by ReVille.

The evidence therefore supports the reasonable inference that through this special relationship, The Citadel was aware of the reasonable foreseeability that ReVille would sexually abuse the Plaintiff's child. In the context of child sexual abuse—where, masked by the perpetrator's manipulation, actual threats of harm are disguised by deception and concealment—such awareness is tantamount to a specific threat of harm to Plaintiff's child.

The imposition of a duty on the part of The Citadel based upon a special relationship in this case is likewise consistent with South Carolina jurisprudence. In Bishop, the South Carolina Supreme Court, quoting the seminal case regarding a psychotherapist's duty to warn, Tarasoff v. Regents of University of California, 551 P.2d 334 (1976), determined the Department had a

special relationship with mother because the Department had custody and control of mother. Thus, the court determined that if the Department knew or should have known a specific threat was made by mother, the Department had a duty to warn the threatened third party of mother's release. Notably, as to the Department's knowledge of a specific threat of harm, the court stated:

> Although the Department's discharge summary stated mother related to the examiners she had no intention of hurting herself or her family and *mother did not make a specific threat of harm to her child while in the Department's custody*, the Department was *aware mother had made specific threats to harm victim in the past.* These threats were noted on the documents admitting mother into the custody of the Department. This knowledge was sufficient to trigger the Department's duty to warn victim of mother's release because a specific threat had been made by mother to harm a specific person.

Bishop, 331 S.C. at 88, 502 S.E.2d at 82 (emphasis added). Therefore, to trigger the duty to warn, the court found it sufficient that the Department merely had knowledge that mother had made specific threats *in the past.* In fact, the opinion notes that "mother did not make a specific threat of harm to her child while in the Department's custody." Id. Consequently, the court found the Department breached its duty to warn of mother's release.

The control and knowledge of the Department in Bishop is not unlike that of The Citadel, which demonstrated control over ReVille and awareness of specific acts of abuse against multiple boys in the past. In fact, given the foreseeability of future like conduct, as acknowledged by The Citadel's own witnesses and experts, the threat of harm was arguably even more apparent in the instant case. Here, as in Bishop, The Citadel's knowledge of the threat of harm posed by ReVille is sufficient to trigger The Citadel's duty to warn and/or report ReVille to law enforcement.

e. The Citadel had a duty to report and to prevent the threat of harm by sexual abuse under the statutory duty exception.

In South Carolina, the test for determining when a statute creates a duty of care and supports an action for negligence is (1) whether the statute's essential purpose is to protect from the kind of harm the plaintiff has suffered and (2) whether the plaintiff is a member of the class of persons the statute is intended to protect. Rayfield, 374 S.E.2d at 914 (deriving test from comparison of Clifford v. Southern Railway, 69 S.E. 513 (S.C. 1910) and Hutto v. Southern Railway, 84 S.E. 719 (S.C. 1915)). Accordingly, a statute may create a duty of care of which the violation of constitutes breach in a negligence action, which thereby establishes negligence per se. Rayfield, 374 S.E.2d at 915.

i. Title IX

The evidence set forth herein establishes that The Citadel had a statutory duty under Title IX to eliminate the threat of harm posed to Plaintiff's child by ReVille and to prevent its recurrence. The Citadel's conduct in response to the 2007 report of child sexual abuse by ReVille violated this duty. Title IX of the Education Amendments of 1972 [Title IX], codified at 20 U.S.C. §§ 1681 et seq. and Title 34 Code of Federal Regulations Part 106, seeks to eliminate, with certain exceptions, discrimination on the basis of sex in any education program or activity[2] receiving Federal financial assistance. 20 U.S.C. § 1681; 34 C.F.R. § 106.1. Title IX bestows a remedial and affirmative action requirement on institutes of undergraduate higher education to take such remedial action as necessary to overcome the effects of such discrimination. 34 C.F.R. § 106.3(a). Therefore, Title IX's essential purpose to eliminate sex discrimination by definition

[2] Under Title IX, an education program recipient of Federal financial assistance means "any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2(i). "Institutions" include those of higher education as defined by 34 C.F.R. § 106.2(l), (m), (n), and (o), which includes The Citadel as an institute of undergraduate higher education.

seeks to protect other individuals from the possibility of sex discrimination. For eliminating known sexual discrimination, whether it be in the form of harassment or abuse, prevents the future sexual abuse of other individuals. Accordingly, the Plaintiff victims are members of the class of persons Title IX is intended to protect.

As early as 2000, the Office of Civil Rights [OCR] provided guidance to schools, including The Citadel, on their obligations under Title IX regarding complaints of sexual discrimination and harassment. (Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties ("OCR 2001 Guidance"), January 2001; see also DCL, April 4, 2011, http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html). The guidance disseminated by the OCR establishes the standards imposed on federal fund recipients, such as The Citadel, for Title IX compliance. For instance, OCR highlighted that the United States Supreme Court in Gebser v. Lago Visa Indep. School Dist., 524 U.S. 274 (1998), expressly affirmed that schools must take remedial action to remedy the effects of the harassment on the victim. (Exhibit 28, OCR 2001 Guidance). Similarly, schools must "disseminate a policy against sex discrimination" and "adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment." Id.

The Citadel's own expert, Mr. Margolis, also put forth a presentation highlighting the requirements of Title IX, to include the definition of sexual harassment:

Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol
- An individual also may be unable to give consent due to an intellectual or other disability

- May include rape, sexual assault, sexual battery, and sexual coercion.

(Exhibit 29, Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 7).

In 2007, as referenced above, The Citadel disseminated policies against sex discrimination and harassment that governed its actions regarding Doe's complaint of ReVille's sexual abuse. (Exhibit 12, Memorandum Number 4; Exhibit 13, Memorandum Number 51; Exhibit 40, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). Title IX requires schools to designate at least one employee to coordinate compliance with the regulations implementing Title IX. (Exhibit 28, OCR 2001 Guidance). Despite President Rosa himself bringing in Janet Shealy as the Citadel's Sexual Assault Response Coordinator in 2006, neither he nor any other Citadel administrator referred the ReVille sexual abuse claims to Ms. Shealy. (Exhibit 21, Rosa Deposition, July 29, 2013, p. 29, 83).

Title IX also requires that if the school knows, or even reasonably should know, of sexual harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. (Exhibit 28, OCR 2001 Guidance). Even if the school does not learn of the sexual harassment from the victim but from some other source, the school violates Title IX if it fails to take "immediate and effective corrective action." (Exhibit 28, OCR 2001 Guidance). Gary Margolis, Defendant's own expert, has acknowledged the importance of the requirement to take immediate action regardless of whether the complaint comes from the victim, a parent, or a third party. (Exhibit 29, Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 12). The OCR further instructs that "if harassment has occurred, doing nothing is always the wrong response." (Exhibit 28, OCR 2001 Guidance).

Title IX further emphasizes a school's duty to respond promptly to allegations of harassing conduct or possible criminal conduct, noting:

> In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigation are different, police investigations or reports may not be determinative of whether harassment has occurred under Title IX and DO NOT relieve the school of ITS DUTY to respond promptly.

(Exhibit 28, OCR 2001 Guidance) (emphasis added). As emphasized by OCR, the prompt response contemplated by Title IX requires "taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy its effects on the victim." (Exhibit 28, OCR 2001 Guidance; Exhibit 29, Margolis Healy PowerPoint, p. 12). Thus, in addition to taking action to stop the harassment or sexual violence and prevent its recurrence, Title IX recipients, such as The Citadel, are required to provide victim assistance.

The record in this case is replete with evidence to support the reasonable inference that The Citadel did nothing to rehabilitate or assist Camper Doe, as was required by Title IX, and instead acted to conceal his complaint of sexual abuse. Moreover, The Citadel took no action in response to Doe's third party complaint of sexual abuse as to the two former campers who were presently residing on campus as Citadel Cadets. In fact, The Citadel entirely ignored the fact that ReVille, who was still on campus on April 24, 2007, may have still been abusing, harassing or otherwise creating a hostile environment for these cadets. Rather, the evidence establishes The Citadel intentionally neglected its Title IX duties in favor of concealing the allegations and its knowledge of ReVille's dangerous propensities. The Citadel's motives were self-serving, and as a former member of President Rosa's staff who lived through this ordeal testified:

> Q. Looking back on the period of time when you were working within the President's office....do you believe that President Rosa was indifferent towards

concerns that he should have been worried about; for example, other victims who may be abused?

Mr. Kovach: Objection.

A. Yeah, I do think he was indifferent to it.

(Exhibit 27, Shiel Deposition, p. 49-50).

The Citadel's failure to abide the duty of care established by Title IX is further evinced in its decision to extend the responsibility for investigating the 2007 complaint to Mark Brandenburg, the Citadel's General Counsel. Title IX specifically requires an impartial investigation, and The Citadel's own expert agrees that college attorneys are not impartial parties for purposes of a Title IX investigation. (Exhibit 8, Margolis Deposition, p. 124-125; Exhibit 29, Margolis Healy PowerPoint, p. 19). What's more, the only outside entity permitted by the Citadel to have knowledge of the complaint and the investigative process was its insurer, the South Carolina Insurance Reserve Fund ("IRF"). (Exhibit 19, Brandenburg Deposition, p. 169, 190-191). The Citadel's decision to involve the IRF in the investigation was in direct violation of OCR's caution against using insurance company investigations to guide the school's response to complaints of sexual abuse or harassment, because, as OCR explains, "[t]he purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different than those under Title IX." (Exhibit 28, OCR 2001 Guidance). The Citadel's use of its own in house attorney to "investigate" the child sexual abuse and its involvement of the IRF in the investigation directly violates Title IX and the duty of care provided by the OCR and the statutory scheme.

Defendant's own expert even conceded that The Citadel's response to the 2007 complaint violated Title IX:

Q: when Doe made a third-party complaint as to eyewitness Doe and the six others who were abused the year before, The Citadel's duty under Title IX requiring it to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects applied to the many others, not just Doe, correct?

A: Correct.

* * *

Q: You would agree with me that the Title IX coordinator at The Citadel didn't oversee those allegations and the investigation of them by Mark Brandenburg, correct?

A: That is correct.

Q: That would be a violation of Title IX, correct?

A: It would be a violation of this, correct.

(Exhibit 8, Margolis Deposition, Vol. I, 308:8-16; 309:11-20).

In light of the foregoing, The Citadel's actions in response to the 2007 report of child sex abuse violated the duty of care established by Title IX, and its breach of the duty constitutes negligence per se and common law negligence under the statutory duty exception reiterated in Faile and Marion.

ii. South Carolina Mandatory Reporter Statute

While Doe v. Marion declined to find a private right of action under South Carolina's Mandatory Reporter Statute, S.C. Code § 63-7-310(A), for the failure of a physician to report suspected child sexual abuse, the intentional failure of The Citadel to report the 2007 allegations of child sexual abuse created the risk of harm to Plaintiff's child by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse. See id. 373 S.C. at 398-99, 645 S.E.2d at 249-50. The Citadel Public Safety are mandatory reporters of child abuse pursuant to S.C. Code § 63-7-310(A), and as such, The Citadel assumed a duty to report

Doe's 2007 complaint of child sexual abuse regarding ReVille. Section 63-7-310(A) provides, in relevant part:

> (A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, *police or law enforcement officer*, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA *must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.*
>
> (B) *If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect* if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was *committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.*

S.C. Code Ann. § 63-7-310 (formerly cited as 20-7-510).

A plain reading of the statute reveals that regardless whether The Citadel and its administrators are, by definition, mandatory reporters, "police" and "law enforcement officer[s]" unequivocally are mandatory reporters. This fact is confirmed by the current head of Citadel Public Safety, Colonel William Fletcher, who clarified that Citadel Public Safety are "certified" law enforcement officers. (Exhibit 30, Deposition of Fletcher, p. 17:14-18). Therefore, if The Citadel had reported the sexual abuse to Citadel Public Safety, as required by the Serious Incidents policy outlined above, Citadel Public Safety was required to contact the Charleston Police or SLED who would have investigated the matter and arrested ReVille. See S.C. Code §

63-7-410. However, the evidence leads to the reasonable inference that The Citadel deliberately chose not to involve Citadel Public Safety in order to prevent inevitable disclosure by law enforcement of child sex abuse by a Citadel employee on the Citadel campus. Indeed, Chief Fletcher acknowledged that in 2007, he could not have alerted SLED unless the allegation was reported to him. (Exhibit 30, Fletcher Deposition, p. 23:8-17). The intentional failure of The Citadel to report the 2007 complaint of child sexual abuse created the risk of harm to Plaintiff and her child by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse.

iii. Jessica Horton Act

The Jessica Horton Act, S.C. Code Ann. § 59-154-10, effective June 6, 2007, requires notification to SLED by campus police of "a report alleging that an act of criminal sexual conduct has occurred on the property of the institution." In particular, the Act provides:

> (B) The chief of the campus police of an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division if there is a death resulting from an incident occurring on the property of the institution or if the officer *or another official of the institution* is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution.
>
> (C) Upon notification, the State Law Enforcement Division shall participate in a joint investigation of the death or alleged act of criminal sexual conduct. In the case of a death, the State Law Enforcement Division shall lead the investigation. In the case of an alleged act of criminal sexual conduct, the campus police shall lead the investigation.

S.C. Code Ann. § 59-154-10.

Here, Brandenburg specifically testified that the Horton Act applied to Doe's report and that he, along with President Rosa and Colonel Trez, is an "official of the institution" for purposes of the Act. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 180-181). Brandenburg

likewise conceded that the allegations reported by Doe alleged criminal sexual conduct. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 184-185, agreeing Horton Act applied to July 1, 2007 statement). Thus, the Horton Act, which was in effect after Doe's July 1, 2007 statement containing additional allegations and identification of victims, imposed a duty on The Citadel to notify SLED and to participate in a joint investigation. This action was not taken.

Furthermore, Chief Fletcher testified that he would have notified SLED pursuant to the Horton Act if he had been informed of the 2007 report. (Exhibit 30, Fletcher Deposition, p. 18-19). As noted, however, the evidence leads to the reasonable inference that The Citadel deliberately chose not to inform Citadel Public Safety in order to prevent disclosure to law enforcement. As above, the intentional failure of The Citadel to inform Citadel Public Safety of the 2007 complaint created the risk of harm to Plaintiff and her child by preventing the mechanisms established by the legislature in enacting § 59-154-10 to prevent sexual abuse.

iv. Clery Act

Additional evidence of The Citadel's intentional concealment of the 2007 child sex abuse complaint is its failure to include the complaint in The Citadel's report of crime statistics for the 2007 time frame, pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (f). Brandenburg's own general counsel documents show that he was responsible for The Citadel's reporting obligations under the Clery Act and, accordingly, knew, or should have known, the law. (Exhibit 31, Email from Jennifer Shiel, October 24, 2007, including list of Mr. Brandenburg's files to include Clery Act Report-2007, p. 11). The Clery Act requires an annual security report that contains crime statistics "for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property" of a list of crimes "that are reported to local police

agencies or to a campus security authority." 34 C.F.R. § 668.46. Sex offenses, forcible and non-forcible are included. Id. 34 C.F.R. § 668.46(c)(2) also requires that "an institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to campus security"—rather than the year crime occurred.

However, The Citadel did not include the child sex abuse complaint in the 2007 report. Nor did it report the 2007 child sex abuse complaint to any law enforcement entity, thereby also preventing the trigger of any duty to report pursuant to the Clery Act. As above, The Citadel's concealment of the 2007 complaint created the risk of harm to Plaintiff and her child by preventing the disclosure of sex offenses and crime statistics in violation of 20 U.S.C. § 1092 (f).

f. The Citadel's Duty Argument Fails.

i. The Question of Duty is One of Fact in the Instant Case.

The Citadel incorrectly maintains that the issue of duty in this case is a matter of law. Rather, South Carolina law makes clear that such a determination is a mixed question of law and fact where, as here, there are factual issues regarding the circumstances giving rise to a duty. See City of Camden, 329 S.C. at 314-15, 494 S.E.2d at 815-16 (the question whether a duty of care arises in a given case may depend on the existence of particular facts); Town of Lyman, 370 S.C. 436, 635 S.E.2d at 637–38 (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes; there were town ordinances regulating sidewalks; town was aware of complaints about the sidewalks and did not report these to any other authority; and the town had previously handled complaints about sidewalks); Fickling, 372 S.C. 597, 643 S.E.2d at 116 (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks was used by a court as evidence to assess whether there was a

voluntary undertaking). As stated in detail above, and reiterated below, there are ample factual issues regarding the existence of a common law duty in this case.

ii. *Doe v. Marion* is Not Controlling.

As noted, there are five circumstances or exceptions where there is a common law duty to control the conduct of another or to warn a third person or potential victim of danger: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Marion, 373 S.C. at 400; 645 S.E.2d at 250; Faile, 350 S.C. at 334, 566 S.E.2d at 546. Marion only addresses one of the four exceptions applicable to the instant case for purposes of establishing the existence of a common law duty—the exception "where the defendant has a special relationship with the injurer." While Plaintiff asserts that the special relationship exception applies in the instant case, two other exceptions directly apply—namely, exceptions (3) where the defendant voluntarily undertakes a duty, and (4) where the defendant negligently or intentionally creates the risk. The facts and holding in Marion are simply irrelevant to the determination of the existence of a duty in the instant case under these two exceptions.

iii. Exceptions of Voluntarily Undertaking a Duty and Creation of the Risk Do Not Require a Specific Threat of Harm to the Victim.

Defendant may assert that the absence of a specific threat of harm defeats Plaintiff's claim of duty. Notably, however, neither of the relevant exceptions requires knowledge by the defendant of a "specific threat of harm" to the victim. Rather, the "specific threat of harm" requirement is ***only*** implicated when analyzing the existence of a duty under the special relationship exception. Thus, while the evidence establishes that such a relationship and

knowledge of such a threat did, in fact, exist, the requirement of a specific threat of harm is not interpolated into the remaining exceptions addressed in this brief.

Under South Carolina law, a specific threat of harm is simply not an element of the voluntary duty analysis.[3] See Miller, 329 S.C. at 315, 494 S.E.2d at 815 (imposing no requirement of a specific threat of harm in finding issue of fact as to whether defendant voluntarily assumed a duty). In fact, most South Carolina cases analyzing the voluntary duty exception involve no threat of specific harm whatsoever. See Bryant v. City of North Charleston, 304 S.C. 123, 403 S.E.2d 159 (1991) (finding duty owed to remote plaintiff injured on sidewalk because defendant voluntarily undertook maintenance of the area); Vaughn, 370 S.C. at 447-48, 635 S.E.2d at 637-38 (reversing grant of summary judgment where evidence, including town ordinances regulating sidewalks, created factual issue as to whether defendant assumed duty to remote plaintiff injured on sidewalk). Likewise, South Carolina law imposes no requirement of a specific threat of harm where a defendant negligently or intentionally creates the risk of harm. See Greenville Memorial Auditorium, 301 S.C. 242, 391 S.E.2d 546 (requiring no specific threat of harm in finding city liable for injuries to plaintiff resulting from the criminal acts of another based on the city's negligence in securing the premises where the negligence created a foreseeable risk of injury); Madison ex rel. Bryant, 371 S.C. 123, 143, 638 S.E.2d at 660 (requiring no specific threat of harm in noting government entity may be held liable for its

[3] Notwithstanding, The Citadel's own witnesses have acknowledged that at least one of the reasons for voluntarily undertaking the duties to report and to investigate was to prevent harm to other boys and prevent harm to potential victims, *i.e.* the Plaintiff and her child. (See Exhibit 19, Deposition of Mark Brandenburg, pp. 31, 259). Of course, such an undertaking would also prevent further harm and reduce the threat of continuing harm to past and current victims of ReVille.

conduct in relation to prior notice of inappropriate care of a client by another entity where such negligence creates the risk of injury).

iv. **The Evidence Reveals The Citadel Voluntarily Undertook a Duty to Report ReVille to Citadel Public Safety/Law Enforcement.**

With regard to voluntary duty, Defendant overlooks the overwhelming evidence in this case establishing that The Citadel voluntarily undertook a duty to exercise due care to report ReVille's illegal and immoral activity to Citadel Public Safety and law enforcement. See e.g. Bergstrom v. Palmetto Health Alliance, 352 S.C. 221, 229, 573 S.E.2d 805, 809 (Ct. App. 2002) aff'd in part, vacated in part, 358 S.C. 388, 596 S.E.2d 42 (2004) (recognizing that hospital's internal policies created a duty to mother). The plain language of The Citadel's own policies and procedures evidence such a voluntary undertaking through detailing self-imposed duties to report to law enforcement. These policies include, but are not limited to, the Serious Incidents Policy, Summer Camp Policies Regarding Sexual Misconduct Issues, Sexual Harassment Policy, and the Citadel's Sexual Assault Policy. Furthermore, The Citadel's own witness and expert testimony reveals that The Citadel had a duty to report ReVille to law enforcement and the rationale for imposing the duty to report was based upon The Citadel's emphasis on responsibility for the welfare of others—namely, victims and future victims of ReVille. (See Exhibit 19, Brandenburg Deposition, Vol. II, p. 264; Exhibit 8, Margolis Deposition, Vol. I, pp. 57, 286-287, 290; and Exhibit 21, Deposition of President Rosa, Vol. I, p. 53).

v. **The Evidence Establishes The Citadel Undertook the Duty to Investigate Doe's Claims and to Prevent Harm to Other Young Boys and Potential Victims.**

The Citadel's Rule 30(b)(6) witness with the most knowledge regarding the investigation into Doe's allegations testified as follows:

Q Would you agree with me that preventing harm to other young boys or victims was a goal of the investigation?
A Sure.
Q Would you agree with me that by undertaking the investigation, that The Citadel was aiming to prevent harm to potential victims?
A I assume so.

(Exhibit 19, Brandenburg Deposition, Vol. I, p. 31)

Q Under Core Values, could you read what No. 2 says about duty?
A "We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."
Q Would you agree that that moral sense of duty would apply to investigating an alleged sexual offense?
A Yes.

(Exhibit 19, Brandenburg Deposition, Vol. II, p. 259). Thus, not only did The Citadel voluntarily undertake the duty of investigating Doe's report of sexual abuse, it did so with the "goal of preventing harm to other young boys or victims," *i.e.* the Plaintiff's child. Moreover, Mark Brandenburg conceded that the "moral obligation of responsibility for the welfare of others," *i.e.* the Plaintiff and her child, applied to the investigation.

vi. Duty Owed Pursuant to Negligent or Intentional Creation of Risk.

Defendant will likely argue that The Citadel did not "create" any dangerous condition that would not have existed otherwise. However, the overwhelming evidence supports the reasonable inference that Defendant did create the risk, both negligently and intentionally, in a number of ways, including the following: neglecting its duty to report ReVille to law enforcement; concealing the allegations and designating the matter "close hold"; alerting ReVille to the allegations; directing ReVille to lay-low; failing to conduct an impartial investigation; failing to interview witnesses; failing to involve the Title IX coordinator/SARC; failing to file an anonymous report and failing to "punish ReVille" per The Citadel Sexual Assault Policy; failing to document ReVille's Summer Camp policy violations in ReVille's file; failing to follow up

regarding Sergeant Middleton's August 6, 2001 letter; and failing to permit Camper Doe 6 to report ReVille. These negligent and intentional acts, all of which are supported by the evidence, constitute affirmative conduct by The Citadel in concealing a known child sexual predator. Such affirmative acts enabled ReVille to gain access to his victims, including the Plaintiff's child.

Indeed, Defendant's own expert witness testimony supports the inference that The Citadel created the dangerous condition by providing ReVille access to his victims:

> Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
> A. I would agree with you, yes.
> Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
> A. I would agree that that's a reasonable assumption.

(Exhibit 8, Deposition of Margolis, Vol. I, p. 19-20). At the very least, the evidence creates an issue of fact for the jury that The Citadel's negligent disregard of duty and intentional concealment of ReVille's sexual abuse from 2001-2011 had the effect of unleashing a known predator into the community. There is no greater creation of risk than that.

vii. *Oblachinski v. Reynolds* Does Not Apply to the Exceptions at Issue

In denying the existence of a duty owed by The Citadel, Defendant may cite Oblachinski v. Reynolds, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011), a medical malpractice case in which the plaintiff asked the Court to find an exception to the general rule that no duty of care exists between a physician and a third party. The present case has nothing to do with the specific issue of whether a physician owes a duty to a third party. The Citadel is not a physician or health care provider. Plaintiff is instead asserting the existence of a common law duty based upon the

exceptions enumerated above in Doe v. Marion and Faile. These exceptions were not at issue in Oblachinski or the cases cited therein.

Defendant may also cite Oblachinski for the proposition that "[f]oreseeability of injury, in and of itself, does **not** give rise to a duty." Id. (emphasis in original) (citing Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003); and South Carolina State Ports Authority v. Booz–Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986)).[4] The existence of a duty in this case is not rooted in foreseeability. Rather, the evidence cited herein shows that The Citadel voluntarily undertook duties and created a risk, not simply that ReVille's subsequent assaults were foreseeable. Indeed, none of the testimony cited addresses foreseeability. The evidence shows that The Citadel assumed a duty by creating or increasing the risk of harm to Plaintiff's child, by voluntarily undertaking policies requiring reporting to law enforcement, and by voluntarily undertaking to investigate sexual abuse claims. Plaintiff has also presented evidence that The Citadel had a moral responsibility for the welfare of others, including the prevention of harm to other boys and potential victims. Accordingly, these claims fall under the exceptions enumerated above in Marion and Faile.

Moreover, like the elements of all negligence claims, Plaintiff has also proven that it is foreseeable that a breach of these duties could harm a third person—the Plaintiff and her child.

---

[4] In supporting this proposition, Oblachinski relies on two cases, Charleston Dry Cleaners and S.C. State Ports Authority, which are equally distinguishable from the matters at hand. Charleston Dry Cleaners upheld the majority rule that a negligence claim cannot be brought directly against an independent adjustor and noted that the plaintiff could bring a claim against insurer to recover because the acts of the independent adjustor (agent) may be imputed to the insurer (principal). Id. at 618-619. S.C. State Ports Authority found a duty owed to the S.C. State Ports Authority to accurately report objective factual data concerning the Charleston Port by a consulting company hired by the Georgia Ports Authority. Id. at 377. None of these cases addressed the exceptions creating the existence of a duty in this case.

SC State Ports Authority held foreseeability of injury, in the absence of a duty to prevent that injury, is an insufficient basis on which to rest liability. Id. at 376. Here, the evidence establishes both the existence of a duty to prevent injury and foreseeability. As noted, Citadel witness testimony supports the reasonable inference that The Citadel had a duty to prevent injury to other potential victims, and that The Citadel's negligence in performing these duties increased the risk of harm to Plaintiff. Such circumstances giving rise to the existence of a duty in this case were neither addressed nor at issue in Oblachinski or the cases cited therein.

II. PLAINTIFF'S DAMAGES ARE COGNIZABLE UNDER SOUTH CAROLINA LAW.

South Carolina jurisprudence has long recognized that damages to a parent for loss of a child's services includes intangible elements. The legal rationale for acknowledging a parent's intangible injury is set out in Villepigue v. Shular, 1849 WL 2667, 34 S.C.L. 462, 3 Strob. 462 (Ct. App. 1849), wherein the Court observed: "the loss of service is well understood to be little more than a legal fiction, which has been introduced to secure compensation for outraged feelings." In fact, a parent's claim for injury to a child can be traced back to 1653. U.S. v. Standard Oil, 332 U.S. 301, 312 n. 16 and 17; 67 S.Ct. 1604, 1610 n. 16 and 17 (1947). As such, compensable elements of damage recognized under South Carolina law include: "outrage and deprivation, the injury the [mother] sustains in the loss of [her] child, the insult offered [her] feelings, the agony in the destruction of [her] hopes concerning [her] child, and the irreplaceable loss of that comfort and society which may be the only solace of his declining years." Dobson v Cothran, 16 S.E. 679 (1891). Such damages also include the loss of the child's "companionship." Webb v. Southern Railway Company, 88 S.E. 297, 299 (1916).

Other cognizable elements of damage are out of pocket costs incurred by a parent to care for an injured child. See e.g., Endres v. Greenville Hospital System, 439 S.E.2d 261 (S.C. 1993) (medical negligence claim); Webb, 104 S.C. 89, 88 S.E. 297 (action by mother for loss of child's services and companionship); Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child); Medlin v. United States, 244 F.Supp. 403, 411 (D.S.C. 1965) ("The parents have a right of action for loss of services, expenses incident to their child being injured, including medical care, hospital treatment, physicians' and nurses' fees, and other expenses that have resulted; also the future care and treatment" where their child was burned by fireworks). Furthermore, a parent's claims for a child's medical expenses and loss of services are recoverable as a "loss" under the Tort Claims Act. Wright v. Colleton County School Dist., 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (finding parent's claims for loss of services and medical expenses are within the statutory definition of "loss" as contained in Section 15–78–30(f) and are therefore recoverable):

The common law loss of services claim is distinct from the loss of consortium claim which is governed by statute, S.C. Code § 15-75-20. Absent a legislative change, the statutory loss of consortium claim is limited to claims among spouses. E.g., Doe v. Greenville County School District, 651 S.E.2d 305, 309 (2007) (case pled as loss of consortium, "not a claim for loss of services").

Dicta in Doe v. Greenville implies that intangible injury is not part of the loss of services claim. Id. at 308. The Court's dicta on the history of the scope of loss of services is simply incorrect, and overtly contrary to a number of South Carolina cases, some of which are cited above, which recognize loss of services to include intangible injuries as well as out of pocket

expenses incurred for the care and treatment of her son resulting from his sexual abuse by ReVille. Particularly where the facts reflect that The Citadel actively concealed ReVille's known record of abusing children, and The Citadel facilitated ReVille's applying for other jobs by trading on his Citadel record, the conduct of The Citadel is distinguishable from the school system in Doe v. Greenville, which had no explicit prior information that the coach involved had a sexual interest in children. See e.g., Webb, 88 S.E. 297 (a direct claim against the entity whose agents injured the mother's son, and negligent supervision is alleged in this complaint).

Here, there is ample evidence to support recovery for Plaintiff's intangible injuries as well as out of pocket expenses incurred for the care and treatment of her son resulting from his sexual abuse by ReVille. Mother Doe A knows her son was abused by ReVille, and knows her child held that secret for a number of years. She is likewise aware of the probable emotional/psychological effects of child sexual abuse, many of which have already begun to manifest, including withdrawal, complications among siblings, anger, indifference, lack of companionship, blame, and denial.

Prior to the abuse, Mother Doe A's child was a thriving, happy boy who enjoyed Tennis and other activities. In the fall of 2007, he enrolled in Tennis lessons at the Mt. Pleasant Recreation Department where he became acquainted with Skip ReVille. (Exhibit 32, Mother Doe A at 65–66). At that time, the child was in the seventh and eighth grades. (Exhibit 32, Mother Doe A at 80). He was exposed to ReVille over a two year period during which he was sexually abused on at least forty-five (45) occasions, twenty of which involved oral contact. (Exhibit 33, Deposition of Louis ReVille, Volume III at 595:25—596:7).

In 2010, the family moved to Charlotte. (Exhibit 32, Mother Doe A at 98). It was at this time that her son began to be very "withdrawn." (Exhibit 32, Mother Doe A at 100). Among

other things, after moving to Charlotte her son stopped playing tennis and "didn't want to have anything to do with anybody." (Exhibit 32, Mother Doe A at 102).

In October 2011, her son informed her that ReVille had been arrested, "for molesting kids." (Exhibit 32, Mother Doe A at 100). Mother Doe A asked her son if ReVille had done anything to him, but the son denied it. (Exhibit 32, Mother Doe A at 100). Two weeks later, Mother Doe A received a call from the Mt. Pleasant police informing her that ReVille had admitted to molesting her son on more than 20 occasions. (Exhibit 32, Mother Doe A at 101-102). When she approached her son with this information, "he just started bawling." (Exhibit 32, Mother Doe A at 104). He indicated he had not told her before then because, as he put it, "I did not want to worry you with this."

Because her son did not want his siblings to know about the abuse, it has created "a major ordeal within [the] family." (Exhibit 32, Mother Doe A at 105). Mother Doe A has tried to get her son therapy and even had him meet with a therapist, but he "did not want to go." (Exhibit 32, Mother Doe A at 104). After three months of unproductive therapy and increasing problems among his siblings, the therapist recommended she handle the "no-win situation" by stopping therapy until such time as her son was ready for it. (Exhibit 32, Mother Doe A at 105). Unfortunately, as stated by Plaintiff, the "wedge between [her] sons" remains. (Exhibit 32, Mother Doe A at 106).

Mother Doe A has developed serious concerns about her son, including that he is a "ticking time bomb" which she worries about "constantly." (Exhibit 32, Mother Doe A at 108, 112). He didn't attend social functions his last two years of high school, had "no close friends," and "came home every day and went to his room." (Exhibit 32, Mother Doe A at 168). "He wouldn't have anything to do with his younger brother," he "never spent the night out, never

asked to go to a party, never did anything," and was not interested in getting a driver's license. (Exhibit 32, Mother Doe A at 168). Plaintiff also observes that her son is getting increasingly angry about the abuse. (Exhibit 32, Mother Doe A at 110). She testified:

> My son was a great kid. Now I'm left with a sullen, melancholy kid that basically does not have anything to do with anyone in our family. And he would be appalled to know — I couldn't even tell my own father about this. It's affected every single relationship I have with all of my children. Because they're having to deal with a mom who has good days and bad days.

(Exhibit 32, Mother Doe A at 114).

Mother Doe A has sought professional mental health help and would like to obtain additional mental health counseling for herself when her finances permit. (Exhibit 32, Mother Doe A at 114—115). Her sense is that her son may at some point be receptive to therapy. She testified, "I think he's getting there." (Exhibit 32, Mother Doe A at 173). Because he hasn't dealt with it, Plaintiff testified "I worry about his well-being. I know the statistics that are out there with regard to these children [abuse victims]. And even if it's nothing drastic, in the sense of killing themselves, whatever the case may be, there are a lot of statistics out there about children who don't get help. I worry about when the shoe is going to drop on a daily basis." (Exhibit 32, Mother Doe A at 174). That her son carried this secret with him for the four years he did is very distressing to Plaintiff. (Exhibit 32, Mother Doe A at 175).

In sum, because of The Citadel's assistance to ReVille, Mother Doe A is left with a never-ending complication with her child, and her other children, as the time-bomb elements of sexual abuse can and will re-occur at any time later in life. Having forever lost the pre-ReVille mother/son relationship, Mother Doe A now carries the justifiable concern for the increased risk of future harm to her son as the lasting effects of child sexual abuse continue to manifest, with no end in sight. Given the testimony cited herein, there is certainly evidence that Mother Doe A is

outraged and has suffered "the irreplaceable loss of th[e] comfort and society" of her child. Moreover, the cited testimony establishes sufficient evidence to create a genuine issue of material fact as to Mother Doe A's: (1) "shame, humiliation, and mental anguish;" (2) "the insult offered to [a parent's] feeling;" (4) "the agony in the destruction of his hopes concerning his child;" and (5) the effect on the child's "companionship." As outlined above, ample evidence exists that Plaintiff has both an intangible loss associated with the conduct of the Citadel as well as costs incurred in conjunction with such loss. Summary judgment as to Plaintiff's loss of services claim is therefore improper.

A finding that Plaintiff is entitled to recovery for her intangible losses is likewise consistent with common law decisions in other jurisdictions. See e.g. Kendrick v. McCrary, 11 Ga. 603, 1852 WL 1363 (Ga. 1852); Grable v. Margrave, 4 Ill. 372 (Ill. 1842); Tillotsin v. Currin, 97 S.E.395 (N.C. 1918); O'Brien v. City of Philadelphia, 64 A. 551 (Pa. 1906); and White v. Campbell, 54 Va. 573, 1856 WL 3510 (Va. 1856). For instance in L.P. v. Oubre, 547 So. 2d 1320, 1326 (La. App. 5th Cir. 1989) writ denied, 550 So. 2d 634 (La. 1989), the Court of Appeal of Louisiana held that "[a]nguish of the parents as well as the children is a reasonably anticipated consequence of child molestation." Id. (citing Blackwell v. Oser, 436 So.2d 1293, 1299 (L.A. App. 4 Cir. 1983); Stone, Louisiana Tort Doctrine: Emotional Distress Occasioned by Another's Peril, 48 Tul.L.Rev. 782 (1974)). In finding a cognizable claim for mental anguish damages, the Louisiana Court of Appeal distinguished the availability of such damages where, as in the instant case, there was prior knowledge by the defendant of the risk of harm. The court reasoned that a defendant's prior knowledge of sexually abusive conduct establishes a "foreseeable plaintiff" and a "foreseeable risk." Id.

Here, as in Oubre, The Citadel had prior knowledge of the risk posed by ReVille so as to establish an independent duty to Plaintiff, a parent and foreseeable plaintiff subjected to the foreseeable risk established by The Citadel's failure to take appropriate action in response to its knowledge of a known risk. It is within the realm of reasonable foreseeability that The Citadel's failure to take appropriate action would result in Mother Doe A's emotional distress in response to her son's abuse. Given its role in concealing ReVille's known history of sexual abuse, The Citadel is responsible to Mother Doe A for her child's sexual abuse by ReVille, and her common law clam for loss of services includes intangible as well as tangible damage measures.

III. MOTHER DOE A'S CLAIMS ARE TIMELY UNDER THE DISCOVERY RULE AND DOE V. BISHOP OF CHARLESTON.

Mother Doe A's complaint, filed within one month of discovery of her child's sexual abuse, is timely. The Citadel's assertion to the contrary overlooks the application of the discovery rule as well as the Court of Appeals recent holding in Doe v. Bishop of Charleston.

The discovery rule is applicable to actions brought under the Tort Claims Act. Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Id. The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Bayle, 344 S.C. at 123, 542 S.E.2d at 740. "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience

on notice that some right of his has been invaded, or that some claim against another party might exist." Young, 333 S.C. at 719, 511 S.E.2d at 416.

Applying this framework to the instant case, the time for Mother Doe A to initiate suit began when a cause of action ***against The Citadel*** reasonably ought to have been discovered, Dean v. Ruscon Corp., 468 S.E.2d 645 (1996), meaning when Plaintiff either knew or should have known by the exercise of reasonable diligence that a cause of action against The Citadel had arisen from the wrongful conduct. See id. Mother Doe A's filing of the instant action within two months of learning of ReVille's abuse certainly satisfies this standard. Specifically, Plaintiff filed this action on December 14, 2011, less than two months after receiving a call from the Mount Pleasant Police informing her that ReVille confessed to molesting her son. Prior to receiving this call, Mother Doe A had no knowledge of her son's abuse. (Exhibit 32, Deposition of Mother Doe A at 99-101). In effect, by asserting that the instant matter is time-barred, The Citadel inappropriately suggests that Mother Doe A was required to file suit before obtaining knowledge that a cause of action exists. Such a position ignores the well-settled rubric of the discovery rule, which extends the commencement of the limitation period until the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises. See Bayle v. S. Carolina Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) ("The discovery rule is applicable to actions brought under the Tort Claims Act.").

Plaintiff's action is likewise timely pursuant to the Supreme Court's holding in John Doe v. The Bishop of Charleston, which found deliberate acts of deception and concealment of knowledge of sexual abuse by employees, such as in the instant case, would toll the limitations period. Id., 754 S.E.2d 494, 500-501 (2014). As outlined herein, the evidence leads to the

reasonable inference that The Citadel deliberately undertook to conceal and cover-up ReVille's abuses at the summer camp. The Citadel's concealment began in 2001 and ended in 2011 when ReVille was finally apprehended. ReVille had access to Plaintiff's child only because The Citadel assisted ReVille in obtaining employment in the community through maintaining an inaccurate and unblemished Citadel record, despite its awareness that ReVille had sexually abused multiple children.

Indeed, when ReVille began abusing Mother Doe A's child in 2007 and 2008, only The Citadel had knowledge that ReVille had a sexual interest in children and had sexually abused young boys. Knowing her child would be spending time with ReVille through the Mt. Pleasant Recreation Department as his tennis coach, Mother Doe A researched The Citadel website to verify ReVille's background and found nothing to contradict his claims that he was "an outstanding, upstanding Citadel cadet." (Exhibit 32, Deposition of Mother Doe A at 76:10—77:2). There is no evidence to suggest that Mother Doe A had any knowledge of her child's sexual abuse until October 2011, when she received the call from the Mount Pleasant Police informing her that ReVille had confessed to molesting her son. (Exhibit 32, Deposition of Mother Doe A at 101:17-21). Until his arrest on October 28, 2011, ReVille had told no one that he was molesting children. Until the police called Mother Doe A in October, 2011, her son had disclosed nothing to her. (Exhibit 32, Deposition of Mother Doe A at p. 101).

By 2011, Mother Doe A and her children were living out of state. (Exhibit 32, Deposition of Mother Doe A at p. 98). Subsequent to the arrest, and after Mother Doe A learned that her son had been sexually abused, The Citadel, through General Rosa, issued a press release assuring the public that ReVille's record at The Citadel was "clean " (Exhibit 34, Media Advisory (stating "we checked his personnel files and found no other complaints.") The

misleading public statement implies, falsely, that The Citadel had no knowledge of ReVille's sexual interest in children, when in fact, The Citadel on repeated occasions had failed to act on, or to even record, the multiple instances where ReVille had violated Citadel policy, procedure, and state and federal law. Not until November 2011, through subsequent press reports disputing The Citadel's claims of innocence, did Mother Doe A discover that complaints about ReVille had been made at The Citadel as early as 2002 or 2003. (Exhibit 32, Deposition of Mother Doe A at p. 178). Consequently, Plaintiff filed the instant action on December 14, 2011, one month after learning that The Citadel was less than truthful in its public statements.

In challenging the timeliness of the Complaint, The Citadel necessarily argues that Mother Doe A should have known or discovered about ReVille what multiple officials of The Citadel knew and had affirmatively acted to conceal. In other words, The Citadel essentially argues that Mother Doe A should have known before November, 2011, that The Citadel was fraudulently concealing ReVille's actual record at The Citadel. Not only is there no objective evidence that Plaintiff had any reason to know what the Citadel had affirmatively concealed about ReVille, and about itself, the record construed favorably to Plaintiff, as it must be, prohibits the inference from being drawn, in part because of the active, and fraudulent, concealment by The Citadel. See Bishop of Charleston, 754 S.E.2d at 501.

The limitation period commences under the discovery rule only when the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises. Bayle, 542 S.E.2d 736, 740 (Ct. App. 2001). The record supports no inference that Plaintiff has not acted with reasonable diligence. The Citadel's fraudulent concealment of ReVille's known past raises fact issues that must be resolved by the jury. See True v. Monteith, 489 S.E.2d 615 (1997) (fact issues made summary judgment inappropriate for suit filed 17 years

after fraudulent concealment). "A systematic practice of secrecy and concealment of their knowledge of sexual abuse by employees, including the employee who appellants allege committed the abuse at issue" tolls the statute of limitations for negligent supervision claims. Bishop of Charleston, 754 S.E.2d at 501.

Viewed favorably to the Plaintiff, the evidence establishes that numerous individuals at The Citadel deliberately undertook to conceal and cover-up ReVille's sexual interest in children and his sexual misconduct with children, and did so despite Citadel policies, procedures and state and federal law. That fraudulent concealment began in 2001 and extended even after ReVille's October 2011 arrest, when The Citadel publicly claimed that ReVille's record at The Citadel was clean, implying they had no ground to anticipate he would molest any child. In fact, The Citadel knew that ReVille's record was clean only because The Citadel collaborated to keep it clean by disregarding its own rules, state law, and federal law.

Construed favorably to the Plaintiff, the record reflects facts from which a jury could reasonably find the limitations period was tolled as to Mother Doe A's complaint until after October, 2011, when the most recent act of affirmative concealment by The Citadel, *i.e.* General Rosa's less than truthful media advisory, was committed. At a minimum, facts are in dispute about The Citadel's active concealment, and summary judgment cannot be granted. Accordingly, as in Doe v. Bishop, such acts of concealment by The Citadel would toll the limitations period so as to render Plaintiff's claims timely.

IV. PLAINTIFF IS ENTITLED TO RECOVERY FOR THE TORT OF OUTRAGE.

Plaintiff has asserted that The Citadel is liable for the tort of outrage based on its reckless conduct in concealing multiple acts of child sexual abuse by ReVille and by enabling ReVille's

continued access to children in the community despite the reasonable foreseeability that ReVille would sexually abuse the Plaintiff's child. The tort of outrage includes the following elements:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
> (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
> (3) the actions of the defendant caused plaintiff's emotional distress; and
> (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could expect to endure it."

Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (quoting Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

a. Plaintiff's outrage claim is not barred by the South Carolina Tort Claims Act.

Defendant improperly submits that the South Carolina Tort Claims Act ("SCTCA") bars Plaintiff's claim of outrage against The Citadel based on S.C. Code § 15-78-30(f), which concerns the definition of "loss" pertaining to actual damages recoverable in an action for negligence:

> "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code Ann. § 15-78-30. A plain reading of the unambiguous language of 15-78-30(f) reveals the term "loss" as contemplated under the SCTCA refers only to the specific type of damages recoverable in actions against a state entity for negligence. While excluding "intentional infliction of emotional harm" as an element of damages for negligence, such a reference has no bearing on a Plaintiff's right of recovery under the tort of outrage. Indeed, state entities "are liable for their torts in the same manner and to the same extent as a private

individual under like circumstances." S.C. Code Ann. § 15-78-40. The exemptions from liability set forth under § 15-78-60 constitute specific circumstances where a government entity will not be liable for a loss, rather than a list of torts the state entity is exempt from.

Moreover, South Carolina courts recognize that under the SCTCA, a government entity that is found to have acted in a grossly negligent manner is liable for its torts as if it were a private individual. See Duncan v. Hampton Cnty. Sch. Dist. No. 2, 335 S.C. 535, 517 S.E.2d 449 (Ct. App. 1999) (holding that where a government entity or employee's discretion is exercised in a grossly negligent manner, the government entity is liable for its torts as if it were a private individual.). "South Carolina courts have long recognized that an individual's negligent conduct can be so gross as to amount to recklessness." Bass v. S. Carolina Dep't of Soc. Servs., 403 S.C. 184, 193, 742 S.E.2d 667, 672 (Ct. App. 2013) (citing Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011); Jeffers v. Hardeman, 231 S.C. 578, 582, 99 S.E.2d 402, 404 (1957)). The juxtaposition of this principle mandates an individual's conduct cannot be reckless where it was not at least grossly negligent. Id. (citing 18 S.C. Jur. Negligence § 9 (2012) ("Recklessness is a higher degree of negligence than gross negligence.")). That the SCTCA permits liability for gross negligence is indicative of its intent to likewise permit claims of outrage premised on reckless behavior.

A finding that Plaintiff's outrage claim survives summary judgment is likewise consistent with recent South Carolina jurisprudence. In Bass v. S.C. Dept. of Social Services, 403 S.C. 184, 742 S.E.2d 667 (Ct. App. 2013), the Court of Appeals considered an analogous argument concerning the SCTCA definition of "loss" in reference to the trial court's denial of a directed verdict motion on the plaintiff's outrage claim. While ultimately reversing the denial of the motion, the Court of Appeals based its decision not on the SCTCA's limitation of damages, but

rather, on the lack of evidence establishing recklessness. Specifically, the Court reasoned that because the evidence did not establish gross negligence, the claim of outrage was likewise doomed to failure as conduct cannot be reckless where it is not at least grossly negligent. By containing an analysis of the merits of the outrage claim, the Bass opinion impliedly instructs that the SCTCA does not exempt outrage liability. Indeed, if such liability was exempt, the Court of Appeals would never have analyzed the merits of the claim to determine whether the elements of outrage were satisfied. Consequently, despite The Citadel's argument to the contrary, Plaintiff's claim of outrage is not limited by the SCTCA's definition of loss.

b. Plaintiff's outrage claim is not barred by other potential available remedies.

Defendant improperly suggests Plaintiff's outrage claim is barred due to other potential available remedies. Defendant's assertion is simply misguided. While the tort of outrage "was conceived as a remedy for tortious conduct where no remedy previously existed," there is no rule permitting a claim of outrage only in the absence, and to the exclusion, of other torts. Todd v. S. Carolina Farm Bureau Mut. Ins. Co., 321 S.E.2d 602, 613 (S.C. App. 1984) writ granted in part, 328 S.E.2d 479 (S.C. 1985) and quashed on other grounds, 336 S.E.2d 472 (1985). Rather, such a proposition would be contrary to South Carolina jurisprudence, which permits alternative theories of recovery.

Here, as an alternate basis for recovery, Mother Doe A has asserted the tort of outrage due to the extreme, outrageous and intolerable actions of The Citadel in concealing a known and dangerous child sexual predator. The evidence cited herein (and reiterated below) sets forth sufficient facts from which a reasonable inference could be drawn that The Citadel intentionally inflicted emotional distress through extreme and outrageous conduct. It is on a review of this evidence that Plaintiff's claim of outrage must be weighed—not on the basis that there may exist

other potential available remedies. See Argo, 710 S.E.2d at 74 (reviewing whether material issue of fact existed to establish claims of false imprisonment, defamation and outrage); Todd, 321 S.E.2d at 612-13 (reviewing evidence to determine whether defendant's conduct may reasonably be regarded as outrageous even though another tort may remedy the conduct).

c. Plaintiff has presented sufficient evidence that The Citadel acted with the requisite level of culpability to support Plaintiff's outrage claim.

The evidence establishes that The Citadel's conduct may be reasonably regarded as so extreme and outrageous as to permit recovery, rendering the question of liability as one for the jury. See Todd v. S.C. Farm Bureau Mutual Insurance Co., 321 S.E.2d 602, 609 (Ct. App. 1984) writ granted in part, 285 S.C. 84, 328 S.E.2d 479 (1985) and decision quashed, 287 S.C. 190, 336 S.E.2d 472 (1985). At a minimum, there exists an issue of fact as to whether The Citadel's conduct in concealing a known sexual predator constitutes "recklessness" or rises to the level of "extreme and outrageous." While The Citadel contends there is no evidence it acted to intentionally harm Plaintiff's child, there is ample evidence to the contrary. Not only does the evidence establish knowledge by The Citadel of ReVille's multiple acts of child sexual abuse against multiple children, it also establishes a concerted effort to conceal ReVille's sexual abuse from potential employers, potential victims in the community, and from the public at-large. Citadel officials were apprised of ReVille's abusive acts by telephone on April 24, 2007, and again via Doe's transcribed statement on July 1, 2007. (See Exhibit 9, May 16, 2007 Letter to IRF; Exhibit 10, July 1, 2007 Statement of Doe; and Exhibit 19, Deposition of Brandenburg at 151:18—152:13). General Rosa, President of The Citadel, was informed of these acts on May 16, 2007, via written correspondence to The Citadel's insurer, the IRF. (See Exhibit 9, May 16, 2007 Letter with carbon copy to General Rosa). The Citadel had knowledge of the names of

victims, the identity of an eyewitness, and Doe's allegations that the abusive conduct occurred on many occasions with numerous other campers. (See Exhibit 10, July 1, 2007 Statement). However, despite this knowledge, The Citadel never informed Public Safety, the Charleston Police, SLED or even its own staff equipped to handle complaints of sexual assault and abuse. Moreover, none of the victims identified in Doe's statement were interviewed, no recorded victim statements were taken, the victim's parents were never contacted (some former campers identified may have still been minors in 2007), and, apart from sending one email, none of the victims were even contacted. (Exhibit 19, Deposition of Brandenburg at 151:18—152:13). What's more, The Citadel never even attempted to interview the eyewitness—a Citadel cadet residing on campus. (Exhibit 19, Deposition of Brandenburg at 139:22—145:23)

Furthermore, the risks posed by serial sexual predators were well-known to The Citadel. In fact, The Citadel, having only recently recovered from the aftermath of the Arpaio abuse litigation, had a heightened sense of awareness of these risks. Yet, even with this heightened awareness, The Citadel failed in every instance to take appropriate action. Instead, The Citadel's response contravened established Citadel policy and procedure, and disregarded the moral and ethical codes embodied by The Citadel's Code of Conduct. (Exhibit 19, Deposition of Brandenburg at 259:1—267:11). Such actions demonstrate an intentional cover-up of a report of multiple acts of child sexual abuse against multiple young boys, and at the very least, demonstrate an indifference to the very real risk of sexual abuse against others in the community and to the lasting injuries suffered by the victims reported by Doe. (Exhibit 27, Deposition of Jennifer Shiel at 36:3-20; 46:6-20; 49:1—50:23). Undoubtedly, a jury could find this conduct "outrageous and intolerable in a civilized society." McSwain v. Shei, 304 S.C. 25, 29, 402

S.E.2d 890, 892 (1991). Consequently, there being ample evidence creating a genuine issue of fact, summary judgment as to Plaintiff's outrage claim is inappropriate.

V. SUMMARY JUDGMENT ON THE ISSUE OF A SINGLE OCCURRENCE IS IMPROPER AND PREMATURE.

Another critical factual dispute at issue concerns the determination of the number of "occurrences" of negligence by The Citadel under the South Carolina Tort Claims Act ("SCTCA"). Defendant maintains that the instant matter involves only one single occurrence, limiting Plaintiff's damages to the $300,000/$600,000 limit of the SCTCA. The Citadel's position is grossly misguided. Importantly, to the extent the determination of the number of "occurrences" requires a finding of proximate cause, the issue is one of fact not appropriately resolved at summary judgment. See Hurd v. Williamsburg Cnty., 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005) ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."); see also Chastain v. AnMed Health Found., 388 S.C. 170, 174, 694 S.E.2d 541, 543-44 (2010) (affirming verdict reduction where jury was not instructed on issue of occurrences and number of occurrences could not be ascertained from jury verdict). Nonetheless, contrary to Defendant's assertion, the evidence set forth herein reveals numerous separate and distinct acts of negligence warranting a finding of multiple occurrences in this case.

a. A finding of multiple occurrences is supported by the SCTCA's statutory scheme and by South Carolina jurisprudence.

The limitations on liability imposed by the SCTCA are found in Section 15-78-120, which provides, in part, that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence

regardless of the number of agencies or political subdivision involved." S.C. Code § 15-78-120(a)(1). The SCTCA defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code § 15-78-30(g). That the SCTCA contemplated recovery against a single entity for multiple occurrences is demonstrated in the statute's use of the term "single act of negligence" in defining "occurrence." If the legislature sought to impose a limit based on whether a plaintiff had brought a single claim or had suffered a single injury, it could have employed such language in expressing the limit in § 15-78-120(a)(1) or in defining "occurrence" in § 15-78-30(g). It did not. Instead, the legislature chose to limit liability in the SCTCA by using the term "occurrence" and by defining that term by focusing on each negligent act from which proximately flowed an unfolding sequence of events giving rise to the claim or action.

South Carolina courts similarly interpret the SCTCA as permitting recovery for multiple occurrences. Specifically, in Boiter v. S. Carolina Dep't of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405 (2011), the South Carolina Supreme Court addressed the issue of occurrences where two separate entities were accused of committing two separate and distinct acts of negligence causing the plaintiff's injury. Relying on the statutory scheme's focus on "wrongful act" as opposed to injury, the Boiter court found multiple occurrences based on two independent acts of negligence. Id. In so finding, the Court specifically rejected respondent's argument equating the number of occurrences with the number of injuries sustained. Id. at 133-34, 712 S.E.2d at 406. Rather, the Boiter court focused on the number of independent and separate acts of negligence. Id. at 134. In other words, as applied in Boiter, the SCTCA dictates a finding of multiple "occurrences" where multiple independent acts of negligence are found to proximately cause an injury. Id.

Also instructive is Williamson v. South Carolina Insurance Reserve Fund, which involved occurrences of negligence as to two different physicians who examined the plaintiff during childbirth and failed to take necessary steps at different times during the delivery to prevent harm to the child. See 355 S.C. 420, 422, 586 S.E.2d 115, 116 (2003). The circuit court found two occurrences had been established for purposes of the SCTCA because the negligent acts of each doctor were entirely independent and not the result of the other doctor. See id. at 423, 586 S.E.2d at 116. Although the Supreme Court declined to address the issue of occurrences on appeal, the circuit court's holding is nonetheless instructive. Cases in other jurisdictions similarly find multiple occurrences by a single government entity. See Brooks v. Memphis & Shelby County Hosp. Auth., 717 S.W.2d 292 (Tenn. App. 1986) (finding two occurrences when one employee negligently failed to prevent patient from falling off a stretcher and a second employee negligently administered an overdose of medication, resulting in patient's death).

Here, as in Boiter, this is a case of multiple occurrences. In particular, Plaintiff has alleged, and Citadel witnesses and experts have admitted, multiple separate acts of negligence resulting in Plaintiff's injuries. Notably, The Citadel's independent acts of gross negligence span a period of ten years beginning in 2001 and extending all the way to 2011. Throughout this period, the evidence revealed in discovery has established numerous independent acts of negligence by numerous employees, agents, and officials of The Citadel, including General Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott, and the Board of Visitors. These Citadel officials, employees, and/or agents engaged in reckless and wrongful neglect of their duties and of Citadel policies and procedures as well as state and federal law and failed, on hundreds of occasions between 2001 and 2011 to make any report to

law enforcement, Citadel Public Safety, The Citadel Title IX Coordinator, child protective services, or to employers about ReVille. As discussed below, these actions did not combine to form one single occurrence of negligence. Rather, the separate and distinct acts of negligence by The Citadel and its officials, employees and/or agents from 2001 to 2011, as in Boiter, constituted separate occurrences of negligence as contemplated by the SCTCA.

b. The evidence establishes multiple separate "occurrences" of negligence by The Citadel, entitling Plaintiff to recovery of the limit of liability for each separate occurrence.

The evidence reveals that in 2001, 2002, 2003, 2005 and 2007, The Citadel had numerous opportunities to put an end to ReVille's abuse by reporting him to law enforcement. It neglected this opportunity on countless occasions, each resulting in a separate occurrence of negligence. Specifically, as early as August 6, 2001, The Citadel was in receipt of a letter from Sergeant Middleton of the Charleston Police Department which highlighted several concerning practices occurring at The Camp, including that "[s]ome of the counselors are allowing certain campers to leave their rooms . . . to go into camp counselor's room[s], watch movies, and fall asleep in the same bed with counselors until the following morning." (Exhibit 1, Middleton Letter, August 6, 2001). The letter also noted that "[s]ome of the counselors engage in sexual conversation in the presence of the campers." (Exhibit 1). Notably, upon receipt of this letter, The Citadel took no action whatsoever. Indeed, ReVille has admitted to abusing nearly eight campers during the 2001 Summer Camp. To do so, he lured campers into his room at night with food and movies—the very practice highlighted in Middleton's letter. (Exhibit 35, ReVille Affidavit, Sept. 20, 2013). Had The Citadel taken action in response to Sergeant Middleton's letter, whether by interviewing counselors and campers or by implementing various safety practices such as random and frequent room checks, ReVille's sexual abuse would have been discovered or, in the

alternative, ReVille would have stopped having campers in his room for fear of being caught and fired. (Exhibit 35, ReVille Affidavit, Sept. 20, 2013).

Consistent with the lack of response to Sergeant Middleton's letter, The Citadel failed to take any action in response to ReVille's 2001 "Counselor Evaluation" which notes that ReVille was "senior counselor material if learns to *distance himself from campers.*" (Exhibit 3, 2001 Counselor Evaluation). The Citadel's failure to take action in response to red-flags regarding ReVille continued throughout 2002 and 2003 as well.

In 2002, Camp Director Jennifer Garrott walked in on ReVille with a camper alone in his room, a violation of Camp policy warranting termination. (Exhibit 35, ReVille Affidavit, Sept. 20, 2013). Garrott took no action in response ReVille's policy violation, neglecting to even document the offense in ReVille's employment file. In 2003, Director Garrott again walked in on ReVille alone with a minor, Camper Doe 6, and ReVille was rubbing "Icy-Hot" on Doe 6's leg. Garrott took no action and Camper Doe 6 was abused by ReVille shortly thereafter. (Exhibit 35, ReVille Affidavit, Sept. 20, 2013). Also in 2003, Garrott's assistant spoke to ReVille four to five times about having minors alone in his room; however, no further action was taken. Colonel Lackey similarly received a report from a counselor that ReVille was having minors in his room. On none of these occasions was ReVille terminated, nor were the infractions documented in ReVille's file, despite camp policies and procedures requiring such action. (Exhibit 35, ReVille Affidavit, Sept. 20, 2013). Instead, ReVille was permitted to continue serving as The Camp's Senior Counselor entrusted with the responsibility of the safety and well-being of the very boys he was abusing.

In 2005, The Citadel neglected yet another opportunity to put an end to ReVille's abuse when Director Garrott, knowing Camper Doe 6 was about to report ReVille, terminated him

instead of receiving the report of sexual abuse Doe 6 was prepared to make. (Exhibit 5, Deposition of Camper Doe 6, p. 142-144). By failing to act in accordance with its policies, duties and accepted professional standards, The Citadel provided ReVille the mechanisms that enabled him to pursue his pedophile activities. (Exhibit 23, Deposition of Col. Trez, Vol. I, p. 154-55, agreeing that The Citadel provided ReVille the mechanisms that enabled him to pursue his pedophile activities). On each of these separate occasions, The Citadel acted recklessly, negligently and wantonly in failing to perform the duties undertaken by its policies and by accepted professional standards.

Furthermore, ReVille—a former Citadel employee—even admitted that it was a separate occurrence of negligence: (1) each time he abused a camper; and (2) each time he was caught violating Citadel rules and Citadel staff failed to follow or enforce Citadel policy. (Exhibit 33, Deposition of ReVille, Vol. III, 597:16—598:4). Moreover, ReVille further conceded that if he had been fired or if Citadel staff had followed the rules, he would have been prevented from abusing other children at The Citadel Summer Camp. (Exhibit 33, Deposition of ReVille, Vol. III, 598:5-18).

As to the April 23, 2007 report of sexual abuse by Camper Doe, The Citadel could have put an end to ReVille's abuse by simply adhering to its own policies and the requirements of state and federal law regarding mandatory reporting of sexual abuse to law enforcement. This simple act would have resulted in an investigation by trained professionals and a conviction. (Exhibit 36, ReVille Guilty Plea, Scarlett Wilson Testimony). ReVille even stated he would have confessed to the multiple acts of sexual abuse if interviewed by law enforcement in 2007. (Exhibit 37, ReVille Affidavit, Sept. 20, 2013(2)). However, The Citadel's negligence does not end there.

The very next day after the report of sexual abuse by Doe, Brandenburg and Colonel Trez met with ReVille on The Citadel campus and alerted him of the allegations. Notice of the allegations not only gave ReVille an opportunity to revise his tactics to remain undetected, it also allowed him to contact two of the victims referenced in Doe's report and urge them to pledge their silence if questioned by Brandenburg. These victims, who happened to be current cadets on The Citadel campus, were former campers abused by ReVille at the Citadel Summer Camp. Notably, Brandenburg neither spoke with nor interviewed these cadet victims. (Exhibit 19, Brandenburg Deposition, Vol. I, p. 139-140, 142, 144).

In addition to alerting ReVille of the allegations, The Citadel engaged in a deliberate attempt to cover-up the matter. Specifically, Jennifer Shiel, Assistant to Mark Brandenburg in 2007, has testified that there was a concerted effort to cover up Doe's report of sexual abuse regarding ReVille from the very beginning. (Exhibit 27, Shiel Deposition, January 21, 2014, pp. 36:9-20; 46:12-20). Her testimony reveals that the cover up was instituted by President Rosa and the matter was labeled "close hold":

Q. And during the time period from when the report was made until the time that you left the Citadel, having lived through it, do you believe there was a conscious effort to cover up or conceal this report of sexual abuse?

[Mr. Kovach: Objection.]

A. Yes.

Q. And was President Rosa in charge ultimately of making sure that this report was concealed and covered up?

[Mr. Kovach: Objection.]

A. In my opinion, yes.

* * *

Q. Having worked in the President's office during this time period, was there ever any doubt in your mind that President Rosa wanted this report of sexual abuse to be kept under wraps?

[Mr. Kovach: Objection.]

A. No. It was very clear that- the term that was used about it was "close hold." I mean only people that needed to know about it were supposed to know about it. That was it.

(Exhibit 27, Shiel Deposition, p. 46:12-20). The Citadel's negligent acts in effecting a cover-up extends to each independent actor who neglected their duties to report and to warn by colluding in the cover up. These include President Rosa, Mark Brandenburg, Colonel Trez, and others within the chain of command who were aware of the report of sexual abuse and failed to take the necessary action mandated by Citadel policies and by state and federal law.

In furtherance of the cover-up, The Citadel permitted ReVille to leave Citadel employment with no record of the sexual abuse; endorsed ReVille as an educator and coach in the Charleston community; allowed ReVille to continue trading on his reputation at the Citadel to secure continued employment with children; and allowed ReVille to remain at large preying on and sexually abusing the Plaintiff's child and other boys despite the foreseeability of continued child sexual abuse by ReVille. Each of these actions in derogation of The Citadel's duties as a state actor, standing alone, constitute a separate occurrence of negligence giving rise to the abuses suffered by Plaintiff and her child.

That these numerous separate negligent acts caused the injuries suffered by Plaintiff are supported by Defendant's own expert witness testimony. In fact, Defendant's expert, Gary Margolis, opined as to the foreseeability that a child sexual predator such as ReVille will continue to abuse children where he works:

Q. Do you agree with me, Dr. Margolis, that child sexual predators create risk of harm to children in their communities?

A. Yes, sir. I do.

Q. And why?

A. They pose a risk to the health and safety of children.

Q. If a child sexual predator is accused of abusing 11-to-15-year-old boys in the past, in your opinion, is it foreseeable that he will abuse 11-to-15-year-old boys near where he lives and works in the future?

A. Again, based on my law enforcement experience, not any psychological experience as such, I would agree with that, more likely than not, it would.

Q. Would you agree, based on your law enforcement experience and your academic background and education, that if you became aware in 2007 that a man has sexually abused children in 2002 and 2003 at a summer camp where he worked, would you agree that it would be foreseeable that any victims he was to have from 2004 through 2007 and 2007 through 2011 would occur where he worked and spent his time?

A. I would agree that it would predispose me to believe that he would be offending again and would have offended again.

(Exhibit 8, Margolis Deposition, Vol. I., p. 18-19). Mr. Margolis further opined that an individual accused of sexually abusing minors in the past is a current threat to children wherever he goes:

Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?

A. I would agree with you, yes.

Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?

A. I would agree that that's a reasonable assumption.

(Exhibit 8, Margolis Deposition, Vol. I., p. 19-20). Margolis likewise admits that another investigator looking at the facts presented could conclude that there was a cover up. He further admits that his investigation **did not** uncover any evidence that Defendant and others at The Citadel **did not** engage in a cover up of ReVille's sexual abuse:

> Q. [C]an you point me to any evidence that The Citadel did not engage in a cover-up to make sure that Skip ReVille's name appeared nowhere with regard to any allegations that Doe had made?
>
> A. In terms of the civil defense sheets that were created?
>
> Q. In terms of anything.
>
> A. I cannot.

(Exhibit 8, Margolis Deposition, Vol. I, p. 109:7-13, 278:17-25, 279:2-3).

In sum, each of the separate and distinct negligent acts and/or omissions of The Citadel outlined herein, standing alone, are a proximate cause of the injuries and losses suffered by Plaintiff, constituting numerous separate occurrences as contemplated by S.C. Code Ann. §§ 15-78-30(g) and 15-78-120. Furthermore, in addition to the independent acts of gross negligence above, each day The Citadel actively concealed the known allegations and other knowledge of ReVille's sexual abuse constitutes separate and distinct negligent acts and/or omissions giving rise to hundreds of occurrences as contemplated by S.C. Code § 15-78-120.

Thus, when the SCTCA is applied to the evidence in this case, the following is clear: (1) multiple separate and distinct acts of neglect were committed by The Citadel and its officials, agents and/or employees from 2001-2011; and (2) each of these acts resulted in a separate occurrence--*i.e.*, an "unfolding sequence of events which proximately flow from a *single act* of negligence." S.C. Code § 15-78-120 (emphasis added). Consequently, Plaintiff's total limit on liability as contemplated by the SCTCA is $300,000/$600,000 multiplied by the number of

occurrences.[5] Accordingly, summary judgment on the issue of a single occurrence is not supported by the evidence and is inconsistent with South Carolina jurisprudence as applied in the

[5] Plaintiff has identified over thirty-three separate occurrences of negligence as pleaded in the complaint and proven by the evidence. These include: 1) Failing to close the Summer Camp upon learning of the Arpaio allegations in 2001; 2) Failing to interview all campers after the Arpaio allegations in 2001 to determine whether any campers were abused by any counselors, including ReVille; 3) Failing to take any action in response to Srgt. Middleton's August 6, 2007 letter highlighting concerning practices at The Camp (deposition testimony by Margolis and Shapiro confirm this action should have been taken). 4) Allowing The Camp to operate from 2001 to 2005 without enforcing sufficient supervision and safety measures post-Arpaio to prevent to their best ability abuses by a child sexual predator, including failing to ensure the methods used by Arpaio to carry out his abuse (having minors alone in his room) were not capable of being repeated; 5) Failing to interview all campers after learning that ReVille needed to "distance himself from campers" in 2001 to determine whether ReVille had been inappropriate with them in any manner; 6) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2002 when ReVille was caught alone in his room with a camper contrary to Citadel policy (See Exhibit 33 at 597:22—598:10); 7) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2003 when ReVille was caught alone in his room with Camper Doe 6 rubbing "Icy Hot" on the minor's leg contrary to Citadel policy (See Exhibit 33 at 597:22—598:10); 8) Failing to take Camper Doe 6's report in 2005 and failing to take any action to frustrate ReVille's ability to continue abusing children despite knowledge that Camper Doe 6 was abused and was attempting to report ReVille; 9) Failing to report ReVille's 2002 and 2003 abuse after adopting and implementing the Summer Camp Policy Regarding Sexual Misconduct issues, which emphasized the lack of time period restrictions regarding reporting and mandated that all sexual misconduct allegations be reported (See Exhibit 33 at 597:22—598:10); 10) Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to Garrott's discovery in 2002 and 2003 of ReVille alone in a room with a minor and failing to ascertain the appropriate action mandated by those policies, including termination, reprimand, internal documentation of the violation and reporting of the abuse to law enforcement (See Exhibit 33 at 597:22—598:10); 11) Failing to check ReVille's references at Pinewood Prep prior to hiring ReVille for the 2006-2007 school year as such a call would have revealed the reasons for ReVille's termination—inappropriate conduct with minors—and such would have been an immediate red flag on April 23, 2007; 12) Failing to immediately report Doe's call on April 23, 2007 to Citadel Public Safety, the Charleston Police or SLED (See Exhibit 38, Deposition of Patricia Kinard, p. 30:9-20; 13) Referring Doe's call on April 23, 2007 to Mark Brandenburg instead of reporting to Colonel Trez and Citadel Public Safety; 14) Failing to report to Colonel Trez, Citadel Public Safety and other law enforcement authorities after Mark Brandenburg spoke with Doe and his father on April 23, 2007; 15) Failing to report Doe's complaint alleging improper and immoral conduct to Citadel Public Safety, pursuant to Citadel policy, after Trez was informed of the allegations; 16) Failing to follow Citadel policies and procedures requiring the disclosure of Doe's complaint of sexual abuse to the Title IX coordinator and/or SARC, who was required to file an anonymous report of the allegations; 17) Establishing a close-hold policy regarding Doe's complaint with the goal of keeping the complaint from leaking outside the chain of command to individuals required to report the allegations to law enforcement and child protective services; 18) Filtering the complaint to a settlement matter with a focus on clocking the statute of limitations; 19) Failing to conduct a thorough and impartial investigation (see Exhibit 39, Addison Deposition, p. 113-115—"I don't know if Brandenburg investigation was gross incompetence or trying to corroborate.....his investigation was pathetically bad."); 20) Meeting with ReVille on April 24, 2007, and alerting him to the allegations prior to law enforcement involvement; 21) Advising ReVille to

context of this case. Moreover, the determination of the number of occurrences is a question of fact.

CONCLUSION

In sum, Defendant's motion involves a host of factual issues not appropriately resolved at the summary judgment stage. Notwithstanding, the evidence, including admissions by Citadel witnesses and experts, establishes a duty on the part of The Citadel pursuant to four of the

---

"lay low;" 22) Failing to contact Pinewood Prep after learning from Jenni Garrot that "Skip was asked to leave Pinewood Prep" and that the reason for his termination was likely inappropriate conduct with children (see Brandenburg notes and Exhibit 19, Brandenburg Deposition, p. 115:3-9, "...she looked at me like, oh goodness, could this be another Arpaio case? Which, of course, is exactly what we were worried about."); 23) Failing to report to Colonel Trez and Citadel Public Safety the abuse of eyewitness Doe or the other campers referenced in Doe's report after learning, between April 23, 2007 and May 1, 2007, that the eyewitness and others who were abused were cadets on the Citadel campus in 2007; 24) Failing to take appropriate action to investigate the allegations against eyewitness Doe and the many others by neglecting to take any action other than sending an email to these victims (See Exhibit 19, Brandenburg Deposition at 151-152); 25) Failing to immediately report the allegations to public safety when Rosa received the May 16, 2007 letter informing him of the abuse and the existence of many other victims or, in the alternative, failing to exercise slight care in carrying out his official duties by neglecting to read his mail; 26) During the May 2007 Board of Visitors meeting, each board member was grossly negligent in failing to ask a single question about the allegations, Brandenburg was negligent in not informing the Board of the details of Doe's report, and President Rosa was negligent in failing to correct Brandenburg to ensure the Board was aware of all allegations including the allegations implicating many other victims; 27) Failing to report to law enforcement or take any action with regard to eyewitness Doe and other involved campers after taking Doe's July 1, 2007 statement containing new information identifying these victims by name and photograph; 28) Failing to document and update ReVille's personnel file with Doe's allegations as to Doe, eyewitness Doe and the many others; 29) Failing to inform employers who were conducting background checks or reference checks on ReVille; 30) Failing to investigate whether ReVille was working around children after 2007; 31)Defendant Garrott was grossly negligent and deliberately indifferent to ReVille's abuse in failing to inform Brandenburg during or after their meeting on April 24, 2007, of ReVille's inappropriate acts and sexual misconduct in 2001, 2002 and 2003 and in failing to inform him of Camper Doe 6's attempt to report in 2005, or in the alternative, Garrott did inform Brandenburg about the 2001, 2002, 2003 and 2005 incidents, and he ignored or concealed the information; 32) Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to the April 23, 2007 report and the July 1, 2007 statement as to Doe, eyewitness Doe and the many others, and failing to ascertain the appropriate action mandated by those policies, including internal documentation of the abuse and reporting of the abuse to law enforcement; and 33) Failing to know and comply with South Carolina law with regard to reporting allegations of child sexual abuse to law enforcement. In addition, each separate act of sexual abuse by ReVille constitutes a separate occurrence of negligence. In total, Plaintiff's child was abused at least forty-five (45) times. (Exhibit 33 at 595:25—597:15). Moreover, each act of abuse by ReVille at The Citadel constitutes a separate occurrence of negligence. (Exhibit 33 at 597:16-21).

referenced five exceptions applicable to these cases. The evidence further reveals, and Citadel witnesses and experts have admitted, to multiple acts of gross negligence by The Citadel arising from the institution's extreme indifference for the safety and well-being of children. Likewise, summary judgment on the statute of limitations and the issue of damages is unsupported by the facts as applied to the well-settled legal framework guiding these matters. On this basis, Defendant's motion must be denied in its entirety.

Respectfully submitted,

PIERCE, HERNS, SLOAN & WILSON, LLC

Carl E. Pierce, II
Allan P. Sloan, III
Louis P. Herns
Kristen B. Fehsenfeld
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733

JEFF ANDERSON & ASSOCIATES, P.A.
Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
1 Poston Road Suite 110
Charleston, SC 29407
843-556-1025, 843-556-1055 facsimile
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com

ATTORNEYS FOR THE PLAINTIFF,
MOTHER DOE A

September 19, 2014

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the forgoing document was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 22 day of Sept, 2014

Mary Sundvall

FILED
2014 SEP 22 AM 9:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

JOSEPH P. RILEY, JR.
Mayor

City of Charleston
SOUTH CAROLINA

REUBEN M. GREENBERG
Chief of Police

POLICE DEPARTMENT
06 August 2001

Colonel John G. Lackey III
The Citadel / Office of the Commandant
171 Moultrie St.
Charleston, SC 29409

RE: Investigation regarding Captain Mike Arpaio

Dear Colonel J. G. Lackey III,

I'm writing this letter to inform you of my investigation regarding Captain Mike Arpaio. I have interviewed numerous persons and could not establish enough probable cause to arrest Captain Mike Arpaio; therefore the investigation has been closed due to the fact that I was unable to prove that Captain Arpaio touched (b) (6) in an inappropriate manner. However, during my investigation I discovered information on some of the activities or practices that are going on during The Citadel Summer Camp Sessions that should be brought to your attention.

While speaking with staff members, campers, and parents the following information was established. Some of the counselors are allowing certain campers to leave their rooms after they are supposed to be in bed for the night. While these campers are out of their rooms they are allowed to go into camp counselor's room, watch movies, and fall asleep in the same bed with counselors until the following morning. Some of the counselors engage in sexual conversation in the presence of the campers. A camper had seen alcohol and tobacco products that belong to counselors in the barracks. A Counselor has taken certain campers off campus on functions that were not camp related functions without the parent's consent.

These are the most serious findings that were brought to my attention during my investigation. I am sure these activities will be addressed and corrected in the future. If there are any questions or concerns regarding this matter, please feel free to contact me at (843) 720-1999.

(b) (6)

180 LOCKWOOD BLVD. CHARLESTON, SC

EXHIBIT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JOHN DOE 2, Plaintiff, vs. PRESIDENT JOHN W. ROSA, INDIVIDUALLY, Defendant.	)	CIVIL ACTION NO: 2:12-cv-00794-RMG
MOTHER DOE, Plaintiff, vs. PRESIDENT JOHN W. ROSA, INDIVIDUALLY, Defendant.	)	CIVIL ACTION NO: 2:12-cv-00795-RMG
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-9200
MOTHER DOE A, Plaintiff, vs. THE CITADEL, Defendant.	)	

DEPOSITION OF LOUIS "SKIP" ReVILLE

TAKEN APRIL 29, 2014

happen. And so to get a better understanding of what -- where I stood, I guess, I said, Well, what should I expect? What do I do? And at that point, Colonel Trez said, Well, Skip, we are here to protect the interest of The Citadel. And Mr. Brandenburg followed up with that and said, you know, Our job is not to prosecute you criminally from this; we're here from the civil side. If the {John Doe Camper family} want to pursue anything criminally, that is their discretion. But we will conduct our own investigation and see where we go from here.

And at that point, I said, Well, what should I do? And Mr. Brandenburg said, It's best for you to lay -- best for you to lay low; there's no reason for you to come on the campus. And we will -- I believe -- I believe he repeated that they would take it from there, and I did not get to -- do anything as far as a follow-up.

Q. Who did you talk to after you talked to Mark Brandenburg and Colonel Trez?

A. After that meeting?

Q. Yes.

A. After that meeting, I got in my car and immediately called two of the cadets who were the

Electronically signed by Eve Wilbanks (101-177-349-6970) f0896419-88ad-44d4-8dcf-540459f484d7

Q. What did you do differently as a result of Bill Bates reemphasizing that no counselors and campers were to be alone in the same room together?

A. Well, initially, like everybody else, I didn't do anything. I did not have any interaction with the campers. But then after I saw that everything was going back to the laxity -- the laxity that this was before, then I started -- I resumed my selecting and grooming the campers.

Q. How many did you abuse in the first session of 2001?

A. Four.

Q. And how many did you abuse in the second session of 2001?

A. Three.

Q. How many times did you abuse the campers in the first session of 2001?

A. Two.

Q. And how many times did you abuse the campers during the second session of 2001?

A. At least a dozen.

Q. Did Jenni Garrott, the deputy director, or Bill Bates, the director, ever find you alone

A. On a couple of occasions, she reminded me that I cannot have campers -- minors in my room alone or after-hours. And with each time it -- she became a little bit more pleading, a little bit more urgent, that that just can't happen, can't continue.

Q. Do you know who I'm referring to when I use the pseudonym Camper Doe 6?

A. I do.

Q. Did Jenni Garrott walk in on you and Camper -- with Camper Doe 6 in your barracks room?

A. Yes.

Q. What were you doing, at the time she walked into your barracks room, with Camper Doe 6?

A. I was applying an ointment to his leg.

Q. And what happened as a result of her walking into your barracks room and her finding you and Camper Doe 6 in the room alone?

A. Another reminder that I should not have minor males in my room alone.

Q. Any other type of reprimand?

A. None.

Q. What should have happened to you pursuant to the camp policies, the camp handbook, when she walked in, the Camp Director, and found

Electronically signed by Eve Wilbanks (101-177-349-5970) f0896419-88ad-44d4-8dcf-540459f484d7

you and Camper Doe 6 alone?

MR. KOVACH: Objection to form.

A. I should have been fired; an incident report should have been written.

Q. Were any changes made regarding the enforcement of the no camper in counselor's room rule?

A. No.

Q. Who is Anna Bronk (ph)?

A. She was a staff member in 2003. I believe she was over personal -- personnel, and was a former acquaintance of mine. She and I worked at the Writing Center together. And she worked directly with Jenni Garrott in her office every day.

Q. Describe for me any conversations you had with Anna Bronk during 2003 -- excuse me -- at The Citadel Summer Camp regarding your breaking camp rules?

A. There was only a few rules that she was talking about, and that was having campers -- minor males in my room after lights-out with regards to pizza parties, having them in to watch movies. She stressed the fact that all of that had to be approved, had to have somebody else,

2003.

Q. Now, you were employed at the Writing Center in April of 2007?

A. That's correct.

Q. And your duties were to put on I think the El Cid course and then provide tutoring for cadets?

A. That's correct.

Q. Were you also seeking another position with The Citadel in April of 2007?

A. Yes. It was a position that had not been granted financially, but it was something that I was seeking, yes.

Q. And that was a leadership program with Colonel Weart?

A. Weart, yes.

Q. Weart. Now, it's my understanding you received a message in the Writing Center on April 24, 2007, that Mark Brandenburg wanted to meet with you?

A. It would have been that late week.

Q. Who is Mark Brandenburg?

A. General counsel of The Citadel.

Q. Did you have the meeting with Mark Brandenburg?

Electronically signed by Eve Wilbanks (101-177-349-6970) f0896419-88ad-44d4-8dcf-540469f484d7

the procedure. And then Mark said that, No, they'll do their own investigation, and that if the {John Doe Camper family} wanted to pursue anything criminally, that was their discretion.

Q. What do you think Mark Brandenburg should have done when he felt that the young man was believable and when he told him about the child sexual abuse that you performed?

MR. KOVACH: Objection to form.

A. Contact the law enforcement.

Q. How many young men would have been spared your sexual abuse had Mark Brandenburg or President Rosa or anyone else at The Citadel contacted law enforcement and turned you in in July of 2007?

MR. KOVACH: Objection to form.

A. Close to 30.

(Deposition Exhibit No. 9, Affidavit of Louis "Skip" ReVille, was marked for identification.)

Q. How many young males did you abuse after you were arrested by the Mt. Pleasant Police Department?

A. None.

Q. I'm handing you what has been marked as

(Deposition Exhibit No. 13, E-mail exchange with Suzanne Bufano, was marked for identification.)

Q. Now, let me give you -- this is Exhibit No. 13, which is an e-mail exchange between you and Ms. Bufano -- Suzanne Bufano. And, Mr. ReVille, just take a minute and look at it before I refresh your memory.

A. Okay.

Q. And what I want to ask you about, Mr. ReVille, is your time with the writing lab, you were contracted for that school year; is that right?

A. That's correct.

Q. And you, at that point in your life, obviously wanted to get a full-time position and to move up in your career; is that right?

A. That's correct.

Q. And during your time in the writing lab, were you also applying for a job to be hired at The Citadel in a more permanent capacity?

MR. KOVACH: Object to the form.

A. Yes. In fact, I had met with many staff members, and one of them I distinctly remember about living with -- campus housing; that's not on

Electronically signed by Eve Wilbanks (101-177-349-6970) f0896419-88ad-44d4-8dcf-540459f484d7

the immediate campus, but The Citadel has buildings around the campus that employees can rent cheaply. And we were in the process of talking about that, and those were my expectations. I remember that.

Q. So in January -- on January 23rd, 2007, your expectations were that you had been moved to the top of the list for the full-time position with Colonel Weart at the Krause Center; is that right?

A. That's correct.

Q. And in January of 2007, you had already talked to Pete Wentzel (ph) about where you would be housed and how that would be arranged?

A. That's correct.

Q. And so when you met with Mark Brandenburg on April the 24th, did you leave that meeting with the understanding that the job with Colonel Weart and the Krause Initiative would no longer be an option for you?

MR. KOVACH: Object to the form.

A. Yes.

Q. And when you left the meeting with Mr. -- with Mr. Brandenburg and Colonel Trez on April the 24th, was it your understanding that you no

Electronically signed by Eve Wilbanks (101-177-349-6970) f0896419-88ad-44d4-8dcf-540459f484d7

A. Yes.
Q. Okay. And were you interviewed by the Unemployment Commission with regard to why you were leaving and those sorts of things?
A. Yes.
Q. And did you tell the unemployment commission that your last day of work at the writing lab was April the 30th?
A. My last day worked for the school was 4/30/2007, yes, that's correct.
Q. And you indicate that if you don't find something permanent, that you would try to return to the school. Do you see that?
A. I do.
Q. Now, when you first filed your application for unemployment, did The Citadel contest it?
A. No.
Q. Let me ask you, when you first filed it, were you given notice that you were going to have to go to a hearing to determine --
A. Yes.
Q. -- whether or not you could get benefits?
A. Yes.

Electronically signed by Eve Wilbanks (101-177-349-6870) f0896419-88ad-44d4-8dcf-540459f484d7

COUNSELOR EVALUATIONS

[redacted]
Rehire—reserved, but diligent

[redacted]
Possible rehire—needs to work harder, immature

[redacted]
Definite rehire—good counselor, should take more authority

[redacted]
Definite rehire—good at staff work, dependable

[redacted]
Definite rehire—hard worker,

[redacted]
Possible rehire—misses activities, needs more enthusiasm, immature. Needs to learn to distinguish between camper and counselor relationships.

[redacted]
Possible rehire—does work, but complains

[redacted]
Do not rehire—not dependable, doesn't handle responsibility well

[redacted]
Do not rehire—not trustworthy

[redacted]
Possible rehire—trouble with authority

[redacted]
Definite rehire—good with kids, firm but fair

[redacted]
Definite rehire—excellent, takes job to the new extreme.

[redacted]
Definite rehire—definite HSC material; possible staff position if applicable

[redacted]
Definite rehire—excellent work with drum and bugle, takes initiative and gets the job done

EXHIBIT
2

CITADEL Box 443-B - 00281
(PHSW Tagged Docs)

[redacted]
Possible rehire—lazy attitude toward camp, not dependable during activities but when told responds well.

[redacted]
Possible rehire—lazy attitude, mind on other matters and not on camp duties but overall okay

[redacted]
Do not rehire—been here too damn long, but will forever remain "BIG DADDY"

[redacted]
Definite rehire—lazy attitude but overall good

[redacted]
Definite rehire—great HSC, director of operations material

Revilla, Skip
Definite rehire—senior counselor material if learns to distance himself from campers, works well with younger kids

[redacted]

[redacted]
Definite rehire—immature but gets job done, learn to take things less personal.

[redacted]
Definite rehire—good HSC, needs to work on communication skills and tactfulness, too intense at times

[redacted]
Possible rehire—needs to take job more serious, possible good counselor

[redacted]
Definite rehire—very dependable

[redacted]
Definite rehire—will be a good counselor, need to distinguish between counselor and camper

[redacted]
Definite rehire—senior counselor material, very conscientious

[redacted]
Definite rehire—good counselor, needs to mature

[redacted]

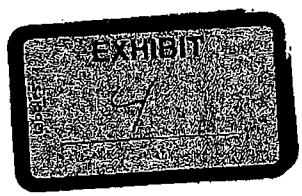
CITADEL Box 443-B - 00284
(PHSW Tagged Doc's)

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

VOLUME I VIDEOTAPED DEPOSITION OF:
JENNIFER CLAIRE GARROTT



Electronically signed by Eve Wilbanks (101-177-349-6970)
7776abfc-f7a1-43e5-b50a-dee45fcb1297

helpful?
A. Yes.
Q. Now, these OC reports and CCQ reports, shouldn't they have on it when somebody delivers a pizza to the barracks?
A. It should.
Q. Because that was Skip's main draw, that and Chinese food; he'd order it and get the campers to come to his room, and then he'd share the pizza and the Chinese/Oriental food. So shouldn't that have been given to you every morning, that, you know, Skip is ordering a lot of pizza and Oriental food to his room?
A. Yes.
Q. Do you recall ever seeing any report that said that?
A. No.
Q. Did you ever, after this 2003 incident when you walked in and Camper Doe 6 was in the room with Skip ReVille, did you ever ask any of the CCQ's or the OC's, is there anything unusual with regards to Skip ReVille's room, both before and after Taps? Are campers going into it?
A. I don't remember asking.
Q. And you didn't ask Camper Doe 6 if he

was going to Skip ReVille's room for any inappropriate activity with Mr. ReVille?
A. No.
Q. Wasn't it a violation of camp policy not to write up a serious violation that Mr. ReVille performed being in the room with a minor by himself?
A. Was it -- can you repeat that?
Q. Let me ask you this, Skip ReVille broke the rules, correct, by having Camper Doe 6 in his room by himself?
A. Oh, broke the rules?
Q. Yeah, broke the rules.
A. Yes.
Q. And the Counselor Code of Conduct says that minors are not supposed to be in the room with a staff member, correct?
A. With the door closed.
Q. I don't think it says that. It says --
A. Well, I guess that's where I thought it was a lapse of judgment because --
Q. 2003, it says that, Campers and counselors are not to be in a room alone. It doesn't say anything about a door, correct?
A. I recall -- yes.

Q. Okay. And down at the bottom of the Counselor Code of Conduct, it says, Violation of these rules will subject you to termination and dismissal, correct?
A. Correct.
Q. Why wasn't Skip ReVille fired for violating the rules in 2003?
A. Well, again, I thought --
Q. No, no. My question was --
A. -- if the door was open --
Q. -- why wasn't --
MR. STONEY: Let her answer the question.
Q. Why wasn't he fired?
A. Because --
Q. Let me ask you this first -- strike the question. Shouldn't Skip ReVille have been fired for breaking the rules in 2003 when you walked in that room and saw Camper Doe 6 and Skip ReVille in the room by themselves?
A. At the time I thought it was a lapse in judgment, and I did not think that it was a violation of that. I -- you know, in that position a lot of people go to him and I -- yes, sir, I was very mad.

Q. He claims he told you and Bill Bates in 2002 a lot of people go to him and give him information. My question is simple, it was a violation of the Code of Conduct and The Citadel policy regarding the camp for him to be in that room with Camper Doe 6 by himself?
A. Yes.
Q. And he should have been fired?
A. Yes.
Q. And if he had been fired, Camper Doe 6 would not have been molested later by Skip ReVille, correct?
A. Yes.
MR. STONEY: Objection.
Q. Okay. This is the training for 2003, Citadel Box No. 295-0059 through 00106. And this was a file folder found in The Citadel camper boxes. 0060 has the Pre-Camp Training Session. Let's move on to 0066. It's the Administrative Structure for The Citadel Summer Camp. Do you see that?
A. Yes, sir.
Q. And it has directors. That would be you as the director of the camp in 2003 and your deputy director?

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

VOLUME II VIDEOTAPED DEPOSITION OF:
JENNIFER CLAIRE GARROTT

In The Matter Of:

Mother Doe A, et al vs

Citadel, et al

Camper Doe 6

March 4, 2014

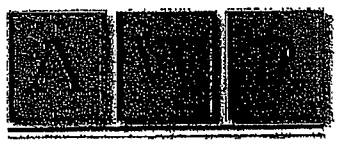
CONFIDENTIAL

A. William Roberts, Jr. and Associates

We're About Service...Fast, Accurate and Friendly

(800) 743-DEPO

www.scheduledepo.com



TRIAL SOLUTIONS

A. William Roberts, Jr. & Associates

court reporting | videography | trial presentation | nationwide scheduling

scheduledepo.com | 800-743-DEPO

Original File CONFIDENTIAL_Camper_Doe_6_-_140304.TXT

Min-U-Script® with Word Index

EXHIBIT

A Oh. His house, the upstairs room. There is only one upstairs room. The rest was on the bottom floor, ground floor.

Q And other than what you've talked about, about him measuring you, was the abuse that you referenced, watching pornography and masturbating?

A Yes, sir.

Q Okay. All right. Now, so we go through February of 2005 when you came to visit the college, you stayed with ReVille, and nothing happened at that time.

A No, sir.

Q So then you then come back to The Citadel as a counselor in the summer of 2005.

A Yes, sir.

Q And tell me -- tell me what happened. Tell me about that summer, was that summer good, was it bad, what happened?

A It was -- it was okay at first. I went to France. Went to France for about a month, maybe a little more. And then I came back just in time for the second session so I worked there.

We had a training, a new type of training, at least that I hadn't seen, where the

lady was talking about rape and pedophilia and how to do it -- or how to recognize pedophiles, a lot of -- you know, adult who spends a lot of time with kids, and doesn't like to spend time with adults. And even went so far as saying an adult minor with him -- I'm sorry -- an adult exposing himself, you know, to a minor is a crime, you know, and that if any of that is caught, they should be turned in to law enforcement, all that stuff.

And I also learned that it was a felony not to report sexual abuse. And I was 18 and kind of afraid, because I'm starting to realize now that Mr. ReVille has sexually abused me and I might go to jail for a felony, is kind of how I was thinking.

But I still cared a lot about the man, so while it took a two weeks of working there before I finally mustered the courage to go speak with the one person I trusted, Ms. Jenni Garrott. And so I asked Ms. Garrott, I said, May I speak with you about something? And she said, No problem.

And we sat down in a room and we faced each other and I said, Well, I needed to speak with you about Skip ReVille. And she said, Well, I -- she just completely changed her demeanor and said,

Well, Camper Doe 6, I have to -- I have to go do something. She started stuttering a lot. And then asked me to go back to my room and she'll come talk to me. I was on my free period, I believe it was called.

So I went back to my room, about 40 minutes to an hour later, a man named Patrick Reid came in, knocked on the door and said he needed to speak with me. And we walked out to the middle of the parade deck and he fired me an hour after I tried to turn Skip in.

Q I'm going to -- I want to make certain I've got some of the -- some of the terms correct. So about two weeks into the session in 2005, you approach Jenni Garrott about wanting to talk to her about something; is that correct?

A About Skip ReVille.

Q Okay. But you didn't tell her it was about Skip ReVille until you gotten --

A Exactly.

Q In other words, when -- what I understand you to have told me is that when you brought his name up, that's when her demeanor changed.

A Yes, sir. Absolutely.

Q All right. Now, do you remember what

(Attach Photo Here)

The Citadel Summer Camp
Employment Application
Staff / Counselor / Junior Counselor / Counselor-in-Training

(Office use only - Do not write in this space)

Name: Louis Skip Reville Age: 23 Class / Company (Cadets Only): _____

~~School~~ Home Address: 400 Beaufort Street Phone #: 347-4883

~~Home Address~~: Summerville, SC 29483 Phone #: (Same)

E-mail Address: Oldmanreville@aol.com

INSTRUCTIONS: Complete all parts of (1) The Citadel Student Employment Application; (2) Application Data Record; and (3) Summer Camp Employee Application. Attach a recent photo or snapshop. Return all three forms to the Camp Office, at which time an interview will be scheduled.

Mailing Address:
The Citadel Summer Camp
MSC 53 - The Citadel
Charleston, SC 29409
FAX: (843) 953-6803

SUMMER CAMP EXPERIENCE:

1. Have you been a camper or worked at any summer camp? Yes X No ___ Name of Camp: Here
2. Have you ever been a camper or worked at The Citadel Summer Camp? Yes ✓ No ✓ Years as camper _____
   Mark Clark Award winner? ___ Year(s)? _____ St. Counselor Award winner? ___ Year(s)? _____
   Years as counselor 2 Positions held CCQ, Sr. Counselor
3. Special qualifications to serve as counselor: 5'11", brown hair, brown eyes, athletic, can cook, recite poetry, dance; enjoys walks on the beach

VARSITY ATHLETIC EXPERIENCE:

High School: _____

College: _____

PRIMARY ACTIVITIES: (Sports Skills / Interests) - Counselors instruct campers in 2 or 3 of the following sports activities. Circle your skill level for each activity: C = Competitive, R = Recreational, or U = Unskilled. Rank each activity, from 1 (highest) to 12 (lowest), according to your preference:

Sport	Skill	Rank	Sport	Skill	Rank
Basketball	C R U		Soccer	C R U	
Racquetball	C R U		Swimming	C R U	
Softball	C R U		Team Handball	C R U	
Flag Football	C R U		Tennis	C R U	
Wrestling	C R U		Volleyball	C R U	
Sailing/Canoeing	C R U		Air Rifle Marksmanship	C R U	

EXHIBIT 5

CITADEL 00041
(RFP #1)

AQUATIC SKILLS: (✓)

_____ Red Cross Lifeguard Training
_____ Red Cross CPR Training
_____ Red Cross Water Safety Instructor
_____ SC Wildlife / Citadel Boating Card

TUTORING SKILLS:

(Circle those you are capable of teaching.)

Algebra Reading Air Rifle Trap/Shotgun
Math English Study Skills

SPECIALIZED ACTIVITIES: Circle 3 of the Specialized Activities listed below and rank them in order of your teaching preference

Camp Newspaper Color Guard Drum & Bugle Corps SCUBA Diving
Chess Computer Skills Photography Variety Show
Chorus / Choir Drill Team Scout Merit Badges Weight Lifting
Trap Shooting *(indicate NRA level, if applicable)*

CAMPER AGE PREFERENCE: Rank your first to third choices of the age of camper with whom you wish to work. (10, 11, 12, 13, 14, or 15 year olds)

1. 2. 3.

CLOTHING SIZES: Please circle appropriate sizes for Camp uniforms. T-shirts are 50/50 blend and will shrink some; shorts have minimal shrinkage. Sizes listed below are MENS MEASUREMENTS.

T-shirts – S M L XL XXL Shorts – S M L XL XXL

SUMMER SCHOOL: Counselors taking summer school classes will be paid less than those who do not. The Camp cannot permit every counselor to take summer school classes, in order to maintain coherent operations and scheduling.

___ YES – I plan to attend summer school, and take _____ class(es) per session.
___ NO – I do not plan to attend summer school.

CAMP INFORMATION:

First Session: June 8 – June 28, 2003 Second Session: July 6 – July 26, 2003

- Staff and HSCs will report on Sunday, June 1, 2003.
- Counselors working 1st Session (or both sessions) will report for training on Monday, June 2, 2003.
- Counselors working 2nd Session will report for training on Wednesday, July 2.
- In the space below, provide appropriate comments (conflicts with camp dates, vacation, or schedule / additional information):

In case of an emergency, contact: Name: _____ Phone #(s): (H)_____

Relation: _____ (W)_____

I have reviewed this application for completeness and accuracy. I understand the commitment required of those employed by the camp and believe I am prepared for this work. Furthermore, I authorize the Camp to research relevant background information that may be required to arrive at an employment decision. I will keep the Camp informed of changes to information on this application.

_____ _____
(Signature) *(Date)*

CITADEL 00042
(RFP #1)

The Citadel Summer Camp

COUNSELOR CODE OF CONDUCT

The Citadel Summer Camp personnel must always remember that they are role models and mentors to the hundreds of boys and girls that attend the Camp each year. They must always practice mature judgment and be mindful of the well being of the campers.

WHILE ON CAMPUS, CAMP PERSONNEL WILL COMPLY WITH THE FOLLOWING REGULATIONS:

1. Use of tobacco, alcohol, and/or drugs, in any form, is prohibited.
2. Camp personnel will not use profanity or make any obscene remarks or gestures.
3. Camp personnel will never use force when disciplining a camper. Campers are not cadets; they are 10 to 15 year old campers!
4. While on campus, there will be limited interaction between summer school students and camp personnel
   - Camp personnel will have no direct contact with Summer School students other than casual meeting encounters.
   - Summer School students and Camp personnel are not permitted to visit each others living area/rooms, unless on official business and registered with the guard at the gate.
5. Sexual activity, in any form, with any person is prohibited while on campus. "Sexual activity" includes kissing, handholding, lying together, groping, fondling and sexual intercourse.
6. Male personnel and campers may NOT visit the girls' living areas at any time unless specifically authorized.
7. Female personnel and campers may NOT visit the boys' living areas at any time unless specifically authorized.
8. Camp personnel must read and abide by procedures set forth in the "Counselor Handbook."

Violation of any of the above policies will result in immediate dismissal

I, Louis Reville understand and accept the policies listed above. I realize that I am a role model to the campers of The Citadel Summer Camp and I will make every effort to act accordingly. I feel I am capable of meeting these standards and agree to follow them at all times while employed by The Citadel Summer Camp.

X Louis Reville 15 April 2003

(Staff/Counselor's Signature) (Date)

CITADEL 00043
(RFP #1)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
MOTHER DOE A, Plaintiff, -against- THE CITADEL, Defendant.	)	Civil Action No: 2011-CP-10-9200
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
JOHN DOE CAMPER, Plaintiff, -against- THE CITADEL, Defendant.	)	Civil Action No: 2012-CP-10-1860

(CAPTION CONTINUES NEXT PAGE)

VIDEOCONFERENCE DEPOSITION OF:

LEONARD SHAPIRO

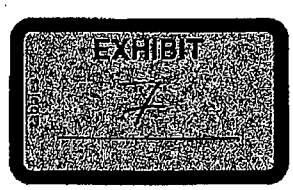
(Called as an Expert Witness)

HELD: Thursday, March 27, 2014

10 a.m. - 4:37 p.m.

Kingston, New York

ALBANY COURT REPORTING, INC.
518-557-5180
www.albanycourtreporting.com
email: ineedareporter@gmail.com



bd5e84f2-ec58-4133-ab97-facc1b1603f5

And it says, "The written application provides the information you need to assess the background and interests of applicants. Questions should help you determine whether applicants have mature, adult relationships as well as clear boundaries and ethical standards for their conduct with youth." Do you see that?

A. I do see that.

Q. And Mr. ReVille's 2003 application that we went over earlier, you'd agree with me that if you had reviewed that as a camp director, you wouldn't have determined that he was a mature adult who could lead children, would you?

MR. BOWERS: Object to the form.

A. Taken out of the context that you're stating this, if I had no history with Mr. ReVille of any kind, that he was simply an applicant and I was reviewing that application, that would not be somebody who would get through my screening process. But

L. Shapiro

if Mr. ReVille had worked for me and I knew of him and knew his background extensively for years, I still probably would have addressed it with him and said, you know, "What is this that you're putting here?" And I would expect that he would say, "Oh, come on. I'm just kidding." But I would say that this is an application form and that it is not appropriate and change it or do a new application.

BY MR. SLOAN:

Q. I understand that. But even assuming this was an attempt at a joke, this is a sick joke, isn't it? When you put down that your qualifications to be senior counselor, you're putting what color your eyes are and your hair, and that you're athletic and that you like to take walks on the beach, that's a sick joke, isn't it? Who would find that funny?

MR. BOWERS: Object to the form.

A. I don't believe I have the

qualifications to say whether it's sick or warped or incredibly poor sense of humor. I don't believe I'm able to qualify what his intent was or how it should be construed, except to say that it doesn't belong on an application, that's it's inappropriate, and that it would be a cause of concern to me as a camp director. And quite frankly, what's written there does not conform to the standards that one would expect of an application.

Q. If you go to page ten.

A. Got it.

Q. Under inappropriate and harmful physical behavior is "Showing pornography or involving youth in pornographic activities," the very last one there.

A. Yes, I see it.

Q. You don't disagree with that, do you?

A. As being inappropriate? I absolutely agree.

Q. Then on page 11 -- (interrupted)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

MOTHER DOE A,

Plaintiff,

vs. Case Action No.: 2011-CP-10-9200

THE CITADEL

Defendant,

_____/

JOHN DOE CAMPER,

Plaintiff,

vs. Case Action No.: 2012-CP-10-1860

THE CITADEL,

Defendant,

_____/

JOHN DOE 2,

Plaintiff,

vs. Case Action No.: 2012-CP-10-1858

THE CITADEL,

Defendant,

_____/

MOTHER DOE 2, on behalf of
JOHN DOE 3,

Plaintiff,

vs. Case Action No.: 2012-CP-10-1859

THE CITADEL,

Defendant,

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

CAMPER DOE 6,

Plaintiff,

vs. Case Action No.: 2013-CP-10-5247

THE CITADEL,

Defendant,

_____/

JOHN DOE, A MINOR, BY HIS GUARDIAN AD LITEM JOHN ROE,

Plaintiff,

vs. Case Action No.: 2013-CP-10-4770

THE CITADEL,

Defendant,

_____/

Videoconference Deposition of **GARY MARGOLIS**, held on Monday, February 17, 2014, taken at the Sound Vision, 310 Hurricane Lane, Suite 1, Williston, Vermont, 05495, commencing at 10:11 a.m., before Karen L. Wright, a RPR, CRR and Notary Public in and for the State of Vermont.

ACCURATE COURT REPORTING, INC.

Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

just not sure if my -- if my accounts payable or accounts receivable folks have done any of that. I just don't recall if I've sent that information to them.

Q. Okay.

A. Likely that I haven't.

Q. Is that something you can easily determine how much time you spent and how much you billed to Barnwell Whaley since March of 2013?

A. Yes, sir. I can call my financial team and ask them if we've sent any invoices, sure.

Q. All right. Do you agree with me, Dr. Margolis, that child sexual predators create risk of harm to children in their communities?

A. Yes, sir. I do.

Q. And why?

A. They pose a risk to the health and safety of children.

Q. If a child sexual predator is accused of abusing 11-to-15-year-old boys in the past, in your opinion, is it foreseeable

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

that he will abuse 11-to-15-year- old boys near where he lives and works in the future?

A. Again, based on my law enforcement experience, not any psychological experience as such, I would agree with that, more likely than not, it would.

Q. Would you agree, based on your law enforcement experience and your academic background and education, that if you became aware in 2007 that a man had sexually abused children in 2002 and 2003 at a summer camp where he worked, would you agree that it would be foreseeable that any victims he was to have from 2004 through 2007 and 2007 through 2011 would occur where he worked and spent his time?

A. I would agree that it would predispose me to believe that he would be offending again and would have offended again.

Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?

A. I would agree with you, yes.

Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?

A. I would agree that that's a reasonable assumption.

Q. If a child sexual predator was a camp counselor in the year 2001 and had a single room as the counselor and used movies and food to lure campers into his room and abuse them there in his room, knowing those facts, what would you do to prevent counselors in the future at that summer camp -- what would you make sure happened as part of your rules to prevent abuse of summer campers going forward?

A. Develop appropriate policies and procedures, train individuals to those policies and procedures, and then hold them accountable to those policies and procedures.

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

coordinator?

A. She might be both. But in terms of the Title IX coordinator, my understanding as I sit here is that it was Janet Shealy.

Q. All right.

A. I could be wrong about that, but that's my recollection.

Q. And if Mark Brandenburg and Colonel Trez have stated under oath that Skip ReVille had a special relationship with The Citadel, you wouldn't have any reason to object to that or disagree with it, correct?

A. Correct.

Q. Would you agree with me that if The Citadel had a policy and procedure that applied to those allegations that required The Citadel to report ReVille to law enforcement, that The Citadel had voluntarily undertaken the duty to report a child sexual predator to law enforcement?

A. If there was a policy that existed to that effect, I would agree with you.

Q. Would you agree with me that if The Citadel had known in 2001 how Mr. Arpaio had

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

opposite conclusion, I just -- that, I don't agree with. If you're telling me that someone could do their own investigation and come up with a different finding, well, then, I would agree with that, absolutely.

Q. And that was all I was asking. Isn't it true, Mr. Margolis, that somebody else, another fact-finder, decision-maker, could look at this case based upon the facts presented and conclude that there was a cover-up? Isn't that possible?

A. It is possible.

Q. Now, what evidence, okay, would you need in order to conclude that there was a cover-up?

A. We would need to have found evidence that implied intent, intent to collusion, you know, intent to hide in some way, shape, or form was deliberate in that regard.

Q. All right. So you would be looking for evidence that there was an intent to hide; is that right?

A. Correct.

Q. All right. What other evidence

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
Info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

that supports both the complainants and the respondents.

Q. And is also one of the -- the reasons is so that any hostile environment will be corrected or eliminated?

A. I would agree with that.

Q. And in eliminating a hostile environment that includes either sexual abuse or sexual harassment, one of the things that Title IX requires is that actions be taken against a predator; isn't that correct?

A. It requires that a fair and impartial process for both the respondent and the complainant be conducted should the complainant wish to do so in order to seek an outcome and a resolution.

Q. Okay. And back in 2007, Title IX clearly required college campuses to conduct an impartial investigation of all instances of sexual abuse; isn't that correct?

A. That they know of, correct.

Q. And back in 2007, a general counsel of a college or university would not be an impartial party to whom an investigation

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

should be conducted by; isn't that correct?

A. We agreed with that and we stipulated to that.

MR. STONEY: Objection.

THE WITNESS: We stated as much in our -- in our report. And, in fact, some of the challenges that we saw here were consistent with what was happening in general, hence the reason why the Dear Colleague letter was issued in April of 2011.

Q. All right. And in addition to the general counsel not being an impartial investigator, the OCR has also cautioned colleges and universities not to allow insurance companies to do an investigation of sexual abuse; isn't that correct?

A. I don't recall that specifically being in the Dear Colleague letter or in the law. Doesn't mean it's not. I just don't recall that specific passage.

Q. Okay. Well, based upon your having worked with Title IX and worked in this subject area, do you believe that insurance companies can be impartial in the

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

ReVille had a propensity to abuse boys within a certain described range of age?

A. I don't recall that specifically, but it wouldn't be a surprise to me.

Q. Okay. And why wouldn't it be a surprise in the field of sexual predators?

A. Because that's who he offended on, and it's consistent with his offense patterns, as I understand them.

Q. Okay. And from a criminal standpoint, young boys would be a discrete class of victims as compared to all ages and both sexes; isn't that correct?

A. That's what I've come to understand from experts in this area, yes.

Q. So it's pretty clear to you that Mr. ReVille had a propensity to abuse victims within a discrete class within our society; is that right?

A. Yes. I believe they're called preferential child molesters or preferential molesters.

Q. Now, in doing any type of investigation, do you naturally like to see

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

others, correct?

MR. STONEY: Objection.

THE WITNESS: Correct. But, again, because of, in our opinion, an inappropriate investigation.

Q. Did you say in your opinion because it was an inappropriate investigation?

A. Because of the problems we found with the investigation. Indicating that he left the school without anything in his personnel file or his HR jacket isn't necessarily surprising. I think it goes back to, you know, the investigation that was conducted and how it was conducted and such created some of those problems.

Q. Let me ask you this with regard to Skip ReVille: Let's say in the year 2010, can you point me to any evidence that The Citadel did not engage in a cover-up to make sure that Skip ReVille's name appeared nowhere with regard to any allegations that Doe had made?

A. In terms of the civil defense sheets that were created?

ACR ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

Q. In terms of anything.

A. I cannot.

Q. All right. Let's go over to Notebook-2, please. By the way, have you ever been -- any of your consulting ever been on behalf of a child that had been abused or a victim who had been abused at a university, or have you always represented the university?

A. In litigation, we've always been on the defense side. We tell universities and colleges what they do wrong all the time. But in terms of litigation, we tend to be on the defense side.

We may have had -- yeah, I don't even recall. I was going to say we may have had one case on the plaintiff's side, but I can't recall the details.

Q. Were you personally on it as the lead person?

A. No. I think it would have been Steven.

Q. All right. Tab 1 in Notebook-2. Did you consider the college regulations when

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

A. No. I said they mirror the Clery -- the first several mirror the Clery Act crimes. They're right out of the federal regulations.

Q. Yes. But then they go beyond the Clery Act, right?

A. Correct. Yes, they do.

Q. All right. And they're just examples of crime, right? You and I have already agreed that what ReVille was accused of doing by Doe to him and others was certainly a crime, correct?

A. Yes, sir.

Q. All right. And over on the next page, it says what are the individual responsibilities when you become aware of a crime. What does it say under "Individual responsibilities"?

A. "Notify the Department of Public Safety."

Q. All right. So when Wanda Milligan or Mark Brandenburg were notified that the crime had been committed on The Citadel campus, they should have notified Public

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

Safety, according to this policy, right?

A. According to this policy, correct.

Q. All right. And then Public Safety's responsibilities, they're to initiate an incident report and investigate as necessary, right?

A. That's what it says, correct.

Q. All right. If you'd turn over two pages to Section L. It says: "Other Incidents."

A. Yes, sir.

Q. And my Bates number for that is 1692. What's yours?

A. 2405.

Q. All right. It says: "Any incident which has a recognized potential for news media interest will be reported by the first individual aware of the incident. Examples of such incidents include, but are not limited to, a scandal involving an individual closely identified with the college, allegations concerning illegal or immoral activities at the college."

Now, you and I have already agreed

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

you're looking at and what I'm looking at are the same. Number 1 is repeated. So I have, "1. Individual Responsibilities." And what should be 2 says, "1. Executive Assistant Responsibilities."

Q. Yes. And that's a typo that's been on all the documents.

A. Perfect. I just wanted to make sure that we're looking -- good. Perfect.

Q. Okay. And so, now, you have and I have established that under the serious incidents memo, which applies to everybody at The Citadel and was in effect in April of 2007, that there are two separate parts of that serious incidents memo which required reporting those allegations to law enforcement, correct?

A. Correct.

Q. Why wasn't this in your report, that The Citadel had a duty under their own policy to report those allegations to law enforcement and they didn't do it?

MR. STONEY: Objection.

THE WITNESS: Well, I don't --

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript / Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

A. It's possible.

Q. And you have -- at the bottom of that, you have: "Regardless of whether a harassed student, his or her parent, or a third party files a complaint," correct?

A. Correct.

Q. And so this would -- when Doe made a third-party complaint as to eyewitness Doe and the six others who were abused the year before, The Citadel's duty under Title IX requiring it to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects applied to the many others, not just Doe, correct?

A. Correct.

Q. All right. Now, over on page -- I think it's about -- it would be page 15. These numerals are hard to see. Where it says, "What Really Matters," at the top. "Designate Title IX Coordinator," right?

A. Yep.

Q. All right. And The Citadel had done that by 2007, correct? They had a Title IX coordinator, right?

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript/Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acrdepos.com • www.acrdepos.com • scheduling@acrdepos.com

A. Correct. I believe that's accurate.

Q. Yeah. And you say what really matters is that the Title IX coordinator's: "Responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints," correct?

A. Correct.

Q. You would agree with me that the Title IX coordinator at The Citadel didn't oversee those allegations and the investigation of them by Mark Brandenburg, correct?

A. That is correct.

Q. That would be a violation of Title IX, correct?

A. It would be a violation of this, correct.

Q. And further down, I think it's about three pages over, under "Preparing to Investigate."

A. Yes, sir.

Q. It says -- the third bullet point

ACCURATE COURT REPORTING, INC.
Nationwide Depositions, Hearings and Trials • Conference Facilities
Videoconferencing • Legal Video Services • Exhibit Scanning
Transcript/Video Synchronization • 24-7 Online Repository
1.888.ACR.3335 • 1.800.862.4206 (FAX)
info@acridepos.com • www.acridepos.com • scheduling@acridepos.com

[redacted]

THE CITADEL
THE MILITARY COLLEGE OF SOUTH CAROLINA

Office of the General Counsel

May 16, 2007

E-mail: [redacted]

David Abromaitis
Claims Manager
Insurance Reserve Fund
1201 Main Street, Suite 500
Columbia, SC 29201

VIA U.S. Mail and E-mail to dabromaitis@irf.sc.gov

Re: [redacted]

Dear David:

This letter is to provide additional information in support of our telephone conference of last week. As I said on the phone, The Citadel was recently contacted by [redacted] graduate of the school, concerning his [redacted] was a camper at the now-defunct Citadel Summer Camp for Boys / Citadel Summer Camp. According to Camp records, [redacted] attended the camp from [redacted] and then served as a counselor-in-training / junior counselor in [redacted]

I spoke with [redacted] initially, and subsequently with [redacted] Both allege that during one summer [redacted] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [redacted] alleges the counselor watched the movies and masturbated as well. Importantly, however, [redacted] specifically said that the counselor never touched him or the other camper. [redacted] allege that the counselor engaged in this activity frequently, though, and with many other campers. [redacted] only experienced it once.

Based on the information [redacted] provided, which includes the first name of the counselor (though not the last name) and an allegation that it was that counselor's second year working for the camp, my research indicates this activity would have occurred in 2002. [redacted] would have been [redacted] years old at the time [redacted] currently [redacted] years old. During our conversation, [redacted] admitted that he has never revealed these allegations to anyone. His father verified that statement. However, the father alleges that, prior to this incident, [redacted] was a happy, well-adjusted boy who earned good grades in school while presenting few, if any, disciplinary problems. After the summer of 2002, he claims [redacted] became disruptive, and that his grades plummeted. [redacted] claims they have spent "thousands of dollars" attempting to correct [redacted] behavior, with no success. [redacted]

[redacted] called the school and attempted to inform Lt Gen Rosa, President of The Citadel, of these allegations. Lt Gen Rosa's secretary took the call initially, and I responded on behalf of the president. I have spoken with [redacted] twice and [redacted] once. To my knowledge, no other representative has spoken with either of the [redacted]

EXHIBIT
61

CITADEL 000380

THE CITADEL 0000234
(FOIA 2011)

[redacted] stated that he wanted the school to know about this incident, and to know that an apparent predator was once affiliated with the school. He suggested that the school take a statement from [redacted]. He also dwelt at length on the trouble that he and his wife have had in raising [redacted] as outlined above. He did not say that he plans to file some type of claim against the school, but he did not rule out the possibility, either.

As you know, the standard statute of limitations for an injury allegedly suffered by a minor would begin to run on the day the minor turns eighteen (18) and would expire on that individual's nineteenth (19th) birthday. However, in 2001, the South Carolina General Assembly enacted S.C. Code Ann. § 15-3-555, which provides:

> An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

(emphasis added). Pursuant to this statute, the limitations period would not begin to run on [redacted] realized the harm which allegedly resulted from the incidents he claims occurred in 2002. [redacted] were to file a lawsuit, we could expect him to argue that he did not reach that realization until the day his father called the school.

At the time I spoke with [redacted] they had not retained counsel. Moreover, [redacted] was eager that The Citadel "hear [redacted] story." As a result, The Citadel believes that someone should meet personally with [redacted] and his parents, and record a detailed statement of his allegations.

The [redacted] live [redacted], therefore there will be some expense involved in this effort. As we discussed on the phone, though, I would be happy to undertake this effort, as a special investigator for the IRF. As you know, I handled the pre-suit investigation of the Arpaio-related matters, as well as the majority of the discovery after those cases were filed. I continued to work on those cases once I assumed my role at The Citadel as general counsel. Thus, I already have experience in investigations of this type. I also have extensive knowledge of the camp from this time period, as [redacted] allegations overlap the period involved in the Arpaio cases. The Citadel recognizes that the IRF's funding of this investigation would be unusual. However, the school believes it would be beneficial to both the IRF and the Institution, and the most likely approach to lead to a quick and inexpensive resolution of this claim.

Please let me know if the IRF will support this approach. I will be happy to answer any questions you might have, and to provide any additional information, as you should require.

With best regards, I am,

Yours truly,

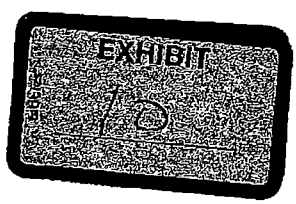
Mark C. Brandenburg
General Counsel

MCB:jhs

cc: Lt Gen John W. Rosa, USAF (Retired)

RE: SUMMER CAMP INTERVIEW

JULY 1, 2007



11:34:33 with , and he ordered Chinese food and --

Q. Did anybody -- let me just stop you for a second.

Did anybody go with you the first night?

A. .

Q. ? Bought food and talked?

A. That's right.

Q. Okay. Nothing -- nothing else happened?

A. No.

Q. Okay. Okay.

A. A few nights later we went back to room. He ordered Chinese food.

Q. Okay.

A. And then he started telling us that he wanted

11:35:03 us to spend the night in his room.

Q. Okay.

A. And he just said, you know, you guys can stay the night here. You'll stay the night here.

Then he started showing us things on the computer. He wanted us to go to the computer. He started showing us things. He started bringing up pornographic videos, and then he started talking about masturbation and how masturbating makes your penis smaller and all these weird things.

Q. Okay.

11:35:34 A. And he at that time pulled out his penis and started masturbating and asked us to join him, and I got up, said I was tired, went to the bed and just said I was going to fall asleep and --

Q. Okay.

A. -- just go to sleep.

Q. This was in his room?

A. That's right.

Q. Okay.

A. He -- he kind of got a little aggressive and was asking me to come back to the computer and join them --

Q. All right.

A. -- which I ended up doing.

11:36:14 Q. Was over there with him?

A. That's right.

Q. Okay. And had he joined?

A. That's right.

Q. Okay.

A. And I did it. Immediately after, I felt completely violated.

Q. Okay.

A. I mean, it was just a horrible experience for me. I didn't tell anyone until this year.

Q. Okay.

11:36:43 A. But like I said, it only happened to me one time.

Q. Okay.

A. I know there are about five other kids that experienced it a few times.

Q. Okay.

A. He made it seem as if it was completely normal.

Q. Okay.

A. And he totally treated these campers like -- he played favorites.

Q. Okay.

A. After that incident, I kind of crossed over to the dark side, I guess you could say. I started

11:37:20 doing horribly in school.

Q. Okay.

A. It led to drug use and -- you know, cigarettes, alcohol.

Q. All right.

A. And for the longest time, you know, I just thought it was my fault, maybe that I was a bad person, but I grew up, and I looked back on it, and, you know --

Q. Okay.

A. -- I realized who the bad guy was.

11:41:48 Q. So he told you in 2002 --
A. That it started in --
Q. -- that it started in 2001?
A. That's right.
Q. Okay.
A. And I -- I believe there are five kids, including and , that were involved in that the year before.
Q. And tell me why you think that there were -- why you say that there were five kids involved?
A. Well, I remember there was -- I remember it was and , and then -- I also remember another kid in this section that definitely did mention was involved.
11:42:17 Q. Okay.
A. I just can't remember his name. I wasn't good friends with this kid.
Q. Okay. If you saw a list of names, would you be able to pick it out?
A. I might be able to.
Q. Okay.
A. But, yeah, I -- -- and he talked about it like it was him and a few other kids.
Q. Okay.
A. And the year that -- the year that it

11:42:40 happened to me, I noticed that there were younger kids coming in and out of room a lot.

Q. Okay.

A. I mean, you know, I'd go over there, and there would be younger kids leaving the room that he had just bought food for and stuff like that. I'm -- I don't know what, you know, that was all about but --

Q. This was in 2001 or in 2002?

A. 2002.

Q. In 2002? Okay. All right.

A. was a 2001.

Q. Okay.

A. In 2002, he was actually moved to a very head position in the camp.

11:43:12 Q. Okay. In 2001, do you know where it is that lived?

A. He lived -- he lived in a small room.

Q. Okay.

A. It might have been the second floor.

Q. Okay.

A. I don't know, though. I had no idea of existence in 2001.

Q. Fair enough.

How about in 2002?

A. In 2002, he lived in the huge room.

11:44:09 Q. () Okay. Did he have a roommate that year?

A. I don't believe he did.

Q. Okay. Was there anybody -- well, you said this only happened to you once.

A. That's right.

Q. Okay. And it was you and . Were there any other counselors in the room?

A. There were none.

Q. Were there any campers in the room?

A. No.

Q. Okay. And you didn't tell anybody about this?

A. I told no one.

11:44:36 Q. Okay. Why not?

A. I felt violated. I was embarrassed to tell people.

Q. Okay. Okay. And you said you saw younger campers going into his room at times?

A. That's right.

Q. When did you see that?

A. Just during camp.

Q. Okay. What time of day did this occur?

A. Night.

Q. Nighttime? Do you remember -- I mean, was it

12:14:30 Q. Why he picked you.

A. No, not at all.

Q. Okay. How about ? Did he ever give you any explanation?

A. No.

Q. Do you know how many times it happened to ?

A. I believe it happened a few times. Quite often.

Q. Had it happened before it happened to you to ?

A. Yes.

Q. Do you know if it happened afterwards --

A. I'm not sure.

12:14:56 Q. -- to him?

Okay. Do you know if it happened to anybody else afterwards?

A. I'm not sure, but I wouldn't doubt it. I saw kids coming in and out of his room --

Q. Okay.

A. -- at all hours.

Q. Okay. Okay. All right. And the first time that you told anybody about this was when you told your parents --

A. My mom.

12:18:02 is the problem.

Q. Okay.

A. is the problem.

Q. Okay.

A. I just -- I -- I -- I don't want him to do to another kid what he did to me.

Q. Okay. Did you have a sense that he -- well, I'll go in a different direction.

Is there anything that you want the Citadel to do as a result of this?

A. I was put in a hole because of what happened.

Q. Uh-huh.

A. I've been trying really hard to get myself out of this hole.

12:18:44 Q. Yeah.

A. I do expect some sort of compensation. I -- I don't believe I'm in position to say what.

Q. Uh-huh.

A. I mean, every step that I've taken out of this hole that I was put in I've done by myself, on my own.

Q. Yeah.

A. Most of all, the thing I want the most is just to make sure that doesn't have a chance to do this to anyone else.

check have arrived to me. I would appreciate it. I am also attaching a copy of the all from the court reporter in the amount of $70. Then it's all squared away. We appreciate you issuing a check directly to that company.

Thank you again for all of your cooperation in this matter. I am sorry we were not able to close it in a release, but I feel confident that we are very unlikely to receive a claim against the Citadel.

I hope you have a wonderful Thanksgiving!

Mark

Mark C. Brandenburg
Senior Counsel
The Citadel
171 Moultrie Street
Bond Hall, Room 369
Charleston, SC 29409
(843) 953-5227 (office)
(843) 953-7366 (cell)
(843) 953-7392 (fax)
mark.brandenburg@citadel.edu

From: Mark C. Brandenburg
Sent: Wednesday, August 08, 2007 10:10 AM
To: David Sucke
Cc: Dan Harris
Subject: RE: [redacted]

David and Dan

I stopped by [redacted] after my conversation with [redacted] at the end of June. I met with [redacted] the former cadet complainant and his parents [redacted]. We talked for a couple of hours and I recently received the rough draft of the interview. I [redacted] received a copy as well, and I've forwarded it on to the DOJ. I have not received an exhibit sheet, however.

I will be happy to provide a more complete report later and, if need be, will be happy to send an electronic copy of the transcript, if you wish. In short, though, I found [redacted] to be believable. His story remained the same as the one he related to me over the phone some time ago. He described one incident, in which [redacted] a fellow cadet, [redacted] to visit the room of a classmate at the latter's home. Once there, the [redacted] showed them pornographic pictures on the computer and convinced the two cadets to masturbate with him. [redacted] both specifically and emphatically denied that he was touched during the incident. Nonetheless, he says he felt "dirty" and ashamed as a result, and his grades and general standard of life suffered tremendously afterward. He [redacted] though he eventually [redacted] is currently working at a grocery store in [redacted] though his parents are trying to [redacted] seems ready with his life and professes to be much more at peace with himself now that he has revealed this information to his parents. He and his parents described series of visits with doctors, psychologists, psychiatrists, etc., which have finally subsided with the revelation.

[redacted] identified the counselor without hesitation when shown his pictures from the relevant time period. He had previously identified him only as "Mike." When I showed him pictures of the staff, though, he immediately identified Mike Reville, who was serving as the senior counselor during the year in question. Moreover, his identification of the barracks the crime was in that year, and indeed, the room in which Reville was living, was accurate. [redacted] has reported names, dates, etc. of this. However, Reville's initial denials were equally forceful and unfortunately, ultimately proved totally false.

[redacted] was by far the most emotional of the three. She has significant animosity toward the [redacted] apparently now that he feels the wheel can no longer turn against him. Even as it worked to

EXHIBIT

THE CITADEL 0000224
(FOIA 2011)

The problem [redacted] is a Citadel graduate. However, and I suspect fearing much of the typical desire that graduates have to see their sons attend The Citadel, [redacted] seems interested in attending, though not as interested as his father and [redacted] seeing him attend.

Mark

Mark C. Brandenburg
General Counsel
The Citadel
171 Moultrie Street
Bond Hall, Room 369
Charleston, SC 29409
(843) 953-5252 (office)
(843) 478-8468 (mobile)
(843) 953-7592 (fax)
mark.brandenburg@citadel.edu

From: David Stuckey [mailto:dstuckey@irf.sc.gov]
Sent: Friday, June 15, 2007 3:48 PM
To: Mark C. Brandenburg
Cc: Dan Perris
Subject: [redacted]

Mark,

This email will confirm our telephone conversation on June 14, 2007 in which we discussed the above incident. During the conversation, we agreed that it would be in our best interest for you to meet with [redacted]. During this conversation with the [redacted] family, we agreed that a court reporter should be present in order to record the conversation for any possible litigation in the future. Even though a claim has not been filed with either The Citadel or the Insurance Reserve Fund, we would ask that the [redacted] family convey in writing their intentions and expectations regarding the investigation of this incident.

Once you have returned from that meeting, please give us a call.

Very respectfully,

David L. Stuckey, Jr.
Professional Liability Representative
South Carolina Insurance Reserve Fund
P.O. Box 11066
Columbia, SC 29211
Office: (803) 737-0028
Fax: (803) 737-3757

THE CITADEL 0000225
(FOIA 2011)

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, SC 29404

MEMORANDUM
NUMBER 4

15 August 2005

THE CITADEL'S SEXUAL ASSAULT CRISIS INTERVENTION POLICY

1. INTRODUCTION:

The Citadel community strongly supports a policy that prohibits abuse of power by sexual assault. This unlawful act and the coercion, intimidation, and lack of respect it represents is the antithesis of The Citadel's mission, and this behavior will not be tolerated. THE CITADEL WILL PUNISH ANY INDIVIDUAL(S) WHO IS FOUND TO HAVE COMMITTED A SEXUAL ASSAULT. Furthermore, the College believes that preventive education is critical to both attempting to reduce the likelihood of sexual assault on campus and to supplementing the process of contemporary leadership development among cadets. Thus, The Citadel is committed to presenting a strong, ongoing sexual assault prevention program in an effort to educate all members of The Citadel Community. **THIS POLICY APPLIES TO ALL MEMBERS OF THE CITADEL COMMUNITY TO INCLUDE CGPS STUDENTS, FACULTY AND STAFF.**

2. DEFINITIONS:

A. RAPE is defined as any sexual intercourse (i.e., anal, oral, or vaginal) however slight with any object without affirmative consent (see definition at 2c).

B. SEXUAL ASSAULT includes rape and all other forms of unlawful sexual behavior and contact which is not mutually agreed upon (i.e., penetration with a foreign object including a finger; oral or anal sex; unwanted touching on skin or through clothing; or touching an intimate part of another person such as their genitals, buttocks, or breasts) without affirmative consent by all persons involved.

C. AFFIRMATIVE CONSENT cannot be given in the following situations:

1) the person is unable to give consent (because the person is a minor under the 18 years of age);

2) the person is unable to give consent because of his/her temporary or permanent mental handicap or physical incapacity, such as a person who is under the influence of alcohol or drugs, who has "passed out" or "blacked out", and/or who is unconscious or semiconscious;

3) the person expressed by words or any other behavior a lack of agreement to engage in sexual activity;

CITADEL 0002522

4) the person having formerly consented to sexual activity subsequently expresses by words or any other behavior a lack of agreement to continue engaging in sexual activity;

5) the person was induced to engage in sexual activity by the other person's

a. physical coercion, or

b. abuse of position of power, trust or authority; and/or use of artificial means (i.e., drugs such as Rohypnol);

6) and/or when the consent is expressed in words or conduct by a third party.

In summary, "No" means "No." The communication of "No" may be expressed verbally or non-verbally (i.e., physical resistance, body language, etc.). Rape and other forms of sexual assault are illegal, regardless of the relationship between the perpetrator and victim (i.e., acquaintance or date rape is as serious a crime as stranger rape).

3. GENERAL GUIDELINES OF THE SEXUAL ASSAULT CRISIS INTERVENTION POLICY:

A. Upon enrollment and/or during orientation and annually thereafter, The Citadel will make available to each cadet, CGPS student, faculty, and employee the following:

1) The Citadel's policies on cadet dating, cadet fraternization, sexual harassment, and sexual assault;

2) information designed to reduce the risk of being sexually assaulted or committing sexual assault, (such information will also be displayed prominently on campus bulletin boards);

3) guidelines which detail the range of formal and informal options for addressing a range of inappropriate behaviors including sexual assault; and

4) data on the prevalence of these crimes, both at The Citadel and in the local area.

B. The Citadel will make available educational programs to inform all students (both cadets and CGPS), staff, and faculty in the campus community about the nature of sexual assault and sexual harassment. These programs are detailed in the annual Plan of Instruction (POI) for the Corps of Cadets. Example programs are as follows:

1) Guest speakers, seminars, disoussion panels, and/or drama troupes may be utilized at various times in an attempt to maintain a preventive education program throughout the year;

2) Academic psycho-educational classes on drug and alcohol abuse may be presented, which may include the discussion of the close relationship of substance use and sexual assault for all cadets.

3) Faculty, staff, and CGPS students may attend any of the above on a voluntary basis. Contact the Assistant Commandant of Cadets for Administration and Coeducation at 953-6707 for information on these programs.

C. Given that date/acquaintance rape is a particular problem on most college and university campuses, The Citadel will provide training and distribute literature, which focuses on assisting individuals who have been sexually assaulted. This program includes:

1) written protocol describing exact procedures for handling sexual assault cases (this policy);

2) written guidelines for seeking immediate medical and psychological treatment (this policy);

3) brochures which detail information about sexual assault and the options for addressing sexual assault in both a formal and informal manner; and

4) procedures for coordinating the activities of campus and local law enforcement agencies (this policy).

D. The Citadel's policy encourages individuals who have been sexually assaulted to formally report the incident to a member of the college's administration or to a Citadel Public Safety official (Campus Police). You are encouraged to report to a police official in order that you may preserve physical evidence that is proof that you were raped. However, you do not have to file a formal police report if you wish not to press charges. If you only want assistance with getting counseling and medical treatment, you may report the incident to the Ombudsman, the Infirmary, The Assistant Commandant for Administration and Coeducation, The Sexual Assault Response Coordinator (SARC) or Assistant SARC, or the Special Assistant to The President, and request this assistance as outlined in paragraph E below. It is critical that you report the incident to someone so you can get help. We do strongly encourage you to report the perpetrator since this individual may have a pattern of behavior where he/she has assaulted other victims.

E. The Citadel strongly encourages all cadets, CGPS students, faculty and staff who have experienced a sexual assault or sexual harassment or have knowledge of another person's sexual assault or harassment to report such knowledge to either the Campus Police, the Commandant of Cadets or his/her representative, one of the Deans, the Ombudsperson, the Counseling Center staff, a member of the campus clergy, Human Resources, or the EEO/AA/Diversity Director. The report will not include the name of the individual who has been sexually assaulted or sexually harassed without the individual's permission, except when there is a known or a perceived future threat of

imminent physical harm to the individual or others. This report may be done anonymously.

4. IMMEDIATE GUIDELINES IN THE EVENT YOU ARE SEXUALLY ASSAULTED (Refer to Annex A).

5. DO's AND DON'T's IN SUPPORTING A SEXUAL ASSAULT VICTIM (Refer to Annex B).

6. DUTIES AND RESPONSIBILITIES OF CAMPUS PERSONNEL:

   A. The persons and agencies suggested in Annex A, Paragraph 1, are recommended initial points of contact for individuals who have been sexually assaulted. It is important to remember, however, that anyone on campus has the potential to be the first contact with someone who has been sexually assaulted, and thus everyone must be familiar with certain information and requirements. First and foremost, it is important to respect the wishes of the individual who has been sexually assaulted, especially as to whether to file a formal complaint or criminal charges. The healing process begins with this individual's control of decision-making that may affect his/her life dramatically.

   B. Initial Contact. The Citadel community must be prepared to be the first contact in a sexual assault case. Handling a difficult situation is not easy. The guidelines at Annex B dealing with DO's and DON'T's, should be kept in mind. (NOTE: THIS LISTING OF DO's AND DON'T's IS AVAILABLE IN WALLET-CARD FORMAT AND IS RECOMMENDED TO BE CARRIED BY ALL MEMBERS OF THE CITADEL CAMPUS COMMUNITY.)

   C. The Sexual Assault Response Coordinator (SARC) for The Citadel is LTC Kathy Jones in the Admissions Office. Her telephone number is (843) 953-5975. She will be assisted in these responsibilities by Assistant Sexual Response Coordinators (ASARC). These individuals are as follows:

      - Assistant Commandant of Cadets for Administration and Coeducation, 953-6707
      - Major Robert Pickering, Director of Multi-Cultural Student Services, 953-5096
      - Ms. Mary Ellen Huddleston, Director of Intramural Programs, 953-7955
      - Ms. Kelly Simpson, Assist. Athletic Director/Senior Women's Administrator, 953-6604
      - Ms. Bridgette Beasley, Deputy Director, Human Resources, 953-6989

   D. Sexual Assault Prevention Committee. This committee will consist of the Special Assistant to the President (Chair), Title IX Coordinator, Sexual Assault Response Coordinators, Director of the Counseling Center, The Citadel Physician, Assistant Commandant of Cadets for Coeducation, Director of

Student Activities, Dean of CGPS, Director of Human Resources, Chaplain to the Corps of Cadets, and Director of Public Safety. Responsibilities are as follows:

1) conduct an annual review of this policy and recommend changes as required;

2) review contents of annual education program on sexual assault and recommend changes as required;

3) review annual statistics on sexual assault on campus and in local area to discuss trends and lessons learned; and

4) meet, as required, to discuss the latest educational material and issues related to sexual assault.

7. MYTHS AND REALITIES OF SEXUAL ASSAULT (Refer to Annex C).

8. FILING A SEXUAL ASSAULT COMPLAINT (Refer to Annex D).

9. FOLLOW-UP RESPONSIBILITIES IN THE AFTERMATH OF SEXUAL ASSAULT (Refer to Annex E)

10. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) AND THE CRIME AWARENESS AND CAMPUS SECURITY ACT OF 1990 (Refer to Annex F).

11. ADDITIONAL INFORMATION ON THE CITADEL'S SEXUAL HARRASSMENT POLICY MAY BE FOUND IN MEMORANDUM 15, SEXUAL HARASSMENT, DATED 30 AUGUST 2002.

12. RECOMMENDED CHANGES OR QUESTIONS REGARDING THIS POLICY SHOULD BE REFERRED TO THE SPECIAL ASSISTANT TO THE PRESIDENT, 953-4834.

13. RECISSION:

Memorandum Number 9, dated 3 July 2002, is rescinded.

FOR THE PRESIDENT:

OFFICIAL

CHARLES B. REGER
Colonel, USAF, Retired
Executive Assistant to the President

Attachments:
Annex A, "Immediate Guidelines in the Event You are Sexually Assaulted"
Annex B, "DO's and DON'T's in Supporting a Sexual Assault Victim"
Annex C, "Myths and Realities of Sexual Assault"

CITADEL 0002526

Annex D, "Filing a Sexual Assault Complaint"
Annex E, "Follow-up Responsibilities in the Aftermath of Sexual Assault"
Appendix 1: "Protocol for Responding to Sexual Assault, Responsibilities of the Initial Contact Person – All Cadets, Students, Staff and Faculty"
Appendix 2: "Protocol for Responding to Sexual Assault, Responsibilities of the Sexual Assault Response Coordinator (SARC or Asst. SARC)"
Appendix 3: "Sexual Assault Incident Report Form"
Annex F, "FERPA and the Crime Awareness and Campus Security Act of 1990"

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, South Carolina 29409

MEMORANDUM
NUMBER 51*

30 June 2000

SEXUAL HARASSMENT

1. PURPOSE:

All employees and students are entitled to a positive learning and working environment free of any type of sexual harassment. The Citadel's administration has zero tolerance for any form of sexual harassment or sexual violence. In severe instances, cadets may be expelled or employees may have their employment terminated.

Sexual harassment between or among any members of The Citadel community is prohibited, including faculty-student and student-to-student harassment. Sexual harassment also violates federal and state laws.

The purpose of this memorandum is to define and prevent sexual harassment, to establish policies on sexual harassment, to establish procedures for reporting and investigating sexual harassment complaints by students, faculty or staff in a timely manner, and to describe sanctions.

Recommended changes to this memorandum should be submitted to the Title IX Coordinator, Office of the President, who is the proponent for this regulation.

2. REFERENCES:

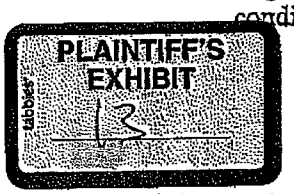
A. Equal Employment Opportunity Commission (EEOC) Guidelines on Sexual Harassment in the Workplace (Title VII of the Civil Rights Act of 1964).

B. Office for Civil Rights, U.S. Department of Education; Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Title IX of the Educational Amendments of 1972), dated 13 March 1997.

C. South Carolina Human Affairs Law, S.C. Code Ann. 1-13 10 to-100 (1990).

3. BEHAVIORAL AND LEGAL DEFINITIONS:

A. Behavioral. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment under the following conditions:



1) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment, or advancement, or other student opportunities.

* Supersedes Memorandum Number 20, SEXUAL HARASSMENT, dated 15 September 1997.

CITADEL 0001694

2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an individual's employment, or advancement, academic standing, or other student standing, or other student opportunities.

3) Such conduct has the purpose or effect of unreasonably interfering with a person's work, professional or academic performance or creates an intimidating, hostile, or offensive work, learning, or social environment.

B. Legal. Sexual harassment is a form of sexual discrimination and is prohibited by the following:

(1) Title VII of the Civil Rights Act of 1964. Title VII covers all employers, including educational institutions, and prohibits discrimination on the basis of race, color, national origin, religion, and sex. Only employees (including student employees) are covered. Title VII is enforced by the Equal Employment Opportunity Commission (EEOC).

(2) Title IX of the Educational Amendments of 1972. Title IX prohibits sex discrimination in schools receiving any federal assistance, including financial aid. Discrimination, including sexual harassment, is prohibited in the entire school, not just the program receiving federal funds. Students and employees are covered. In February 1992, the U.S. Supreme Court unanimously ruled that complainants under Title IX may sue for damages. Title IX is enforced by the Office for Civil Rights in the Department of Education.

(3) Individuals may also be sued under the provisions of state law for criminal behavior which may include crimes of rape, sexual assault, or sexual abuse.

C. Offending Behaviors. Sexual harassment is unwanted sexual attention. It is usually repeated behavior but it could be one serious incident. It is frequently a display of formal or informal power intended to demean, embarrass, intimidate or coerce a person. It includes, but is not limited to, unwanted requests or demands for sexual favors, propositions, questions about a person's sexual practices, lewd comments, leering, sexual insults or innuendoes and sexually explicit jokes. It also includes unwanted touching, fondling, patting, pinching or kissing, as well as blocking a person's way. Sexual graffiti and sexually explicit pictures, cartoons or objects can also constitute sexual harassment. Although some forms of sexual harassment may be unintentional, words and behaviors such as those described above may be harassing when viewed or heard by others. Words which are demeaning to one gender, such as calling men and women derogatory names or by names for body parts are forms of sexual harassment. Both men and women can be sexually harassed although women are most often the targets of sexual harassment. Sexual harassment can also occur between members of the same sex.

Additional examples of sexual harassment are given in the following list but sexual harassment is not limited to these examples:

1) Quid Pro Quo. One form of sexual harassment is direct or indirect pressure for sexual

CITADEL 0001695

activity with implicit or explicit threats or bribes such as a harasser asking a subordinate, co-worker, or peer to engage in sexual activity in order to receive improved work, learning, or social conditions (e.g., better grades, promotions, evaluations, etc.).

a) This form of harassment usually occurs when people use the power they have over others. Usually, the harasser asks a subordinate or co-worker to have sex in order to receive improved work conditions (e.g., better benefits, conditions, promotions, or performance ratings).

b) A school employee explicitly or implicitly ties a student's participation in an educational program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or verbal, nonverbal, or physical contact of a sexual nature.

c) Quid pro quo harassment is also unlawful when the student or employee resists and suffers the threatened harm or submits in order to avoid the threatened harm.

d) Quid pro quo cases are usually the most fagrant and clear-cut (although not the most frequent) kind of sexual harassment. Typically the person involved is a supervisor, faculty member, or someone with formal power who can provide or withhold a benefit, service or evaluation, and thus has the power to harm the person involved.

e) The major elements of quid pro quo harassment are as follows:

- the sexual advances or demands are unwanted, and submission is explicitly or implicitly a term or condition of employment or school status or is used as the basis for decisions about the individual's employment or school status.

2) Hostile Environment Sexual Harassment:

a) Sexually harassing conduct (which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature by an employee, by another student (peer), or by a third party) is behavior which is sufficiently severe, persistent, or pervasive to create a hostile or abusive educational or work environment that limits a person's ability to work or participate in or benefit from an educational program or activity.

b) Harassment occurs when one or more people create an uncomfortable, intimidating, and demeaning atmosphere for others either in the work place or educational setting by engaging in unwelcome activities such as sexual remarks, gestures, sexist pictures or pornography.

c) The harasser who creates a hostile environment does not have to be a person with formal power. In fact, most peer-to-peer harassment is of a hostile environment type.

d) The behavior does not have to be sexual in nature; it could be simply demeaning

or intimidating; it could be general comments about the inferiority of females or males; or it could be physical threats or verbal abuse.

3) Examples of sexual harassment include, but are not limited to, the following:

a) Engaging in sexual comments, sexual innuendoes, degrading language, profanity, or vulgar comments.

b) Asking or commenting about a person's sexuality or spreading rumors about a person's sexual activities.

c) Engaging in humor or jokes about sex or about women or men in general.

d) Making sexually suggestive sounds or gestures, including winking, throwing kisses, making cat calls, licking lips, whistling, etc.

e) Pestering a person for dates.

f) Ogling, leering, or looking a person up and down (elevator eyes).

g) Unnecessary touching, fondling, patting, or pinching, or deliberate brushing against a person.

h) Shouting obscenities at a person.

i) Publicly discussing a man or woman's sexual attributes.

j) Mooning.

k) Pulling down one's own shorts or pants or those of another.

l) Creating a sexually demeaning atmosphere, such as displaying posters or pictures that are sexist or otherwise demeaning to women or men, or having social events that focus on sexuality.

m) Showing petty hostility to a particular sex by making sexual remarks.

n) Engaging in sexual banter or jokes.

o) Leaving obscene messages on campus computers.

p) Promising rewards or benefits to someone for cooperating with sexual advances.

q) Displaying sexual graffiti and sexually explicit pictures, cartoons, or objects.

r) Sexually touching or rubbing oneself in a suggestive way when around another person.

s) Intentionally cornering or blocking another's passage or other "in your face" type of behavior.

CITADEL 0001697

t) Offering repeated, unwelcome sexual attention.

u) Making demands, threats and bribes -- implied or direct -- for sexual activity.

v) Committing sexual assault.

4. CONFIDENTIALITY:

The confidentiality of the reporting party as well as those affected by the harassment (third party) will be observed to the greatest extent possible, with only those with a need to know being informed, provided it does not interfere with The Citadel's ability to investigate or take corrective actions.

5. INTENT:

The fact that someone did not intend sexual harassment of an individual is no defense to a complaint of sexual harassment. Regardless of intent, it is the effect and characteristics of the behavior that determine whether the behavior constitutes sexual harassment.

6. PROHIBITION AGAINST RETALIATION OR REPRISALS AGAINST ANYONE REPORTING SEXUAL HARASSMENT BEHAVIORS:

A. Retaliation against anyone reporting or thought to have reported sexual harassment behaviors or against anyone who is a witness or is otherwise involved in a sexual harassment complaint or proceeding is prohibited. Such retaliation shall be considered a serious violation of the policy and shall be independent of whether a charge or informal complaint is substantiated. Encouraging others to retaliate also violates this policy.

B. Examples of retaliation are as follows:

1) Threats or bribes.

2) Unfair grading.

3) Unfair evaluations.

4) Unfair assignments.

5) Withholding information or making it difficult to obtain in a timely manner.

6) Failure to inform the person about important events such as meetings or changes in policies.

7) Ridicule (public or private).

8) Oral or written threats or bribes.

9) Refusal to meet with a person even though that person has a right to a meeting.

10) Name calling.

11) Further harassment or intimidation of any nature.

7. SCOPE:

A. This policy covers all persons – including administrators, faculty, staff, cadets, students of the College of Graduate and Professional Studies and other employees of The Citadel. The harassment of students by faculty or staff as well as by other students (peer harassment) is also covered, as is the harassment of faculty, staff, or other employees by students. Prospective and former cadets or students as well as visitors to The Citadel campus are also covered.

B. The harassment of cadets, students, and employees by vendors, including contractors, is prohibited.

C. Males as well as females are covered by this policy, and may also be victims of same-sex harassment.

8. OTHER FORMS OF HARASSMENT:

Discrimination and harassment based on race, color, religion, or national origin is strictly prohibited.

9. OFF-CAMPUS VIOLATIONS:

The Citadel will treat in the same manner as on campus violations any off-campus violations of this policy by any cadet, student, or member of the faculty or staff in those cases involving Citadel off-campus athletic events, internships, or any Citadel-sponsored event or program. The Citadel will also not tolerate the harassment of its cadets, nor other students, nor members of the faculty or staff by non-Citadel personnel in programs sponsored or supported by The Citadel.

10. IMPACT OF SEXUAL HARASSMENT:

Sexual harassment is demeaning and degrading. It affects an individual's self-esteem and can have a negative impact on performance at work or in class. It can make an individual feel angry, powerless, and fearful, as well as cause physical reactions such as tension/stress.

11. FALSE CHARGES:

Any one who knowingly makes false charges of sexual harassment will be subject to discipline. Such charges will be considered a serious offense. However, a complaint that cannot be substantiated simply because of a lack of evidence shall not be considered a false complaint. The decision on whether or not false charges were submitted will be made at the Vice President level after a careful review of the available facts.

12. CONSENSUAL RELATIONSHIPS:

The Citadel strictly prohibits amorous relationships between a cadet and any individual with professional responsibility for that student -- e.g., faculty, staff, or a member of the cadet's chain of command. The fact that a relationship may have been consensual at one time shall not be a defense to a subsequent charge of sexual harassment.

13. COMPLAINT PROCEDURES:

A. Options for Handling Complaints

1) The individual informally takes steps which may stop the behavior. (See Annex A.)

2) The Citadel initiates actions informally. (See Annex A.)

3) Formal charges under The Citadel's Sexual Harassment Procedures can be Filed against the offender by either the individual complaining or by The Citadel. (See Annex B.)

4) The person may file formal charges under federal and/or state laws.

5) The individual may seek advice or assistance from the Ombudsperson (See paragraph 21.)

B. Informal Complaints (See Annex A.)

1) Studies show that more than 90 percent of individuals who experience sexual harassment do not want to file formal charges.

2) Consequently, most complaints are handled informally, including those handled by the Ombudsperson.

3) Informal procedures are optional, and individuals can choose to bypass them, discontinue them, or initiate a formal complaint while using them.

4) The purpose of dealing with a complaint informally is to stop the offending behavior and to resolve the matter as expeditiously as possible.

5) Disciplinary action requires a formal charge and by the rules of due process requires a formal hearing. The Citadel cannot take disciplinary action using informal procedures.

6) Informal procedures are aimed at stopping the behavior rather than determining culpability.

7) Informal procedures are voluntary on the part of the victim, with no requirement that individuals use informal procedures before filing a formal charge.

8) There is no requirement that informal complaints be put into writing.

9) In cases of severe harassment, The Citadel may bypass informal resolution by filing its own formal charges against offenders.

10) In some cases, the identity of the complainant can be kept confidential and not be revealed to the alleged harasser without the person's permission.

C. Formal Complaint Procedures. (See Annex B.)

1) Formal complaint resolution procedures include conducting a thorough investigation that results in a formal written report of the investigator's findings of fact, conclusions of law, and recommended actions to resolve the complaint.

2) The parties to the complaint are interviewed as are witnesses and third parties.

3) Formal complaint procedures may be pursued by either the person complaining or by The Citadel.

4) A third party, who is not the direct victim of harassment but who feels that the sexual conduct of another in the educational or work environment has the purpose or effect of substantially interfering with the third party's welfare, academic, or work performance, may file a formal complaint.

5) A person who believes that he or she is a victim of sexual harassment should file the complaint within 180 days of the incident.

6) The formal complaint procedure should be completed within 30 days of the date of filing and within 60 days of the date of filing when the individual submits an appeal.

7) Formal complaints should be filed with The Citadel's Affirmative Action Officer who also serves as The Citadel's Title IX Coordinator. The Affirmative Action Officer is responsible for ensuring that the policy is followed, that time frames are observed, and that questions from all parties are answered.

8) Investigations of allegations involving a member of the faculty or staff will be conducted in a confidential manner by an Affirmative Action/Equal Employment Opportunity Advisory Committee, which is a three-person investigative committee appointed by the President or the Vice President who directed the investigation. The investigation will include questioning of the individual(s) accused of wrongdoing to afford them the opportunity to respond to the allegations of the complaint as well as any witnesses. The Advisory Committee will collect, record, and safeguard all information and/or evidence relative to the incident and report findings through the Vice President to the President for final disposition. If the recommendation is to terminate a faculty member for cause, the process will follow paragraph 4c of Section II of College Regulations and paragraphs 4c and 4d of General Order (GO) 14, dated 7 June 2000, Policies and Procedures On Probationary Reappointment, Academic Tenure, Academic

Promotion, and Termination of Tenured Faculty. Proceedings involving (non-faculty) staff members will follow procedures outlined in The Citadel's Human Resources Policies and Procedures.

9) Investigations of allegations involving a cadet will be conducted through the use of a Commandant's Board or Hearing. The procedures outlined in the Blue Book will be followed for due process procedures. The results of the hearing or board will be forwarded to the Commandant of Cadets. Recommendations for suspension, dismissal, or expulsion will be forwarded to the President for final action.

10) A copy of all completed formal investigations of charges of sexual harassment will be forwarded to The Citadel's Affirmative Action Officer/Title IX Coordinator for filing.

11) All rights and procedures for appeals will be in accordance with paragraph 6 of College Regulations for cadets, paragraph 4c of Section II of the College Regulations and GO 14 for faculty members, and the State-approved, "The Citadel Employee Grievances Policy" for (non-faculty) staff members.

12) Hearings and boards will be either open or closed based on the desires of both the victim and the accused. Both must agree if the hearing is to be open based on their individual desires for confidentiality. If either party objects to the hearing being open, it will be closed.

13) The hearings or boards are administrative in nature; therefore, there is no right to legal representation. Appeal procedures are as stated in College Regulations.

14) The standard for findings of guilt or innocence is that of "a preponderance of evidence"- that is, there is sufficient evidence which is greater in weight or more convincing than the evidence, which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The Hearing Officer or Board will perceive the evidence of one side as outweighing the other based on which side has the most persuasive or impressive evidence. The strength or "weight" of evidence is not decided by the sheer number of witnesses but rather by the witnesses opportunity for knowledge, information possessed, and the manner of testifying.

14. SANCTIONS:

The following list of sanctions may be used when a person is found guilty of harassing behavior. The purpose of the sanctions will be reasonably calculated to end the sexual harassment, punish the harasser, and prevent recurrence of incidents. Although advice and counseling may be appropriate occasionally, they are not applied in lieu of sanctions. If alcohol were involved, attendance may be required at a program on alcohol abuse prevention. The sanctions listed below can be applied to cadets, faculty, students or staff. Those sanctions that specifically apply to a selected group are so designated, i.e., faculty/staff, cadets/students, cadets.

CITADEL 0001702

A. Applies to cadets, other students, faculty, or staff.

1) Written warning letter of reprimand.

2) Mandatory attendance at a sexual harassment training or counseling program. (This is not likely to be imposed as a single sanction.)

3) Change of job or class assignment (removes the person from being in a position to retaliate or further affect the victim).

4) A mandatory apology to the victim(s).

5) When ever there is an incident of sexual assault or sexual abuse, the incident will be reported to the police. Reporting an incident to the police will not affect any disciplinary proceeding conducted by The Citadel.

6) Required community service, such as preparing posters or disseminating information about harassment and/or sexual assault.

B. Applies only to faculty/staff.

Probation, suspension, dismissal or termination.

C. Applies only to cadets.

1) Prohibition from holding rank or participating in specific student activities, including sports, for a specified time period.

2) Transfer of the cadet or student to another academic class or company assignment.

3) Tours or confinements.

4) Suspension, dismissal, or expulsion.

15. PERSONS TO CONTACT IF AN INDIVIDUAL IS EXPERIENCING SEXUAL HARASSMENT:

A. There are several places to whom a person experiencing sexual harassment or one who is concerned about it can go for help. The person can choose the person with whom he or she feels most comfortable. The information will be kept confidential to the greatest extent possible. The persons listed in the following paragraphs can explain the policy and discuss options for handling the situation.

B. For faculty or staff members who feel that they have been sexually harassed or who are concerned about it, the following steps should be taken:

1) Discuss the matter with an immediate supervisor, an appropriate person

upward in the chain of command and/or the Affirmative Action Officer, the Director of Human Resources or the Ombudsperson (see paragraph 21). Assistance is also available through the Chaplain or the Counseling Center's counselors who may suggest options and help the person decide what steps need to be taken next. The President's Hotline 953-OUCH is also available to report problems. This line is available via voice mail 24 hours a day. (See TABS A and B for how complaints are handled both informally and formally.)

2) To ensure confidentiality, the faculty or staff members should not discuss the complaint with persons other than the persons receiving the complaint.

3) Detailed procedures for informal complaints are located at Annex A.

4) Detailed procedures for formal complaints are located at Annex B.

C. Individuals who have knowledge of sexual harassment or who feel they have been sexually harassed should discuss the behavior with any of the people listed below.

1) Discuss the matter with an immediate supervisor in the chain of command, an appropriate person upward in the chain of command, and/or a tactical officer, an Assistant Commandant, or the Commandant of Cadets. A cadet may also discuss the matter with the Ombudsperson (see paragraph 21), the Title IX Coordinator, a cadet Human Affairs Officer or a cadet Religious Officer, the Chaplain or any campus minister, a counselor in the Counseling Center, a member of The Citadel Faculty or Staff, or a Public Safety Officer. **The important point is to report the alleged harassment to someone in authority.**

2) It is the responsibility of the person receiving the complaint from a cadet to pass the information quickly (within 24 hours)to the officer listed below who will determine if an immediate investigation is required to determine the facts and circumstances surrounding the incident.

If the person accused is:	The complaint should be filed with:
• A cadet	The Assistant Commandant of Cadets
• CGPS or Summer School student	The Dean of Graduate and Professional Studies (CGPS)
• A member of the Faculty	The Dean of Undergraduate Studies
• A member of The Citadel Staff	The Affirmative Action Officer

3) The victim should complete the appropriate harassment complaint form (formal complaints only, see Appendix 2 to Annex B of this Memorandum).

4) The accused will be informed of the charges and be given the opportunity to refute the charges (formal complaints only).

CITADEL 0001704

5) The complainant will receive a timely written response to the allegation or be informed of the results face to face from the person listed in paragraph 15c(2) or the person who conducted the investigation. The notice will inform the complainant that the allegation was either substantiated or not and to whom it was sent for action (formal complaints only).

6) Sexual harassment complaints against a member of The Citadel Faculty or Staff will be promptly investigated by The Citadel Affirmative Action/Equal Opportunity Advisory Committee (formal complaints only).

7) If the complaint, based on the investigation, is deemed valid, then it will be sent to the appropriate Vice President for review and appropriate action:

If the accused is:	Review and action authority is:
A cadet	The Commandant of Cadets
CGPS or Summer School Student	Dean of Graduate and Professional Studies (CGPS)
Faculty	VP for Academic Affairs
Staff	VP for Finance and Business Affairs

8) Throughout the process of investigation on harassment complaints, strict confidentiality will be maintained by all involved.

9) Final disposition on the matter will be taken by the President. The appropriate disciplinary action will be taken based on the facts, on a case-by-case basis.

10) Proven allegations of harassment may be considered as the commission of an act unbecoming a cadet which would tend to bring discredit to the institution or to the uniform.

16. RETALIATION:

Under no circumstances will retaliation, such as making threats or continued harassment, be tolerated when a person has reported an alleged sexual harassment violation.

17. REPORTING REQUIREMENTS:

A. The Citadel requires that all cadets, students, faculty, and administrators who have knowledge of sexual harassment to report it confidentially to the officials noted in paragraph 15 of this memorandum as soon as possible. The report will not include the name of the victim without the victim's permission unless there is a known or perceived threat of physical harm.

B. Such reporting enables Citadel administrators to identify problem areas that can, in some instances, be eliminated by initiating educational efforts for a particular unit without identifying the information that makes the educational efforts necessary. Such reporting also helps in identifying persons who may have a history of harassment, which requires stronger means of intervention.

C. At a minimum, the information should be reported to either the Affirmative Action Officer, who is The Citadel's Title VII and Title IX Coordinator, or one of the assistant coordinators listed in paragraph 18 of this memorandum.

18. TITLE VII AND IX COORDINATORS:

A. The Citadel's Title VII and Title IX Coordinator is Ms. Roberta Tracy. Her office phone number is 953-5252. Her office is located in Bond Hall.

B. The Assistant Title VII and Title IX Coordinators are: (1) The Assistant Commandant of Cadets for Coeducation and Administration -- office phone number is 953-6707; office located in Jenkins Hall; (2) The Multicultural Officer -- office phone number is 953-5096; office is located in the Counseling Center; (3) The Special Assistant to the VPAA for Cadet Matters -- office phone number is 953-4834; office is located in the Executive Wing of Bond Hall; and (4) the Dean of Undergraduate Studies -- office phone number is 953-5016; office is located in the Executive Wing of Bond Hall.

19. MAINTAINING RECORDS:

A. All complaints of sexual harassment will be recorded once they are reported to The Citadel. The records will remain confidential and will be kept in a secured, locked file.

B. Records will be maintained whether the complaint was made formally or informally. Records will be maintained on informal complaints only if reported to the Title IX Officer. For example, the Ombudsperson will not file reports because all the information that he/she has is confidential.

C. The records will be maintained in the following locations:

1) Records on faculty or staff will be maintained by the Director of Affirmative Action, Equal Opportunity and Diversity.

2) Records on cadets will be maintained by the Assistant Commandant of Cadets for Coeducation and Administration.

D. The information may be used in subsequent complaints against the same person to assess whether a pattern of harassment exists.

E. Before the complaint is filed, the custodian will ensure that the complaint is properly completed and that a determination was properly made as to whether the complaint was substantiated or not substantiated and that it is marked properly.

F. Records will be maintained for the time period required by institutional policy for the type of person identified (cadet, faculty or staff).

20. TRAINING REQUIREMENTS:

A. The Commandant of Cadets will publish an annual training program concerning sexual harassment no later than the start of each academic year that outlines training requirements for all classes within the Corps of Cadets. This training is mandatory for all cadets. Make-up classes are required for any cadet who misses the regularly scheduled training.

B. New faculty and staff will attend mandatory initial training on Title VII and Title IX during their new employee or faculty orientation session. Mandatory sustainment training will be held annually according to requirements set forth by the Director of Human Resources for members of the staff and by the VPAA for the faculty.

C. READMITTED cadets will be required to attend Sexual Harassment Training at the very start of the semester that they return to The Citadel.

21. THE OMBUDSPERSON:

A. The President of The Citadel will appoint an Ombudsperson at the beginning of each academic year.

B. All communications with the Ombudsperson shall be considered confidential. The Ombudsperson will not reveal any name(s) of people without their express permission in writing unless there is a perceived threat of imminent physical harm or of other illegal activity.

C. The Ombudsperson will have direct access to the President of The Citadel and to all vice presidents and directors.

D. All interactions with the Ombudsperson shall be voluntary.

E. The general duties and responsibilities of the Ombudsperson are as follows:

1) Act as a source of information and assistance to all students, faculty, and staff with regard to alleged inequities. (No individual shall be retaliated against for using the services of an Ombudsperson.)

2) Bring the complaint to the attention of the appropriate Citadel official.

3) Seek to resolve the difficulty between the individual and The Citadel.

4) Make recommendations to the President and appropriate authorities when necessary on policies, procedures actions.

5) Address matters using existing policies and procedures in an informal

manner. If the individual desires to use formal procedures, the Ombudsperson will direct the individual to the appropriate office or person.

6) Keep no case records on behalf of the organization. If notes are necessary to manage the work, the Ombudsperson will follow a consistent and standard practice for the destruction of any written notes as soon as possible.

7) Remain neutral and strive for objectivity and impartiality.

F. The Ombudsperson is LTC John Carter, Health and Physical Education Department. Office phone is 953-7453. Home phone is 577-6830.

22. MANDATORY POSTING REQUIREMENTS FOR THIS MEMORANDUM:

A. This regulation will be maintained in its entirety and permanently posted in the White Book binder located in each cadet's room. The presence of the booklet is an inspection item during Saturday Morning Inspections.

B. New faculty and staff will receive a copy of this memorandum during New Employee or Faculty Orientation.

C. A copy of this memorandum will be posted in the permanent section of every cadet company's bulletin board.

D. A copy of this memorandum will be located in every department's policy file in its administrative office.

E. Copies of this memorandum will be required reading for all staff and faculty on an annual basis. A roster indicating that the memorandum was read by all will be maintained in the department's administrative office.

23. Recession:

FOR THE PRESIDENT

OFFICIAL:

CHARLES B. REGER
COL, USAF, RET
Executive Assistant to The President

Attachments:
Annex A: Informal Complaint Procedures
Annex B: Formal Complaint Procedures

Distribution:
1 each cadet
1 each staff member
1 each faculty member

Memo # _____ Dated, _____ is rescinded.

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, South Carolina 29409

MEMORANDUM
NUMBER 39

26 April 2000

SERIOUS INCIDENTS

1. GENERAL:

Serious incidents are unexpected occurrences directly or indirectly involving The Citadel, which require a response or action from the college administration; or, which have the potential to generate positive or negative publicity regarding the college.

Serious incidents include, but are not limited to, such events as a death, serious injury, fire, accident, criminal activity, act of heroism, severe weather or other natural disasters affecting the campus.

All members of the Corps of Cadets, day and evening students, faculty, and staff of The Citadel are responsible for reporting such occurrences immediately.

2. PROCEDURES:

A. Death of Cadet(s):

1) Individual responsibilities:

Notify the Department of Public Safety.

2) Public Safety responsibilities:

a) Determine the appropriateness of notifying City of Charleston Police Department (on-campus death due to vehicle accident, homicide or suicide). Director of Public Safety will normally make this determination. Notify City Police as required. If death occurs on campus, the Coroner will also be notified.

b) Notify:

Commandant or Assistant Commandant
Director of Public Safety (Deputy Director in his absence)
President (through his office during duty hours) and the Executive Assistant
The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)
The Citadel Physician

CITADEL 0002394

Counselor to the Corps of Cadets
Vice President for Facilities and Engineering
Vice President for Communications*
Director of Physical Plant*
Vice President for Finance and Business Affairs*
Safety and Risk Management Officer*

*The Director of Public Safety will normally direct which of these should be notified, depending upon circumstances.

c) Maintain police blotter, recording actions taken and personnel notified.

3) Notification of the next of kin:

The President will make the determination of who notifies the next of kin.

B. Death of Day or Evening Student(s) On Campus:

1) Individual responsibilities:

Notify the Department of Public Safety.

2) Public Safety responsibilities:

a) Determine the appropriateness of notifying the City of Charleston Police Department (on-campus death due to vehicle accident, homicide or suicide). Director of Public Safety will normally make this determination. Notify City Police as required. If death occurs on campus, the Coroner will also be notified.

b) Notify:

Director of Public Safety (Deputy Director in his absence)
President (through his office during duty hours) and the Executive Assistant
Vice President for Academic Affairs
Dean of Undergraduate Studies or the Dean of the College of Graduate & Professional Studies as appropriate
The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)
The Citadel Physician
Vice President for Facilities and Engineering
Vice President for Communications
Director of Physical Plant*
Vice President for Finance and Business Affairs*
Director of Human Resources* (if student was also a Citadel employee)

CITADEL 0002395

Safety and Risk Management Officer*

*The Director of Public Safety will normally direct which of these should be notified, depending upon circumstances.

c) Maintain police blotter, recording actions and personnel notified.

3) Notification of the next of kin:

The Vice President for Academic Affairs will confer with the individuals listed below to determine the most appropriate notification of the next of kin. He will inform the President and obtain his concurrence before proceeding with the actual notification.

The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)
Executive Assistant to the President
Appropriate Dean (Undergraduate or College of Graduate and Professional Studies)

C. Death of Faculty or Staff Member or of a Faculty or Staff Member's Dependent on Campus:

1) Individual responsibilities:

Notify the Department of Public Safety

2) Public Safety responsibilities:

a) Determine the appropriateness of notifying City of Charleston Police Department (on-campus death due to vehicle accident, homicide or suicide). Director of Public Safety will normally make this determination. Notify City Police as required. If death occurs on campus, the Coroner will also be notified.

b) Notify:

Director of Public Safety (Deputy Director in his absence)
President (through his office during duty hours) and the Executive Assistant
Appropriate Department Head
Vice President for Facilities and Engineering
The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)
The Citadel Physician
Director of Human Resources
Vice President for Communications*

CITADEL 0002396

Director of Physical Plant*
Vice President for Finance and Business Affairs*
Safety and Risk Management Officer*

*The Director of Public Safety will normally direct which of these should be notified, depending upon circumstances.

c) Maintain police blotter, recording actions taken and personnel notified.

2) Notification of the next of kin:

The Vice President for Academic Affairs will confer with the individuals listed below to determine the most appropriate notification of the next of kin. He will inform the President and obtain his concurrence before proceeding with the actual notification.

The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)
Executive Assistant to the President
Director of Human Resources

D. Fire:

1) Individual responsibilities:

Alert individuals in the area.
Notify fire department.
Notify Public Safety.
Assist at scene.

2) Public Safety responsibilities:

a) Dispatch first unit to the scene to:

Evacuate personnel.
Establish crowd control.
Set up vehicle traffic control.
Take actions to control fire.
Assume command at the scene until fire department and/or The Citadel Fire Marshal arrives.
Brief responding fire fighting personnel.

b) Dispatch second unit (if available) to meet fire department vehicles at the gate and lead them to the scene.

CITADEL 0002397

c) Notify:

The Citadel Fire Marshal (Physical Plant office during duty hours)
Director of Public Safety and Deputy Director
President (through his office during duty hours) and the Executive Assistant
Vice President for Facilities and Engineering
Safety and Risk Management Officer
Vice President(s) responsible for personnel or facilities involved
Building coordinators(s) of facilities involved

d) Maintain police blotter, recording actions taken and personnel notified.

B. Serious Injury (on-campus):

1) Individual responsibilities:

a) Render immediate fire aid.

b) Summon emergency medical service (EMS) – Dial 911 (9-911) from a barracks or on-campus office telephone.

c) Notify Public Safety.

d) Remain with injured person until assistance arrives.

2) Public Safety responsibilities:

a) Summon EMS if not already accomplished.

b) Dispatch unit to scene to:

Give "First Responder" care to injured person(s).
Establish crowd control.
Set up vehicle traffic controls.
Gather information, identify witnesses, and obtain other information for incident report.
Assist medical personnel as requested.

c) Contact Sports Medicine (0800-1800 Monday-Friday) if it involves an athlete.

d) Dispatch second unit (if available) to gate to escort responding emergency vehicles to the scene.

CITADEL 0002398

e) Notify:

The Citadel Physician
Director and Deputy Director of Public Safety
Commandant or Assistant Commandant (only if it is a cadet who is injured)
President (through his office during duty hours) and the Executive Assistant
Vice President for Facilities and Engineering
Safety and Risk Management Officer
Director of Physical Plant*
The Citadel Director of Religious Activities (if unavailable, contact The Citadel Episcopal or Catholic Chaplain)*
Appropriate Department Head*
Vice President for Communications*
Vice President for Finance and Business Affairs*
Director of Human Resources (only if injured person is employee)*

*The Director of Public Safety will normally direct which of these is to be notified depending upon circumstances.

f) Maintain police blotter, recording actions taken and personnel notified.

F. Serious Injury (Off Campus):

The serious injury of a member of The Citadel student body, faculty or staff while off-campus would normally be handled by city or county medical and law enforcement personnel. Should a member of The Citadel community learn of such an occurrence, the following will apply:

1) Individual responsibilities:

Notify the Department of Public Safety.

2) Public Safety responsibilities:

a) Notify:

The Citadel Physician
Director of Public Safety
Commandant or Assistant Commandant (only if it is a cadet who is injured)
President (through his office during duty hours) and the Executive Assistant
Vice President for Facilities and Engineering
Safety and Risk Management Officer

CITADEL 0002399

The Citadel Director of Religious Activities (if unavailable, The Citadel Episcopal or Catholic Chaplain will be contacted)*
Appropriate Department Head*
Vice President for Communications*
Vice President for Finance and Business Affairs*
Director of the Physical Plant (only if a Citadel vehicle or Physical Plant personnel are involved)
Director of Human Resources*

*The Director of Public Safety will normally direct which of these is to be notified depending upon circumstances.

b) Maintain police blotter, recording actions taken and personnel notified.

G. On-Campus Accidents:

All on-campus accidents, vehicle and otherwise, must be reported as soon as possible. When such an accident is observed by a member of The Citadel community, the following actions apply:

1) Individual responsibilities:

Notify EMS (Call 911) if personnel are injured in the accident.
Notify the Department of Public Safety (953-5114).
Notify Physical Plant.

2) Public Safety responsibilities:

Notify EMS if injuries are involved and EMS has not already been notified.
Notify Fire Department if fire and/or hazardous materials are involved.
Dispatch a unit to the scene to:

Give "First Responder" care to injured person(s).
Determine if a fire or hazardous material contamination is involved or imminent.
Establish crowd control. (Evacuate personnel if appropriate.)
Establish vehicle traffic controls.
Gather information, identify witnesses, and obtain other information for accident report.
Transport individuals with minor injuries to The Citadel Infirmary, if requested.
Assist fire and medical personnel as appropriate.

CITADEL 0002400

a) Notify:

The Citadel Physician if injuries, however minor, are reported
The Director of Public Safety and Deputy Director
Commandant or Assistant Commandant (only if a cadet is involved)
President (through his office during duty hours) and the Executive Assistant
Director of Physical Plant (Physical Plant office during duty hours)
Safety and Risk Management Officer
Vice President for Academic Affairs
Vice President for Facilities and Engineering
Appropriate Department Head*
Vice President for Communications*
Vice President for Finance and Business Affairs*
Director of Human Resources*

*The Director of Public Safety will normally direct which of these is to be notified, depending upon circumstances.

b) Maintain police blotter, recording actions taken and personnel notified.

c) Prepare appropriate accident/incident report.

3) Physical Plant responsibilities:

a) Respond to scene to:

Implement hazardous materials (HAZMAT) warnings and procedures, if appropriate.
Evaluate contributing factors to the accident from a real property and/or vehicle viewpoint.
Determine appropriate physical repair requirements.
Initiate accident prevention measures as appropriate.

H. Off-Campus Accidents Involving Citadel Personnel or Property:

All off-campus accidents, vehicle and otherwise, must be reported as soon as possible when observed by a member of The Citadel community. In such instances, the following actions apply:

1) Individual responsibilities:

a) Notify the Department of Public Safety.

CITADEL 0002401

b) Notify the Physical Plant.

2) Public Safety responsibilities:

a) Gather information, identify witnesses, and obtain other information for the accident report.

b) Ensure that The Citadel Physical Plant has been notified in all cases involving Citadel real property or vehicles.

c) Determine whether or not the news media has been notified and if publicity is expected.

d) Notify:

The Citadel Physician if injuries, however minor, are reported
Director of Public Safety and Deputy Director
Commandant or Assistant Commandant (only if a cadet is involved)
President (through his office during duty hours) and the Executive Assistant
Vice President for Facilities and Engineering
Safety and Risk Management Officer
Appropriate Department Head*
Vice President for Communications*
Director of Human Resources*
Vice President for Finance and Business Affairs*

*The Director of Public Safety will normally direct which of these is to be notified depending upon circumstances.

e) Maintain police blotter, recording actions taken and personnel notified.

I. Criminal Activity:

The occurrence on The Citadel campus or the involvement of a member of The Citadel Corps of Cadets, day/evening student, faculty, staff or campus dependent, as the suspect or victim in an incident will be immediately reported by the first member of The Citadel community learning of the occurrence. Incidents include, but are not limited to, murder, rape, robbery, aggravated assault, simple assault, burglary, motor vehicle theft, liquor law violations, drug abuse, weapon possession violations, driving under the influence, theft (grand and/or petty larceny), trespass, hazing, telephone violations, computer violations, ATM card violations, and mail violations. The following responsibilities apply:

1) Individual responsibilities:

CITADEL 0002402

Notify the Department of Public Safety.

2) Public Safety responsibilities:

a) Initiate an incident report and investigation as necessary.

b) Contact the appropriate law enforcement agency (agencies) as necessary to ascertain the facts in the situation.

c) If a member of the Corps of Cadets has been accused or is involved as a victim:

Notify the Commandant immediately. In his absence, notify the Assistant Commandant or Officer of the Day. Determine whether or not it is appropriate to have an offending cadet released to Public Safety custody; if so, follow standard operating procedures to accomplish same. Determine the current location and disposition of cadet victims. Notify in accordance with injured cadet notification procedures. (See paragraph 2.f.2)a. above.)

d) Notify:

Director of Public Safety and Deputy Director
President (through his office during duty hours) and the Executive Assistant
Vice President for Academic Affairs*
Appropriate Vice President*
Vice President for Communications*

*The Director of Public Safety will normally direct which of these is to be notified, depending upon circumstances.

e) Maintain police blotter, recording actions taken and personnel notified.

J. Act of Heroism:

Upon learning that a member of the student body, faculty, staff, Board of Visitors, or an alumnus of the college has performed an act of heroism, members of The Citadel community will notify the Director of Pubic Affairs. The Vice President for Communications will:

1) Verify the facts involved in the incident.

2) Inform the President and Executive Assistant.

CITADEL 0002403

3) Inform the Commandant or Assistant Commandant (if a cadet is involved).

4) Inform the appropriate department head.

5) Recommend to the President the appropriate recognition and arrange for news media coverage.

K. Severe Weather/Earthquake Damage:

(1) Individual responsibilities:

Notify the Department of Public Safety immediately.
Return to the scene of the damage to safeguard the area until the Public Safety officer arrives.
Assist the Public Safety Officer in warning persons in the area, controlling traffic, and otherwise preventing further damage or injury.

2) Public Safety responsibilities:

a) Dispatch a unit to scene of damage to:

Evaluate the situation, report the extent of damage and determine the appropriate response elements from the Physical Plant, off-campus utility (gas, electrical, water) or the Fire Department required.
Remain at the scene to control traffic and direct the arrival of appropriate Physical Plant and/or other responding personnel.
Take charge of damaged area to ensure that further damage and injury are kept to a minimum.
Interview witnesses, gather information, and prepare a preliminary incident report.

b) Notify:

Director of Physical Plant
Director of Public Safety and Deputy Director
President (through his office during normal duty hours) and the Executive Assistant
Vice President for Academic Affairs*
Vice President for Facilities and Engineering
Safety and Risk Management Officer
Vice President for Communications*
Commandant*
Department Head(s)*
Building monitor(s)*

CITADEL 0002404

Janitorial personnel*

*The Director of Public Safety will normally direct which, if any, of these individuals are to be notified depending upon the circumstances.

o) Maintain police blotter, recording actions taken and personnel notified.

L. Other Incidents:

Any incident which has a recognized potential for news media interest will be reported by the first individual aware of the incident. Examples of such incidents include, but are not limited to, scandal involving an individual(s) closely identified with the college, allegations concerning illegal or immoral activities at the college, allegations of major personnel changes or firings at the college, and rumors of pending changes affecting the Corps of Cadets. The following responsibilities apply:

1) Individual responsibilities:

Notify the Executive Assistant to the President.
Refrain from commenting on the incident or situation to other individuals or to the news media until the facts can be ascertained.

1) Executive Assistant responsibilities:

Alert the President to the situation.
If criminal activity is alleged, contact the Department of Public Safety.
Contact the appropriate department head to ascertain the facts as known to him or her.
If warranted, appoint an appropriate fact-finding investigative panel of officers to determine the facts and report the same to the President.
Alert the Vice President for Communications to the situation.

3) Public Safety responsibilities:

Initiate actions in accordance with Paragraph 2.i. above if criminal activity is alleged.

3. ADMINISTRATION:

Each director or office manager in the college will prepare appropriate office instructions or checklists to ensure that all personnel have the necessary guidance to implement this memorandum. A copy of these instructions/checklists will be forwarded to the Department of Public Safety to be filed with the original memorandum.

CITADEL 0002405

4. RESCISSION:

This memorandum rescinds Memorandum No. 15 dated 22 May 1995.

FOR THE PRESIDENT:

OFFICIAL

CHARLES B. REGER
Colonel, USAF, Retired
Executive Assistant to the President

DISTRIBUTION:
B

CITADEL 0002406

THE CITADEL SUMMER CAMP

OFFICIAL CAMP POLICIES REGARDING SEXUAL MISCONDUCT ISSUES

1. ANY SEXUAL RELATIONSHIP BETWEEN ANY CAMP EMPLOYEE AND A CAMPER IS PROHIBITED. ANY PERSON NOT ADHERING TO THIS RULE WILL BE IMMEDIATELY DISMISSED FROM HIS/HER EMPLOYMENT WITH THE CITADEL AND WILL BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW.

2. ANY PHYSICAL CONTACT BETWEEN AN EMPLOYEE OF THE CITADEL AND A SUMMER CAMPER SHOULD BE CLEARLY IDENTIFIED AS HAVING AN EDUCATIONAL PURPOSE OR AS A RESULT OF ILLNESS OR INJURY.

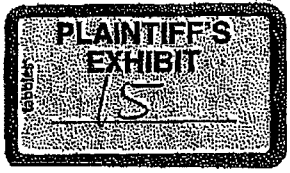
3. CAMP EMPLOYEES WILL KEEP AN OPEN DOOR WHEN VISITING CAMPER ROOMS ALONE. WHEN A CAMPER VISITS A COUNSELOR'S ROOM ALONE, IT IS THE RESPONSIBILITY OF THAT CAMP EMPLOYEE TO ENSURE THAT THE DOOR IS FULLY OPEN AND THAT IT STAYS OPEN UNTIL ANOTHER ALERT PERSON IS PRESENT IN THE ROOM.

4. REGARDLESS OF VALIDITY OF THE VIOLATION, ANY SEXUALLY INAPPROPRIATE CONDUCT REPORTS CONCERNING ANY CAMPER OR EMPLOYEE OF THE CAMP WILL BE TURNED OVER TO THE CITADEL PUBLIC SAFETY DEPARTMENT AND A THOROUGH INVESTIGATION WILL BE CONDUCTED.

5. FAILURE TO REPORT KNOWN MISCONDUCT AND/OR QUESTIONABLE BEHAVIOR IS GROUNDS FOR TERMINATION OF EMPLOYMENT WITH THE CITADEL. IF A CRIMINAL OFFENSE HAS BEEN COMITTED, FAILURE TO REPORT THE INCIDENT IS CONCIDERED A FELONY AND WILL BE REPORTED TO THE NECESSARY LAW ENFORCEMENT AGENCIES FOR PROSECUTION.

6. ANY EMPLOYEE OF THE CAMP WHO HAS BEEN CHARGED OR CONVICTED OF A CRIMINAL OFFENSE WHILE WOKING AT THE CAMP HAS 24 HOURS FROM THE INITIAL ALLEGATION TO DISCLOSE SUCH INFORMATION TO THE DIRECTOR OF THE CAMP. ANY HIREE OF THE CAMP IS REQUIRED TO DISCLOSE ANY PENDING INVESTIGATION CONCERNING A CRIMINAL CONDUCT ALLEGATION.

7. ALL SEXUAL MISCONDUCT ALLEGATIONS DISCLOSED AT ANY TIME CONCERNING ANY INDIVIDUAL(S), CURRENTLY OR FORMERLLY,



CITADEL 0002283

ASSOCIATED WITH THE CAMP, WILL BE INVESTIGATED UPON DISCLOSURE. THERE ARE NO TIME PERIOD RESTRICTIONS REGARDING SEXUAL MISCONDUCT INVESTIGATIONS.

8. AT NO TIME IS ANY MINOR PARTICIPANT OF THE CAMP ALLOWED OFF CAMPUS WITHOUT PERMISSION FROM THE DIRECTOR. ALL OFF-CAMPUS TRIPS INVOLVING A MINOR PARTICIPANT OF THE CAMP REQUIRE NO LESS THAN 3 PERSONS. IF THE MINOR PARTICIPANT IS A FEMALE, AT LEAST ONE OTHER FEMALE MUST BE PRESENT.

9. ALL CAMP EMPLOYEES MUST ADHERE TO THE GUIDELINES AND STANDARDS OF THE CITADEL BE SUBJECT TO THE CITADEL'S STANDARD OF REVIEW.

I UNDERSTAND AND WILL ABIDE BY THESE POLICIES:

X_____

Print Name:_____ Date:_____

CITADEL 0002284

COLLEGE REGULATIONS

THE CITADEL

The Military College of South Carolina

(Revised 22 April 2006)

CITADEL 0001091

16. Ignorance of Regulations. Ignorance of any order or regulation is not considered an excuse for neglect or misconduct.

17. Information about the College. The Vice President for Communications is the official source of information to the news media about the College, except for athletic matters which will be disseminated by the Director of Athletics or a designated representative.

18. Publications. Any authorized student publication, such as the yearbook, the college newspaper, and student academic literary journals, will be issued under the responsible supervision of a student editor and a designated faculty advisor. The Director of Cadet Activities retains final responsibility for these student publications related to cadet activities. The Provost/Designee of the Provost is responsible for student publications related to activities of non-cadet students. Other official publications prepared by the faculty or staff will be coordinated with the Vice President for Communications.

19. Non-Academic Graduation Requirements. Having incurred punishments which would extend beyond commencement, a cadet will not be permitted to graduate or participate in commencement exercises until such punishments have been served or disposed of to the satisfaction of the Commandant of Cadets.

20. Policy on Hallucinogenic, Narcotic, and Other Controlled Drugs and Substances; Drug Paraphernalia; and The Citadel Drug Testing Policy.

a. **Prohibited Activity.** The Citadel will not tolerate the possession, solicitation, distribution, sale, or use of hallucinogenic, narcotic or other controlled drugs or substances or of drug paraphernalia.

(1) The Citadel therefore prohibits all students at any time or place, whether on- or off-campus, from possessing or using any hallucinogenic, narcotic or other controlled drug or substance or any paraphernalia as defined in South Carolina Code Ann. Sec. 44-53-110, unless authorized by a legal prescription for such substance or otherwise specifically permitted by law. Any student knowingly and willfully possessing or using any such substance or item in violation of this policy will be expelled from the College. Any student possessing or using any such substance or item in violation of this policy, but for whom the possession or use is not knowing and willful, will be subject to expulsion from the College.

(2) The Citadel has a drug testing program which gives the College the right to randomly test members of the Corps of Cadets periodically for the presence of illegal drugs and other controlled substances. Agreeing to participate in this program is a condition of acceptance at The Citadel, and submitting to testing when required under this program is a condition for remaining as a student. (See required Consent Form at the end of this section.)

(3) The Citadel additionally prohibits any person - whether a student, visitor, employee, or other person - from bringing onto or possessing on The Citadel campus or other Citadel property any hallucinogenic, narcotic or other controlled drug or substance or any drug paraphernalia except as specifically permitted by law. The possession of any such substance or item by any person on Citadel property is contrary to and in violation of the permission of any person to be on Citadel property, and possession or control of any such substance or item on

CITADEL 0001110

COUNSELOR CODE OF CONDUCT

The Citadel Summer Camp personnel must always remember that they are role models and mentors to the hundreds of boys and girls that attend the Camp each year. They must always practice mature judgment and be mindful of the well being of the campers.

WHILE ON CAMPUS, CAMP PERSONNEL WILL COMPLY WITH THE FOLLOWING REGULATIONS:

1. Use of tobacco, alcohol, and/or drugs, in any form, is prohibited.
2. Camp personnel will not use profanity or make any obscene remarks or gestures.
3. Camp personnel will never use force when disciplining a camper. Campers are not cadets; they are 10 to 15 year old campers!
4. While on campus, there will be limited interaction between summer school students and camp personnel
   - Camp personnel will have no direct contact with Summer School students other than casual meeting encounters.
   - Summer School students and Camp personnel are not permitted to visit each others living area/rooms, unless on official business and registered with the guard at the gate.
5. Sexual activity, in any form, with any person is prohibited while on campus. "Sexual activity" includes kissing, handholding, lying together, groping, fondling and sexual intercourse.
6. Male personnel and campers may NOT visit the girls' living areas at any time unless specifically authorized.
7. Female personnel and campers may NOT visit the boys' living areas at any time unless specifically authorized.
8. Camp personnel must read and abide by procedures set forth in the "Counselor Handbook."

COMPUTER ROOM:
The Senior Counselor will have a key to the barracks Computer Room for use by counselors. This room is especially helpful when writing "Counselor Letters" to parents. Please take special care of this room so that the camp's privileges of using it is not revoked. **CAMPERS ARE NEVER ALLOWED IN THE COMPUTER ROOM (unless permission has been granted by the Camp Director).**

COUNSELOR LOUNGE:
An air-conditioned room in the barracks will be designated as a "counselor lounge", for use during free time and periods off. This is a common area for use by all counselors. Care must be exercised to ensure the activities of a few do not interfere with others. Care must also be taken to ensure the lounge is kept clean. If problems arise with the lounge, it may be closed.

a. Male and female counselors, and guests who are properly "signed-in," may jointly use the lounge.
b. Camp employees and visitors are expected to self-police behavior and cleanliness in this area.
c. Individuals may be barred from the lounge for disruptive behavior, and the lounge may be closed entirely if problems persist.

CURFEW:
Counselors under the age of 18 have a curfew of 12:00 midnight. For accountability, these individuals must report to the Staff Duty Officer in the front sallyport to sign-in each night. Curfew violations will result in immediate termination of employment.

DANCES:
1. Remember: The Citadel Summer Camp Dances are for the campers,.. not for counselors to find a boy- or girlfriend. Counselors will NOT bring guests to dances. This rule also applies to counselors on their "day off."
2. Counselors will act as chaperones and be visible at all times. Counselors will be assigned to perform specific functions or monitor various areas during the dance. Assignments will be handed out and posted in the guardroom on the day of the dance.
3. Counselors MUST BE PROPERLY DRESSED IN UNIFORM WHILE AT A DANCE. If a counselor is on a "day off" and desires to attend the dance, he/she must be in uniform.
4. Counselors exhibiting inappropriate behavior may be dismissed.
5. At the end of the dance, sections will be dismissed one at a time and return to the barracks in formation. Everyone should stay in the auditorium until his/her section is dismissed.

Remember: You are accountable for your campers and yourself.

PLAINTIFF'S EXHIBIT 17

CITADEL Box 295 - 0076
(PHSW Tagged Doc's)

DAYS OFF:

1. Days off will be assigned at the beginning of each session. Assignments will be given to each HSC. Section counselors will then make their night duty schedules.

2. Days off usually run from after dinner until the 7:00 a.m. meeting 36 hours later. When making the night duty schedule with your section, try to make sure you are not scheduled for night duty the night before your day off. If you are, you will be expected to work. Schedules will NOT be rearranged.

3. In order to optimize rest and relaxation, counselors should try to spend their days off away from camp.

4. Counselors may attend camp meals on days off, but will be in proper camp uniform while in the Mess Hall.

5. Counselors should try to get sufficient rest during their days off.

6. If returning to the barracks late at night, please do so **QUIETLY**.

7. Counselors cannot change their days off. If a counselor has a problem with his/her day off, he/she will coordinate with the Head Section Counselor, the Senior Counselors and the Directors before the session begins. **COUNSELORS CANNOT REARRANGE SCHEDULES!**

8. Counselors who sign up to tutor Academic Review are expected to meet this obligation, regardless of day off schedule.

DISCIPLINE:

1. Counselors are responsible for discipline within their section and at their activities. Counselors must handle discipline in a positive nature. Reoccurring problems or those of a significant nature will be channeled through the Head Section Counselor, to the Senior Counselors, and to the Directors, if necessary.

2. Discipline Reports are used to document a camper's negative behavior. Making use of these forms enables the staff and counselors to keep a record of problems we have had with a particular camper. Discipline reports must be filed in the barracks guardroom. You can find blank reports in various locations:
   - Activity Notebooks
   - Guardroom
   - Dean Hall Camp Office
   - Mess Hall Podium
   - Head Section Counselor Notebooks

   ★ **REMEMBER:** Use of "discipline report forms" helps let the camper know what they did wrong. Having the camper take "time out" to fill in the report is a good way to punish negative behavior. Campers with excessive reports will be sent to the senior counselor, and if the problems persist, the parents will be called.

3. Lead by example and be a positive influence! Be specific rather than general. Avoid group punishment. Be positive and encouraging, but never give the camper false hope (i.e. "you'll probably win the Mark Clark Award", "I bet you will be the First Honor Graduate", etc.).

4. Campers <u>are not</u> going through a fourth-class system. <u>Push-ups, or any form of physical punishment, are prohibited when disciplining campers.</u>

5. Campers are 10 – 15 years old. They are not adults! They are not cadets! Treat them with kindness and encouragement.
   REMEMBER: Praise publicly / Punish privately

EQUIPMENT POLICY:

1. Activity heads will sign for the equipment for their activity from the Operations Officer. They should verify the amount and condition of equipment for which they sign. Counselors who are instructing an activity will also verify equipment accountability at the end of each period. Broken equipment should be brought to the attention of the camp Operations Officer and Logistics Officer.

2. Do not leave equipment at an activity site until the counselors instructing the next class arrive. If the next instructor does not arrive within a reasonable amount of time (after the next class starts), notify a staff member

CITADEL Box 295 - 0077
(PHSW Tagged Doc's)

immediately. Equipment should be returned to the respective storage areas at the end of morning and afternoon activity sessions (11:20 a.m. and 3:20 p.m. M/W/F or 4:20 T/T/S).

- Deas Hall Storage Equipment (hallway by the Camp Office)
  - Basketball
  - Racquetball
  - Swimming
  - Volleyball
  - Dodge Balls

- Barracks Equipment Room (designated room-# TBA)
  - Flag Football
  - Soccer
  - Softball
  - Team Handball
  - Tennis
  - Referee equipment
  - Cones for intramurals

- Air Rifle (locked closet in the Air Rifle Room)
  - Air Rifle equipment
  - Ping Pong equipment

Other about Kmart
(2) Aquarium?

3. Failure to properly account for equipment may mean that a counselor ha

4. Any problems concerning equipment or Deas Hall personnel should be d

EVENING ACTIVITIES:
The camp offers the following evening activities for campers and counselors:

1. Field Games: 1st night of each session
2. Intramural Sports: between sections
3. Video/Movie Nights: All movies watched by campers must be G or PG
4. Dances: Saturday, and the final Friday of each session
5. *Riverdogs* Baseball Game

FINES:
1. All personnel hired by the Camp are expected to abide by the rules set forth in this Counselor Handbook and in the Code of Conduct agreement of which they have signed. As a reinforcement mechanism, counselors may be subject to monetary fines for minor infractions of the rules.

2. Fines may be routinely levied for: missing a morning meeting; being late or absent from scheduled activity; being late or absent from required duty; uniform or room condition infractions and equipment or property damage.

3. Counselors are expected to pay their fines on paydays.

4. The Director will collect the fines.

5. Fines collected will be returned to the camp, and may be used for the general good of the camp as determined by the Directors.

FORMATIONS:
1. Counselors must attend all formations (except on their days off). The first formation of the day is a meeting in the front sallyport at 7:00 a.m. (Head Section Counselors may authorize one counselor to miss this meeting in order to supervise section campers in the barracks. The HSC will report for that counselor during roll call.)

2. Counselors are expected to march with their section to all meals and retreat.

3. For the 1st activity period in the morning / afternoon, counselors assigned to teach an activity, will march the campers they are instructing to the appropriate location. If necessary, one counselor should be sent ahead to ensure equipment is ready. Counselors will march campers back to the barracks after the last morning / afternoon activity ends. Campers will not be allowed to march themselves back to the barracks.

CITADEL Box 295 - 0078
(PHSW Tagged Doc's)

4. Head Section Counselors must insure all campers and counselors are in formation and in proper camp uniform. Accountability relates directly to SAFETY; campers should be accounted for at all times!

5. Night duty counselors will march their campers to evening activities, and remain with them during the activity. (On movie nights, campers sit as a section with their counselors. Night duty counselors sit IN the auditorium, watching the movie with their section.) The night duty counselors will march their section back to the barracks after the activity.

6. Both campers and counselors should be prompt to formations. Early in the session, counselors need to be extra early for formations. Special attention may be required for campers as they adjust or there may be a specific problem camper who needs assistance.

FUN:

1. This is the second priority of camp! While campers, counselors, and staff members are not required to have fun, most at least make an attempt at it.

2. Safety should never be jeopardized in the interest of fun. After over forty years of existence, the camp program has proven that it can be an enjoyable experience. Do your part to ensure each camper has the opportunity for an enjoyable and FUN experience.

3. *Competition should not be over-emphasized and EFFORT should be consistently recognized.*

GIFTS FROM PARENTS OR CAMPERS:

1. Counselors and staff members should never accept money or goods from a camper (including his or her family or friends.)

2. If gifts are offered, the staff member or counselor should politely inform the giver of this camp policy and thank them for the thought.

GUARDROOM:

The barracks guardroom is an office of the camp. It must be maintained in an orderly manner. The guardroom and front sallyport are not lounges. CCQs and CTs are responsible for cleanliness of these areas. The telephone in the guardroom is for official business only.

HARASSMENT:

1. Every camper deserves the opportunity to experience camp life free from any form of harassment. Each camper should be able to experience camp without being subject to physical, mental or sexual harassment, assault, slurs, degradation or pressure of any kind.

2. No counselor will subject a camper to harassment.

3. No counselor will strike, lay hands upon, threaten with violence, or offer to do bodily harm to a camper.

4. No counselor will allow tyrannical, abusive, shameful, insulting, or humiliating treatment to a camper.

5. Campers may be disciplined by:
   a. reprimand (e.g., explain how the action will not be tolerated)
   b. loss of privileges (e.g., starting Rec. Period fifteen minutes late)
   c. additional duty (e.g., sweeping the section gallery or a portion of the quad).

6. If a counselor has tried remedies for a camper and does not see changes in behavior, the counselor should seek assistance from the Head Section Counselor, Senior Counselors, or Directors.

7. Campers should not be subject to harassment from other campers.
   a. Older campers may try to control younger campers
   b. Multi-year campers may try to control newer campers
   c. Campers who are heavy or wear glasses may be subject to comments/slurs
   d. Campers of one race may be subject to comments by those of another race
   e. Campers of one sex may offend those of another
   f. Campers may threaten other campers

CITADEL Box 295 - 0079
(PHSW Tagged.Doc's)

8. Counselors must constantly monitor sections and activities to ensure no form of harassment takes place.

9. The definition of "Sexual Harassment" as defined in the Blue Book Regulations for the Corps of Cadets states: "Sexual harassment is unwanted sexual attention. It is frequently a display of power intended to demean, embarrass, intimidate or coerce a person. It includes but is not limited to unwanted requests or demands for sexual favors, propositions, questions about a person's sexual experiences, lewd comments, leering, sexual insults or innuendos and sexually explicit jokes. It also includes unwanted touching, fondling, patting, pinching or kissing, as well as blocking a person's way. Sexual graffiti and sexually explicit pictures (including those on computers), cartoons, or objects can also constitute sexual harassment. Although some forms of sexual harassment may be unintentional, words and behaviors such as those described above may be harassing when viewed or heard by others. Words which are demeaning to one gender are also forms of sexual harassment. Both men and women can be sexually harassed and it can also occur between members of the same sex."

10. All counselors must accept personal responsibility for the fair, equitable, proper, and effective treatment of every camper and every other counselor.

HOTEL SIERRA:

1. "Hotel Sierra" is a code phrase often used for "homesickness." Homesickness can happen to any camper, regardless of age, when separated from familiar surroundings.

2. On the first day of camp, especially while parents are leaving, campers tend to be very susceptible to homesickness. For some campers, this is their first time away from home. Counselors should be extra patient with these campers. Try not to single them out and attempt to get every camper fully engaged in the activities at hand. Most campers will successfully adapt to new surroundings with involvement, support, and positive reinforcement.

3. Parents may experience "child-sickness" when separated from campers. Counselors should discourage excessive contact with parents, which may contribute to the camper's homesickness. Let the Directors know if there is a situation where a parent is contributing to the ongoing homesickness of a camper.

INDIVIDUAL EXCELLENCE:

1. This is the fourth priority of the camp.

2. Campers, counselors, and staff are encouraged to do their best to "excel", but never at the expense of Safety, Fun, or Team Play. Keep in mind that effort, not perfection, should be recognized.

INFIRMARY:

1. Campers and counselors may use the camps Infirmary when required for medical assistance.

2. Sick call will be held each morning at the time of the first activity. Campers should go on "sick call" if they need medical assistance, or have been instructed to do so by the medical staff. Sick call will usually be broken into two portions: campers with sports injuries, who need to see the trainer; and those with sickness, infection, or medical problems, who need to see the doctor or nurse.

3. The nurses of the Infirmary administer medications to campers:
   - Routine medications are administered near meal times and at bedtime.
   - Campers who need medications will usually go to the Infirmary at a different time than those who need to see the doctor, nurse, or trainer.

4. The Infirmary is not a place for homesick campers. In the case of a severely homesick camper, please escort that camper to the Camp office in Deas Hall.

5. Counselors and staff must remember the staff of the Infirmary are trained professionals. Their considered opinion will be followed without comment or discussion.

JOB DESCRIPTIONS:

Job descriptions for Staff, Counselors, CCQs, and CITs are found at the beginning of this Handbook.

CITADEL Box 295 - 0080
(PHSW Tagged Doc's)

JUNIOR COUNSELORS and COUNSELORS-in-TRAINING:

1. Counselors in Training (CITs) are 16-year old employees whose primary role is to serve as operational assistants to the camp staff. CIT's are hired for one session of camp, but may be asked to remain in camp and take a position as a Junior Counselor (depending on position availability and prior job performance).

2. Junior Counselors (JCs) are 16- and 17-year olds who have been assigned to a section of campers.

3. For safety and liability reasons, JCs and CITs have certain restrictions that may not apply to other counselors. Other counselors must be mindful of not putting a JC or a CIT in a position where these rules could be violated.

4. Even though there are differences in counselor positions, where campers are involved, JCs and CITs are the same as counselors. Counselors and staff should NEVER call attention to counselor-level distinctions to the campers.

JC & CIT CODE OF CONDUCT

Junior Counselors (JCs) and Counselors in Training (CITs) must always remember that they are role models and mentors to the hundreds of boys and girls that attend the Camp each year. JCs and CITs are no longer campers and are expected to continuously demonstrate maturity well beyond that expected from the oldest campers.

AUTOMOBILES: Automobiles will be permitted on campus when approved by parents/guardians. All vehicles must be registered with the campus Public Safety office, through the Camp's Director of Personnel and Administration. Possession and use of a vehicle on campus are privileges and are revocable. Travel during off duty hours must be within a 25 mile radius from The Citadel campus, unless specific exceptions are requested by parents and approved in advance by the Directors.

CURFEW: The nightly curfew for all JCs and CITs is 12:00 a.m. All JCs and CITs are required to be in the barracks by that time and will be required to sign in with the Staff Duty Officer.

WHILE ON CAMPUS, JCS AND CITS WILL COMPLY WITH THE FOLLOWING REGULATIONS:

- Use of tobacco, alcohol, and/or drugs, in any form, is prohibited.
- Camp personnel will not use profanity or make any obscene remarks or gestures.
- Camp personnel will never use force when disciplining a camper. Campers are not cadets; they are 10 to 15 year old campers!
- While on campus, there will be limited interaction between summer school students and camp personnel
  - Camp personnel will have no direct contact with Summer School students other than casual meeting encounters.
  - Summer School students and Camp personnel are not permitted to visit each others living areas/rooms, unless on official business and registered with the guard at the gate.
- Sexual activity, in any form, with any person is prohibited while on campus. "Sexual activity" includes kissing, handholding, lying together, groping, fondling and sexual intercourse.
- Male personnel and campers may NOT visit the girls' living areas at any time unless specifically authorized.
- Female personnel and campers may NOT visit the boys' living areas at any time unless specifically authorized.
- Counselors must read and abide by procedures set forth in the Counselor Handbook.

LANGUAGE:

1. Counselors and staff are expected to use proper language at all times. Campers are at an impressionable age and will often repeat what they hear from other campers and counselors.

2. Campers are also expected to use proper language. Counselors must monitor the language of the campers in their care and make corrections when indicated.

3. Cussing, cursing, profanity, vulgarity, insults, name-calling, derogatory, demeaning or threatening language will not be tolerated. Off-color and derogatory "jody calls" will not be tolerated. Counselors are expected to insure a proper tone in all counselor-camper, camper-counselor and camper-camper discourse. IN SHORT, DO NOT USE IMPROPER LANGUAGE.

LAUNDRY:

1. Laundry service is provided for campers and counselors by the campus Laundry. Laundry is picked up and delivered twice each week. The dates for pickup and delivery are posted in each camper's room and announced in the Mess Hall.

CITADEL Box 295 - 0081
(PHSW Tagged Doc's)

2. Campers and counselors will count their laundry, complete the forms, and carry their laundry to the quadrangle for pick up. Counselors should supervise this process and ensure their campers have clean cloths and clean bedding. Bedding should be changed at least weekly (see the master schedule and remind your campers).

3. Counselors who so desire may make use of the vending washers and dryers on campus (the Laundromat is located between Deas Hall and LeTellier Hall.)

4. Every counselor is expected to have clean uniforms to wear during camp. "I didn't get my laundry done," is not an excuse for being in an improper or dirty uniform. Uniforms that are torn or permanently stained may be exchanged in the camp office.

MAIL CALL:
Individual sections do Mail Call. Each morning the Director of Personnel and Administration collects outgoing mail from the guardroom and delivers it to the campus Post Office. Incoming mail is then returned to the barracks, sorted by section and put in section boxes for counselors to distribute after lunch. Campers enjoy getting mail, so be sure to check the boxes and ensure all items are delivered to the camper to whom addressed.

MENTORING:
Counselors are the leadership of the camp. Act responsibly and maturely. Campers are aware of your actions and are easily influenced. Set a good example!

MESS HALL:
1. Counselors sit at the end of each table ("mess carvers") and are responsible for camper behavior, as well as their own. The Mess Hall is a place to eat (not to play games, throw food, etc.). Food should not be taken from the Mess Hall. Sections will be kept quiet during announcements and behavior monitored at all times.

2. Should a counselor have a problem with the food, mess hall employees, etc., he/she should report the situation to the camp Logistics Officer; to include any special food or dietary needs (e.g. pork substitutes for Jewish or Muslim campers.)

3. At breakfast, sections will rotate to the cereal tables. An announcement will be made at the beginning of each meal indicating what sections go first. Counselors need to pay attention to the rotation and control their campers.

MONEY:
1. Counselors will neither loan money to, nor borrow money from, campers at any time. Additionally, campers and counselors are prohibited from selling items at camp.

2. Remind your campers to keep their valuables secured and not give their lock combinations to their roommates.

3. Before campers arrive, check lock boxes in each room and make sure they can be secured. Report any problems to the Logistics Officer. Continue to monitor this situation during camp sessions.

4. Security of cash is especially important on Wednesdays when campers receive spending money. Caution your campers to take care of their money and keep it safe.

5. If a section is to hold a pizza party, counselors must be extremely careful regarding money collected from campers. Money collected will be documented on a section roster, and turned over to the Senior Counselor. At no time should a counselor appear to profit by collecting money for a section party. If proper documentation is not kept, the counselors of that particular section will be responsible for any refunds requested by campers.

6. On Wednesdays, campers are given $10.00 in spending money. Head Section Counselors will see the Director of Personnel and Administration at the beginning the lunch meal to receive the money and a roster for their section. HSCs will have each camper sign for their $10.00, and return their roster and any extra cash to the Director of Personnel and Administration, before leaving the Mess Hall. Extra money and rosters will not be taken from the Mess Hall, without specific approval.

NIGHT DUTY:
1. Counselors are scheduled to work several night duty shifts during each camp session. Prior to the start of each session, section counselors will get together and make their section's night duty schedule. The schedule is then

CITADEL Box 295 - 0082
(PHSW Tagged Doc's)

submitted to the Senior Counselor for approval. Copies are then distributed to the Directors and staff for further accountability.

2. Once approved and published, night duty schedules will not be changed without written approval from the Senior Counselor or one of the Directors.

3. One of the two counselors scheduled for night duty will remain with the section, in the barracks, all night ("Overnight Section Duty"). The other counselor with night duty ("Evening Activity Duty") is off at 10:00 p.m. The schedule will indicate which counselor is required to be present for the overnight shift.

4. Counselors without night duty may leave campus after dinner.

5. Night duty counselors are responsible for:
   a. Being present on the gallery until "Taps" is sound, or until campers settle down for the night. (Both night duty counselors must be present).
   b. Maintaining order in their section (noise, chaos, etc.).
   c. Insuring all campers take a shower before Taps.
   d. Insuring all lights in camper rooms are turned off at Taps.
   e. Providing an "All-in Report" to the on-duty CCQ (within fifteen minutes of Taps).
   f. Keeping campers in their own rooms after Taps.
   g. Insuring camper accountability (infirmary visits, etc.).

6. Each evening, a staff member is assigned duty as "Staff Duty Officer", to:
   a. Insure all counselors assigned for night duty are present.
   b. Monitor evening events.
   c. Be present on campus during evening activities and in the barracks from after Taps until breakfast the next morning.
   d. Receive the "All-In Reports" from the CCQ on duty.
   e. Insure order is maintained in the barracks.
   f. Insure the guard on duty plays "first call" for Reveille/breakfast at 0715.
   g. Conduct accountability check of JC / CIT curfew.

7. Visibility is the first line of defense against section disorder. Counselors must remain on the galleries until Taps has sound and order among campers has been established.

8. Campers may not "switch" rooms (even if it is "just for the night"). Night duty counselors are responsible for enforcing this rule. Campers who do not observe this policy will lose privileges.

9. Campers will NEVER be allowed to sleep in a counselor's room. If a camper is experiencing difficulty, visit the camper in their room with their roommate present, or talk to them on the gallery or in a counselor room with another counselor present. NEVER allow a camper to sleep in a counselor's room and NEVER sleep in a camper's room.

PARTIES (PIZZA):
Counselors may have no more than 1 section party after Taps, per session. These parties are encouraged, but for maximum value should be tied to a positive event: i.e, when campers have performed particularly well during inspections, section grading, behavior, and/or intramural competition. Head Section Counselors must receive advance permission from the Senior Counselor, and give notice to the Staff Duty Officer. For accountability, money collected for those parties MUST be documented and signed by the camper on a Section Roster. Turn the completed money collection roster over to the Senior Counselor.

PERIOD OFF:
Each day, counselors will be assigned at least one 50-minute activity time slot as a period "off". Counselors enrolled in summer school will not be afforded this privilege, due to the time already taken out of the camp schedule for their classes.

PROMPTNESS:
1. Bugle calls apply to both campers and counselors. Counselors on duty are expected to be on time for all formations.

CITADEL Box 295 - 0083
(PHSW Tagged Doc's)

2. Counselors are expected to be at their assigned activity on time. Repeated instances of being late to formations and activities will result in monetary fines for counselors and, if necessary, termination of employment.

3. Counselors in summer school classes are especially susceptible to being late. Extra care must be taken to proceed quickly to assigned activities. Once at an activity site, counselors should not leave the activity site until another counselor has arrived.

QUAD CHAOS:
"Quad Chaos" is a term used for activities that occur on the barracks quadrangles during free time. Even when "no one is in charge" of camper activities, counselors must be aware of what is taking place. SAFETY must not be compromised for the sake of fun.

QUIET:
1. Order and discipline by Summer Camp personnel is important. The camp must be a good neighbor and be courteous of others at all times.

2. There are several campus facilities that deserve special attention, regarding noise:
   a. Deas Hall – Many camp activities take place in Deas Hall. Summer School activities also take place here. Whenever campers are in hallways, they should remain orderly and quiet. Campers should only take the stairwells allocated for camper use (signs will be displayed.)

   b. Mark Clark Hall – Mark Clark Hall is one of the most visited buildings on campus, and the Camp also uses it for many activities. Campers must maintain good order and discipline in this building. Counselors should regularly monitor bathrooms. When in Mark Clark Hall, campers should never be without counselor supervision. During Recreation Period, counselors will be assigned to monitor areas of concern.

   c. Murray Infirmary – Campers visit the Infirmary to receive medications, for routine sick call and for emergency treatment. Only campers who stay in the Infirmary on orders of the medical staff due to injury or illness will be left without counselor supervision. Orderliness is important so that nurses and doctors can properly treat campers. Counselors will routinely be assigned to accompany campers to the Infirmary to assist in maintaining order and discipline. The Director of Safety & Education will monitor camper and counselor conduct in the infirmary on a daily basis.

3. Quiet and discipline in the barracks is extremely important.
   a. The Summer Camp can be quite taxing on campers, as well as counselors. Quiet must be maintained to ensure everyone gets a good rest, at night and after lunch.

   b. When Summer Camp shares barracks space with other activities, like the SC Police Corps, the need for general quiet becomes even more important.

   c. Many counselors are taking summer school classes. Quiet is needed for study time.

4. It is a counselor's duty to control and maintain discipline of campers. Noise levels must be kept down when inside all buildings. Campers who fail to observe rules should be immediately corrected. The word "Quiet" will be used when requesting order within the section. "Shut-up" will not be used.

RAIN (See Black Flag):
1. When the Black Flag / Rainy Day (BF/RD) Schedule is to be implemented, as much advance notice as possible will be given to counselors. Counselors should be ready to move campers to their alternate activity quickly and safely.

2. Under the BF/RD Schedule, each outside activity has an alternate activity/site. Counselors with outside activity responsibilities should review their teaching schedule and become familiar with any reassignments.

RECREATION PERIOD:
Recreation period takes place on Mondays, Wednesday, and Fridays from 3:30 to 4:20. After the last Activity Period on these days, campers return to the barracks for a formation. After this formation, campers are free to leave the barracks. Permissible destinations include:

- Remain in the barracks
- Mark Clark Hall / Snac

CITADEL Box 295 - 0084
(PHSW Tagged Doc's)

- k Bar
- Parade Ground
- Deas Hall (only when escorted by a counselor)

Counselors will be assigned to various locations to supervise campers. Assignments will be posted in the guardroom before the session starts.

REGULATIONS:
Counselors will abide by regulations of The Citadel and are expected to conduct themselves accordingly; the college's Honor Code and Summer School Regulations apply. College regulations give the Directors disciplinary authority over Summer Camp personnel.

RELATIONS (COUNSELOR/STAFF):

1. Camp counselors are responsible for the day-to-day supervision of campers and their activity instruction. Within each section, the Head Section Counselor is responsible for that section's other counselors.

2. Camp staff members are primarily responsible for planning and coordination, which allows counselors to operate effectively.

3. Counselors in Charge of Quarters (CCQs) are primarily responsible for the security of the camp's barracks.

4. Counselors-in-Training (CITs) have two responsibilities: security of the camp's barracks during daylight hours and performing various support and training activities, e.g., intramural referees, marking fields, supplying water to activity sites.

5. Counselors and staff must strive to work together in order for the camp to operate efficiently and professionally. Recognition that staff, counselors, CCQs and CITs have different responsibilities is important. Each person must perform his/her own duties. Any concerns or problems should be brought to the attention of the Senior Counselors or Directors without hesitation.

6. Counselors with problems or questions, no matter how small, should normally consult, first, their Head Section Counselor. The Senior Counselors are usually the next to be consulted, but any staff member, including the Directors, may be approached regarding questions or problems. Staff members must be ready to correct problems brought to their attention.

7. Counselors should not hesitate to direct parents to the Senior Counselors or Directors concerning any camper-related problems.

8. Counselors will not have "dating relationships" with other counselors while camp is in session. Such behavior is not conducive to smooth operation of the camp and may result in dismissal.

ROOMS:

1. Counselor and staff rooms will be kept neat and clean at all times. Staff members (including the Directors) will check rooms periodically. Failure to maintain rooms in proper order may result in fines.

2. Counselors are allowed to have televisions, VCRs, computers, stereos, and video games. Other appliances (i.e., refrigerators, microwaves, hotplates, etc.) are not acceptable.

3. If furniture in a counselor's room is moved, it must be returned to its normal arrangement before the end of camp. Furniture may not be arranged in such a manner to create a safety hazard.

4. The guardroom, front sallyport and staff rooms are not lounging areas for either campers or counselors. Help maintain these areas for official camp business.

5. A room designated as the "Counselor Lounge" will be set aside for use by camp personnel during off-duty time. Campers are not allowed in the Lounge. Failure to maintain the Lounge in an orderly manner and excessive noise may result in a person being banned from the Lounge or the closing of the Lounge altogether (See "Counselor Lounge".)

6. Campers should not enter another camper's room unless invited by the occupants. Campers are also not permitted to visit other rooms after Taps. CAMPERS MUST SLEEP IN THEIR OWN ROOMS. Staff and

CITADEL Box 295 - 0085
(PHSW Tagged Doc's)

counselors on night duty will enforce this rule. Likewise, counselors should not visit camper's rooms after Taps, except in case of illness, injury, assisting a camper or while maintaining order.

7. No member of the opposite sex should enter any camper's room for any reason without prior approval of the Senior Counselors, or Directors. Should the need arise, staff or counselors will enter in pairs and never alone.

8. Staff and counselors should use discretion when visiting with campers in his/her room. Always leave the door open, and insist that another counselor or camper is present.

SAFETY!

1. THIS IS THE #1 CAMP PRIORITY!

2. In case of injury, the Senior Counselors, Directors, or the Staff Duty Officer will be immediately notified. Follow established safety procedures (located in activity notebooks and posted in barracks) to get aid for the injured individual, and then proceed to transport him/her to the Infirmary. If an injury is sufficiently serious, contact a staff member for evacuation to the Medical University of South Carolina Emergency Room.

3. The counselors present when an accident occurs are responsible for promptly filling out of an Accident Report. If no counselor was present, the Head Section Counselor of the camper will complete the Accident Report. Accident forms should be turned in to the Safety and Education Officer within six hours of an accident.

4. Blank Accident Reports are in all activity notebooks, the guardroom, and the camp office.

SCUBA INSTRUCTION:

SCUBA TAKES PLACE FROM 4:30 TO 6:00, MONDAY – FRIDAY. Due to time constraints and the large amount of material to cover over the 3-week session, it is very important that SCUBA participants are prompt in getting to class. Two people will be assigned to assist with SCUBA and their primary functions include:

1. Ensuring all participants are in the sallyport, with proper materials (swim suit, towel, book, fins, etc.) in hand, at 4:25 p.m.
2. Escorting campers to Dess Hall by 4:30 p.m.
3. Assisting SCUBA Instructors with camper accountability and discipline during the class.
4. Escorting campers to the Mess Hall after the class, eating dinner with them, and escorting them back to the barracks.

For accountability purposes, Section Counselors need to know which of their campers are participating in SCUBA

SPECIALIZED ACTIVITIES:

1. Counselors are assigned to work with a specialized activity. These assignments are based upon individual interests (as indicated on the employment application) and the needs of the camp. Assignments are announced during staff training.

2. Counselors will be at their specialized activity every day (except days off) and be on time.

3. Some counselors are assigned Hunter Safety & Trapshooting as their specialized activity. This activity takes place after lunch on WLI Field, behind the mess hall. Counselors assigned to this activity have a rest period during the regularly scheduled specialized activity period (4:30 – 5:30 p.m.), Monday through Saturday. The Director of Marksmanship is coordinator for this activity.

4. Specialized activities last an entire hour (4:30 - 5:30 p.m.), Monday through Saturday.
DO NOT LET CAMPERS LEAVE EARLY!

5. Counselors cannot cancel a specialized activity for a day; therefore, counselors involved with outdoor specialized activities should prepare for rainy days.

6. Counselors involved with each specialized activity will present a skit for the campers on the first Monday night of each session. After the skits, campers sign-up to participate in one of the activities offered.

CITADEL Box 295 - 0086
(PHSW Tagged Doc's)

TEAM PLAY:

1. This is the third priority of the camp.
2. Team Play encourages sportsmanship and group involvement by everyone in all activities. Activity instructors and coaches for intramurals must ensure each camper gets an opportunity to participate.
3. Unsportsman-like conduct will not be tolerated and violators will be asked to sit out of the activity. Activity instructors and coaches must take the lead in monitoring daily activities and intramural competition. Support for a section is to be encouraged, but good sportsmanship must always be practiced. Stop improper actions; council players; expect and demand good sportsmanship.
4. At the beginning of camp, counselors should remind campers of the "Best Section" competition. This award is based on the combined results of numerous competitions:
   - Room inspections results
   - Track Meet results
   - Field Day results
   - Marching competition results
   - Team cooperation
   - Team spirit
   - Counselor leadership
   - Overall behavior

TELEPHONES:

1. Telephones in the camp office and guardroom are for official business use only. Should the need arise, counselors may use the phones in the camp office to contact camper parents.
2. Head Section Counselors and staff members should plan to have telephones in their rooms. These phones will be an important resource for their communications. Campers should not be permitted to use these telephones unless the Directors give specific permission.
3. Other counselors are allowed to bring their own telephones for personal use, but this privilege may be revoked for cause (i.e., letting campers use counselor phones.)
4. Campers will have routine access to telephones in Mark Clark Hall to contact parents during Recreation Periods (Rec. Time), M-W-F 3:30 to 4:20. Counselors should be prepared to assist campers in placing collect or credit card calls, if required.
5. Campers should not use the pay phone located in the barracks.
6. A 24-hour cell phone will be provided to the camp. The Senior Counselors will have the phone during the day and at night the Staff Duty Officer will have the phone.

TOBACCO:

The use of tobacco (in any form) by campers, counselors, or staff members is prohibited at camp. Campers found with tobacco products will receive punishment. Counselors found with tobacco products will be dismissed.

VALUABLES:

1. Counselors and campers should secure any valuables in lock boxes. When campers are checking into camp, try to discourage them from keeping expensive, pilferable items. Encourage parents to take such items when they depart on Opening Day.
2. Before campers arrive, each session, counselors check the condition of the lock boxes in each room and assure they can be secured. During daily checks of camper rooms, and when talking to campers, be aware of any security problems. Report problems to the Director of Logistics and the Senior Counselors.
3. The camp attempts to provide a secure environment but it is not responsible for lost or stolen items.

CITADEL Box 295 - 0087
(PHSW Tagged Doc's)

VEHICLES:

1. Operators of any camp vehicle, including the golf cart, must have a valid drivers' license in their possession and obey all traffic regulations. Only individuals who participate in "Vehicle Safety Training", during staff training, may drive assigned vehicles.

2. Operators of the golf cart must exercise great care:
   a. The cart is small and not seen as readily as other vehicles.
   b. While highly maneuverable, the golf cart is considered a vehicle and is not allowed on sidewalks.
   c. Passengers may not be carried in the back of the golf cart.

VISITORS:

1. Counselors and staff members should challenge anyone in the barracks who is not:
   a. a camp employee
   b. a member of the vending machine or janitorial service staffs
   c. maintenance personnel
   d. College official (President, Director of the Physical Plant, etc.)
   e. affiliated with the SC Police Corps

2. Summer school students are not allowed in the camp barracks without a counselor or staff escort.

3. Visitors wishing to see camp personnel will report to the guardroom. The CCQ/CIT on duty will page the counselor, who must come to the sally port and escort the visitor to his/her room. A barracks pass will be given to all visitors and must be outwardly displayed when visiting. No visitor of the opposite sex will be allowed into a counselor's room.

4. Guests of camp personnel may visit with their host/hostess in the Counselor Lounge provided they observe all rules pertaining to the lounge.

5. Visitors are not allowed in the Mess Hall without the prior approval of the Senior Counselors or Directors.

MOST IMPORTANTLY:

- **USE GOOD JUDGMENT AT ALL TIMES**
- **BE A GOOD ROLE MODEL**
- **BE SAFE**
- **HAVE FUN**

CITADEL Box 295 - 0088
(PHSW Tagged Doc's)

1	STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
2	COUNTY OF CHARLESTON	
3	- - - - - - - - - - - - - - - x	
4	MOTHER DOE A, :	
5	Plaintiff, :	
6	vs. :	CASE NO. 2011-CP-10-9200
7	THE CITADEL, :	
8	Defendant. :	
9	- - - - - - - - - - - - - - - :	
10	JOHN DOE CAMPER, :	
11	Plaintiff, :	
12	v. :	CASE NO. 2012-CP-10-1860
13	THE CITADEL, :	
14	Defendant. :	
15	- - - - - - - - - - - - - - - :	
16	JOHN DOE 2, :	
17	Plaintiff, :	
18	vs. :	CASE NO. 2012-CP-10-1858
19	THE CITADEL, :	
20	Defendant. :	
21	- - - - - - - - - - - - - - - x	

22 DEPOSITION OF: ANN H. FRANKE (VOLUME 1)

Page 174

abused any minor males, after being arrested by the Mount Pleasant police in October of 2011, is 100 percent that he did not abuse any minor males.

A Had he committed suicide at that moment, he would not have abused anyone else either.

Yes. I agree with you.

Q Because as you note in your report, the only two sure ways that a pedophile isn't going to sexually abuse a child is death and incarceration.

MR. BOWERS: I object to the form.

THE WITNESS: I believe I said --

MR. HERNS: Correct.

THE WITNESS: -- institutionalization.

BY MR. HERNS:

Q Which is the same as incarceration --

A There are --

Q -- correct?

A -- other kinds of institutional confinements, but they are of a piece, yes.

Q Two peas in a pod. Wouldn't you agree? We are splitting hairs, aren't we?

A You ask a rhetorical question. I'll give you a rhetorical answer.

Page 175

Q And it also notes in the last sentence of that paragraph that we were reviewing that university administrator's believe that policies allowing the confidential or anonymous reporting encourage reporting of child -- excuse me -- encourage reporting of sexual assault, correct?

A The phrase reads "confidential and anonymous reporting." So you put an "or" there instead of an "and." And the sentence applies to college students.

Yes. I agree with the sentiment expressed in the sentence.

Q Isn't it more important to report pedophiles -- those preying on the children of our society -- to law enforcement?

A More important than what?

Q Than college students reporting their sexual assault.

A I believe so. Children have less capacity, themselves, to make a report and less capacity to protect themselves. So, as a society, we have mandatory reporting laws that address precisely the distinction that you're making.

Those mandatory reporting laws disappear, go out the window when the victim, at the age of victimhood, is an adult.

Q Okay. So, college students can make up their own mind. Children, who are sexually abused, sexually molested, they should be reported -- it should be reported on their behalf.

Would you agree with that?

A As state law so dictates, yes.

Q Or if you, as an institution, university adopt your own policy where you make it mandatory on yourself to report.

A If that policy is clear and it says, if you see child abuse or neglect, you must report it, then -- yes -- that can be an obligation the institution takes on itself.

Q Okay. If you will, turn to tab four, please.

A Okay.

Q Tab four is an article cited in your report, "Campus Sexual Assault: How America's Institutions of Higher Education Respond," by Heather Karjane -- K-A-R-J-A-N-E -- Bonnie S. Fisher, and Francis T. Cullen.

Page 176

Page 177

Do you have that in front of you?

A I do.

Q Okay. And again, this is dealing with a rape on college campuses and other forms of sexual assault on college campuses.

A Yes.

Q It is not addressing child sexual abuse, child molestation by pedophiles.

A Correct.

Q Okay. If you will, turn to page VI, the first page under, "Executive Summary."

Do you have that?

A I will in one moment.

Yes.

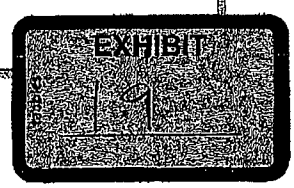
Q Okay. About the center of the page -- the paragraph in the center of the page, it notes the Student Right-to-Know and Campus Security Act was amended in 1992.

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

VOLUME I VIDEOTAPED
30(b)(6) DEPOSITION OF: MARK BRANDENBURG



Page 30

And I recall he thought that was -- he had experience with that position in the military, and he thought that The Citadel ought to have an individual that had those responsibilities. And I believe that was in -- I believe he started talking about that shortly after he took office in the beginning of 2006 and we hired Janet Shealy in the fall of 2006, as I recall.

Q. Would you agree with me that beginning in 2006, with General Rosa, it was important enough to him and The Citadel -- that coordinating a response to a claim of sexual assault was so important that he wanted somebody in charge of that 40 hours a week at The Citadel?

A. He wanted a full-time person to address those kind of issues.

Q. When you received the call from Father Doe in April of 2000- -- received a phone message about that, you called him back?

A. Uh-huh (indicating an affirmative response).

Q. What -- would you consider what you did from April of 2007 through September of 2007 an investigation?

A. That's the term we have used.

Page 31

Q. What were your goals for the investigation?

A. To find out what had happened.

Q. Would you agree with me that preventing harm to other young boys or victims was a goal of the investigation?

A. Sure.

Q. Would you agree with me that by undertaking the investigation, that The Citadel was aiming to prevent harm to potential victims?

A. I assume so.

Q. In April of 2007, would you agree with me that the names of sexual assault victims are kept confidential by police agencies in South Carolina?

A. I assume so. I'm not a police officer. I don't -- I don't know what exactly their policies are.

Q. Do you know what the law was in 2007, whether they were required to keep the names of -

A. I don't.

Q. -- sexual assault victims --

A. I don't.

Q. -- confidential? Do you know what it is now, the law?

Page 32

A. With regard to police officers?

Q. Right.

A. I don't.

Q. Do you know whether or not in April of 2007 if -- for instance, if a report had been made about Mr. ReVille, do you know whether police officers are required to keep his name confidential unless there's an arrest made?

A. I don't know.

Q. When is the -- prior to April 23rd of 2007, did you know Skip ReVille?

A. I don't believe I did.

Q. To your knowledge, you had never met him?

A. I may have.

Q. Were you aware in April of 2007 that Skip ReVille was on campus as -- working in the Writing Center?

A. I don't believe I was.

Q. To your knowledge, you had never eaten a meal with Mr. ReVille, never been to his house?

A. No.

Q. He'd never been to your home?

A. No.

Q. And you don't know whether you attended

Page 33

any Citadel functions where he was present?

A. He may have been. I don't know. I mean, if by a Citadel function, you include -- excuse me -- a football game or a basketball game, I'd say it's very likely we were there at the same time. But I -- I knew his name. I knew that he had been the chairman of the Honor Court, which is probably why I knew his name.

Q. How many years did you spend as a Citadel defense lawyer, either in your own practice or with Joe Brockington or with Barnwell Whaley?

A. I graduated law school in '93; I started my own practice in the fall of '95; and I joined The Citadel staff in 2005. So ten years.

Q. Okay. As part of your work as a Citadel defense lawyer, were you trained to find and interview eyewitnesses?

A. Was I trained? Did somebody teach me that?

Q. Yeah.

A. Kind of on-the-job training, I suppose. I clerked for firms and watched other lawyers do it and kind of learned by watching.

Q. Did it become self-evident to you as a

until now, any letter that you've ever sent that you cc'd somebody who was at The Citadel, that you have later found out that they somehow didn't get it, has that ever happened?

A. I don't recall. I don't recall that ever happening.

Q. As you sit here today, you can't think of one instance where you cc'd somebody who was on campus at The Citadel in a letter and you later found that that person never got that letter?

A. I can't think -- I can't think of any incident where that ever happened, no.

Q. This complaint by Father Doe came in April 23rd of 2007, correct?

A. Yes.

Q. And you very shortly thereafter contacted Mr. ReVille, correct?

A. I believe I talked to him the next day.

Q. The next day. How did you undertake to contact him?

A. My notes have a phone number on there, so --

Q. Where did you get the phone number?

A. I'm not sure. It might have been -- I see a note that says Jessica Mixon on my notes of

my conversation with -- Father Doe, I guess is what we're calling him. And my recollection is Ms. Mixon was in the -- what I would have called the Writing Center when I was a cadet; I think we now call it the Academic Support Center, which is where Skip was working. And so I -- I may have -- I may have called her and asked her for Skip's phone number, or I may have called the office -- just called the Academic Support Center directly. I also -- it looks like I also talked with Jenni Garrett and Bill Bates before I talked with him. So they may have given me his number.

Q. Let me ask you this way: Father Doe, he wouldn't have known -- he didn't tell you that -- to call Jessica Mixon or that Skip was working in the Writing Center, right? He would have no reason to know that?

A. Father Doe did not know Skip's last name. All he told me was somebody named Skip.

Q. I'm trying -- to the best of your knowledge, you're not sure where you got the name Jessica Mixon from, who is in the Writing Center? It may have been Jenni Garrott or it may have been Bates?

A. It may have been. I may have opened up

the telephone directory and looked to see who is in the Writing Center. I --

Q. But where did the Writing Center information come from? Do you know?

A. I don't recall.

Q. You didn't know independently he was in the Writing Center; you think you got that from somebody else?

A. I believe so.

Q. And so you called over to the Writing Center?

A. Apparently. I don't know.

Q. And he was there?

A. It looks like I reached him by his mobile phone somehow. I don't know if he -- if he was at the Writing Center when I called. I just don't know. I don't recall.

Q. Do you recall calling the Writing Center and asking for Skip ReVille?

A. I don't.

Q. Is it possible you did that?

A. It's possible.

Q. Okay. Do you have a phone record that shows you reaching him by his cell phone or that you called the Writing Center?

A. The only thing I have is what I think you all have, and it's about three pages of notes that have a name at the top, April 24th, and telephone conference with Skip ReVille. Those are -- that's all of the record that I have.

Q. And you've got a name (sic) for Jessica Mixon, who is in the Writing Center, and then you have Skip's cell phone number, right?

A. No. I have on -- I have -- the number that I have for Jessica Mixon is a cell phone for -- it looks like the Columbia area, and another number which I don't know; it may be a local telephone number here.

Q. Did Skip ReVille have a Citadel e-mail address on April 23rd, 2007?

A. I believe he did. I -- based on documents I've seen, you know, during discovery, I think he did.

Q. Did you in any way contact him via e-mail?

A. I don't believe I did. I don't know. It does not appear I did, but maybe.

Q. Do you recall in 2008 Mr. ReVille calling you?

A. No.

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-6d92-4929-aeca-746b30ae8dda

Q. Do you know whether the Margolis folks talked to Skip ReVille?
A. I don't believe he's listed as one of the people that they interviewed.
Q. Do you know whether they tried to?
A. I have no idea.
Q. It doesn't -- I mean, there's a section that says people they wanted to talk to and couldn't. I think one was your secretary or --
A. Was Ms. Shiel, yes.
Q. So it didn't say that they tried to talk to him and he wouldn't talk, right?
A. It does not say that in the document, right.
Q. Are your duties with regard to reporting a child predator to the police any different if the perpetrator is a Citadel employee or not a Citadel employee?
A. No.
Q. It's not in your notes, so I want to ask you, did ReVille, when you met with him on April the 24th of 2007, did he at some point say that, You know me, and you responded by saying, We thought we knew Arpaio?
A. That sounds like something I would say.

Q. Did you hear Colonel Trez say that, My job is to make sure that The Citadel is not harmed?
A. That sounds like something he would say.
Q. Did you hear -- did you tell Mr. ReVille to stay off campus?
A. I don't have the power to tell somebody to stay off campus.
Q. Do you have the power to suggest they stay off campus?
A. I can certainly suggest that.
Q. Did you suggest to Mr. ReVille that he should stay off campus until further notice?
A. I don't recall doing that.
Q. Did you tell ReVille to lay low?
A. I don't recall doing that.
Q. Did you ask Mr. ReVille whether or not he would agree to have a court reporter present when you had your meeting?
A. I don't believe I did.
Q. All right. Why would you have had Colonel Trez present in the room, if he were there, for a meeting with ReVille?
A. I mean, you're asking me a hypothetical. Why would I have done something that some people

say didn't happen? I guess I can answer it like this: Colonel Trez was down on the first floor at the time. He was the Executive Assistant. He was the individual that I had worked with most closely throughout the time that I was at Barnwell, Whaley. He and I worked together most closely on the Arpaio cases, and he attended most of the depositions and most of the interviews that we did in the litigation of those cases. When I joined the staff, there were plenty of times where he would call me and say, We've got this meeting about to happen. I think you ought to be involved in it. Come on down. Or he would grab me out of the hall, if I happened to be on the hall as he was walking to it, and I did the reverse. If I was walking to a meeting and thought he would be beneficial to be involved, I would ask him to come and be involved. And, you know, so particularly, I suppose, based on that lengthy experience during the Arpaio cases, where he sat with me on -- or we sat together with witness interviews, and I very easily could have said to him, Come with me while I talk to this person.
Q. It wouldn't surprise you if Trez were in a meeting?

A. It would not, not at all.
Q. All right.
A. Nor would it surprise me if he were not.
Q. Let me put it this way: Is Skip ReVille -- from the time you got there in '05 until now, is Skip ReVille the only accused child predator that you've ever interviewed or talked to --
A. On campus.
Q. -- on campus?
A. I believe so, yes.
Q. Are you telling me that it's possible you met face-to-face with Skip ReVille and you don't remember it?
A. Yes.
Q. And Colonel Trez doesn't remember it?
A. And Colonel Trez says he does not remember it, yes.
Q. But your notes indicate to you that you probably did?
A. My notes indicate -- my notes say telephone conference with Skip ReVille. And as I said before, I see a line here where it leads me to believe at some point, if it started as a telephone conference, it became a face-to-face

Electronically signed by Eve Wilbanks (101-177-349-6970)
775e718f-6d92-4929-aeca-745b30ae8dda

conference. But as I sit here, I do not have an independent recollection of meeting with ReVille face-to-face on April 24th of 2007.

Q. How far is the Writing Center from Bond Hall?

A. It's on the other end of campus.

Q. What is that, a ten-minute walk?

A. Well, using your map, it's in Grimsley Hall. It's a five-, ten-minute walk, depending on if you walk across the parade ground or walk around it.

Q. And you and Skip ReVille can both walk across the parade ground, right?

A. Yeah.

MR. SLOAN: We've got to change tapes.

THE VIDEOGRAPHER: This is the end of tape No. 2 in the deposition of Mark Brandenburg. We're off the record at 12:24.

(The deposition went off the record.)

THE VIDEOGRAPHER: This is tape No. 3 in the deposition of Mark Brandenburg. We're on the record at 12:36.

BY MR. SLOAN:

Q. And, Mr. Brandenburg, I'm going to get you to look at the notebook that's entitled

Unredacted FOIA Documents because your notes are Bates numbered in there.

A. Okay.

Q. And I think what we're going to --

MR. SLOAN: Dawes, what I'm going to do is just give Eve the redacted -- the redacted FOIA document notebook. And they're both Bates stamped, and she can just use the Bates stamp as the FOIA redacted documents. Okay? So that we can look at everything and see the names and everything.

THE WITNESS: Okay.

BY MR. SLOAN:

Q. But if you'll turn to Citadel FOIA 109, that's the Bates stamp on the right of the document.

A. 109.

Q. Right. That's in your notes.

MR. COOKE: You're not actually marking it as an exhibit? You're just going to refer to it?

MR. SLOAN: No. Just going to refer it.

Q. And this -- the Bates -- it's Citadel 2955, and Citadel FOIA 109. I'm going to refer to it as the FOIA Bates number, and that will be the

one that the court reporter has. Okay?

A. So 109?

Q. Right. This -- I take it, this is what you received from Wanda Milligan?

A. At some point.

Q. So you didn't actually have this document on April 23rd, you don't think?

A. I don't know.

Q. Do you specifically recall talking to Wanda Milligan about this --

A. No.

Q. -- or you just don't know whether you got this note or whether you talked to her or Colonel Trez?

A. I don't remember, no. I think I talked to Wanda, for some reason, but I just -- I don't remember.

Q. We've already discussed, this Father Doe who called, he didn't call the general counsel or the legal department, right?

A. No.

Q. He called the President?

A. He called the President.

Q. And it was up to the President's office as to who to send this report to and who to

investigate it, right?

A. Um, I suppose so.

Q. And the President's office, for whatever reason, chose you?

A. It found its way to me somehow. I don't know how that happened.

Q. And --

A. The information, again, that -- the piece of paper, I don't know when that ended up in my file, whether it was on that day or sometime after.

Q. And then these documents were given to us kind of in reverse chronological order. But if you go back, can you tell us -- the first note going backwards I think would be your telephone conference with Father Doe, and tell us where that starts.

A. That looks like it was at Citadel FOIA 100.

Q. Okay.

A. Are you asking --

Q. Yes -- now, is that the telephone call with the dad?

A. Yes.

Q. And then I take it these notes that run

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-6d92-4929-aeca-746b30ae8dda

Page 114

Q. All right. All right. Well, if you we look at Jenni Garrott --
A. Okay.
Q. -- why would you have wanted to talk to her?
A. Because she was the -- either the director or the deputy director at this time.
Q. And on June 20- -- I'm sorry -- on April --
A. April.
Q. -- 24th of '04, she tells you and you put an asterisk by, Skip was asked to leave Pinewood Prep.
A. Right.
Q. And, Knowing look (inaudible) --
THE COURT REPORTER: I'm sorry?
Q. Let me go back and ask that question. You have an asterisk by the statement that, Skip was asked to leave Pinewood Prep. And you have "knowing look" in all caps and you've underlined it, right?
A. Everything is in all caps.
Q. You've underlined "knowing look," right?
A. Yes.
Q. Did you ask her about the "knowing look"?
A. I assume I did.
Q. Well, what does that mean, Skip was asked to leave Pinewood Prep. Knowing look?
A. I think that what that -- I think that what that means is she looked at me like, Oh goodness, could this be another Arpaio case? Which, of course, is exactly what we were worried about.
Q. Did you call Pinewood Prep?
A. I may have.
Q. Would there be a record of that on your cell phone records that you produced in Margolis?
A. If I used my cell phone, there might be.
Q. Does Margolis also have your interoffice phone --
A. I don't know.
Q. -- records?
A. I don't know. I don't know that they record everybody I called.
Q. Would it be a good idea to call Pinewood Prep if Jenni Garrott gave you a knowing look that he was asked to leave?
A. Yeah.
Q. Wouldn't you want to know why he was asked to leave?
A. If he was asked to leave. It looks like I talked with him, you know, afterwards, and my recollection is he said he had -- he had decided to leave on his own.
Q. The only way to find out for sure is to call Pinewood Prep, right, if you're doing an investigation?
A. If they would release that information.
Q. Is there anywhere in your notes where you detail talking to Pinewood Prep or calling Pinewood Prep or sending them a letter or doing anything with regard to Pinewood Prep?
A. There's nothing in my documents, no.
Q. What does the next sentence say? I can't read it.
A. "Had vibes that not interested."
Q. What does that mean?
A. I don't know.
Q. What does that mean, that she had vibes that he wasn't interested in her?
A. Perhaps.
Q. And this is the director of the summer camp, Jenni Garrott?
A. Yeah.
Q. Okay. Did you report to General Rosa that the director of the summer camp told you that Skip was asked to leave Pinewood Prep and gave you a knowing look?
A. I don't know.
Q. Would that be something you think he ought to know?
A. Um, I don't know. It would depend on what I found out afterwards and when I talked to -- what I knew at the time that I talked to the President.
Q. What is the next -- what does it say next?
A. Well, it says a name, was fired for being too interested in campers. Was watching an Army film alone with camper in about 2005 -- or in 2005.
Q. What does it say out to the left there?
A. Bates, director 1999 to 2003.
Q. Okay. How old is Jenni Garrott?
A. Now? Mid 30's, maybe late 30's.
Q. Okay. The top of the next page?
A. I'm not sure.
Q. What does that say?
A. Never fired anyone for having or showing

director of what we then called the Krause Initiative.

Q. Did you ever -- what is the Krause Initiative?

A. It's a leadership program.

Q. Did you ever talk to Witt or Barton and tell them, Hey, don't hire this guy?

A. No.

Q. And those are all your notes from meeting with Skip ReVille?

A. Correct.

Q. You don't have any notes in here about asking him any other specifics about what Doe alleged --

A. I don't.

Q. -- and him denying it?

A. I don't.

Q. Why not?

A. I didn't write down a whole lot of notes. I wrote down -- it looks like to me that I wrote down some things to jog my memory later, folks maybe to get in touch with, but I don't -- I don't write down everything that people tell me.

Q. It's very possible that you -- that you tracked down Skip ReVille on April the 24th, 2007,

and he was right over there at the writing lab on campus, right?

A. It's possible.

Q. And he walked on over to Bond Hall and sat down with you?

A. He could have, yes.

Q. Did you ask him if he was employed at The Citadel?

A. I don't know if I did or not. Again, from my notes with Jessica Mixon, and somehow it seems I knew that he was -- you know, I found out that he was working at the Writing Center. And I -- I have a recollection of -- I eat in the canteen that's at The Citadel -- I eat lunch frequently there. And ReVille looks like a fellow that was a student in my dorm when I was in law school. And I remember seeing this individual come in periodically, and the first time he came in, I thought, why is -- and this fellow's name was George, I think. I looked over and I thought, why is George eating in the canteen at The Citadel? Because this kid was from New York or some place, as I recall. And as I recall, it turned out to be ReVille. And so either as a result of that event or whatever else, at some

point, I became aware that he was working at the Writing Center -- again, what I would call the Writing Center.

Q. As far as you knew on April 24th, 2007, based on where you found ReVille, you thought he was working at The Citadel, right?

A. I think -- my understanding was he was a tutor for the academic year 2006 to 2007.

Q. Okay. And he told you he was looking for a full-time job at The Citadel with Barton and Wirt?

A. Barton or Wirt.

Q. Okay. What does Barton do? Is that different than the initiative you told me about?

A. Yes.

Q. What does she do?

A. Colonel Barton is the assistant commandant for logistics. I can't remember. She works in the commandant's department. I can't remember what her exact -- what her exact title is now or was then.

Q. All right. And then your next notes are when?

A. What I have chronologically -- I'm sorry. Do you want notes or just what happened

next, so to speak?

Q. Right now I want notes.

A. Notes look to be -- um, a telephone call from a name on May 2nd of 2007, where this individual says, Never at summer camp.

Q. What Bates number is that?

A. 91.

Q. 91. Is that one of the names that ReVille gave you?

A. That's one of the names. In between those two notes, I have a series of e-mails that I sent out.

Q. Right.

A. And that looks to be one of the names to whom I sent an e-mail on --

Q. May 1st?

A. -- May -- yeah, Tuesday, May 1st.

Q. Why don't we look at those? If you want to go in chronological order, it would be page 6 -- 608 in your FOIA notebook there at the very back under a tab that says "e-mails."

A. All right. 608. Okay. All right. It looks like an e-mail that I sent on Tuesday, May 1st, at 10:26.

Q. Yes.

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-6d92-4929-aeca-746b30ae8dda

Page 138

A. Correct.
Q. What did you ask and what did they say?
A. I would have asked them, Was there any kind of pornography? Was there anything involving Mr. ReVille? And the answers I got back were denials.
Q. Well, you got an answer from one cadet, right?
A. Like I said, I have a recollection of that -- you know, of having a conversation with a cadet there.
Q. But you don't know which one it was, right?
A. I don't know which one it was, no.
Q. And you only talked to one of the six, correct?
A. That I recall.
Q. And, I mean, these six -- we know Eyewitness Doe was identified by Camper Doe, right?
A. Right.
Q. These other guys --
A. And ReVille.
Q. You sent -- these other -- the other five you sent e-mails to, there was no report or

Page 139

allegation from Doe that these guys had done anything to ReVille or that ReVille had done anything to them, correct?
A. There's no indication in my notes of that, no.
Q. So it wouldn't be surprising if one of them said, No, I didn't see any pornography with ReVille, right?
A. Well, the name that is on 613 is familiar to me. I don't know --
Q. Do you think that's who you talked to?
A. No, no, no. I just -- that name is notable.
Q. Why is that?
A. Because there's a basketball coach with the same last name that I'm familiar with.
Q. Well, I guess, can you eliminate him as the one you talked to or no?
A. I can't.
Q. No?
A. I can't.
Q. For Eyewitness Doe, other than this e-mail that you sent, you have no specific recollection today of ever talking to Eyewitness Doe, right?

Page 140

A. I do not.
Q. You didn't ever -- to the best of your knowledge, you can't prove to me you ever picked up the phone and called him?
A. I cannot, no.
Q. Either at The Citadel or when he went home for the summer, right?
A. I don't have any notes that indicate that -- that reflect a telephone conference with him, no.
Q. You don't have any follow-up e-mail by Eyewitness Doe, correct?
A. I do.
Q. You have a follow-up e-mail?
A. There is an e-mail that his father sent to Mike Rogers in either October -- I guess it would have been November of 2011, that says there -- it was after ReVille's arrest, that says, in essence, a lawyer for The Citadel contacted us about this individual years ago and it was dropped. We didn't say anything now and we're not saying -- we didn't say anything then and we're not saying anything now.
Q. And has that been produced?
A. As far as I know.

Page 141

MR. SLOAN: Dawes, do you know if that's been produced?
MR. COOKE: I don't know.
MR. SLOAN: I don't think it has.
MR. MCLEOD: Probably not. If there's a question, it probably hasn't been.
BY MR. SLOAN:
Q. You said this was an e-mail from Eyewitness Doe's father. Who is Mike Rogers?
A. Mike Rogers is the alumni director.
Q. And it says that, We were contacted by a Citadel attorney years ago about Skip ReVille or about this. We didn't say anything then; we're not saying anything now?
A. Something along those lines, yeah.
Q. Didn't say, My son had nothing to do with ReVille. This is all false; these are bad allegations; they're not true. It just says, I ain't saying nothing?
A. That's what I recall the e-mail saying.
Q. Now, Eyewitness Doe -- we've already established that Eyewitness Doe at the very most was five, ten minutes away from Bond Hall the whole time he was on campus as a Citadel cadet, right?

Electronically signed by Eve Wilbanks (101-177-349-6970) 775e718f-6d92-4929-aeca-746b30ae8dda

Page 142

A. Someplace.
Q. Did he come back as a sophomore?
A. I have no idea -- no. I believe he graduated.
Q. Okay. You have no recollection of -- I was asking you, you, Mark Brandenburg, never sent a follow-up e-mail to Eyewitness Doe?
A. I don't know.
Q. If you did, you don't have a record of it and neither do the 50,000 e-mails Mr. Cooke has told me about that have been pulled in this, right?
A. Right.
Q. So to the best of your knowledge, you didn't send him another e-mail?
A. No.
Q. Or you would have given it to us, right?
A. These e-mails came from an old external hard drive that was attached to the laptop computer that I was using in 2007. In 2010, we -- our IT department installed what they call an appliance that catches e-mails. The computer -- that was not installed until 2010. These e-mails are what I was able to find on that external hard drive that at one point had been hooked up to the

Page 143

computer that I used in 2007. I'm on my third computer since I joined the staff of The Citadel. That computer is long gone, and as is the second one. So -- and these e-mails, as I recall, came out of an archive file and only show what I sent in -- which is contained in that archive file for whatever time period that is. And I ran searches right after all of this broke in November of 2011, and these are the e-mails I could find.
Q. You personally did a search of your computer? If there had been another e-mail to or from Eyewitness Doe, you would have given it to me? You would have printed it out and given it to me?
A. If I had found one on that computer, yes.
Q. So to the best of your knowledge, you sent this one e-mail on May 1st; he never responded to it, correct, to the best of your knowledge?
A. To the best of my recollection.
Q. You never followed up with another e-mail, correct?
A. I don't know that.
Q. You never walked five or ten minutes

Page 144

over to any dorm? You had to know -- you could find out very easily where his dorm room was?
A. Yeah, sure.
Q. And you never walked over there to talk to him, right?
A. This was on Tuesday, May 1st of 2007. As I said, graduation was that Saturday. So on that Friday -- he would have left campus Saturday morning, whatever, four or five days later, the 6th, and he would have been gone all summer long.
Q. He would have left on what day exactly?
A. I think they leave at about six o'clock in the morning on Saturday.
Q. Of May 6th?
A. Of graduation, yes.
Q. So you knew on May 1st that he was going to be gone on May 6th, right?
A. I would have, yes.
Q. And he is the eyewitness to the abuse that Doe alleged, correct?
A. Uh-huh (indicating an affirmative response).
Q. And you never walked the five or ten minutes over to his dorm room, right?
A. I don't know that.

Page 145

Q. You never asked him to come over to Bond Hall and talk to you?
A. I don't recall doing that.
Q. What did you have to do that was more important than talking to the eyewitness to a sexual abuse claim, who was getting ready to leave for the summer, for the five days from May 1st to May 6th? What job duty as general counsel of The Citadel was more important than that?
A. There were -- the last few weeks of school are just absolutely chaotic. We have disciplinary cases that pile up. We have honor cases that pile up. We have all kind of events. My recollection is we were kicking a senior out that year, who had completed all of his academic requirements and -- but had committed some kind of an honor violation that we had to -- we ended up expelling I think the day before graduation. I recall being in a lot of meetings involving -- involving that event. There was just -- I don't recall what else was going on, but I know that every year at this time period, there are all kind of things that are going on.
Q. Is that your full answer to that question? Did you get to say everything you

Page 150

Q. Was there any hazing?
A. I don't recall any.
Q. All right. So you had a good camp experience?
A. I had a good time, yes.
Q. Did you confirm that Doe -- he told you he won the Mark Clark Award for Sportsmanship, Senior Counselor Award for Outstanding Camper. Did you confirm that?
A. I couldn't confirm that.
Q. You couldn't confirm it or deny it?
A. I could not, no.
Q. If you turn to page 427 -- FOIA 427.
A. Okay.
Q. This is, Eyewitness Doe came to Camper Doe and told him that the year before, that he and about five other kids used to go to ReVille's room, right?
A. Yes.
Q. In the middle of the page?
A. Yes.
Q. And he used -- ReVille would buy them Chinese food and pizza, and then he pulled out a pornographic video and put it in and started masturbating?

Page 151

A. Right.
Q. And he encouraged everyone else in the room to join him?
A. Yes.
Q. That's what he related, right?
A. Right.
Q. And they did, right?
A. I have no idea.
Q. That's what he told you, right? That's what he reported to you?
A. Whatever he said.
Q. And he made an agreement with them that he would keep buying them Chinese food and pizza and all these good things and give them privileges if they continued to come to his room, you know? That's what he told you?
A. That's what it says, yes.
Q. Would you agree with me that on July 1st, 2007, not only did you have a report that Camper Doe had been abused by Skip ReVille, but that Eyewitness Doe and five others had been?
A. That's what he alleged, yes.
Q. That was his report to you, right?
A. Yes, yes.
Q. After July 1st of 2007, what, if any,

Page 152

investigation did you undertake to find the five others?
A. I don't know.
Q. You didn't do anything, did you?
A. I don't know that I had any names. I don't --
Q. But you didn't do any investigation to determine who those five others may have been, right?
A. I don't recall, no.
Q. As you sit here today, you don't specifically recall doing anything?
A. No.
Q. On 431 --
A. Okay.
Q. Camper Doe is telling you the specifics of what happened, correct?
A. Yes.
Q. And he tells you that Skip ReVille started showing pornography on his computer, right?
A. Yes.
Q. And he talked about masturbation and then he started masturbating, right?
A. That's what he says.

Page 153

Q. And that Doe tried to go away and tried to go to sleep, right?
A. Yes.
Q. But that Skip was aggressive and insisted that he join in and he did so?
A. He says on page 74 of the statement, "He kind of got a little aggressive and was asking me to come back to the computer and join them."
Q. And he did so, right?
A. That's what he says.
Q. And he tells you he felt completely violated?
A. Yes.
Q. Do you agree that no 14-year-old boy at The Citadel Summer Camp should have to go through that?
A. Correct.
Q. Do you agree that Skip ReVille used coercion with regard to Camper Doe?
A. According to his statement, yes.
Q. And you actually used that word in one of your report letters, the word coerced, right?
A. I may have, yes.
Q. We'll go over it later.
A. Okay.

Electronically signed by Eve Wilbanks (101-177-349-6970) 775e718f-6d92-4929-aeca-746b30ae8dda

Page 166

this is when you're talking to Doe, not his dad, right?
A. Right.
Q. And you ask at line 9, "Is there anything that you want The Citadel to do as a result of this?"
A. Yes.
Q. And it goes back and forth. At the bottom, line 23 --
A. Uh-huh (indicating an affirmative response).
Q. -- he says, Most of all, the thing I want the most is just to make sure that Skip doesn't have a chance to do this to anyone else.
A. Correct.
Q. So this is the adult --
A. Uh-huh (indicating an affirmative response).
Q. -- Doe?
A. Yeah.
Q. You ask him, What do you want The Citadel to do most of all? And he tells you, Most of all, I want you to make sure this doesn't happen to anybody else.
A. What I asked him was -- I said, Is there

Page 167

anything else that you want The Citadel to do as a result of this? And on line 16 he says, I do expect some sort of compensation. I don't believe I'm in a position to say what. I mean, every step that I've taken out of this hole that I was put in, I've done by myself on my own. He says that before he says, Most of all, the thing I want is to make sure Skip doesn't have a chance to do this again.
Q. But he does say "most of all," right --
A. Right.
Q. -- the thing I want the most is just to make sure that Skip doesn't have a chance to do this to anyone else?
A. After he says I want -- I expect some sort of compensation, yes.
Q. But he clarifies that with saying what he wants most of all? "Most of all" means more than compensation, doesn't it? It means most of all, doesn't it?
A. That's what he said.
Q. And he's saying that as an adult, right?
A. Yeah.
Q. And if we're going to treat him as an adult with regard to reporting, then it doesn't

Page 168

really matter what his dad says about whether he wants to go to The Citadel or not, does it?
A. I don't understand your question.
Q. Doe, adult, Most of all, I want to make sure that Skip doesn't have a chance to do this to anyone else.
A. Okay.
Q. The dad all through here -- Dad is talking, I want my kid to go to The Citadel, I love The Citadel, let's get him to The Citadel, let's find a way to get him to The Citadel.
A. Right.
Q. Is Doe an adult who gets to decide for himself what he wants The Citadel to do for him, or are you listening to the dad?
A. I'm seeing what the kid says, what Doe says about what -- that he wants compensation. And also that he doesn't want the -- Skip to have the chance to do this again.
Q. Okay. I saw something in -- General Rosa's reason for sending you out there to get the transcript was to sit down face-to-face with his family and figure out where they were and what they wanted, right? Have you read that?
A. No.

Page 169

Q. No? Did General Rosa ever tell you, The reason I'm sending you out there is so you can sit down face-to-face with these folks and see where they are and what they want?
A. I recall there being several reasons that I went.
Q. Okay. What was your understanding -- did you have an understanding from General Rosa as to why he wanted you to go?
A. I just -- I had an understanding as to why I was going out there, and that was based on conversations with General Rosa and also with the adjusters that I talked with at the Insurance Reserve Fund, and, in all likelihood, conversations I had with Colonel Trez as well.
Q. We'll look at those. Those will be detailed in the letters back and forth to the IRF, right, the reason you were going?
A. There would -- some of it would be reflected in that, and also it's based on telephone conversations and oral conversations I was having with all of those individuals.
Q. Did you ever tell General Rosa that, What this adult told us was that most of all he wanted to make sure that Skip doesn't have a

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-5d92-4929-aeca-746b30ae8dda

Page 178

to masturbate in front of ReVille and another 14-year-old, correct?
A. Yes.
Q. And you would agree with me that the conduct that Doe described about ReVille took place on The Citadel property?
A. Yes.
Q. Took place on campus in the cadet dorms, right?
A. The barracks.
Q. In the cadet barracks, right?
A. Yes.
Q. You did not report that to The Citadel Public Safety, campus police, or SLED?
A. No.
Q. To your knowledge, no one at The Citadel reported it, correct?
A. Correct.
Q. Likewise, would you agree with me that you had reports by Doe of Eyewitness Doe and three others who were identified by photo, one of which you knew the name of, two of which you did not find out the names for -- that on July 1st of 2007 you were provided by Doe with reports of the exact same type of conduct with regard to those

Page 179

individuals?
A. He's -- I recall he said -- as -- whatever the statement says. I can't recall what the statement says. Whether it's the exact same kind of conduct; that -- he said that he believed similar things had happened to other people, I think is basically what he said.
Q. If you'll turn to tab 1 of that notebook, which is the Jessica Horton Act --
A. Yes.
Q. -- are you familiar with it?
A. I am now.
Q. Were you familiar with it in July of 2007?
A. I see it was -- it became effective on June 6 of 2007.
Q. Were you familiar with it?
A. I don't believe so.
Q. Do you have any method as general counsel of The Citadel for keeping up with statutes that are passed that affect The Citadel?
A. We have a government liaison that provides us with some information.
Q. Who is that?
A. Well, now it's Cardon Crawford.

Page 180

Q. Who was it in '07?
A. At the time it was Lieutenant Colonel Ben Legare.
Q. I'm sorry. Who?
A. Lieutenant Colonel Ben Legare.
Q. Is he with a company, or is he in-house at The Citadel?
A. No. He was an employee of The Citadel.
Q. He's required of making sure The Citadel is aware of any statute that is passed that affects The Citadel?
A. I don't know that he's required to do that. I think that was a part of what he did.
Q. Okay. Do you agree with me that the Jessica Horton Act does apply to The Citadel --
A. Yes.
Q. -- as a four-year institution? If we look at B of the Jessica Horton Act, it says, "The chief of the campus police of a an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division if there is a death resulting from an incident occurring on property of the institution." We don't have that in this case, right?
A. Correct.

Page 181

Q. Then it stays, "Or if the officer or another official of the institution is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution"?
A. Okay.
Q. All right? We've already established that you're an official of the institution, right?
A. Yes.
Q. So is General Rosa and Colonel Trez, right?
A. Correct.
Q. "Is in receipt of a report alleging that an act of criminal sexual conduct" -- we just read the definition of criminal sexual conduct in Title 16 of the South Carolina Code, right?
A. We read -- I mean, you read a statute that you pointed out to me.
Q. Okay. That is a definition of criminal sexual conduct that's in the South Carolina Criminal Code, right? We can agree on that, right?
MR. COOKE: Objection to the form of the question.
Q. Can't we agree to that?

Electronically signed by Eve Wilbanks (101-177-349-6970)
775e718f-6d92-4929-aeca-746b30ae8dda

Page 182

A. It's in a section that talks about -- obscenity, material harmful to minors, child exploitation and child prostitution is what it says, yes.

Q. And we've also established that this incident regarding ReVille and Doe occurred on the property of The Citadel, right?

A. According to the Camper's allegation, yes.

Q. And we not only have an allegation as to what happened to Doe, but we have an allegation from Doe about what happened to Eyewitness Doe, about what happened to the camper that had the same last name as a famous basketball coach, and two other guys he pointed out in the picture, correct?

A. Again, he -- what he alleges is he thinks -- as I recall, what he alleges is he thinks similar things had happened to other people.

Q. And you've told me that after July 1st you did no -- you can't -- you have no evidence to present to me that you did any investigation whatsoever with regard to any of the other individuals other than Doe of which sexual abuse

Page 183

was alleged?

A. Correct.

Q. Nor did you do any further work on Doe -- on Doe's case, right? You didn't contact anybody and didn't do anything else?

A. I had a number of communications or conversations with his father the end of July, early August, as I recall.

Q. Other than talking to his father -- that wouldn't really be investigation, would it?

A. I don't know.

Q. Would you agree with me that after July 1st of 2007, other than talking to Doe's father, you didn't do -- you didn't do any other investigative work on Doe's claim?

A. No. I wouldn't agree with you on that.

Q. What else did you do as --

A. What I've said is I don't recall doing anything else.

Q. Let me phrase it this way: As a -- you can't point me to any evidence -- any written document of any type that would suggest that you in any way did any investigation other than calling Doe's father after July 1st of 2007?

A. No. I can't point you to any documents.

Page 184

Q. In the back of your notebook -- and if I can have your notebook, I can probably --

A. Which one?

Q. That one there, let me get to it. It's not numbered.

MR. SLOAN: Dawes, I'm going to 16-3-800, which is kind of near the back part.

MR. COOKE: Got it.

BY MR. SLOAN:

Q. Okay. This article has to do -- this is 16-3-800, Sexual Performance by Children.

A. Uh-huh (indicating an affirmative response).

Q. It's another code section that defines sexual conduct. Do you see it in paragraph 2?

A. Right.

Q. Can you read what sexual conduct -- what the criminal code defines as sexual conduct?

A. It means "actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals."

Q. And in the allegations by Doe, we have masturbation, we have lewd exhibition of the genitals; you and I have already agreed on that,

Page 185

right?

A. Yes.

Q. Okay. In 16-3-810, it says, "It is unlawful for any person to employ, authorize or induce a child under eighteen years of age to engage in sexual performance." (b) says, "Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree, and, upon conviction, shall be punished" pursuant to a different code section.

A. Okay.

Q. Would you agree with me that we've gone over at least two parts of the South Carolina Code section that defines sexual conduct in terms of exactly what happened between Doe and ReVille?

A. As alleged by Doe, yes.

Q. And you would agree with me that the -- these code sections or the Jessica Horton Act, they absolutely do not require touching?

A. I don't see any requirement of touching in what you've given to me, no.

Q. Does General Rosa teach a class at The Citadel?

A. I think he has taught a Cit 201 class.

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-6d92-4929-aeca-746b30ae8dda

Page 190

right, Phillip sent you? Okay. Do you know when between April 23rd and June 15th you talked to Phillip?
A. No.
Q. Do you know how many times you talked to him?
A. No.
Q. Was there some discussion about Phillip going and taking the statement?
A. Yes.
Q. Who was that discussion with?
A. It was with the folks from the Insurance Reserve Fund and probably Colonel Trez and maybe General Rosa as well.
Q. Okay. And was there a conference call?
A. No.
Q. Was there a meeting?
A. I don't recall.
Q. Were there e-mails?
A. No. As I recall, I was – I was playing the messenger between all of them. I would talk with somebody – either Parris or David Stuckey at the Insurance Reserve Fund, and I would talk to Phillip on the phone, and I would go downstairs and talk to Colonel Trez and/or General Rosa, and

Page 191

I would go back and forth like that.
Q. Who is -- is there somebody in the group at the IRF or General Rosa or Colonel Trez that wanted Phillip to go take the statement?
A. I don't recall if there was anybody who was more in favor of one person or another. I think we -- we kind of debated back and forth, well, who should it be? The Insurance Reserve Fund could send Phillip out there or they could -- or I could go. And it was -- you know, or we could hire an independent adjuster or somebody to do it. It was just a range of options that we considered as far as going to get -- going to talk with Doe.
Q. Okay. And General Rosa was involved in the discussion as to whether or not it should be you or it should be Phillip Ferderigos?
A. I believe so, yes.
Q. Document -- FOIA document 651 –
A. Okay.
Q. -- this is an e-mail -- starting at the middle of the page, an e-mail from you and you sent it to yourself and to David Stuckey at the IRF and you cc'd Dan Parris; is that right? It's dated November 16th of 2007.

Page 192

A. Yes.
Q. This is kind of toward the end of the process, right?
A. Yes.
Q. If you look over on page 652, which is a continuation –
A. Right.
Q. – of the e-mail, my understanding was that there was some -- there was an offer made -- was there an offer made to pay Doe and his family $20,000?
A. Yes.
Q. And was part of it that he had to come to The Citadel?
A. No.
Q. Okay. When you say in this paragraph at the top of 652 –
A. Okay.
Q. -- that -- the second sentence there says, "The cadets now at The Citadel who attended camp with {redacted} several years ago are currently sophomores and will be juniors" –
MR. SLOAN: Let me go back and just strike that name out. Okay? The first name –

Page 193

Q. – "and will be juniors if Doe enters The Citadel next fall. I doubt he will want to face them in that situation." What do you mean by you doubt Doe will want to face them in that situation?
A. What I mean is I doubted that he would want to be a freshman where all of his buddies are juniors and are in leadership positions at that point in the corps. Remember, freshmen are under the fourth class system, and so they would -- he would be two years removed from them, and he would be undergoing the fourth class system and perhaps at the hands of some of his friends. And I just – I don't think that that's something anybody would enjoy.
Q. What would they do to him?
A. I don't know. It's just –
Q. What would the concern be?
A. It would not be an enjoyable situation. During the interview, as I recall, there were -- they – the father talked about somebody who was really upset that he was not going to be there to go through the system with him. Your class is incredibly important to you at The Citadel, and going through with your friends – being a fourth

Electronically signed by Eve Wilbanks (101-177-349-6970)

775e718f-8d92-4929-aeca-746b30ae8dd

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

MOTHER DOE A,

Plaintiff,

-versus-

THE CITADEL,

Defendant.

Case 11-CP-10-9200

JOHN DOE CAMPER,

Plaintiff,

-versus-

THE CITADEL,

Defendant.

Case 11-CP-10-1860

JOHN DOE 2,

Plaintiff,

-versus-

THE CITADEL,

Defendant.

Case 11-CP-10-1858

MOTHER DOE 2, on behalf of JOHN DOE 3,

Plaintiff,

-versus-

THE CITADEL;

Defendant.

Case 12-CP-10-1859

THE CONTINUATION OF THE DEPOSITION OF MARK BRANDENBURG was taken as a witness on behalf of the

MR. STONEY: Objection.
A I don't know.
MR. STONEY: What was the date of that application?
MR. SLOAN: He signed the next page April 15, 2003. But there's no date on the front page. It says his age is 23.
BY MR. SLOAN:
Q If you'll look at FOIA 285. This is The Citadel ethical principles for employees which ReVille signed in August of 2006 when he was hired in the writing center.
A Right.
Q Did you sign a similar pledge?
A I believe I did, yes.
Q Under accountability it says, "Citadel employees should take responsibility for their own actions and personal decisions and should protect the institution by following all policies and procedures of The Citadel and upholding the constitutions and laws of the United States of America and the state of South Carolina."
A Yes.
Q I take it you signed that and General Rosa signed it? Everybody signed it?

A I believe I signed it. I would guess that General Rosa signed it. I don't know.
(Exhibit No. 7 marked for identification.)
A Are we done with this one?
BY MR. SLOAN:
Q I think so. This is a notebook that has Citadel policies and procedures.
MR. STONEY: Objection. Did you mark this entire book as an exhibit?
MR. SLOAN: I did. I think what I'm going to do is just get her to pull the pages that I actually reference by Bates number so we don't have a full notebook.
MR. STONEY: What exhibit number would it be?
MR. SLOAN: No. 7. It will be composite No. 7.
BY MR. SLOAN:
Q I meant to ask you, do you know how much the Margolis report cost?
A For some reason, about $150,000 rings in my mind for what their fee was.
Q And I read there was some -- in the Margolis interview statements that there was a

public relations firm that was hired that cost $200,000 regarding the ReVille allegations. Are you aware of that?
A I know that they used a company called Chernoff Newman during this time period. I don't know what their -- I don't know what their bills were.
Q If you would turn in that notebook to tab 1, which is the college regulations that were revised April 22, 2006, do the college regulations apply to you?
A Yes.
Q And these would have been in effect in April of 2007. Correct?
A Some version of them would have been, yes.
Q Is there a version that hadn't been produced to me that was revised between April 22, 2006, and April 23, 2007?
A Not to my knowledge.
Q If you'll turn to page 1094, Citadel 1094.
A Okay.
Q This is the very first page of The Citadel's college regulations. Right?

A Right.
Q Section one. It's got a Statement of Vision, Core Values and Mission. Right?
A Right.
Q It says, "These Statements of Vision, Core Values and Mission were approved by The Citadel Board of Visitors in February of 2003 and by the South Carolina Commission on Higher Education in June of 2003." Right?
A Right.
Q Under Core Values, could you read what No. 2 says about duty?
A "We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."
Q Would you agree that that moral sense of duty would apply to investigating an alleged sexual offense?
A Yes.
Q In fact, we talked about that yesterday; that one of the goals of the investigation into the ReVille allegations would be to protect the welfare of others from a child predator. Right?
A My job as the school's lawyer is to look out for its legal well-being. We viewed this as a

claim against the school, and I was viewing it in that fashion.
Q Under the code section of The Citadel's college regulations it says you have an obligation of responsibility for the welfare of others. Right?
A Yes.
Q It's on the first page, No. 2 under Core Values.
A Yes.
Q If you would turn to page 1109, which is still part of the --
A Okay.
Q -- code of college regulations. Under sexual harassment, section B which defines sexual harassment says it's prohibited, unwelcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature constitutes sexual harassment.
A Right.
Q Do you agree with me that what happened between Skip ReVille and Doe was sexual harassment under this code?
A This is written with an eye toward the college, not so much the summer camp. But it certainly fits within these descriptions, I think.

I mean, it talks about employment, student opportunities, things of that nature. If we expand that to camp, then it fits within those categories.
Q If you'll turn to 1681, what is this?
A It's a policy called Serious Incidents.
Q It's dated April 26, 2000?
A Yes.
Q Was this in effect in April of 2007?
A I assume it was.
Q Did it apply to you?
A If it was in effect, it did.
Q It says under the second section, second paragraph, "Serious incidents include, but are not limited to, such events as a death, serious injury, fire, accident, criminal activity" -- Right?
A Yes.
Q It says, "All members of the Corps of Cadets, day and evening students, faculty and staff of The Citadel are responsible for reporting such occurrences immediately."
A Right.
Q Have you ever under this memorandum Serious Incidents reported something to Citadel public safety?
A Have I?

Q Yes.
A Normally, by the time I hear something, a lot of times public safety has already been notified.
Q If you go over to 1692, who is the -- In 2007, who was the executive assistant to the president?
A In 2000 --
Q April 2007.
A Colonel Trez.
Q It says under Other Incidents --
A Right.
Q Do you see that? "Any incident which has a recognized potential for news media interest will be reported by the first individual aware of the incident. Examples of such incidents include, but are not limited to, scandal involving an individual closely identified with the college, allegations concerning illegal or immoral activities at the college" -- Okay. Would you agree with me that the allegations against ReVille were a scandal involving an individual closely identified with the college?
A Well, it was involving -- Yes.
Q Would you agree with me that the allegations involved immoral activities at the

college?
A Yes.
Q So the individual responsibilities are to notify the executive assistant to the president?
A Right.
Q And you notified Colonel Trez. Right?
A He knew about it.
Q And then it says under that the executive assistant responsibilities. Right?
A Right.
Q He is to alert the president of the situation. General Rosa knew. Right?
A He knew.
Q And then it says, "If criminal activity is alleged, contact the Department of Public Safety."
A Right.
Q Was that done?
A No.
Q Colonel Trez should have done that according to this memorandum. Right?
MR. STONEY: Objection.
A That's what the memorandum says.
BY MR. SLOAN:
Q And you told us earlier that you would

never suggest to any Citadel administrative personnel that they should violate any Citadel policy, regulation or code. Right?
A No.
Q So it's Colonel Trez's job to report the ReVille obligations to the Department of Public Safety and he didn't do it?
A According to this memo, he is to report allegations of illegal or immoral activities, right.
Q There's just no question that what ReVille did with those 14-year-old boys was illegal and immoral?
A It's clear now, yes.
Q It was immoral when it came in, wasn't it?
A The allegations -- It was allegations of immoral activity, yes.
Q Did you know that Colonel Trez was supposed to report this to the Department of Public Safety before today?
A Before today?
Q Yes.
A I mean, I know of this memo now. I don't know if I had read this or if I read this at that time.

Q 1743.
A 1743? My book goes from 1722 to 2438. No, I've got it.
Q What tab was it under in your book?
A Well, it's all under one, but it was later. I've found 1743.
Q 1743 is the Sexual Assault Crisis Intervention Policy.
A Right.
Q And under the introduction, the eighth line down, it says, "The Citadel community strongly supports a policy that prohibits abuse of power by sexual assault. This unlawful act and the coercion, intimidation and lack of respect it represents is the antithesis of The Citadel's mission and this behavior will not be tolerated."
A Right.
Q "The Citadel will punish any individual who is found to have committed a sexual assault."
A Correct.
Q And then under Definitions, No. 2B, sexual assault.
A Right.
Q It says it includes rape and all other forms of unlawful sexual behavior.

A Okay.
Q And contact. Right?
A Right.
Q So you and I established yesterday that what Mr. ReVille did was unlawful sexual behavior. Right?
A We looked at several statutes, that it fit some of the definitions under of those statutes. It appeared to.
Q So under The Citadel's Sexual Assault Crisis Intervention Policy, unlawful sexual behavior would include what Mr. ReVille was alleged to have done by Doe?
A It appears to.
Q And obviously on the next page, affirmative consent cannot be given if the person is under 18 years old?
A Okay. Right.
Q Did it ever -- This memorandum is dated July 3, 2002. Right?
A Right.
Q Is there any policy that superseded it with regard to The Citadel's Sexual Assault Crisis Intervention Policy before April of 2007?
A I think there's another one that's dated

2005.
Q Did it change this definition of sexual assault?
A I don't believe it did.
Q Did it ever occur to you that you needed to immediately contact the sexual response coordinator, the SARC?
A I don't recall that it did.
Q Based on this policy, is that what you should have done?
A I'm not sure.
Q Have you read -- Janet Shealy is the sexual assault response coordinator. Right?
A Right.
Q And she was --
A Not exactly her title, but that's her job.
Q And have you read her deposition?
A No.
Q Do you know what she says she would have done had Doe reported to her?
A I don't recall, no.
Q Over on page 1761, this is still part of that same Sexual Assault Intervention Policy.
A Okay.

IN THE EVENT OF EMPLOYEE MISCONDUCT...

As an employee, if you are accused of sexual misconduct, the following consequences may occur as a result of your actions:

- The allegation, the outcome of the investigation, and any disciplinary action stemming from the incident will go in your permanent employee file.
- The Citadel will not expunge molestation findings from your record.
- The Citadel will not terminate an investigation of sexual misconduct in exchange for resignation.
- The Citadel will report necessary information about the incident to state licensing entities and other clearinghouses.
- The Citadel will not provide you with positive referrals before concluding an investigation.
- The Citadel will refuse to negotiate gag order clauses in employee termination agreements.
- The Citadel will provide factual and candid responses to inquiries by other potential employees about your behavior.
- The Citadel will fully cooperate with law enforcement agencies that are conducting investigations.

Citadel 2821

CITADEL Box 443-B - 00951
(PHSVV-Tagged Docs)

PLAINTIFF'S EXHIBIT 20

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 11-CP-10-9200

Mother Doe A,

Plaintiff,

vs.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1860

John Doe Camper,

Plaintiff,

vs.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1858

John Doe 2,

Plaintiff,

vs.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1859

Mother Doe 2, on behalf of John Doe 3,

Plaintiff,

vs.

The Citadel,

Defendant.

* *

VIDEOTAPED DEPOSITION OF: GENERAL JOHN W. ROSA - VOL. I

DATE TAKEN: Monday, July 29, 2013

TIME: 10:00 a.m.

PLACE: 321 East Bay Street
Charleston, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

A That was my assessment.

Q All right. Did you do a review of all Citadel policies when you arrived at The Citadel?

A Not -- not all, I wouldn't say 100 percent, but we reviewed several of them, several of what -- what is considered key policies. I can't -- I can't sit here and name them.

Q Uh-huh (affirmative).

A But that first year was a year of trying to understand the institution, how the institution was run, but a state institution is considerably different than a federal institution.

Q Okay. When you arrived at The Citadel, did you review the serious incidents policy?

A No.

Q Four lines down says, "We brought in Janet Shealy, sexual violence prevention coordinator." It's really sexual assault response coordinator --

A Right.

Q -- SARC, isn't that -- is that correct?

A She was initially called the SARC and now her acronym is CARE.

Q And what does CARE stand for?

A Citadel advocate response -- I don't know the acronym.

Electronically signed by Teri Sampson (401-251-957-7637) db5d5f12-6075-457c-acdf-62eeb003bf29

BY MR. SLOAN:

Q This is Bates number -- if you'll turn to Bates 1094, which is the first page. And now, the -- I take it the college regulations apply to you as well, correct?

A Yes.

Q And they apply to Mark Brandenburg and Joe Trez, is that correct?

A Right.

Q And under core values under -- this is the statement of vision, under core value, it says, "Duty, we emphasize the importance of individual accountability and a moral obligation of responsibility for the welfare of others." Is that correct, what it says?

A Right.

Q Do you agree with that?

A Right.

Q Would you agree with me that some of The Citadel's policies and procedures and guidelines, when they're written, they take into account the duty of a moral obligation of responsibility for the welfare of others?

A Right.

Q All right. If you would turn over to Tab 3,

Q All right. So were you ever told by Mark Brandenburg what -- what Doe wanted as opposed to Doe's father?

A No, not that I recall, because his -- I think he did speak with the -- with the young man --

Q Uh-huh (affirmative).

A -- but most of his conversations related to me that he had -- was with the father.

Q Okay. Well, it seems to me from reading your Margolis interview that you put quite a bit of weight on the fact that Doe was an adult as opposed to a minor at the time he made the report, right?

A Yes.

Q All right. So I take it with regard to whether or not the -- The Citadel should report this to law enforcement, you would defer to Doe, the adult victim, as opposed to Doe's father?

A Correct.

Q Okay. And so -- and Mark Brandenburg should have as well?

A Right. But --

Q All right.

A -- I think they were both together when Mark spoke to them. I'm not sure of that.

Q Uh-huh (affirmative). Have you spoken to

Electronically signed by Teri Sampson (401-251-957-7637) db5d5f12-6075-457c-acdf-62eeb003bf29

agree with me that Mark Brandenburg knew or should have known that he was dealing with a pedophile at that time?

A I'm not sure what he knew. I can't speak for Mark, but if he knew all of that information, clearly it appears that he should have.

Q Okay. And when this -- you would agree with me that when that -- when those allegations come in to Mark Brandenburg and he knows all of that, isn't there a current -- and -- and -- and Skip ReVille is on campus, the next day when he tries to find ReVille, he's on The Citadel campus, wouldn't you agree that if that person who has been accused of being a pedophile is on The Citadel campus, that that's a current threat to not only The Citadel, but the public at large?

A Possibly, but I don't think that's the way they looked at -- that's not the way that it was interpreted. It was looked at as a five-year-old incident.

Q Uh-huh (affirmative).

A Whether that's right or wrong, I believe that's the way it was looked at.

Q And I understand you're saying that's the way it's interpreted. But the -- I mean, the fact of the matter is when the allegation came in, it was a current

threat of a child sexual predator?

MR. COOKE: Objection to the --

BY MR. SLOAN:

Q Right?

MR. COOKE: -- form of the question.

BY MR. SLOAN:

Q He wasn't -- he wasn't locked up like he is now, a guy who repeatedly was inappropriate sexually with children and he's on the campus, that's a current threat, isn't it?

MR. COOKE: Objection to the form.

A (Continuing) If we knew all of that, it would be a current threat.

Q Just like if there was a -- if there was a fire at The Citadel and it was close to a neighborhood, you -- you wouldn't just keep the fire to yourself and try to put it out yourself, you'd warn your neighboring community, wouldn't you?

A Sure.

Q All right. And why isn't a child sexual predator the same?

A It should --

Q If you have a child sexual predator on campus, you ought to warn people about it, it's a current threat, not only to The Citadel, but the

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 11-CP-10-9200

Mother Doe A,

Plaintiff,

vs.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1860

John Doe Camper,

Plaintiff,

vs.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1858

John Doe 2,

Plaintiff,

vs.

The Citadel,

Defendant.

Electronically signed by Teri Sampson (401-251-957-7637) 9163345b-cc61-41e0-8928-2d4326f2e868

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 12-CP-10-1859

Mother Doe 2, on behalf of John Doe 3,

Plaintiff,

vs.

The Citadel,

Defendant.

* *

VIDEOTAPED
DEPOSITION OF: GENERAL JOHN W. ROSA - VOL. II

DATE TAKEN: Tuesday, July 30, 2013

TIME: 10:00 a.m.

PLACE: 321 East Bay Street
Charleston, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

Electronically signed by Teri Sampson (401-251-957-7637) 9163345b-cc61-41e0-8928-2d4326f2e868

A I'm somewhat familiar with it.

Q Uh-huh (affirmative). Are you aware that Mr. ReVille was asked to come and speak to Citadel freshmen as a guest speaker at the 101 course between 2007 and 2011?

A No, I was not.

Q If you had known that, would you have allowed it?

A I don't know that.

Q I think we established this yesterday, but you would agree with me that Mr. ReVille, who, after graduating The Citadel, actually worked at The Citadel and came back to induct other cadets into the honor committee and came back to teach freshmen as a guest speaker at the 101 Citadel course between 2007 and 2011, would you agree with me that that is a Citadel graduate who has a special relationship with The Citadel?

A First of all, I didn't know that. I didn't know that he was invited --

Q Okay.

A -- to both of those venues. And by -- in this community just by being an alumnus --

Q Uh-huh (affirmative).

A -- you have a relationship. We're not a big

Electronically signed by Teri Sampson (401-251-957-7637) 9163345b-cc61-41e0-8928-2d4326f2e868

PBS NEWSHOUR

Culture Change at the Air Force Academy

October 14, 2003 at 12:00 AM EDT

[Sorry, the video for this story has expired, but you can still read the transcript below.]

TRANSCRIPT

TOM BEARDEN: Cadets call it "the beast," five weeks of hard-core basic training that all freshmen must endure before starting classes at the Air Force Academy. But this year, the training was a little less beastly. While freshmen still had to endure grueling physical challenges, they did so without the humiliating verbal assaults by upperclassmen that characterized the training in years past. Instead, the older cadets shouted out encouragement to their new charges.

LT. GEN. JOHN ROSA, Academy Superintendent: There's not so much "in your face," as we call it, the yelling and the one-on-one interchange. It's been a much more professional environment.

TOM BEARDEN: The new approach is part of a broad effort to repair the school's damaged reputation after a series of highly publicized investigations into allegations of widespread sexual assaults over many years, and charges that the academy punished the victims instead of the perpetrators.

LT. GEN. JOHN ROSA: But we'll get there.

TOM BEARDEN: Newly installed superintendent Lieutenant General John Rosa thinks treating young cadets with more professionalism from the very start will foster more unit cohesion, and reduce hostility directed at female cadets, and he hopes that in turn will reduce sexual harassment and assault.

LT. GEN. JOHN ROSA: If I said we were changing one thing, we're changing young people's mindsets. And we're trying to change, over time, if you change the mindset, what's acceptable and what's not acceptable.

TOM BEARDEN: It all started last spring when dozens of former cadets came forward saying they had been raped while at the academy, and that when they reported the rapes, they were ignored by their superiors.

In March, the Air Force secretary replaced the academy's top leadership team, and ordered that a 165-point Agenda for Change be adopted. In May, the Defense Department Inspector General's Survey found that nearly 20 percent of female cadets said they had been victims of sexual assault, 7 percent said it was in the form of rape or attempted rape. And in September, a civilian commission appointed by Congress concluded that there had been a "deep chasm" in leadership, both at the academy and the Pentagon. Former Congresswoman Tillie Fowler chaired that investigation.

TILLIE FOWLER: We believe that this chasm in leadership helped create an environment in which sexual assault became a part of life. The roots of this crisis go as deep as the institution's culture. Just last year, more than one-fourth of the male cadets responding to the academy's own survey stated they did not believe that women belong at the academy. This is a severe problem in the culture of the academy, and reflects a failure of character and values.

SPOKESPERSON: Hup, two, three, four, hup, two, three, four...

TOM BEARDEN: General Rosa and the new leadership team say they're trying to change that culture. In addition to the "gentler" treatment of freshmen, they have a tough new alcohol policy. A cadet can be kicked out after two infractions. Academy officials say that alcohol was involved in at least 40 percent of the sexual assault cases.

The new administration has also made it clear that criminal activity of any kind will not be tolerated. Even failure to report offenses of other cadets can be grounds for dismissal.

There's a new emphasis on educating cadets about the necessity to report assaults, and a demand that cadets not tolerate inappropriate behavior by their peers. Recently, Brigadier

General John Weida, the new commandant of the cadets, brandished a sword as he lectured students about the warrior heritage they needed to uphold.

BRIG. GEN. JOHN WEIDA, Commandant of Cadets: Ladies and gentlemen, if you think we don't have a sexual assault or sexual harassment problem at the Air Force Academy, your head is in the sand. Pull it out right now.

If we don't reverse this trend, the very existence of this institution is threatened. And there's a few in the audience that I've made eye contact with that I'm not sure get it. You will get it, or you will leave this institution.

TOM BEARDEN: Senior Cadet Dana Stockton says he's gotten the message loud and clear. He says he won't stand idly by if he sees offensive behavior.

DANA STOCKTON, Senior Cadet: We all see little things now that need to be fixed, just the little things that never have been looked at before. And all those things now, we see, and we'll stop.

TOM BEARDEN: Little things like?

DANA STOCKTON: Little things like stupid jokes. There's... sometimes stupid jokes go on here, and they're not necessary, and a lot of the females here just brush it off, which... and it's not a big deal. But it is a big deal now, and we realize that, and those things are changing.

TOM BEARDEN: Junior Cadet Stephanie Vidal says other things are changing, too. In previous years, Vidal says many female cadets felt pressure not to report assaults because it would reflect poorly on their squadrons. She says that's not the case anymore.

STEPHANIE VIDAL, Junior Cadet: There's a sense that if we have an issue as females to discuss, that people are open to hear and to listen. There's also a sense that if there is a problem, you won't get ridiculed or ostracized for coming forth.

TOM BEARDEN: In the past, assault victims said the system in which senior cadets controlled virtually every aspect of a freshman's life also needed to change. Last spring, a rape victim explained the connection to the NewsHour correspondent Betty Ann Bowser.

"LIZ," Former Cadet: In essence, it's kids training kids, and that's really what it comes down to. It's teenagers on teenagers. And there is a tremendous amount of power vested in these teenagers that are so-called "above" other teenagers, just because of the ranking system. And that does teach discipline, but it is just taken way out of context sometimes.

BETTY ANN BOWSER: But does that also encourage men to use their power over women, including rape?

"LIZ:" Yes, it does. They really... it really is a power trip. It definitely is a power trip. That's what rape is all about. It's not about the sex at all.

TOM BEARDEN: Senior Cadet Kristina Belcourt says that training system has been abolished by the new administration.

KRISTINA BELTCOURT: You don't have people in a direct position of authority, like where they control every single aspect of your life anymore. You have people that will help you out, more so than controlling you. There's a lot more discipline instead of, like...

TOM BEARDEN: Harassment?

KRISTINA BELTCOURT: Not harassment. We called it... we called it beating, but it wasn't beating. It was just physical training. So there's a lot less of that, and I think that really improves the environment around here.

TOM BEARDEN: But even as some cadets see positive changes, a recent academy survey tells a different story. Eight in ten cadets say they've heard other cadets make sexual slurs and jokes. 40 percent of the cadets said they drank while underage. Almost one-fifth of female cadets said they don't know how to report sexual misconduct. And a nearly equal number of women said they feared reprisal if they did file such reports.

Ironically, some of that fear may be a result of the new Agenda for Change, which abolished confidential reporting of sexual assault. Previously, victims' names weren't made public. That change troubles Cadet Belcourt.

KRISTINA BELTCOURT: I have problems with it, simply because the victims that I've known have had problems bringing it forward, because you don't want your dirty laundry to be

aired to everyone.

TOM BEARDEN: The loss of confidentiality also troubled the Fowler Commission.

TILLIE FOWLER: The agenda for change overlooked an established form of privileged communication that is currently available throughout the armed forces, and can benefit cadet victims.

TOM BEARDEN: General Rosa says the reason confidentiality as abolished was to aid in the prosecution of cases.

LT. GEN. JOHN ROSA: You report a crime. That way, you have a victim. The commander — it's in the chain of command. The commander knows that we have a victim. We can preserve evidence, take care of that victim, preserve evidence so that as the trauma passes, we can bring the appropriate action to the alleged perpetrator. So that's the program we have now.

TOM BEARDEN: But Rosa says Air Force officials are aware of the widespread opposition to the change, and they're working to see if a compromise solution can be worked out.

SPOKESMAN: Hup, two, three, four...

TOM BEARDEN: He says the entire Agenda for Change is just a blueprint, and will be revised if the culture doesn't fundamentally improve at the academy.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-9200

MOTHER DOE A,

Plaintiff,

vs.

THE CITADEL,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1860

JOHN DOE CAMPER,

Plaintiff,

vs.

THE CITADEL,

Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1858

JOHN DOE 2,

Plaintiff,

vs.

THE CITADEL,

Defendant.

VOLUME I VIDEOTAPED
30(b)(6) DEPOSITION OF: COLONEL JOSEPH W. TREZ

Page 54

(The deposition went off the record.)
THE VIDEOGRAPHER: This is tape No. 2 in the deposition of Colonel Joseph Trez. We're on the record at 11:38.
BY MR. SLOAN:
Q. All right. There was a question that you were going to answer by looking at some stuff. What is your answer?
A. Yes. I've reviewed two policies, one the Sexual Harassment Policy memorandum No. 51, dated 30 June 2000. It starts with Bates number 1694. I'm going specifically to page 1717 on formal procedures. Annex B, Formal Procedures Are Used, and it gets to C and it says, "Criminal laws are involved, such as sexual assault or sexual abuse (in some instances, the victim may not want to prefer charges, leaving the college with the option of handling the situation informally or filing its own charges)."
Now I'm going to go to the Sexual Assault Crisis Intervention Policy, 3 July 2002, starting with Bates stamp 1743. I'm on page 1746. Paragraph D says, "The Citadel's policy encourages individuals who have been sexually assaulted to formally report the incident to a member of the

Page 55

college administration or to a Citadel Public Safety official."
The Citadel strongly encourages all cadets, students, faculty and staff who have knowledge of a sexual assault or have knowledge of another person's sexual assault to report to either the campus safety, the Commandant, the counseling center, a member of the campus clergy and so forth. The report will not include the name of the individual who has been assaulted or sexually harassed. This report may be done anonymously.
Down to Duties of Campus Personnel, paragraph 6-A, "First and foremost, it is important to respect the wishes of the individual who has been sexually assaulted, especially as to whether to file a formal complaint or criminal charges." And that is a key point, and I can go back and explain that as the policy writer.
Q. Okay.
A. I'm not --
Q. Go ahead.
A. I'm still going. I'm now on Annex A, page 2 to that policy that's Bates stamped 1750. "With the assistance of a qualified professional,

Page 56

decide" -- this is advice to a victim -- "decide whether or not you wish to notify the police."
"The Citadel strongly encourages individuals to formally report crimes. Keep in mind that reporting the crime does not require the filing of criminal charges."
On the top of page 1751, "Even if you do not file criminal charges, information provided to the police may help protect others. Remember, many perpetrators of sexual assault" may commit this crime repeatedly.
I'm now on Do's and Don'ts in Supporting a Sexual Assault Victim, Annex B, Bates stamp 1752. "Do review with the victim the options, then respect the choices regarding the options the victim wishes to implement."
And that's one of my points that we -- as we wrote the policies, it's to honor the wishes of the alleged victim.
I'm on Annex D, page 1754. "If the alleged victim requests, describe the process of seeking formal and informal action and the process of filing criminal charges."
On 1759, paragraph 4-C, Nothing in this policy will prevent the student (sic), staff or

Page 57

students from exercising their legal rights.
The Protocol for Responding to Sexual Assault, Bates stamp 1760, "Encourage the individual to go to The Citadel Public Safety to file a report and offer to accompany the individual or encourage the individual to contact" their police -- "the local police to file a report."
And then finally, on Responsibilities of the Sexual Assault Response Coordinator, who is not involved in here, in this matter, 1761 encourages the individual to contact local police to report.
So within our policies, both sexual harassment and sexual assault, it was written to give the victim or the alleged victim the decision of whether or not to report it to the police. We found, talking with all of our consultants, as we put the policies together, that we had to give that power to the alleged victim, and that we could not usurp that power and have a policy that didn't have a chilling effect.
Q. On 1761 you were just talking about, Responding to Sexual Assault --
A. 1761?

A. I'm not sure I have a comment on that. I just -- you know, I know things now in -- since 2011 that cause me to question why we didn't do something different. But at the time, I didn't know that. These are questions that I ask myself every day since 2011.

Q. As someone who was the liaison for the Arpaio cases before you took over as Executive Assistant to the President, did you -- did you think to put in -- some type of system in place so that when there was an allegation of a potential child sexual predator, that The Citadel would do the right thing?

A. That's why I wrote the policy from Texas A&M.

Q. And that -- but in your mind, that required touching -- sexual assault, right?

A. No. The policy dealing -- sexual assault, yes.

Q. Required touching, right?

A. Required touching. But dealing with the issue -- do you want to ask?

Q. Go ahead.

A. -- issues dealing with the operations of the camp and those procedures that take place when

the camp is in operation, that's the Children on Campus policy. And that's where you would report things to Public Safety for camps in operation. But I have no recollection of being asked questions about the Children on Campus policy as it applies to this case.

Q. Your current job, tell me again what it is.

A. I'm the Executive Director for the Krause Center for Leadership and Ethics.

Q. And what are your job responsibilities?

A. I'm responsible for the coordination and delivery of leadership and ethics programs to the Corps of Cadets.

Q. Do you teach a class?

A. I teach freshmen through seniors.

Q. I'm sorry?

A. Freshmen through seniors.

Q. But is there a name -- is there a class?

A. Freshmen, it's called Cit 101; sophomores, it's called Leaders 201; for juniors, it's JEEE, which is the Junior Ethics Enrichment Experience; and the seniors, it's called the Senior Leadership Integration Experience --

Q. In 2007 --

A. -- or seminar. I'm sorry.

Q. In 2007, did you do any teaching?

A. In 2007, I did not.

Q. Do you know of any recommendation in the Wise report that's been implemented at The Citadel?

A. Specifically?

Q. Yes.

A. There have been a lot of staff action memos that have come in based on all the different committees that are reporting over time. Specifically, I'd have to go through the report to tell you what I know that's been implemented or not.

Q. Do you know specifically whether any of those staff memos have come from the Wise report?

A. Yes.

Q. How many do you think?

A. I don't remember. Because, again, you have to understand, my role is not in the administration any longer. I mean, I'm a Citadel employee, but I'm outside the administration piece. I have had people from different faculty staff committees that are studying different sections of the Wise report come interview me, and

those are the ones that I'm aware of.

Q. Okay. Were you ever -- were you aware that after Skip ReVille graduated, that he would come back and talk to the Honor Council?

A. I did not have any interaction with him.

Q. You never heard him speak on campus?

A. I don't remember. I don't remember him as a graduate doing it.

Q. Does that happen from time to time, where a former -- where graduates are asked to come back and speak to different --

A. Yes.

Q. -- associations?

A. Yes.

Q. When a graduate is asked to do that on a repetitive basis, would you consider that that graduate has a special relationship with The Citadel?

A. I would consider that, yes.

Q. Different than a normal ordinance --

A. Sure.

Q. Same --

A. I mean, the person would have been called back for an area of expertise. So dealing with ReVille, if he came back to speak to honor

Electronically signed by Eve Wilbanks (101-177-349-6970)

1e9eea4b-4c9d-45bc-ba00-61e71ed44bc0

classes or to the Honor Committee, that would be normal. We do that frequently.

Q. But that's a different relationship than just if somebody graduated from The Citadel and hasn't been back on the campus in 30 years?

A. Certainly.

(Deposition Exhibit No. 13, Citadel Box 443-B-00351, was marked for identification.)

Q. I'm handing you what is marked Exhibit 13. And this is a document that The Citadel provided to us in the Arpaio boxes. Have you ever seen this document before?

A. I don't remember it.

Q. It says, As an employee, if you're accused of sexual misconduct, the following consequences may occur as a result of your actions. So you haven't seen this before?

A. I don't recall it.

Q. Do you recognize it as a policy of The Citadel?

A. It certainly says The Citadel, but I don't know what it's -- you know, what it's part of. It's not part of the sexual harassment policy or any policies that I'm familiar with.

Q. Let me ask you this, if you're accused

of sexual misconduct, it says, The allegation, the outcome of the investigation and any disciplinary action stemming from the incident will go in your permanent employee file. Do you see that? Do you agree with that? Should that be done at The Citadel?

A. I think it should go in an employee's file if there is corroboration and a finding.

Q. I see. So you wouldn't put -- for instance, for Skip ReVille, in, let's say, in 2008 or 2009, if some potential employer from Mt. Pleasant had sent a request for information on Skip ReVille, you don't believe that The Citadel should have given them any information?

A. I don't believe that there was corroboration, so it wouldn't have been in a file.

Q. So the answer would be you wouldn't tell them there was an allegation against Skip ReVille, right?

A. Human resources wouldn't have known that.

Q. But that's because nobody told human resources, right?

A. Because there was no corroboration. That's what my assumption -- there was no

corroboration; therefore, no file was sent over.

Q. Well, if there's -- how is there ever going to be anybody who is an employee of The Citadel who is going to have a record at human resources if it's a rape or a sexual assault where there's only two people in the room? There's no corroboration, right, if the accused denies it? Right?

A. I don't understand.

Q. Well, yeah. If there's a guy and a girl in the room and the guy is accused of raping her, and she says, This guy raped me, and he says, I didn't do it, and there's no independent eyewitness or corroboration, then it would never get reported to human resources at The Citadel?

A. Not to human resources, but it would be in the file. If it were investigated, it would go into a lockbox file.

Q. Who would have the lockbox?

A. It depends on whether it was a faculty, staff or cadet that was involved.

Q. What if it was an employee?

A. If it was an employee, it would be in the Title IX office in a lockbox. It's now in the SARC's office. SARC keeps those things now, now

that we have a SARC, in current policies. If it's a cadet, the Assistant Commandant For Coeducation, in a lockbox, unless there's a corroboration.

Q. So if the Mt. Pleasant Rec Department -- let's say that an employee of The Citadel, like an assistant basketball coach or something, is accused of rape; it's his word against her word, it gets locked up in a lockbox somewhere, and if that guy goes and applies at Mt. Pleasant Rec Department to coach and they ask The Citadel about it, human resources, human resources will say --

A. Unless --

Q. -- nothing?

A. That's correct. Unless there is the corroborated part of an investigation, it wouldn't go in a file. If there was a corroborated part of the investigation, then there would have been some disciplinary action taken, and that would have gone into the personnel file.

Q. Okay. Did Mr. Brandenburg -- I think it's your testimony that Mr. Brandenburg never told you that there was an eyewitness to Doe's allegations; is that correct?

A. I have no recollection of being told there was an eyewitness.

Electronically signed by Eve Wilbanks (101-177-349-6970) 1e9eea4b-4c9d-45bc-ba00-61e71ed44bc0

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

John Doe 2, Plaintiff, vs. President John W. Rosa, individually, Defendant.	C/A No.: 2:12-cv-00794-RMG

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

MOTHER DOE, on behalf of John Doe 3, Plaintiff, vs. President John W. Rosa, individually, Defendant.	C/A No.: 2:12-cv-00795-RMG

I, Louis Neal "Skip" Revilla, am providing this affidavit on Tuesday May 21 2013 at Perry Correctional Institution. I am making this statement on my own volition.

1. In April of 2007, I was on the Citadel campus and received a message at the writing center to meet with Mark Brandenburg in Bond Hall. At this time, I was working as a learning strategy consultant for the Writing Center.

2. I was under the impression that this meeting would concern a project that LTC Weart and I were working on. This project was a leadership initiative within the Values and Respects Program, and I had talked over the project's scope with Col. Trez in his office earlier that year (incidentally, in that meeting, Col. Trez recommended I read a book, Small Unit Leadership, by Malone or a similar name).

3. At Bond Hall, Mr Brandenburg met me and walked me to a conference room on the first floor of Bond Hall, which was only a few doors down from the President's office. It was at this time – outside the door

3 (cont.) of the conference room - when I saw in Mr. Brandenburg's hand a Citadel Summer Camp Bulletin.

4. Once inside the conference room, I took a seat on the left-hand side of the table and Mr. Brandenburg went to get Col. Trez.

5. Within a few minutes, both Mr. Brandenburg and Col. Trez returned - Brandenburg sat across from me and Col. Trez sat to my left. Mark began by telling me that there had been allegations ~~from~~ ~~a~~ from a camper that I had acted inappropriately with that camper. Although I denied any allegations, I had in fact sexually abused this camper.

6. During the course of the conversation, Col. Trez made it known to me that from the Citadel's standpoint, their main concern was to protect the institution.

7. At the conclusion of the meeting, I asked what I needed to do, and their reply was that, while they

(4 cont.) conduct their own investigation, I should lay low and stay off campus.

8. In the Fall (late) or Winter of the following year, I was invited by LTC Weart to speak on campus to the Honor Committee. I called Mr. Brandenburg's office in order to notify him and, more importantly, to gain an idea of ~~any~~ the development of their investigation. I spoke to Ms. Jennifer Shiel and left my name and number. I never received a reply from Mr. Brandenburg.

9. Over the course of the next few years, I returned to the campus to speak with ~~incoming~~ freshmen as well as an invited visit, again by LTC Weart, in 2010 at the unveiling of the remodelled Honor Court.

Jeff Revill 5/21/2013

Sworn before me this
21st day of May, 2013
Brooke Dillon
Notary Public for SC
My Commission Expires:
10/10/13

JCB 102AV
5/98
08127
Local Office No 180
Issue 14

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
UNEMPLOYMENT INSURANCE DIVISION
AVAILABILITY
FACT FINDING

Effective Date of Issue
05-28-07
Type of Claim
New ☐ Add ☐
Trans ☒ Rem ☐
Cont ☐
BYE 05-27-08

CLAIMANT'S NAME Louis Reville SOCIAL SECURITY NUMBER [redacted]-0699

Occupation Tutor/[redacted] Customary hours from 7 00am to 3 30pm or which shift 1st

1 During week(s) 06/02/07 were you physically and mentally able to work in your customary occupation? Yes ☐, No ☐, NA ☒ If "No," answer questions "4" and explain in "Claimant's Statement"

2 During the week(s) ending 06/02/07 did you restrict your ability because of lack of transportation, child care, family illness, vacation, Social Security benefits, incarceration, military reserve duty, jury duty, out of the area (personal), school, union restrictions, wage demands, hour demands, etc ? Yes ☐, No ☐, NA ☒ If "No," answer questions "4" and explain in "Claimant's Statement"

3 During week(s) ending 06/02/07 did you seek work as directed by the local office? Yes ☐, No ☐, NA ☒ If "No," answer questions "4" and explain in "Claimant's Statement"

4 HAVE YOU NOW RESOLVED THE CONDITIONS WHICH MADE YOU UNAVAILABLE FOR EMPLOYMENT? Yes ☐, No ☐, NA ☒ IF "YES," ON WHAT DATE DID YOU BECOME AVAILABLE FOR WORK? _____ EXPLAIN IN "CLAIMANT'S STATEMENT"

5 Are you qualified to perform the work which you are seeking (include license, tools, permits, etc as required for this occupation)? Yes ☐, No ☐, NA ☒ If "No," explain in "Claimant's Statement"

6 Have you failed to keep a scheduled appointment with the local office or have you received a notice stating that you did not report to Job Service every six weeks as directed? Yes ☐, No ☐, NA ☒ If "Yes," explain in "Claimant's Statement"

7 Other between academic terms Explain in "Claimant's Statement"

Claimant's Statement (Include beginning and ending dates of availability, if known, and any facts from others including a physician's statement if needed as proof that the claimant is or is not available for employment)

Claim is being filed during a school break. I am still employed by The Citadel I was employed as a part time employee The school does want me to return after the holiday/ vacation The school break is from 4/30/07 to 08/17/07 My last day worked for the school was 04/30/07 I do plan to return to the school unless I find a fulltime position, the school is aware that I am looking for fulltime position.

CLAIMANT'S CERTIFICATION I certify that the information above is true I understand that the Law prescribes penalties for false statements for the purpose of obtaining benefits to which I am not entitled

CLAIMANT'S SIGNATURE By Phone DATE 06/07/07

INTERVIEWERS STATEMENT Spoke to Chris @(843)953-5305(Dept Head) employer states claimant out for temp Assignment, JOB is not being held for him

INTERVIEWER'S SIGNATURE [signature] DATE OF REPORT 06/07/07

If claimant wishes to come back he would have to reapply

S.C. Employment Security Comm
JUN 0 8 2007
[redacted] DIVISION

SC Dept of Employment- rec'd per [redacted] 19

PLAINTIFF'S EXHIBIT 25

Velocity SM
SPORTS PERFORMANCE

FOR OFFICE USE ONLY
Date:
Position Applied For:

Velocity Sports Performance is an Equal Opportunity Employer. Programs, services and employment are available to everyone. Please inform the Human Resources Department if you require reasonable accommodation to the application or interview.

Applicant Data

How were you referred to us: personal

Full Name: Louis Neal Reville

Address: 2011 Hwy 17 N. Apt 1800D, MOUNT PLEASANT, SC 29466

Phone: Mobile/Beeper/Other Phone: E-Mail Address: coachskip@mac.com

Date Available to Start: immediately Social Security #: 420-29-0699 Salary Requirement:

OTHER

If you are under 18 and we require a work permit, can you furnish one? ☐ Yes ☐ No

If no, please explain:

Have you ever worked or applied for this company? ☐ Yes ☒ No If yes, when?

Are you a citizen of the United States? ☒ Yes ☐ No If not, do you have work papers? ☐ Yes ☐ No

Type of employment desired: ☐ Full-time ☒ Part Time ☐ Temporary ☐ Season

Have you ever pled "guilty" to or been convicted of a crime in the last 10 years? ☐ Yes ☒ No

If yes, give dates and details:

Answering yes to these questions does not constitute an automatic rejection to employment. Date of the offense, seriousness and nature of the violation, rehabilitation and position applied for will be considered.

Driver's license number if applicable to position: 10026441552 State: SC

Education

High School: Mountain Brook High Address: 3650 BETHUNE DRIVE, MTN. BROOK, AL 35223

# of Years Completed: 4 Did you graduate? ☒ Yes ☐ No Degree: ADVANCED

Major: - GPA: 3.0 Class Rank: -

College/University: THE CITADEL Address: 171 MOULTRIE STREET, CHARLESTON, SC 29409

# of Years Completed: 4 Did you graduate? ☒ Yes ☐ No Degree: B.A. ENGLISH

Major: ENGLISH GPA: 3.1 Class Rank: -

Other: GONZAGA Address: online

# of Years Completed: 2 Did you graduate? ☐ Yes ☒ No Degree: M.A.

Major: Organizational Leadership GPA: 3.6 Class Rank: -

References

Please furnish the names, addresses, and telephone numbers of two people whom you are not related and by whom you have not been employed:

1) Name: Jay Buddin Phone: 843 991 3125

Address: N. Chas. City: N. Chas State: SC Zip: 29420

2) Name: Tom Maynor Phone: 324 4870

Address: Mt. Pleasant City: Mt. P State: SC Zip: 29464

04/24/08

PLAINTIFF'S EXHIBIT 26

Summarize Your Special Skills or Qualifications

multi-sport background
pursuing NASE + CSCS certification

Previous Employment

Dates of employment: From 6/07 To present Position(s) held: Teaching Pro

Business: Town of Mt. Pleasant Address: 889 Whipple Road 29464

Phone: 843 856 2162 Manager: Title: Asst. Teaching Pro

Responsibilities/Duties: instructor, planning

Starting Salary: $16 per hour Ending Salary: $21 per hour

Reason for Leaving: — May we contact this employer for reference? yes

Dates of employment: From: To: Position(s) held:

Business: The Citadel Address:

Phone: 843 953 5305 Manager: Title:

Responsibilities/Duties: presenter/facilitator

Starting Salary: $10 per hour Ending Salary: $15 per hour

Reason for Leaving: only contracted 1 year May we contact this employer for reference? yes

Dates of employment: From 5/06 To: 5/07 Position(s) held:

Business: V-Enterprises Address: 1731 N. Main Street Suite B, Summerville

Phone: 843 873 0574 Manager: Title: owner

Responsibilities/Duties: operations, owner, instructor

Starting Salary: — Ending Salary: —

Reason for Leaving: sold May we contact this employer for references? yes

I certify that my answers are true and complete to the best of my knowledge. I authorize you to make such investigations and inquiries of my personal, employment, educational, financial, or medical history and other related matters as may be necessary for an employment decision. I hereby release employers, schools or persons from all liability in responding to inquiries in connection with my application. In the event I am employed, I understand that false or misleading information given in my application or interview(s) may result in discharge.

Signature of applicant: Lewis Reville Date: 4.28.08

Nothing in this application or in any other written statements of Velocity Sports Performance's general policies and procedures shall be construed or interpreted to constitute an employment contract with any prospective employee. Velocity Sports Performance in its sole discretion reserves the unconditional right to terminate any person's employment at any time for any reason. Velocity Sports Performance also reserves the unconditional right to modify, delete, or make any exception to any of its policies and procedures with or without notice at any time and for any reason. Oral statements, representations, or promises contrary to the foregoing, including promises of employment for any specified period of time, are not binding unless confirmed in writing by the President of Velocity Sports Performance.
My signature below certifies that I have read the foregoing.

Signature of applicant: Lewis Reville Date: 4.24.08

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JOHN DOE 2,	)	CIVIL ACTION NO:
	)	2:12-cv-00794-RMG
Plaintiff,	)	
	)	
vs.	)	
	)	
PRESIDENT JOHN W. ROSA, INDIVIDUALLY,	)	
	)	
Defendant.	)	
	)	CIVIL ACTION NO:
MOTHER DOE,	)	2:12-cv-00795-RMG
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PRESIDENT JOHN W. ROSA, INDIVIDUALLY,	)	
	)	
Defendant.	)	

* * * * * * * * * * * * * * * * *

DEPOSITION OF: JENNIFER SHIEL

DATE TAKEN: Tuesday, January 21, 2014

TIME: 12:06 p.m.

PLACE: McLeod Law Group, LLC
3 Morris Street
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * * * * * * * * * * * * * *

PLAINTIFF'S EXHIBIT 24

Q. -- do you understand that?
A. Yes.
Q. So from the beginning, was it clear to you that President Rosa did not want this report of sexual abuse to be leaked or to get out of the President's office?
MR. KOVACH: Objection.
A. Yes.
Q. And during the time period from when the report was made until the time that you left The Citadel, having lived through it, do you believe there was a conscious effort to cover up or conceal this report of sexual abuse?
MR. KOVACH: Objection.
A. Yes.
Q. And was President Rosa in charge ultimately of making sure that this report was concealed and covered up?
MR. KOVACH: Objection.
A. In my opinion, yes.
Q. Let me ask you this, when the report came in, the school had a Title IX coordinator, right?
A. Yes.
Q. The report could have gone to the Title

Electronically signed by Eve Wilbanks (101-177-349-8970)

27016763-0a83-4a48-84f6-56ca50233bea

Page 154

Q. -- the counselors that are going to be running The Citadel Summer Camp in 2003?
A. Correct. And the camp staff.
Q. And the camp staff. And item B indicates that, "It is highly likely that you know an abuser," and she lists three points there. Would you take a look at them and tell me if you agree with those three points?
A. I agree with those points.
Q. And the same for item C, "The greatest risk to children doesn't come from strangers but from trusted adult friends." Item 3, "A pedophile typically creates opportunities for contact with children." Look at the others and tell me -- and there are three more on the other page -- if you agree with those points?
A. I've been through Darkness to Light training. I agree with all these points.
Q. And did The Citadel Summer Camp create the opportunity for Michael Arpaio to pursue his pedophile activities?
A. That's what the lawsuit was all about.
Q. And did The Citadel Summer Camp provide Skip ReVille contact with children that enabled him to pursue his pedophile activities?

Page 155

A. We know that today.
Q. Okay. And let's turn to page 00103, and under step 5 it says, item A, Don't overreact (sic) and offer support. This is when a camper comes forward. And if you would read those items and tell me if you agree or disagree with them.
A. I agree.
Q. Let's look at the last one on page 00103. Is it Mrs. Hewett?
A. Dr. Hewett.
Q. Dr. Hewett was telling the counselors of the 2003 Citadel Summer Camp that, quote, You have a duty to report the abuse, closed quote. Did I read that correctly?
A. You did, sir.
Q. So it was a requirement for each counselor to report abuse if they were so informed by a camper or somebody else that the abuse was taking place?
A. Yes.
Q. And it goes on to state, "All 50 states require that professionals who work with children report reasonable suspicions of child abuse." Not that child abuse took place; just reasonable suspicions? Did I read that correctly?

Page 156

A. That's what it says.
Q. And when that parent called in 2007 and said that his son reported to him that he had been abused in 2002, you don't consider that was a reasonable suspicion of child abuse?
A. It certainly was, based on what we know today. And the point that Brandenburg was making to the board, that I remember, was that, but The Citadel was not a mandatory reporter. So as I've gone through the training on child abuse, taught by the South Carolina School of Law Children's Law Center, what we've just read here applies to categories of people to include, and then its listed, and we're not one of those reporters.
Q. But you made your counselors, the people that were going to run your camp, you made them have the absolute duty to report abuse, correct?
A. Well, I don't know if that's true. I believe --
Q. It says it right there, under step 5, page 00103, "You have a duty to report the abuse," correct?
A. That's what it says.
Q. And that's what was required of your counselors?

Page 157

A. That's what it says.
Q. And then on page 00104, it's in all caps, "Remember, sexual abuse is a crime." Do you agree with that?
A. I agree.
Q. And if the counselor did not want to report it to somebody in the camp, wow, she provides several means for the abuse to be reported. She can go to Public Safety at The Citadel and report it?
A. Correct.
Q. Or there are one, two, three -- four toll-free numbers that the counselor could call to report the abuse?
A. Correct.
Q. Okay.
MR. HERNS: If we can have this marked as next Exhibit 18, please.
(Deposition Exhibit No. 18, Citadel Citadel Box 295-0023, was marked for identification.)
BY MR. HERNS:
Q. Okay. The next document is Exhibit 18 to the deposition. It is identified Citadel Citadel Box 295-0023, a one-page document. At the

civil matter against The Citadel, did The Citadel just stop doing the disciplinary investigation that they'd typically do?

MR. KOVACH: Objection.

A. No.

Q. So based upon your personal knowledge, a civil matter generally did not have any impact on The Citadel instituting or following its own policies and procedures?

A. No.

MR. KOVACH: Object.

Q. Having worked in the President's office during this time period, was there ever any doubt in your mind that President Rosa wanted this report of sexual abuse to be kept under wraps?

MR. KOVACH: Objection.

A. No. It was very clear that -- the term that was used about it was "close hold." I mean, only people that needed to know about it were supposed to know about it. That was it.

Q. Had you heard that phrase "close hold" used prior to this report of sexual abuse?

A. In reference to other matters, yes.

Q. Right. And, like, what other matters do you remember "close hold" being the orders from

Public Safety officers were ever around when this was being discussed, you know. Public Safety -- there were no calls from Public Safety about this. And so, you know, to my knowledge, that was never given a consideration. And, you know, being lower down on the food chain, you just assumed that they have their reasons for doing what they're doing.

Q. And I recognize that you learned a lot about -- you learned additional information about what happened with regard to ReVille sometime after you left The Citadel. But my question is, as far as the priorities during this time period when President Rosa's office responded to the report of sexual abuse, was it ever made known to you that one of the priorities was making sure ReVille didn't abuse anybody else?

MR. KOVACH: Objection.

Q. Did that even make the priority list?

A. No. I never heard that discussed.

Q. Looking back on the period of time when you were working within the President's office, helping respond in an administrative role to the report of sexual abuse, do you believe that President Rosa was indifferent towards concerns that he should have been worried about; for

Electronically signed by Eve Wilbanks (101-177-348-8970)

27016763-0a83-4a48-84f6-56ca5023bea

example, other victims who may be abused?

MR. KOVACH: Objection.

A. Yeah. I do think he was indifferent to it.

Q. Do you believe -- not do you believe. Was his indifference the result of his desire to protect The Citadel?

MR. KOVACH: Objection.

A. I don't know if it was that, or I don't know if it was -- it may have been that they weren't -- they didn't take this -- this report of sexual abuse seriously.

Q. And that was -- that was going to be my next question. The report came in on April 23rd, 2007, and Mr. Brandenburg went to interview the family on July 1st, 2007. Forget about -- well, if Mr. Brandenburg and President Rosa, based upon your knowledge of having worked with them, if they thought the school was at imminent risk of a problem, would they have waited approximately four months to go interview the family?

MR. KOVACH: Objection.

A. In my mind, I mean, no. And that's one of the -- one of the reasons why I didn't get -- you know -- I just didn't get the feeling through

27016753-0a83-4e48-8476-56ca60233bea

Electronically signed by Eve Wilbanks (101-177-349-6970)

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

TITLE IX

January 2001

U.S. Department of Education
Office for Civil Rights

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties," issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school[1] should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

[1] As in the 1997 guidance, the revised guidance uses the term "school" to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well- publicized and effective grievance procedures in place to handle complaints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.[2] Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

[2] It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections "Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program" and "Harassment by Teachers and Other Employees" to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have "artificially" restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school's responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, "conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment"), the definitions are consistent. Both the Court's and the Department's definitions are contextual descriptions intended to capture the same concept — that under Title IX, the conduct must be sufficiently serious that it adversely affects a student's ability to participate in or benefit from the school's program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the "constellation of surrounding circumstances, expectations, and relationships" (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR's 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from "appropriate response" to "effective response" implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student's right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.[3]

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) — of which FERPA is a part — to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972...."[4] The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

---

[3] Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

[4] 20 U.S.C. 1221(d). A similar amendment was orlginally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS[1] BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES

Outline of Contents

I. Introduction

II. Sexual Harassment

III. Applicability of Title IX

IV. Title IX Regulatory Compliance Responsibilities

V. Determining a School's Responsibilities

- A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program
  - 1. Factors Used to Evaluate Hostile Environment Sexual Harassment
  - 2. Welcomeness
- B. Nature of a School's Responsibility to Address Sexual Harassment
  - 1. Harassment by Teachers and Other Employees
  - 2. Harassment by Other Students or Third Parties
- C. Notice of Employee, Peer, or Third Party Harassment
- D. The Role of Grievance Procedures

VI. OCR Case Resolution

VII. Recipient's Response

- A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee
- B. Confidentiality
- C. Response to Other Types of Notice

VIII. Prevention

IX. Prompt and Equitable Grievance Procedures

X. Due Process Rights of the Accused

XI. First Amendment

I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.[2] The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.[3] This guidance focuses on a school's[4] fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.[5]

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.[6] Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.[7] Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.[8] This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,[9] another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any "person" from sex discrimination. Accordingly, both male and female students are protected from sexual harassment[10] engaged in by a school's employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.[11] An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.[12]

Although Title IX does not prohibit discrimination on the basis of sexual orientation,[13] sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.[14] For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.[15]

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,[16] but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program.[17] For example, the repeated sabotaging of female graduate students' laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.[18] In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.[19]

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department's Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.[20]

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department's Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.[21]

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.[22] A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;[23]
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;[24]
- Deny any student any such aid, benefit, or service;[25]
- Subject students to separate or different rules of behavior, sanctions, or other treatment;[26]
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;[27] and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.[28]

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.[29]

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination[30] and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.[31] The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.[32]

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.[33] In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.[34] Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.[35]

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.[36] This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.[37]

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective[38] and objective[39] perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."[40] Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.[41] A student may also suffer physical injuries or mental or emotional distress.[42] In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

  A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.[43] For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.[44] For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.[45] On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.[46] Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.

- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.[47]

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,[48] the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.

- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.[49]

- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.[50] Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.

- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.[51]

- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.[52]

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled "Sexual Harassment" explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and "regarded the conduct as undesirable or offensive."[53] Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.[54] For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.[55] Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.[56]

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged "consensual" sexual relationships between a school's adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,[57] OCR will consider a number of factors in determining whether a school employee's sexual advances or other sexual conduct could be considered welcome.[58] In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.[59] The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student's age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student's age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student's ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.[60] Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,[61] the recipient is responsible for the discriminatory conduct.[62] The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.[63] Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,[64] consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth- grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,[65] to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know[66] about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.[67] As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.[68] In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know[69] of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.[70] For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.[71] In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.[72]

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.[73] A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.[74] Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator[75] or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."[76]

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.[77] In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)[78]

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.[79] (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,[80] the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX[81] and effective grievance procedures;[82] (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;[83] and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.[84] (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.[85] Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.[86] As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),[87] explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved — the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.[88] Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.[89] A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.[90] In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements[91] or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.[92]

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.[93] For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment[94] and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.[95] At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.[96]

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.[97]

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.[98] Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.[99]

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.[100] Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.[101]

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;[102] and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.[103]

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.[104] The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.[105] Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.[106] While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.[107] Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.[108]

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.[109] OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.[110] Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.[111]

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.[112] Free speech rights apply in the classroom (e.g., classroom lectures and discussions)[113] and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events[114]; and student newspapers, journals, and other publications[115]). In addition, First Amendment rights apply to the speech of students and teachers.[116]

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.[117] In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.[118]

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.[119] As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

[1] This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 et seq.; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

[2] 20 U.S.C. 1681; 34 CFR part 106.

[3] See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

[4] As described in the section on "Applicability," this guidance applies to all levels of education.

[5] For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see "Protecting Students from Harassment and Hate Crime, A Guide for Schools," which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

[6] See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and "numerous acts of objectively offensive touching;" Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student.

[7] See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

[8] 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

[9] If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

[10] Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

[11] Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g., pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

[12] Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

[13] See Williamson v. A.G. Edwards & Sons, Inc., 876 F2d 69, 70 (8th Cir. 1989, cert. denied 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

[14] It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

[15] However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

[16] See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

[17] See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

[18] See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

[19] See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

[20] Davis, 526 U.S. at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute."); Franklin, 503 U.S. at 75 ("Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex,' ... We believe the same rule should apply when a teacher sexually harasses and abuses a student," (citation omitted)).

OCR's longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

[21] 34 CFR 106.4.

[22] These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

[23] 34 CFR 106.31(b)(1).

[24] 34 CFR 106.31(b)(2).

[25] 34 CFR 106.31(b)(3).

[26] 34 CFR 106.31(b)(4).

[27] 34 CFR 106.31(b)(6).

[28] 34 CFR 106.31(b)(7).

[29] 34 CFR 106.3(a).

[30] 34 CFR 106.9.

[31] 34 CFR 106.8(b).

[32] 34 CFR 106.8(a).

[33] The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

[34] See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim "that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education..."); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student's agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

[35] 34 CFR 106.31(b).

[36] Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR's 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

[37] 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits" supports a claim for money damages in an implied right of action).

[38] In Harris, the Supreme Court explained the requirement for considering the "subjective perspective" when determining the existence of a hostile environment. The Court stated—"... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

[39] See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

[40] See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

[41] See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

[42] Doe v. Petaluma, 830 F.Supp. at 1566.

[43] See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

[44] See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

[45] 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): "The Commission will presume that the unwelcome, intentional touching of [an employee's] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff'd, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker's talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

[46] See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student's muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

[47] Davis, 526 U.S. at 653 ("The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment."); Patricia H., 830 F. Supp. at 1297 (stating that the "grave disparity in age and power" between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 ("impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority"); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

[48] See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

[49] Cf. Patricia H., 830 F. Supp. at 1297.

[50] See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

[51] See Hall, 842 F. 2d at 1015 (stating that "evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment") (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

[52] In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

[53] Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

[54] See Meritor Savings Bank, 477 U.S. at 68. "[T]he fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."

[55] Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser "directly" that the conduct is unwelcome, in other cases a "consistent failure to respond to suggestive comments or gestures may be sufficient...."); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee's own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: "Even if ... [the employee's] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....").

[56] See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int'l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

[57] The school bears the burden of rebutting the presumption.

[58] Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

[59] See note 58.

[60] Gebser, 524 U.S. at 281 ("Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher's sexual harassment of a student...."; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

[61] See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

[62] 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

[63] Davis, 526 U.S. at 646.

[64] See section on "Applicability of Title IX" for scope of coverage.

[65] See section on "Notice of Employee, Peer, or Third Party Harassment."

[66] See section on "Notice of Employee, Peer, or Third Party Harassment."

[67] 34 CFR 106.31(b).

[68] 34 CFR 106.31(b).

[69] See section on "Notice of Employee, Peer, or Third Party Harassment."

[70] Cf. Davis, 526 U.S. at 646.

[71] 34 CFR 106.31(b).

[72] 34 CFR 106.31(b).

[73] Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

[74] Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.
The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a "responsible employee" under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

[75] The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

[76] 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

[77] For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school's knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

[78] Cf. Katz, 709 F.2d at 256 (finding that the employer "should have been aware of the problem both because of its pervasive character and because of [the employee's] specific complaints ..."); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) "where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment" under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); "[s]exual harassment ... was so pervasive that an inference of knowledge arises .... The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert."); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) ("... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it" under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students' knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

[79] 34 CFR 106.9 and 106.8(b).

[80] 34 CFR 106.8(b) and 106.31(b).

[81] 34 CFR 106.9.

[82] 34 CFR 106.8(b).

[83] 34 CFR 106.31.

[84] 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 ("In the event of a violation, [under OCR's administrative enforcement scheme] a funding recipient may be required to take 'such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.' §106.3.").

[85] 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

[86] Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

[87] In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school's policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

[88] Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int'l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

[89] See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer's remedial action under Title VII will depend on the "severity and persistence of the harassment and the effectiveness of any initial remedial steps"); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company's quick decision to remove the harasser from the victim was adequate remedial action).

[90] See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer's response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

[91] Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

[92] See section on "Harassment by Other Students or Third Parties."

[93] University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

[94] Even if the harassment stops without the school's involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student's request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

[95] 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

[96] Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

[97] In addition, if information about the incident is contained in an "education record" of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student's consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

[98] 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

[99] Fenton Community High School Dist. #100, OCR Case 05-92-1104.

[100] While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

[101] See generally Meritor, 477 U.S. at 72-73 (holding that "mere existence of a grievance procedure" for discrimination does not shield an employer from a sexual harassment claim).

[102] The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department's current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student's education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school's ability to inform the complainant of any disciplinary action taken.

[103] The section in the guidance on "Recipient's Response" provides examples of reasonable and appropriate corrective action.

[104] 34 CFR 106.8(a).

[105] Id.

[106] See Meritor, 477 U.S. at 72-73.

[107] University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school's new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student's or employee's individual file, but instead may be kept in a central confidential location.

[108] For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

[109] Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

[110] Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

[111] Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

[112] The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

[113] See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

[114] See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

[115] See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

[116] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

[117] See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

[118] See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

[119] Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

MARGOLIS HEALY
SOLUTIONS FOR SAFE COMPANIES

Definition

- Sexual violence is a form of sexual harassment prohibited by Title IX.
  - Sexual violence refers to physical sexual acts **perpetrated against a person's will** or where a person is **incapable of giving consent** due to the victim's use of drugs or alcohol
  - An individual also may be unable to give consent due to an intellectual or other disability
  - May include rape, sexual assault, sexual battery, and sexual coercion

© Margolis Healy & Associates, LLC

PLAINTIFF'S EXHIBIT 29

MARGOLIS HEALY

Bottom Line

- If your institution knows or reasonably should know about sexual harassment that creates a hostile environment, Title IX **requires immediate action** to eliminate the harassment, prevent its recurrence, and address its effects.

  - Regardless of whether a harassed student, his or her parent, or a third party files a complaint

© Margolis Healy & Associates, LLC

MARGOLIS HEALY
SOLUTIONS FOR LIFE CAMPUSES

Effective Investigations

I. Recognize impact of trauma on response

- There is no "normal" victim response
- Most complainants/victims/survivors **do not physically resist**
- Most complainants/victims/survivors **who report do so after some delay**
- Most complainants/victims/survivors **have difficulty remembering** all the details or sequence of the sexual assault
- Complainants/victims/survivors **experience trauma reactions** on an ongoing basis after the assault
- We can **use expert witnesses** (through training) to explain impact of trauma

© Margolis Healy & Associates, LLC

MARGOLIS HEALY
SOLUTIONS FOR SAFE CAMPUSES

Emotional/Psychological Effects of Sexual Violence

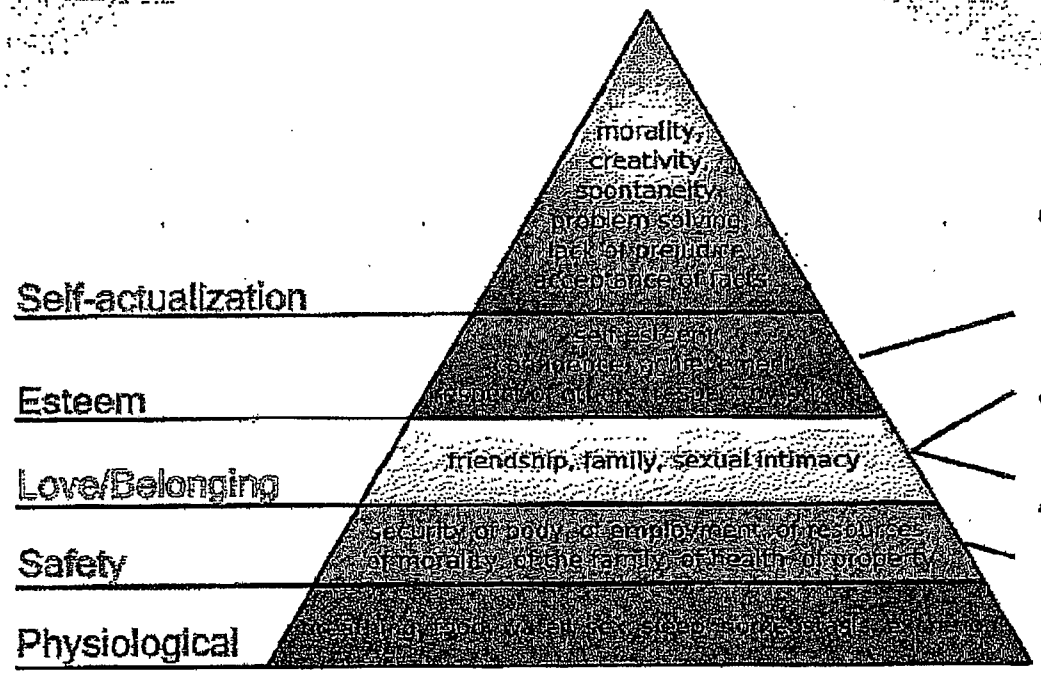
- Shock/denial
- Irritability/anger
- Depression
- Social withdrawal
- Numbing/apathy (detachment, loss of caring)
- Restricted affect (reduced ability to express emotions)
- Nightmares/flashbacks
- Difficulty concentrating
- Loss of self-esteem
- Loss of security/loss of trust in others
- Guilt/shame/embarrassment
- Impaired memory
- Loss of appetite
- Suicidal ideation (thoughts of suicide and death)
- Substance Abuse
- Psychological disorders

© 2008 National Center for Victims of Crime

© Margolis Healy & Associates, LLC

MARGOLIS HEALY
SCREENING FOR SAFE COMPANIES

Impact of Sexual Violence



- Loss of self-esteem
- Social withdrawa
- Loss of trust in others
- Loss of security

Psychology Wiki http://psychology.wikia.com/wiki/Maslow's_hierarchy_of_needs

© Margolis Healy & Associates, LLC

MARGOLIS HEALY
SOLUTIONS FOR CAMPUS COMMUNITIES

Preparing to Investigate

- Impartial investigator
  - No bias or conflict of interest
  - Consider giving the parties an opportunity to object to the investigator
  - Use a different investigator if you feel there is a possible or actual conflict
  - Per OCR, should not be Title IX Coordinator or college/university attorney, which could present a conflict of interest
  - Per OCR, should have adequate training or knowledge regarding sexual violence
  - Per OCR, do not rely on police or insurance investigations. The institution needs to conduct its own review

© Margolis Healy & Associates, LLC

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	
Plaintiff,	
vs.	
THE CITADEL,	
Defendant.	

VIDEOTAPED
30(b)(6) DEPOSITION OF: COLONEL WILLIAM A. FLETCHER

Electronically signed by Eve Wilbanks (101-177-349-8970)

0e805ff4-5647-4902-91e2-fa1d80981270

Page 18

Jessica Horton Act, have you heard of that?
A. Yes.
Q. And did The Citadel --
A. Clery?
Q. -- tell you about it?
A. Clery Act?
Q. Well, now, those are two different things.
A. I know the Clery Act.
Q. Do you know what the Clery Act is?
A. Yes.
Q. And The Citadel made you aware of the Clery Act?
A. Law enforcement training did.
Q. So was it a law enforcement seminar you went to?
A. Yes. It's like a week-long, two- or three-day course, that sort of thing.
Q. I've got you. What about, have you heard of the Jessica Horton Act?
A. Yes.
Q. And as a certified law enforcement officer of South Carolina, if under the Horton Act you were required to notify SLED of an investigation, you would do so, right?

Page 19

A. Yes.
Q. Have you spoken to Chief Mullen of the Charleston Police Department about the ReVille case?
A. No, I haven't.
Q. My understanding is that The Citadel Public Safety had nothing to do whatsoever with the Skip ReVille case, correct?
A. That's correct.
Q. To this day, nothing?
A. (Indicating a negative response.)
Q. Is that correct?
A. That's correct.
Q. Are you aware of any crimes that have occurred on the campus of The Citadel where General Rosa has gone straight to the Charleston Police Department and not informed you or anybody at The Citadel Public Safety of what's happened?
A. I can't remember any particular case at this time, no.
Q. Does the Skip ReVille case -- has that been reported under the Clery Act in any way?
A. I'm not sure about that at this time. I would have to check our records.
Q. And if you had -- if Skip ReVille had

Page 20

pled guilty to violating the South Carolina Criminal Code with regard to 23 children on The Citadel campus, that would be 23 separate incidents under the Clery Act?
A. That's correct.
MR. STONEY: Objection.
Q. Is that a yes?
A. Yes.
Q. And no one from The Citadel has instructed you as chief of Citadel Public Safety to do anything with regard to the Clery Act as to Skip ReVille and his guilty pleas?
A. Not to my knowledge, no. I don't recall anything.
Q. In calendar year 2013, how many -- have there been any sexual abuse or sexual assault or sexual harassment claims reported to The Citadel Public Safety department?
A. No.
Q. Do you know whether or not there have been any that have happened on campus that haven't been reported to you?
A. No, I'm not aware of them.
Q. Let's go back to the example of someone breaking in a car at The Citadel. Let's say that --

Page 21

whoever reported it said that the person -- let's say it was John Smith that did it, and you found out that John Smith wasn't somebody that worked at The Citadel or was a Citadel person; it was just somebody from out in the community. Okay? Would you call -- would you handle that, or would you send that to the Charleston Police Department or --
A. We would handle that.
Q. You could handle that?
A. Yes.
Q. So you could go to Mt. Pleasant and interview him or do whatever you need to do?
A. As long as he's in the state, we can do it.
Q. Okay. Let me ask you, if an allegation had come in to you -- the allegation we discussed earlier that you said you would have called in the experts at SLED, can we agree that if that allegation had been turned in to you at Citadel Public Safety -- can we agree that you would not at Citadel Public Safety have been authorized to offer -- the person who made the allegation, you wouldn't have been authorized to offer them any money, right?

Electronically signed by Eve Wilbanks (101-177-349-6870)
0e805ff4-5647-4902-91e2-fa1d86961270

Page 14

correct?
A. That's correct.
Q. You never had any training on what to look for, you never had any training on how to interview a potential child sexual predator, to make sure that it would be done right; is that correct?
A. That's correct.
Q. Now, also, my understanding would be, if -- if you had a report of a child sexual predator, that since you didn't have -- let me ask it this way, first: You would agree with me that if there is a potential child sexual predator, that that is a -- that's a serious matter at The Citadel, correct?
A. Anywhere, yes.
Q. Anywhere. All right. And my understanding is if you didn't feel like you had the proper training to be the person who should be investigating a child sexual predator or doing an interview of a child sexual predator, that you would call in someone -- an agency that had expertise in that, like SLED; is that correct?
A. That's correct.
Q. And so if you had been provided with an

Page 15

allegation that -- of criminal sexual conduct involving a potential child sexual predator at The Citadel in 2007, you would not have hauled off and tried to have done an investigation and interviewed the perpetrator on your own; you would have called SLED; isn't that the best and -- proper and best thing to do?
MR. STONEY: Objection.
A. I'm not sure if I would; it depended on the situation.
Q. Let's say the situation is that the alleged is accused of showing pornography to a minor in violation of South Carolina Code, exposing his genitals to a 13-year-old in violation of South Carolina Code, and masturbating in front of a 13-year-old in violation of South Carolina Code and coercing two 13-year-olds to masturbate in front of him; that would be a serious allegation, wouldn't it?
A. Yes.
Q. And if the allegation were that this perpetrator had done it not only to the person reporting it but to many others who were minors, that would be an indication to you that this wasn't a one-time incident where one person was

Page 16

alleging something, that there were allegations that this person was a child sexual predator, right?
A. That's a good possibility, yes.
Q. And if you had those allegations, wouldn't the best thing to do be to turn that over to SLED or someone else who had expertise in investigating child sexual predators and interviewing child sexual predators to make sure that it got done right?
A. That's -- yes.
Q. All right.
MR. SLOAN: Let me take a break.
THE VIDEOGRAPHER: Off the record at 10:27.
(The deposition went off the record.)
THE VIDEOGRAPHER: On the record at 10:38.
BY MR. SLOAN:
Q. Chief Fletcher, you mentioned a moment ago in talking about a child sexual predator, you would agree with me that any child sexual predator is not only a threat to The Citadel campus, but a threat to the community at large; would you agree with that?

Page 17

A. Yes.
Q. Are you familiar with this Margolis report that's come out from The Citadel?
A. No, I'm not.
Q. As the current chief of Citadel Public Safety, from January of this year up until today's date in June of 2013, have you been given any new guidelines or criteria as the chief of Citadel Public Safety with regard to sexual abuse claims, children on campus claims, sexual assault, criminal sexual conduct, or any other area of sexual misconduct on The Citadel campus?
A. No -- no, I haven't.
Q. And my understanding is that at The Citadel Public Safety, you are an authorized or a licensed South Carolina law enforcement officer; is that correct?
A. That's correct. The term is certified. --
Q. Certified. Okay. And do you expect The Citadel to make The Citadel Public Safety Department aware of any laws or codes that specifically apply to The Citadel?
A. I'm not sure I understand what you mean, a situation.
Q. Let's say, for instance, like the

Electronically signed by Eve Wilbanks (101-177-349-6870)
0e805ff4-5647-4902-91e2-fa1d86961270

MR. STONEY: Objection.
A. In reference to what?
Q. In reference to the allegation that the person was making about the sexual child predator – you wouldn't offer anybody any money, right?
MR. STONEY: Objection.
A. For what reason?
Q. I agree. But I'm just – you wouldn't offer anybody any money for any reason, would you?
MR. STONEY: Objection.
A. No.
Q. And you wouldn't research the civil statute of limitations, would you, at Citadel Public Safety? You would have no reason to do that, would you?
A. No.
Q. That wouldn't be the thrust of your investigation, would it?
A. No.
Q. And once -- when SLED gets involved, would you offer them any cooperation, any courtesy that they ask for when they're investigating something on The Citadel campus?
A. Yes. Any preliminary work that we would do, we'd forward to them; if they needed to speak

to witnesses, we'd make those available.
Q. Okay. And I take it that from time to time you've worked with SLED or Charleston Police Department and if they needed something, you'd help them out and make sure every courtesy is extended on campus, right?
A. That's correct.
Q. As deputy chief of police in 2007 at The Citadel, would you agree with me that you can't conduct an investigation if you don't know there's been an allegation of a crime, right?
A. If you don't know about it, that's correct.
Q. Likewise, you can't alert SLED to anything if you don't know about it as the deputy chief?
A. That's correct.
MR. SLOAN: Let's go off the record again.
THE VIDEOGRAPHER: Off the record at 10:51.
(The deposition went off the record.)
THE VIDEOGRAPHER: On the record at 10:56.
MR. SLOAN: Chief Fletcher, that's all

the questions I have for you today. I appreciate you coming.
THE WITNESS: Thank you.
MR. ROBERTS: I have none.
THE VIDEOGRAPHER: This concludes the deposition of William A. Fletcher. We're off the record at 10:57.
(The deposition concluded at 10:57 a.m.)

CERTIFICATE
STATE OF SOUTH CAROLINA:
COUNTY OF CHARLESTON:
I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.
I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.
WITNESS MY HAND AND OFFICIAL SEAL this 19th day of June, 2013, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks
Registered Professional Reporter
and Notary Public

My commission expires:
December 16, 2014

Electronically signed by Eve Wilbanks (101-177-349-6970)
0e805ff4-5647-4902-91e2-fa1d86961270

[redacted]

From: Jennifer M. Hawley Shiel [/O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SHIELJ137528770]
Sent: Wednesday, October 24, 2007 5:03 PM
To: 'Joe Trez'
Subject: Legal File System

Attachments: Untitled attachment 168783.htm; File List.xls; File System.xls

Untitled ichment 168783.ht

File List.xls

File System.xls

I've mentioned this to you, but I thought you might want to see this system Mark & I have devised. It works like a champ. The only thing I haven't done is put in all the locations yet. I'm using a numbering system for the file locations, with 1 being the copier room and 4 being Records Management. That way when Mark wants a file, we can go straight to it without looking in several places. I also insist on using the file "Out" cards when we pull a file. It keeps me from having to try to remember who has what file. I've driven myself crazy too often to rely on my memory.

The other list attached explains the file numbering system.

It is really a thing of beauty.

Mrs. Jennifer Shiel

President's Support Office

Bond Hall, Room 369

Phone: (843) 953-5815

Fax: (843) 953-7592

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2013.0.3408 / Virus Database: 3658/6972 - Release Date: 01/03/14

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF:
MOTHER DOE A

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab78

Page 62

A. Uh-huh (indicating an affirmative response).

Q. The first is the -- and I will read the question, and then we will go through your answers. And I'm not going to do it by reading every word necessarily because I don't want to -- I want to be judicious of time, but I do want to get -- you know, make certain I'm current on the information. The first is, Give the names, present accurate addresses and place of employment of all persons known to the Plaintiff Mother Doe A, individually, and as a parent on behalf of a minor child, as referenced in the Complaint or of their counsel, who will be witnesses concerning the facts of the case, set forth in a summary sufficient to inform Defendants of the important facts known or observed by each witness. Okay?

And the first response is Mark Brandenburg. Do you know Mark Brandenburg?

A. I do not.

Q. And I'm going -- I apologize if I appear to ask questions that seem redundant, and the next one will. Have you ever met Mark Brandenburg?

A. No, I have not.

Q. So when --

Page 63

A. Not to my knowledge.

Q. So when you say -- when you list him as a witness, is that something that I may assume that your attorney provided?

A. Yes.

Q. Okay. So you've never been in his presence, never met him, never talked to him; is that correct?

A. Correct.

Q. Okay. And I'll need to ask you -- and do you -- and do you have any idea what he does, what his role, what his profession is?

A. I believe I have read that he was General Counsel to The Citadel.

Q. Okay. So that's what -- you've come to know that through information that you've received -- either been told or reading?

A. Correct.

Q. Okay. All right. And the same question with Chris Fudge; do you know Chris Fudge?

A. No, I don't.

Q. Have never met Chris Fudge?

A. I have never met her. Is it a her? Oh, yes, it's a her.

Q. Do you have any information at all about

Page 64

The Citadel Writing Center?

A. I do not.

Q. And do you know or have any information about Louis N., also known as Skip, ReVille's involvement with the Writing Center?

A. I do not.

Q. Do you know anything about his participation there, when he started and when he stopped?

A. I do not.

Q. {John Doe LR} is your child. And we've talked about him.

A. Correct.

Q. {Mother Doe A} is you?

A. Correct.

Q. Louis Reville is Skip ReVille?

A. Correct.

Q. And do you know Skip ReVille?

A. I do.

Q. Tell me when you remember meeting Skip ReVille and under what circumstances.

A. Um, I recall I met Skip ReVille while my son was taking tennis lessons from Mt. Pleasant tennis -- Mt. Pleasant Recreation Department. He was one of the coaches there.

Page 65

Q. Do you know what year that was?

A. That was in the fall of 2007. We had just moved back to Charleston.

Q. And tell me, you say he was one of your son's coaches?

A. Correct. I believe they had several coaches at the time. I don't really recall exactly, but he was one of the people who was on staff there to conduct clinics and give private lessons.

Q. Did he -- did he ever give either you or your son private lessons?

A. He gave -- not initially, but, later, he gave {John Doe LR} private lessons.

Q. Do you know where ReVille lived at that point?

A. I do not recall where he lived at that particular time. I was under the assumption that he lived out -- Mt. Pleasant.

Q. Okay. When you met Skip ReVille in the fall of 2007, what did you understand -- or what, if anything, did you know about his background?

A. Initially, I didn't know anything about his background, other than the fact that he was employed by Mt. Pleasant Recreation Department.

Electronically signed by Eve Wilbanks (101-177-349-6970) 82bafe93-3e21-4501-b948-0e04a799ab78

Page 66

Q. All right. So he was employed by Mt. Pleasant Rec Department as one of the tennis coach staff?
A. Correct.
Q. And tell me, did you know anything about his -- where he grew up?
A. No, I did not.
Q. Did you ever find out -- did you ever come to know him well enough to know where he grew up?
A. I came to know him well enough to know that he had had -- he had a father who lived in, I believe, California, and his mother was a minister, I believe he told me at one point, a clergy member.
Q. Anything else?
A. Initially?
Q. Yeah.
A. Not at that point.
Q. Okay. Tell me about him as a coach.
A. Well, he appeared to be -- {John Doe LR} seemed to like him, and he was -- I liked the fact that he was very big on academics and making sure that the total child was being challenged, not just tennis. He was very big into religion, which

Page 67

that doesn't really mean anything at this point, but I did realize he -- there was another child that I knew their parents somewhat via former acquaintances of ours at Aiken, and they seemed to like him a lot.
Q. All right. There was -- I'm sorry -- a former --
A. There was another child that he took special interest in at the time because -- {John Doe LR} had been very competitive and was a competitive player. And I think he seemed to recognize that, and he took a special interest in {John Doe LR}. And there was another child whose parents were -- whom I had known somewhat over the years via a connection with Aiken, and they were a Mt. Pleasant family that's been here for years and years and years and knew a lot of people in Mt. Pleasant, and they seemed very comfortable with Skip as well. He took both of our boys and, you know, kind of nurtured them in their tennis and also very encouraging with regard to their academics.
Q. And who was that? We can --
A. These are the {the DC family}.
Q. Which {DC name}?

Page 68

A. I can't tell you. I get confused between the Aiken and -- the same {the DC family} that built the {redacted}.
Q. So it's {Father Doe DC's} family?
A. Uh-huh (indicating an affirmative response).
Q. And their son was also a tennis player?
A. Correct.
Q. Was he a good friend of {John Doe LR's}?
A. I wouldn't say they're good friends. {John Doe LR} is very close with the core group -- he's always had very close relationships with his friends and tight knit. He's not a social butterfly. But they got along. So --
Q. They were both pupils of Skip ReVille?
A. Right. But they were also competitors too, so, it's a kind of -- you know --
Q. All right. Was the {John Doe DA} child {John Doe LR's} age?
A. I think he may have been a year older than {John Doe LR}. I'm not sure.
Q. And were the {the DC family} friends of you all's?
A. They were not friends of us -- ours personally, but the family had a lot to do with

Page 69

{redacted establishment} in Aiken, because part of them live in Aiken. So there was a strong connection. One of the nephews used to play at our club all the time and that sort of thing. So South Carolina is somewhat incestuous in that way. You know people who -- maybe that's not a good term to use, but there are a lot of connections. My husband's family has been in the area for years and knows a lot of people and, you know, my family has been in the area as well. And so, consequently, my children used to say, You know someone who knows that someone else always. So that's -- a small place, small world.
Q. If you don't know the person, you probably know somebody in common with them?
A. Correct. Correct.
Q. So -- and that was how --
A. Who is your family, you know, kind of thing. That's how it kind of works in South Carolina anyway.
Q. So did the {the DC family} introduce you to ReVille or --
A. I don't think -- no one really introduced us. We just dropped {John Doe LR} off for a clinic, and it just so happened that he was

Electronically signed by Eve Wilbanks (101-177-349-6970)
82bafe93-3e21-4501-b948-0e04a799ab76

Page 74

of going through the Arpaio incident and sitting up here still wondering if that child has had any -- has been affected by that man's actions, being my oldest son, I said, I don't feel comfortable stepping foot on the campus.

And he said, I know what you're talking about, {Mother Doe A}. They actually brought me in to assuage everyone's fears. And I said, What do you mean? He was like, Oh, yeah, I know all about Arpaio. And, you know, I won the Algernon Sydney Sullivan Award. You know, I started -- and my father-in-law was -- received that award, and was very proud of that award, from the University of South Carolina. And I thought, wow, they really did what General Grinalds said to me on the phone when he called me that time. He said, We will make sure that nothing like this happens again.

And so here I'm listening to Skip talk about The Citadel in a way that -- basically them saying, you know, You're our top cadet and you've got all this great stuff going for you; we'll bring you in and you can be one of the head counselors and that's going to put everybody's mind at ease.

Page 75

So when he said that, I was thinking to myself, wow, The Citadel actually did what they said they were going to do, and they brought in this fabulous person to, you know -- who seemed genuinely a top cadet -- and I looked it up. He was a top cadet, he won this -- this great award for his public service and, you know, he cares about my son. I was -- you know, imagine my surprise when I find out -- well, at any rate, {John Doe LR} did participate at -- on campus that day. And from there, it kind of, you know -- he came -- he would call and say, Can I take {John Doe LR} to get a bite to eat? And initially I was okay and then I thought, well, {John Doe RA} may feel left out. And I said, {John Doe LR}, you know, you really need to let {John Doe RA} go with you guys sometimes. And {John Doe LR} would just get all weird. Now, in hindsight, I think he was trying to protect his brother from coming into contact with that man.

Q. Well, let me ask you, going back to what you were telling me about him taking {John Doe LR} to The Citadel and that discussion you had, do you remember when that was?

A. I want to say it was the spring of 2008.

Page 76

Q. Okay.

A. I can't be certain because then --

Q. So as I understand what you're telling me, you actually -- you actually talked to Skip ReVille about --

A. About Arpaio.

Q. Okay. And ReVille responded as you have told us?

A. Correct.

Q. And I think you -- you said this fabulous person, being -- reference -- referencing Skip ReVille?

A. I'm talking about his record, the things that I had read about him. Most -- most of it that came off of The Citadel Website, looking up their history, their -- his tenure as a cadet there.

Q. Because --

A. Because I wanted to be very careful before -- I didn't know -- I went into the Arpaio incident -- I was -- you know, I knew nothing about The Citadel at that point. I was -- I would have hoped that someone -- someone -- The Citadel knew about his proclivities before I even met him, and, yet, he was still portraying himself as an

Page 77

outstanding, upstanding Citadel cadet, and there was nothing there to contradict that.

Q. And I want -- I want -- I understand what your opinion is, and I understand what your lawyers have alleged in the Complaint.

A. No. Excuse me. I don't mean to interrupt you. This is not what they allege. This -- my son was molested by Skip ReVille. There's no alleged anything. My son was molested by Skip ReVille. I didn't even want to believe it. What I do find it difficult to believe is that when you have information and you're a public institution and you know there's a crime being committed -- and from what I can tell, by what I've read, showing people porn, 12-year-olds porn, that breaks -- that breaks the statute and the law of South Carolina. And they should have reported that, and then I would have never had to be dealing with this right now.

Q. I understand that. And I certainly appreciate what you're telling me. This is a deposition, and my job is to ask questions.

A. I understand.

Q. And so what I want to do is -- I'm trying to follow a pattern of questions that has

Page 78

-- that has a sequence to it.
A. I understand.
Q. So I want to go back. And, you know, when I say the allegations in the Complaint, I'm not -- I'm not getting into what -- you know, what Skip ReVille did to your son. That's a matter of public record. It's part of a guilty plea.
A. Correct.
Q. So when I -- I mean, that's not what I --
A. Okay.
Q. When I refer to allegations, that's not the specific one that --
A. I understand. I just get a little --
Q. I --
A. -- on the edge when I hear alleged and whatever --
Q. You know, lawyers use words just out of rote, so you'll have to overlook that.
A. I understand that.
Q. I want to go back to -- you were telling me about when you talked to Skip ReVille about the Arpaio. And you -- you did some looking into ReVille and found that he had won the Algernon Sydney Sullivan Award; is that correct?

Page 79

A. Correct.
Q. And I think, in your own testimony, you said that he -- he had been brought to The Citadel to assuage the fears and to get everything back on track; is that --
A. That was my understanding from him.
Q. And so you -- you went to some efforts to look into his background and to make certain that you, as a parent, would be comfortable with him being with your child; is that --
A. Correct. Correct.
Q. And this was sometime in the year 2007?
A. I would say 2000- -- maybe early 2008. Because up until that point it was, you know, very --
Q. And I think you -- you also got, for lack of a better word, positive reviews or a comfortable read on ReVille from parents of other children that he coached?
A. Correct. Correct.
Q. And nobody ever had any hesitation or suspicion about ReVille?
A. No.
Q. And you certainly, as a parent, never had any suspicion about him?

Page 80

A. No.
Q. Did you ever, at any time, have any hesitation about an unbridled trust in Skip ReVille as a coach or as a mentor for your child?
A. No.
Q. Okay. Was there -- over the years -- or let me ask you, how -- how long was {John Doe LR} one of Skip ReVille's tennis students?
A. Well, 7th and 8th grade.
Q. Okay. And that was -- and I apologize. I'm trying to remember from a calendar standpoint. You remained in Mt. Pleasant until 2009, was it?
A. Right.
Q. And then you moved to --
A. Charlotte.
Q. Charlotte. So --
A. Towards his junior year -- I mean, his freshman year, I noticed he wasn't participating.
Q. He wasn't --
A. Skip would call him and ask him if he could go help with some -- something Velocity was doing as a part of Mt. Pleasant -- the high school football program. And I noticed that {John Doe LR} had started taking a -- kind of --
Q. He wasn't as responsive?

Page 81

A. Exactly.
Q. Now, was {John Doe LR} playing tennis in high school?
A. Actually, he quit playing tennis at that point.
Q. When did he start playing again?
A. Um, his junior year in high school.
Q. So in 2009, his -- your last year in Charleston, where was he in school?
A. He was at Wando.
Q. First year?
A. (Indicating an affirmative response.)
THE COURT REPORTER: Yes?
THE WITNESS: Pardon? Yes. I'm sorry.
BY MR. STONEY:
Q. All right. Did you and your family participate in any -- did you all go to church anywhere in Mt. Pleasant?
A. No, we did not.
Q. Is church something that is -- is it a part or not a part of your general activity?
A. Um, no. I tend to be a secular humanist, so it's not something I would say my children -- I'm trying to teach them right and wrong, but I don't practice any organized

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab76

Page 98

to have been the end of July, first of August of 2011.

Q. Okay. And did {John Doe LR} come down to see {John Doe A} often?

A. No. He wanted to do it more, but because of the nature in my work schedule, I was not able to -- I couldn't do that.

Q. And he would have been -- this was when he was 16 years old, I guess?

A. Correct.

Q. In 2011. All right. So after -- after the family moved to Charlotte in 2010 -- and I don't think you remembered specifically when that was in 2010. It would -- would it have been in time for them to start school that fall?

A. It would have been. It would have been. So it was --

Q. Sometime before August?

A. Right. It was the first of -- it may have even been the first of September. I think they were going -- Charlotte started later, and they were going to miss a couple of days or the first day of school.

Q. All right. So had {John Doe LR} been back to South Carolina in that year between when

Page 99

you left and --

A. No.

Q. -- he came back to visit {John Doe A}?

A. No.

Q. So, to your knowledge, did he have any interaction with ReVille in that interim period?

A. To my knowledge, no.

Q. And did you?

A. No.

Q. All right. So he would have finished his freshman year at --

A. At Wando.

Q. -- at Wando.

A. And he was starting his sophomore year at South Meck.

Q. And his freshman year -- when he was at Wando his freshman year, he was not being coached by ReVille; is that what I understand?

A. Um, there was some interaction. I don't think -- it didn't have anything to do, really, with tennis anymore. It had to do with basketball and Velocity Sports and participating in setting up training programs with regard to Velocity Sports. He was into cross-training at that point.

Q. And you said that {John Doe LR} came to

Page 100

you in October of 2011 and let you know that Skip had been arrested?

A. Right.

Q. What was his reaction?

A. It was -- for a couple of years {John Doe LR} has been very tight to the vest and very -- a lot more withdrawn. So it wasn't like there was any big reaction. He's a very even person. And he would -- I was -- I'm like, Really? For what? And he said, For molesting kids. And my heart -- I got real -- flipped out, because I had already been through this once before with this idea that I didn't know if my children's lives were going to be changed with regard to my oldest son and Arpaio.

And that was the first thing that came to my mind, and I tried to keep it together and not get too weird about it. I took {John Doe LR} in the bathroom and I said, I want to ask you something. Did anything ever happen to you? And he's like, No. What are you talking about? And I said, I just know you've spent a lot of time with him, you know. If something has gone on, I want you to let me know. And he's like, Nothing happened.

Page 101

And he had been a little -- at this point, for the last couple of years he'd been -- always been a very sweet, very high sense -- a strong sense of fairness and just, and he had been -- become increasingly withdrawn. And it's hard to say -- at that point, I didn't know if it was teenage years or -- so I don't recall at this point. I was very, very concerned. I do remember calling a friend of mine and saying that Skip -- she knew that Skip had spent time with {John Doe LR}. This is my friend Sharon. And I said, Do you think anything has happened there? In my heart, I probably knew something had. And it brought back -- I got real angry because it brought back what I felt was a very bad situation with my oldest son.

And then I think two weeks later I get a call from Mt. Pleasant Police. And as soon as she called, I knew exactly -- at that point I had to face reality. So I didn't even want to know all the details --

MR. STONEY: There's a box of Kleenex over there on your left.

A. Thank you. But I did ask if it was just one occasion. And she said that Skip had said

Electronically signed by Eve Wilbanks (101-177-349-6870)

82bafe93-3e21-4501-b948-0e04a799ab7f

Page 102

that it was on more than 20 occasions.

Q. Okay. All right. I want to go back and ask my question to you -- my original question was what was -- what was your son's reaction when he heard that ReVille was arrested?

A. He was -- it was -- I can't even describe his reaction to you because it's almost like comfortably numb. There wasn't a lot of affect at all within his demeanor. It wasn't, Oh, my gosh. It was -- and it wasn't -- you know -- very flat line. Which he's been, you know, very -- I mean, he's been very cloistered. He quit playing tennis when we moved to Charlotte. I bought him a thing to go to the Y; I couldn't get him to go to the Y. I tried to get him out to play sports with other people. And he just -- he didn't want to have anything to do with anybody.

Q. And then, as I understand, he -- he resumed playing tennis when he was in high school?

A. He did.

Q. And --

A. His junior -- his sophomore year he played on the tennis team, and it was at that point that I was able to get him into a program with the Carolina Tennis Academy. And that was

Page 103

because he was -- this was his senior year -- I mean, junior year, because I was home schooling him at this point. And I remember walking to the tennis academy, and they wanted to have him there, and they thought he had a lot of potential. And the woman happened to mention to me that they had gone to Penn State. And I said, Well, my daughter went to Penn State. And she started in about how awful it was what happened to those kids at Penn State.

And I guess {John Doe LR} had been at the tennis academy a couple of weeks -- this was his junior year -- and his tennis coach came up to me and he said, you know, What's with your kid? He won't even lift his head up. And, of course, I knew at this point what no one else there knew, was that, you know, he had -- well, what am I supposed to say here? Well, his tennis coach molested him. But he kept harping on {John Doe LR}, Get your head up. You know, Why do you hold your head down all the time?

And at this point, I had already put {John Doe LR} into some therapy, which wasn't going well either.

Q. And where was that?

Page 104

A. That was with Alexander Youth Network. After -- after the people called -- after Mt. Pleasant Police called me and said I needed to take him to get a forensic interview -- first of all, I had to approach him with it. And so I took him aside because I didn't want his brother -- younger brother to know. I said, I just got a call from Mt. Pleasant Police. And he just started bawling. I said, I gather by this that something happened there. And he said, I did not want to worry you with this.

Q. Tell me -- tell me what therapy -- tell me what therapy he received and what, if any, therapy you received and from whom that was and what the duration was.

A. Um, immediately, because I didn't have a lot of money and I didn't have insurance, that was a big concern for me, so I went through Alexander Youth Network. I think we qualified for services there. It's a private organization. And I started taking him to see Chet Williams at Alexander Youth Network, a licensed family clinical therapist. And {John Doe LR} did not want to go. And for several months -- I don't know, it may have been three months, I would have

Page 105

to look back at the calendar, he probably knows better -- I took him once a week, and that turned into a major ordeal within my family. My youngest son started saying ugly things to him about why he was sick in the head.

{John Doe LR} would not let me tell him what was going on, and, to this day, my youngest son doesn't know what has happened here. It became -- it became a very, very sticky situation. {John Doe LR} got very belligerent with his brother. I was constantly having to pull them out of fights. My youngest son would say to me, You're letting him get away with murder. Chet would say to me, We're going nowhere with this therapy. He -- we -- they never even discussed it. After three months, he could not get anything out of him. They wouldn't even -- {John Doe LR} would not even go there.

So, basically, I said, What do you propose I do? And he's like, Well, it's causing a rift in your family because you're up here taking him to therapy, your youngest son is getting jealous and doesn't understand what is going on here. Your son tells you you can't tell them. And you're kind of caught in a no-win situation.

Electronically signed by Eve Wilbanks (101-177-349-8970)

82bafe93-3e21-4501-b948-0e04a799ab7

Page 106

Because there's a big secret that hangs out in my family to this day, and it's driven a wedge between my sons, who were very close.

And at this point in time, I cannot even get {John Doe LR's} permission to talk with his younger brother about this, which I feel is only fair, and I don't want that to come back and be used against him.

Q. You say you can't get {John Doe LR's} permission to talk to {John Doe RA} about it; is that --

A. Correct.

Q. Other than the -- other than the Alexander Youth Network and Chet Williams, has {John Doe LR} received any other therapy or counseling?

A. No.

MR. STONEY: And I believe -- this is kind of on the side, but, Gregg, we have not gotten these records yet.

MR. MEYERS: Yeah, I heard that yesterday.

THE WITNESS: Well, I'm going to tell you, I don't know even what is going to be in there, because he's like -- after -- after all

Page 107

this time, he hasn't opened up to anyone.

MR. STONEY: Well, this is part of the discovery, that we exchange that information. And I just need for your lawyer to follow up and get the records because we're entitled to them. And I really wanted to have them before today, but --

MR. MEYERS: Yeah, Randell. Let me tell you that when Chip passed that on to me yesterday, I called Chet Williams and left him a message. We affirmed that we've given him all the permission --

MR. STONEY: We've been trying to get them for six months, Gregg, and that's something we can talk about later. In any event, so --

MR. MEYERS: I just want you to know that we've given him permission to give everything, so it's weird.

MR. STONEY: It is.

BY MR. STONEY:

Q. All right. So your son now is --

A. 18 years old.

Q. Okay. And he's at USC, right? Got -- played varsity tennis and --

Page 108

A. Yes.

Q. And do you know if he has sought any counseling at South Carolina?

A. I do not know that. I know someone who I went to school with who is head of the health -- the mental health facility there, and I passed along information to her that there's an issue with {John Doe LR}. And I was very concerned about him going to college, and was really not keen on him going to South Carolina even though I knew -- he's the biggest Gamecock fan there is. But I was concerned that he would be -- I don't -- I don't know. He may be a ticking time bomb. I know it can be a stressful time for children anyway under normal circumstances, but I worry constantly about whether or not he's going to have a major attack. I just heard where that's the number one killer of children, is suicide, especially college freshmen and sophomores. And those are children who haven't been through something like he's been through.

Q. Has he gotten his first semester grades, do you know?

A. He did.

Q. How did he do?

Page 109

A. He got a 3.5.

Q. And do you know what courses he was taking?

A. Oh, English, University 101, Music Appreciation, which was his most difficult one; he couldn't stand it. I don't recall the rest of them. Those are the ones I just --

Q. The general freshmen curriculum. Is that --

A. Correct.

Q. All right. When you are with {John Doe LR}, does he ever -- do you ever bring this subject up?

A. Um, we do. I asked him last night -- he's here in Mt. Pleasant. And I asked him -- he was visiting {John Doe A}, and I told him I would pick him up. And I asked him about {John Doe F}, who is one of the core group of the kids, who flunked out of USC and has gotten involved in drugs pretty heavily. I asked him about -- Were any of your friends affected like this? And he's like, If they were, I wouldn't know.

So we talked about how secret everything has been. And even among friends, I don't think they probably know the extent of it.

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab76

Page 110

Q. Let me ask you --
A. And I do know he's getting to a point where he's getting very angry, and he's -- he said to me, I hope you don't want to reach across and strangle them. He's very angry about it, and he's keeping it in, but I have a feeling it's getting ready to surface its ugly head.
Q. He knows why you're down here?
A. Yes, he does know why I'm down here.
Q. And he understands that you've brought a lawsuit?
A. Yes, he does.
Q. And he understands the foundation of the lawsuits?
A. He knows that The Citadel had information prior to his meeting Skip ReVille and they did not disclose that information to people that Skip may be around, yes, he does know that. And he's smart enough to understand that that -- if -- in the very least, you have the moral obligation to disclose, but, legally, you also have an obligation. He does. That's why he wants to study law. He's been very impacted by what's gone on here. And, quite frankly, it's really -- I'm trying to teach this young man to be a man, to

Page 111

grow up and be a man. And when people shirk their responsibilities and positions of power, with the public interest not in their mind -- you're right, I have talked to him, we have discussed this, because I think he needs to know that what went down here is wrong.
Q. I hear what you're saying. But my question that I want -- that I want -- would like to know the answer to is not talking about what -- what you all's opinion is and your --
A. Excuse me.
Q. Let me finish my question, now; I get to ask the questions. Okay? That's what a deposition is. I ask the questions.
A. I get that. I understand that.
Q. And I want -- I'm very interested in what you have to say, but I'm also interested in your answering what I want to try and understand for those things that I need to know. And when I ask if you have talked about the circumstance, I'm not talking about your anger about what happened or what you believe should have been done or was done that wasn't done. What I want to know is, from your perspective and from your son's perspective, have you ever discussed or have you

Page 112

offered or has he said, I need to talk to somebody?
A. No, he has not. I have -- I have been the person initiating that. Okay? I've been the person who has initiated, because I am so fearful that what is going to happen to that other boy that I heard in court talk about how he got involved with drugs and how he sucked it up and how he buried it. And I'm so fearful that if he doesn't, I feel like I have a ticking time bomb on my hands.
Q. But my --
A. And I am trying to answer your question. I've tried to discuss it with him, and all I've gotten from him is, If you only knew. If you only knew.
Now, as a parent, what parent wants to hear that coming from their children? Anyone sitting in here today, if they were in my shoes, would have wanted to know information. And this is not anything to do with my attorney; this is based on my experience over the years with another situation that happened to another one of my children. I'm very -- the disregard for children that has been shown, and my two children are now

Page 113

potentially -- one I know for sure is going to -- has had their childhood ripped away from them. And I will never have -- I will never have the relationship I sought to have with him. That is a fact. You cannot go back and change what happened with him.
But I don't want this to ever happen to anybody else's family, because of pain, the anxiety I live with on a day-to-day basis. Every time I hear words of molestation, I'm constantly reminded of it. I am -- I'm beside myself. So while I understand this is your question and answer, I've been watching and listening to everything everybody has had to say, everybody's opinion on this matter for two years now.
My son was a great kid. Now I'm left with a sullen, melancholy kid that basically does not have anything to do with anyone in our family. And he would be appalled to know -- I couldn't even tell my own father about this. It's affected every single relationship I have with all of my children. Because they're having to deal with a mom who has good days and bad days.
So excuse me for getting upset, and I know this is your job to answer questions -- to

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab7(

Page 114

ask questions, but I'm also a human being here, and I'm only human.

Q. Have you sought any help for yourself?

A. I have sought help.

Q. And from whom?

A. Mostly from a nonprofit, because I cannot afford to get the kind of help that I'm probably going to need.

Q. So -- well, tell me what the nonprofit is, which nonprofit --

A. Well, you -- Darkness to Light I've called many, many times. Many, many times late at night.

Q. Have you --

A. My first priority was getting my children help, and I do the best I can with that. Unfortunately, they don't pick and choose people with deep pockets. Okay? It's -- I've had to work my butt off just to keep things on the table and keep a roof overhead. The added expense here, why did I even need this? I didn't need this at all. And I realize everyone wants to give -- you know, oh, come down to the legality -- but the issue is, when I found out that The Citadel knew that this man was a molester, in the very least,

Page 115

attempting, putting his hands on people -- and I know that Rosa had a responsibility, I also know he has a track record at the Air Force Academy. Why do I know this? Because I keep up with this. My brother, who is a West Point graduate -- I hold those institutions very high and dear.

He should have known this person -- caught him in the act; you guys said you believed him. And then you just turn and pass your trash to the rest of us? It's wrong. I'm just -- have I gotten help? I'm getting the help that I can at the moment. Do I need more help? You're right. My oldest son said, Mom, we need family counseling.

Q. Have you talked to your oldest son about it?

A. That's who I've talked to. And you know what? Some of the same behaviors that have come out of {John Doe LR}, I saw coming out of my oldest son, and he said to me initially nothing happened. Now, he goes, Well, I'll tell you, yeah, they did -- I did get alcohol at The Citadel. I was brought into rooms and shown porn. This is in 2001. And I say to him, Are you sure nothing happened between you and Arpaio? And he's

Page 116

like, I really can't remember. And, yet, there were four different kids who kept saying that my son was in the room.

So you see, I've had an institution -- a person -- I've had two boys that are dealing with this issue on some level. And they're only -- the thing they have in common, that my other three children didn't.

Q. All right. We had talked about your son's last interaction with ReVille, and it was when ReVille and his wife brought him to Columbia.

A. Columbia.

Q. And that would have been the last time. Did you pick him up in Columbia or did your daughter?

A. My daughter picked him up.

Q. All right. And you have -- I want to continue down the Interrogatories. We've talked about ReVille. And the next is John Rosa. Have you ever met John Rosa?

A. No, I have not.

Q. So do you know anything about him, other than what you have -- what you have read?

A. Well, I do know that he was brought into the Air Force Academy to clean out -- up their

Page 117

mess with regard to the sex abuse scandal.

Q. My question was, do you know anything about General Rosa other than what you have read?

A. Other than what I read, no, not me personally.

Q. Okay. And what you know is that he was brought into the Air Force Academy to deal with the --

A. Fallout of the --

Q. -- fallout of -- the issues up there. And that he subsequently came to The Citadel, correct?

A. Correct.

Q. Other than what you've read -- and let me ask you, what are the sources of what you read? What are the sources of your knowledge?

A. I'm a voracious reader, so it could be -- I mean, I'm sure I've Googled him to find out more information about what his background is. I've read it in the Post and Courier. I do recall briefly -- I didn't realize he was the person involved, but I've kind of kept up with the Tailhook scandal and the various scandals that have gone on at the military institutions, because, as I told you before, my brother is a

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab7e

Page 166

A. I think so. So anything that was coming from that, it would have been hard to say.
Q. How did his -- what -- you know, what were some of the manifestations of the changes? How did they --
A. Well, he became very defiant toward me. And to this day, he's -- he -- I feel like he holds -- why didn't I protect him?
Q. And has he ever said that --
A. And for me -- I mean, for me -- not in those words. And for me, I wanted to protect him, and I'm really very upset that someone else didn't care enough about the children out there.
Q. Is his father aware of all of this?
A. Oh, yes.
Q. What has his father -- has he been a part or tried to --
A. No, not really. But he's -- I don't even know what it is to be a father and go through knowing -- I know he'd like to kill the people, and I know he's very upset.
Q. Who -- when you say he would like to kill, who does he want to kill? And when I say that --
A. He doesn't mean -- yeah, we don't mean

Page 167

literally kill.
Q. Right.
A. Very upset with Mr. ReVille, but equally upset with the fact that you guys had him. You had him underneath your -- not you guys. I'm talking about The Citadel had him left to right, and they just passed this piece of trash out to people who are decent people. That's -- he's very upset about that.
Q. Okay.
A. And he was always very supportive of The Citadel.
Q. All right. I was asking you about -- about your son. And you say he was -- he had become defiant. Did you have any of your other children ever --
A. Not in -- not in the sense that he was defiant. And he -- for two years he never had a friend. He went to his room. He lived in his room.
Q. What about --
A. And even now, in college, he's very, very closed off.
Q. I mean -- and when you say that, have you -- have you had an opportunity to observe him

Page 168

in college in any environment, without him knowing that you're observing him?
A. Yeah. I'm not in his dorm room, that's for sure.
Q. I know your NSA connections.
A. Yeah. Don't get a baby monitor. Okay? It's not -- my father told me that years ago. Well, let's put it this way: His last two years of high school, he didn't go to one function. He didn't have one friend. Okay? He came home every day and went to his room. He wouldn't have anything to do with me or his younger brother. That -- no, I have never had a child act that way.
Q. What about -- what about his teammates?
A. He had no close friends. They would ask him to go and do things, and he -- he did not want to participate.
Q. Never spent the night out?
A. Never spent the night out. In two years in high school, never spent the night out, never asked to go to a party, never did anything.
Q. Did he drive?
A. And even now -- no, he doesn't even drive. He doesn't want to.
Q. He doesn't have a driver's license?

Page 169

A. No.
THE VIDEOGRAPHER: This is the end of tape No. 4. We're off the record at 2:43.
(The deposition went off the record.)
THE VIDEOGRAPHER: This is tape No. 5 in the deposition of Mother Doe A. We're on the record at 2:50.
BY MR. STONEY:
Q. All right. I think when we changed tapes we were talking about the -- you were telling me a little -- describing your son's life in high school and the fact that he was reluctant to go out and do things that you felt like he normally would do. Do you -- do you have any feel for how he's getting along in college now?
A. Um, I don't think -- I mean, I talk to him at least once or twice a week, and he's just very monotone. I think he -- he says he wished he hadn't gone to such a big university. He told me that last night.
Q. And I don't mean this as a "but," but his grades are good?
A. Right. That's because I don't think he participates in the social life the way my other children did. My son and his -- older son in a

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab76

Page 170

fraternity, my daughter in a sorority. He has -- and they're all different -- I get that. But he's not -- grades are not everything. I'm not just about grades. I like -- I want my children to be happy.

Q. And I'm with you on that. A 3.5 is a nice level.

A. Look, I was very -- I took -- I was very proud of him for that, because I know that he's -- but he also has a good friend who was a part of that group who has flunked out this year. So I'm a bit --

Q. All right.

A. I've never seen him date. He's never had a girlfriend.

Q. How about your oldest boy?

A. Oh, my oldest boy, he has the opposite problem, which was kind of off the reservation too. I mean, they were two extremes. One went one way, and the other one went the other way.

Q. What -- what do you mean when you say -- this is {John Doe EC}?

A. {John Doe EC} was very into a girlfriend every week. So -- and I used to think, you know, it's a bit excessive. And then I've got this one

Page 171

who has no girlfriend, and not even interested in going out to meet people. And that's what he told me about college. He's like, I pretty much stay in my room and do my work.

Q. What about {John Doe EB}?

A. {John Doe EB} -- {John Doe EB} is just your easy-going, kind of happy-go-lucky, everything-is-right-with-the-world.

Q. Does he have a girlfriend?

A. He's had girlfriends off and on but nothing serious.

Q. How about {Jane Doe HI}?

A. {Jane Doe HI} is the same. They're pretty normal; normal social life.

Q. And I guess {John Doe RA} is getting to the age.

A. {John Doe RA} is in -- yeah. He's very social.

Q. All right. And, again, these questions are going to sound kind of funny -- or strange, but you never did actually witness any untoward activity between your son and Skip ReVille?

A. No.

Q. Okay. And I --

A. I would have killed him.

Page 172

Q. Well, I got that. And what -- the damages, as a result of the injuries to your son, the injuries being what has been documented in the police reports, the interaction with ReVille, and we've talked a little bit about oral sex and whatever else took place, as has been admitted to and described by ReVille and fleshed out in the investigations; is that correct?

A. Correct.

Q. And, again, this is going to sound a little bit odd, but your son has not suffered any physical injury; he wasn't hurt damage-wise, broken bones?

A. No.

Q. And you obviously didn't find any of this out until well after the fact, when ReVille was arrested and all of this came out in the public; is that correct?

A. Correct.

Q. And other than that one time that your son went to The Citadel to play tennis, he's had no contact or interaction with The Citadel, has he?

A. Not to my knowledge.

Q. I mean, The Citadel didn't have any --

Page 173

and I don't want to get -- at the risk of going off on a tangent, The Citadel didn't have any active part and was not a party to ReVille's -- whatever actions he had with your son?

A. None.

Q. And we've talked about -- we've quantified the therapy. I take it from what your testimony is that at some point, hopefully in the near future, you plan to seek some help?

A. Correct.

Q. And what about for your son? He's --

A. I think I spoke with you earlier, when I told you that I have a friend who's over the Wellness Center at USC, and she's been put on alert should anything -- because they actually did a big thing on childhood sex abuse. And I was actually concerned after seeing this that {John Doe LR} would see it, and it was sent out to all the students, and I wanted to touch base so that if he did need to reach out.

Q. You feel like he understands and is comfortable that if he needs to reach out, that there will be somebody there?

A. I think he's getting there. I think he's getting there. I don't think he's quite

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab78

Page 174

there yet, unfortunately.
Q. I think -- I know that from my experience as a parent of a USC student, that the mechanisms are there.
A. Right. Right. And that's what I wanted to make sure, she was aware, and he was aware.
Q. And so at this stage, where we are right now -- and this is the hard thing is, you don't know -- we don't know what general effect this entire experience has had on {John Doe LR}?
A. Well, I guess that's the big -- that's the roughest part as a parent.
Q. Right. You want to find that out and get it --
A. Well, I mean, you can never go rewind the clock. I'll never have the child back. Furthermore, because he hasn't dealt with it, I worry about his wellbeing. I know the statistics that are out there with regard to these children. And even if it's nothing drastic, in the sense of killing themselves, whatever the case may be, there are a lot of statistics out there about children who don't get help. I worry about when the shoe is going to drop on a daily basis.
Q. Okay. And you just have to hope that he

Page 175

reaches out if he needs to.
A. Yeah, you just have to hope. My hope was that -- an ounce of prevention is worth a pound of cure. And I hope everyone has learned something from this.
Q. All right. Let's see. I can obviously tell that this has had the typical parental response. I need you to try and tell me a little bit also how this has factored into your life, how it's affected you. And when I say that, I mean, other than the -- what you've clearly shown today is the natural reaction of a loving parent to a child that's been injured. Has it -- and these are the things that you will be quantifying at some point. I mean, how has it factored into your ability to interact with your other children? Has it factored into your ability to carry out your profession and pursue your -- your livelihood and that sort of thing?
A. I'm trying to compose myself. The fact that my son carried around this secret for two, three, four years, that's hurtful. Because I should have been there for him. I cannot even look at him without feeling sorry for him. I'm worried the child that I had, a sweet, a caring, a

Page 176

lot of empathy for people and I -- now I don't know what kind of soul he has because I can't get inside his mind and know what wires have been crossed. When I hear people say, We're creating more child molesters, I worry about that with my own son. I fear that. I've heard people say that. I've heard kids in my classroom say that, talk about in general terms, Are you just going to be a child molester? And now I have to go -- it's all I can do not to jump down those children's throats when I hear that kind of banter, because I'm thinking there may be a kid in this room that you're offending. And what would it be like for my son to be in there? What will trigger it for him?
You can't rewind the clock. I can't tell you what's going to be in the future, no parent can. But I know that his future has been tremendously changed by this. He can maybe turn it into good, but he can also turn it into bad. As far as my other family members, I watched two boys who basically spent a lot of time together because of -- they're brothers, wanting to be closed off. He feels left out. They don't have the same relationship they used to. I used to

Page 177

laugh and call them Mutt and Jeff.
My youngest son looked up to {John Doe LR}, and {John Doe LR} is so worried that, if he finds out, it's going to destroy his opinion of him. Dealing with males is very difficult. There are a lot of things that go with this. Now they don't even want to be in the same room together.
As far as my daughter, it's affected every dyn- -- every relationship that goes on in our house, because everyone walks around on eggshells. Because in some ways our family still keeps a big secret. Most people in my own family don't even know.
Q. Thank you. We'll move on. Do you have any information or indication that anyone at The Citadel was aware that ReVille abused other children, or abused children; other than that information that they had in 2007, that he had that propensity? And I didn't phrase the question very well. Let me try and restate it so that it's a little clearer.
Other than the information that came to The Citadel in 2007 involving the camper -- the camper's information that occurred in 2002, okay, are you following me?

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe83-3e21-4501-b948-0e04a799ab76

Page 178

A. Right.
Q. -- do you have any information or knowledge that The Citadel was aware of any other act that ReVille did involving --
A. Only --
Q. -- involving another camper?
A. I don't even know if this is the same one, but I do know that there was an allegation that the head counselor caught him rubbing something on some child in 2002, 2003. I believe I read that in the paper.
Q. Okay.
A. And she should -- she says she should have come forward and said something about it.
Q. That's when ReVille was in -- it has been testified to was in his room and he was applying ointment to the --
THE WITNESS: Thank you.
BY MR. STONEY:
Q. -- to the boy's leg that had run track or something?
A. Right.
Q. Okay. So that would be the only other incident that you would -- or issue that The Citadel might have been aware of?

Page 179

A. From what I've read. I don't know if there are any other --
Q. And, again, whatever you know is based on what you've read?
A. Right. Because I wasn't in the room. That's the only way I have to --
Q. Do you think that The Citadel or anybody at The Citadel intended or wanted these children like your son to have been abused by ReVille?
A. I think -- I think The Citadel knew what kind of person they were dealing with. And I think that by doing nothing and not reporting it, I think was as good as -- yes, I think intent -- intent can be involved with doing nothing as well as doing something. I used to tell my children lying -- Shiloh -- there's a book, and read it to them, and we would talk about lying. And lying isn't necessarily about what you say; it's about what you leave out. Regardless, it's still dishonest. Just because you didn't come out and tell a lie, lying by omission, it's just as bad.
And I think that by not -- by not reporting what they knew about him to law enforcement so that they could carry on an

Page 180

investigation, what did they intend to happen to these -- to the people and the kids who came in contact in the future? What -- what did they think would possibly happen? Because we know these people don't stop; we know they don't. So you're asking me, do you think The Citadel intentionally? Yes, I think they intentionally knew and sent him out into the world. Because I think that anybody who is involved with children and education knows that people who carry on in this manner, they don't stop until someone stops them.
And I think The Citadel had a chance, an opportunity to stop him before he came into contact with my son. And that's -- that's it in a nutshell for me. I think that had they done what they were supposed to do, which is carried that chain all the way through, that there would be a lot less victims in this world. And the propensity of these little victims to go out and become victimizers, I think, yes, they knew exactly -- by doing nothing, I think they had intent. And I mean, you can argue whatever way you want, but I know what I know. And what I know is that child molesters do not stop unless they're

Page 181

stopped.
And my God, people, these are innocent children. And I'm going to say to every male in this room, if you had the fear that a man was going to come and -- come and have a relationship with your son, your underage son, your 11-, 12-year-old baby, how would you make that decision then? And that's what I want to ask Rosa. If you knew that male was going to come in contact with your son, would you have just let him go? I think not. And that's -- yeah, I think The Citadel had intent, the small, short story there.
Q. One thing that you mentioned was -- you talked about these people -- these child molesters, they don't stop until they're caught. How long have you known that?
A. How could you not know that?
Q. Well --
A. I've known that since {John Doe LR} -- since {John Doe EC} came into contact with it. I looked up child molestation. I looked. What concerned me the most about that, before I even got a call from Charleston Police Department, I was looking up child molestation, and it talked about grooming behavior. It talked about breaking

Electronically signed by Eve Wilbanks (101-177-349-6970)

82bafe93-3e21-4501-b948-0e04a799ab7(

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JOHN DOE 2, Plaintiff, vs. PRESIDENT JOHN W. ROSA, INDIVIDUALLY, Defendant.	CIVIL ACTION NO: 2:12-cv-00794-RMG
MOTHER DOE, Plaintiff, vs. PRESIDENT JOHN W. ROSA, INDIVIDUALLY, Defendant.	CIVIL ACTION NO: 2:12-cv-00795-RMG
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MOTHER DOE A, Plaintiff, vs. THE CITADEL, Defendant.	THE COURT OF COMMON PLEAS CASE NO. 2011-CP-10-9200

VOLUME III DEPOSITION OF LOUIS "SKIP" ReVILLE

TAKEN: FRIDAY, AUGUST 15, 2014

Draft Copy

a67109bc-841e-4a08-b22c-77282e79dc1e

experience, no.

Q. Did you consider applying that Icy Hot to be a sexual act, or was it an act to alleviate the pain of Camper Doe 6?

A. A sexual act.

Q. And where did you apply the Icy Hot? To what part of his leg?

A. I don't rightly recall.

Q. At any point when you were applying that Icy Hot, did Camper Doe 6 object or tell you that he didn't want you to do that?

A. Not that I recall.

Q. Do you think that Camper Doe 6 was aware that you were applying that for a sexual purpose?

A. No.

Q. So from his perspective, he was in pain and you applied this ointment to alleviate his pain? Would that be your understanding?

A. I don't know what he was thinking. But I certainly never conveyed to him that I was doing it out of a sexual nature.

Q. And during that incident, was there anything that evolved into a sexual act, or did you simply apply the analgesic cream to his leg?

A. I applied it to his leg.

Copy

Q. Was there any other touching of any sort at that time?

A. No, not that I recall.

Q. Why didn't you come back to the camp in 2004? You had stated in a previous deposition that you believed the camp was a paradise for pedophiles. Do you recall saying that?

A. I do.

Q. If that were the case, wouldn't you have felt somehow attracted to the camp because of that moniker that you've given it?

A. Well, probably the main reason that I didn't come back to camp is I had so many victims that I was victimizing from Pinewood. In a sense, to say I had enough and -- I had a certain number from Pinewood I was abusing at the time.

Q. Mr. ReVille, do you believe that Pinewood Prep was also a paradise for pedophiles?

A. I think, at the time that I was employed at Pinewood, there was such a margin between what was stated concretely in their policies and what they were either able to enforce or just the family culture -- there was such a margin there that it was easy to spend one-on-one time with children.

a67109bc-841e-4a08-b22c-77282e79dc1e

A. It's locations 5, 7 and 12.
Q. Okay. And then PHSW 6 would be location 1. And anywhere else?
A. Yes.
MR. KOVACH: Chip, is that No. 6?
MR. SLOAN: Yeah. It's Camper Doe 6.
A. 1, 2 and 4.
Q. And then if you -- the ones who were abused at location 9, if we go back to PHSW 1, was that the sleep-over, or was he one of the daytime ones as well?
A. I victimized him on two occasions at that location.
Q. What about PHSW 2?
A. The same two occasions.
Q. And PHSW 4?
A. On one occasion.
Q. And was that the sleep-over one?
A. It was.
Q. Now, I don't know that we're going to get to talk to you again, Mr. ReVille, and I don't know if you'll be at the trial or not. So I just want to ask you if you can confirm -- from the police reports, what you have admitted to with regard to each of those clients. Okay? With

regard to PHSW 1, can you confirm whether this is correct or not, that he masturbated in your presence approximately 20 times? In addition, you helped him reach climax with your hand approximately 15 times, and you performed oral sex on him about 10 times? Can you confirm that?

A. I can.

Q. With regard to PHSW 2, can you tell me -- I guess what the extent of that abuse was for No. 2?

A. I would say over 20 that he masturbated in my presence, and over 20 that I manipulated him with my hand, and approximately 15 times where I performed oral sex on him.

Q. Now if we go to PHSW 3, can you tell me the extent of that abuse?

A. I manipulated him with my hand, so hand contact three times, and I exposed myself in his presence once.

Q. PHSW 4, the extent of the abuse to him?

A. I would say that he masturbated in my presence approximately five times. I made hand contact on him fewer than 10 times and oral contact once.

Q. Okay. All right. And No. 5, the extent

of abuse on him?

A. Probably masturbated in my presence approximately five times. I made hand contact on him over 20 times and made oral contact on him approximately 20 times.

Q. And that's the child of Mother Doe A?

A. That's correct.

Q. And I think we've been over in the deposition with Camper Doe 6, correct?

A. That's correct.

Q. Would you -- would you agree with me that each time you abused one of these kids, that it was a separate act of abuse?

A. Yes.

Q. And they were on different days or different months over a long period of time, correct?

A. That's correct.

Q. And would you -- I guess you understand from going through this that even one instance of abuse could be something that is very traumatic and something that some people just can't get over, correct?

A. I understand that, yeah.

Q. Would you agree with me that the more it

happens, the more damage is likely to occur or can occur?

A. Yes.

Q. Would you agree with me that the -- I guess there seem to be kind of steps to the abuse, and that the further you get, possibly the worse the damage could be to that child?

MR. KOVACH: Objection to form.

A. Yes.

Q. In terms of just exposing yourself and actually touching someone and that kind of thing?

A. That's correct.

Q. And all of those are separate occurrences of damage?

A. Yes.

Q. The same questions with regard to separate occurrences in terms of not the damages but when you were at The Citadel. Okay? Each time you abused someone there, it was a separate occurrence, correct?

A. That's correct.

Q. Each time Ms. Garrott or Colonel Lackey or Colonel Bates or Anna Bronk caught you violating the rules and didn't follow the rules and enforce the rules, that's a separate

occurrence of them not enforcing the rules and doing what they're supposed to, correct?

MR. KOVACH: Objection to form.

A. I agree with that.

Q. And at any time, if they had fired you or they had done what the rules required, it would have prevented your opportunity to abuse at The Citadel Summer Camp, correct?

MR. KOVACH: Objection to form.

A. Correct.

Q. And then I guess four years after you were no longer at the summer camp, when Camper Doe called General Rosa's office and spoke to Mark Brandenburg, that would have been another occurrence or an opportunity for The Citadel to do something, correct?

MR. KOVACH: Objection to form.

A. Correct.

Q. Did you have some type of counseling with the minister at location 9?

A. Yes.

Q. What was that counseling for?

A. I want to say it was spiritual coaching into the demands of the roles of husband and father. Ultimately, it was a mentorship or

THE CITADEL
THE MILITARY COLLEGE OF SOUTH CAROLINA

12 November 2011

MEDIA ADVISORY
Statement regarding Louis Neal "Skip" ReVille
From Citadel President Lt. Gen. John W. Rosa

Like so many in the Lowcountry, I am saddened and sickened that someone so close has betrayed our trust. My thoughts and prayers go out to the victims and their families.

As an institution responsible for delivering tomorrow's leaders, we hold The Citadel to a higher standard. We tell cadets to go beyond enforcing rules – to do what's right. We are confronted with an investigation from 2007 in which I do not believe we met that standard.

In 2007 an individual came forward with an allegation regarding inappropriate sexual behavior that happened five years earlier, in 2002, and which involved Louis Neal "Skip" ReVille. The individual stated that he and another camper along with Mr. ReVille watched pornography on Mr. ReVille's computer. They did not touch each other, but they each engaged in sexual activity.

As soon as this information was brought to our attention, The Citadel investigated the accusation. At the time we took what we thought were the necessary steps. It is now clear we should have done more.

The Citadel's general counsel tried to contact other individuals mentioned by the former camper making the accusation in order to corroborate his allegations. After initial communications were not returned, it was understood they did not want to speak with us. However, we should have more aggressively sought out individuals able to shed light on the incident.

The general counsel also interviewed camp staff – they were all very complimentary of Mr. ReVille who had graduated from The Citadel that May. As a cadet, he had been elected Honor Court chair, and at graduation received the award for excellence in public service.

We checked his personnel files and found no other complaints. His files also included a clean background check conducted by an outside organization.

And, unlike the charges Mr. ReVille now faces, which the media have reported he has admitted to, back in 2007 he strongly denied the accusation.

-more-

Achieving excellence in the education and development of principled leaders
171 Moultrie Street, Charleston SC 29409
(843) 953-6779 Fax: (843) 953-6767
www.citadel.edu oea@citadel.edu

PLAINTIFF'S EXHIBIT 39

As we continued to discuss the matter with the accuser and his family, they stressed the importance of their privacy. When the family did not pursue the matter, we did not either. We should have.

In processing the Freedom of Information Act requests we have received, documents have come to our attention in the last 72 hours, the nature of which was not shared with me or the Board of Visitors in 2007, but which demand action now that we have reviewed them.

I have directed the following:

- We have shared what information we have with the Charleston Police Department, who will make their own determination how best to proceed. We also ask anyone who may have information regarding inappropriate behavior involving Mr. ReVille to step forward and contact the Charleston Police Department.

- The Citadel also will directly address media inquiries. I thank the media for their vigilance and recognize their role in protecting the rights of the community. I also realize that The Citadel has lost public trust because of this incident. In order to earn back that trust we are making available to the media all documents relating to the incident involving Mr. ReVille, with names and personal information redacted.

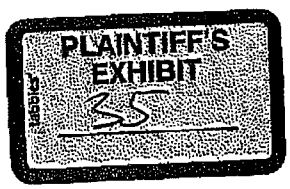
- Additionally, the college has hired Guidepost Solutions, a New York-based company, to review the procedures that the college followed in this matter and recommend how we can improve our capacity to protect those living, learning, and working at The Citadel. Guidepost Solutions will report its findings as quickly as possible, and we will share with you how the college will act on them.

When I speak to young officers, I offer them three principles to guide their careers: be a person of integrity; respect others and yourself; and, accept accountability for your actions. I hope our actions today demonstrate my resolve to continue leading The Citadel by those same principles.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Mother Doe A, Plaintiff, v. The Citadel Defendant,	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No.: 2011-CP-10-9200
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CAMPER DOE 6 Plaintiff, v. THE CITADEL, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. **AFFIDAVIT OF** **LOUIS NEAL "SKIP" REVILLE**

I, Louis Neal "Skip" ReVille, provide this affidavit of my own free will on Friday, September 20, 2013 at the Perry Correctional Institute; 430 Oaklawn Road; Pelzer, SC; 29669.

1. Due to the lack of adult supervision and oversight of the barracks at night, I was able to sexually abuse numerous minor campers, at night, in my assigned barracks room, behind a closed door, while I was employed by The Citadel Summer Camp during the summer sessions of the camp in 2001, 2002 and 2003.
2. During the 2001, 2002, and 2003 sessions of The Citadel Summer Camp, Bill Bates and Jenni Garrott never visited or inspected my barracks room after Taps had been



played. In addition, neither the Tactical Officer, nor the on duty CCQ visited or inspected my barracks room after Taps had sounded.

3. After the Arpaio allegations surfaced at the end of the First Session of the 2001 Citadel Summer Camp, staff training was held before the Second Session began to emphasize that campers and counselors were not to be in the same barracks room alone. The Camp's Director, Bill Bates, and Deputy Director, Jenni Garrott, did nothing to see that this emphasized rule was enforced.

4. During the 2002 Summer Camp while I was employed as the Senior Counselor, Bill Bates and Jenni Garrott had a meeting with me. They explained that they had heard that I was having minor male campers visit my barracks room at night, after Taps, when the campers were to be in bed. I was told not to put myself in a situation where I could get into trouble. After this meeting, no one ever visited or inspected my room after Taps to enforce the no minors in counselor's room rule.

5. During the ~~2002~~ 2003 ER Summer Camp while I was employed as the Senior Counselor, Col. John Lackey met with me and advised me that I should not place myself in compromising situations with the minor male campers. Col. Lackey had been advised by another counselor that minor campers were visiting my room at night after taps. ER

6. During 2001, 2002, and 2003, while employed by The Citadel Summer Camp, I would regularly have nightly food deliveries brought to me at the barracks and would invite the minor male campers that I had targeted for sexual abuse to join me in my room to help me eat it. The food was used to lure the minor male campers into my room for grooming and sexual abuse. The amount of food ordered was clearly for more than one person. No one ever questioned the amount or frequencies of the deliveries of food that were made to me at the barracks.

ER

7. My activities with the minor male campers did not change as a result of these meetings. The no campers in counselor's room rule was not enforced, and I remained free, as the 2002 Senior Counselor in charge of the barracks at night, to continue to have minor male campers visit my room after Taps.
8. In 2002, one of the campers had a heat rash between his legs and could hardly walk. The camper was to stay with me and not participate in activities until this rash cleared up. Jenni Garrott opened the door and walked into my room one afternoon to find the camper with the rash sitting on one side of the couch and me on the other. Ms. Garrott simply warned me that I should not be in my room with a minor camper.
9. It is my understanding that I should have been fired for violating the 2002 Camp Policy of no campers in counselor's rooms behind closed doors.
10. One afternoon, at the beginning of the Second Session of the 2003 Citadel Summer Camp, Jenni Garrott opened the closed door of my assigned barracks room and caught me with a minor Junior Counselor. (I am advised that this minor male is referred to as Camper Doe 6 for litigation purposes.) The minor had just completed a run and I was rubbing sports cream on the Junior Counselor's upper thighs and calves. I was grooming Camper Doe 6 and had not yet sexually abused him at the time Ms. Garrott caught the two of us alone. Ms. Garrott warned me that I should not permit minors to be alone with me in my room.
11. It is my understanding that I should have been fired for violating the 2003 Camp Policy of no campers in counselor's rooms.

12. Had I been fired when Ms. Garrott caught me alone with Camper Doe 6, I would not have been allowed the opportunity to sexually abuse Camper Doe 6 on several occasions during the remainder of the 2003 Second Session.

13. As a result of the Arpaio incident, I came to the realization that it was not normal to show pornography to and masturbate with minor males. I also realized that it was criminal to participate in these activities with minor males. In spite of this knowledge, and a ~~true~~ desire on my part to cease the sexual abuse, the lack of competent adult supervision and oversight of the barracks at The Citadel Summer Camps, especially at night, made it all too easy for me to continue to prey upon and sexually abuse the minor male campers.

14. As an Academic Review Tutor in 2001, I was permitted to hold my review sessions with the minor male campers in my barracks room instead of the Mess Hall, where all other review sessions were held. I used these closed door review sessions ~~to groom campers that I had targeted to sexually abuse~~.

15. In 2001, 2002 and 2003, had there been frequent and random after Taps room checks to enforce the no campers in counselor's rooms rule, I would have stopped having campers visit my barracks room at night for fear of being caught and fired;

or I would have actually been caught in the act of sexually abusing the minor male campers resulting in my being fired and reported to law enforcement. .

Further affiant sayeth not.

Louis Neal Reville

Louis Neal "Skip" Reville

SWORN to before me this
20th day of September, 2013
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-26-2020

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina, Plaintiff, vs. Louis Neal "Skip" ReVille, Defendant.	)	Charleston: 12-GS-10-1835 et al Berkeley: 12-GS-08-0353 et al Dorchester: 12-GS-18-0425 et al

TRANSCRIPT OF HEARING

The within Hearing was held on June 13, 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Scarlett Wilson, Solicitor
Debi Herring-Lath, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
Charleston, South Carolina
-and-
Meghan Hall, Assistant Solicitor
1st CIRCUIT SOLICITOR'S OFFICE
St. George, South Carolina
Appearing for State of South Carolina

Craig Jones, Esq.
Appearing for Defendant

Lewis Herns, Esq.

William Nixon, Esq.

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

it is hard to sit here and listen to this. It takes a toll year after year. We came to you and asked that you hear this case and you didn't run, and you could have. You never run from us. I know you are able, but I also know the toll that it takes.

The clerk's office has been remarkable from the start of this case, trying to streamline things so that we could get this done at this time; for the victims, that was very important for us. I appreciate all the work that they did for us, from the Grand Jury process forward.

You know, we've heard so much today. What I think is very important for all of us to see is that child molestation is an adult problem. It is our problem as adults.

THE COURT: Amen.

SCARLETT WILSON: When we see people that have children -- as you know, I don't have children of my mine, I do have many in my life. It takes enormous trust to raise your child and to be able to give them a healthy and happy life. You have to trust other people. You have to trust other parents, you have to trust

coaches, you have to let them grow and be independent and learn from others. To have that trust and then have it taken away, I know what I imagine that would be like. I also know that, I can't really imagine, not being a parent myself, what it must feel like to have to take that leap of faith, have that trust and then have it taken away.

You know, the victim who stepped forward tapped into something that I would hope would be brought forward, and that's the anger. We hear so much about the tears, about the mourning, the loss, but the anger is there. While we wouldn't ask the Court to do anything out of anger, this prosecution has not been out of anger, but it is outrageous -- it is outrageous that some that we have trusted in this community, some of those people have taken advantage of loopholes in the law and have shirked their responsibilities, morally, to do what was right.

That aspect of this case is something that this victim has taken on. While I don't have children, I will take the liberty of saying (addressing John Doe #13), 'Son, it was not your

fault. It was not your job.'

There were some who had a job and who had a role. To hear those people neglect and -- to see that they have neglected to stand up and the time to do something strong, something right, reputations be damned. That opportunity was neglected.

To hear them justify that by saying 'there was no corroboration, we didn't have enough evidence,' there is never enough evidence on day one. There is never enough evidence when witness one, victim one comes forward on that first day. People who are not trained, who do not have the tools and who do not have the motivation but had the audacity to say there was no corroboration, there was no case, that's what we are here for. We have some of the best in the state, if not the nation, in prosecution. We have law enforcement. We have the D. Norton Children's Center. We are not the backwoods. We have every resource you can imagine in this community and it was there. People were discouraged from using it. It is a true shame.

That said, the investigation that eventually took place was an investigation

gearing us for trial. That investigation could have easily taken place a decade ago.

But what happened that Friday when the phone started ringing, Ms. Herring Lash was brought into the case immediately, I was brought in. Mount Pleasant Police Department, Detectives Bacon and Willis, they did a remarkable job -- because in a case like this, with this volume, you have two things that can happen -- and I know you see it in some of our bigger trials. One is that you can have too many chiefs and everybody wanting to be a boss, or you can have so many people involved that nobody wants to take responsibility and nothing gets none. In this case they were organized, they were methodical. We met, we had a plan and the plan was to get this thing ready for trial in June, one way or the other. If it was a guilty plea, great. If it was a trial, great. But we wanted these children to be able to have a summer with this behind them and start the new year fresh. We have accomplished that. I commend them for that -- of course, Ms. Hall, Ms. Herring Lash, all of the law enforcement agencies that were involved.

Your Honor, you know, from the many conversations that we've had administratively how I feel about the importance of accepting responsibility and the value that it has in our system. It's critical in almost every case.

In this case, this defendant -- he has cooperated and he has accepted full responsibility. While we appreciate that, it's also important to note that he has started from day one the effort to save his skin. His manipulation continued from the moment that this thing unfolded. There was one person in this world, on October 28th, one person, who realized the landslide, the landslide of victims, and accusations that were going to be out there -- it was him. He knew more than anyone and he started with the letters to parents, trying to reach back out to victims, to mitigate. I don't want the Court to misunderstand that in considering accepting and admitting responsibility.

You know, the overwhelming, overarching thing is that this man has threatened, gravely threatened two of the most important aspects of any young person's life, I believe, especially

in this country. The first is the involvement in sports. Gosh, so many of us who have gone on to do well can look back to those times playing sports. Having a team. Having people taken an interest in them. Having those great mentors. Parents kinda have to love you. When you've got a wonderful coach or a teacher who invests in you, that does wonders for your self-worth. This man has threatened that, greatly threatened it. I am using that word for a reason, and I'll explain that in a minute.

The other aspect, obviously, is that this man has used and abused in the name of God. He used God as a ruse, as a ruse. He was more methodical than we were, and he epitomized evil, he epitomized what the devil can do. It's hard enough in this life, especially in this day and age, to find that spiritual path; to have someone threaten that spiritual path the way that he has is abominable. We've seen that here today.

I use the word "threaten" not to minimize what's happened here but I think it's important for all of us, as the adults in the room, for all of us to recognize and to give

hope that these lives -- these lives -- don't have to be relived. They are threatened. It is a long road. For those victims, especially the ones in Dorchester who were not able or willing to come forward, we can only hope that the message gets out that they've got to deal with it now, because it will be back one way or the other -- one way or the other.

There is hope. We don't know what's going to happen from here. The threat will be there for a long time but these lives don't have to be ruined. We have to remember that this young man, and the young men who did cooperate with police and were able to -- perhaps they had that family support that some don't, -- that they did stand up, unlike some of the adults in this community. They did stand up when it was time. They did do the right thing. I believe that they've given you all you need to put Mr. ReVille away forever.

From hereon, we as a community have to make sure that we give these victims hope. We have to make sure that we recognize that this is not an isolated problem -- and that is one of the things that was so great about your

(addressing John Doe #13) talking here today. In this country, we act like this just doesn't happen. We have such a hard time with these cases because people don't want to believe it. They do not want to believe it.

Perhaps one of the good things that will come out of this case and the publicity, perhaps one of the good things that will come out of Pennsylvania, is that finally adults will believe that this stuff really does happen, that children really aren't equipped to deal with it, that we have to deal with it. We can't just look the other way, pass the buck and say, 'Next.'

As I mentioned, Debi Herring Lash was brought into this case that day, as was I. We are fortunate to have her, certainly, in the office. But more than that, bigger than that, in this community.

THE COURT: I agree.

SCARLETT WILSON: She is going to address the Court more specifically as to sentencing, but thank you for your patience and for your willingness to serve.

THE COURT: Thank you, Solicitor.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Mother Doe A, Plaintiff, v. The Citadel Defendant,	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No.: 2011-CP-10-9200
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CAMPER DOE 6 Plaintiff, v. THE CITADEL, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. **AFFIDAVIT OF** **LOUIS NEAL "SKIP" REVILLE**

I, Louis Neal "Skip" Reville, provide this affidavit of my own free will on Friday, September 20, 2013 at the Perry Correctional Institute, 430 Oaklawn Road, Pelzer, SC 29669.

1. In April of 2007, I met with Mark Brandenburg and Col. Joseph Trez in Bond Hall on the campus of The Citadel.

2. I was informed during the meeting that a camper who attended The Citadel Summer Camp in 2002, while I served on the camp staff as the Head CCQ, alleged that I had acted inappropriately with him. I lied to Mr. Brandenburg and Col. Trez and denied allegations

PLAINTIFF'S EXHIBIT 37

lr

of inappropriate activity with the minor camper. I had, in fact, sexually abused the camper in my assigned barracks room, at night, behind a closed door.

3. After the April 2007 meeting with Mr. Brandenburg and Col. Trez, I lived in fear for a year that The Citadel was going to report the child sexual abuse allegation to law enforcement which would result in my being arrested and charged.

4. In October 2011, when confronted by the Mt. Pleasant Police and questioned about sexually abusing minor males, I freely co-operated with the law enforcement investigators and admitted/confessed to the sexual abuse of my victims.

5. Being questioned by law enforcement in October 2011 made me realize that I had been caught, and that I was not going to be able to lie my way out of the child sexual abuse accusations that were being made against me.

6. Had I been reported to and questioned by law enforcement officials any time after the April 2007 meeting with Dr. Brandenburg and Col. Trez, I would have admitted to the sexual abuse of the complaining minor camper, as well as the other minor campers that I sexually abused while I was employed by The Citadel Summer Camp during the years 2001, 2002, and 2003.

7. Had The Citadel reported the allegations of child sexual abuse to law enforcement, and had I been questioned by law enforcement in or about April of 2007, my admission/confession of the child sexual abuse would have resulted in my conviction; and I would not have been able to sexually abuse numerous other minor males until my arrest in October 2011.

Further affiant sayeth not.

Louis Neal "Skip" Reville

SWORN to before me this
20th day of December, 2013
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-26-2020

STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2011-CP-10-9200
MOTHER DOE A, Plaintiff, vs. THE CITADEL, Defendant.	
SATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER, Plaintiff, vs. THE CITADEL, Defendant.	
STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CASE NO. 2012-CP-10-1858
JOHN DOE 2, Plaintiff, vs. THE CITADEL, Defendant.	

VIDEOTAPED DEPOSITION OF: PATRICIA KINARD

PLAINTIFF'S EXHIBIT 38

Electronically signed by Denise Lauder (301-268-293-2697) 47e9189c-21ce-4bc3-b6f7-09cfe3750a26

way the question was asked.
THE WITNESS: I see.
MR. STONEY: So don't take that as any signal from me. If you know the answer to the question, go ahead and answer.
THE WITNESS: Okay. Could you repeat it again?
BY MR. SLOAN:
Q. In 2007, if you had received a call when you were the administrative assistant to the President from a Citadel alumnus that his son had been at the summer camp and was sexually abused there, isn't it true that you would have called Public Safety?
A. Yes, sir.
Q. Okay. And is there a particular Citadel policy that you would refer to to do that or is it just common sense? Why would you do that?
A. There may be a policy, sir, I don't know, but I believe that would be common sense.
Q. Okay. All right. I believe that's all the questions that I have for you. I don't know if Ellis has any.
MR. ROBERTS: None.
MR. STONEY: I don't have any.

THE VIDEOGRAPHER: This concludes the deposition of Patricia Kinard. Off the record at 3:03. Tape one.

CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 15th day of June, 2013 at Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional Reporter, CP
My Commission expires August 2, 2017

Electronically signed by Denise Lauder (301-268-293-2597)

47e9189c-21ce-4bc3-b6f7-09cfe3750a26

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-9200
MOTHER DOE A,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-1858
JOHN DOE 2,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF:
COLONEL GLENN ADDISON

PLAINTIFF'S EXHIBIT 37

Wilbanks (101-177-349-6970)

ed505823-781c-4e1c-8fb0-4365fd887a54

he never saw this letter, right?

A. That's what he shared with the board, yes.

Q. If General Rosa had seen this letter on May 16th of 2007, would you have expected him to fully inform the board of what he had been told about these allegations?

A. I think he would have initially contacted the chairman and maybe the executive committee and then -- yes, he would have informed the entire board in a short period of time, based upon his previous experience and knowledge.

Q. The school had just come through the Arpaio litigation, where it paid out $3.5 million and it was truly an embarrassment to The Citadel, right?

A. The Insurance Reserve Fund was 3.5, and it was -- it was an embarrassment because it involved one of our own and -- but it was also -- it was just an embarrassment.

Q. If General Rosa received this letter on May 16th of 2007, tell me why it's not -- if he never said anything to the board about it, why it's not a cover-up by him, or, in the alternative, gross incompetence?

Electronically signed by Eve Wilbanks (101-177-349-6970) ed505823-781c-4e1c-8fb0-4365fd667a54

MR. COOKE: Objection to the form.

A. As I said before, I had complete confidence in General Rosa. He's never given me any reason to question his work; he's a man of integrity and honor. And I take him at his word that he never saw it. Why he never saw it, I don't know. But all I can do is take him at his word for that. Because nothing that I've seen him do the entire time I've known him would have prevented him from taking immediate action had he seen this. There would have been no reason not to on his part; he would have. And that's why I wrestled with this when I first saw it; I tried to figure out what had occurred. But all I could assume was he knew nothing, and I take him at his word that he didn't.

Q. I take it, then, that if you would have expected General Rosa to immediately act based on this and tell the board everything, we know one person for absolute sure who knew everything in there and who authored the letter and signed it?

A. Yes.

Q. And we know for sure he never told the board about this, did he?

A. No.

Electronically signed by Eve Wilbanks (101-177-349-8970) ed505823-781c-4e1c-8fb0-4365fd667a54

Q. That's gross incompetence, isn't it?

MR. COOKE: Objection to the form of the question.

A. I'm not -- I don't know what the term would be for it. I have a -- my lack of confidence in his abilities. Whether it rises to the level of gross incompetence or whether he was actually in the process of doing an investigation, trying to corroborate or whatever, I don't know. But should this have been shared with the President and the -- by the policy or by the guidelines? Absolutely. And that's why I was as adamant as I was that we should have been informed.

Q. And if Mr. Brandenburg's excuse for not telling the board in May or June about everything in this May 16, 2007, letter -- his excuse is that, I was doing an investigation, then you would agree with me that his investigation was pathetically bad, wouldn't you?

MR. COOKE: Objection to the form of the question.

A. I think I used those words.

MR. SLOAN: Okay. All right, sir. Why don't we take a break and we'll --

Electronically signed by Eve Wilbanks (101-177-349-6970)
ed505823-781c-4e1c-8fb0-4365fd667a54

APPENDIX 1 TO ANNEX B:

General Procedures for Conducting
Formal Investigations of
Sexual Harassment Complaints

1. Respect the rights of all parties.

2. Provide the alleged harasser timely and adequate notice of the allegations and give the alleged harasser an opportunity to respond in person or in writing before a neutral person or panel.

3. Select an Investigator who:

A. Has knowledge and training in issues dealing with sexual harassment.

B. Is thoroughly familiar with The Citadel's Sexual Harassment Policy.

C. Has credibility with The Citadel community.

D. Is neutral to all parties and represent The Citadel in a fair manner.

E. Is fair and not reach a conclusion until the investigation is completed.

F. Is able to maintain confidentiality of information.

4. In selecting the panel or board members to hear the case use the following criteria:

A. Select members who have no conflict of interest preventing them from acting fairly toward either the alleged harasser or victim.

B. Select panel or board members who have received training instructions or adequate material on sexual harassment so that they are knowledgeable of what sexual harassment is and what The Citadel's policies are.

C. Procedures should be timely and follow the guidelines stated within this memorandum.

5. Confidentiality should be honored by all participants in the process to the greatest extent possible, keeping in mind that neither the complainant nor the alleged harasser is bound by confidentiality although both can be asked to observe it.

6. Plan the strategy for the Investigation.

A. Create a timeline (include when interviews will be taken, report prepared, and decision reached).

B. Identify specific issues or allegations to be addressed.

C. Identify witnesses to be interviewed.

D. Identify/obtain documents.

E. Prepare a list of general questions for each interview.

7. Inform the alleged harasser to avoid any unnecessary contact with the complainant and of the prohibitions of retaliation.

8. Inform the complainant about retaliation, provide examples, and request that any attempts at retaliation be reported immediately.

9. Arrange to tape record all interviews and appearances before a board or panel. If either party objects to recording the interview, make a written record of the fact and resort to taking written notes.

10. Reach a conclusion. There are four possible outcomes to the board or hearing process:

A. the harassment occurred; or

B. the harassment did not occur; or

C. the allegation was unsubstantiated but with probable cause; or

D. there was insufficient information to make a determination.

11. Write the report and provide it to the person (Vice President/President) who will make the decision.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-9200
MOTHER DOE A,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

AND NOW COMES Defendant The Citadel, The Military College of South Carolina ("Defendant" or "The Citadel") in the above-captioned matters and files the following Memorandum in Support of Motion for Summary Judgment:

INTRODUCTION

This lawsuit has been commenced by the mother of an alleged victim of abuse by Louis "Skip" ReVille against The Citadel. Plaintiff alleges that The Citadel failed to prevent ReVille from abusing her son. ReVille's crimes were unspeakable. Nevertheless, Plaintiff's claims against The Citadel cannot stand as a matter of law because:

(a) Plaintiff cannot present any evidence that she sustained any damages cognizable under South Carolina law.

(b) The Citadel owed no common law or statutory duty of care to Plaintiff.

(c) Plaintiff's claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act, at S.C. Code § 15-78-110, because she did not file this action within two years after she discovered her loss.

(d) Plaintiff's outrage claim is barred by the South Carolina Tort Claims Act.

(e) Plaintiff cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim.

(f) Plaintiff's potential recovery is limited to $300,000.00 under the South

Carolina Tort Claims Act, S.C. Code § 15-78-120(a)(1), because Plaintiff's claims involve a single alleged "occurrence."

On April 23, 2007, the father of a camper at The Citadel's summer camp ("Camper Doe") reported to The Citadel that ReVille had engaged in sexual misconduct with his son at The Citadel Summer Camp five years prior, in or around 2002. Camper Doe's father spoke by telephone with in-house General Counsel for The Citadel, Mark Brandenburg; during that telephone conversation, Camper Doe's father told Attorney Brandenburg that on a single occasion during Camper Doe's stay at the summer camp (some five years earlier), a counselor named "Skip" invited his son, then a minor, into his room; the two of them "watched pornography and masturbated while [Camper Doe] was in 'Skip's' room." (*See* Ex. A ¶ 3). Attorney Brandenburg subsequently spoke with Camper Doe, by then of majority age, via telephone. Camper Doe reported that "on one occasion, 'Skip' had invited him into his room and showed him pornography" and "convinced him to masturbate while in the room." (*See id.* ¶ 4).

Attorney Brandenburg telephoned ReVille, who coincidentally had submitted his resignation from his part-time temporary employment with The Citadel Writing Center on March 22, 2007 and had recently worked his final day at The Citadel. (*See* Fudge Deposition, at 58:18-59:20; Separation Form; Timesheet Printout (attached hereto as Exs. B-D, respectively)). When confronted by Attorney Brandenburg, ReVille emphatically denied Camper Doe's allegations.

Brandenburg continued his investigation on July 1, 2007, when he met with Camper Doe and his parents in Texas. Camper Doe discussed what had happened to him and mentioned there was another camper in the room at the time. (*See* Ex. E, at 74:1-25). Camper Doe's father expressed a desire for privacy, stating, "I don't want to be another name in the Charleston papers." (*See id.*, at 121:24-122:2). Camper Doe's Father further stated that he did not want for his family to "go and be a part of Charleston gossip." (*See id.*, at 144:10-11). At the close of the interview, Camper Doe's father discussed the fact that The Citadel had not accepted Camper Doe for admission as a cadet and stated that, by admitting him as a cadet, The Citadel, "can be part of

the root cause to fix him." (*See id.*, at 123:16-17). Camper Doe's father also expressed his belief that admitting his son as a cadet would be, "a very inexpensive way for The Citadel to say, do you know what – we'll fix our own." (*See id.*, at 123:19-23).

In compliance with the wishes of Camper Doe and his family, Attorney Brandenburg worked with Citadel admissions employees seeking a solution that would allow Camper Doe's admission as a cadet. (*See* Brandenburg Depo., Vol. I, at 205:25-206:25 (attached hereto as Ex. F)). When it was determined that Camper Doe lacked the requisite academic qualifications for admission, Brandenburg proposed to Camper Doe and his parents that the IRF would pay for the necessary courses at a community college in order to allow him to reapply to The Citadel. (*See id.*, at 207:1-208:16). Attorney Brandenburg never heard again from Camper Doe or his parents.

The following facts are indisputable with regard to Camper Doe's report in 2007 and The Citadel's response thereto (*see generally* Ex. E):

- The report concerned an incident that had occurred approximately five years prior.
- The summer camp closed the year prior to Camper Doe's report.
- ReVille had resigned from his employment at The Citadel prior to Camper Doe's report.
- Camper Doe's report did not identify any physical sexual contact between ReVille and any minor.
- Camper Doe was an adult, with the autonomy to make his own decision with regard to the complaint.
- Camper Doe was unwilling to report the incident to the police, desiring to maintain his anonymity. In fact, Camper Doe or his family never reported the incident to law enforcement prior to ReVille's arrest in 2011.
- After the interview of Camper Doe and his family, they did not follow up with Attorney Brandenburg concerning the incident.

In light of the cumulative effect of those factors and in compliance with all applicable laws,

Attorney Brandenburg did not report the alleged incident to law enforcement or recommend that it be reported to law enforcement.

In October 2011, incidents of sexual misconduct by ReVille came to light, and various law enforcement agencies initiated investigations into ReVille's activities. At the completion of those investigations, charges were filed against ReVille in Charleston, Berkeley, and Dorchester counties. On June 13, 2012, ReVille pleaded guilty to numerous charges of criminal sexual conduct with a minor, solicitation of a minor, lewd acts upon a minor, and dissemination of obscene material. The Honorable R. Markley Dennis, Jr., sentenced ReVille to fifty years imprisonment.

Plaintiff Mother Doe A alleges that ReVille abused her son on occasions in 2007 and 2008. (*See* Pl.'s Am. Compl. ¶ 133). There is no evidence that Plaintiff's son was abused at the summer camp or on The Citadel's campus. To the contrary, Plaintiff alleges that her son was abused while being coached by ReVille in Mount Pleasant. Plaintiff Mother Doe A's Amended Complaint alleges claims sounding in: (a) gross negligence/failure to warn; (b) negligent hiring, retention and supervision; (c) the Jessica Horton Act, S.C. Code § 59-154-10; (d) civil conspiracy; (e) the mandatory reporting statute, S.C. Code § 63-7-310; (f) intentional infliction of emotional distress/outrage; and (g) loss of services.

For the reasons that follow, this Court should grant The Citadel's Motion for Summary Judgment. In an effort to conserve resources and avoid unnecessary duplication, The Citadel hereby incorporates by reference (as if set forth at length) its various Memoranda in Support of Motions for Summary Judgment filed in *John Doe Camper v. The Citadel*, No. 2012-CP-10-1860; *John Doe 2 v. The Citadel*, No. 2012-CP-10-1858; and *Mother Doe on Behalf of John Doe 3 v. The Citadel*, No. 2012-CP-10-1859, including its: (a) Memorandum in Support of Motion for Summary Judgment filed on April 17, 2014 ("Prior Memorandum"); (b) Supplemental Memorandum in Support of Motions for Summary Judgment Concerning the Existence of a

Duty of Care filed on April 28, 2014; and (c) Supplemental Memorandum in Support of Motion for Summary Judgment filed on June 6, 2014. The Citadel incorporates all of those memoranda herein as if set forth at length.

ARGUMENTS

A. Standard of Review

The standards governing a motion for summary judgment are well-settled in South Carolina:

> This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n. 2, 677 S.E.2d 612, 614 n. 2 (Ct. App. 2009). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (*citing George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).
>
> An adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994). Nonetheless, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

See Paine Gayle Props., LLC v. CSX Transp., Inc., 400 S.C. 568, 576, 735 S.E.2d 528, 532-33 (Ct. App. 2012) (affirming grant of summary judgment). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

"[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489

S.E.2d 647, 648 (Ct. App. 1997).

B. Plaintiff Has Not Sustained Recoverable Damages

1. Plaintiff's Claimed Damages

For the reasons set forth below, Plaintiff cannot proffer a scintilla of evidence establishing that she has suffered a compensable injury. Plaintiff has attempted to characterize her claimed damages as loss of her child's services. However, an examination of the injuries for which she seeks compensation reveals that she is really claiming only loss of filial consortium, which is not recoverable in South Carolina.

In her discovery responses in this case, Plaintiff has suggested that she is seeking to recover the following elements of damages in this lawsuit:

> 10. Please set forth an accurate statement of all medical, hospital, drug and/or other related costs incurred by the Plaintiff Mother Doe A individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint as a result of the incident alleged in the complaint. Please provide the bills, invoices or other data for supporting expenses incurred.
>
> **ANSWER:** The mother herself does not have the statement of costs incurred but has requested one of Chet Williams, Child and Family Therapist, 5855 Executive Center Dr., Suite 111, Charlotte, NC 28212, and it will be provided when obtained. We are also agreeable to providing a release for the defendants to obtain the same information, assuming it will be treated with appropriate discretion. . . .
>
> 16. If Plaintiff Mother Doe A individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint sustained a financial loss as a result of the incidents alleged in the Complaint, other than medical expenses, state the nature and amount of each such loss, and the date of loss.
>
> **ANSWER:** Expenses have been incurred for therapy for her child and herself, as indicated above. []In addition to out of pocket costs, there are intangible injuries. [H]er child has become less participatory with family activities. He is now more easily angered, especially with his siblings. His mother has observed his mood fluctuating between periods of solitude and exclusion, fits of rage, guilt, and deep-seated betrayal. She believes he now has anger management issues that he did not have before the abuse. For a number of years the sexual abuse resulted in "secret" keeping that puts the family in a no-win situation with regard to the

other siblings in the family, as information about the abuse must either be spread more broadly among those family members or a certain level of ambiguity has to be maintained about the problems now posed for her son's interaction with family members.

Mother Doe's brother, her child's uncle, has commented on her child's antisocial behavior which has led to very awkward, and heated conversations between Mother Doe A and her brother, who does not understand the impact of abuse on her child's psyche and how it has eroded his ability to trust people in positions of authority. Mother Doe A has observed that her son's abuse has changed the family's dynamic, and caused, among other things, Mother Doe A's brother to visit less frequently.

(*See* Plaintiff's Amended Answers to First Set of Interrogatories ¶¶ 10 and 16, Ex. G hereto). Plaintiff has not produced any actual medical bills or evidence that she has actually incurred any medical expenses. Moreover, Plaintiff recently elaborated on the damages she seeks to recover:

Mother Doe A's damages are those permitted in various cases for loss of services. Past South Carolina cases have acknowledged claims for a parent's "shame, humiliation, and mental anguish," and "outrage and deprivation," and "the insult offered to [a parent's] feeling," and "the agony in the destruction of his hopes concerning his child," and the effect on the child's "companionship." These are intangibles, and jurors have been quite serious about the value of those intangibles.

Mother Doe A knows her son was abused by Reville, and knows her child held that secret for a number of years. The Mother also has complications among her other children as a result of the abuse to this son, some of which was testified to by Chet Williams.

Mother Doe A knows the probable emotional/psychological effects of child sexual abuse (see Margolis powerpoint slide - denial, anger, depression, social and family withdrawal, detachment, loss of caring, reduced ability to express emotions, loss of self-esteem, loss of trust in others including parents, guilt, shame, substance abuse and suicidal ideation). There are many instances where Mother Doe A's son refused to talk to her for long periods. He has been resisting therapy because he was angry that his intention to keep this secret was uncovered by the police investigation. His plan to keep silent about Reville reflects his shame and denial, burdens the Mother is keenly aware that her child was bearing alone. He has been withdrawn from her and other family members and has shown loss of caring about her and other family members.

So we have a Mother who sees several of the known sexual abuse effects in her son and a son who is in denial and refuses therapy. The pre-Reville mother/son

> relationship is gone forever, and she will now forever carry the justifiable concern for the increased risk of future harms that her son will be more susceptible to in the long-term. She has an at many times angry son who withdraws from her and others, having had his caring relationships with his Mother and his family affected. She is also aware that he has an increased risk for complications for his own relationships and future problems to deal with as a result of the abuse. Mother Doe A desperately wants him to get help but he refuses and this causes more damage to the relationship, and burdens her . One only need look at Camper Doe 6 who made it to college on a scholarship and soon after his life went into a 8 year downward spiral of drugs, depression and suicide attempt – all related directly to the abuse of Skip Reville.
>
> Mother Doe A is left with the choice every time she sees her son - do I bring up getting help and further damage our relationship or just watch him slip away as other effects start to show up? How is a mother supposed to talk to her son about the disgusting acts detailed by Reville in the Burke records? How can a mother enjoy companionship with her son when he is angry, withdrawn, doesn't care about his family like he used to and refuses to get any help for the underlying problem which is the Reville abuse? Every parent will understand going from good relationship and companionship with their child to years of the opposite with no end in sight. Those would be among the damages. Essentially, because of The Citadel's assistance to Reville, the Mother now has a never-ending complication with this child, and her other children, as the time-bomb elements of sexual abuse can re-occur at any time later in life.

(*See* April 11, 2014 Email from Sloan to Cooke, attached hereto as Ex. H).

For the reasons that follow, in light of these claimed damages, Plaintiff cannot proffer a scintilla of evidence supporting her contention that she has sustained any compensable injury.

2. <u>Plaintiff May Not Recover for Her Alleged Emotional Distress</u>

To the extent Plaintiff seeks to recover for her *own* emotional distress, that claim is not cognizable under South Carolina law and attempts an end run around the South Carolina Supreme Court's unwavering refusal to recognize a general claim for negligently causing emotional distress. Plaintiff's claim is, of necessity, a claim for negligence inasmuch as it is brought pursuant to the South Carolina Tort Claims Act.

There was a time in the past when South Carolina law did appear to allow recovery for negligently inflicted general emotional distress. In *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604, 103 S.E.2d 265, 270 (1958), a negligently operated truck struck the plaintiff's

home, allegedly causing fright, exposure to the cold, weight loss, fever and a skin condition. The Court considered whether damages might be "recoverable for shock, fright and emotional upset when there is no physical impact." Ultimately, the Court concluded that the question of whether the shock caused physical injury was properly submitted to the jury:

> We think that under the authorities above quoted, the trial Judge was correct in submitting to the jury the question of whether or not the respondent had sustained physical or bodily injury as a consequence of the shock, fright and emotional upset experienced by him. If the respondent's bodily injury was proximately caused by the shock, fright and emotional upset as a result of the negligence and willfulness of the appellant, he was entitled to recover such damages as would compensate him for the injury so sustained.

See id., 232 S.C. at 607-08, 103 S.E.2d at 272. In reaching that conclusion, the Supreme Court made a metaphysical connection between physical harm and some psychic harms:

> "The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other. It must be conceded that a nervous shock or paroxysm, or a disturbance of the nervous system, is distinct from mental anguish, and falls within the physiological, rather than the psychological, branch of the human organism."

See id., 232 S.C. at 605, 103 S.E.2d at 271 (citations omitted).

Subsequently, the South Carolina Supreme Court cited *Padgett* in stating that "[w]e have recognized the rule that there is no liability for emotional distress without a showing that the distress inflicted is extreme or severe." *See Rhodes v. Security Fin. Corp. of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). Concluding that there was no evidence to support a recovery, the Court observed that "[w]hile there is testimony that appellant was emotionally upset from the attempt to collect the forged note, there is no showing that the attempts by respondent's agents to collect were unreasonable or abusive, nor that appellant's emotional upset was other than transient and trivial." *See id.* With *Rhodes*, the Court first began to limit recovery for negligent infliction of emotional distress.

The Supreme Court next stated, two years later, in *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 770, 259 S.E.2d 812, 813 (1979), that "[i]n order to prevail in a tortious action in

which the sole damages alleged are those of mental anguish, plaintiff must show that the conduct on the part of defendant was extreme and outrageous, causing distress that is of an extreme or severe nature." Two years thereafter, the Supreme Court quoted the language referenced from *Hudson* and *Rhodes*, and formally recognized the tort of outrage (or *intentional* interference with emotional distress). *See Ford v. Hutson,* 276 S.C. 157; 276 S.E.2d 776 (1981).

Importantly, the Supreme Court next in *Dooley v. Richland Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), rejected an invitation to recognize a general tort of negligent infliction of emotional distress — beyond intentional and reckless conduct — because the plaintiffs had failed to make any showing of physical injury to support their claim. The Court stated that one criticism of permitting a tort for negligent infliction of emotional distress is "that it will allow for fraudulent claims" and that "[o]ne method of eliminating this danger has been to require some type of physical injury in addition to any claimed emotional injury." *See id.*, 283 S.C. at 375, 322 S.E.2d at 671. Later that year, the Court refused to permit the recovery of emotional distress damages in a legal malpractice claim, despite a litany of claimed "physical" manifestations of the distress (including crying spells, headaches, change of hair color, and an inability to sleep with her spouse for several years). *See Caddel v. Gates*, 284 S.C. 481, 327 S.E.2d 351 (1984).

In *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), the Supreme Court finally recognized the tort of negligent infliction of emotional distress, but restricted it to very limited circumstances. Importantly, the Supreme Court limited it to claims by a bystander who observes an accident that actually causes death or serious physical injury:

> (a) the negligence of the defendant must cause death or serious physical injury to another;
>
> (b) the plaintiff bystander must be in close proximity to the accident;
>
> (c) the plaintiff and the victim must be closely related;
>
> (d) the plaintiff must contemporaneously perceive the accident; and

(e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

See id., 286 S.C. at 582, 336 S.E.2d at 465.

As the law of South Carolina stands, the modern rule of the Supreme Court has been to recognize emotional distress damages in three specific circumstances: (a) when accompanied by actual physical injury, such as in a car accident; (b) outrage; and (c) negligent infliction in a "bystander" situation. In the nearly thirty years since *Kinard*, the Supreme Court has steadfastly refused to extend liability for emotional distress beyond these three limited circumstances:

- In *Hansson v. Scalise Bldrs. of S.C.*, 374 S.C. 352, 358-59, 650 S.E.2d 68, 72 (2007), the Court held in the context of an outrage claim: "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something "more"-in the form of third party witness testimony and other corroborating evidence-in order to make a prima facie showing of 'severe' emotional distress."

- In *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013), the Court refused to allow a claim for emotional distress damages flowing from trespass and nuisance in the form of odors from a landfill: "In short, allowing recovery for personal annoyance and discomfort under the guise of trespass and nuisance would be the stealth recognition of an entirely new tort."

A case almost directly on point with the present case is another sexual abuse case arising under the Tort Claims Act, *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007). There, Court refused to extend the negligent infliction of emotional distress damages to encompass a claim by parents stemming from sexual activity between their daughter and a school teacher, stating: "[b]ecause South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable

under South Carolina law."

Here, to the extent she seeks to recover for her emotional distress, Plaintiff's claims do not fall within the ambit of any cause of action for emotional distress recognized by the Supreme Court. She does not claim that The Citadel caused any physical impact to her or that she was a bystander observing her son's abuse. Instead, Plaintiff in this case seeks the "stealth recognition of an entirely new tort" for negligent infliction of emotional distress in the absence of any physical impact or the death or serious injury of a bystander, based solely on the *knowledge* that Plaintiff's son was abused. No contemporary South Carolina authority recognizes such a claim.

3. Plaintiff's Recoverable Damages Are Limited to Medical Expenses for Injuries to Plaintiff's Son and Loss of Services, Neither of Which Are Supported By a Scintilla of Evidence

a. A Parent's Recoverable Damages Are Limited to Medical Expenses for Injuries to the Child and Loss of Services

As Plaintiff is not entitled to recover for her own alleged emotional distress caused by ReVille's abuse of her son, the next consideration is what damages are allowed to a parent claiming an injury to his or her child.

The Supreme Court has concluded that, in cases such as this, a parent's potential damages are extremely limited in scope. In *Doe v. Greenville County. School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), cited in the previous section, a student's parents sued a school district, alleging that a substitute teacher at the school was involved in a sexual relationship with their fourteen year old daughter. Specifically, the parents alleged that allege that the school had prior complaints and warnings regarding the teacher's inappropriate interest in young girls and should have known about the development of this relationship. The trial court granted the school district's motion to dismiss. On appeal, the Supreme Court affirmed in part and reversed in part the trial court's dismissal. The Court first concluded, as discussed in the preceding section, that the *parents* could *not* assert a claim for negligently inflicted emotional distress:

> In [*Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985),] this Court recognized that a parent may bring a cause of action for negligent infliction of emotional distress as a result of injury to his or her child. *Kinard*, 286 S.C. at 582, 336 S.E.2d at 467. The Court instructed that such an action is strictly limited to the "bystander liability" scenario. . . . Mr. and Mrs. Doe admit that they did not and cannot allege facts which would support a bystander liability cause of action. Because South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to *bystander liability*, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law.

See id., 375 S.C. at 68, 651 S.E.2d 307 (emphasis added).

Next, the Court analyzed the plaintiffs' loss of filial consortium claim and expressly held that South Carolina would not recognize such a claim. Specifically, the Court held that "our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.". *See id.*, 375 S.C. at 69-70, 651 S.E.2d at 308. Finally, the Court held that the plaintiffs could state a claim for negligent supervision to seek recovery for their daughter's medical expenses. *See id.*, 375 S.C. at 71-72, 651 S.E.2d at 309.

Thus, following the *Greenville County School District* case, a parent may recover only two forms of damages for an injury to a child: (a) medical expenses the parent paid for the care of the child; and (b) the loss of the child's services as a result of the injury. *See Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990) (holding that medical expenses and lost services may be recoverable losses under the South Carolina Tort Claims Act).

b. Plaintiff Cannot Proffer a Scintilla of Evidence That She Paid Medical Expenses for Injuries to Her Son or Lost Any "Services" as a Result of the Alleged Abuse of Her Son

As set forth above, the *only* damages potentially recoverable in this case are: (a) medical

expenses Plaintiff paid for her son's treatment; and (b) loss of services. Plaintiff can proffer evidence of neither.

First, Plaintiff has not presented any evidence that she paid medical bills for the treatment of her son. While Plaintiff has suggested that her son saw Chet Williams on a limited basis, she has proffered no evidence showing what she paid, if anything, for that treatment. There is no evidence that Plaintiff's son sustained any physical injury requiring medical treatment.

Second, despite her efforts to recast her claimed damages, Plaintiff is not claiming loss of her son's services. Specifically, Plaintiff has not proffered any evidence that, because of The Citadel's actionable conduct, her son has been unable to provide work for a family business or to provide services for Plaintiff. She cannot identify any specific "services" that are being withheld from her as a result of abuse by Mr. ReVille. She has not proffered any evidence that her son sustained any physical injury that precludes him from performing specific tasks for her. In fact, Plaintiff has not shown that ReVille's abuse has rendered her son unable to perform any specific type of work or render any particular service.

Plaintiff's discovery responses and correspondence to The Citadel's counsel confirm that, in reality, she is claiming loss of consortium damages, not loss of services. For example, Plaintiff claims intangible injuries for:

- Her son becoming "less participatory with family activities."
- Her son being "easily angered, especially with his siblings."
- Her son's "secret" causing disharmony in the family.
- Her son's behavior causing strains between Mother Doe A and her brother.
- Changes to family's dynamic that have caused, among other things, Mother Doe A's brother to visit less frequently.
- Complications among Plaintiff's other children as a result of the abuse to this son.
- Instances where Plaintiff's son refused to talk to her for long periods and be

withdrawn from her and other family members.

- Loss of "[t]he pre-Reville mother/son relationship."
- Plaintiff having and "angry son who withdraws from her and others, having had his caring relationships with his Mother and his family affected."
- Strain to the mother-son relationship.

None of the claimed elements of damages constitute loss of services. Plaintiff has not shown, and cannot show, that she suffered a loss of the services of her son as the result of ReVille's abuse.

These are common elements of loss of consortium under a different name. All of these items involve alleged harm to the Plaintiff's relationship with her son and her loss of his companionship. In reality, as her claimed damages were described by her counsel above, Plaintiff is not seeking to recover "loss of services" at all. Instead, she is seeking to recover loss of her son's consortium, which the Supreme Court has expressly prohibited in *Doe v. Greenville County School District, supra.* Plaintiff's detailed explanation of her damages is nothing more than a claim that she has lost the companionship of her son and has felt damage to the familial relationship. This is the very crux of "loss of consortium." Plaintiff's claimed damages are plainly prohibited.

Plaintiff can cite to no authority that would include the damages claimed by Plaintiff within the definition of "loss of services." To the contrary, "loss of services" has always been an element of damages *separate from* harm to the familial relationship or loss of the companionship of a loved one. For example, the spousal consortium statute permits recovery of damages for injury to the "right to the companionship, aid, society *and services*" *See* S.C. Code § 15-75-20. That statute expressly separates lost services from the other traditional elements of damages recoverable for injury to a spouse. In other words, "services" are a demonstrably different species of damages from loss of companionship, aid and society.

Plaintiff has suggested that "[p]ast South Carolina cases have acknowledged claims for a parent's 'shame, humiliation, and mental anguish,' and 'outrage and deprivation,' and 'the insult offered to [a parent's] feeling,' and 'the agony in the destruction of his hopes concerning his child,' and the effect on the child's 'companionship.'" (*See* Ex. H). Much of the quoted language Plaintiff used originates from very old caselaw, which is not applicable to her claims. For example, in *Kirkpatrick v. Lockhart*, 2 Brev. 276, 4 S.C.L. 276 (S.C. Ct. App. 1809), a father sued for the forcible abduction of his daughter. There, the court held that, in the absence of evidence of loss of services of the daughter, the father could still recover damages amounting to lost consortium:

> We are, therefore, of opinion there is no necessity to resort to this absurd fiction, to support an action so well founded in justice, reason, and policy. The true ground of action cannot be the loss of service, for a child may be of an age so tender, or of a constitution so delicate, as to be incapable of rendering any service. *The true ground of action is the outrage, and deprivation; the injury the father sustains in the loss of his child; the insult offered to his feelings; the heart-rendering agony he must suffer in the destruction of his dearest hopes, and the irreparable loss of that comfort, and society, which may be the only solace of his declining age.*

See id. (emphasis added). Likewise, in *Dobson v. Cothran*, 34 S.C. 518, 13 S.E. 679 (1891), the Supreme Court addressed a father's claim for damages from the abduction of his minor daughter for improper purposes. There, the trial judge charged that "[t]he true ground of the action, as I understand the law, is not so much the loss of the services of the child, *but the outrage and deprivation, the injury the father sustains in the loss of his child, the insult offered his feelings, the agony in the destruction of his hopes concerning his child, and the irreparable loss of that comfort and society which may be the only solace of his declining years.*" *See id.*, 13 S.E. at 679-80 (emphasis added). Finally, in *Rumler v. Gantt*, 121 S.C. 117, 113 S.E. 581 (1922), the Court affirmed a judgment for the plaintiff "for the loss of services of plaintiff's daughter and causing the plaintiff *shame, humiliation, and mental anguish* by seducing, debauching, and carnally knowing Clara Rumler, the daughter of plaintiff." *See id.*, 113 S.E. at 581.

The Supreme Court in *Doe v. Greenville County School District*, the Court, refused to recognize these ancient causes of action against one other than the person actually seducing the minor:

> Additionally, Mr. and Mrs. Doe's claim that South Carolina's recognition of a cause of action for seduction is a valid basis for recognizing a claim for loss of filial consortium is misleading. A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse. *See* 18 S.C. Jur. Seduction § 2 (1993). The right to sue upon an action for seduction belongs to the victim of the seduction. *See* 18 S.C. Jur. Seduction § 9. However, traditionally, a claim for seduction was a father's (or mother's in the absence of the father) right of action for the loss of his daughter's services. *See* 18 S.C. Jur. Seduction § 8. In either case, the defendant to the action must be the perpetrator of the seduction. *See* 18 S.C. Jur. Seduction § 2. Clearly, the School District is not the perpetrator of the seduction in this case. Accordingly, this Court's recognition of a claim for seduction would not lend support to Mr. and Mrs. Doe's argument that this Court should recognize a claim for loss of filial consortium.

See Doe v. Greenville County School District, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007). Plaintiff simply has not presented any evidence that this case is not squarely within the prohibitions of *Doe v. Greenville County School District.*

In conclusion, none of the damages that Plaintiff seeks to recover as the mother of an injured child are available in a case like this.

C. Defendant is Entitled to Summary Judgment Because It Owed No Legal Duty of Care to Plaintiff

For the reasons set forth, *inter alia*, in Sections B(1)-(5) of the Prior Memorandum (including all subsections), The Citadel is entitled to summary judgment as to Plaintiff's claims because Plaintiff did not owe a duty of care to Plaintiff under South Carolina common law or through breach of any statutory duty. The instant case is even further removed than the facts presented to this Court in the Prior Memorandum, inasmuch as Plaintiff is not the actual victim of the abuse committed by Skip ReVille. Rather, Plaintiff is the *parent* of the alleged victim. Plaintiff can cite no caselaw imposing a duty of care extending beyond the victims of ReVille to

their parents. *See e.g., Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998).

D. Defendant is Entitled to Summary Judgment Because Plaintiff's Claims Are Time-Barred

For the reasons set forth, *inter alia*, in Sections C(1)-(4) the Prior Memorandum, The Citadel is entitled to summary judgment as to Plaintiff's claims because all of those claims are time-barred by the statute of limitations contained in the South Carolina Tort Claims Act. *See* S.C. Code § 15-78-110. In particular, Plaintiff's claims are barred because she commenced this action on December 14, 2011, more than two years after the alleged abuse of her son in 2007 and 2008. Plaintiff was not a minor when her claim arose, so she is not entitled to any tolling of the statute of limitations.

E. Defendant Is Entitled to Summary Judgment as to Plaintiff's Outrage Claim

For the reasons set forth, *inter alia*, in Sections E and F of the Prior Memorandum, The Citadel is entitled to summary judgment as to Plaintiff's outrage claim. In particular, that claim is barred by the South Carolina Tort Claims Act, which precludes liability for claims premised upon malice or intent to harm. *See e.g., Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."). In addition, Plaintiff cannot proffer a scintilla of evidence that The Citadel acted in such an outrageous and intentional manner as to permit the imposition of liability under that claim.

F. Plaintiff's Maximum Possible Recovery Is Limited to $300,000.00, as She Alleges Injury from a Single "Occurrence"

For the reasons set forth, *inter alia*, in Section G of the Prior Memorandum, The Citadel is entitled to summary judgment limiting Plaintiff's potential recovery to the limits of the South

Carolina Tort Claims Act. In particular, Plaintiff's claims involve a single unfolding sequence of events that all proximately flow from a single alleged act of negligence. *See e.g.,* S.C. Code §§ 15-78-3(g) and 15-78-120(a)(1) & (2).

CONCLUSION

For the reasons discussed above, this Court should grant Defendant The Citadel summary judgment as to all of Plaintiff's claims.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s/ Randell C. Stoney, Jr.
M. Dawes Cooke, Jr., Esq.
Randell C. Stoney, Esq.
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Counsel for Defendant The Citadel

Dated: September 19, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was served upon all counsel of record via E-Mail & U.S. Mail on this 19th day of September, 2014.

ATTORNEY FOR PLAINTIFF:

Allan P. Sloan, III, Esq.
Louis Herns, Esq.
Carl Pierce, Esq.
Pierce, Herns, Sloan & Wilson, LLC
P. O. Box 22437
Charleston, SC 29413
louispherns@phswlaw.com
chipsloan@phswlaw.com
carlpierce@phswlaw.com

ATTORNEY FOR PLAINTIFF:

Gregg Meyers, Esq.
Jeff Anderson & Associates, P.A.
366 Jackson St., Suite 100
St. Paul, MN 55101
Gregg@AndersonAdvocates.com

/s/ Melanie L. Mason
Melanie L. Mason, Paralegal

{00489513.DOC.1 }

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

John Doe 2, Plaintiff, -vs- President John W. Rosa, Individually, Defendant.	C/A #: 2:12-cv-00794-RMG **AFFIDAVIT OF MARK C. BRANDENBURG**

PERSONALLY appeared before me, Mark C. Brandenburg, who, being duly sworn, deposes and states as follows:

1. I am the General Counsel at The Citadel, The Military College of South Carolina. I have been employed as the General Counsel at The Citadel since October, 2005.

2. On Monday, April 23, 2007, I received a message from Wanda Milligan, Administrative Assistant to the President, concerning a phone call she received on that day from [redacted] Ms. Milligan took notes during her conversation. A copy of her notes is attached as Exhibit A.

3. I called Mr. [redacted] at approximately 4:00 pm on April 23, 2007. Mr. [redacted] stated that his son, [redacted] attended The Citadel Summer Camp during the summers of 1998, 1999, 2000, 2001, and 2002. He alleged that a counselor named "Skip" invited [redacted] into his room during one of the summers [redacted] attended the camp. Mr. [redacted] further alleged that "Skip" and [redacted] watched pornography and masturbated while [redacted] was in "Skip's" room.

4. I subsequently spoke via telephone with [redacted] At the time of that conversation, [redacted] was nineteen (19) years old. He reported that, on one occasion, "Skip" had invited him into his room and showed him pornography. He also said that "Skip" convinced him to masturbate while in the room. [redacted] could not remember the year in which this incident occurred.

5. I reviewed graduation programs for The Citadel Summer Camp from 2001 and 2002. Louis "Skip" ReVille is listed as a CCQ during the 2001 summer camps. He is identified as the Senior Counselor in 2002. Copies of the relevant pages from these graduation programs are attached as Exhibit B.

6. Prior to Mr. [redacted] phone call on April 23, I had never heard any allegations concerning ReVille.

7. Between April 23 and August, 2007, I discussed the [redacted] allegations with Lt Gen John W. Rosa, USAF (Ret.), President of The Citadel. Lt Gen Rosa never directed me to conceal any information from anyone concerning ReVille.

8. No official from The Citadel ever directed me to conceal any information from anyone concerning ReVille.

9. I had no knowledge of the termination of Mr. ReVille's employment on April 20, 2007, nor did I have any knowledge as to his future employment. More specifically, I did not enter into any agreement, with Mr. ReVille or anyone else, for Mr. ReVille to resign from employment from The Citadel for any reason related to the accusation made against him.

10. Upon information and belief, I am not acquainted with, and have had no personal connection with, any of the children who were victimized by Mr. ReVille after April of 2007.

FURTHER DEPONENT SAYETH NOT!

MARK C. BRANDENBURG

SWORN to before me this
12th day of March, 2013.

Patricia M. Kinard
Notary Public for South Carolina
My Commission Expires: 12/01/2018

PATRICIA M. KINARD NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 12-01-2018

{Client Matter\000001\0537\DJS\00390267.DOC}

CITADEL 0003608

23 Apr 07, 15.45

[redacted] '72

c) [redacted]

son [redacted] 18 yrs

came around 10 yrs old

came to yrs

counselling for couple

yrs.

One day said did not want

to come back

Today - told Father had

problems at Citadel

Summer Camp

Met Gen Rosa 2005

in co at his retirement

- son Green on drugs

- "One more Kid"

- happened when son was

12 or 13/14

Counselors in Charge of Quarters

Skip ReVille
Robert Killian
G Harding
Rob Heaton
Nick Smith
Travis Taylor
Joe Walker

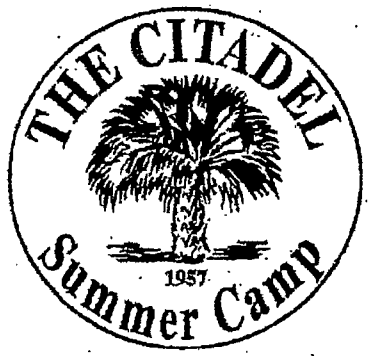
0881

CITADEL 0003610

The Citadel

Summer Camp

Charleston, SC



Graduation Exercises

First Session
July 7th, 2001

0882

Counselors in Charge of Quarters

Skip Reville
Rob Heaton
Robert Jackson
Robert Killian
Nick Smith
Travis Taylor
Joe Walker

CITADEL 0003611

The Citadel Summer Camp

Charleston, SC

THE CITADEL
1957
Summer Camp

Graduation Exercises

Second Session
August 4th, 2001

Graduation Exercises

Summerall Chapel
August 3, 2002
10:15 a.m.

-Program-

Invocation.....Chaplain (Col.) David Golden

Advance the Colors.....Crumpton Color Guard

Welcome and Introduction of Guests.....Major Bill Bates

Report to Parents.....Major Bates

Remarks.....Brigadier General J. Emory Mace

Mark Clark Awards.....General Mace

Senior Counselor Awards.....Lieutenant Skip ReVille

Outstanding Section Awards.....General Mace

Creative Youth Development Award.....General Mace

Thomas S. Blair Award.....General Mace

Awarding of Graduation Certificates.....General Mace

Benediction.....Chaplain Golden

0883

CITADEL 0003612

The Citadel Summer Camp

Charleston, SC

THE CITADEL 1957 Summer Camp

Graduation Exercises

First Session
July 6th, 2002

Graduation Exercises

Summerall Chapel
August 3, 2002
10:15 a.m.

-Program-

Invocation.....Chaplain (Col.) David Golden

Advance the Colors.....Crumpton Color Guard

Welcome and Introduction of Guests.....Major Bill Bates

Report to Parents.....Major Bates

Remarks.....Brigadier General J. Emory Mace

Mark Clark Awards.....General Mace

Senior Counselor Awards.....Lieutenant Skip ReVille

Outstanding Section Awards.....General Mace

Creative Youth Development Award.....General Mace

Thomas S. Blair Award.....General Mace

Awarding of Graduation Certificates.....General Mace

Benediction.....Chaplain Golden

0884

CITADEL 0003613

The Citadel Summer Camp

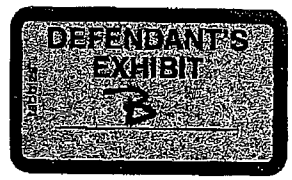
Charleston, SC

THE CITADEL 1957 Summer Camp

Graduation Exercises

Second Session

August 3rd, 2002



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JOHN DOE 2,	)	CIVIL ACTION NO.:
	)	2:12-CV-00794RMG
Plaintiff,	)	
	)	
vs.	)	
	)	
PRESIDENT JOHN W. ROSA, Individually,	)	
	)	
Defendant.	)	

* *

DEPOSITION OF: LT. COLONEL L. CHRISTINE FUDGE

DATE TAKEN: Tuesday, April 9, 2013

TIME: 10:00 a.m.

PLACE: 134 Meeting Street
Suite 160
Charleston, SC 29401

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

forms that we could verify?

A I would think so.

Q Okay. Okay. So, then, in 2007, you signed another separation form for Mr. Reville?

A Uh-huh (affirmative).

(Discussion off the record.)

MS. MOORE: And this will be Exhibit 6.

BY MS. MOORE:

Q And again, that's your signature in the middle of the page?

A Yes, it is.

Q Okay. And that's Mr. Reville's name in the top box?

A Yes, it is.

Q Okay. Under "Type of separation," what is selected in 2007?

A It looks like "resignation."

Q Okay. And what is selected as the reason for separation in the next box?

A Mutually satisfactory release.

Q Explain why those two items were checked.

A He said he wasn't going to come back for the next school year.

Q Okay. And why is the form dated March 22nd, 2007?

A The forms can be dated any time. It would have an effective date and the effective date would be what they would go by.

Q Okay. So the -- okay. So did Mr. Reville come talk to you about this?

A I believe so.

Q Would there have been an email exchanged about this?

A I'm not sure.

Q Okay. Did you fill out this form?

A No.

Q Who would have filled this form out?

A Our office manager.

Q So was the office manager sitting in the meeting with you and Mr. Reville when you discussed his resignation?

A I can't say.

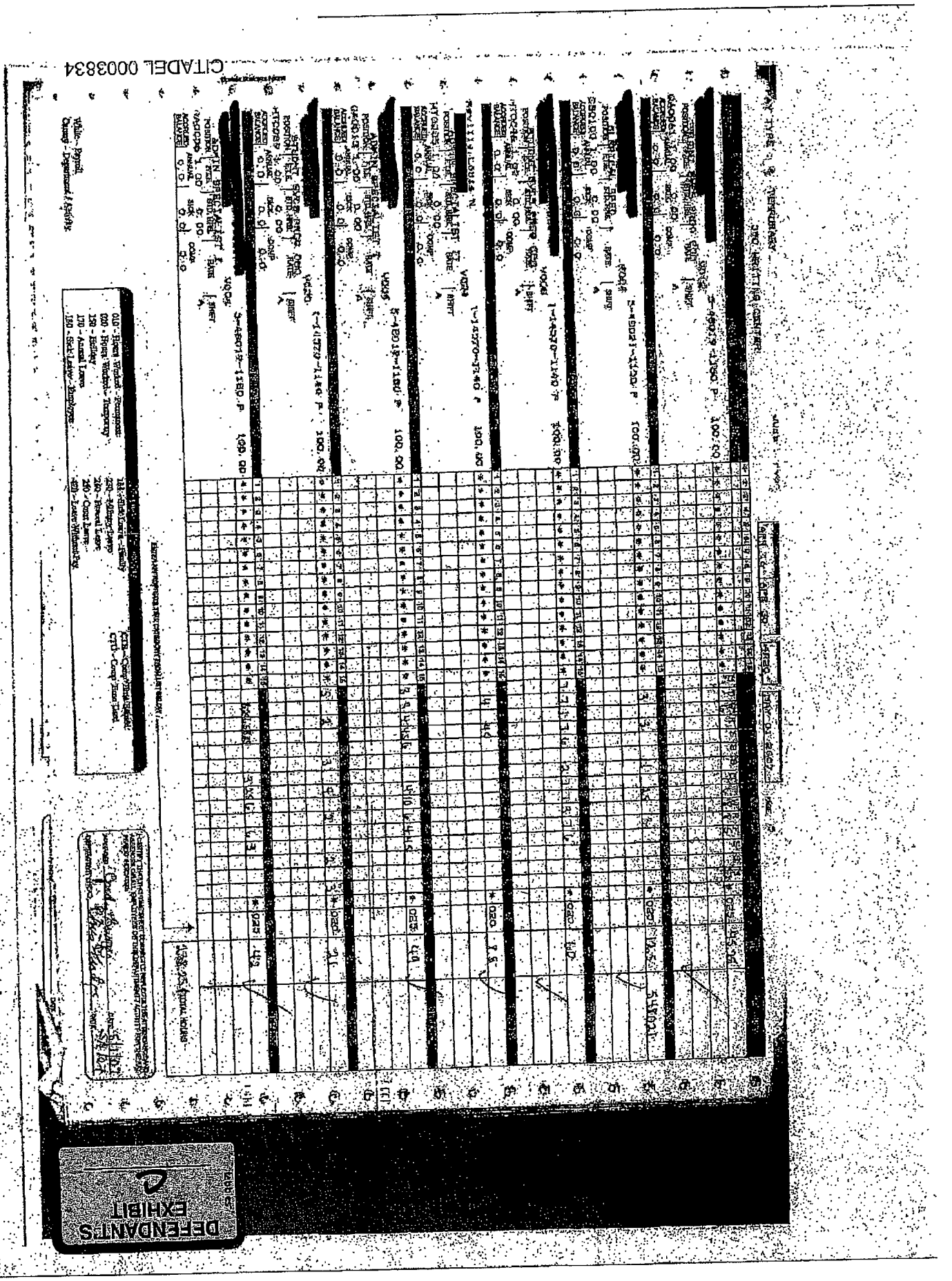
Q Well, how else would she have filled out the form?

A She may have asked me.

Q Okay. What's your understanding of the Freedom of Information Act?

A I'm not sure what you mean.

Q Do you know -- do you know what the Freedom of Information Act is?


DEFENDANT'S
EXHIBIT
C
CITADEL 0003834

DEFENDANT'S EXHIBIT D

I. EMPLOYING DEPARTMENT

Employee Name: Louis N. RaVille	Employee ID (Last 4 of SSN):	Department: Writing and Learning Center
Position Number: HT0205	Effective Date of Separation: 4/20/07	Position Type: ☐ Permanent ☑ Temporary

Type of Separation:

☑ Resignation ☐ Reduction in Force ☐ Deceased
☐ Retirement ☐ Termination ☐ End of Temporary Employment

Reason for Separation (Please attach any documentation)

☐ Accept Other Employment (110)	☑ Mutually Satisfactory Release (115)	☐ Dismissed for Cause (237)
☐ Job Dissatisfaction (111)	☐ Moving to New Location (116)	☐ Layoff (240)
☐ Domestic Duties or Pregnancy (112)	☐ Abandoned Position (230)	☐ Other (242)
☐ Attend School (113)	☐ Ineptitude for Job (231)	☐ Contract Expiration (250)
☐ Failure to Report to Work (114)	☐ Chronic Absenteeism/Tardiness (232)	☐ Regular Retirement (460)
☐ Personal Reasons (115)	☐ Expired Layoff Rights (233)	☐ Early Retirement (461)
☐ Long Term Disability (116)	☐ Unsatisfactory Performance (234)	☐ Disability Retirement (470)
☐ Resign While on Layoff (117)	☐ Physical or Mental Impairment (235)	☐ Death (510)

Is the employee eligible for rehire in your dept? ☑ Yes ☐ No

If you checked 'No', please explain: _____

Did the employee have supervisory responsibilities? ☐ Yes ☑ No If yes, complete the following section

Employee Name(s)

Interim/New Supervisor Name:

Is the employee returning as a temporary employee? ☐ Yes ☑ No

If yes, what dept? _____ Return date: _____

Chris Fudge — Signature of Supervisor

3/22/07 — Date

II. HUMAN RESOURCES USE

EMPLOYMENT

☑ HRS
☐ HRIS
☐ Personnel File
☐ Employment Vendor
☐ Date of Employment: _____
☐ E-mail Separation Notice

J. Finnegan — Signature — Date

BENEFITS

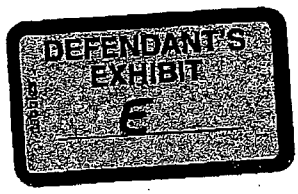
☐ Exit Interview
☐ HRS
☐ Insurance Division
☐ Retirement System
☐ Other: _____

_____ Signature _____ Date

HR-402

RECEIVED
MAR 22 2007
HUMAN RESOURCES

CITADEL 00022
(RFP #1)



RE: SUMMER CAMP INTERVIEW

JULY 1, 2007

THE CITADEL 0000287
(FOIA 2011)

11:35:34 A. And he at that time pulled out his penis and started masturbating and asked us to join him, and I got up, said I was tired, went to the bed and just said I was going to fall asleep and --

Q. Okay.

A. -- just go to sleep.

Q. This was in his room?

A. That's right.

Q. Okay.

A. He -- he kind of got a little aggressive and was asking me to come back to the computer and join them --

Q. All right.

A. -- which I ended up doing.

11:36:14 Q. Was over there with him?

A. That's right.

Q. Okay. And had he joined?

A. That's right.

Q. Okay.

A. And I did it. Immediately after, I felt completely violated.

Q. Okay.

A. I mean, it was just a horrible experience for me. I didn't tell anyone until this year.

Q. Okay.

THE CITADEL 0000433
(FOIA 2011)

12:28:52 : got on the phone and told his dad, and said, I'll call you back, and that's when he called you.

: Right.

: So I don't even think he even -- I don't even think you ran it by , if you were going to call the Citadel or not. You just picked up the phone and called.

: I just picked up the phone and --

: The only thing ever said to me is -- he said, Mom, I don't want -- he said, I have felt guilty for years, I -- that I never said anything when I could have, and maybe he's done

12:29:19 this to other kids because I didn't talk.

: Yeah.

: And he said, I don't want him to do this to anybody else.

: Right.

: That's -- that's my side of the --

: Okay.

: -- what happened that day.

: But one of the things is -- is, you know, I don't want to -- you know, I -- I

THE CITADEL 0000527
(FOIA 2011)

12:30:30 young man deserves for the Citadel to take another look at him. I think this young man needs an education. He needs to be -- if he's been able to go from -- from -- from -- you know, go from 100 percent to zero and back --

: Yeah.

: -- and get to a point, you know --

: Uh-huh.

: -- I think he deserves a chance.

: Yeah.

: And -- and that's -- you know -- but it's up to him. He's an adult. But for

12:31:03 me, I think the Citadel was -- was part of the root cause. I think that it can be part of the root cause to fix him.

: Right.

: And, you know, I think it's a very inexpensive way for the Citadel to say, do you know what --

: Right.

: -- we'll fix our own.

: Yeah.

: We'll -- we'll -- we'll keep

THE CITADEL 0000531
(FOIA 2011)

12:48:18 know, that's why you don't see us with -- with attorneys.

: Right.

: You don't see us with anything. I want to do whatever this happens -- and -- and you guys can do -- the Citadel can do all the investigating and looking and so forth to -- to -- to corroborate story --

: Uh-huh.

: -- but we don't want to go and be part of the Charleston gossip.

: Sure.

: And that's not what anybody needs.

12:48:49 THE WITNESS: Yeah.

: Well, it's not going to help anybody.

: It won't help anybody.

: Right, right.

: And -- you know, and all I'm saying is -- is not the Citadel but the summer camp was -- was -- was part of the root cause. Now I'm just, you know, as a parent saying, you know --

: Uh-huh.

: -- there's no way that you

THE CITADEL 0000573
(FOIA 2011)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-9200

MOTHER DOE A,
Plaintiff,
vs.
THE CITADEL,
Defendant.

DEFENDANT'S EXHIBIT F

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1860

JOHN DOE CAMPER,
Plaintiff,
vs.
THE CITADEL,
Defendant.

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1858

JOHN DOE 2,
Plaintiff,
vs.
THE CITADEL,
Defendant.

VOLUME I VIDEOTAPED
30(b)(6) DEPOSITION OF: MARK BRANDENBURG

STATE OF SOUTH CAROLINA	) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	) CASE NO. 2012-CP-10-1859
MOTHER DOE 2, ON BEHALF OF JOHN DOE 3, Plaintiff,	)
vs.	)
THE CITADEL, Defendant.	)

VOLUME I VIDEOTAPED
30(b)(6) DEPOSITION OF: MARK BRANDENBURG

DATE TAKEN:	Wednesday, June 5, 2013
TIME:	10:00 a.m.
PLACE:	Pierce Herns Sloan & Wilson 321 East Bay Street Charleston, South Carolina
REPORTED BY:	EVE WILBANKS Registered Professional Reporter, Certified LiveNote Reporter and Notary Public

* * * * * * * * * * * * * * * * *

POST OFFICE BOX 21784

CHARLESTON, SOUTH CAROLINA 29413-1784

see what I talked to him about at previous meetings. And when I pulled it up on the computer and then when I saved it, it said "modified."

Q. All right.

A. That's my best guess. I'm sorry.

Q. Then page 80, that's the August list, right?

A. That's a meeting we had in August, yes.

Q. And the Doe case is on both the August and September list?

A. Correct, yes.

Q. And then what is 81? That's dated September.

A. That would be a meeting that I had with him on September 3rd or somewhere close to that, I would guess.

Q. So we have a July, August and September meeting with General Rosa, all of which the Doe case was --

A. Right.

Q. -- talked about?

A. Right.

Q. Okay. Who is on -- on document 83, this is August 8th, 2007, who is that --

A. The name -- the number is really

scratched out. August 8th of 2007?

Q. Yeah.

A. Yeah.

Q. Who is that? Telephone call with who?

A. John Powell.

Q. Who is that?

A. He's the director of admissions.

Q. And what was decided was they couldn't get Doe into school that year; is that right?

A. What was happening at this time is I was having -- I'd had a phone call on August 3rd from Doe's father, and I believe there were other phone calls during that time period. But his -- his goal was to get his son into The Citadel. And so I went down -- or I called downstairs and I talked with John and I said, Where is he? You know, what is the -- what is the status, so to speak, of him?

And John says to me, He's missing Algebra II. Also lacks two lab sciences. The state requires three lab sciences, Biology I and II. He said, Even if we -- I think he said, Even if we substitute a physical science for one of the lab sciences, we were still -- still going to come up two courses short for what he had to have in order to matriculate.

And so I called the father back again -- the negotiations that were back and forth during this time period was he wanted his son in The Citadel. And so I went back to the father and I said, We can't put him in this year. This is August 8. So this is probably within two or three days of the freshman class reporting that year. And I said, We just can't do it. We -- he needs two courses; we can't let him come in. And it's going to be -- I think I even said -- yeah, I said, It's not fair -- It's going to be unfair to him because he's just not going to be prepared.

And so in the course of these negotiations and also talking with the Insurance Reserve Fund and downstairs, the thought was, let's have him go to a -- like a Trident Tech, a technical school someplace, and get the two high school courses that he needs and get a -- and get a couple of other courses, get ahead, and The Citadel will pay for it.

Q. Right. That was the 20,000?

A. That's the 20,000. And that was the negotiations with the Insurance Reserve Fund, and the Insurance Reserve Fund said, We'll -- you know, We'll put up the $20,000 that he can use to

fund those -- to fund those classes. And maybe it was a week later, because I see -- I see one other conversation with the father on 8/13, but sometime in there -- whether between 8/8 and 8/13 or after 8/13 is when the class matriculated. And after that, I didn't hear anything more. But the agreement was -- you know, that the father had agreed to, was the 20,000 to go to a technical school or something, and then -- and I said -- the father asked, Could he come next year guaranteed? And my recollection is we said, We can't guarantee it, but, you know, we'll certainly look favorably on the application. And he was supposed to go back and talk with young Doe and get the -- and get them all to agree to it, and I didn't ever hear from him after that.

Q. So you had only talked to Doe's dad from July 1st up through this time. You never talked to Doe, right?

A. Right.

Q. And when you and Doe's dad worked out some type of agreement, Doe never agreed to it, to the best of your knowledge?

A. To the best of my knowledge, he didn't.

Q. During any of your briefings to the

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-9200
Mother Doe A,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Citadel,	)	
	)	
Defendant.	)	

AMENDED ANSWERS TO THE CITADEL'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, MOTHER DOE A, INDIVIDUALLY AND/OR AS NATURAL PARENT OF THE MINOR CHILD AS REFERENCED IN THE COMPLAINT

TO: COUNSEL FOR THE DEFENDANT

Plaintiff provides these amended answers to The Citadel's First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

1. Give the names, present accurate addresses and place of employment of all persons known to the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint and/or their counsel who will or may be witnesses concerning the facts of this case and set forth a summary sufficient to inform Defendant(s) of the important facts known to or observed by each witness.

ANSWER:

Mark Brandenberg, counsel for The Citadel, was the individual who in 2007 was aware that Reville had abused a camper in 2002 by his investigating a complaint made in April, 2007. After he had traveled to Texas to conduct a sworn statement in the company of a court reporter, and recorded the information about the camper's 2002 abuse by Reville and other irregularities committed by Reville, he returned to

the Citadel and analyzed how long the school would have to wait to know if any claim would be brought against The Citadel by that 2002 camper. No report was made to federal or state officials about what The Citadel had learned about Reville's sexual interest in children. The Citadel chose to adopt, either because of what was amended or despite what was recommended, a policy of concealment of Reville's known sexual interest in children.

Mrs. Chris Fudge of the Citadel Writing Center, is expected to have information about (1) either about her not having been informed at any time after July 1, 2007, that Louis Reville was known to have a sexual interest in chidren, or her having been informed after July 1, 2007 that Louis Reville was known to have had a sexual interest in children, and (2) inquiries that were made of her, or not made of her, about Louis Reville after July 1, 2007.

[redacted] is the child of Mother Doe A. He can be communicated with through counsel. He is a student. He has information about his molestation by Reville, his concealment of the information, and the process of reporting the information to law enforcement personnel investigating Reville.

[redacted], who can be communicated with through counsel, is the person designated as Mother Doe A. Her identity is disclosed on the agreement among counsel to preserve her identity as confidential with respect to the public record. She is self-employed. She has information on how the sexual abuse by Reville has affected her son, how the concealment by The Citadel enabled Reville to have access to her child, and the affects on her of The Citadel's incomprehensible conduct in shielding Reville from law enforcement and enabling him to have contact with her child and other children.

Louis Reville is presently incarcerated at Kirkland Correctional Institute, 4344 Broad River Road, Columbia SC 29210. He has information about his misconduct with children, his guilty plea, and how the silence by The Citadel enabled him to maintain his interest in being around children and how he exploited those opportunities to engage children in sexual conduct.

John W. Rosa is a retired United States Air Force officer who serves as President of The Citadel and has since January 3, 2006 He was informed in 2007 of the camper's 2002 information and has information about his conscious election to not report the information he had received. He also has information about the federal funding The Citadel receives, and their reporting obligations under Title IX, 20 U.S.C § 1681 – 1688, and the Cleary Act, 20 U.S.C 1092(f)

Other individuals with information, and the information they have, are disclosed in the documents produced with this response.

2. Please identify and give the present accurate addresses of all persons, whether listed in the foregoing interrogatory or not, from whom written or recorded statements have been taken in connection with the allegations of the complaint and identify, with present accurate addresses, the person or persons now having custody of such written or recorded statements.

ANSWER: No statements have been taken by counsel for the plaintiffs. Statements were taken by law enforcement, of Reville, and presumably from the child in this action, pursuant to Reville's criminal conviction for molesting the plaintiff's child. The 2002 camper gave a sworn statement to The Citadel in 2007, and that statement is in the possession of The Citadel in its unredacted form. Various statements have been collected from other sources, and they are produced with the original response to these interrogatories. Those documents are again produced with these amended responses.

3. Please list all photographs, statements, sketches, records, tangible items or other prepared documents of which Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint are aware that are in any way related to or connected to any of the facts or issues of this case and in their possession or that of their attorney or any agents and identify, with accurate present addresses, the person or other agents having possession of the same.

ANSWER: In possession of counsel for the plaintiff are documents produced by the Citadel, as well as the following documents which are again produced in pdf format on a cd-rom disk:

Reville Social Security Card, redacted

8/6/01 letter to Citadel regarding Arpaio

2002 Resume of Skip Reville

May, 2002 Memorandum of Instruction for Citadel Summer Camp

2002 Citadel Summer Camp Counselor Handbook

4/10/02 SLED check on Reville

2002 and 2003 Arpaio trial transcript volumes 1- 5

2/20/04 letter to Skip Reville from James Brown, Academic Dean of Pinewood Prep

3/16/04 memorandum of meeting at Pinewood Prep

12/13/05 Email from Amy Hurdock to administrative team

6/13/06 SC Employment Security Commission forms (two) by Juliet Londergan

7/1/06 Email from Amy Hurdock to Julie Londergan

11/15/06 Dorchester School District Two Application by Skip Reville

1/9/07 SLED check on Skip Reville

7/1/07 Sworn statement by 2002 camper

3/10/08 Dorchester School District Two personnel change form

2007 to 2009 Clery reports by the Citadel,

10/28/11 waiver of rights by Skip Reville,

10/28/11 statement by Skip Reville

10/30/11 statement by Skip Reville

12/12/11 Complaint in Doe v. Pinewood Prep et al.,

12/16/11 statement by Skip Reville,

3/5/12 SLED Investigative report

3/18/12 article headlined "Police warned Citadel in '01"

3/19/12 article headlined, "Six lawsuits allege Citadel, president 'concealed' sex abuse of campers,"

6/13/12 transcript of Reville guilty plea

7/8/2012 news article from the Post and Courier headlined, "Child molester Skip Reville says Citadel police officer turned him away when he wanted to confess,"

2012 letter from Carrie ReVille to Judge Dennis

4. Please list all photographs, statements, statutes, records, medical records, x-rays, tangible items or other prepared items of which Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint are aware that are in any way related to or connected to any of the facts or issues of this case but are in the possession of any person other than the Plaintiff(s) or their attorneys or agents and identify, with accurate present addresses, the person or other agents having possession of the same.

ANSWER: See response to interrogatories 3 and 6, and the documents against produced by CD-rom with these responses. Documents held by others are not known.

5. Provide a list of names, addresses and qualifications of any expert witnesses whom the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint or their counsel proposes to use as a witness at the trial of the case as to the Defendant and set forth the following:

a. The subject matter concerning the Defendant on which such expert is expected to testify;

b. The substance of the facts or the opinions to which each such expert is expected to testify as to the Defendant; and

c. Furnish a summary of the grounds for each such opinion as to the Defendant expected to be from each expert named in response to this interrogatory.

ANSWER: No expert has yet been retained to provide testimony as a witness in this case. If an expert is retained this interrogatory will be supplemented, as required by SCRCP 26(e).

6. Please give the names and addresses of all of the Plaintiff's family doctors, dentists, psychologists, psychiatrists, counselors, therapist, mental health or other health care professionals for the ten years prior to filing this lawsuit.

ANSWER:

Mother Doe A has received medical care in the last ten years from:

Dr. Toya Pound, ob-gyn, East Cooper Women's Center, 1280 Hospital Drive Suite 200, Mt Pleasant SC 29464.

Greg Bottone, DDS, Dentist, 924 Tall Pine Road, Mt Pleasant SC 29464

Chet Williams, Child and Family Therapist, 5855 Executive Center Dr, Suite 111, Charlotte, NC 28212.

There is no objection to authorizing release of information from those providers, assuming it will be treated with appropriate discretion.

7. If within the ten years prior to filing this lawsuit, the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint suffered any type of physical or mental injury, illness, or other complaint, please state the following:

a. List fully all such prior injuries, illnesses, complaints and symptoms stating to which area or areas of the body they related, the dates and causes or cause of origin, and the date or dates when complaints and symptoms were no longer noticed.

b. State when, where, and the nature of medical treatment, if any, received for each such prior injury, illness, or complaint including the name of the medical practitioners providing such care.

c. Describe fully any accident or occurrence that gave rise to each of these injuries, complaints, or illnesses giving the date of each such accident or occurrence, where it occurred, and the nature of the event.

d. If a claim was made arising out of the injury, give the name of the person against whom the claim was made, the name of their insurer, the full caption and action number of any suit that was filed, and the disposition of the claim.

ANSWER: Mother Doe A has made no prior complaint about any prior injury. Her routine medical treatment as requested by this interrogatory is reflected in the records of the providers listed in response to interrogatory six. She has no objection to those records being released to defendants, assuming it will be treated with appropriate discretion. Those records will reflect information responsive to this interrogatory, to the extent the information is available, and the response to the interrogatory can be derived or ascertained from those records.

8. Please give the names and present accurate addresses of any and all physicians, psychiatrists and/or therapists or other health care professional, including psychologists or counselors, who examined and/or treated the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint as a result of the incident described in the complaint. Please also list the dates of treatment and a summary of the treatment.

ANSWER:

Chet Williams, Child and Family Therapist, 5855 Executive Center Dr., Suite 111, Charlotte, NC 28212. There is no objection to producing his records for the defendants, , assuming it will be treated with appropriate discretion.

9. Please list the names and addresses of any and all hospitals and/or treatment centers to the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint were admitted as a result of the incident described in the complaint along with the dates of treatment.

ANSWER:

Chet Williams, Child and Family Therapist, 5855 Executive Center Drive, Suite 111, Charlotte, NC 28212. There is no objection to producing his records for the defendants, assuming it will be treated with appropriate discretion.

10. Please set forth an accurate statement of all medical, hospital, drug and/or other related costs incurred by the Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint as a result of the incident alleged in the complaint. Please provide the bills, invoices or other data for supporting expenses incurred.

ANSWER:

The mother herself does not have the statement of costs incurred but has requested one of Chet Williams, Child and Family Therapist, 5855 Executive Center Dr, Suite 111, Charlotte, NC 28212, and it will be provided when obtained. We are also agreeable to providing a release for the defendants to obtain the same information, assuming it will be treated with appropriate discretion.

11. List all physicians, counselors, psychiatrist, psychologist, therapist and mental health care workers, which you or your minor child are presently under the care of, and please state the following:

a. The name, address and business telephone number of each physician, counselor, psychiatrist, psychologist, therapist and mental health care worker;

b. The purpose for which you saw each physician, counselor, psychiatrist, psychologist, therapist and mental health care worker; and

c. The periods of time when you were under the care of each physician, counselor, psychiatrist, psychologist, therapist and mental health care worker.

ANSWER: Chet Williams, Child and Family Therapist, Alexander Youth Network, 6220 Thermal Road, Charlotte, NC 28211, who has been consulted in response to the realization that her son was affected by Louis Reville, has a current treatment relationship and has since 2011.

12. After each alleged assault as identified in the Complaint, did Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint have any conversations with any employee, agent, or official of The Citadel, or overhear any conversations involving any employee, agent, or official of The Citadel, or any other person pertaining in anyway to the assault? If

so, state exactly as possible, the date and time of the conversation as well as the conversation or what Plaintiff(s) overheard.

ANSWER: Mother Doe A, for herself or on behalf of her child, had no communications with The Citadel after learning of her child's assaults by Reville or after learning that The Citadel might have prevented those assaults by acting in a responsible manner with the information they had in April, 2007 that Reville was known to have a sexual interest in children.

13. Has Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint given any written or recorded statements about any of the incidents or Plaintiff(s) claim for injuries? If so, provide the following.

a. person to whom statement made;

b. date of statement(s);

c. whether Plaintiff(s) was provided a copy of statement; and

d. whether Plaintiff(s) still has a copy of the statement.

ANSWER: Mother Doe A has provided no prior statements about her injuries.

14. Has Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint ever been arrested? If so, identify each arrest by date, charge and disposition.

ANSWER: Mother Doe A has never been arrested.

15. Please set forth the following information regarding Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint:

a. full legal name;

b. current address;

c. date of birth;

d. social security number; and

e. current driver's license number, including state of issue and date of expiration.

ANSWER: Mother Doe A's full legal name is [redacted]. She presently resides at [redacted]. Her Date of Birth is [redacted]. Her Social Security Number is [redacted] and should be regarded as confidential. She holds [redacted] driver's license number [redacted]

16. If Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint sustained a financial loss as a result of the incidents alleged in the Complaint, other than medical expenses, state the nature and amount of each such loss, and the date of loss.

ANSWER: Expenses have been incurred for therapy for her child and herself, as indicated above. HIn addition to out of pocket costs, there are intangible injuries. er child has become less participatory with family activities. He is now more easily angered, especially with his siblings. His mother has observed his mood fluctuating between periods of solitude and exclusion, fits of rage, guilt, and deep-seated betrayal. She believes he now has anger management issues that he did not have before the abuse. For a number of years the sexual abuse resulted in "secret" keeping that puts the family in a no-win situation with regard to the other siblings in the family, as information about the abuse must either be spread more broadly among those family members or a certain level of ambiguity has to be maintained about the problems now posed for her son's interaction with family members.

Mother Doe's brother, her child's uncle, has commented on her child's antisocial behavior which has led to very awkward, and heated conversations between Mother Doe A and her brother, who does not understand the impact of abuse on her child's psyche and how it has eroded his ability to trust people in positions of authority. Mother Doe A has observed that her son's abuse has changed the family's dynamic, and caused, among other things, Mother Doe A's brother to visit less frequently.

17. Has Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint ever made a claim for compensation arising out of personal injury other than this claim? If so, identify the previous claim(s) as follows:

a. a brief description of incident giving rise to claim, including date, place and how occurred;

b. attorney representing Plaintiff(s) in claim;

c. name of insurance carrier(s) defending claim(s); and

d. disposition of claim(s).

ANSWER: Mother Doe A has made no prior claim.

18. Has Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint ever been involved in any lawsuit(s) other than this lawsuit? If so, identify the previous lawsuit(s) as follows:

a. brief description of incident giving rise to claim, including date, place and how occurred;

b. attorney representing Plaintiff(s) in claim;

c. name of insurance carrier(s) defending claim(s); and

d. disposition of claim(s).

ANSWER: Mother Doe A has not been party to any other civil lawsuit for damages, and has been the subject of no criminal proceedings. Her child was involved in Reville's sentencing hearing since Reville pleaded guilty to molesting her child, among many others.

19. Please identify any and all "witnesses who were former employees and/or agents of The Citadel who," you allege, "knew or should have known of the allegedly dangerous propensities of Louis "Skip" ReVille with regard to minor children."

ANSWER: Persons with information responsive to this interrogatory known at present are:

Mark Brandenburg, counsel to The Citadel, who apparently informed President Rosa in 2007.

Louis Reville and the individuals to whom he disclosed or attempted to disclose his own molestation of children.

President Rosa.

20. Please identify, by date, location, and individuals involved, all incidents in which you allege Louis "Skip" ReVille inappropriately touched a camper or former camper at The Citadel. As to each incident, please give a complete description of the incident.

ANSWER: The information called for by this interrogatory is not information Mother Doe A possesses. However, information about it is contained in the 2002 camper's sworn statement under questioning by Mark Brandenburg, and was also

conveyed by Louis Reville when, by his own account, his attempt to self-disclose was rejected by The Citadel. It is not known if Reville's guilty plea includes any conduct with Citadel campers beyond the sources noted above. The 2002 camper's sworn statement is in possession of the Citadel, and was obtained by the plaintiff from the Citadel's website in redacted form. It is 321 pages, and the first page is labeled Citadel 387. It is produced with these responses to interrogatories.

21. Please identify, by date, location, and individuals involved, all incidents in which you allege Louis "Skip" ReVille inappropriately touched a camper or former camper at locations away from The Citadel. As to each incident, please give a compete description of the incident.

ANSWER: See response to interrogatory 20. Louis Reville concedes he was inappropriate with campers.

22. Please provide the name, address and phone number of all persons you allege have contacted The Citadel and complained and/or voiced their concerns about Louis "Skip" ReVille. As to each person, the individual associated with The Citadel they conveyed their concerns or complaints, the date and method of communication of their concerns and complaints, and the specific concern or complain which they communicated to The Citadel.

ANSWER: This is not information known to Mother Doe A. It is now publicly known that disclosures were made in 2007 by the father of the 2002 camper by telephone call to The Citadel in 2007 (April 23, 2007), the 2002 camper's disclosure

in 2007 (July 1, 2007), during his sworn statement under questioning by Mark Brandenburg, according to the document produced by the Citadel. As that information has been disclosed by the Citadel, it has not included the identity of the 2002 camper. It is not known if any aspects of Reville's guilty plea involved Citadel campers.

23. As to each individual you allege "knew or should have known of the allegedly dangerous propensities of Louis "Skip" ReVille with regard to minor children," please identify each act, omission, or information you allege informed each witness of the allegedly dangerous propensities of Louis "Skip" ReVille, and as to each act, omission, or information, please identify the date or dates on which it occurred, should have occurred, or was conveyed to the individual, respectively, as we as all other witnesses to the act, omission, or information.

ANSWER: On April 23, 2007, the father of the 2002 camper called The Citadel to report that his son was molested by Reville in 2002 during the summer camp. On July 1, 2007, Mark Brandenberg traveled to Texas to take a sworn statement of that 2002 camper. From 2007 through Reville's arrest, neither Brandenberg nor President Rosa made any disclosure that Reville was known to have a sexual interest in children, and had committed sexual assaults against children on The Citadel campus. The Citadel knew that Reville had worked as a tutor at The Citadel until at least April 20, 2007 (Reville represented to Coastal Christian that he performed as a tutor until May, 2007), and The Citadel knew or should have known that he continued to have contact with children since 2002, from his work at

Pinewood Prep, prior to 2007, to his work with the other child-oriented employers and activities after 2007. Specifically, Velocity Sports Performance, Mt. Pleasant Recreation, Bishop England, basketball coaching in Summerville he did from 2000 to 2008, substitute for Dorchester County District 2., basketball coach for Moultrie Middle School, Eastbridge Presbyterian, Coastal Christian Preparatory School. Had the Citadel even internally shared the information it had in 2007 about Reville's known sexual interest in children then Reville's application to be principal of Coastal Christian would not have been approved, because his having listed as a reference Mrs. Chris Fudge of the Citadel Writing Center would have, if properly pursued by Mrs. Fudge, have disclosed his sexual interest in children.

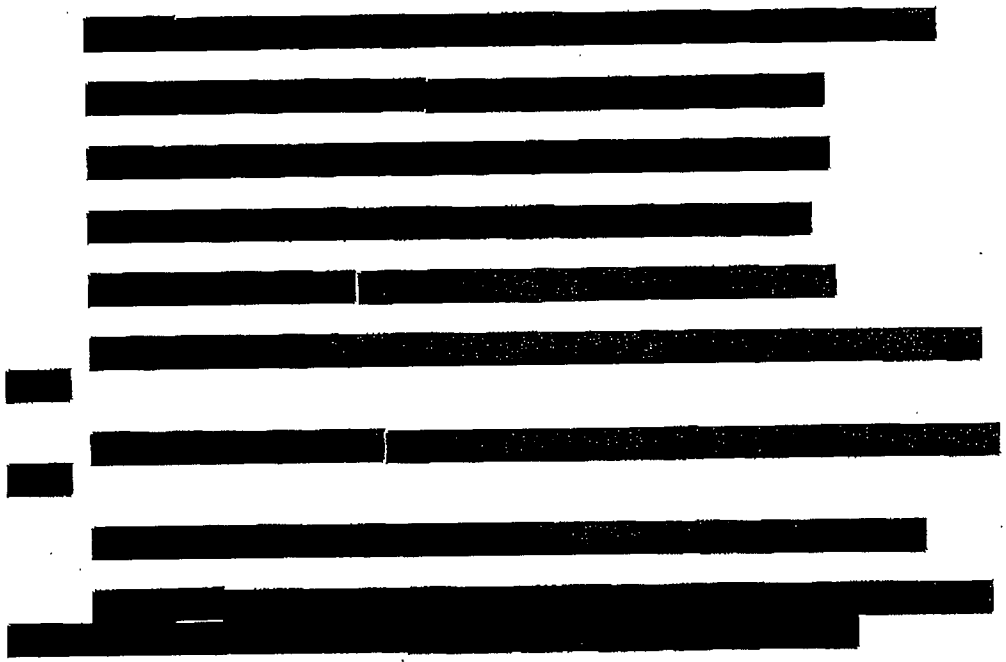
Had The Citadel reported Reville, as it should have under either its internal policies or as it should have under Title IX or under the reports it made under the Cleary Act, his SLED check of June, 2007 would have reflected the report and Reville would have been unable to have contact with the plaintiff's child.

In a news article of March 6, 2012, Citadel President Rosa was quoted as saying, of the information The Citadel had about Reville, "We are sorry we didn't pursue it more." Either President Rosa has changed his opinion, or those who govern the Citadel have elected to

24. Please identify all athletic teams your minor child has participated on since 1991 forward.

ANSWER: The child of Mother Doe A participated in the following activities:

[redacted]



25. Please identify, by name, address, and phone number, all individuals who have served as coaches for athletic teams your minor child has participated on since 1991 forward. As to each coach, please identify the athletic team he or she coached, and the years he or she coached.

ANSWER:

The only coaches Mother Doe A can recall are identified in response to interrogatory 24. She has no contact information for those coaches.

26. Please identify all teachers your minor child has had since 1991 forward.

ANSWER:

Mother Doe A is not able to identify the individual teachers her son has had, other than the year he was homeschooled and his instruction was overseen by Mother Doe A, however, her child attended the following schools at the times identified:

[redacted]

There is no objection to authorizing a release of that information to the defendant, assuming it will be treated with appropriate discretion.

27. Please identify all disciplinary actions taken against your minor child by any school official, for whatever reason, from 1991 forward. As to each action, please identify the incident which led to the disciplinary action, by time, place and a description of the event. Also, please identify, by name, address, and phone number, all individuals involved in the incident, to include the school officials who discovered the incident, investigated the incident, and effected disciplinary action for the incident.

ANSWER: Mother Doe A's child has not had disciplinary action taken against him by any school official.

28. If Plaintiff Mother Doe A, individually and/or as Natural Parent on behalf of her minor child as referenced in the complaint rely upon any portion of any records to establish the alleged negligent act, set forth the specific portion or portions of the records, which are relied upon.

ANSWER: The Citadel benefits from federal funds, and as such is obligated to make reports of criminal conduct including sexual assault under the Cleary Act and under Title IX, and the Citadel has in fact made reports under the Cleary Act from 2007 to the present.

The Citadel has in its possession, and has had since 2007, information from the report made in 2007 by the 2002 camper. That report was first made on April 23, 2007, and then was made in detailed form on July 1, 2007. That information, and Louis Reville's attempt to self-report his conduct, are documents which should have been reported to law enforcement and through reports made under Title IX and under the Cleary Act. Reville was never reported to law enforcement by The Citadel, so was able after April 23, 2007 to sexually exploit children. President Rosa acknowledged in march, 2012 that The Citadel should have done more to pursue the information it had, and apparently now the governing body of the Citadel has disagreed with President Rosa and contends that The Citadel has no obligation to report. We expert depositions of the individuals who comprise the Board of Visitors, when they are available, to also have information about that position of The Citadel.

Mother Doe relies on the records of the information The Citadel had from April 23, 2007, about Reville's sexual interest in children, and The Citadel's lack of

reporting that information, to establish the negligent actions of the Citadel. Specifically, The Citadel made no report to law enforcement about the information it had since April 23, 2007 that Reville had a sexual interest in children.

Gregg Meyers
Jeff Anderson & Associates, PA
366 Jackson Street
St. Paul, MN 55101
(651) 227-9990
(651) 297-6543 (facsimile)
gregg@andersonadvocates.com

ATTORNEY FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the enclosed Plaintiff's Answers to The Citadel's First Set of Interrogatories by causing a copy of the document to be placed in the United States mails, first class postage pre-paid, addressed to:

M. Dawes Cooke, Jr.
Randell C. Stoney, Jr.
885 Island Park Drive
P.O. Drawer H
Charleston, SC 29402

Done March 4, 2013

Gregg Meyers

From: Allan Sloan [chipsloan@phswlaw.com]
Sent: Friday, April 11, 2014 1:59 PM
To: M. Dawes Cooke; Gregg@andersonadvocates.com
Cc: Randell C. Stoney, Jr.; Randell C. Stoney, Jr.; John Fletcher; Chris Kovach
Subject: RE: Mother Doe A v. The Citadel, et al

Dawes:

Mother Doe A's damages are those permitted in various cases for loss of services. Past South Carolina cases have acknowledged claims for a parent's "shame, humiliation, and mental anguish," and "outrage and deprivation," and "the insult offered to [a parent's] feeling," and "the agony in the destruction of his hopes concerning his child," and the effect on the child's "companionship. " These are intangibles, and jurors have been quite serious about the value of those intangibles.

Mother Doe A knows her son was abused by Reville, and knows her child held that secret for a number of years. The Mother also has complications among her other children as a result of the abuse to this son, some of which was testified to by Chet Williams.

Mother Doe A knows the probable emotional/psychological effects of child sexual abuse (see Margolis powerpoint slide - denial, anger, depression, social and family withdrawal, detachment, loss of caring, reduced ability to express emotions, loss of self-esteem, loss of trust in others including parents, guilt, shame, substance abuse and suicidal ideation). There are many instances where Mother Doe A's son refused to talk to her for long periods. He has been resisting therapy because he was angry that his intention to keep this secret was uncovered by the police investigation. His plan to keep silent about Reville reflects his shame and denial, burdens the Mother is keenly aware that her child was bearing alone. He has been withdrawn from her and other family members and has shown loss of caring about her and other family members.

So we have a Mother who sees several of the known sexual abuse effects in her son and a son who is in denial and refuses therapy. The pre-Reville mother/son relationship is gone forever, and she will now forever carry the justifiable concern for the increased risk of future harms that her son will be more susceptible to in the long-term. She has an at many times angry son who withdraws from her and others, having had his caring relationships with his Mother and his family affected. She is also aware that he has an increased risk for complications for his own relationships and future problems to deal with as a result of the abuse. Mother Doe A desperately wants him to get help but he refuses and this causes more damage to the relationship, and burdens her . One only need look at Camper Doe 6 who made it to college on a scholarship and soon after his life went into a 8 year downward spiral of drugs, depression and suicide attempt – all related directly to the abuse of Skip Reville.

Mother Doe A is left with the choice every time she sees her son - do I bring up getting help and further damage our relationship or just watch him slip away as other effects start to show up? How is a mother supposed to talk to her son about the disgusting acts detailed by Reville in the Burke records? How can a mother enjoy companionship with her son when he is angry, withdrawn, doesn't care about his family like he used to and refuses to get any help for the underlying problem which is the Reville abuse? Every parent will understand going from good relationship and companionship with their child to years of the opposite with no end in sight. Those would be among the damages. Essentially, because of The Citadel's assistance to Reville, the Mother now has a never-ending complication with this child, and her other children, as the time-bomb elements of sexual abuse can re-occur at any time later in life.

Chip

Allan P. Sloan III
Pierce, Herns, Sloan & Wilson, LLC
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
Telephone: (843) 722-7733
Fax: (843) 722-7732

PIERCE, HERNS, SLOAN & WILSON LLC
ATTORNEYS AND COUNSELORS AT LAW

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The information contained in this communication is confidential, is subject to the attorney-client privilege, may constitute inside information, and is intended only for the use of the addressee. It is the property of Pierce, Herns, Sloan & Wilson, LLC. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Thursday, April 10, 2014 5:35 PM
To: Allan Sloan; Gregg@andersonadvocates.com
Cc: Randell C. Stoney, Jr.; Randell C. Stoney, Jr.; John Fletcher; Chris Kovach
Subject: Mother Doe A v. The Citadel, et al

Chip, on a related note – since Mother Doe A will be one of the first cases reached for trial – can you clarify what damages she is claiming? I'd like to pass this information along to my clients.

Thanks
Dawes

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Mother Doe A,)
)
Plaintiff,)
)
v.)
)
The Citadel)
)
Defendant,)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No: 2011-CP-10-9200

FILED
2014 APR 25 PM 4:03
JULIE ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
John Doe Camper)
)
Plaintiff)
)
v.)
)
The Citadel)
)
Defendant)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1860

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JOHN DOE 2)
)
Plaintiff)
)
v.)
)
THE CITADEL)
)
Defendant)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1858

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MOTHER DOE 2, on behalf of JOHN DOE 3 Plaintiff v. THE CITADEL Defendant	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2012-CP-10-1859
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CAMPER DOE 6 Plaintiff v. THE CITADEL Defendant	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2013-CP-10-5247
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOHN DOE, A MINOR, BY HIS *GUARDIAN AD LITEM* JOHN ROE, Plaintiff THE CITADEL Defendant	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2013-CP-10-4770

MEMORANDUM OF PLAINTIFFS' MOTHER DOE A, CAMPER DOE 6 AND JOHN DOE IN OPPOSITION TO THE CITADEL'S MOTION FOR SUMMARY JUDGMENT AS TO JOHN DOE CAMPER, JOHN DOE 2 & MOTHER DOE 2

This matter is before the court on the motion of the Defendant, The Citadel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, in the cases of John Doe Camper v. The Citadel, Case No. 2012-CP-10-1860; John Doe 2 v. The Citadel, Case No. 2012-CP-10-1858; and Mother Doe 2 on behalf of John Doe 3 v. The Citadel, Case No. 2012-CP-10-1859. The Defendant filed the referenced summary judgment motions on March 6, 2014, asserting several arguments critical to all Plaintiffs' claims in the above-captioned consolidated matters, including, but not limited to, the following grounds: (1) that The Citadel owed no duty of care to Plaintiffs pursuant to Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007); (2) that Plaintiffs' claims involve a single occurrence as defined by the SCTCA so as to limit each Plaintiff's potential recovery to $300,000; and (3) that certain plaintiffs' claims are barred by the two-year statute of limitations of the South Carolina Tort Claims Act ("SCTCA"). (See Citadel's Motions for Summary Judgment, attached hereto as exhibits 1, 2 & 3). Given the common issues of law and fact underlying these consolidated matters, Plaintiffs Mother Doe A, Camper Doe 6 and John Doe, while not parties to the instant motions, have a significant interest in the issues presented and, therefore, submit the following memorandum in opposition.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of the child sexual abuse of numerous Plaintiff victims by former cadet and Citadel employee, Louis "Skip" ReVille. Plaintiff Camper Doe 6 was abused by ReVille at The Citadel Summer Camp in 2003. Plaintiff Mother Doe A is the mother of a child abused by ReVille from 2007-2008, after The Citadel received a report of multiple allegations of child sexual abuse concerning ReVille. Like Mother Doe A's child, Plaintiff John Doe was similarly abused by ReVille after The Citadel failed to take appropriate required action in response to multiple allegations of child sexual abuse against ReVille. The evidence in this case

reveals The Citadel had countless opportunities (and duties) from 2001 to 2011 to prevent the harm suffered by Plaintiffs. It neglected to do so on every occasion. The relevant facts are as follows.

From 1957 until 2006, The Citadel operated a residential summer camp for children ages ten to fifteen wherein The Citadel employed Citadel cadets, college students, and former campers as counselors. Among the counselors selected, employed and supervised by The Citadel was Louis ReVille, who was recommended and hired by The Citadel as Head Counselor in Charge of Quarters ("CCQ") in 2001 and Senior Counselor for the summers of 2002 and 2003.

In 2001, during ReVille's first summer at The Camp, The Citadel was notified that a well-respected volunteer counselor, former Citadel Cadet, Citadel Graduate and United States Marine Corps Captain, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's First Session. In addition, The Citadel learned that campers attending The Camp had been exposed to pornography, profanity, alcohol, and inappropriate touching. The Citadel was later informed that additional minor campers were sexually abused by Michael Arpaio while attending The Camp between 1995 and 2000.

After receiving notice of these instances of sexual abuse, The Citadel continued to operate The Camp as usual. Absent additional safety precautions, ReVille, like Arpaio, was able to utilize The Camp to sexually abuse and molest at least seventeen boys, including Camper Doe 6, during the summers of 2001, 2002, and 2003. During this time, The Citadel operated The Camp as it had in the years leading up to Arpaio's abuse—turning a blind eye to inappropriate

conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

In fact, Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus. These individuals, as well as other Citadel officials and staff, were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers . . .*" (Exhibit 4, 2001 Employee Evaluation).

Furthermore, during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring immediate termination for such a violation. Additionally, neither Garrott nor Bates followed up with the minor camper or other counselors to investigate any inappropriate or suspicious behavior involving ReVille and minor campers, and no written report of ReVille's infraction was ever recorded in his employee file. Rather, when faced with notice of ReVille's inappropriate behavior, The Citadel took no action, and as a result, at least four young boys were sexually abused and molested by ReVille at The Camp in 2002.

In the summer of 2003, ReVille was asked back to The Camp to again serve as Senior Counselor where he was entrusted with the care and supervision of Plaintiff Camper Doe 6.[1]

[1] Notably, ReVille was hired as Senior Counselor despite a clearly deficient application which The Citadel's own experts agree was cause for concern. (See Exhibit 5, 2003 Application, referencing as

During the First Session of the 2003 Camp, ReVille began grooming Doe 6, who was a minor, for what would progress into a repeated pattern of sexual abuse and molestation. In July 2003, at the beginning of The Camp's Second Session but before ReVille had actually succeeded in sexually abusing and molesting Plaintiff, Camp Director Garrott caught ReVille alone in his room with Plaintiff rubbing "Icy-Hot" on Plaintiff's leg. Upon discovering ReVille and Doe 6 alone, Garrott ignored, neglected and disregarded The Camp's policy requiring immediate termination for such behavior and further neglected to even draft a report or memorandum to document the violation.

Garrott now concedes, however, that pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately for having the minor Plaintiff in his room and rubbing "Icy-Hot" on his leg, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Garrott has likewise conceded that had ReVille been terminated, Doe 6 would not have been subjected to ReVille's sexual abuse and molestation. (Exhibit 8, Deposition of Jennifer Garrott, p. 57:10-13).

Notwithstanding, ReVille was neither terminated, nor was a report drafted and placed in ReVille's file documenting the policy violation. Instead, ReVille was permitted to continue to serve at The Camp as Senior Counselor for the entirety of the second session of 2003. During this three week session, after Garrott caught ReVille alone with Doe 6, ReVille repeatedly and on numerous separate occasions initiated inappropriate contact with Doe 6 in ReVille's dorm

---

qualifications: "5'11"; brown hair; brown eyes; athletic; can cook; recite poetry; dance; enjoys walks on the beach."; Exhibit 6, Shapiro Deposition, p. 185-187; Exhibit 7, Margolis Deposition, p. 226-228)

room. This inappropriate contact progressed to sexual molestation which occurred on multiple separate occasions throughout the duration of the three week camp session.

In the summer of 2005, after being subjected to ReVille's sexual abuse and molestation in 2003, Doe 6 returned to work at The Camp as a Junior Counselor. After completing pre-camp counselor training in June of 2005, which included a section on child sexual abuse prepared by People Against Rape, Doe 6 felt compelled to report ReVille's acts of sexual abuse to Director Garrott. However, as soon as Doe 6 explained to Garrott that he wanted to talk about "Skip ReVille," her demeanor immediately changed. She abruptly called off the meeting, claiming she had another obligation. No less than an hour later, Doe 6 was fired and instructed to leave the premises within two hours. (Exhibit 9, Deposition of Camper Doe 6, p. 142-144) Because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college.

In 2007, The Citadel received yet another report of abuse regarding ReVille—this time involving multiple children. Specifically, on April 23, 2007, the father of a former camper called President John W. Rosa and reported that his son had been sexually abused while attending The Camp in 2002. The call was forwarded to The Citadel's General Counsel, Mark Brandenburg who followed up with the former camper ("Camper Doe" or "Doe") that evening. The allegations of the complaint reported to The Citadel were memorialized in a letter from Mark Brandenburg to The Citadel's insurance carrier, the Internal Reserve Fund ("IRF"), and copied to President Rosa. The letter, dated May 16, 2007, stated:

> Both allege that during one summer, [Doe] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [Doe] alleges the

> counselor watched the movies and masturbated as well. Importantly, however, [Doe] specifically said that the counselor never touched him or the other camper. [Doe] does allege that the counselor *engaged in this activity frequently, though, and with many other campers.*

The letter further noted that Doe's father "wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (Exhibit 10, May 16, 2007 Letter to IRF).

Thereafter, Brandenburg was dispatched to Dallas, Texas on July 1, 2007, to take the former camper's statement. The statement was transcribed by a court reporter and revealed the following:

i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights, ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.

ii. On one occasion, ReVille invited the 2002 Camper and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When the camper refused, ReVille "got a little aggressive" and asked the boy to come back to the computer and join him, which he did.

iii. ReVille also insisted that the 2002 Camper and the other camper spend the night with him in his room. When the 2002 Camper tried to leave, ReVille coerced him into staying and masturbating in front of him.

iv. ReVille abused the other camper who accompanied the 2002 Camper to ReVille's dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.

v. Furthermore, the 2002 Camper personally observed younger boys going into ReVille's room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: "I know there are about five other kids that experienced it a few times."

(See Exhibit 11, July 1, 2007 Statement at 73-75, 80-81, 83). When asked by Brandenburg whether "there [was] anything [he] want[ed] the Citadel to do as a result of this," Doe expressed

his foremost desire to put an end to the abuse, stating: "Most of all, the thing I want the most is just to make sure that [ReVille] doesn't have a chance to do this to anyone else." (Exhibit 11, July 1, 2007 Statement, p. 109).

In an email to the IRF, dated August 8, 2007, Brandenburg summarized his findings from the interview, stating, "In short. . . I found [the 2002 Camper] to be believable." (Exhibit 12, Aug. 8, 2007 Email to IRF). In this same email, Mr. Brandenburg called attention to ReVille's emphatic denial of the allegations, and even likened his statements to similar comments made by Arpaio during the 2002 sexual abuse investigation. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Citadel Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or other authorities as mandated by clearly established campus policies and procedures as well as statutory and common law.

Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children, including victims presently residing on The Citadel campus enrolled as cadets. (Exhibit 11, July 1, 2007 Statement, p. 105). These allegations were sufficient to trigger the duties set forth under the Citadel's policies and procedures regarding reporting to law enforcement as well as the duties to report set forth under state and federal law, including, S.C. Code Ann. § 59-154-10, ("The Jessica Horton Act"); S.C. Code Ann. § 63-7-310, ("Mandatory Reporting Act"); 20 U.S.C. § 1092(f), ("Clery Act"); 20 U.S.C. § 1681, ("Title IX"). However, after undertaking the duty to investigate Doe's allegations, Brandenburg and The Citadel took no further action regarding the matter.

Not long after Doe's statement, ReVille obtained employment as a coach and tennis instructor in Mt. Pleasant through which he was provided access to other minor victims, including Mother Doe A's son. In late 2007, ReVille began grooming Mother Doe A's child for what would progress into sexual abuse and molestation which occurred on multiple separate occasions throughout the duration of 2008. As with Mother Doe A's child, Plaintiff John Doe A also suffered similar abuses by ReVille after 2007.

Pursuant to The Citadel's policies and procedures, the sexual abuse and molestation suffered by Doe and Camper Doe 6, who were minors under the age of 18 when the abuse occurred, constitutes sexual assault, sexual harassment, immoral conduct, illegal activity, unlawful sexual behavior, contact which is not mutually agreed upon, sexual misconduct, and prohibited sexual activity. These same policies mandate prompt actions such as reporting of the conduct to Citadel Public Safety or law enforcement, as well as termination where, as here, the conduct involves an employee. (Exhibit 13, Sexual Assault Crisis Intervention Policy; Exhibit 14, Sexual Harassment Policy; Exhibit 15, Serious Incidents Policy; Exhibit 16, Camp Policies Regarding Sexual Misconduct Issues; Exhibit 17, Counselor Code of Conduct; Exhibit 18, College Regulations).

Despite The Citadel's duties and obligations pursuant to these policies and procedures, however, the Citadel concealed its knowledge of ReVille's child sexual abuse until October of 2011, when ReVille was finally arrested on charges of molestation and sexual abuse of twenty-three boys, including Doe, Camper Doe 6, Mother Doe A's child and John Doe.

Complaints in the instant matter were timely filed by Mother Doe A, Camper Doe 6 and John Doe on December 14, 2011, September 9, 2013, and August 13, 2013, alleging common claims of gross negligence and outrage. Defendant filed motions for summary judgment in the

related cases of John Doe Camper, John Doe 2 and Mother Doe 2 on March 6, 2014. As noted, given the common issues of law and fact underlying these consolidated matters, Plaintiffs Mother Doe A, Camper Doe 6 and John Doe oppose Defendant's motions on the grounds stated herein.

STANDARD OF REVIEW

Summary judgment is a drastic remedy which should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). As such, summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Madison ex rel. Bryant, at 134, 638 S.E.2d at 655. Summary judgment should be denied if more than one inference can be drawn from the evidence. Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)).

LAW/ANALYSIS

Defendant submits The Citadel is entitled to summary judgment on several critical disputed issues—namely, the existence of a duty of care and the number of "occurrences" under the SCTCA. These issues, being mixed questions of law and fact, are not appropriately resolved at summary judgment. See e.g. Miller, 329 S.C. at 314, 494 S.E.2d at 815 (noting that where there are factual issues regarding whether the law imposes a duty, the existence of a duty

becomes a mixed question of law and fact to be resolved by the fact-finder); Hurd v. Williamsburg County, 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005) ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."). Moreover, Plaintiffs need only submit a mere scintilla of evidence to withstand Defendant's motion. Indeed, the evidence supporting plaintiffs as to the existence of a duty of care and the presence of multiple occurrences far exceeds this burden.

In particular, as set forth herein, Citadel witness and expert testimony reveals that not only did The Citadel have a statutory duty to take action in response to numerous reports regarding ReVille's child sexual abuse, but The Citadel voluntarily undertook various duties of care pursuant to its policies and procedures, and the failure to take the appropriate action required by these policies in 2001, 2002, 2003, 2005 and 2007 created the danger for the Plaintiffs. Citadel witnesses and experts have likewise admitted that The Citadel had a special relationship with ReVille and that Citadel officials, employees and/or agents were more than acutely aware of a specific threat of harm to Plaintiffs by ReVille.

Furthermore, within the repeated failures and neglect of duty by The Citadel through the acts of President Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott and others, the evidence reveals at least thirty-three separate and distinct occurrences of gross negligence beginning in 2001 and ending in 2011. Such evidence established by The Citadel's own witnesses and experts surely meets (and far exceeds) the mere scintilla burden of proof.

As to the statute of limitations, The Citadel's motion inappropriately attempts to supplant the specific statute of limitations governing the instant matters—*i.e.*, the sexual abuse statute of

limitations contained in S.C. Code Ann. § 15-3-555, which extends the limitation period for actions arising out of child sexual abuse to six years after the victim reaches age twenty-one—with the general two year statute of limitations provided by the South Carolina Tort Claims Act. Such a position ignores the plain language of the controlling statute and the well-settled rule of statutory interpretation that where two statutes are in conflict, the more recent and specific statute will prevail. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

As addressed in turn below, The Citadel is not entitled to summary judgment on these critical disputed issues because there are genuine issues of material fact requiring further inquiry to clarify application of the law. See Grooms v. Malboro County School Dist., 414 S.E.2d 802, 803 (Ct. App. 1992) ("Summary judgment should not be granted except where it is perfectly clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law.").

A. SUMMARY JUDGMENT ON THE ISSUE OF DUTY IS IMPROPER.

Defendant's motion asks this Court to resolve a factual dispute as to whether The Citadel, after failing to take action in response to numerous complaints about ReVille from 2001-2011, had a duty to protect the Plaintiff victims from ReVille. The evidence reveals such a duty existed. An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Jensen v. Anderson County Dept. of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991); Miller v. City of Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994). While there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger, South Carolina recognizes the following five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer;

3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002)). As detailed herein, the evidence, including Citadel witness and expert testimony, reveals four of the above five exceptions apply in the instant matter so as to create such a duty on the part of The Citadel.

a. Doe v. Marion is inapplicable to the instant matter.

In maintaining Defendant owed no common law or statutory duty of care to Plaintiffs, The Citadel incorrectly relies on Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007), as the governing law in this case. Absent the common theme of sexual abuse, Marion is entirely inapposite. Specifically, at issue in Marion was whether the Child Abuse Reporting Statute (presently S.C. Code § 63-7-310) created either a private cause of action for *negligence per se* or a common law duty to warn where a doctor who treated a pedophile patient failed to warn future victims of the patient's predilection for child sexual abuse. Here, Plaintiffs do not assert a private cause of action under § 63-7-310, or that § 63-7-310 created a duty of care. Rather, Plaintiffs actions are rooted in the Citadel's negligence in creating the harm for Plaintiffs through numerous acts of gross negligence, including the failure to report or warn.

The Citadel's reliance on Marion likewise overlooks the relevant exceptions to the rule that there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger. Only one of these exceptions was addressed in Marion; the instant case involves at least four. Indeed, Marion, which cited these exceptions with favor, did **not** overturn the well-established duties provided by these exceptions—exceptions which, when applied to the facts herein, support the reasonable inference that The Citadel, unlike Dr. Marion, owed a duty of care to Plaintiffs. Id., at 249 (citing the recognized exceptions set forth in Faile v.

S.C. Dept. of Juvenile Justice, 566 S.E.2d 536, 546 (2002)). Accordingly, Doe v. Marion is not controlling.

b. The Citadel had a duty to control the conduct of another or to warn Plaintiffs under the exception for voluntarily undertaking a duty.

While The Citadel maintains it had no duty to warn or to control the conduct of ReVille, a review of Citadel policies and procedures, as well as the various services undertaken by The Citadel, reveals otherwise. "[I]t has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care." Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136-37, 638 S.E.2d 650, 656-57 (2006) (citing Sherer v. James, 290 S.C. 404, 406, 351 S.E.2d 148, 150 (1986); Roundtree Villas Assn. v. 4701 Kings Corp., 282 S.C. 415, 423, 321 S.E.2d 46, 50-51 (1984); Miller v. City of Camden, 317 S.C. 28, 33-34, 451 S.E.2d 401, 404 (Ct. App. 1994)). "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." Id. (quoting Restatement (Second) of Torts § 323 (1965)).

Although a volunteer assumes the duty to use due care, the question whether a duty of care arises in a given case may depend on the existence of particular facts. Miller v. City of Camden, 329 S.C. 310, 314-15, 494 S.E.2d 813, 815-16 (1997) (citing Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997)). Evidence, such as prior conduct or internal memoranda, could serve as evidence of a voluntary undertaking. Id. (citing Vaughan v. Town of Lyman, 370 S.C. 436,

635 S.E.2d 631, 637–38 (2006) (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes; there were town ordinances regulating sidewalks; town was aware of complaints about the sidewalks and did not report these to any other authority; and the town had previously handled complaints about sidewalks); Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110, 116 (Ct. App. 2007) (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks was used by a court as evidence to assess whether there was a voluntary undertaking)). "Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder. Id. Here, the evidence leads to the reasonable inference that The Citadel voluntarily undertook the duty to report, to investigate and to protect Plaintiffs from harm.

i. Duty Voluntarily Undertaken by Adoption of Citadel Policies.

The evidence revealed in discovery establishes The Citadel undertook various duties pursuant to its policies and procedures, including, the duty to report ReVille to law enforcement. Citadel expert Anne Franke testified that an institution can self-impose mandatory reporter duties by undertaking policies obligating certain officials to report. (Exhibit 19, Deposition of Anne Franke, Vol. I, p. 176:6-18). Thus, by adopting policies for the protection and well-being of prospective and foreseeable victims, the Citadel acquired a duty under state common law to provide Plaintiffs with adequate protection against that danger. See e.g. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 202, 109 S. Ct. 998, 1006, 103 L. Ed. 2d 249 (1989) (observing that by voluntarily undertaking to provide petitioner with protection against a danger it played no part in creating, the state may have acquired a duty under state tort

law to provide petitioner with adequate protection against that danger). Here, The Citadel acquired such a duty through its policies aimed at preventing harm and imposing reporter duties.

In particular, The Citadel's "Serious Incidents Memorandum," dated April 2000, defines "serious incident" as "unexpected occurrences directly or indirectly involving The Citadel, which require a response or action from the college administration; or which have the potential to generate positive or negative publicity regarding the college." (Exhibit 15, Serious Incidents Memo, p. 1). Among the non-exclusive list of examples of serious incidents are "allegations concerning illegal or immoral activities at the college." (Exhibit 15, p. 12). The policy directs that when an individual is in receipt of allegations concerning illegal or immoral activities at the college, they are required to notify the Executive Assistant to the President, *i.e.* Colonel Trez, who is, in turn, required to alert the President and, if criminal activity is alleged, to contact the Department of Public Safety. (Exhibit 15, p. 12). Further, if criminal activity involving someone affiliated with the Citadel occurs, as in the instant case, the "first member of the Citadel community learning of the occurrence" is required to report it to the Citadel Public Safety Department. Mark Brandenburg has testified that if the Serious Incidents policy was in effect--which it was--it applied to him. (Exhibit 20, Brandenburg Deposition, p. 261:5-11). Brandenburg also acknowledged that per the policy, Col. Trez was required to report allegations of illegal or immoral activities involving ReVille to the Citadel Department of Public Safety. (Exhibit 20, Brandenburg Deposition, p. 264:5-17). However, no report to the Citadel Public Safety was ever made.

In addition, The Citadel self-imposed a duty to report pursuant to its "Summer Camp Policies Regarding Sexual Misconduct Issues." This policy unambiguously requires that, "[r]egardless of validity of the violation, any sexually inappropriate conduct reports concerning

any camper or employee of the camp will be turned over to the Citadel Public Safety Department and a thorough investigation will be conducted." (Exhibit 16, Camp Policies Regarding Sexual Misconduct Issues). The policy likewise makes clear that "[t]here are no time period restrictions regarding sexual misconduct investigations," stating, "[a]ll sexual misconduct allegations disclosed *at any time* concerning *any individual(s)*, currently or *formerly*, associated with the camp, will be investigated upon disclosure." Despite the duty imposed by this policy, no member of The Citadel administration reported the child sexual abuse complaint by Doe to the Citadel Public Safety Department.

In addition to self-imposing the duty to report to law enforcement, The Citadel had disseminated policies against sex discrimination and harassment that obligated Citadel officials, employees and/or agents to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator. (Exhibit 21, Memorandum Number 4, August 15, 2005; Exhibit 22, Memorandum Number 51, June 30, 2000 at p. 13; Exhibit 23, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). The sexual assault policy also provides that "The Citadel will punish any individual who is found to have committed a sexual assault." Brandenburg admitted that the 2007 complaint against ReVille constituted a sexual assault. (Exhibit 20, Brandenburg Deposition, p. 265-266). However, he does not recall ever considering contacting The Citadel's sexual response coordinator. (Exhibit 20, Brandenburg Deposition, p. 267:5-8).

The Citadel also undertook various duties pursuant to its Employee Misconduct Policy, which include: 1) not expunging molestation findings from the employee's record; 2) not terminating any investigation in exchange for resignation by the employee; 3) providing factual and candid responses to inquiries by potential employers; and 4) fully cooperating with law

enforcement. (Exhibit 24, In the Event of Employee Misconduct Policy). The Citadel failed to impose any of these requirements with regard to ReVille. In fact, The Citadel's actions in instructing ReVille to lay low and to leave Citadel employment with no record of the sexual abuse report were in direct violation of this policy.

The evidence reveals that by virtue of adopting policies and procedures, The Citadel undertook a duty to report ReVille to law enforcement and to warn plaintiffs, the community, and potential employers of ReVille's dangerous propensities and known acts of abuse. See Miller, 329 S.C. at 314-15, 494 S.E.2d at 815-16 (stating "[e]vidence such as . . . internal memoranda, could serve as evidence of a voluntary undertaking."). Despite the duties undertaken pursuant to the above policies in effect, The Citadel ensured that none were followed, and that the child sexual abuse was instead concealed. In other words, by its very own policies and procedures, The Citadel failed to exercise due care. See Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

i. Duty Voluntarily Undertaken by Investigation.

Citadel witness and expert testimony confirms there was a duty by The Citadel to protect foreseeable victims, such as the Plaintiffs, by undertaking an investigation into the 2007 report of sexual abuse. Brandenburg admitted that "preventing harm to other young boys or victims" was a goal of the investigation. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 31:4-7). He further agreed that "by undertaking the investigation . . . The Citadel was aiming to prevent harm to potential victims." (Exhibit 20, Brandenburg Deposition, Vol. I, p. 31:8-11). Similarly, Brandenburg testified that The Citadel's core values apply to him and that the moral sense of duty and obligation of responsibility for the welfare of others would apply to his investigation of

an alleged sexual offense. (Exhibit 20, Brandenburg Deposition, Vol. II, p. 259, lines 11-19); Exhibit 18, College Regulations, defining "Duty" as "individual accountability and moral *obligation of responsibility for the welfare of others.*"). By voluntarily undertaking an investigation guided by the "moral obligation of responsibility for the welfare of others" and with the goal of "preventing harm to other young boys or victims," The Citadel owed a common law duty of care to Plaintiffs.

Having undertaken the investigation (the *only* investigation conducted in 2007), The Citadel was obligated to act with due care. It did not. In fact, by its own policies and procedures, The Citadel failed to exercise due care. Indeed, if The Citadel had conducted an impartial investigation and not one led by its General Counsel as part of an attempt to conceal ReVille's sexual abuse, The Citadel would have taken action in accordance with, rather than in opposition to, its own policies and procedures and state and federal law requiring reporting to law enforcement, child protective services and the school's Title IX coordinator. Instead, The Citadel neglected to follow these well-established policies and intentionally concealed the matter from law enforcement, the Citadel community, the Board of Visitors and the public at large. The Citadel's deviation from its own policies and procedures demonstrates its lack of due care under the relevant circumstances. See Peterson v. National Railroad Passenger Corporation, CSX, and Southco Sweeping and Maintenance, Co., 618 S.E.2d 903, 906 (2005) (holding company's deviation from internal maintenance policies admissible to show breach of duty owed); Madison ex rel. Bryant, 371 S.C. at 140, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

In sum, The Citadel undertook the duty to report ReVille to law enforcement; to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator; to punish any individual

who is found to have committed a sexual assault; to not expunge molestation findings from the employee's record; to not terminate an investigation in exchange for resignation by the employee; to provide factual and candid responses to inquiries by potential employers; to fully cooperate with law enforcement; and to prevent harm to future victims by undertaking an investigation. By voluntarily undertaking these duties, The Citadel owed a duty to Plaintiffs to use reasonable care to protect them from the risk of harm created thereby. Whether The Citadel exercised such care is a question of fact for the jury.

c. The Citadel had a duty of care under the special relationship exception based on The Citadel's relationship with ReVille.

The evidence establishes The Citadel had a special relationship with ReVille while he was a Citadel cadet, Citadel employee, alumnus using campus facilities, invited guest speaker and prospective job applicant. This special relationship existed at the time the April 23, 2007 report was made and continued until ReVille was arrested in 2011. Through this special relationship, The Citadel had a duty to control ReVille's conduct so as to prevent the threat of future harm to Plaintiffs. The Citadel's failure to monitor and control ReVille's conduct while he was a Citadel employee is a proximate cause of the Plaintiffs' injuries.

A common law duty to warn potential victims of an individual's dangerous conduct arises under the special relationship exception where, as here, the defendant "has the ability to monitor, supervise and control an individual's conduct" and the defendant is aware of a specific threat of harm to potential victims by the individual. Bishop v. S. Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). A duty to warn under this exception does not require the threat to be made while under the control of or in the custody of the defendant;

instead, all that is required is that the defendant was aware or should have been aware of the specific threat by the individual. Id. at 88, 502 S.E.2d at 82.

At all times relevant herein, The Citadel was aware of a specific threat by ReVille and had the ability to monitor, supervise and control ReVille. Turning first to the existence of a special relationship, testimony from Citadel General Counsel, Mark Brandenburg indicates ReVille was on campus working in the writing center on April 24, 2007, when Brandenburg contacted ReVille to alert him of the allegations. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 44:10-22; p. 131:10-12, 132:4-8). In fact, the call to the writing center turned into a face to face meeting with Brandenburg and Colonel Trez in Bond Hall, where ReVille was instructed to "lay low and stay off campus" while Brandenburg and Trez conduct their own investigation into the sexual abuse report. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 98:20-99:4, 101:4-102:14; 130:24-131:12; Exhibit 25, ReVille Affidavit, May 21, 2013). Directing ReVille to lay low and stay off campus not only confirms that ReVille had unfettered access to campus but further demonstrates The Citadel's ability to "supervise, monitor and control" ReVille's conduct.

As further evidence of ReVille's relationship with The Citadel, ReVille's application to the South Carolina Employment Security Commission, Unemployment Insurance Division, notes his "last day worked for the school was 04/30/07." (Exhibit 26, ReVille Unemployment Application, dated 6/7/07, p. 19). ReVille's 2008 job application for a position as a coach in Mt. Pleasant similarly references his employment with The Citadel as extending to May 2007. (Exhibit 27, Velocity Sports Application, p. 2). ReVille also had a Citadel email address on April 23, 2007, that he continued to maintain until at least June 2007. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 45:14-18).

What's more, ReVille continued to have access to the campus after May 2007 by returning to campus numerous times to speak to the Honor Committee, to incoming freshman, and in 2010 at the unveiling of the remodeled Honor Court. (Exhibit 25, ReVille Affidavit, May 21, 2013, p. 3). Given ReVille's demonstrated access to and affiliation with the institution, President Rosa and Colonel Trez further admit that ReVille had a "different relationship" with The Citadel than the ordinary graduate. (Exhibit 28, Trez Deposition, Vol. I, p. 81:2-82:6; Exhibit 29, Rosa Deposition, Vol. II, p. 230:10-14;). Thus, while The Citadel contends ReVille was no longer affiliated with the college after April 20, 2007, the evidence suggests otherwise.

As to knowledge by The Citadel of a specific threat of harm to victims, The Citadel, including President Rosa and Colonel Trez, was well aware in 2007 that a child molester is a threat to the community at large:

> Q: Is a child sexual predator an ongoing threat to the community at large?
>
> A: It could—yes.

(Exhibit 28, Trez Deposition, Vol. I, p. 54:23-25).

> Q: . . . Skip ReVille is on campus, the next day when he tries to find ReVille, he's on The Citadel Campus, wouldn't you agree that if that person who has been accused of being a pedophile is on The Citadel campus, that that's a current threat to not only The Citadel, but the public at large?
>
> A: Possibly . . .

(Exhibit 29, Rosa Deposition, Vol. I, July 29, 2013, p. 168:10-16). Notably,

Despite this knowledge, Citadel officials and employees designated the matter "close hold", intentionally concealing Doe's 2007 report of sexual abuse from law enforcement, the Board of Visitors, the Citadel community, and the public at large. (Exhibit 30, Deposition of Jennifer Shiel, January 21, 2014, p. 36:9-20). The Citadel's concealment of the sexual abuse by

ReVille enabled ReVille to continue his abusive acts on unwitting boys in the community, including the Plaintiffs. Likewise, The Citadel's concealment of its knowledge of ReVille as a child molester, which included alerting ReVille to the allegations, directing him to "lay low" and permitting him to leave The Citadel with no record of the 2007 complaint, created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys. Indeed, as conceded by The Citadel's own expert, allowing a sexual molester to leave campus means that he is a threat to minors wherever he goes off campus. (Exhibit 7, Margolis Deposition, Vol. I, p. 20:6-11). By unleashing a known sexual predator onto the community, there can be no dispute that The Citadel was well aware of a specific threat of harm to Plaintiffs by ReVille.

Furthermore, Citadel witnesses admit that The Citadel's duty to protect extends beyond the walls of The Citadel to include the surrounding community and the State of South Carolina, including the Plaintiffs:

Q: . . . its reach goes beyond the gray walls of The Citadel?
A: Yes, it does.
Q: To the people in Mt. Pleasant?
A: Yes.
Q: To the people in Columbia. Everywhere in the state of South Carolina. Correct?
A: Right.
Q: The duty, honor, loyalty of The Citadel doesn't stop at the gate.
A: No.

(Exhibit 31, Deposition of Christine Fudge, Oct. 10, 2013, p. 19:19-20:4). The overwhelming evidence, therefore, establishes a special relationship and knowledge by The Citadel of a specific threat of harm to Plaintiffs so as to create a duty of care.

The imposition of a duty on the part of The Citadel based upon a special relationship in this case is likewise consistent with South Carolina jurisprudence. In Bishop, the South Carolina Supreme Court, quoting Tarasoff v. Regents of University of California, 17 Cal.3d 425, 131

Cal.Rptr. 14, 551 P.2d 334 (1976), determined the Department had a special relationship with mother because the Department had custody and control of mother. Thus, the court determined if the Department knew or should have known a specific threat was made by mother, the Department had a duty to warn the threatened third party of mother's release. Notably, as to the Department's knowledge of a specific threat of harm, the court stated:

> Although the Department's discharge summary stated mother related to the examiners she had no intention of hurting herself or her family and *mother did not make a specific threat of harm to her child while in the Department's custody*, the Department was *aware mother had made specific threats to harm victim in the past.* These threats were noted on the documents admitting mother into the custody of the Department. This knowledge was sufficient to trigger the Department's duty to warn victim of mother's release because a specific threat had been made by mother to harm a specific person.

Bishop, 331 S.C. at 88, 502 S.E.2d at 82 (emphasis added). Therefore, to trigger the duty to warn, the court found it sufficient that the Department merely had knowledge that mother had made specific threats *in the past.* In fact, the opinion notes that "mother did not make a specific threat of harm to her child while in the Department's custody." Id. Consequently, the court found the Department breached its duty to warn of mother's release.

The control and knowledge of the Department in Bishop is not unlike that of The Citadel, which demonstrated control over ReVille and awareness of specific acts of abuse against multiple boys in the past. In fact, given the foreseeability of future like conduct, as acknowledged by The Citadel's own witnesses and experts, the threat of harm was arguably even more apparent in the instant case. Here, as in Bishop, The Citadel's knowledge of the threat of harm posed by ReVille is sufficient to trigger The Citadel's duty to warn and/or report ReVille to law enforcement.

d. The Citadel had a duty to report and to prevent the threat of harm by sexual abuse under the statutory duty exception pursuant to Title IX, the South

Carolina Mandatory Reporter Statute, the Jessica Horton Act, and the Cleary Act.

In South Carolina, the test for determining when a statute creates a duty of care and supports an action for negligence is (1) whether the statute's essential purpose is to protect from the kind of harm the plaintiff has suffered and (2) whether the plaintiff is a member of the class of persons the statute is intended to protect. Rayfield, 374 S.E.2d at 914 (deriving test from comparison of Clifford v. Southern Railway, 69 S.E. 513 (S.C. 1910) and Hutto v. Southern Railway, 84 S.E. 719 (S.C. 1915)). Accordingly, a statute may create a duty of care of which the violation of constitutes breach in a negligence action, which thereby establishes negligence per se. Rayfield, 374 S.E.2d at 915.

i. Title IX

The evidence set forth herein establishes that The Citadel had a statutory duty under Title IX to eliminate the threat of harm posed to Plaintiffs by ReVille and to prevent its recurrence. The Citadel's conduct in response to the 2007 report of child sexual abuse by ReVille violated this duty. Title IX of the Education Amendments of 1972 [Title IX], codified at 20 U.S.C. §§ 1681 et seq. and Title 34 Code of Federal Regulations Part 106, seeks to eliminate, with certain exceptions, discrimination on the basis of sex in any education program or activity[2] receiving Federal financial assistance. 20 U.S.C. § 1681; 34 C.F.R. § 106.1. Title IX bestows a remedial and affirmative action requirement on institutes of undergraduate higher education to take such remedial action as necessary to overcome the effects of such discrimination. 34 C.F.R. §

[2] Under Title IX, an education program recipient of Federal financial assistance means "any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2(i). "Institutions" include those of higher education as defined by 34 C.F.R. § 106.2(l), (m), (n), and (o), which includes The Citadel as an institute of undergraduate higher education.

106.3(a). Therefore, Title IX's essential purpose to eliminate sex discrimination by definition seeks to protect other individuals from the possibility of sex discrimination. For eliminating known sexual discrimination, whether it be in the form of harassment or abuse, prevents the future sexual abuse of other individuals. Accordingly, the Plaintiff victims are members of the class of persons Title IX is intended to protect.

As early as 2000, the Office of Civil Rights [OCR] provided guidance to schools, including The Citadel, on their obligations under Title IX regarding complaints of sexual discrimination and harassment. (Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties ("OCR 2001 Guidance"), January 2001; see also DCL, April 4, 2011, http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html). The guidance disseminated by the OCR establishes the standards imposed on federal fund recipients, such as The Citadel, for Title IX compliance. For instance, OCR highlighted that the United States Supreme Court in Gebser v. Lago Visa Indep. School Dist., 524 U.S. 274 (1998), expressly affirmed that schools must take remedial action to remedy the effects of the harassment on the victim. (Exhibit 32, OCR 2001 Guidance). Similarly, schools must "disseminate a policy against sex discrimination" and "adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment." (Id.).

The Citadel's own expert, Mr. Margolis, also put forth a presentation highlighting the requirements of Title IX, to include the definition of sexual harassment:

Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol

- An individual also may be unable to give consent due to an intellectual or other disability
- May include rape, sexual assault, sexual battery, and sexual coercion.

(Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 7).

In 2007, as referenced above, The Citadel disseminated policies against sex discrimination and harassment that governed its actions regarding Doe's complaint of ReVille's sexual abuse. (Exhibit 21, Memorandum Number 4; Exhibit 22, Memorandum Number 51; Exhibit 23, General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints). Title IX requires schools to designate at least one employee to coordinate compliance with the regulations implementing Title IX. (Exhibit 32, OCR 2001 Guidance). Despite President Rosa himself bringing in Janet Shealy as the Citadel's Sexual Assault Response Coordinator in 2006, neither he nor any other Citadel administrator referred the ReVille sexual abuse claims to Ms. Shealy. (Exhibit 29, Rosa Deposition, July 29, 2013, p. 29, 83).

Title IX also requires that if the school knows, or even reasonably should know, of sexual harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. (Exhibit 32, OCR 2001 Guidance). Even if the school does not learn of the sexual harassment from the victim but from some other source, the school violates Title IX if it fails to take "immediate and effective corrective action." (OCR 2001 Guidance). Gary Margolis, Defendant's own expert, has acknowledged the importance of the requirement to take immediate action regardless of whether the complaint comes from the victim, a parent, or a third party. (Exhibit 33, Notebook 3 to Margolis Deposition, Margolis Healy PowerPoint, p. 12). The OCR further instructs that "if harassment has occurred, doing nothing is always the wrong response." (Exhibit 32, OCR 2001 Guidance).

Title IX further emphasizes a school's duty to respond promptly to allegations of harassing conduct or possible criminal conduct, noting:

> In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigation are different, police investigations or reports may not be determinative of whether harassment has occurred under Title IX and DO NOT relieve the school of ITS DUTY to respond promptly.

(Exhibit 32, OCR 2001 Guidance) (emphasis added). As emphasized by OCR, the prompt response contemplated by Title IX requires "taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy its effects on the victim." (Exhibit 32, OCR 2001 Guidance; Exhibit 33, Margolis Healy PowerPoint, p. 12). Thus, in addition to taking action to stop the harassment or sexual violence and prevent its recurrence, Title IX recipients, such as The Citadel, are required to provide victim assistance.

The fact-finder in this case will have little to no difficulty determining that The Citadel did nothing to rehabilitate or assist Camper Doe, as is required by Title IX, and instead acted to conceal his complaint of sexual abuse. Moreover, The Citadel took no action in response to Doe's third party complaint of sexual abuse as to the two former campers who were presently residing on campus as Citadel Cadets. In fact, The Citadel entirely ignored the fact that ReVille, who was still on campus on April 24, 2007, may have still been abusing, harassing or otherwise creating a hostile environment for these cadets. Instead, the evidence establishes The Citadel intentionally neglected its Title IX duties in favor of concealing the allegations and its knowledge of ReVille's dangerous propensities. The Citadel's motives were self-serving, and as a former member of President Rosa's staff who lived through this ordeal testified:

> Q. Looking back on the period of time when you were working within the President's office....do you believe that President Rosa was indifferent towards

concerns that he should have been worried about; for example, other victims who may be abused?

Mr. Kovach: Objection.

A. Yeah, I do think he was indifferent to it.

(Exhibit 30, Shiel Deposition, p. 49-50).

The Citadel's failure to abide the duty of care established by Title IX is further evinced in its decision to extend the responsibility for investigating the 2007 complaint to the Citadel's General Counsel. Title IX specifically requires an impartial investigation, and The Citadel's own expert agrees that college attorneys are not impartial parties for purposes of a Title IX investigation. (Exhibit 7, Margolis Deposition, p. 124-125; Exhibit 33, Margolis Healy PowerPoint, p. 19). What's more, the only outside entity permitted by the Citadel to have knowledge of the complaint and the investigative process was its insurer, the South Carolina Insurance Reserve Fund ("IRF"). (Exhibit 20, Brandenburg Deposition, p. 169, 190-191). The Citadel's decision to involve the IRF in the investigation was in direct violation of OCR's caution against using insurance company investigations to guide the school's response to complaints of sexual abuse or harassment, because, as OCR explains, "[t]he purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different than those under Title IX." (Exhibit 32, OCR 2001 Guidance). The Citadel's use of the General Counsel to "investigate" the child sexual abuse and its involvement of the IRF in the investigation directly violates Title IX and the duty of care provided by the OCR and the statutory scheme.

Defendant's own expert even conceded that The Citadel's response to the 2007 complaint violated Title IX:

Q: when Doe made a third-party complaint as to eyewitness Doe and the six others who were abused the year before, The Citadel's duty under Title IX requiring it to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects applied to the many others, not just Doe, correct?

A: Correct.

* * *

Q: You would agree with me that the Title IX coordinator at The Citadel didn't oversee those allegations and the investigation of them by Mark Brandenburg, correct?

A: That is correct.

Q: That would be a violation of Title IX, correct?

A: It would be a violation of this, correct.

(Exhibit 7, Margolis Deposition, Vol. I, 308:8-16; 309:11-20).

In light of the foregoing, The Citadel's actions in response to the 2007 report of child sex abuse violated the duty of care established by Title IX, and its breach of the duty constitutes negligence per se and common law negligence under the statutory duty exception reiterated in Faile and Marion.

ii. South Carolina Mandatory Reporter Statute

While Doe v. Marion declined to find a private right of action under South Carolina's Mandatory Reporter Statute, S.C. Code § 63-7-310(A), for the failure of a physician to report suspected child sexual abuse, the intentional failure of The Citadel to report the 2007 allegations of child sexual abuse created the risk of harm to plaintiffs by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse. See id. 373 S.C. at 398-99, 645 S.E.2d at 249-50. The Citadel Public Safety are mandatory reporters of child abuse pursuant to S.C. Code § 63-7-310(A), and as such, The Citadel assumed a duty to report

Doe's 2007 complaint of child sexual abuse regarding ReVille. Section 63-7-310(A) provides, in relevant part:

> (A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, *police or law enforcement officer*, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA *must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.*
>
> (B) *If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect* if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was *committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.*

S.C. Code Ann. § 63-7-310 (formerly cited as 20-7-510).

A plain reading of the statute reveals that regardless whether The Citadel and its administrators are, by definition, mandatory reporters, "police" and "law enforcement officer[s]" unequivocally are mandatory reporters. This fact is confirmed by the current head of Citadel Public Safety, Colonel William Fletcher, who clarified that Citadel Public Safety are "certified" law enforcement officers. (Exibit 34, Deposition of Fletcher, p. 17:14-18). Therefore, if The Citadel had reported the sexual abuse to Citadel Public Safety, as required by the Serious Incidents policy outlined above, Citadel Public Safety was required to contact the Charleston Police or SLED who would have investigated the matter and arrested ReVille. See S.C. Code §

63-7-410. However, the evidence leads to the reasonable inference that The Citadel deliberately chose not to involve Citadel Public Safety in order to prevent inevitable disclosure by law enforcement of child sex abuse by a Citadel employee on the Citadel campus. Indeed, Chief Fletcher acknowledged that in 2007, he could not have alerted SLED unless the allegation was reported to him. (Exhibit 34, Fletcher Deposition, p. 23:8-17). The intentional failure of The Citadel to report the 2007 complaint of child sexual abuse created the risk of harm to plaintiffs by preventing the mechanisms established by the legislature in enacting § 63-7-310 to prevent child sexual abuse.

iii. Jessica Horton Act

The Jessica Horton Act, S.C. Code Ann. § 59-154-10, effective June 6, 2007, requires notification to SLED by campus police of "a report alleging that an act of criminal sexual conduct has occurred on the property of the institution." In particular, the Act provides:

> (B) The chief of the campus police of an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division if there is a death resulting from an incident occurring on the property of the institution or if the officer *or another official of the institution* is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution.
>
> (C) Upon notification, the State Law Enforcement Division shall participate in a joint investigation of the death or alleged act of criminal sexual conduct. In the case of a death, the State Law Enforcement Division shall lead the investigation. In the case of an alleged act of criminal sexual conduct, the campus police shall lead the investigation.

S.C. Code Ann. § 59-154-10.

Here, Brandenburg specifically testified that the Horton Act applied to Doe's report and that he, along with President Rosa and Colonel Trez, is an "official of the institution" for purposes of the Act. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 180-181). Brandenburg

likewise conceded that the allegations reported by Doe alleged criminal sexual conduct. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 184-185, agreeing Horton Act applied to July 1, 2007 statement). Thus, the Horton Act, which was in effect after Doe's July 1, 2007 statement containing additional allegations and identification of victims, imposed a duty on The Citadel to notify SLED and to participate in a joint investigation. This action was not taken.

Furthermore, Chief Fletcher testified that he would have notified SLED pursuant to the Horton Act if he had been informed of the 2007 report. (Exhibit 34, Fletcher Deposition, p. 18-19). As noted, however, the evidence leads to the reasonable inference that The Citadel deliberately chose not to inform Citadel Public Safety in order to prevent disclosure to law enforcement. As above, the intentional failure of The Citadel to inform Citadel Public Safety of the 2007 complaint created the risk of harm to plaintiffs by preventing the mechanisms established by the legislature in enacting § 59-154-10 to prevent sexual abuse.

iv. Clery Act

Additional evidence of The Citadel's intentional concealment of the 2007 child sex abuse complaint is its failure to include the complaint in The Citadel's report of crime statistics for the 2007 time frame, pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (f). The General Counsel's own documents show that he was responsible for The Citadel's reporting obligations under the Clery Act and, accordingly, knew, or should have known, the law. (Exhibit 35, Email from Jennifer Shiel, October 24, 2007, including list of Mr. Brandenburg's files to include Clery Act Report- 2007, p. 11). The Clery Act requires an annual security report that contains crime statistics "for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property" of a list of crimes "that are reported to local police agencies

or to a campus security authority." 34 C.F.R. § 668.46. Sex offenses, forcible and non-forcible are included. Id. 34 C.F.R. § 668.46(c)(2) also requires that "an institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to campus security"—rather than the year crime occurred.

However, The Citadel did not include the child sex abuse complaint in the 2007 report. Nor did it report the 2007 child sex abuse complaint to any law enforcement entity, thereby also preventing the trigger of any duty to report pursuant to the Clery Act. As above, The Citadel's concealment of the 2007 complaint created the risk of harm to plaintiffs by preventing the disclosure of sex offenses and crime statistics in violation of 20 U.S.C. § 1092 (f).

e. The Citadel owed a common law duty to Plaintiffs under the exception for negligently or intentionally creating the risk.

Defendant will maintain that The Citadel is not liable for Plaintiffs' injuries and damages under the statutory exception to the waiver of governmental immunity for "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20). However, any argument as to this exception is unpersuasive. The fact that ReVille, as a third party, sexually abused the Plaintiffs does not affect the common law duty The Citadel owed to Plaintiffs to not negligently or intentionally create the risk that ReVille would commit acts of sexual abuse against them. See Madison ex rel Bryant, 638 S.E.2d at 660 (holding facts that independent contractor directly provided services to plaintiff or that third party committed criminal act against plaintiff did not affect the government's common law duty to plaintiff to exercise reasonable care in supervising and providing appropriate care to plaintiff).

Particularly instructive on the issue of duty of care in this context is Greenville Memorial Auditorium v. Martin, 391 S.E.2d 546, 547 (1990). There, the plaintiff claimed that a public auditorium was negligent in adequately securing and maintaining its premises during a concert where the plaintiff was injured by a bottle thrown by an unknown individual from the auditorium's balcony. The Court held that the exception to the waiver of immunity for a loss resulting from the act or omission of a person other than an employee did not apply, because Martin did not allege the auditorium was liable for the third party's actions. Id.; S.C. Code § 15-78-60(20). Rather, the complaint alleged that the auditorium was liable for its own negligence in creating a reasonably foreseeable risk of such third party conduct. In upholding the jury verdict for the plaintiff, the Supreme Court reasoned:

> [The auditorium] cannot successfully defend that [plaintiff's] injuries were caused by the wrongful criminal act of a third party, where the very basis upon which [the auditorium] is claimed to be negligent is that [it] created a reasonably foreseeable risk of such third party conduct.

Id. at 547-548.

As in Martin, The Citadel is liable for its own negligence in creating a reasonably foreseeable risk of sexual abuse by ReVille. Specifically, The Citadel's deliberate concealment of its knowledge of ReVille as a child molester, which began as early as 2001 and extended until ReVille's arrest in 2011, included repeatedly ignoring known acts of abuse at the Citadel Summer Camp, directing ReVille to "lay low" and permitting ReVille to leave The Citadel with no record of the 2007 complaint or prior abuses, created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys. Additionally, alerting ReVille to the allegations on April 24, 2007, served to create and exacerbate the risk of harm to Plaintiffs by allowing ReVille to revise his tactics so as to better allay suspicions and escape detection.

The evidence also establishes that Citadel leaders, including President Rosa, who had a wealth of experience dealing with sexual harassment and abuse, were well aware that sexual predators continue to abuse and pose a threat to the community. (Exhibit 36, Culture Change at Air Force Academy, October 14, 2003, regarding sexual assault reporting policies implemented by Rosa at the U.S. Air Force Academy; Exhibit 29, Rosa Deposition, Vol. I, p. 168:7-169;13; Exhibit 28, Trez Deposition, p. 54:23-25). The Citadel's own expert further confirms that ReVille had a propensity to abuse victims within a discrete class of society, calling him a preferential child molester, and even opining as to the foreseeability that ReVille would continue molesting boys once he left Citadel campus. (Exhibit 7, Margolis Deposition, p. 19-20; 188).

Thus, The Citadel's own negligence allowed ReVille to remain undetected in the Charleston community as a decorated Citadel alumnus and former employee using his unblemished record at The Citadel to gain continued employment with children. The Citadel's conduct created the reasonably foreseeable risk that the Plaintiff victims would be abused by ReVille. The overwhelming evidence, therefore, establishes that The Citadel is liable for its own conduct in negligently and intentionally concealing a known child sexual predator and in failing to take the required action—actions required by Citadel policy and state and federal law—to report ReVille to law enforcement and put an end to the abuse.

B. SUMMARY JUDGMENT ON THE ISSUE OF A SINGLE OCCURRENCE IS IMPROPER AND PREMATURE.

Another critical factual dispute at issue concerns the determination of the number of "occurrences" of negligence by The Citadel under the South Carolina Tort Claims Act ("SCTCA"). Defendant maintains that the instant matter involves only one single occurrence, limiting Plaintiffs' damages to the $300,000/$600,000 limit of the SCTCA. The Citadel's

position is grossly misguided. Importantly, to the extent the determination of the number of "occurrences" requires a finding of proximate cause, the issue is one of fact not appropriately resolved at summary judgment. See Hurd v. Williamsburg Cnty., 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005) ("Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."); see also Chastain v. AnMed Health Found., 388 S.C. 170, 174, 694 S.E.2d 541, 543-44 (2010) (affirming verdict reduction where jury was not instructed on issue of occurrences and number of occurrences could not be ascertained from jury verdict). Nonetheless, contrary to Defendant's assertion, the evidence set forth herein reveals numerous separate and distinct acts of negligence warranting a finding of multiple occurrences in this case.

a. A finding of multiple occurrences is supported by the SCTCA's statutory scheme and by South Carolina jurisprudence.

The limitations on liability imposed by the SCTCA are found in Section 15-78-120, which provides, in part, that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivision involved." S.C. Code § 15-78-120(a)(1). The SCTCA defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code § 15-78-30(g). That the SCTCA contemplated recovery against a single entity for multiple occurrences is demonstrated in the statute's use of the term "single act of negligence" in defining "occurrence." If the legislature sought to impose a limit based on whether a plaintiff had brought a single claim or had suffered a single injury, it could have employed such language in expressing the limit in § 15-78-120(a)(1)

or in defining "occurrence" in § 15-78-30(g). It did not. Instead, the legislature chose to limit liability in the SCTCA by using the term "occurrence" and by defining that term by focusing on each negligent act from which proximately flowed an unfolding sequence of events giving rise to the claim or action.

South Carolina courts similarly interpret the SCTCA as permitting recovery for multiple occurrences. Specifically, in Boiter v. S. Carolina Dep't of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405 (2011), the South Carolina Supreme Court addressed the issue of occurrences where two separate entities were accused of committing two separate and distinct acts of negligence causing the plaintiff's injury. Relying on the statutory scheme's focus on "wrongful act" as opposed to injury, the Boiter court found multiple occurrences based on two independent acts of negligence. Id. In so finding, the Court specifically rejected respondent's argument equating the number of occurrences with the number of injuries sustained. Id. at 133-34, 712 S.E.2d at 406. Rather, the Boiter court focused on the number of independent and separate acts of negligence. Id. at 134. In other words, as applied in Boiter, the SCTCA dictates a finding of multiple "occurrences" where multiple independent acts of negligence are found to proximately cause an injury. Id.

Also instructive is Williamson v. South Carolina Insurance Reserve Fund, which involved occurrences of negligence as to two different physicians who examined the plaintiff during childbirth and failed to take necessary steps at different times during the delivery to prevent harm to the child. See 355 S.C. 420, 422, 586 S.E.2d 115, 116 (2003). The circuit court found two occurrences had been established for purposes of the SCTCA because the negligent acts of each doctor were entirely independent and not the result of the other doctor. See id. at 423, 586 S.E.2d at 116. Although the Supreme Court declined to address the issue of

occurrences on appeal, the circuit court's holding is nonetheless instructive. Cases in other jurisdictions similarly find multiple occurrences by a single government entity. See Brooks v. Memphis & Shelby County Hosp. Auth., 717 S.W.2d 292 (Tenn. App. 1986) (finding two occurrences when one employee negligently failed to prevent patient from falling off a stretcher and a second employee negligently administered an overdose of medication, resulting in patient's death).

Here, as in Boiter, this is a case of multiple occurrences. In particular, Plaintiffs have alleged, and Citadel witnesses and experts have admitted, multiple separate acts of negligence resulting in Plaintiffs' injuries. Notably, The Citadel's independent acts of gross negligence span a period of ten years beginning in 2001 and extending all the way to 2011. Throughout this period, the evidence revealed in discovery has established numerous independent acts of negligence by numerous employees, agents, and officials of The Citadel, including General Rosa, Mark Brandenburg, Colonel Trez, Colonel Lackey, Major Bates, Jennifer Garrott, and the Board of Visitors. These Citadel officials, employees, and/or agents engaged in reckless and wrongful neglect of their duties and of Citadel policies and procedures as well as state and federal law and failed, on hundreds of occasions between 2001 and 2011 to make any report to law enforcement, Citadel Public Safety, The Citadel Title IX Coordinator, child protective services, or to employers about ReVille. As discussed below, these actions did not combine to form one single occurrence of negligence. Rather, the separate and distinct acts of negligence by The Citadel and its officials, employees and/or agents from 2001 to 2011, as in Boiter, constituted separate occurrences of negligence as contemplated by the SCTCA.

b. The evidence establishes multiple separate "occurrences" of negligence by The Citadel, entitling Plaintiffs to recovery of the limit of liability for each separate occurrence.

The evidence reveals that in 2001, 2002, 2003, 2005 and 2007, The Citadel had numerous opportunities to put an end to ReVille's abuse by reporting him to law enforcement. It neglected this opportunity on countless occasions, each resulting in a separate occurrence of negligence. Specifically, as early as August 6, 2001, The Citadel was in receipt of a letter from Sergeant Middleton of the Charleston Police Department which highlighted several concerning practices occurring at The Camp, including that "[s]ome of the counselors are allowing certain campers to leave their rooms . . . to go into camp counselor's room[s], watch movies, and fall asleep in the same bed with counselors until the following morning." (Exhibit 37, Middleton Letter, August 6, 2001). The letter also noted that "[s]ome of the counselors engage in sexual conversation in the presence of the campers." (Exhibit 36). Notably, upon receipt of this letter, The Citadel took no action whatsoever. Indeed, ReVille has admitted to abusing nearly eight campers during the 2001 Summer Camp. To do so, he lured campers into his room at night with food and movies—the very practice highlighted in Middleton's letter. (Exhibit 38, ReVille Affidavit, Sept. 20, 2013). Had The Citadel taken action in response to Sergeant Middleton's letter, whether by interviewing counselors and campers or by implementing various safety practices such as random and frequent room checks, ReVille's sexual abuse would have been discovered or, in the alternative, ReVille would have stopped having campers in his room for fear of being caught and fired. (Exhibit 38, ReVille Affidavit, Sept. 20, 2013).

Consistent with the lack of response to Sergeant Middleton's letter, The Citadel failed to take any action in response to ReVille's 2001 "Counselor Evaluation" which notes that ReVille was "senior counselor material if learns to *distance himself from campers.*" (Exhibit 4, 2001

Counselor Evaluation). The Citadel's failure to take action in response to red-flags regarding ReVille continued throughout 2002 and 2003 as well.

In 2002, Camp Director Jennifer Garrott walked in on ReVille with a camper alone in his room, a violation of Camp policy warranting termination. (Exhibit 38, ReVille Affidavit, Sept. 20, 2013). Garrott took no action in response ReVille's policy violation, neglecting to even document the offense in ReVille's employment file. In 2003, Director Garrott again walked in on ReVille alone with a minor, Camper Doe 6, and ReVille was rubbing "Icy-Hot" on Doe 6's leg. Garrott took no action and Camper Doe 6 was abused by ReVille shortly thereafter. (Exhibit 38, ReVille Affidavit, Sept. 20, 2013). Also in 2003, Garrott's assistant spoke to ReVille four to five times about having minors alone in his room; however, no further action was taken. Colonel Lackey similarly received a report from a counselor that ReVille was having minors in his room. On none of these occasions was ReVille terminated, nor were the infractions documented in ReVille's file, despite camp policies and procedures requiring such action. (Exhibit 38, ReVille Affidavit, Sept. 20, 2013). Instead, ReVille was permitted to continue serving as The Camp's Senior Counselor entrusted with the responsibility of the safety and well-being of the very boys he was abusing.

In 2005, The Citadel neglected yet another opportunity to put an end to ReVille's abuse when Director Garrott, knowing Camper Doe 6 was about to report ReVille, terminated him instead of receiving the report of sexual abuse Doe 6 was prepared to make. (Exhibit 9, Deposition of Camper Doe 6, p. 142-144). By failing to act in accordance with its policies, duties and accepted professional standards, The Citadel provided ReVille the mechanisms that enabled him to pursue his pedophile activities. (Exhibit 28, Deposition of Col. Trez, Vol. I, p. 154-55, agreeing that The Citadel provided ReVille the mechanisms that enabled him to pursue

his pedophile activities). On each of these separate occasions, The Citadel acted recklessly, negligently and wantonly in failing to perform the duties undertaken by its policies and by accepted professional standards.

As to the April 23, 2007 report of sexual abuse by Camper Doe, The Citadel could have put an end to ReVille's abuse by simply adhering to its own policies and the requirements of state and federal law regarding mandatory reporting of sexual abuse to law enforcement. This simple act would have resulted in an investigation by trained professionals and a conviction. (Exhibit 39, ReVille Guilty Plea, Scarlett Wilson Testimony). ReVille even stated he would have confessed to the multiple acts of sexual abuse if interviewed by law enforcement in 2007. (Exhibit 40, ReVille Affidavit, Sept. 20, 2013). However, The Citadel's negligence does not end there.

The very next day after the report of sexual abuse by Doe, Brandenburg and Colonel Trez met with ReVille on The Citadel campus and alerted him of the allegations. Notice of the allegations not only gave ReVille an opportunity to revise his tactics to remain undetected, it also allowed him to contact two of the victims referenced in Doe's report and urge them to pledge their silence if questioned by Brandenburg. These victims, who happened to be current cadets on The Citadel campus, were former campers abused by ReVille at the Citadel Summer Camp. Notably, Brandenburg neither spoke with nor interviewed these cadet victims. (Exhibit 20, Brandenburg Deposition, Vol. I, p. 139-140, 142, 144).

In addition to alerting ReVille of the allegations, The Citadel engaged in a deliberate attempt to cover-up the matter. Specifically, Jennifer Shiel, Assistant to Mark Brandenburg in 2007, has testified that there was a concerted effort to cover up Doe's report of sexual abuse regarding ReVille from the very beginning. (Exhibit 30, Shiel Deposition, January 21, 2014, pp.

36:9-20; 46:12-20). Her testimony reveals that the cover up was instituted by President Rosa and the matter was labeled "close hold":

> Q. And during the time period from when the report was made until the time that you left the Citadel, having lived through it, do you believe there was a conscious effort to cover up or conceal this report of sexual abuse?
>
> [Mr. Kovach: Objection.]
>
> A. Yes.
>
> Q. And was President Rosa in charge ultimately of making sure that this report was concealed and covered up?
>
> [Mr. Kovach: Objection.]
>
> A. In my opinion, yes.
>
> * * *
>
> Q. Having worked in the President's office during this time period, was there ever any doubt in your mind that President Rosa wanted this report of sexual abuse to be kept under wraps?
>
> [Mr. Kovach: Objection.]
>
> A. No. It was very clear that- the term that was used about it was "close hold." I mean only people that needed to know about it were supposed to know about it. That was it.

(Exhibit 30, Shiel Deposition, p. 46:12-20). The Citadel's negligent acts in effecting a cover-up extends to each independent actor who neglected their duties to report and to warn by colluding in the cover up. These include President Rosa, Mark Brandenburg, Colonel Trez, and others within the chain of command who were aware of the report of sexual abuse and failed to take the necessary action mandated by Citadel policies and by state and federal law.

In furtherance of the cover-up, The Citadel permitted ReVille to leave Citadel employment with no record of the sexual abuse; endorsed ReVille as an educator and coach in the Charleston community; allowed ReVille to continue trading on his reputation at the Citadel

to secure continued employment with children; and allowed ReVille to remain at large preying on and sexually abusing the Plaintiffs and other boys despite the foreseeability of continued child sexual abuse by ReVille. Each of these actions in derogation of The Citadel's duties as a state actor, standing alone, constitute a separate occurrence of negligence giving rise to the abuses suffered by Plaintiffs.

That these numerous separate negligent acts caused the injuries suffered by Plaintiffs is supported by Defendant's own expert witness testimony. In fact, Defendant's expert, Gary Margolis, opined as to the foreseeability that a child sexual predator such as ReVille will continue to abuse children where he works:

> Q. Do you agree with me, Dr. Margolis, that child sexual predators create risk of harm to children in their communities?
>
> A. Yes, sir. I do.
>
> Q. And why?
>
> A. They pose a risk to the health and safety of children.
>
> Q. If a child sexual predator is accused of abusing 11-to-15-year-old boys in the past, in your opinion, is it foreseeable that he will abuse 11-to-15-year- old boys near where he lives and works in the future?
>
> A. Again, based on my law enforcement experience, not any psychological experience as such, I would agree with that, more likely than not, it would.
>
> Q. Would you agree, based on your law enforcement experience and your academic background and education, that if you became aware in 2007 that a man has sexually abused children in 2002 and 2003 at a summer camp where he worked, would you agree that it would be foreseeable that any victims he was to have from 2004 through 2007 and 2007 through 2011 would occur where he worked and spent his time?
>
> A. I would agree that it would predispose me to believe that he would be offending again and would have offended again.

(Exhibit 7, Margolis Deposition, Vol. I., p. 18-19). Mr. Margolis further opined that an individual accused of sexually abusing minors in the past is a current threat to children wherever he goes:

> Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
>
> A. I would agree with you, yes.
>
> Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
>
> A. I would agree that that's a reasonable assumption.

(Exhibit 7, Margolis Deposition, Vol. I., p. 19-20). Margolis likewise admits that another investigator looking at the facts presented could conclude that there was a cover up. He further admits that his investigation **did not** uncover any evidence that Defendant and others at The Citadel **did not** engage in a cover up of ReVille's sexual abuse:

> Q. [C]an you point me to any evidence that The Citadel did not engage in a cover-up to make sure that Skip ReVille's name appeared nowhere with regard to any allegations that Doe had made?
>
> A. In terms of the civil defense sheets that were created?
>
> Q. In terms of anything.
>
> A. I cannot.

(Exhibit 7, Margolis Deposition, Vol. I, p. 109:7-13, 278:17-25, 279:2-3).

In sum, each of the separate and distinct negligent acts and/or omissions of The Citadel outlined herein, standing alone, are a proximate cause of the injuries and losses suffered by Plaintiffs, constituting numerous separate occurrences as contemplated by S.C. Code Ann. §§ 15-78-30(g) and 15-78-120. Furthermore, in addition to the independent acts of gross negligence

above, each day The Citadel actively concealed the known allegations and other knowledge of ReVille's sexual abuse constitutes separate and distinct negligent acts and/or omissions giving rise to hundreds of occurrences as contemplated by S.C. Code § 15-78-120.

Thus, when the SCTCA is applied to the evidence in this case, the following is clear: (1) multiple separate and distinct acts of neglect were committed by The Citadel and its officials, agents and/or employees from 2001-2011; and (2) each of these acts resulted in a separate occurrence--i.e., an "unfolding sequence of events which proximately flow from a *single act* of negligence." S.C. Code § 15-78-120 (emphasis added). Consequently, Plaintiffs' total limit on liability as contemplated by the SCTCA is $300,000/$600,000 multiplied by the number of occurrences.[3] Accordingly, summary judgment on the issue of a single occurrence is not

[3] Plaintiff has identified at least thirty-three separate occurrences of negligence as pleaded in the complaint and proven by the evidence. These include: 1) Failing to close the Summer Camp upon learning of the Arpaio allegations in 2001; 2) Failing to interview all campers after the Arpaio allegations in 2001 to determine whether any campers were abused by any counselors, including ReVille; 3) Failing to take any action in response to Srgt. Middleton's August 6, 2007 letter highlighting concerning practices at The Camp (deposition testimony by Margolis and Shapiro confirm this action should have been taken). 4) Allowing The Camp to operate from 2001 to 2005 without enforcing sufficient supervision and safety measures post-Arpaio to prevent to their best ability abuses by a child sexual predator, including failing to ensure the methods used by Arpaio to carry out his abuse (having minors alone in his room) were not capable of being repeated; 5) Failing to interview all campers after learning that ReVille needed to "distance himself from campers" in 2001 to determine whether ReVille had been inappropriate with them in any manner; 6) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2002 when ReVille was caught alone in his room with a camper contrary to Citadel policy; 7) Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2003 when ReVille was caught alone in his room with Camper Doe 6 rubbing "Icy Hot" on the minor's leg contrary to Citadel policy; 8) Failing to take Camper Doe 6's report in 2005 and failing to take any action to frustrate ReVille's ability to continue abusing children despite knowledge that Camper Doe 6 was abused and was attempting to report ReVille; 9) Failing to report ReVille's 2002 and 2003 abuse after adopting and implementing the Summer Camp Policy Regarding Sexual Misconduct issues, which emphasized the lack of time period restrictions regarding reporting and mandated that all sexual misconduct allegations be reported; 10) Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to Garrott's discovery in 2002 and 2003 of ReVille alone in a room with a minor and failing to ascertain the appropriate action mandated by those policies, including termination, reprimand, internal documentation of the violation and reporting of the abuse to law enforcement; 11) Failing to check ReVille's references at Pinewood Prep prior to hiring ReVille for the 2006-2007 school year as such a call would have revealed the reasons for ReVille's termination—

inappropriate conduct with minors—and such would have been an immediate red flag on April 23, 2007; 12) Failing to immediately report Doe's call on April 23, 2007 to Citadel Public Safety, the Charleston Police or SLED (See Exhibit 41, Deposition of Patricia Kinard, p. 30:9-20; 13) Referring Doe's call on April 23, 2007 to Mark Brandenburg instead of reporting to Colonel Trez and Citadel Public Safety; 14) Failing to report to Colonel Trez, Citadel Public Safety and other law enforcement authorities after Mark Brandenburg spoke with Doe and his father on April 23, 2007; 15) Failing to report Doe's complaint alleging improper and immoral conduct to Citadel Public Safety, pursuant to Citadel policy, after Trez was informed of the allegations; 16) Failing to follow Citadel policies and procedures requiring the disclosure of Doe's complaint of sexual abuse to the Title IX coordinator and/or SARC, who was required to file an anonymous report of the allegations; 17) Establishing a close-hold policy regarding Doe's complaint with the goal of keeping the complaint from leaking outside the chain of command to individuals required to report the allegations to law enforcement and child protective services; 18) Filtering the complaint to a settlement matter with a focus on clocking the statute of limitations; 19) Failing to conduct a thorough and impartial investigation (see Exhibit 42, Addison Deposition, p. 113-115—"I don't know if Brandenburg investigation was gross incompetence or trying to corroborate.....his investigation was pathetically bad."); 20) Meeting with ReVille on April 24, 2007, and alerting him to the allegations prior to law enforcement involvement; 21) Advising ReVille to "lay low;" 22) Failing to contact Pinewood Prep after learning from Jenni Garrot that "Skip was asked to leave Pinewood Prep" and that the reason for his termination was likely inappropriate conduct with children (see Brandenburg notes and Exhibit 20, Brandenburg Deposition, p. 115:3-9, "...she looked at me like, oh goodness, could this be another Arpaio case? Which, of course, is exactly what we were worried about."); 23) Failing to report to Colonel Trez and Citadel Public Safety the abuse of eyewitness Doe or the other campers referenced in Doe's report after learning, between April 23, 2007 and May 1, 2007, that the eyewitness and others who were abused were cadets on the Citadel campus in 2007; 24) Failing to take appropriate action to investigate the allegations against eyewitness Doe and the many others by neglecting to take any action other than sending an email to these victims (See Exhibit 20, Brandenburg Deposition at 151-152); 25) Failing to immediately report the allegations to public safety when Rosa received the May 16, 2007 letter informing him of the abuse and the existence of many other victims or, in the alternative, failing to exercise slight care in carrying out his official duties by neglecting to read his mail; 26) During the May 2007 Board of Visitors meeting, each board member was grossly negligent in failing to ask a single question about the allegations, Brandenburg was negligent in not informing the Board of the details of Doe's report, and President Rosa was negligent in failing to correct Brandenburg to ensure the Board was aware of all allegations including the allegations implicating many other victims; 27) Failing to report to law enforcement or take any action with regard to eyewitness Doe and other involved campers after taking Doe's July 1, 2007 statement containing new information identifying these victims by name and photograph; 28) Failing to document and update ReVille's personnel file with Doe's allegations as to Doe, eyewitness Doe and the many others; 29) Failing to inform employers who were conducting background checks or reference checks on ReVille; 30) Failing to investigate whether ReVille was working around children after 2007; 31)Defendant Garrott was grossly negligent and deliberately indifferent to ReVille's abuse in failing to inform Brandenburg during or after their meeting on April 24, 2007, of ReVille's inappropriate acts and sexual misconduct in 2001, 2002 and 2003 and in failing to inform him of Camper Doe 6's attempt to report in 2005, or in the alternative, Garrott did inform Brandenburg about the 2001, 2002, 2003 and 2005 incidents, and he ignored or concealed the information; 32) Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to the April 23, 2007 report and the July 1, 2007 statement as to Doe, eyewitness Doe and the many others, and failing to ascertain the appropriate action mandated by those policies, including internal documentation of the abuse and reporting of the abuse to law

supported by the evidence and is inconsistent with South Carolina jurisprudence as applied in the context of this case. Moreover, the determination of the number of occurrences is a question of fact.

C. THE SPECIFIC SEXUAL ABUSE STATUTE OF LIMITATIONS OF § 15-3-555 GOVERNS THESE ACTIONS SO AS TO RENDER ALL CLAIMS FILED BEFORE A VICTIMS 27TH BIRTHDAY TIMELY.

The statute of limitations is only at issue in the case of Camper Doe, who, in accordance with § 15-3-555, had just reached the age of twenty-seven at the time of filing the instant action. Section 15-3-555 of the South Carolina Code was enacted in 2001 to expand the limitations period for actions involving sexual abuse to six years after the victim becomes twenty-one or three years from the time of discovery of the injury, whichever occurs later. S.C. Code Ann. § 15-3-555. In an attempt to circumvent the unambiguous application of § 15-3-555, Defendant maintains the general two year statute of limitations of § 15-78-110 for actions governed by the SCTCA applies. Defendant's position is misguided and irreconcilable with the rules of statutory interpretation—namely, the well-settled tenet that where two statutes are in conflict, the more recent and specific statute will prevail. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, § 15-3-555, as the more recent and specific statute, controls so as to bring Camper Doe's claims within the statute of limitations.

a. Section 15-3-555 is the controlling statute of limitation in this case and, therefore, Plaintiff's claims are timely.

It is well-settled that where two statutes are in conflict, the more recent and specific statute will prevail over an earlier, general statute. See Hodges, 341 S.C. at 85, 533 S.E.2d at

---

enforcement; and 33) Failing to know and comply with South Carolina law with regard to reporting allegations of child sexual abuse to law enforcement.

581. "Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." Spectre, LLC v. S.C. Dept. of Health and Envtl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010). "Specific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied." Denman v. City of Columbia, 387 S.C. 131, 138-39, 691 S.E.2d 465, 469 (2010).

Here, the SCTCA, enacted in 1998, contains a general limitations provision which states:

> Except as provided for in Section 15-3-40[4], any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

S.C. Code Ann. § 15-78-110. With specific regard to actions involving sexual abuse, Section 15-3-555 of the South Carolina Code was enacted three years after the SCTCA to expand the limitations period to six years after the victim becomes twenty-one or three years from the time of discovery of the injury, whichever occurs later. Section 15-3-555(A) provides in pertinent part:

> An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

S.C. Code Ann. § 15-3-555. According the terms of the statute their plain and ordinary meaning, there is no dispute that the instant case falls within the purview of the more recent and specific

[4] Section 15-3-40 extends the limitations period for minors, who were under the age of eighteen at the time the cause of action accrues, to their nineteenth birthday. S.C. Code Ann. § 15-3-40.

limitations period pronounced by § 15-3-555 and not the general limitations period provided in the SCTCA. As set forth in the Complaint, the underlying injuries giving rise to Camper Doe's claims against The Citadel are repeated acts of sexual abuse occurring on its premises when Plaintiff was a minor. Thus, there is no question that the instant case consitutes "an action to recover damages for injury to a person" and that the underlying injury giving rise to the action arises from "an act of sexual abuse."

What's more, the Defendant has even conceded that § 15-3-555 applies to this litigation. Specifically, by email dated November 16, 2007, Mark Brandenburg, The Citadel's general counsel, applied the sexual abuse statute of limitations in construing the limitations period for Camper Doe, stating:

> Fortunately, since we now have a transcript of my interview with [Doe], we have an unequivocal trigger of the statute of limitations. As you know, under S.C. Code Ann. 15-3-555, "An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later." At this point, we [k]now that [Doe] has "discover(ed)... the causal relationship" between the injuries described in the interview and the alleged abuse. Thus, at the very latest, the statute began to run on the date of the interview in June. Unfortunately, though, since the statute provides that the limitations period does not expire until three years after that discovery or six years after the person becomes twenty-one years of age, the period arguably does not expire until [Doe's 27th] birthday.

(Exhibit 43, Brandenburg's 11/16/2007 Email to IRF). Accordingly, applying the well-settled rules of statutory interpretation, the more recent and specific statute of limitations dealing specifically with child sexual abuse controls and, therefore, Camper Doe's claims filed prior to his twenty-seventh birthday are not time-barred.

b. The legislative intent underlying § 15-3-555 compels application of the sexual abuse statute to avoid the unjust result of a narrow, general limitation period on victims of childhood sexual abuse.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges, 341 S.C. at 85, 533 S.E.2d at 581. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Id. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. "The legislature's intent should be ascertained primarily from the plain language of the statute." Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will; therefore, courts are bound to give effect to the expressed intent of the legislature. Hodges, 341 S.C. at 85, 533 S.E.2d at 581. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843 (1992). "A statute must receive a practical and reasonable interpretation consistent with the 'design' of the legislature." Smith v. South Carolina Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361. "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

With regard to the sexual abuse statute, there is no indication the legislature intended to limit the application of the statute simply because the defendant is a government entity. The legislative intent underlying § 15-3-555 suggests that the legislature intended the statute to apply to all claims arising out of sexual abuse. Specifically, § 15-3-555 was passed and made effective in 2001—after the SCTCA. In addition, the legislative history of § 15-3-555 suggests no intent

to limit the applicability of the statute with regard to claims against a government entity. See South Carolina Bill Summary, 2001 Reg. Sess. H.B. 3131 (Describing the purpose of the act as "to amend Chapter 3, Title 15 by adding section 15-3-555 so as to provide a statute of limitations for actions based on sexual abuse or incest of six years from the time a person becomes twenty-one or within three years of discovering the injury and the causal relationship between the injury and the abuse or incest."). Indeed, in ratifying § 15-3-555, the legislature implicitly highlighted the importance of providing a remedy to victims of sexual abuse.

Likewise, if the plain language of 15-3-555 and the legislative history supporting the same is not enough, it bears noting that § 15-3-555 is currently pending amendment to entirely abolish the limitations period for an action based on childhood sexual abuse. Specifically, the proposed amendment revises § 15-3-555 to read as follows:

> [T]he provisions of this chapter which provide limitations on the commencement of civil actions do not apply to a civil action to recover damages for injury to a victim arising out of an act of sexual abuse or incest which occurred when the victim was under the age of eighteen.

2013 S.C. House Bill No. 3940, 120th Session, April 11, 2013. Certainly, such an expansive stance on broadening the rights of victims to seek remedies for childhood sexual abuse is instructive as to the legislature's intent to extend this right to victims regardless of the identity of the defendant as a government entity. Moreover, because §§ 15-3-555 and 15-3-40 are within the same chapter, the language of the new statute would modify that of § 15-3-40 so as to remove the limitations period for all child sexual abuse claims. See 2013 S.C. House Bill No. 3940 (stating "the provisions of *this chapter* . . . do not apply to a civil action . . . arising out of an act of sexual abuse . . . which occurred when the victim was under the age of eighteen.") (emphasis added).

Also instructive is Doe v. R.D., 308 S.C. 139, 417 S.E.2d 541 (1992). There, our supreme court, confined by the limitations period that pre-dated § 15-3-555, expressly recognized the unjust result of a narrow statute of limitations on victims of childhood sexual abuse. In so noting, the Court observed:

> We are aware of the damage that sexual abuse can cause in the lives of the victims. We also recognize that the application of a statute of limitations can appear unjust. In Note, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action,* 26 Wake Forest L.Rev. 1245 (1991), the author details the rationale for statute of limitations and the application of such statutes in sexual abuse cases. A number of states have amended their statute of limitations to protect the sexually abused. A few courts have allowed the plaintiff to avoid the statute of limitations because the plaintiff has successfully claimed a disability. Several other states have applied the discovery rule by allowing the plaintiff to maintain an action where, as in the case at bar, the plaintiff discovered the causal connection between the injury and abuse within the statutory period. ***While the result may be appealing, we are without authority to amend our statute. An exception to the plain and unambiguous language of our statute of limitations must come from our legislature.***

Id., at 141-42, 417 S.E.2d at 542-43 (emphasis added) (footnotes and internal citations omitted). While the court in Doe v. R.D. was confined by the statute of limitations existing at the time, it presented a compelling case for legislative action. Id. at 142, n. 4 (noting at least three state legislatures amended the statute of limitations to accommodate adult survivors of sexual abuse in the wake of decision such as Doe v. R.D.). Fortunately, we are not so confined today. Indeed, it was against this backdrop that § 15-3-555 was enacted to avoid the unjust result of the reluctant R.D. Court—the very result sought by Defendant in the instant case.

Moreover, statutes of limitations governing other specific causes of action have been held to apply to Tort Claims Act defendants. For instance, in the context of medical malpractice, the specific medical malpractice statute of limitations of § 15-3-545 has been found to apply to government hospitals under the Tort Claims Act. See Kerr v. Richland Mem'l Hosp., 383 S.C.

146, 149, 678 S.E.2d 809, 811 (2009) (finding the statute of limitation and repose provision of § 15-3-545 applies to government hospitals under the Tort Claims Act). Here, as in Kerr, the statute of limitation governing the specific tort at issue controls.

Accordingly, as expressed in the language of the statute, § 15-3-555 applies to all actions arising out of sexual abuse and is the relevant statute of limitations governing this case. As such, Plaintiff's claims, having been filed within the limitations period provided by § 15-3-555, are timely.

c. Even assuming § 15-3-555 were inapplicable, Plaintiff's claims are still timely under the rationale espoused in Doe v. Bishop of Charleston.

Even assuming § 15-3-555 were inapplicable, Camper Doe's action is timely pursuant to the Supreme Court's holding in John Doe v. The Bishop of Charleston, which found deliberate acts of deception and concealment of knowledge of sexual abuse by employees, such as in the instant case, would toll the limitations period. Id., 754 S.E.2d 494, 500-501 (2014). As outlined herein, the evidence leads to the reasonable inference that The Citadel deliberately undertook to conceal and cover-up ReVille's abuses at the summer camp. The Citadel's concealment began in 2001 and ended in 2011 when ReVille was finally apprehended. Accordingly, as in Doe v. Bishop, such acts of concealment by The Citadel would toll the limitations period so as to render all victim's claims timely.

CONCLUSION

In sum, the issues presented involve a host of factual issues not appropriately resolved at the summary judgment stage. Notwithstanding, the evidence, including admissions by Citadel witnesses and experts, establishes a duty on the part of The Citadel pursuant to four of the referenced five exceptions applicable to these cases. The evidence further reveals, and Citadel

witnesses and experts have admitted, to multiple acts of gross negligence by The Citadel arising from the institution's vast ineptitude and extreme indifference for the safety and well-being of children. Likewise, summary judgment on the statute of limitations is unsupported by the well-settled rules of statutory construction dictating application of the specific sexual abuse statute of limitations in these actions.

Respectfully submitted,

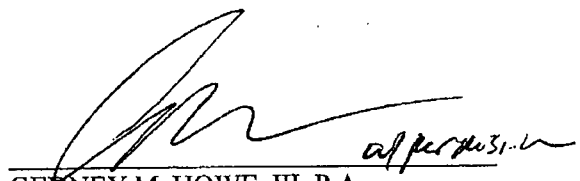
PIERCE, HERNS, SLOAN & WILSON, LLC

Carl E. Pierce, II
Allan P. Sloan, III
Louis P. Herns
Kristen B. Fehsenfeld
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733

ATTORNEYS FOR PLAINTIFF'S
MOTHER DOE A AND CAMPER DOE 6

April 25, 2014
Charleston, South Carolina

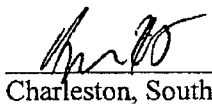
JEFF ANDERSON & ASSOCIATES, P.A.
Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
1 Poston Road Suite 110
Charleston, SC 29407
843-556-1025, 843-556-1055 facsimile
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com



GEDNEY M. HOWE, III, P.A.
Gedney M. Howe, III, Esq.
8 Chalmers Street (29401)
Post Office Box 1034
Charleston, SC 29402-1034
(843) 722-8048

WYNDHAM LAW FIRM, LLC
Robert J. Wyndham, Esq.
47 State Street (29401)
Post office Box 598
Charleston, SC 29402-0598
(843) 853-6121

ATTORNEYS FOR PLAINTIFF JOHN DOE



, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	C/N: 2012-CP-10-1860
JOHN DOE CAMPER,)	
)	**NOTICE OF MOTION AND MOTION**
Plaintiff,)	**FOR SUMMARY JUDGMENT**
v.)	
)	
THE CITADEL,)	
)	
Defendant.)	

FILED
2014 MAR -6 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: W. MULLINS McLEOD, JR., ESQ. AND JAMES B. MOORE, III, ESQ., ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel ("Defendant"), will move before this Court, at least ten (10) days from the date hereof or as soon as thereafter as counsel may be heard, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this Motion are that:

(a) Defendant is entitled to summary judgment as to all counts under S.C. Code § 15-78-60(25), because Plaintiff claims a loss resulting from duties relating to "supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity," and Plaintiff cannot proffer a scintilla of evidence that The Citadel exercised such duties in a grossly negligent manner.

(b) Defendant is entitled to summary judgment as to all counts to the extent they assert claims based upon an alleged failure to investigate his report in 2007, because no legal duty of care flowed to Plaintiff as to that claim.

(c) Defendant is entitled to summary judgment as to all of Plaintiff's claims because such claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act, at S.C. Code § 15-78-110, because he did not file this action within two years after the loss was discovered or within one year of reaching the age of eighteen. *See* S.C. Code § 15-3-40.

(d) Defendant is entitled to summary judgment as to Plaintiff's invasion of privacy claim (Count 3), outrage claims (Counts 4-6), assault claim (Count 8), false imprisonment claim (Count 9) and sexual harassment claim (Count 10) because those claims are barred by the South Carolina Tort Claims Act, *see e.g.*, S.C. Code §§ 15-78-30(f) & 15-78-60(17).

(e) Defendant is entitled to summary judgment as to Plaintiff's outrage claims (Counts 4-6) because Plaintiff has had other potential remedies available to him.

(f) Defendant is entitled to summary judgment as to Plaintiff's outrage claims (Counts 4-6) because Plaintiff cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim.

(g) Defendant is entitled to summary judgment as to Count 10 of Plaintiff's Complaint because his claim does not involve an unlawful employment practice by The Citadel and because Plaintiff failed to exhaust his administrative remedies.

(h) Defendant is entitled to summary judgment as to Counts 3, 4, 8 and 9 because those claims are premised on a theory of *respondeat superior*, but the alleged conduct was well outside of the scope of the alleged employment of Defendant ReVille.

(i) Plaintiff's potential recovery is limited to $300,000.00 under the South Carolina Tort Claims Act, S.C. Code § 15-78-120(a)(1), because Plaintiff's claims involve a single alleged "occurrence."

This Motion may also be supported by a memorandum of law filed subsequent hereto, and by the argument of counsel at the hearing of these motions. This Motion will also be supported by the pleadings, depositions, discovery and documents produced in this matter.

BARNWELL, WHALEY, PATTERSON, AND HELMS, LLC

By: M Dawes Cooke

M. Dawes Cooke, Jr., Esq.
Randell C. Stoney, Esq.
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Counsel for Defendant The Citadel

Dated: March 5, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of March, 2014, a true copy of **Defendant's Notice of Motion and Motion for Summary Judgment** has been served upon Plaintiff's counsel by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto, as follows:

FILED
2014 MAR -6 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire
McLeod Law Group, LLC
134 Meeting Street, Suite 160
Charleston, South Carolina 29401

Julia G. Childers, Legal Assistant

BARNWELL WHALEY PATTERSON & HELMS LLC | 75 YEARS 1938-2013

Attorneys for businesses & professionals since 1938

M. Dawes Cooke, Jr.
John W. Fletcher
jfletcher@barnwell-whaley.com

March 5, 2014

1.516
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: John Doe Camper vs. The Citadel
Civil Action No.: 2012-CP-10-1860
BWPH File No.: 1.516

Dear Julie:

Enclosed please find the original and one (1) copy of Defendant The Citadel's Notice of Motion and Motion for Summary Judgment, along with a Motion and Order Information Form and Cover Sheet and our firm's check in the amount of Twenty-Five and 00/100 ($25.00) Dollars for the filing fee. Please file the original Motion and return a clocked copy to us in the self-addressed, stamped envelope provided for your convenience. By copy of this letter we are serving a copy of the Motion upon Plaintiff's counsel.

Sincerely,

M. Dawes Cooke, Jr.
John W. Fletcher

MDCjr/JWF/jgc
Enclosures (as stated)

cc: W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield

William C. Helms, III*

* Registered patent attorney
* Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-1858
JOHN DOE 2,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
	)	
THE CITADEL,	)	
	)	
Defendants.	)	

FILED
2014 MAR -6 PM 4:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: W. MULLINS McLEOD, JR., ESQ. AND JAMES B. MOORE, III, ESQ., ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel ("Defendant"), will move before this Court, at least ten (10) days from the date hereof or as soon as thereafter as counsel may be heard, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this Motion are that:

(a) Defendant is entitled to summary judgment as to all claims because, under South Carolina law, Defendant owed no common law or statutory duty of care to Plaintiff. *See e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007).

(b) Defendant is entitled to summary judgment as to all of Plaintiff's claims because such claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act, at S.C. Code § 15-78-110, because he did not file this action within two years after the loss was discovered or within one year of reaching the age of eighteen. *See* S.C. Code § 15-3-40.

(c) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because that claim is barred by the South Carolina Tort Claims Act, *see e.g.*, S.C. Code § 15-78-30(f) and because Plaintiff has had other potential remedies available to him.

(d) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because Plaintiff cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim.

(e) Plaintiff's potential recovery is limited to $300,000.00 under the South Carolina Tort Claims Act, S.C. Code § 15-78-120(a)(1), because Plaintiff's claims involve a single alleged "occurrence."

This Motion may also be supported by a memorandum of law filed subsequent hereto, and by the argument of counsel at the hearing of these motions. This Motion will also be supported by the pleadings, depositions, discovery and documents produced in this matter.

BARNWELL, WHALEY, PATTERSON, AND HELMS, LLC

By: M Dawes Cooke Jr

M. Dawes Cooke, Jr., Esq.
Randell C. Stoney, Esq.
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Counsel for Defendant The Citadel

Dated: March 5, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of March, 2014, a true copy of **Defendant's Notice of Motion and Motion for Summary Judgment** has been served upon Plaintiff's counsel by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto, as follows:

FILED
2014 MAR -6 PM 1:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire
McLeod Law Group, LLC
134 Meeting Street, Suite 160
Charleston, South Carolina 29401

Julia G. Childers, Legal Assistant

BARNWELL WHALEY PATTERSON & HELMS LLC | 75 YEARS 1938-2013

Attorneys for businesses & professionals since 1938

M. Dawes Cooke, Jr.
John W. Fletcher
jfletcher@barnwell-whaley.com

March 5, 2014

1.538
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: John Doe 2 vs. The Citadel
Civil Action No.: 2012-CP-10-1858
BWPH File No.: 1.537

Dear Julie:

Enclosed please find the original and one (1) copy of Defendant The Citadel's Notice of Motion and Motion for Summary Judgment, along with a Motion and Order Information Form and Cover Sheet and our firm's check in the amount of Twenty-Five and 00/100 ($25.00) Dollars for the filing fee. Please file the original Motion and return a clocked copy to us in the self-addressed, stamped envelope provided for your convenience. By copy of this letter we are serving a copy of the Motion upon Plaintiff's counsel.

Sincerely,

Dawes Cooke

M. Dawes Cooke, Jr.
John W. Fletcher

MDCjr/JWF/jgc
Enclosures (as stated)

cc: W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
William C. Helms, III*

* Registered patent attorney
• Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-1859
MOTHER DOE 3, on behalf of JOHN DOE 3,	)	
Plaintiff,	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
THE CITADEL,	)	
Defendants.	)	

FILED
2012 MAR -6 PM 1:47
JULIE J. ARMSTRONG
CLERK OF COURT

TO: W. MULLINS McLEOD, JR., ESQ. AND JAMES B. MOORE, III, ESQ., ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel ("Defendant"), will move before this Court, at least ten (10) days from the date hereof or as soon as thereafter as counsel may be heard, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this motion are that:

(a) Defendant is entitled to summary judgment as to all claims because, under South Carolina law, Defendant owed no common law or statutory duty of care to Plaintiff. *See e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007).

(b) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because that claim is barred by the South Carolina Tort Claims Act, *see e.g.*, S.C. Code § 15-78-30(f) and because Plaintiff has had other potential remedies available to him.

(c) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because Plaintiff cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim.

(d) Plaintiff's potential recovery is limited to $300,000.00 under the South Carolina Tort Claims Act, S.C. Code § 15-78-120(a)(1), because Plaintiff's claims involve a single alleged "occurrence."

This Motion may also be supported by a memorandum of law filed subsequent hereto, and by the argument of counsel at the hearing of these motions. This Motion will also be supported by the pleadings, depositions, discovery and documents produced in this matter.

BARNWELL, WHALEY, PATTERSON, AND HELMS, LLC

By: M Dawes Cooke, Jr

M. Dawes Cooke, Jr., Esq.
Randell C. Stoney, Esq.
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700
Counsel for Defendant The Citadel

Dated: March 5, 2014
Charleston, South Carolina

12-1859

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of March, 2014, a true copy of **Defendant's Notice of Motion and Motion for Summary Judgment** has been served upon Plaintiff's counsel by mailing a copy via U.S. mail, properly addressed with sufficient postage affixed thereto, as follows:

FILED
2014 MAR -6 PM 1:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire
McLeod Law Group, LLC
134 Meeting Street, Suite 160
Charleston, South Carolina 29401

Julia G. Childers, Legal Assistant

BARNWELL WHALEY PATTERSON & HELMS LLC | 75 YEARS 1938-2013

Attorneys for businesses & professionals since 1938

M. Dawes Cooke, Jr.
John W. Fletcher
jfletcher@barnwell-whaley.com

March 5, 2014

1.538
The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: Mother Doe 3, on behalf of John Doe 3 vs. The Citadel
Civil Action No.: 2012-CP-10-1859
BWPH File No.: 1.538

Dear Julie:

Enclosed please find the original and one (1) copy of Defendant The Citadel's Notice of Motion and Motion for Summary Judgment, along with a Motion and Order Information Form and Cover Sheet and our firm's check in the amount of Twenty-Five and 00/100 ($25.00) Dollars for the filing fee. Please file the original Motion and return a clocked copy to us in the self-addressed, stamped envelope provided for your convenience. By copy of this letter we are serving a copy of the Motion upon Plaintiff's counsel.

Sincerely,

M. Dawes Cooke, Jr.
John W. Fletcher

MDCjr/JWF/jgc
Enclosures (as stated)

cc: W. Mullins McLeod, Jr., Esquire
Julie L. Moore, Esquire
D. Ellis Roberts, Esquire

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield
William C. Helms, III*

* Registered patent attorney
• Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Banias

COUNSELOR EVALUATIONS

[redacted]
Rehire—reserved, but diligent

[redacted]
Possible rehire—needs to work harder, immature

[redacted]
Definite rehire—good counselor, should take more authority

[redacted]
Definite rehire—good at staff work, dependable

[redacted]
Definite rehire—hard worker,

[redacted]
Possible rehire—misses activities, needs more enthusiasm, immature. Needs to learn to distinguish between camper and counselor relationships.

[redacted]
Possible rehire—does work, but complains

[redacted]
Do not rehire—not dependable, doesn't handle responsibility well

[redacted]
Do not rehire—not trustworthy

[redacted]
Possible rehire—trouble with authority

[redacted]
Definite rehire—good with kids, firm but fair

[redacted]
Definite rehire—excellent, takes job to the new extreme

[redacted]
Definite rehire—definite HSC material; possible staff position if applicable

[redacted]
Definite rehire—excellent work with drum and bugle, takes initiative and gets the job done

PLAINTIFF'S EXHIBIT

DEPOSITION EXHIBIT

CITADEL Box 443-B 00281
(PHSW Tagged Doc's)

[redacted]
Possible rehire—lazy attitude toward camp, not dependable during activities but when told responds well.

[redacted]
Possible rehire—lazy attitude, mind on other matters and not on camp duties but overall okay

[redacted]
Do not rehire—been here too damn long, but will forever remain "BIG DADDY"

[redacted]
Definite rehire—lazy attitude but overall good

[redacted]
Definite rehire—great HSC, director of operations material

Reville, Skip
Definite rehire—senior counselor material if learns to distance himself from campers, works well with younger kids

[redacted]

[redacted]
Definite rehire—immature but gets job done, learn to take things less personal.

[redacted]
Definite rehire—good HSC, needs to work on communication skills and tactfulness, too intense at times

[redacted]
Possible rehire—needs to take job more serious, possible good counselor

[redacted]
Definite rehire—very dependable

[redacted]
Definite rehire—will be a good counselor, need to distinguish between counselor and camper

[redacted]
Definite rehire—senior counselor material, very conscientious

[redacted]
Definite rehire—good counselor, needs to mature

[redacted]

CITADEL Box 443-B - 00284
(PHSW Tagged Doc's)

(Attach Photo Here)

The Citadel Summer Camp
Employment Application
Staff / Counselor / Junior Counselor / Counselor-in-Training

(Office use only - Do not write in this space)

Name: Louis Skip Reville Age: 23 Class / Company (Cadets Only): _____

~~Home~~ Address: 400 Beaufort Street Phone #: 367-4883

~~Home Address~~: Summerville, SC 29483 Phone #: (Same)

E-mail Address: Oldmanreville@aol.com

INSTRUCTIONS: Complete all parts of: (1) The Citadel Student Employment Application; (2) Application Data Record; and (3) Summer Camp Employee Application. Attach a recent photo or snapshop. Return all three forms to the Camp Office, at which time an interview will be scheduled.

Mailing Address:
The Citadel Summer Camp
MSC 53 - The Citadel
Charleston, SC 29409
FAX: (843) 953-6803

SUMMER CAMP EXPERIENCE:

1. Have you been a camper or worked at any summer camp? Yes ✓ No ___ Name of Camp: Here

2. Have you ever been a camper or worked at The Citadel Summer Camp? Yes ✓ No ✓ Years as camper ___

   Mark Clark Award winner? ___ Year(s)? ___ Sr. Counselor Award winner? ___ Year(s)? ___

   Years as counselor 2 Positions held CCR, Sr. Counselor

3. Special qualifications to serve as counselor: 5'11", brown hair, brown eyes, athletic, can cook, recite poetry, dance; enjoys walks on the beach

VARSITY ATHLETIC EXPERIENCE:

High School: _____

College: _____

PRIMARY ACTIVITIES: (Sports Skills / Interests) - Counselors instruct campers in 2 or 3 of the following sports activities. Circle your skill level for each activity: C = Competitive, R = Recreational, or U = Unskilled. Rank each activity, from 1 (highest) to 12 (lowest), according to your preference:

Sport	Skill	Rank	Sport	Skill	Rank
Basketball	C R U	___	Soccer	C R U	___
Racquetball	C R U	___	Swimming	C R U	___
Softball	C R U	___	Team Handball	C R U	___
Flag Football	C R U	___	Tennis	C R U	___
Wrestling	C R U	___	Volleyball	C R U	___
Sailing/Canoeing	C R U	___	Air Rifle Marksmanship	C R U	___

PLAINTIFF'S EXHIBIT 5

CITADEL-00041
(RFP #1)

AQUATIC SKILLS: (✓)

_____ Red Cross Lifeguard Training
_____ Red Cross CPR Training
_____ Red Cross Water Safety Instructor
_____ SC Wildlife / Citadel Boating Card

TUTORING SKILLS:

(Circle those you are capable of teaching.)

Algebra Reading Air Rifle Trap/Shotgun
Math English Study Skills

SPECIALIZED ACTIVITIES: Circle 3 of the Specialized Activities listed below and rank them in order of your teaching preference

Camp Newspaper
Chess
Chorus / Choir
Color Guard
Computer Skills
Drill Team
Drum & Bugle Corps
Photography
Scout Merit Badges
Trap Shooting (*indicate NRA level, if applicable*)
SCUBA Diving
Variety Show
Weight Lifting

CAMPER AGE PREFERENCE: Rank your first to third choices of the age of camper with whom you wish to work. (10, 11, 12, 13, 14, or 15 year olds)

1. 2. 3.

CLOTHING SIZES: Please circle appropriate sizes for Camp uniforms. T-shirts are 50/50 blend and will shrink some; shorts have minimal shrinkage. Sizes listed below are MENS MEASUREMENTS.

T-shirts -- S M L XL XXL Shorts -- S M L XL XXL

SUMMER SCHOOL: Counselors taking summer school classes will be paid less than those who do not. The Camp can not permit every counselor to take summer school classes, in order to maintain coherent operations and scheduling.

___ YES - I plan to attend summer school, and take _____ class(es) per session.
___ NO - I do not plan to attend summer school.

CAMP INFORMATION:

First Session: June 8 - June 28, 2003 Second Session: July 6- July 26, 2003

- Staff and HSCs will report on Sunday, June 1, 2003.
- Counselors working 1st Session (or both sessions) will report for training on Monday, June 2, 2003.
- Counselors working 2nd Session will report for training on Wednesday, July 2.
- In the space below, provide appropriate comments (conflicts with camp dates, routine, or schedule / additional information):

In case of an emergency, contact: Name: _____ Phone #(s): (H)_____

Relation: _____ (W)_____

I have reviewed this application for completeness and accuracy. I understand the commitment required of those employed by the camp and believe I am prepared for this work. Furthermore, I authorize the Camp to research relevant background information that may be required to arrive at an employment decision. I will keep the Camp informed of changes to information on this application.

_____ _____
(Signature) *(Date)*

CITADEL 00042
(RFP #1)

The Citadel Summer Camp

COUNSELOR CODE OF CONDUCT

The Citadel Summer Camp personnel must always remember that they are role models and mentors to the hundreds of boys and girls that attend the Camp each year. They must always practice mature judgment and be mindful of the well being of the campers.

WHILE ON CAMPUS, CAMP PERSONNEL WILL COMPLY WITH THE FOLLOWING REGULATIONS:

1. Use of tobacco, alcohol, and/or drugs, in any form, is prohibited.
2. Camp personnel will not use profanity or make any obscene remarks or gestures.
3. Camp personnel will never use force when disciplining a camper. Campers are not cadets; they are 10 to 15 year old campers!
4. While on campus, there will be limited interaction between summer school students and camp personnel.
    - Camp personnel will have no direct contact with Summer School students other than casual meeting encounters.
    - Summer School students and Camp personnel are not permitted to visit each others living area/rooms, unless on official business and registered with the guard at the gate.
5. Sexual activity, in any form, with any person is prohibited while on campus. "Sexual activity" includes kissing, handholding, lying together, groping, fondling and sexual intercourse.
6. Male personnel and campers may NOT visit the girls' living areas at any time unless specifically authorized.
7. Female personnel and campers may NOT visit the boys' living areas at any time unless specifically authorized.
8. Camp personnel must read and abide by procedures set forth in the "Counselor Handbook."

Violation of any of the above policies will result in immediate dismissal

I, Louis ReVille, understand and accept the policies listed above. I realize that I am a role model to the campers of The Citadel Summer Camp and I will make every effort to act accordingly. I feel I am capable of meeting these standards and agree to follow them at all times while employed by The Citadel Summer Camp.

X Louis ReVille 15 April 2003

(Staff/Counselor's Signature) (Date)

CITADEL 00043
(RFP #1)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON MOTHER DOE A, Plaintiff, -against- THE CITADEL, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No: 2011-CP-10-9200

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOHN DOE CAMPER, Plaintiff, -against- THE CITADEL, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No: 2012-CP-10-1860

(CAPTION CONTINUES NEXT PAGE)

VIDEOCONFERENCE DEPOSITION OF:

LEONARD SHAPIRO

(Called as an Expert Witness)

HELD: Thursday, March 27, 2014

10 a.m. - 4:37 p.m.

Kingston, New York

PLAINTIFF'S EXHIBIT 6

ALBANY COURT REPORTING, INC.
518-557-5180
www.albanycourtreporting.com
email: ineedareporter@gmail.com

bd5e84f2-ec68-4133-ab97-facc1b1603f5