

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Appellate Case No. 2015-000613

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison R. Lee, Circuit Court Judge

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Case No. 2013-CP-40-1460
Appellate Case No. 2015-000613

S.C. SUPREME COURT

Jeffrey Kennedy..... Petitioner,

v.

Richland County School District Two, Eric Barnes and Chuck Earle.....Respondents.

APPENDIX

Volume III of III

(Pages 837-1215)

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1 Richland in 1970.

2 Q What year?

3 A 1970.

4 Q Are you married?

5 A I am, 40 years.

6 Q What's your wife's name?

7 A Cindy.

8 Q Where is Cindy from?

9 A She is from Petersburg, Virginia; but she's a
10 Columbia native now obviously.

11 Q Sure. Do you have children?

12 A Children, I have two. I have a 36-year-old
13 daughter, who is special needs; and I have a son
14 that's 33.

15 Q And are they around the area?

16 A Yes, both of them in Columbia.

17 Q Tell me a little bit about your education after
18 Lower Richland. Where did you go?

19 A I graduated from the University of South Carolina
20 in 1974 with a BS in science. I received a
21 Master's in science from Louisiana State University
22 in 1997.

23 I coached in private school a couple of years:
24 In Dalzell, Thomas Sumter Academy, Wildewood
25 Academy, which no longer exists, here in Columbia

1 for two years. I went to Lower Richland where I
2 was a biology teacher and basketball coach for nine
3 years there.

4 Q So you taught biology and coached basketball at
5 Lower Richland?

6 A Lower Richland. I left there, went to Louisiana
7 State University for nine years, then the
8 University of Memphis for a year, and came back to
9 Columbia in 1998. That's when I was a biology
10 teacher, administrator, and basketball coach at
11 Spring Valley for three years.

12 Q All right. So you coached at Lower Richland for
13 how many years?

14 A Nine years.

15 Q Did you have any players there that we might
16 recognize?

17 A Yeah, you'd probably recognize some of them, like
18 Stanley Roberts, Jo Jo English, Tim Burroughs. All
19 of those were drafted.

20 Q How about at Spring Valley?

21 A Didn't have that kind of athlete there. Those were
22 pretty good ones.

23 Q Hard to duplicate that?

24 A Yes, that's true. That was some golden times.

25 Q So when did you get out of coaching?

1 A Pardon me?

2 Q When did you get out of coaching basketball?

3 A That would be 2001.

4 Q Okay.

5 A When I became Assistant Principal. I became
6 Assistant Principal then. You can't coach and
7 become Assistant Principal. So I took a different
8 direction. I had coached for 29 years. So I was
9 ready for a change.

10 Q How about you mentioned you got a grad degree from
11 LSU? Were you working while you were down there
12 too?

13 A Yes, I was Assistant Baseball Coach at LSU for nine
14 years.

15 Q Who were you coaching under then?

16 A Coach Dale Brown.

17 Q All right. Now, was Shaquille O'Neal there when
18 you were there?

19 A Yes, he was, Shaquille O'Neal. We had three
20 7-footers: Shaquille O'Neal, Gurt Hammett, and
21 Stanley Robinson. We had quite a team.

22 Q You probably enjoyed talking about that?

23 A Oh, yeah. In my office I have all my pictures. I
24 don't really do it to brag about things, but it's
25 really a communication point to the kids when they

1 come in. They see that. They can identify a
2 little bit better with you.

3 I have a shoe of Shaq's. It's a size 22.
4 When the kids come in, that's the first thing that
5 draws their eyes is about that shoe. So they're
6 interested in that. I tell them that Shaq was 17
7 when he wore that shoe.

8 Q Good times, good times. Less talk about this case.

9 A Yes.

10 Q You've been Assistant Principal for how long?

11 A Since 2001; so, 13 years.

12 Q All right. And as an Assistant Principal, what do
13 you do?

14 A My job is operations, facilities, safety, security
15 operations; and I'm also the Director of Career and
16 Technology there at Spring Valley.

17 Q All right. How many assistant principles are
18 there?

19 A There are four.

20 Q Four. And what areas? Does each assistant
21 Principal have a specific area?

22 A Yes, like one of them is curriculum instruction,
23 one is technology, one is discipline. But we all
24 share all of the duties quite frankly. We help
25 each other, but that's their area. They're kind of

1 over that area, but we all collaborate and work
2 together. You have to with 2,000 students we have
3 at Spring Valley.

4 Q Sure. What principals have you worked under at
5 Spring Valley since you have been the Assistant
6 Principal?

7 A Well, Dr. Trump was the first one. He was only
8 there for a year. He hired me, told me the best
9 job he did was hiring me the first year. The next
10 one was Dr. Greg Owens. He came in my second year
11 there. Then Dr. Barron Davis. He was there for
12 two years, and now Jeff Temoney just came in this
13 year.

14 Q Just came in this year?

15 A Yeah.

16 Q And do you supervise anybody?

17 A Well, we supervise teachers, students, other staff
18 members, custodial. Service Solutions is the
19 custodial service that we have, but they're
20 contracted. They're really not our employees; but
21 they report directly to me on matters of custodial
22 issues, yes, and maintenance.

23 Q Sure.

24 A The maintenance team.

25 Q And have you been the Facilities Assistant

1 Principal the whole time you have been Assistant
2 Principal?

3 A As Assistant Principal, yes, sir.

4 Q And as the Facilities Assistant, what are some of
5 the things that a Facilities Assistant Principal
6 has to deal with on a regular basis?

7 A Well, we're in charge of safety; so we developed
8 the emergency plans. We develop all the drills,
9 set up all the supervision areas at all times in
10 the school. It's quite extensive, you know, all
11 the things that we have to do to set up for a
12 regular school day.

13 Q How about as far as security in the building?

14 A Yeah, security in the building, I'm responsible for
15 that. I work closely with the school resource
16 officers, with the other staff members to make sure
17 we have a safe, secure environment there.

18 Q Sure. The school resource officer, is that an
19 employee of the school?

20 A He is a deputy. He is a sheriff's deputy, but I'm
21 not sure how he is paid to be honest with you; but
22 he is there as a resource for us. He is a deputy
23 officer there at the school for us.

24 Q So this is an actual deputy at the Sheriff's Office
25 that has a gun, badge, et cetera?

1 A Absolutely.

2 Q That's at school?

3 A Yeah.

4 Q His hours at the school would be what?

5 A They would be along the line of a regular day,
6 which would be from 8:00 o'clock for our teachers
7 to 4:00; but it extends on because unfortunately
8 our buses don't get there, you know, in a timely
9 manner a lot of times because we're the last route.

10 We have elementary and middle school. If
11 something happens on those routes, then it puts
12 everything back. So we're there quite late every
13 day.

14 Q Sure. What are your typical hours?

15 A I get in there before 8:00 o'clock generally, and
16 it depends on the day if I'm supervising an event.
17 But generally I've leave around 4:30, 5:00 o'clock.
18 If it's an event date, we can be there as late as
19 10:00, 10:30 for a game or other activities there.

20 We also supervise -- we're assigned duties and
21 we'll be at drama events and basketball games.
22 It's quite an array of responsibilities that we
23 have at night.

24 Q Sure. Now, like I said, you were in here for some
25 of the testimony earlier. People have given sort

1 of an overview of the campus. I'm not going to put
2 all those pictures back up or anything like that.

3 Anything that needs correcting that you've
4 heard?

5 A Well, Spring Valley is a huge campus. It's a
6 quarter mile actually from one end of the campus to
7 the other. It's 64 acres. It's a three-story
8 building.

9 That main building that we talked about is the
10 bottom floor where the admin area is. It's just a
11 huge facility that requires a lot of gates being
12 locked, doors being checked. It's areas being
13 checked around campus. It's not an easy thing to
14 do. It takes time.

15 Q Where is your office in the building?

16 A It's in the main hallway. When y'all saw the door,
17 the exterior door, when you come in from the
18 outside of the main office, my office is right
19 there. I have a window. I have a room with a
20 view.

21 Q All right. So you're in the administrative hall?
22 That's sort of the term we have used?

23 A Yeah.

24 Q And your office is the first one on the left side
25 when you come in the door?

1 A On the left.

2 Q All right. Now, I want to take you back to
3 February 2011, and I'm going to show you what's
4 already been marked as Defendant's Exhibit 1 in the
5 case.

6 (Cell phone goes off.)

7 MR. GOODWYN: I'm sorry. I cut it on out
8 there.

9 THE COURT: Turn it off.

10 MR. GOODWYN: I'm doing it right now.

11 THE COURT: Thank you.

12 BY MR. BARLOW:

13 Q Take a second to look at it if you want to.

14 A Yeah.

15 Q All right. Are you ready for some questions about
16 it?

17 A Yeah.

18 Q Why don't you take me sort of from the top in
19 February 2011. What was brought to your office?

20 A February 14th, Joanne Cabiness, she is in the main
21 office. She is our Principal's secretary. She
22 reported to me that \$50 cash and a ring that had
23 been retrieved from years ago -- Joanna had been
24 there for years through several principals -- and
25 had stored a ring in her desk drawer, the bottom

1 left desk drawer in an inconspicuous place.

2 It was in two different areas. The jewelry
3 was separate from the cash. She had a bunch of
4 thick files. So the weird thing about this is that
5 somebody who had gone in there would have to have
6 time to go through and wouldn't be able to just
7 rifle through. They would have to have time to go
8 through and look at it.

9 At the time she told me that she couldn't
10 pinpoint because she doesn't go in that drawer very
11 often quite frankly, didn't think she had to
12 because it was well hidden.

13 She couldn't put a time or date on it. It
14 bothered me, you know, that we had a theft; but I
15 couldn't put a camera on it because we didn't know
16 what the time or date was.

17 Q Sure. So that was the first one that came to your
18 attention?

19 A That was the first one.

20 Q Okay. Did you take an opportunity to go look at
21 the desk where she was showing you?

22 A Yes, I did.

23 Q And the files and such?

24 A The files and all that. It would be very hard to
25 just go in there. You'd have to have a lot of

1 time, unless you knew where it was. If you didn't
2 know where it was, you would have to take a lot of
3 time to go through and find those items.

4 Q What was the next thing that came to your
5 attention?

6 A Well, on February 25th Dorothy Loidice -- and
7 that's a hard name to pronounce -- reported that
8 \$20 cash and a check for \$15 had been taken from
9 her room.

10 Now, this room also was out of the area of the
11 cameras that they have talked about; but when they
12 did it, I was able to go to the cameras because I
13 had a timeline.

14 She had left the night before. She put the
15 money in the top desk drawer. She gets off around
16 4:00 o'clock and she left. So I went to the
17 cameras.

18 At that time, you know, there were staff
19 members who were leaving on the camera. There was
20 a custodian who came in and cleaned and left. Then
21 at 11:33 from the exterior door, we see a security
22 guard come in.

23 He comes in there, and then he goes out of
24 view of the camera. Then he comes back at about
25 11:52; so, you know, 19 minutes later. It was kind

1 of odd because it took so much time in that area.
2 I thought that was odd.
3 Q Is that the administrative hall that we're talking
4 about?
5 A That's the administrative hall, yes.
6 Q Dorothy Loiodice?
7 A Loiodice, yes.
8 Q Is that close enough?
9 A Yes.
10 Q She told you that she put money in there that same
11 night?
12 A That's right, the night before.
13 Q Okay.
14 A Yeah, well, that night. It was reported to me the
15 next day.
16 Q All right. Puts the money in that night. The
17 money goes missing, and it's reported to you the
18 next day that it's missing?
19 A Yeah.
20 Q So you went to the video?
21 A I went to the video.
22 Q Is that something you do from time to time?
23 A I do a lot of that. I've had cameras for a number
24 of years. Quite frankly, a lot of people came to
25 me to ask for help with the cameras because I was

1 pretty good at it.

2 I could pull things up. I could, you know,
3 show them how we could go from one frame to the
4 other and what areas you had to consider when you
5 looked at the cameras. I had a great understanding
6 of where all the cameras were on the campus.

7 Q Right. And you were here for Mr. Earles's
8 testimony?

9 A Yes.

10 Q As far as that goes, is what he testified about
11 with regard to where the cameras are in the
12 administrative hall consistent with your thought on
13 that?

14 A The one camera that was facing the exterior door
15 was the only camera we had there in that hallway.
16 Then later on, after we had a theft, they brought
17 two cameras in, one to get the rest of the hallway
18 and one to point at the bookkeeper. So it was
19 close but actually we had two more cameras added.

20 Q What was Dorothy Loiodice's job?

21 A She was discipline secretary. What she does is
22 take the discipline referrals. You have to go
23 through this program of recording them so that
24 we'll have accurate records.

25 Q Anything unusual about her office or the condition

1 of her office?

2 A Other than the fact, it was out of the view of the
3 cameras; but nothing unusual, no.

4 Q I'm talking about post theft. Was it left in any
5 particular condition or anything?

6 A Well, she complained that some things had been
7 moved around on a desk. That's what kind of drew
8 her attention. She went into the desk drawer and
9 had found that, you know, the money was gone and
10 the check that time.

11 Q What time are students at the school? What's
12 regular time?

13 A Well, we start supervision from 7:30. We try to
14 get them out of the door at 4:00 o'clock. That
15 doesn't always happen in a high school because we
16 have so many other activities going on at the
17 school.

18 We have drama and athletics, band. It's
19 really quite a community in the afternoon, but we
20 try to move them out of the main building most of
21 the time at 4:00 o'clock.

22 Q Would students have any reason to be in the
23 administrative hall after 4:00 o'clock?

24 A No. Once we close the office down at 4:00 o'clock,
25 they have no access to the office.

1 Q All right. No access because it's locked?

2 A It's locked.

3 Q So that was February 25th?

4 A That was the 25th, yes.

5 Q What was the next incident?

6 A All right. Well, can I tell you what happened
7 after February 25th or do you want me to go ahead
8 and tell you?

9 Q Tell me in the sequence you best remember. That's
10 fine.

11 A Okay. Well, after that incident there was a lot of
12 talking in the office about, you know, who is
13 coming in and taking this money. Everybody was
14 concerned.

15 So there was some chatter among some of the
16 staff members: Are the custodians coming in?
17 Ms. Jackson, who I relied on quite extensively, she
18 was the one who came in. I told them, "I'm telling
19 you, Ms. Jackson did not take that. I know
20 Ms. Jackson. She is not of that type of
21 character."

22 I was thinking at the time that I would
23 eliminate her, okay, and draw the suspicion from
24 her by taking her key. She had an A-key. So at
25 that time I took her key. Ms. Jackson did say that

1 I took Ms. Bush's key. She wasn't accurate on
2 that. I did not take Ms. Bush's key.

3 Q All right.

4 A The supervisor, her boss, I took her key on the
5 25th.

6 Q Was Ms. Jackson's assignment the administrative
7 hall?

8 A She had the administrative area. After that we
9 talked about it. We said, "It would be better for
10 you to come during the day while we're here and,
11 you know, clean the area so there will be no
12 suspicion."

13 I think it bothered her. I tried to make her
14 feel that I wanted to, you know, take all the
15 suspicion off of her. Ms. Jackson is -- she was --
16 she was kind of like my administrator on campus at
17 night.

18 She called me if things were -- something was
19 going on so I could address it. They are not
20 really allowed to direct a lot of, you know,
21 comments to students and other staff members. She
22 would let me know, and she was really my right hand
23 really at night.

24 Q So the timeframe when you would have taken the
25 A-key from Ms. Jackson was?

1 A After the incident on the 25th.

2 Q So either the 26th, 25th, something like that?

3 A Yes, yes, well that day.

4 Q What was the next incident that came to your
5 attention? When was that?

6 A All right. Then, I guess, about like a week later,
7 March 2nd, we had another theft. This time it was
8 our bookkeeper's office, Sandra Watts. She is in
9 the main office area.

10 She reported \$40 cash had been stolen, and it
11 was kind of along the same line because somebody
12 would have to go in there. She had it hidden under
13 a calendar under her desk.

14 Somebody would have to, you know, have time to
15 go through and look through things to kind of find
16 it. It was in an inconspicuous place. It wasn't
17 on top of the desk where they could see it.

18 She also noticed that some things were out of
19 place. We found that the cabinet had a plant
20 closed in with a drawer. So somebody had gone in.
21 When they closed the cabinet, they had closed the
22 plant into the cabinet drawer closure. Also, that
23 some deposit slips or something had been moved
24 around in the cabinet.

25 Q All right. And when did she put the \$40 in there?

1 A She put the \$40 the night before. She left at
2 4:00 o'clock. Okay. So she put it in that
3 afternoon when she was leaving; and when she came
4 back the next morning, it was gone.

5 Q All right. And after the -- after that did you
6 look at the camera again?

7 A Yes, I did.

8 Q What did you see on the camera?

9 A On the camera again -- I checked cameras and
10 Mr. Kennedy again walked into the main office
11 around 11:23:58 P.M. on March 1st and exited the
12 main office at 11:48, approximately 19 minutes or
13 16 minutes later, something like that.

14 Q All right.

15 A Well beyond the time that's needed to just come
16 through. I went back just to see what the pattern
17 was for the security guard coming in. I went back
18 a couple of weeks actually.

19 On those dates that the thefts occurred, he
20 spent a lot of time in the office. On the dates
21 that no thefts occurred, he came in and went right
22 out in a manner of a short period of time.

23 Q How about as far as the route?

24 A The route would always be, you know, one time he
25 came in and came in the copy room right in front of

1 the camera and came out and passed through; and he
2 came out of the main office.

3 Q How about the other when you went back and looked?
4 What was the route? Same route? Different route?

5 A Basically come through and just leave out, yeah,
6 the same route.

7 Q Okay.

8 A But it was for a short period of time, real short.
9 The times that the thefts occurred, they were much,
10 much longer.

11 Q And did that cause you suspicion?

12 A Oh, yeah, yeah.

13 Q Did you know Mr. Kennedy by name at that time?

14 A Well, by that time I had; but I can't talk about
15 the reason for that; right? I guess because...

16 Q Well, how did you know him?

17 A From a previous incident that occurred in the main
18 office.

19 Q Okay. What was that?

20 MR. GOODWYN: Objection.

21 MS. PEAVY: Your Honor, objection. You ruled
22 on that.

23 MR. BARLOW: Oh, no. I'm sorry. I'm sorry.
24 Withdrawn. Yeah, you're right. I just drew a blank.
25 I'm sorry about that. Okay. No problem. Just strike

1 all that.

2 BY MR. BARLOW:

3 Q Now, back to that one, March -- what day was that?

4 A On March the 2nd is when Sandra Watts reported it.

5 It actually occurred that evening probably,

6 March 1st, in the evening.

7 Q Okay. All right. And what did you do after you
8 got that report?

9 A I contacted Chuck Earles, told him what I had done
10 about removing the key from the custodian, about --
11 it was a likelihood that maybe somebody from
12 security may be coming in and taking things out of
13 the office.

14 Q And why Chuck Earles in particular?

15 A He is the Director of Security in the District.

16 Q Is that why you would have gone to him instead of
17 the resource officer?

18 A Yeah. Well, I called Chuck Earles and the resource
19 officer too. We called both of them, but Chuck
20 Earles is the one that I would report to as far as
21 the videotape and recording things on the videotape
22 and keeping copies and all that. He is kind of the
23 expert there.

24 Q And after that what did Chuck Earles specifically
25 do?

1 A Well, obviously he knew we had a problem. He put
2 some money in an envelope in Loiodice's office. I
3 think, as he explained, put something on there
4 where if somebody were to pick it up, they would
5 identify it. He checked the bills and numbered the
6 bills and everything and put them in his record.

7 Q And to your knowledge did that go missing at any
8 minute?

9 A No, never did. You know, it just did not.

10 Q Okay. Let's move on to the Bates Hall that we've
11 talked about, the theft from Tim Hunter's office.
12 Tell me how you got -- how that came to your
13 attention.

14 A Well, let's see, Friday, March 4th, Tim calls me
15 and says, "We've got a problem. We've got \$1,000
16 missing out of my office." I can't remember if I
17 went to his office first.

18 I think I did, just to go look at it because I
19 wanted to see and make sure there wasn't breakage
20 because he said there was nothing broken when he
21 reported it to me.

22 So I went and looked. He showed me where he
23 had kept the money. Then I kind of did kind of a
24 cursory look around to make sure that somebody did
25 not come through the ceiling tiles, things like

1 that. We've had thefts like that before. The
2 walls in the offices --

3 Q Can I stop you?

4 A Okay.

5 Q In the Bates Hall, did you ever have anybody come
6 through the ceiling in Bates Hall?

7 A No.

8 Q All right.

9 A And it wasn't possible in Tim's office anyway
10 because the walls went all the way to the ceiling
11 above the ceiling tiles. So there was no way
12 somebody could come in that way, but I just went in
13 there to make the fact. I went in there to make
14 sure.

15 Q Right. The point of access to Tim's office for
16 this theft, where would that have been?

17 A The point of access could only be the door.

18 Q All right. What did you do after that?

19 A Well, then I went back and looked at the cameras.
20 When we went to the cameras, I saw where
21 Mr. Kennedy and somebody came in that -- well, that
22 night after Tim Hunter and Sonny Uker left out --
23 Let me start over.

24 Sonny Uker and Tim Hunter left out in the
25 evening. After the Viking Cup, they had counted

1 the money. That showed them leaving the Bates
2 Hall.

3 Then shortly after that on the cameras, it
4 shows Mr. Kennedy and another man going right into
5 the building, going to the keyboard, and then going
6 right back out.

7 About 11-something I see the baseball team
8 come in. They had a late game. So they come in to
9 the middle entrance. They go right across to the
10 locker room, and I see Charlie Wentzky -- he was
11 the baseball coach then -- come very quickly down
12 the hallway.

13 The way the monitors work, he goes from the
14 hallway monitor to the pad monitor, just like that.
15 There is not any time where he could -- you know,
16 it happens real quick.

17 Q Sure.

18 A Then he does the pad. He goes from the pad monitor
19 to the hallway monitor, just like that; and he goes
20 down to the locker room.

21 Q So back down the hall?

22 A Back down the hallway.

23 Q So that's what you saw?

24 A That's what I saw. Now, you know, it's been since
25 2011; and I can't remember, to be honest with you,

1 if he came back to the pad or not. But if he had
2 of, I would have seen it. It would have been a
3 short duration because I made a note that he wasn't
4 in the hallway long, whatever time it was.

5 Q Right.

6 A So they leave out. All right.

7 Q Who is they?

8 A The baseball team. They weren't in there but ten
9 minutes probably.

10 Q Okay.

11 A Because they were bringing the stuff in. It was
12 late. They wanted to get out of the building and
13 get home. They leave out that middle entrance
14 again. They don't come down the hallway. They go
15 right on out.

16 They didn't go into the weight room because
17 you can tell where the little piece is to the
18 hallway. Somebody would have to go in there and
19 come back out.

20 They went down the hallway to go out. You can
21 see them on the other camera. This is another
22 camera that faces the door that you can see them
23 walk out there.

24 Q That you can see them walking out?

25 A Yeah, out of the middle entrance.

1 Q Now, what did you see next on the video?

2 A Then, as Chuck Earles explained, there is no
3 activity on the cameras unless somebody is in the
4 building. Okay. So I don't -- I don't see any
5 activity until the next morning.

6 At 5:48:55 A.M., Mr. Kennedy comes into the
7 lobby of the Bates Hall. Then he turns and he goes
8 out of sight but doesn't leave the main -- the
9 Bates Hall main area.

10 So he is out of sight from 5:48:55 to
11 5:55:45 A.M., about seven minutes, which I find
12 kind of odd because it only takes 30 seconds to
13 disarm the alarm there.

14 Q How long would it take to walk into the weight room
15 and flip the lights on?

16 A Not long. You know, if he went into that one room
17 and walked across to the other side, like 30
18 seconds.

19 Q And what was the next thing that you saw on the
20 tape after that?

21 A The next morning -- well, then I leave. I see him
22 leave out at that time, 5:55 A.M. The next morning
23 I see Paul Dobbins, the trainer, come in. Paul
24 Dobbins comes in the main entrance of Bates Hall;
25 and he goes right to his room, which is in view of

1 the camera. So he goes into the room. You see
2 him.

3 He always comes early. He's our trainer. He
4 probably works longer hours than anybody there --
5 maybe Tim Hunter does -- but then shortly after
6 that, you see Tim Hunter come in about 8:00ish,
7 8:15. He comes into his office.

8 Q All right. Now, what did you do after that?

9 A Call Chuck Earles again.

10 Q All right.

11 A And notify a deputy. We have a problem, especially
12 a \$1,000 theft.

13 Q Did you have any further involvement in
14 investigating after that?

15 A No, not really. You know, I kind of showed Chuck
16 Earles what I had seen on the cameras and pretty
17 much turned it over to him to handle from then on.

18 Q All right. Based on what you saw, did you have any
19 reason to suspect Tim Hunter?

20 A No. Tim Hunter joined us in -- I believe it was
21 2004 -- and he's done a great job. He has kind of
22 reorganized the Athletic Department. We stay in
23 the black every year. He has done a great job of
24 operating our program with integrity, and it never
25 crossed my mind to be honest with you.

1 Q Sure.

2 A He is just not that type of person.

3 Q How about Ms. Jackson?

4 A Ms. Jackson is a wonderful lady, and I tell you
5 that I trust her totally. She is not that type of
6 person. She wouldn't do it.

7 Q How about Sonny Uker?

8 A Sonny Uker has been the right hand of Tim Hunter.
9 He couldn't have done it because Tim Hunter was
10 with him when he left out, and he doesn't have a
11 key to the door. Only a person with an A-key or a
12 District master key could have accessed that door.

13 Q Let's talk about keys. There's been lots of
14 testimony about keys, and I don't want you to
15 repeat all of that. But who is in charge of the
16 key distribution in your building?

17 A Well, our Principal's secretary hands out the keys
18 based on what I tell her to hand out, quite
19 frankly. Our teachers have one key that gets into
20 their classroom.

21 We have some special storage rooms that have a
22 certain type of key because we don't want all the
23 teachers to be able to get in certain types of
24 storage. We have other areas that have certain
25 type keys.

1 But there are some offices that we do not
2 want, you know, much access; and we give them an A,
3 a master key cylinder. One of those is our
4 Athletic Director's Office because of the fact
5 that, you know, he has a safe; and he has a lot of
6 money that he deals with all the time.

7 Q What other places get a master key, a key cylinder?

8 A The principal's office, my office, assistant
9 principles' offices, the administrator's offices.
10 Those are right off the top of my head.

11 Q Will teacher keys get you in the administrative
12 hall?

13 A No.

14 Q Now, who -- at this time on campus, who would have
15 had A-keys?

16 A Well, remember, I took Larrine's from her. So
17 Shelley Bush, the day supervisor, would have an
18 A-key. Then the administrators, our school
19 resource officers. Those would be the ones.

20 Q Tim Hunter had an A-key?

21 A Tim Hunter because he was Athletic Director. I
22 considered Tim an administrator. He administers
23 the athletic program.

24 Q Security had an A-key?

25 A Security has a master key, master A. Well, it's a

1 District master. They can get in any door in the
2 District basically was my understanding.

3 Q All right.

4 A They could get in all our doors at Spring Valley.

5 Q Any reason to suspect the baseball coach?

6 A No, he doesn't have an A-key; and it didn't verify
7 it on the camera. He came through from one frame
8 to the other and went back out the other frame, and
9 it was split seconds.

10 Q All right. Any more thefts reported in the
11 administrative hall at Spring Valley --

12 A No.

13 Q -- since then?

14 A No.

15 Q How about in the Bates Hall?

16 A No.

17 MR. BARLOW: Just a second.

18 (Pause.)

19 BY MR. BARLOW:

20 Q All right. Mr. Childers, I don't have any further
21 questions of you. Answer any questions that
22 counsel has.

23 A All right.

24 THE COURT: Any cross?

25 MR. GOODWYN: Yes, Your Honor.

CROSS EXAMINATION

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BY MR. GOODWYN:

Q Mr. Childers, my name is Jeff Goodwyn. I represent Jeffrey Kennedy in this case. Let me ask you a few questions about the keys.

There has been some seemingly conflicting testimony about the upgrade or change in the key system. Eric Barnes mentioned that he remembered a change. Then Tim Hunter said, "Yes, there was a change." He thought it was before.

What is your recollection?

A We were in an old building. The gym, which Tim had mentioned, and the facilities there for the gymnasium still had the same cylinders. They did not change the cylinders in those doors because those doors had been redone probably about four or five years prior to the new building being built.

So we had keys. There was no need to rekey that building when we built the new facility. So we kept the AL-2 key. The AL-2 is the gym key. All the coaches keep AL-2 keys.

Q All right.

A And then when we built the new facility, we had something called an AL-11. That's the teachers' keys.

1 Q When you say new facility, is that the --

2 A -- that's the main building.

3 Q -- where the administration is?

4 A That's right. We built that building. The key
5 system that we have was still the same. The master
6 key still fit the cylinders from the old building,
7 still fit the gym keys, and fit the new building.

8 Of course, the teacher keys, the AL-11s, there
9 was a little bit of a problem with the cylinder not
10 matching the new keys. So we had to get a lot of
11 new AL-11s, but it was the AL-11 key that fit --
12 eventually fit -- for the teachers' classrooms.

13 All of our teachers had the same key because
14 we want, for safety and security reasons, we want
15 to be able to get in and out of a classroom,
16 anybody's classroom, quickly in case of a lockdown
17 or something like that. They would have access to
18 anybody's classroom.

19 Q Right. Now, the key to Tim Hunter's office, he was
20 saying has been the same key for ten years or so?

21 A No, we changed -- see, that was the Science
22 Building. So that used to be -- that room never
23 existed where he is at now.

24 Q Tim's office you are talking about?

25 A They cleared out -- Well, where Tim's office is,

1 those used to be classrooms. They took all the
2 classrooms out of that building and made the
3 offices, the weight rooms, and those type things,
4 kind of remodeled the inside.

5 When that happened Tim's office became -- we
6 made sure he had an A-key because we didn't want
7 access, and actually --

8 Q Tim got a new key when that was remodeled?

9 A Well, no, he had an A-key. Tim already had an
10 A-key because he had to access areas that required
11 an A-key. He is an administrator.

12 Q So did Tim's door have a different key then it did
13 before the remodeling -- or after the remodeling?

14 A You know, when they first put the cylinders in,
15 they were construction cylinders; and then I
16 assigned the keys.

17 Q So the door itself -- you said they remodeled.
18 They regutted the inside and reshaped it all?

19 A That's right.

20 Q So he had a new physical door?

21 A Yeah, these are new doors.

22 Q A new lock?

23 A A new lock.

24 Q A construction lock for a period?

25 A And then it changes. Then we put an A-key in it,

1 yeah.

2 Q But it wasn't the same key he had had before?

3 A To be honest with you, I don't know if we gave him
4 a new key or not because he would have already had
5 an A-key. So I doubt if I gave him a new key.

6 Q Did anything happen after Eric Barnes got there
7 that you can recall? Were there any new key
8 upgrades?

9 A I'm not sure -- no, no. I mean, we had the same
10 keys, yeah.

11 Q Okay.

12 A We've had the same keys in there since we
13 transitioned over in 2009 from the old building.

14 Q All right. Even before that, the master key that
15 went to Tim Hunter's office, had been in existence
16 for a number of years?

17 A Yeah.

18 Q How long have you been the Assistant Principal?

19 A Well, I just started my 17th year.

20 Q Okay.

21 A Assistant Principal is 13 years.

22 Q How long have you been in charge of giving out the
23 keys?

24 A You know, around that time, 13 years.

25 Q How many master keys have you given out during that

1 time?

2 A There's been a few, quite a few.

3 Q All right.

4 A We've had a lot of change with the staff. Then
5 when they leave, we get their keys back and we
6 reissue them or they wear out. We break them with
7 the pliers and throw them away.

8 Q Have you ever lost any?

9 A There have been some keys lost, yes. My
10 understanding was a security key was lost one time.
11 That wasn't ours. We've had teacher keys lost,
12 yes, absolutely.

13 Q And you don't re-key every time you have a key
14 lost, do you?

15 A No, can't afford it.

16 Q All right. Let's talk about the video from that
17 night. You testified you saw the baseball team
18 come in?

19 A Yeah.

20 Q You saw the coach rush down and set the alarm off,
21 turn the alarm off?

22 A Yeah, he moved pretty quickly.

23 Q Turned the alarm off?

24 A Yeah.

25 Q And what do you recall about the players? Did they

1 come up and down the hallway?

2 A No, they went right to the locker room. I think
3 they were ready to get out of there. It was late.
4 It was after 11:00.

5 Q All right. I believe your testimony was that you
6 don't recall whether the coach came back down and
7 reset the alarm?

8 A You know, that's been said. Usually that's the
9 case. After you came in and hit the touch pad, you
10 come back and do it. I will be honest with you.
11 It's been 2011 since I've seen that video. It's
12 been a while.

13 Q You didn't save it, did you?

14 A Huh?

15 Q You didn't save it?

16 A No, because that's saved by Chuck Earles. I told
17 him --

18 Q Chuck didn't. I think he testified he did not --

19 A All I can say, my -- all I can say is what I saw.
20 I didn't save anything.

21 Q Okay. So you left it to Chuck Earles to save --

22 A I did.

23 Q -- portions that he thought was relevant?

24 A I did, yeah.

25 Q Do you have any explanation for why Chuck Earles

1 wouldn't remember seeing the baseball team in there
2 that night?

3 A I don't. Well, I'll tell you. I will say he has
4 44 schools he deals with. I'm just one of them,
5 Spring Valley. He's got hundreds of video cameras
6 that he's associated with. So it's hard for me
7 sometimes to recollect on my own campus. I can't
8 imagine what his recollection is of an incident
9 that happened back in 2011.

10 Q All right. And at what time did you start watching
11 the video that night or what timeframe was the
12 beginning point for you?

13 A I'll be honest with you. I talked to Tim and it
14 had to be prior -- right prior to when they left.

15 Q So did you actually see --

16 A -- that would be Tim Hunter and Sonny Uker.

17 Q Did you see Tim leave the building?

18 A Yes, Tim and Sonny left the building together.

19 Q It's probably that, as far as the morning side goes
20 of it, it's possible you didn't see somebody come
21 in the building --

22 A No.

23 Q -- and the camera wouldn't have captured it?

24 A The camera would have captured it.

25 Q Any idea why it wasn't saved, all that video saved?

1 Why just the --

2 A I'll be honest with you. I don't know. I don't
3 know. I guess maybe at the time whoever was saving
4 it felt that the part that showed the people coming
5 to the pad was sufficient. I don't know. I can't
6 answer that question.

7 Q All right.

8 A All I know is I saw all of it. Actually, I went
9 back for a pattern. Again, the pattern the week
10 before was that somebody came in real quick, turned
11 the thing, and left. They didn't come in and stay
12 in the room.

13 Q How far back?

14 A I went back at least a week.

15 Q Eric Barnes testified at first he didn't go back
16 but three days.

17 A You can go back -- at that time I recall going back
18 a month on some things.

19 Q But you didn't go back a month on Jeffrey Kennedy?

20 A Not that far, no. But I went back --

21 Q -- about a week?

22 A -- a pretty good ways to see what the pattern was.
23 I'd say a week or so.

24 Q Did you look at any other buildings?

25 A I looked at the main building, the pattern coming

1 back in the hallway. I've mentioned that already
2 to you.

3 Q Okay. But you didn't go back further than a few
4 days or a week?

5 A No, probably not. I can't say how long. Right now
6 it's been so long. I just know that it was unusual
7 behavior.

8 Q Unusual to who?

9 A For somebody to come in. It was not a pattern that
10 happens often. It was like --

11 Q How do you know?

12 A Because I went back about a week or so.

13 Q About a week. And you know that he had been there
14 three years or more?

15 A I didn't go back three years. It's not allowed to
16 go back three years.

17 Q Did you ask anybody else on the security staff that
18 had worked the night shift what their pattern was?
19 Would they spend time in these buildings?

20 A I didn't because that security -- their security is
21 not my responsibility. I turned that over to Chuck
22 Earles.

23 Q I'm just saying: Did you ask him about it?

24 A No.

25 Q Did you ask anybody or did you ask Jeffrey Kennedy

1 what he was instructed to do?

2 A No. Again, he is under the supervision of Chuck
3 Earles.

4 Q Did you ask anybody over at security if they had
5 trained Jeffrey to, instead of spending time in the
6 truck, to spend some time in the buildings
7 sometimes?

8 A Obviously not.

9 Q Okay.

10 A It's under the security, supervision of Eric Barnes
11 and Chuck Earles.

12 Q If you had done that and they told, "Oh, yeah. We
13 tell them to stay in the buildings from time to
14 time instead of spending time in the truck," would
15 that have made it less suspicion for you?

16 A When we got with Eric Barnes and Chuck Earles, they
17 told us that was suspicious activity, that he
18 shouldn't be in the building at night.

19 Q And you heard Chuck Earles's testimony, didn't you?

20 A Yeah, I did.

21 Q And he didn't know if his own people trained the
22 night watchman; right?

23 A That's what I heard from him, yeah. He didn't know
24 exactly --

25 Q How did he know whether it's suspicious or not?

- 1 A I don't know. I can't answer that for you.
- 2 Q Now, I think you testified that the custodial
- 3 staff -- and that's SSC?
- 4 A Yeah.
- 5 Q Yeah. That they're independent contractors;
- 6 correct?
- 7 A Right.
- 8 Q So you don't screen these people?
- 9 A No, they do that with SSC. They have a screening
- 10 process with SSC.
- 11 Q So you don't know what these people's criminal
- 12 record is or background is?
- 13 A Well, they screen them. They have to go through
- 14 SLED, I think. They do a SLED background check and
- 15 all that.
- 16 Q That's what they're supposed to do; right?
- 17 A They're very strict about it.
- 18 Q How do you know?
- 19 A They tell me about it.
- 20 Q But you haven't seen these SLED reports, have you?
- 21 A No.
- 22 Q These are part-time custodians; right?
- 23 A We've got full-time.
- 24 Q But Ms. Jackson's testimony was most of them were
- 25 part-time. They had day jobs.

1 A A lot of them have two jobs, yeah.

2 Q Right. People that take two jobs because they need
3 some money; right?

4 A That's right.

5 Q People more likely to steal than when somebody is
6 on the rise --

7 A That's your --

8 Q -- and just got his promotion?

9 A -- that's your opinion.

10 Q I'm not a professional investigator, but it seems
11 logical to me. Does it seem logical to you?

12 A I would say -- how can I make that inference right
13 there? If they have a part-time job, that they're
14 more prone to steal? It doesn't make sense.

15 Q All right. So you don't know anything about this
16 custodial staff? You don't know the people?

17 A I do know them.

18 Q You haven't personally screened them? You haven't
19 seen their SLED checks?

20 A No. All we get is the fact that they've been
21 cleared to work.

22 Q And with these -- I believe you testified about a
23 few thefts leading up to the March 3rd \$1,000
24 theft. The first one was the \$50 and a ring from
25 the drawer where the person claimed and said, "I

1 have no idea when it was stolen"?

2 A Okay.

3 Q It could have been --

4 A That's true. Well, she had inferred to me that she
5 hadn't checked it in about a month. So I couldn't
6 go back to the cameras.

7 Q So sometime in the last month?

8 A Yeah.

9 Q That's all we know about that one?

10 A Yeah.

11 Q All right. The second one was Dorothy -- what's
12 her last name?

13 A Loiodice.

14 Q Loiodice. That's why I couldn't remember it. This
15 was February 25th, \$20 cash -- and what did you
16 say -- \$15?

17 A On the second one, it was \$20 cash and a check,
18 yeah, for \$15.

19 Q I believe your testimony was that she left at
20 4:00 o'clock that day. There were other staff
21 members in that area that were still --

22 A Yeah.

23 Q -- in the area?

24 A Yeah.

25 Q The custodians came in and cleaned?

1 A Yeah.

2 Q But you blame Jeffrey Kennedy?

3 A Well, I found it likely that somebody who had a lot
4 of time after hours could access, you know,
5 Ms. Cabiness' office and rifle through.

6 Q All right.

7 A And Ms. Watts later on. So it -- all I did was
8 suggest to Mr. Earles that it was highly
9 suspicious.

10 Q All right. But you still took away the custodians'
11 keys; right?

12 A I did.

13 Q And you didn't suspect them at all?

14 A I trusted Ms. Jackson totally. She had --

15 Q But you trusted --

16 A -- she had been there for years. She turned things
17 in that had value that she could have easily kept.
18 So I --

19 Q And keep in mind I'm not necessarily implicating
20 Ms. Jackson --

21 MR. BARLOW: Your Honor, could the witness
22 finish his answer, please.

23 MR. GOODWYN: I'm sorry. I thought it was
24 unresponsive. I was trying to move it along.

25 THE WITNESS: I thought it --

1 THE COURT: You can explain it.

2 BY MR. GOODWYN:

3 Q I'm sorry to interrupt.

4 A So just Ms. Jackson was very trustworthy. I asked
5 her to do a lot of things after hours, and I had
6 the utmost trust for her. I wanted to eliminate
7 her as a -- from the possibility that someone would
8 accuse her of taking money.

9 Q Right.

10 A And so that's why I did that.

11 Q When you say to eliminate her, you mean her and her
12 staff?

13 A Just her. She had the A-key.

14 Q So she is the only one that could have accessed
15 these offices?

16 A That's right, except for Shelley Bush, who was the
17 daytime -- her boss.

18 Q So what offices did the staff clean? What areas
19 did the first staff clean?

20 A The what staff?

21 Q Ms. Jackson's staff.

22 A Well, they had other offices around campus; but she
23 was responsible for the main office.

24 Q I got you. So you took Ms. Jackson's key on the
25 25th; correct?

1 A That's right.

2 Q And you haven't had anymore thefts since then;
3 right?

4 A That's right. In that area that's right.

5 Q Does that suggest to you anything?

6 A Yeah. Yeah, because -- I mean, we didn't have any
7 thefts after March 2nd.

8 Q March 2nd? I got you.

9 A March 2nd. We had a theft after the 25th.

10 Q All right. That's the bookkeeper --

11 A So that would say that Ms. Jackson wasn't taking
12 the money.

13 Q I got you. That's \$40 cash out of the main office
14 section under a calendar. You said it was under a
15 calendar on her desk?

16 A Sitting on her desk. She was kind of in a hurry,
17 had a little bit of cash that somebody turned in.
18 So she slipped it under a calendar on her desk.

19 Q You said something about a cabinet and a plant
20 being closed into it?

21 A Yeah. She noticed some things had been disturbed
22 in her office. One of them was the cabinet. It's
23 a big, tall file cabinet, has a long drawer on it.
24 When they closed it back, the plant that was there
25 was closed in on the...

1 Q Suggesting that somebody had opened it --

2 A -- somebody had opened it and gone through and then
3 tried to put it back in place.

4 Q All right. Now, you know all the security guards
5 are fingerprinted before they start work; right?

6 A I don't know what their -- the process for hiring
7 them is.

8 Q All right. Did you ever even consider asking the
9 Sheriff's Department to take some fingerprints and
10 compare to it who you thought committed these
11 crimes?

12 A We did.

13 Q You did what?

14 A We did suggest that.

15 Q And did they do it?

16 A Not to my knowledge.

17 Q All right. Had they done that, that could have
18 helped exonerate Jeffrey?

19 A I'm not sure.

20 Q Well, logically if they found none of his
21 fingerprints on the inside of the offices, that
22 would help exonerate him, wouldn't it?

23 A Possibly.

24 Q That would be evidence in his favor; right?

25 A Possibly, yeah.

1 Q And if his fingerprints were on the cabinets, then
2 that would help implicate him?

3 A Uh-huh.

4 Q So that would be something you would have liked to
5 have known; correct?

6 A Yeah, that would have been nice. But in some cases
7 sometimes somebody who steals something wears
8 gloves or they wear something that would prevent
9 them from getting fingerprints.

10 Q Going back and looking at your security cameras,
11 did you ever see Mr. Kennedy wear any gloves?

12 A No, I don't recall seeing gloves. But if I was
13 walking down the hallway and I was going to, you
14 know, I may not put my gloves on in view of the
15 camera.

16 Q And that's assuming you know what is and what isn't
17 in the camera view; right?

18 A That's right.

19 Q Have you seen this (indicating)?

20 A Oh, yeah.

21 Q I'm just going to hold it up. If the thefts had
22 occurred on this end (indicating), if any of the
23 thefts had occurred on this end (indicating), that
24 would have --

25 A Right.

1 Q -- suggested that Kennedy was not the thief because
2 you would have seen him?

3 A That's right.

4 Q Okay. Did you talk to any of the staff members
5 about these thefts?

6 A Oh, yeah. I talked to everybody in the main
7 office, about the times that they left during the
8 day. You know, just if they had seen anybody in
9 the office, were any of the doors open to the
10 office at any time?

11 Our bookkeeper does not -- she closed her --
12 she locks her office every time she walks out.
13 Joanne Cabiness is in her office. When she leaves
14 her office, most of the time that's locked up.
15 Ms. Loiodice is the same way.

16 Q Okay.

17 A That's one of the things we cover with our teachers
18 is to make sure that their area is secure.

19 Q Do those doors in that area, do they lock
20 automatically? Or do you have to lock them when
21 you leave?

22 A Some of them do, like Tim's does.

23 Q I'm sorry. When I say that area, I mean, this same
24 area where these thefts --

25 A My recollection is that you have to -- there are

1 some doors that you can open and they stay open,
2 and you have to lock them. What I've told most of
3 our staff members is that you can open the door and
4 set the deadbolt and then turn it back, and it will
5 be locked. So I've always told them to have the
6 door in a locked position when they leave out.

7 Q Do you know if they do that?

8 A You know, I don't know.

9 Q Did you form or inform the security that you had
10 taken keys from Ms. Jackson?

11 A No.

12 Q Why not?

13 A I didn't feel like they should know about it. This
14 was my -- I was doing a little investigation quite
15 frankly.

16 Q So you conducted an investigation and you didn't
17 really --

18 A I was eliminating Ms. Jackson.

19 Q Did you share any information with Chuck Earles or
20 Eric Barnes about your investigation?

21 A After the fact.

22 Q All right. And you heard Chuck Earles's testimony;
23 right?

24 A Yeah. Chuck Earles, yeah.

25 Q He says he didn't hear anything really from you

1 about your investigation. He didn't -- he said,
2 you know, once we get -- "Once we realize it's a
3 crime, we tell HR, we tell Richland County; and
4 we're pretty much out of it."

5 A Well, Chuck Earles and I communicated. He came to
6 the school, and we looked at the video cameras
7 together.

8 Q Did you -- I mean, other than looking at the video
9 together -- what about these interviews with the
10 other staff? Did you -- he says he didn't hear
11 anything about any of that from you; is that
12 correct?

13 A No, he did hear that. I talked to people in the
14 office.

15 Q And you told him about what they said?

16 A Well, not everything that was covered. But, you
17 know, I told him that it's a -- just the body of
18 evidence that we saw over a period of time that the
19 thefts were occurring; and there was only one
20 common denominator.

21 Q All right. And it has to be one person; right? It
22 can't be more than one person doing this?

23 A I would think that since that person was involved
24 in the theft, that it would be the person.

25 Q What's that?

1 A If that person that was involved in the theft was
2 in the building in that area for an extended period
3 of time, I would think that that person might be
4 responsible, yeah.

5 Q All right. And when you went back and looked at
6 your videos from the past to look at Jeffrey
7 Kennedy's pattern, did you ever see him entering a
8 locked office using his master key in an office
9 that he should not have been going to?

10 A I didn't see that because it never showed on the
11 cameras.

12 Q Not one time --

13 A -- no --

14 Q -- did you ever see him go into the office?

15 A No. But, again, remember the thefts occurred in
16 areas that were out of sight of the cameras.

17 Q I understand that.

18 A Yeah.

19 Q And you're assuming that he knew which direction
20 the cameras were pointing in; right?

21 A Possibly.

22 Q If he didn't, it would be quite the gamble on his
23 part, wouldn't it?

24 A Possibly, yeah. Possibly.

25 Q I mean, the security guards aren't supposed to be

1 going into the interior locked doors; correct?

2 A That's correct.

3 Q And if he does it, he knows it's on camera. Even
4 if nothing is missing, it's still improper. He can
5 get fired for that; right?

6 A I don't know what the --

7 Q It could be something --

8 A -- he could probably get disciplined for.

9 Q All right.

10 A Sure.

11 Q Do you have any formal training on crime
12 investigation?

13 A No. Mine has been as a teacher, administrative
14 coach. Now, I did get some training on the
15 cameras --

16 Q Right.

17 A -- through media services. This is the people who
18 installed the cameras and also Chuck Earles.

19 Q All right. You've said Ms. Bush still had the
20 master key that would access Tim Hunter's office?

21 A Yeah.

22 Q There was some testimony from John Reid that he was
23 being interviewed by Eric Barnes about this
24 incident and saw someone, a custodian, pull out a
25 key and walk into Tim's office.

1 A Yeah.

2 Q Would that be who that was?

3 A Yeah, that was Shelley Bush. She comes in in the
4 morning and she has the A-key.

5 Q What time does she get in in the morning?

6 A Well, either she gets in real early or she has one
7 of her staff members get in early to open up the
8 exterior doors. The exterior doors are open with
9 an AL-key, not a master key.

10 Q Okay.

11 A When she arrives, she arrives fairly early. She
12 used to. Ms. Bush is no longer there with Spring
13 Valley.

14 Q Why isn't she there?

15 A She has actually been promoted.

16 Q Oh, yeah?

17 A To a more supervisor area of the District.

18 Q Okay. You mentioned something about the
19 possibility of a thief coming in through the
20 ceiling tile?

21 A Well, I had some break-ins before where we had
22 people crawl over other areas in the old building
23 and, you know, remove ceiling tiles and go into
24 another area. But this is not possible in Tim's
25 office because the wall --

1 Q The wall?

2 A -- goes all the way up to the ceiling, and there is
3 no access.

4 Q But you had some creative thieves in the past?

5 A Oh, yeah, sure.

6 Q Were these thieves students or adults?

7 A Some of them we don't know.

8 Q You didn't catch them?

9 A Some we didn't catch. Some we caught. Some were
10 students.

11 Q All right. So you had students on campus making
12 robberies before?

13 A Oh, yeah. We've got 2,000 students.

14 Q How many times a year do you have a student come on
15 campus and cause mischief?

16 A Come on campus? Or just -- I mean, every student
17 has a chrome book. That's a computer. Every
18 student has a cell phone almost. They leave
19 pocketbooks around. They're very trusting. It's a
20 crime of opportunity. We have it happen all the
21 time.

22 Q Okay. Are there a lot of these thefts that you
23 don't tell Chuck Earles about?

24 A Chuck Earles doesn't get involved in that part
25 because we kind of handle that through our

1 administrators and our school resource officer.

2 Q All right. About how many of these petty thefts
3 would you estimate in a year?

4 A In a year? Maybe a hundred.

5 Q These are pretty much all students taking other
6 students' stuff?

7 A That's it.

8 Q But you've had instances where students come and
9 try to break in the buildings?

10 A We've had that before. That's rare. It was in the
11 old building. We had somebody take a sledgehammer
12 and knock some doors through.

13 Q That's not as creative as the ceiling tile?

14 A No.

15 Q All right. So if the alarm in the Athletic
16 Department was not on that night, somebody could
17 have broken in?

18 A They couldn't have gotten in Tim's office without
19 us knowing about it.

20 Q Not unless they had a key of some type; right?

21 A Well, yeah, if they had an A-key --

22 Q -- or they found a ladder?

23 A -- and we didn't pick them up on the camera.

24 Q So whoever reset the alarm wasn't picked up on the
25 camera either; right?

1 A What was your question?

2 Q Whoever reset the alarm that night wasn't picked up
3 on the camera either, it doesn't sound like.

4 A Don't know that it was reset. I know when he came
5 in on the first time, he took the alarm off because
6 it was beeping. We can't recall if he ever came
7 back and reset the alarm, just don't know.

8 Q Right.

9 A I don't have a tape to show you the record of that.

10 Q Well, ADT has records of when the alarms are set,
11 don't they?

12 A I imagine they probably would, yeah.

13 Q You could have gone back and checked that?

14 A Why would I want to check the alarm?

15 Q The baseball team is there; the baseball team
16 leaves.

17 A Uh-huh.

18 Q The alarm is not set. An hour later the alarm is
19 reset. That would indicate somebody else got in
20 the building and --

21 A We know that the baseball team came into the
22 building.

23 Q The baseball team came in?

24 A Uh-huh.

25 Q But then they leave?

- 1 A Yeah.
- 2 Q And the alarm does not get reset --
- 3 A Yeah, but nobody shows up on the video.
- 4 Q Just hear me out.
- 5 A Uh-huh.
- 6 Q Then the alarm is reset. ADT has a record of it
- 7 getting reset somehow?
- 8 A Do you have a record of the ADT being reset in the
- 9 morning?
- 10 Q I don't have the record. I'm saying if you had
- 11 done that and it showed it being reset, that would
- 12 suggest someone else was in the building.
- 13 A To be honest with you, I don't know. I can't
- 14 recall if he did come back and reset it. I just
- 15 don't know.
- 16 Q And you heard Tim Hunter's testimony that he did
- 17 not see him come back down and reset it?
- 18 A Yeah, and it's been a long time. It's been since
- 19 2011. So I don't know if Tim actually said he did
- 20 not. I don't know if that's what he said. He
- 21 wasn't sure.
- 22 Q He was pretty adamant about it.
- 23 A I think he was unsure --
- 24 Q The first time --
- 25 A -- I think he was unsure.

1 Q All right. Were you here for Tim Hunter's
2 testimony?

3 A Yes.

4 Q So you heard him describe how he -- where he put
5 the money and what boxes the money was in and how
6 he was careful to hide it under the desk with the
7 chair and all that?

8 A Yes, I heard it.

9 Q These black boxes, would you agree that you're not
10 going to see those if you just walk in the office
11 and you're just looking around?

12 A If you have it under the desk, no.

13 Q If you don't know they're there, they're going to
14 be hard to find?

15 A They could be easily found though. I mean, if you
16 walk behind the desk, you could see them.

17 Q He said, "You would have to actually get down and
18 look up under his desk to find those things." That
19 was his testimony.

20 A Well...

21 Q And there were two people that knew it was there?

22 A Uh-huh.

23 Q And the money was gone in the morning. That
24 doesn't sound like an inside job to you?

25 A No, because I knew Tim Hunter. I've known Tim

1 Hunter since 2004, and we've never had money -- had
2 an issue with money, a shortage of money, anything.

3 Q And Sonny?

4 A Sonny Uker is being supervised by Tim.

5 Q How much does Sonny make?

6 A I'm not sure what he makes. He gets paid for the
7 event, each event, by Tim.

8 Q So he is part-time kind of?

9 A Yeah, just kind of part-time. He puts in a lot of
10 hours. He's a former veteran who comes in and
11 helps us at the gates.

12 Q How much does he get paid?

13 A I don't know. That's a Tim Hunter question. I
14 have no idea.

15 Q He just reports directly to Tim?

16 A Yeah, Tim controls that.

17 Q All right. The trainer got there before Tim Hunter
18 that morning?

19 A Yes.

20 Q What time do you recall him getting there?

21 A I don't know exactly, but it was before
22 8:00 o'clock.

23 Q Before 7:30, 8:00 o'clock?

24 A Yeah, something like that. He gets there early.

25 Q Looking at this (indicating), can you see this?

- 1 A Yes.
- 2 Q Where is Paul's office or room or whatever?
- 3 A Do you want me to show you?
- 4 Q Yeah, you can come down.
- 5 A (Witness leaves the witness stand.)
- 6 Q I tell you what. Why don't you mark it on there.
- 7 Is it Paul Dobbins?
- 8 A Paul Dobbins, the trainer.
- 9 Q Why don't you put a PD where his office is?
- 10 A Here is the training room (indicating) and that's
- 11 actually his office right here (indicating).
- 12 Q Okay. You can put an X there.
- 13 A (Witness complies.) He is inside the training
- 14 room.
- 15 Q So is that where you saw that he went when he came
- 16 in?
- 17 A I saw him come through this door (indicating) and
- 18 then he goes out.
- 19 Q You can't see this area (indicating)? That's part
- 20 of the area you can't see?
- 21 A Yeah, you can.
- 22 Q You can?
- 23 A Oh, yeah. Now, when he goes through the door.
- 24 Q In here (indicating) you are talking about?
- 25 A Yeah.

1 Q Okay. I got you. All right. Thanks.

2 A (Witness resumes the witness stand.)

3 Q And what kind of key does Paul Dobbins have?

4 A He as an AL-2 key, a gym key.

5 Q Now, back to that. There was a theft. Was it
6 Ms. Dorothy that said she had a check stolen from a
7 desk?

8 A Yeah, \$20 cash and the check was \$15. It was in
9 the same envelope; so --

10 Q Okay.

11 A -- I assume they just took the envelope.

12 Q Did anybody ever follow up to see if that check had
13 been cashed?

14 A Not that I know of.

15 Q All right. Don't you think that might help figure
16 out who took the money?

17 A It possibly could have, yeah.

18 Q But that was never done?

19 A No.

20 Q Do you know when the morning custodial shift began
21 on Friday?

22 A Well, on that morning, again -- I explained to you
23 before -- a person comes in and opens up the doors
24 at 7:00 A.M. One person has an AL-key.

25 Q Now, did you see then on the video?

1 A Not at Bates Hall because Tim Hunter comes in.
2 There is no need to open that up because we don't
3 have students come in that building at that time,
4 only the main building area.

5 Q Okay. Do you know when the custodians --

6 A And there's only a few doors open by the way.

7 Q And Ms. Shelley Bush?

8 A Uh-huh.

9 Q She is there by 7:00 every day?

10 A Well, not necessarily. Sometimes she will get
11 there early. Sometimes she allocates that to
12 somebody else to go around and open, and then she
13 comes in a little bit later. She keeps her keys
14 with her. She keeps her A-key with her. The
15 person that opens up the door has an AL-key.

16 Q But she would have been there before Tim Hunter
17 that day?

18 A Well...

19 Q She oftentimes gets there before 8:00 o'clock in
20 the morning? Is that a fair statement?

21 A I can't say because the person that opens up the
22 door is around until she gets there; and it
23 generally was early, pretty early.

24 Q All right.

25 A Because the building has already been cleaned the

1 night before. Basically the custodian comes in,
2 opens up a few doors so that we can access them,
3 the staff and students.

4 Then the other staff comes in later on, and
5 their job during the day is maintenance. At night
6 it's to clean, like Ms. Jackson said, to thoroughly
7 clean the rooms after everybody is gone.

8 Q Ms. Jackson testified there was a fair amount of
9 turnover on her staff. Has that been your
10 experience as well?

11 A There's been some turnover, yeah. It's a
12 transitional job for a lot of them.

13 Q Okay.

14 A And they don't pay a lot of money quite frankly.
15 It's hard to keep them.

16 Q Did you tell anybody that you took Ms. Jackson's
17 keys?

18 A Dr. Owens.

19 Q Who is Dr. Owens?

20 A He was the Principal at the time.

21 Q Other than the Principal, did you tell anybody?

22 A Shelley Bush. I let her know what I did.

23 Q Just because she is the other custodian?

24 A She is the supervisor.

25 Q And she may have to take over some of those

1 responsibilities because Ms. Jackson didn't have a
2 key?

3 A Well, during the day. At night, yeah, she might
4 have to.

5 Q Anybody else?

6 A No.

7 Q You didn't even tell security, did you?

8 A Not until, I think, after the March 2nd incident.

9 Q Okay. Was part of the reason you did that to make
10 sure you kept her reputation intact? You didn't
11 want to --

12 A That's right.

13 Q Because if you take away somebody's keys it
14 suggests they're untrustworthy; correct?

15 A There was mumbling that maybe custodians were
16 stealing. I just wanted to eliminate that totally.

17 Q You say some mumbling. I mean, from the people
18 that you had interviewed?

19 A Yeah, talking to them. They suggested maybe the
20 custodians were coming in.

21 Q All right. Nobody was suggesting the security
22 staff was doing anything; right?

23 A No.

24 Q There were some questions about when the buildings
25 get locked, can students get in and out of the

1 administrative area. I think your response was
2 it's locked at 4:00 o'clock or something like that;
3 is that right?

4 A Well, we close the doors at 4:00 o'clock; but we
5 have activities going on all the time on campus.
6 We have after-school clubs. As I explained before,
7 we have athletics going on.

8 We have clubs going on. We have after-school
9 tutoring. So there's still some in and out traffic
10 in the building. But in the main office, only the
11 person with the AH-1 key could get in that area or
12 a master key.

13 Q Unless somebody let's them in; right?

14 A Well, what I'm saying is most of the people in the
15 main office, they leave at 4:00 o'clock. There
16 might be some assistant principles --

17 Q Yeah.

18 A -- that stay after, a little bit later, and the
19 Principal. Many times we stay there very late.

20 Q So it's possible somebody could get access to the
21 building?

22 A Yeah. You could say that an Assistant Principal
23 could get to it, yeah.

24 MR. GOODWYN: I think that's all I have, Your
25 Honor.

1 THE COURT: Any redirect?

2 MR. BARLOW: No, Your Honor. Please excuse
3 the witness.

4 THE COURT: You may step down. You may be
5 excused.

6 (The witness leaves the witness stand.)

7 THE COURT: Ladies and gentlemen, at this time
8 we'll take a break for the evening. I'm going to remind
9 you of all the instructions I have given to you. I know
10 I say it every time. I say it over and over again.

11 I'm going to ask that you not begin to discuss
12 this matter among yourselves because you have not heard
13 all of the evidence. Please remember as you come and go
14 from the courthouse not to listen to conversations in
15 the hallways, again, for the reasons that you have to
16 make decisions based upon the evidence that you've heard
17 throughout the course of this trial.

18 In addition, please do not allow anyone to
19 approach you to discuss this matter. Again, please tell
20 them that you cannot discuss it. We ask that you report
21 it as soon as possible.

22 Additionally, overnight I ask, again, that you
23 not engage in any independent research or investigation,
24 that you not listen to, watch, or read any media
25 reports.

1 I don't think there have been any. But just
2 in the event there is something printed or reported, I
3 ask that you not listen to or watch or read any of those
4 reports because that is someone else's recitation of
5 what they've heard or seen.

6 Again, please tell your family and friends
7 that I've asked you not to discuss it with them at this
8 particular time. Ladies and gentlemen, I'm going to ask
9 that you report tomorrow morning, again, to the same
10 jury room where you have reported throughout the course
11 of the trial.

12 Report at 9:30. At 9:30 we will be ready to
13 continue on with the trial of this case. I hope you
14 have a good evening, and we'll see you back at 9:30
15 tomorrow morning.

16 (The jury is excused for the day at 5:59 P.M.)

17 THE COURT: If there are any requests to
18 charge, if you'll present them in the morning.
19 Hopefully, I'll have a final answer as it relates to the
20 negligent supervision charge. I am planning on ordering
21 lunch in for the jury. So we'll take a very abbreviated
22 lunch break and be prepared to continue on.

23 (Whereupon the proceedings are concluded for
24 October 1, 2014.)

25 (The following proceedings are reported on

1 October 2, 2014.)

2 THE COURT: Were there any additional requests
3 to charge to be submitted?

4 MR. BARLOW: None from the defense.

5 MS. PEAVY: Your Honor, we did think there
6 was a question of law that needed to be decided as it
7 related to the charges; but we can take that up at the
8 charge conference, I guess.

9 THE COURT: I had the opportunity to review
10 the information relating to negligent supervision. And
11 after a review of the arguments that were made and
12 reviewing the case law, I think that there is evidence
13 in the record that would allow it to be presented to the
14 jury on negligent supervision. So I'll deny the
15 directed verdict at this particular time.

16 Is there anything else we need to take up
17 before we get started this morning?

18 MR. BARLOW: No, Your Honor.

19 MS. PEAVY: No, Your Honor.

20 THE COURT: You may ask the jury to come in,
21 please.

22 (The jury returns to the courtroom at
23 9:35 A.M.)

24 THE BAILIFF: The jury is seated, Your Honor.

25 THE COURT: Good morning, ladies and

1 gentlemen.

2 THE JURY: Good morning.

3 THE COURT: At this time, we're ready to
4 continue on. You may call your next witness.

5 MS. LONG-MAHONEY: Your Honor, the defense
6 would like to call Traci Batchelder.

7 (The witness comes forward.)

8 TRACI LYNN BATCHELDER, being
9 first duly sworn, testifies as follows:

10 THE COURT: Thank you. If you could have a
11 seat and state your full name, please.

12 THE WITNESS: My name is Traci Lynn
13 Batchelder.

14 THE COURT: Would you spell your first name
15 and your last name.

16 THE WITNESS: It's T-R-A-C-I and my last name
17 is B-A-T-C-H-E-L-D-E-R.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MS. LONG-MAHONEY:

21 Q Good morning, Ms. Batchelder.

22 A Good morning.

23 Q If you could please tell the jury what your
24 position is with Richland School District Two.

25 A Human Resources Director.

1 Q Tell them a little bit about your educational
2 background.

3 A Well, I graduated from Columbia High School here in
4 Columbia. Then I went to USC and I got a
5 Bachelor's degree in sociology. I then went on to
6 get a Master's degree in human resources. After
7 that I worked on my doctorate for a while and have
8 gotten most of the way there, but I did not finish
9 that.

10 Q All right. And how long have you been employed
11 with the School District?

12 A About 15 years.

13 Q And tell us about the general responsibilities you
14 have as Human Resources Director?

15 A Compensation, employee compensation issues,
16 employee benefits. I supervise the employee
17 benefits area. I also get involved with
18 recruitment for noncertified staff. I approve all
19 those hires, and I get involved with investigations
20 if there are employment concerns.

21 Q And how many employees are in Richland School
22 District Two?

23 A About 3,500.

24 Q So you might get involved in investigations with
25 any of those numbers of employees, I guess, if

1 something were to come up?

2 A Correct. Yes.

3 Q When did you first become aware of concerns with
4 Mr. Kennedy?

5 A March 2011 would have been the timeframe.

6 Q Okay. And how did you learn of concerns with him
7 at that point?

8 A Chuck Earles and Eric Barnes would have contacted
9 me and kind of summarized what had happened and
10 informed me that the Sheriff's Department was
11 investigating this issue at that time.

12 Q Okay. So would you at that time have talked with
13 them, found out what their concerns were, and then
14 reviewed whatever statements and whatnot they had
15 gathered as part of it?

16 A Whatever information they had. At that point my
17 ability to investigate -- we try not to interfere
18 with the Sheriff's Department's investigation if
19 it's a criminal investigation, but I try to gather
20 whatever information is appropriate from the two.

21 Q Right. Okay. So at some point did y'all -- you
22 and Chuck Earles or you and Eric Barnes -- meet
23 with Mr. Kennedy then in March of 2011?

24 A Yes.

25 Q Tell the jury about your standard practice of

1 investigation when you meet with an employee.

2 What's your general framework for how those
3 meetings take place?

4 A Well, I try to find out what the concerns are from
5 the folks at Spring Valley, then try to meet with
6 the employee and give them a chance to respond to
7 those concerns and get their side.

8 Q So it's a combination of asking questions and
9 hearing what they have to say in response? Would
10 that be fair to say?

11 A Yes, yes.

12 Q So what do you recall when you first met with
13 Mr. Kennedy at the end of March, sort of what his
14 general response was to the concerns that you
15 described to him?

16 A Well, when Eric Barnes and I met, I had some
17 concerns with what appeared to be some
18 inconsistencies in statements.

19 Q Can you give some examples of what you thought at
20 that very first meeting with him that you thought
21 were inconsistencies with his statements?

22 A Well, I know the jury has heard a lot of details,
23 and I had heard a lot of those same details. One
24 focus was on, you know, some gaps in time. He had
25 said he had been in the break room for about 20

1 minutes.

2 Following up after that, he said if he had
3 gone outside the break room, it would set off the
4 motion detector. Then later in his statements, he
5 said that the alarm hadn't worked in a year.

6 And then subsequent to that one, when
7 Mr. Garrick and I met with him, he said the alarm
8 hadn't worked in two years. So that just wasn't
9 making sense to me. He also made comments that, "I
10 don't go in schools."

11 He said at another point, "I don't go in
12 schools unless alarms are going off." He then said
13 I could ask Captain Zerzicki. She could tell me
14 that he doesn't go in schools, but then he is
15 describing -- well, I'm asking him about these
16 things, situations where he is in the schools. He
17 is in the break room. He is going into the weight
18 room. I was concerned about the inconsistencies.

19 Q So you meet with a lot of employees when there are
20 concerns; right?

21 A Yes, yes.

22 Q You form conclusions. Sometimes they have a
23 perfect explanation when you have those meetings,
24 where their explanation makes perfect sense?

25 A Yes, yes.

1 Q And was this one of those meetings where the
2 explanation made perfect sense?

3 A No.

4 Q And you said earlier that the Richland County
5 Sheriff's Department was simultaneously involved in
6 the investigation; is that right?

7 A Yes.

8 Q So there was a meeting that has been testified to
9 on May 5, 2011, when Mr. Kennedy, Mr. Garrick,
10 Chuck Earles, and you were all present? Were you
11 at that meeting?

12 A Yes.

13 Q You heard whatever was said by Mr. Kennedy at that
14 meeting as well?

15 A Yes.

16 Q At some point -- I guess it must have been between
17 May and June -- the Sheriff's Department did not
18 charge Mr. Kennedy with anything; is that correct?

19 A Correct.

20 Q So following some discussion, did you also then
21 attend the meeting with Mr. Kennedy and Mr. Garrick
22 and Chuck Earles on June 15, 2011?

23 A I did.

24 Q Okay. At that meeting was the decision basically
25 made that Mr. Kennedy would go back to work?

1 A Yes.

2 Q In light of all the facts and circumstances that
3 y'all had determined at that point?

4 A Yes.

5 Q Okay. And you were part of that meeting?

6 A Yes.

7 Q So from your perspective was the matter concluded
8 at that point?

9 A Yes, it was.

10 Q And you went on the next day to whatever next
11 investigation or whatever next issue you had to get
12 involved in, I assume?

13 A Yes. I've got plenty.

14 Q So months go by, over a year. When is the next
15 time you had to address concerns with Mr. Kennedy's
16 conduct?

17 A October 2012.

18 Q Okay. And at that point there's been lots of
19 testimony about you were notified by a principal
20 that there were some concerns that she had a parent
21 who was also an employee who may have viewed a
22 videotape of her child; is that correct?

23 A Yes.

24 Q And so when you learned that information, did you
25 meet with Ms. Jones to find out what had happened?

1 A Yes.

2 Q And she is your employee -- while she is also a
3 parent, she is also an employee; right?

4 A Yes.

5 Q All right. You heard her testify yesterday. I'm
6 just trying to move this along so we don't have to
7 keep going through everything. But you heard her
8 testify as to what she said and what she did. Was
9 that consistent with what she told you in October
10 of 2012 when you met with her?

11 A Yes.

12 Q So during the first time you met with her, from
13 what she said, was it accurate that she really
14 didn't know specifically it was Mr. Kennedy that
15 she had these conversations with; is that right?

16 A (Nods in the affirmative.)

17 Q She didn't know his name or specific identity?

18 A That's correct.

19 Q So at some point, between Chuck Earles and you and
20 Ms. Jones, you figured out that it was Mr. Kennedy;
21 is that right? Or more than likely it was
22 Mr. Kennedy? Is that fair to say?

23 A I think Chuck asked if anybody knew. He sent an
24 e-mail. I think y'all have heard about that,
25 asking if anybody had spoken to Ms. Jones about

1 this.

2 Q All right. So then ultimately then you and Chuck
3 Earles met with Mr. Kennedy; is that correct?

4 A Yes.

5 Q To discuss the matter, "that now we think it might
6 be he"?

7 A Yes.

8 Q And at that meeting in October of 2012, what was
9 his response?

10 A Well, you know, I'm taking notes. Initially, he
11 made a comment. He explained that she had
12 approached him and made the request. Then he
13 initially made the comment that he didn't pull it
14 up at that time, but that next night, I think his
15 shift was ending the next night, he played with it
16 and pulled it up.

17 So I noted that in my notes. But at that
18 point in time, Eric Barnes -- I believe it was
19 Eric -- that asked him, "You pulled the video from
20 Round Top?" So it seemed like his story kind of
21 changed. Then he was like, "No, I can't pull the
22 video up." So that...

23 Q That pretty much ended that?

24 A And then he insisted that for the rest of the time
25 that we met.

1 Q Now, was it appropriate for Ms. Jones to ask
2 Mr. Kennedy to pull up this video?
3 A No, no.
4 Q Did you address that with her?
5 A Yes.
6 Q Did you tell her that when you met with her?
7 A Yes.
8 Q Did you then -- what was put in front of the
9 jury --
10 MS. LONG-MAHONEY: Your Honor, may I approach
11 the witness?
12 THE COURT: Yes, ma'am.
13 BY MS. LONG-MAHONEY:
14 Q If you could look at Plaintiff's Exhibit 12,
15 please.
16 A Yes.
17 Q Is this a letter you sent to Ms. Jones after you
18 told her what she did was not appropriate and then
19 you addressed it with her in writing?
20 A Yes.
21 Q And what was your point of sending Ms. Jones this
22 letter?
23 A Just to make sure it was abundantly clear, you
24 know. We could have some legal exposure if
25 unauthorized folks know that she is looking for

1 information on her son but about other people's
2 children, et cetera. So I had to address it.

3 Q So there would have been other children potentially
4 on that tape that she could be looking at without
5 approval?

6 A Correct.

7 Q All right. So at this point when you're meeting
8 with Ms. Jones and trying to figure out who she was
9 having this discussion with, were you thinking,
10 "I've got a significant issue. I need to terminate
11 two employees." Was that your perspective at this
12 point?

13 A My perspective was I needed to make sure folks
14 know. I have to limit our legal expose. I had
15 noticed that there was maybe some reiteration of
16 what the procedures are that needed to occur with
17 these employees.

18 Q At that point you weren't thinking, "I have to
19 terminate two people," were you?

20 A No.

21 Q So would your initial intent have been to address
22 the matter with Mr. Kennedy similarly to how you
23 addressed it with Ms. Jones?

24 A Yes. And that's typically what I do is try to be
25 craft -- be fair -- craft the same body of a letter

1 for each person, yes.

2 Q Okay. So let's get back to the incident then. You
3 met with Mr. Kennedy in sort of mid to late
4 October, and that was with Chuck Earles present.
5 You all discussed it with him. You just testified
6 that he said he put it up, maybe didn't pull it up,
7 whatever you described as to what he said to you?

8 A Yes.

9 Q At that point did you suggest you meet with him
10 along with Ms. Jones?

11 A Yes. You know, let's clarify. If I'm talking
12 about the wrong person, I need to make sure
13 Mr. Kennedy knows what the procedures are but find
14 out who else may have shown her the video and make
15 sure they know what the procedures are.

16 Q At that point did you say to Mr. Kennedy with
17 Mr. Earles present, "Let's get Ms. Jones and let's
18 go see Ms. Jones"?

19 A Yes.

20 Q Okay. What was Mr. Kennedy's response?

21 A He said he had to go to another job; so he didn't
22 have time that day.

23 Q So was he able to at that moment?

24 A No.

25 Q So were you planning to meet with him maybe the

1 next day?

2 A Whatever we, you know, could -- whatever was
3 possible after we tried to resolve the identity of
4 whoever showed the video.

5 Q Okay. All right. So after that the previous
6 testimony has been that Chuck Earles had some
7 conversations with Ms. Jones to further confirm the
8 identity of Mr. Kennedy?

9 A Yes.

10 Q Did he also at that point learn something about the
11 phone conversation between Mr. Jones and
12 Ms. Kennedy?

13 A Yes.

14 Q Tell us about that.

15 A He called me after --

16 Q He is who?

17 A Chuck Earles.

18 Q Okay.

19 A Called me after he left. He had gone to talk to
20 Ms. Jones. Since Mr. Kennedy couldn't go, he was
21 going to try to see if he could show her some
22 photographs to identify the officer.

23 He called me back and said that in talking to
24 Ms. Jones, as y'all heard yesterday, that she told
25 him that -- well, she got very upset. I think he

1 mentioned teared up and that she seemed reluctant
2 to identify the person.

3 She finally said that Mr. Kennedy had called
4 her and told her that she was going to be asked to
5 identify him and she better not do it and he could
6 get fired is what was relayed to me.

7 Q So when you're learning this, was it your
8 understanding that the phone call that took place
9 between Mr. Kennedy and Ms. Jones happened then
10 shortly after you and Mr. Earles had just met with
11 Mr. Kennedy?

12 A Yes. Because by the time Chuck -- my office isn't
13 that far, I think maybe seven miles. I understood
14 Chuck was going straight there to try to talk with
15 her.

16 By the time he got there, he looked at her
17 phone log and the call had occurred like 24 minutes
18 earlier or something to that effect. So it had to
19 have been made right after our meeting.

20 Q So you're trying to solve a simple problem?

21 A Correct.

22 Q Find out what happened?

23 A Correct.

24 Q You get inconsistencies with what happened?

25 A I felt like he was starting to say what seemed to

1 make sense, that he pulled it up, had played with
2 it and pulled it up that night. Then when we
3 followed up and asked, his story changed. So I
4 was...

5 Q So what you attempted to make simple turned into he
6 gives inconsistencies. Now you learn that he's
7 contacted an employee; right?

8 A Yes, yes.

9 Q And made remarks she considered threatening?

10 A Yes.

11 Q What do you think at this point?

12 A That he is trying to interfere with our
13 investigation. This should be a very simple issue.
14 He is scaring my employee to death, got her on the
15 verge of tears, threatening her. I was very upset.
16 I would say I was very upset.

17 Q So did you then meet again with Mr. Kennedy and ask
18 him about it?

19 A Yes.

20 Q Tell the jury about that meeting.

21 A He at that time tried to say that she called him
22 and that she had asked him or they had a plan for
23 her to call him right as soon as the meeting was
24 over.

25 That upset me further because I'm like, you

1 know, I met with her like a week prior. Why would
2 they have a plan to talk to each other right after
3 our meeting, and he is not telling me any of this.
4 He didn't tell me any of this the day before. I
5 just felt like he totally wasn't honest with me to
6 be honest.

7 (Defendant's Exhibit Number 5 is marked for
8 identification.)

9 BY MS. LONG-MAHONEY:

10 Q Ms. Batchelder, if you could identify what's been
11 marked as Defendant's Exhibit 5, please?

12 A This is the letter that followed up on the meetings
13 I had with Mr. Kennedy.

14 Q Okay. Based upon the concerns you have with
15 Mr. Kennedy at this point, what was your decision
16 with respect to his continued employment?

17 A I was very disturbed and felt that he had not been
18 honest. He tried to interfere with my
19 investigation. He tried to upset my witness, get
20 her to lie to me. Again, this is over a very
21 simple matter. So I gave him the opportunity to
22 resign. Otherwise I told him I would have to
23 recommend termination.

24 Q All right. Did you look at this matter in
25 isolation or did you consider it in connection

1 with --

2 A I had met with him before and I had concerns then.
3 We had hoped in his new position he would regain
4 our trust. I know he wanted to be promoted, you
5 know, and regain our trust. Then now on this
6 simple matter, I can't get a straight answer out of
7 him.

8 Q Did this conduct in this October 2012 incident
9 regain your trust and confidence in Mr. Kennedy?

10 A Absolutely not.

11 Q Okay. So if you could refer to your letter, is
12 this -- you wrote this letter; correct?

13 A Yes.

14 Q And this was -- you wrote it contemporaneously
15 around the end of October 2012?

16 A Yes.

17 MS. LONG-MAHONEY: We'd like to move this into
18 evidence, please.

19 THE COURT: Any objection?

20 MR. GOODWYN: No objection.

21 THE COURT: It's admitted.

22 (Defendant's Exhibit Number 5 is received into
23 evidence.)

24 BY MS. LONG-MAHONEY:

25 Q If you could, Ms. Batchelder, refer to whatever

1 relevant aspects of your letter to explain what the
2 basis of your termination -- well, let me ask you
3 this: Did Mr. Kennedy -- strike that. Did
4 Mr. Kennedy resign from his employment?

5 A No.

6 Q So you then had to terminate his employment; is
7 that correct?

8 A I recommended his termination.

9 Q Could you explain to the jury what the basis of
10 your termination recommendation was?

11 A This whole handling -- consistent with the
12 letter -- his whole handling of contacting
13 Ms. Jones and telling her that if she identified
14 him to Mr. Earles, he was going to be fired and she
15 better not do it.

16 This whole thing about the phone number, even
17 though Mr. Earles confirmed that it was an incoming
18 call, he then was trying to tell me, "She called
19 me," which if she did, that would be upsetting
20 because of the timing of that. How would she have
21 known when the timing was?

22 It was just all of these background things
23 going on that seemed very inappropriate. I felt
24 like he was trying to basically provide false and
25 misleading information to me on a very simple

1 issue.

2 So going back to the fact that we had dealt
3 with him in March 2011, and at that time I had
4 concerns about inconsistencies, Roosevelt had
5 concerns about inconsistencies; but he was given
6 another chance and was put back to work. Here we
7 are, again, over, like I said, what should be a
8 simple issue.

9 Q So at that point did you believe he could continue
10 in his employment with the School District
11 effectively?

12 A No, no.

13 Q Is it for the reasons stated in your letter?

14 A Yes.

15 Q And that you just described?

16 A Yes.

17 Q Did Mr. Kennedy appeal your termination decision to
18 Mr. Garrick?

19 A No.

20 Q Did he appeal to the School Board?

21 A No.

22 Q There was some discussion yesterday about the
23 District's relationship with Service Solutions, who
24 is the contracting company for the District's
25 custodial services, and about what sorts of

1 employees they could put in schools and do we have
2 any control over who comes in and out of our
3 schools and maybe some of them were essentially
4 stealing or doing something.

5 Could you describe for the jury what role the
6 District plays in determining who works for Service
7 Solutions in the School District?

8 A We establish in our contract, not just with Service
9 Solutions, but any outside contracting services, we
10 establish our expectations in the contract for
11 background checks.

12 We also have some vendors that work in our
13 after-school programs. It's the same thing.
14 Because the Service Solutions custodians do move
15 around freely in our schools and interact amongst
16 students, I audited their background checks about
17 2009.

18 I asked them to actually send me copies of
19 their background checks so I could make sure that
20 they were doing what we asked. You know, that's
21 not necessarily just them, also some of our
22 vendors, I might say, "Send me what you've got so I
23 can audit," just doing what we asked them to.

24 Q So does the District maintain that level of
25 expectation about background checks and staying on

1 top of who is in their schools working, regardless
2 of whether they are a contract employee or not?
3 A Yes. Particularly with the Service Solutions
4 staff, I personally audited them; but we also have
5 a fellow now who is a District employee that
6 maintains ongoing auditing as well because he
7 administered the contract with them. It's not with
8 just them but some other contracts that he
9 administers as well.

10 MS. LONG-MAHONEY: Excuse me just a minute.

11 (Pause.)

12 MS. LONG-MAHONEY: Okay. Please answer any
13 questions the defense counsel has.

14 THE COURT: Any cross?

15 MR. GOODWYN: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MR. GOODWYN:

18 Q Ms. Batchelder, my name is Jeff Goodwyn. I
19 represent Jeffery Kennedy in this case. I just
20 have a few questions for you. All right. So you
21 testified that you were involved in the
22 investigations involving any kind of theft
23 involving employees?

24 A Yes.

25 Q Are you involved in any thefts where students are

1 involved?

2 A No.

3 Q Who handles those?

4 A Our Student Services Division.

5 Q You were just testifying about the custodial staff
6 employees and audits that you conducted. The audit
7 you conducted, I think you said, was in 2009?

8 A That's right. When I initially audited Service
9 Solutions, approximately 2009.

10 Q Why did you audit them again?

11 A Well, you know, they have a lot of exposure with
12 our students. I think we all watch the news and
13 other school districts. You know, we could be held
14 jointly liable. We get notice of news reports all
15 over the State. We watch the news too.

16 Q Are you referring to like physical harm that they
17 might do?

18 A Anybody on our campuses could do physical harm to
19 our students, and that makes me nervous.

20 Q I'm asking --

21 A Yes.

22 Q -- were you concerned about their honesty or just
23 the fact that they may be violent people?

24 A Oh, no. Again, I don't audit just Service
25 Solutions. I go in and audit any of these vendors,

1 whatever.

2 Q What prompted the 2009 audit, concern over what?

3 A Well, sometime in that timeframe, there was a
4 question about a background check on one custodian
5 at another school. And so --

6 Q What was the concern there?

7 A That he may have had something on his background
8 check. So I asked to see that background check,
9 and what the concern was, was not -- did not appear
10 on the background check that Service Solutions had
11 processed.

12 Q All right. So what was the concern? Was it a
13 prior theft or some violent act?

14 A No, it was alleged that he had installed a camera
15 in a bathroom --

16 Q Oh.

17 A -- to watch the adults. It is an adult bathroom.

18 Q I got you. I got you. All right. So there are
19 things that the custodians' background check just
20 sometimes doesn't catch?

21 A Well, it's dependent upon what SLED puts on the
22 background checks.

23 Q Right. So it's if not on the background check,
24 they wouldn't know about it?

25 A Well, you know, we -- I mean, yeah, they're going

1 to depend on what's reported on the background
2 check.

3 Q All right. In 2011 do you know if there were any
4 of the same people that you checked in 2009 that
5 were even still working for the custodial staff in
6 2011?

7 A I vaguely remember like Ms. Jackson. I vaguely
8 remember her name. So since I had a vague
9 recollection of her name, I can only assume that my
10 vague recollection was coming from looking at the
11 background checks.

12 Q All right. Now, but any of her staff, you would
13 know if they were still there in 2011 or not?

14 A No, no. I mean, other than after I did that
15 additional audit, we've got another fellow that
16 supervises specific contracts; and he works with
17 Service Solutions on background checks and whatnot.

18 Q All right. Do you know if he actually had that
19 audited, the background checks, in 2009?

20 A Yes, he calls me anytime -- in our agreement with
21 Service Solutions if they have any questions about
22 background checks, they are supposed to authorize
23 it through me before they let the person go to
24 work.

25 You know, sometimes what you see on a

1 background check, it's debatable about whether or
2 not that person is appropriate to be working around
3 children or not.

4 Our agreement with Service Solutions on
5 expectations, they're supposed to contact me if
6 there's something questionable on the background
7 check.

8 So Wendell helps them on that.. He is the
9 District employee. He kind of tries to be a
10 liaison. He calls me all the time. We have this
11 question, that question, is this person okay
12 working on campus.

13 Q All right. But Service Solutions doesn't call you
14 or Wendell. You don't do regular audits; right?

15 A No, they send them on everybody with their
16 application packets.

17 Q All right.

18 A Including those background checks.

19 Q I got you. All right. Let's go through these two
20 incidents. First, the \$1,000 theft. You
21 interviewed Jeffrey with respect to that, I believe
22 you testified?

23 A Yes, yes.

24 Q All right. And did you take notes about what he
25 told you?

1 A Yes.

2 Q Is this a copy of your notes?

3 A Yes.

4 Q All right. Let me see that for a second.

5 MS. LONG-MAHONEY: What is the date of those?

6 MR. GOODWYN: This is March 29th.

7 MS. LONG-MAHONEY: Okay.

8 BY MR. GOODWYN:

9 Q You also had another set of notes from the Kim
10 Jones incident; right?

11 A Yes.

12 Q Okay. We'll talk about that in a minute. All
13 right. I just want to have you read some excerpts
14 from your notes if you could. Can you read this
15 highlighted line here (indicating).

16 A "He said -- and what I'm trying to do is verbatim
17 write down what he said.

18 Q Right.

19 A "He said, 'I ain't never took anything. I ain't
20 got to steal.'"

21 Q When he said, "I ain't got to steal," what did you
22 interpret that to mean?

23 A That he was saying he wasn't involved in these
24 incidents.

25 Q When he is saying, "I ain't got to steal," does

1 that suggest to you that he makes plenty of money,
2 he's a family man, he's got a new career, he just
3 got a promotion, he doesn't need to steal?

4 A Sure.

5 Q But you didn't buy it?

6 A Well, when I initially met with him -- nobody has
7 questioned him yet. Okay. So, like, I heard all
8 the things that Jim Childers had said and Tim
9 Hunter had said. I heard all these things all
10 these people had said, but they hadn't questioned
11 Mr. Kennedy yet.

12 You know, we don't let them do that. I want
13 to hear directly from the employee, and I haven't
14 made an assessment of whether the person is guilty
15 or not.

16 Q So you're just writing down verbatim exactly what
17 is said?

18 A Right. I'm trying to do that and then process
19 questions and give him an opportunity to respond.
20 Because my answer to the supervisors, since I'm the
21 first one to really give him a chance to say his
22 side, is: "You've got the wrong guy. You got the
23 right guy," et cetera.

24 Q And what did you write down here, this next
25 highlighted area?

- 1 A "I have never stolen anything in my life. I've
2 been in the building to cut the alarm off. I went
3 in the weight room and walked right out."
- 4 Q All right. And start reading here (indicating).
5 Is this more of what he told you?
- 6 A I'd have to see it closer.
- 7 Q All right. Start there with number three.
- 8 A Okay. He was talking about, "They went into the
9 double doors, eight players and three coaches,"
10 which we've heard about.
- 11 Q That's the baseball team?
- 12 A Yes, apparently so.
- 13 Q Okay.
- 14 A "They could have had access. The football coach
15 had the key in the door. Coaches have keys to that
16 office."
- 17 Q Okay. Is that --
- 18 A Oh, do you want me to keep going?
- 19 Q Let me see where you stopped. All right. And this
20 next line down here (indicating), just those two
21 lines that start with, "I go."
- 22 A "I go in there and change the battery in the alarm.
23 I never went in nobody's office."
- 24 Q Was that referring to the February 25th thefts?
- 25 A I'm just writing down what he said.

- 1 Q All right.
- 2 A I don't know if he's talking about going into Tim
3 Hunter's office or the --
- 4 Q Were you asking him questions about both of them?
- 5 A Yes, yes.
- 6 Q All right. All right. And this last part here,
7 this highlighted section here (indicating), it
8 starts with "I have been."
- 9 A "I have been working four years. I am trying to
10 get promoted and grow. The supervisors can tell
11 you about my character."
- 12 Q All right. Did you ask the supervisors about his
13 character?
- 14 A. What happened after this point, I wrote down all
15 these notes. I was waiting for some, you know,
16 guidance from the Sheriff's Department because they
17 have got the simultaneous investigation. At this
18 point I went to Mr. Garrick and told him my
19 concerns with some of the statements.
- 20 Q I'm not asking --
- 21 A Not yet. I wasn't ready yet. I hadn't made the
22 decision.
- 23 Q I'm not asking you about right then. Did you ever
24 go ask his supervisors about his character?
- 25 A I didn't come to the conclusion at that point that

1 I was ready to ask those questions.

2 Q I mean, did you ever do it?

3 A No, because I wasn't at the point of making a
4 termination decision.

5 Q Okay.

6 A I was just writing down what he said.

7 Q I got you. Did you understand that he had been
8 recommended for the promotion?

9 A Yes, yes.

10 Q All right. And whose decision would it have been
11 to actually finally approve the promotion?

12 A Those come to me.

13 Q Okay.

14 A All those recommendations come to me.

15 Q All right. And did you -- did you deny the
16 promotion?

17 A I checked with my boss, Mr. Garrick, and said,
18 "What do you want to do here? Do I approve this?
19 Do I not approve it," for guidance.

20 Q Whose final say was it, yours or Mr. Garrick's?

21 A Mr. Garrick's.

22 Q And what did he say?

23 A I'm sorry?

24 Q What did he say?

25 A He ultimately in the June -- I didn't know what his

1 thought process was, you know, in advance that I
2 recall. During the meeting on June 15th with
3 Mr. Kennedy, he communicated to him that he was not
4 going to give him the promotion. He was going to
5 put him back to work.

6 Q All right. Was that -- not getting the
7 promotion -- in large part because of what y'all
8 thought about this investigation and his potential
9 involvement?

10 A Well, I had the concerns about the consistencies in
11 the statements that I had, of course, expressed to
12 Mr. Garrick. Mr. Garrick had his own concerns
13 about the consistencies. When somebody is the
14 supervisor, we want to feel like we can count on
15 them 100 percent.

16 Q Had these thefts never occurred, would you have had
17 any reason not to approve the promotion?

18 A No, no.

19 Q He looked squeaky clean other than --

20 A Well, he did have three letters in his file; but...

21 Q All right. But that had nothing to do with whether
22 or not you would promote?

23 A If Mr. Earles and Mr. Barnes felt comfortable, they
24 worked with him every day, then sure, I wouldn't
25 have had any reason to deny the promotion.

1 Q And these letters you're referring to, were they
2 just, "You were late for work," or what?

3 A There was one from Chief Propst and then two from
4 Captain Zerzicki complaining that he had not shown
5 up at times and at football games when he had been
6 given a schedule.

7 Q They thought he was supposed to work, and he --

8 A -- he didn't show up. It happened multiple times.
9 When Chief Propst sent his letter, it was like,
10 "Look, we had this same problem last year."

11 Q This is over the course of three years that he
12 missed a shift or whatever he didn't do?

13 A These letters, as I recall were -- the two.

14 Q It's --

15 A -- two in 2008 and one in 2009, I believe.

16 Q Okay. So a couple of years before all of this?

17 A Yes, yes.

18 Q Okay. And he had been there three years
19 approximately? He started approximately in 2008?

20 A Yes, I think that sounds about correct.

21 Q And you never had any problems with him stealing or
22 being dishonest or being misleading or anything
23 like that prior to this?

24 A I mean, we didn't know. I didn't...

25 Q You hadn't heard of anything?

1 A Well, I just know when I looked at the statements,
2 that Dorothy Loiodice wrote in her statement that
3 she had another theft in May of 2010 at Spring
4 Valley. That was in the last sentence of her
5 statement.

6 Q Mr. Kennedy has denied involvement in any of these
7 thefts from the beginning; right?

8 A Yes, yes.

9 Q The decision was ultimately made to allow him back
10 to work; correct?

11 A Yes.

12 Q And why was that?

13 A Well, the Sheriff's Department conducted their
14 investigation; and they were not going to charge
15 him with a crime.

16 Q Were they going to charge anybody with a crime?

17 A Not that I know of.

18 Q All right.

19 A And so, you know, I wasn't making the decision at
20 that point; Mr. Garrick was.

21 Q All right.

22 A And I know that was a factor that he considered.

23 Q Do you think the Sheriff's Department conducted a
24 thorough investigation?

25 A I mean, it sounds like there's some things that

1 they could have done that they didn't. I would
2 have liked to have seen them do some fingerprinting
3 and all these other things, look at phone records.
4 You know, I would liked to have seen that. I don't
5 control that, and I don't really know what they
6 didn't or didn't do to be honest with you.

7 Q Speaking of phone records, did Mr. Kennedy -- you
8 can see it in the video. He is on the phone. He
9 has testified he was talking to Lieutenant Young
10 when he was in the Bates office, in the break room,
11 and got a phone call about some place that
12 Lieutenant Young needed him to go to. So he left.

13 Did you bother checking the school's phone
14 records to see if he was actually on the phone at
15 that time?

16 A I didn't even know anything about the phone call
17 until that's been brought up at this trial. He
18 never mentioned anything about a phone call to me.
19 So I didn't know to ask. You know, he didn't
20 mention that to me.

21 Q So nobody -- well, let me ask you this: Did you
22 watch the security video?

23 A I did but --

24 Q You did not?

25 A -- as you saw from the video, that phone coming up

1 was at the very end briefly, and so that --

2 Q Did you notice it?

3 A I didn't even notice it quite honestly.

4 Q And you didn't talk to Lieutenant Young or any of
5 the supervisors?

6 A What I did was after I spoke to Mr. Kennedy on the
7 29th, I know the Sheriff's Department was not
8 finished with their investigation. Based on his
9 statements to me, I contacted Mr. Garrick; and I
10 said, "This is what I'm finding."

11 Q Did you --

12 A -- you know --

13 Q Did you --

14 A -- I'm sure whatever decision I make is probably
15 going to be appealed. So typically if there is an
16 appeal I ask him to look at --

17 Q I was just asking you --

18 THE COURT REPORTER: I'm sorry. I didn't
19 understand what you just asked.

20 BY MR. GOODWYN:

21 Q I'm just asking you if you talked to Lieutenant
22 Young.

23 A He took over the investigation really kind of at
24 that point.

25 Q Lieutenant Young took over the investigation?

1 A No, Mr. Garrick.

2 Q Did you talk to Lieutenant Young?

3 A I did not talk to Lieutenant Young.

4 Q Thank you. All right. Let's move on to the Kim
5 Jones incident. I think there's been some
6 testimony, both from Kim Jones and Jeffery Kennedy,
7 that they had no idea there was a policy that the
8 security wasn't supposed to show a video to a
9 parent whose child was involved in something.

10 A (Nods in the affirmative.)

11 Q Is that common? Well, I don't know if that's
12 something -- I mean, how many times have you had
13 this situation come up where a video had been shown
14 to somebody that maybe wasn't authorized?

15 A Never, never.

16 Q This is the only time that you can recall?

17 A Yes.

18 Q And how are employees told about this policy?

19 A We give information on confidentiality and
20 confidentiality of records, but we depend on our --
21 their supervisors to let them know. You know, it's
22 hard to anticipate every problem that can occur --

23 Q Okay.

24 A -- quite honestly. When I looked into the
25 complaint, I thought, "Okay. Well maybe it's a

1 possibility that he didn't get trained." That was
2 my whole purpose was to make sure he knew what the
3 policy was. So that's what I was trying to
4 identify who it was.

5 Q Right. That was the testimony. He was never
6 trained on that?

7 A Yes.

8 Q It's entirety foreseeable; correct?

9 A It could happen. We have 3,500 employees. It's
10 possible that there's one employee out of 3,500.
11 It's possible there could would be ten out of
12 3,500.

13 Q So 3,500 out of 3,500 need to be told that; right?

14 A Well, we communicate. All of our Board policies
15 are on line.

16 Q Right.

17 A We have handbooks employees sign off every year.
18 Ms. Jones reiterated that, we have a confidentially
19 video. We make sure electronically we have got
20 everybody set. We're doing all of these things.

21 Q Right.

22 A But when you're trying to apply that to a
23 particular situation, like a request for video,
24 maybe somebody doesn't understand that.

25 Q Would Ms. Kennedy have -- not Ms. Kennedy --

1 Ms. Jones have been given access to the videos
2 since her son was involved in the altercation?

3 A She could have asked at the school level.

4 Q Is it common to let parents see the video if they
5 ask?

6 A Through the school so that they can make
7 determinations. Because sometimes they have to
8 contact the attorney and say, "What can I show or
9 not show?" We may have a special needs student or
10 something like that.

11 Q Is it common for parents to be shown the videos if
12 they ask appropriately, the appropriate people?

13 A I don't deal with student issues; but my
14 understanding is with the appropriate attorney's
15 authorization, it is common, yes.

16 Q So she was going to see this video one way or
17 another, whether it was from a security officer or
18 the school or whoever; right?

19 A If she wanted to, right.

20 Q She obviously wanted to; right?

21 A She could have gone to the school, yes.

22 Q What's the big deal about this whole thing to begin
23 with? There really wasn't a big deal, was there?

24 A I just need to make sure the employees are trained.

25 Q Okay. Now, when Ms. Jones came in, did you let her

1 know that her seeking to watch the video directly
2 from the security officer, as opposed to taking the
3 proper channels, was improper?

4 A Yes.

5 Q So at that point she knew that she may get in
6 trouble for all of this?

7 A Oh, yeah.

8 Q All right. And she told you at some point that
9 Jeffery Kennedy called her?

10 A Yes -- well, she told Chuck Earles initially and
11 then --

12 Q -- relayed the same message to you?

13 A Yes.

14 Q All right. How on earth would he have gotten her
15 cell phone number unless she called him first?

16 A I can't answer that, and that was a question she
17 seemed to be very concerned about as well.

18 Q She said, "I didn't give it to him"?

19 A Yes.

20 Q And his testimony was, "She called me. I had given
21 her my business cards. She called me and I just
22 called her back." Does that sound a little more
23 plausible?

24 A No, it doesn't sound credible that immediately
25 after our meeting that she would -- unless he told

1 her he was meeting with us -- that there would be a
2 plan for the two of them to converse --
3 Q Are you saying there was a plan?
4 A How would she know? I'm just trying to find a
5 reason.
6 Q How would she know what?
7 A That we had just met.
8 Q I'm not asking --
9 A -- the timing was so suspicious.
10 Q All right. So Jeffrey's testimony is that he
11 showed you his phone, that was her number, and you
12 wrote it down somewhere. Did you not? That didn't
13 happen you're saying?
14 A I recall that Chuck Earles called me and said that
15 he had looked at the phone, and he observed the
16 phone number, and he --
17 Q From Jeffrey's phone or Kim's phone?
18 A From Kim's phone.
19 Q I'm talking about Jeffrey's phone.
20 A I don't recall seeing his phone to be quite honest.
21 Q All right. Did he tell you that she called him?
22 A He did, yes.
23 Q But would you -- did he -- did Kim Jones tell you
24 that Jeffrey called her?
25 A Yes.

1 Q Did you check her phone?

2 A Chuck had checked it.

3 Q Okay.

4 A And he told me the number.

5 Q All right.

6 A And I looked in our payroll system to match it.

7 Q Right, right, which is consistent with Jeffrey's
8 version that he called her back. His phone number
9 should have been in the phone; right?

10 A I don't know. You know, she told me he didn't; and
11 I don't recall him offering to show me his phone.
12 I don't recall that.

13 Q Did you ask to see it?

14 A I don't recall that.

15 Q Wouldn't that be something that you would like to
16 know if he is saying, "She called me."

17 "Well, let me see your phone."

18 A Quite honestly, I felt like I was getting the
19 runaround from Mr. Kennedy. I mean, I don't have
20 any other way to put it.

21 Q Don't you feel like it would be something good for
22 you to know? If he is saying, "She called me."

23 "Well, can I see your phone?"

24 Did he give you the runaround and say, "Well,
25 I left it in the office," or something like that?

1 A I mean, I guess I could have asked. I was
2 frustrated.

3 Q But you didn't want to confirm his side of the
4 story? You just trusted Ms. Jones; right?

5 A Her side of the story made sense, and his side
6 didn't make sense.

7 Q And you didn't make any effort to make sure his
8 side of the story made sense, did you? You didn't
9 even ask to look at the number. That would have
10 made Ms. Jones look very suspicious, wouldn't it,
11 if she said, "No, I never called him," and then he
12 has her phone number right there?

13 A What I was looking for was after Chuck had
14 contacted me and said, "I've got this employee in
15 my office," it made sense what was communicated
16 from Chuck to me. It made perfect sense.

17 The number, he said he saw an incoming call.
18 I was concerned that Mr. Kennedy would have called
19 her back or had any communications with her. It
20 all seemed from a logical standpoint to make
21 perfect sense.

22 So I was angry that this communication had
23 occurred, and my thought process was, "I want a
24 good explanation from Mr. Kennedy. Why would he
25 have any conversing with Ms. Jones about this?"

1 It didn't make sense that she would have been
2 in his office, first of all, being hesitant and
3 reluctant to identify him. I mean, this is a
4 simple issue. Why would she be so reluctant to
5 identify him?

6 It made sense if she felt she had been
7 threatened that she would be reluctant to identify
8 him. All that made sense. So I decided I had
9 enough information from my level -- now, he always
10 has appeal rights -- but from my level I could
11 recommend termination.

12 Q Doesn't it make sense also that she might be trying
13 to cover her own -- her own position? She is
14 trying to pass it off on somebody else. "He showed
15 this to me," when, in fact, it didn't happen?

16 A If he disagreed with my position, you know, it says
17 in my letter, "You can appeal to Mr. Garrick."

18 Q I'm not asking about an appeal process.

19 A Yeah, I felt that based on the information I had
20 and the series of facts I had and the fact that I
21 didn't get consistent information, I believed her
22 side of the story. I did not believe what he was
23 telling me. I didn't find it to be credible.

24 Q But you --

25 A I felt at that point the appropriate decision was

1 to give him the opportunity to resign. If not, I
2 was going to recommend termination.

3 Q All right.

4 A And then if he wants to present phone records or
5 make all those arguments, then he can make that to
6 Mr. Garrick. But at my level I felt like I had
7 enough to ask him to resign --

8 Q All right.

9 A -- and make that recommendation.

10 Q Now, this is another set of notes from, it looks
11 like, May 5th of 2011. Are these your handwritten
12 notes?

13 A Yes.

14 Q All right. And you took another set of notes. Was
15 this related to the March theft or Ms. Jones
16 incident? What were these notes for?

17 A These were notes from the meeting with Mr. Garrick
18 that he was conducting. I'm trying to capture what
19 everybody said, as close to verbatim, as I can
20 possibly write.

21 Q So this is still in 2011? So this is about the
22 thefts?

23 A Yes.

24 Q All right. Can you read what you wrote here in
25 this little highlighted section here (indicating)

1 starting with, "Nobody"?

2 A Yes.

3 Q And, again, this is you trying to write down
4 verbatim what Mr. Kennedy is saying?

5 A Yes. Because, again, we have this appeal process.
6 I want a record. Just like we're creating a record
7 here, I want a record so that everything can be
8 reviewed.

9 So what he said was, "Nobody has ever said we
10 couldn't go in the building and go in the break
11 room. I've been doing the same thing for four
12 years."

13 Q All right. And can you read the next highlighted
14 section down there for me.

15 A "I have never stole nothing a day in my life. I
16 just got promoted to lieutenant. What would I look
17 like stealing? I'm a godly man. I don't steal.
18 They are putting something circumstantial on me.
19 I've got too much to lose to take change from a
20 drawer."

21 Q Okay. Sorry, one more. On this next page, can you
22 read -- just read these -- just read the rest of
23 that page.

24 A "I've got four grandchildren, kids in college.
25 I've got a mortgage. My yearly salary means more

1 to me than that. I didn't do it from the bottom of
2 my heart. It wasn't me. I didn't do that." Then
3 Mr. Garrick said, "I will get back to you."

4 Q All right. Thank you.

5 MR. GOODWYN: I think that's all I have, Your
6 Honor?

7 THE COURT: Any redirect?

8 MS. LONG-MAHONEY: Yes, Your Honor.

9 I'd like to move into evidence the two sets of
10 notes that Mr. Kennedy's counsel just had Ms. Batchelder
11 read from, the notes from the March 29, 2011, meeting
12 and the notes from the May 5, 2011, meeting.

13 MS. PEAVY: Objection, Your Honor.

14 MR. GOODWYN: We do have an objection. We
15 probably need to talk about it. Can we approach, Your
16 Honor?

17 THE COURT: Yes, sir.

18 (Whereupon there was a bench conference off
19 the record in the presence of the jury but out of the
20 hearing of the jury.)

21 THE COURT: Is there anything further on
22 redirect?

23 MS. LONG-MAHONEY: Yes, I do. Can we go on
24 with that?

25 THE COURT: Yes.

REDIRECT EXAMINATION

BY MS. LONG-MAHONEY:

Q There were three letters, three reprimand letters, mentioned regarding Mr. Kennedy that you were asked about in your testimony of Ms. Batchelder?

A Yes.

Q I'd like to show you those letters. If I could just to make the record clear, is this one of the letters you were referencing?

A Yes.

MS. LONG-MAHONEY: I'd like to move that into evidence as Defendant's next exhibit, please.

MR. GOODWYN: I'm sorry. I didn't hear you.

MS. LONG-MAHONEY: I'd like to move it into evidence.

MS. PEAVY: No objection.

(Defendant's Exhibit Number 6 is marked for identification.)

BY MS. LONG-MAHONEY:

Q Okay. So what I have just marked as Defendant's Exhibit 6 is a letter dated September 8, 2009; is that correct?

A Yes.

MS. LONG-MAHONEY: I'd also like to move into evidence two other reprimand letters sent to

1 Mr. Kennedy, one dated June 6, 2008, and one
2 November 11, 2008. I want to mark it as one exhibit.

3 MS. PEAVY: No objection.

4 MS. LONG-MAHONEY: Okay.

5 (Court Reporter's Note: Two additional
6 letters were added to Defendant's Exhibit Number 6.)

7 BY MS. LONG-MAHONEY:

8 Q Ms. Batchelder, I'll just ask you, what's been
9 marked as Exhibit 6 --

10 MS. LONG-MAHONEY: Are these into evidence
11 now? I'm sorry. I'd like to move them into evidence.

12 THE COURT: They are. Thank you. They're
13 admitted into evidence.

14 MS. LONG-MAHONEY: Great, thank you.

15 THE COURT: Without objection.

16 (Defendant's Exhibit Number 6 is received into
17 evidence.)

18 BY MS. LONG-MAHONEY:

19 Q What's marked as Exhibit 6, are those the three
20 letters of reprimand to Mr. Kennedy that you
21 referenced when you were asked about it on your
22 cross examination?

23 A Yes.

24 MS. LONG-MAHONEY: All right. Your Honor, my
25 other question was going to relate to those notes.

1 THE COURT: You can ask her questions about
2 the notes.

3 MS. LONG-MAHONEY: Okay.

4 THE COURT: But I will say that my previous
5 ruling as it relates to certain matters continues to
6 stand. So to the extent they address those issues that
7 I've ruled are not appropriate and not admissible, they
8 need to be redacted.

9 MS. LONG-MAHONEY: Okay. Would you like me to
10 finish the examination of Ms. Batchelder now or would
11 you like to...

12 THE COURT: It's your examination, as long as
13 you understand what my ruling is.

14 MS. LONG-MAHONEY: Okay.

15 THE COURT: And I think y'all do.

16 BY MS. LONG-MAHONEY:

17 Q Ms. Batchelder, the notes that you were asked about
18 on cross examination from March 29, 2011, to May 5,
19 2011, are your handwritten notes; is that correct?

20 A Yes, yes.

21 Q Those were put in front of you and you were asked
22 to read certain excerpts from them; is that
23 correct?

24 A Yes.

25 Q And is that your standard practice when you're

1 meeting with employees to transcribe them? So if I
2 were to say something to you, you would probably do
3 the same with me, wouldn't you?

4 A Yes.

5 Q We've had this conversation. But in your meetings
6 with employees, is that what you do? You attempt
7 to take down everything that they're saying?

8 A Good, bad, ugly. I'm not trying to filter.

9 Q Do those notes reflect your notes of how you
10 conducted the meeting on March 12, 2011, as well as
11 the meeting on May 5, 2011, transcribing what
12 Mr. Kennedy said and what other members at the
13 meeting said?

14 A As fast as I can write.

15 Q Okay. Thank you.

16 MS. LONG-MAHONEY: We would like to move it
17 into evidence, but I understand we'll do it with
18 appropriate redactions. Should we do that at this time
19 or do that later?

20 THE COURT: You can do it at the break.

21 MS. LONG-MAHONEY: So these will be admitted
22 as the next two Defendant's exhibits, please, with
23 appropriate redactions.

24 MR. GOODWYN: We'd like to see the redactions
25 first.

1 THE COURT: When they're ready you can mark
2 them.

3 MS. LONG-MAHONEY: That's great. We have
4 nothing further.

5 MR. GOODWYN: Nothing further.

6 THE COURT: You may step down. Thank you.

7 (The witness leaves the witness stand.)

8 THE COURT: Ladies and gentlemen, at this time
9 it will be a good time to take a break. I'll take a
10 break at this time so they can get the exhibits
11 appropriately redacted to conform to my prior rulings.

12 Then we'll bring you back and we'll be able to
13 continue on with the trial of this matter. I remind you
14 that you are not to discuss the matter. You still
15 haven't heard all the evidence that has to be presented
16 in this case.

17 (The jury retires to the jury room.)

18 THE COURT: As I've indicated previously, I've
19 made a ruling as it relates to any information relating
20 to the aerosol and the other as it relates to those
21 things that were redacted off of Defendant's
22 Exhibit Number 1.

23 That would include information relating to the
24 aerosol cans from the main rest room and any information
25 relating to the theft from Dorothy Loiodice, from her

1 office in the Spring of 2010, or whenever it occurred in
2 2010.

3 So to the extent that those notes reflect
4 conversations regarding those two incidents, they need
5 to be redacted, appropriately redacted. I'll give you a
6 chance to do that so they can be marked. So if there
7 are any additional exhibits to be presented through the
8 next witness, they will be numbered appropriately.

9 MR. BARLOW: Right.

10 THE COURT: We'll take a break to do that.

11 MS. LONG-MAHONEY: Your Honor, if I could just
12 explain kind of what I was -- I didn't want to explain
13 it in front of the jury. What's so challenging is that
14 plaintiff's counsel puts it in front of the witness and
15 gets her to read transcribed parts of a meeting.

16 THE COURT: I understand.

17 MS. LONG-MAHONEY: It was a meeting in its
18 total that they keep opening the door to and asking
19 questions like, "Were there prior thefts?" They keep
20 opening the door, and we have to keep not saying it.
21 It's very difficult when they keep opening and opening
22 and opening the door. That's why I had to try to get
23 the evidence in.

24 THE COURT: It's not opening the door to those
25 particular events. It is a meeting about the events

1 that we're here in this particular trial about. I have
2 previously ruled as it relates to those particular
3 events and that stands throughout.

4 As I told you all at the beginning when we
5 agreed to redact it, that was going to be the ruling
6 throughout. I understand that Mr. Goodwyn has asked
7 some questions that would appear to open the door to a
8 lot of information, but I'm not going to go back and add
9 in those particular points at this particular time
10 without the benefit of all those other witnesses who
11 could have testified to those things because we're not
12 going to be here another week to do that.

13 So I'll being consistent in my ruling. That's
14 what you all agree to when Defendant's Exhibit Number 1
15 was introduced. Mr. Goodwyn needs to be able to ask the
16 questions without opening the door to allow all these
17 things to come in.

18 So I'm being consistent in my rulings. I have
19 not in any way tried to restrict any information, of
20 course, related to other disciplinary infractions or
21 other instances.

22 But with respect to any prior instances
23 regarding viewing Mr. Kennedy as the perpetrator of
24 thefts, the two instances have been -- whatever occurred
25 in 2010 with Ms. Dorothy's office and the aerosol, the

1 air freshener; and that that's been consistent. I'm
2 going to maintain that consistently.

3 I understand it may create some other issues
4 for you all; but in terms of everything else that we
5 discussed at those meetings, they have been discussed.
6 You can raise those things.

7 You can talk about those things because they
8 relate to all the other instances that the District was
9 looking at. So I'm being consistent with that ruling.
10 Let's redact them and we will get them marked at the
11 appropriate time.

12 MS. LONG-MAHONEY: Thank you, Your Honor.

13 (Whereupon there was a recess.)

14 THE COURT: Have you all had the opportunity
15 to take care of the exhibit?

16 MS. LONG-MAHONEY: Yes, Your Honor.

17 MS. PEAVY: Yes, Your Honor.

18 THE COURT: Are there any questions or
19 concerns about it?

20 MS. PEAVY: No.

21 MR. GOODWYN: I think we're in agreement on
22 the redactions.

23 THE COURT: And have they been marked?

24 MS. LONG-MAHONEY: Not yet.

25 THE COURT: Do that, please.

1 (Defendant's Exhibits Number 7-8 are marked
2 for identification.)

3 THE COURT: Is there anything else to take up
4 before we bring the jury in?

5 MR. BARLOW: Not from the defendant.

6 MS. PEAVY: Not from the plaintiff, Your
7 Honor.

8 THE COURT: You may ask the jury to come in,
9 please.

10 (The jury returns to the courtroom.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Yes, ma'am, as far as the
13 exhibits?

14 MS. LONG-MAHONEY: Your Honor, I'd like to
15 move into evidence Defendant's Exhibits 7 and 8, the
16 notes from March 29, 2011, and May 5, 2011, from
17 Ms. Batchelder to Mr. Kennedy.

18 MR. GOODWYN: No objection.

19 THE COURT: There is no objection; so they
20 will be admitted.

21 (Defendant's Exhibit Number 7-8 are received
22 into evidence.)

23 THE COURT: You may call your next witness.

24 MS. LONG-MAHONEY: The defense would like to
25 call Roosevelt Garrick, please.

1 ROOSEVELT GARRICK, JR., being
2 first duly sworn, testifies as follows:

3 THE CLERK: Thank you. Have a seat in the
4 witness stand, please. State your name for the record.

5 THE WITNESS: Roosevelt Garrick, Jr.

6 THE COURT: Would you please spell your last
7 name.

8 THE WITNESS: G-A-R-R-I-C-K.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 BY MS. LONG-MAHONEY:

12 Q Good morning, Mr. Garrick.

13 A Good morning.

14 Q If you could tell the jury what your position is
15 with Richland School District Two?

16 A I am the Chief Administrative Officer for Richland
17 School District Two at this time.

18 Q What is your educational background?

19 A I graduated from Lower Richland High School. I
20 continued my education at South Carolina State
21 University where I received my undergraduate
22 degree. I then came to the University of South
23 Carolina where I completed my graduate, Master's
24 degree.

25 Q And how long have you been employed with Richland

1 School District Two and in what capacities?

2 A I've been employed with Richland Two for 35 years.
3 I've been a teacher, coach, Assistant Principal,
4 principal, and District Office Administrator in
5 various capacities.

6 Q Of all those 35 years, did you happen to spend any
7 of them at Spring Valley High School?

8 A Yes. Interestingly enough, I spent my first ten
9 years in Richland Two at Spring Valley High School
10 from '79 to '89.

11 Q What did do you at that point back then?

12 A I was a coach and a teacher, coach and in a
13 position we call Assistant Administrator where you
14 get your initial baptism into administration.

15 Q What did you coach during those years at Spring
16 Valley?

17 A I coached girls basketball, I coached football, and
18 track.

19 Q Okay. I'm curious was Sammy Uker a volunteer back
20 then as well, back in 1979?

21 A Yes, he was.

22 Q So this is the same Sammy Uker who is still around
23 today helping Coach Hunter?

24 A Same Mr. Uker.

25 Q Was he a character back then as well?

1 A Yes, he was.

2 Q Tell the jury what your primary responsibilities
3 are as Chief Administrative Officer.

4 A I supervise several departments, one of which is
5 Human Resources.

6 Q All right. And so your District is --
7 approximately how many students does the District
8 have?

9 A Our student count in Richland School District Two
10 at this time is 27,000-plus students, which makes
11 us the largest School District in the Midlands.

12 Q How many employees does it take to educate that
13 many students?

14 A We have approximately 3,500 employees,
15 approximately 2,000 certificated employees, and
16 about 1,500 classified employees.

17 Q Do you have responsibility, overall responsibility,
18 for all 3,500 of those employees?

19 A On the Human Resources side, I have that
20 responsibility, yes, ma'am.

21 Q All right. Why does the District have a category
22 of employees called security officers? I believe
23 you have approximately 80 full-time, part-time.
24 What's the purpose of that whole department in the
25 School District?

1 A Well, Richland School District Two is a very large
2 School District, as I stated the largest School
3 Districted in the Midlands. We have 40-plus sites,
4 schools, and centers.

5 As far as physical security, we have a
6 security force that goes around and makes sure that
7 those 40 sites are secure on a 24-hour a day, 7-day
8 a week basis.

9 Q Why is that important to the District?

10 A Well, it's very important because of the capital
11 that we have involved with all of those schools;
12 and we want to keep our schools secure. We want to
13 keep our children safe. The bottom line is our
14 children are the reason we're there. So that's the
15 reason for the security force.

16 Q Okay. And what role do you specifically have with
17 respect to the security officers in the District?
18 Do you have any direct role with them?

19 A I have no direct role. Check Earles is in charge
20 of the security force. But as with any employees
21 in the District, security being included, any time
22 someone is recommended for a job or recommended for
23 termination, it has to come through my office.

24 Q Okay.

25 A A recommendation for employment or a recommendation

1 for termination comes through my office.

2 Q And will promotions come through your office as
3 well?

4 A Yes.

5 Q When and how did you first learn of concerns with
6 Jeffery Kennedy?

7 A March 2011. I was given information that there had
8 been some thefts at Spring Valley High School and a
9 security officer may be involved.

10 Q Okay. So after you were given that information,
11 did you review those documents about these theft
12 concerns at Spring Valley High School?

13 A Yes. I reviewed documents from the investigation
14 by the administration at Spring Valley High School,
15 and I got some information from Chuck Earles and
16 Traci Batchelder.

17 Q Okay. Tell the jury if you could what your
18 standard practice is when allegations are made
19 against an employee. How do you handle that from
20 an HR perspective?

21 A When allegations are made against an employee and
22 with 3,500 employees, something is going on all the
23 time; but either I myself or someone who works with
24 me on my staff goes out and looks into the
25 situation.

1 Q Okay. And once an initial investigation is done
2 just regarding any employee, at some point do you
3 often meet with the employees directly?

4 A Yes. When it comes to matters of recommendation
5 for termination, although I review a lot of
6 materials, read a lot of information, it is very
7 important to me to sit down with that person to
8 know who I'm dealing with, to get as much
9 information for myself in making the decision about
10 this situation.

11 Q And what things do you generally look for when
12 you're meeting with an employee to get your own
13 instincts on the employee or whatever the
14 allegations are? What are you looking for when
15 you're meeting with that employee?

16 A I'm looking for honesty. I'm looking to see if the
17 employee takes responsibility for their actions.
18 I'm looking to see if this is someone that I can
19 put back to work or I can't put back to work.

20 Q Okay. At some point after you learned that perhaps
21 Mr. Kennedy had some possible connection to the
22 Spring Valley High School thefts, did you meet with
23 him personally at some point?

24 A Yes. I believe on May 5, 2011, I made an
25 appointment to see Mr. Kennedy. Mr. Kennedy came

1 in. I had in the meeting, along with me, Ms. Traci
2 Batchelder, whom you just heard from; and I had
3 Mr. Chuck Earles, who is over security.

4 Q So tell the jury what you recall from that meeting
5 with Mr. Kennedy in general, that May 5th meeting.
6 What do you recall he said about his routine, let's
7 say, first on the evening of February 24th?

8 A Okay. When I have these meetings, I want to see --
9 it's important to me to see who I'm talking to.
10 Okay. As I said earlier, I reviewed a lot of
11 information. I wanted to see who I was talking to.

12 At that time if I'm recalling correctly, this
13 was the first time I ever met Mr. Kennedy. So I
14 asked about his routine. I asked -- once he
15 started telling me what he did coming through the
16 back door, moving down the hall, that type of
17 thing, I asked him questions about, you know, why
18 he did that. I asked him questions about why he
19 was off the camera for an extended period of time.
20 During that time I got inconsistent answers.

21 Q Okay. So if you can recall -- and it was a while
22 ago -- the three issues you would have brought to
23 his attention or among the three would be the
24 February 24th evening, the videotape you had seen
25 and the statements about it. What do you recall he

1 said about his routine on February 24th during this
2 meeting?

3 A Well, a couple of things struck me. At one point
4 he said, "I'm just wasting time." Another time he
5 said he was in the break room with a magazine
6 getting some water. Later on he said he was
7 charging the walkie-talkie, those type of things.

8 Q Okay.

9 A That was on that particular day.

10 Q All right. What do you recall he said about his
11 routine on March 1st, that evening of March 1st,
12 which was the next night there was evidence that
13 more went missing at Spring Valley? What do you
14 recall he said specifically about that night?

15 A On that night he said basically the same things:
16 That he went in through the back door. He visited
17 the rest room. He disappeared off camera for a
18 period of time. Again, he mentioned wasting time.

19 Again, he mentioned being in the break room,
20 basically the same thing he said the first time.
21 But I asked him on the -- and this is the March 1st
22 situation.

23 Q Okay.

24 A I asked him, "What I noticed is after you come in,
25 you're off camera for awhile, and then you leave

1 out. Is that the end of your time?" He said yes.
2 I said, "Are you absolutely sure that's the end of
3 your time there at Spring Valley?" He said yes.

4 I said, "Are you sure?" He said yes. But yet
5 after he left, he got in his vehicle, he drove
6 around front. Then he came back in the front and
7 went through the front part turning off lights.

8 Q You have some general familiarity with the layout
9 of Spring Valley High School; right?

10 A Yes.

11 Q From where he spent 20 minutes in those back
12 administrative offices and went in and out that
13 door, could he have walked from that area to the
14 same area you saw him later turning off the lights
15 with any effort at all?

16 A It's a straight shot.

17 Q A matter of some feet, a few feet?

18 A I would say 50 feet, something like that.

19 Q But right through the hallway?

20 A You go through a door, and then you're in that
21 area.

22 Q So why would he spend 20 minutes in the
23 administrative hallway, go in and out, take his
24 break, go out the door, get in his vehicle, and
25 drive out the front if he could have accessed it

1 just by walking on out?

2 A Well, that's what was puzzling to me; but my
3 thoughts were at the time -- and these were my
4 personal thoughts in looking at the situation --
5 and this would have been my question:

6 "Why not park in the front, come in the front
7 where you are going to turn out the lights and do
8 what you do, go to the back, charge your radio, and
9 you're back out to where you started?"

10 But the inconsistent thing and the thing that
11 got me saying, "Huh," is he said he didn't do that.
12 He said he came in the back. He left out of the
13 back and that was it. He was through.

14 I asked if, "You're sure." He said, "Yes, I'm
15 sure. That's all I did," but yet I see him get in
16 his truck, pull back around, park, come in and
17 take -- and I said to myself, "Why would he tell me
18 that?" I just couldn't figure it out.

19 Q And did you find his explanation for why he was
20 spending 20 minutes -- his shift would have
21 started, what, about 11:00 P.M.; is that right?

22 A Something like that.

23 Q And the times that he was observed in the
24 administrative hallways were, what, within the
25 first 30 minutes of that?

1 A Right.

2 Q You're Chief Administrative Officer for the
3 District of all 3,500 employees, is it acceptable
4 to you that someone is taking a break within the
5 first 30 minutes of their shift?

6 A Certainly not, and that's something that stuck in
7 my mind. The first part of your shift "You're
8 already taking a break?" Number two, "What are you
9 doing?"

10 "I'm wasting time. I quote, "I'm wasting
11 time."

12 Q Did he say that to you more than once?

13 A Yes.

14 Q What did you think about that?

15 A Well, number one, I'm responsible for 3,500
16 employees. I don't expect any employee to tell me
17 they're on their job wasting time. I don't care
18 what the job is.

19 Q What do you recall Mr. Kennedy saying about his
20 whereabouts or his explanation about the seven
21 minutes he was in the athletic building on
22 March 3rd off camera? What do you recall about
23 that response?

24 A When he talked to me about the -- I think that was
25 the February 28th, May 1st timeframe. He was off

1 camera about six, seven minutes, something like
2 that.

3 Again, I got inconsistent answers. I've heard
4 turning off the lights. I've heard messing around
5 with the weights. I've heard wasting time, same
6 thing.

7 Q So what do you think at this time?

8 A It's very inconsistent. It's -- I can't figure out
9 what's going on. It doesn't make sense.

10 Q And were you aware that the evening of March 3rd
11 when he was in the athletic building, had you seen
12 the video to see that when he set the alarm, it
13 took about less than a minute?

14 A I noticed he and the other gentleman come in, set
15 the alarm, right back out.

16 Q And then what did you notice about the routine the
17 next morning?

18 A When he came in, he was alone. He went to the
19 keypad, took off the alarm, or whatever he did.
20 I'm not positive. But he came in and he was there
21 for about six, seven minutes, very, you know -- he
22 came in that morning.

23 Well, when they armed it, it was in and out.
24 When he came back in the next morning, whether he
25 armed it or whether it was unarmed, I don't know;

1 but he was in there for six or seven minutes.

2 Q All right. And what precisely did he tell you for
3 those six or seven minutes, as best you can recall
4 sitting here today, that he said he was doing on
5 those six or seven minutes on March 3rd when he was
6 in the athletic building?

7 A Okay. Now, when I was meeting with him on May 5th,
8 we talked about all of these things. So I would
9 ask him questions about certain things. Then I
10 would go to another situation, and then I would
11 come back later on. Again, I got inconsistent
12 answers.

13 Q Within the same meeting?

14 A Within the same meeting.

15 Q Okay. So to the best of your memory, what are the
16 most explanations he gave you for what he did
17 during those six minutes in the athletic building
18 on March 3rd?

19 A Messing around with weights, wasting time.

20 Q Did he say anything else other than those two
21 explanations to you on May 5, 2011, of
22 significance?

23 A I don't recall right now.

24 Q Okay.

25 A If there was anything else.

1 Q But that was basically his explanation?

2 A That was his explanation.

3 Q Did it seem plausible?

4 A It was very inconsistent.

5 Q Okay. How did you conclude your May 5th meeting
6 with Mr. Kennedy?

7 A Well, after meeting Mr. Kennedy, after talking to
8 him, when you're contemplating or looking at an
9 employee for termination, that's a very serious
10 matter.

11 From what I've read and then what I got during
12 that meeting, I said, "I need to look into this
13 some more. I need to think about this." I told
14 him I would get back to him.

15 The reason I did that, based on what he told
16 me, I wanted to go back and look at the video again
17 to make sure that I saw what I thought I saw and to
18 give him the benefit of the doubt on his
19 explanation to me.

20 Q Were you trying to trick him in your questions of
21 him?

22 A Not at all. This is the first time I've met this
23 gentleman as I recall. I'm all around the
24 District. I am in and out of all schools. I'm in
25 and out of the Support Service Center.

1 But I cannot recall prior to this meeting ever
2 meeting Mr. Kennedy before. This is the first
3 time. So I wanted to make sure I'm meeting this
4 gentleman for the first time. I'm hearing from him
5 for the first time. I'm looking at some
6 disciplinary action here. So I want to be
7 thorough.

8 Q And during that meeting do you feel confident that
9 you gave him every opportunity to tell you anything
10 he was doing and provide you with any information
11 he wanted to provide to you to explain what he was
12 doing on those evenings?

13 A I said to him, "Is there anything else you'd like
14 to tell me before I dismiss the meeting?"

15 Q So from your perspective, if he had something else
16 to tell you, he could have told you on May 5th?

17 A Exactly.

18 Q But what you've described is what he told you?

19 A Yes.

20 Q After that meeting I think you said you went back
21 and looked at the video. What did you determine
22 after you looked at that?

23 A Well, concerning the May 1st, February 28th
24 timeframe --

25 Q Are you talking about March 1st?

1 A Excuse me, March 1st. February 28th, March 1st
2 timeframe I confirmed he came in that building. He
3 spent some time off camera, approximately 20
4 minutes. He left out. He drove around front and
5 he came back in the front of the building, went
6 through, and turned the lights off.

7 He told me that didn't happen. That was the
8 end of his shift when he left out of the back of
9 that building that night. I asked that question
10 several times. So I wanted to go back and confirm
11 it, and I looked at it and he didn't.

12 Q Okay. So some point after your May meeting, you
13 learned that the Richland County Sheriff's
14 Department was not going to charge Mr. Kennedy with
15 any crime; is that correct?

16 A Yes.

17 Q So at this point where are you in your thoughts
18 regarding Mr. Kennedy and his continued employment?

19 A I've listened to Mr. Kennedy. I've looked at all
20 the documents. This is somebody's job. I don't
21 have any place in all of this where I can say,
22 "Yeah, I saw you take this."

23 We turned information over to -- we turned
24 investigations like this over to the Richland
25 County Sheriff's Department. They got back to us,

1 and they said they were not bringing charges.

2 So I called Mr. Kennedy back in. Again,
3 Mr. Chuck Earles, Ms. Traci Batchelder. After much
4 thought, although I've seen a lot of
5 inconsistencies, I give him the benefit of the
6 doubt. I tell him I'm putting him back to work.

7 Q So he had been on administrative leave with pay all
8 this time period; right?

9 A He had been on administrative leave, and we do the
10 administrative leave with all employees who there
11 is an allegation against. So we have employees
12 and, with 3,500 employees, we have employees on
13 administrative leave probably every day; but we do
14 that to protect the District and to protect other
15 employees.

16 So as the investigation is going on, the
17 employee is not in the midst. We can't -- we don't
18 want people to say during the investigation that
19 this employee did this or this employee did that.
20 So they're at home. We instruct them if we need
21 them, we'll give them a call, with pay. So
22 approximately four months Mr. Kennedy was home with
23 pay.

24 MS. LONG-MAHONEY: May I approach the witness,
25 Your Honor?

1 THE COURT: Yes, ma'am.

2 BY MS. LONG-MAHONEY:

3 Q If you could look at what's been marked as
4 Plaintiff's Exhibit 5. Can you identify that
5 document, please?

6 A This is the letter I wrote to Mr. Kennedy on
7 June 27th.

8 Q And would you --

9 A Giving him my decision.

10 Q All right. So you met with Mr. Kennedy on June 15,
11 2011. You decided to give him the benefit of the
12 doubt. Can you explain to the jury what you told
13 Mr. Kennedy your conclusions were in your June 27th
14 letter and then what you laid out as your
15 expectations for Mr. Kennedy in that letter?

16 A I told him that I was putting him back to work,
17 and --

18 Q Let me ask you this: Did you -- were you demoting
19 him or did you put him back to work?

20 A I put him back to work.

21 Q Okay. Same salary?

22 A Same salary, everything.

23 Q Same benefits?

24 A Same benefits.

25 Q Okay.

1 A The only thing I did not do was tell security where
2 to put him.

3 Q Okay.

4 A But I said, "He needs to go back to work." I said
5 to him, "I must emphasize that during my review of
6 the videotape, I was unable to draw a conclusion
7 about your whereabouts on several occasions, given
8 that you visited unnecessary areas, such as the
9 break room, in an effort to pass time. Please
10 understand it is imperative that you refrain from
11 any conduct that is not effective or productive in
12 using your work hours."

13 This is basically addressing wasting time.
14 "In the future, if you feel you do not have
15 sufficient workload or schedule, please discuss the
16 situation with Eric Barnes or Chuck Earles. It is
17 important that you are using all your time
18 productively and remain diligent in performing your
19 responsibilities throughout your working hours."

20 It bothered me that I have an employee wasting
21 time. So I wanted him to know, "I'm putting you
22 back to work, but use your time wisely. Okay. You
23 do that, we're good."

24 Q Okay. But at the time you put him back to work,
25 did you still have your concern with

1 inconsistencies and his honesty with you?

2 A Definitely, yes, I sure did.

3 Q But as you put it --

4 A And I expressed it.

5 Q -- in your words you gave him the benefit of the
6 doubt?

7 A Yes.

8 Q At the point at which you put him back to work, had
9 he been recommended for a promotion?

10 A He was recommended for a promotion, I think, some
11 time in February.

12 Q Okay. And what was your decision with respect to
13 promoting him with your concerns that you had at
14 that point you put him back to work?

15 A At that point I have an employee who was very
16 inconsistent in explaining his whereabouts and what
17 was going on during these alleged thefts. Okay. I
18 also had an employee who told me he was wasting
19 time on a 64-acre campus with probably -- next to
20 Blythewood High School -- our largest physical
21 plant.

22 It takes an inordinate amount of time to go
23 around and check. He told me he was wasting time,
24 and I was concerned with that. I could not approve
25 a promotion at that point in time; so I did not

1 promote him.

2 Q So you wouldn't be promoting him to a supervisory
3 position? Is that what you were declining to do?

4 A Exactly.

5 Q Did you think he could be an effective supervisor
6 given the concerns you just described that had with
7 him?

8 A That's the problem I had.

9 Q Okay. And is this letter, what's identified as
10 Plaintiff's Exhibit 5, is that the letter you sent
11 to Mr. Kennedy in follow up to your meeting with
12 him?

13 A This is the letter I sent.

14 Q When did you next hear from Mr. Kennedy?

15 A I got a letter from an attorney representing
16 Mr. Kennedy sometime later. I don't remember the
17 exact date.

18 Q Okay.

19 MS. LONG-MAHONEY: Mark this as our next
20 exhibit, please.

21 (Defendant's Exhibit Number 9 is marked for
22 identification.)

23 MS. PEAVY: Just briefly if we could strike
24 out the personal identification number there, his Social
25 Security number.

1 MS. LONG-MAHONEY: Oh, absolutely.

2 BY MS. LONG-MAHONEY:

3 Q I would like to show you what's been marked as
4 Defendant's Exhibit 9. Is that the letter you
5 received from Mr. Brown?

6 A This letter is from Mr. Franchot Brown.

7 Q Okay. And this was what was addressed to you
8 regarding his client, Mr. Kennedy?

9 A Yes. We received this letter on January 17, 2012.

10 MS. LONG-MAHONEY: I'd like to introduce this
11 into evidence.

12 THE COURT: Any objection?

13 MS. PEAVY: No objection.

14 THE COURT: It's admitted.

15 (Defendant's Exhibit Number 9 is received into
16 evidence.)

17 BY MS. LONG-MAHONEY:

18 Q Okay. Mr. Kennedy, what was Franchot Brown, the
19 attorney for Mr. Kennedy, telling you on -- in
20 early January of 2012 in this letter? What was the
21 gist of what he was saying to you?

22 A He wrote me this letter to demand that I
23 immediately promote Mr. Kennedy.

24 Q Okay. Is that his third paragraph in this letter?

25 A Yes.

1 Q If you could read that to the jury, please.

2 A "This letter is therefore to demand you place
3 Mr. Kennedy back in his full-time position, elevate
4 him to a position of lieutenant, restore all the
5 rights and privilege due him as a five-year
6 employee with the security forces of Richland
7 School District Two."

8 Q What was your reaction to receiving this letter
9 from Mr. Kennedy's attorney?

10 A Number one, he was already back in his position. I
11 had already done that. He was back in his
12 full-time position. No rights were ever taken away
13 from him. He said, "Restore all rights and
14 privileges." He had all those rights and
15 privileges. The only thing here is demanding that
16 I promote him.

17 Q All right.

18 MS. LONG-MAHONEY: If you could mark this next
19 exhibit.

20 (Defendant's Exhibit Number 10 is marked for
21 identification.)

22 BY MS. LONG-MAHONEY:

23 Q If you could please identify what's been marked
24 Defendant's Exhibit 10?

25 A This is my February 8, 2012, letter to Mr. Kennedy

1 addressing the Franchot Brown letter.

2 Q Okay. And you prepared this letter --

3 A Yes.

4 Q -- around the time of February 8, 2012; is that
5 correct?

6 A Yes.

7 MS. LONG-MAHONEY: We'd like to introduce this
8 into evidence as Defendant's Exhibit 10.

9 MS. PEAVY: No objection.

10 THE COURT: It's admitted.

11 (Defendant's Exhibit Number 10 is received
12 into evidence.)

13 BY MS. LONG-MAHONEY:

14 Q Mr. Garrick, what did you tell Mr. Kennedy in this
15 February 8, 2012, letter to him after you got that
16 demand from his attorney?

17 A I told him I was in receipt of a letter from
18 Mr. Brown. I told him in my letter that Mr. Brown
19 was demanding that I put him -- that I promote him;
20 and I basically tell him that he's not been
21 demoted, instead he remained employed in the same
22 position in which he was assigned prior to being
23 placed on administrative leave.

24 Q Would you refer if you would and read to the jury
25 your third paragraph in that letter to Mr. Kennedy.

1 It begins, "While the Richland County Sheriff's
2 Department."

3 A "While the Richland County Sheriff's Department was
4 involved in investigating the missing property, my
5 letter dated June 27, 2011, confirmed that you were
6 being reinstated to your position as security
7 officer in the District.

8 In my June 27th letter, I outlined my concern
9 with what appeared to be some unusual behavior on
10 your part, as well as my concern that you did not
11 provide me with accurate and consistent information
12 in your security of the Spring Valley High School
13 Administration Building. While there is not an
14 open criminal investigation, we were not
15 comfortable with your responses during our
16 investigation."

17 Q All right. What does your next paragraph go on to
18 say?

19 A "As you know, you have not been demoted from your
20 position as security officer, instead you remain
21 employed in the same position which you were
22 assigned in prior to being placed on administrative
23 leave.

24 However, while I returned you to your position
25 of security officer in the District, as a result of

1 the concerns I described in this letter, as well as
2 my June 27th letter, I decided not to approve a
3 recommendation that you be promoted to a position
4 of lieutenant at this time.

5 Your job responsibilities as security officer
6 and particularly a lieutenant require that we have
7 the utmost trust and confidence in you. For those
8 reasons, I am denying your attorney's demand that
9 you be promoted to a position of lieutenant at this
10 time.

11 If you wish to be considered for a promotion
12 in the future, you will need to ensure that you
13 exercise good judgment in the performance of your
14 duties at all times and conduct yourself in a
15 manner which restores our trust and confidence in
16 you."

17 Q This is the letter you sent to Mr. Kennedy on
18 February 28, 2012; correct?

19 A Yes, yes.

20 Q Mr. Garrick, from your perspective had that
21 concluded the matter with Mr. Kennedy?

22 A Yes.

23 Q Do you believe you gave him, as you said, the
24 benefit of the doubt?

25 A I definitely did. Based on everything I saw and

1 was presented with, I gave him the benefit of the
2 doubt. I put him back to work.

3 Q Okay. When did you next hear there was a problem
4 with Mr. Kennedy after that?

5 A I think around October 2012 -- September,
6 October 2012.

7 Q Did Ms. Batchelder make you aware of those
8 concerns?

9 A Yes, she did.

10 Q Okay. Did she discuss them with you at the time?

11 A Yes, she did.

12 Q Did you meet with Mr. Kennedy in connection with
13 the October 2012 incident?

14 A No, I didn't.

15 Q But you were aware that Ms. Batchelder terminated
16 his employment; is that correct?

17 A I was aware that she recommended his termination,
18 yes.

19 Q And he did not appeal that to you to come back and
20 talk to you and explain the situation to you; is
21 that correct?

22 A Although I had met with Mr. Kennedy back in
23 May 2011, he knew he could have come to me and we
24 could have sat down. We could have talked again.
25 He did not do that.

1 Q And in Ms. Batchelder's letter, she referred about
2 his right to appeal to you; right?

3 A Exactly, yes.

4 Q And could he have come in and showed you phone
5 records and brought you documents and brought you
6 his cell phone or whatever he wanted to do during
7 that meeting?

8 A Yes, he could have. That was the purpose of an
9 appeal.

10 Q But he didn't ask to do that?

11 A No.

12 Q All right. So when he didn't appeal it to you, at
13 some point did you become familiar with the facts
14 and circumstances about why Ms. Batchelder was so
15 concerned about his October 2012 conduct?

16 A Yes.

17 Q And did you agree with Ms. Batchelder that
18 originally that would have been an issue you would
19 just address to employees about clarifying the
20 policy and move on?

21 A Based on what I saw initially, that's what we would
22 have done.

23 Q So is the issue about whether he did or didn't show
24 Ms. Jones the video?

25 A No, not at all, not at all.

1 Q What fundamentally was the problem that
2 Ms. Batchelder concluded was a problem with
3 Mr. Kennedy in October 2012 and that you
4 ultimately, I assume, agreed with?

5 A I agreed with it. We have a culture of excellence
6 in Richland School District Two. That's a culture
7 of excellence for our students, our staff members,
8 and an expectation to help us with our parents, a
9 culture of excellence.

10 Now, one of the buzz words over the last few
11 years that we hear constantly from our students and
12 in the community is bullying. When I read what had
13 happened or I was apprized of what had happened
14 between Ms. Jones and Mr. Kennedy, I wholeheartedly
15 agreed with what Ms. Batchelder did because I
16 considered that bullying.

17 Q Falling on the heels of your letter in February
18 of 2012, reiterating your expectations that it's
19 his job to restore your confidence in him, did this
20 behavior in October 2012 restore your confidence in
21 Mr. Kennedy?

22 A Not at all.

23 Q And do you --

24 A And that was the purpose. I gave him a chance to
25 go back to do what he needed to do to restore our

1 confidence and maybe down the line get that
2 promotion.

3 Q But in light of his conduct in October 2012, did he
4 leave you with any options?

5 A None.

6 Q Thank you.

7 MS. LONG-MAHONEY: I don't have any further
8 questions.

9 THE COURT: Any cross?

10 MS. PEAVY: Yes, Your Honor. Thank you.

11 CROSS EXAMINATION

12 BY MS. PEAVY:

13 Q Mr. Garrick, we met previously. We've been here
14 all week. My name is Rachel Peavy. I'm the
15 attorney for Jeffery Kennedy.

16 A Yes.

17 Q Your June 27, 2011, letter --

18 A Uh-huh.

19 Q -- that's been marked as Plaintiff's Exhibit 5, you
20 had thoroughly reviewed the evidence that you had
21 in your possession at that time; is that correct?

22 A Yes.

23 Q All right. And you found that other individuals
24 did enter into many of the areas where the thefts
25 occurred and that some of them had keys to those

- 1 secured areas?
- 2 A Yes.
- 3 Q Is that correct?
- 4 A Yes.
- 5 Q Okay. Who were those other people that had access
- 6 and opportunity?
- 7 A Other employees in the school.
- 8 Q Okay. Did you meet with those other employees?
- 9 A Not every one of them.
- 10 Q Okay.
- 11 A I talked to some of them.
- 12 Q Okay. But you didn't talk to all of them?
- 13 A No.
- 14 Q Did you meet with them with -- did Chuck Earles sit
- 15 in on those meetings?
- 16 A No.
- 17 Q Did Eric Barnes?
- 18 A No.
- 19 Q Did Chuck Earles know about these other individuals
- 20 who had keys and access at the same time that the
- 21 thefts were reported?
- 22 A I can't answer that question.
- 23 Q Okay. Did Eric Barnes know about those people?
- 24 A I can't answer that also.
- 25 Q Okay. But you knew about them; correct?

1 A I knew about?

2 Q That there were other people that you could
3 identify --

4 A Yes.

5 Q -- that had keys?

6 A Yes.

7 Q And that were there on the same date and time that
8 the items, the money went missing; correct?

9 A I could identify other people that were there.

10 Q Uh-huh.

11 A In individual instances.

12 Q Uh-huh.

13 A I could not identify anybody else that was there in
14 all of those instances.

15 Q Okay. But there were other people who had keys and
16 access? Is that a fair assessment based on your
17 letter?

18 A Yes.

19 Q Okay. And you've been here all week so you heard
20 Mr. Eric Barnes testify with some emotion that
21 Richland Two was a wonderful place to work, that it
22 would bend over backwards for its employees. Is
23 that an accurate characterization of his testimony?

24 A Yes.

25 Q Okay. You don't consider that to be a bad thing,

1 do you?

2 A What to be a bad thing?

3 Q That Richland Two gives its employees the benefit
4 of the doubt.

5 A That's why I put him back to work.

6 Q And if Richland Two is a wonderful place to work
7 for members of the community -- you've got a lot of
8 longtime employees -- that's not a bad thing
9 either, is it?

10 A No.

11 Q You're trying to cultivate your employees; correct?

12 A Yes.

13 Q That's part of the best practices of being a Human
14 Resources professional; correct?

15 A We hire and we want to retain who we hire.

16 Q Okay. I think it's undisputed you have years of
17 experience. You were the Chief Human Resources
18 Officer at the time these events were occurring.
19 So you're certainly qualified to determine when a
20 Human Resources matter involving an employee is
21 sensitive. Is that fair?

22 A Yes.

23 Q And you're able to determine, based on your years
24 of experience, when it's handled well, when it's
25 handled properly. Is that fair?

1 A Yes.

2 Q Okay. And is part of handling a sensitive employee
3 issue ensuring that the employee's privacy is
4 protected?

5 A Yes.

6 Q And that confidential information about an employee
7 is kept confidential?

8 A That's one of our hallmarks.

9 Q Okay. So here today -- you've been here all
10 week -- so you heard the testimony of Mr. Jim
11 Childers; correct?

12 A Yes.

13 Q Okay. And he's a longtime Richland Two employee
14 and he is the Assistant Principal at Spring Valley;
15 correct?

16 A Yes.

17 Q And you heard him testify about how he dealt with
18 the situation involving Ms. Larrine Jackson, didn't
19 you?

20 A Yes.

21 Q Okay. How he protected her and her reputation from
22 any rumor or innuendo that would flow from him
23 removing the key from her. Is that fair?

24 A He sought to do that, yes.

25 Q Okay. And did Jim demonstrate the culture of

1 excellence that Richland Two strives for in that
2 situation with Ms. Jackson?

3 A I think he was very fair and very smart to do what
4 he did.

5 Q Okay. So he was discrete about the situation;
6 correct?

7 A Yes.

8 Q He spoke to people directly on a need-to-know
9 basis. I think he testified he told maybe two or
10 three people about his action. Is that fair?

11 A Yes.

12 Q Okay. And in your professional opinion, based on
13 your years of experience, Jim Childers in dealing
14 with Ms. Jackson and the taking away of the keys,
15 his actions were appropriate, professional, and in
16 accordance with the best practices. Is that fair?

17 A Yes.

18 Q Okay. There was no memo floating around that,
19 "We've taken the keys away from Ms. Jackson"?

20 A Not that I know of.

21 Q And you have no reason to doubt Mr. Childers's
22 testimony that he dealt with it quietly and
23 discreetly on a need-to-know basis by verbally
24 informing the two or three people that needed to
25 know that he was taking away that key; correct?

1 A Yes.

2 Q Okay. So nothing was left out in any break room in
3 the Administration Building letting people know,
4 Ms. Jackson is not to have keys anymore; correct?

5 A I didn't hear anything about that.

6 Q Okay. And there wasn't anything in any vehicles
7 that Richland Two employees used in the course of
8 their employment that said the keys have been
9 removed from Ms. Jackson's custody, correct, that
10 you know of?

11 A Not that I know of.

12 Q And listening to Mr. Childers's testimony this
13 week, you must have been pleased to hear about how
14 that was dealt with?

15 A Very much so.

16 Q And that's what you strive for; correct?

17 A Exactly.

18 Q Okay. That's the culture of excellence that
19 Richland Two wants to perpetuate?

20 A That's what we strive for.

21 Q So that sensitive HR matters are handled well,
22 they're handled privately, and that confidential
23 information is kept confidential?

24 A (Nods in the affirmative.)

25 Q Okay. And looking at another situation where

1 you're hearing testimony from current Richland Two
2 employees that a confidential memo stating that
3 Jeffery Kennedy, who was in the Security Division,
4 was not to have any keys, you hearing that it was
5 left out in the watch room, that it was present in
6 Richland Two vehicles, that Lieutenant John Reid
7 said, "Everyone could put two and two together and
8 know what was going on," that's not the culture of
9 excellence that you want to strive for? That
10 doesn't reflect the culture of excellence?

11 A No.

12 Q Okay. So after sitting here this week, it's
13 disappointing to you, as a respected HR
14 professional, to hear that confidential employee
15 information, sensitive information, information
16 that could be damaging to an employee's reputation
17 if it got out, it's disheartening to hear that, in
18 fact, it did get out; correct?

19 A It's disheartening to find out that it did get out.

20 Q Uh-huh.

21 A What's more important to me is how it got out.

22 Q Uh-huh.

23 A Did one of our employees put it out there?

24 Q Okay.

25 A And I've heard nothing to say that.

1 Q Okay. Well, you've heard your own employees and I
2 think it was Captain Permenter. He is a long time
3 employee. He's been promoted over the years. You
4 heard lieutenant John Reid. He is a great fellow,
5 another respected employee. You heard Barry
6 Mitchell who worked there for a long time. He
7 decided to resign.

8 Anyway, you heard from them that, in fact,
9 what's been marked as Plaintiff's Exhibit 4 -- and
10 I'll show it to you, sir, because I know this is
11 your first day up here -- you heard testimony from
12 all those individuals that, in fact, this e-mail,
13 which was from Chuck Earles and was sent to all
14 Richland Two supervisory level employees and Traci
15 Batchelder, that this confidential memo had, in
16 fact, been printed out and left out for rank and
17 file staff to see. Isn't that accurate?

18 A No, ma'am.

19 Q Okay. So your testimony here today is that the
20 gentlemen who were here previously in the week, the
21 Richland Two employees who testified to that, you
22 never heard that testimony?

23 A They said they saw it in these places.

24 Q Right.

25 A But they never said Chuck Earles or Eric Barnes or

1 who --

2 Q Right.

3 A -- put it in these places.

4 Q Oh, correct. But will you agree with me that this
5 e-mail was written and sent by Chuck Earles, and it
6 was only delivered to the people that were listed
7 here; correct?

8 A Exactly.

9 Q Okay. So someone printed it out who received it;
10 correct?

11 A If it happened the way they say it did, someone had
12 to do that.

13 Q Okay. So someone who received this e-mail printed
14 it out and it was left out, if the testimony of the
15 current Richland Two employees is to be believed,
16 John Reid and Mr. Permenter, Captain Permenter?

17 A I would agree if that is to be believed, but there
18 are all kinds of ways that that could have gotten
19 out.

20 Q Well, someone would have received this e-mail and
21 printed it out; right? That's how it becomes paper
22 sitting here instead of just in someone's inbox;
23 right?

24 A What's more important to me is if that was done --

25 Q Uh-huh.

1 A -- and one of those people that it's addressed to
2 go to or Mr. Earles put it out there, and I have
3 nothing at this point to say that one of them did
4 that.

5 Q Okay. So Mr. Earles testified he didn't print it
6 out --

7 A Exactly.

8 Q -- and leave it out in the office, and Eric Barnes
9 testified he didn't print it out --

10 A Exactly.

11 Q -- and leave it in the office. But it would be
12 logical that whoever printed it out received it in
13 their inbox; right?

14 Because they are the people who are checking
15 their inbox, pulling their e-mails up on their
16 screen and deciding if they are going to print the
17 e-mail out; right?

18 A And it could be one of those people it went to --

19 Q Uh-huh.

20 A -- who printed it out.

21 Q Yeah.

22 A And gave to it Mr. Kennedy.

23 Q Uh-huh. Well, the testimony wasn't that it was
24 being given to Mr. Kennedy. The testimony was that
25 it was sitting out in the shift room where they

1 would come in to deal with things at the beginning
2 and end of shift and where other people would come
3 by. Then also the testimony was that it was in the
4 Richland Two trucks.

5 A And that was the testimony.

6 Q Okay.

7 A But as far as I'm concerned, I don't know that as a
8 fact.

9 Q Okay. So if Captain Permenter testified that he
10 saw it laying out in the watch room, Anthony
11 Permenter -- he is a captain, worked at the
12 District for a long time -- you don't give much
13 weight to that?

14 A Well, ma'am, you brought it up.

15 Q Oh, I know.

16 A Angela Permenter is Captain Permenter's wife.

17 Q Right.

18 A She received it.

19 Q Right.

20 A It could have gotten from Angela Permenter to
21 Captain Permenter to Mr. Kennedy.

22 Q So Angela Permenter printed it out and left it in
23 the room?

24 A I'm not saying that. I'm telling you what it could
25 have been. I have not heard yet who did that.

- 1 Q Okay. Right.
- 2 A And that's what's important to me because if I know
- 3 who did that --
- 4 Q Uh-huh.
- 5 A -- that goes back to what we were talking about
- 6 earlier and that confidentiality.
- 7 Q Uh-huh.
- 8 A It's marked confidential.
- 9 Q Right.
- 10 A If one of our people took confidential information
- 11 and left it lying around --
- 12 Q Uh-huh.
- 13 A -- I want to know that.
- 14 Q Oh, of course.
- 15 A Because I want to address it.
- 16 Q Of course.
- 17 A Right.
- 18 Q Because that's not the best practice?
- 19 A Certainly not.
- 20 Q That's not the culture of excellence?
- 21 A Certainly not.
- 22 Q To leave confidential information out that could
- 23 really hurt an employee; correct?
- 24 A I agree.
- 25 Q Okay. And you agree that this would be hurtful to

- 1 Mr. Kennedy if it got out? Outside of the
2 supervisory staff, it would be hurtful; right?
- 3 A It would be hurtful to Mr. Kennedy, and --
- 4 Q That's why it's marked confidential; right?
- 5 A It would be hurtful to Mr. Kennedy if one of these
6 people did that.
- 7 Q Uh-huh.
- 8 A But if Angela Permenter gave it to her husband,
9 Mr. Permenter, and he then gave it to Mr. Kennedy
10 and he left it out, then I think that's
11 intentional.
- 12 Q Well, so your testimony is that you think
13 Mr. Kennedy would have a motive to let everyone
14 know --
- 15 A No.
- 16 Q That --
- 17 A No.
- 18 Q -- his supervisors considered him to be dishonest
19 and untrustworthy?
- 20 A No, I'm not saying that at all.
- 21 Q Oh, okay.
- 22 A You are telling me what you think it could be.
- 23 Q Okay.
- 24 A I'm telling you what I think it could be.
- 25 Q Okay.

- 1 A And at the same time what I want to know.
- 2 Q Uh-huh.
- 3 A Chuck Earles testified that he did not leave it
- 4 out.
- 5 Q Right.
- 6 A Eric Barnes testified that he did not leave it out.
- 7 Q Okay.
- 8 A Okay. If one of these other people who received it
- 9 is the one who left it out --
- 10 Q Okay.
- 11 A -- and we haven't heard that.
- 12 Q Uh-huh.
- 13 A That's what I want to know because I want to deal
- 14 with that person.
- 15 Q Right. Okay. So you don't dispute the testimony
- 16 that it was left out. You just don't know who
- 17 printed it out and left it out?
- 18 A I don't know if it was left out or not.
- 19 Q Okay. So listening to your employees on the stand,
- 20 you don't know if you believe them?
- 21 A I don't know if it was left out. That's what they
- 22 said. I don't know that.
- 23 Q Okay.
- 24 A And if you show me who left it out --
- 25 Q Uh-huh.

- 1 A -- then we can take up that matter.
- 2 Q All right. When you interviewed or when you sat in
3 on the May 5th meeting with Mr. Kennedy and Traci
4 and I think Chuck Earles was there too, at that
5 point had Traci shared with you her notes from the
6 March 29th meeting?
- 7 A On May 5th?
- 8 Q Yes, sir.
- 9 A I believe so.
- 10 Q Okay. So she had gone through with you what she
11 had heard from Mr. Kennedy back March 29th?
- 12 A I believe so.
- 13 Q Okay. So on March 29th Ms. Batchelder, who she is
14 your trusted deputy; correct?
- 15 A She is one of several employees that work with me.
- 16 Q Uh-huh.
- 17 A We work together.
- 18 Q Okay.
- 19 A In the HR Department, yes.
- 20 Q Were you her boss at the time?
- 21 A I am over the entire division.
- 22 Q Okay. That's what I thought.
- 23 A She has an executive director that she reports
24 directly to.
- 25 Q All right. And so on March 29th she is

1 interviewing Mr. Kennedy just trying to get his
2 version of events, and that's about a month after
3 the events in question; correct?

4 A Uh-huh.

5 Q And then when you are meeting with him on May 5th,
6 that's two months after the night in question that
7 you're asking him about; correct?

8 A Approximately.

9 Q Okay. And you testified you felt that his
10 responses were inconsistent?

11 A Yes.

12 Q And that gave you pause?

13 A Yes.

14 Q Okay. It's fair to say that you're trying to
15 promote a culture of excellence at Richland County,
16 and you're hearing repeated statements from a
17 Richland Two employee that they're wasting time on
18 their shift?

19 A Yes, ma'am.

20 Q Okay. So he was always consistent that he wasted
21 time on his shift; correct?

22 A Yes.

23 Q And he was always consistent that he would just be
24 wasting time going to the break room, wasting time
25 looking at a magazine, wasting time having a drink

1 of water; correct?

2 A Yes.

3 Q And that would have been deeply upsetting to you as
4 a Human Resource professional; correct.

5 A It was.

6 Q And did you -- when you heard this information
7 about a security guard, he is telling you himself,
8 "I waste time on my shifts. Every shift I'm
9 wasting time. You're showing me -- you're asking
10 me about evenings two months ago, yeah, I was
11 wasting time." Correct?

12 A Yes.

13 Q Okay. At that point did you speak with the
14 supervisors, the shift supervisors, the captain and
15 lieutenant who had supervised Mr. Kennedy during
16 those third shifts, and find out, "Hey, is this
17 what's going on with these shift guys? They're
18 wasting a bunch of time"?

19 A No.

20 Q Okay. Did you speak with them and find out, you
21 know, "I'm hearing from a rank and file security
22 officer that there's a lot of wasting time going
23 on. Can you tell me what the ordinary night is
24 like for third shift?"

25 A No.

1 Q Okay. So you were extremely upset by Mr. Kennedy
2 telling you that he wasted time on his shifts, but
3 you didn't pursue further inquiry into whether that
4 was the ordinary course of third shift?

5 A No, I didn't.

6 Q Okay.

7 A Because we don't want any employees wasting time.

8 Q Oh, of course not. That's not part of what you're
9 looking for Richland Two to live up to is for
10 employees to waste time; correct?

11 A Right.

12 Q And you've never overseen the Security Division,
13 correct, at Richland Two?

14 A No.

15 Q Okay. And you don't know the ebb and flow and sort
16 of the normal course of third shift in the Security
17 Division, do you?

18 A No.

19 Q Okay. So if Mr. Kennedy told Ms. Batchelder and
20 told you that, you know, "This is the way I've
21 always done it. I've always wasted time on my
22 shift," you don't have any knowledge if that's
23 incorrect, do you?

24 A I don't have any knowledge that's incorrect.

25 Q Okay.

1 A But if he told me what you just stated, if he told
2 me that, I'm going to tell him just what I told
3 him.

4 Q Oh, yeah. You were very clear that you wanted him
5 to step it up a notch in terms of productively
6 using his time?

7 A Exactly.

8 Q And you wanted him to step it up a notch in terms
9 of not frittering away District resources by
10 sitting around in the break room 20 minutes, having
11 a soda, maybe calling his wife, whatever it was;
12 right?

13 A Whatever wasting time is.

14 Q Okay. All right. Now, you felt when you wrote the
15 letter to Jeffrey advising him of where you were on
16 June 27, 2011, you felt you had thoroughly reviewed
17 the matter; is that correct?

18 A Yes.

19 Q Okay. And that's based on your years of experience
20 dealing with HR matters; correct?

21 A Yes.

22 Q Was part of your thorough review of the matter
23 viewing all the security footage from the time when
24 Mr. Hunter left the Athletic Department, I think it
25 was around 10:30, until he came back the next

1 morning?

2 A No.

3 Q Okay. Was that made available to you?

4 A Some of the footage was made available to me. What
5 I particularly asked for --

6 Q Uh-huh.

7 A -- after I met with Mr. Kennedy --

8 Q Uh-huh.

9 A -- and he told me what he did as far as his routine
10 on the night of February 28th, March 1st time
11 period.

12 Q I want to focus on the Athletic Department, and
13 then I'll allow -- I'll get into the Administration
14 Building. Okay. Let's just keep it on the
15 Athletic Department because it's two separate
16 buildings.

17 Was the video footage from Mr. Hunter's
18 departure on the evening of March 3rd until his
19 arrival on the morning of March 4th, was that made
20 available to you?

21 A Okay. And you stopped me before I could tell you.

22 Q Okay.

23 A You asked what was made available to me.

24 Q Uh-huh.

25 A I met with Mr. Kennedy.

1 Q Right.

2 A During our meeting he gave me reason to go back and
3 look.

4 Q Right.

5 A Because of some inconsistencies.

6 Q Right.

7 A So, no, I didn't go back to the Athletic
8 Department. I went back to the administrative area
9 where he told me that he came in.

10 Q Uh-huh.

11 A He spent some time, he left out, and that was the
12 end of his shift.

13 Q That --

14 A That's --

15 Q -- was the end of his shift or the end of his --

16 A -- the end of his time at Spring Valley.

17 Q Okay.

18 A That's the part I went back and reviewed because in
19 my review I don't remember him doing that. I
20 remembered him continuing.

21 Q Uh-huh.

22 A So I wanted to make sure that what I had in the
23 beginning was accurate.

24 Q Uh-huh.

25 A And I wanted to see if what he was telling me was

1 accurate.

2 Q Okay.

3 A And I went back and I reviewed that.

4 Q Uh-huh.

5 A And found that what he was telling me was not
6 accurate.

7 Q Okay.

8 A So that's what I reviewed.

9 Q Okay.

10 A No, I didn't review anything over in the Athletic
11 Department after that time.

12 Q Did you ever review the video from the Athletic
13 Department?

14 A Yes.

15 Q Okay. Did you review the entire footage from when
16 Mr. Hunter left to when Mr. Hunter arrived the next
17 morning?

18 A No.

19 Q What did you review?

20 A I reviewed the coming in of the two security
21 guards.

22 Q So the snapshot with Mr. Kennedy and John Reid?

23 A Uh-huh.

24 Q Lieutenant Reid.

25 A Uh-huh.

1 Q Okay.

2 A And then when he came back.

3 Q Yeah.

4 A And went back out.

5 Q Okay. So the snapshot at 10:45 or so when he and
6 Lieutenant Reid arm it?

7 A Uh-huh.

8 Q And then the snapshot at 5:45 or so when he is
9 disarming it?

10 A Uh-huh.

11 Q Okay. All right. Did you ever explore -- strike
12 that. Did you ever speak with the members of the
13 baseball team and baseball staff that came back
14 that night?

15 A No.

16 Q All right. But you were aware that they too had
17 been in the building sometime after midnight, I
18 think the testimony has been; is that correct?

19 A I think I was aware of that sometime later.

20 Q Okay. Well, if Ms. Batchelder was aware of the
21 contention that the baseball team had come back and
22 there's been testimony to that effect, you would
23 have no reason to doubt that; correct?

24 A No, not at all.

25 Q So when you acknowledge in your letter that during

1 the timeframe of these incidents, "I have found
2 that other individuals did enter into many of these
3 areas with some of them having keys to the
4 appropriate secured areas," are you referring to
5 the baseball team coming back late that night?

6 A I'm referring to the fact that other people had
7 access, be it the baseball team, be it District
8 employees, whoever.

9 Q Okay. So you had knowledge on June 27th that other
10 people had access and keys to the Athletic
11 Director's Office when they were saying Mr. Kennedy
12 also had access?

13 A Uh-huh.

14 Q Of keys?

15 A Yes.

16 Q All right.

17 A That's why I gave him the benefit of the doubt.

18 Q Yes.

19 A And that's why he was put back to work.

20 Q Right. And that's conveyed in your letter very
21 clearly.

22 A Yes.

23 Q Your correspondence is very clear. The same holds
24 true for the Administration Building. You're
25 saying here you've reviewed the evidence. Other

1 people had keys. Other people had access and
2 opportunity on the days when these items were
3 reported missing; correct?

4 A Other people had keys; other people had
5 opportunities.

6 Q Uh-huh.

7 A On different -- at different times.

8 Q Uh-huh.

9 A There was one common denominator.

10 Q Uh-huh.

11 A Mr. Kennedy.

12 Q Okay. And if Mr. Kennedy was working all those
13 days, he would, of course, be a common denominator;
14 correct?

15 A Yes, he would.

16 Q Okay.

17 A But on each of those, there was extra time spent --

18 Q Right.

19 A -- off camera.

20 Q The wasting of the time; right?

21 A Or whatever was going on.

22 Q But he testified he was wasting time; correct?

23 A That's what he told me.

24 Q Okay. I say he testified. He told you that. And
25 the testimony has been that from the Security

1 Division's perspective when there is a report of a
2 theft in Richland Two, the security guards are
3 always -- who are on shift that time -- they're
4 always going to be investigated; correct?

5 A If that's what he testified.

6 Q But, I mean, wouldn't that be standard practice in
7 terms of if there is a security guard working on
8 the day in question when something goes missing,
9 you're going to look at the security guard because
10 presumably the security guard has keys and access;
11 correct?

12 A I wouldn't think so because if they're doing what
13 they're supposed to be doing, there is no need to
14 investigate them.

15 Q Well, if the Security Division says that that's
16 kind of a baseline, "We always look at security
17 first because they have got access and they're
18 working," you wouldn't have any quarrel with that,
19 would you?

20 A No.

21 Q All right. Did you find it odd that a man who just
22 got put up for a promotion, who had a good
23 reputation, married with kids, had grandkids, would
24 steal?

25 A It's odd but I've never said he stole anything.

- 1 Q Oh, I'm not saying that. I'm just saying he was
2 investigated.
- 3 A Uh-huh.
- 4 Q Chuck Earles and Eric Barnes thought he did it. Is
5 that fair to say?
- 6 A Well, you'd have to refer to their testimony for
7 that.
- 8 Q Okay. We saw Eric Barnes get agitated talking
9 about how Richland Two is a great place to be an
10 employee, you know, over the rainbow, what have
11 you. He thought he should have been -- his
12 testimony was he thought he should have been let
13 go; correct?
- 14 A If that's what you say.
- 15 Q Okay. So, you know, we've talking about
16 inconsistencies. You're in Human Resources so you
17 deal with human nature all the time, correct,
18 employees?
- 19 A I deal with employees all the time, yes.
- 20 Q So it is odd that someone who is on the up and up
21 who has got a lot to lose would decide to steal
22 just when they had been recommended for a
23 promotion; right?
- 24 A I can't comment on that.
- 25 Q Okay. But just generally you think it's odd? I

1 think you just testified it's odd.

2 A I wouldn't -- I would wonder why somebody would do
3 that, yes.

4 Q Right, right. Did you ever speak with Captain Z.,
5 Captain Zerzicki, about Mr. Kennedy?

6 A No.

7 Q All right. Did you ever speak with Lieutenant
8 Young, who was the shift supervisor that night,
9 about Mr. Kennedy?

10 A No.

11 Q So on the night when he is alleged to have acted
12 suspiciously, acted inconsistent, you didn't speak
13 with Mr. Kennedy's direct supervisors who were also
14 there that night to make any further inquiries;
15 correct?

16 A No.

17 Q Did you direct Traci Batchelder to do that?

18 A No.

19 Q Okay.

20 A And I don't need to talk to his supervisors to
21 determine somebody that tells me they're wasting
22 time --

23 Q Okay.

24 A -- that they're wrong. I don't need to talk to his
25 supervisors about that.

- 1 Q He is admitting to you he is wasting time?
- 2 A Right.
- 3 Q He is not trying to hide that from you?
- 4 A Right.
- 5 Q You're the head of HR?
- 6 A And that's why I don't need to talk to their
- 7 supervisors.
- 8 Q So he is being honest and telling you, "I waste
- 9 time during my shift." Right?
- 10 A Uh-huh.
- 11 Q And you believed him that he was wasting time;
- 12 right?
- 13 A Yes.
- 14 Q The evidence showed he was wasting time --
- 15 A Yes.
- 16 Q -- in your opinion. We've talked a little bit
- 17 about how Traci would have informed Jeffrey when
- 18 she terminated him after he declined to resign,
- 19 after she terminated him that he would have had the
- 20 right to appeal through the Richland grievance
- 21 measures --
- 22 A Yes.
- 23 Q -- or what have you. Jeffrey had been trying to
- 24 get this promotion back for a while. He had
- 25 requested, "Am I going to get my promotion?" In

1 June you said to him, "You're not going to get it.
2 I want to see you using your time better. I want
3 to see you using District resources better." You
4 didn't feel he was ready. Everyone has testified
5 that's your decision. HR makes the final decision
6 on any promotion?

7 A Yes.

8 Q Okay.

9 A But I also wanted to make sure he was honest.

10 Q Right.

11 A And forthright.

12 Q Okay.

13 A Those type things also. It was just not the
14 wasting time.

15 Q Right.

16 A It was a combination of all those things.

17 Q Okay. And did you feel that wasting time while
18 you're on shift, did you feel like that was being
19 dishonest or was that just being not a great
20 employee at that time?

21 A No. But when he told me what he did as far as his
22 routine --

23 Q Uh-huh.

24 A -- that was being dishonest.

25 Q Okay. And how many years of videotape did you

1 review to establish what Mr. Kennedy's routine was?

2 A Well, I didn't have to look at years of videotape

3 to establish that.

4 Q Okay.

5 A Because I asked him specifically on that night.

6 Q Okay.

7 A "What did you do?"

8 Q Okay.

9 A And he said he came in.

10 Q Uh-huh.

11 A He spent the 20 minutes or so inside.

12 Q Right.

13 A He exited.

14 Q Uh-huh.

15 A And that was the end of his time at Spring Valley.

16 Q Uh-huh.

17 A I said, "Are you sure?"

18 Q Because, in fact, he went back around to the front

19 door and dealt with the keypad; right?

20 A I said, "Are you sure?"

21 Q Uh-huh.

22 A And he said, "Yes, I'm sure."

23 Q Okay.

24 A That was it.

25 Q Okay.

1 A Then I observed him and I go back and look at the
2 video again. I observe him going back around --
3 Q Uh-huh.
4 A -- and going in and turning off lights.
5 Q Okay.
6 A That was dishonest.
7 Q All right. And you're here today and you're
8 testifying to these meetings in 2011, and you'll
9 agree with me that if you're asking Mr. Kennedy in
10 May what he did on a night two months prior or so
11 in February, he may have spoken incorrectly; right?
12 A And all he had to do was say, "I don't remember."
13 Q Okay. But he didn't say that?
14 A He didn't --
15 Q And he told you --
16 A -- and I asked him several times.
17 Q Okay. So he told you what he thought he had done
18 and that was incorrect?
19 A Exactly.
20 Q Okay. Just one minute. I just want to check.
21 A Okay.
22 (Pause.)
23 MS. PEAVY: Mr. Garrick, thank you for your
24 time.
25 THE COURT: Any redirect?

1 MS. LONG-MAHONEY: Just a couple brief
2 questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. LONG-MAHONEY:

5 Q Mr. Garrick, you also heard testimony throughout
6 this trial that Mr. Kennedy told some of the
7 Richland Two employees he worked with that he was
8 being investigated for stealing money; is that
9 correct?

10 A Yes.

11 Q So that's an example of Mr. Kennedy spreading
12 rumors about himself; is that correct?

13 A Yes.

14 Q And this e-mail has been talked about. We've all
15 been sitting here --

16 A Yes.

17 Q -- for four days, a lot.

18 A Yes.

19 Q Okay. But looking at this e-mail, it's marked
20 confidential at the top. It's from a supervisor to
21 supervisors, and you indicated the security is
22 24/7; is that correct?

23 A Yes.

24 Q So there are people who are supervising an
25 11:00 P.M. to 7:00 A.M. shift or thereabouts;

1 right?

2 A Right.

3 Q And Chuck Earles isn't out there at 11:00 P.M., is
4 he?

5 A No.

6 Q So he has to communicate somehow to these 24/7
7 supervisors; is that correct?

8 A Right.

9 Q And under that he puts in bold, "The information
10 contained in this e-mail is confidential and will
11 only be shared with other District security
12 supervisors as needed when they will be supervising
13 Mr. Kennedy."

14 Was that an appropriate, in your professional
15 opinion, addition to what's already marked as a
16 confidential e-mail only sent to supervisors?

17 A Yes.

18 Q And in this e-mail does it say, "Mr. Kennedy is a
19 thief and can't be trusted"?

20 A No.

21 Q Anywhere in this e-mail?

22 A No.

23 Q What does it say? It says, "He is not to be given
24 any assignment that involves having keys to any
25 District facility."

1 A That's what it says.

2 Q Is that an appropriate statement for a supervisor
3 to tell other supervisors in a highly confidential
4 e-mail to ensure that Mr. Kennedy didn't have keys?

5 A Yes.

6 Q And was the decision not to give Mr. Kennedy keys
7 an appropriate decision under all the facts and
8 circumstance you testified to about all the
9 concerns you have with him, even when you gave him
10 the benefit of the doubt and put him back to work?

11 A It's very appropriate in that he's going to a
12 position he doesn't needs keys.

13 Q Thank you.

14 MS. LONG-MAHONEY: Nothing further.

15 THE COURT: You may step down. Thank you.

16 (The witness leaves the witness stand.)

17 THE COURT: Are there any further witnesses by
18 the defense?

19 MR. BARLOW: There are not. The defense
20 rests.

21 THE COURT: Do we have any rebuttal?

22 MS. PEAVY: Yes, Your Honor. We'd like to
23 recall Mr. Kennedy to the stand.

24 MR. BARLOW: Your Honor, could I approach a
25 minute?

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy Respondent,

v.

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

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1 THE COURT: Yes, sir.

2 (Whereupon there was a bench conference off
3 the record in the presence of the jury but out of the
4 hearing of the jury.)

5 THE COURT: For the record we preserve the
6 motions that we normally have. We'll take them up after
7 the testimony.

8 MR. BARLOW: Thank you, Your Honor.

9 MS. PEAVY: Thank you, Your Honor. The
10 plaintiff calls Mr. Jeffrey Kennedy.

11 THE COURT: Mr. Kennedy, I'll remind you that
12 you're still under oath to tell the truth in this
13 matter.

14 THE WITNESS: Yes, ma'am.

15 JEFFREY WILLIAM KENNEDY,
16 having been previously duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MS. PEAVY:

19 Q Mr. Kennedy, we've been here several days this
20 week. There's been a lot of testimony, and this is
21 our opportunity to address some additional points
22 about that testimony.

23 A Yes, ma'am.

24 Q I want to discuss Tim Hunter briefly. You enjoyed
25 working for Tim Hunter as part of the security

1 staff at games and events; correct?

2 A Yes, ma'am.

3 Q And your testimony has always been that you tried
4 to get those extra assignments on Coach Hunter's
5 activities; correct?

6 A Yes, ma'am.

7 Q You don't hold any grudge against Mr. Hunter, do
8 you?

9 A No, ma'am.

10 Q Okay. And Mr. Hunter isn't one of the people that
11 is named in this lawsuit; correct?

12 A Correct.

13 Q You don't think Tim Hunter ruined your reputation,
14 do you?

15 A No, ma'am.

16 Q Okay. And when you pointed out in your testimony
17 that Tim Hunter had keys and so did a lot of other
18 people, members of his staff, that's because you
19 believed that Spring Valley had a key problem;
20 correct?

21 A Yes, ma'am.

22 MR. BARLOW: Your Honor, I'm going to object.
23 We're covering his prior testimony here. This is
24 supposed to be rebuttal.

25 MS. PEAVY: Your Honor, I believe that

1 Mr. Hunter testified extensively as to his office
2 procedures, the way his department was run. I think
3 Mr. Kennedy is allowed to address that on rebuttal.
4 Mr. Hunter was not deposed previously as part of the
5 lawsuit.

6 THE COURT: I think he can address the
7 allegations to the extent that it relates to Mr. Kennedy
8 and what he did or did not do in rebuttal.

9 BY MS. PEAVY:

10 Q Would you have liked to have viewed that video
11 footage that Tim Hunter testified he viewed from
12 the night when the money went missing?

13 A Yes, ma'am.

14 Q And did Richland Two or Chuck Earles or Eric Barnes
15 ever show that to you?

16 A No, ma'am.

17 Q During these -- and you learned at this trial that
18 that video footage that -- I think it was
19 10:30 P.M. when Mr. Hunter left until, I think he
20 testified, he got there around 8:00 that morning.
21 You learned at this trial that that footage
22 wasn't -- hadn't been saved; correct?

23 A Correct.

24 Q And did you ever see a copy of the check that went
25 missing from Ms. Loiodice's office?

1 A No, ma'am.

2 Q And if that check had been cashed, had been
3 negotiated at some bank or a check cashing place,
4 would that have been information that you would
5 have wanted to know about?

6 A Yes, ma'am.

7 Q Because that would have shown that someone took
8 that check and maybe their face showed up on a
9 video screen; right?

10 A Yes, ma'am.

11 Q You also testified that you saw the baseball team
12 in the halls of the Athletic Department on the
13 night in question; correct?

14 A Yes, ma'am.

15 Q Okay. And Mr. Permenter, Captain Permenter,
16 testified to that as well; correct?

17 A Yes, ma'am.

18 Q All right. And is the reason that you got to
19 observe the baseball team in the halls of the
20 Athletic Department that night was because
21 Lieutenant Young called you to let you know that an
22 alarm had gone off?

23 A Yes, ma'am.

24 Q And what did Lieutenant Young direct you to do?

25 A Go to Bates Hall and observe and see what was going

1 on.

2 Q And by the time you got over there, had the coach
3 or whoever had the alarm code already turned it
4 off?

5 A Yes, ma'am, they was in the building.

6 Q Okay. And you had parked your vehicle out front
7 where the plate glass doors were; correct?

8 A Yes, ma'am.

9 Q Well, I don't need to show it. We've seen it up on
10 the screen where the keypad is; right?

11 A Yes, ma'am.

12 Q So you're sitting in your vehicle looking in to the
13 Athletic Department building?

14 A Yes, ma'am.

15 Q Here (indicating) is the plate glass. Over here
16 (indicating) is the keypad. What do you see?

17 A I see coaches in the building and students.

18 Q Okay. So they're over on that side (indicating)?

19 A Yes, ma'am.

20 Q So they're down over in front near Tim Hunter's
21 office?

22 A Yes, ma'am.

23 Q Okay. And Tim Hunter testified that the video
24 showed he thought it was sometime after midnight.
25 Is that accurate in your mind?

1 A Yes, ma'am.

2 Q All right. So that's the best of your
3 recollection?

4 A Yes, ma'am.

5 Q And the fact that you were over in one location and
6 then Lieutenant Young called you to head back over
7 to Bates Hall, that's just an example of how every
8 night is different; correct?

9 A Yes, ma'am.

10 Q Okay. So you didn't think, when you armed the
11 Athletic Department earlier that evening with
12 Lieutenant Reid by your side, you didn't think you
13 would be back there until the end of your shift;
14 correct?

15 A Correct.

16 Q And Mr. Hunter testified about seeing you come back
17 on the video to set the alarm -- or to turn the
18 alarm off -- around 5:45; is that correct?

19 A Yes, ma'am.

20 Q And he said that the way you said you entered the
21 weight room in the first door there on the left,
22 that little alcove right behind the keypad, he said
23 that would have been odd because you then would
24 have had to walk all the way down there to turn off
25 the light and then walk all the way back through

1 the weight room to come back out that same door.
2 That was his testimony; right?
3 A Yes, ma'am.
4 Q Okay. And when you went in the weight room, did
5 you receive a call from Lieutenant Young?
6 A Yes, ma'am.
7 Q And were y'all chatting?
8 A Yes, ma'am.
9 Q Okay. What was he telling you?
10 A He telling me that I needed to go to Polo Road and
11 open the gate for the cafeteria manager.
12 Q Okay. So you were going to go to another one of
13 your schools?
14 A Yes, ma'am.
15 Q And you also testified you were in the weight room
16 for a little while?
17 A Yes, ma'am.
18 Q Having a bottle of water, wasting time; correct?
19 A Yes, ma'am. Well, I can't leave Spring Valley
20 until 6:00 o'clock in the morning. So normally if
21 I got a little more time, I'll go through that
22 weight room or just sit in the truck or something
23 like that.
24 Q Okay.
25 A You know what I'm saying? At night I can't leave

1 until 1:00 o'clock in the morning. We're there
2 from 11:00 to 1:00 to start going to my schools.

3 Q Uh-huh.

4 A And then in the morning I can't leave until 6:00 to
5 go back and open up the schools.

6 Q All right. So even though, you know, Mr. Garrick
7 is saying that -- kept saying you were wasting
8 time, that's how you were trained to do the job;
9 correct?

10 A I mean, yes. It don't take that long to do what
11 you got to do. So you've got time. So you try to
12 space your time out so that you're just not sitting
13 in the truck and falling asleep or doing nothing.

14 Q Okay. Let's get back to the weight room because
15 Mr. Hunter felt that if you walked back the length
16 of the weight room after you shut the light off and
17 then you're walking all the way back down and going
18 out that door behind the keypad, he seemed to think
19 that was a pretty treacherous activity. You're
20 smiling a little bit.

21 Was it treacherous to walk back down after
22 you'd shut the lights off?

23 A No, ma'am. You still got the lights from the
24 parking lot. It's a clear path straight down to
25 that door to the light switch. I've done it many

- 1 times.
- 2 Q At that point are the hall lights on too?
- 3 A Yes, ma'am. Yes, ma'am.
- 4 Q So there's some ambient lighting coming in, even if
- 5 the overhead lights aren't on; correct?
- 6 A Yes, ma'am.
- 7 Q And you had been in that weight room lots?
- 8 A Lots of times in the three years I was doing this,
- 9 yes, ma'am.
- 10 Q And did members of the security staff go in there
- 11 from time to time and lift weights?
- 12 A Yes, ma'am.
- 13 Q Okay. So just like all the schools you went to
- 14 over the years -- E.L. Wright, Spring Valley, Polo
- 15 Road -- you had been in all these spaces numerous
- 16 times?
- 17 A Yes, ma'am.
- 18 Q Okay. This promotion, you've heard -- strike that.
- 19 You heard Ms. Batchelder read from her notes today;
- 20 correct?
- 21 A Yes, ma'am.
- 22 Q And is it fair to say that her notes accurately
- 23 reflected that this promotion meant so much to you?
- 24 A Yes, it did.
- 25 Q You were telling her about how you were a husband,

1 you were a father, you had kids to educate,
2 grandchildren. You were begging her to believe
3 you?

4 A Oh, yes, ma'am. I was getting off that night shift
5 going on second shift. My next step I was going to
6 try to make captain.

7 Q So you saw a bright future for yourself with
8 Richland Two?

9 A I did.

10 Q And they put into evidence a few letters of -- oh,
11 what are they called? -- letters of counseling from
12 back in 2008 and 2009 from Captain Z. just saying,
13 you know, "Step up your game. Show up when you're
14 supposed to. Don't leave early," what have you.
15 Other than that you saw a bright future; correct?

16 A Yes, ma'am.

17 Q You weren't looking to sabotage that in any way,
18 were you?

19 A No, ma'am.

20 Q And you were making good money, weren't you?

21 A Yes, ma'am.

22 Q Okay. There was a lot of testimony that if you
23 stood directly under the security camera, you could
24 tell which way it was pointed. Did you hear that
25 testimony?

- 1 A I did.
- 2 Q Did you ever do that?
- 3 A No, ma'am.
- 4 Q And someone who was doing that presumably might be
- 5 shown doing that; correct?
- 6 A Correct.
- 7 Q All right. And your job at the time these thefts
- 8 occurred wasn't to sit in the watch room and watch
- 9 video feed; correct?
- 10 A That's correct.
- 11 Q You weren't sitting there replaying video of the
- 12 security cameras from different angles; correct?
- 13 A Correct.
- 14 Q You were out doing the rounds, doing the grunt
- 15 work, checking the buildings, being a security
- 16 guard?
- 17 A Yes, ma'am.
- 18 Q All right. And you were doing all that in hopes
- 19 that on your watch anyway, no one was committing
- 20 one of the 100-plus thefts a year at Spring Valley
- 21 that Jim Childers testified to; correct?
- 22 A Correct.
- 23 Q All right. Ms. Jackson seems like a nice lady.
- 24 Wouldn't you agree?
- 25 A Yes, ma'am, she is.

1 Q Okay. You never had any quarrel with her while
2 y'all were both employed at Richland Two, did you?

3 A No, ma'am.

4 Q And y'all didn't really even know each other?

5 A No, we didn't.

6 Q You would go where she told you to go if she needed
7 something opened or her staff needed assistance?

8 A Yes, ma'am.

9 Q Okay. And so when you testified about the
10 custodial staff having keys, that was just obvious
11 because they did have keys because they were
12 cleaning offices; correct?

13 A Yes, ma'am.

14 Q And you were here yesterday during Mr. Childers's
15 testimony; correct?

16 A Yes, ma'am.

17 Q All right. And you listened to the care with which
18 Mr. Childers treated Ms. Jackson?

19 A Yes, ma'am.

20 Q Kind of kid gloves; right?

21 A Yes, ma'am.

22 Q Does that make you feel angry in some way?

23 A Yes, ma'am. Anybody did nothing to try to help me
24 defend me.

25 Q Okay.

1 A They didn't see no videos or nothing that would
2 exonerate me. It wasn't important. It wasn't
3 suspicious.

4 Q So you had just been recommended for a promotion.
5 You were obviously considered a valued employee,
6 but your supervisors, the people running the
7 Security Division, they didn't act the way Jim
8 Childers acted towards Ms. Jackson; right?

9 A No, ma'am.

10 Q And Chuck Earles never trained you once he took
11 over as head, did he?

12 A No, ma'am.

13 Q Okay.

14 A We just did the same thing we always did, nothing
15 changed.

16 Q Okay. So in 2008 when you started, your captains
17 and lieutenants and Chief Propst told you the way
18 to do it?

19 A Yes, ma'am.

20 Q And we noticed that Lieutenant Reid was coming on
21 around the time when all this occurred, and you
22 actually had him -- you were kind of having him
23 shadow you a little bit to show him how it's done;
24 right?

25 A Yes, ma'am.

1 Q So when you came on in 2008, did you do something
2 similar with the guards that had already been
3 there?

4 A Yeah, Lieutenant Young and Officer Mitchell.

5 Q Okay. And back then Lieutenant Young wasn't a
6 lieutenant; right?

7 A He was a lieutenant, and he was my shift supervisor
8 then.

9 Q So you would shadow around with him to find out how
10 it's done?

11 A Yeah, he trained with me.

12 Q Okay. You know, we've heard a lot of talk that
13 Chuck Earles didn't want you and your coworkers
14 taking all these breaks and wiling away the time,
15 but that was the way y'all had always done it;
16 correct?

17 A Yes, ma'am. We don't get no lunch break.

18 Q Uh-huh.

19 A So at Spring Valley you've got to be there from
20 11:00 o'clock to 1:00 o'clock. I mean, I've been
21 at Spring Valley long enough that I could walk
22 Spring Valley in like 20 minutes and check the
23 outside doors. The second shift will leave the
24 cell phone on the charger in the break room. You
25 have to go in there and change your battery in

1 there.

2 Q Uh-huh.

3 A So I done walked through most of my outside doors
4 and everything. So I go in there and sit down and
5 take my little break because I don't get no lunch
6 break.

7 Once you start going to your other schools,
8 you're on a time thing then. If something happens,
9 you ain't going to be able to finish all your
10 schools. So I take mine while I'm at Spring Valley
11 because I'm there for two hours.

12 Q Okay.

13 A Then when I do that, then I go ahead and finish the
14 other half I've got to do.

15 Q Uh-huh.

16 A So I space my time out where I'm not just sitting
17 in the truck doing nothing.

18 Q Okay.

19 A Or falling asleep.

20 Q And Mr. Garrick was obviously rightly discouraged
21 to hear you tell him and Ms. Batchelder several
22 times consistently that during you shift, you're
23 wasting time. You don't blame him for that, do
24 you. That's his job; right?

25 A Yes, ma'am.

1 Q And in a perfect world, no one would ever waste any
2 time while they were on the job, whether they work
3 9:00 to 5:00, 11:00 to 7:00, what have you. Every
4 employer wants their employees to be efficient and
5 on the clock; correct?

6 A Yes, ma'am.

7 Q All right. Now, there was testimony from your
8 former coworkers, current and former Richland Two
9 employees, that you told them that you were being
10 investigated for the thefts?

11 MR. BARLOW: Your Honor, objection. That's
12 not rebuttal to our case. They didn't testify in our
13 case.

14 THE COURT: Let me hear the question first.

15 MR. BARLOW: All right.

16 MS. PEAVY: I just want to establish that
17 he -- oh, you want to hear the question?

18 THE COURT: Yes, ma'am.

19 BY MS. PEAVY:

20 Q Now, is it correct that there was testimony that
21 you told them you were being investigated from the
22 theft from Tim Hunter's office; correct?

23 You weren't surprised that they were
24 investigating you because you worked on the night
25 in question, and you worked on those other two days

1 and that no one on the security staff would be
2 surprised that you were being investigated or
3 looked at for it because that was the way it
4 worked.

5 If you were on shift and something went
6 missing, they were going to look to you because you
7 had keys and you had access.

8 MS. PEAVY: Your Honor, I think there's been a
9 lot of testimony in the defense's case that they believe
10 that Mr. Kennedy, I guess, defamed himself. So I'm
11 trying to show that the existence of the investigation
12 is a separate issue.

13 THE COURT: I'm going to sustain the
14 objection. I think that's an argument you can make to
15 the jury.

16 MS. PEAVY: Okay. Thank you, Your Honor.

17 BY MS. PEAVY:

18 Q Let's talk a little bit about Kim Jones. You were
19 here for Ms. Jones's testimony. You heard her
20 testimony that she received a letter; correct?

21 A Yes, ma'am.

22 Q Did you know that she had never been disciplined?

23 A No, ma'am.

24 Q Okay. And she testified that you called her and
25 threatened her; is that correct?

- 1 A No, ma'am.
- 2 Q Okay. She testified that you did that; correct?
- 3 A Yes, ma'am.
- 4 Q Sitting here today, a father of two, grandfather of
5 six, someone who was in a longtime marriage, have
6 you ever threatened Kim Jones?
- 7 A No, ma'am.
- 8 Q Ever tried to scare her?
- 9 A No, ma'am.
- 10 Q And up until she realized that you and she had
11 violated the Richland Two policy about trying to
12 view this video outside of the chain of command,
13 she never told you she was scared of you, did she?
- 14 A No, ma'am.
- 15 Q And she never demonstrated to you that she was
16 scared or felt frightened in your presence, did
17 she?
- 18 A No, ma'am.
- 19 Q And when y'all spoke on the phone, that was because
20 you had given her a card with your number on it;
21 correct?
- 22 A Yes, ma'am.
- 23 Q Okay. And was that so that she could reach you to
24 find out the best time to meet to try to review the
25 footage?

1 A Yes, ma'am.

2 Q You didn't appeal your termination with Richland
3 Two from October 2012, did you?

4 A No, ma'am.

5 Q Okay. You didn't think you would get a fair shake,
6 did you?

7 A Not from Mr. Garrick, no, ma'am.

8 Q Okay.

9 A He already had formed his opinion of me.

10 Q Okay.

11 A He demonstrated that today.

12 Q Okay.

13 MS. PEAVY: Excuse me one moment.

14 (Pause.)

15 MS. PEAVY: That's all I have. Thank you.

16 THE COURT: Any cross?

17 MR. BARLOW: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BARLOW:

20 Q Mr. Kennedy, the first time you saw this Spring
21 Valley video was not in this trial, was it?

22 A Which one?

23 Q The ones that we watched here.

24 A I only seen that one with me in the hall pushing
25 open that book room door and going in the break

1 room. I saw that at the Richland County Sheriff's
2 Department with Franchot Brown.

3 Q Which one was that?

4 A The one showing me coming in the back door. I
5 pushed open the book room door and went in the
6 break room. That's the only one.

7 Q All right. Anthony Permenter showed you videos,
8 didn't he?

9 A Anthony Permenter?

10 Q Yes, sir.

11 A No, he did not show me no videos.

12 Q He did not. Okay. You gave a deposition in this
13 case, didn't you?

14 A I did.

15 Q We looked at that deposition last time, didn't we?

16 A Yes, sir.

17 Q All right. And do you remember talking about that
18 with me?

19 A Yes, sir.

20 Q Okay.

21 A I didn't say he showed me a video.

22 Q You didn't?

23 A No, sir.

24 Q Let me check on that here.

25 A Okay.

1 MR. BARLOW: Do you care if I use this
2 certified copy here?

3 MS. PEAVY: No, I don't mind.

4 BY MR. BARLOW:

5 Q In that deposition, sir, you were under oath?

6 A Yes, sir.

7 Q Just like you were here. There was a court
8 reporter there just like here, and your lawyers
9 were there too; right? I want you to turn to page
10 60 for me, Mr. Kennedy.

11 A All right. I have all that.

12 Q Have you got it? All right. Let me turn to mine.
13 I'm going to read, looking at line 13, and you read
14 along with me.

15 "How about, like, when we were talking before
16 about the Spring Valley videos and all that, how
17 did you get to see that? Did they show it to you?"

18 "Answer: Captain Permento (phonetic)." Is
19 that the same thing as Captain Permenter?

20 A Yes, sir.

21 Q All right. "Question: That's Ms. Permenter?"

22 "Answer: Not Mrs., her husband used to work
23 there."

24 "Anthony?"

25 "Anthony, yeah."

1 "Question: He is the one that showed you the
2 Spring Valley video?"

3 "Answer: Yes."

4 A He showed me pictures of the video. He didn't show
5 me the video.

6 Q Your testimony right there was that he showed you
7 the video, sir?

8 A I meant pictures of the video.

9 Q All right. Now, you sat in the truck while the
10 baseball coach and the team went in the building?

11 A They was in the building when I got up there.

12 Q So you stayed in the truck though?

13 A I could see them.

14 Q So the security guard for the building that's
15 supposed to make sure what's going on, things
16 aren't going missing on his watch, sits in his
17 truck while they're all in the building?

18 A It's the baseball team and the coaches. They were
19 in there all the time. They was in the building
20 when I got there. It's like that on a regular
21 base.

22 The track team come back, the basketball team,
23 the same thing. My job is to go check the building
24 when they come back out and make sure the building
25 is secured.

- 1 Q That's right. You didn't go in there because
2 they're trustworthy, aren't they?
- 3 A I seen the coach go up there. Lieutenant Young
4 told me that the alarm was okay.
- 5 Q All right. You, in fact, turned the alarm off that
6 morning, didn't you?
- 7 A I sure did.
- 8 Q Because the coach reset the alarm, didn't he?
- 9 A Yeah, somebody set the alarm. I guess he did.
- 10 Q Well, the coach did, didn't he?
- 11 A Yeah, he had said he was in the building.
- 12 Q Well, I'm asking you, is it your testimony that the
13 coach cut the alarm back on?
- 14 A Yes. Yes, sir.
- 15 Q All right. Now, on these soccer tournaments and
16 things like that, you helped tote the money boxes
17 with the coaches before, hadn't you?
- 18 A Helped tote the money box?
- 19 Q Yes, sir.
- 20 A Yes, sir. I went back to follow with Sonny to
21 escort him back to the office with the money,
22 basketball and stuff like that.
- 23 Q Sure. So you knew at these tournaments, people
24 were collecting money and bringing it back?
- 25 A Yeah, I seen them.

1 Q Let me ask you this: You expected an investigation
2 to be conducted; right?

3 A Yeah.

4 Q When the money went missing?

5 A Uh-huh.

6 Q Okay. You were being accused at some point of
7 being the person that took the money; right?

8 A I was the only person being accused.

9 Q All right. But the first time you ever told
10 anybody that you were on the phone with Mr. Young
11 during that time was this trial, wasn't it?

12 A No, not true. I told them when I met with them in
13 that meeting that Mr. Young called me.

14 Q You never told Traci --

15 A Yes, I did. I told them to talk to Mr. Young, and
16 I told them to talk to Officer Z. about my routine
17 at the school. They was talking about I was in the
18 building too long, and they never did.

19 Q Now, you know how to pull up video, don't you?

20 A No, I do not.

21 Q You don't know how to pull up a realtime video and
22 monitor schools?

23 A No, I did not. Captain Groves used to pull up the
24 video for me when I worked in the watch room. He
25 pulled it up for me. That's what it stayed on.

1 Until I left I just did the logs. If anything
2 happened I called him and he came in there.

3 Q Sir, why don't you turn to page 50 in that
4 deposition. I want you to look at line 19. I
5 asked you the question: "What video capability did
6 you have?

7 "Answer: I can pull up all the schools and
8 just monitor, just pull up all the schools. They
9 can put up about four or five schools at one time
10 and monitor that. I can take that down and put
11 another one up. As far as running back cameras and
12 video seeing what happened, I don't know how to do
13 that."

14 But you know how to pull the video up --

15 A I mean, I can pull the school up, yeah. I can't,
16 you know, what I'm saying, check back on nothing.

17 Q Right.

18 A I can pull it up when the camera comes up.

19 Q You can pull it up realtime?

20 A Just like the pictures y'all did yesterday.

21 Q That's right. And you can see what the cameras are
22 seeing when you are doing that?

23 A On a certain area, yeah.

24 Q Sure. Now, you watched the videotape that had the
25 coach in it, didn't you?

1 A What you mean had the coach in it?

2 Q You know, the testimony that was about the video
3 with the coach, you know, that showed the coach
4 coming into Bates Hall.

5 A Did I watch that video?

6 Q Yes, sir. You watched it prior to today.

7 A The video of the coach?

8 Q Yes, sir.

9 A I've seen pictures with the coaches in the hall.

10 Q You're saying you didn't see the video with the
11 coach in it?

12 A I can't recall seeing the video of the coach in it.

13 Q Do you want to look at page 35 there?

14 A What page?

15 Q Thirty-five. I want you to look at line 15.

16 A I see it.

17 Q All right. I'm going to read. You read along with
18 me. That's the most efficient way to do this, I
19 think.

20 "Did you watch the videotape from that night?"

21 "The videotape for what night," was your
22 answer.

23 "Question: The night that you worked, that
24 Thursday night or whatever it is they were talking
25 about when the coach came in."

1 Line 19 is your answer. "Oh, yeah, I seen
2 him. Yes. Yes, sir."
3 A Yeah. That's the same thing, the video pictures,
4 that Mr. Permenter showed me.
5 Q Mr. Permenter didn't save any of that video, did
6 he?
7 A No, I don't think he did.
8 Q You didn't either, did you?
9 A I didn't know how to save it. I wasn't privy to
10 it.
11 Q You saw this confidential memo laying out. Is that
12 your testimony?
13 A Yes, sir.
14 Q You didn't do a thing to report that to anybody and
15 let them know it was out, did you?
16 A Yes, sir, I told my supervisor that it was out.
17 MR. BARLOW: No further questions.
18 THE COURT: Anything further?
19 MS. PEAVY: No, Your Honor.
20 THE COURT: You may step down.
21 (The witness leaves the witness stand.)
22 THE COURT: Ladies and gentlemen, as you
23 realized, I ordered lunch for you all today. It has
24 arrived. So I'm going to ask that you all take a lunch
25 break.

1 I'm going to remind you during the lunch break
2 not to discuss what you have heard or seen during this
3 particular time. Even though you may have heard all the
4 evidence that has to be presented, you are still not in
5 a position to be able to determine the facts until
6 you've heard the closing arguments and until you've
7 heard my instructions to you as to the law.

8 I'm going to ask that you retire to the jury
9 room and enjoy your lunch. If you wish to leave the
10 building after that, you certainly may do that. We do
11 have some legal issues we need to take up outside of
12 your presence, which we'll do that during this lunch
13 break.

14 So if you'll report back to the jury room at
15 no later than 2:15, then we'll be ready at that
16 particular time to come back and continue on with the
17 trial of this matter. Have a good lunch.

18 (The jury retires to the jury room for the
19 lunch break at 12:50 P.M.)

20 THE COURT: Are there any motions at this
21 time? I believe we preserved the motions for the
22 defense at the conclusion of the defense's case. So
23 I'll be happy to hear any motions.

24 MR. BARLOW: Yes, Your Honor. Just with
25 regard to the directed verdict, we want to renew the

1 directed verdict motion at this time on the remaining
2 claims. As far as the defamation claim, we feel that
3 the evidence has not established any of the requisite
4 publication.

5 Specifically with regard to the termination,
6 there has not been anything published to anyone. There
7 is no evidence of that, that anybody heard or understood
8 that to be defamatory in any way, shape, or form.

9 THE COURT: You're saying the termination?

10 MR. BARLOW: The termination itself. I think
11 the termination can be severed from the reassignment in
12 terms of an adverse action to the plaintiff. I think
13 it's unfair for the jury to consider this as a wrongful
14 termination case. He is an at-will employee.

15 THE COURT: I certainly haven't considered it
16 as a wrongful termination case or that the defamation
17 related to the termination. It's always been my
18 understanding from everything I've heard and everything
19 that I've read that it related to purely the
20 circumstances regarding the investigation and the claims
21 relating to the money that was missing in these other
22 instances.

23 MR. BARLOW: Yes, and that's my position
24 certainly. As far as the termination, it should not be
25 part of this case; and damages should not be available.

1 for the termination of his employment because that's a
2 separate act that has nothing to do with it.

3 Now, in addition to the qualified privilege,
4 I'd reassert that there's a qualified privilege that
5 attaches to a memorandum, a confidential e-mail, that's
6 sent to supervisors.

7 There is no evidence that any defendant
8 exceeded that privilege or acted with any malice. You
9 know, I defined actual malice at the prior directed
10 verdict motion.

11 There is just not evidence in the record that
12 either of the two gentlemen acted with actual malice
13 from which a jury could find that. There's not any
14 testimony about that.

15 So I would renew the directed verdict
16 motion as to qualified privilege on the defamation
17 claim, in addition to lack of publication with the
18 termination.

19 In addition to that, element two of defamation
20 as defined in Williams versus Lancaster School District,
21 631 S.E.2d 286, Court of Appeals, 2006, the second
22 element is an unprivileged publication of a statement to
23 a third party.

24 There is no evidence that this was published
25 to a third party in an unprivileged context. I think

1 any employee that saw it at the school, it's privileged
2 in that respect.

3 The case I cited, the Court of Appeals case,
4 the statement at issue there was a principal's statement
5 to another employee that "a teacher cleaned us out,"
6 McBride, that's subject to a qualified privilege in that
7 case.

8 So the second element of the defamation
9 standard requires that they show an unprivileged
10 communication as privileged. In addition to that, the
11 qualified privilege, which is a defense, an affirmative
12 defense, I think we've proven that as a matter of law.

13 THE COURT: So you're saying that whatever
14 that case -- that's 631 S.E.2d 286 -- says that a
15 principal is having a conversation with just a general
16 employee and made statements impugning that somebody
17 committed a crime that that was -- that was not a
18 publication?

19 MR. BARLOW: In connection with an
20 investigation, it was not. That's McBride versus
21 Greenville County School District, that case. That
22 citation I have just given you is for the Lancaster
23 School District case.

24 THE COURT: And so which -- I've associated
25 631 with that.

1 MR. BARLOW: All right.

2 THE COURT: Is that not the correct one?

3 MR. BARLOW: No, that's an opinion I handed up
4 yesterday, the McBride case. I don't know if I can put
5 my hands on that. I don't know that it's been actually
6 published yet by the Court of Appeals.

7 THE COURT: I have that one.

8 MR. BARLOW: All right.

9 THE COURT: So now, what are you citing
10 McBride for?

11 MR. BARLOW: We are citing McBride for the
12 qualified privilege, affirmative defense.

13 THE COURT: Yes, it has to be raised as an
14 affirmative defense. I understand that.

15 MR. BARLOW: Sure. And not only that, on
16 remand that McBride case, that satisfied the affirmative
17 defense of qualified immunity when the principal, the
18 statement he made, that "the teacher had cleaned us
19 out," was subject to a qualified privilege and directed
20 verdict was granted. There have been several iterations
21 of that McBride case that have gone up and back.

22 THE COURT: Okay. So what is the 631 case?

23 MR. BARLOW: That's Williams versus Lancaster
24 County School District.

25 THE COURT: Which says what?

1 MR. BARLOW: It gives the elements of
2 defamation, which are, one, a false and defamatory
3 statement; two, the unprivileged publication of the
4 statement to a third party.

5 I don't think that there is evidence of an
6 unprivileged communication to a third party. These are
7 all employees within the department. No defendant made
8 a publication to anyone outside of the supervisors.
9 There's no evidence of that.

10 THE COURT: So your argument is that any
11 communication that took place would have been privileged
12 and that -- who do you say the communications involved?

13 MR. BARLOW: It involved the supervisors who
14 are addressed on the confidential memo.

15 THE COURT: All right.

16 MR. BARLOW: That's my arguments on the
17 defamation claim.

18 THE COURT: Yes.

19 MR. BARLOW: As far as the negligent
20 supervision --

21 MS. PEAVY: Your Honor, can we respond to that
22 or would you like us to wait?

23 THE COURT: Let me just hear all of his
24 arguments, and then I can ask you all the questions I
25 need to ask you and let you respond.

1 MR. BARLOW: As far as the negligent
2 supervision claim, we would renew our directed verdict
3 motion on that as well. The complaint alleges that the
4 School District, Richland Two, negligently supervised
5 the people who are individual defendants.

6 There is nothing in the record to show that
7 any of the individual defendants had any work history,
8 any prior problems anywhere that would have alerted the
9 School District that they would be likely or it would be
10 foreseeable -- assuming that they defamed anybody --
11 that it would be likely or foreseeable that either
12 Mr. Barnes or Mr. Earles would defame him. There is
13 just not any evidence of that in the record.

14 THE COURT: But that goes to the negligent
15 hiring, does it not, and not a negligent supervision?

16 MR. BARLOW: I think it goes to both. I mean,
17 if there's not any prior writeups or anything like that
18 with the police department or EMS or wherever those two
19 gentlemen had worked, that would be one thing. The
20 negligent supervision is whether they had done any of
21 that at Richland Two to let Richland Two know that there
22 was a problem with that.

23 THE COURT: It would not be a situation in
24 which there is an investigation ongoing and the failure
25 to supervise it during the course of that investigation

1 to ensure that information is not released to those
2 individuals who do not have a need to know or who do not
3 have -- were not involved in the investigation,
4 basically outside of the protective group of
5 individuals.

6 MR. BARLOW: That's not what the complaint
7 alleges happened. That's not what the complaint alleges
8 the claim to be. I don't think negligent supervision
9 can exist in a vacuum that you -- I mean, that sounds
10 like just a basic negligence claim that you failed to
11 properly monitor an investigation generally, School
12 District.

13 Negligent supervision is more: You failed to
14 supervise the individuals who were conducting the
15 investigation because you had a reason to know that they
16 weren't going to do it properly.

17 You had prior knowledge from prior events and
18 circumstances that these individuals would not do the
19 investigation properly and would defame someone as a
20 result. I think that's the argument on the negligent
21 supervision.

22 Finally, Your Honor, with the Tort Claims Act
23 argument that I made yesterday, I think it has to be
24 either/or. Either the individuals acted outside of the
25 scope and they're liable or they didn't, and the School

1 District is the responsible party. I don't think it can
2 go to the jury as both.

3 THE COURT: What about those provisions? The
4 provision that excludes under 15-78-70, which is the
5 part you cited yesterday, it talks about nothing may be
6 construed -- "Nothing in this chapter may be construed
7 to give an employee of a governmental entity immunity
8 from suit or liability if it's proved that the
9 employee's conduct is not within the scope of his
10 official duties or that it constitutes actual fraud,
11 actual malice, intent to harm, or a crime involving
12 moral turpitude."

13 So there are circumstances in which both the
14 employee, as well as the School District, can be sued to
15 determine whether or not, first of all, the employee was
16 acting within the course and scope of his duties or
17 whether or not there was actual malice involved.

18 MR. BARLOW: Well, there is another immunity
19 though under the Tort Claims Act in 15-78-60 though that
20 would make the School District itself immune from
21 actual -- action by an employee that is actual malice,
22 intent to harm, et cetera. I think it's (13),
23 15-78-60(13) maybe.

24 THE COURT: No, sir. That's not what you
25 argued to me yesterday, which is why I came to the

1 conclusion I did.

2 MR. BARLOW: Okay. Well, I --

3 THE COURT: 15-78-60(13) talks about
4 regulatory powers and functions.

5 MR. BARLOW: Okay. It's one of the 15-78-60.
6 If those are --

7 THE COURT: It's number (17).

8 MR. BARLOW: Okay, (17).

9 THE COURT: Which is basically the same
10 language that I just talked about in 15-78-70. So
11 basically the jury has to make the decision.

12 In my view, the way I've seen it exercised is
13 that the jury makes a decision; and there's a special
14 interrogatory that goes to the jury as to whether or not
15 it is either within the course and scope of his duties
16 or was it done with actual malice. That ultimately
17 would determine who is responsible.

18 MR. BARLOW: All right. And I guess at this
19 point I would argue that there is not evidence of intent
20 to harm, actual malice, et cetera. So the individuals
21 should be out. If there is an entity or a defendant, it
22 should be the School District.

23 THE COURT: So if in considering evidence as
24 it relates to the defamation, could they not make a
25 finding that there was actual malice? I understand that

1 you would disagree with that.

2 MR. BARLOW: Correct. Right. I would
3 disagree that there is anything to support a finding of
4 actual malice at this point. Thank you.

5 THE COURT: All right. Thank you.

6 For the plaintiff, yes, ma'am.

7 MS. PEAVY: Your Honor, I'd like to address
8 the qualified privilege issue if I may. We would like
9 to move to strike the defense and any charge to that
10 effect under Rule 12(f) of the Rules of Civil Procedure.

11 Under the case of Abofreka versus Alston
12 Tobacco Company, which is 288 S.C. 122, 341 S.C.2d 622.
13 If I may approach, I can hand it up.

14 THE COURT: Yes, ma'am.

15 (Hands to Court.)

16 MS. PEAVY: This case is directly on point
17 with the situation here, Your Honor, which is you have a
18 memo. It's been demonstrated that a qualified privilege
19 attaches to it based on the author and the recipients.

20 The privilege is lost when the memorandum is
21 posted in the employee -- on the premise of the
22 employee -- on the premises of the company for employees
23 to see.

24 It states directly that, "The privilege was
25 lost when the memorandum was published to persons other

1 than those to whom the privilege applies. A Marnat
2 employee -- that's the company -- testified to the
3 location of the memorandum caused it to be seen by
4 persons other than Marnat employees. The trial judge
5 did not err in striking the defenses from the answer."

6 So, Your Honor, I believe we're entitled to a
7 ruling as a matter of law that the qualified privilege
8 based on who the author was and who the recipients were
9 was lost in this case because the testimony is
10 undisputed from Richland Two's own employees that it was
11 lying out for the rank and file to see and that it was
12 located in Richland Two vehicles. So we would ask for a
13 ruling on that as a matter of law.

14 THE COURT: Any other arguments?

15 MS. PEAVY: As to all of the issues?

16 THE COURT: Yes, ma'am.

17 MS. PEAVY: Okay. As to the negligent
18 supervision claim, Your Honor, we believe that that
19 claim should go to the jury because we had testimony
20 that the Security Division was a rumor mill.

21 Chuck Earles was trying to change that
22 culture, that he wanted all the employees to sign a
23 Change of Culture memorandum. So, you know the evidence
24 is such that you know you have a problem. You've got to
25 do some supervising and figure out is everyone working

1 to solve that problem. Are we working to keep things
2 confidential?

3 There is also testimony in the record from
4 Mr. Garrick on what the culture of excellence is, that
5 there is a -- that the way Jim Childers behaved in
6 taking away keys from Ms. Jackson, I mean, that was
7 really the gold standard.

8 Obviously you've got a contrast with the way
9 the taking away of the keys and the publication of that
10 was dealt with in Jeffrey Kennedy's case. So we believe
11 we've got a claim for negligent supervision.

12 If we have to amend the complaint in some way
13 to conform to the evidence based on what's been
14 introduced here in trial, we can do so; but we believe
15 we're entitled to go to the jury on that.

16 THE COURT: But that is different from what
17 you alleged in the complaint, is it not?

18 MS. PEAVY: I'm looking at the complaint right
19 now. It says, "At the time of the above-described
20 actions, Mr. Earles, Mister -- it says Mr. Bonds --
21 Richland Two knew or should have known of the necessity
22 and opportunity to control the defendants as the
23 above-described defamation began to escalate; and they
24 were under a reasonable duty to exercise reasonable care
25 to control its employees to keep them from harming the,

1 plaintiff."

2 I think what we're talking about there is that
3 Richland Two, they knew they had a Security Division
4 problem. They had Chief Propst who was -- you know,
5 there's been conflicting testimony. I don't know if he
6 resigned or if he was terminated, but he was out the
7 door.

8 They were trying to change it up. They knew
9 they had a problem with rumors. Church Earles didn't
10 create that idea. I mean, that was something that he
11 observed when he was not the Director; and he tried to
12 change it when he became the Assistant Director and the
13 Director, what have you.

14 They have a duty to make sure that their
15 employees are living up to this culture of excellence.
16 That's what it says in the complaint. They're under a
17 duty to exercise reasonable care to control its
18 employees.

19 So there should have been training or what
20 have you on: "This is what you do when your taking away
21 keys and someone's reputation could be ruined."
22 Mr. Childers did it on his own accord; but I think there
23 is evidence to go to the jury on this, Your Honor.

24 THE COURT: But paragraph 21 doesn't apply,
25 that that employees of Richland Two are supposed to be

1 controlled. It would be Barnes, Batchelder, Earles, and
2 Jones.

3 MS. PEAVY: Yes, Your Honor. That's because
4 Chuck Earles should have been instructed that if you're
5 taking keys away, you've got to handle it in a discreet,
6 quiet, need-to-know basis.

7 Don't send out emails that are going on a
8 Richland Two e-mail system that can be pulled up on the
9 screen, that can be printed out, that can be
10 disseminated. Everyone knows the way electronic
11 communications work. That stuff can float around in 60
12 seconds.

13 The way Jim Childers testified as to how he
14 dealt with it, I think we have established that, you
15 know, that's the standard. Your Honor, if we need to
16 move to amend the complaint to conform, obviously we'll
17 do so.

18 THE COURT: Any response?

19 I'm sorry. Before I get to that, we're all in
20 agreement then that any defamation does not relate to
21 the termination?

22 MS. PEAVY: Yes, Your Honor.

23 THE COURT: Yes, sir.

24 MR. BARLOW: Yes, just as far as a brief
25 response to the Abofreka versus Alston Tobacco Company

1 case. Certainly, the qualified privilege was lost in
2 that case because they published the two people who were
3 not or are not employees.

4 It's a completely different factual
5 circumstance here. There is no evidence that any
6 defendant intended to post that. Certainly, we haven't
7 waived somehow the qualified immunity defense, and the
8 jury needs to be able to consider that.

9 I mean, if you're not going to grant our
10 directed verdict on that, it's certainly an issue of
11 fact for the jury to determine whether the defense has
12 been somehow waived or exceeded by whatever conduct the
13 defendants engaged in. It's still in play.

14 MS. PEAVY: Your Honor, I --

15 MR. BARLOW: There is no reason to rule as a
16 matter of law that we have lost the qualified privilege
17 because there is some testimony in the record that
18 people saw the memo that weren't the original people
19 that it was addressed to.

20 MS. PEAVY: That's the only evidence in the
21 record. We believe that it is properly a ruling as a
22 matter of law, Your Honor. They shouldn't be able to --
23 the jury shouldn't be charged on it because as a matter
24 of law the privilege was destroyed when other people saw
25 the memo who were not supervisory level employees.

1 MR. BARLOW: At a minimum though, it's a
2 factual issue as to how they got it and how it got
3 there, whether it was through Jeffery Kennedy by way of
4 Anthony Permenter or our people, the people who are
5 defendants.

6 I mean, if somebody who is a supervisor sends
7 this or leaves it out, that is not defamation by Chuck
8 Earles or Eric Barnes. That's not a publication by Eric
9 Barnes or Chuck Earles.

10 MS. PEAVY: They testified they didn't publish
11 it. They didn't leave it out. The only testimony was
12 that it was left out which means that one of the people
13 that received it -- and all those people are supervisory
14 level employees -- that they printed it out, that they
15 left it out.

16 MR. BARLOW: They're certainly --

17 MS. PEAVY: So I think as a matter of law,
18 we're entitled to have that stricken and that there not
19 be a charge on that, Your Honor. Abofreka upholds that
20 the qualified privilege defense is properly stricken.

21 THE COURT: Let me ask: Who does the
22 privilege relate -- who does the privilege extend to?
23 Does it extend only to those individuals to whom the
24 memo is addressed? Does it extend to all District
25 employees?

1 My view is it's a qualified privilege that's
2 to be limited to those individuals, based on the case
3 law in the definition, those people who have an interest
4 in whatever the event is and that people are discussing
5 it.

6 That would include those individuals who are
7 investigating the allegations and the claim. I can
8 understand it would extend from the Principal to Barnes,
9 to Earles, to those individuals that they interviewed
10 about the situation, which would include the Principal,
11 and then up to the District level.

12 Then as a result of whatever action was
13 determined on the personnel side, the memo to those
14 individuals who were supervisors who would be
15 responsible for supervising Mr. Kennedy in his -- in his
16 new role or his new location or wherever he was going to
17 be assigned.

18 MS. PEAVY: And that's our understanding, Your
19 Honor, that the privilege attaches -- that e-mail in and
20 of itself is privileged because it's the Director, Chuck
21 Earles, who is indicating this to his supervisory staff.

22 That's not the issue. The issue is the
23 subsequent printing out of the e-mail, the subsequent
24 display of the e-mail in the watch room and the Richland
25 Two vehicles.

1 That testimony is undisputed. So we believe
2 as a matter of law that we've shown that that privilege
3 was lost when the memorandum marked confidential was
4 left out and visible to Richland Two employees, rank and
5 file employees.

6 MR. BARLOW: Your Honor, she is asking for a
7 strict liability standard. If the memorandum gets out,
8 then therefore you don't get a qualified immunity
9 defense.

10 The defendants who are accused of defamation
11 somehow lose their immunity defense if the memo gets out
12 by someone other than them. I mean, that's strict
13 liability. That's not the way defamation works.

14 THE COURT: So basically your position is that
15 steps were taken to safeguard to whom -- it was
16 addressed to specific individuals, and it states in the
17 memo that it shouldn't be published.

18 So if it's published by somebody else that is
19 not directly either Barnes or Earles or Garrick, then
20 that defamation claim would have to go against those
21 individuals who actually put it out there.

22 MR. BARLOW: Yes, yes.

23 MS. PEAVY: Your Honor, I think the important
24 thing to note just briefly is that the only way that
25 this e-mail could have been printed out is by someone

1 who is on that e-mail chain. So someone who is in that
2 supervisory sphere or in that management sphere printed
3 that out. They're the only people on the to -- the
4 address.

5 THE COURT: But you have the burden of proof.
6 You have the burden of proving that. I mean, you just
7 can't say it's been out there and therefore ipso facto
8 somebody had to print it out. So it falls back on the
9 District.

10 I mean, I guess the only -- the only way to
11 establish it is to bring in each one of those people who
12 received it and for them to say, "I didn't publish it or
13 I did publish it."

14 I mean, you're asking for there to be a leap
15 from -- I mean, there's got to be some evidence that one
16 of those individuals did that and just to say, "Well,
17 it's obvious that it was printed out and it's
18 distributed," you still have to establish who it is.

19 MS. PEAVY: Well, the only evidence I believe
20 is that the e-mail was delivered to the people who are
21 listed on there; and they are all supervisors. So it
22 would then be that the people who received the e-mail
23 would have the power, custody, and control of the e-mail
24 and would have printed it out and left it out.

25 THE COURT: And does that fall on the School

1 District or does that fall on them individually?

2 MS. PEAVY: It's both because you've got an
3 issue where you've got a confidential memorandum and
4 it's not kept confidential. Chuck Earles and Eric
5 Barnes both said they didn't print it out and leave it
6 in the break room.

7 But the only evidence is that it was printed
8 out by someone who received it. The only people who
9 received it are supervisors, and it was visible in the
10 break room and in the vehicles.

11 THE COURT: I will...

12 MR. BARLOW: I was going to say something just
13 in response to the negligent supervision claim.

14 THE COURT: Yes, sir.

15 MR. BARLOW: I think it's too late to amend
16 the complaint to allege a futile claim for what appears
17 to be a general duty to maintain a community or a
18 workplace of excellence.

19 There's just not such a claim that exists.
20 There is no right of action. There is no duty to
21 maintain a nice workplace in South Carolina. There is
22 not a cause of action for that. There is no general
23 negligence claim in these facts.

24 Negligent supervision, the elements of that
25 require -- the first one is the employee is on the

1 premises of the employer using the chattel of the
2 employer.

3 The employer knows or has reason to know of
4 the ability to control the employee, and the employer
5 knows or should know of the necessity and opportunity
6 for exercise and control.

7 So it assumes that there is a tortfeasor, one
8 person, who does this that the employer has failed to
9 control, not that it has failed to generally control its
10 operations. That's it.

11 MS. PEAVY: Your Honor, I don't think I
12 responded to their Tort Claims Act motion. I can do so.

13 THE COURT: Yes, ma'am.

14 MS. PEAVY: Our position, Your Honor -- and
15 this kind of dovetails into another issue -- is that we
16 believe that the evidence is in the record of actual
17 malice here. Under the Holtzscheiter versus Thomson
18 Newspapers case, 332 S.C. 502 -- and I can hand that up
19 if you would like.

20 THE COURT: Yes, ma'am. I'm familiar with it,
21 but you can hand it up.

22 MS. PEAVY: Okay.

23 (Hands to Court.)

24 MS. PEAVY: We would ask for a ruling that the
25 statement that "Jeffrey Kennedy is not to have keys,"

1 when published to a group of security employees where
2 the very nature of being a security guard is having
3 keys, we would contend that that's defamatory per se and
4 that it's actionable per se.

5 Therefore, the law presumes that the defendant
6 acted with common law malice and that the plaintiff
7 suffered general damages. So we would be asking for a
8 charge on that.

9 But I also think, since it's a question of
10 law, it's appropriate at this stage for there to be a
11 discussion of that; and we're moving for a directed
12 verdict on that issue.

13 That dovetails into the Tort Claims Act, their
14 directed verdict issue, because we believe that there is
15 actual malice here; so therefore, the defamation claim
16 against the individuals should stand because it meets
17 the exception under 15-78-70, Subsection (b).

18 THE COURT: I think that that is -- I think
19 how to interpret what was stated and whether or not it
20 constitutes defamation is clearly a jury issue. I think
21 it's up to them to view the evidence and look at it as a
22 whole and determine -- if we get past the publication
23 issue -- whether or not the message that was
24 communicated was defamatory.

25 I think that that's something they have to

1 make a decision on based upon the ordinary meaning and
2 whatever arguments that you want to make. If you want
3 to make that as a jury argument that, you know, for
4 security officers not to have keys impugns his
5 reputation, then I think you can make that argument.
6 But I think that's clearly an issue that has to be
7 determined based on the jury by the jury. That's not as
8 a matter of law.

9 MS. PEAVY: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. BARLOW: No, Your Honor.

12 THE COURT: I'm going to consider some of the
13 issues that you raised in your motions. I will review
14 the information again in light of the new arguments and
15 my understanding of, I guess, what you were trying to
16 tell me before.

17 Let's come back at about 2:00 o'clock. I can
18 give you a ruling, and at that time we'll be prepared to
19 give you a charge.

20 (Whereupon there is a luncheon recess.)

21 THE COURT: There are a couple of additional
22 questions that I need to ask as it relates to some of
23 the claims.

24 I understand with the defamation claim, what I
25 had originally ruled was that it would be a jury issue ;

1 as to Mr. Earles and Mr. Barnes -- or it's not been a
2 directed verdict as to Mr. Earles and Mr. Barnes. I
3 added Richland County School District Two, and I
4 dismissed Kim Jones.

5 So those are the parties that will remain at
6 the close of the defendant's case; is that correct?

7 MS. PEAVY: Yes, Your Honor.

8 MR. BARLOW: Yes, Your Honor.

9 THE COURT: Let me make sure -- and I know
10 I've heard it many times -- but it appears a lot of
11 things get mixed together. What is the plaintiff's
12 position as to what the defamation entails? In other
13 words, what's the defamatory statements or claims that
14 they're making as it relates to Barnes and Earles?

15 MS. PEAVY: As it relates to Barnes and
16 Earles, it concerns that they insinuated through their
17 conduct and the e-mail is a statement that a security
18 guard is not to have keys.

19 We contend that by having that published to
20 the staff at large, not among the supervisors, that
21 statement can only mean one thing to people working in
22 security. I believe the testimony on this was clear
23 that a security guard without keys, something is wrong.
24 They're not to be trusted.

25 The way that the memo is closely related to

1 the investigation and to the missing money from Tim
2 Hunter's office and also the -- and also the
3 Administration Building thefts -- there's only one way
4 to interpret that, which is that they believed Jeffery
5 Kennedy was the responsible party.

6 They're moving forward letting everyone know
7 they don't trust him. It doesn't matter what the
8 Richland County Sheriff's Department decided to do, this
9 is their opinion; and they're going to let everyone know
10 that he is not to be trusted.

11 The standard of care to use when, you know,
12 dealing with confidential employee information is to be
13 discreet, to keep it confidential, to ensure it's kept
14 confidential.

15 We don't dispute that they have the right to
16 send a memo to their supervisors. What we argue, Your
17 Honor, is that they defamed him or caused him to be
18 defamed when the e-mail was printed out and left around
19 carelessly.

20 They knew they had a culture problem. They
21 knew they had a gossip problem. That's the Change of
22 Culture memo. So that's our position as to Mr. Earles
23 and Mr. Barnes.

24 THE COURT: And specifically what -- you said
25 through conduct and e-mail. Tell me what conduct of

1 Mr. Barnes was communicated to third parties.

2 MS. PEAVY: Well, Mr. Barnes and Mr. Earles
3 both --

4 THE COURT: I'm asking about Mr. Barnes.

5 MS. PEAVY: Mr. Barnes?

6 THE COURT: Yes.

7 MS. PEAVY: Mr. Barnes was -- his conduct to
8 third parties?

9 THE COURT: What did he do that was
10 defamatory? What communications? What conduct? What
11 actions did he take? What are you claiming that he did
12 that constitutes -- separate and apart from Earles --

13 MS. PEAVY: Okay.

14 THE COURT: -- that constitutes defamation?

15 MS. PEAVY: Well, I think there was plenty of
16 testimony in the record about the chain of command in
17 the Security Division, which was that you had the rank
18 and file, the guys and the women doing the shift work.
19 Then you have the captain and lieutenant level. Those
20 are the people who the e-mail is addressed to.

21 Then you had Mr. Barnes and then you had
22 Mr. Earles. Mr. Barnes was the person charged with
23 supervising those captains and lieutenants who the
24 e-mail is addressed to. He knew that there was a
25 culture problem. He knew that he and Chuck Earles were

1 trying to change that rumor mill.

2 So he should have ensured that it was kept
3 confidential. So he allowed the message to get out, and
4 everyone knew that he considered Mr. Kennedy to be the
5 thief. He was -- he testified himself he was angry that
6 Mr. Kennedy wasn't fired back in June.

7 THE COURT: And to whom were those comments
8 about that he thought he was guilty, for lack of a
9 better word, and that he was angry that he wasn't fired?
10 To whom were those communicated? I'm talking purely
11 about the defamation, not the negligent supervision
12 issues, only the defamation.

13 MS. PEAVY: I think that Lieutenant Reid
14 testified that everybody -- that through their words and
15 conduct -- that Mr. Earles and Mr. Barnes communicated
16 to the staff that he wasn't to be trusted. I think that
17 was the testimony.

18 Mr. Permenter, Captain Permenter, Lieutenant
19 Reid, Barry Mitchell said everyone knew. There was only
20 one way for everyone to know that they didn't think
21 Jeffrey could be trusted was for Mr. Barnes and
22 Mr. Earles to communicate that.

23 (Pause.)

24 MS. PEAVY: Your Honor, also just briefly. He
25 testified that he didn't print the e-mail out, and it's

1 for the jury to weigh the credibility of the witnesses
2 as well. The theory of our case is that someone who is
3 on that e-mail printed it out and left it out.

4 THE COURT: As it relates to the qualified
5 privilege, whether there exists a qualified privilege,
6 it is a matter of law which has to be decided by the
7 Court. As it relates to the memorandum or the memo that
8 was sent to the employees, I find that that was the
9 subject of a qualified privilege.

10 It was addressed to individuals who had a need
11 to know about the issues that were being discussed, that
12 it was limited to those certain personnel who had that
13 need. So it was not -- the interest that was being
14 expressed was the common interest among all the
15 individuals to whom the information was communicated.

16 So those conversations as it relates to the
17 e-mail is the subject of a qualified privilege. It
18 becomes a jury question as to whether or not the
19 privilege was exceeded.

20 As it relates to that conduct, I'm not sure
21 that that information -- I'm not sure to whom the
22 conduct was demonstrated. I think there might be some
23 dispute as to that.

24 That's a question as to whether or not the
25 information is being published to other individuals. I

1 think that's a jury question as well, as to whether
2 through their conduct in interacting with the other
3 employees that they were outside of the supervisory
4 stuff, that they had communicated a defamatory message.
5 Of course, whether the message was, in fact, defamatory
6 is also a jury question. So I'll deny the directed
7 verdict on that basis.

8 On the negligent supervision, I'm still not
9 sure that I really understand what the argument is about
10 the negligent supervision. I've heard about two or
11 three different arguments.

12 The argument that made the most sense to me
13 was the last argument that was made by the defense.
14 There was no general duty to keep a good workplace, a
15 work site.

16 The problem I have with the negligent
17 supervision is that it appears that there has to be --
18 and I'll have to look back at it again -- it appears
19 there has to be some knowledge on the part of the
20 employer or the person who is doing the supervising that
21 there is an issue that they need to be aware of.

22 As it relates to the School District, there's
23 two scenarios here. There's the School District
24 supervising Barnes and Earles, and I find that there's
25 not any evidence to show that they should have been put

1 on notice that there was some error or there was some
2 problem with the manner in which those two gentlemen
3 were supervising their employees or were conducting
4 business within the School District.

5 So while there's a lot of questions about, you
6 know: Did you ask questions about the training? Did
7 you ask how they were trained? Did you go back and talk
8 to them?

9 As it relates to the School District's
10 responsibility, which I think would go up to Batchelder
11 and Garrick and how they view -- how they supervised
12 Earles and Barnes -- there's no evidence that would have
13 put them on notice that they had to be aware that there
14 was some issue that they needed to properly go back and
15 supervise and to know that they had to control how those
16 two individuals were exercising their duties and
17 performing those duties and supervising their employees.
18 So on that particular issue, I will grant the directed
19 verdict as to that particular issue.

20 The second scenario that comes up is as it
21 relates to Barnes and Earles having knowledge and to
22 supervise their employees on how they should have -- how
23 they are to treat information that's presented to them.

24 Again, I think the testimony was that, as it
25 relates to the memorandum -- and that's really the issue

1 that we're talking about here. That still goes to the
2 slander issue -- but as to supervising them in terms of
3 discussions that they may have had, I haven't heard
4 anything about the overall tenor in the discussion about
5 the fact that there was a rumor mill.

6 Case law seems not to address -- while there
7 have been a number of cases that talk about rumors, both
8 in the context of slander, there's not much in the
9 context of negligent supervision.

10 I don't think that that is a duty that is owed
11 to a third party that they have to control all of the
12 discussions and conversations that their employees have
13 within their workplace.

14 The question is certainly the memo that was
15 sent out is marked confidential and it's marked not to
16 discuss it and the memo goes so far as to say, you know:
17 "The contents of this memo are will not be shared with
18 others except on a need-to-know basis," which certainly
19 imparts the importance of being able to keep that
20 information confidential and keep it to themselves.

21 The fact that somebody goes -- and the
22 testimony was, "When I send out something confidential,
23 I would expect that those in a supervisory role would
24 understand that importance and to show and demonstrate
25 and respect the fact it's confidential and should not be

1 shared with others." I think that's a reasonable
2 expectation.

3 I also believe that based upon the evidence
4 and the case law that there is not a -- that there has
5 been no reason to believe that those individuals would
6 therefore go out and do something contrary to what the
7 expectation was in light of the fact that the memo
8 clearly says it's confidential.

9 One of the things about negligent supervision
10 is they should know of the necessity and the opportunity
11 to exercise the control over their employees and prevent
12 them or to cause them to do something that would prevent
13 them from doing something else and knowing that they
14 have the ability to control.

15 Certainly, they would know that they have the
16 ability to control those individuals; but there's been,
17 I guess, a lack of evidence and information about
18 what -- I guess what the School District or what the
19 employers would have done differently and what they
20 should have done in terms of being able to convey that
21 message.

22 Now, I understand that the argument is that
23 they didn't go back and they didn't talk to him
24 individually or personally. They didn't do what
25 Childers would have done.

1 But I don't think that that conduct would
2 impart back to the School District and hold the School
3 District responsible, in the absence of having some
4 evidence that there should have been some type of
5 different treatment or that they are aware that those
6 confidences had ever been disclosed in other
7 circumstances or other situations.

8 So for that reason I will grant the motion as
9 it relates to the negligent supervision. Additionally,
10 I think there's nothing in the evidence to show that --
11 and I think I may have already said this -- that Earles
12 would not have handled the matters that were under his
13 control and that the School District would need to act,
14 to step in to do otherwise.

15 The claim is not against -- the claim is not
16 against the individuals. It's against the School
17 District. In the absence of some evidence that the
18 School District should know that Earles would not
19 properly supervise or Barnes would not properly
20 supervise their employees, I think that there would be
21 some issue that would put them on notice that they
22 needed to do so.

23 I think that claim fails. I understand this
24 morning I said something different; but in listening to
25 the arguments again, I'm going back and reevaluating it.

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

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

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

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

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

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

1 MS. PEAVY: Thank you, Your Honor.

2 CLOSING ARGUMENT

3 MS. PEAVY: Ladies and gentlemen of the jury,
4 Madam Foreperson, thank you. Like the judge said, we
5 know you have been here all week. You've been
6 attentive. You've been listening to the witnesses.
7 You've been listening to the testimony. We appreciate
8 that, all the lawyers in this room, as does Mr. Kennedy,
9 as does the School District and their employees.

10 When I first had the opportunity to speak to
11 you on Monday afternoon, I told you we were here for one
12 reason because there is only one place in our country,
13 here, that Jeffrey can try and get his reputation back.
14 That place is this courtroom. Nothing has changed.
15 That's what this case was about on Monday. That's what
16 this case is about now.

17 Now, you've heard a lot of evidence about the
18 fact of the \$1,000 missing from the Athletic Department
19 and the other small thefts at the Administration
20 Building.

21 I'm not going to go through all those details
22 again. We heard there are a lot of questions, a lot of
23 unanswered questions, about keys, about access to the
24 building, about videos or the lack thereof, about
25 habits, about wasting time, about alarms, about

1 timelines.

2 We've heard testimony from the witnesses about
3 other people who were in the building on the same days
4 when Jeffrey was. We heard from Tim Hunter. I think we
5 can all agree that Tim Hunter, the Athletic Director,
6 seems like a great guy. He is a longtime coach. He is
7 a longtime educator. He is a Spring Valley parent. He
8 has a good reputation in the school and the community.

9 He would have had a lot to lose by taking this
10 \$1,000. He had no history of any theft or dishonesty.
11 So even though he was the person who left the cash out,
12 who had a key, it just didn't seem to make sense that
13 Tim Hunter would risk all that, really risk who he was,
14 to do that. He had too much to lose.

15 We didn't hear from Sonny Uker, but we heard
16 people talk about him. We heard Tim Hunter talk about
17 him, said he was a stand-up guy, his right-hand guy, a
18 great booster for Spring Valley. So he had a good
19 reputation in the community.

20 He enjoyed his job according to the testimony.
21 Again, it sounds like he would have had a lot to lose by
22 taking this money. We didn't hear any history that he
23 had any history of being dishonest.

24 So even though he was there that night and he
25 knew the money had been left out, it just didn't seem

1 likely that those two gentlemen would have taken that
2 money.

3 Then there's my client, Mr. Jeffery Kennedy.
4 The case against him was that he too was in the Athletic
5 Department that night working. He was off camera in --
6 his testimony was in the weight room for about five or
7 six minutes, and that he had keys.

8 But, again, just like Tim Hunter, just like
9 Sonny Uker, he had a lot to lose. You heard his
10 testimony. He had just gotten this promotion. He was
11 getting off third shift. He was looking forward to
12 being a lieutenant. He had a wife. He had kids.

13 We heard Traci Batchelder recount her notes
14 from her meeting with him back in March. It was heart
15 wrenching, to me at least, because I know Mr. Kennedy.
16 He was part of the culture of excellence at Richland
17 Two. He was up for a promotion.

18 It just doesn't make sense that he would go
19 ahead and jeopardize all of that by taking this money,
20 by rifling through desks, nothing like that. It didn't
21 sound like he would want to lose that, just the way Tim
22 Hunter wouldn't want to jeopardize his life, his family,
23 just the way Sonny Uker would not want to do that ever.

24 But Jeffrey was on duty that night, and he was
25 on duty in the Administration Building those other days.

1 The testimony is undisputed. He would have expected to
2 be investigated. That's what happens when you work
3 security and something goes messing on your shift.

4 You've got keys. You've got access. They all
5 know the cameras are everywhere. They don't know where
6 the cameras are looking at what time; but they know
7 they're being watched. They know if something goes
8 missing, they're going to look to see what the security
9 guard was doing.

10 That's not the problem. It's not a problem
11 that Richland Two decided to investigate and see what
12 Jeffrey did that night. It's not a problem that Chuck
13 Earles or Eric Barnes decided to see what Jeffrey was
14 doing the days in question. That is reasonable, but
15 they don't have the right to be reckless and smear a
16 good reputation.

17 Unlike the situation with Tim Hunter, unlike
18 the situation with Sonny Uker, for some reason Jeffrey's
19 good reputation really didn't seem to matter. He had
20 been working there a long time. He had a few notes in
21 his file about how maybe he was late or he left early on
22 a shift or whatever, but they had just recommended him
23 for the promotion.

24 So really in theory he was a valued member of
25 Richland Two, but for some reason something wasn't quite

1 right in their eyes. You saw Jeffrey on the stand. The
2 judge is going to ask you or is going to tell you that
3 it's up to y'all to evaluate credibility. It's up to
4 y'all to form your opinions about witnesses and the way
5 they presented themselves.

6 So maybe he did forget a few details a few
7 months later about what door he went in on what night at
8 the nine schools that he monitors or that maybe he
9 wasted 20 minutes one night instead of wasting ten
10 minutes. I think we can agree sometimes when you're
11 looking back, you don't know exactly what you did on
12 February 24th, what have you.

13 The testimony has been undisputed. They never
14 ever saw Jeffrey accessing any of these offices with a
15 key in the three years that he had been working there,
16 nothing, no evidence to that.

17 But instead of giving Jeffrey consideration,
18 instead of looking and seeing that Jeffrey was a person
19 who should be protected, they went ahead and they
20 targeted him.

21 In his 50 years, he had a good career in
22 security. He had a good reputation among his coworkers.
23 You heard from Lieutenant Reid. You heard from Captain
24 Permenter. They are still working for the District.
25 They have no reason to come here and tell you they think

1 Jeffrey Kennedy is a good guy.

2 They have no reason to come here and put
3 themselves at odds with their current employer, but they
4 thought he had a good reputation. They thought what
5 happened to him was really unfair.

6 Jeffrey was a person who had started that
7 youth mentoring program for young men at his church.
8 Jeffrey was a person who helped to guard the collection
9 plate at his church.

10 Now, just like Tim Hunter, he had a lot to
11 lose; but for some reason he wasn't treated the same.
12 He had no history of theft or dishonesty. So really
13 when you look at it, they had every reason to believe
14 that he wouldn't be a petty thief.

15 Now, we've heard a lot of testimony about
16 other people, other potential candidates, people who had
17 access. You heard from Mr. Garrick, plain as day, other
18 people had access. Other people had keys.

19 You heard from Eric Barnes. He testified that
20 when he was conducting his investigation, he tried to
21 drown out the white noise. I guess by white noise he
22 meant looking into these other people that maybe had
23 opportunity and access and keys.

24 We talked about the baseball team. We never
25 heard anyone say they had spoken to them. We talked

1 about the custodial staff, never heard anyone say anyone
2 spoke with the morning security staff or who was on duty
3 that day.

4 You also heard a lot of testimony about the
5 video system. That's been replaced since this incident.
6 Maybe it kept malfunctioning or taping over or the
7 motion sensors weren't working properly. Who knows?

8 We don't have it here. We don't have that
9 span of video to look at. So you can consider that when
10 you consider all the evidence as well: What's here and
11 what's not here.

12 I think at the end of the day, you'll be left
13 with the same impression that the Sheriff's Department
14 was left with. They couldn't convincingly arrive at a
15 conclusion that one person had taken this money or been
16 responsible for these other thefts in the Administration
17 Building. There was just too many unanswered questions
18 and not enough hard facts.

19 You heard Jim Childers up on the stand the
20 other day. He testified that break-ins happen. People
21 would come through the ceiling tiles at times, be
22 creative.

23 He also testified that with 2,000 teenagers, a
24 bunch of staff, coaches, Athletic Department people,
25 teams going in and out, tournaments, he estimated a

1 hundred thefts a year at Spring Valley. The testimony
2 was undisputed he doesn't report all those to the
3 Security Division.

4 So we know what the facts were. We know what
5 the evidence was. If you're a supervisor, like Chuck
6 Earles or Eric Barnes, and you know the police have
7 decided not to charge anyone, they didn't have any
8 proof, you know, no one was convicted of the crime,
9 whose reputation do you choose to smear?

10 Do you take your best guess? No, we know
11 that's not the responsible thing to do. Because
12 employees have the right to expect that their privacy is
13 protected while they're in the workplace.

14 You heard Mr. Garrick testify to a culture of
15 excellence -- a culture of excellence. Part of that is
16 looking out for your employees, ensuring that their good
17 name isn't sullied because an investigation is going on,
18 and you think they're responsible.

19 It's to make sure that their reputation isn't
20 ruined because information in their confidential HR file
21 gets out, is left around carelessly. You can't ruin
22 your employee's reputation.

23 If someone hasn't been charged or convicted
24 with a crime, you can't go around letting people know
25 that you think they're a thief no matter what. Needless

1 to say it's extremely harmful.

2 I'm asking you to think about what you heard
3 from Jim Childers because I thought that testimony was
4 really instructive. Jim Childers had to deal with this
5 situation where he was taking keys from a longtime
6 employee. We all heard from Ms. Jackson. She was a
7 lovely lady up there on the stand.

8 Jim Childers didn't want to smear her
9 reputation. He didn't want to ruin her good reputation.
10 He didn't want to sully her in any way. She worked for
11 a long time. She was trusted.

12 He testified that what he did was he
13 discreetly and quietly told the Principal and one or two
14 other managers on a need-to-know basis of his decision
15 to take those keys away quietly, discreetly, need to
16 know, no e-mail, no memo.

17 Mr. Garrick testified that Mr. Childers
18 handled that situation, I think, pretty much perfectly
19 because that's the goal. Employees have a right to
20 privacy when it comes to sensitive issues like that so
21 that people's reputations aren't ruined by a smear.

22 Mr. Childers knew that. He knew if it got out
23 that he was pulling Ms. Jackson's keys, it would hurt
24 her. It would harm her. She has built up a good
25 reputation over time. She was in a position of trust.

1 It would harm her if people knew he had done that.

2 Isn't that the same thing with Jeffrey
3 Kennedy? Wasn't he a longtime employee, three years?
4 Wasn't he valued and trusted? They had recommended him
5 for a promotion; but we know he wasn't treated the same
6 way, not at all.

7 If you want to discipline an employee, you
8 can. No one is here saying that Richland Two and its
9 supervisors, its managers, don't have a right to
10 discipline their employees.

11 Richland Two is a renown School District.
12 It's a large school district. Mr. Garrick is dealing
13 with HR issues every day. They have a lot going on.
14 But if you're going to discipline your employee, you
15 need to keep it in-house. You need to keep it
16 confidential.

17 That's what this case is really about. We're
18 not here to fault Chuck Earles for sending an e-mail to
19 his supervisory staff telling them that under no
20 circumstances is Jeffrey Kennedy to have keys anymore.

21 He has the right to do that. Those are his
22 supervisors. He is the Director. A boss has to be able
23 to tell managers what the discipline is so that they can
24 follow the instructions.

25 But Chuck Earles and Eric Barnes also knew

1 that they had some problems in that department in terms
2 of having things confidential. You saw the Change of
3 Culture memo that Chuck Earles prepared. They had a
4 rumor problem. They had a gossip problem. They were
5 trying to fix it.

6 Chuck Earles and Eric Barnes knew that
7 Jeffrey's reputation and professional career would be
8 damaged if that e-mail got beyond its recipients, got
9 beyond the core group of supervisory staff who they were
10 allowed to communicate with.

11 Everyone in this case has acknowledged that
12 that e-mail to this day if you saw it and you worked in
13 security, Lieutenant Reid said, "You put two and two
14 together. Everyone knows."

15 That e-mail did get out. It was printed out.
16 The undisputed testimony is that it was lying in the
17 office, the shift room or whatever it's called, watch
18 room, and that people saw it lying out there: Captain
19 Permenter, Barry Mitchell.

20 Captain Permenter is still at the District.
21 His wife has worked there forever. She is a recipient
22 on that e-mail. These people don't have a bone to pick
23 with the District. They're longtime employees.

24 But the fact is the evidence shows that it was
25 printed out by someone who received it, someone who had

1 access to it, and it was left out. This was careless
2 and reckless.

3 So no one is surprised, based upon the
4 culture, the rumor mill, that word got out; and it just
5 didn't get out to the security staff. That would have
6 been bad enough.

7 No, it got out. Because Columbia, even though
8 it's the capital city, sometimes it can feel like a
9 small town. People's lives overlap. People work at
10 Richland Two. They testified they've got thousands of
11 employees.

12 Well, some of those people might go to your
13 same church, your same synagogue. Some of those people
14 might do recreational activities with you. Your lives
15 are intertwined when you live in Columbia.

16 People at these big employers, they know.
17 They know that they're going to interact with people
18 outside of just that little world of Richland Two. The
19 student body found out about it. We know that.

20 Mr. Jeffrey testified he was at Wal-Mart, saw
21 a Spring Valley student talking about him. Now, most
22 adults won't go beyond your back or step away.
23 Sometimes kids aren't quite so sensitive. That happened
24 this year.

25 We know Jeffrey's church found out about it.

1 He testified he had started up that Godly Men's program,
2 to help mentor youth. Suddenly he wasn't really welcome
3 doing that anymore, and suddenly he is not asked to work
4 security while the offering is being counted and
5 accounted for on Sundays.

6 We don't know how many looks he has gotten
7 when people recognize who he is. We just know it's out
8 there. I talked about this in my opening statement to
9 y'all, the virus. It travels.

10 We're in an age now where rumors can fly in
11 two seconds, where it can go anywhere. People have
12 their phones. People have their computers. It's not
13 hard for it to get around.

14 How many friends and acquaintances, if they
15 knew someone was thought to be a theft [sic], would have
16 turned away from Jeffrey instead of saying hello? How
17 many times has Jeffrey noticed and how many times will
18 he notice someone maybe giving him a little bit of a
19 funny look, recognizing him from his years at Richland
20 Two saying, "Oh, that's Mr. Kennedy from Spring Valley."

21 Again, we're in Columbia. His marriage is no
22 longer. He still has kids. He has still got grandkids.
23 He can't just pack up and move somewhere else. His life
24 is rooted here. He graduated from Keenan. His mother
25 is here.

1 So he can't simply run away from all this. He
2 is not 20 years old. He can't simply pack up and start
3 a new life, transfer college, and go somewhere where
4 people don't know him. He's going to have to deal with
5 this.

6 So the question becomes: What can you as
7 jurors do to try to make this right? Because remember,
8 this is the only place for Jeffery Kennedy. The law
9 doesn't make you write -- make the School District write
10 an apology, make Mr. Barnes or Mr. Earles write an
11 apology. It doesn't allow a retraction to be forced to
12 be printed anywhere.

13 The only thing the law allows is for you, the
14 members of the jury, to award money damages to
15 compensate someone in Mr. Kennedy's position for the
16 embarrassment, for the humiliation, for any loss he has
17 suffered, inside, his emotions, his family structure,
18 what have you that he has endured as a result of this
19 incident.

20 The question is: What's appropriate here? I
21 would suggest that you all go back to the jury room and
22 arrive at an amount that fairly compensates Jeffery
23 Kennedy for the embarrassment and humiliation that he
24 suffered as a result of this reckless accusation that he
25 was a thief.

1 An amount that will say to the School
2 District, that will say to the School District's
3 employees that, "You have to be exceedingly careful when
4 you're dealing with a man's reputation or you will end
5 up paying for it later."

6 An amount that says to everyone who hears
7 about the verdict, the public, that Jeffrey doesn't
8 deserve this bad reputation, something that's
9 appropriate and sends a message.

10 Now, Mr. Kennedy testified before this all
11 happened, he was bringing home about \$1,600 every pay
12 period. So he was bringing home about \$3,200 a month or
13 so. Mr. Kennedy is 50 years old -- about to turn 50.
14 Sorry, Mr. Kennedy.

15 I would submit to you, ladies and gentlemen,
16 that ten years of his salary where he was at Richland
17 Two before all of this came down, that's an appropriate
18 amount. That's an amount of about \$400,000.

19 That's an amount that will send a message to
20 the School District and to its employees that they were
21 wrong, that shows that you thought Jeffery Kennedy was
22 right, and that he did not deserve what he was subjected
23 to.

24 The judge is going to give you a verdict form.
25 The School District obviously is an entity. It can't

1 defame anyone. It acts through its employees. I would
2 ask you to fill in an award of \$400,000 on this verdict
3 form to show the District, to show the community that
4 the way the District and its employees treated Jeffery
5 Kennedy was wrong and that you the jury are trying to
6 make it right today. Thank you so much for your time.
7 That's all I have.

8 THE COURT: Yes, sir. You may proceed.

9 MR. BARLOW: May it please the Court, Counsel.

10 THE COURT: Yes, sir.

11 CLOSING ARGUMENT

12 MR. BARLOW: Ladies and gentlemen, it's good
13 to get back up in front of you. It's been a long week.
14 I also appreciate your patience and attention on behalf
15 of the School District folks over here, Mr. Garrick and
16 Captain Mahoney as well.

17 In my opening I told you what kind of case
18 this was. Both sides agreed this case was about trust.
19 Okay. The judge's instructions are going to tell you
20 how to apply the law.

21 You don't get to make up the law. If you
22 don't like what the judge tells you the law is, that's
23 too bad because the judge is going to tell you what the
24 law is that you have to apply. You are not allowed to
25 make your own law. If you don't like the law, then I'm

1 sorry. It's what the judge says does apply.

2 This is not a criminal case. This was the
3 first thing -- or one of the first things I said on
4 Monday. It seems like a long time ago. I said, "This
5 isn't a criminal case."

6 I said we would not come up here and try to
7 prove that Jeffery Kennedy took money from the
8 administrative hall or from the Bates Hall beyond a
9 reasonable doubt. Okay.

10 The burden is theirs to prove that we caused
11 Jeffery Kennedy reputational injury. It's not our
12 burden to prove that he stole things from us. I did
13 tell you that I would prove to you -- and I did prove to
14 you -- this week through all of our witnesses that there
15 were lots of reasons for the School District folks that
16 you heard from up here not to trust what Jeffery Kennedy
17 was telling you.

18 I don't have time to list them all, but there
19 are a lot of them. Eric Barnes is the one who used the
20 term white noise up there on the stand. You've heard
21 from counsel when they were asking questions of all the
22 witnesses.

23 What about Tim Hunter? What about
24 Ms. Jackson? What about Sonny Uker? What about the
25 baseball coach? Don't they have keys? Where are all

1 their keys? Who does this? And who does that? The
2 keys are white noise. Okay. If somebody is in that
3 building, they show up on the camera.

4 There are a couple of people that have a key
5 that gets into every door in there. There are two
6 people, I think you heard testify today, maybe three,
7 that actually have the master key to get in the Athletic
8 Director's Office in the Bates Hall. That's Tim Hunter,
9 Jeffrey Kennedy, and Jim Childers. That's something to
10 think about there.

11 The other white noise that you heard about,
12 Sonny Uker, an 86-year-old guy. Do you really need to
13 sit down and question an 86-year-old man about whether
14 he stole money? Do you need to sit down and question
15 Tim Hunter and put him through a whole battery of tests?

16 You heard from Ms. Jackson up here.
17 Ms. Jackson would be the last person to ever take
18 anything from anybody. She gives plenty to people but
19 would never, ever take anything. So that's white noise.

20 They want to talk about everything except what
21 their client did. I will go through some of that now.
22 They also want you to second guess people who have spent
23 their lives in law enforcement, people who have spent
24 their lives in education trying to do the right thing.
25 They know when something is wrong, and they need to take

1 care of it and address it when something just doesn't
2 seem right with one of their employees.

3 One of the terms you heard was common
4 denominator. That means something that's involved in
5 every little thing, something that is always the same
6 with everything.

7 In the administrative hall we heard testimony,
8 three reports in about two weeks, suspicious activity in
9 there by Mr. Kennedy. All of that was varied from his
10 normal routine.

11 Stuff didn't just go missing in the school now
12 when Mr. Kennedy was in there and unaccounted for. It
13 went missing in that very area in the administrative
14 hall in the time that he was off camera.

15 Now, Mr. Kennedy just says he was wasting
16 time, just killing time. It's curious that Mr. Kennedy,
17 whenever he is killing time and wasting time, it's not
18 on the camera. It's not on camera when he does that.

19 But who has time to rifle through desks and
20 file cabinets and things like that? Who has time to do
21 that? Are the students going to come in through the
22 Assistant Principal's office or by the Principal and
23 start digging in the desk and trying to take stuff?

24 It's the third shift security guard who has
25 time to do these things. Who knows where the cameras

1 are? Somebody who has a lot of time in the building. I
2 think one of the questions when Mr. Kennedy got back up
3 was: "You spend a lot of time in these buildings, don't
4 you? You know these buildings better than anybody
5 else."

6 You heard from Chuck Earles that you can look
7 up in those cameras and see exactly where they're
8 pointed. You heard from Mr. Kennedy, after some
9 prompting from his deposition, that he knows how to run
10 these cameras. He knows how to pull it up.

11 He can see which camera is looking here
12 (indicating). He can see which camera is looking there
13 (indicating). He can find the blind spots. So those
14 are some of the things at the administrative hall.

15 There's just no reason to go to the back door,
16 stay in there for 20 minutes, take a break 20 minutes
17 after your shift starts. I mean, nobody takes a break
18 20 minutes after their shift starts. That just doesn't
19 make any sense.

20 That's what these people are trying to filter
21 out. Who is the most likely person? Are we going to
22 try to convict this person of a crime or anything like
23 that? No, let's just try to find out what's going on
24 and make it stop. That's what they are trying to do at
25 this point.

1 Let's talk about the Bates Hall for a minute.
2 Who has the best opportunity there? Who would know what
3 the cameras see and what they don't see? The
4 explanation for the lights in the weight room, that's
5 just kind of all over the place there.

6 It takes you about ten seconds to turn off
7 lights, to walk to the edge of the room, and turn off
8 lights. And why do you go back through the dark room
9 when you can go through a lit hall and be right back on
10 the camera? So that was one of the explanations for
11 that that we got.

12 The baseball coach? Well, maybe the baseball
13 did it. Well, why are you sitting out in your truck
14 while the baseball coach and the team are coming back in
15 the building if the baseball coach is somebody that is
16 not trustworthy and you can't trust?

17 The testimony was the baseball coach does not
18 have an A-key. They watched him on the video for a
19 little bit. And the rest of the players took off,
20 removed from the situation.

21 Once Mr. Kennedy was out of the third shift
22 there at Spring Valley, once he was out of the
23 administrative hall, once he was out of the Bates Hall,
24 all this stuff stopped. That bait money that Mr. Earles
25 put in there stayed in there for six months in the file

1 cabinet area there in the administrative hall.

2 The answers to the questions Mr. Garrick asked
3 Mr. Kennedy, "You know, why did you do that?"

4 "Oh, I didn't go back around the front. I
5 stayed in the building the whole time, and then I went
6 out the back door." He was not truthful with that.

7 For the first time at this trial, he has
8 brought up that he was on the phone with Mr. Young at
9 the time. Mr. Young presumably is somebody that could
10 receive a subpoena, come here and testify. You didn't
11 hear anything from Mr. Young to try to confirm that.

12 He never said anything like that to
13 Mr. Garrick or Ms. Batchelder or anybody that was
14 interviewing him. That's a brand new thing. Traci
15 Batchelder's notes are one of the exhibits.

16 I want you to read Traci Batchelder's notes
17 and see if you can find anything about any conversation
18 that Mr. Kennedy was having with Mr. Young during that
19 time that he says he was not in Tim Hunter's office with
20 the money.

21 Also, Kim Jones. You heard all the testimony
22 about Kim Jones. He thought she was cute, wanted to
23 chat with her all the time; but then he's going to tell
24 you, "No, I didn't look at that video and tell her what
25 was on it. She called me. I didn't call her." I think

1 you can get that testimony yourselves.

2 So that's why Richland Two didn't really trust
3 Jeffery Kennedy and the idea was that we needed to do
4 something to try to rectify this situation. But he
5 showed you himself why you shouldn't trust him either.

6 We talked about the stories he was giving
7 Mr. Garrick and Ms. Batchelder about his activities.
8 There is one thing we can say about Mr. Kennedy's
9 testimony here and his interviews with other people is
10 that he is consistently inconsistent.

11 He has been under oath twice, once when he was
12 in a deposition and the other time here. About
13 50 percent of it was the same. You saw how we would go
14 back to the deposition transcript and try to correct the
15 testimony and show you what he said before that's
16 different from what he's saying now.

17 In addition to that, when we talked about
18 Ms. Jones and not telling the truth about her, when he
19 was testifying, he said he left Richland Two. Now, he's
20 working with GEO Care or something like that.

21 But on cross examination I showed you that he
22 left out a whole 18 months of employment that he had.
23 He worked at Allied Barton and SCANA right after
24 Richland Two.

25 I showed him the LinkedIn page that he had,

1 his application. He started to work for them the same
2 month that he left Richland Two. I think he didn't want
3 to tell you that because he wanted you all to think he
4 was out of work for a long time. He was not. He went
5 right from that job right to the next job.

6 Then you know what he does? He tells
7 everybody in security. He tells the people who
8 testified the other day, Mr. Permenter for one.
9 Mr. Mitchell, "When is the first time you heard that
10 Mr. Kennedy had been accused of stealing anything?"

11 "Well, I heard that from Mr. Kennedy."

12 "Mr. Mitchell, when is the first time you ever
13 heard that Mr. Kennedy had taken anything from the Bates
14 Hall that he was accused of, that he was the suspect?"

15 "Well, I heard that Mr. Mr. Kennedy."

16 What Mr. Kennedy wants to do is tell everybody
17 in security that he's been accused of things, and then
18 he wants you to give him damages because he says
19 everybody in security knows about it. I mean, that's
20 kind of what you're hearing here, the inconsistencies
21 that are going on here.

22 Then he tells you that he was homeless and he
23 was evicted and things like that. I don't see how that
24 could be the School District's fault when he goes right
25 from the School District to another job paying him more

1 money.

2 Those are the things you need to think about
3 as far as what he has shown you in the trial, not just
4 what we're telling you, but what he showed you in the
5 course of the week why you can't trust him.

6 I also showed you and told you at the
7 beginning we would show you that, despite the reasons
8 that we had not to trust Mr. Kennedy at that time, we
9 gave him another chance and he was treated fairly.

10 He was paid for four months while he was out
11 on leave. He basically got a four-month paid vacation.
12 Then he comes back to work. Then he wants it both ways,
13 of course, when he comes back to work.

14 "They've got me doing supervisory work.
15 They've got me doing the same things that the
16 supervisors are doing," he tells you. Then the next
17 thing he tells you is, "This work is demeaning. They
18 put me in a closet. Everybody thinks that I must have
19 stolen something because I'm working in a closet."

20 So which is it? Is it you're treated as a
21 supervisor or are you somebody who works in a closet?
22 You just can't have it both ways. You also heard that
23 he got the same pay. His pay didn't change. He got the
24 same hours. He got the same pay. He got the same
25 benefits. He liked his job. He didn't apply for

1 another job.

2 I mean, if you don't like your job, if it's
3 demeaning and you hate it and the people are treating
4 you miserably, what's the first thing you do? You start
5 applying for another job while you still have a job.
6 That's what you do.

7 Nobody was out to get Jeffery Kennedy. They
8 wanted to promote Jeffery Kennedy. I mean, this is
9 right before these thefts came to the attention of Chuck
10 Earles and Eric Barnes and the school people. He was up
11 for a promotion. He was ready to be promoted.

12 Nobody was out to do him in or meant him any
13 ill will or anything like that. They took steps to
14 protect the confidentiality when he came back to work.
15 You've seen that confidential e-mail so many times I'm
16 not going to drag that thing back up here and show it to
17 you.

18 What it says -- it's addressed to about five
19 or six people -- it says, "Confidential. Keep this
20 confidential." There is nobody that testified at all
21 that Chuck Earles or Eric Barnes put that memo out where
22 Mr. Kennedy was going to get in trouble or everybody was
23 going to see it and then think that Mr. Kennedy had
24 stolen stuff.

25 They want you to believe that there's some

1 secret message in that e-mail -- that I'm sure you can
2 take back and read because it's an exhibit -- that
3 really says that Chuck Earles is sending mind vibes to
4 these people to say, "Print this out. Make sure we can
5 get Jeffery Kennedy and embarrass him by doing this."

6 I think Mr. Garrick hit the nail on the head.
7 You've got a Permenter who is an addressee on this
8 e-mail. You have a Permenter who is his friend
9 testifying here. How do you think that e-mail got out?
10 What's the most likely thing?

11 Let's focus on what's likely, not what's
12 possible because that's what you are asked to do here.
13 They have to prove what's likely, not just what might be
14 possible. All right.

15 The judge is going to instruct you that you're
16 not allowed to get a defamation claim, you're not
17 allowed to claim that somebody has ruined your
18 reputation if you're the one that's publishing all the
19 information out there to people.

20 That's what was going on with that. There is
21 not a single witness here that testified that their
22 initial source of information in this case was that
23 e-mail. "Jeffery Kennedy told me. Jeffery Kennedy told
24 me." That's where his witnesses got the information,
25 not from this e-mail at all.

1 Both witnesses showed him the video.

2 Mr. Permenter showed him the video. They are good
3 friends. Now, Mr. Permenter is the guy that's pulling
4 up the video for Jeffrey Kennedy to see, in which he
5 initially denied he had ever seen it at all. Then we
6 showed him the deposition on that, and he corrected
7 that. That's what's going on.

8 Now, we've talked a lot about this Change of
9 Culture here. They want to focus on the, "Mind your own
10 business," part of it and say that there was a
11 reputation problem going on or one of these rumor mills.

12 There is no evidence at all here that we had
13 any problem with any of these people who were addressed
14 on this confidential e-mail that started rumors or
15 spread information.

16 They want you to say that Chuck Earles should
17 have run everybody down and said, "Can you read this?
18 Can you make sure you read this and read it real good."
19 These are professional people who are supervisors. They
20 know what to do when they get an e-mail, and they know
21 they're not supposed to print it out.

22 That's not Chuck Earles's fault. That's not
23 Eric Barnes's fault if one of them decides that they're
24 going to print it out and leave it in their car or leave
25 it in the room.

1 Change of Culture, the one that's important to
2 us is number five. It says, "Always be honest. Do not
3 hide the truth. Coming forward and taking
4 responsibility for a mistake is always better than
5 having your supervisor discover it."

6 That's exactly what happened in the Kim Jones
7 situation. We talked about that at length. You know,
8 it was a simple thing. Traci Batchelder was going to
9 give him the same letter that Ms. Jones got, but he had
10 to go and try to interfere with her.

11 Roosevelt Garrick, Mr. Garrick said and made a
12 good point here, I think. He said, "It's the same thing
13 as bullying. We would never tolerate this from
14 students. We're not going to tolerate it from
15 employees." That's what you're dealing with here as far
16 as that goes.

17 Now, Mr. Kennedy never got a bad reference.
18 He wanted to say that initially, but that's another one
19 of those things we pulled out with the deposition; and
20 he said, "No, I don't have any evidence that anybody
21 gave a bad reference to one of my future employers about
22 my work in Richland Two."

23 He got a job. You know, he got that initial
24 job that he didn't want to tell us about. Then he got
25 his next job. There's been no loss of income to

1 Mr. Kennedy. There's been no hurt feelings, no
2 reputation damage at all to Mr. Kennedy as a result of
3 what happened at Richland Two.

4 Now, I'm almost done here, but I want to leave
5 you with this one. For Mr. Kennedy to win this case,
6 you have to believe that all of our witnesses -- these
7 people who have dedicated their careers and their lives
8 to upholding and enforcing the law, teaching and
9 coaching kids, driving a bus for special ed kids,
10 working two jobs -- and I'm talking about Ms. Jackson
11 now and taking pride in her work doing everything,
12 serving as role models for kids, for other employees,
13 for coworkers.

14 You'd have to believe that they all got
15 together and they cooked up this story about what was on
16 these videos just to hurt Mr. Kennedy's reputation; and
17 they have come in here and lied to you for three or four
18 days.

19 This case is about trust. There's only one
20 side of this case that you can really trust, and that's
21 the Richland Two side of the case. It's not Jeffery
22 Kennedy's side. I thank you all again and I look
23 forward to your verdict for the defendants when y'all
24 come back. Thank you.

25 THE COURT: Any rebuttal?

1 MS. PEAVY: No, Your Honor.

2 (Whereupon the Court charges the jury as
3 follows.)

4 (Whereupon the Court charges the jury as
5 follows.)

6 THE COURT: During this trial, ladies and
7 gentlemen, you and I have certain duties to perform. As
8 the trial judge, it's my responsibility to preside over
9 the trial of this case and to rule upon and pass upon
10 the admissibility of evidence that's been presented
11 throughout the course of this trial.

12 You should consider only the competent
13 evidence which is before you. To any evidence to which
14 there was an objection sustained, you must not speculate
15 as to what the evidence might have been.

16 Any decisions about whether evidence was
17 inadmissible or not, you should not consider the reasons
18 for the decisions. You should consider only the
19 competent evidence which is before you, which is the
20 testimony from the witnesses, as well as the exhibits
21 that have been made a part of the record in this case.

22 Now, I have the additional duty and
23 responsibility to instruct you on the law that applies.
24 As the trial judge, I'm the sole judge of the law that
25 applies. If you have any preconceived ideas as to what

1 the law is or what you want the law to be or your
2 interpretation of the law, you must set all of that
3 aside.

4 Under your oath as jurors, you are sworn to
5 accept the law as I charge it to you. Now, if by chance
6 I make some error in my instructions to you, there is
7 another court at another time that can correct those
8 errors of law. But for purposes of this trial right now
9 this moment, you must accept the law as I charge it to
10 you as being the correct statement of law.

11 Now, in every case tried before a jury, you
12 the jurors become the sole, exclusive judges of the
13 facts in this case. No one can tell you what the facts
14 of this case are.

15 If I've done anything throughout the course of
16 the trial that has given you any impression that I'm
17 commenting on the facts, that I'm telling what facts to
18 find, that I'm giving you an opinion about the facts, I
19 ask that you set all of that aside, for I assure you, I
20 don't have any opinion about the facts of this case.

21 That's not my job here. That's not my role.
22 That's your duty, your responsibility as jurors to
23 determine the facts of this case. Now, in order to do
24 that, you have to analyze and evaluate the evidence and
25 determine what evidence convinces you of its truth.

1 In order to do that, you have to judge or
2 weigh the credibility of the witnesses who have
3 testified. In judging the credibility or believability
4 of the witnesses, you may consider the following
5 factors:

6 What was the manner and appearance of the
7 witness who testified? Was he or she hesitant or
8 straightforward in answering the questions? How did the
9 witness come to know the facts that he or she testified
10 to? What was his or her ability to know these facts?

11 Was the testimony of a witness consistent or
12 inconsistent? Is there some reason that a witness would
13 want to give testimony that would help or hurt one side
14 or the other?

15 In other words, was the testimony of a witness
16 biased or prejudiced in some manner? Was the testimony
17 of a witness strengthened or weakened by other testimony
18 and other evidence?

19 Now, ladies and gentlemen, in judging the
20 credibility or believability of the witnesses, you may
21 believe one witness against several witnesses or you may
22 believe several witnesses against one witness.

23 You may believe a portion of a witness's
24 testimony and disregard other portions of that same
25 witness's testimony. And if you have a good and

1 sufficient reason for doing so, you may accept the
2 witness's testimony in its entirety or you may reject it
3 in its entirety.

4 You may also consider whether a witness's
5 testimony has been challenged or impeached by prior
6 testimony or prior evidence. If you believe that a
7 witness's testimony has been impeached or challenged,
8 you may give any or all the witness's present or prior
9 testimony the weight that you think it deserves.

10 These factors you should not exercise
11 arbitrarily; but if in your good judgment there is
12 reason for you to consider these factors, then you
13 should do so. Your objective, ladies and gentlemen, is
14 to seek the truth.

15 Whether it comes from a witness or witnesses
16 for the plaintiff or a witness or witnesses for the
17 defendant, you don't determine the truthfulness of the
18 testimony by counting the number of witnesses who
19 testified for one side or the other. The truth isn't
20 determined by counting witnesses.

21 What the law simply requires is that when you
22 exercise your mental processes in coming up with what
23 you consider to be truthful evidence, you should use
24 your good common sense. Use your sense of logic and
25 reasoning. Use your experiences in life.

1 You then apply these attributes to the
2 evidence and determine what you the jury consider to be
3 truthful evidence. Then to those true statements of
4 fact as determined by you, you apply the law as I
5 instruct you. Then you will be able to arrive at your
6 verdict.

7 Ladies and gentlemen, your verdict should not
8 be based upon sympathy, passion, or prejudice. By your
9 verdict you have no friends to reward, and you have no
10 enemies to punish. Your verdict should simply speak the
11 truth.

12 Now, under our rules any time a lawsuit is
13 filed and we come to court for a trial, the person who
14 brings a lawsuit or the plaintiff has the burden of
15 proving each and every element of their claim by what we
16 call the greater weight or preponderance of the
17 evidence.

18 That's typically illustrated by looking at a
19 set of those old fashioned scales, where at the
20 beginning of the trial, the scales are even; but
21 throughout the course of the trial as the evidence is
22 presented, the scales may tip back and forth.

23 If, after considering all the evidence, the
24 scales remain even or if they tip ever so slightly in
25 favor of the defendant, then that means that the

1 plaintiff has not satisfied the burden of proof; and
2 your verdict must be for the defendant.

3 If, on the other hand, after all the evidence
4 is presented, the scales should tip ever so slightly in
5 favor of the plaintiff, then that means that the
6 plaintiff has satisfied that burden of proof; and your
7 verdict must be for the plaintiff.

8 Of course, there is no way to physically weigh
9 the evidence. It is entirely a mental process. The
10 evidence to which you assign the most weight should be
11 the evidence that convinces you of its truth, regardless
12 of from whom or what source it comes.

13 Now, this is a defamation case. The plaintiff
14 claims that the defendant communicated a defamatory
15 statement about the plaintiff to another person.
16 Defamation can be in the form of a written statement or
17 it could be one that's communicated by actions or
18 conduct or it could be oral statements.

19 The defamation action is based on the
20 violation of the plaintiff's right to enjoy a good
21 reputation without false and defamatory attacks.
22 Defamatory language is language that tends to injure or
23 adversely affect the plaintiff's reputation.

24 In order to recover in this case, the
25 plaintiff has to prove by the greater weight or

1 preponderance of the evidence that the defamatory
2 language was communicated by the defendant about the
3 plaintiff.

4 A defamatory statement is one than tends to
5 attack the honesty, integrity, virtue, or reputation of
6 a person and expose that person to disgrace, public
7 hatred, avoidance, contempt, or ridicule.

8 A defamatory statement does not have to be
9 direct, open, or a positive attack. It may be merely a
10 suggestion or a hint which is false and malicious, as
11 long as the meaning is plain.

12 In deciding whether a statement is defamatory,
13 you must give the words their ordinary and popular
14 meaning. The intent and meaning of the words must be
15 determined from the words themselves and the context in
16 which they are used.

17 All parts of the statement must be considered
18 together to determine the statement's true meaning.
19 Individual words cannot be singled out as defamatory.
20 In addition, the statement must be considered in light
21 of the facts known to the person or persons to whom the
22 statement was made and not in light of what the facts
23 are known to the parties.

24 The defendant must prove that the statement
25 was substantially true. A statement is not defamatory

1 if it is substantially true. Even if the defendant made
2 the statement for no good purpose or for ill will or
3 it's solely for the purpose of harming the plaintiff, if
4 the statement is true, then the plaintiff cannot recover
5 for defamation.

6 Next, the plaintiff must prove that the
7 statement was communicated to someone other than the
8 plaintiff. It's not enough that the statement be made
9 within the hearing of another person. The plaintiff has
10 to prove that the statement was heard by another person
11 who understood that that statement referred to the
12 plaintiff.

13 The plaintiff also has to prove that the
14 defendant made the statement knowingly or reasonably
15 expecting it to reach a third person. If the plaintiff
16 repeats the defamatory statement to a third person, the
17 defendant is not responsible for damages that are caused
18 by the plaintiff's communicating of the statement.

19 The defendant is only responsible for the
20 damage caused by its own publication of the defamatory
21 statement. Now, even if you were to find that the
22 defendant's statement was defamatory, the defendant in
23 this case claims that it was under a qualified
24 privilege.

25 In order to prove that a qualified privilege

1 exists, the plaintiff must prove -- I'm sorry -- the
2 defendant must prove by a greater weight or
3 preponderance of the evidence that the defendant made
4 the statement in good faith.

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

9 The defendant must also prove that there was
10 an interest to be upheld and that the statement was
11 solely to uphold the interest of the defendant or a
12 third party.

13 The defendant must also prove that the
14 statement was made at the proper time. Finally, the
15 defendant must prove that the statement was communicated
16 in a proper manner and only to proper parties.

17 Now, ladies and gentlemen, I will instruct you
18 that this Court has determined that the memorandum
19 communicated by e-mail to the security supervisors was
20 privileged because it was made to persons solely to
21 uphold the interest of the defendant.

22 However, you have to decide whether the
23 defendant exceeded the privilege by communications or
24 publication with actual malice. That is again with
25 knowledge that it was false or with reckless disregard

1 of whether it was true or false or that it was not made
2 at the proper time or to the proper parties or in the
3 proper manner.

4 Finally, ladies and gentlemen, the plaintiff
5 must prove that his reputation was damaged by the
6 defamatory statement. The plaintiff must prove that the
7 damages naturally and proximately resulted from the
8 defendant's statement.

9 Actual damages are damages which will
10 compensate the plaintiff for the injury and to put him
11 as near as possible in the same position that he would
12 have been in before the statement had been made.

13 General damages would include humiliation,
14 hurt feelings, mental suffering, injury to reputation,
15 and other types of injuries to which you cannot normally
16 associate a monetary value.

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

24 Now, certain statements are considered to be
25 what is slanderous per se or defamation per se. A

1 statement is defamation per se, if it's slanderous per
2 se the injury to the plaintiff is presumed; and he does
3 not have to prove any special damages.

4 Statements which charge the plaintiff with a
5 commission of a crime of moral turpitude, contraction of
6 a sexually transmitted disease, adultery, unchastity or
7 unfit in the plaintiff's business or profession are
8 considered to be slanderous per se or defamation per se.

9 In deciding whether a crime is one of moral
10 turpitude, those generally involve -- we call them
11 crimes of dishonesty. That would fall under the slander
12 per se or defamation per se.

13 If you find that the statement was slanderous
14 per se, as I stated, the plaintiff does not have to
15 prove those special damages; but you should return a
16 verdict for the plaintiff and award at least nominal
17 damages.

18 Nominal damages may be only a small or trivial
19 sum. Nominal damages are required because the law
20 presumes that there is some actual damage to the
21 plaintiff's reputation and character that is directly
22 and proximately resulting from the defamatory statement
23 that amounts to slander per se.

24 If you find that the plaintiff is entitled to
25 actual damages, then you should consider whether the

1 defendant would be required to pay punitive damages to
2 the plaintiff.

3 Punitive damages are exactly what they sound
4 like. They're intended to punish the defendant and to
5 attempt to ensure that neither the defendant nor anyone
6 else commits similar conduct in the future.

7 In order to recover for punitive damages, the
8 plaintiff has to prove by clear and convincing evidence
9 that the defendant acted with actual malice in making
10 the defamatory statement.

11 Clear and convincing is more than just a
12 preponderance of the evidence, but it's less than beyond
13 a reasonable doubt as you hear often associated with
14 criminal cases.

15 Clear and convincing proof leaves no
16 substantial doubt in your mind. It means that the
17 evidence is not ambiguous, doubtful, equivocal, or
18 contradictory.

19 Convincing means persuading by proof or
20 argument, causing one to believe in the truth of what is
21 asserted. Clear and convincing proof establishes not
22 only in your mind that the fact at issue is probable but
23 that it is highly probable.

24 Again, only if the plaintiff proves actual
25 malice in making the defamatory statement by clear and

1 convincing evidence may the plaintiff recover for
2 punitive damages.

3 Actual malice involves a malicious intent or
4 recklessness, willfulness, or wantonness. This means
5 that the defendant's statement was motivated by ill will
6 and with the intent to injure the plaintiff or that the
7 statement was made with such recklessness as to show a
8 conscious indifference toward and a disregard of the
9 plaintiff's rights.

10 In determining the amount to award for
11 punitive damages, you should consider the nature of the
12 defendant's actions, the punishment, if any, which will
13 be given for those actions in the form of actual
14 damages, and the ability of the defendant to pay.

15 Ladies and gentlemen, the amount which you
16 make for an award for actual damages, as with all
17 damages, the plaintiff doesn't have to prove them to a
18 precise mathematical certainty; but the plaintiff has to
19 put up enough evidence that would allow you the jury to
20 be able to determine an amount that is fair and just and
21 reasonable.

22 When you have considered all of the evidence
23 in this case and when you have applied the law as I have
24 instructed it to you, then it will be time for your
25 foreperson to record the verdict on the appropriate

1 form. I will go over them.

2 There are two separate forms, Madam
3 Foreperson. I will go over these forms with you. Let
4 me note, first, that neither one of these forms has a
5 specific line against Richland County School District
6 Two. That's because the School District can only act
7 through its employees.

8 In judging whether the School District would
9 be responsible, we have to judge the conduct of those
10 individuals. So the verdict form specifically relates
11 to the two individuals in this case. There's no
12 significance to which employee I consider first.

13 The first form I picked up is on the
14 defamation claim against Chuck Earles: We the jury
15 unanimously find for -- there is a place for the
16 plaintiff -- a line for actual damages, with a dollar
17 sign in parentheses, a line for punitive damages, with a
18 dollar sign in parentheses, or for the defendant,
19 Charles Earles.

20 Let me go over that part first. So your
21 thought process is this: Did the plaintiff prove by a
22 greater weight or preponderance of the evidence that the
23 defendant, Chuck Earles, defamed him based upon those
24 elements that I described to you?

25 Was there a defamatory statement? Was there a

1 publication of that statement? Was there a qualified
2 privilege? Did they exceed the privilege? Consider all
3 those factors and the damages and then determine that.

4 If you find that the plaintiff has failed to
5 meet the burden as to any one of those elements, then
6 your verdict would be for the defendant, Charles
7 Earles.

8 If you find, however, that the plaintiff has
9 met the burden of proving by the greater weight or
10 preponderance of the evidence that he was defamed by
11 Charles Earles, then you would consider the damages.

12 The actual damages would include those damages
13 to reputation and those matters which I have explained
14 to you, and any special damages that may apply. If you
15 find that he has, then you would complete this. You
16 determine what those damages are, and you complete this
17 like you would a check: The words on the line with the
18 numbers behind the dollar sign.

19 If and only if you make an award for actual
20 damages, may you consider the punitive damages. Your
21 question on the punitive damages is: Did the plaintiff
22 prove by clear and convincing evidence that the
23 defendant's conduct was motivated by actual malice; that
24 is, a reckless, willful disregard for his rights?

25 If you find that he has failed to prove that,

1 then you would not fill out the punitive damages. If
2 you find, however, that he has proven by clear and
3 convincing evidence there is actual malice, then you
4 would consider the amount to award for punitive damages
5 and make that award.

6 Once you have completed the top part, then
7 there is a question here at the bottom. It says: If
8 you returned a verdict in favor of the plaintiff, do you
9 the jury unanimously find that Chuck Earles acted with
10 actual malice?

11 Now, when you complete this, it's not based
12 solely on whether or not you made an award for punitive
13 damages. Remember to award punitives, it has to be
14 clear and convincing.

15 But if you find by a greater weight or
16 preponderance of the evidence that there was malice,
17 then you would check yes. If you find that the
18 defendant [sic] did not prove actual malice, then you
19 would check no. If you check for the defendant, you do
20 not complete the sentence, the question at the bottom.

21 No matter what your verdict, you would sign
22 your name and place today's date. I will tell you that
23 the verdict as to Eric Barnes is exactly the same. You
24 go through the exact same process.

25 It says on the defamation claim against Eric

1 Barnes: We the jury unanimously find for the plaintiff
2 -- there is a line for actual damages, a line for
3 punitive damages. There's a place to check for Eric
4 Earles [sic].

5 The same process you consider with Chuck
6 Earles, you consider with Eric Barnes. Again, did the
7 plaintiff prove by a greater weight of the evidence or a
8 preponderance of the evidence that he was defamed by
9 Eric Barnes?

10 If you find that he failed to prove that, then
11 you would check for the defendant. You do not need to
12 complete the rest of the form, other than sign your name
13 and put today's date.

14 If you find, however, that the plaintiff did
15 prove by a greater weight or the preponderance of the
16 evidence that Eric Barnes defamed him, as I have
17 described that to you, you would consider the actual
18 damages. If and only if you make an award for actual
19 damages, may you consider punitive damages.

20 Again, the question on punitives is by clear
21 and convincing evidence that Earl Barnes [sic] acted
22 with actual malice, as I have described that to you. If
23 you find that he failed to prove it by clear and
24 convincing, then you don't complete this; but you would
25 still need to answer the question.

1 If you return a verdict in favor of the
2 plaintiff, do you the jury unanimously find that Eric
3 Barnes acted with actual malice? Yes or no? Again, no
4 matter what the verdict is, Madam Foreperson, if you
5 would sign your name and place the date.

6 Now, ladies and gentlemen, as I stated, your
7 verdict must be unanimous. It must be the verdict of
8 all 12 of you. You have been sworn as fair and
9 impartial jurors to determine the facts of this case
10 based upon the law -- based upon the evidence that's
11 been presented and based upon the law as I've instructed
12 it to you.

13 When you have done that, then you will arrive
14 at your verdict. No one will be able to complain about
15 the verdict that you have reached. You will have fully
16 discharged your duty and your responsibility as jurors.

17 I understand that we're near the end of the
18 day. I will tell you that I would like you to begin
19 some deliberations this afternoon. I ask that you not
20 try to rush through any deliberations in order to be
21 able to leave.

22 When you tell me you're ready to leave for the
23 evening, I will certainly excuse you. I will tell you
24 that I will not order dinner for you. So we are happy
25 to have you come back tomorrow and continue your

1 deliberations, if appropriate.

2 I ask that you not rush through deliberations
3 in an effort to try to adjourn for the day. You can
4 stay here as long as you like or as little as you like.
5 We will certainly welcome you back tomorrow to conclude
6 your deliberations.

7 Before you begin your deliberations, ladies
8 and gentlemen, I will tell you that the law requires
9 that I consult with the attorneys to see if I have
10 omitted anything from the charge, my instructions.

11 If I have not omitted anything, then the
12 verdict forms, as well as all the exhibits, will be sent
13 to you into the jury room; and you can begin your
14 deliberations at that time.

15 Madam Foreperson, if there are any questions
16 that come up during the course of your deliberation, if
17 you will write the question on a sheet of paper. Please
18 sign your name to the question. Knock on the door and
19 give it to the bailiff. We'll try to answer those
20 questions.

21 If you have no questions and whenever you have
22 reached a verdict and you filled out the form, if you'll
23 knock on the door at that time. We'll receive you back
24 into court to receive the verdict that you've rendered
25 in this case.

1 I ask that you retire to the jury room and
2 await further instructions before you begin your
3 deliberations. Thank you.

4 (The jury retires to the jury room at
5 4:46 P.M.)

6 THE COURT: Are there any exceptions to the
7 charge by the plaintiff?

8 MR. GOODWYN: The only thing I thought and I'm
9 not sure if this came into play when you have the
10 Richland County School District Two verdict form was an
11 explanation about double recovery. The plaintiff won't
12 -- even if you put an amount on both forms, he won't get
13 double recovery. Did you plan on saying that?

14 THE COURT: I can certainly do that. That's
15 not a problem.

16 MR. GOODWYN: Okay.

17 THE COURT: Anything from the defense?

18 MR. BARLOW: No, Your Honor.

19 THE COURT: If you'll ask them to come back,
20 please.

21 (The jury returns to the courtroom at
22 4:48 P.M.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: I'm sorry, ladies and gentlemen.
25 When I was explaining to you about the School District

1 and they can only act through their employees,
2 understand that there are two separate verdict forms and
3 there are two separate employees in this particular
4 case.

5 You should consider the conduct as to each one
6 individually. You don't combine them together to
7 consider as a group whether or not they engaged in the
8 conduct. You have to consider each person's conduct
9 separately.

10 I will tell you: Do not be concerned about a
11 double recovery. Those are legal issues for the Court
12 to take up, and I assure you that the law does not
13 provide or allow for a double recovery.

14 You should award each -- you should make your
15 verdict based upon the facts relating to each particular
16 defendant and not grouping them together and not being
17 concerned about whether or not there would be a double
18 recovery in this case. So having said that, I'll ask
19 that you return to the jury room at this particular time
20 and await further instruction.

21 (The jury retires to the jury room at
22 4:50 P.M.)

23 THE COURT: Anything further from the
24 plaintiff?

25 MR. GOODWYN: No, Your Honor.

1 THE COURT: From the defendant?

2 MR. BARLOW: No, Your Honor.

3 THE COURT: I just saw one typo. On
4 Mr. Earles, it says defendant Charles Earles. Do you
5 want me to change it to Chuck? Or can I leave it as
6 Charles?

7 MR. BARLOW: You can leave it. That's his
8 name.

9 MR. GOODWYN: Well, the caption is Chuck.

10 THE COURT: I'm happy to change it if that's
11 what I need do.

12 MR. BARLOW: I have no objection to it.

13 MR. GOODWYN: I believe we should probably
14 change it.

15 THE COURT: That's fine.

16 MR. GOODWYN: Just to make it clear.

17 THE COURT: No problem. I am happy to change
18 that. While I'm doing this, make sure all the exhibits
19 are there. Here is the verdict form as to Mr. Barnes.
20 Please look at it again and I'll get this one changed.

21 (Pause.)

22 (Whereupon, the jury commences its
23 deliberation at 4:57 P.M.)

24 (The following occurred at 6:20 P.M.)

25 THE COURT: I have a note from the jury which

1 MR. GOODWYN: I'm ten minutes away. That
2 would be better for me.

3 THE COURT: And then you'll be able to reach
4 your clients, just as long as I'm able to reach you in
5 the event they have any questions that come up.

6 MR. GOODWYN: Okay.

7 THE COURT: As soon as I get a note, I'll be
8 sure to call you at that time.

9 MR. GOODWYN: Thank you, Your Honor.

10 MR. BARLOW: Thank you.

11 (Whereupon the proceedings are concluded for
12 October 2, 2014.)

13 (The following proceedings are reported on
14 October 3, 2014.)

15 (The jury recommences its deliberation at
16 9:28 A.M.)

17 (The following occurred 10:58 A.M.)

18 THE COURT: I've received a note from the jury
19 with two questions. It says, "We are a little confused.
20 Question one, we are seeking clarity from you on terms
21 actual, punitive, and malice.

22 Question two, is there a percentage chart to
23 use or do we break the amount into a rounded number to
24 the best of our ability?" That's signed by the
25 foreperson.

1 I'm not sure exactly -- I understand punitive
2 and malice. I'm not sure what they mean with actual,
3 whether they're talking about actual damages or whether
4 they are talking about actual malice. So I'll be happy
5 to clarify that with the jury when I bring them in.

6 My thought is to, depending on what it is,
7 clarify and charge them, recharge them on punitive
8 damages, which includes a definition of actual malice.
9 If they need actual damages, I'll recharge them on that
10 as well.

11 MR. GOODWYN: Could you reread the second
12 question? I'm not even sure what they mean.

13 THE COURT: It just says, "Is there a
14 percentage chart to use or do we break the amount into a
15 rounded number to the best of our ability?"

16 MR. GOODWYN: Percentage chart?

17 THE COURT: I don't know what that means
18 either.

19 MR. GOODWYN: Oh, they may be wondering
20 between the two defendants.

21 THE COURT: I would certainly clarify, as I
22 told them yesterday, that they have to consider each one
23 individually and award damages. It's attributable to
24 each defendant and not combine them or split them and
25 will reemphasize to them that there will not be a double

1 recovery. The law does not allow for a double recovery.
2 So any issues related to that would be taken up.

3 MR. BARLOW: Would there be any way to clarify
4 that this is not a termination case?

5 MR. GOODWYN: I would object to that since
6 that was not charged.

7 THE COURT: I don't know that there is
8 anything in here that relates to termination.

9 MR. BARLOW: Well, damages.

10 THE COURT: Well, there are damages for
11 slander. So, you know, I mean, that's a cause of action
12 for defamation.

13 MR. BARLOW: All right.

14 MR. GOODWYN: You're just going to recharge
15 them basically on the damages?

16 THE COURT: I'm not giving them any new
17 instructions. I'm not doing anything different. I will
18 answer their questions and try to find out what the
19 actual part means.

20 Once they tell me, I'll go from there. I'll
21 tell them with respect to question two that there's no
22 chart; but I will reemphasize to them that what I told
23 them was that they had to consider the evidence as to
24 each separate defendant.

25 If they decide to make an award for damages,

1 they need to make an award based on damages that were
2 caused by those individual defendants and answer the
3 question and that they should not add them together, and
4 they would not split them up.

5 Anything else?

6 MS. PEAVY: No, Your Honor.

7 THE COURT: You can ask the jury to come in,
8 please.

9 (The jury returns to the courtroom at
10 11:01 A.M.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Good morning, ladies and
13 gentlemen.

14 THE JURY: Good morning.

15 THE COURT: I have received a note from the
16 foreperson this morning. It says, "We are a little
17 confused. Question one, we are seeking clarify from you
18 on terms actual, punitive, and malice."

19 Then question two, "Is there a percentage
20 chart to use or do we break the amount into a rounded
21 number to the best of our ability," and it's signed.

22 Is that the note you sent to me?

23 THE FOREMAN: Yes.

24 THE COURT: I have a couple of questions.
25 When you talk about needing clarity on the terms of

1 actual, punitive, and malice, certainly I can give you
2 the charge on malice and define that for you, as well as
3 -- I'm assuming you are talking about punitive damages?

4 THE FOREMAN: Yes, ma'am.

5 THE COURT: On the actual are you talking
6 about actual damages or are you talking about actual
7 malice, a definition of actual malice?

8 THE FOREMAN: Actual malice.

9 THE COURT: That helps and that's what I'll do
10 at this time.

11 THE FOREMAN: Excuse me. Excuse me. I'm
12 incorrect.

13 THE COURT: So actual damages?

14 THE JUROR: I just want actual and punitive
15 damages.

16 THE FOREMAN: Sorry about that.

17 THE COURT: That's what I thought. I just
18 wanted to make sure. You'll remember that yesterday I
19 instructed you as to the elements of damages -- elements
20 of defamation.

21 The last portion that the plaintiff has to
22 prove, the plaintiff has to prove that his reputation
23 was damaged by the defamatory statement; and, therefore,
24 he must prove the damages that naturally and proximately
25 resulted from the defendant's statements.

1 Actual damages are damages which compensate
2 the plaintiff for the injury and to put him as near as
3 possible in the same position that he would have been in
4 before the statements were made or before the damage
5 occurred.

6 General damages include humiliation, hurt
7 feelings, mental suffering, injury to reputation, and
8 other types of injuries on which you cannot generally
9 place a monetary value; but you will have to assign a
10 monetary value in order to compensate him for those
11 damages.

12 The plaintiff must also prove special damages
13 that result from the defamatory statement. Special
14 damages are monetary damages with respect to property,
15 business, profession, or occupation of a plaintiff, such
16 as the loss of a job -- excuse me -- loss of a job, loss
17 of customers, or the loss of a business relationship as
18 a result of injury to the plaintiff's reputation.

19 Then as it relates to punitive damages,
20 punitive damages are damages which punish the defendant
21 for his conduct and attempt to ensure that neither the
22 defendant nor anyone else commits similar conduct in the
23 future.

24 In order to recover for punitive damages, the
25 plaintiff has to prove by clear and convincing evidence

1 that the defendant acted with actual malice in making
2 the defamatory statement.

3 Clear and convincing evidence is more than a
4 preponderance or greater weight of the evidence. Clear
5 and convincing, it is more than -- it's less than beyond
6 a reasonable doubt which you often hear about in
7 criminal cases.

8 Clear and convincing proof leaves no
9 substantial doubt in your mind. It means that the
10 evidence is not ambiguous, doubtful, equivocal, or
11 contradictory.

12 Convincing means persuading by proof or
13 argument, causing one to believe in the truth of what is
14 asserted. Clear and convincing proof establishes in
15 your mind not only that the fact at issue is probable
16 but it is highly probable.

17 As I've indicated, he has to prove by clear
18 and convincing evidence that the defendant acted with
19 actual malice. Actual malice involves a malicious
20 intent or recklessness, willfulness, or wantonness.

21 This means that the defendant's statement was
22 motivated by ill will with the intent to injure the
23 plaintiff or that the statement was made with such
24 recklessness as to show a conscious indifference towards
25 or disregard of the plaintiff's rights.

1 In determining the amount that is appropriate
2 for punitive damages, you should consider the nature of
3 the defendant's actions, the punishment, if any, which
4 should be given for those actions, and the ability of
5 the defendant to pay. I believe that would clarify
6 those questions as to question one.

7 As to question two relating to, "Is there a
8 percentage chart?" Let me first go back and indicate to
9 you, there are two separate verdict forms, one for each
10 defendant.

11 You have to consider the evidence as it
12 relates to each particular defendant and whether -- if
13 you determine that the plaintiff is entitled to recover
14 a verdict based upon the law as I have instructed it
15 to you, then you consider all the damages that were
16 caused by that particular defendant.

17 Then you consider all the damages that were
18 caused by the other defendant. You do not add them
19 together. You do not divide them up. You find the
20 damages that are attributable to each defendant if you
21 decide to make an award.

22 Again, I will emphasize to you that the law
23 does not allow a double recovery, but you all need not
24 be concerned with that. That's a legal question which
25 the Court will determine based upon whatever verdict

1 that you reach in this case.

2 So you need not be concerned about whether or
3 not you're making an award for twice the amount that you
4 think he reasonably should pay or is reasonable under
5 the circumstances.

6 You have to consider the conduct of each
7 person individually. Then it's up to the Court and the
8 parties to discuss the legal issues relating to the
9 verdict as you reach it.

10 So you need not be concerned with adding them
11 or splitting up whatever the verdict is if that's the
12 concern arising out of question two.

13 So I ask -- I believe I've answered both of
14 them. I'll ask that you retire to the jury room and
15 continue your deliberations. If there are any
16 additional questions, if you'll please write me a note.

17 THE FOREMAN: Thank you.

18 THE COURT: Thank you.

19 (The jury retires to continue its deliberation
20 at 11:09 A.M.)

21 (Court's Exhibit Number 2 is marked for
22 purposes of the record.)

23 THE COURT: We'll stand in recess until we
24 hear from them further.

25 MR. GOODWYN: Sounds like they might be

1 somewhat close. We will stick around. You have my cell
2 phone number.

3 THE COURT: I do. If I get another note, I'll
4 be sure to let you know.

5 MR. GOODWYN: Thank you.

6 (Whereupon there is a recess.)

7 (The following occurred at 12:10 P.M.)

8 THE COURT: I understand that the jury has
9 reached a verdict. Is there anything we need to take up
10 before we bring them?

11 MR. GOODWYN: Nothing from the plaintiff, Your
12 Honor.

13 MR. BARLOW: Nothing from the defense, Your
14 Honor.

15 THE COURT: You may ask the jury to come in.
16 (The jury returns to open court to report its
17 verdict.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: Ladies and gentlemen, I understand
20 that you all have reached a verdict; is that correct?

21 THE FOREMAN: That's correct, Your Honor.

22 THE COURT: Would you please pass the
23 documents to the bailiff. Thank you.

24 (Hands to Court.)

25 THE COURT: Madam Clerk, if you would please

1 publish the verdict.

2 (Whereupon the verdict of the jury is
3 published as follows.)

4 THE CLERK: Case number 2013-CP-40-1460,
5 Jeffrey Kennedy versus Richland County School District
6 Two, Eric Barnes, Chuck Earles, on the defamation claim
7 against Eric Barnes, we the jury unanimously find for
8 the plaintiff in the amount of \$100,000 actual damages
9 and \$150,000 punitive damages.

10 The question: If you return a verdict in
11 favor of the plaintiff, do you the jury unanimously find
12 that Eric Barnes acted with actual malice? Yes. This
13 is signed by the foreperson, Lizzie Lewis-Clemons,
14 October 3, 2014.

15 Case number 2013-CP-40-1460, Jeffrey Kennedy
16 versus Richland Two County School District, Eric Barnes,
17 Chuck Earles, on the defamation claim against Chuck
18 Earles, we the jury unanimously find for the plaintiff
19 in the amount of \$100,000 actual damages and \$200,000
20 punitive damages.

21 As far as the question: If you return a
22 verdict in favor of the plaintiff, do you the jury
23 unanimously find that Chuck Earles acted with actual
24 malice? The answer was yes. This is signed Foreperson,
25 Lizzie Lewis-Clemons, October 3, 2014.

1 Madam Foreperson, are these your verdicts and
2 the verdict of the entire jury?

3 THE FOREMAN: Yes, ma'am, it is.

4 THE COURT: Do the parties wish to poll the
5 jurors?

6 MR. BARLOW: Yes, Your Honor.

7 THE COURT: Ladies and gentlemen, the clerk
8 will call your name. She will ask you two questions.
9 Those questions will be: Was this your verdict and is
10 it still your verdict? I ask that you answer according
11 to your conscience.

12 CLERK: Lizzie Lewis-Clemons, was this your
13 verdict?

14 THE FOREMAN: Yes, it was.

15 CLERK: Is it still your verdict?

16 THE FOREMAN: Yes, it is.

17 CLERK: Cathey Chunn, was this your verdict?

18 JUROR: Yes, it was.

19 CLERK: Is it still your verdict?

20 JUROR: Yes, it is.

21 CLERK: Heidi Lovit, was this your verdict?

22 JUROR: Yes, it was.

23 CLERK: Is it still your verdict?

24 JUROR: Yes, it is.

25 CLERK: Jerry Barney, was this your verdict?



Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

RICHLAND SCHOOL DISTRICT TWO
6831 BROOKFIELD ROAD
COLUMBIA, SOUTH CAROLINA 29206

ADMINISTRATIVE OFFICES

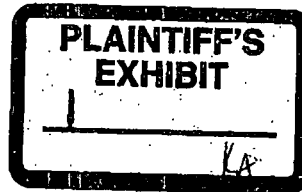
TO: KENNEDY, JEFFERY
SS # [REDACTED]

FROM: DR. STEPHEN W. HEFNER
SUPERINTENDENT

RE: OFFER OF EMPLOYMENT

DATE: May 15, 2008

SECURITY OFFICER
NORMAL NO. OF DAYS: 262 (32)
SCHOOL: SUPPORT SERVICE CENTER



RICHLAND COUNTY SCHOOL DISTRICT TWO HERewith AND HEREBY OFFERS YOU INDEFINITE EMPLOYMENT ON AN "AT-WILL" BASIS. THIS MEANS THAT YOU ARE AT LIBERTY TO LEAVE THE DISTRICT'S EMPLOY WHENEVER YOU WISH AND THE DISTRICT IS AT LIBERTY TO DISMISS YOU FROM ITS EMPLOY ANYTIME IT WISHES FOR ANY REASON OR NO REASON SO LONG AS THE REASON, IF ANY, IS NOT A LEGALLY IMPERMISSIBLE ONE.

THE DISTRICT'S INTENT OF EMPLOYMENT IS SUBJECT TO CHANGES IN THE DISTRICT'S ORGANIZATIONAL CHART; IMPLEMENTATION OF A REDUCTION IN FORCE; A LOSS OF FUNDING WHICH MAY REQUIRE A PRO-RATA REDUCTION OF SALARY; OR WHENEVER IT IS DEEMED TO BE IN THE BEST INTEREST OF THE DISTRICT.

THIS OFFER OF EMPLOYMENT IS SUBJECT TO RATIFICATION BY THE RICHLAND COUNTY SCHOOL DISTRICT TWO BOARD OF TRUSTEES.

I ACCEPT THIS OFFER OF INDEFINITE EMPLOYMENT WITH RICHLAND COUNTY SCHOOL DISTRICT TWO ON AN "AT-WILL" BASIS AS DESCRIBED ABOVE.


SIGNATURE

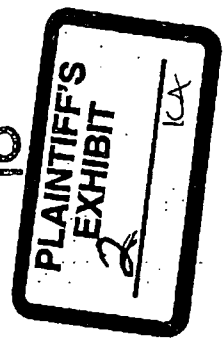
5/15/08
DATE

Mission Statement – Richland School District Two, in partnership with the Columbia Northeast community, guarantees each student a quality education by providing appropriate and challenging learning experiences to equip each individual for life-long learning, responsible citizenship, and productivity in an ever-changing world.

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Richland School District Two



SECURITY DIVISION

CHANGE OF CULTURE

FROM THIS DAY FORWARD:

1. MIND YOUR OWN BUSINESS. DO NOT EVER discuss anyone's personal life or situation. DO NOT EVER discuss another employee's job performance with anyone other than that employee or his/her supervisor and NEVER do it where others can hear it.
2. DO YOUR JOB. It is not that hard. Come to work on-time, squared away and with a good attitude EVERY DAY.
3. LEAVE YOUR PERSONAL LIFE AT HOME. If your co-workers don't know about it, they can't talk about it.
4. DO NOT LISTEN TO OR REPEAT RUMORS. Have the courage to say "That's none of our business and I don't want to hear it" and walk away.
5. ALWAYS BE HONEST. Do not hide the truth. Coming forward and taking responsibility for a mistake is always better than having you supervisor discover it.

Jeffrey Kennedy
Signature

8-7-15
Date

JEFFREY KENNEDY
Printed Name

000122

1008

**RICHLAND SCHOOL DISTRICT TWO
RECOMMENDATION FOR EMPLOYMENT**

I would like to make the following recommendation for employment:

Name: Kennedy, Jeffery

SSN: [REDACTED]

Job Title: Patrol Supervisor- Lieutenant

Assignment: SSC

(Grade level, subject area, etc.)

☒ This is a replacement for Ryan Miller
who vacated the position by March 4, 2011

☒ Resignation
☐ Transfer

☐ Dismissal
☐ Retirement

☐ Disability leave
☐ Academic leave

☐ Other _____

☐ This is a new position authorized by _____
(District Administrator)

☐ This position is for certified employment:

☐ Full Time

☐ Part Time

☐ Limited to Current Year

Hours or teaching periods per day _____

☒ This position is for Classified employment:

☒ Full Time

☐ Part Time

☐ Temporary

☐ Limited to Current Year

Hours per Day 8

Hours per Day _____

Ending Date _____

Days per Year 262

Days per Year _____

Funding Source: _____

☒ General budget funds

☐ Special funds administered/authorized by: _____

The beginning date of employment will be established by the Director of Personnel. In compliance with district policy and federal law, the recommended employee MUST complete pre-employment paperwork PRIOR TO beginning work. Orientation to benefits will be scheduled by the Coordinator of Benefits.

Comments: 2nd shift (3 pm - 11 pm. start date March 07, 2011)

February 28, 2011

(Date)

(Building Principal's Signature)

For Personnel Office Only:

Position Code _____

Certification Status _____

Contract Type _____

Permit Requested _____

Beginning Date _____

White & Yellow Copies - Personnel Office

Pink Copy - School

000133

1009

CONFIDENTIAL

Charles Earles <cearles@richland2.org>

Wed, Jun 15, 2011 at 11:18 AM

To: Angella Permenter <aperment@richland2.org>, Eric Barnes <ebarnes@richland2.org>, Gerome Young <gyoung@richland2.org>, Lelith Zerzycki <lzerzycki@richland2.org>, Rick Groves <rgroves@richland2.org>
Cc: Traci Batchelder <tbatch@richland2.org>

THE INFORMATION CONTAINED IN THIS E-MAIL IS CONFIDENTIAL AND WILL ONLY BE SHARED WITH OTHER DISTRICT SECURITY SUPERVISORS, AS NEEDED, WHEN THEY WILL BE SUPERVISING MR. KENNEDY.

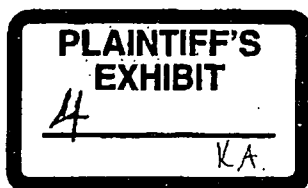
Mr. Kennedy will be reporting to work tomorrow night (Thursday, June 16) to work on 3rd shift, weekdays. This will be his permanent assignment.

I have told him that he will be assigned to work the watch room answering phones and performing whatever other duties are necessary in the watch room.

His is NOT to be given any assignment that involves having keys to any District facility.

Thank you.

Chuck Earles
Interim Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663



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Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

ADMINISTRATIVE OFFICES

June 27, 2011

Mr. Jeffery W. Kennedy
356 Weddell Street
Columbia, SC 29223



Dear Mr. Kennedy:

This letter serves to follow up on the conferences that Chuck Earles, Traci Batchelder and I had with you on May 5 and June 15, 2011. During those meetings, we discussed several unusual occurrences that have transpired at Spring Valley High School (SVHS), where you have been assigned to work as a Security Officer. Those situations have involved several incidents in which checks, a diamond ring, and \$1,000 in cash have disappeared from the school. You have been questioned in this matter, given that in a review of the videotape evidence, you were observed in the general area for what appears to be excessive periods of time in these situations. You are also one of a limited number of individuals who would have had keys to all of the secured areas in which these thefts occurred.

During the meetings that were held, you have consistently denied having any knowledge of the missing items. You also pointed out that in many of these incidents, there were other individuals who were also present for sufficient periods of time, or who would have had access to the secured areas. I must inform you that I remain concerned that during our meeting on May 5, we discussed what appears to be some unusual behavior on your part. After reviewing the videotape from the SVHS administrative offices and main lobby, it appears that on the evening in which items disappeared from the administrative offices, you entered at the back door of the offices area, then exited from the same back door and came around to the front, then entered once again to turn off the lights. You did not seem to have a clear explanation for your actions on this date. Mr. Earles has further stated that on some of the evenings in which the thefts occurred, there appears to be some variance in your normal pattern for conducting your duties. Over the course of our May 5 meeting, you denied having engaged in unusual behavior, particularly on the evening in which items disappeared from the administrative offices. At that time, I agreed to review the evidence, once again, to confirm my understanding of your actions. During our meeting on June 15, you were informed that your May 5 description of your behavior was not consistent with your videotaped actions.

Based on my thorough review of this matter, I would like to acknowledge that during the timeframes of these incidents, I have found that other individuals did enter into many of these areas, with

Mission Statement – Richland School District Two, in partnership with the Columbia Northeast community, guarantees each student a quality education by providing appropriate and challenging learning experiences to equip each individual for life-long learning, responsible citizenship, and productivity in an ever-changing world.

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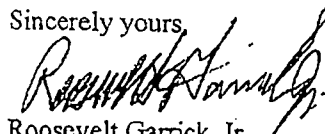
1011

some of them having keys to the appropriate secured areas. In an effort to provide you with the full benefit of the doubt, it is my decision to return you to your employment as a Security Officer in the District. During our meeting on June 15, you asked about a pending recommendation for your promotion to a Lieutenant position within your department. Given my conclusion that you did not provide me with accurate and consistent information in your securing of the SVHS administration building, I do not feel comfortable approving that promotion at this time.

Mr. Kennedy, I must emphasize that during my review of the videotape evidence, I was unable to draw conclusions about your whereabouts on several occasions, given that you visited some unnecessary areas, such as the SVHS break room, in an effort to pass the time. Please understand it is imperative that you refrain from any conduct that is not an effective or productive use of your working hours. In the future, if you feel that you do not have a sufficient workload or schedule, please discuss the situation with Eric Barnes or Chuck Earles. It is important that you are using all of your time productively, and remaining diligent in performing your work responsibilities throughout your working hours.

Please know that the district does reserve the right to take further action in this matter if we become aware of additional facts or circumstances that lead us to change our conclusions. You may contact me at 738-3219 if you have any questions or concerns.

Sincerely yours,


Roosevelt Garrick, Jr.
Chief Human Resources Officer

c: Mr. Chuck Earles, Emergency Services Manager ✓

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South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

NOTICE OF ESTIMATED REFUND PAYMENT

JEFFERY W KENNEDY
356 WEDDELL ST
COLUMBIA SC 29223

SSN: XXX-XX-XXXX
Appl ID: XXXXX9061-1-7-2
System: SCRS
Type: Refund
Date: March 06, 2013

We have completed processing your request for a refund of contributions in your South Carolina Retirement System account. Your refund check(s) should be mailed 7 to 10 days **after** the Refund Eligibility Date shown below. Please review the following information carefully:

Gross Refund Amount: \$ 14,521.49
Refund Eligibility Date: 03/06/2013

Payment of Refund Claim:

1. Net Refund Check to Member	11,617.19
2. Federal Taxes	2,904.30

If you believe any of the above information is incorrect, please contact us without delay. Doing so will prevent unnecessary problems with your refund. Please note that unforeseen problems have, in the past, sometimes delayed the issuing of refund checks. **The Retirement Systems is therefore unable to guarantee that you will receive your refund check(s) on the date indicated above.**

Please notify the South Carolina Retirement Systems, in writing, of any address changes. **If you do not keep your address current, your refund payment will be delayed.** It is also important to keep your address current until you receive your IRS Form 1099R. These forms are mailed no later than January 31 of each year for refunds paid in the previous tax year.

Finally, please note that if you return to employment covered by the South Carolina Retirement Systems before your refund claim is paid, you will again become an active member and your refund request will be cancelled.

Please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800 if you have any questions about this notice or would like any additional information or assistance.



SC Public Employee Benefit Authority • South Carolina Retirement Systems

202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211

803-737-6800 • 800-868-9002



Date 1.7.2013

Bluebird Property Management
1817 Pickens Street
Columbia, SC 29201

Jeffrey Kennedy
7734 Exeter Lane
Columbia, SC 29223

Re: Unpaid charges

Dear Jeffrey Kennedy:

Your rent payment for the month of Jan. 2013 has not been recieved. Your account has been charged a late fee of 115.00 which is 10% of your rent. Please remit the total amount due of \$ 4290.00. Please remember if rent and late fees is not paid by the 10th of the month eviction proceedings will begin and an additional \$100.00 will be charged to your account.

If you have any questions feel free to give us a call.

Regards,

Bluebird Property Management



0/12/12

Richland School District Two Mail - Fwd: Video



Jeffery Kennedy

Traci Batchelder <tbatch@richland2.org>

Fwd: Video

2 messages

Charles Earles <cearles@richland2.org>
To: Traci Batchelder <tbatch@richland2.org>

Thu, Oct 11, 2012 at 9:50 AM

----- Forwarded message -----

From: Rick Groves <rgroves@richland2.org>
Date: Wed, Oct 10, 2012 at 2:13 PM
Subject: Re: Video
To: Charles Earles <cearles@richland2.org>

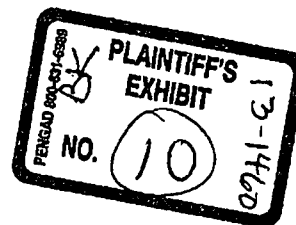
Officer Kennedy said he tried to show her the video but he could not pull it up.

On Fri, Oct 5, 2012 at 1:59 PM, Charles Earles <cearles@richland2.org> wrote:
Please let me know who allowed Kim Jones (a bus driver) to view a video from Roundtop Elem from Sept. 26.

Thanks.

Emergency Management = Knowing your responsibilities and knowing who to notify

Chuck Earles
Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663



Emergency Management = Knowing your responsibilities and knowing who to notify

Chuck Earles
Manager
Emergency Services
Richland School District Two
124 Risdon Way
Columbia, SC 29223
Office - 803-736-3774
Cell - 803-518-2663

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Questions

1 + 2
= 3

Judge:

Good Morning ;)

We are a little confused;

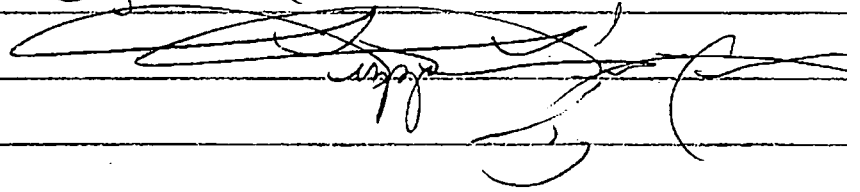
Question 1 We are seeking clarity from you on terms "Actual", "Punitive" & "Malice"?

Question 2 ~~Do we~~ Upon deciding on an amount are we to break the total amount into Actual/Punitive? for Plaintiff/Defendant?

~~Should we derive at a percentage or just use our amount.~~

Question 3 Is there a percentage chart to use or do we break the amount into a rounded number to the best of our ability?

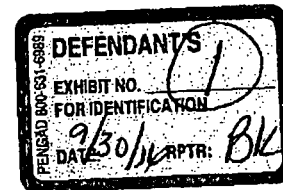
Signature



To: Eric Barnes
Security-Richland School District Two

Re: Statement regarding thefts

Date: March 24, 2011



On Feb. 14th of this year, Jo Ann Caviness, the principal's secretary, reported to me that someone had stolen \$50 in cash and a gold ring with three diamonds from her office in the main office. The ring which was found at a SV event years ago had been kept in her desk in case anyone ever reported it missing. She said the odd thing was that the money and the ring were hidden in two different inconspicuous areas of her desk and that whoever stole the items had to have had plenty of time to go through her desk and was not worried about anyone walking in on them. She said she was not sure when the thefts had occurred because she seldom went into the areas of the desk to check on these items because they were so well hidden.

On Feb. 25th of this year, Dorothy Loiodice reported that \$20 cash and a check for \$15 had been stolen from her desk. I examined the cameras for that evening and saw that Jeffery Kennedy entered the main office hall from the exterior door at 11:33:56 PM on Thursday, Fe. 24th presumably to check the main office area. He did not exit the building until 11:52:56 PM, nineteen minutes later. This was odd because it only takes less than a minute to check the main office and he only went into the restroom for 17 seconds after emerges from the front office area. I also checked the other cameras and Mr. Kennedy never left the main office area.

On March 2nd, Sandra Watts, our bookkeeper who also has an office in the main office area, reported that \$40 in cash had been stolen from her office. Like the theft in Mrs. Caviness' office, the money had been well hidden in papers located on her desk, so the individual who stole the money must have had time and was not in fear of anyone walking in on them. I checked the cameras and Mr. Kennedy again walked into the main office area at 11:23:58 PM on March 1st and exited the main office at 11:48:43 PM, approximately nineteen minutes later, well beyond the time he needed to be in the area.

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On Thursday, March 3rd, our athletic director Tim Hunter who has an office in Bates Hall, had prepared the gate ticket money (\$1,000) for the events that were going to be held on Friday, March 4th. He normally stores the money in his safe in the office and prepares it the day of the event but he was not going to be on campus the next day so instead he set it out on the table so that Sonny Yeuker could get to it the next day for the games. I checked the cameras and noticed that Mr. Kennedy came into the lobby of the Bates Hall at 5:48:55 AM to presumably turn the motion alarm off which is his normal duty. It normally takes less than 30 seconds to do so. He however, left at 5:55:45 AM, seven minutes later. The AD's office is just across from the alarm and requires a master key to open. The trainer and baseball coach who came in the building on Thursday night after their games do not have a master key to get into the AD's office. On the cameras, the baseball coach only went momentarily by the AD office to cut off the alarm and the trainer only went into the training room. No one else could have gone into the AD office.

It is my strong belief that Mr. Kennedy is the one who is responsible for the thefts in all of the above listed incidents. He has access with his master key, he has time and he is the only one in the building during these times, which would explain how someone could rifle through the desks without worry of anyone walking in on him.

Jim Childers

SVHS Burglary in Admin

Two reported cases of desks being gone through and cash being taken in admin area, once over the night of 02/24-02/25/11 and once over the night of 03/01-03/02/11.

03/02/11

Eric Barnes and I went to SVHS to discuss these incidents. Met with the employees who had been victimized as well as SRO Fields and Dr. Owings. SRO Fields was completing a RCSD Incident Report.

I changed the angle on the Admin hall camera to look towards the offices that had been gone through. I placed a \$10.00 bill in a small red binder clip and placed it in an unmarked SVHS envelope after spraying both the bill and the envelope with green Sirchie Clue Spray. I marked the bill, using a black ball point pen, with a small black "C" on the left side of the front of the bill. I photographed the bill to record the serial number and the marking. S/N = 1B33463695 A. This envelope was placed in Ms. Gio's desk at the location where the money had been previously taken.

03/03/11

Review of video shows Mr. Kennedy entering the admin hall from the side door and not exiting ANY admin door for 20+ minutes each night. Further review of the video over those nights shows no one else in the admin area for more than a very few minutes.

03/04/11

Received call from Jim Childers. Over \$750.00 cash was taken from his office overnight. Cash was in a cash box with the key in the lock (not in the safe) in his office. Review of the video shows Mr. Kennedy & Mr. Reid setting the alarm at 10:53:44 on 03/03 which took 23 seconds, no activity until Mr. Kennedy disarmed the alarm on 03/04 at 5:48:54 am, which took 5 min 53 seconds. No direct video view of Tim Hunter's door. I saved the video on my computer.

03/08/11

I copied the 03/03-03/04 video to the CD containing 02/24 and 03/01 videos. I made another copy for Traci Batchelder. One CD given to Eric Barnes to take to Inv. Joe Clark at RCSD.

05/05/11 - 1530 hrs

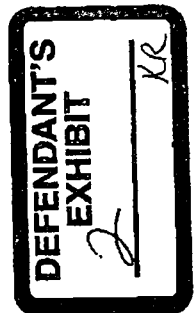
Met with Mr. Kennedy, Traci Batchelder, Roosevelt Garrick in Mr. Garrick's office. Mr. Garrick asked questions about the incidents. Mr. Kennedy lied about re-entering SVHS through the front door after exiting through the admin back door. Mr. Garrick asked to view the video that confirms this lie,

05/16/11 0830 hrs

Delivered CD with the above reference video to Mr. Garrick's secretary.

05/31/11 - 0900 hrs

Played the video CD for Mr. Garrick



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06/15/11 - 0900 hrs

I met with Mr. Kennedy, Traci Batchelder and Roosevelt Garrick. Mr. Garrick informed Mr. Kennedy that there "is some doubt and he is being given the benefit of that doubt" in being allowed to return to work in Security. I informed Mr. Kennedy that he is to report to 3rd shift on Thursday, June 16 at 11:00 pm. He will be assigned to answer phones and perform watch room duties.

I sent an e-mail to Eric Barnes, Rick Groves, Gerome Young, Angelia Permenter and Lileth Zerzycki (cc: Traci Batchelder) informing them of Mr. Kennedy's assignment and my requirement that he not be given an assignment that would involve him have a key to any District facility.

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2/24/2011 3:45:06 PM



1020
Admin Hall

000311



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Statement of Charles A. Earles in reference to Officer Jeffrey Kennedy

10/18/2012 1:00pm

I attended a meeting with Jeffrey Kennedy and Traci Batchelder in DO Conf. Rm 5 in reference to the inappropriate release of information contained in the District video surveillance system. Mr. Kennedy admitted being asked about this by Ms. Jones but denied viewing any recorded images. He said, repeatedly, that he did not know how to view any images other than the live images that he sees when working on his shift. He further stated that if he knew how to view recorded images, he would have allowed Ms. Jones to view the video because he was not aware that it was wrong to do so. He also repeatedly said that he asked Lt. Young if he could do it and Lt. Young told him that he had forgotten how. Mr. Kennedy repeatedly said that he told Ms. Jones that she should ask the principal about viewing the video. Mr. Kennedy, further, repeatedly said that he wrote down the time and date to see if Capt. Groves could retrieve the video for Ms. Jones. Mr. Kennedy said that he threw the information away and never gave it to Capt. Groves. Mr. Kennedy said that he never viewed the video or told Ms. Jones what was on any video. Ms. Batchelder and I each advised Mr. Kennedy that no Security Officer was authorized to allow anyone to view any video or describe what happened on any video.

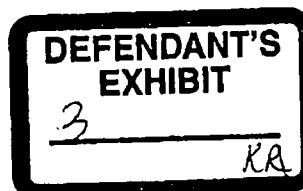
Ms. Batchelder acknowledged that it could be a case of mistaken identity and suggested that we all go meet with Ms. Jones to get a positive ID. Mr. Kennedy said that he had to go to his other job and could not make the trip to SSC because of this. Ms. Batchelder asked if I had pictures of Officers that I could show to Ms. Jones to positively identify the Officer who described the video to her. I told her that I did and proceeded to SSC for this purpose.

Upon arrival at SSC I had Ms. Jones come to my office. I told Ms. Jones that I needed for her to identify the Officer who told her what was on the recorded video. I showed her a copy of Mr. Kennedy's driver's license photo. She said that she could not be sure. I then showed her photos of each Officer who works 3rd shift because she had said that she spoke with the Officer at about 5:45 am on October 1 & 2, 2012. Ms. Jones ruled out all of the other Officers. I tried to view the surveillance video of the SSC lobby from Oct 1 & 2 but it had already been recorded over for several days.

As I continued to question Ms. Jones about the details of speaking to the Officer she became visibly upset. She told me that the Officer had called her this afternoon. Ms. Jones stated that he told her that if she identified him he was going to be fired and she "better not do it". Ms. Jones became more upset and was in fear of retaliation from Mr. Kennedy or other employees who she did not identify to me. Upon questioning about the call log in her phone, Ms. Jones pulled out her phone and read out to me that she had received a call "24 minutes ago" (this is how it appeared in her call log and the current time was 1:50 pm) from 803-261-0699. Ms. Batchelder and I each independently confirmed that we had that number in our records as belonging to Jeffrey Kennedy.

Ms. Batchelder asked that we arrange another meeting with Mr. Kennedy for 11:30 am Friday October 19 at the District Office. I had Eric Barnes make the arrangements.


10/18/12



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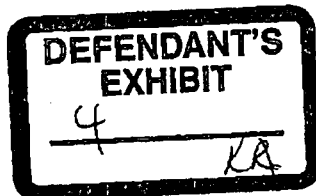


Spring Valley High School Athletic Department

Tim Hunter, Athletic Director

To: Whom it may concern
From: Tim Hunter
Date: 3/24/11
RE: Theft

I had \$1,000 taken from my office sometime between 10:30 pm on 3/3/11 and 8:00 am on 3/4/11. We were hosting the Taco Bell Viking Cup Soccer Tournament, I was feeling ill the night of Thursday 3/3 and did not know if I would be able to come to work on Friday 3/4. In preparation for getting the ticket boxes ready for Friday, I put the change money in 3 ticket boxes. \$500 in one and \$250 in each of the other 2 for a total of \$1,000. I put the boxes on the floor behind my desk so they would be kept out of site. I did this so my assistant, Sonny Youker, could get the boxes out to the gates on Friday in the event I could not come to work. When I came in Friday morning, the boxes were where I had them and the tickets were still in each box. However, all of the money was gone. When I reported the theft to Jim Childers, he immediately went to the security cameras.



120 Sparkleberry Lane • Columbia SC 29229
(803) 699-3500 x69919 • Fax (803) 419-2145 • email: thunter@richland2.org

000119

1025

Richland School District Two
124 Risdon Way
Columbia, South Carolina 29223

Subject: Letter of Counseling (08 September 2009)

Thru: Lelith Zerzycki
Security Services (Watch Commander)
Richland School District Two

To: Jeffery Kennedy
Security Services
Richland School District Two

This letter of counseling is based on the fact that you failed to support Richland School District Two on 04 September 2009. You were assigned to perform duties at the football games at Parone Stadium at Spring Valley High School every Friday until further notice.

On September 4th you failed to report to Spring Valley High School Stadium. I John W. Propst distribute copies of all Football Schedule in July 2009. I have also distribute a letter informing all Security Officers who fail to perform their assigned duties that it could result in a recommendation for termination.

Officer Kennedy we had the same problems with your performance last year and I will not have the same problem this year. This counseling statement is to inform you that if you miss any other requirements that you are assigned too, then I have no alternate but to recommend you for termination from Richland School District Two.

John W. Propst
Supervisor of Safety/Security
Richland School District Two



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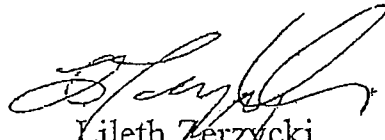
6th June 2008

Officer Kennedy you are been counseled on failure to follow proper procedure and instructions.

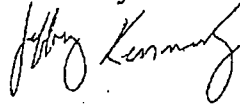
This reflects poor performance on your part, on the following dates June 4th and 5th you choose to leave your assigned post with out proper relief, which causes the mission to lapse. You were

~~instructed by your Watch Commander (officer Zerzycki)~~ not to leave your post until your relief was present for duty.

This type of action will not be tolerated and could be grounds for termination.


Lileth Zerzycki
Watch commander

Jeffery Kennedy
Security officer



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STATEMENT OF COUNSELING

11 NOV 08

OFFICER KENNEDY, THIS COUNSELING STATEMENT IS TO INFORM YOU OF YOUR UNEXCUSED ABSENTS AND NON-COMMUNICATIVE APPROACH FOR THE JOB IS PUTTING THE TEAM (3RD SHIFT) IN A CONSTANT LOST FOR MANPOWER, WHICH IS GETTING MORE DIFFICULT WITH OUR ADDED DEMANDS.

NOTED, YOU CALLED ME AROUND 4PM WITH A SITUATION STATING THAT YOU WILL CALL BACK WITH AN UPDATE. THIS IS THE 3RD OR MORE TIMES INCIDENT OF THIS NATURE WITH THE SAME END RESULT (UNDEPENDABLE). THIS CANNOT CONTINUE AND WILL NO LONGER BE TOLORATED


L. ZERZYCKI
WATCH CDR.

J. KENNEDY
SECURITY OFFICER

Refuse to sign

000124

1028

Jeffrey Kennedy

3/29/11

st of all I don't go in he ofc to ck he
man area I go into he break area
I look @ a magazine I get a drink
of H₂O - I have picture of @ least
10 other people who have been in that
hall

no body has ever seen me. That ain't true.
my lawyer has several pictures - from
kids to from people. I ain't never
been sorry - I ain't got hurt.

at 11:30 - 11:40 I have to be
he battery being it will be dead.

I don't go in school ~~now~~ unless you
got an alarm going off

I have to stay here until 12:30

I can't go past he break room
or the motion detectors will go off

- Eric - he don't know

I was promoted to lieutenant & the job was
given to someone else.

I have never stolen anything in my life.

- I've been in he bldg to cut he alarm off -
I went in he weight room & walked @
out

That coach went into he AD's ofc.

000045

There was an alteration that night w/ the baseball coach. Nobody said why about the alteration. We had some words about them opening all the doors - they are going to open up all those gates for no reason. He opened up the baseball coach had an alteration w/ me that night. They need them open - I had the gates open for the buses - it set off the alarm - they didn't make sure the doors were closed that night.

They went into the double doors - 8 players + 3 coaches. They could have had access - the football coach had the key in the door. Coaches have keys to that office.

I don't go in that front office on the date you'll say I was in there - there is a custodian going in there on the 1st & the 3rd.

I go in there + I'm the battery in the alarm - I never went in nobody's office.

- Custodian - everybody has keys @ SV - people come into the band room - everybody has a key to everything. The alarm hasn't worked in a year - they ain't looked at nobody but me.

- I don't spray no spray - I don't smoke no cigarettes - that ain't me.

- They spray it in the back + leave the can in the seat in the security vehicle.

000046

~~_____~~
~~_____~~ - it has it on he
can so they know where it can run.
- They say I was the only one who came
up the hall. That not true -
abt 8-9 people came up that hall.
Capt Z will say I don't go to no
School - never have - I have been
Wking 4 yrs - I am trying to get promoted
& grow.

- The Supv can tell you abt my character.

Several times gone against me is -

① why he spent so much time before
of you talk to all the other officers
they will say they take a break.

I went bk to sev days prior & tried to
look @ a common way you did your
business - it was common for you to be
- here that long.

It was unusual for that span of days -
Mitchell was x fied to WE - that
when I stated for who he 3 day
The 20 was has caused the police -
he out of x spent to look through
offices - it doesn't necessarily have to
be me -

When that 1st x came up we would say

000047

is this an abbreviation? Of he [redacted] incident -
you're the common denominator -

~~from~~

my reputation & character is being? & for how long

• Social friend who is in the [redacted] [redacted]

If you capture the other [redacted] [redacted] on
camera it was abnormal

I don't remember much about those days.

261-0699

000048



Jeffrey Kennedy

5/5/11

This is what has come to me from the CITRO

Of course you know more than I do. I've read the
info that has gathered from the weekly. BY I make
a final decision I wanted to hear from you. From what
I've read is you state you had nothing to do with him
You don't know anything about this

No sir

On your words, you are in the black don't go in the
main office

I go into a the battery -

Is that correct

Yes unless he goes down 2nd shift 8:15
BY I get this

How many 25 per wk

2-3 x per wk - sometimes every day

I go in there + sometimes get a date of H2O

I can't leave until 12:30, I'm just

wash + until we leave

How long do you go in there

65-70 min sometimes some 25 I can

straight out. I may use the problem

Tell me about the routine in the at the
old

Normally I just sit down. I go in there

in the the keypad off some xcel go in

I come @ bat out,

I go to the keypad + put in the code which

I go into the weight room for 10-15 min

Just sit to work x

000020

most officers go in here to work out.

When you can in the blk of the man offer to do the radio, is that your last stop.

Yes I may make a little bottle of 1720 or look @ a magazine or smth.

Mr. Earle - What Mr. K is explain - is that pretty much how they are supposed to operate?

They do have down x. The prob had been on his signal - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

It seemed like a minor incident so I let that go.

Then we had 8 missing. As he went home missing Mr. K went in the blk don walked around to the front & set the alarm. The night of the thefts - it appeared there was a variance for his pattern. Those were the only notes he viewed.

Was it routine to go in the blk don.

That route for all See officers.

I didn't have to arm the alarm - the alarm went off at 2:30.

- You said it was his routine - you go in the blk don & then you go out & that he end of your duty.

000030

you tell me.

-2-

That's what you do every X

- Those days you say you never care b/c
and it can be fun.

No sir

- Many old have been coming by
I came to UK - there were 12 people
in the office - w/ date & time - in
the admin office - my lawyer has
pictures.

- Those kids don't have keys to the office
Who says the offices were locked?

The custodians have keys.

- When it was okay - he also in the
conf room could go off.

I've been @ SV 4 yrs w/ no probs

What does the alarm have to do w/
this

I don't have no reason to go to those
offices.

When do you go read magazines?

There's a kitchen in the bk rm

On the athletic part you just mess
around w/ the weight

Every now & then. I just sit in
alarm & leave.

Why not just do the key pad & leave.
I didn't know it's a prob - other people

000031

go in here - Mr. Miskell goes in here
uses, he weight in. ^{Wahdy, I say to him}
Mr. Miskell ^{How he say to him} ^{about that} nobody ever sd
anyby to her abt why he weight in.

on 2/25 - When he & I went messy
you see in the bk door - that was the day
you sat and I read magazine
If I stayed up here over 5 min -
you stayed in here 220 min
that's when I was in the break room.

on 3/2 - when he & I was taken out of
the bookkeepers office -

You were in here 25 min that day
nobody ever sd we didn't go in the
bldg & go to the break room - I've been
dog he save by for 4 yrs.

Other officers do that. ~~at~~

We aren't. Wahdy abt you sit. ^{one officer went tally abt}

I did put back \$ in there. Since Mike
left it's still here - since he left
it's still here.

I have never stold Wahdy a day in my life
I just got promoted to Lt. What would I look
like stealin. I'm a goodly man - I don't
steal. Try me puttin' sackin' surveillance
on me - I've got too much too lose to take
charge from a drawer.

000032

I've got 4 grandchildren, kids in college. I've got a mortgage -
my yearly salary means more to me than that.

-3-

I didn't do it. From the bottom of my
heart it wasn't me I didn't do that.

I will get black boys

approval from me.

000033

1037

LAW OFFICES OF
Franchot A. Brown
ATTORNEYS AT LAW

Jeffery Kennedy

1324 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-7060
E-MAIL FRANCHOTB@FABLAWFIRM.COM

MAILING ADDRESS:
POST OFFICE BOX 643
COLUMBIA, SC 29202-0543
FAX (803) 779-7786

January 13, 2012

Mr. Roosevelt Garrick, Jr.
Chief Human Resources Officer
Richland School District Two
6831 Brookfield Road
Columbia, SC 29206

RECEIVED JAN 17 2012

RE: Mr. Jeffery W. Kennedy

Dear Mr. Garrick:

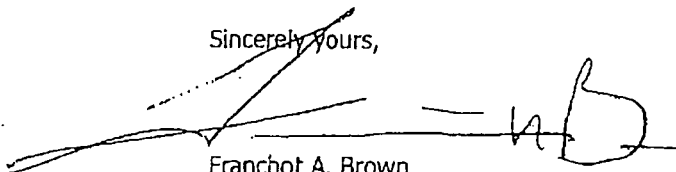
As you are aware, over six (6) months ago you sent a letter to Mr. Kennedy dated June 27, 2011 advising him of some concerns you had relative to \$1,000.00 and some property being missing from a building at Spring Valley High School. Your office turned the investigation of this matter over to the Richland County Sheriff's Department, who had Mr. Kennedy and I to visit with them on at least one (1) occasion and I followed up with several letters after which time, it is my understanding from talking to Investigator Clark of the Richland County Sheriff's Department they never listed my client as a suspect and have closed their file.

Since the commencement of this investigation and the allegations you seem to be leveling at Mr. Kennedy, he has been denied a promotion to Lieutenant, has been restricted to a desk job and is not allowed to enjoy any overtime employment in the desk job position he presently holds. We were under the impression that the Richland County Sheriff's Department had an outstanding file on Mr. Kennedy, however, Investigator Clark of the Richland County Sheriff's Department has assured us that they never listed him as a suspect, do not have a case file on the matter open and this case has been completely closed and never shall be opened.

This letter is, therefore, to demand that you place Mr. Kennedy back to his full-time position, elevate him to the position of Lieutenant and restore all of the rights and privileges due him as a 5-year employee with the security forces of Richland School District Two.

Hoping you consider time of the essence and notify me that same is being complied with immediately and thanking you in advance, I remain

Sincerely yours,


Franchot A. Brown
Attorney at Law

FAB:msa

cc: Mr. Jeffrey W. Kennedy



000013

1038



Richland School District Two 6831 Brookfield Road Columbia, South Carolina 29206 (803) 787-1910
FAX # (803) 738-7393
www.richland2.org

ADMINISTRATIVE OFFICES

February 8, 2012

Mr. Jeffrey Kennedy
356 Weddell Street
Columbia, South Carolina 29223

Dear Mr. Kennedy:

We are in receipt of a letter from your attorney, Franchot Brown, dated January 13, 2012.
In the letter, Mr. Brown stated:

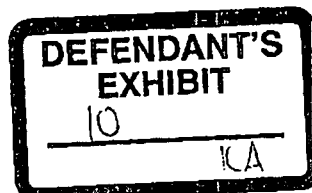
This letter is, therefore, to demand that you place Mr. Kennedy back to his full time position, elevate him to the position of Lieutenant and restore all the rights and privileges due him as a five year employee with the security forces of the Richland School District Two.

He stated that I sent you a letter dated June 27, 2011, advising you of concerns relative to the missing property from Spring Valley High School ("SVHS") and that the investigation of the matter was turned over to the Richland County Sheriff's Department. He further stated the investigation was closed.

While the Richland County Sheriff's Department was involved in investigating the missing property, my letter dated June 27, 2011, confirmed that you were being reinstated to your position as a security officer in the District. In my June 27 letter, I outlined my concerns with what appeared to be some unusual behavior on your part, as well as my concern that you did not provide me with accurate and consistent information in your security of the SVHS administration building. While there is not an open criminal investigation, we were not comfortable with your responses during our investigation.

As you know, you have not been demoted from your position as security officer. Instead, you remain employed in the same position to which you were assigned prior to being placed on administrative leave. However, while I have returned you to your position of security officer in the District, as a result of the concerns I have described in this letter, as well as my June 27 letter, I decided not to approve a recommendation that you be promoted to a position of Lieutenant at this time. Your job responsibilities as a security officer, and particularly a Lieutenant, require that we have the utmost trust and confidence in you. For these reasons, I am denying your

Mission Statement - Richland School District Two, in partnership with the Columbia Northeast community, guarantees each student a quality education by providing appropriate and challenging learning experiences to equip each individual for life-long learning, responsible citizenship, and productivity in an ever-changing world.



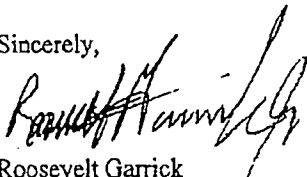
000108

1039

attorney's demand that you be promoted to a position of Lieutenant at this time. If you wish to be considered for promotions in the future, you will need to ensure that you exercise good judgment in the performance of your duties at all times, and conduct yourself in a manner which restores our trust and confidence in you.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Roosevelt Garrick". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Roosevelt Garrick
Chief Human Resources Officer

000109

1040

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy Respondent,

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record On appeal contains all material proposed to be included by any of the parties and not any other material.


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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy.....Respondent,

v.

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

APPENDIX TO THE RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF RICHLAND

3
4 JEFFREY KENNEDY,

5 Plaintiff,

6 -vs-

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

10 Defendants.

TRANSCRIPT OF RECORD

13-CP-40-1460

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

13 B E F O R E:

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

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

17 T. JEFF GOODWYN JR., Esquire
18 RACHEL G. PEAVY, Esquire
19 Attorneys for the Plaintiff

20 THOMAS K. BARLOW, Esquire
21 KATHRYN LONG MAHONEY, Esquire
22 Attorneys for the Defendants

23
24 Reported by: KAREN E. AMBROZIAK, RPR
Circuit Court Reporter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Next, the plaintiff must prove that the

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

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

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

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

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

1 to the plaintiff's reputation.

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

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

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

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

1 defamation per se.

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

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

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

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

1 defendant made the statement in good faith.

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

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

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

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

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

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

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

3 THE COURT: Thank you.

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

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

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

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

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

25 I will emphasize that the defendant is only

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

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

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

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

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

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

25 One verdict form will be as to the School

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

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

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

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

22 THE COURT: I have to retype them all.

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

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

1 charges.

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

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

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

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

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

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

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

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

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

15 THE COURT: Anything else?

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

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

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

1 THE COURT: For the defense?

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

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

13 In addition, Your Honor --

14 THE COURT: One moment.

15 MR. BARLOW: Oh, sorry.

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

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

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

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

3 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

3 THE COURT: Anything else?

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

6 THE COURT: Sure.

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

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

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

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

18 THE COURT: Oh, certainly not.

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

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

1 THE COURT: You mean charge the jury that?

2 MR. BARLOW: Yes.

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

9 MR. BARLOW: Okay.

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

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

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

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

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

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

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

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

9 MR. BARLOW: Sure.

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

12 MR. BARLOW: Correct.

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

17 THE COURT: Yes, ma'am.

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

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

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

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

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

7 MR. BARLOW: Sure.

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

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

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

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

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

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

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

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

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

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

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

16 MR. BARLOW: Right.

17 THE COURT: That's fine.

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

20 THE COURT: Yes.

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

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

25 MR. BARLOW: Okay.

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

3 THE COURT: Under the Tort Claims Act.

4 MS. PEAVY: Okay.

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

8 MR. BARLOW: Correct.

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

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

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

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

1 what you're saying.

2 MR. BARLOW: Right.

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

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

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

13 THE COURT: -- the School District.

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

15 THE COURT: I'm listening.

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

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

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

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

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

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

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

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

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

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

24 MR. BARLOW: Sounds good.

25 THE COURT: And have the interrogatory at the

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

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

8 MR. GOODWYN: All right.

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

12 MR. BARLOW: Sure.

13 THE COURT: Are we all clear?

14 MR. BARLOW: All clear.

15 THE COURT: Thank you for your patience.

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

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

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

22 (Whereupon there is a recess.)

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

Jeffrey Kennedy.....Respondent,

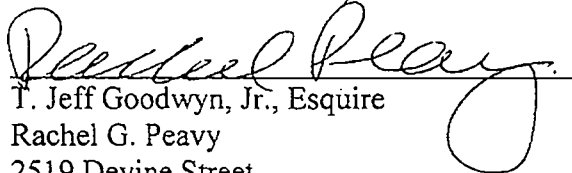
v.

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

CERTIFICATE OF COUNSEL

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

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