

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No.: 2016-002525
Consolidated Civil Action No.: 2015-CP-10-2389

Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., A Minor;
and Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., A Minor,
Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., A Minor;
Adam Olsen Ackerman; and A.E.P., III, ... Plaintiffs,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company,
and Jones Street Publishers, LLC, ... Defendants,

And

Eugene Walpole, ... Plaintiff,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company,
and Jones Street Publishers, LLC, ... Defendants,

Of Whom Eugene Walpole, Amy Garrard and Lee Garrard, Guardians Ad
Litem for R.C.G., A Minor; and Dean Frailey and Kathryn Frailey, Guardians Ad
Litem for C.F., A Minor, Richard Nelson and Cheryl Nelson, Guardians Ad
Litem for D.G.N., A Minor; Adam Olsen Ackerman; and A.E.P., III, are the Appellants,

And

Of Whom Jones Street Publishers, LLC is the Respondent.

RECORD ON APPEAL
VOLUME 1 OF 2

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SC Court of Appeals

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2389

A.E.P., et al.

Charleston County School District, Kevin Clayton, Axxis
Consulting Company, and Jones Street Publishers, LLC,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jean H. Toal

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant Jones Street Publishers, LLC's Motion for Summary Judgment is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

See attached order

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

[Signature]
Circuit Court Judge

2758

Judge Code

Date

11-15-16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SCRCP Form 4C (03/2013)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

A.E.P., III, et al.,

Plaintiffs,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2015-CP-10-2389
(Consolidated Case)

EUGENE H. WALPOLE,

Plaintiff,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, AND JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2014-CP-10-7655

FILED
2016 NOV 18 PM 2:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

#1
8/15/17

**ORDER GRANTING DEFENDANT JONES STREET PUBLISHERS, LLC'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT CHARLESTON COUNTY SCHOOL DISTRICT'S
MOTION FOR PROTECTIVE ORDER**

This matter comes before the Court on Defendant Jones Street Publishers, LLC's ("Jones Street") Motions for Summary Judgment on the claims made against it by each plaintiff in the complaints now consolidated in case number 2015-CP-10-2389 and the claims made against it by Eugene "Bud" Walpole in case number 2014-CP-10-7655. The Court has carefully reviewed the memoranda, exhibits, affidavits, and excerpts of deposition testimony submitted by the parties. The Court also conducted a hearing on October 11, 2016, and heard oral argument from

the parties on the motions. For the reasons stated below, the Court grants Jones Street's Motions for Summary Judgment.

The Court also heard Defendant Charleston County School District's motion for a protective order at the same hearing, and for the reasons noted below denies that motion.

Factual and Procedural Background

The plaintiffs in this matter are six members of the 2014-2015 football team and the head football coach at the Academic Magnet High School ("AMHS") located in Charleston, South Carolina. The plaintiffs brought this action against Jones Street, the Charleston County School District ("School District"), and two other defendants, alleging a single cause of action for defamation arising from statements made by defendants and two non-party School District officials concerning a post-game ritual performed by the team.

In the fall of 2014, the AMHS football team became the subject of national media attention for events occurring in the wake of the football team's post-game celebration ritual. The media coverage began on October 21, 2014, after the School District issued a press release stating that, after hearing of "inappropriate post game celebrations" by the AMHS football team, it had conducted an investigation and "as a result of the investigation, the head football coach will no longer be serving as a coach for Charleston County School District." The School District also announced that its Superintendent would be holding a press conference open to the public that day at the School District offices.

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During the press conference, the Superintendent described the post-game ritual that prompted the investigation. She stated that "Players would gather in a circle and smash the watermelon while others either were standing in a group or locking arms and making chanting sounds that were described as 'Ooo ooo ooo,' and several players demonstrated the motion."

The Superintendent described the chanting sounds as “monkey sounds” and stated that a School Board trustee had reported that the football team engaged in a “tribal-like chant that is animalistic or monkey-like.” She also stated that the AHMS team named the watermelons “Bonds Wilson”¹ and drew a face on each watermelon “that could be considered a caricature.” A copy of the caricature drawn by the same football player who drew it on the watermelons was shown to the persons attending the press conference.

Defendant Jones Street owns and publishes the *Charleston City Paper* weekly newspaper (the “*City Paper*”). *City Paper* reporter Paul Bowers attended the press conference and wrote an article about it based on what he heard and observed there. The article – “District: AMHS football team’s watermelon ritual included ‘monkey sounds,’ ‘caricature.’ Coach removed after complaint of ‘animalistic’ sounds following defeat of majority-black team” – included a summary of the Superintendent’s statements from the press conference. The article also included comments from parents of AMHS students made in support of Coach Walpole at or following the press conference.

Chris Haire was the Editor of the *City Paper* and watched Superintendent McGinley’s press conference by a live television broadcast from the School District’s public hearing room. After viewing the press conference, he wrote two opinion editorials about the events described at the press conference: “Melongate,” which was published in the *City Paper* on October 21, 2014, and “Mob Rules,” which was published in the *City Paper* on November 5, 2014. Both editorials include information disclosed by the Superintendent during the press conference and contain biting commentary on the derogatory and negative racial offense of the post-game ritual.

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¹ Bonds Wilson is the name of a formerly segregated African-American school that was located at the campus where AMHS is now located and is named in honor of two prominent African-American educators from Charleston.

The story about the AMHS football team ritual and the firing of Coach Walpole was also reported on by numerous other news media, on the internet, in print, on the radio, and on television. In media outlets ranging from national publications to the local AMHS school newspaper, numerous commentators expressed the opinion that the behavior of the football players in the post-game ritual was racist or racially offensive, and that either the players or the coaches had to have known or should have known that the ritual would be perceived as racist. In short, the Superintendent's press conference and the factual allegations made therein were widely covered by national and local media outlets, and a diverse range of commentators expressed a diverse range of views on the story, including the opinion that the actions of the team were racist.

The plaintiffs' claims against Jones Street are based upon the two opinion editorials, or "op-eds," published in the *City Paper* about the controversy, and the headline of the news article reporting on the press conference where Coach Walpole's termination was announced. The plaintiffs contend that these publications are defamatory because they imply that the football team and the head coach are racist.

Discussion

A. Summary Judgment Is Appropriate as to All Plaintiffs' Claims.

1. The Statements of Fact Are Protected by the Fair Report Privilege.

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The "fair report" privilege has long been recognized in South Carolina courts both under the common law and as a constitutional protection. See *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 550 (D.S.C. 2008) ("South Carolina recognizes the fair report privilege."); see also *George v. Kay*, 632 F. 2d 1103, 1105 (4th Cir. 1980), *cert. denied*, 450 U.S. 1029 (1981); *Eubanks v. Smith*, 292 S.C. 57, 354 S.E. 2d 898 (1987); *Padgett v. Sun News*, 278 S. C.

26, 292 S. E. 2d 30 (1982); *McClain v. Arnold*, 275 S. C. 282, 270 S. E. 2d 124 (1980); *Jones v. Garner*, 250 S.C. 479, 158 S.E. 2d 909 (1968); *Lybrand v. State Co.*, 179 S.C. 208, 184 S.E. 580 (1936); *Oliveros v. Henderson*, 116 S.C. 77, 106 S. E. 855 (1921). While the early cases apply the privilege as a matter of common law, in *Padgett v. Sun News*, *supra*, the South Carolina Supreme Court recognized that there is a constitutional basis for the common law privilege, in that holding a publisher liable for an accurate report of a government official's statement or action would constitute liability without fault in violation of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

The privilege protects those who accurately report the substance of statements, actions, proceedings, reports, or records of public officials or agencies, even if what was stated by the government official turns out to be false and defamatory. As the Fourth Circuit has explained:

[The] fair report privilege shields news organizations from defamation claims when publishing information originally based upon government reports or actions. ... The fair report privilege encourages the media to report regularly on government operations so that citizens can monitor them.

Reuber v. Food Chemical News, Inc., 925 F.2d 703, 712 (4th Cir. 1991). The privilege is not limited to official records or formal proceedings, but also applies to information provided by authorized public officials to the press, including the reporting of public statements made by public officials in news releases, press conferences, and interviews with the press. *See, e.g.*, *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087 (4th Cir. 1992) (public statement of congressman); *Kilgore v. Younger*, 640 P.2d 793 (Cal. 1982) (report of statement made by official at press conference); *ELM Medical Laboratory, Inc. v. RKO General, Inc.*, 532 N.E.2d 675, 678 (Mass. 1989) (privilege extends to statements of public officials in news releases and interviews); *Brandon v. Gazette Publishing Co.*, 234 Ark. 332, 352 S.W.2d 92, 93-94 (1961) (statement by governor at press conference).

"It is not necessary that [the report] be exact in every immaterial detail. ... It is enough that it conveys to the persons who read it a substantially correct account of the proceedings." RESTATEMENT (SECOND) OF TORTS § 611 comment f (1977); *accord Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546 (D.S.C. 2008). Where the report is a fair and accurate summary of a statement made by a public official or agency, the person reporting it has no affirmative duty to investigate the underlying truth of the matter, nor may he be held liable for the negligence or bad faith of the government official or agency that was the source of the defamatory charge. *See Padgett*, 278 S.C. at 31, 292 S.E.2d at 34. Regardless of whether the statement made by the public official is true or not, if the press accurately reports the content of that statement, the press is immune from liability.

The plaintiffs' own Complaints establish that the allegedly defamatory factual statements in the *City Paper's* article and op-eds at issue – as alleged by the very words used by the plaintiffs in their Complaints – fall within this privilege. The Complaints state that School District officials made the following statements to the public concerning the post-game ritual:

- 
- "the football team made animal sounds and drew a monkey face on the watermelon during these celebrations," Complaint ¶ 7²;
 - "the team made monkey sounds and drew a monkey face on the watermelon," Complaint ¶ 7;
 - "the plaintiff[s] [intended] to cast African American opponents in a derogatory light," Complaint ¶ 7;
 - "[t]he defendants by their statements falsely accused the team and plaintiffs of being racially prejudiced," Complaint ¶ 7;
 - "the members of the Academic Magnet High School football team 'had engaged in a game ritual after football games in which the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make

² The ¶ numbers referenced herein relate to the Amended Complaint filed in the *A.E.P.* case. The complaints filed by the other student plaintiffs and Coach Walpole may reference different ¶ numbers, but are the same statements.

animal noises,”” Complaint ¶ 8;

- “players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as ‘ooh,ooh,ooh,’” Complaint ¶ 9;
- “the sounds were ‘monkey sounds,’” Complaint ¶ 9;
- “[plaintiffs’ actions were] racially derogatory actions intended to equate black members of opposing football teams with monkeys,” Complaint ¶ 10.

Paul Bowers and Chris Haire also submitted affidavits for the Court’s review in which they note that all of the factual statements contained in the pieces that they wrote were in fact taken from the statements made by the Superintendent at the press conference. The plaintiffs conceded as much at the hearing on the motions. Plaintiffs also submitted, shortly after the hearing, a videotape of the press conference as well as a formal statement later made by the Superintendent, and these materials also confirm that all factual statements in the *City Paper* article and op-eds are accurate statements or summaries of statements made by the Superintendent at the press conference.

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Therefore, this Court finds that all statements of a factual nature in the *City Paper* publications are accurate reproductions of comments made publicly by School District officials, and thus are protected by the fair report privilege. Because the *City Paper* presented a substantially accurate summary of the facts as represented by School District officials, Jones Street is immune from liability for those statements as a matter of law under the fair report privilege. This includes the entirety of the headline of the Paul Bowers’ article that is the subject of plaintiffs’ Complaints, and all of the factual statements about the ritual in Chris Haire’s editorials.

2. The Opinions Expressed in the Articles Are Not Actionable.

When the factual statements listed above are removed from the *City Paper* editorials, the allegedly defamatory content of what remains are statements that are merely expressions of the writer's opinions and ideas on a matter of public concern. Under established First Amendment jurisprudence, Jones Street cannot be held liable for such statements.

The Court first notes that the subject of the Jones Street publications addressed a matter of public concern. "Whether ... speech addresses a matter of public concern must be determined by [the expression's] content, form, and context ... as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147-48 (1983). The AMHS football team's ritual, the School District's investigation into the AMHS football team's ritual, and Coach Walpole's removal as head coach of the team were subjects of great interest to the Charleston community and garnered widespread coverage from media outlets both locally and throughout the United States. The controversy involved allegations of racial insensitivity in a city steeped with a historical legacy of racial tension. When viewing the record as a whole, there is little doubt that the speech at issue in this case was addressed to a matter of public concern.

Furthermore, it is settled law that expressions of opinion on matters of public concern are immune from liability for defamation. The United States Supreme Court declared at the outset of its opinion in *Gertz v. Robert Welch, Inc.*:

 We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

418 U.S. 323, 339-40 (1974). The Supreme Court has also held that "a statement on matters of public concern must be provable as false before there can be liability under state defamation law, at least ... where a media defendant is involved." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1,

19-20 (1990) (emphasis added).³ Additionally, statements are protected if they “cannot ‘reasonably [be] interpreted as stating actual facts’ about an individual.” *Id.* at 20. This protection is important because it “provides assurance that public debate will not suffer for lack of ‘imaginative expression’ or ‘rhetorical hyperbole’ which has traditionally added much to the discourse of our nation.” *Id.* In determining whether a statement can be “reasonably interpreted as an actual fact,” the court considers the nature and purpose of the publication and whether the statement is “easily susceptible (if at all) to ‘proof’ one way or the other.” *Faltas v. State Newspaper*, 928 F. Supp. 637, 649 (D.S.C. 1996). Whether the use of a term is a hyperbolic expression of ideas or whether it implies a fact also depends on the context in which the term is used. *Faltas*, 928 F. Supp. at 648. Statements of fact “are readily understood by the reader to have a precise, unambiguous and definite meaning and can be objectively characterized as true or false.” *Chau v. Lewis*, 771 F.3d 118, 129 (2d Cir. 2014).

The crux of plaintiffs’ Complaint against Jones Street involves the claim that the opinion editorials depict plaintiffs as racists. Removing the statements that merely repeated or summarized what School District officials stated publicly about the post-game ritual, the editorials contain the following statements concerning the AMHS football team and coach:

In “Melongate”:

- 
- “Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there’s one lesson to be learned from all of this it’s this: big toothy grins, watermelons, and monkey noises don’t mix. Any sensible person can see that.”

³ Although the Supreme Court in *Milkovich* rejected the notion of a constitutional dichotomy of fact and opinion, courts applying *Milkovich* have continued to use the term “opinion” as a shorthand for the concept of statements that cannot be objectively provable as false or that cannot “reasonably be interpreted as stating actual facts about an individual,” and this Court does so here.

- “Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.”
- “That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn’t see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer.”
- “Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so. I don’t know about you, but I think it’s time to reconsider Academic Magnet’s rankings because clearly they are producing nothing more than grade-A dumbasses.”
- “The point is that an entire team of players thought it was OK to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.”
- “No one said, ‘Hey guys, I know not a single one of you has a racist bone in your body, you know, because that’s a bad thing, and well, you’re an Academic Magnet kid, and you come from a good middle-class white family and you’re going to college, and there’s no way in hell you’d, you know, draw a racist caricature on a watermelon and make monkey noises and do it fully aware of, like, what all that stuff means, because if you did, knowing all that stuff, then, yikes, people might start thinking you’re racists. Hell, I’d think you’re a racist, and, well, I just don’t know if I can deal with the fact that Charleston’s best and brightest students are racist douchebags. I mean, it’s just a joke right? Right?”
- “Actually, it’s not. It’s the sad truth about life here in Charleston, S.C. today.”

In “Mob Rules”:

- “School board forces out superintendent for firing coach who condoned racist ritual”
- “[N]ow the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act.”
- “McGinley was in the right to give Walpole the boot – and the board should’ve backed her.”
- “The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer.”

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- “Perhaps [McGinley] genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn’t.”
- “Apparently, [for Walpole supporters] to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.”
- “Coach Walpole’s firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.”
- “Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team’s actions caused the African-American community, some of them their fellow students.”

None of the above statements, to the extent they can be argued to have defamed the plaintiffs, asserts any verifiable, objectively provable fact. They are expressions of the editorial writer’s ideas and opinions, using rhetorical hyperbole to emphasize his views. Whether the football players acted like “racist douchebags,” whether the team’s failure to perceive the negative racial connotations of their actions is “indicative of the casual acceptance of racism in Charleston today,” whether the watermelon ritual was an act that “any sensible outside observer” would “perceive[] as racist,” or an example of “inadvertently ... hurtful racially offensive behavior” – these are all statements on which different persons could have different views and sentiments. In fact, many people did express different views on the matter and it was a highly contested issue for the School District. None of the statements, as expressed in the Jones Street publications, are statements of fact that can be objectively proved or disproved in a court of law.

Indeed, the record reflects that many of the plaintiffs agreed that the subject of Chris Haire’s op-eds was a matter of opinion. In his deposition, plaintiff Ackerman agreed that “whether or not something is racist is a matter of opinion.” Ackerman Dep. at 71, lines 16-18. Plaintiff Frailey agreed that the question of whether the watermelon ritual was racist “is a matter

of opinion.” Frailey Dep. at 85, line 17. Plaintiff Moore agreed “[a]bsolutely” that “people can have different opinions as to what is racist.” Moore Dep. at 115, lines 3-5. And plaintiff Coach Walpole agreed that whether or not something is racist is a matter of “individual interpretation.” Walpole Dep. at 116 line 22 – p.117 line 1.

Furthermore, the context in which the op-eds were published was the “Views” section of the newspaper – a section devoted to opinion and commentary – and the football team’s ritual was a matter of great public concern widely covered by local and national media. In the context of this public controversy, the op-eds published in the *City Paper* are a fundamental example of the type of public discourse protected by the First Amendment. See *Faltas*, 928 F. Supp. at 647 (publication of a letter to the editor calling the plaintiff a liar was “simply ‘hyperbole’ which a reasonable reader would not take as stating actual facts”). By invoking the term “racist” in opinion editorials about a sequence of events that involved facts disclosed by the School District officials related to a racially sensitive matter, the *City Paper* was simply publishing the editorial writer’s views on a matter of public concern.

Courts around the country have held that the expression of one’s opinion that another is racist cannot form the basis of an actionable defamation claim. See *Forte v. Jones*, 2013 WL 1164929, at *6 (E.D. Cal. 2013) (“where someone thinks another person is a racist and says so to a third person does not constitute publication of a defamatory statement because the statement is one of factual opinion that cannot be proven or disproven”); see also *Silverman v. Daily News, LP*, 2015 WL 201392, 43 Media L. Rptr. 2099 (N.Y. App. Div. June 24, 2015) (defendant’s publication that plaintiff authored “racist writings” is a statement of opinion, not fact); *Covino v. Hagemann*, 627 N.Y.S.2d 894 (Sup. Ct. 1995) (allegation of racism is protected expression of opinion). Here, the writer used strong rhetoric to express his opinions, such as “more or less

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behaved like racist douchebags.” However, such rhetoric is also protected by the First Amendment. *Greenbelt Coop. Publishing Ass’n v. Bresler*, 398 U.S. 6, 14 (1970); *see also Milkovich*, 497 U.S. at 16-17, 20. “To foreclose the use of hyperbole, under the threat of civil liability, ‘would condemn [commentary] to an arid, desiccated recital of bare facts.’ Such a result would ill-serve the interests of the First Amendment in ‘assur[ing] [the] unfettered exchange of ideas’ among the American people.” *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1385 (S.D. Fla. 2006) (quoting *Time, Inc. v. Johnston*, 448 F.2d 378, 384 (4th Cir. 1971); *Roth v. United States*, 354 U.S. 476, 484 (1957)).

Accordingly, the statements of fact in the *City Paper*’s op-eds are protected by the fair report privilege, and all other allegedly defamatory statements are protected expressions of ideas, opinions, and rhetorical commentary.

3. Plaintiffs Have Not Shown Proof of Injury to Reputation.

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Injury to reputation is an essential element of a defamation claim. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622, 625 (1986). Unlike invasion of privacy, in which “the interest to be vindicated is the injury to the person’s own feelings,” *Zeran v. Diamond Broadcasting, Inc.*, 203 F.3d 714, 719 (10th Cir. 2000), in a defamation case “the primary harm being compensated is damage to reputation,” not “the mental distress from having been exposed to public view,” as in a privacy case. *Time, Inc. v. Hill*, 385 U.S. 374, 384 n.9 (1967); *see also Monitor Patriot Co. v. Roy*, 401 U.S. 265, 275 (1971) (“[D]amage to reputation is, of course, the essence of libel.”); *Capps v. Watts*, 271 S.C. 276, 283, 246 S.E.2d 606, 610 (1978) (“The essence of a defamation suit is recovery for injury to reputation.”).

Although the common law presumes damages in cases involving defamation *per se*, the South Carolina Supreme Court squarely held that damages may not be presumed in a case involving a media defendant and a matter of public concern:

[I]n a case involving an issue of public controversy or concern where the libelous statement is published by a media defendant, the common law presumptions the defendant acted with common law malice and the plaintiff suffered general damages do not apply. Instead, the private-figure plaintiff must plead and prove common law malice and show "actual injury" in the form of general or special damages.

Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 466, 629 S.E.2d 653, 665 (2006).

General damages "are imposed for the purpose of compensating the plaintiff for the harm that the publication has caused to his reputation." Restatement (Second) of Torts, sec. 621 comment a (1977). Special damages consist of some provable material loss to the plaintiff as a result of the injury to his reputation; hurt feelings do not suffice as proof of special damages. *Wardlaw v. Peck*, 282 S.C. 199, 318 S.E.2d 270 (Ct. App. 1984).

In response to Jones Street's motions, the plaintiffs have not produced any evidence of either special damages or general damages arising from injury to reputation as a result of the *City Paper* publications. In an interrogatory to plaintiffs, Jones Street specifically asked them to identify any person who read the *City Paper* publications and, as a result of those publications (and not the numerous other news stories and editorials about the team's ritual), thought less of any of the plaintiffs or their reputations. The plaintiffs admitted that they could not identify any such person.

Coach Walpole testified in his deposition that he was not even aware of the *City Paper* publications over which he has brought suit until his attorney showed them to him. Walpole Dep. at 118, lines 16-23. When questioned in their depositions about injury from the *City Paper*, none of the plaintiffs could identify any evidence that the article or editorials in the *City Paper* – as opposed to the other extensive media coverage of the controversy – were the proximate cause of any damage to their reputations. See Ackerman Dep. at 52, 69-70; Frailey Dep. at 59-60, 63-65, 76-78, 87; Moore Dep. at 83-84; Nelson Dep. at 85, 88-89, 92-95, Perry Dep. at 44-45, 61-

63, 65-66; R.C.G. Dep. at 32-33, 39-42; Walpole Dep. at 119-123.

In this regard, it is significant that the *City Paper* did not break the story about the team's ritual – it was already the subject of extensive publicity, both local and national, on the radio and television as well as in print and on the internet, including publicity of the alleged “monkey sounds” and caricature drawn on the watermelons. Thus, any inference of racism that might be drawn from the facts reported about the ritual had already been made in local and national media coverage of the story. The plaintiffs themselves assert this in their allegations against the School District. See Moore Complaint ¶ 13; Walpole Complaint ¶ 12.

Because the plaintiffs have not presented evidence of injury to reputation as a proximate result of the *City Paper* publications, their cases lack proof of an essential element of the cause of action of defamation, and summary judgment in favor of Jones Street is warranted as a matter of law.

B. Additionally, the Student Plaintiffs' Claims Are Subject to Summary Dismissal Because the Alleged Defamatory Statements Were not “of and concerning” These Plaintiffs.

Jones Street's motion is granted against the student plaintiffs for the additional reason that the alleged defamatory statements that form the basis of the plaintiffs' claims were not “of and concerning” the student plaintiffs, in that they refer to the entire football team and not to any of the plaintiffs individually. Consequently, the statements are not actionable under South Carolina defamation law.

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“To prevail in a defamation action, the plaintiff must establish that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred.” *Burns v. Gardner*, 493 S.E.2d 356, 359, 328 S.C. 608, 615 (Ct. App. 1997). Therefore, where defamatory language is applied broadly in discussing the members of a class or group, without any specific circumstances pointing to a particular member, no individual

member has a right to maintain an action for defamation. See *AIDS Counseling and Testing Centers v. Group W Television, Inc.*, 903 F.2d 1000, 1005 (4th Cir. 1990) (“In order to actionably defame an individual, a publication must contain some ‘special application of the defamatory matter’ to the individual. The ‘circumstances of the publication [must] reasonably give rise to the conclusion that there is a particular reference’ to the individual.”) (citations and quotation marks omitted)).

Nothing in the *City Paper* publications makes specific reference to any individual team member or any characteristic of a team member that would make him identifiable as the subject of the article or editorials. Courts examining analogous circumstances have found that the individual member of a group could not maintain an action for defamation. For example, in *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012), members of a college lacrosse team brought a section 1983 action against a police spokesperson and others, seeking to assert, *inter alia*, a “due process stigma-plus” claim based on several allegedly defamatory statements made concerning a rape investigation. The Court of Appeals reversed the trial court’s denial of the defendant’s motion to dismiss and the concurring opinion noted that the plaintiffs could not even meet the requirements of traditional defamation law because they were attempting to hold a spokesperson liable for statements about the team when no individual had been referenced. *Id.* at 660; *see also Algarin v. Town of Wallkill*, 421 F.3d 137 (2d. Cir. 2005) (affirming the dismissal of 23 individuals’ stigma-plus claims because the alleged defamatory statements did not sufficiently identify any specific officers).

Similarly, the Fourth Circuit Court of Appeals affirmed a decision of the South Carolina District Court holding that a defamatory statement about a company’s “management” was not “of and concerning” one of 17 individual members of the company management team. *Outlaw*

v. Standard Products Co., 122 F.3d 1062 (4th Cir. 1997). The Fourth Circuit reasoned:

[R]eference to a group does not implicate the individual members of the group. As the district court noted, in this case none of the articles mentions Outlaw [the plaintiff] or any other employee by name or title. The reference to “management” refers to a group, and therefore does not implicate Outlaw.

Id.

The *City Paper*’s publications made only general statements about the conduct of the AMHS football team as a whole. The *City Paper* did not publish any facts or commentary specific to any particular member of the AMHS football team, and there is no statement in the *City Paper* that refers to any of them individually. For this reason, in addition to the others discussed above, the student plaintiffs may not maintain their action for defamation against Jones Street.

C. Coach Walpole’s Claims against Jones Street Also Fail as a Matter of Law Because He Is a Public Official, and He Has Not Shown that Jones Street Acted with Actual Malice.

The Court further finds that summary judgment is appropriately granted to Jones Street on Coach Walpole’s complaint because he is a public official and has failed to adduce any evidence of actual malice. When a public official seeks to recover damages for an alleged defamatory falsehood, he must allege and prove by clear and convincing evidence that the defendant acted with actual malice in publishing the statement. *See New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *accord Time, Inc. v. Firestone*, 424 U.S. 448, 453-55 (1976); *Fleming v. Rose*, 350 S.C. 488, 494-95, 567 S.E.2d 857, 860-61 (2002); *George v. Fabri*, 345 S.C. 440, 451, 548 S.E.2d 868, 874 (2001); *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000).

“[T]he ‘public official’ designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility

for or control over the conduct of government affairs.” *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). The public official category is not limited to elected officials or the upper echelons of government. “The status of a public official may be deemed sufficient to warrant application of the *New York Times* privilege, not because of the government employee’s place on the totem pole, but because of the public interest in a government employee’s activity in a particular context.” *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 520 n.4, 506 S.E.2d 497, 507 n. 4 (1998) (*Holtzscheiter II*) (Toal, J., concurring) (quoting *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980)).

For purposes of First Amendment analysis, courts have held a wide variety of public school administrators and employees to be public officials. See *Keller-Moser Consulting, LLC v. Daniels*, 2012 WL 554643 (D.S.C. 2012) (discussing the status of superintendents as public officials); *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991) (finding school board members to be public officials); *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978) (finding school trustees to be public officials). In particular, public school teachers and athletic coaches have been held to be public officials for purposes of applying the *New York Times* doctrine. See, e.g., *Johnson v. Southwestern Newspapers Corp.*, 855 S.W.2d 182 (Tex. App. 1993); *Mahoney v. Adirondack Publishing Co.*, 71 N.Y.2d 31 (1987); *Johnston v. Corinthian Television Corp.*, 583 P.2d 1101 (Okla. 1978); *Basarich v. Rodeghero*, 321 N.E.2d 739 (Ill. 1974).

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Coach Walpole is the head football coach at AMHS, the head women’s basketball coach at AMHS, and a teacher in the School District. As the head coach of two teams at AMHS, Coach Walpole was not a stranger to media coverage. Indeed, the public had a continuing interest in his leadership of the AMHS teams throughout the many years of his tenure as coach. In the particular context of the coverage of the AMHS football team’s post-game ritual, the

public interest in his responsibility for oversight of the team's activities was overwhelming as demonstrated by the breadth of coverage of the matter. Accordingly, as a matter of law, Coach Walpole is a public official under the *New York Times* doctrine.

As a public official, Coach Walpole must come forth with evidence of actual malice to establish his defamation claim against Jones Street. He has not done so. Actual malice exists when a statement is made "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times*, 376 U.S. at 279-80. As a public official, plaintiff Walpole must present clear and convincing proof "that the defendant realized that [the allegedly defamatory statement about the plaintiff] was false or that [the defendant] subjectively entertained serious doubt as to the truth of [the statement]." *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 511 n.30 (1984) (citations omitted).

[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968). These rigorous standards were recently reaffirmed by the South Carolina Supreme Court:

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Actual malice is a subjective standard testing the publisher's good faith belief in the truth of his or her statements. The constitutional actual malice standard requires a public official [or public figure] to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth. A "reckless disregard" for the truth, however, requires more than a departure from reasonably prudent conduct. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." There must be evidence the defendant had a "high degree of awareness of ... probable falsity."

Elder, 341 S.C. at 114, 533 S.E.2d at 902 (emphasis in original) (quoting *St. Amant, supra*; *Garrison*, 379 U.S. at 74).

The Jones Street publications were merely paraphrased summaries of public statements made by School District officials concerning the post-game ritual. Further, as acknowledged in Coach Walpole's Complaint, those statements were reported widely in both local and national news media. *See* Complaint ¶ 12. Each of the writers of the Jones Street publications submitted affidavits to this Court stating that they had no reason to doubt that the reported information was anything other than completely true and accurate. Coach Walpole presented no evidence to the contrary. Although he has argued that the various depositions taken in this case and the publications themselves were evidence of actual malice, he could not direct the Court to a single line of testimony in the depositions or any passage of the publications that constitutes evidence that anyone at Jones Street knew of any false statement in the editorials or articles or in fact entertained serious doubts as to the truthfulness of them. Therefore, summary judgment is warranted.

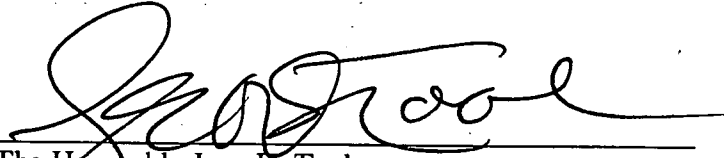
D. The School District's motion for a protective order is denied.

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Also pending before the Court is a motion by the School District for a protective order. Specifically, in the depositions of two former District officers, counsel for the District objected to questions about statements made while the School Board was in executive session, and instructed the witnesses not to answer. The sole basis of counsel's objection was the provision of the South Carolina Freedom of Information Act ("FOIA") which authorizes public bodies to go into executive session to discuss certain matters. The Court finds that this provision applies as an exception to disclosure under the FOIA but does not apply to discovery in a lawsuit brought by a person who was the subject in part of the executive session discussion. Accordingly, the District's motion is denied.

Conclusion

For the reasons stated herein, the Court grants defendant Jones Street's Motions for Summary Judgment and dismisses all of the plaintiffs' claims against Jones Street as a matter of law.⁴

IT IS SO ORDERED.


The Honorable Jean H. Toal
Chief Justice (Retired), South Carolina Supreme Court
Acting Judge, South Carolina Circuit Court

Nov. 19, 2016

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⁴ At first blush, it would appear that this Court's conclusions on Jones Street's motions would extend to the disposition of plaintiffs' claims, in whole or in part, as they relate to the other defendants in this case. The Court particularly notes that any claims against the remaining defendants by the student plaintiffs would be subject to dismissal if none of those defendants' statements mentioned any student plaintiff by name or otherwise identified an individual plaintiff such that the statements could be "of and concerning" the student plaintiff. At the motion hearing, counsel for the School District indicated that he intended to move for summary judgment after the Jones Street motion had been addressed. Because the School District's motion is not presently before the Court, the current record does not succinctly demonstrate the manner in which the grounds for summary judgment discussed herein would apply to defendants other than Jones Street. If and when the remaining defendants file their own motions, the plaintiffs may then respond with such evidence as they deem pertinent, and the record will be ripe for a complete analysis of the defamation claims against those defendants.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-7655
2014-CP-10-7203
2015-CP-10-0605
2015-CP-10-1044Eugene H. Walpole
PLAINTIFF(S)Charleston County School District et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 43(k), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Defendant Jones Street Publisher, LLC Motions to Dismiss, filed in this case and the three additional companion cases listed in the caption above. This Motion was filed on February 4, 2015, and argued before this Court on May 8, 2015. After review, this Court hereby denies Defendant's Motion, finding that the Plaintiffs have stated a cause of action based on the four corners of the complaint, and a 12(b)(6) dismissal would be premature.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

Circuit Court Judge

SCRPC Form 4C

2117
Judge Code

Date

7/6/15

ROA 26

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JAMES R. MOORE, JR. and BETTY
MOORE, Guardians Ad Litem for R. A. M., a
Minor; AMY GARRARD and LEE
GARRARD, Guardians Ad Litem for R.C.G., a
Minor; and DEAN FRAILEY and KATHRYN
FRAILEY, Guardians Ad Litem for C.F., a
Minor,

Plaintiffs,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2014-CP-10-7203

**DEFENDANT JONES
STREET PUBLISHERS, LLC'S
MOTION TO DISMISS**

FILED
2015 JAN 20 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendant Jones Street Publishers, LLC, respectfully moves to dismiss the Plaintiffs' Complaint for failure to state a claim on which relief can be granted.

The Plaintiffs' Complaint alleges a single cause of action for defamation, arising from statements made by Defendants concerning the public controversy over a practice of the football team of the Academic Magnet High School of celebrating victories by painting a face on a watermelon and then smashing the watermelon while chanting. The Plaintiffs are the parents of three members of the football team, who have brought this action on behalf of their respective sons.

Defendant Jones Street Publishers owns and publishes the *City Paper* weekly newspaper. The Plaintiffs' claim against it is based upon an opinion editorial ("op-ed") published in the *City Paper* about the controversy. The Plaintiffs contend that the op-ed is defamatory because of its statement that the football team had engaged in a " 'ritual that would be perceived as racist by

any sensible outside observer.’ ” Complaint para. 14 (quoting the *City Paper*). Plaintiffs further allege that the op-ed, “when read as a whole, falsely accuses the football team and the plaintiffs of being racist.” *Id.* A copy of the newspaper’s op-ed is attached as Exhibit A hereto.¹

While Jones Street Publishers disputes allegations of the Complaint, even accepting all of the allegations as true for purposes of this motion, the Complaint fails to states facts constituting a valid cause of action against Jones Street Publishers, for the following reasons:

1. The Defendant’s allegedly defamatory statements were not “of and concerning” the Plaintiffs’ sons, since they referred only to the football team as a whole and did not refer to any individual players, including the Plaintiffs’ children.

2. The alleged defamation constitutes protected expression of opinion, epithet, or hyperbole, and is therefore not actionable.

3. To the extent to which the Defendant’s op-ed contains statements that are not the expression of opinion, epithet, or hyperbole, it is protected by the fair report privilege as a fair and accurate report of statements made by public officials on the matter.

A memorandum of law with cases and authorities supporting the motion will be submitted prior to the hearing on the motion.

For the reasons stated above and in the forthcoming memorandum of law, Defendant Jones Street Publishers, LLC, moves the Court to dismiss it from this action with prejudice, to award its costs and attorneys’ fees, and to take such further action as the Court deems appropriate.

¹ On a rule 12 motion to dismiss, the trial court may consider documents referenced in but not attached to the complaint without converting the motion to dismiss into a motion for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009); *accord Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006) (newspaper article referred to in complaint considered on motion to dismiss).

Respectfully submitted,



Wallace K. Lightsey (S. C. Bar No. 6476)

Meliah Bowers Jefferson (S. C. Bar No. 74064)

WYCHE, P.A.

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E-Mail: wlightsey@wyche.com

mjefferson@wyche.com

Date: January 16, 2015

**ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC**

EXHIBIT A



HAIRE OF THE DOG | BY CHRIS HAIRE



Mob Rules

School board forces out superintendent for firing coach who condoned racist ritual

My friends across the United States, don't believe the hype. Charleston is not the No. 1 city in the United States. I'm sorry you've been led to believe this. I truly am.

Yes, we have a great and wonderful town, full of colonial charm and history and friendly pride. We're home to great chefs and great restaurants, a truly great arts festival, and a music scene that's on the edge of breaking through. — Cary Ann and Michael, love ya. Sean Brock: I just ordered your cookbook. Spoleto, Memorial Day weekend can't get here soon enough.

From the Battery to Upper King, the Ashley to the Cooper, we are truly one of the most beautiful cities in the country, if not the world. I love Charleston more than I've loved any other city — and I lived in Honolulu with the ocean right out my bedroom window and the mountains to my back.

But goddammit, this town is rotten with racists.

Not only do we have a Confederate flag-waving, Southern apologist heading up the College of Charleston, now the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act.

Honestly, I had no idea that this was how the Coach Bud Walpole controversy would play out. I don't think anyone really did. The ouster of McGinley is every bit as surprising as one of George R. R. Martin's wedding-day blood baths. But it's even more brutal than the *Game of Thrones* author could have conjured up because McGinley was in the right to give Walpole the boot — and the board should've backed her.

The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you don't already know, a racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it.

And based on what has been reported, it appears that McGinley, in part, was motivated to remove Walpole because he apparently didn't see anything disturbing himself, a stance that more than strains credulity given the coach's 50-some-odd years on this planet.

But none of that explains how we got here — with Charleston's most successful superintendent being escorted from office by pitchfork.

In hindsight, there's no denying that McGinley simply misjudged her fellow Charlestonians. Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't.

As the controversy unfolded, the black community largely remained silent while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people. Because one single coach had been fired, they were willing to ignore America's shameful racist past. Apparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.

Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.

Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African-American community, some of them their fellow students. Now that Nancy McGinley has been forced out of office, perhaps that realization will happen much sooner rather than later.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JAMES R. MOORE, JR. and BETTY
MOORE, Guardians Ad Litem for R. A. M., a
Minor; AMY GARRARD and LEE
GARRARD, Guardians Ad Litem for R.C.G., a
Minor; and DEAN FRAILEY and KATHRYN
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DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2014-CP-10-7203

DEFENDANT
JONES STREET PUBLISHERS, LLC'S
MOTION FOR SUMMARY JUDGMENT

FILED
2016 APR 29 AM 10:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

Pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, Defendant Jones Street Publishers, LLC, respectfully moves for summary judgment dismissing the Plaintiffs' Complaint on the ground that there is no genuine issue of material fact and Jones Street Publishers is entitled to judgment as a matter of law. This motion is based on the pleadings in this action and the affidavits of Paul Bowers and Chris Haire filed herewith, and will be supplemented with a legal memorandum with exhibits in the form of deposition excerpts and documentary exhibits supporting the bases for summary judgment.

The Plaintiffs' Complaint alleges a single cause of action for defamation, arising from statements made by Defendants concerning the public controversy over a practice of the football team of the Academic Magnet High School of celebrating victories by painting a face on a watermelon and then smashing the watermelon while chanting. The Plaintiffs are the parents of

three members of the football team, who have brought this action on behalf of their respective sons.

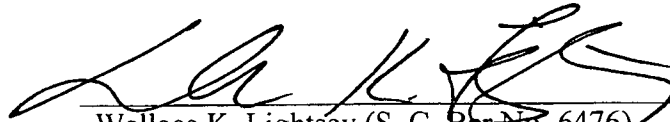
Defendant Jones Street Publishers owns and publishes the *City Paper* weekly newspaper. The Plaintiffs' claim against it is based upon an opinion editorial ("op-ed") published in the *City Paper* about the controversy. The Plaintiffs contend that the op-ed is defamatory because of its statement that the football team had engaged in a " 'ritual that would be perceived as racist by any sensible outside observer.' " Complaint ¶ 13 (quoting the *City Paper*). Plaintiffs further allege that the op-ed, "when read as a whole, falsely accuses the football team and the plaintiffs of being racist." *Id.* A copy of the op-ed is attached as Exhibit A to Chris Haire's affidavit.

Jones Street Publishers is entitled to summary judgment on the following grounds:

1. The Plaintiffs have no proof that the *City Paper* op-ed was the proximate cause of injury to Plaintiffs' reputations. Because South Carolina law requires proof of injury to reputation under the facts of this case, the absence of such proof requires dismissal of Plaintiffs' claim.
2. The Defendant's allegedly defamatory statements were not "of and concerning" the Plaintiffs, since they referred only to the football team as a whole and did not refer to any individual players, including any of the Plaintiffs.
3. The alleged defamation constitutes protected expression of opinion, epithet, or hyperbole that is immune under the doctrine of fair comment and the First Amendment privilege for statements of opinion, and is therefore not actionable.
4. To the extent to which the *City Paper* op-ed contains statements that are not the expression of opinion, epithet, or hyperbole, it is protected by the fair report privilege as a fair and accurate report of statements made by public officials on the matter.

For the reasons stated above and in the forthcoming memorandum of law, Defendant Jones Street Publishers, LLC, moves the Court to grant summary judgment dismissing Plaintiffs' claim against it with prejudice, to award its costs and attorneys' fees, and to take such further action as the Court deems appropriate.

Respectfully submitted,



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Date: April 19, 2016

**ATTORNEYS FOR DEFENDANT
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JAMES R. MOORE, JR. and BETTY
MOORE, Guardians Ad Litem for R. A. M., a
Minor; AMY GARRARD and LEE
GARRARD, Guardians Ad Litem for R.C.G., a
Minor; and DEAN FRAILEY and KATHRYN
FRAILEY, Guardians Ad Litem for C.F., a
Minor,

Plaintiffs,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2014-CP-10-7203

CERTIFICATE OF SERVICE

2016 APR 29 AM 11:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

This is to certify that I have this date caused to be served true and correct copies of
Defendant Jones Street Publishers, LLC's Motion for Summary Judgment, Affidavit of
Paul Bowers and Affidavit of Chris Haire on counsel of record in this action by causing the
same to be deposited in the United States mail, first class postage affixed, addressed as follows:

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Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

A.E.P., III, et al.,

Plaintiffs,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2015-CP-10-2389
(Consolidated Case)

DEFENDANT
JONES STREET PUBLISHERS, LLC
MEMORANDUM OF LAW
IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

FILED
2016 OCT 11 AM 11:15
JULIE J. ARISTON
CLERK COURT

Defendant Jones Street Publishers, LLC, ("Jones Street") respectfully submits this Memorandum of Law in Support of Its Motion for Summary Judgment.

BACKGROUND AND SUMMARY OF ARGUMENT

This consolidated action, and another virtually identical suit filed by the same law firm, strike at the heart of freedom of speech and of the press, for they attempt to impose liability on the publisher of a newspaper for doing nothing more than expressing an editorial opinion and engaging in public discourse on a matter of substantial public controversy.

The plaintiffs are six members of the Academic Magnet High School ("AMHS") football team. The related case has been filed on behalf of the head football coach, Eugene "Bud" Walpole. Jones Street has moved for summary judgment in the *Walpole* action as well, and this memorandum of law is incorporated by reference in support of the motion for summary judgment in that case.

In the fall of 2014, Walpole was fired from his coaching position because of a bizarre and inflammatory postgame practice of the team in which players smashed a watermelon that had

been painted with a caricature face bearing features similar to derogatory depictions historically used to mock African-Americans. All of the players on the AMHS team except for one were white, and the teams they had beaten were predominantly African-American. The players called the watermelon "Bonds Wilson" after a former segregated school named for two African American educators, and chanted "ooh ooh ooh" while smashing the watermelon (hereinafter referred to as the "watermelon ritual"). The Charleston County School District Superintendent fired Walpole from his coaching position following an official investigation of the watermelon ritual. Walpole was reinstated a week later under pressure from the School Board, which led to the resignation of the Superintendent. The controversy was covered widely in both local and national news media.

The plaintiffs' Complaints all allege a single cause of action for defamation, arising from statements made by defendants and two non-party School District officials concerning the public controversy over the watermelon ritual. Defendant Jones Street owns and publishes the *Charleston City Paper* weekly newspaper (the "*City Paper*"). The plaintiffs' claims against Jones Street are based upon two opinion editorials, or "op-eds," published in the *City Paper* about the controversy, and the headline of a news article reporting on the press conference where Coach Walpole's termination was announced. The plaintiffs contend that these publications are defamatory because they imply that the football team and the head coach are racist. Copies of the op-eds and article at issue are attached as exhibits to the Affidavit of Paul Bowers and Affidavit of Chris Haire filed with the motions.

Summary judgment should be granted for any of several independent but related reasons.

First, all statements of fact contained in the *City Paper* publications are merely restatements of the official, public comments of the School District Superintendent concerning

the public controversy. Accordingly, those statements are protected by the fair report privilege, which precludes liability for accurately reporting statements of government officials on governmental matters.

Second, to the extent that the op-eds go beyond such factual statements, their content is indisputably an expression of the editorial writer's opinions, ideas, and rhetorical commentary concerning the facts as reported by the School District Superintendent. Under the First Amendment, a citizen of this country cannot be held liable for expressing opinions, ideas or rhetorical hyperbole concerning a matter of public interest.

Third, the plaintiffs have no evidence that the *City Paper* publication at issue caused any damage to their reputations, and proof of injury to reputation is required as a matter of law in this case. Thus, the plaintiffs lack proof of an essential element of their cause of action.

Fourth, the allegedly defamatory statements were not "of and concerning" the plaintiffs, since they referred only to the football team as a whole and did not refer to any individual players, including any of the plaintiffs. A person cannot sue for defamation if the alleged defamatory statement does not refer to the person individually.

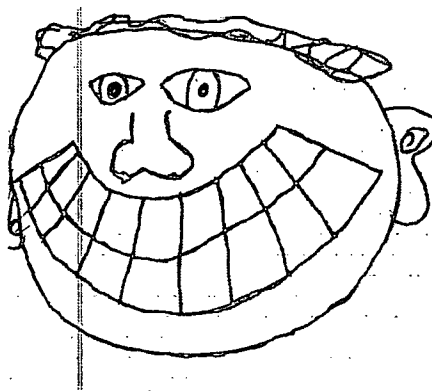
For any of these reasons, the Court should grant summary judgment and dismiss all of these cases as a matter of law.

STATEMENT OF UNDISPUTED FACTS

The story of the watermelon ritual broke on October 21, 2014. On that day, the Charleston County School District issued a press release stating that, after hearing of "inappropriate post game celebrations" by the AMHS football team, an investigation was conducted by the District and "as a result of the investigation, the head football coach will no

longer be serving as a coach for Charleston County School District.” Exhibit 1 (Media Release). The District also announced that School District Superintendent Nancy McGinley would be holding a press conference open to the public that day at the School District offices.

City Paper reporter Paul Bowers attended the press conference and wrote an article about it based on what he heard and observed there. As reported in the article, Superintendent McGinley stated at the press conference that “Players would gather in a circle and smash the watermelon while others either were standing in a group or locking arms and making chanting sounds that were described as ‘Ooo ooo ooo,’ and several players demonstrated the motion.” Superintendent McGinley described the chanting sounds as “monkey sounds” and stated that School Board trustee Michael Miller had reported that the football team engaged in a “tribal-like chant that is animalistic or monkey-like.” She also stated that the watermelon was nick-named “Bonds Wilson” and that it had a face drawn on it “that could be considered a caricature.” A copy of the caricature drawn by the same football player who drew it on the watermelons was shown to the persons attending the press conference. A copy of the drawing is attached to the affidavits of Paul Bowers and Chris Haire, and is reproduced here:



It is beyond dispute that the article written by Paul Bowers is a completely accurate statement of the official comments made by Superintendent McGinley at the press conference. It is beyond dispute that the headline of the article – “District: AMHS football team’s watermelon

ritual included ‘monkey sounds,’ ‘caricature.’ Coach removed after complaint of ‘animalistic’ sounds following defeat of majority-black team.” – is a completely accurate summary of the official statements that Superintendent McGinley made at the press conference. It is beyond dispute that Paul Bowers wrote his article in good faith. As he states in his affidavit:

At the time of the press conference, I knew Superintendent McGinley in a professional capacity and considered her to be a completely credible and reliable news source, especially in connection with official statements such as those made at the press conference. I accepted the statements she made during the press conference as accurate representations of the School District’s official position and findings concerning the watermelon ritual.

Bowers Affid. ¶ 6. The article includes comments from parents of AMHS students made in support of Coach Walpole at or following the press conference. Mr. Bowers attempted to reach Coach Walpole to ask for his comments, and left a voice mail message for him, but Walpole did not return the call. *Id.* ¶ 7.

The *City Paper* did not break this story. To the contrary, it was reported on by numerous other news media, on the internet, in print, on the radio, and on television. Many of these other publications and broadcasts were made to a much greater audience, readership, or viewership than the relatively small readership of the *City Paper*, and all of them reported the statements by Superintendent McGinley that the ritual included “monkey like” or “animalistic” sounds and a “caricature” face drawn on the watermelon. *Id.* ¶ 8; *see also* Haire Affid. ¶¶ 13-14 & Ex. D. In media outlets ranging from national publications to the local AMHS school newspaper, numerous commentators expressed the opinion that the behavior of the football players in the watermelon ritual was racist or racially offensive, and that either the players or the coaches had to have known or should have known that the ritual would be perceived as racist. Bowers Affid. ¶ 10; Haire Affid. ¶ 14.

For example, the Huffington Post – an internet news service with approximately 40 million readers a month – published an article entitled, “Was This High School Football Team’s Watermelon-Smashing Ritual Racist?” The article noted that “[t]he story has sparked outrage and debate nationwide.” It also quoted a commentator who said, “The idea that these kids were unaware that there may be a racial connotation to anything that they did, that is patently false.” See http://www.huffingtonpost.com/2014/10/27/south-carolina-high-school-football-watermelon_n_6054702.html (copy attached hereto as Exhibit 2).

In addition to national press attention, the story also received extensive coverage and commentary in local and regional publications. Indeed, one of the plaintiffs’ fellow students at the AMHS wrote an editorial in the school newspaper entitled, “Sometimes a Watermelon isn’t Just a Watermelon.” In his editorial, the student expressed his opinion in this way:

Black stereotypes are present in today’s society, and the students at Academic Magnet are aware of this. ... I feel that it is impossible that the team or individual who started this ritual did not know of any correlation between the watermelon and [the] African American race. The wide grin, large nose, and “twig-like hair” characteristics drawn on the melon are distinctly similar to depictions of Blacks during both slavery and post-slavery time periods. As if this wasn’t enough, the team decided it was appropriate to name one or more of the watermelons “Bonds-Wilson”, the name of the AMHS campus. The campus was named after the original all black high school that was built during segregation ... Granted, some of the students may not have known this, but it leads me to ask, “why name the melon ‘Bonds-Wilson’ in lieu of a name like ‘Academic Magnet’? As far as the “chanting” noises are concerned, ... with the other facts presented, it makes me wonder even more “what were my peers thinking”? ... No one has stood up to tell them that their actions were wrong, and it’s time for that to change.

William Pugh, *Sometimes a Watermelon isn’t Just a Watermelon*, The Talon, Nov. 5, 2014, <http://amhsnewspaper.com/3368/news/sometimes-a-watermelon-isnt-just-a-watermelon/>.

Here is a partial listing of other news coverage and commentary concerning the watermelon ritual and its aftermath:

- Coby Dubose, *White SC High School Football Team Celebrates Win by Making Monkey Sounds and Smashing Watermelons*, Daily Kos, Oct. 21, 2014;

- *S.C. Coach fired over watermelon, ape-like celebrations*, Associated Press, Oct. 21, 2014
- Joshua De Leon, *Racist Display Gets High School Football Coach Fired*, Ring of Fire Network, Oct. 22, 2014, available at <http://trofire.com/2014/10/22/racist-display-gets-high-school-football-coach-fired/>;
- D.L. Chandler, *Football Coach Canned After Mocking Black Opponents with Watermelons*, HipHopWired, available at <http://hiphopwired.com/2014/10/22/south-carolina-football-coach-watermelons-fired/>;
- *Coach Fired After Horribly Racist Postgame Parties Involving Acting Like Monkeys, Smashing Watermelons*, Americans Against the Tea Party, Oct. 23, 2014, available at <http://aattp.org/coach-fired-after-horribly-racist-postgame-parties-involving-acting-like-monkeys-smashing-watermelons/>;
- Amanda Kerr, *Whipper seeking coach's ouster*, The Post & Courier, Oct. 24, 2014, at A1, A4;
- *State rep: Fire all the coaches at Academic Magnet*, ABC News 4 (WCIV), Oct. 20, 2014;
- Joseph A. Darby, Op-Ed, *McGinley's departure teaches familiar lesson in unfairness*, The Post & Courier, Nov. 4, 2014;
- Stew Williams, Letter to the Editor, *Why trust the school board?*, The Post & Courier, Nov. 2, 2014;
- Steve Driscoll, Letter to the Editor, *Board should reconsider*, The Post & Courier, Nov. 2, 2014;
- Brian Hicks, Op-Ed, *Why the board and McGinley divorced: Race at the center of nearly every controversy*, The Post & Courier, Nov. 2, 2014;
- Brian Hicks, Op-Ed, *Politics, not policy, have doomed McGinley*, The Post & Courier, Oct. 29, 2014;
- Gene Sapakoff & David Shelton, *Academic Magnet coach fired over celebration*, The Post & Courier, Oct. 22, 2014 at A1, A10;
- Amanda Kerr, *S.C. Rep. Seth Whipper calls for suspension, firing of Academic Magnet coach*, The Post & Courier, Oct. 23, 2014;
- *S.C. coach fired for 'inappropriate postgame celebrations' offered job back*, USA Today, Oct. 22, 2014;
- Theresa Edwards, *Football coach fired amid allegations of racist behavior (update)*, SheKnows, Oct. 22, 2014, available at <http://www.sheknows.com/parenting/articles/1054841/football-coach-fired-amid-allegations-of-racist-behavior>;
- DV The Bossman, *Video: Racist SC High School Football Coach Fired After Team Mocks Black Opponents with Watermelons*, VannDigital.com, Oct. 22, 2014, available at <http://www.vanndigital.com/2014/10/22/video-racist-sc-high-school-football-coach-fired-team-mocks-black-opponents-watermelons/>;
- *Group calls for suspended then reinstated S.C. football coach to be banned again*, USA Today, Oct. 23, 2014;
- Arturo Garcia, *S. Carolina HS football coach fired after team mocks Black opponents with watermelons*, Raw Story, Oct. 21, 2014;

- *American football coach fired over 'racist watermelon ritual'*, onenews, Oct. 22, 2014; available at <https://www.tvnz.co.nz/one-news/world/american-football-coach-fired-over-racist-watermelon-ritual-6115075>;
- Christina Zdanowicz & Melonyce McAfee, *Football coach reinstated after controversial 'watermelon ritual'*, CNN, Oct. 23, 2014;
- *Superintendent explains why Academic Magnet coach was fired over postgame celebrations*, South Carolina Radio Network, Oct. 21, 2014;
- Steph Bazzle, *High School Coach Fired for Watermelon Ritual to be Reinstated*, Inquisitr, Oct. 23, 2014;
- William Black, *How Watermelons Became a Racist Trope*, The Atlantic, Dec. 8, 2014;
- Julianne Cassidy, *High school football coach fired over 'racist' watermelon ritual*, Scripps Media, Oct. 23, 2014;
- *Football coach reinstated after controversial 'watermelon ritual' angered NAACP, others*, Q13 Fox News, Oct. 23, 2014;
- Edmundo Carrillo, Op-Ed, *Apology for questionable celebration restores coach's job*, Santa Fe New Mexican, Oct. 23, 2014;
- David Shelton, *Academic Magnet football coach Bud Walpole fired*, The Post & Courier, Oct. 21, 2014;
- *S.C. superintendent resigns amidst postgame watermelon scandal fallout*, USA Today, Oct. 30, 2014;
- Amanda Kerr, *Nancy McGinley out: Board accepts Charleston schools chief's resignation*, The Post & Courier, Oct. 30, 2014;
- Caroline Schaeffer, *An Underdog Football Team On a Hot Streak Loses Coach When Its Watermelon Ritual Deemed Racist*, Independent Journal, available at <http://www.ijreview.com/2014/10/190848-watermelon-ritual-deemed-racist/>
- *Walpole rejoins Academic Magnet, 'thankful' to be coaching again*, WCSC, Oct. 22, 2014;
- Christina Zdanowicz and Melonyce McAfee, *Football coach reinstated after controversial 'watermelon ritual'*, CNN, Oct. 23, 2014;
- Phillip Weiss, *NAACP: Academic Magnet football coach apologized, did not see celebrations and racially insensitive*, Live 5 News (WCSC), Oct. 22, 2014;
- *Coach fired over watermelon celebration is rehired*, Associated Press, Oct. 23, 2014;
- *Injustice in Charleston, SC*, CNN, Oct. 21, 2014, CNN Producer Note;
- Amanda Kerr & Jeff Hartsell, *McGinley offers fired Academic Magnet coach his job back effective Thursday*, The Post & Courier, Oct. 22, 2014;
- William Joy, *Parents sound off after coach fired for post-game watermelon ritual*, (WCSC), Oct. 21, 2014;
- Kevin Bilodeau, *CCSD: SC football coach removed for post-game watermelon ritual*, (WCSC), Oct. 20, 2014, available at <http://raycomgroup.worldnow.com/story/26835720/ccsd-academic-magnet-football-coach-removed-for-post-game-watermelon-ritual>;
- Amanda Kerr & Jeff Hartsell, *Academic Magnet coach fired over watermelon celebration; players, parents defend coach*, The Post & Courier, Oct. 21, 2014;
- Frankie Mansfield, *Academic Magnet football coach Walpole fired*, Moultrie News, Oct. 21, 2014;

- Clay Travis, *Charleston High School Football Coach Fired Because Team Smashes Watermelons After Wins*, Fox Sports College Football Blog, Oct. 21, 2014;
- Amanda Kerr, *McGinley due over \$200,000 if fired*, The Post & Courier, Oct. 29, 2014;
- Editorial, *Talk about bad timing*, The Post & Courier, Oct. 29, 2014;
- Amanda Kerr, *School chief's future remains unclear*, The Post & Courier, Oct. 28, 2014;
- Andrew Miller, *Academic Magnet shakes off controversy*, The Post & Courier, Oct. 25, 2014;
- David Shelton, *Academic Magnet coach Bud Walpole fired*, The Post & Courier, Oct. 20, 2014;
- Amanda Kerr, *McGinley questioned Walpole's firing ahead of coach's dismissal, emails show*, The Post & Courier, Jan. 3, 2015;
- Barney Blakeney, *Only Six Blacks Entering Academic Magnet High's Freshman Class – Why?*, Charleston Chronicle, Aug. 10, 2015;
- Paul Bowers, *At majority-white Academic Magnet, students address race and diversity head-on*, The Post & Courier, Jan. 3, 2016;
- Amanda Kerr, *Charleston County School District report shows new findings of racism in Academic Magnet football ritual*, Charleston Post and Courier, Nov. 3, 2014;
- *Coach fired over watermelon celebration is rehired*, Yahoo Sports, Oct. 23, 2014;
- *Coach fired over watermelon, ape-like celebrations*, Fox Sports, Oct. 21, 2014;
- Brian Hicks, Op-Ed, *Some people missed the point of the whole Academic Magnet watermelon incident*, Charleston Post and Courier, Nov. 9, 2014;
- Cam Smith, *South Carolina football coach dismissed for 'inappropriate postgame celebrations'*, USA Today, Oct. 21, 2014.

In short, Superintendent McGinley's press conference and the factual allegations made therein were widely covered by national and local media outlets, and a diverse range of commentators expressed a diverse range of views on the story, including the opinion that the actions of the team were racist. Most of these publications and media have substantially greater viewership than the *City Paper* – for example, the *Post & Courier* has a circulation of over 90,000 a day; *USA Today* is read by over 4 million people every day; and WCSC Charleston TV has a viewership of about 253,000 people nightly.

Chris Haire is the Editor of the *City Paper* and wrote the two opinion editorials that are the subject of plaintiffs' lawsuits: "Melongate," which was published in the *City Paper* on October 21, 2014, and "Mob Rules," which was published in the *City Paper* on November 5, 2014. Copies of these editorials are attached to Mr. Haire's affidavit. Mr. Haire watched

Superintendent McGinley's press conference by a live television broadcast from the School District's public hearing room. As he affirms in his affidavit:

I distinctly remember Superintendent McGinley stating that the watermelon ritual involved "monkey-like" chants of "ooh ooh ooh ooh," the drawing of a caricature face on a watermelon, the naming of the watermelon as "Bonds Wilson," and the smashing of the watermelon while the players chanted the "monkey sounds."

Haire Affid. ¶ 5. The drawing of the caricature face was shown on the television broadcast. As

Mr. Haire states:

There was no question in my mind then, and there is no question in my mind now, that the drawing was intended to be a caricature of an African-American person — the broad nose, kinky hair, big ears and eyes, and big toothy grin immediately brought to my mind the "Sambo" caricatures of the past.

Moreover, "Bonds Wilson" is the name of the formerly segregated African-American school that had been located at the site of the Academic Magnet High School campus. The name "Bonds Wilson" was taken from the names of two prominent African-American educators of early 20th-century Charleston.

Based on the facts as stated by the School District at the public press conference, I formed the opinions that the watermelon ritual involved offensive racist behavior on the part of the football players, and that the players and coaches should have known that this behavior would be perceived as offensive and racist. I believed that the apparent failure of the players and coaches to recognize the possibility of such a perception of their actions was "indicative of the casual acceptance of racism in Charleston today, even among the best and brightest," as I stated in the first editorial.

Haire Affid. ¶¶ 7, 8, 9.

As with Paul Bowers, it is beyond dispute that Chris Haire wrote what he did in total good faith:

At the time of the press conference, I knew Superintendent McGinley well and had known her for some time. I have always considered her to be completely honest and trustworthy. I have never had any reason to doubt the truth of what she said, particularly in the context of official announcements such as those made at this public press conference, and I had no reason to doubt the truth of the statements she made during the press conference. I accepted them as true and reliable.

...

With both of my editorials on the watermelon ritual, my whole purpose in writing the editorials was to state my opinions concerning the ritual, the firing and reinstatement of Coach Walpole, and the resignation of Superintendent McGinley. I held these opinions in good faith at the time they were published, and I continue to hold them and to believe that they express a valid point of view. In writing these editorials, my sole intent was to express my views based on the official statements of the School District officials ...

Haire Affid. ¶¶ 6, 11.

ARGUMENT

1. Because of the First Amendment Defenses in this Case, the Usual Standard for Summary Judgment Does Not Apply. Instead, the Plaintiffs Must Present Clear and Convincing Evidence To Defeat Summary Judgment.

The “scintilla of evidence” standard does not apply to these motions for summary judgment, because of the First Amendment values at stake here. Numerous courts, including the state and federal courts of South Carolina, have recognized that the high cost and unpredictability associated with the defense of libel actions, and the “chilling effect” that these factors may exert upon freedom of speech and of the press, require that summary judgment be viewed differently in such actions as compared with other civil actions. For example, the South Carolina U.S. District Court explicitly held:

Summary judgment occupies a position of great importance in libel actions as compared with other civil actions, due to the possible chilling effect on constitutionally protected speech which would result from the defense of defamation claims. Courts have expressed a preference for the dismissal by summary judgment of libel cases in order to prevent all but the strongest cases from proceeding to trial.

MRR Southern, LLC v. Citizens for Marlboro County, 2012 WL 1016180, at *2 (D.S.C. Mar. 26, 2012) (emphasis added) (citing *Peeler v. Spartanburg Herald-Journal*, 681 F. Supp. 1144, 1146 (D.S.C. 1988); *Sunshine Sportswear & Elec. Inc. v. WSOC Television, Inc.*, 738 F. Supp. 1499,

1505 (D.S.C. 1989)).

Therefore, unlike the usual standard of review on a motion for summary judgment, this Court is required to exercise its independent judgment in assessing whether the plaintiffs have presented sufficient evidence in response to this motion to survive summary judgment:

The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not merely a question for the trier of fact. Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold

Bose Corporation v. Consumers Union of United States, Inc., 466 U.S. 485, 511, 104 S. Ct. 1949, 1965 (1984) (emphasis added). This requirement of independent review applies to the trial court's review of a motion for summary judgment:

[W]here the constitutional prerequisites of falsity and actual malice are at issue 'an appellate court has an obligation to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion on the [field] of free expression." While *Bose* and prior cases involved appellate review of trial verdicts in libel actions, logic and considerations of judicial administration dictate that the same level of review apply to the granting of summary judgment.

Liberty Lobby, Inc. v. Dow Jones & Co., 838 F.2d 1287, 1293 (D.C. Cir. 1988) (citations omitted; emphasis added) (quoting *Bose*, 466 U.S. at 499), *cert. denied*, 488 U.S. 825 (1988).

Moreover, in response to this motion, the plaintiffs must demonstrate here and now that they can overcome Jones Street's constitutional defenses with clear and convincing evidence. Such was the precise holding of the United States Supreme Court in *Anderson v. Liberty Lobby, Inc.*, 417 U.S. 242, 255-56, 106 S. Ct. 2505, 2514 (1986), and of the South Carolina Supreme Court in *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001), and *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002).

Thus, the plaintiffs must come forward with concrete evidence in opposition to the

motion; they cannot merely “assert[] that the jury might, and legally could, disbelieve the defendant.” *Anderson*, 417 U.S. at 256, 106 S. Ct. at 2514. “The plaintiff cannot rely upon the hope that witness cross-examination will raise a credibility issue.” *Fazekas v. Crain Consumer Group Division*, 583 F. Supp. 110, 114 (S.D. Ind. 1984).

As discussed below, the plaintiffs have no evidence to overcome Jones Street’s constitutional defenses, much less the clear and convincing evidence required to defeat summary judgment.

2. The Statements of Fact Are Protected by the Fair Report Privilege.

It is undisputed that all factual statements contained in the *City Paper* publications are accurate restatements of what was said in the public and official comments of the School District Superintendent concerning the watermelon ritual. Accordingly, those statements fall squarely within the privilege of fair report.

The “fair report” privilege has long been recognized in South Carolina courts both under the common law and as a constitutional protection, and has been expressly adopted by the Fourth Circuit. *See Reuber v. Food Chemical News, Inc.*, 925 F.2d 703, 712 (4th Cir. 1991); *George v. Kay*, 632 F. 2d 1103, 1105 (4th Cir. 1980), *cert. denied*, 450 U. S. 1029 (1981); *Eubanks v. Smith*, 292 S. C. 57, 354 S. E. 2d 898 (1987); *Padgett v. Sun News*, 278 S. C. 26, 292 S. E. 2d 30 (1982); *McClain v. Arnold*, 275 S. C. 282, 270 S. E. 2d 124 (1980); *Jones v. Garner*, 250 S. C. 479, 158 S. E. 2d 909 (1968); *Lybrand v. State Co.*, 179 S. C. 208, 184 S. E. 580 (1936); *Oliveros v. Henderson*, 116 S. C. 77, 106 S. E. 855 (1921). While the early cases apply the privilege as a matter of common law, in *Padgett v. Sun News*, *supra*, the South Carolina Supreme Court recognized that there is a constitutional basis for the common law privilege, in that holding a publisher liable for an accurate report of a government official’s statement or action would

constitute liability without fault in violation of *Gertz v. Robert Welch, Inc.*, 418 U. S. 323 (1974).

The privilege protects those who accurately report the substance of statements, actions, proceedings, reports, or records of public officials or agencies, even if what was stated by the government official turns out to be false and defamatory. As the Fourth Circuit has explained:

[The] fair report privilege shields news organizations from defamation claims when publishing information originally based upon government reports or actions. ... Government documents serve as 'the basic data of governmental operations.' *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492, 95 S. Ct. 1029, 1044, 43 L. Ed. 2d 328 (1975). The fair report privilege encourages the media to report regularly on government operations so that citizens can monitor them.

Reuber v. Food Chemical News, Inc., 925 F.2d at 712.

Further, as recently held by a South Carolina Circuit Court Judge, the privilege is not limited to official records or formal proceedings, but also applies to information provided by authorized public officials to the press. In *Brewster v. Laurens County Advertiser*, 40 Media L. Rep. 1978 (S.C. Cir. Ct. April 10, 2012) (copy attached hereto as Exhibit 3), Judge Addy granted summary judgment for a newspaper on the basis of the fair report privilege, holding that the privilege extended to information provided by email to the paper by a county sheriff's department employee. Similarly, in *Trexler v. Associated Press*, the South Carolina Court of Appeals held that the privilege applies to publications based on information provided in a press release from a public body. 2015 WL 1681002, 43 Media L. Rep. 1545 (S.C. Ct. App. 2015).

Many courts from other jurisdictions have held likewise, concluding that the fair report privilege covers the reporting of public statements made by public officials in news releases, press conferences, and interviews with the press. See, e.g., *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087 (4th Cir. 1992) (public statement of congressman); *Kilgore v. Younger*, 640 P.2d 793 (Cal. 1982) (report of statement made by official at press conference); *ELM Medical Laboratory, Inc. v. RKO General, Inc.*, 532 N.E.2d 675, 678 (Mass. 1989) (privilege extends to statements of

public officials in news releases and interviews); *Brandon v. Gazette Publishing Co.*, 234 Ark. 332, 352 S.W.2d 92, 93-94 (1961) (statement by governor at press conference).

The standard of accuracy is one of substantial truth, except that it applies with respect to the act or statement on which the report is based rather than the underlying truth of the matter. “It is not necessary that [the report] be exact in every immaterial detail. ... It is enough that it conveys to the persons who read it a substantially correct account of the proceedings.” RESTATEMENT (SECOND) OF TORTS § 611 comment f (1977); *accord Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546 (D.S.C. 2008). As long as the report is a fair and accurate summary of a statement made by a public official or agency, the person reporting it does not have to investigate the underlying truth of the matter, nor may he be held liable for the negligence or bad faith of the government official or agency that was the source of the defamatory charge. *See Padgett*, 278 S.C. at 31, 292 S.E.2d at 34.

In short, regardless of whether the statement made by the public official is true or not, if the press accurately reports the content of that statement, the press is immune from liability. The constitutional values underlying this privilege are heightened significantly when, as in this case, the matter at issue is one of substantial public interest. In this type of situation in particular, the press should not refrain from reporting statements by a public official on the matter for fear that they could be held liable if the official’s statements turn out to be untrue.

The plaintiffs’ own Complaints establish that the allegedly defamatory factual statements of the *City Paper*’s op-eds – as alleged by the very words used by the plaintiffs in their Complaints – fall within this privilege. The Complaints state that School District officials made the following public statements concerning the watermelon ritual:

- “the football team made animal sounds and drew a monkey face on the

watermelon during these celebrations,” Complaint ¶ 8¹;

- “the team made monkey sounds and drew a monkey face on the watermelon,” Complaint ¶ 8;
- “the plaintiffs [intended] to cast African American opponents in a derogatory light,” Complaint ¶ 8;
- “[t]he defendants by their statements falsely accused the team and plaintiffs of being racially prejudiced,” Complaint ¶ 8;
- “the members of the Academic Magnet High School football team ‘had engaged in a game ritual after football games in which the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make animal noises,’ ” Complaint ¶ 9;
- “players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as ‘ooh,ooh,ooh,’ ” Complaint ¶ 9;
- “the sounds were ‘monkey sounds,’ ” Complaint ¶ 10;
- “[plaintiffs’ actions were] racially derogatory actions intended to equate black members of opposing football teams with monkeys,” Complaint ¶ 10.

The affidavits of Paul Bowers and Chris Haire also establish that all of the factual statements contained in the pieces that they wrote were in fact taken from the statements made by Superintendent McGinley at the press conference. The plaintiffs do not dispute this. *See* Frailey Dep. at 88 (Exhibit 4);² Walpole Dep. at 67 (Exhibit 5).³

Thus, it is undisputed that all statements of a factual nature in the *City Paper* publications are accurate reproductions of comments made publicly by School District Officials, and thus are protected by the fair report privilege. It is immaterial that they summarized or paraphrased the

¹ The ¶ numbers referenced herein relate to the *A.E.P.* case. The complaints filed by the other student plaintiffs may reference different ¶ numbers, but are the same statements.

² Excerpts from the Deposition Transcript of Connor Frailey taken August 3, 2015 (“Frailey Dep.”) are attached hereto collectively as Exhibit 4.

³ Excerpts from the Deposition Transcript of Eugene H. Walpole taken December 16, 2015 (“Walpole Dep.”) are attached hereto collectively as Exhibit 5.

Superintendent's statements. "The privilege does not require that the published report be verbatim of the official report but it must only be substantially correct." *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 254 (4th Cir. 1988). Because the *City Paper* presented a substantially accurate summary of the facts as represented by School District officials, Jones Street is immune from liability for those statements as a matter of law under the fair report privilege. This includes the entirety of the headline of the Paul Bowers' article that is the subject of plaintiffs' Complaints, and all of the factual statements about the ritual in Chris Haire's editorials.

3. All Other Statements Are Protected Expression of Opinion and Rhetorical Hyperbole.

When the factual statements listed above are removed from the *City Paper* editorials, the allegedly defamatory content of what remains are statements that are unquestionably expressions of the writer's opinions and ideas, and comments of rhetorical hyperbole. Under established doctrine, Jones Street cannot be held liable for such statements. This is an issue of law for the court to decide. *E.g., Chau v. Lewis*, 771 F.3d 118, 128 (2d Cir. 2014) ("Determining whether a statement is an allegation of fact or mere opinion is a legal question for the court.").

It is settled law that expressions of opinion are immune from liability for defamation. The reasons are manifold. They include the need to protect self-expression – "the freedom to speak one's mind ... [as] an aspect of individual liberty – and thus a good unto itself"⁴ – and the societal and political value of public debate – "the common quest for truth and the vitality of society as a whole."⁵ Against this backdrop, the United States Supreme Court declared at the

⁴ *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 503 (1984).

⁵ *Bose*, 466 U.S. at 503-04.

outset of its opinion in *Gertz v. Robert Welch, Inc.*:

We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

418 U.S. 323, 339-40 (1974).

In the leading decision applying the First Amendment protection for expression of opinion, the Supreme Court held that “a statement on matters of public concern must be provable as false before there can be liability under state defamation law, at least ... where a media defendant is involved.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990) (emphasis added). Additionally, statements are protected if they “cannot ‘reasonably [be] interpreted as stating actual facts’ about an individual.” This protection is important because it “provides assurance that public debate will not suffer for lack of ‘imaginative expression’ or ‘rhetorical hyperbole’ which has traditionally added much to the discourse of our nation.” *Id.* at 20. In determining whether a statement can be “reasonably interpreted as an actual fact,” the court considers the nature and purpose of the publication and whether the statement is “easily susceptible (if at all) to ‘proof’ one way or the other.” *Faltas v. State Newspaper*, 928 F. Supp. 637, 649 (D.S.C. 1996).

More recently, the Supreme Court explained that a fact, in contrast to an opinion, must assert something verifiable:

A fact is “a thing done or existing” or “[a]n actual happening.” Webster’s New International Dictionary 782 (1927). An opinion is “a belief[,] a view,” or a “sentiment which the mind forms of persons or things.” *Id.*, at 1509[.] 7 Oxford English Dictionary 151 (1933) (an opinion “rests[s] on grounds insufficient for complete demonstration”).

Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 135 S. Ct. 1318, 1325 (2015). Whether the use of a term is a hyperbolic expression of ideas or whether it implies a fact

also depends on the context in which the term is used. *Faltas*, 928 F. Supp. at 648. Statements of fact “are readily understood by the reader to have a precise, unambiguous and definite meaning and can be objectively characterized as true or false.” *Chau v. Lewis, supra*, 771 F.3d at 129 (emphasis added).

The crux of plaintiffs’ Complaint against Jones Street involves the claim that the opinion editorials depict plaintiffs as racists. Removing the statements that merely repeated or summarized what School District officials stated publicly about the watermelon ritual, the editorials contain the following statements concerning the AMHS football team and coach:

In “Melongate”:

- “Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there’s one lesson to be learned from all of this it’s this: big toothy grins, watermelons, and monkey noises don’t mix. Any sensible person can see that.”
- “Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.”
- “That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn’t see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer.”
- “Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so. I don’t know about you, but I think it’s time to reconsider Academic Magnet’s rankings because clearly they are producing nothing more than grade-A dumbasses.”
- “The point is that an entire team of players thought it was OK to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.”
- “No one said, ‘Hey guys, I know not a single one of you has a racist bone in your body, you know, because that’s a bad thing, and well, you’re an Academic Magnet kid, and you come from a good middle-class white family and you’re

going to college, and there's no way in hell you'd, you know, draw a racist caricature on a watermelon and make monkey noises and do it fully aware of, like, what all that stuff means, because if you did, knowing all that stuff, then, yikes, people might start thinking you're racists. Hell, I'd think you're a racist, and, well, I just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?"

- "Actually, it's not. It's the sad truth about life here in Charleston, S.C. today."

In "Mob Rules":

- "School board forces out superintendent for firing coach who condoned racist ritual"
- "[N]ow the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act."
- "McGinley was in the right to give Walpole the boot – and the board should've backed her."
- "The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer."
- "Perhaps [McGinley] genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't."
- "Apparently, [for Walpole supporters] to admit that their coach, their children, might be just a smidgen racist was simply too much to bear."
- "Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated."
- "Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African-American community, some of them their fellow students."

None of these statements, to the extent they can be argued to have defamed the plaintiffs, asserts any verifiable, provable fact. They are expressions of the editorial writer's ideas and opinions, using rhetorical hyperbole to give color and emphasis to his views. Whether the

football players acted like “racist douchebags,” whether the team’s failure to perceive the negative racial connotations of their actions is “indicative of the casual acceptance of racism in Charleston today,” whether the watermelon ritual was an act that “any sensible outside observer” would “perceive[] as racist,” or an example of “inadvertently ... hurtful racially offensive behavior” – these are all statements on which different persons could have different views and sentiments, and in fact many people did express different views on this matter. None of these statements are statements of fact that can be objectively proved or disproved in a court of law, like whether a traffic light was green or red. They are the op-ed writer’s opinions about what had been reported by School District officials in their public statements on the controversy.

Indeed, plaintiff Ackerman agreed that “whether or not something is racist is a matter of opinion.” Ackerman Dep. at 71, lines 16-18 (Exhibit 6).⁶ Plaintiff Frailey agreed that the question of whether the watermelon ritual was racist “is a matter of opinion.” Frailey Dep. at 85, line 17 (Exhibit 4). Plaintiff Moore agreed “[a]bsolutely” that “people can have different opinions as to what is racist.” Moore Dep. at 115, lines 3-5 (Exhibit 7).⁷ And plaintiff Coach Walpole agreed that whether or not something is racist is a matter of “individual interpretation.” Walpole Dep. at 116 line 22 – p.117 line 1 (Exhibit 5).

Furthermore, the context in which the op-eds were published was the “Views” section of the newspaper – a section devoted to opinion and commentary - and the watermelon ritual was a matter of great public concern widely covered by local and national media. In the context of this public controversy, the op-eds published in the *City Paper* are a fundamental example of the type of public discourse protected by the First Amendment. *See Faltas*, 928 F. Supp. at 647

⁶ Excerpts from the Deposition Transcript of Adam Ackerman taken August 3, 2015 are attached hereto collectively as Exhibit 6.

⁷ Excerpts from the Deposition Transcript of Reece A. Moore taken August 3, 2015 are attached hereto collectively as Exhibit 7.

(publication of a letter to the editor calling the plaintiff a liar was “simply ‘hyperbole’ which a reasonable reader would not take as stating actual facts”).

By invoking the term “racist” in opinion editorials about a sequence of events that involved facts disclosed by the School District Officials of and concerning a racially sensitive matter, the *City Paper* was simply publishing the editorial writer’s views on a matter of public concern. As explained recently by the federal district court in *Forte v. Jones*,

[T]he allegation that a person is a “racist” ... is not actionable because the term “racist” has no factually verifiable meaning. See *Overhill Farms, Inc. v. Lopez*, 190 Cal. App. 4th 1248, 1262, 119 Cal. Rptr. 3d 127 (4 Dist. 2010) (“charging a person with being racist, unfair or unjust – without more – [...] constitute mere name calling and do not contain a probably false assertion of fact” as is required to state a claim for defamation).

... [E]ven seen in the worst possible light, [the publication at issue] is merely an indication that someone (not necessarily Defendant) is of the impression that Plaintiff is a racist. Again, pursuant to *Overhill Farms*, where someone thinks another person is a racist and says so to a third person does not constitute publication of a defamatory statement because the statement is one of factual opinion that cannot be proven or disproven.

2013 WL 1164929, at *6 (E.D. Cal. 2013) (emphasis added); see also *Silverman v. Daily News, LP*, 2015 WL 201392, 43 Media L. Rptr. 2099 (N.Y. App. Div. June 24, 2015) (defendant’s publication that plaintiff authored “racist writings” is statement of opinion, not fact); *Covino v. Hagemann*, 627 N.Y.S.2d 894 (Sup. Ct. 1995) (allegation of racism is protected expression of opinion).

Indeed, it is telling that the *City Paper* is the only publication that the plaintiffs have attacked, despite the widespread coverage of the controversy in local and national news media. This fact demonstrates that it is the *City Paper*’s editorial expression of opinion, not any factual statements reported by the newspaper, with which the plaintiffs take issue. All of the factual statements on which these lawsuits are predicated, the facts as represented by the School District officials, were reported by numerous other publications and broadcast media. Yet plaintiffs have

not sued any of those media companies – only the small business that publishes the *Charleston City Paper*. The only thing that distinguishes Jones Street from the other media that reported on this matter is how its editor expressed his opinions about the controversy. That editorial position is a constitutionally protected expression of opinion and commentary.

The writer's use of strong rhetoric to express his opinions, such as "behaved like racist douchebags," does not remove this protection – "rhetorical hyperbole" and "vigorous epithet" cannot be the basis of a claim for defamation. *Greenbelt Coop. Publishing Ass'n v. Bresler*, 398 U.S. 6, 14 (1970); *see also Milkovich*, 497 U.S. at 16-17, 20. "To foreclose the use of hyperbole, under the threat of civil liability, 'would condemn [commentary] to an arid, desiccated recital of bare facts.' Such a result would ill-serve the interests of the First Amendment in 'assur[ing] [the] unfettered exchange of ideas' among the American people." *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1385 (S.D. Fla. 2006) (quoting *Time, Inc. v. Johnston*, 448 F.2d 378, 384 (4th Cir. 1971); *Roth v. United States*, 354 U.S. 476, 484 (1957)). Indeed, a writer's use of hyperbole reinforces that what is being expressed is opinion rather than fact. *Neumann v. Liles*, 358 Ore. 706, 2016 WL 852812, 44 Media L. Rptr. 1433, 1439 (Ore. Mar. 3, 2016).

For example, courts have held the following expressions to be mere "name calling," "hyperbole," and "vigorous epithet," and thus immune from liability for defamation:

- "yes man" – *Bidzirk, LLC v. Smith*, 2007 WL 3119445 (D.S.C. Oct. 22, 2007);
- "two faced, crooked, and rude" – *Neumann v. Liles*, 358 Ore. 706, 2016 WL 852812, 44 Media L. Rptr. 1433 (Ore. Mar. 3, 2016);
- "bastard" (when used as epithet) – *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 348 (5th Cir. 1966);
- "scum" – *Lamelza v. Bally's Park Place, Inc.*, 580 F. Supp. 445 (E.D. Pa. 1984);
- "horse's ass," "jerk," "idiot," "paranoid" – *Blouin v. Anton*, 139 Vt. 618, 431 A.2d 376 (1981);

- “anti-semitic” – *Standing Committee on Discipline v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995); *Ward v. Zelickovsky*, 643 A.2d 972, 983-84 (N.J. 1994).

As one court put it, “the law affords no redress for insult alone.” *Mann v. Roosevelt Shop, Inc.*, 41 So. 2d 894, 895 (Fla. 1949).

In short, all statements of fact in the *City Paper*’s op-eds are protected by the fair report privilege, and all other allegedly defamatory statements are protected expressions of ideas, opinions, and rhetorical commentary. Nothing remains to support a valid claim of defamation.

4. Proof of Injury to Reputation Is Required, and Plaintiffs Have No Such Proof.

Injury to reputation is an essential element of a defamation claim. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622, 625 (1986). Unlike invasion of privacy, in which “the interest to be vindicated is the injury to the person’s own feelings,” *Zeran v. Diamond Broadcasting, Inc.*, 203 F.3d 714, 719 (10th Cir. 2000), in a defamation case “the primary harm being compensated is damage to reputation,” not “the mental distress from having been exposed to public view,” as in a privacy case. *Time, Inc. v. Hill*, 385 U.S. 374, 384 n.9 (1967); *see also Monitor Patriot Co. v. Roy*, 401 U.S. 265, 275 (1971) (“[D]amage to reputation is, of course, the essence of libel.”); *Capps v. Watts*, 271 S.C. 276, 283, 246 S.E.2d 606, 610 (1978) (“The essence of a defamation suit is recovery for injury to reputation.”).

Therefore, as one court explained:

Unless injury to reputation is shown, plaintiff has not established a valid claim for defamation, by either libel or slander, under our law. It is reputation which is defamed, reputation which is injured, reputation which is protected by the laws of libel and slander.

Gobin v. Globe Publishing Co., 232 Kan. 1, 6, 649 P.2d 1239, 1243 (1982). The same thought was echoed in *Tatum v. Philip Morris, Inc.*:

The issue in a defamation case is whether the plaintiff’s reputation has been

harmed. It is the injury to reputation and not to the feelings of the individual that is the subject of redress.

809 F. Supp. 1452, 1470 (W.D. Okla. 1991), *aff'd*, 16 F.3d 417 (10th Cir. 1993).

The court put it even more directly in *Zeran*: “Plaintiff’s defamation claim fails because Plaintiff has not shown that any person thinks less of him, Kenneth Zeran, as a result of the broadcast.” 203 F.3d at 719. Likewise, in *Hussain v. Palmer Communications, Inc.*, the court affirmed summary judgment for the defendant on this ground: “Although our plaintiff may have suffered an injury, he did not suffer injury to his reputation, as he could point to no one who thought he was John Doe #2 as referred to in KFOR’s news reports.” 60 Fed. Appx. 747, 751-52 (10th Cir. 2003).

Although the common law presumes damages in cases involving defamation *per se*, the South Carolina Supreme Court squarely held that damages may not be presumed in a case, like this one, involving a media defendant and a matter of public concern:

[I]n a case involving an issue of public controversy or concern where the libelous statement is published by a media defendant, the common law presumptions the defendant acted with common law malice and the plaintiff suffered general damages do not apply. Instead, the private-figure plaintiff must plead and prove common law malice and show “actual injury” in the form of general or special damages.

Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 466, 629 S.E.2d 653, 665 (2006) (emphasis added). General damages “are imposed for the purpose of compensating the plaintiff for the harm that the publication has caused to his reputation.” Restatement (Second) of Torts, sec. 621 comment a (1977). Special damages consist of some provable material loss to the plaintiff as a result of the injury to his reputation; hurt feelings do not suffice as proof of special damages. *Wardlaw v. Peck*, 282 S.C. 199, 318 S.E.2d 270 (Ct. App. 1984).

In discovery in this case, the plaintiffs have not identified any evidence of either special damages or general damages arising from injury to reputation as a result of the *City Paper*

publications. In an interrogatory to plaintiffs, Jones Street specifically asked them to identify any person who read the *City Paper* publications and, as a result of those publications (and not the numerous other news stories and editorials about the watermelon ritual), thought less of any of the plaintiffs or their reputations. The plaintiffs admitted that they could not identify any such person – not even one. See Plaintiffs’ Answers to Defendant, Jones Street Publisher’s, LLC’s, Second Set of Interrogatories, No. 18 (a copy of which is attached hereto as Exhibit 8).

Coach Walpole was not even aware of the *City Paper* publications over which he has brought suit until his attorney showed them to him. Walpole Dep. at 118, lines 16-23 (Exhibit 5). When questioned in their depositions about injury from the *City Paper*, none of the plaintiffs could identify any evidence that the article or editorials in the *City Paper* – as opposed to the other extensive media coverage of the controversy – was the proximate cause of any damage to their reputations. See Ackerman Dep. at 52, 69-70 (Exhibit 6); Frailey Dep. at 59-60, 63-65, 76-78, 87 (Exhibit 4); Moore Dep. at 83-84 (Exhibit 7); Nelson Dep. at 85, 88-89, 92-95 (Exhibit 9);⁸ Perry Dep. at 44-45, 61-63, 65-66 (Exhibit 10);⁹ R.C.G. Dep. at 32-33, 39-42 (Exhibit 11);¹⁰ Walpole Dep. at 119-123 (Exhibit 5).

This is not surprising – to the contrary, it makes perfect sense. The student plaintiffs were never even identified by the *City Paper*. Coach Walpole was reinstated to his position the very next week after being fired, with no loss of income. Walpole Dep. at 65 (Exhibit 5). The *City Paper* did not break the story about the watermelon ritual – it was already the subject of

⁸ Excerpts from the Deposition Transcript of Daniel Nelson taken August 4, 2015 are attached hereto collectively as Exhibit 9.

⁹ Excerpts from the Deposition Transcript of Arthur E. Perry, III taken August 4, 2015 are attached hereto collectively as Exhibit 10.

¹⁰ Excerpts from the Deposition Transcript of minor Plaintiff, R.C. G. taken August 4, 2015 are attached hereto collectively as Exhibit 11.

extensive publicity, both local and national, on the radio and television as well as in print and on the internet, including publicity of the alleged “monkey sounds” and caricature drawn on the watermelons. Thus, any inference of racism that might be drawn from the facts reported about the ritual had already been made in local and national media coverage of the story. See Exhibit D to Haire Affidavit.

The plaintiffs themselves assert this in their allegations against the School District. See Moore Complaint ¶ 13; Walpole Complaint ¶ 12. As Coach Walpole testified in his deposition:

Well, I believe that the statements made by the superintendent and the associate superintendent, as well as Kevin Clayton [the School District’s diversity consultant], were falsely made, were falsely published, that I knowingly allowed our team to draw a monkey face on a watermelon and make monkey noises. Those statements were defamatory and were published in the print media, they were on national TV, and on the Internet.

And by making those false statements, they were intended – their intentions were to depict me as a racist and to falsely accuse me of casting African-Americans in a derogatory light.

Walpole Dep. at 78 line 15 – p.79 line 1 (Exhibit 5).

In short, the *City Paper* publications did not cause any injury to the plaintiffs’ reputations, and the plaintiffs have no evidence to prove otherwise. Because the plaintiffs have no proof of injury to reputation as a proximate result of the *City Paper* publications, their cases lack proof of an essential element of the cause of action of defamation, and must be dismissed.

5. Individual Plaintiffs Were Not Defamed by Statements about their Team.

The student-player plaintiffs’ defamation claims also fail as a matter of law because nothing in the *City Paper* publications refers to any individual member of the AMHS football team, including any of the plaintiffs. The law does not allow a person to sue for defamation where there is no reasonable identification of the individual as the subject of the alleged

defamatory statement.

“To prevail in a defamation action, the plaintiff must establish that the defendant’s statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred.” *Burns v. Gardner*, 493 S.E.2d 356, 359, 328 S.C. 608, 615 (Ct. App. 1997) (emphasis added). Therefore, where defamatory language is applied broadly in discussing the members of a class or group, without any specific circumstances pointing to a particular member, no individual member has a right to maintain an action for defamation. *See AIDS Counseling and Testing Centers v. Group W Television, Inc.*, 903 F.2d 1000, 1005 (4th Cir. 1990) (“In order to actionably defame an individual, a publication must contain some “special application of the defamatory matter” to the individual. The ‘circumstances of the publication [must] reasonably give rise to the conclusion that there is a particular reference’ to the individual.”) (emphasis added; citations and quotation marks omitted)).

Nothing in the *City Paper* publications makes specific reference to any individual team member or any characteristic of a team member that would make him identifiable as the subject of the article or editorials. Courts examining analogous circumstances have found that the individual member of a group could not maintain an action for defamation. For example, in *Evans v. Chalmers*, 703 F.3d 636 (4th Cir. 2012), members of a college lacrosse team brought a section 1983 action against a police spokesperson and others, seeking to assert, *inter alia*, a “due process stigma-plus” claim based on several allegedly defamatory statements made concerning a rape investigation. The court reversed the trial court’s denial of the defendant’s motion to dismiss and the concurring opinion noted that the plaintiffs could not even meet the requirements of traditional defamation law because they were attempting to hold a spokesperson liable for statements about the team when no individual had been referenced. *Id.* at 660; *see also Algarin*

v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005) (affirming the dismissal of 23 individuals' stigma-plus claims because the alleged defamatory statements did not sufficiently identify any specific officers).

Similarly, the Fourth Circuit Court of Appeals affirmed a decision of the South Carolina District Court holding that a defamatory statement about a company's "management" was not "of and concerning" one of 17 individual members of the company management team. *Outlaw v. Standard Products Co.*, 122 F.3d 1062, 25 Media L. Rptr. 2470 (4th Cir. 1997) (copy attached). The Fourth Circuit reasoned:

[R]eference to a group does not implicate the individual members of the group. As the district court noted, in this case none of the articles mentions Outlaw [the plaintiff] or any other employee by name or title. The reference to "management" refers to a group, and therefore does not implicate Outlaw.

Id., 25 Media L. Rptr. 2470, at *2.

Likewise, the Second Circuit Court of Appeals has noted that cases sustaining "small group libel" claims "usually have involved numbers of 25 or fewer." *Algarin v. Town of Wallkill*, 421 F.3d 137, 139 (2^d Cir. 2005) (quoting RESTATEMENT (SECOND) OF TORTS § 564A cmt. B (1977)). These cases show that claims brought by an individual concerning statements made about groups of 17, 23, and over 25 cannot be sustained. In this case, the AMHS football team had 29 members at the time of the publications.

The public controversy that forms the context of this action heightens the First Amendment implications of this common law doctrine. As explained by a Michigan federal district judge, in dismissing a libel action brought by a member of a group allegedly defamed:

To avoid conflict with First Amendment values ... this court must reaffirm the general tort principle which requires that a publication specifically refer to or point to the plaintiff before he is permitted to maintain suit.

Michigan United Conservation Clubs v. CBS News, 485 F. Supp. 893, 900 (W.D. Mich. 1980),

aff'd, 665 F.2d 110 (6th Cir. 1981). Likewise, a federal court in Minnesota found that constitutional values play a role in application of this common law doctrine to debate over a public controversy:

To hold that statements commenting generally on the laetrile controversy are of and concerning individuals prominent in the controversy would chill heated public debate into lukewarm pap. The first amendment does not countenance such a deterrent of free speech.

Schuster v. U.S. News & World Report, Inc., 459 F. Supp. 973, 978 (D. Minn. 1978), *aff'd*, 602 F.2d 850 (8th Cir. 1979).

The *City Paper's* publications made only general statements about the conduct of the AMHS football team as a whole. The *City Paper* did not publish any facts or commentary specific to any particular member of the AMHS football team, and none of these plaintiffs can direct the Court to any statement in the *City Paper* that refers to any of them individually. Indeed, as noted above, the plaintiffs have all conceded that they do not know of any person who read the *City Paper* publications and, as a result, thought any less of any of them. For this reason, Jones Street is entitled to summary judgment on the defamation claims against it.

CONCLUSION

Our system of freedom of speech and of the press does not allow someone to bring suit against the news media for accurately and truthfully reporting the substance of public comments made by public officials on a matter of public controversy. Our system of freedom of speech and of the press does not allow one person to sue another based on expressions of opinion. Our system of free speech and press does not allow a member of a group to bring suit because the group has been criticized without singling out individuals. Our system does not allow someone

to sue for defamation when they have no evidence of injury to reputation as a result of the alleged defamatory statement.

The Court should grant summary judgment and dismiss this action against Jones Street.

Respectfully submitted,



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Meliah Bowers Jefferson (S. C. Bar No. 74064)
Christopher B. Schoen (S. C. Bar No. 80735)
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Date: October 5, 2016

**ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

A.E.P., III, et al.,

Plaintiffs,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2015-CP-10-2389
(Consolidated Case)

CERTIFICATE OF SERVICE

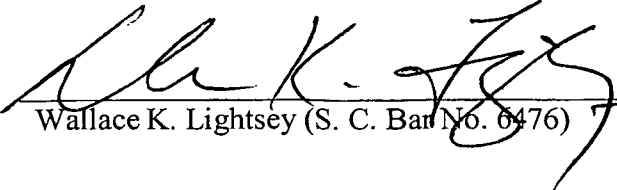
This is to certify that I have this date caused to be served a true and correct copy of the within and foregoing defendant Jones Street Publishers, LLC's Memorandum in Support of Its Motion for Summary Judgment on counsel of record in this action by causing the same to be delivered by Federal Express, addressed as follows:

John E. Parker, Esq.
William F. Barnes III, Esq.
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.
101 Mulberry Street East
Hampton, SC 29924

William H. Davidson, II
Steven R. Spreewuers
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive, Second Floor
Columbia, South Carolina 29204

Kevin Clayton and Axxis Consulting Company
1680 Dew Place
Marietta, GA 30064
Pro Se Defendants

Date: October 5, 2016


Wallace K. Lightsey (S. C. Bar No. 6476)

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CLERK OF COURT

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

A.E.P., III, et al.,

Plaintiffs,

vs.

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CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

**C.A. No.: 2015-CP-10-2389
(Consolidated Case)**

**INDEX OF EXHIBITS TO MEMORANDUM
IN SUPPORT OF DEFENDANT JONES
STREET PUBLISHERS, LLC'S
MOTION FOR SUMMARY JUDGMENT**

Exhibit	Description
1	October 21, 2014 Media Release
2	Chris Branch, " <i>Was This High School Football Team's Watermelon-Smashing Ritual Racist?</i> ", Huffington Post, Oct. 27, 2014
3	<i>Edward C. Brewster vs. Laurens County Advertiser</i> , 2012 WL 4767052 (S.C.Com.Pl.), 40 Media L. Rep. 1978
4	Excerpts from the Deposition Transcript of Connor Frailey taken August 3, 2015
5	Excerpts from the Deposition Transcript of Eugene H. Walpole taken December 16, 2015
6	Excerpts from the Deposition Transcript of Adam Ackerman taken August 3, 2015
7	Excerpts from the Deposition Transcript of Reece A. Moore taken August 3, 2015
8	Plaintiffs' Answers to Defendant, Jones Street Publishers, LLC's, Second Set of Interrogatories
9	Excerpts from the Deposition Transcript of Daniel Nelson taken August 4, 2015
10	Excerpts from the Deposition Transcript of Arthur E. Perry, III taken August 4, 2015
11	Excerpts from the Deposition Transcript of Robert C. Garrard taken August 4, 2015

For Immediate Release
October 21, 2014

Contact:
Erica S. Taylor

7:36 a.m.

Media Release

Statement

Academic Magnet High School Football Coach

Charleston, S.C. – There was an allegation related to inappropriate post game celebrations by the Academic Magnet High School (AMHS) Football Team. An investigation was conducted and, as a result of the investigation, the head football coach will no longer be serving as a coach for Charleston County School District.

Office of Strategy and Communications

Dr. Nancy J. McGinley
Superintendent of Schools

Erica S. Taylor
Executive Director

Coach Andrew Rusciolelli will serve as the interim head football coach and Coach Steven Kamp and Coach Gary Weart will be assistants for the two remaining games of the 2014 season.

Should additional information be requested, contact Erica S. Taylor, CCSD Office of Communications at (843) 937-6303.

Thank you.

Charleston County School District (CCSD) is the second largest school system in South Carolina representing a unique blend of urban, suburban, and rural schools that span 1,000 square miles of coastal lands. CCSD serves more than 48,500 students in 84 schools and several specialized programs. CCSD offers a diverse, expanding portfolio of options—including neighborhood, charter, magnet, IB (international baccalaureate), and Montessori schools—and is divided into early childhood, elementary, middle, secondary, "Innovation Zone" and Promise Neighborhood Learning Communities, each led by an associate or assistant associate superintendent. With approximately 6,000 employees district-wide, CCSD is the fourth largest employer in the region.

For more information, visit www.ccsdschools.com.

About Vision 2016

Vision 2016 is the next phase of Charleston Achieving Excellence, Superintendent McGinley's flagship reform initiative. The five-year plan aims to dramatically improve the achievement of every student in Charleston County and includes three fundamental goals: 1) close the achievement gap, 2) elevate achievement overall and 3) raise the graduation rate. These goals were developed through a series of community engagement meetings in partnership

with the CCSD Board of Trustees.

CCSD believes that by combining the right supports, high expectations, and great teaching—every child will graduate with the critical skills and knowledge necessary to succeed in college and the 21st Century global workforce.

For more information, visit vision2016.org.

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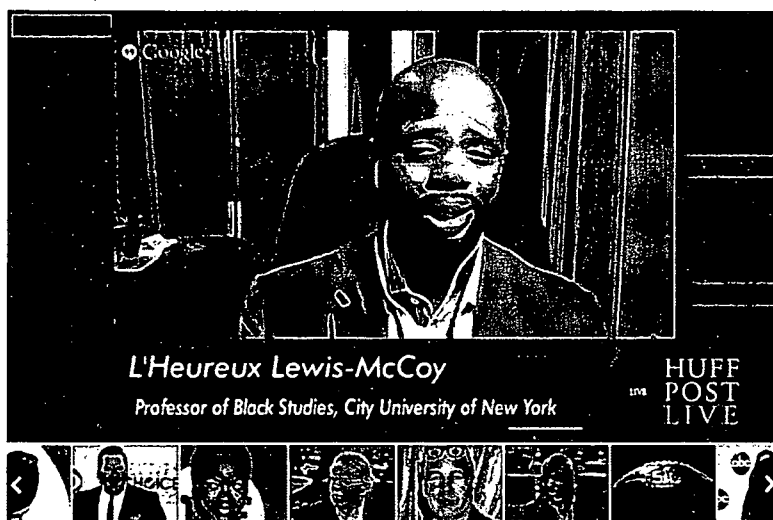
Was This High School Football Team's Watermelon-Smashing Ritual Racist?

10/27/2014 11:39 am ET | Updated Oct 27, 2014

132



Chris Branch



The saga of South Carolina high school football coach Bud Walpole is a strange one: first, he was fired for his team's reported watermelon-smashing ritual, after the school board found out about the practice and was understandably worried about the racial stereotypes attached.

Then, after more than 4,000 people signed a petition, Walpole was reinstated as head coach at Academic Magnet. The story has sparked outrage and debate nationwide.

HuffPost Live hosted a three-member roundtable — the lawyer for the team's parents, Larry Kobrovsky, Dr. Greg Carr, professor of African-American studies at Howard University and L'Heureux Lewis-McCoy, sociology and black studies professor at CUNY — to discuss whether the ritual was racist or not.

Kobrovsky, who the team's parents hired to help reinstate the coach, maintains there were no racist motives behind the tradition.

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ROA 75

"A watermelon by itself is not a racial or hostile fruit. In the consciousness of these students, I'm not sure if they even comprehend what you're talking about," he told host Marc Lamont Hill. "Used in a certain contexts, in a cartoon or something to show people, that's a different story than the context that you eat a watermelon then stomp on it after you eat it, I don't see a racial context in that."

Carr and Lewis-McCoy did not agree, to say the least.

"Once again, the artificiality of color blindness protects and preserves this notion of whiteness," Carr said. "There is no such thing as color blindness."

The idea that these kids were unaware that there may be a racial connotation to anything that they did, that is patently false," Lewis-McCoy added. "When we look at what young people actually understand about race, starting from five years old — really three years old — we see them understanding and working around race."

Catch the rest of the discussion above, and watch the [full HuffPost Live conversation here](#).

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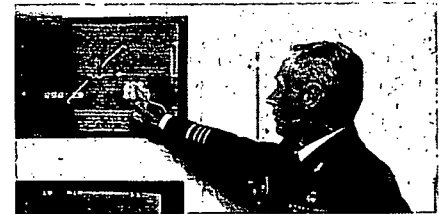
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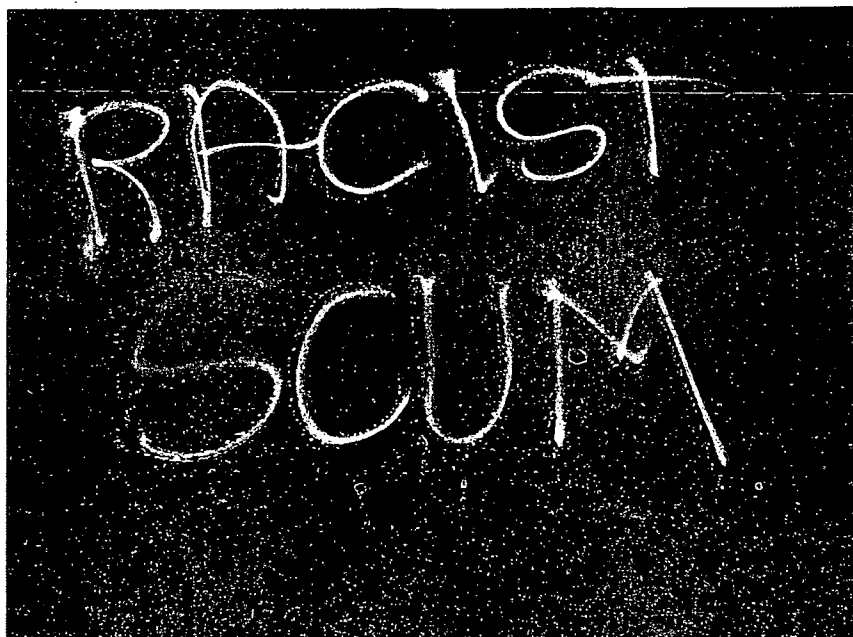
7 People You Will Lose In Your Life — And How To Cope



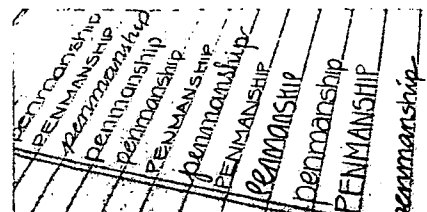
Mama June Of 'Honey Boo Boo' Fame Reveals 'Dramatic' Home Updates



ROA 76



25 Samples Of Perfect Penmanship That Are Totally On Point



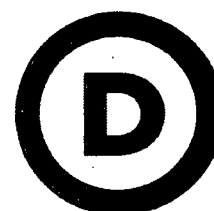
Toddler Gets Woken Up By Darth Vader, Has Totally Unexpected Response



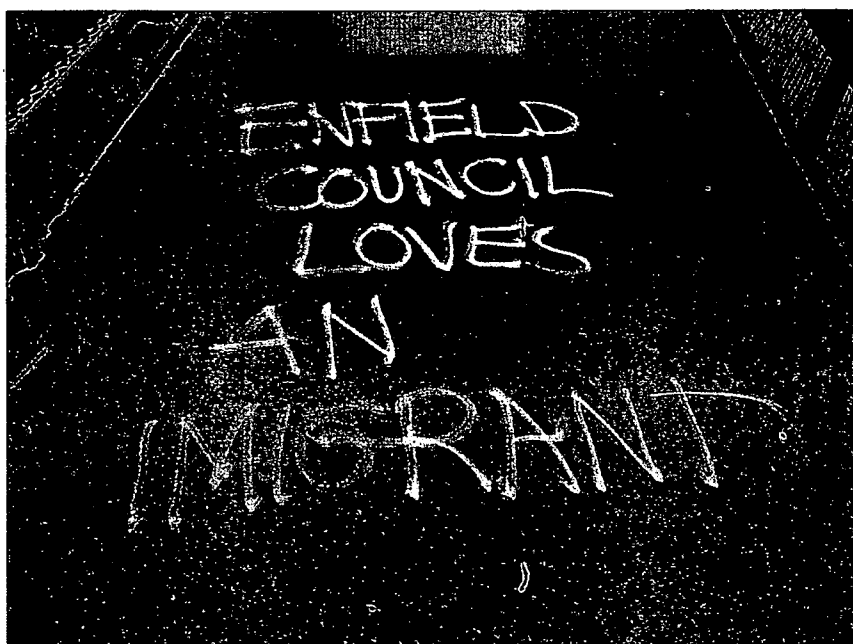
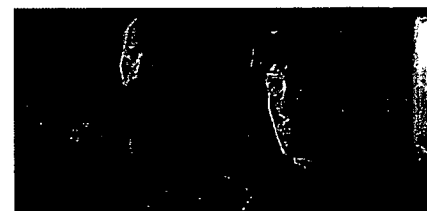
Terrifying Tornado Gives Teens A Prom Photo They'll Never Forget

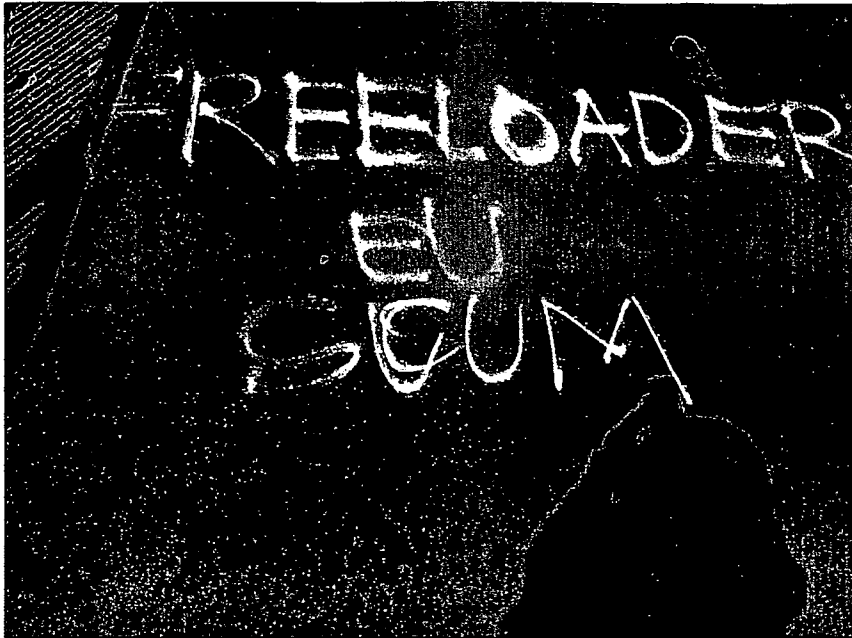


Clinton and the DNC Are Not Just Colluding -- They're Changing the Rules for Superdelegates

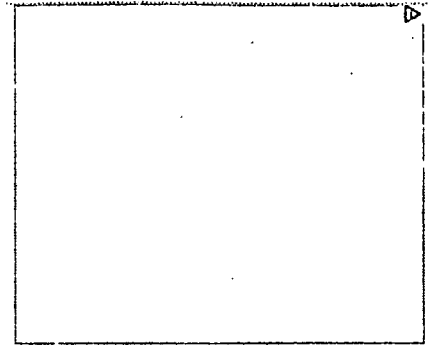


'Game Of Thrones' Star Art Parkinson Shoots Down Shaggydog Theory

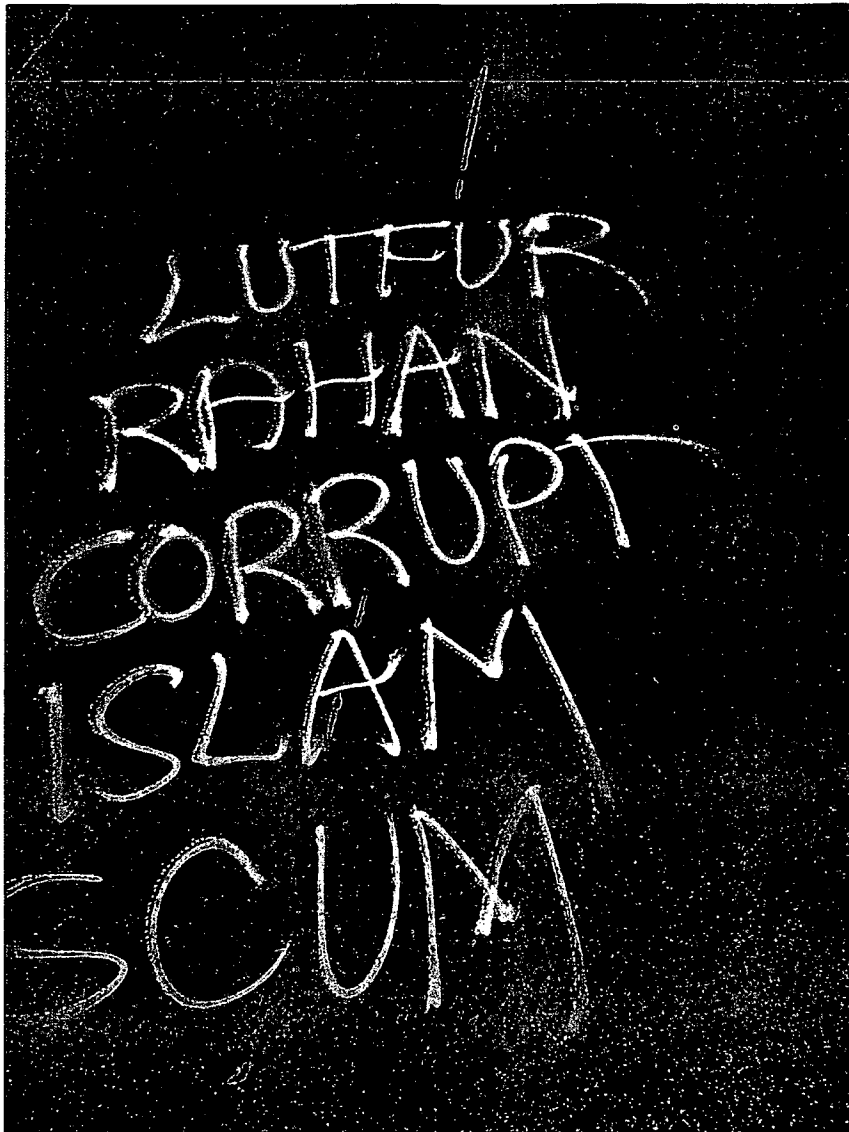




Yes, It Is Medically Possible For Janet Jackson To Be Pregnant At 49



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CONVERSATIONS

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**RonandGloria Page** · Franklin High School (New Jersey)

They are only doing just what they are teaching them. To take out into this F--KED UP WORLD. And then try to say that the kids don't know any better. LIERS

Like · Reply · 3 · Oct 27, 2014 11:44am

**Peter DeMars**

"Dr. Greg Carr"? Is he a physician? If not, then simply "professor Greg Carr or Greg Carr, PhD".

Why on earth would anyone give not one but TWO academics whose job relies on social conflict theory a platform? "African-American Studies" is about as weak a science as can be.

Like · Reply · 3 · Oct 27, 2014 11:52am · Edited

**Hannibal Pace** · University of Illinois at Chicago

If it weren't for my African American Studies courses, I would still be under the mistaken thinking that Abraham Lincoln "freed the slaves" to correct a 400 year wrong and not as a strategic tactic to cripple the South during the civil war. African American Studies courses are the last bastion for truth as 'Murica sterilizes the history books.

Like · Reply · 9 · Oct 27, 2014 1:50pm

**Lesa L. Tatum**

I doubt anyone would call African American studies a science. It's a educational curriculum and a good one. I personally learned so much more than I was ever taught in regular high school history classes but I could say the same for all the history courses I took in college to earn my degree. There were a lot of whites in those African American history classes I took and you would be surprised how many times I heard a white person say "Wow" or "I didn't know that". That's the purpose of the curriculum as it is for Asian history or classes or any other type of history class, which is to teach you things you never knew before.

Like · Reply · 5 · Oct 27, 2014 3:31pm

**Ryan-Michele D. Eagleton** · Litigation Paralegal at Law Firm

Maybe because people with PhDs are generally given the title Doctor? Are you the last person to catch the memo on that?

Like · Reply · 2 · Oct 28, 2014 11:15am

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**Danny Anderson** · Works at Retired

Get over this and move forward.

Like · Reply · 3 · Oct 27, 2014 12:10pm

**Victor Barney** · Southern Connecticut State University

All depends if they were black or white doesn't it? I still believe that everything is black and white, don't you know? I'm just saying...

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**Linda Pritchard** · Southeast African Centered High School

Maybe, maybe not; but a big assed waste of fruit!

Like · Reply · Oct 30, 2014 3:36am

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2012 WL 4767052 (S.C.Com.Pl.), 40 Media L. Rep. 1978 (Trial Order)
Court of Common Pleas of South Carolina.
Laurens County

Edward C. BREWSTER, Plaintiffs,
v.
LAURENS COUNTY ADVERTISER, Defendant.

No. 2010-CP-30-1186.
April 6, 2012.

Order Granting Defendant's Motion for Summary Judgment

Hon. Frank R. Addy, Jr., Judge.

*1 This matter is before the Court on Defendant Laurens County Advertiser's motion for summary judgment. For the reasons stated below, the Court grants the motion.

The material facts are not in dispute. This lawsuit arises from Defendant's publication of a newspaper article concerning an arrest, entitled "Agencies collaborate to end recent robberies," printed on July 15, 2009. The article included Plaintiff's mug shot and reported that "Edward Brewster, 52, of South Harper Street Extension" was one of four men arrested by the Laurens County Sheriff's Office, Laurens Police Department, and Spartanburg County Sheriff's Office in response to a series of armed robberies.

Unfortunately, it was Plaintiff's brother Teddy who was arrested for the robberies, not Plaintiff. Plaintiff and Teddy reside at the same address and were born just one year apart. Plaintiff and Teddy were arrested on July 3 and July 10, 2009, respectively, and the Laurens County Sheriff's Office mistakenly emailed Plaintiff's name and mug shot to Defendant's reporter in connection with their report of the arrest. Plaintiff's name and mug shot appeared in the article in question exactly as they appeared in the report sent from the police to Defendant's reporter. The information provided to the Defendant by the Sheriff's Office came from an official, authorized source within the Sheriff's Office, and was information provided "on the record" from the official source to the news media.

It is undisputed that the article is a completely accurate report of the information provided by the police agency responsible for the arrests, which Defendant's reporter considered reliable. He had no knowledge of the mistake made by the Sheriff's Office at the time the article was published, and there is no evidence that Defendant's reporter knew or should have known of the mistake on the part of the police agency. Defendant asserts, and the Court agrees, that these facts bring the newspaper article within the "fair report" privilege.

This privilege has been recognized in South Carolina both under the common law and as a constitutional protection. The privilege applies to fair and accurate reports of judicial records and proceedings and other governmental actions, reports, and documents. See *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 550 (D.S.C. 2008) ("South Carolina recognizes the fair report privilege."); see also *George v. Kay*, 632 F. 2d 1103, 1105 (4th Cir. 1980) (applying South Carolina law), cert. denied, 450 U. S. 1029 (1981); *Eubanks v. Smith*, 292 S. C. 57, 354 S. E. 2d 898 (1987); *Padgett v. Sun News*, 278 S. C. 26, 292 S. E. 2d 30 (1982); *McClain v. Arnold*, 275 S. C. 282, 270 S. E. 2d 124 (1980); *Jones v. Garner*, 250 S. C. 479, 158 S. E. 2d 909 (1968); *Lybrand v. State Co.*, 179 S. C. 208, 184 S. E. 580 (1936); *Oliveros v. Henderson*, 116 S. C. 77, 106 S. E. 855 (1921). While the early cases discuss and apply the privilege under the common law, in *Padgett v. Sun News*, supra, the South Carolina Supreme Court recognized that there is a constitutional basis for the common law privilege, in that holding a publisher liable for an accurate report of information obtained from a governmental record or proceeding would constitute liability without fault in violation of *Gertz v. Robert Welch, Inc.*, 418 U. S. 323 (1974).

*2 In general, the "fair report" privilege protects those who accurately report the substance of government proceedings, acts,

reports, or documents that turn out to contain false and defamatory information about a person. To come within the privilege, the report must be accurate, fair, and impartial; it may not contain defamatory matter extraneous to the record, act, document, or proceeding being reported; and it may not be made with actual malice. See *Jones v. Garner*, *supra*, 250 S.C. at 158; *Lybrand v. State Co.*, *supra*; *Oliveros v. Henderson*, *supra*. As the Fourth Circuit has explained:

“[The] fair report privilege shields news organizations from defamation claims when publishing information originally based upon government reports or actions.... Government documents serve as ‘the basic data of governmental operations.’ *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492, 95 S. Ct. 1029, 1044, 43 L. Ed. 2d 328 (1975). The fair report privilege encourages the media to report regularly on government operations so that citizens can monitor them.”

Reuber v. Food Chemical News, Inc., 925 F.2d 703, 712 (4th Cir. 1991).

As long as the report is a fair and accurate summary of the governmental act, proceeding, or record, the person reporting it does not have to investigate the underlying truth of the matter, nor may he be held liable for the negligence or bad faith of the person who was the source of the information reported. See *Padgett*, *supra*, 278 S.C. at 31, 292 S.E.2d at 34. Thus, the privilege protects the publisher from liability even if the information provided by the government is discovered to be false and defamatory. *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 550 (D.S.C. 2008) (applying South Carolina law). The privilege “is not measured by the legal sufficiency of the charges made ... or the truth of those charges. The privilege consists of making a fair and substantially true account of the particular proceeding or record.” *Padgett*, 278 S.C. at 31, 292 S.E.2d at 33 (quoting *Alexandria Gazette v. West*, 198 Va. 154, 160, 93 S.E.2d 274, 279 (1956)). Therefore, if a publication is a fair and accurate summary of a police report, the publisher has no duty to investigate the underlying truth of the report and he is protected by the privilege, even if the information in the police report is discovered to be false.

That is exactly the case here. The article that printed Plaintiff’s name and mug shot in connection with arrests for several armed robberies was a fair and accurate report of information provided to Defendant’s reporter on the record by an official and authorized source within the Laurens County Sheriff’s Office.

At the motion hearing, counsel for the Plaintiff argued that the privilege was not applicable, citing to the following language from the South Carolina Court of Appeals decision in *West v. Morehead*, 2011 WL 4025724 (S.C. App. 2011): “[t]he privilege extends only to a report of the contents of the public record and any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged.” *Id.* at *2 (quoting *Jones*, *supra*, at 487, 158 S.E.2d at 913). Plaintiff asserts that because the information concerning the Plaintiff was provided to the Defendant by email rather than through an official press release or other formal document, the privilege does not apply here. The Court finds that this is not a material distinction. Neither *West v. Morehead* nor any other case cited by the parties has held the privilege to be limited in this manner. Because the information provided to the Defendant by the Sheriff’s office was on the record, concerned an official act by the Sheriff’s Department (the arrest of Plaintiff’s brother), and came from an official, authorized, and proper source within the Sheriff’s Department, the Court finds that the privilege applies to the Defendant’s publication of the information.

*3 In a nearly identical factual scenario, the Missouri Court of Appeals in *Biermann v. Pulitzer Publ’g Co.*, 627 S.W.2d 87, 87-88 (Mo. Ct. App. 1981), found summary judgment for the defendant newspaper to be appropriate when the newspaper erroneously reported that the plaintiff was arrested on several drug charges. The newspaper received the defendant’s name from the local police department, and the reporter believed the information contained in the article was true when it was published. *Id.* Like the newspaper in *Biermann*, Defendant is immune from liability. The article was a fair and accurate report of information provided by the Laurens County Sheriff’s Office, thus Defendant had no duty to investigate the underlying truth of the arrest report, and it is immaterial that Plaintiff was not actually arrested in connection with the charges reported in the newspaper article (though, as noted above, he was arrested just a week before that). Accordingly, Defendant’s publication, as a matter of law, comes within the protection of the fair report privilege.

In order to overcome the privilege, the Plaintiff bears the burden of presenting clear and convincing evidence of common law actual malice as well as constitutional actual malice. A defendant acts with common law actual malice when he acts “with ill-will towards the plaintiff or ... recklessly or wantonly, meaning with conscious indifference toward plaintiff’s rights.” *Padgett*, 278 S.C. at 32, 292 S.E.2d at 34 (quoting *Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958)). By contrast, constitutional actual malice means knowledge of falsity or reckless disregard for the truth. See, e.g.,

Anderson v. Augusta Chronicle, 365 S.C. 589, 594, 619 S.E.2d 428, 431 (2006); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001); *Holtzscheiter v. Thompson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1999). In *George v. Fabri*, the South Carolina Supreme Court adopted as a matter of state law the holding of *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986), that the standard of "clear and convincing evidence" of actual malice applies to summary judgment motions when a constitutional privilege requires a showing of actual malice. This standard was reaffirmed in *Fleming v. Rose*, *supra*.

The Plaintiff concedes that he has no evidence of malice on the part of the Defendant. Accordingly, the Plaintiff has not presented sufficient proof to withstand Defendant's motion for summary judgment.

In a very similar case, the defendant newspaper in *Wilson v. Capital City Press*, 315 So.2d 393, 398 (La. Ct. App. 1975), received a list of suspects who were arrested in a drug raid directly from the police department responsible for organizing the raid. *Wilson*, 315 So.2d at 395. The plaintiff's name was on the list and printed in the newspaper, but the plaintiff had not been arrested. *Id.* at 393. The Louisiana Court of Appeals held that the newspaper was not liable for defamation as a matter of law, because the publication of plaintiff's name was based on information received from a proper and authorized source within the police department; thus there was no duty on the part of the publisher to investigate further and no showing of actual malice. *Id.* at 397-98. As in *Wilson*, there is no proof here that Defendant's reporter acted recklessly or wantonly with conscious indifference toward Plaintiff's rights, or had knowledge or reason to know that the Sheriff's Office had provided the wrong name.

Consequently, Plaintiff is unable to overcome the fair report privilege. Defendant is immune from liability as a matter of law. For these reasons, the Court grants Defendant's motion for summary judgment and dismisses Plaintiff's Complaint with prejudice.

So ordered.

April 6, 2012

<<signature>>

Hon. Frank R. Addy, Jr. Judge, South Carolina Circuit Court

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrand and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
 2 Plaintiff,) Civil Action No.:
 3 vs.) 15-CP-10-1044
 4 Charleston County School District,)
 5 Kevin Clayton, Axxis Consulting)
 6 Company and Jones Street)
 7 Publishers, LLC,)
 8 Defendants.)

9 A.E.P., III,)
 10 Plaintiff,) Civil Action No.:
 11 vs.) 15-CP-10-2389
 12 Charleston County School District,)
 13 Kevin Clayton, Axxis Consulting)
 14 Company and Jones Street)
 15 Publishers, LLC,)
 16 Defendants.)

17 * * * * *

18 DEPOSITION OF: CONNOR FRAILEY
 19 DATE TAKEN: Monday, August 3, 2015
 20 TIME: 1:19 p.m.
 21 PLACE: 123 Meeting Street
 22 Charleston, SC
 23 REPORTED BY: TERI L. SAMPSON, RPR,
 24 Notary Public and Certified
 25 Live Note Reporter

* * * * *

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DEAN FRAILEY
KATHRYN FRAILEY

I N D E X

WITNESS: CONNOR FRAILEY

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is reserved by the Deponent.

1 people were saying -- yeah, people were saying stuff
2 about it. I don't recall what because I really wasn't
3 talking to people about it. And then I remember our
4 principal kind of called us all into a classroom and
5 was like, "That was -- that was -- that was tough, you
6 guys did good, good luck on your game tomorrow --
7 tonight," kind of deal.

8 Q To your knowledge, did anyone at the school,
9 faculty, staff, students, friends, ever call you a
10 racist or say anything about racism?

11 A Me personally, I know some people kind of
12 joked about it, but they weren't just trying to be
13 outright -- they were saying like -- like people who
14 didn't totally agree with it, but didn't totally
15 disagree with it. And then there were -- like there
16 was one kid at our school who wrote an article in the
17 newspaper that kind of called us all, like, "Yeah, what
18 the heck were you guys thinking? That was really,
19 really insensitive and not -- not a good idea."

20 Q Okay. Was that student African-American?

21 A Yes.

22 Q But as far as anybody coming up to you and
23 calling you a racist or --

24 A No one called me a racist to my face.

25 Q To your knowledge, has your name ever

1 appeared in any of the newspaper articles or any of
2 the --

3 A None of the news articles.

4 Q -- press that's come out as a result of this?

5 A Not in the news articles, no.

6 Q Did you ever talk with Coach Walpole about
7 what happened?

8 A Not like a one-on-one, no. I think he kind
9 of addressed it -- actually, no, no, I don't think he
10 did. No.

11 Q Did he ever say anything about, "We're not
12 doing the watermelon and this is why"?

13 A He told us -- like after it happened, he told
14 us like, "Yeah, don't do that anymore, it's causing a
15 lot of problems."

16 Q Okay. Did he ever discuss with you-all
17 trying to make sure that you-all understood there are
18 certain things to do or not do that might be
19 misperceived by others as being racially insensitive?

20 A No, not to my knowledge.

21 Q Do you recall if the superintendent ever met
22 with the -- the football team?

23 A She did, once.

24 Q Do you recall what she said?

25 A I remember -- I remember they called us all

1 media, but I'll let her ask those questions because
2 she'll understand what you're talking about.

3 While you have been out in the community, has
4 anybody ever said anything to you about this whole
5 mess?

6 A When I -- usually when I tell people what
7 school I go to, they ask, "Oh, did you hear about this,
8 that," like I remember talking to one dude, I went to
9 my USC orientation and every time I talk to someone
10 from this area, like I talked to one guy who's from the
11 Beaufort area, he was -- I was talking to him and he
12 was like, "Oh, Academic Magnet," he was like, "Oh, did
13 you hear about all of this?" I was like, "Yeah, I was
14 on the football team" --

15 Q Okay.

16 A -- "at that point."

17 Q Anybody say anything to you about racist, not
18 racists, anything like --

19 A They never really gave their opinion on it,
20 but it just -- it made it hard to talk to people about
21 it just because you don't know their opinion on it.

22 Q Has anybody, to your knowledge, any of your
23 acquaintances, ever said anything about the fact that
24 what you did or what the team did was racially
25 insensitive or inappropriate?

1 A Have acquaintances of mine ever asked -- most
2 of my like -- could you repeat that one more time?

3 Q Yeah. Does anybody you know, your
4 acquaintances --

5 A Okay.

6 Q -- friends, ever say anything to you that
7 said they felt what you-all had done as a team was
8 racially insensitive or racist?

9 A Not that I can remember, no. Like I can't
10 remember one person who specifically come up and saying
11 it was racist.

12 Q Okay. Did you ever go to any kind of
13 diversity training or sensitivity training --

14 A No.

15 Q -- or anything like that?

16 Do you ever recall anyone at the school
17 district from the superintendent on down ever saying
18 anything about Connor Frailey being involved in this
19 incident?

20 A No.

21 Q Okay. You haven't seen your name in the
22 paper or --

23 A I have not.

24 Q -- anything directed directly at you?

25 A Not -- not in the paper no.

1 Q You haven't got any emails or --

2 A I have not.

3 Q -- texts or Twitters or what, Twitts, or
4 whatever they're called --

5 A Tweets.

6 Q Tweets, whatever they're called, or Facebook
7 about anything about this?

8 A One, not like someone sent it directly to me.
9 I remember -- I don't remember exactly what they said,
10 but I remember just some random person I don't know on
11 Twitter Tweeted about this. And then actually
12 Darius -- I think they were wondering because it gave
13 the initials in the paper, and they were wondering what
14 the -- like who they -- those kids were. And I
15 remember someone said like, "Oh, yeah, who are they?"
16 And Darius actually tagged me and Reece in that
17 comment, and then from then on, I can't remember what
18 they said, but I can't -- don't -- it wasn't exactly
19 positive.

20 Q It wasn't exactly?

21 A It wasn't exactly positive from what I
22 remember. It was like, "What the heck, why did you do
23 that?"

24 Q Okay. When you got in to Carolina, did you
25 get any scholarships?

1 A No.

2 Q -- in this publication?

3 Did it ever say that you were racist
4 specifically?

5 A It's just like when you -- not specifically,
6 no.

7 Q And you -- you did not sue any national
8 publication that implied that you were -- that -- that
9 implied that what the team did was racially insensitive
10 or racist?

11 MR. PARKER: Object to the form of the
12 question.

13 A (Continuing) No.

14 Q All right. But you did sue the Charleston
15 City Paper because they wrote an article implying or
16 stating that -- their opinion that what you did -- what
17 the team did, that the watermelon ritual could be
18 perceived as racist or racially insensitive?

19 MR. PARKER: Object to the form of the
20 question.

21 A (Continuing) Yes.

22 Q How has the City Paper's -- how has the City
23 Paper's publications of the article "Mob Rules" harmed
24 your reputation?

25 A Well, it's like that was the -- around the

1 time, that was the article that everyone around had
2 read just because it was so -- it took -- it kind of
3 took things -- it was on a different level than all the
4 other articles it seemed because everyone -- everyone
5 you talked to at the time was like, "Yeah, did you read
6 this, did you read this, did you read this?" It kind
7 of spread through the news, it kind of spread through
8 like a wildfire throughout our school community.

9 And then people I talked to, it's like they
10 weren't asking me, "Did you read the Live 5 news
11 article about this happening?" It's like, "Oh, did you
12 read Chris Haire's article about how -- about what your
13 school -- about what your school did and how" -- it
14 just seemed much more serious than...

15 Q Who -- who asked you that specifically?

16 A I have no idea.

17 Q Can you name anyone who specifically asked
18 you about the Chris Haire article?

19 A Just classmates, no. I can't name exact
20 names.

21 Q All right. And of the -- even though you
22 can't name any specific names, can -- can you tell
23 me -- let me start over.

24 The classmates who asked you about this
25 article, were they friendly with you before this

1 incident occurred?

2 A Mostly, yes.

3 Q And did there -- were they still friendly
4 with you after the article was published?

5 A Yes.

6 Q Has there been any other injury to your
7 reputation, to your -- any alleged injury to your
8 reputation as a result of this article?

9 A Just the uncertain, like I don't like to talk
10 about football, the football season in general because
11 of all this that happened. Like it's just a -- it's a
12 sore topic. It's -- it's almost an embarrassing thing
13 to talk about to nowadays to people you first meet
14 because you don't know how they're going to react.

15 Q Okay. So would you say that you -- as a
16 result of this article or -- as a result of this
17 article, you were -- you're now embarrassed about your
18 association with the watermelon ritual?

19 A I'm not embarrassed about the association of
20 it around the whole -- the whole thing that happened.
21 I'm just -- it's -- it's embarrassing to talk to a
22 person who has read these news articles that are
23 just -- just -- just straight up kind of torched
24 Academic Magnet's football team, like, and presented it
25 in such a negative light.

1 yes, it does have some racial issues to it.

2 Q Do you think whether or not the Confederate
3 flag is racist is a matter of opinion?

4 A I'd say more of just what you and your family
5 has experienced.

6 Q Okay. Do you think whether or not the
7 watermelon ritual, the perception of the watermelon
8 ritual, whether or not that's racist is a matter of
9 opinion?

10 A The ritual -- okay, the ritual in its
11 entirety, what we did, I don't think what we did is
12 racist and I think if you saw the whole story, what --
13 you can form your own opinion there, but I feel like
14 most people's opinion would be that it's not racist,
15 but then the information that came out about it was
16 pointed in a way that it would seem racist.

17 So, yeah, it is a matter of opinion, but it's
18 also -- it's an opinion generated on what you've heard.

19 Q Okay. Do you think the word "nigger" is
20 racist?

21 A Yes.

22 Q What about the word "nigga"?

23 A I'm never going to call anyone that just
24 because I know that people will take offense to that.

25 Q Okay. What about the word "coon"?

1 Q Spic.

2 A Spic, never heard the word before in my life.

3 Q Wetback, what about the word "wetback"?

4 A Wetback, that's -- isn't that a derogatory
5 term for Mexicans?

6 Q Hispanic people.

7 A Hispanic. Well, yeah, yeah, it's offensive.
8 It's a name that people come up with for some reason to
9 call other people that to refer to them in a derogatory
10 term, so, yeah.

11 Q Can you name anyone who thought less of you
12 because of the editorial in the City Paper entitled
13 "Mob Rules"?

14 A Anyone that I've asked or anyone that I could
15 think maybe would have thought less of me?

16 Q Anyone -- can -- anyone that you know of or
17 anyone that you -- that you can name that thinks less
18 of you because of the editorial.

19 A I mean, I've never asked anyone has their
20 opinion on me changed by it. I -- I've talked to
21 people and if they have a different opinion on -- of
22 me, like if they think I -- what we did was wrong, then
23 I can assume that they thought I probably have some
24 sort of racial issue or issue with race, although I do
25 not, but I cannot name anyone specifically.

1 Q Miss McGinley reported -- allegedly
2 Miss McGinley reported that the football team made
3 animal signs and drew a monkey face on watermelons
4 during the --

5 A Uh-huh (affirmative).

6 Q -- during the celebrations. She also
7 reported that -- let's see. That they -- Louis Martin
8 with the school district allegedly reported that the
9 team had engaged in a game ritual after football games
10 in which the team would draw a monkey face on a
11 watermelon and would smash the fruit and make animal
12 noises. Did the City Paper report any facts different
13 from that?

14 A From what I remember, they used the facts
15 that were reported by McGinley and Louis Martin because
16 that's -- those are the only facts that were put out to
17 the public.

18 Q Okay. Other than the facts reported by the
19 school district, was there anything else in the City
20 Paper that defamed -- that you believe defamed you?

21 A Again, just the way Chris Haire talked about
22 the students at Magnet.

23 Q So generally characterizing --

24 A Just characterizing --

25 Q -- the actions as racist?

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



5

5

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)

9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: EUGENE H. WALPOLE, III
19 DATE TAKEN: Wednesday, December 16, 2015
20 TIME: 1:00 p.m.
21 PLACE: 75 Calhoun Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

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EXHIBITS:

8	Defendant's	
9	Exhibit	Page
10		Description
11	1	Drawing, 9586-C-005
12	2	How Watermelons Became a
13	3	Racist Trope -- The Atlantic
14		October 17, 2014 email string,
15		9586-E-047
16	4	October 20, 2014 letter to
17		Walpole from Martin
18	5	Media Release Statement,
19		9586-D-001
20	6	October 28, 2014 letter to
21		Walpole from McGinley,
22		9586-F-008
23	7	Statement of commitment by
24		Bud Walpole, 9586-F-007
25	8	Typewritten statement,
		9586-D-007 through 009
	9	City Paper Melongate article
	10	City Paper article
	11	Mob Rules article

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the
transcript is reserved by the Deponent.

1 A Correct.

2 Q My understanding is that letter did not in
3 any way affect your teaching responsibilities at
4 Liberty Hill, correct?

5 A Correct.

6 Q It's my understanding also that as a result
7 of that letter, you appealed Mr. Martin's decision to
8 the superintendent?

9 A Yes.

10 Q And she overturned that termination of your
11 coach's duty after she met with you and heard from you
12 about your position in regard to this matter, correct?

13 A Yes.

14 Q So am I correct you never lost any income
15 whatsoever from the letter of October 20th?

16 A Correct.

17 Q Now, if you don't mind -- let me see if I can
18 find my copy. Take a moment and read that letter,
19 please.

20 A (Witness complied with request of counsel.)

21 Q Do you see anywhere in that letter where
22 Mr. Clayton -- I mean, Mr. Martin used the word
23 "racially prejudiced" in regard to you?

24 A No.

25 Q And he indicated in that letter the reason

1 insensitive, correct?

2 A That's what the letter states.

3 Q It doesn't say anything about Bud Walpole is
4 racially insensitive, does it?

5 A Does not say that, no.

6 Q Now, Miss McGinley, you said that she had
7 accused you of being racially prejudiced. Do you
8 recall that? Do you recall saying that?

9 A Yes.

10 Q Okay. When did that occur?

11 A In her -- she made a public statement, she
12 made a false statement in public that the -- that our
13 team was making monkey sounds.

14 Q Well, would you agree with me that if it was
15 represented that -- by one of the students that they
16 were going ooh-ooh-ooh, that could be considered --

17 MR. PARKER: Object to the form. We've been
18 over that four times.

19 BY MR. DAVIDSON:

20 Q -- potentially perceived as a monkey sound?

21 A No.

22 Q I will show you what's a news release.

23 MR. DAVIDSON: Mark that as 5.

24 (Defendant's Exhibit No. 5 marked.)

25 BY MR. DAVIDSON:

1 Q And you understand after all this had gone on
2 that there were certain members of the community that
3 were offended by the ritual, correct?

4 A Yes.

5 Q And you didn't want it to happen again and
6 that you felt that you could use this to teach your
7 players to be more sensitive to others of different
8 ethnic origins or different racial origins?

9 A That's what our agreement -- that was our
10 agreement.

11 Q Are you aware at any time Dr. McGinley ever
12 referring to you in any press release or any news
13 conference as being racially prejudiced or racially
14 insensitive?

15 A Well, I believe that the statements made by
16 the superintendent and the associate superintendent, as
17 well as Kevin Clayton, were falsely made, were falsely
18 published, that I knowingly allowed our team to draw a
19 monkey face on a watermelon and make monkey noises.
20 Those statements were defamatory and were published in
21 the print media, they were on national TV, and on the
22 Internet.

23 And by making those false statements, they
24 were intended -- their intentions were to depict me as
25 a racist and to falsely accuse me of casting

1 African-Americans in a derogatory light.

2 So, yes, I believe they are false statements
3 that were published and depicted me as being racially
4 insensitive and depicted racial prejudice.

5 Q We've referred to Mr. Martin and Mr. Clayton
6 during the meeting of the 16th.

7 A Uh-huh (affirmative).

8 Q We referred to Mr. Martin's letter to you of
9 the 20th, correct?

10 A Yes.

11 Q And the email that's been marked as one of
12 the exhibits, I can't remember the number, can you tell
13 me the number of the exhibit?

14 A Which one?

15 Q Yes, sir. What's that one?

16 A Three.

17 Q Other than those three documents, are you
18 aware of any other documents where any claims were made
19 by Mr. Clayton or Mr. Martin that you knowingly allowed
20 this to happen, anything in any of those documents?

21 A Any other documents besides these?

22 Q Those, because those are the ones you've
23 referenced here today. I've asked you a question. If
24 you know of any more, tell me what they are besides
25 newspaper articles, I'm not worried about newspaper

1 Q Do you know what Sambo, what the reference to
2 Sambo means?

3 A I've heard that name, but, no.

4 Q Could you identify -- could you identify a
5 Sambo picture if you saw one?

6 A I don't -- I don't know.

7 Q Do you believe the Confederate flag is a
8 racist symbol?

9 A Yes.

10 Q Have you ever worn clothing with the
11 Confederate flag on it?

12 A No.

13 Q Have you ever displayed the Confederate flag
14 on your vehicle?

15 A No.

16 Q Have you ever displayed the Confederate flag
17 on or in front of your home?

18 A No.

19 Q Who determines whether or not something is
20 racist?

21 A Who determines if something is racist?

22 Q Yes. Who determines whether or not something
23 is racist?

24 A It's up to the -- I don't know. I don't
25 know. It's up to the -- it depends on what it is, up

1 to the individual interpretation, I don't know.

2 Q Is it --

3 A If the person think it's derogatory, you
4 know, if I thought it was something that was derogatory
5 towards somebody.

6 Q Does --

7 A Is that what you mean?

8 Q Does the person committing the act, if --
9 scratch that.

10 If I perceive an action towards me as racist,
11 would that be a fair assessment on my part?

12 A If you -- if you were offended?

13 Q If I was offended and I considered something
14 to be racist, would that be a fair assessment on my
15 part?

16 MR. PARKER: Object to the form of the
17 question.

18 A (Continuing) I'm not sure I understand.

19 Q If -- is it the province of the offended or
20 the actor to determine what is racist?

21 A I'm not sure I understand the question. I
22 don't know.

23 MR. PARKER: Is what you're saying that just
24 because you perceive something is racist, does
25 that make it racist?

1 MS. JEFFERSON: No.

2 BY MS. JEFFERSON:

3 Q My question is, if I'm offended by an action,
4 does that make it racist?

5 A Does that make it racist?

6 Q Yes.

7 A You know, I don't know. I mean, I don't
8 know. I'm not sure I understand the question, how to
9 answer that.

10 Q All right. Do you believe that whether
11 something is racist is a matter of opinion?

12 A I don't know. I guess it could be. I
13 suppose it could be.

14 Q How did you --

15 A I don't know.

16 Q How did you first learn of -- how did you
17 first learn about the publications in the city paper?

18 A I believe -- I believe I first learned about
19 that either -- I believe my attorney had a copy of
20 that, that article, those articles in the city paper.

21 Q Okay.

22 A He had a copy of that and I believe that's
23 where I first read it, he gave me a copy.

24 Q Okay. Are you aware of any other media
25 publications about the incident with the football

1 players and the watermelon?

2 A Just, you know, what I've read on the
3 Internet.

4 Q Have you read any articles or any media on
5 the Internet that implied or called you racist?

6 A I believe I have, yeah, yes, uh-huh
7 (affirmative).

8 Q Did you lose any friends as a result of the
9 articles published by the city newspaper?

10 A Any friends?

11 Q Yes.

12 A Not that I know of.

13 Q You mentioned that the assistant coach at
14 North Charleston High refused to shake your hands.
15 Did -- are you aware of whether or not this coach was
16 with the team last year?

17 A I believe he was.

18 Q Okay. And did you -- you said you do -- he
19 did not mention this comment to you?

20 A No.

21 Q Okay. Did he shake your hand?

22 A I don't recall. We shake a lot of hands. We
23 shake the hands of every player, I do, of every player
24 and every coach that's in the line, that comes down the
25 line. Some coaches will walk off to the side sometimes

1 and just bypass the players and just shake the other
2 coaches' hands. So I don't recall -- I don't recall
3 shaking his hand. I may have. I remember shaking the
4 head coach's hand. We always -- but I do remember
5 shaking some of the assistant coaches' hands. I just
6 don't remember whether it was him.

7 Q Who told you that this coach made the
8 comment?

9 A One of my assistant coaches.

10 Q Could you please give me his name?

11 A Yeah, Steve Kamp.

12 Q You mentioned William Pugh as a student who
13 might have changed his opinion of you. Do you know
14 whether or not he changed his opinion of you?

15 A Just what I read in the article that he
16 wrote. I don't know -- he has never told me that.
17 But, like I said, I got to know William very well when
18 he got to school and always enjoyed talking with him,
19 very, very fine young man, and we asked him to do
20 the -- be the public address announcer for all of the
21 basketball games. We had a good relationship, and
22 still do, I still see him. I've seen him a couple of
23 times since then. And he's still very -- very pleasant
24 with one another, but I'm just basing it on that
25 article he wrote.

1 Q After he wrote this article, did you talk to
2 William about his opinion?

3 A No.

4 Q Why not?

5 A Well, I don't know. I don't know. Just
6 never did. I didn't feel led to at the time. We still
7 talk when I see him.

8 Q In your cultural sensitivity training from
9 SAVE, after you went through your cultural sensitivity
10 training at SAVE, did you feel it was important to
11 understand his point of view?

12 A Yeah, I mean, I respect any -- any of our
13 players, you know, students, coaches, you know, very
14 respectful of their point of view, yes, of course.
15 We're all -- sometimes we have disagreements on this,
16 that, and the other, and we've always been and we've
17 taught our players to be that way, you know, respect
18 the other person's point of view. If you don't know
19 what it is, you know, find out, be respectful, be
20 respectful to that.

21 Q But you did not talk to him about his article
22 or why he felt the way he felt?

23 A No.

24 Q Have you reached out to any of the schools
25 that -- have you reached out to any of the schools that

1 you -- that your team was playing in which the
2 watermelon ritual was performed?

3 A Have I reached out to them?

4 Q Yes.

5 A Well, we -- I have and I have always had a
6 good relationship with all of the coaches that we play.
7 We have mutual respect for one another, we've been
8 going at it for years, you know, on the football field,
9 basketball court, and we do. The St. Johns scrimmage
10 this year, we got together with them after the
11 scrimmage and had a nice conversation, wished them
12 well, it's always a pleasure to -- scrimmaging with
13 them because the teams are pretty evenly matched. And
14 like I said, we shared a Gatorade together.

15 And then Baptist Hill, I saw one of their
16 coaches in Chick-Fil-A one time on the way. We were on
17 the way to -- we were on the way to a trip out of town,
18 I think to Branchville, I think they were on their way
19 somewhere, and I saw the assistant coach that I've
20 known for a few years in Wendy's with the cheerleaders,
21 and he and I got to talking and he mentioned that they
22 were starting a -- trying to get a JV team or a B team
23 together, but they didn't have any -- didn't have any
24 uniforms, practice gear or anything like that, so I
25 knew that we had some extra practice gear, practice

1 pants and jerseys that we weren't using that we had
2 stored up, so I said, "We've got 30 or more of those if
3 you-all would like to have them, you know, to start
4 your program," and so they don't have to spend money.

5 So we -- as a matter of fact, we were playing
6 them the following week, so I said, "I'll just bring
7 them to you when I see you at the game next week." So
8 we got the stuff together and when we met at our field,
9 I handed him two bags of equipment. You know, we all
10 do that for each other. We all try to help each other
11 out when we can. We're competitors, but we're also
12 friends, you know, and we know that we want to do --
13 help our players and our program in any way we can,
14 we're all in that together.

15 Q So after -- I'm sorry.

16 A So that's the way we -- another way we kind
17 of reached out, give you an example.

18 Q After this media coverage, the coaches of
19 these other schools still remained friendly with you?

20 A Yes, yeah.

21 Q Just a couple more questions. You indicated
22 that you have suffered distress, emotional distress, as
23 a result of this incident. Could you explain to me how
24 you experienced emotional distress as a result of the
25 city paper publications?

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 29th day of December, 2015, in the City of Charleston, County of Charleston, State of South Carolina.

Teri L. Sampson



Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:

6

6

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrard and)
 Lee Garrard, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: ADAM ACKERMAN
19 DATE TAKEN: Monday, August 3, 2015
20 TIME: 3:20 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

26 * * * * *

27 POST OFFICE BOX 21784
28 CHARLESTON, SOUTH CAROLINA 29413-1784

A P P E A R A N C E S

REPRESENTING THE PLAINTIFFS:

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Eltzroth & Detrick, P.A.
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(803) 943-2111

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DISTRICT:

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LLC:

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A P P E A R A N C E S (Continued)

ALSO PRESENT:

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Columbia, SC 29203
(803) 988-0252
email: kanderson@scsba.org

MRS. ACKERMAN

I N D E X

WITNESS: ADAM ACKERMAN

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is reserved by the Deponent.

1 Q Okay. So you've got friends at Yonges Island
2 and friends that went to Magnet?

3 A Right.

4 Q Okay. All -- any of those friends stop being
5 friends after this incident?

6 A No.

7 Q Has anybody ever come up to you and said
8 anything to you about you being a racist or anything
9 like that?

10 A Jokingly.

11 Q Jokingly, okay. At --

12 A Well, I feel that it's been jokingly.

13 Q At school?

14 A Like everywhere that I see people --

15 Q Okay.

16 A -- when it comes up.

17 Q Is it the kind of banter that you know that
18 they're just picking at you?

19 A Yes.

20 Q Okay. Has anybody of African-American decent
21 ever said anything derogatory to you about this?

22 A No.

23 Q Have you ever been to any kind of sensitivity
24 training or diversity training?

25 A No.

1 Ackerman --

2 A No.

3 Q -- as a racist?

4 Do you think that the facts reported by the
5 school district suggest that you were racist?

6 A Where is the -- where are the facts or is it
7 just what's in the --

8 Q In your complaint. Well, I'll just say the
9 facts as you stated in your complaint, and I assume you
10 are familiar with your complaint.

11 A Yes.

12 Q So you -- you allege that those -- the facts
13 as you allege in the complaint imply that you were
14 racist?

15 A Yes.

16 Q If those facts were reported by other
17 publications, would you agree that those -- that those
18 publications also implied you were racist?

19 A Yes.

20 Q Could you please tell me what your -- could
21 you please tell me the exact injury you have incurred
22 as a result of the article published in the -- the
23 editorial article published in the city newspaper, the
24 city paper?

25 A Defamation of character.

1 Q And how has your character been defamed,
2 what -- what exactly -- injury have you felt?

3 A I've been characterized as a racist.

4 Q Who has characterized you as a racist other
5 than the city newspaper?

6 A I'm sure a lot of people.

7 Q Can you name any person who has characterized
8 you as a racist?

9 A Not personally.

10 Q So you -- you don't know of anyone who has
11 characterized you as a racist?

12 A Not personally, no.

13 Q Okay. Have you -- has your reputation
14 been other -- do you have any other harm to your
15 reputation other than your allegation of defamation
16 because of being called a racist?

17 A No.

18 Q What's your definition of racism?

19 A Racism?

20 Q Yes.

21 A Deliberately doing something that you know
22 offends another race.

23 Q So in order to be -- in order for something
24 to be racist or for you -- for something -- in order
25 for something to be characterized as racism or racist,

1 it has to be deliberate?

2 A No.

3 Q No. Okay. So in your definition, you said
4 that -- that it needed to be a deliberate act. Are you
5 changing your definition?

6 A No.

7 Q Do you think the Confederate flag is racist?

8 A No.

9 Q Do you agree -- do you -- are you aware that
10 some people disagree with you that the Confederate flag
11 is racist?

12 A Yes.

13 Q Do you believe that whether or not something
14 is racist is a matter of opinion?

15 A Can you repeat that?

16 Q Do you believe whether or not something is
17 racist is a matter of opinion?

18 A It is a matter of opinion.

19 Q Do you think the word "nigger" is racist?

20 A Yes.

21 Q What about the word "nigga"?

22 A Yes.

23 Q What about the word "jap"?

24 A I've never heard of that.

25 Q Slant eyes?

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional
Reporter, Notary Public and Certified Live Note
Reporter, State of South Carolina at Large, certify
that I was authorized to and did stenographically
report the foregoing deposition; and that the
transcript is a true record of the testimony given by
the witness.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of
August, 2015, in the Town of Goose Creek, County of
Berkeley, State of South Carolina.

Teri L. Sampson
Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



7

7

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
 2 Plaintiff,) Civil Action No.:
 3 vs.) 15-CP-10-1044
 4 Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 5 Company and Jones Street)
 Publishers, LLC,)
 6 Defendants.)
 7
 8 A.E.P., III,) Civil Action No.:
 Plaintiff,) 15-CP-10-2389
 9 vs.)
 10 Charleston County School District,)
 11 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 12 Publishers, LLC,)
 13 Defendants.)

14 * * * * *

15 DEPOSITION OF: REECE A. MOORE
 16 DATE TAKEN: Monday, August 3, 2015
 17 TIME: 10:00 a.m.
 18 PLACE: 123 Meeting Street
 19 Charleston, SC
 20 REPORTED BY: TERI L. SAMPSON, RPR,
 21 Notary Public and Certified
 Live Note Reporter

22 * * * * *

23 POST OFFICE BOX 21784
 24 CHARLESTON, SOUTH CAROLINA 29413-1784
 25

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1 A P P E A R A N C E S (Continued)

2

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I N D E X

WITNESS: REECE A. MOORE

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4	Charleston City Paper article	98

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is reserved by the Deponent.

1 Internet.

2 A Yes.

3 Q Did you ever see your name on TV or the
4 Internet or in the newspaper, anything like that?

5 A Oh, all the time associated with the football
6 team, I was on the cover of the sports page one time,
7 Reece Moore, Academic Magnet, those could two kind of
8 go hand in hand.

9 Q Okay. But anything about the watermelon
10 incident? I understand you would have been on the
11 football team, you probably either scored some scores,
12 there were articles about the team, I think this was
13 one of the first times you-all had had a -- a winning
14 season. Is that right?

15 A Yes.

16 Q Okay. So I know there were sports articles
17 about the team and a picture of the team. But do you
18 ever remember your name being mentioned with anything
19 about the watermelon incident and the investigation?

20 A No.

21 Q Okay. Did you ever see anyone refer to you
22 in -- either on the Internet, newspapers, anything,
23 about Reece being a racist?

24 A No.

25 Q Okay. Anything about Reece being racially

1 insensitive?

2 A No.

3 Q Other than being on the -- on the football
4 team, there would be no way to associate you with this
5 incident, is that right?

6 A There would be no way to associate my --

7 Q You with this incident.

8 A I don't understand the question.

9 Q All right. Other than the fact you're on the
10 football team, there's nothing that would indicate that
11 you were ever involved in this situation, correct?

12 A I attended Academic Magnet High School. I
13 mean --

14 Q Well --

15 A -- you --

16 Q -- not --

17 A -- you --

18 Q -- everybody at Academic Magnet High
19 School --

20 A Sure. But you're representing your high
21 school. That's why people wear class rings. That's
22 why -- you're supposed to be proud of your high school.

23 Q Okay. But my question is, other than the
24 fact that you were on the team, okay, nobody would know
25 one way or the other whether you participated in this

1 There's -- there's no other way.

2 Q Okay. Could -- could racism also be -- do
3 you think that people can have different opinions as to
4 what is racist?

5 A Absolutely.

6 MR. PARKER: They can about watermelons.

7 BY MS. JEFFERSON:

8 Q Do you --

9 MR. PARKER: I'm teasing.

10 BY MS. JEFFERSON:

11 Q Do you think the Confederate flag is racist?

12 A Do I think the Confederate flag is racist,
13 how can a flag be racist? Like are you asking about
14 the idea of the flag or the flag itself?

15 Q I'm asking you, do you think the Confederate
16 flag is a racist symbol?

17 A Do I -- no.

18 Q Do you think the word "nigger" is racist?

19 A Yes.

20 Q Do you think the word "nigga" is racist?

21 A When those -- when those words are used, in
22 what context are they being used?

23 Q So context matters for determining whether
24 something is racist?

25 A No, I'm just --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson
Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



8

8

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

A.E.P., III,

Plaintiffs,

v.

CIVIL ACTION NO.: 2015-CP-10-2389

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, AND
JONES STREET PUBLISHERS, LLC,,
Defendants.

**PLAINTIFFS' ANSWERS TO DEFENDANT, JONES STREET PUBLISHER'S, LLC'S,
SECOND SET OF INTERROGATORIES**

TO: WALLACE K. LIGHTSEY, ESQUIRE, and MELIAH BOWERS JEFFERSON, ESQUIRE,
ATTORNEYS FOR DEFENDANT, JONES STREET PUBLISHERS, LLC:

Plaintiffs' answers to defendant, Jones Street Publishers, LLC's, second set of interrogatories to plaintiffs as follows:

16. With regard to each expert witness Plaintiff(s) expect to call at trial, please state:
- His or her name and address;
 - His or her qualification or, in lieu thereof, attach a curriculum vitae to answers;
 - The subject matter on which he or she is expected to testify;
 - The substance of facts and opinions to which the expert is expected to testify;
 - A summary of the grounds for each opinion; and
 - Whether a written report has been furnished, and if so, attach a copy of any report rendered.

ANSWER: Plaintiff has not retained an expert witness.

17. State precisely the name of textbooks, treatises, or other articles, works, or documents of any kind that will be utilized:

- By each expert witness called by Plaintiff(s) and indicate which material will be used by which witness; or
- To otherwise substantiate Plaintiffs' contentions herein.

ANSWER:

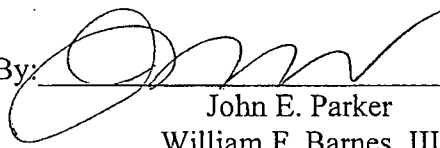
N/A

18. Identify any and every person of whom any Plaintiff or Plaintiffs' counsel is aware whose opinion of any Plaintiff or of any Plaintiff's reputation was changed for the worse as a result of reading any of the City Paper publications that are at issue in any of these cases.

ANSWER:

Plaintiffs know of no one in particular because people do not tell you such information but plaintiffs believe that everyone who read the Article and did not know the plaintiffs would have a negative opinion of plaintiffs.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By: 

John E. Parker
William F. Barnes, III
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
jparker@pmped.com
wbarnes@pmped.com

ATTORNEYS FOR PLAINTIFFS

April 8, 2016

CERTIFICATE OF SERVICE

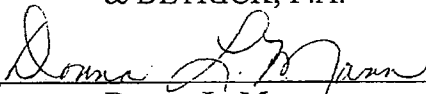
This is to certify that I, **Donna L. Mann**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiffs, have this date mailed via the U.S. Postal Service, a true and correct copy of the within *Plaintiffs' Answers to Defendant, Jones Street Publisher's, Inc.'s, Second Set of Interrogatories* with first class postage prepaid to:

Wallace K. Lightsey
Melliah Bowers Jefferson
WYCHE, P.A.
44 E. Camperdown Way
Greenville, SC 29601

ATTORNEYS FOR DEFENDANT, JONES STREET PUBLISHERS, LLC

RE: Perry, et al.. v. *Charleston County School Dist, et al.*
C/A No.: 2015-CP-10-2389

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 
Donna L. Mann,

April 8, 2016
Hampton, South Carolina

9

9

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants:)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

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 Kevin Clayton, Axxis Consulting)
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Richard Nelson and Cheryl Nelson,)
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Civil Action No.:
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vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
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 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)

9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: DANIEL NELSON
19 DATE TAKEN: Tuesday, August 4, 2015
20 TIME: 10:00 a.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

A P P E A R A N C E S

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DISTRICT:

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ALSO PRESENT:

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SCSBIT
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(803) 988-0252
email: kanderson@scsba.org

CHERYL NELSON
RICHARD NELSON

I N D E X

WITNESS: DANIEL NELSON

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EXHIBITS:

(No exhibits were offered or marked for
identification.)

S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the
transcript is reserved by the Deponent.

1 Mr. Clayton, anything from a school record point of
2 view negative happen to you, did you get a black mark
3 in your personal file, anybody withdraw any
4 recommendations for college, anything like that that
5 you know of?

6 A I mean, I honestly can't say. I was applying
7 to colleges during the time. They may have heard about
8 it and then decided not -- I mean --

9 Q You applied to, I think you said, Clemson and
10 Carolina?

11 A Well, I may not have been considered for some
12 scholarships that others would have.

13 Q Did you apply for other scholarships?

14 A I applied for -- yes, I applied to a few
15 online.

16 Q Okay. Did you ever interview?

17 A No, I did not.

18 Q Okay. Did you have to fill out an
19 application?

20 A For the scholarships?

21 Q Yeah.

22 A Yes.

23 Q Okay. Did any of them have a place on the
24 application that you played football at Academic
25 Magnet?

1 Q Okay. And advised you-all that Coach Walpole
2 had been removed as head coach?

3 A That's correct.

4 Q Okay. To your knowledge, other than
5 indicating to you-all that Coach Walpole had been
6 removed as head coach, did she say anything else?

7 A I remember she was not answering the
8 questions when we were asking --

9 Q Why?

10 A Yeah. She kept dodging the questions.

11 Q Okay. Do you think -- well, scratch that.

12 To your knowledge -- and there's been a fair
13 amount of press about all of this, I'm sure co-counsel
14 will ask you some of this, but to your knowledge, has
15 your name ever appeared in any newspaper or news
16 broadcast, either radio or TV, about being involved in
17 the watermelon incident at Academic Magnet?

18 A Not my specific name.

19 Q You listed out a fair number of friends that
20 you had in the Charleston area, both Academic Magnet
21 friends and friends over in Mt. Pleasant. Are they
22 still all your friends?

23 A (Indicating yes.)

24 Q You have to answer --

25 A Yes, sir, yes, sir.

1 Q Okay. Has any of your friends dropped you as
2 a friend because of this incident?

3 A No, sir.

4 Q Do you have any African-American friends?

5 A Yes, sir.

6 Q Have you talked with them about it?

7 A No, sir. I just choose not to bring it up.

8 Q And they have been tolerant, they haven't
9 said anything to you about it?

10 A That's correct.

11 Q Make sure I'm right, bought a watermelon,
12 draw a -- drew a picture on it, took it to ball games,
13 most of which were predominantly black schools, busted
14 the watermelon and made barking or chanting sounds at
15 the games, correct?

16 A I -- I would buy the watermelon usually and
17 someone would draw whatever face they would like on it,
18 then we would take it to the game and set it on the
19 bench and break it on the -- in the middle of the field
20 making football chants, huddle up and making football
21 chants, and eat the watermelon and then pick it up and
22 throw it away.

23 Q Okay.

24 MR. DAVIDSON: Do you want to ask some and
25 let me look at my notes and --

1 Q Okay. And what's your cell phone number?

2 A (843) 513-2642.

3 Q 2642?

4 A Yes.

5 Q And through social media -- through social
6 media or text, have you communicated with anyone about
7 the -- participating in the watermelon ritual or the
8 investigation or events concerning the watermelon
9 activities?

10 A I know on Facebook, I sent out a -- a post to
11 try and -- for a petition to get Coach Walpole
12 reinstated. So that -- I mentioned it there. And as
13 far as texting, I don't recall ever texting any --
14 anyone about it. I usually just talk to my teammates
15 in person, but...

16 Q Would -- would you agree that there has been
17 lots of publicity about this event?

18 A Yes, I agree.

19 Q Has there been national publicity about it?

20 A Yes, ma'am.

21 Q Could you tell me about some of the national
22 publicity that you're aware of?

23 A The Huffington Post, I believe, and then just
24 on those like news channels, like Nancy Grace type
25 things, I think I watched one where -- and everyone is

1 taking the side that, you know, we're racist because
2 we're from the south and that we're making the monkey
3 chants, which aren't monkey chants, they're football
4 chants. And so that's just what I've seen, and then
5 newspaper -- there's been some newspaper articles that
6 I know of, especially locally.

7 Q Okay. And there's been -- so there's been
8 lots of local coverage of it as well?

9 A Yes.

10 Q By "local," do you mean just Charleston or
11 all South Carolina?

12 A Mostly Charleston, but I know there has been
13 some across South Carolina.

14 Q Okay. And in your complaint, you are suing
15 the Charleston City Paper for defamation because of an
16 article they published entitled "Mob Rules." Could you
17 tell me what about -- could you tell me why you decided
18 to sue the City Paper over that article?

19 A Because I felt the article is misleading and
20 it didn't take an objective form of -- to portray and
21 you pretty much just assumed that we were racists and
22 didn't take the time to gather the facts and do honest
23 reporting.

24 Q Could you tell me how the article has
25 particularly caused you harm?

1 A I mean, it's harmed my character and my
2 reputation by pretty much calling me a racist.

3 Q And what harm to your character and
4 reputation have you experienced?

5 A I mean, I know that my peers kind of -- they
6 look at me differently and -- not as far as treatment,
7 but I know that they're like, "Oh, well, that's the kid
8 that had the idea for the watermelon," or if I ever go
9 to apply for a job and they figure out that, you know,
10 I was on the Academic Magnet football team, that's what
11 they're going to remember, you know, "Oh, you're the --
12 you're -- you participated in the watermelon thing."

13 Q Can you -- can you tell me any specific
14 person who has treated you differently because of the
15 article published by the City Paper?

16 A Like I said, they didn't necessarily treat me
17 differently. It's as far as I know that they -- they
18 view me differently, that they can -- they -- it -- it
19 gives them pause when talking to me, and like they --
20 they're not sure about who I really am even though
21 they've known me, the media kind of makes them doubt.
22 So, I mean, I'd say my closest friends that I listed
23 there, they've all had their doubts.

24 Q And did they tell you that was specifically
25 because of the article written by -- written in the

1 city -- in the Charleston City Paper?

2 A They didn't specifically mention that.

3 Q Do you know of anyone who was your friend
4 before the Charleston City Paper wrote the article who
5 is not your friend now?

6 A No, ma'am.

7 Q Do you know of any specific opportunity that
8 you have missed because of the publication in the
9 Charleston City Paper?

10 A Like I said, I could have possibly missed out
11 on some scholarships, but there's nothing where I can
12 concretely say that I definitely missed out, but also
13 just future employment opportunities because it's
14 always going to be out there now because it's been
15 published.

16 Q And do you -- can you -- you said that you
17 were aware that there has been national publication
18 indicating that the actions taken by the football team
19 were racist also. Do you know whether or not those
20 publications had any effect on the -- had any effect on
21 people's opinion either?

22 A Like I said, no articles were specifically
23 mentioned, but it -- I'm sure if someone has read them,
24 it can make them pause -- have pause about who I am.

25 Q Okay. And why did you decide to sue the City

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.


Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



10

10

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)

9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: ARTHUR E. PERRY, III
19 DATE TAKEN: Tuesday, August 4, 2015
20 TIME: 12:43 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

* * * * *

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I N D E X

WITNESS: ARTHUR E. PERRY, III

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It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is reserved by the Deponent.

1 teachers as well. And by the time I got out of my
2 interview, the whole school knew what was going on.

3 Q Okay. Anybody ever say anything to you
4 negative about what had happened?

5 A I'm not sure I understand the question.

6 Q Okay. Did anybody ever say anything to you
7 derogatory about your involvement with the watermelon
8 incident?

9 A No, sir.

10 Q And you understand what the word "derogatory"
11 means, negative?

12 A Yeah, and no one ever -- at the school, no
13 one ever talked bad about us because of that.

14 Q Okay. Has anyone in the community ever
15 spoken bad about you, about you specifically?

16 A Not to my knowledge, not to my face.

17 Q Okay. You presently employed?

18 A No, sir.

19 Q Have you worked any this summer?

20 A Yes, sir.

21 Q Where did you work?

22 A It's an Italian restaurant on Isle of Palms,
23 it's called Coda del Pesce.

24 Q Were you a waitress -- waitress. Were you a
25 waiter or a --

1 A I was a server assistant.

2 Q Server assistant. Had you ever worked there
3 before?

4 A The last summer as well.

5 Q And were you rehired or told -- did you work
6 there during the school year?

7 A I started back up in February.

8 Q Okay. And obviously they didn't think
9 anything about what went on at the Academic Magnet
10 school because they hired you again, didn't they?

11 A I -- I had already been employed there before
12 the incident.

13 Q They didn't let you go?

14 A No, sir.

15 Q Okay. Now, afterwards, did you ever attend
16 any type of diversity training or any training dealing
17 with race relations or anything like that?

18 A No, sir.

19 Q Okay. After this, I think Coach Walpole was
20 removed as the coach for the team, are you aware of
21 that?

22 A Yes, sir.

23 Q Okay. Did you participate in the meeting
24 with the principal about the team and what was going
25 on?

1 looking at Huffington Post, theirs isn't as bad, but I
2 personally felt that Charleston City and -- and Chris
3 Haire as well took it beyond the point of reporting on
4 what they thought had occurred and took it and used it
5 to almost attack the Academic Magnet, attack my
6 reputation.

7 Q And how do you think that the City Paper's
8 particular publication harmed your reputation?

9 A I think that now -- I know that I -- I can't
10 even wear an Academic Magnet shirt and walk around and
11 not have people think about that now. Academic Magnet
12 is -- it was ranked this year as the No. 7 best high
13 school in the nation, and I'm a graduate from that high
14 school. I should wear that shirt with pride, I
15 shouldn't have to think, you know, who's -- you know,
16 oh, they see that shirt, they're thinking about a bunch
17 of racist white people smashing watermelons.

18 I know that while I was on the football team,
19 we went to Subway every week, the one -- I don't
20 remember what road it's on, it's in North Charleston.
21 We were so -- after this incident, we were so concerned
22 with what people might think of us that we even
23 considered not wearing our jerseys to the Subway
24 anymore so when we got out of the our cars, people
25 wouldn't, you know, say, "Oh, there's the Magnet

1 football team. They're a bunch of racists."

2 I know of an incident with another student
3 where -- where in our basketball games, the other teams
4 would make slurs about us being racist white boys.
5 Like I said -- and I'm sorry, I had an incident with my
6 guidance counselor where she told me it may not be best
7 to mention the fact that I was on the Academic Magnet
8 football team.

9 And Coach Walpole is someone very dear to my
10 heart, he's a great mentor, and he wrote some of my
11 college letters. And I had my guidance counselor tell
12 me I should essentially shred those up, those aren't
13 worth anything because people are going to see that I'm
14 part of this program and it's not going to go -- it's
15 not going to go well for me anymore, there's nothing to
16 win out of being part of that program.

17 Q And do you -- do you know that the articles
18 from -- the editorial article from the City Paper, as
19 opposed to any other publicity, is because of your
20 alleged harm?

21 A I -- that's a -- that's an odd question. I
22 don't know that the City Paper is the main -- I mean, I
23 assume that they're all correlated to generate this
24 image, but being the Charleston City Paper, that's the
25 one that people in Charleston read. That's where I

1 live. So people who are getting this paper as their
2 normal paper are now going to think this guy is a
3 racist. They don't even know me. I never got to tell
4 my part of the story. Nobody knows except what was
5 posted.

6 Q You mentioned the team feeling like they
7 could not wear their jersey at the Subway. Did -- did
8 anybody ever tell you you could not wear your jersey to
9 Subway?

10 A We were never told we were not allowed to.

11 Q Did -- did anyone at Subway ever tell you not
12 to come back to Subway after this incident occurred?

13 A No. No, ma'am.

14 Q Okay. Did -- did anyone ever tell you you
15 were not welcome at Subway after this incident
16 occurred?

17 A No, ma'am.

18 Q Okay. You said that the -- that your -- that
19 the school's basketball team may have had some taunting
20 from other teams as a result of this.

21 A Yes.

22 Q Were you -- did anybody directly taunt you as
23 a result of this?

24 A Not me personally, but as a student body,
25 yes, we were taunted. At that point, I was part of

1 may not paint the best image for you."

2 We later talked about the fact that Coach
3 Walpole had written a lot of my letters of
4 recommendation. He wrote letters of recommendation for
5 all the schools I went to -- or all the schools I
6 applied to. And she advised me to not send those
7 letters because of his name and the fact that he was
8 associated with the football team and that those may
9 not do me any good, in fact, those may do me damage
10 applying to colleges.

11 Q Did you send those letters?

12 A I did.

13 Q And you -- remind me, you told me -- you told
14 us that you applied to Elon, Wofford, USC, and Auburn.
15 If you had to rank those schools, you know, from your
16 first choice to your -- your -- I guess your -- your
17 last choice, how would you rank them?

18 A Elon, USC, Wofford, Auburn.

19 Q Okay. And so you got into Elon, but you were
20 wait listed?

21 A I did.

22 Q And then you got into USC and you are
23 planning to attend there?

24 A Yes, ma'am.

25 Q Okay. Do you -- can you identify anyone who

1 knew of your reputation before the City Paper editorial
2 and knew that you were on the football team who thought
3 less of you after the editorial was published?

4 A You mean like anyone directly who --

5 Q Directly, yes.

6 A Not to my knowledge. I mean, I would -- you
7 know, other coaches from other teams perhaps. I don't
8 know what other people thought of us at that point.

9 Q Does -- did the City Paper editorial ever
10 specifically name you?

11 A No, ma'am.

12 Q How do you define racism?

13 A I define racism, I would assume, as a -- a
14 genuine hate for someone of a different color, when --
15 degrading people based on the color of their skin, not
16 by the strength of their character.

17 Q And how --

18 A Sorry. Go ahead.

19 Q And how do you know when something is racist?

20 A Like I said, it's when -- when something is
21 degrading, when something is physically degrading to
22 someone of a different color skin, not because of any
23 character aspects or anything like that.

24 Q Who determines whether or not something is
25 racist?

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson
Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



11

11

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
Moore, Guardians Ad Litem for)
R.A.M., A Minor; Amy Garrant and)
Lee Garrand, Guardians Ad Litem)
for R.C.G., A Minor, and Dean)
Frailey and Kathryn Frailey,)
Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
Kevin Clayton, Axxis Consulting)
Company and Jones Street)
Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
14-CP-10-7655

vs.)

Charleston County School District,)
Kevin Clayton, Axxis Consulting)
Company and Jones Street)
Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
Guardians Ad Litem for D.G.N.,)
a Minor,)

Plaintiffs,)

Civil Action No.:
15-CP-10-605

vs.)

Charleston County School District,)
Kevin Clayton, Axxis Consulting)
Company and Jones Street)
Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: R. C. G.
19 DATE TAKEN: Tuesday, August 4, 2015
20 TIME: 2:18 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

26 * * * * *

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DISTRICT:

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REPRESENTING THE DEFENDANT JONES STREET PUBLISHERS,
LLC:

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A P P E A R A N C E S (Continued)

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email: kanderson@scsba.org

AMY GARRARD
LEE GARRARD

I N D E X

WITNESS: R. C. G.

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EXHIBITS:

(No exhibits were offered or marked for identification.)

S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is reserved by the Deponent.

1 A I think she was just there monitoring. I
2 don't think she said anything.

3 Q Did you do a statement or anything kind of
4 memorializing what was said in any of these meetings or
5 interviews?

6 A No, sir.

7 Q Now, do you know of any statement, either in
8 the newspaper, on the Internet, blogs, whatever there
9 is out there now, Twitts, Tweets, Facebook, whatever,
10 newspapers, radio, TV, any news story that had your
11 name in it?

12 A No, sir.

13 Q Okay. Have you ever heard yourself referred
14 to in any manner in the press in a derogatory manner?

15 A My personal name or --

16 Q Your personal name.

17 A No, sir.

18 Q Have you ever heard anyone associated with
19 the Charleston County School District refer to you
20 individually in a derogatory term?

21 A No, sir.

22 Q Do you know what I mean by "derogatory,"
23 negative term?

24 A Yes, sir.

25 Q Okay. Have you ever heard anybody say that

1 you, okay, **R. C. G.** , is a racist?

2 A No, sir.

3 Q Or racially insensitive?

4 A No, sir.

5 Q Have you ever heard anyone with the school
6 district -- associated with the school district say
7 anything derogatory about any of your fellow teammates
8 by name?

9 A No, sir.

10 Q Okay. **R. C. G.** , if -- if you had known that
11 the watermelon with the painting and the name
12 Bonds-Wilson and the making of the sounds, the chants
13 or whatever you-all want to call it, was offensive to
14 certain members of the African-American community,
15 would you have agreed to do it?

16 A No, sir, we would have stopped it.

17 Q Huh?

18 A We would have stopped it.

19 Q Okay. Were the coaches aware of the practice
20 of the watermelon with the face and the name and the
21 throwing it and making the noise?

22 A I don't know if they were aware of the face.
23 I knew they were aware that we smashed a watermelon.

24 Q Okay. But the face -- the watermelon was in
25 plain view on the bench?

1 Q Okay. Who is your best friend at the Magnet
2 school?

3 A Beckham Watkins.

4 Q Beckham Watkins?

5 A Yes, ma'am.

6 Q And does -- is it Mr. Watkins?

7 A Yes.

8 Q Miss?

9 A Mister.

10 Q Mister. Does he play football?

11 A No, ma'am.

12 Q Okay. And who's your best friend outside of
13 the Magnet school?

14 A I'd say Robert O'Donnell.

15 Q Robert O'Donnell. And where does Robert
16 live?

17 A West Ashley in Carolina Bay.

18 Q Okay. And were they your friends before the
19 watermelon ritual began?

20 A Yes, ma'am.

21 Q And has your -- are they still your friends?

22 A Yes, ma'am.

23 Q And do you know -- can you identify anyone
24 who knew you before the City Paper published the
25 editorial whose opinion changed of you after the

1 editorial was published?

2 A No one brought anything up with me.

3 Q Okay. There has been a lot of media coverage
4 about this incident at the Magnet school, are you aware
5 of that?

6 A Yes, ma'am.

7 Q Are you aware that there has been national
8 coverage of this incident?

9 A I heard something about CNN and something
10 about The Huffington Post.

11 Q Okay. And are you aware that The Huffington
12 Post in particular covered the racial implications of
13 the incident at the Magnet school?

14 A No. I didn't read the article.

15 Q Okay. Do you -- are you aware that some
16 media coverage has discussed the racial implications of
17 the incident at the school regarding the watermelon
18 ritual?

19 A Yes, ma'am.

20 Q Are you -- why are you suing Jones Street
21 Publishing?

22 A Because they publish the City Paper.

23 Q Okay. And why are you -- why are you suing
24 the City Paper?

25 A Because like -- defamation and slander is

1 why.

2 Q Okay. And how do you feel they defamed or
3 slandered you?

4 A They falsely accused us of being racists.

5 Q Okay. And are you aware that other
6 publications, both nationally and locally, also
7 publicized or accused you -- accused the football
8 team's actions of being racist?

9 A I did not know that they directly called us
10 racists such as the City Paper has.

11 Q Okay. If you had known that other
12 publications directly called you racist, would that
13 upset you?

14 A Yes, ma'am.

15 Q So to be clear, are you -- are you suing
16 the -- actually, I'm -- I'm not really clear. Why are
17 you suing the Charleston City Paper?

18 A Because they directly called us racists.

19 Q Okay. And how has the Charleston City
20 Paper's article, editorial harmed you?

21 A They falsely accused me of being something
22 I'm not, which makes you feel more self-conscious. It
23 doesn't feel good to be called a racist, when you're
24 not.

25 Q Other than making you feel self-conscious

1 and -- and making you feel bad, what other harm have
2 you had as a result of the publication in the
3 Charleston City Paper?

4 A There's been no physical harm.

5 Q The job that you currently hold now --

6 A Yes, ma'am.

7 Q -- you -- you had that job last summer before
8 the watermelon ritual occurred?

9 A Yes, ma'am.

10 Q Did you have any problems getting your job
11 back after the publication of the articles in the City
12 Paper?

13 A No, ma'am.

14 Q What's your GPA?

15 A I'm not sure. I think it's -- it was like a
16 3.2.

17 Q Is that unweighted or weighted?

18 A I think that's weighted.

19 Q Okay. Have you taken the PSAT?

20 A Yes, ma'am.

21 Q How did you score on that?

22 A I think I got like a 900, something in the
23 nine hundreds.

24 Q Okay. And that's just math and --

25 A I did the full SAT.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



W Y C H E

Attorneys at Law

By Federal Express

October 7, 2016

Callie Robertson
PIERCE HERNS SLOAN & WILSON LLC
The Blake House
321 East Bay Street
Charleston, SC 29413

Re: *A.E.P., III vs. Jones Street Publishers, LLC, et al.*
Case No.: 2015-CP-10-2389 (Consolidated Case)

Walpole vs. Jones Street Publishers, LLC, et al.
Case No.: 2014-CP-10-7655

Dear Callie:

Enclosed for filing are an original and one copy of Defendant Jones Street Publishers, LLC's Memorandum in Support of Motion for Summary Judgment in EACH of the above-referenced cases. We have also enclosed a binder for hand delivery to Chief Justice Toal at the Charleston County Courthouse.

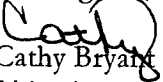
Please hold these until you hear from Wallace Lightsey or myself before filing with the Court or hand delivering the binder to Chief Justice Toal. We need to make sure the hearing is still going to take place on Tuesday, October 11 before we file the memoranda.

Once you are given the green light, we would appreciate your filing the originals; scanning and emailing to me the memoranda only. Meliah Bowers Jefferson will pick up our filed-stamped copies from you late Monday afternoon, but before your office closes at 5:00 p.m.

We will serve counsel of record with copies on Monday. You do not need to worry about service.

Thank you so much for your assistance in this matter. Please do not hesitate to contact us if you have any questions.

Best regards,


Cathy Bryant

Litigation Paralegal
(864) 242-8262
cbryant@wyche.com

Enclosures

c: Wallace K. Lightsey, Esq. (*by electronic mail only; w/o enclosures*)
Meliah Bowers Jefferson, Esq. (*by electronic mail only; w/o enclosures*)

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ROA 189

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

A.E.P., III, et al.,

Plaintiffs,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-10-2389

EUGENE H. WALPOLE,

Plaintiff,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, AND JONES
STREET PUBLISHERS, LLC,

Defendants.

CIVIL ACTION NO.: 2014-CP-10-7655

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO JONES STREET
PUBLISHERS MOTION FOR SUMMARY JUDGMENT**

Defendant Jones Street Publishers, LLC ("Jones Street") damaged the reputation of the Plaintiffs, three minor student-athletes at the Academic Magnet High School ("Academic Magnet"), by publishing articles that accused the Plaintiffs of participating in racially-motivated post-game celebration rituals. These articles were defamatory in nature and referred to the Academic Magnet football team, of which the Plaintiffs are members, as "racist douchebags" and "grade-A dumbasses," while characterizing their post-game celebrations as racist and demeaning to the black community. Compl. ¶ 13. Although these assertions were included within op-ed pieces, the "opinions" contained within these articles were presented as factual allegations, even though the author, Chris Haire, had no

factual basis on which to ground his false conclusions. The Plaintiffs are entitled to seek damages under South Carolina common-law defamation principles, which have been formulated to prevent this very type of injustice.

The Plaintiffs request that the Court deny the Motion for Summary Judgment submitted by Defendant Jones Street. An examination of the record clearly indicates that there are genuine issues of material fact that should be resolved by the factfinder in relation to the arguments advanced by Jones Street. Additionally, actual damages do not have to be proven under the facts of this case, as the statements made by Mr. Haire are not commentary on aspects of the controversy that are of or in the public interest. In the alternative, even if actual damages do have to be proven, there is evidence in the record that could lead a reasonable jury to conclude that the Defendant proximately caused actual damages to the Plaintiffs.

FACTS

The Plaintiffs are students at the Academic Magnet in Charleston County, which is a school operated by the Charleston County School District (“CCSD”). Compl. ¶¶ 6-7. Each Plaintiff is a member of the Academic Magnet’s football team, the Raptors. *Id.* On October 16, 2014, CCSD Associate Superintendent Louis Martin and Kevin Clayton, an Atlanta-based diversity consultant, met with the football team and coaches of the Academic Magnet High School after CCSD received information concerning the football team and an incident involving watermelons. Compl. ¶ 8. Although they found no evidence of any racial motivation for the team’s watermelon celebration after a win and all concerned told them there was no racial motivation for the celebrations, Mr. Martin and Mr. Clayton falsely published to others that the football team made animal sounds and drew a monkey face on the watermelon during these celebrations. *Id.*

Mr. Martin subsequently made statements to the public that the members of the Academic Magnet Raptors “had engaged in a game ritual after football games in which the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make animal noises.” Compl. ¶ 9. Additionally, CCSD Superintendent Nancy McGinley, stated to the public that “players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as ‘ooh, ooh, ooh’”. Compl. ¶ 10. She further stated the sounds were “monkey sounds”. These allegations, if true, could have been construed as racially derogatory actions intended to equate black members of opposing football teams with monkeys. Compl. ¶ 11. Kevin Clayton also made public statements of a similar nature about the post-game celebrations of the Raptors. Compl. ¶ 12.

On October 21, 2014, Jones Street Publishers, LLC published an article by Chris Haire in the *Charleston City Paper* entitled “Melongate: Big toothy grins, watermelons, and monkey sounds don’t mix.” Compl. ¶ 13. In the edition of the paper the article states:

Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there’s one lesson to be learned from all of this it’s this: big toothy grins, watermelons, and monkey noises don’t mix. Any sensible person can see that.

Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.

Somewhere along the way in this year’s unexpectedly successful season, the Raptors took a liking to buying watermelons before their games. They apparently drew a face on it each time – a big toothy, grinning face. The first time the watermelon was named Junior. The next time it was Bonds Wilson, the name of the campus the AMHS shares with School of the Arts. That name stuck.

But here’s where the things get even worse. At the close of each game, the players smashed the watermelon on the ground while reportedly making the monkey-like sounds of ‘ooh ooh ooh ooh.’ Apparently, the players did this after four or five games, each time evidently after the largely white Raptor squad beat one of their opponents, each one largely an African-American team. Parents of players on one of the opposing

teams reportedly brought this to the attention of African-American Board member Michael Miller last week.

That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn't see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer. After all, AMHS is not only the No. 1 ranked school in the state, it's one of the tops in the nation.

Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so, I don't know about you, but I think it's time to reconsider Academic Magnet's rankings because clearly they are producing nothing more than grade-A dumbasses.

Even more troubling is the degree to which Raptor Nation has circled the wagons around Walpole and the team. Frankly, this has nothing to do with the fact that the coach is by all accounts a good man. Walpole's merits are meaningless.

The point is that an entire team of players thought it was Ok to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.

No one said, 'Hey guys, I know not a single one of you has a racist bone in your body, you know, because that's a bad thing, and well, you're an Academic Magnet kid, and you come from a good middle-class white family and you're going to college, and there's no way in hell you'd, you know, draw a racist caricature on a watermelon and make monkey noises and do it fully aware of, like, what all that stuff means, because if you did, knowing all that stuff, then yikes, people might start thinking you're racists. Hell, I'd think you're a racist, and, well, I just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?'

Actually, it's not. It's the sad truth about life here in Charleston, S.C. today.

Chris Haire, Melongate: Big toothy grins, watermelons, and monkey sounds don't mix, Charleston City Paper (Oct. 21, 2014, 5:20 PM), <http://www.charlestoncitypaper.com/HaireoftheDog/archives/2014/10/21/melongate-big-toothy-grins-watermelons-and-monkey-sounds-dont-mix>.

Also in the October 21, 2014 edition of the *Charleston City Paper*, Jones Street published an article entitled “District: AMHS football team’s watermelon ritual included ‘monkey sounds,’ ‘caricature.’ Coach removed after complaint of ‘animalistic’ sounds following defeat of majority-black team.” Compl. ¶ 15. Following this article, Coach Walpole was reinstated and Superintendent McGinley resigned from her position. In the October 30, 2014 edition of the *Charleston City Paper*, Jones Street published another article by Mr. Haire entitled “Mob Rules. School district forces out superintendent who *fired coach who condoned racist ritual*.” Compl. ¶ 17. The article further states:

But goddammit, this town is rotten with racists.

Not only do we have a Confederate-flag waving, Southern apologist heading up the College of Charleston, now the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act.

Honestly, I had no idea that this was how the Coach Bud Walpole controversy would play out. I don’t think anyone really did. The ouster of McGinley is every bit as surprising as one of George R.R. Martin’s wedding-day bloodbaths. But it’s even more brutal than the *Game of Thrones* author could have conjured up because McGinley was in the right to give Walpole the boot – and the board should’ve backed her.

The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you don’t already know, a racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it.

And based on what has been reported, it appears that McGinley in part was motivated to remove Walpole because he apparently didn’t see anything disturbing himself, a stance that more than strains credulity given the coach’s 50-some-odd-years on this planet.

...

In hindsight, there’s no denying that McGinley simply misjudged her fellow Charlestonians. Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America’s most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn’t.

As the controversy unfolded, the black community largely remained, silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people. Because one single coach had been fired, they were willing to ignore America's shameful racist past. Apparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.

Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.

Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African American community, some of them their fellow students. Now that Nancy McGinley has been forced out of office, perhaps that realization will happen much sooner rather than later.

Chris Haire, School district forces out superintendent who fired coach who condoned racist ritual, Charleston City Paper (Oct. 30, 2014, 4:25 PM), <http://www.charlestoncitypaper.com/HaireoftheDog/archives/2014/10/30/sc-school-district-forces-out-superintendent-who-fired-coach-who-condoned-racist-ritual>. As a result of the publication of these statements and articles, the Plaintiffs have suffered harm to their reputation amongst their peers and within the community.

Jones Street previously moved to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6). After hearing arguments on Jones Street's motion on May 8, 2015, the Court held that the "Plaintiffs have stated a cause of action based on the four corners of the complaint, and a 12(b)(6) dismissal would be premature." (Order July 6, 2015). Jones Street makes the same argument now as it did for the motion to dismiss. There is evidence supporting the allegations set forth in Complaint, and therefore, Jones Street's motion for summary judgment should be denied.

STANDARD OF REVIEW

A court should not grant summary judgment unless the moving party shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. The pleadings, depositions, affidavits, and discovery on file, and all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party when determining if any genuine issues of fact exist. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

ARGUMENT

Defendant Jones Street has tarnished the Plaintiffs’ reputations within the community and amongst their peers. Defamation law has been created by the courts to embody the public policy that “individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. Thus, the focus of defamation is not on the hurt to the defamed party’s feelings, but on the injury to his reputation.” *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 517, 506 S.E.2d 497, 505 (1998). Defamatory statements can take the form of either libel or slander. Libel consists of “the publication of defamatory material by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed words.” *Id.* (citing Restatement (Second) of Torts § 568 (1977)).

Defamation common-law principles exist in tension with the protections afforded to the media by the First Amendment. However, these protections do not extend to shield the media defendant when commenting on a private individual’s private matters. In *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 105 S. Ct. 2939, 86 L. Ed. 2d 593 (1985), the Supreme Court of the

United States held that a private individual does not have to prove a heightened standard of “actual malice” in order to recover presumed damages where the defamatory statements do not involve matters of public concern. This leaves any defamation suit on private matters to be adjudicated on state common law principles.

Jones Street has introduced four separate arguments to support its Motion for Summary Judgment. The first of these arguments is based on a faulty analysis of the facts under South Carolina law and asserts that the Plaintiffs must prove actual damages. However, the defamatory statements published by Jones Street concern “private elements” of a public matter, and therefore do not require a showing of actual damages. *See Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 246, 452 S.E.2d 640, 646 (1994). As for Jones Street’s remaining arguments, there are genuine disputes of material fact that should be left to the jury, rendering summary judgment inappropriate under the context of the present case.

A. PROOF OF INJURY IS NOT REQUIRED UNDER COMMON LAW PRINCIPLES FOR PRIVATE INDIVIDUALS DEFAMED OVER A MATTER OF PRIVATE CONCERN

Jones Street’s first argument states that there is “no proof that the *City Paper* op-ed was the proximate cause of injury to Plaintiffs’ reputations. Because South Carolina law requires proof of injury to reputation under the facts of this case, the absence of such proof requires dismissal of Plaintiffs’ claim.” Def.’s Mot. for Summ. J. 2. However, Jones Street’s argument is premised upon a faulty analysis of the facts under federal and state defamation law. To prove defamation, a plaintiff is required to show “*either* actionability of the statement irrespective of special harm *or* the existence of special harm caused by the publication.” *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 161, 750 S.E.2d 605, 607 (2013) (emphasis added).

1. Under common principles, libel is actionable *per se* and does not require proof of actual damages

A defamation action is analyzed primarily under the common law when the plaintiff is a private figure. *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Under the common law, libel is actionable *per se* if it involves “written or printed words which tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous” *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502 (quoting *Lesesne v. Willingham*, 83 F. Supp. 918, 921 (E.D.S.C. 1949). “Essentially, all libel is actionable *per se*” *Erickson*, 368 S.C. at 466, 629 S.E.2d at 664.

If the libel is actionable *per se*, then under common law principles it is presumed that the plaintiff suffered general damages. *Capps v. Watts*, 271 S.C. 276, 281, 246 S.E.2d 606, 609 (1978). General damages include things such as injury to reputation, mental suffering, and other types of injuries that cannot be assigned an absolute monetary valuation. *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502 n.4. Additionally, an actionable *per se* libel does not require the pleading and proof of special damages. *Capps*, 271 S.C. at 281, 246 S.E.2d at 609. Special damages are measurable losses that are capable of being assessed monetarily, which result from injury to the plaintiff’s reputation. *Holtzscheiter*, 332 S.C. at 510, 506 S.E.2d at 502 n.4. The issue of whether a statement is actionable *per se* is always a question of law for the court. *See id.* at 510, 506 S.E.2d at 501. Therefore, a libel of a private individual will generally not require a showing of general or special damages to be actionable.

2. Actual malice and proof of actual damages are not constitutionally required where a private figure has been defamed over a private matter

In *Holtzscheiter*, the South Carolina Supreme Court attempted to reconcile common law defamation principles with the constitutional issues implicated by the First Amendment. The court states that

At common law, defamation was a “strict liability” tort, but where the constitution is involved, the common law rules are altered. For example, since respondent relied on the newspaper’s negligence here to establish liability, the constitution requires she prove

“actual injury”: She may not rely on the common law presumption of general damages arising from a defamation actionable *per se*.

Id. at 512, 506 S.E.2d at 503 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974)). However, the *Holtzscheiter* and *Gertz* requirement of proof of “actual injury” only applies in instances where the First Amendment’s protection of speech is heightened, such as when the defamatory statements concern a matter of public interest. See *Dun & Bradstreet*, 472 U.S. at 757-761, 105 S. Ct. at 2944-46, 85 L. Ed. 2d at 601-04; *Rosenbloom v. Metromedia*, 403 U.S. 29, 43-44, 91 S. Ct. 1811, 1820, 29 L. Ed. 2d 296, 312 (1971); *Erickson*, 368 S.C. 444 at 466, 629 S.E.2d 653 at 665. It is for the court to decide whether the evidence shows that an individual is a public or private figure. *Rosenblatt v. Baer*, 383 U.S. 75, 88, 86 S. Ct. 669, 677, 15 L. Ed. 2d 597, 606 (1966). Thus, Jones Street’s assertion that proof of injury to reputation is required under the facts of this case hinges upon whether Mr. Haire’s statements published by the *City Paper* involved public figures or a matter of public concern.

Media defendants commenting on public figures are afforded the constitutional protections outlined in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Gertz, 418 U.S. at 345, 94 S. Ct. at 3009. On the other hand, no clear test has been delineated by South Carolina or federal courts to determine whether a controversy is a matter of public concern. Most courts approach the issue on an ad hoc, “I-know-it-when-I-see-it” basis. Carl Willner, *Defining a Public Controversy in the Constitutional Law of Defamation*, 69 Va. L. Rev. 931, 944 (1983).

Here, the Plaintiffs are student members of the Academic Magnet's football team. The students were drawn into the controversy after Mr. Martin and Mr. Clayton disseminated statements concerning their post-game celebrations to the media. The students are clearly private individuals for the purposes of a defamation suit. *See Gertz*, 418 U.S. at 345, 94 S. Ct. at 3009, 41 L. Ed. 2d at 812. The students have neither assumed roles of prominence in society nor do they possess influence or power within the community. *See id.* The students did not purposefully inject themselves into the public eye or invite comment on their activities. *See id.* Under *Gertz*, the students must be classified as private individuals, and thus are not constrained by the heightened protections afforded to defendants by the *New York Times* decision. *See Erickson*, 368 S.C. at 472-474, 629 S.E.2d at 668-669.

The controversy, as reported in the media, may be viewed as comprising of four separate but connected events: (1) the Academic Magnet Raptor's post-game celebrations, (2) the firing of Coach Bud Walpole, (3) the reinstatement of Coach Walpole, and (4) the resignation of Ms. McGinley. It is likely that a court would find the firing and reinstatement of Coach Walpole, as well as the resignation of Ms. McGinley, to be matters of public concern. These events involved functions of the Academic Magnet and CCSD, which are public institutions and "affected with a public interest." *See Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352-53, 95 S. Ct. 449, 454-55 (1974). The post-game celebrations gave rise to the controversy yet are concomitant to the functions of the school and school district.

In themselves, the celebrations would not be a matter of public concern or interest; however, as the origin of the public controversy, the celebrations may be of public concern. However, the intent and motivation of the individual students are a separate concern and present a "situation of general public interest with private matter elements." *See Parker*, 317 S.C. at 246, 452 S.E.2d at 646. The students' private beliefs are indirectly connected to the public controversy, and as such, should not be

viewed as a matter of public interest. The public has an interest in being informed of the affairs of publicly funded schools, as well as the functions of governing school boards. This interest does not extend to protect defamatory statements by the media concerning the character and beliefs of individual students.

In sum, the Plaintiffs are private figures, and the defamatory statements by Mr. Haire involved a matter of private, not public, concern. As such, the action should be analyzed under common-law defamation principles. *See Erickson*, 368 S.C. at 465, 629 S.E.2d at 664. Mr. Haire's printed statements, as libel, are actionable *per se*. *See id.* at 466, 629 S.E.2d at 664. Therefore, it is presumed that the Plaintiffs suffered general damages, and proof of damages is not required to defeat Jones Street's Motion for Summary Judgment. *See Capps*, 271 S.C. at 281, 246 S.E.2d at 609.

B. IF PROOF OF INJURY IS REQUIRED UNDER *GERTZ*, A REASONABLE JURY COULD CONCLUDE THAT THE DEFAMATORY STATEMENTS ACTUALLY INJURED THE PLAINTIFFS

In the alternative, if the Court decides that the matter is a public one, a reasonable jury could determine from the evidence that the defamatory statements printed by the *City Paper* caused actual injury to the Plaintiffs. Under *Gertz*, if a private figure is defamed in a public matter, the plaintiff must prove actual injury, and may not rely on the common law presumption of general damages if the defamation is actionable *per se*. *Holtzscheiter*, 332 S.C. at 512, 506 S.E.2d at 504 (citing *Gertz*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789). Actual damages should not be confused with special damages. F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts § 7.A.3.b (2014). In *Gertz*, the Court did not define actual injury, opting to leave it to the trial courts to define the term. *Gertz*, 418 U.S. at 349-50, 94 S. Ct. 3012, 41 L. Ed. 2d at 811. However, the Court did state that "actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm

inflicted by defamatory falsehood include *impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering.*" *Id.* (emphasis added).

Here, there is evidence in the record from which a reasonable jury could conclude the Plaintiffs have suffered actual injury to their reputation and standing in the community, as well as personal humiliation and mental anguish. Furthermore, there is evidence in the record that could lead a reasonable jury to conclude that Mr. Haire's articles proximately injured the Plaintiffs. Reece A. Moore, one of the members of the 2014 Raptor team and a plaintiff in the current action, stated that the team members were harassed and called racist by other students at the school. Moore Dep. 77:7-78:14, Aug. 3, 2015. Moore also indicated that his classmates' perceptions of himself and his teammates were changed by the incident and that he was questioned about the incident during university pre-admission decision interviews. Moore Dep. 103:19-105:11. Coach Walpole also has made statements indicating that the reputation of the team and its members was tarnished as a result of the defamatory statements. At one point a North Charleston coach refused to shake hands with his assistants and told them, "We do not have any respect for you-all because of what happened last year." Walpole Dep. 91:10-18, Dec. 16, 2015.

Plaintiff Robert Garrard said that the Chris Haire articles in the *City Paper* had made him "feel more self-conscious. It doesn't feel good to be called a racist when you're not." Garrard Dep. 41:22-24, Aug. 4, 2015. The third plaintiff, Connor Frailey, stated that the *City Paper's* articles were responsible for the harm Plaintiffs suffered to their reputation amongst their peers, claiming that the Chris Haire "Mob Rules" article was the article "that everyone around had read because . . . it was on a different level than all the other articles" Frailey Dep. 77:1-4, August 3, 2015. He also emphasized that the article took center-stage amongst the publications reporting on the matter:

A And then people I talked to, it's like they weren't asking me, "Did you read the Live 5 news article about this happening?" It's like, "Oh, did you read Chris

- Haire's article about how – about what your school – about what your school did and how"—it just seemed much more serious than . . .
- Q Who – who asked you that specifically?
- A I have no idea.
- Q Can you name anyone who specifically asked you about the Chris Haire article?
- A Just classmates

Frailey Dep. 77:9-19.

In conclusion, there is evidence in the record showing that Plaintiffs did suffer harm from the defamatory statements within the Chris Haire articles published by the *City Paper*. Statements by two of the plaintiffs and Coach Walpole show that they not only suffered a loss of reputation and standing amongst their peers but were also harassed as a result of the articles, experiencing personal humiliation and embarrassment. Mr. Frailey's statements indicate that the articles were the primary and proximate cause of the sentiments displayed by the Academic Magnet student body at the time of the articles. Therefore, summary judgment is improper even if actual damages must be proven, as there are genuine issues of material fact that should be resolved by a jury.

C. THERE IS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO CONCLUDE THE DEFAMATORY STATEMENTS ARE "OF AND CONCERNING" THE PLAINTIFFS

Jones Street's next argument states that the "allegedly defamatory statements were not 'of and concerning' the Plaintiffs, since they referred only to the football team as a whole and did not refer to any individual players, including any of the Plaintiffs." Def.'s Mot. for Summ. J. 2. The issue of whether Mr. Haire's statements published by the *City Paper* are "of and concerning" the Plaintiffs at the least presents a triable issue of fact from which a reasonable jury could determine that the statements were referring to the members of the 2014 Academic Magnet football team.

The tort of defamation allows a plaintiff to recover damages for injury to his reputation as the result of the publication of untrue statements "of and concerning" the plaintiff. *See Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 37, 358 S.E.2d 397, 399 (Ct. App. 1987); *see also Neeley v. Winn-Dixie Greenville,*

Inc., 255 S.C. 301, 308, 178 S.E.2d 662, 665 (1971) (“Defendant’s words are actionable only if they refer to some ascertained or ascertainable person, and to be entitled to recover, the plaintiff must show that he is the person with reference to whom the statement was made”) (quoting 50 Am. Jur. 2d Libel and Slander § 143). It is not necessary for the plaintiff to be explicitly named within the defamatory publication. “To support an action for a libel, the plaintiff’s name need not be mentioned in the writing; it is sufficient that there is a description of, or reference to, him, by which he may be known.” *Nash v. Sharper*, 229 S.C. 451, 456, 93 S.E.2d 457, 459 (1956). However, when a defamatory statement refers to a class of persons, the plaintiff must establish that the statement had a personal application to maintain an action for defamation. *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 377-78, 9 S.E.2d 796, 800 (1940). In South Carolina, a member of a small group does not have to be named in order to be defamed by false statements concerning the group. *Holtzscheiter*, 332 S.C. at 514, 506 S.E.2d at 504 (“While the general rule is that defamation of a group does not allow an individual member of that group to maintain an action, ***this rule is not applicable to a small group.***”) (emphasis added). Whether a defamatory statement refers to a specific plaintiff is a question of fact that must be decided by a jury. *Wilhoit*, 293 S.C. at 39, 358 S.E.2d at 400.

Hospital Care Corp., 194 S.C. 370, 9 S.E.2d 796, involved a defamation action against an insurance company. The defendant insurance company distributed a circular in which it lauded its own policies and reputation and warned of the inferior policies of its competitors. *Id.* at 377-78, 9 S.E.2d at 800. The publication referred to insurance companies as a whole throughout the United States and Canada without specifically identifying any particular insurance company. *Id.* The court found that the circular was “seller’s talk,” and while it did belittle its competitors, it did not defame any particular defendant. *Id.*

At least one court has held that a member of a football team may be defamed even if he is not specifically named. In *Fawcett Publications, Inc. v. Morris*, 1962 OK 183, 377 P.2d 42 (1962), the Supreme Court of Oklahoma held that a fullback on the alternate squad of the University of Oklahoma football team had been defamed by an article alleging that members of the team had used amphetamines, even though the player had not been named within the article. The court found that

[T]he article libels every member of the team, including the plaintiff, although he was not specifically named therein; that the average lay reader who was familiar with the team, and its members, would necessarily believe that the regular players, including the plaintiff, were using an amphetamine spray as set forth in the article; that the article strongly suggests that the use of amphetamine was criminal; and that plaintiff has sufficiently established his identity as one of those libeled by the publication.

Fawcett Publ'ns, 1962 OK at ¶ 51, 377 P.2d at 52.

The facts of the present case are analogous with *Fawcett Publications* and distinguishable from those of *Hospital Care Corp.* Here, the plaintiffs are members of a high school football team, not a nationwide class of businesses and corporations. The 2014 Raptors football team had a total of 28 players. Academic Magnet Football All-Time Roster, Maxpreps.com, [http://www.maxpreps.com/high-schools/academic-magnet-raptors-\(north-charleston,sc\)/football-fall-15/all_time_roster.htm](http://www.maxpreps.com/high-schools/academic-magnet-raptors-(north-charleston,sc)/football-fall-15/all_time_roster.htm) (last visited June 3, 2016). By labeling the team as “racist douchebags,” Mr. Haire was making a statement about each individual plaintiff with a reference “by which he may be known,” i.e., the Raptor football team. *See Nash*, 229 S.C. at 456, 93 S.E.2d at 459. Additionally, the published statements refer to an activity in which all members of the team participated, namely the post-game celebrations. Owing to the small number of players on the team, this gives the statement a personal application to each member and harmfully tarnishes his reputation within the local community. *See Hospital Care Corp.*, 194 S.C. at 377-78, 9 S.E.2d at 800. At a minimum, the facts present a triable issue that should be resolved by a jury. *See Wilhoit*, 293 S.C. at 39, 358 S.E.2d at 400.

D. THERE IS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO CONCLUDE THE DEFAMATORY STATEMENTS ARE FACTUAL ASSERTIONS AND NOT PROTECTED BY THE FAIR COMMENT DOCTRINE

In support of its Motion for Summary Judgment, Jones Street claims that “[t]he alleged defamation constitutes protected expression of opinion, epithet, or hyperbole that is immune under the doctrine of fair comment and the First Amendment privilege for statements of opinion, and is therefore not actionable.” Def.’s Mot. for Summ. J. 2. Jones Street’s argument attempts to give a free pass to all “opinion,” construing it as non-defamatory comment without qualification. *See Goodwin v. Kennedy*, 347 S.C. 30, 41, 552 S.E.2d 319, 325 (Ct. App. 2001). In order to prevail under the qualified privilege of fair comment, which “holds matters of public interest and concern to be legitimate subjects of criticism,” any published statements of opinion must be presented “fairly and with an honest purpose.” *Oswalt v. State-Record Co.*, 250 S.C. 429, 433, 158 S.E.2d 204, 206 (1967). Under a qualified privilege, “one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused.” *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) (citing Restatement (Second) of Torts § 593 (1977)). It is a question of law for the court to decide whether the occasion gives rise to a qualified privilege. *Id.* at 485, 514 S.E.2d at 134. The determination of whether the privilege has been abused should be left to the factfinder if there is conflicting evidence. *Id.*

South Carolina courts have long held that even opinions may not be protected by the privilege if the content of the opinion is false. “A newspaper is privileged to publish accounts of a public meeting, provided such publication does not contain charges or statements, made by the paper . . . which are false and malicious.” *Jackson v. Record Pub. Co.*, 175 S.C. 211, 216, 178 S.E. 833, 835 (1935). Indeed, the Supreme Court of the United States has stated that there is no “wholesale

defamation exemption for anything that might be labeled ‘opinion.’” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 110 S. Ct. 2695, 2705, 111 L. Ed. 2d 1, 17 (1990).

[E]xpressions of “opinion” may often imply an assertion of objective fact. If a speaker says, “In my opinion John Jones is a liar,” he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, “In my opinion Jones is a liar,” can cause as much damage to reputation as the statement, “Jones is a liar.”

Milkovich, 497 U.S. at 18-19, 110 S. Ct. at 2705-06, 111 L. Ed. 2d at 17-18. Under this line of reasoning, the central question becomes whether a reasonable factfinder could conclude the *City Paper*’s publications contained factual assertions that the members of the Academic Magnet’s football team were racists.

Jones Street’s Motion for Summary Judgment should not prevail under the doctrine of fair comment because Mr. Haire’s statements concerned the character and beliefs of the individual members of the Academic Magnet’s football team. As described above, these statements did not concern a public matter, but a private one. *See Parker*, 317 S.C. at 246, 452 S.E.2d at 646. The fair comment privilege only extends to “matters of public interest and concern,” and not private matters. *See Oswalt*, 250 S.C. at 433, 158 S.E.2d at 206. Additionally, the published statements of Mr. Haire should not be protected by the fair comment privilege because the statements contain assertions that would lead the reader to conclude that the members of the Raptor football team are racist, and Jones Street has not raised the defense of truthfulness with regard to Mr. Haire’s statements in its Motion for Summary Judgment. In the article “Melongate: Big toothy grins, watermelons, and monkey sounds don’t mix,” in reference to the football team, Mr. Haire states, “‘Hell, I’d think you’re a racist, and, well, I just don’t know if I can deal with the fact that Charleston’s best and brightest students are racist douchebags. I mean, it’s just a joke right? Right?’ Actually, it’s not. It’s the sad truth about life here

in Charleston, S.C. today.” Haire, Melongate, *supra*. In “Mob Rules. School district forces out superintendent who fired coach who condoned racist ritual,” Mr. Haire states that the Academic Magnet’s “largely white football team” drew a “racist caricature” on a watermelon and smashed it after defeating “predominately African-American competitors.” Haire, Mob Rules, *supra*. Mr. Haire then proceeds to admonish the Academic Magnet community by noting that “[a]pparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to hear.” *Id.* As written, these statements are presented as factual assertions cloaked in the guise of opinion. Therefore, a reasonable jury could find that the printed statements are defamatory and not opinion on a matter of public concern, and as such, should not be protected by the qualified privilege of fair comment.

E. THERE IS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO CONCLUDE THE DEFAMATORY STATEMENTS WERE MANUFACTURED BY THE AUTHOR AND ARE NOT PROTECTED BY THE FAIR REPORT PRIVILEGE

Jones Street’s final argument states that “[t]o the extent which the *City Paper* op-ed contains statements that are not the expression of opinion, epithet, or hyperbole, it is protected by the fair report privilege as a fair and accurate report of statements made by public officials on the matter.” Def.’s Mot. for Summ. J. 2. The fair report privilege was originally articulated to protect fair and accurate reports of judicial records and proceedings. *See Padgett v. Sun News*, 278 S.C. 26, 31, 292 S.E.2d 30, 33 (1982); *Herring v. Retail Credit Co.*, 266 S.C. 455, 460, 224 S.E.2d 663, 665 (1976). This privilege has since been extended to all matters of public interest. *Jones v. Garner*, 250 S.C. 479, 487, 158 S.E.2d 909, 913 (1968) (“Fair and impartial reports in newspapers of matters of public interest are qualifiedly privileged.”). However, “any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged.” *West v. Morehead*, 396 S.C. 1, 8, 720 S.E.2d 495, 499 (Ct. App. 2011) (quoting *Jones*, 250 S.C. at 487, 158 S.E.2d at 913). The fair report privilege is a qualified privilege, and as such, subsequent determinations must be made by the

court and the factfinder as to whether the conditions give rise to the privilege, and whether the privilege has been abused. *Swinton Creek*, 334 S.C. at 485, 514 S.E.2d at 134.

Any factual reporting by Mr. Haire regarding statements made by Academic Magnet or CCSD officials will be protected by the fair report privilege. Statements describing the students' post-game celebrations, as well as the firing of Coach Walpole and resignation of Superintendent McGinley, would be protected by the fair report privilege as well. However, this privilege will not extend to any factual assertions regarding racism made by Mr. Haire under the guise of "opinion," as has been explained above. In order for the fair report privilege to protect a statement, the statement must be "fair and accurate," and not contain any material added by the publisher. *Padgett*, 278 S.C. at 31, 292 S.E.2d at 33; *West*, 396 S.C. at 8, 720 S.E.2d at 499. Therefore, any assertions that the students' motives were racist, as well as characterizing any symbolism associated with the students' celebrations as racist, does not fall under the umbrella of the fair report privilege. The statements by Mr. Haire labeling the celebration as racially motivated do not reflect a "fair and accurate" representation of any information disseminated by CCSD through press releases or news conferences. Nowhere within the press releases or news conferences issued by CCSD and Superintendent McGinley were the individual members of the Academic Magnet football team referred to as racists. In fact, Superintendent McGinley's statements to the public concerning the controversy characterized the celebration as "an innocent ritual." Frankie Mansfield, Superintendent McGinley speaks on Academic Magnet, Walpole firing, Moultrie News (Oct. 21, 2014), <http://www.moultrienews.com/article/20141021/MN11/141029921/0/MN>. She also stated that the investigators, Mr. Martin and Mr. Clayton, did not observe any "cultural insensitivity." *Id.* Therefore, based on the evidence, a reasonable jury could find that any statements made by Mr. Haire that assign racist motivations to the celebration and football team members are not protected by the fair report privilege.

F. EVEN IF THE DEFAMATORY STATEMENTS ARE PRIVILEGED, A SHOWING OF ACTUAL MALICE WILL DEFEAT THE PRIVILEGE

If this Court deems it proper to grant Jones Street's Motion for Summary Judgment on the issue of qualified privilege, a showing of actual malice will overcome the privilege. "A qualified privilege, even if it does apply, does not prevent liability for defamation where the statement is made with actual malice." *Eubanks v. Smith*, 292 S.C. 57, 63, 354 S.E.2d 896, 902 (1987) (citing *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979); *Bell v. Bank of Abbeville*, 208 S.C. 490, 38 S.E.2d 641 (1947)). The Supreme Court of South Carolina has defined actual malice as "ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights." *Id.* (citing *Padgett*, 278 S.C.26, 292 S.E.2d 30 (1982)). Constitutional actual malice has a heightened standard requiring knowledge that the defamatory statements were false or reckless disregard of whether it was false. *New York Times*, 376 U.S. at 280, 84 S. Ct. at 726, 11 L. Ed. 2d at 706.

There are material facts that could lead a reasonable jury to conclude that both common law and constitutional malice are present in this case. Superintendent McGinley's statements at the press conference on Coach Walpole's firing indicated that the celebration was innocent and that the team members were not being culturally insensitive. Mansfield, Walpole firing, *supra* ("The tone of the report that was given back to me implied that this was an innocent ritual . . ."). In his affidavit, Mr. Haire states that he has always considered Ms. McGinley to be "completely honest and trustworthy" and that he had "no reason to doubt the truth of the statements she made during the press conference." Aff. of Chris Haire in Supp. of Mot. for Summ. J. on Behalf of Jones Street Publishing, LLC ¶ 6. Mr. Haire watched the live television broadcast of the news conference. *Id.* ¶ 5. However, in his articles Mr. Haire referred to the Academic Magnet team members as racists, which is at odds with the statements made by Ms. McGinley in her press conference that the initial report concluded that the celebration was innocent. If Mr. Haire considered Ms. McGinley to be a reliable source, then it follows

that Mr. Haire knew that it was probable that the students were innocent of any racial motivation behind their post-game celebrations.

Mr. Haire's June 25, 2013 article entitled "I am a racist and proud of it" is evidence of actual malice. Mr. Haire begins the article:

I realized something about myself today: I am a racist. And I'm not ashamed to admit it. In fact, I'm damn proud that I'm a racist.

The truth of the matter is I'm so proud of my racist beliefs I'm going to teach my two daughters to be racists, just like their racist old daddy. After all, if there's anything that's going to save our country from splitting in two, it's more racists.

There, I said it. The U.S. needs more racists, especially now that we have a black man in the White House and Congress seems poised to grant amnesty to some 11 million illegal immigrants.

...

And so City Paper readers, I've come to you today to admit this truth. I'm a racist. And I'm not going to apologize for it. So all of you non-racist assholes can take Paula Deen's entire collection of cookbooks and stick them up your non-racists ass.

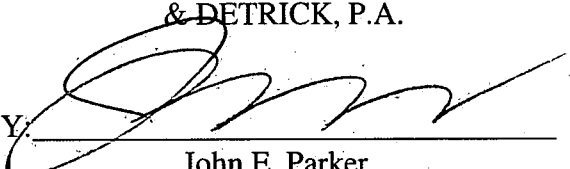
Chris Haire, I am a racist and damn proud of it, City Paper (June 25, 2013), <http://www.charlestoncitypaper.com/HaireoftheDog/archives/2013/06/25/i-am-a-racist-and-proud-of-it>. Clearly, because of Mr. Haire's beliefs he is sensitive to racism and the evidence supports he is indeed racist against white people.

Therefore, Mr. Haire's defamatory statements not only meet the requirement of common law malice, but also the heightened requirements of constitutional malice, as Mr. Haire had knowledge of the falsity of his assertions, or at least an obvious reason to doubt the accuracy of his report. *See St. Amant v. Thompson*, 390 U.S. 727, 732-33, 88 S. Ct. 1323, 1326, 20 L. Ed. 2d 262, 268 (1968). Since there is sufficient evidence to warrant such a finding by a jury, any qualified privilege may be overcome, and it should be left to the jury to decide if the privilege has been abused. *See Eubanks*, 292 S.C. at 63, 354 S.E.2d at 902; *Swinton Creek*, 334 S.C. at 485, 514 S.E.2d at 134.

CONCLUSION

Under the facts of this case, actual damages do not have to be proven, as Mr. Haire's statements concerning the students' motives and beliefs are a private matter. In the alternative, if the court finds the controversy to be a completely public matter, the Plaintiffs can prove actual damages. Additionally, there are sufficient facts for a jury to conclude that the statements made by Mr. Haire are "of and concerning" the Plaintiffs, that the statements are factual assertions under the guise of opinion and should not be protected by the fair comment privilege, and that the statements are not "fair and accurate" reports that are suitable for protection by the fair report privilege. Additionally, a reasonable jury could conclude that Mr. Haire's statements meet the scienter requirement of actual malice, which would overcome any qualified privilege defense. For the foregoing reasons, Jones Street's Motion for Summary Judgment should be denied.

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ATTORNEYS FOR PLAINTIFFS

October 11, 2016
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2014-CP-10-7203

JAMES R. MOORE, JR. AND BETTY)
MOORE, GUARDIANS AD LITEM FOR)
R.A.M., A MINOR; AMY GARRARD)
AND LEE GARRARD, GUARDIANS AD)
LITEM FOR R.C.G., A MINOR; AND)
DEAN FRAILEY AND KATHRYN)
FRAILEY, GUARDIANS AD LITEM)
FOR C.F., A MINOR,)

Plaintiffs,)

v.)

CHARLESTON COUNTY SCHOOL)
DISTRICT, KEVIN CLAYTON, AXXIS)
CONSULTING COMPANY, AND JONES)
STREET PUBLISHERS, LLC,)

Defendants.)

**AMENDED
COMPLAINT**

(Jury Trial Requested)

2016 JUN 14 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY 8

FILED

The Plaintiffs allege:

1. The defendant, Charleston County School District is a governmental entity, subject to being sued pursuant to S.C. Code Ann. § 15-78-10, et. seq. Venue of the case is proper in Charleston County pursuant to § 15-78-100.
2. The defendant, Kevin L. Clayton, was at the times alleged in this complaint an agent and/or employee of Axxis Consulting Company acting within the scope of his agency and/or employment.
3. The defendant, Axxis Consulting Company, is liable for the acts of Kevin Clayton because Mr. Clayton was acting within the scope of his agency and/or employment at all times mentioned herein.

4. Nancy McGinley was at the relevant times the Superintendent of Charleston County School District and Louis Martin is an Assistant Superintendent of Charleston County School District.

5. Jones Street Publishers, LLC is a limited liability corporation which publishes the Charleston City Paper and its headquarters is in Charleston, South Carolina.

6. R.A.M. is the son of James Moore, Jr. and Betty Moore who have been appointed his Guardians ad Litem because R.A.M. is a minor. R.C.G. is the minor son of Amy and Lee Garrard, who have been appointed as Guardians ad Litem for R.C.G. because he is a minor. Dean Frailey and Kathryn Frailey have been appointed as Guardians ad Litem for C.F. because he is a minor.

7. R.A.M., R.C.G. and C.F. are students at the Academic Magnet High School in Charleston County, which is a school operated by the Charleston County School District, and they are each a member of its football team.

8. On October 16, 2014, Louis Martin and Kevin Clayton met with the football team and coaches of the Academic Magnet High School after the School District received information concerning the football team and an incident involving watermelons, and even though they found no evidence of any racial reason for the team's watermelon celebration after a win, and even though all concerned told them there was no racial reason for the celebrations, they falsely published to others that the football team made animal sounds and drew a monkey face on the watermelon during these celebrations. The defendants by falsely portraying that the team made monkey sounds and drew a monkey face on the watermelon falsely accused the team and the plaintiffs of intending to cast African American opponents in a derogatory light. The defendants by their statements falsely accused the team and plaintiffs of being racially prejudiced.

9. After October 16, 2014, Louis J. Martin, Assistant Superintendent of Education for the Charleston County School District, falsely stated that the members of the Academic Magnet High School football team, "had engaged in a game ritual after football games in which the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make animal noises".

10. After October 16, 2014, Nancy McGinley, falsely stated to the public that "players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as 'ooh, ooh, ooh'". She further falsely stated the sounds were "monkey sounds".

11. The statements of the Superintendent and Assistant Superintendent of the School District falsely accused the football team and the plaintiffs of drawing monkey faces on a watermelon and making monkey sounds, which if true, would have been racially derogatory actions intended to equate black members of opposing football teams with monkeys.

12. Kevin Clayton, Nancy McGinley, the Superintendent, and Louis Martin, the Assistant Superintendent, made the defamatory statements, even though they learned through interviews of the team and coaches that their statements were false, and with this knowledge they published these statements with malice.

13. In an October 21, 2014 post of the Charleston City Paper the defendant, Jones Street Publishers, LLC published an article entitled "Melongate: Big toothy grins, watermelons, and monkey sounds don't mix." In the edition of the paper the article states:

Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there's one lesson to be learned from all of this it's this: big toothy grins, watermelons, and monkey noises don't mix. Any sensible person can see that.

Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.

Somewhere along the way in this year's unexpectedly successful season, the Raptors took a liking to buying watermelons before their games. They apparently drew a face on it each time – a big toothy, grinning face. The first time the watermelon was named Junior. The next time it was Bonds Wilson, the name of the campus the AMHS shares with School of the Arts. That name stuck.

But here's where the things get even worse. At the close of each game, the players smashed the watermelon on the ground while reportedly making the monkey-like sounds of 'ooh ooh ooh ooh.' Apparently, the players did this after four or five games, each time evidently after the largely white Raptor squad beat one of their opponents, each one largely an African-American team. Parents of players on one of the opposing teams reportedly brought this to the attention of African-American Board member Michael Miller last week.

That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn't see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer. After all, AMHS is not only the No. 1 ranked school in the state, it's one of the tops in the nation.

Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so, I don't know about you, but I think it's time to reconsider Academic Magnet's rankings because clearly they are producing nothing more than grade-A dumbasses.

Even more troubling is the degree to which Raptor Nation has circled the wagons around Walpole and the team. Frankly, this has nothing to do with the fact that the coach is by all accounts a good man. Walpole's merits are meaningless.

The point is that an entire team of players thought it was Ok to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.

No one said, 'Hey guys, I know not a single one of you has a racist bone in your body, you know, because that's a bad thing, and well, you're an Academic Magnet kid, and you come from a good middle-class white family and you're going to college, and there's no way in hell you'd, you know, draw a racist caricature on a watermelon and make monkey noises and do it fully aware of,

like, what all that stuff means, because if you did, knowing all that stuff, then yikes, people might start thinking you're racists. Hell, I'd think you're a racist, and, well, I just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?'

Actually, it's not. It's the sad truth about life here in Charleston, S.C. today.

14. The above article posted on October 21, 2014 and published to others falsely accused plaintiffs of being racist and is defamatory.

15. In an October 21, 2014 post of the Charleston City Paper the defendant, Jones Street Publishers, LLC published an article entitled "District: AMHS football team's watermelon ritual included 'monkey sounds,' 'caricature.' Coach removed after complaint of 'animalistic' sounds following defeat of majority-black team."

16. The above caption to the article which was published falsely accuses plaintiffs of being a racist and is defamatory.

17. In the October 30, 2014 edition of the Charleston City Paper, the defendant, Jones Street Publishers, LLC, published an article entitled "School district forces out superintendent who fired coach who condoned racist ritual. Mob rules." The article further states:

But goddammit, this town is rotten with racists.

Not only do we have a Confederate-flag waving, Southern apologist heading up the College of Charleston, now the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act.

Honestly, I had no idea that this was how the Coach Bud Walpole controversy would play out. I don't think anyone really did. The ouster of McGinley is every bit as surprising as one of George R.R. Martin's wedding-day bloodbaths. But it's even more brutal than the *Game of Thrones* author could have conjured up because McGinley was in the right to give Walpole the boot – and the board should've backed her.

The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you

don't already know, a racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it.

And based on what has been reported, it appears that McGinley in part was motivated to remove Walpole because he apparently didn't see anything disturbing himself, a stance that more than strains credulity given the coach's 50-some-odd-years on this planet.

...

In hindsight, there's no denying that McGinley simply misjudged her fellow Charlestonians. Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't.

As the controversy unfolded, the black community largely remained, silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people. Because one single coach had been fired, they were willing to ignore America's shameful racist past. Apparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.

Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.

Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African American community, some of them their fellow students. Now that Nancy McGinley has been forced out of office, perhaps that realization will happen much sooner rather than later.

18. The October 30, 2014 post and November 5, 2014 article falsely accuses plaintiffs of being racist and is defamatory.

19. The publication of these false and defamatory statements about the plaintiffs injured the plaintiffs' reputations.

20. The false and defamatory statements made by the defendants and their agents and/or employees were published to others and were published in the print media as well as local and national television. The print media and television programs falsely depicted the Academic Magnet High School football team and the plaintiffs as members of the football team as being racist.

21. In the November 5, 2014 edition of the Charleston City Paper, the defendant, Jones Street Publishers, LLC published an article entitled, "Mob Rules". In this article, it is states: "The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you don't already know, a racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it."

The newspaper further stated: "Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't."

The article also states: "As the controversy unfolded, the black community largely remained silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people."

The article when read as a whole, falsely accuses the football team and the plaintiffs of being racist.

22. The publication of the false statements about the plaintiffs injured the plaintiffs' reputations.

23. The plaintiffs are entitled to actual damages against all defendants and to punitive damages against the defendants, Kevin Clayton, Axxis Consulting Company and Jones Street Publishers, LLC.

WHEREFORE, plaintiffs pray judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

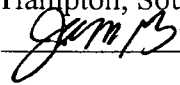
PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

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ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina

, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-7203

JAMES R. MOORE, JR. AND BETTY
MOORE, GUARDIANS AD LITEM FOR
R.A.M., A MINOR; AMY GARRARD
AND LEE GARRARD, GUARDIANS AD
LITEM FOR R.C.G., A MINOR; AND
DEAN FRAILEY AND KATHRYN
FRAILEY, GUARDIANS AD LITEM
FOR C.F.,

Plaintiffs,

v.

Charleston County School District, Kevin
Clayton, Axxis Consulting Company, and
Jones Street Publishers, LLC,

Defendants.

COMPLAINT
(Jury Trial Requested)

FILED
2014 NOV 21 PM 4:44
JULIE J. ANSTRONG
CLERK OF COURT

The Plaintiffs allege:

1. The defendant, Charleston County School District is a governmental entity, subject to being sued pursuant to S.C. Code Ann. § 15-78-10, et. seq. Venue of the case is proper in Charleston County pursuant to § 15-78-100.

2. The defendant, Kevin L. Clayton, was at the times alleged in this complaint an agent and/or employee of Axxis Consulting Company acting within the scope of his agency and/or employment.

3. The defendant, Axxis Consulting Company, is liable for the acts of Kevin Clayton because Mr. Clayton was acting within the scope of his agency and/or employment at all times mentioned herein.

4. Nancy McGinley was at the relevant times the Superintendent of Charleston County School District and Louis Martin is an Assistant Superintendent of Charleston County School District.

5. Jones Street Publishers, LLC is a limited liability corporation which publishes the Charleston City Paper and its headquarters is in Charleston, South Carolina.

6. R.A.M. is the son of James Moore, Jr. and Betty Moore who have been appointed his Guardians ad Litem because R.A.M. is a minor. R.C.G. is the minor son of Amy and Lee Garrard, who have been appointed as Guardians ad Litem for R.C.G. because he is a minor. Dean Frailey and Kathryn Frailey have been appointed as Guardians ad Litem for C.F. because he is a minor.

7. R.A.M., R.C.G. and C.F. are students at the Academic Magnet High School in Charleston County, which is a school operated by the Charleston County School District, and they are each a member of its football team.

8. On October 16, 2014, Louis Martin and Kevin Clayton met with the football team and coaches of the Academic Magnet High School after the School District received information concerning the football team and an incident involving watermelons, and even though they found no evidence of any racial reason for the team's watermelon celebration after a win, and even though all concerned told them there was no racial reason for the celebrations, they falsely published to others that the football team made animal sounds and drew a monkey face on the watermelon during these celebrations. The defendants by falsely portraying that the team made monkey sounds and drew a monkey face on the watermelon falsely accused the team and the plaintiffs of intending to cast African American opponents in a derogatory light. The defendants by their statements falsely accused the team and plaintiffs of being racially prejudiced.

9. After October 16, 2014, Louis J. Martin, Assistant Superintendent of Education for the Charleston County School District, falsely stated that the members of the Academic Magnet High School football team, "had engaged in a game ritual after football games in which

SCCA 401 (5/02)

the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make animal noises”.

10. After October 16, 2014, Nancy McGinley, falsely stated to the public that “players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as ‘ooh, ooh, ooh’”. She further falsely stated the sounds were “monkey sounds”.

11. The statements of the Superintendent and Assistant Superintendent of the School District falsely accused the football team and the plaintiffs of drawing monkey faces on a watermelon and making monkey sounds, which if true, would have been racially derogatory actions intended to equate black members of opposing football teams with monkeys.

12. Kevin Clayton, Nancy McGinley, the Superintendent, and Louis Martin, the Assistant Superintendent, made the defamatory statements, even though they learned through interviews of the team and coaches that their statements were false, and with this knowledge they published these statements with malice.

13. The false and defamatory statements made by the defendants and their agents and/or employees were published to others and were published in the print media as well as local and national television. The print media and television programs falsely depicted the Academic Magnet High School football team and the plaintiffs as members of the football team as being racist.

14. In the November 5, 2014 edition of the Charleston City Paper, the defendant, Jones Street Publishers, LLC published an article entitled, “Mob Rules”. In this article, it is states: “The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you don’t already know, a

SCCA 401 (5/02)

racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it."

The newspaper further stated: "Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't."

The article also states: "As the controversy unfolded, the black community largely remained silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people."

The article when read as a whole, falsely accuses the football team and the plaintiffs of being racist.

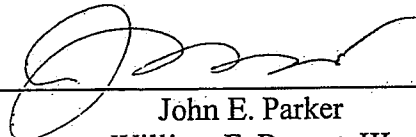
15. The publication of the false statements about the plaintiffs injured the plaintiffs' reputations.

16. The plaintiffs are entitled to actual damages against all defendants and to punitive damages against the defendants, Kevin Clayton, Axxis Consulting Company and Jones Street Publishers, LLC.

WHEREFORE, plaintiffs pray judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

[Signature Page to Follow]

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ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
November 17, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EUGENE H. WALPOLE,

Plaintiff,

v.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, AND JONES
STREET PUBLISHERS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10- 7655

SUMMONS

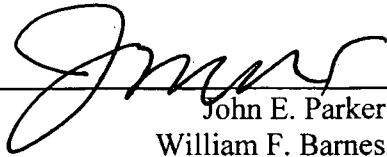
(Jury Trial Requested)

FILED
2014 DEC 16 PM 3:03
CLERK OF COURT
J. ARMSTRONG

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

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ATTORNEYS FOR PLAINTIFF

December 16, 2014
Hampton, South Carolina

ROA 226

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eugene H. Walpole,

Plaintiff,

v.

Charleston County School District, Kevin
Clayton, Axxis Consulting Company, and
Jones Street Publishers, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-7655

COMPLAINT
(Jury Trial Requested)

FILED
2014 DEC 16 PM 3:03
J. ARMSTRONG
CLERK OF COURT

The Plaintiff alleges:

1. The defendant, Charleston County School District is a governmental entity, subject to being sued pursuant to S.C. Code Ann. § 15-78-10, et. seq. Venue of the case is proper in Charleston County pursuant to § 15-78-100.

2. The defendant, Kevin L. Clayton, was at the times alleged in this complaint an agent and/or employee of Axxis Consulting Company acting within the scope of his agency and/or employment.

3. The defendant, Axxis Consulting Company, is liable for the acts of Kevin Clayton because Mr. Clayton was acting within the scope of his agency and/or employment at all times mentioned herein.

4. Nancy McGinley was at the relevant times the Superintendent of Charleston County School District and Louis Martin is an Assistant Superintendent of Charleston County School District and were at all times mentioned below acting within their employment with the Charleston County School District..

5. Jones Street Publishers, LLC is a limited liability corporation which publishes the Charleston City Paper and its headquarters is in Charleston, South Carolina.

6. The plaintiff is the football coach at the Academic Magnet High School.

7. On October 16, 2014, Louis Martin and Kevin Clayton met with the football team and coaches of the Academic Magnet High School after the School District received information concerning the football team and an incident involving watermelons, and even though they found no evidence of any racial reason for the team's watermelon celebration after a win, and even though all concerned told them there was no racial reason for the celebrations, they falsely published to others that Coach Walpole knowingly allowed the football team to make animal sounds and draw a monkey face on the watermelon during these celebrations. The defendants by falsely portraying that Coach Walpole knowingly allowed the team to make monkey sounds and draw a monkey face on the watermelon falsely accused Coach Walpole of intending to cast African American opponents in a derogatory light. The defendants by their statements falsely accused Coach Walpole of being racially prejudiced.

8. After October 16, 2014, Louis J. Martin, Assistant Superintendent of Education for the Charleston County School District, falsely stated and published to others that the members of the Academic Magnet High School football team with Coach Walpole's knowledge, "had engaged in a game ritual after football games in which the football team would draw a monkey face on a watermelon and after a victory, would smash the fruit and make animal noises."

9. After October 16, 2014, Nancy McGinley, falsely stated to the public that with Coach Walpole's knowledge "players would gather in a circle and squash the watermelon while others were either standing in a group or locking arms and making sounds described as 'ooh, ooh, ooh.'" She further falsely stated the sounds were "monkey sounds."

10. The statements of the Superintendent and Assistant Superintendent of the School District falsely accused the football team, with Coach Walpole's knowledge, of drawing monkey faces on a watermelon and making monkey sounds, which if true, would have been racially derogatory actions intended to equate black members of opposing football teams with monkeys.

11. Kevin Clayton, Nancy McGinley, the Superintendent, and Louis Martin, the Assistant Superintendent, made the defamatory statements, even though they learned through interviews of the team and coaches that their statements were false, and with this knowledge they published these statements with malice. Because of the false statements made and published by Kevin Clayton and Louis Martin, Coach Walpole was terminated from his coaching duties on October 20, 2014. He was reinstated to his coaching duties on October 22, 2014.

12. The false and defamatory statements made by the defendants and their agents and/or employees were published to others and were published in the print media as well as local and national television. The print media and television programs falsely depicted Coach Walpole and the Academic Magnet High School football team as being racist.

13. In an October 21, 2014 post of the Charleston City Paper the defendant, Jones Street Publishers, LLC published an article entitled "Melongate: Big toothy grins, watermelons, and monkey sounds don't mix." In the edition of the paper the article states:

Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there's one lesson to be learned from all of this it's this: big toothy grins, watermelons, and monkey noises don't mix. Any sensible person can see that.

Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.

Somewhere along the way in this year's unexpectedly successful season, the Raptors took a liking to buying watermelons before their games. They apparently

drew a face on it each time – a big toothy, grinning face. The first time the watermelon was named Junior. The next time it was Bonds Wilson, the name of the campus the AMHS shares with School of the Arts. That name stuck.

But here's where the things get even worse. At the close of each game, the players smashed the watermelon on the ground while reportedly making the monkey-like sounds of 'ooh ooh ooh ooh.' Apparently, the players did this after four or five games, each time evidently after the largely white Raptor squad beat one of their opponents, each one largely an African-American team. Parents of players on one of the opposing teams reportedly brought this to the attention of African-American Board member Michael Miller last week.

That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn't see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer. After all, AMHS is not only the No. 1 ranked school in the state, it's one of the tops in the nation.

Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so, I don't know about you, but I think it's time to reconsider Academic Magnet's rankings because clearly they are producing nothing more than grade-A dumbasses.

Even more troubling is the degree to which Raptor Nation has circled the wagons around Walpole and the team. Frankly, this has nothing to do with the fact that the coach is by all accounts a good man. Walpole's merits are meaningless.

The point is that an entire team of players thought it was Ok to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.

No one said, 'Hey guys, I know not a single one of you has a racist bone in your body, you know, because that's a bad thing, and well, you're an Academic Magnet kid, and you come from a good middle-class white family and you're going to college, and there's no way in hell you'd, you know, draw a racist caricature on a watermelon and make monkey noises and do it fully aware of, like, what all that stuff means, because if you did, knowing all that stuff, then yikes, people might start thinking you're racists. Hell, I'd think you're a racist, and, well, I just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?'

Actually, it's not. It's the sad truth about life here in Charleston, S.C. today.

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16. The above caption to the article which was published falsely accuses Coach Walpole of being a racist and is defamatory.

17. In an October 22, 2014 post published in the November 5, 2014 edition of the Charleston City Paper the defendant, Jones Street Publishers, LLC, stated that Coach Walpole had an "apparent problem recognizing racially insensitive matters." This statement falsely accuses Coach Walpole of being racially prejudiced.

18. In the October 30, 2014 edition of the Charleston City Paper, the defendant, Jones Street Publishers, LLC, published an article entitled "School district forces out superintendent who fired coach who condoned racist ritual. Mob rules." The article further states:

But goddammit, this town is rotten with racists.

Not only do we have a Confederate-flag waving, Southern apologist heading up the College of Charleston, now the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a football coach who condoned a racist act.

Honestly, I had no idea that this was how the Coach Bud Walpole controversy would play out. I don't think anyone really did. The ouster of McGinley is every bit as surprising as one of George R.R. Martin's wedding-day bloodbaths. But it's even more brutal than the *Game of Thrones* author could have conjured up because McGinley was in the right to give Walpole the boot – and the board should've backed her.

The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. If you don't already know, a racist caricature had been drawn on a watermelon and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it.

And based on what has been reported, it appears that McGinley in part was motivated to remove Walpole because he apparently didn't see anything disturbing himself, a stance that more than strains credulity given the coach's 50-some-odd-years on this planet.

...

In hindsight, there's no denying that McGinley simply misjudged her fellow Charlestonians. Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn this racist behavior. But it didn't.

As the controversy unfolded, the black community largely remained, silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people. Because one single coach had been fired, they were willing to ignore America's shameful racist past. Apparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.

Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior. Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.

Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African American community, some of them their fellow students. Now that Nancy McGinley has been forced out of office, perhaps that realization will happen much sooner rather than later.

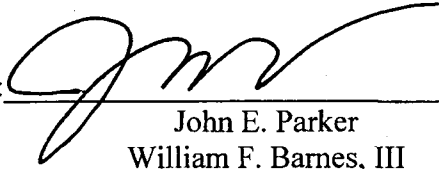
19. The October 30, 2014 ~~post~~ and November 5, 2014 article falsely accuses Coach Walpole of being a racist and is defamatory.

20. The publication of these false and defamatory statements about the plaintiff injured the plaintiff's reputation.

21. The plaintiff is entitled to actual damages against all defendants and to punitive damages against the defendants, Kevin Clayton, Axxis Consulting Company and Jones Street Publishers, LLC.

WHEREFORE, plaintiff prays judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

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ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
December 16, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

A.E.P., III,

Plaintiff,

vs.

C.A. No.: 2015-CP-10-2389

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

**JONES STREET PUBLISHERS, LLC'S
ANSWER AND COUNTERCLAIM**

FILED
2016 JUN 27 AM 10:35
JAMES ARMSTRONG
CLERK OF COURT
By [Signature]

Defendant Jones Street Publishers, LLC ("Jones Street"), answering the Amended Complaint of the Plaintiff, and counterclaiming thereto, would respectfully show to the Court as follows:

GENERAL DENIAL

1. Upon information and belief, Jones Street admits the allegations of paragraph 1 of the Amended Complaint.
2. Jones Street is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 2 and 3 of the Amended Complaint and, on that basis, denies those allegations.
3. Upon information and belief, Jones Street admits the allegations of paragraph 4 of the Amended Complaint.
4. Jones Street admits the allegations of paragraph 5 of the Amended Complaint.
5. On information and belief, Jones Street denies the allegations of paragraph 6.
6. Answering the allegations of paragraph 7 of the Amended Complaint, Jones Street admits that on or about October 16, 2014, Louis Martin and Kevin Clayton met with the football

team and coaches of the Academic Magnet High School to gather information concerning and related to the watermelon incidents. The remaining allegations of paragraph 7 of the Amended Complaint contain allegations, legal conclusions, and argument not directed to Jones Street to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein.

7. The allegations of paragraphs 8-11 of the Amended Complaint contain allegations, legal conclusions, and argument not directed to Jones Street to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein, with the exception that Jones Street admits that Nancy McGinley, acting in her official capacity, stated as follows in a public press conference on October 21, 2014: "Players would gather in a circle and smash the watermelon while others either were standing in a group or locking arms and making chanting sounds that were described as 'Ooo ooo ooo,' and several players demonstrated the motion." Superintendent McGinley described the chanting sounds as "monkey sounds" and stated that School Board trustee Michael Miller had reported that the football team engaged in a "tribal-like chant that is animalistic or monkey-like." She also stated that the watermelon was nick-named "Bonds Wilson" and that it had a face drawn on it "that could be considered a caricature."

8. Answering the allegations of paragraph 12 and 13 of the Amended Complaint, Jones Street admits that on or about October 21, 2014, it published an opinion editorial entitled "Melongate: Big toothy grins, watermelons, and monkey sounds don't mix" in the Charleston City Paper (the "October 21 opinion editorial"), and alleges that the opinion editorial speaks for

itself but that it is quoted substantially accurately in paragraph 12. Jones Street denies the remaining allegations of paragraph 12 and 13 of the Amended Complaint and specifically denies that the October 21 opinion editorial contains any false and defamatory accusation of racism of and concerning the Plaintiff.

9. Jones Street admits the allegations of paragraph 14 of the Amended Complaint.

10. Jones Street denies the allegations of paragraph 15 of the Amended Complaint.

11. Answering the allegations of paragraph 16 of the Amended Complaint, Jones Street admits that on or about October 30, 2014 and November 5, 2014, it published an opinion editorial entitled "School district forces out superintendent who fired coach who condoned racist ritual: Mob rules" in the Charleston City Paper (the "Mob Rules opinion editorial"), and alleges that the opinion editorial speaks for itself but that portions of it are quoted substantially accurately in paragraph 16.

12. Jones Street denies the allegations of paragraphs 17 and 18 of the Amended Complaint.

13. Answering the allegations of paragraph 19 of the Amended Complaint, Jones Street admits that official statements made to the public by the Charleston County School District Superintendent concerning and related to the watermelon incidents were published by various local and national print, television, radio, and internet media outlets. The remaining allegations of paragraph 19 of the Amended Complaint contain allegations, legal conclusions, and argument not directed to Jones Street to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein.

14. Answering the allegations of paragraph 20 of the Amended Complaint, Jones Street admits that on or about November 5, 2014, it published the Mob Rules opinion editorial in the Charleston City Paper, and alleges that the opinion editorial speaks for itself but that portions of it are quoted substantially accurately in paragraph 20. Jones Street denies the remaining allegations of paragraph 20 of the Amended Complaint and specifically denies that the opinion editorial, "when read as a whole," contains any false and defamatory accusation of racism of and concerning the Plaintiff.

15. Jones Street denies the allegations of paragraphs 21 and 22 of the Amended Complaint as they pertain to Jones Street.

16. Jones Street denies all the allegations of the Amended Complaint not expressly admitted hereinabove. Jones Street denies that Plaintiff is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

17. All factual statements concerning the Plaintiff that were made in the *City Paper* publications that are the subject of this action are and were substantially true and correct, were based upon official public statements by officials of the Charleston County School District, and concerned matters of legitimate public interest.

18. All other statements concerning the Plaintiff in the publications were expressions of opinion and therefore cannot be subject to liability.

19. Accordingly, the publications are privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

SECOND AFFIRMATIVE DEFENSE

20. The gist or sting of the opinion editorials about which the Plaintiff complains – that the Plaintiffs were insensitive to the racially derogatory implications of their actions – is substantially true and was based on records, statements, and reports of the Charleston County School District and its officials.

21. Accordingly, the opinion editorials are privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

THIRD AFFIRMATIVE DEFENSE

22. The *City Paper* publications about which the Plaintiff complains are not defamatory of and concerning any of the Plaintiffs individually.

FOURTH AFFIRMATIVE DEFENSE

23. The *City Paper* publications about which the Plaintiff complains are not defamatory *per se*, and Plaintiffs have not pleaded any extrinsic facts that make the publications defamatory *per quod*.

FIFTH AFFIRMATIVE DEFENSE

24. The *City Paper* publications about which the Plaintiff complains were a fair report of official reports, statements, and records.

SIXTH AFFIRMATIVE DEFENSE

21. The Plaintiff is a public figure with respect to the issues discussed in the *City Paper* publications that are the subject of this action.

22. The *City Paper* publications concerned matters of legitimate general and public interest and were published by Jones Street in good faith without actual malice toward the

Plaintiff.

23. Accordingly, the *City Paper* publications are privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

SEVENTH AFFIRMATIVE DEFENSE

24. The *City Paper* publications about which the Plaintiff complains are not defamatory *per se*, and Plaintiffs have not pleaded and cannot prove special damages.

EIGHTH AFFIRMATIVE DEFENSE

25. The opinion editorials about which the Plaintiff complains are privileged and protected by the doctrine of fair comment.

NINTH AFFIRMATIVE DEFENSE

26. The *City Paper* publications about which the Plaintiff complains constitute a fair and neutral report about a matter of public interest and thus are privileged as a matter of law.

TENTH AFFIRMATIVE DEFENSE

27. Plaintiff's past deeds are tendered in mitigation of any damages suffered or claimed by Plaintiff (which damages are denied).

ELEVENTH AFFIRMATIVE DEFENSE

28. The constitutional protections afforded the press by the First Amendment to the Constitution of the United States and Article I, Section 2 of the South Carolina Constitution do not depend on the legal theory asserted by the Plaintiffs; therefore, because Plaintiff has no justiciable claim for defamation against Jones Street, he likewise has no justiciable claims under other theories of law.

TWELFTH AFFIRMATIVE DEFENSE

29. The allowance of punitive damages against Jones Street under the particular facts of this case would abridge Jones Street's constitutional rights under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Constitution of the State of South Carolina.

THIRTEENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

30. Jones Street incorporates herein by reference the foregoing paragraphs of this Answer to Amended Complaint and Counterclaim to the extent consistent with this defense and these counterclaims.

31. The Plaintiff's actions in the watermelon incidents were widely covered by multiple sources of local and national print, television, broadcast, and internet media and were the subject of numerous comments on the racial implications and social perceptions of those actions.

32. Jones Street is the only media entity or individual sued by Plaintiff for its coverage or commentary on the racial implications and social perceptions of the Plaintiffs' actions.

33. The Plaintiff has no proof and cannot show that the *City Paper* publications about which he complains contain any defamatory statement of fact of and concerning the Plaintiff individually that was the proximate cause of any legally actionable injury to him.

34. The Plaintiff brought this action for the ulterior and improper purpose of seeking to punish Jones Street for exercising its constitutional right to express opinion on a matter of public interest.

35. The initiation and pursuit of this action by Plaintiff constitutes a willful act not proper in the regular conduct of this proceeding.

36. Such action constitutes an abuse of process in that the actions were not taken to redress any legally actionable injury sustained by him as a proximate result of Jones Street's conduct, but rather were initiated primarily to promote the Plaintiff's ulterior purpose to gain objectives not legitimate in the use of the legal process, specifically to infringe upon, punish, and deter Jones Street's exercise of its First Amendment rights.

37. The Plaintiff, with others and with several third parties, combined to bring this improper action against Jones Street for the purpose of injuring Jones Street in its business interests. Specifically, the Plaintiff has caused injury and special damages to Jones Street's reputation and goodwill. Accordingly, the initiation and pursuit of this action by Plaintiff constitutes civil conspiracy.

38. Plaintiff instituted the action against Jones Street with malice and without probable cause. Plaintiff's unfounded claim against Jones Street will be terminated in favor of Jones Street. Additionally, this unjustified action continuously causes Jones Street significant injury by attempting to infringe upon, punish, and deter Jones Street's exercise of its First Amendment rights. Accordingly, pursuit of this action by Plaintiff constitutes wrongful institution of civil proceedings and malicious prosecution.

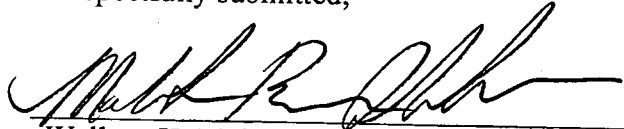
39. The Plaintiff should be held responsible in the amount of damages for all injury proximately caused to Jones Street by the initiation and pursuit of this action, including all attorneys' fees, litigation costs, and related expenses, and damages to goodwill and reputation.

40. The Plaintiff's conduct is willful and malicious, and punitive damages should be awarded against them.

41. Jones Street demands a jury trial as to all issues of fact concerning the Plaintiff's Amended Complaint and the Defendant's Counterclaims.

WHEREFORE, having answered the Amended Complaint of Plaintiff and counterclaimed thereto, Jones Street prays that the Court dismiss the Amended Complaint with costs and attorneys' fees, enter judgment against the Counterclaim Defendants, jointly and severally, for Jones Street's actual damages on its counterclaims, enter judgment for such punitive damages as are awarded on its counterclaims, and that the Court enter such other and further relief as it considers appropriate.

Respectfully submitted,



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Date: June 24, 2016

**ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

A.E.P., III,

Plaintiff,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2015-CP-10-2389

CERTIFICATE OF SERVICE

FILED
2016 JUN 27 AM 10:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This is to certify that I have this date caused to be served a true and correct copy of the within and foregoing **Jones Street Publishers, LLC's Answer and Counterclaim** on counsel of record in this action by causing the same to be deposited in the United States mail, first class postage affixed, addressed as follows:

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Kevin Clayton and Axxis Consulting Company
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Pro Se Defendants

Respectfully submitted,



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Date: June 24, 2016

**ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EUGENE H. WALPOLE,

Plaintiff,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-10-7655

**JONES STREET PUBLISHERS, LLC'S
ANSWER AND COUNTERCLAIM**

FILED
2015 JUL 28 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Jones Street Publishers, LLC ("Jones Street"), answering the Complaint of the Plaintiff, and counterclaiming thereto, would respectfully show to the Court as follows:

GENERAL DENIAL

1. Upon information and belief, Jones Street admits the allegations of paragraph 1 of the Complaint.
2. Jones Street is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 2-3 of the Complaint and, on that basis, denies those allegations.
3. Upon information and belief, Jones Street admits the allegations of paragraph 4 of the Complaint.
4. Jones Street admits the allegations of paragraph 5 of the Complaint.
5. Upon information and belief, Jones Street admits the allegations of paragraph 6 of the Complaint.
6. Answering the allegations of paragraph 7 of the Complaint, Jones Street admits that on or about October 16, 2014, Louis Martin and Kevin Clayton met with the football team

and coaches of the Academic Magnet High School to gather information concerning and related to the watermelon incidents. The remaining allegations of paragraph 7 of the Complaint contain allegations, legal conclusions, and argument not directed to Jones Street to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein.

7. The allegations of paragraphs 8-11 of the Complaint contain allegations, legal conclusions, and argument not directed to Jones Street to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein.

8. Answering the allegations of paragraph 12 of the Complaint, Jones Street admits that statements made publicly available by the Charleston County School District concerning and related to the watermelon incidents were published by various local and national print and television media outlets. Jones Street further admits that various local and national print and television media outlets included commentary racial implications and social perceptions related to the watermelon incidents. The remaining allegations of paragraph 12 of the Complaint contain allegations, legal conclusions, and argument to which no response is required. To the extent any allegations, legal conclusions, or argument may be directed to Jones Street, except as expressly admitted herein, Jones Street denies such statements contained therein.

9. Answering the allegations of paragraph 13 and 14 of the Complaint, Jones Street admits that on or about October 21, 2014, it published an opinion editorial entitled "Melongate: Big toothy grins, watermelons, and monkey sounds don't mix" in the Charleston City Paper (the "October 21 opinion editorial"). Jones Street denies the remaining allegations of paragraph 13

and 14 of the Complaint and alleges that the October 21 opinion editorial speaks for itself. Jones Street specifically denies that the October 21 opinion editorial, “when read as a whole,” contains any false accusation of racism of and concerning the Plaintiff.

10. Jones Street admits the allegations of paragraph 15 of the Complaint

11. Jones Street denies the allegations of paragraph 16 of the Complaint

12. Answering the allegations of paragraph 17 of the Complaint, Jones Street admits that on or about October 22, 2014, it published an opinion editorial entitled “Coach Walpole reinstated by Superintendent Nancy McGinley” in the Charleston City Paper (the “October 22 opinion editorial”). Jones Street denies the remaining allegations of paragraph 17 of the Complaint and alleges that the October 22 opinion editorial speaks for itself. Jones Street specifically denies that the October 22 opinion editorial, “when read as a whole,” contains any false accusation of racism of and concerning the Plaintiff.

13. Answering the allegations of paragraph 18 of the Complaint, Jones Street admits that on or about October 30, 2014 and November 5, 2014, it published an opinion editorial entitled “School district forces out superintendent who fired coach who condoned racist ritual: Mob rules” in the Charleston City Paper (the “Mob Rules opinion editorial”). Jones Street denies the remaining allegations of paragraph 18 of the Complaint and alleges that the Mob Rules opinion editorial speaks for itself. Jones Street specifically denies that the Mob Rules opinion editorial, “when read as a whole,” contains any false accusation of racism of and concerning the Plaintiff.

14. Jones Street denies the allegations of paragraph 19 and 20 of the Complaint.

15. Jones Street denies all the allegations of the Complaint not expressly admitted hereinabove. Jones Street denies that Plaintiff is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

16. All factual statements concerning the Plaintiff that were made in the opinion editorials that are the subject of this action are and were substantially true and correct, were based upon public statements by officials of the Charleston County School District, and concerned matters of legitimate public interest.

17. All other statements concerning the Plaintiff in the opinion editorial were expressions of opinion and therefore cannot be subject to liability.

18. Accordingly, the opinion editorial is privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

SECOND AFFIRMATIVE DEFENSE

19. The gist or sting of the opinion editorial about which the Plaintiff complains – that the Plaintiff was insensitive to the racially derogatory implications of his actions – is substantially true and was based on records, statements, and reports of the Charleston County School District and its officials.

20. Accordingly, the opinion editorials are privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

THIRD AFFIRMATIVE DEFENSE

21. The opinion editorials about which the Plaintiff complains are not defamatory of and concerning the Plaintiff individually.

FOURTH AFFIRMATIVE DEFENSE

22. The opinion editorials about which the Plaintiff complains are not defamatory *per se*, and Plaintiff has not pleaded any extrinsic facts that make the opinion editorial defamatory *per quod*.

FIFTH AFFIRMATIVE DEFENSE

23. The opinion editorials about which the Plaintiff complains were a fair report of official reports, statements, and records.

SIXTH AFFIRMATIVE DEFENSE

21. The Plaintiff is a public official and a public figure with respect to the issues discussed in the opinion editorials that are the subject of this action.

22. The opinion editorials concerned matters of legitimate general and public interest and were published by Jones Street in good faith without actual malice toward the Plaintiff.

23. Accordingly, the opinion editorials are privileged and protected under the common law of South Carolina and the Constitutions of the United States of America and the State of South Carolina.

SEVENTH AFFIRMATIVE DEFENSE

24. The opinion editorials about which the Plaintiff complains are not defamatory *per se*, and Plaintiff has not pleaded and cannot prove special damages.

EIGHTH AFFIRMATIVE DEFENSE

25. The opinion editorials about which the Plaintiff complains are privileged and protected by the doctrine of fair comment.

NINTH AFFIRMATIVE DEFENSE

26. The opinion editorials about which the Plaintiff complains constitute a fair and neutral report about a matter of public interest and thus is privileged as a matter of law.

TENTH AFFIRMATIVE DEFENSE

27. Plaintiff's past deeds are tendered in mitigation of any damages suffered or claimed by Plaintiff (which damages are denied).

ELEVENTH AFFIRMATIVE DEFENSE

28. The constitutional protections afforded the press by the First Amendment to the Constitution of the United States and Opinion editorial I, Section 2 of the South Carolina Constitution do not depend on the legal theory asserted by the Plaintiff; therefore, because Plaintiff has no justiciable claim for defamation against Jones Street, he likewise has no justiciable claims under other theories of law.

TWELFTH AFFIRMATIVE DEFENSE

29. The allowance of punitive damages against Jones Street under the particular facts of this case would abridge Jones Street's constitutional rights under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Constitution of the State of South Carolina.

THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM

30. Jones Street incorporates herein by reference the foregoing paragraphs of this Answer and Counterclaim to the extent consistent with this defense and these counterclaims.

31. The Plaintiff's actions in the watermelon incidents were widely covered by multiple sources of local and national print, television, broadcast, and internet media and were the subject of numerous comments on the racial implications and perceptions of those actions.

32. Jones Street is the only media entity or individual sued by Plaintiff for its coverage or commentary on the racial implications and social perceptions of the Plaintiff's actions.

33. The Plaintiff has no proof and cannot show that the Jones Street opinion editorial contains any defamatory statement of fact of and concerning the Plaintiff individually that was the proximate cause of any legally actionable injury to him.

34. The Plaintiff brought this action for the ulterior and improper purpose of seeking to punish Jones Street for exercising its constitutional right to express opinion on a matter of public interest.

35. The initiation and pursuit of this action by Plaintiff constitutes a willful act not proper in the regular conduct of this proceeding.

36. Such action constitutes an abuse of process in that the actions were not taken to redress any legally actionable injury sustained by them as a proximate result of Jones Street's conduct, but rather were initiated primarily to promote the Plaintiff's ulterior purpose to gain objectives not legitimate in the use of the legal process, specifically to infringe upon, punish, and deter Jones Street's exercise of its First Amendment rights.

37. The Plaintiff combined with several third parties to bring this improper action against Jones Street for the purpose of injuring Jones Street in its business interests. Specifically, the Plaintiff has caused injury and special damages to Jones Street's reputation and goodwill. Accordingly, the initiation and pursuit of this action by Plaintiff constitutes civil conspiracy.

38. Plaintiff instituted the action against Jones Street with malice and without probable cause. Plaintiff's unfounded claim against Jones Street will be terminated in favor of Jones Street. Additionally, this unjustified action continuously causes Jones Street significant

injury by attempting to infringe upon, punish, and deter Jones Street's exercise of its First Amendment rights. Accordingly, pursuit of this action by Plaintiff constitutes wrongful institution of civil proceedings and malicious prosecution.

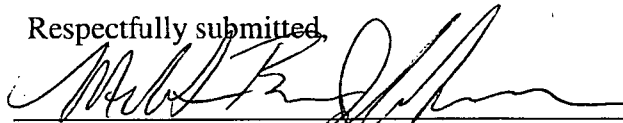
39. The Plaintiff should be held responsible in damages for all injury proximately caused to Jones Street by the initiation and pursuit of this action, including all attorneys' fees, litigation costs, and related expenses, and damages to goodwill and reputation.

40. The Plaintiff's conduct is willful and malicious, and punitive damages should be awarded against him.

41. Jones Street demands a jury trial as to all issues of fact concerning the Plaintiff's Complaint and the Defendant's Counterclaims.

WHEREFORE, having answered the Complaint of Plaintiff and counterclaimed thereto, Jones Street prays that the Court dismiss the Complaint with costs and attorneys' fees, enter judgment against the Counterclaim Defendant for Jones Street's actual damages on its counterclaims, enter judgment for such punitive damages as are awarded on its counterclaims, and that the Court enter such other and further relief as it considers appropriate.

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC**

Date: July 27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

EUGENE H. WALPOLE,

Plaintiff,

vs.

CHARLESTON COUNTY SCHOOL
DISTRICT, KEVIN CLAYTON, AXXIS
CONSULTING COMPANY, and JONES
STREET PUBLISHERS, LLC,

Defendants.

C.A. No.: 2014-CP-10-7655

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a true and correct copy of the within and foregoing **Jones Street Publishers, LLC's Answer and Counterclaim** on counsel of record in this action by causing the same to be deposited in the United States mail, first class postage affixed, addressed as follows:

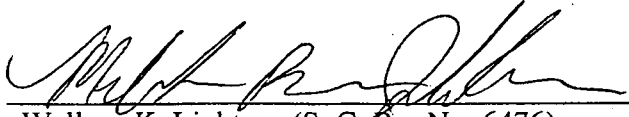
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FILED
2015 JUL 28 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

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Kevin Clayton and Axxis Consulting Company

Respectfully submitted,



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Date: July 28, 2015

ATTORNEYS FOR DEFENDANT
JONES STREET PUBLISHERS, LLC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2015-CP-10-2389

A.E.P., III, ET AL.,

PLAINTIFFS,

VS.

CHARLESTON CITY
SCHOOL DISTRICT,
KEVIN CLAYTON, AXXIS
CONSULTING COMPANY
AND JONES STREET
PUBLISHERS, LLC, ET.
AL,

DEFENDANTS.

TRANSCRIPT OF RECORD

OCTOBER 11, 2016
CHARLESTON, SC

B E F O R E:

HONORABLE (RET) CHIEF JUSTICE TOAL.

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

JOHN E. PARKER, ESQUIRE
WILLIAM F. BARNES, III ESQUIRE
Attorneys for the Plaintiffs

WALLACE K. LIGHTSEY, ESQUIRE
MELIAH BOWERS JEFFERSON, ESQUIRE
WILLIAM DAVIDSON, ESQUIRE
Attorneys for the Defendants

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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1 (The following proceedings were held
2 October 11, 2016, Charleston County, South
3 Carolina, @ 2:30 p.m.)

4 THE COURT: Please be seated. We are
5 here this afternoon on the roster -- motion roster
6 matters No. 20, 21, 22, 23, 24, 25, 26, 27, 28 and
7 29. These are all motions for summary judgment and
8 motions for protective orders on behalf of the
9 Defendant in connection with the lawsuits of
10 various members of the football team or former
11 members of the football team at the Academic Magnet
12 and Eugene H. Walpole, the coach of the football
13 team, the Academic Magnet, against the Charleston
14 School District, Jones Street Publishers, Kevin
15 Clayton, Axxis Consulting Company. That's all the
16 Defendants in the matter.

17 Now, here as the moving parties are
18 Attorney Wallace Lightsey and Attorney Meliah
19 Bowers Jefferson and appearing for the various
20 Plaintiffs is Attorney John E. Parker and his
21 associate, Mr. Barnes. Very good.

22 Mr. Lightsey, you are the moving party.
23 You may proceed.

24 MR. LIGHTSEY: Thank you, Your Honor.
25 May it please the Court --

1 THE COURT: Attorney Davidson isn't
2 here. Attorney Davidson is stuck in Orangeburg,
3 but I would imagine counsel for the Defendants are
4 going to make a presentation, am I right?

5 MR. LIGHTSEY: Your Honor, we will be
6 arguing the summary judgment motion for Jones
7 Street Publishers. Mr. Davidson represents the
8 school district.

9 THE COURT: He will be arguing for the
10 protective?

11 MR. LIGHTSEY: I will not be arguing
12 for that. That's his motion. We take no position
13 on that.

14 THE COURT: Very good. Well, I don't
15 think he is going to lose any steam by your going
16 ahead with your presentation unless y'all think
17 otherwise.

18 MR. LIGHTSEY: I think that makes
19 sense, Your Honor.

20 THE COURT: Very good. You may
21 proceed.

22 MR. LIGHTSEY: Thank you, Your Honor.
23 Again, may it please the Court, as I mentioned
24 we're here on behalf of Jones Street Publishers on
25 a motion for summary judgment and Ms. Jefferson and

1 I will be dividing that argument between the two of
2 us.

3 The basic question that's before the
4 Court on the summary judgment motion is this: In
5 connection with the matter that became a major
6 controversy attracting both local and national
7 media attention, debate and commentary, could a
8 newspaper be held liable for doing nothing more
9 than accurately reporting what a public official
10 said about the matter in their official public
11 press conferences and expressing the newspaper
12 editor's opinions about the matter.

13 This is exactly what the Charleston
14 City Paper did and all that it did in the
15 publications that the Plaintiffs are suing over.
16 Under our First Amendment juris prudence, a
17 newspaper or any person cannot be held liable in
18 those circumstances, so the case should be
19 dismissed now in summary judgment.

20 That is our principal argument which
21 applies to all of the cases, both the students
22 cases and the coaches. In addition, Ms. Jefferson
23 will present a ground for dismissal specific to the
24 Walpole case which is that he's a public figure and
25 has no proof of actual malice.

1 All are grounds, Your Honor, are
2 matters of law to be decided by the Court.

3 Your Honor, if I may, I would ask the
4 Court to indulge us so we can give a little bit of
5 the historical background that gives rise to this
6 case. In the early 1950's South Carolina begin
7 building what were called equalization schools to
8 provide a segregated but supposedly equal education
9 to African-American children. One of those
10 equalization schools was built here in Charleston.
11 It opened in 1951 and for 20 years provided a
12 segregated education to African-American children
13 in Charleston County.

14 The name of that school was Bonds
15 Wilson and was named for two preeminent
16 African-American educators of the 1940s and 1950s,
17 JR Bonds and John Wilson.

18 Bonds Wilson was torn down in 1955. It
19 is now the location of Charleston's Academic Magnet
20 High School. Approximately 650 students attend
21 Academic Magnet High School, and of that number,
22 approximately two percent are African-American.
23 That in itself has been a subject of some
24 controversy.

25 This case arises from the actions of

1 the 2014 Academic Magnet High School football team.
2 It was an all white team with the exception of one
3 player from Nigeria. Its opponents were the
4 predominantly African-American teams of Charleston
5 and surrounding counties, Baptist High School in
6 Hollywood, Whale Branch High School in rural
7 Beaufort County, and Berkeley High School in
8 Charleston.

9 And at some point the team decided that
10 it would celebrate football victories over these
11 other teams by smashing a watermelon. Of course I
12 don't need to explain to you the long history of
13 racial stereotyping of African-Americans with
14 watermelons, a history that goes back over a
15 hundred years and also includes a more recent era
16 of Tiger Woods and Barack Obama.

17 These caricatures appeared only a few
18 weeks before the matters at issue in this case.
19 And some of these, Your Honor, were extremely
20 offensive and very hurtful. As a result the
21 watermelon became and remains a powerfully racially
22 derogatory symbol. And the football teams and
23 watermelons weren't just ordinary watermelons. A
24 member of the team drew a face on them, a face with
25 a large flat nose, curly hair, wide eyes, and a

1 big, toothy grin.

2 That's a reproduction that was done by
3 the player who the drew the face on the watermelon.
4 And while they smashed the watermelon the team made
5 monkey or ape sounds. Ooo, ooo, ooo, ooo. Again,
6 I don't have to tell you the ugly history of the
7 use of monkey and ape images to mock
8 African-Americans.

9 And they gave the watermelon a name.
10 They named it Bonds Wilson. During this time, some
11 of the Plaintiffs who are before you today arguing
12 injury to reputation were filling their Facebook
13 pages and Twitter posts with racial jokes and
14 racial stereotypes.

15 Your Honor, we are here today on the
16 Charleston City Paper's motion for summary judgment
17 and the standard to be applied is not the typical
18 scintilla of evidence summary judgment standard
19 because the press in general and the Charleston
20 City Paper in this instance are protected by the
21 Constitution of the United States, particularly in
22 reporting and commenting on matters of public
23 concern as this clearly was.

24 As our United States Supreme Court has
25 held, I know you're familiar with these cases, in

1 Bose Corporation, judges as expositors of the
2 Constitution must independently decide whether the
3 evidence in the record is sufficient to cross the
4 constitutional threshold. And that standard in
5 this summary judgment motion is one of clear and
6 convincing evidence. Our South Carolina Supreme
7 Court has held very clearly in George v. Fabri and
8 in Fleming that it's a clear and convincing
9 evidence standard that applies on summary judgment.
10 That's a standard that the Plaintiffs cannot meet.

11 The article and editorials at issue
12 arose from a press conference held by the
13 Charleston County School District in the aftermath
14 of the watermelon ritual being exposed. At that
15 press conference the district superintendent
16 announced the findings of the district's
17 investigation of the ritual and her decision to
18 fire the head coach of the team from his coaching
19 position.

20 The Charleston City Paper attended that
21 press conference, reported on it and wrote two
22 editorials about it and later events. The initial
23 news article and the two editorials are the
24 subjects of the Plaintiff's claims for defamation.

25 What appears in the City Paper can be

1 divided into two categories. Your Honor, I know
2 that you know that Milkovich said there's no
3 artificial distinction between fact and opinion,
4 but as you know the cases post Milkovich it can
5 still be used, it's kind of a shorthand reference
6 to what Milkovich said, is protected under the
7 traditional protection for opinion, statements of
8 opinion.

9 On the left are the facts that the City
10 Paper reported, the fact that watermelons were
11 smashed as part of this ritual, that there was a
12 face drawn on them, that there was a caricature,
13 that monkey sounds were made, the ritual took place
14 and that a watermelon was named Bonds Wilson.

15 It's undisputed that these are accurate
16 reports of statements made by the school
17 superintendent at the press conference.

18 As I have summarized on the right, the
19 City Paper gave its editorial view of those facts,
20 its view of what had happened. That the football
21 players had behaved like racist douche bags, that
22 if they did not realize that their actions would be
23 perceived as racially offensive, that that was
24 indicative of the casual acceptance of racism in
25 Charleston today, that the school had not taught

1 its students about the history of the watermelon
2 trope, and it was turning out a bunch of grade A
3 dumbasses and not the best and brightest and that
4 this was a racist ritual, a racist behavior, on the
5 part of the people that participated in it.

6 Your Honor, as a matter of law, both
7 sides of this board are protected. The left side
8 of the facts are protected by the Fair Report
9 Privilege as the Fourth Circuit explained in the
10 Reuber case. Is this position okay for you, Your
11 Honor?

12 THE COURT: Yeah. I can see it.

13 MR. LIGHTSEY: The Fair Report
14 Privilege shields news organizations from
15 defamation claims when publishing information
16 originally based on government reports or actions.
17 The Fair Report Privilege encourages the media to
18 report regularly on government operations so that
19 citizens can monitor them. It's undisputed that
20 all of the facts summarized on the left side of the
21 board came from the press conference that the
22 Charleston County School District held to report
23 its findings of its investigation of the ritual.
24 These are not facts that the City Paper uncovered
25 or created. In fact, the Plaintiff's own pleadings

1 establish that the facts stated in the article and
2 the editorial about the ritual are accurate
3 restatements of what the school district officials
4 publicly said about the watermelon ritual and as
5 such they are covered by the Fair Report Privilege.

6 The right side of the board, it's a
7 summary, but it is what remains of the editorials
8 at issue and these are not facts. They're
9 opinions, ideas and commentary and as such they are
10 protected by the First Amendment. The Supreme
11 Court has held in Gertz that there is no such thing
12 as a false idea and it reaffirmed in Milkovich that
13 for something to be subject for a defamation claim
14 it has to be objectively provable as true or false.

15 As the Court said in Gertz, however
16 pernicious an opinion may seem, it said -- this is
17 the common ground -- we depend for its correction
18 not on the conscience of judges and juries, but on
19 the competition of other ideas.

20 Your Honor, that's exactly what
21 happened in Charleston. There was a vigorous
22 public debate about the actions of the Academic
23 Magnet football team in 2014. Many newspaper
24 reports criticized them, some supported them. The
25 national press weighed in. Local officials weighed

1 in. And community leaders in the African-American
2 community as well as alumni of Bonds Wilson also
3 weighed in and said this was racist and it should
4 be censured. This is how issues like these are to
5 be resolved, through vigorous public debate, not
6 through attempts to stifle those whose opinion
7 offends you through the threat of a jury trial.
8 That's why the Supreme Court has turned the order
9 of proof on its head in cases like this. And the
10 leading case on the protection of statements of
11 opinion held that a statement on matters of public
12 concern must be provable as false before there can
13 be liability under state defamation law at least
14 where a media defendant is involved and that is
15 clearly the case here, Your Honor.

16 The opinions expressed by the City
17 Paper editor are not provable as true or false.
18 They're not -- they are clearly statements on which
19 different people can hold different views and
20 people did hold different views on those. It is
21 not a question of fact like was the light red or
22 green or was the Defendant the one who fired the
23 gun. These are expressions of the editorial
24 writer's views on a matter of very substantial
25 public controversy that was picked up and covered

1 all over the country. Certainly others might
2 disagree with that editorial and some did. Some
3 thought this was silly to get so upset about it.
4 Some said this is political correctness that's
5 going too far. I don't agree with that point of
6 view, but I recognize they have the right to
7 express that.

8 They even went further and said the
9 real racist here is the one who perceive this thing
10 as racist. Again, I don't agree with that, but I
11 think they should be able to express that view and
12 not worry about getting sued by it -- over it by
13 somebody who disagrees with them. Because it's a
14 matter of opinion, not something that can be proved
15 objectively or verified with evidence.

16 And that's exactly what the district
17 court held in Forte v. Jones. The allegation that
18 a person is racist is not actual because it has no
19 factually verifiable meaning. Where someone thinks
20 another person is racist and says so to a third
21 person does not constitute publication of a
22 defamatory statement because the statement is one
23 of factual opinion. It cannot be proved or
24 disproved. People even disagree over what racist
25 means. There is different views of that. It can

1 be implied, it can be implicit, it can mean you
2 think somebody from a different race is inferior,
3 it can mean you just don't like people of a
4 different race. It can hold lots of different
5 meanings.

6 In fact, Your Honor, what we have here
7 is what a number of courts have called pure opinion
8 which is where the writer sets forth the facts that
9 they are drawing the conclusion on. Does not imply
10 that there are other facts that they know about
11 that may be defamatory that lead them to form their
12 conclusion, but sets out all of the facts and says
13 from these facts I conclude X. That's what courts
14 have held as pure opinion and felt it is absolutely
15 protected under the First Amendment.

16 Your Honor, I think it would be
17 analogous if I wrote a letter to the editor and
18 said what Mr. Trump said on that hot mic to Billy
19 Bush, he behaved like a sexist douche bag. All the
20 facts are out there. It's what he said on the hot
21 mic and I am not implying that I know something
22 that may be defamatory that other people don't
23 know. I don't think that's any different from the
24 case we have here. I can't imagine that Mr. Trump
25 would have a valid claim of defamation against me

1 if I were to make a statement like that.

2 So if I may, I want to make two other
3 points very quickly and then I will turn it over to
4 Ms. Jefferson. One other argument that we have,
5 and this goes to all of the cases, the students and
6 the coach, is that they don't have any proof of
7 injury to reputation. It is important to note here
8 the City Paper did not break that story. It was
9 already widely reported locally, state wide,
10 nationally, in print, on TV, on the radio, on the
11 internet, and there were many other commentators
12 who were calling this racist behavior or racist
13 ritual.

14 The Plaintiffs themselves allege in
15 their pleadings that national and local media
16 besides the City Paper picked up the comments made
17 by the school district officials about the drawing
18 on the watermelon and the monkey sounds and that
19 this led to the Plaintiffs being portrayed as
20 racist. Wholly independent of the City Paper
21 publications. The Plaintiffs all affirmed at their
22 depositions and they have admitted they have no
23 proof that their reputations were tarnished because
24 of this City Paper publication as opposed to all of
25 the other media coverage.

1 Coach Walpole wasn't even aware of the
2 City Paper piece until this attorney showed it to
3 him.

4 All of the students got into their
5 colleges, Coach Walpole was reinstated just a week
6 later. There is no proof of any injury to
7 reputation, no proof of any special damages and
8 this is fatal to their claim. You have written
9 about this extensively, Your Honor. The essence of
10 defamation is injury to reputation, not hurt
11 feelings.

12 Now, in a defamation claim there can be
13 damages for hurt feelings or embarrassment, but
14 injury to reputation remains a required element of
15 the tort. In cases of defamation per say, injury
16 to reputation can be presumed, but the Supreme
17 Court made it clear in Fleming and Erickson that
18 when the Defendant is a member of the news media
19 and the issue is one of public concern that
20 presumption of injury does not apply and proof is
21 required.

22 THE COURT: Let me ask you something
23 there, Mr. Lightsey. One of the central
24 contentions of the Defendants is this was not a
25 matter of public interest. And they, of course,

1 use a different test therefore. And particularly
2 with respect to the football players who they
3 contend are not public figures. What do you say to
4 that?

5 MR. LIGHTSEY: Well, I would concede
6 that the players are not public figures. We have
7 not contended that. I think clearly given the
8 attention that this brought and at some point I
9 hope I can touch on the general tension that we
10 have in racial affairs now, I think given the
11 broader social context of what was going on at the
12 time in Ferguson, Baltimore and places like that,
13 here in Charleston, this became a significant
14 controversy and it was all over the press, all over
15 the media. I think that made it an issue of public
16 concern. And action was being taken by the
17 government agency. The school district initially
18 fired the coach, it reported findings suggesting
19 that the behavior was racist and then restated him
20 under pressure from the school board and the
21 superintendent then resigned. It was a huge
22 controversy about that. And that was really the
23 context. So certainly a private person can become
24 involved in a matter of public controversy and
25 concern. You don't have to be a public figure to

1 do that.

2 THE COURT: The suggestion is made in
3 Defendant's filings that it was a purely private
4 matter, that the school district itself committed
5 the sin of making it a public controversy when its
6 then superintendent called a news conference and
7 said the various things that were said about what
8 happened.

9 MR. LIGHTSEY: And, Your Honor, I am
10 not faulting opposing counsel. I just got their
11 memo about five minutes before you came in so I
12 haven't really had a chance to read it. But
13 clearly if the school board, or excuse me, the
14 school district made this a public controversy then
15 it was. That happened before the City Paper wrote.
16 Again, City Paper didn't break the story. If this
17 was going on and nobody knew about it and the City
18 Paper published this big expose on it, maybe there
19 might be an argument then. But there was a public
20 press conference. These comments were made by the
21 district superintendent. The coach was fired. A
22 week later under pressure the coach was reinstated
23 and the superintendent resigned.

24 I think that makes this a public
25 controversy, Your Honor, and one of legitimate

1 public concern. And it was a matter of public
2 concern. As I mentioned, Seth Whipper got
3 involved. Reverend Darby got involved with the
4 commenting on it. This was a big concern to the
5 local community and to the nation. So again, Your
6 Honor, on the question of injury to reputation,
7 they have no proof of that. They conceded that.
8 And that also requires all of the cases to be
9 dismissed.

10 And then finally and just briefly, I
11 will touch on this just briefly because again I
12 know you know the law on this. To be actionable a
13 defamatory statement has to be other concerning the
14 Plaintiff. As to the students, not the coach, but
15 as to the students, no statement was made about any
16 of them individually. Nothing was made that
17 described any individual player or any of the
18 Plaintiffs. There was simply comments as to the
19 team as a whole. There are cases that we have
20 cited in our memorandum where the courts have held
21 a group of 17 people is too many for any individual
22 to have a cause of action. Another case with 23
23 people said it was too many. A case involving a
24 lacrosse team that was 30, the court said that's
25 too many people. Individual has a cause of action.

1 Here the football team has 29 players. We submit
2 as a matter of law that's too many for the alleged
3 defamation to be of concern to any of them and so
4 there shouldn't be any cause of action on the part
5 of the players.

6 THE COURT: Thank you, Mr. Lightsey.
7 Ms. Jefferson.

8 MS. JEFFERSON: May it please the
9 Court, like the students' suits, Coach Walpole's
10 claims against the City Paper should be dismissed
11 on the grounds of Fair Report Privilege, protection
12 of statements of opinion and lack of proof of
13 injury to reputation. But there is an additional
14 reason why Coach Walpole's suit must be dismissed.
15 Coach Walpole is a public official as a matter of
16 law. And as such, he has an obligation to come
17 forth with proof of actual malice.

18 Unfortunately for Coach Walpole, he has
19 no proof of actual malice, much less the clear and
20 convincing proof that he is required to demonstrate
21 under the New York Times doctrine. As a matter of
22 law, Coach Walpole is a public official and the
23 scope of who might qualify as a public official is
24 broadly defined and is not limited to only elected
25 officials or top government officials. It is a

1 case-by-case analysis made after careful
2 examination of facts and circumstances. The key
3 consideration is whether or not the employees's
4 position would invite public scrutiny and
5 discussion of the person holding it.

6 Multiple courts, including ones here in
7 South Carolina, have done this analysis and have
8 found public school administrators, employees and
9 public officials to be -- public officials to be
10 public figures. Some courts have even held that
11 teachers and athletic coaches are public officials.

12 And when we think about it, the
13 athletic programs in public school systems and
14 those who run them are consistent subjects of
15 intense public interest and substantial publicity.
16 Our colleague Jay Bender has even been known to say
17 things like in South Carolina football is a true
18 religion. And he probably says that a little bit
19 tongue in cheek, but on a crisp fall Friday or
20 Saturday night in the south, an objective observer
21 might not think that that statement falls far from
22 the truth.

23 And in that context on that fall Friday
24 night or Saturday afternoon, particularly in
25 Columbia, the almighty and the king of kings of

1 football is none other than the head football
2 coach. And the head football coach has great
3 influence over the students with which they
4 interact. So let's look at Coach Walpole's
5 position in the Charleston County School District.

6 He is not just another teacher at the
7 school. He was the head football coach at the
8 Academic Magnet High School and he was also the
9 head coach of the womens basketball team. And in
10 those roles Coach Walpole participated in
11 television and newspaper interviews.

12 He was often covered by the media for
13 the teams performance in his role as head football
14 coach of these teams. This coverage was actual and
15 expected exposure that he anticipated as the head
16 football coach. The fact is that Coach Walpole is
17 not a stranger to news coverage. The media talked
18 about him regularly and that was particularly true
19 in 2004 when the Academic High School was on the
20 most unlikeliest of winning streaks. He was the
21 very -- he was the public face of this winning
22 streak. And he is the very essence of the public
23 official.

24 The Court should make that conclusive
25 determination and hold him to the New York Times

1 standard of showing actual malice. Now, if we look
2 at the standard set out by the Supreme Court in New
3 York Times v. Sullivan, it explains that public
4 officials like Coach Walpole must allege and prove
5 by clear and convincing evidence that the Defendant
6 acted with actual malice in publishing the
7 allegedly defamatory statement. To meet that
8 standard Coach Walpole must first show that the
9 City Paper made the subject statements with
10 knowledge of falsity or reckless disregard for the
11 truth.

12 But just alleging or even showing
13 negligence in failing to discover falsity in the
14 published statements is not enough to show the
15 recklessness that is required or finding of actual
16 malice. It is undisputed and in the complaint
17 itself it actually acknowledges that the City Paper
18 simply reported and commented on statements of the
19 school district officials and these very statements
20 were also reported widely in local and national
21 media.

22 The City Paper had absolutely no reason
23 to think that what they were reporting was not
24 true. And this is affirmed by the affidavit of
25 Paul Bowers and Chris Haire who are the authors of

1 the article in the editorials at issue in this
2 case.

3 Coach Walpole simply has no evidence to
4 the contrary. He only relies on the paper's
5 failure to interview the players and this is
6 nothing more than a criticism of the paper's
7 journalist standards. But it is well established
8 that the failure to investigate is not enough to
9 prove actual malice. The Plaintiffs have no claims
10 here. The City Paper stated the facts and gave its
11 opinion. It is allowed to do that. The Plaintiffs
12 have no proof of any injury to their reputations or
13 otherwise.

14 So you may ask then how would we get
15 here if the Plaintiffs have no claims? Your Honor,
16 we're here because the City Paper hurt their
17 feelings. But as my colleague, Mr. Lightsey, said
18 that's not enough to continue this case on to
19 trial.

20 At the beginning of this argument Mr.
21 Lightsey poignantly framed the legal issues at the
22 very heart of this case. But I would be remiss if
23 I did not take a moment to acknowledge both the
24 irony and the absurdity of making this argument
25 before this Court here in Charleston, South

1 Carolina, where we sometimes forget that just steps
2 away from the beautiful historic buildings now
3 filled with quaint shops and restaurants is the old
4 slave mart where nearly 40 percent of the American
5 slave population was bargained for and sold like
6 cattle. A city where we are -- there are deeply
7 rooted unhealed wounds festering in the history of
8 racism that some would much rather ignore than to
9 heal.

10 If recent events, including this one,
11 shows us anything at all, it's that we cannot leave
12 these wounds unattended. But we must be able to
13 open the dialogue about it if we ever hope to move
14 forward together. And that means telling our
15 children that Charleston's history is as ugly to
16 examine as this city is now beautiful to gaze upon.

17 Upholding the constitutional protection
18 of the First Amendment and promptly disposing of
19 baseless claims like the Plaintiffs claims here
20 insures that the conversation and hopefully some
21 aspect of healing can move forward. Thank you,
22 Your Honor.

23 THE COURT: Thank you, Ms. Jefferson.
24 Mr. Davidson.

25 MR. DAVIDSON: I apologize for getting

1 in here late, Your Honor.

2 THE COURT: Traffic getting in here is
3 a difficult thing.

4 MR. DAVIDSON: I have never seen I-26
5 literally stopped for 20 minutes on the interstate.

6 THE COURT: Well, we are just glad
7 you're here. Mr. Lightsey and Ms. Jefferson have
8 made a presentation with respect to the summary
9 judgment motion. You, of course, are -- have a
10 central role to play in the protective order
11 motion, but is there anything you would like to add
12 to the summary judgment matter before I turn to Mr.
13 Parker?

14 MR. DAVIDSON: Not really, Your Honor.
15 At some point the district may be moving, but at
16 this stage, we went ahead and let Jones go first
17 and we really have nothing to add to the argument.

18 THE COURT: Very well.

19 MR. DAVIDSON: Thank you, ma'am. I
20 appreciate it.

21 THE COURT: Mr. Parker.

22 MR. PARKER: Thank you. It's
23 interesting to me, these cases fascinate me because
24 lawyers and great lawyers can argue that calling
25 somebody a racist douche bag doesn't hurt your

1 reputation. I promise you if you are a racist
2 douche bag you have got a horrible reputation.
3 Your reputation has been damaged about as much in
4 today's world as you could by saying anything that
5 I know of.

6 I -- of course we won't go to the
7 technical definition of douche bag, but it's not a
8 good thing, but the other meaning is it is a
9 contemptible person. A person that's the highest
10 of contemptible. And being called a contemptible
11 person is certainly defamatory, particularly in the
12 language used in these articles. And I don't think
13 there's any question, I don't think they have
14 raised it too much, about the fact that I think
15 that the defense is that -- somehow they are
16 entitled to call people douche bags. I don't
17 believe they are. I don't believe that they are
18 able to single out people and say very, very
19 defamatory things about them and then say well, we
20 said it, but we are not liable for it. We said
21 these terrible things about you that damaged your
22 reputation, but we are entitled to damage your
23 reputation falsely.

24 And I want to tell you what really
25 happened. That -- I am surprised that the defense

1 didn't bring this up, because they never stated the
2 evidence about what really happened in this case
3 that was so ignored by the media and by the
4 defense.

5 What really happened in this case is
6 these young, fine gentlemen that play football for
7 the Academic Magnet School, they went to a fruit
8 stand and bought a watermelon. And one of the guys
9 on the team, Daniel Nelson, decided that it would
10 be a good thing to go and do like Tom Hanks did in
11 the movie the Castaways and draw a figure on the
12 watermelon and name the watermelon as they did in
13 the movie Wilson. He named it Bonds Wilson.

14 And they started this tradition of
15 eating this watermelon after the game which they
16 did and it had nothing to do with any racial
17 overtones whatsoever. In fact, one of the students
18 doing this was a black guy, Darius, who was the --
19 got up a petition to get the kids to reinstate
20 their names and to actually reinstate the coach.

21 And this is what they were attempting
22 to do and what the testimony is in the case, what
23 their intention was of this. Unfortunately, in
24 order to make out a case of racism and to bring
25 this to the public light, people that had interest

1 other than finding the truth decided that they
2 would blow this out of proportion and brand these
3 children and this coach a racist which nothing
4 could be further from the truth.

5 And that is the facts of what happened
6 on page 30 of Daniel Nelson's deposition and the
7 ensuing pages. And so the question is can a
8 newspaper falsely without investigating anything
9 make a determination that people are racial, racist
10 douche bags that aren't really fit to be members of
11 society and to mark them as outcasts and do it with
12 impunity because they say they have a First
13 Amendment right to do so.

14 I don't think the First Amendment goes
15 near that far. And the First Amendment in this
16 case at most if they were negligent in what they
17 did, then clearly, they would be liable. They were
18 negligent because they made no effort to find the
19 truth.

20 They knew there was a denial that this
21 was not, in fact, true. They knew that, in fact,
22 the players and the coach denied all this. They
23 had some obligation to actually determine whether
24 or not what they were printing was, in fact, true.
25 It was, in fact, false. And they did it with

1 impunity because they figured that they could call
2 these people -- and one other thing I want to bring
3 up is there were monkey sounds. What was done was
4 when they would circle up they would form a circle
5 as football teams do and give football chants. And
6 from that that has morphed into monkey sounds.

7 So what we have here is a total made up
8 story, totally made up, totally untrue, totally
9 decided for other reasons, political reasons, to
10 make this and make the Academic Magnet School and
11 the students out to be racist and make the coach
12 out to be a racist when, in fact, he's not.

13 If, in fact, being called a racist
14 douche bag is not defamatory then obviously we have
15 no case. Because that's what they were falsely
16 accused of being and they were falsely accused --
17 you have to read the articles. As a whole they are
18 totally damning to these kids and to the coach's
19 reputation. If you believe what's in those
20 articles in the paper and the City Paper you would
21 believe that Coach Walpole and these students are
22 the lowest form of life. I would. I am totally --

23 THE COURT: Well, Mr. Parker, let me
24 ask you this: First of all, as I understand the
25 claim that was made by the paper it is that two

1 things were done in these two articles. One was
2 factually based and one was opinion based. The
3 factually based part they contend was not anything
4 more than reporting what Ms. McGinley, the
5 superintendent, said. And it certainly appears
6 from the material that I have looked at that she
7 did use the word racist, she did use the word
8 monkey sounds, she did describe the picture that
9 was drawn on the watermelon as a racial caricature
10 and they reported that.

11 Now, that's the first contention that
12 he made is that is not something made up, nor do
13 they have a duty to investigate it, but rather if
14 it is the recording of a public event by public
15 persons, they may quote that person and report the
16 public opinion and that's something our cases have
17 said that. How do you respond?

18 MR. PARKER: Because they didn't do
19 that.

20 THE COURT: Well, what is it they said
21 that was completely made up and that was not said
22 by Mrs. McGinley?

23 MR. PARKER: Well, completely made up
24 was the fact that these students and coaches are
25 racist douche bags.

1 THE COURT: Wait a minute. That's the
2 opinion part. I'm not talking about that part.
3 Wait a minute, Mr. Parker. There are two aspects
4 to this. One of them is the reporting of an event
5 that happened. The students having this watermelon
6 ritual after a game and Ms. McGinley held a public
7 press conference to discuss that and describe that
8 and describe why she suspended the coach because of
9 it.

10 And the paper contends that the first
11 thing that happened is they reported what she said
12 at her press conference. And, you know, you have
13 discussed here that no, it is something that comes
14 from a Tom Cruise movie and no one made sounds and
15 there was nothing racial. She described it as a
16 racial event with monkey sounds and a caricature on
17 a watermelon. So help me understand what is made
18 up about what the City Paper described as what she
19 said.

20 MR. PARKER: What she actually said was
21 -- this was what she said. She stated that the
22 players would gather in circles, squash the
23 watermelon while others were standing in a group
24 while locking arms and making sounds described as
25 ooo, ooo, ooo. She also said they were monkey

1 sounds.

2 THE COURT: Right.

3 MR. PARKER: That's what she said.

4 THE COURT: She also talked about the
5 caricature. She showed that to the audience. What
6 did she say about that?

7 MR. PARKER: She did. She held it up
8 and --

9 THE COURT: What did she say about
10 that?

11 MR. PARKER: I'm not --

12 THE COURT: She said it was a
13 caricature, a racial caricature, did she not?

14 MR. PARKER: She said they drew monkey
15 faces on a watermelon and making monkey sounds
16 and --

17 THE COURT: She used the word racist,
18 did she not?

19 MR. PARKER: That I'm not positive of.
20 I don't want to say if she did. She may have. But
21 they did not report it as that. If they had
22 reported what she said and said that Dr. McGinley
23 held a press conference and said what she said,
24 then I would agree there would be no liability.

25 THE COURT: Then you go to the other

1 side of the ledger and the thing that you have
2 objected most strongly to is the use of the term
3 racist and racist douche bag and in the pleadings
4 we also talk about Charleston area causal
5 acceptance of racism, grade A dumbasses and they
6 have a racist ritual with racist behavior. All
7 those things are said on the opinion side of the
8 ledger in the two articles, the two opinion pieces,
9 Mob Rule and Melongate. The contention is made
10 that those are permitted expression of opinion of a
11 newspaper interpreting what Ms. McGinley said
12 happened factually.

13 MR. PARKER: I disagree with that. I
14 disagree.

15 THE COURT: What is the line that would
16 separate protecting First Amendment expression of
17 opinion even if it contains pejorative words from
18 material that can be sued for as defamation? What
19 is the dividing line?

20 MR. PARKER: Well, I think one dividing
21 line is it has to be true what's being said.

22 THE COURT: No. That's not what the
23 courts say.

24 MR. PARKER: Well, it first has to be
25 false --

1 THE COURT: You have a burden of
2 showing it was false.

3 MR. PARKER: That's right, we do. And
4 we can prove it is false and we have evidence in
5 the record that it's false.

6 Now, the question is did the City Paper
7 accurately report on what Superintendent McGinley
8 said. The answer is no, they did not. They took
9 what she said and went about four or five steps
10 farther.

11 THE COURT: Well, what they did was to
12 take what she said and then they put the label on
13 it. They said what she described is in our opinion
14 a racist ritual. Is that something they cannot do?
15 They cannot look at something and say they think
16 that's a racist ritual without being sued for
17 defamation?

18 MR. PARKER: Well, they went further
19 than that. They said that these people are racist
20 douche bags. They said they are racist,
21 contemptible people. All of these people that we
22 have sued for are racist contemptible people. And
23 that is defamatory. If it's not I don't know what
24 could be in today's world when you take it and they
25 had no evidence whatsoever. They were wrong in

1 what they reported --

2 THE COURT: Let's assume you're right.
3 It is defamatory. This case is still subject to
4 potential dismissal if other components of an
5 actionable defamatory statements are not there.
6 And one of those is actual malice.

7 MR. PARKER: Correct.

8 THE COURT: And what is it that
9 demonstrates the actual malice here?

10 MR. PARKER: The fact that they are
11 labeling these people as racist douche bags without
12 any investigation, without any evidence, without
13 anything to come to that conclusion with. They
14 have made that up. Because they are not racist
15 douch bags.

16 THE COURT: Well, let me ask you this:
17 Does it bear on this analysis, and I am not saying
18 it does. I am not very fond of taking clips from
19 newspapers all over the country and both sides have
20 done that. And some in their notebooks or their
21 filings have shown considerable coverage that was
22 in various places, some well before these things
23 were published by City Paper.

24 MR. PARKER: Absolutely.

25 THE COURT: And I must say that the

1 overwhelming amount of materials I have been
2 supplied with, materials in which the writer is of
3 the opinions, say this is a racist ritual. That's
4 an opinion they express about the drawing of the
5 face on the watermelon, the naming of it after a
6 black high school, and a primarily white team
7 circling around and making monkey like sounds and
8 eating it. The majority of the writings that
9 describe that event label it as a racist event or a
10 racist ritual. Does that bear on the ability of
11 this particular paper to express that opinion
12 without being brought into court for defaming
13 someone?

14 MR. PARKER: I think if they said what
15 the other papers said and said that --

16 THE COURT: How so? They can quote
17 somebody else saying it is racist, but they can't
18 themselves say it is racist?

19 MR. PARKER: No, it is not that -- no,
20 the idea that if you take it as true --

21 THE COURT: I am taking it as
22 a recitation of the fair reporting of a public
23 event that is the conference that -- the press
24 conference that Ms. McGinley had. If it is found
25 that this is first of all, a fair reporting of what

1 she said.

2 MR. PARKER: I don't think that it is a
3 fair reporting.

4 THE COURT: Then she is a governmental
5 official.

6 MR. PARKER: I agree with that.

7 THE COURT: Who said something and if
8 it is found, I know you don't agree with it, but if
9 it's found that is a fair reporting of what she
10 said, then the question is may they also express an
11 opinion, even a scurrilous opinion or a defamatory
12 opinion without being able to be sued for it?

13 MR. PARKER: I don't think they can. I
14 think that they can be sued for it because what
15 they have done is taken what she said and added
16 about four layers to it and stigmatized these
17 people falsely. If what she said was true, then
18 obviously we wouldn't be here.

19 THE COURT: Well, yeah. And I'm taking
20 that it's -- I'm going to take that what she said
21 about them was defamatory. I must say that I don't
22 see where you're coming from about whether it is
23 true or not. It's what she said and most of the
24 other reports about what she said say exactly what
25 they said. Is that she used the term racist. She

1 used the term monkey sounds. She used the term
2 animalistic, et cetera.

3 Now, whether you agree with that or
4 not, a public official said that about this ritual
5 and said that the coach in allowing his players to
6 have done that for five different games should have
7 had the judgment to know that that would be
8 perceived in a broader community as racist. That's
9 essentially what she said and that's why she was
10 suspended.

11 MR. PARKER: I agree with that.

12 THE COURT: Well --

13 MR. PARKER: What I disagree with --

14 THE COURT: What the City Paper then
15 did is take what she said, whether we like what she
16 said or we don't, and expressed it as an opinion
17 based on that statement.

18 MR. PARKER: I think they expressed
19 fact based on that without any investigation.

20 THE COURT: Well, you know, at least
21 some courts have said that calling a person a
22 racist is not actionable.

23 MR. PARKER: I agree with you. Some
24 have said it is. So, you know, I think --

25 THE COURT: I don't know that the

1 douche bag beyond that makes it actionable or not.

2 MR. PARKER: Well, it's -- I don't know
3 what in today's environment you could say worse
4 about somebody than to label them a racist douche
5 bag which means a racial contemptible person so you
6 certainly have been held up to contempt and that is
7 obviously what defamation is. So clearly it's you
8 are holding that person up for contempt.

9 THE COURT: Tell me this. With respect
10 to, of course, you got two different kind of
11 Defendants. You have Mr. Walpole, then you have
12 the players, team players. Do you seriously
13 contend this is not a matter of public interest?

14 MR. PARKER: I don't contend that. For
15 the coach it is. I don't think that as far as the
16 kids it is. I think that the kids have a different
17 standard. I think the coach --

18 THE COURT: Why is it a public --
19 matter of public interest as far as the coach is
20 concerned? He may be a public figure. They may be
21 private figures, but the event is the event. Why
22 it isn't equally a matter of public interest
23 whether a bunch of kids did it or the coach or both
24 of them?

25 MR. PARKER: I don't seriously contend

1 that it is not a matter of public interest. I
2 think that it probably was and is. But, in fact,
3 what we have here is, you know, it's a very
4 unfortunate thing for these kids and for the coach.
5 Because someone decided to do an inadequate
6 investigation and find out what went on and what
7 the facts were, then certain people at the school
8 district came to a false conclusion.

9 THE COURT: What was the false
10 conclusion they came to?

11 MR. PARKER: That they didn't find out
12 what was going on about the Castaways and the fact
13 that these kids were emulating the Castaways and
14 there's nothing racist about it. There's no racist
15 animus, no racism involved whatsoever. It was
16 nothing to do with racism. And but they for their
17 own purposes I say neglected to find out so that
18 they could and some of the documents said that we
19 can use this as a teachable moment.

20 So for ulterior motives they decided to
21 put it out there that this was what happened. What
22 they put out there was totally false. There was
23 nothing true, no truth about what they said. At
24 some point in time I hope we will get a chance to
25 prove it was untrue, but I feel very strongly it

1 was based on the testimony of the kids. I mean
2 there is too much coincidence this is Wilson on the
3 watermelon and Bonds Wilson face on it like a face
4 on this volleyball like the movie. All of the
5 things parallel that much too great to not be true
6 what these kids are saying.

7 Now, the school district should have
8 found that out, no doubt. And they should not have
9 falsely accused the coach and the kids of being
10 racist.

11 THE COURT: Well --

12 MR. PARKER: But that doesn't give --

13 THE COURT: Mr. Parker, what is
14 contended by the Defendants in this matter is that
15 any reasonable objective look at the caricature as
16 drawn on that watermelon and what those boys did in
17 circling around it and naming of that watermelon
18 Bonds Wilson leads to the conclusion that that was
19 an attempt to racially caricature. And whether the
20 folks that say oh, in their hearts they meant it to
21 be a Castaway in Wilson and Castaway or not, what
22 the Defendants contend is that some adult in the
23 mixture should have had the good sense to realize
24 given the history of the use of the watermelon as a
25 caricature for blacks over time and the monkey

1 sounds as a caricature of African-Americans and the
2 use of the name Bonds Wilson someone, some adult in
3 the world should have realized that that had great
4 potential for being perceived as a racist ritual.
5 That's what the contention is.

6 MR. PARKER: Coach Walpole was not
7 aware of what they were doing other than eating
8 watermelon. So it is not -- as far as Coach
9 Walpole is concerned, he had no knowledge of the
10 details of this ritual.

11 THE COURT: I mean it was done on the
12 field in front of everybody, right?

13 MR. PARKER: Was not.

14 THE COURT: Where was it done?

15 MR. PARKER: It was done after the
16 game.

17 THE COURT: Well, I mean wasn't it done
18 out on the field?

19 MR. PARKER: It was done on the field
20 by the kids getting in a circle.

21 THE COURT: Well, Coach Walpole just
22 didn't leave the kids sitting out there by
23 themselves.

24 MR. PARKER: He was aware there was
25 eating watermelon. He was not aware of the

1 remainder of what was going on.

2 THE COURT: I see.

3 MR. PARKER: That's the testimony. And
4 I think that, you know, Your Honor, what this boils
5 down to is if you're right and people on the jury
6 come to the conclusion that what you say these
7 kids, even though they say not, they were racist
8 and doing this we are going to lose. On the other
9 hand, if they believe what we say happened
10 happened, which I believe in every fiber of my
11 being that this did, in fact, happen and they were
12 falsely and with some bad motive made to be
13 scapegoats for ulterior purposes. And as a result
14 of that the kids were defamed in the newspaper and
15 particularly in the City Paper in the worst of
16 ways. And the coach was also who really had no
17 knowledge of this other than they were eating
18 watermelon. Frankly, the idea that a watermelon is
19 a racist symbol, it could be. We have a watermelon
20 festival in Hampton. It's not racist. And a
21 watermelon in and of itself in my mind is not
22 racist at all. I don't see watermelon in the store
23 and think racist or black.

24 THE COURT: That's not what's being
25 alleged here. It is alleged that the taking of

1 that piece of fruit and drawing on it a racial
2 caricature makes it the expression of a racial --

3 MR. PARKER: According to the guy that
4 drew it it was not racist. That's the way he drew
5 the figure. He draws, and we have evidence of him
6 drawing another figure of a white fellow who is the
7 same. So it has to be you have to draw that
8 conclusion that it is racist. We say it is not.
9 That it's a caricature.

10 THE COURT: Um-hmm. Of course that's
11 in the end what a lot of this is about. What
12 conclusions can be drawn from this incident and
13 caricature and so forth legitimately without being
14 sued for.

15 MR. PARKER: Right. And we are saying
16 that you can't go and take the little evidence they
17 have. Had they reported what had been reported
18 about Superintendent McGinley I think we would be
19 -- we would have no case. No suit would have been
20 brought. But when they went further and labeled
21 the team and the coach absolutely racists and also
22 labeled them as racist douche bags, that they are
23 saying that they are -- I think being a racist is a
24 factual statement and that being a racist douche
25 bag is factual. And it says that you're a racist,

1 highly contemptible person, which is defamatory.
2 And we have evidence of that and we think that we
3 can prevail on that. And I would like to bring up
4 one other thing.

5 And that is that the motion for
6 judgment on the pleadings which included all these
7 articles, the pleading was denied. There has been
8 no evidence that what's in the complaint is not
9 factual and not true. They have presented none and
10 as such they are bound by the order denying the
11 motion for summary judgment -- I mean for motion
12 judgment on pleadings. Because they have decided
13 this issue.

14 THE COURT: Well, educate me on that.
15 Where is that in the record?

16 MR. PARKER: In the record they made a
17 motion for judgment on the pleading and we have in
18 the notebook Judge Nicholson's order denying it.
19 Let's see which exhibit it is. It's Exhibit 6.

20 THE COURT: Just help me. Okay. I see
21 it. This matter came before the Court on motion to
22 dismiss filed in this case and three additional
23 companion cases. This motion is filed on
24 February 4th heard before the Court on May the 8th,
25 2015. After review Court hereby denies the

1 Defendant's motion finding the Plaintiffs have
2 stated a cause of action based on four corners of
3 the complaint and dismissal would be premature.
4 That's what you are --

5 MR. PARKER: Yes, I am because the
6 complaint itself contains these articles. The
7 Court has looked at these articles and said in
8 ruling against them on the motion to dismiss that
9 the fact they stated the cause of action. And if
10 they stated a cause of action they still state one,
11 and we shouldn't be allowed to go forward on it
12 because it has become the law of the case.

13 THE COURT: Very good.

14 MR. LIGHTSEY: I will reply just very
15 briefly on that last point if I may.

16 THE COURT: Well, I'm going to let you
17 have the chance to reply as much as you would like
18 and the same thing, if Mr. Parker wants to talk
19 some more I'm going to let him do that as well. So
20 come right forward.

21 MR. LIGHTSEY: Thank you, Your Honor.
22 I appreciate it. I think you have got a great
23 grasp of the issues. I know you know the law in
24 this area better than me so I'm not going to repeat
25 what I said.

1 THE COURT: I don't know. We may have
2 confused the law a whole bunch.

3 MR. LIGHTSEY: You did more to
4 straighten it out.

5 THE COURT: The Supreme Court
6 contributed to all that in both the New York Times
7 and the Sullivan case ironically in a case
8 involving a coach, Coach Butz against Curtis
9 Publishing. The matter has continued to be in a
10 state of flux since then.

11 MR. LIGHTSEY: One thing I forgot when
12 I read Milkovich, that was about a high school
13 wrestling coach.

14 THE COURT: That's right.

15 MR. LIGHTSEY: The denial of the
16 12(b)(6) motion is not the law on this case.
17 That's why it is not immediately appealable and all
18 Judge Nicholson held was that it was premature at
19 that time. He thought there should be opportunity
20 for discovery which we have had now. So that is in
21 no way binding on the Court here.

22 One other thing I did want to mention
23 is looking quickly over the No. 1 opposition which
24 we just got, I did see an argument that sounded
25 like there was a suggestion that the newspaper was

1 insinuating that the intentions of the Plaintiffs
2 were racist or that that was a factual issue.

3 THE COURT: I think that's exactly what
4 we just heard a half hour's worth of argument.
5 That's exactly what Mr. Parker said. He says this
6 isn't just the kind of throwaway you're a racist.
7 This use of the term racist douche bag in
8 connection with talking about what the kids did is
9 expression of an opinion that they are -- is more
10 than just an expression of opinion. It is a
11 recitation of a fact that they are deplorable
12 people because they engaged in racist behavior.

13 And he says that the facts on this
14 matter are in great contention. Doesn't mean you
15 have to believe what he says, but the inferences
16 are all in favor of the nonmoving party. As you
17 know, the nonmoving party is Mr. Parker and his
18 clients. And they say that this is beyond an
19 expression of opinion. This is the recitation of a
20 fact. And that is defamatory. The accusation that
21 they are contemptible people because of their
22 racist behavior. What do you say to that?

23 MR. LIGHTSEY: Your Honor, to me this
24 is a prime example what the courts called vigorous
25 epitaph or mere name calling, that kind of thing.

1 The courts have repeatedly held that you don't have
2 a cause of action for pure name calling.

3 THE COURT: Well, it's a defamatory
4 remark without a doubt, it is not?

5 MR. LIGHTSEY: Yes, Your Honor.

6 THE COURT: And the question is whether
7 it's an actionable defamatory --

8 MR. LIGHTSEY: That's exactly right.

9 THE COURT: -- remark. And if it is
10 the recitation of something that they say is
11 absolutely not true, they say there's an
12 explanation for what they were doing and why they
13 were doing it, that is what discloses their true
14 intent as well actually what they were doing, and
15 that that fact scenario is not something that the
16 City Paper chose to investigate at all, they simply
17 accepted as true kind of the general community and
18 Ms. McGinley and everybody else is saying.

19 MR. LIGHTSEY: That's true, Your Honor.
20 And I think, too, an important thing here is as you
21 know, the Court or the jury if it goes to trial is
22 required to look at the entire piece and not
23 particular parts of it. But there's an important
24 part at the end of one of the editorials where he
25 says, you know, this could be inadvertently

1 hurtful, racially offensive behavior and that was
2 really the whole point of the editorial was that
3 the kids should have known better, they should have
4 had this history. And if they didn't know and it
5 was truly inadvertent, then the coaches and the
6 adults involved should have explained that to them
7 instead of characterizing them as victims and that
8 was the teachable moment that this editorial writer
9 seized upon and emphasized.

10 So I think that's an important part of
11 this whole piece. That was really the gist of what
12 he was doing. But as to racist douche bags, again,
13 Your Honor, the context of this piece it's what the
14 courts call pure opinion. The grounds for that
15 conclusion were set forth. There wasn't any
16 implied oh, I know something that the public
17 doesn't know and that's why they are racist douche
18 bags. It was all set forth. I think it is no
19 different from my hypothetical. If I said that
20 what Trump said to Billy Bush, he behaved like a
21 sexist douche bag and I think that's pure opinion.
22 He shouldn't be able to sue me over that. Clearly
23 it's defamatory. It's not a nice thing. Don't
24 take issue with that. But I ought to be able to
25 express that and not be worried about getting sued

1 about it.

2 THE COURT: Is there any limit then on
3 the expression of the opinion no matter how little
4 based in fact and defamatory?

5 MR. LIGHTSEY: The only limit is what
6 the courts said in Milkovich that if the opinion
7 implied defamatory facts that are not set forth in
8 the piece that can be the subject of a claim for
9 defamation.

10 THE COURT: Of course that's what he
11 argues. That's what he argues.

12 MR. LIGHTSEY: Well, that's what he
13 argues, but the pieces don't say that. They set
14 forth the basis. They don't say or imply I know
15 something else that the public doesn't know, that
16 the school district didn't say and that's why I
17 have got this opinion. It set forth all the
18 grounds of the opinion and invited the reader to
19 draw that conclusion they do. I mean in Milkovich
20 the majority opinion used an example of if somebody
21 believes that writings of Marx they are abysmally
22 ignorant. That's a defamatory thing calling
23 somebody abysmally ignorant, that was their example
24 of pure opinion that is protected and cannot be
25 subject to the defame and I would say this is the

1 same thing, Your Honor.

2 THE COURT: Very good. Ms. Jefferson.

3 MS. JEFFERSON: Your Honor, I don't
4 have anything further.

5 THE COURT: Now, Mr. Davidson, we turn
6 to you. We got one motion with your name on it.

7 MR. PARKER: Your Honor, may I say one
8 further thing?

9 THE COURT: Yes. Mr. Davidson, you can
10 come up while he is getting here. Let Mr. Davidson
11 get seated. You come right to the podium, Mr.
12 Parker.

13 MR. PARKER: In our notebook under tab
14 13 there is an article Mr. Haire wrote and predated
15 some of these things and it -- in it what he says,
16 and I think it's important because it gives you an
17 idea of where he is coming from and a view into his
18 -- how he look at things. In that he said I am a
19 racist and proud of it. And I don't want to go
20 through the whole article, but essentially what he
21 says he is making a -- he is really calling a lot
22 of why he is a racist because he says white people
23 say they are not racist. And he goes through that
24 and gives you an insight into his thinking and to
25 what's behind these articles and why he thinks that

1 white people such as Coach Walpole and these
2 students are, in fact, racist because all white
3 people say they're not racist, therefore he's a
4 racist. And it's interesting to see how his
5 thought process is because it gives us insight into
6 why he really went after Coach Walpole and these
7 kids with a vengeance. Way worse than with a lot
8 added to anybody else which is what brought no
9 lawsuit against any publication other than the City
10 Paper. Thank you.

11 THE COURT: Thank you, Mr. Parker. We
12 shift gears, Mr. Davidson, for yours. Before we
13 hear from you, this is a nice breaking time. Let's
14 take a little break.

15 (A recess transpired.)

16 THE COURT: Mr. Davidson.

17 MR. DAVIDSON: Your Honor, this is a
18 motion in part to one of the questions asked by Mr.
19 Parker in the deposition of former Superintendent
20 McGinley. I have that deposition. The question
21 that was asked -- obviously she was sharing results
22 of the investigation which was a personnel matter
23 in regards to the school district and the events
24 surrounding the -- what I call the watermelon
25 ritual for lack of a better term.

1 And Mr. Parker then asked how did they
2 accept that, talking about the board members in
3 executive session. And if you flip back actually a
4 couple of pages, the meeting that was pulled
5 together on page 41 line 12, and which ones and I
6 said that and the witness said there was a meeting
7 pulled together where I was asked to brief the
8 board and I may have written down who was there.
9 Was that an open meeting I asked and she said no,
10 it was an executive session. And then I said she
11 can't testify about what went on in executive
12 session and then he followed up again and I stopped
13 him again from asking about what was said or
14 expressed in executive session.

15 As the Court is aware, the Freedom of
16 Information Act allows public bodies to go into
17 executive session to discuss certain matters, legal
18 advice, investigations dealing with personnel
19 matters, student matters, various things that are
20 allowed by the statute. I believe I can give you
21 the statute although I'm sure you are familiar with
22 it, Your Honor. Section 30-4-70. And it says the
23 public body may hold a meeting closed to the public
24 for one or more following purposes and it lists out
25 the purposes.

1 It's not mandatory, as the court has
2 said many times, that the public body can decide to
3 disclose information that went on in public -- in
4 executive session if it so desires. But it does
5 have the right to exempt certain things. And I
6 believe the Campbell case versus Marion Hospital
7 which is a 2003 case basically indicated that the
8 exemption from disclosure provisions of the Freedom
9 of Information Act allow a government body to
10 withhold within its discretion exempted material
11 from public disclosure.

12 And what I was objecting to is Mr.
13 Parker getting into what was said in executive
14 session by the board members or Ms. McGinley which
15 would be, in fact, in executive session and would
16 be material that was exempt from disclosure to the
17 public.

18 Further, Ms. McGinley who at the time
19 of the board meeting was the superintendent was not
20 a member of the Charleston County Board. My
21 understanding of the statute the way it is written,
22 the public body, and I apologize if I am talking
23 loud. I have got a real problem with my ear right
24 now so I may be talking too loud.

25 THE COURT: As someone who hears

1 bilateral hearing aides you can't talk too loud for
2 me.

3 MR. DAVIDSON: I am about the same way
4 right now. My understanding Ms. McGinley who was
5 not a member of the board would not have the right
6 to waive or disclose what went on in executive
7 session. That would be a matter that would be
8 brought before the board and the board make a
9 formal vote to either waive or exempt itself from
10 those matters which were discussed in executive
11 session. I believe it was October 21, 2015, Your
12 Honor, or '14, I'm not sure of the exact date. I
13 know was October 21st.

14 And that was when after the executive
15 session Ms. McGinley came out and provided the
16 press conference to update the press as a result of
17 the turmoil that had been created by the families
18 over the events surrounding the investigation into
19 what I call the watermelon ritual.

20 So it is my position under 30-4-70 that
21 the school board going into executive session as
22 referenced by Ms. McGinley exempted from disclosure
23 what went on in executive session and then as a
24 result of that any inquiry into what went on in
25 executive session of Ms. McGinley would be improper

1 and barred under the statute. That was our
2 position, Your Honor. That's all. Thank you,
3 ma'am.

4 THE COURT: All right, Mr. Davidson.
5 All right, Mr. Barnes.

6 MR. BARNES: Thank you, Your Honor.
7 May it please the Court, I will keep this pretty
8 brief because I don't think there's a whole lot
9 say. 30-4-70 does not provide any limitations on
10 prohibition from any disclosure from anything.
11 That is just a statute that allows a public body to
12 go into executive session. There's no subsection
13 that says anything discussed in executive session
14 is public. And furthermore, we aren't the public.
15 This is of a matter relating to Coach Walpole who
16 is a Plaintiff in this case. And, in fact, 30-4-70
17 (a)(1) says if the hearing is adversary that the
18 employee has a right that the hearing be made
19 public.

20 So the statute allows we believe this
21 to be discoverable and we believe that the
22 Defendant's motion for a protective order under
23 Rule 26 (C) should be denied. I will be happy to
24 answer any questions the Court may have.

25 THE COURT: I think I understand well

1 what you're saying. And I must say it is in accord
2 with what I thought the law was. It is one thing
3 for the school district to be able to protect their
4 meetings from public access. But what goes on in
5 them may be another thing. I'm going to listen to
6 Mr. Davidson in reply.

7 MR. DAVIDSON: Thank you, Your Honor.
8 Number one, Your Honor, there was no hearing held
9 in executive session. It was for informational
10 purposes only as Ms. McGinley indicated. If you
11 look at the Kandel case, Your Honor, it clearly
12 indicates that simply to allow a -- simply to allow
13 a public agency the discretion to withhold exempted
14 material from public disclosure. If you allow
15 essentially in this instance a nonboard member to
16 testify about what went on in executive session,
17 you have rendered basically the exemption and the
18 ability of the board to go into executive session
19 totally useless and ineffectual.

20 If you have a situation where you are
21 getting information concerning the personnel matter
22 or a school student matter that may be discussed in
23 executive session and someone being in a deposition
24 was asked what went on in executive session, tell
25 me what was said, tell me what was discussed, in

1 this instance there is no indication that any vote
2 occurred in executive session. There is absolutely
3 no reason that the information that Ms. McGinley
4 would provide should be relevant to this instance
5 because it will go into the impressions of the
6 board about what they were thinking inside that
7 meeting room, what they may have said in regards to
8 the investigation, their thoughts regarding the
9 investigation, and what in my opinion would be
10 improper to enter into essentially at that point
11 legislative minds of the school board members who
12 are duly elected members of the Charleston County
13 school board.

14 But in the same token, if the board
15 were to vote to go into executive session to
16 discuss this matter, which Ms. McGinley indicated
17 it was an executive session, the board has then
18 made the decision to exempt what information may be
19 presented in executive session and what information
20 may be unrelated to executive session. And to
21 allow essentially a deposition of an individual
22 such as Ms. McGinley who is not able to waive that
23 exemption to go into and testify about everything
24 that was said in executive session completely
25 renders we believe 30-4-70 useless.

1 THE COURT: Well, Mr. Barnes argues
2 based on the language of the statute itself that
3 what it exempts is their meeting together in
4 private from the otherwise requirements of open
5 meeting law which is part of open records, there is
6 open records and open meeting, there is two
7 different kinds of aspects to the Freedom of
8 Information Act. The part we are talking about as
9 I understand it is one of the open meeting
10 provisions and it says you go into executive
11 session.

12 Now, what Mr. Barnes argues is fine,
13 you go into executive section, but there isn't
14 anything in the statute that specifically says that
15 which is presented in executive session is secret.
16 And you say the Campbell case is a gloss on that.
17 Start with the statute. What does the statute say?

18 MR. DAVIDSON: The statute says, Your
19 Honor, let me go back and pull it up. A public
20 body may hold a meeting closed to the public for
21 one of the following reasons, discussions of
22 employment, discussions mean allowing them the free
23 and open ability to talk.

24 THE COURT: I got that.

25 MR. DAVIDSON: Now, in essence that's

1 what we're talking about. They also talk about
2 appointment, compensation, they also talk about
3 discussion of negotiations, discusses dealing with
4 security and security personnel and devices. They
5 talk about investigating procedure regarding
6 allegations of criminal misconduct, discussing
7 matters related to proposed, all of which deal with
8 the discussion.

9 THE COURT: Exactly. Where is in there
10 that provision that that which is discussed and
11 that which is offered by way of documentation may
12 not be publicly disclosed?

13 MR. DAVIDSON: Because, Your Honor --

14 THE COURT: Is there a gloss on it or
15 is there a specific provision that says that?

16 MR. DAVIDSON: I believe by case law
17 and by analogy you can clearly indicate if you are
18 not -- if you allow to go in and discuss something
19 in executive session and exempt from public
20 disclosure, that's what the statute says, they may
21 make the decision to -- court may hold a closed
22 meeting to the public for the following reasons.
23 Kandel case talks about public disclosure.

24 THE COURT: Public disclosure is not in
25 there either, is it?

1 MR. DAVIDSON: It's not in the statute.

2 THE COURT: All this is gloss. So that
3 the number one argument Mr. Barnes makes is it
4 isn't in the statute specifically. All that's in
5 the statute is the meeting itself. So all the rest
6 of what we are talking about, including the Kandel
7 case, is gloss on this motion that you can meet in
8 secret for certain purposes.

9 MR. DAVIDSON: And discuss.

10 THE COURT: And discuss matters. Now,
11 let's take it a step further. There is another
12 that talks about closed and open hearings for
13 employment matters.

14 MR. DAVIDSON: Correct.

15 THE COURT: As I understand this
16 particular closed meeting, it was a meeting to
17 discuss employment matters, mainly the employment
18 of the coach, right?

19 MR. DAVIDSON: It was to receive
20 information regarding the investigation that was
21 undertaken by the school district.

22 THE COURT: By Ms. McGinley.

23 MR. DAVIDSON: Not by Ms. McGinley,
24 other individuals did the investigation. To update
25 the board regarding that investigation with regards

1 to the watermelon ritual from A to Z. Part of that
2 would have included Mr. Walpole's role in there.
3 It would have also included all the students role
4 in this. And if they discussed students obviously
5 we have got a whole other issue with the Buckley
6 Amendment dealing with disclosure of student
7 information, things like that. The statute clearly
8 said you can for students information go into
9 executive session to discuss those matters. There
10 was no hearing in this matter. It was for
11 information purposes only.

12 THE COURT: But as the result of this
13 meeting Ms. McGinley came right out of that meeting
14 and held a press conference, right?

15 MR. DAVIDSON: Correct.

16 THE COURT: And she announced in that
17 press conference that she was suspending the coach
18 or firing the coach.

19 MR. DAVIDSON: That was done earlier in
20 the day with a press release that said as a result
21 of the investigation Mr. Walpole would be removed
22 as the head coach and another coach was
23 substituted.

24 THE COURT: And that is an action the
25 superintendent took.

1 MR. DAVIDSON: Yes, Your Honor. It's
2 her responsibility.

3 THE COURT: So she has already
4 announced that by her fiat, which she's got the
5 authority to do, has removed this coach.

6 MR. DAVIDSON: I understand.

7 THE COURT: Then she has a private
8 meeting with the school board and then she comes
9 out and does she talk about the coach and his
10 firing?

11 MR. DAVIDSON: She talks about the
12 investigation and, in fact, goes into what we have
13 heard earlier.

14 THE COURT: So she told the secrets of
15 the executive session, didn't she?

16 MR. DAVIDSON: No, she told the
17 investigative information.

18 THE COURT: Well, I mean that was
19 disclosed in the process of the secret meeting,
20 right?

21 MR. DAVIDSON: It was for purposes of
22 updating the board in regard to the investigation.

23 THE COURT: Well, I understand that,
24 Mr. Davidson. It is real simple. That was in
25 executive session, wasn't it?

1 MR. DAVIDSON: It was in executive
2 session.

3 THE COURT: But she came out and she
4 talked already to the public about what went on in
5 that meeting and what the investigation revealed
6 and so forth and so on.

7 MR. DAVIDSON: She did go over what the
8 investigation revealed.

9 THE COURT: And counsel wants to ask
10 her about that some more.

11 MR. DAVIDSON: The problem is what
12 discussions occurred in executive session between
13 her and the board members who then voted to go into
14 executive session to have a discussion about that
15 investigation.

16 THE COURT: I understand that, but she
17 didn't get it from kind of the air. She got it
18 from what was said during that meeting.

19 MR. DAVIDSON: No, she got it from a
20 report of the individuals who did the
21 investigation.

22 THE COURT: Is that a secret report,
23 too?

24 MR. DAVIDSON: No, all that's been
25 produced.

1 THE COURT: That's been --

2 MR. DAVIDSON: The press release was
3 produced under FOIA. In this instance the actual
4 news or the press conference or whatever you want
5 to call it after the board meeting is videotaped.
6 That's been provided. All that is FOIA. I ain't
7 got a problem with that, but listen to what I am
8 saying. What Ms. McGinley knew from one of the
9 African-American board members is that this ritual
10 had taken place and he was concerned about it. She
11 then tasked the assistant superintendent and a
12 gentleman named Kevin Clayton who was under
13 contract to provide diversity training for the
14 district to go and look into the matter and they
15 did. And they issued a report. Okay?

16 As a result of that report Ms.
17 McGinley, and this is in the press release, and
18 discussed in the meeting with the press which was
19 videotaped, she said that there were concerns that
20 that might -- this ritual might show cultural or
21 racial insensitivity. Okay? I don't believe --
22 even in her deposition she is adamant she never
23 referred specifically to anyone as a racist. She
24 said that she was concerned that the watermelon,
25 the painting of the caricature on the watermelon,

1 the bursting of the watermelon, the fact that this
2 ritual started in response to them playing
3 predominantly African-American teams, that the
4 watermelon was named for Bonds Wilson, two
5 prominent African-American educators in Charleston
6 back here during integration -- segregation, the
7 fact that were sounds made, even the boys admit,
8 several of them, that sounds were made. Whether
9 they want to say it was like a football chant, but
10 I got them to describe them, Mr. Fraley describes
11 them as ooo, ooo, ooo, that in my opinion and to
12 the other opinion of other people could, in fact,
13 be seen as monkey sounds.

14 She was concerned that the behavior of
15 the football team was racially insensitive and
16 could cause potential problems within the district
17 between African-American students and Causation or
18 white students. And she asked it to be
19 investigated. And she reported the investigation
20 to the school board. The parents got upset by the
21 way it was handled and there was a firestorm.

22 THE COURT: I think I understand all
23 that. But all I am asking is, I am trying to
24 figure out whether there are -- the secrecy of this
25 meeting has been so breached that there is nothing

1 to protect. I mean she gets to give her gloss on
2 why she investigated, what the report said and
3 everything else and say that out to a big press
4 conference. And now Parker and Barnes want to
5 question her about that. And they want to find out
6 what was said. And every time it veers in the
7 direction of something that happened in executive
8 session you say that that is somehow protected by a
9 statute that never talks about what goes on, but
10 just simply says when you can meet in one.

11 MR. DAVIDSON: When you can meet and
12 have discussions. My whole objection is the
13 ability to go in after the fact and ask either
14 board members or Ms. McGinley what was discussed.

15 THE COURT: I get that. And you
16 represent school districts all the time. I don't
17 blame you for -- and public bodies. I don't blame
18 you for taking that position. This thing is
19 complicated by the fact that in this particular
20 instance -- a lot of times they do hush up what
21 goes on in executive session. They don't repeat
22 it. They don't talk about it and so forth.

23 But in this particular time she went
24 out into a big public press conference and
25 discussed what went on.

1 MR. DAVIDSON: She discussed the
2 investigation. If you look in her deposition, I
3 don't know if they handed it up or not.

4 THE COURT: She did not quote any board
5 member saying anything. I agree with that. But
6 she does discuss the heart and soul of what
7 apparently was projected in that meeting. That was
8 the report itself, right?

9 MS. DAVIDSON: She discussed what was
10 relayed to the board and the board obviously had
11 the ability to ask questions about what happened.
12 How did this happen. What happened here. What did
13 you find here. They had the ability to have a
14 free-wheeling discussion into that matter. To
15 allow -- after the fact to allow such inquiry into
16 what is discussed in executive session would in my
17 opinion chill the entire effect and purpose of
18 allowing a board to go into executive session.
19 What difference does it make if you say okay, we
20 are exempting our ability to go in and to talk
21 about a personnel matter. We have got a guy who
22 had this problem, this problem, this problem. What
23 do you think we should do. But then to allow
24 somebody to go in after the fact and discuss --

25 THE COURT: I think we are plowing the

1 same ground again. I think I got it. Mr. Parker
2 or Mr. Barnes, either one of y'all? All right.

3 MR. PARKER: Your Honor, I do have one
4 thing. I just want to make sure what we have
5 submitted is in the record, the depositions and so
6 forth that we have submitted.

7 THE COURT: Yes. I have got these
8 notebooks. I had two copies of the notebooks
9 submitted by Mr. Lightsey and Ms. Jefferson. So I
10 can certainly leave one of those for the record
11 although it is a compiled thing.

12 Then I have one copy of yours and if
13 you have another copy then I will have two. I will
14 be happy to place one in the record so to speak. I
15 don't want you to take one if you got your notes in
16 them. That would be great. I think that would be
17 helpful.

18 MR. PARKER: Thank you.

19 THE COURT: Because either way I rule
20 on this people are going to want to have a record
21 of what the Court considered.

22 MR. DAVIDSON: And, Your Honor, I have
23 a copy of the excerpt that I will give the clerk.

24 THE COURT: I have marked on mine.

25 MR. DAVIDSON: I will give a copy to

1 the clerk so you can put it in the file.

2 THE COURT: Just put it right up here
3 with these materials.

4 MR. DAVIDSON: The only thing I don't
5 like about the rule dealing with motions for
6 protective order, you got five days and you don't
7 have the deposition. You can't figure out what you
8 are objecting to in the deposition.

9 THE COURT: I understand. Very good.
10 All counsel, both in this matter and in the broader
11 matter here, what I am going to do, I'm going to be
12 here for the week and I am going to take a lot of
13 time to study the notebooks as well as the
14 pleadings that are in these various files and read
15 some of these cases that have been cited by each
16 side. These are very well presented arguments and
17 frankly I think there's some close questions
18 presented and I am surprised at that. Mr. Parker
19 is a very eloquent presenter as are Ms. Jefferson
20 and Mr. Lightsey. So I have got a lot to think
21 about here about the main issue.

22 I will try to formulate some thoughts
23 about it and I will get them to you either in an
24 e-mail from myself or an e-mail from my law clerk
25 on my behalf. She is back in Columbia because she

1 is expecting and had an appointment today, but we
2 talked during the break as a matter of fact about
3 what was going on and she will be well prepared to
4 assist me in sending something to you all before
5 the week is out telling you what the Court's ruling
6 is and asking the prevailing parties for some
7 proposed orders that, of course, would be exchanged
8 with the other side and so forth, but my goal would
9 be to try to get this thing composed and in a final
10 order form and filed within the next week
11 and-a-half.

12 So that's kind of what I am aiming for.
13 If it all breaks down sometimes because other
14 matters present themselves, but I will try to get
15 on this and stay with it until I get something that
16 I can give to you all to let you know where I am on
17 it.

18 (These proceedings were concluded at
19 4:09 p.m., October 11, 2016, Charleston County,
20 South Carolina.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 10th day of January, 2017 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese
Registered Diplomat
Reporter

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Page 2

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

* * * * *

16 DEPOSITION OF: DANIEL NELSON
17 DATE TAKEN: Tuesday, August 4, 2015
18 TIME: 10:00 a.m.
19 PLACE: 123 Meeting Street
20 REPORTED BY: TERI L. SAMPSON, RPR,
21 Notary Public and Certified
22 Live Note Reporter

* * * * *

24 POST OFFICE BOX 21784
25 CHARLESTON, SOUTH CAROLINA 29413-1784

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1 Q Same thing with Burke?

2 A Yes.

3 Q Same thing with North Charleston?

4 A Yes, sir.

5 Q Okay. And Garrett is the same way,
6 predominantly black?

7 A I believe so.

8 Q And the teams are predominantly black,
9 correct?

10 A With the exception of Branchville, I believe,
11 yes.

12 Q Okay. And I think the Academic Magnet school
13 is predominantly white, correct?

14 A That's correct.

15 Q I think you-all had one African-American on
16 the team?

17 A That's correct.

18 Q And I think his name was Darius?

19 A Yes, sir.

20 Q People have told me how this tradition or --
21 how the watermelon showed up at the game, but I want
22 you to kind of tell me what you remember about how the
23 watermelon came to show up the first time at the
24 Military Magnet game.

25 A I bought the watermelon on the way back from

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1 Subway from a gentleman selling them from his pickup
2 truck and didn't know what I was going to do with it.
3 And I brought it back to the school and then we decided
4 that if we win, we should smash it since we had lost
5 our first game at Lincoln, that maybe it would be a
6 good luck charm. So then I just got the idea to draw a
7 funny face on it as well, and then we could -- we could
8 eat it after the game as well.

9 Q Now, you-all went to Subway, is that where
10 you-all went before a game?

11 A That's correct.

12 Q Okay. So the Military Magnet game, which was
13 out of town -- well, not out of town, but not at your
14 home school, you-all would go to Subway before you went
15 back to the locker room to pack up to go to the game?

16 A That's correct.

17 Q And was anyone with you when you bought the
18 watermelon?

19 A Yes, sir.

20 Q Who?

21 A I know that Connor Frailey was driving and I
22 believe Jack was there with me and I think Andrew Wong.

23 Q I think you said Connor was driving?

24 A That's correct.

25 Q Who decided to stop at the -- was it a fruit

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1 A Not during any of those games that you
2 mentioned with the watermelon.

3 Q So you decided to take the watermelon into
4 the locker room and then you decided to draw a face on
5 it?

6 A I just -- yes, with my teammates, I discussed
7 what we should -- what I should do with it, and we
8 decided that we should -- we could eat it after the
9 game. And so I was just sitting there and I didn't
10 have anything to do, so I found a Sharpie and I just
11 started drawing a face on it.

12 Q Okay. Why did you draw a face on it?

13 A Well, I got the idea to draw a face on it
14 from the movie Castaway, and as you know, the
15 volleyball and he named it Wilson, which is also how I
16 derived -- well, I derived Bonds-Wilson because that's
17 the name of our school campus, but I thought that the
18 Wilson made it fit, so...

19 Q Okay. And I think in -- in Castaway, that
20 was a volleyball or a soccer ball that the drawing was?

21 A Volleyball, I believe.

22 Q Volleyball, okay. And I think Tom Hanks
23 played in that movie.

24 A That's correct.

25 Q Okay. And he actually kept the volleyball

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1 Q Okay. Kind of walk me through once you-all
2 have kind of done some of your pre-game stretches,
3 whatever you did at Academic Magnet, kind of walk me
4 through the process of getting ready to go to Military
5 Magnet.

6 A Starting from -- from what point?

7 Q When coaches said, "All right, let's start
8 getting ready to load up."

9 A Usually freshmen would get the water that's
10 been -- that they would fill or it's been filled up,
11 put it in Coach Kamp's truck, we would all throw our
12 shoulder pads in the truck and then hop on the bus and
13 go ahead and go down to the field.

14 Q What happened to the watermelon?

15 A I brought the watermelon with me on the bus,
16 I believe.

17 Q Did you actually carry it on the bus?

18 A Yes, sir.

19 Q Okay. Now, when you're on -- getting on the
20 bus, where do the coaches usually sit?

21 A In the front.

22 Q And which coaches usually ran -- rode with
23 the bus?

24 A I believe Coach Rush and Coach Walpole drove
25 the bus and Coach Kamp drove the truck over.

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1 A I believe so.

2 Q Now, ride up to Military Magnet, you
3 obviously got all -- get all your stuff together, I
4 assume put your pads on, get out on the field. What
5 happened to the watermelon?

6 A I brought it on the field with me.

7 Q Okay.

8 A I carried it out there and sat it on the
9 bench and went and warmed up.

10 Q Now, when you say "sat it on the bench," what
11 are you talking about?

12 A When I would -- we usually sit down on the
13 bench to put on our shoes and our shoulder pads, so I
14 sat down on the bench, placed the watermelon next to
15 me, put on my shoes and my shoulder pads, and then left
16 it there.

17 Q Now, is the watermelon -- kind of hard to
18 describe, but I'm going to try the best I can, was the
19 watermelon sitting up on the bench with its face facing
20 out towards the field?

21 A I don't know if I set it on the bench in any
22 particular fashion. I just sat it on there.

23 Q Okay. Did the other players know that you
24 had actually put a face on it?

25 A I believe most of them knew.

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1 did you normally go over and sit on the bench, or did
2 you stand in the area?

3 A I stood next to Coach Walpole to get the next
4 play.

5 Q When you -- when you came off the field and
6 looked over to the bench, could you tell your
7 watermelon was still there?

8 A I never --

9 Q Never paid any attention?

10 A -- thought to look during the game.

11 Q So you didn't know if it was still there or
12 falling off the bench and gotten broken or anything
13 like that?

14 A I assume it stayed up there the whole game
15 because after the game, it was in one piece.

16 Q Okay. Now, Military Magnet, I think you-all
17 won the game, I think it was actually a pretty good
18 win, 53 to 30 is what I remember, what I see here.

19 A That's correct.

20 Q Kind of tell me what happened at the end of
21 the game.

22 A All the guys were excited because we had
23 just -- usually we don't lose to Lincoln, and so
24 everyone was down that we lost to Lincoln, so everyone
25 was excited and coach gave us our speech. And then

1 I -- I remembered that, oh, yeah, we needed to eat the
2 watermelon.

3 So we were all huddled up around coach, and I
4 can't remember if I smashed it or if Darius smashed it
5 or who smashed it, but we all gathered around and made
6 a football chant and smashed it --

7 Q Okay.

8 A -- and ate it.

9 Q Now, you said you-all were all around the
10 coach, which coach were you-all all around?

11 A Coach Walpole made a speech, but we -- he got
12 out of the middle of the circle when we brought the
13 watermelon.

14 Q And where was Coach Kamp and Coach Rush?

15 A Just amongst players.

16 Q Amongst the players. Were they there when
17 the watermelon got brought into the circle and smashed?

18 A I believe so.

19 Q Did they ever -- did any of the coaches ever
20 get a piece of watermelon?

21 A I -- I believe I offered. I can't remember
22 if they accepted or not. They may have.

23 Q Did you offer all three of them?

24 A I think I only saw Coach Kamp after the game,
25 so I offered him.

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1 Q Okay. Now, you said chants, and I've had
2 various people describe the -- the chant or the sounds
3 you-all were making after the watermelon came into the
4 circle. Can you describe for me the sound or the chant
5 of what you-all did when you-all were getting ready to
6 destroy the watermelon?

7 A I described it as the chants heard in the
8 movie Remember the Titans, if you've ever seen that,
9 and it's just a basic football chant, sounds kind of
10 like a -- a dog.

11 Q A what?

12 A A dog that's barking or --

13 Q Okay. Can you illustrate for me what that
14 sounds like? It has been a while since I saw the
15 Titans movie.

16 A Roo roo roo roo roo.

17 Q Did everybody on the team do that?

18 A Yes, sir. Someone -- I can't remember who
19 started it, but eventually we just all did that.

20 Q Did everybody laugh once the watermelon got
21 busted?

22 A Nobody laughed out loud laughing, but
23 everyone was still happy from the game.

24 Q Okay. Now, obviously the coaches have had
25 their post statement, good job, need to work on so and

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1 A I believe so. I wasn't looking over there,
2 though.

3 Q And after the watermelon was smashed, what
4 happened then after you-all ate some?

5 A We'd usually all pick up the pieces that were
6 left that we could get and throw them in the -- throw
7 them away and pack up our stuff and get on the bus.

8 Q Did anybody say anything about the watermelon
9 or talk about Bonds-Wilson or anything about the
10 smashing of the watermelon that you remember?

11 A You need to clarify that question, sir.

12 Q Okay. Well, did anybody comment about that
13 was fun or anything about what had happened?

14 A On the football team?

15 Q On the football team.

16 A Not that I remember. I mean, everyone was
17 just happy from the game.

18 Q Okay. Now, obviously after Military Magnet,
19 you had the Branchville game and it was a home game.
20 And you-all won that game.

21 A That's correct.

22 Q Okay. Who bought the watermelon for the
23 Branchville game?

24 A That was me again.

25 Q Okay. What about Bishop [sic] Hill?

1 A I believe --

2 Q I mean Baptist Hill, I'm sorry.

3 A I think I brought -- I bought that one, too.

4 Q Burke?

5 A I believe me as well. I believe I bought all
6 of them except maybe -- there might have been one
7 because I feel like I had something -- I had a prior,
8 so someone else got it for me.

9 Q Okay. Now, the Branchville game was actually
10 on your home field on the 12th of September. During
11 that week of practice, did anybody say anything about
12 the watermelon?

13 A Not that I remember, no, sir.

14 Q Okay. And I assume you bought the watermelon
15 right before the game?

16 A That's correct.

17 Q Okay. Same guy in the truck selling?

18 A No, sir. I didn't see him. He was right
19 outside the Subway, but he -- I didn't see him again,
20 so we -- we went to Wal-Mart or to a little grocery
21 store called Save-A-Lot on Rivers.

22 Q Okay. And when you say "we," who all again
23 went with you?

24 A Usually we'd car pool over to Subway, so --
25 but usually I would ride with Connor and whoever would

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1 be in there.

2 Q Did anybody suggest buying the watermelon or
3 did you suggest it or you just said, "I'm going to buy
4 another watermelon"?

5 A I decided that since we had won the last game
6 that, you know, we kind of -- we were rallying around
7 it as a good luck charm per se, so we were going to try
8 to keep that -- the win streak going.

9 Q Okay. Any idea that -- you know, watermelons
10 keep a little while. Any idea about keeping the
11 watermelon rather than destroying it since it was a
12 good luck charm?

13 MR. PARKER: Object to the form.

14 BY MR. DAVIDSON:

15 Q Any thought of keeping the good luck charm
16 rather than destroying it and eating it?

17 A No, sir. It's -- the idea of breaking the
18 watermelon was to eat it with the team and kind of bond
19 after the game.

20 Q Bought the watermelon for the Branchville
21 game. It's at home, so kind of walk me through what
22 you did with the watermelon this time.

23 A Same thing. Brought it into the locker room,
24 I can't remember if I drew the face on this one or if
25 someone else did. It -- it was a different face. I

1 changed up all the faces when I -- on the three I
2 believe I drew. So I drew the face on it and -- and
3 just set it down and talked to my teammates or threw
4 the football again.

5 Q And did you name this one?

6 A I believe it was just Bonds-Wilson, II, or...

7 Q Now, you said that -- that actually you drew
8 another face. Can you draw what -- kind of what you
9 did?

10 A I can't remember. That was -- that was a
11 generic.

12 Q Tell you what, I know you're not an artist,
13 okay?

14 A Okay.

15 Q Kind of draw for me a representative look of
16 what the face would have been like on the various
17 watermelons you decorated.

18 A How many faces would you like me to draw?

19 Q Well, if you want to draw all of them that
20 you did, that's great, but -- yeah, do that. You said
21 you think you did three?

22 A Yes, but I can't --

23 Q Can't do that, okay.

24 A I mean, I can't remember what I drew on each
25 one. I just -- when I drew the other face, it was

1 Q To your knowledge, did anybody ever video the
2 post-game smashing of the watermelon?

3 A Not to my knowledge.

4 Q Now, when you had the Branchville game at
5 home, again, the watermelon has got a face on it.
6 About the same size, volleyball size?

7 A The watermelon was roughly the same size.

8 Q Take it back to the locker room, you draw the
9 face or somebody draws the face on, similar to what's
10 on Exhibit 1, correct?

11 A No.

12 Q Not similar. Okay. How is it different?

13 A If I -- if I drew it, I know I -- I changed
14 it to -- I still had the -- the cheesy smile on there
15 because that's just how I draw smiley faces. But the
16 eyes are different, I changed the nose, maybe gave him
17 different hair. If someone else drew it, it's -- I
18 mean, it's totally different, doesn't look anything
19 like how -- my drawing.

20 Q Well, who -- who else would have drawn them?

21 A Trey drew them on.

22 Q Trey did?

23 A Yes.

24 Q Okay.

25 A And Rado to my knowledge.

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1 drawn on it, correct?

2 A I would say so, yes.

3 Q Next game was North -- was Burke, again at
4 Academic Magnet. Same process, you bought the
5 watermelon, a face got put on it, it was called
6 Bonds-Wilson, it was carried out on the field by you,
7 put on the bench, end of the game got smashed?

8 A I believe so, yes.

9 Q Barking again?

10 A Football chants, yes, sir.

11 MR. DAVIDSON: We've been going about an
12 hour. Let's take a short break and stretch our
13 legs.

14 (Brief recess.)

15 BY MR. DAVIDSON:

16 Q Daniel, when you were at the Academic Magnet
17 school, did you take any history classes?

18 A Yes, sir.

19 Q What history classes did you take?

20 A I took history every year, so I took 9th
21 grade history.

22 Q And what was it?

23 A That was -- that was just world history, I
24 believe, a lot of prehistoric stuff.

25 Q And then the other history classes you take,

1 Q Okay. And then after the game, again,
2 coaches would meet, you-all would be somewhere in the
3 field, somebody would bring the watermelon out, smash
4 it, you-all would make the sound that you-all were
5 making that you talked about the Titans or the barking
6 or the chant?

7 A The football chants, yes, sir.

8 Q Now, you described that chant for me early
9 on. Did it ever change?

10 A No, sir.

11 Q Now, we're up to October the 10th and the
12 Garrett Academy Tech game and it's at Garrett. Where
13 is Garrett, North Charleston?

14 A No, sir. I'm -- I'm not entirely sure.

15 Q Okay. Did you buy the watermelon for that
16 game?

17 A I believe so, yes.

18 Q Anybody say anything to you about the
19 watermelon between North Charleston and the Garrett
20 game?

21 A Not that I recall.

22 Q Okay. You decided to go ahead and buy it
23 again. How much were you paying for these watermelons?

24 A They were about five bucks. We were still
25 winning, so...

1 break the superstition, right?

2 A That's correct.

3 Q Okay. Because the last thing you want to do
4 is break that good luck charm, right?

5 A Yes, sir. We kept doing it so we could --
6 because we were on a winning streak, so we assumed that
7 something was working.

8 Q All right. You got the watermelon on the bus
9 and the watermelon is sitting beside you or with your
10 gear?

11 A It's on the back, there's a little ledge
12 right behind the back seat, and it was there with my
13 gear.

14 Q Okay. And when you say your gear, what are
15 you talking about?

16 A My cleats, my -- if I have a shirt, I'll
17 usually just have a little gym bag with some -- some
18 stuff in it for the game, gloves.

19 Q Ah, stuff you're going to take on the field?

20 A Yes.

21 Q Obviously your shoes, your shirt, whatever?

22 A Yes, sir.

23 Q My understanding is Bonds-Wilson watermelon
24 didn't make it to the bench that day.

25 A For Garrett?

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1 Q Yes.

2 A That may have been the game where I
3 accidentally forgot it. There was one game where I
4 accidentally forgot it on the bus and I realized once I
5 had gotten out there, but I also knew that the buses
6 would be locked, so there was no point in me trying to
7 get it, and I was focused on the game ahead and warming
8 up.

9 Q So make sure I understand. You had to get
10 your shoes and your gear to get off the bus?

11 A That's correct.

12 Q And the watermelon is sitting right there,
13 correct, is what you told me?

14 A It may have rolled over. I -- I mean, I
15 don't honestly remember why I didn't grab it. I was
16 probably talking to someone and not paying attention
17 and just grabbed my bag.

18 Q It's a size of a volleyball, right?

19 MR. PARKER: Object to the form of the
20 question.

21 BY MR. DAVIDSON:

22 Q Approximate size of a volleyball?

23 A Approximately.

24 Q Okay. All your gear is there, it's a
25 superstition, you carried this watermelon every game to

1 A I'm sure there was faculty. They didn't just
2 leave the kids outside by --by themselves.

3 Q Okay. Same thing, got in a circle, threw the
4 watermelon, same type noise?

5 A Yes, sir.

6 Q Did any of the students that were
7 non-football players participate in that?

8 A Not that I remember.

9 Q And who told you-all to clean up the
10 courtyard?

11 A I believe it was either one of the coaches or
12 one of the faculty that was there.

13 Q Do you remember which coach it might have
14 been?

15 A No, sir, I do not.

16 Q You said you-all got in trouble for throwing
17 it in the courtyard. What happened?

18 A The principal wasn't happy that we went and
19 disturbed the freshmen lock-in, so we ended up having
20 to do bear crawls the next practice.

21 Q Do what?

22 A Bear crawls. It's where you --

23 Q I got it.

24 A Okay.

25 Q Who told you you were going to have to do

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1 You're sitting in the auditorium and somebody,
2 Mr. Martin opens the door, I assume, and says, "Next,"
3 he didn't know -- he didn't call you by name, did he?

4 A Not from what I remember, but I don't exactly
5 remember.

6 Q Okay. And at that point, had the boys that
7 had been back into the interview room and been
8 interviewed, had they come back into the auditorium, or
9 had they gone back to their classes?

10 A They -- they didn't come back in the
11 auditorium after.

12 Q Okay. And I assume you went straight back to
13 class or lunch after the interview?

14 A I went to lunch, yes.

15 Q Okay. And lunch starts at what time?

16 A One.

17 Q Okay. And how much time do you-all have for
18 lunch?

19 A It goes until 1:35 or 1:40.

20 Q So about 1:00 you went to the lunchroom, got
21 your lunch, brought it back, started eating, and then
22 got called back for the interview?

23 A Yes, sir.

24 Q Okay. And then once you got through with
25 your interview, you left, and did you go back to the

1 lunchroom, or did you just go hang out in the common
2 area?

3 A Yes, sir. I went to my lunch table for about
4 the last 10 minutes of lunch or so.

5 Q Okay. When Mr. Martin or the gentleman asked
6 you to come back, kind of walk me through when you left
7 the auditorium until you got to the interview room,
8 kind of tell me what happened.

9 A I had no contact with anyone. It was just --
10 the interview room is the closest classroom, so it was
11 10 feet from the exit to the auditorium.

12 Q All right. Did Mr. Martin, once you got out
13 in the hall going to the interview room, introduce
14 himself again?

15 A Yes.

16 Q Okay. And when you walked into the room,
17 obviously Mr. Martin was there and I believe another
18 gentleman was there?

19 A Yes, sir.

20 Q Okay. Did Mr. Martin or that gentleman
21 introduce themselves?

22 A Yes, sir. He introduced himself as
23 Mr. Clayton.

24 Q And did they explain to you why he was there?

25 A He said, "Do you know why you're here?" And

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1 MR. PARKER: Object to the form of the
2 question.

3 BY MR. DAVIDSON:

4 Q You have to answer yes --

5 A Yes.

6 Q Okay. And was it your understanding that the
7 grumbling was because some people perceived what
8 you-all were doing with the watermelon as inappropriate
9 because of racial reasons?

10 A Yes, sir.

11 Q Okay. Now, when you went back to the room
12 with Mr. -- Mr. Martin and Mr. Clayton was in the room,
13 about how long were you in the room?

14 A They gave me 5, 10 minutes to finish my lunch
15 before we started, and then the interview itself was
16 anywhere from 15 to like 25 minutes, I'd say.

17 Q Okay. So actually when you got in the room,
18 they let you finish eating?

19 A Yes, they were very concerned about me
20 finishing my lunch.

21 Q Okay. And then they started, I assume, to
22 ask you about the watermelon tradition?

23 A They started off just asking me information
24 about myself, what position I play, and then we moved
25 into the watermelon, yes, sir.

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1 Q Okay, all right. And that's when you drew
2 the picture of the watermelon?

3 A Yes, sir.

4 Q Which is Exhibit 1, which we looked at
5 earlier?

6 A Yes.

7 Q You actually drew this for Mr. Clayton and
8 Mr. Martin, did you not?

9 A That's correct.

10 Q Okay. And that was -- they asked you to draw
11 kind of a picture of what was on the watermelon,
12 correct?

13 A Correct.

14 Q And you drew this for them to kind of show
15 what you-all drew on the watermelon, correct?

16 A Correct. Well, I didn't draw hair on it at
17 first, but then they kind of looked at me like I was
18 forgetting something, and I was nervous at the time, so
19 I scribbled some hair on there.

20 Q Okay. But actually the picture you put it on
21 had hair, it wasn't a bald person?

22 A It was at -- at first, but then they looked
23 at me, and so I knew that I had drawn one of them with
24 hair, so I --

25 Q All right. So you put hair on it, okay.

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1 What else do you remember them asking?

2 A Do you believe what you did was racist, was
3 there any racial intent behind it, behind the
4 watermelon, a lot of how do you think people would
5 feel. And like I said, I documented what I can
6 remember, so I -- I have more.

7 Q Well --

8 A That's the main ones I can remember. And
9 then they -- they -- we also went through and -- went
10 through who smashed it at each game, what happened,
11 what the chants were, all that stuff.

12 Q And you described for them again the --
13 the -- the chant or the barking sound or the noise you
14 did here earlier today?

15 A Yes, sir.

16 Q Okay. And when they asked you about whether
17 you felt there were some racial overtones or racist
18 overtones to the ritual, what did you say?

19 A I said, "Absolutely not. That was never the
20 intent."

21 Q Okay. Did they ask you whether or not you
22 knew the significance or the correlation or the
23 stereotype of watermelons to African-Americans?

24 A Yes, they did.

25 Q Okay. And what did you tell them?

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1 the first I've heard of it --

2 MR. DAVIDSON: Okay.

3 MR. PARKER: -- so we'll be happy to get it.

4 MR. DAVIDSON: All right.

5 BY MR. DAVIDSON:

6 Q Did they ask you about how the tradition got
7 started?

8 A Yes.

9 Q And did they kind of walk you through kind of
10 what happened like I've done?

11 A Yes.

12 Q Okay. And at the end of the interview, what
13 happened?

14 A They -- they asked -- they asked if -- "Do
15 you think your acts were racist," and I said, "No."
16 And then they asked, "Do you see how it could be
17 racially insensitive to others," and I said, "In
18 hindsight, I do see how it could be perceived now."

19 Q Okay.

20 A Then they said to -- they asked if I was
21 friends with Darius and I said yes. And they said,
22 "Just know that he's not the reason you're here," and
23 that -- "Don't look upon him in any other way." And I
24 said -- I told them, "I won't." And then they said,
25 "Don't discuss anything we said to your peers."

1 Mr. Clayton, anything from a school record point of
2 view negative happen to you, did you get a black mark
3 in your personal file, anybody withdraw any
4 recommendations for college, anything like that that
5 you know of?

6 A I mean, I honestly can't say. I was applying
7 to colleges during the time. They may have heard about
8 it and then decided not -- I mean --

9 Q You applied to, I think you said, Clemson and
10 Carolina?

11 A Well, I may not have been considered for some
12 scholarships that others would have.

13 Q Did you apply for other scholarships?

14 A I applied for -- yes, I applied to a few
15 online.

16 Q Okay. Did you ever interview?

17 A No, I did not.

18 Q Okay. Did you have to fill out an
19 application?

20 A For the scholarships?

21 Q Yeah.

22 A Yes.

23 Q Okay. Did any of them have a place on the
24 application that you played football at Academic
25 Magnet?

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1 Q Okay. And advised you-all that Coach Walpole
2 had been removed as head coach?

3 A That's correct.

4 Q Okay. To your knowledge, other than
5 indicating to you-all that Coach Walpole had been
6 removed as head coach, did she say anything else?

7 A I remember she was not answering the
8 questions when we were asking --

9 Q Why?

10 A Yeah. She kept dodging the questions.

11 Q Okay. Do you think -- well, scratch that.

12 To your knowledge -- and there's been a fair
13 amount of press about all of this, I'm sure co-counsel
14 will ask you some of this, but to your knowledge, has
15 your name ever appeared in any newspaper or news
16 broadcast, either radio or TV, about being involved in
17 the watermelon incident at Academic Magnet?

18 A Not my specific name.

19 Q You listed out a fair number of friends that
20 you had in the Charleston area, both Academic Magnet
21 friends and friends over in Mt. Pleasant. Are they
22 still all your friends?

23 A (Indicating yes.)

24 Q You have to answer --

25 A Yes, sir, yes, sir.

1 Q Okay. Has any of your friends dropped you as
2 a friend because of this incident?

3 A No, sir.

4 Q Do you have any African-American friends?

5 A Yes, sir.

6 Q Have you talked with them about it?

7 A No, sir. I just choose not to bring it up.

8 Q And they have been tolerant, they haven't
9 said anything to you about it?

10 A That's correct.

11 Q Make sure I'm right, bought a watermelon,
12 draw a -- drew a picture on it, took it to ball games,
13 most of which were predominantly black schools, busted
14 the watermelon and made barking or chanting sounds at
15 the games, correct?

16 A I -- I would buy the watermelon usually and
17 someone would draw whatever face they would like on it,
18 then we would take it to the game and set it on the
19 bench and break it on the -- in the middle of the field
20 making football chants, huddle up and making football
21 chants, and eat the watermelon and then pick it up and
22 throw it away.

23 Q Okay.

24 MR. DAVIDSON: Do you want to ask some and
25 let me look at my notes and --

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1 Q Okay. And what's your cell phone number?

2 A (843) 513-2642.

3 Q 2642?

4 A Yes.

5 Q And through social media -- through social
6 media or text, have you communicated with anyone about
7 the -- participating in the watermelon ritual or the
8 investigation or events concerning the watermelon
9 activities?

10 A I know on Facebook, I sent out a -- a post to
11 try and -- for a petition to get Coach Walpole
12 reinstated. So that -- I mentioned it there. And as
13 far as texting, I don't recall ever texting any --
14 anyone about it. I usually just talk to my teammates
15 in person, but...

16 Q Would -- would you agree that there has been
17 lots of publicity about this event?

18 A Yes, I agree.

19 Q Has there been national publicity about it?

20 A Yes, ma'am.

21 Q Could you tell me about some of the national
22 publicity that you're aware of?

23 A The Huffington Post, I believe, and then just
24 on those like news channels, like Nancy Grace type
25 things, I think I watched one where -- and everyone is

1 taking the side that, you know, we're racist because
2 we're from the south and that we're making the monkey
3 chants, which aren't monkey chants, they're football
4 chants. And so that's just what I've seen, and then
5 newspaper -- there's been some newspaper articles that
6 I know of, especially locally.

7 Q Okay. And there's been -- so there's been
8 lots of local coverage of it as well?

9 A Yes.

10 Q By "local," do you mean just Charleston or
11 all South Carolina?

12 A Mostly Charleston, but I know there has been
13 some across South Carolina.

14 Q Okay. And in your complaint, you are suing
15 the Charleston City Paper for defamation because of an
16 article they published entitled "Mob Rules." Could you
17 tell me what about -- could you tell me why you decided
18 to sue the City Paper over that article?

19 A Because I felt the article is misleading and
20 it didn't take an objective form of -- to portray and
21 you pretty much just assumed that we were racists and
22 didn't take the time to gather the facts and do honest
23 reporting.

24 Q Could you tell me how the article has
25 particularly caused you harm?

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1 A I mean, it's harmed my character and my
2 reputation by pretty much calling me a racist.

3 Q And what harm to your character and
4 reputation have you experienced?

5 A I mean, I know that my peers kind of -- they
6 look at me differently and -- not as far as treatment,
7 but I know that they're like, "Oh, well, that's the kid
8 that had the idea for the watermelon," or if I ever go
9 to apply for a job and they figure out that, you know,
10 I was on the Academic Magnet football team, that's what
11 they're going to remember, you know, "Oh, you're the --
12 you're -- you participated in the watermelon thing."

13 Q Can you -- can you tell me any specific
14 person who has treated you differently because of the
15 article published by the City Paper?

16 A Like I said, they didn't necessarily treat me
17 differently. It's as far as I know that they -- they
18 view me differently, that they can -- they -- it -- it
19 gives them pause when talking to me, and like they --
20 they're not sure about who I really am even though
21 they've known me, the media kind of makes them doubt.
22 So, I mean, I'd say my closest friends that I listed
23 there, they've all had their doubts.

24 Q And did they tell you that was specifically
25 because of the article written by -- written in the

1 city -- in the Charleston City Paper?

2 A They didn't specifically mention that.

3 Q Do you know of anyone who was your friend
4 before the Charleston City Paper wrote the article who
5 is not your friend now?

6 A No, ma'am.

7 Q Do you know of any specific opportunity that
8 you have missed because of the publication in the
9 Charleston City Paper?

10 A Like I said, I could have possibly missed out
11 on some scholarships, but there's nothing where I can
12 concretely say that I definitely missed out, but also
13 just future employment opportunities because it's
14 always going to be out there now because it's been
15 published.

16 Q And do you -- can you -- you said that you
17 were aware that there has been national publication
18 indicating that the actions taken by the football team
19 were racist also. Do you know whether or not those
20 publications had any effect on the -- had any effect on
21 people's opinion either?

22 A Like I said, no articles were specifically
23 mentioned, but it -- I'm sure if someone has read them,
24 it can make them pause -- have pause about who I am.

25 Q Okay. And why did you decide to sue the City

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional
Reporter, Notary Public and Certified Live Note
Reporter, State of South Carolina at Large, certify
that I was authorized to and did stenographically
report the foregoing deposition; and that the
transcript is a true record of the testimony given by
the witness.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of
August, 2015, in the Town of Goose Creek, County of
Berkeley, State of South Carolina.

Teri L. Sampson
Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: ADAM ACKERMAN

19 DATE TAKEN: Monday, August 3, 2015

20 TIME: 3:20 p.m.

21 PLACE: 123 Meeting Street
22 Charleston, SC

23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

* * * * *

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1 Q Senior year?

2 A Just this year, yes, sir.

3 Q What about, did you play soccer?

4 A No.

5 Q And how many years of baseball did you play?

6 A Four.

7 Q Basketball?

8 A Four.

9 Q So football was kind of a senior, "I want to
10 play football" --

11 A Yes.

12 Q -- "senior year"?

13 Did you have -- at the linebacker and running
14 back position, did you have a coach that coached you
15 specifically?

16 A Well, on -- our defensive coach was Coach
17 Kamp.

18 Q Okay.

19 A And the offense was mostly Coach Walpole.

20 Q My reason for being here today is to ask you
21 questions about the watermelon ritual. You're aware of
22 that?

23 A Yes.

24 Q Okay. When did that start?

25 A I guess it would be the date of the -- our

1 game versus Military Magnet.

2 Q And kind of tell me how it got started.

3 A Well, we were -- we had our game at North
4 Charleston High School, which is Military Magnet's home
5 field.

6 Q Okay.

7 A And so we go to Magnet, which isn't that far
8 away. So before the game, we could like drive around
9 and get food or do whatever we wanted to, I guess, prep
10 for the game. And we were just driving around in North
11 Charleston and one of the cars, not the car that I was
12 in, stopped at just a roadside stand and a guy was
13 selling watermelons. And so they bought one. And then
14 my car also pulled over and we bought one at the same
15 time.

16 Q All right. You say two cars. Who was in
17 your car?

18 A I don't really remember.

19 Q Okay. Do you know who was driving?

20 A No.

21 Q What about the other car?

22 A I know that was Connor Frailey and Daniel
23 Nelson.

24 Q And who pulled over first?

25 A The other car.

1 have been sort of standing off to the side there
2 waiting for us to --

3 Q Okay. What about coaches?

4 A They were standing on the outside and they
5 weren't like in the circle with us.

6 Q Okay. Would they have been able to see the
7 watermelon being thrown if they wanted to?

8 A Yes.

9 Q Okay. Would -- from your understanding of
10 where the watermelon was on the bench, if the coach
11 wanted to see it, could he have seen it?

12 A Yes.

13 Q Okay. Was this right after the game?

14 A We shook hands with the other team after and
15 then our coaches had their, I guess, end of the game
16 speech, and then after that is when we did it.

17 Q Okay. Were there still other members of the
18 Military Magnet student body on the field or players on
19 the field?

20 A Probably off to the side.

21 Q Okay. Do you know if any of the students or
22 football players or anything said anything to you-all
23 about what you-all were doing?

24 A No.

25 Q Okay. Then you-all, I assume, I hope, okay,

1 you tell me if you did or not, did you-all clean it up
2 afterwards?

3 A Yes.

4 Q Did anybody have to tell you to clean it up?

5 A Our coach.

6 Q Okay. Which coach told you?

7 A Coach Kamp.

8 Q Clean it up, grab all your gear and head back
9 to the bus and go back home?

10 A Yes.

11 Q Anybody say anything about the ritual or what
12 had happened or anything like that?

13 A No.

14 Q Okay. Did anybody say anything, "We're going
15 to get a watermelon next week," or did it just show up
16 at the next game?

17 A It just kind of showed up.

18 Q Okay. Do you know who show -- brought it to
19 the next game?

20 A Daniel and -- Daniel.

21 Q Okay. Was Connor involved with bringing it
22 then?

23 A I'm not sure.

24 Q Okay. Did you ever buy the watermelon?

25 A No.

1 Q Other than the one you-all ate?

2 A No.

3 Q All right. The next game is at Branchville.

4 You-all won that one, 39 to 18, okay? And it says,

5 "Location, Academic Magnet High School," and that was

6 September the 12th. Do you remember that game?

7 A No.

8 Q Okay. Do you remember the ritual, or was it

9 similar to what had happened --

10 A Similar.

11 Q -- while you-all were at the Military Magnet?

12 A Yes.

13 Q Okay. Somebody draws a face similar to

14 what's on No. 1, do you know who drew it that day?

15 A Daniel drew it.

16 Q Daniel drew it again. Okay. And then set it

17 on the bench, everybody could see if they wanted to see
18 it?

19 A Yes.

20 Q Did anybody say, "What are we doing with a

21 watermelon here this time," or did anybody say anything

22 about good luck charm or 12th man or superstition, or

23 did it just show up?

24 A We did believe in some sort of superstition

25 with it.

1 the game to get money back for the watermelon?

2 A No.

3 Q Did, again, Daniel draw the face on the
4 watermelon for that game?

5 A Yes.

6 Q Was he the one that drew all the faces on the
7 watermelon?

8 A Yes.

9 Q And did you ever ask, why are we drawing what
10 I've got as Defendant's No. 1, "Why we're drawing a
11 face on this watermelon"?

12 A No.

13 Q Okay. Did it kind of surprise you to see a
14 face on it?

15 A No.

16 Q Okay. Had you ever seen any other fruit at
17 any other team with a face on it?

18 A No.

19 Q Okay. Never saw a cantaloupe?

20 A No.

21 Q Honeydew?

22 A No.

23 Q Okay. When the Burke game came around, same
24 process, somebody -- Daniel gets a watermelon, Daniel
25 draws the face, Daniel takes or somebody takes and puts

1 it on the bench to be seen if you're looking for it on
2 the bench, and at the end of the game, smashed, whoo
3 whoo whoo again?

4 A Yes.

5 Q Okay. Did anybody ever say anything about
6 why is the watermelon sitting on the bench?

7 A No.

8 Q When you came off the field when you're --
9 obviously defense is off the field, would you-all go to
10 the bench and sit?

11 A No.

12 Q Okay. Was the water over at the bench?

13 A There was a water, like a -- there were water
14 containers that had water bottles in them, and then
15 there was also like a -- it was called the hydration
16 station and it was just -- it had a little -- I don't
17 know how to explain it. You just like squirted the
18 water in your mouth.

19 Q Okay. Was that over where the watermelon
20 was?

21 A It was moved up and down the sideline.

22 Q Okay. After the Burke game, watermelon's
23 busted again, coaches tell you-all to clean up, I
24 assume?

25 A Yeah.

1 Q And then you've got -- next is the North
2 Charleston game, again at the Academic Magnet High
3 School. Same process?

4 A Yes.

5 Q Daniel shows up with the watermelon, Daniel
6 puts the face on it, Bonds-Wilson is the name, it's
7 sitting on the bench, and at the end, it gets destroyed
8 and eaten?

9 A Yes.

10 Q Okay. Same sounds. Did the sounds ever
11 change?

12 A No.

13 Q Okay. Nobody was hip hip hooray or
14 congratulations to us, congratulations to us, it was
15 still always the whoo whoo whoo sound?

16 A Yes.

17 Q My understanding, Burke is still -- is a
18 predominantly African-American school?

19 A Yes.

20 Q And so was North Charleston?

21 A Yes.

22 Q The next game is Garrett Academy. And it's,
23 I think, played in North Charleston. Is that again
24 near where you live?

25 A I live in Yongs Island.

1 Q Okay, Yonges Island.

2 A Hollywood.

3 Q I'm sorry, Hollywood.

4 A Yes.

5 Q You have to forgive me.

6 So Daniel show up with a watermelon again?

7 A Yes.

8 Q Okay. And then in the locker room, Daniel
9 gets the Sharpie and draws another picture?

10 A Yes.

11 Q Again, similar to No. 1?

12 A Yes.

13 Q Loaded up on the bus?

14 A Yes.

15 Q Get to Garrett, what happens?

16 A We got off the bus, I guess we forgot the
17 watermelon.

18 Q Okay. So you-all forgot the watermelon and
19 left it on the bus?

20 A Yes.

21 Q Okay. And how did you-all forget the
22 watermelon, who had been with you for one, two, three,
23 four, five wins?

24 A This game was more -- our coaches were more
25 focused on this game and us winning because Garrett was

1 a more competitive team than the other teams we'd been
2 playing.

3 Q Okay.

4 A So everyone was more focused on the game --

5 Q Okay.

6 A -- instead of joking around and stuff.

7 Q But obviously play -- athletes are
8 superstitious, okay, and you-all just decided -- forgot
9 to bring your good luck charm?

10 A I don't remember.

11 Q Okay. And then that game was 20 to 19,
12 pretty close game.

13 A Yes.

14 Q Did somebody, in celebration of the win,
15 decide to go get the watermelon?

16 A No.

17 Q Okay. Why is that?

18 A I don't know.

19 Q Okay. Did you kind of wonder where the
20 watermelon was?

21 A No.

22 Q Okay. You were more intent on the game?

23 A Yes.

24 Q Okay. Then what happened once you-all got
25 back on the bus?

1 A We drove back to the school.

2 Q Okay. Did you go back to the school, too?

3 A Yes.

4 Q All right. Then what happened to
5 Bonds-Wilson at that point?

6 A We -- it was the night of the freshmen
7 lock-in and we went out into our courtyard at our
8 school and broke it on the square piece.

9 Q And when you were there, same sounds?

10 A Yes.

11 Q Okay. Other people there?

12 A Freshmen.

13 Q Freshmen. Any teachers or professors or --

14 A Yes.

15 Q Do you remember some of the staff that was
16 there?

17 A Not specifically.

18 Q Okay. Were any of the coaches there?

19 A They didn't come outside.

20 Q Okay. When you-all were doing the sounds at
21 the other games when you-all were on the field, were
22 the coaches right there when you were doing it?

23 A Near us, yes.

24 Q Okay. Based on where they were standing in
25 relation to where you-all were, do you think they could

1 Q When you-all were sent to the auditorium
2 on -- I think on Thursday.

3 A No.

4 Q Did you talk with anyone about the ritual
5 prior to being called to the auditorium for the
6 interviews?

7 A No.

8 Q All right. Now, take me through what
9 happened on the day you went to class and were asked to
10 come to the auditorium.

11 A I went up to my first period class and --

12 Q And that would be at what time?

13 A Eight, 8:05.

14 Q Okay.

15 A And our teacher tells me and another student
16 who was on the football team that we'd better pack our
17 bags and bring a lot of books because we were going to
18 be in the auditorium for a long time.

19 Q Okay. And who was the other -- who was the
20 other student?

21 A Andrew Bruce.

22 Q Okay. And what was the teacher's name that
23 told you that?

24 A Last name was Murphy.

25 Q Mr. Murphy black or white?

1 A White.

2 Q And so you got all of your stuff together,
3 you-all went to the auditorium, right. Tell me what
4 happened when you got to the auditorium?

5 A We all sort of sat down and were wondering
6 what we were doing there, but we just talked to one
7 another.

8 Q Okay. What did you-all talk about?

9 A I don't remember.

10 Q Did you-all talk about why you-all were there
11 or what was going on or anything like that?

12 A No.

13 Q Okay. And then what happened while you-all
14 were sitting there?

15 A The -- I don't know their names, but the two
16 men came into the room --

17 Q Uh-huh (affirmative).

18 A -- and told us all to spread out and that we
19 couldn't talk to one another at all.

20 Q Okay.

21 A And then one by one, they took us out into
22 another classroom.

23 Q All right. Now, did the principal ever say
24 anything?

25 A She came in with them, but never said

1 Q Okay. So you've got friends at Yonges Island
2 and friends that went to Magnet?

3 A Right.

4 Q Okay. All -- any of those friends stop being
5 friends after this incident?

6 A No.

7 Q Has anybody ever come up to you and said
8 anything to you about you being a racist or anything
9 like that?

10 A Jokingly.

11 Q Jokingly, okay. At --

12 A Well, I feel that it's been jokingly.

13 Q At school?

14 A Like everywhere that I see people --

15 Q Okay.

16 A -- when it comes up.

17 Q Is it the kind of banter that you know that
18 they're just picking at you?

19 A Yes.

20 Q Okay. Has anybody of African-American decent
21 ever said anything derogatory to you about this?

22 A No.

23 Q Have you ever been to any kind of sensitivity
24 training or diversity training?

25 A No.

1 Ackerman --

2 A No.

3 Q -- as a racist?

4 Do you think that the facts reported by the
5 school district suggest that you were racist?

6 A Where is the -- where are the facts or is it
7 just what's in the --

8 Q In your complaint. Well, I'll just say the
9 facts as you stated in your complaint, and I assume you
10 are familiar with your complaint.

11 A Yes.

12 Q So you -- you allege that those -- the facts
13 as you allege in the complaint imply that you were
14 racist?

15 A Yes.

16 Q If those facts were reported by other
17 publications, would you agree that those -- that those
18 publications also implied you were racist?

19 A Yes.

20 Q Could you please tell me what your -- could
21 you please tell me the exact injury you have incurred
22 as a result of the article published in the -- the
23 editorial article published in the city newspaper, the
24 city paper?

25 A Defamation of character.

1 Q And how has your character been defamed,
2 what -- what exactly -- injury have you felt?

3 A I've been characterized as a racist.

4 Q Who has characterized you as a racist other
5 than the city newspaper?

6 A I'm sure a lot of people.

7 Q Can you name any person who has characterized
8 you as a racist?

9 A Not personally.

10 Q So you -- you don't know of anyone who has
11 characterized you as a racist?

12 A Not personally, no.

13 Q Okay. Have you -- has your reputation
14 been other -- do you have any other harm to your
15 reputation other than your allegation of defamation
16 because of being called a racist?

17 A No.

18 Q What's your definition of racism?

19 A Racism?

20 Q Yes.

21 A Deliberately doing something that you know
22 offends another race.

23 Q So in order to be -- in order for something
24 to be racist or for you -- for something -- in order
25 for something to be characterized as racism or racist,

1 it has to be deliberate?

2 A No.

3 Q No. Okay. So in your definition, you said
4 that -- that it needed to be a deliberate act. Are you
5 changing your definition?

6 A No.

7 Q Do you think the Confederate flag is racist?

8 A No.

9 Q Do you agree -- do you -- are you aware that
10 some people disagree with you that the Confederate flag
11 is racist?

12 A Yes.

13 Q Do you believe that whether or not something
14 is racist is a matter of opinion?

15 A Can you repeat that?

16 Q Do you believe whether or not something is
17 racist is a matter of opinion?

18 A It is a matter of opinion.

19 Q Do you think the word "nigger" is racist?

20 A Yes.

21 Q What about the word "nigga"?

22 A Yes.

23 Q What about the word "jap"?

24 A I've never heard of that.

25 Q Slant eyes?

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrard, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Page 2

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: ROBERT C. GARRARD
19 DATE TAKEN: Tuesday, August 4, 2015
20 TIME: 2:18 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

26 * * * * *

27 POST OFFICE BOX 21784
28 CHARLESTON, SOUTH CAROLINA 29413-1784

1 Q Okay. Did you see the kids drawing the
2 pictures on the watermelon?

3 A Yes, sir.

4 Q Okay. What did you think when you saw a
5 watermelon in the locker with a face on it?

6 A I mean, I didn't really think much of it. I
7 figured it -- it would be a fun tradition to start. We
8 can start eating watermelon.

9 Q Okay. Something the seniors cooked up?

10 A Yes, sir.

11 Q Okay. Now, did you ever tell your mother and
12 father about this watermelon with the face on it?

13 A I told them we started a tradition, and they
14 asked what we were doing, we all stood in a circle.

15 Q Okay. Did you tell them that it had a face
16 on it?

17 A I told them we drew a -- that the seniors
18 would draw on it, yes, sir.

19 Q Did you tell them it was named after the
20 Bonds-Wilson?

21 A No, sir.

22 Q Okay. Did you know it was named?

23 A I knew it was named Bonds-Wilson, but -- yes,
24 sir.

25 Q And did you have any idea what Bonds-Wilson

Page 16

1 was?

2 A Our school campus.

3 Q Okay. Anything about the history of
4 Bonds-Wilson?

5 A No, sir, I didn't know anything about it.

6 Q Do you know anything about Bonds-Wilson
7 today?

8 A I learned that it was two separate people who
9 started an old campus. That's all about it I know.

10 Q Okay. Nobody told you that, in fact,
11 Mr. Bonds and Mr. Wilson were African-American?

12 A Yes, sir, I knew that --

13 Q Okay.

14 A -- or I learned that.

15 Q And that the school that was on you-all's
16 property was basically an African-American school prior
17 to desegregation?

18 A No, sir. I didn't know that.

19 Q Now, you said you-all would stand around and
20 throw the watermelon. Did you ever throw the
21 watermelon?

22 A No, sir. It was -- we wouldn't pass it
23 around. It was one person would hold it while we all
24 stand around and then drop it.

25 Q Okay. Do you remember who bought the

1 watermelon?

2 A Daniel Nelson.

3 Q Okay. Do you know who drew on the
4 watermelon?

5 A I think it was different people, but I know
6 Daniel Nelson drew it the first couple times. I think
7 Rado, our exchange student from Slovakia, may have
8 drawn one of the faces, but that's all I know.

9 Q Okay. And do you know who named it?

10 A No, sir.

11 Q Okay. I'll show you what's been marked as
12 Exhibit 1. Is that similar to one of the pictures that
13 was on the watermelon?

14 A Yeah, I'd say it's similar. It could be
15 different, but...

16 Q Okay. Do you know if anybody ever took a
17 picture of the watermelon?

18 A No, sir.

19 Q Do you know if anybody ever filmed the -- the
20 ritual?

21 A No, I don't think so.

22 Q Watermelon sat where during the game?

23 A On the bench.

24 Q Okay. And on the bench, what -- what else
25 was on the bench?

Page 20

1 like has been illustrated?

2 A Not that I recall.

3 Q Okay. Did you participate in making the
4 noise?

5 A Yes, sir.

6 Q Now, the schools you-all played, the first
7 school you-all started this tradition was Military
8 Magnet, correct?

9 A Yes, sir.

10 Q Okay. It's predominantly an African-American
11 school?

12 A Yes, sir.

13 Q Football team predominantly African-American?

14 A Yes, sir.

15 Q Okay. Branchville, what's it, do you know?

16 A What team is it predominant --

17 Q Uh-huh (affirmative).

18 A Predominantly white, I'd say.

19 Q Okay. What about Baptist Hill?

20 A Predominantly African-American.

21 Q Burke?

22 A African-American.

23 Q North Charleston?

24 A African-American.

25 Q And Garrett Academy?

1 Q When you were interviewed, were you asked
2 whether or not you had ever Googled watermelons and
3 derogatory?

4 A No, sir. He asked me if I knew of any
5 negative connotations between watermelons, I told him,
6 no, I had not, but then he told me I should Google
7 negative connotations of watermelon.

8 Q Did you?

9 A No, sir.

10 Q You didn't?

11 A No, sir.

12 Q It wasn't important to you?

13 A I -- I didn't feel like I should.

14 Q Huh?

15 A I didn't feel like I should.

16 Q When you were called to the auditorium, where
17 were you?

18 A I was in first period.

19 Q Okay. And who told you you needed to go to
20 the auditorium?

21 A My teacher.

22 Q Okay. And what were you told to take with
23 you?

24 A All my books and my book bag.

25 Q Okay. What happened when you got to the

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1 auditorium?

2 A We were separated and told not talk. Our
3 principal and secretary were there making sure we
4 didn't do anything. We just sat there and did work.--

5 Q Okay.

6 A -- for other classes.

7 Q All right. Were you introduced to any of the
8 individuals that were participating in the interview
9 process?

10 A Not prior to me going into the interview.

11 Q Okay. When you were asked to go into the
12 interview, how long had you been in the auditorium?

13 A I'd say two-and-a-half hours.

14 Q Okay. Were you allowed to get up and go to
15 the bathroom?

16 A If we needed to, yes, sir.

17 Q Okay. Were some of the students allowed to
18 go back to their rooms and get their books?

19 A Once they finished the interview, they were
20 allowed to leave.

21 Q Okay. Did you have lunch during that time?

22 A No, sir.

23 Q Okay. So you didn't run into your lunch
24 period?

25 A No, sir, I finished right before lunch. I

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1 Q Okay, all right. And then what happened in
2 the interview?

3 A They were basically asking questions about
4 the incident. I don't remember all the questions.

5 Q Okay. They ask, you know, your name?

6 A Yes, sir.

7 Q Did they ask you what position you played?

8 A No, sir.

9 Q Okay. Did they ask you what grade you were
10 in?

11 A Yes, sir.

12 Q Okay. Did they ask how many years you played
13 football?

14 A No, sir.

15 Q Okay. Did they ask you about how the
16 watermelon tradition started?

17 A Yes, sir.

18 Q Okay. Did they ask you who bought the
19 watermelons?

20 A Yes, sir, and who drew the faces on the
21 watermelons also.

22 Q Okay. And who drew the faces.

23 A Yes, sir.

24 Q Did they show you the face that was drawn for
25 them in the meeting?

1 why.

2 Q Okay. And how do you feel they defamed or
3 slandered you?

4 A They falsely accused us of being racists.

5 Q Okay. And are you aware that other
6 publications, both nationally and locally, also
7 publicized or accused you -- accused the football
8 team's actions of being racist?

9 A I did not know that they directly called us
10 racists such as the City Paper has.

11 Q Okay. If you had known that other
12 publications directly called you racist, would that
13 upset you?

14 A Yes, ma'am.

15 Q So to be clear, are you -- are you suing
16 the -- actually, I'm -- I'm not really clear. Why are
17 you suing the Charleston City Paper?

18 A Because they directly called us racists.

19 Q Okay. And how has the Charleston City
20 Paper's article, editorial harmed you?

21 A They falsely accused me of being something
22 I'm not, which makes you feel more self-conscious. It
23 doesn't feel good to be called a racist when you're
24 not.

25 Q Other than making you feel self-conscious

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1 A I think she was just there monitoring. I
2 don't think she said anything.

3 Q Did you do a statement or anything kind of
4 memorializing what was said in any of these meetings or
5 interviews?

6 A No, sir.

7 Q Now, do you know of any statement, either in
8 the newspaper, on the Internet, blogs, whatever there
9 is out there now, Twitts, Tweets, Facebook, whatever,
10 newspapers, radio, TV, any news story that had your
11 name in it?

12 A No, sir.

13 Q Okay. Have you ever heard yourself referred
14 to in any manner in the press in a derogatory manner?

15 A My personal name or --

16 Q Your personal name.

17 A No, sir.

18 Q Have you ever heard anyone associated with
19 the Charleston County School District refer to you
20 individually in a derogatory term?

21 A No, sir.

22 Q Do you know what I mean by "derogatory,"
23 negative term?

24 A Yes, sir.

25 Q Okay. Have you ever heard anybody say that

1 you, okay, Campbell Garrard, is a racist?

2 A No, sir.

3 Q Or racially insensitive?

4 A No, sir.

5 Q Have you ever heard anyone with the school
6 district -- associated with the school district say
7 anything derogatory about any of your fellow teammates
8 by name?

9 A No, sir.

10 Q Okay. Campbell, if -- if you had known that
11 the watermelon with the painting and the name
12 Bonds-Wilson and the making of the sounds, the chants
13 or whatever you-all want to call it, was offensive to
14 certain members of the African-American community,
15 would you have agreed to do it?

16 A No, sir, we would have stopped it.

17 Q Huh?

18 A We would have stopped it.

19 Q Okay. Were the coaches aware of the practice
20 of the watermelon with the face and the name and the
21 throwing it and making the noise?

22 A I don't know if they were aware of the face.
23 I knew they were aware that we smashed a watermelon.

24 Q Okay. But the face -- the watermelon was in
25 plain view on the bench?

1 Q Okay. Who is your best friend at the Magnet
2 school?

3 A Beckham Watkins.

4 Q Beckham Watkins?

5 A Yes, ma'am.

6 Q And does -- is it Mr. Watkins?

7 A Yes.

8 Q Miss?

9 A Mister.

10 Q Mister. Does he play football?

11 A No, ma'am.

12 Q Okay. And who's your best friend outside of
13 the Magnet school?

14 A I'd say Robert O'Donnell.

15 Q Robert O'Donnell. And where does Robert
16 live?

17 A West Ashley in Carolina Bay.

18 Q Okay. And were they your friends before the
19 watermelon ritual began?

20 A Yes, ma'am.

21 Q And has your -- are they still your friends?

22 A Yes, ma'am.

23 Q And do you know -- can you identify anyone
24 who knew you before the City Paper published the
25 editorial whose opinion changed of you after the

Page 40

1 editorial was published?

2 A No one brought anything up with me.

3 Q Okay. There has been a lot of media coverage
4 about this incident at the Magnet school, are you aware
5 of that?

6 A Yes, ma'am.

7 Q Are you aware that there has been national
8 coverage of this incident?

9 A I heard something about CNN and something
10 about The Huffington Post.

11 Q Okay. And are you aware that The Huffington
12 Post in particular covered the racial implications of
13 the incident at the Magnet school?

14 A No. I didn't read the article.

15 Q Okay. Do you -- are you aware that some
16 media coverage has discussed the racial implications of
17 the incident at the school regarding the watermelon
18 ritual?

19 A Yes, ma'am.

20 Q Are you -- why are you suing Jones Street
21 Publishing?

22 A Because they publish the City Paper.

23 Q Okay. And why are you -- why are you suing
24 the City Paper?

25 A Because like -- defamation and slander is

1 why.

2 Q Okay. And how do you feel they defamed or
3 slandered you?

4 A They falsely accused us of being racists.

5 Q Okay. And are you aware that other
6 publications, both nationally and locally, also
7 publicized or accused you -- accused the football
8 team's actions of being racist?

9 A I did not know that they directly called us
10 racists such as the City Paper has.

11 Q Okay. If you had known that other
12 publications directly called you racist, would that
13 upset you?

14 A Yes, ma'am.

15 Q So to be clear, are you -- are you suing
16 the -- actually, I'm -- I'm not really clear. Why are
17 you suing the Charleston City Paper?

18 A Because they directly called us racists.

19 Q Okay. And how has the Charleston City
20 Paper's article, editorial harmed you?

21 A They falsely accused me of being something
22 I'm not, which makes you feel more self-conscious. It
23 doesn't feel good to be called a racist when you're
24 not.

25 Q Other than making you feel self-conscious

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1 and -- and making you feel bad, what other harm have
2 you had as a result of the publication in the
3 Charleston City Paper?

4 A There's been no physical harm.

5 Q The job that you currently hold now --

6 A Yes, ma'am.

7 Q -- you -- you had that job last summer before
8 the watermelon ritual occurred?

9 A Yes, ma'am.

10 Q Did you have any problems getting your job
11 back after the publication of the articles in the City
12 Paper?

13 A No, ma'am.

14 Q What's your GPA?

15 A I'm not sure. I think it's -- it was like a
16 3.2.

17 Q Is that unweighted or weighted?

18 A I think that's weighted.

19 Q Okay. Have you taken the PSAT?

20 A Yes, ma'am.

21 Q How did you score on that?

22 A I think I got like a 900, something in the
23 nine hundreds.

24 Q Okay. And that's just math and --

25 A I did the full SAT.

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

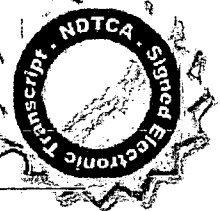
COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson
Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,))
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,))
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,))
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,))
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Page 2

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: ARTHUR E. PERRY, III
19 DATE TAKEN: Tuesday, August 4, 2015
20 TIME: 12:43 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

26 * * * * *

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1 suppose, like you said, South Carolina history in the
2 8th grade.

3 Q Okay.

4 A Not too much in detail beyond that.

5 Q Now, my understanding is that at some point,
6 the football team started to bring a watermelon to the
7 games.

8 A Yes, sir.

9 Q Were you ever involved in purchasing any of
10 the watermelons?

11 A No, sir.

12 Q Who did?

13 A Daniel Nelson, Jack Delanty, and I believe
14 those were the only two, to my knowledge.

15 Q And do you know when the first time a
16 watermelon was purchased and brought to a game?

17 A The second week.

18 Q And I think that would have been for the
19 Military Magnet's game?

20 A Yes, sir.

21 Q Do you remember who brought the watermelon?

22 A Daniel Nelson and Jack Delanty.

23 Q And how did you learn that you-all now had a
24 watermelon in the locker room?

25 A They brought it back to the locker room after

1 purchasing it.

2 Q Did you see it in the locker room?

3 A Yes, sir.

4 Q Did it already have the drawing on its face
5 when you saw it?

6 A No, sir.

7 Q Okay. Did it for the Military Magnet game
8 have a drawing placed on the watermelon?

9 A Yes, sir.

10 Q Okay. And who made that drawing?

11 A Daniel Nelson.

12 Q Did you ever draw on the watermelon?

13 A Yes, sir.

14 Q Okay. And how many times?

15 A Once.

16 Q Once. Why did you draw on the watermelon?

17 A We had a rule that after the first two times,
18 you weren't allowed to draw it again, someone new drew
19 the watermelon after every -- or before every game.

20 Q Okay. Daniel has said he's drawn -- he drew
21 several of those.

22 A Yes, sir.

23 Q Who else besides you drew on the watermelon?

24 A The only other name that I remember as a 100
25 percent was our foreign exchange student, his name was

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1 Radovan, he's from Sova -- Slovakia. He drew his
2 watermelon to look like someone from Slovakia.

3 Q Okay.

4 A And I believe, although I -- I don't want to
5 confirm it, I believe Darius Nwokike drew one as well.

6 Q All right. Since you drew one, I'd like for
7 you to draw me kind of a representation of what you
8 drew.

9 A Yes, sir. I remember directly that on mine,
10 I had given him sunglasses, a nose, and I believe a
11 grimacing face like that.

12 Q Okay.

13 (Defendant's Exhibit No. 7 marked.)

14 BY MR. DAVIDSON:

15 Q All right. And that's your No. 7, okay?

16 A Yes, sir.

17 Q We questioned some of the other students and
18 they've acknowledged that Defendant's 1 to the Moore
19 deposition was, in fact, one of the caricatures that
20 was placed on the watermelon. Do you remember
21 something like that being on one or more of the
22 watermelons?

23 A I remember that picture being on Nancy
24 McGinley's request for Daniel to draw one.

25 Q Okay.

1 was you-all made?

2 A The best representation I have for it is, I
3 mean, I -- it's just a standard football chant. They
4 do them a lot on like a college football pre-game where
5 they're all in a circle and they're all, you know,
6 swaying and chanting. I know Notre Dame does one, LSU
7 does one. That would be my representation, just like a
8 standard football pump up chant.

9 Q Okay. Can you -- can you kind of illustrate
10 for me what the chant would have sounded like?

11 A I think it would have just been something
12 like we would have been in a circle, someone probably
13 would have held the watermelon up or I know we would --
14 before the games, one of us would like hold our fist up
15 and everyone would be around it and we'd go whoo whoo
16 whoo whoo whoo, just like a standard, you know,
17 football chant.

18 Q Okay.

19 A Yeah.

20 Q Was that done when you-all destroyed the
21 watermelon?

22 A Yes, sir.

23 Q Okay. For each of the games after Military
24 Magnet?

25 A To my knowledge.

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1 A Yes, sir. Someone brought it to somewhere
2 where we could grab it after the game if we won.

3 Q Okay. Garrett game, who was charged with the
4 responsibility to bring it to the field?

5 A I'm not sure.

6 Q Was it brought to the field at the Garrett
7 game?

8 A No, sir. We forgot it on the bus. We were
9 late to the game.

10 Q Now, Garrett is a predominantly
11 African-American school?

12 A Yes, sir.

13 Q Same is true with Military Magnet?

14 A Yes, sir.

15 Q Branchville?

16 A No, sir, I think --

17 Q Baptist Hill?

18 A Yes, sir.

19 Q Burke?

20 A Yes, sir.

21 Q North Charleston?

22 A Yes, sir.

23 Q When you got back to campus, did somebody
24 remember to get the watermelon off the bus then?

25 A Yes, sir.

1 Q Okay. Did the watermelon have a face on it?

2 A Yes, sir.

3 Q Okay. Were the coaches aware that the -- the
4 watermelon had a face on it?

5 A Yes, sir.

6 Q Were the coaches aware that it was called
7 Bonds-Wilson?

8 A Yes, sir.

9 Q Okay. Did any of the coaches, Coach Walpole,
10 Coach Kamp or Coach Rush, ever say anything that maybe
11 the watermelon is not such a good idea?

12 A No, sir.

13 Q Okay. Were they aware of -- that you-all
14 were doing the chants as you-all were lifting the
15 watermelon over your head to throw it to the ground?

16 A Yes, sir.

17 Q Okay. All three coaches?

18 A Yes, sir.

19 Q Okay. When you got back to Garrett -- I mean
20 got back from the Garrett game, what happened to the
21 watermelon?

22 A We took it and smashed it in the courtyard in
23 the center of our campus.

24 Q Was any faculty or coaches present when
25 you-all did that?

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1 Q Okay. When you got in the room, what
2 happened?

3 A They told me to take a seat and they began
4 questioning me.

5 Q Okay. Do you remember what the questions
6 were?

7 A The start-up questions were simple questions
8 like, "What position do you play?" I responded,
9 "Quarterback," and the first response I got to that,
10 "Well, oh, so you're sort of the leader of this team,"
11 "Yes, sir, I would assume so."

12 Q Okay. What else do you remember being asked?

13 A The next thing that was asked was, "Did
14 you" -- "Do you believe that what you have done has
15 racial tendencies?" And I said, "No, sir, there was no
16 racial tendencies with what we did, it was a harmless
17 tradition that we had started."

18 Q Okay.

19 A They went on to discuss how some of these
20 connotations may have correlated and given other
21 examples, and at the end of the session, it -- it
22 didn't last very long, I was near the end, they asked
23 me, "Do you see now that what you have done shows
24 racial tendencies?" And I responded, "No, sir, I still
25 don't believe that what we've done has racial

1 tendencies. I'm telling you that we did this with pure
2 hearts, we didn't have any racial tendencies behind
3 it," at which point Mr. Clayton got angry with me and
4 got a bit forcive with his -- or with his response and
5 said, "Well, maybe you should look up African-American
6 negative watermelon connotations and educate yourself
7 and your teammates."

8 Q Uh-huh (affirmative).

9 A And then I was sent out. That was --

10 Q You were what?

11 A I was sent out. The end of my...

12 Q Okay. So he -- he admonished you to maybe do
13 some research because you didn't realize the
14 correlation between watermelons and derogatory comments
15 regarding blacks, correct?

16 A Yes, sir.

17 Q Okay. You were ignorant of that
18 stereotypical derogatory connotation between
19 watermelons and African-Americans?

20 A I wouldn't use the term "ignorant," but I was
21 unaware of it.

22 Q Okay. Well, you've grown up in Charleston --

23 A I have.

24 Q -- and in the south.

25 A Yes, sir.

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1 Q You've never heard anybody refer to
2 watermelons and African-Americans or blacks?

3 A I find that in Charleston, that doesn't
4 happen as much as other areas of the south.

5 Q You were in Spartanburg.

6 A I was, but we moved when I was seven.

7 Q Okay. And about how long overall was the
8 interview?

9 A I would say it probably lasted between 5 and
10 10 minutes, but I'm not sure.

11 Q Okay. And after the interview, where did you
12 go?

13 A I was told not to -- or I was advised by
14 Mr. Martin not to share the details of the interview
15 and I was sent back to my class.

16 Q Okay. So how many classes did you miss, do
17 you remember?

18 A I made it for the last 30 minutes of my
19 second class, so one and -- almost two.

20 Q Okay. Do you know if there was ever any
21 disciplinary action taken against you or any member of
22 the team by the school district for the watermelon
23 incident?

24 A No, sir.

25 Q And I think you said you went to lunch later?

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1 teachers as well. And by the time I got out of my
2 interview, the whole school knew what was going on.

3 Q Okay. Anybody ever say anything to you
4 negative about what had happened?

5 A I'm not sure I understand the question.

6 Q Okay. Did anybody ever say anything to you
7 derogatory about your involvement with the watermelon
8 incident?

9 A No, sir.

10 Q And you understand what the word "derogatory"
11 means, negative?

12 A Yeah, and no one ever -- at the school, no
13 one ever talked bad about us because of that.

14 Q Okay. Has anyone in the community ever
15 spoken bad about you, about you specifically?

16 A Not to my knowledge, not to my face.

17 Q Okay. You presently employed?

18 A No, sir.

19 Q Have you worked any this summer?

20 A Yes, sir.

21 Q Where did you work?

22 A It's an Italian restaurant on Isle of Palms,
23 it's called Coda del Pesce.

24 Q Were you a waitress -- waitress. Were you a
25 waiter or a --

1 A I was a server assistant.

2 Q Server assistant. Had you ever worked there
3 before?

4 A The last summer as well.

5 Q And were you rehired or told -- did you work
6 there during the school year?

7 A I started back up in February.

8 Q Okay. And obviously they didn't think
9 anything about what went on at the Academic Magnet
10 school because they hired you again, didn't they?

11 A I -- I had already been employed there before
12 the incident.

13 Q They didn't let you go?

14 A No, sir.

15 Q Okay. Now, afterwards, did you ever attend
16 any type of diversity training or any training dealing
17 with race relations or anything like that?

18 A No, sir.

19 Q Okay. After this, I think Coach Walpole was
20 removed as the coach for the team, are you aware of
21 that?

22 A Yes, sir.

23 Q Okay. Did you participate in the meeting
24 with the principal about the team and what was going
25 on?

1 looking at Huffington Post, theirs isn't as bad, but I
2 personally felt that Charleston City and -- and Chris
3 Haire as well took it beyond the point of reporting on
4 what they thought had occurred and took it and used it
5 to almost attack the Academic Magnet, attack my
6 reputation.

7 Q And how do you think that the City Paper's
8 particular publication harmed your reputation?

9 A I think that now -- I know that I -- I can't
10 even wear an Academic Magnet shirt and walk around and
11 not have people think about that now. Academic Magnet
12 is -- it was ranked this year as the No. 7 best high
13 school in the nation, and I'm a graduate from that high
14 school. I should wear that shirt with pride, I
15 shouldn't have to think, you know, who's -- you know,
16 oh, they see that shirt, they're thinking about a bunch
17 of racist white people smashing watermelons.

18 I know that while I was on the football team,
19 we went to Subway every week, the one -- I don't
20 remember what road it's on, it's in North Charleston.
21 We were so -- after this incident, we were so concerned
22 with what people might think of us that we even
23 considered not wearing our jerseys to the Subway
24 anymore so when we got out of the our cars, people
25 wouldn't, you know, say, "Oh, there's the Magnet

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1 football team. They're a bunch of racists."

2 I know of an incident with another student
3 where -- where in our basketball games, the other teams
4 would make slurs about us being racist white boys.
5 Like I said -- and I'm sorry, I had an incident with my
6 guidance counselor where she told me it may not be best
7 to mention the fact that I was on the Academic Magnet
8 football team.

9 And Coach Walpole is someone very dear to my
10 heart, he's a great mentor, and he wrote some of my
11 college letters. And I had my guidance counselor tell
12 me I should essentially shred those up, those aren't
13 worth anything because people are going to see that I'm
14 part of this program and it's not going to go -- it's
15 not going to go well for me anymore, there's nothing to
16 win out of being part of that program.

17 Q And do you -- do you know that the articles
18 from -- the editorial article from the City Paper, as
19 opposed to any other publicity, is because of your
20 alleged harm?

21 A I -- that's a -- that's an odd question. I
22 don't know that the City Paper is the main -- I mean, I
23 assume that they're all correlated to generate this
24 image, but being the Charleston City Paper, that's the
25 one that people in Charleston read. That's where I

1 live. So people who are getting this paper as their
2 normal paper are now going to think this guy is a
3 racist. They don't even know me. I never got to tell
4 my part of the story. Nobody knows except what was
5 posted.

6 Q You mentioned the team feeling like they
7 could not wear their jersey at the Subway. Did -- did
8 anybody ever tell you you could not wear your jersey to
9 Subway?

10 A We were never told we were not allowed to.

11 Q Did -- did anyone at Subway ever tell you not
12 to come back to Subway after this incident occurred?

13 A No. No, ma'am.

14 Q Okay. Did -- did anyone ever tell you you
15 were not welcome at Subway after this incident
16 occurred?

17 A No, ma'am.

18 Q Okay. You said that the -- that your -- that
19 the school's basketball team may have had some taunting
20 from other teams as a result of this.

21 A Yes.

22 Q Were you -- did anybody directly taunt you as
23 a result of this?

24 A Not me personally, but as a student body,
25 yes, we were taunted. At that point, I was part of

1 may not paint the best image for you."

2 We later talked about the fact that Coach
3 Walpole had written a lot of my letters of
4 recommendation. He wrote letters of recommendation for
5 all the schools I went to -- or all the schools I
6 applied to. And she advised me to not send those
7 letters because of his name and the fact that he was
8 associated with the football team and that those may
9 not do me any good, in fact, those may do me damage
10 applying to colleges.

11 Q Did you send those letters?

12 A I did.

13 Q And you -- remind me, you told me -- you told
14 us that you applied to Elon, Wofford, USC, and Auburn.
15 If you had to rank those schools, you know, from your
16 first choice to your -- your -- I guess your -- your
17 last choice, how would you rank them?

18 A Elon, USC, Wofford, Auburn.

19 Q Okay. And so you got into Elon, but you were
20 wait listed?

21 A I did.

22 Q And then you got into USC and you are
23 planning to attend there?

24 A Yes, ma'am.

25 Q Okay. Do you -- can you identify anyone who

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1 knew of your reputation before the City Paper editorial
2 and knew that you were on the football team who thought
3 less of you after the editorial was published?

4 A You mean like anyone directly who --

5 Q Directly, yes.

6 A Not to my knowledge. I mean, I would -- you
7 know, other coaches from other teams perhaps. I don't
8 know what other people thought of us at that point.

9 Q Does -- did the City Paper editorial ever
10 specifically name you?

11 A No, ma'am.

12 Q How do you define racism?

13 A I define racism, I would assume, as a -- a
14 genuine hate for someone of a different color, when --
15 degrading people based on the color of their skin, not
16 by the strength of their character.

17 Q And how --

18 A Sorry. Go ahead.

19 Q And how do you know when something is racist?

20 A Like I said, it's when -- when something is
21 degrading, when something is physically degrading to
22 someone of a different color skin, not because of any
23 character aspects or anything like that.

24 Q Who determines whether or not something is
25 racist?

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 11th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.

Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:



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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garratt and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
2 Plaintiff,) Civil Action No.:
3 vs.) 15-CP-10-1044
4 Charleston County School District,)
5 Kevin Clayton, Axxis Consulting)
6 Company and Jones Street)
7 Publishers, LLC,)
8 Defendants.)
9 A.E.P., III,)
10 Plaintiff,) Civil Action No.:
11 vs.) 15-CP-10-2389
12 Charleston County School District,)
13 Kevin Clayton, Axxis Consulting)
14 Company and Jones Street)
15 Publishers, LLC,)
16 Defendants.)

17 * * * * *

18 DEPOSITION OF: CONNOR FRAILEY
19 DATE TAKEN: Monday, August 3, 2015
20 TIME: 1:19 p.m.
21 PLACE: 123 Meeting Street
22 Charleston, SC
23 REPORTED BY: TERI L. SAMPSON, RPR,
24 Notary Public and Certified
25 Live Note Reporter

26 * * * * *

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28 CHARLESTON, SOUTH CAROLINA 29413-1784

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1 A Well, basically what ended up happening is we
2 would go to Subway, it's on Rivers in North Charleston,
3 and we were driving back. Right as we pull out, we
4 just see a guy selling watermelon out of the back of
5 his pickup truck for five bucks, and we're like, "Well,
6 shoot, let's stop."

7 Q Okay.

8 A And then we took it with us, there was --
9 just the car I was in, we got one, and another car got
10 one. And then they went off and kind of hung out. I
11 think they actually ended up -- I think they ate
12 theirs, so -- but the one we had, we just kind of kept
13 it and we were just sitting around the locker room
14 waiting for two hours, something -- just something to
15 do, someone draws a face on it. And then we're like,
16 "Well, we haven't eaten this yet, let's use it as an
17 incentive to win, say we get to eat it if we win, if
18 not, we throw it away."

19 Q Okay. All right. Now, you said you-all were
20 in a car.

21 A Uh-huh (affirmative).

22 Q And there was another car that got a
23 watermelon.

24 A Uh-huh (affirmative).

25 Q And the car that got the watermelon that ate

1 on it?

2 A Someone drew a face.

3 Q Okay. Similar to that?

4 A Somewhat, yeah.

5 Q Okay, all right. Did Daniel draw it on the
6 watermelon each week, or did different people draw?

7 A It was normally him, but he wouldn't do it
8 all the time. Sometimes he'd just be like, "All right,
9 I don't feel like doing this."

10 Q This was before the Military Magnet?

11 A What was before the Military Magnet?

12 Q The watermelon buying --

13 A Yeah.

14 Q Okay.

15 A Buying.

16 Q And when you got it back to the locker room,
17 I understand your locker room --

18 A Uh-huh (affirmative).

19 Q -- is near the stadium or near the field,
20 you-all walk over?

21 A It's -- no. It's actually at your school.

22 Q Okay.

23 A And then we walk to the Danny Jones
24 Recreational Complex. It's about half a mile of a
25 walk.

1 Q Okay. And did you-all carry the watermelon
2 with you to the game?

3 A It was actually an away game at North
4 Charleston.

5 Q Okay.

6 A It's a high school.

7 Q All right. Okay. North Charleston. The
8 Magnet game was actually at North Charleston?

9 A The Military Magnet game was at North
10 Charleston stadium.

11 Q Okay. All right. Did it go in the bus, or
12 did it go in a car?

13 A It was in the bus.

14 Q In the bus. Who was the chaperone for the --
15 for the watermelon?

16 A Boy. I -- I'm not really sure.

17 Q Okay. Did it sit with you?

18 A It -- someone -- it was sitting in the back
19 of the bus and then we just left it on the bench once
20 we got to the stadium.

21 Q All right. So somebody obviously carried it
22 off the bus.

23 A It might have been a -- no. Yeah. I'm not
24 sure who carried it.

25 Q Okay. But it -- was it on the bench the

1 Q What have you learned now?

2 A I learned that it was -- it was multiple
3 people that -- I guess two different people, Bonds and
4 Wilson, they were two different people or the same --

5 Q Okay, go ahead.

6 A And that it was a -- historically an all
7 black high school.

8 Q Okay. Obviously the Military Magnet Academy
9 game you-all won.

10 A Yes, sir.

11 Q That was the first game you-all had won in a
12 while?

13 A It was the first time we had beaten Military
14 Magnet that handedly.

15 Q Military Magnet usually has a pretty good
16 team?

17 A Yes.

18 Q Can you tell me what happened to the
19 watermelon at the end of the game when you-all won?

20 A Well, after we won, you're happy -- we were
21 happy we won, but then nothing happened because we've
22 got to go through the -- you do the hand shakes, and
23 then our coach gathered us and we kind of talked about
24 like what we did well, what we need to work on. And
25 then after that, it's like, "All right, have a good

1 weekend."

2 So then we all start jumping up and down
3 because we're ecstatic that we won. And we just run
4 over to the -- run over to the bench, someone grabs the
5 watermelon, and -- it was Darius. And then he takes it
6 down to about the 30 yard line, the bench sits around
7 the 50, and just throws it on the ground with all of us
8 chasing him.

9 Q Okay. Was any sounds being made or any noise
10 at that time?

11 A At that game, it was -- there was no like
12 organized sounds, it was everyone just cheering and...

13 Q But Darius got it --

14 A Yes, sir.

15 Q -- and ran? Okay.

16 A And then like throws it on the ground and we
17 just all group up around and grab some and --

18 Q What did you-all -- what you-all --

19 A -- ate it, ate the watermelon.

20 Q Anything said by anybody, you know, "Darius,
21 why are you breaking our watermelon," or --

22 A No.

23 Q Okay. Were any parents present for that?

24 A They were not near us, but they were around
25 waiting --

1 A Yes.

2 Q Did you play both ways, or did you just play
3 offense?

4 A I mostly just played offense. I played a
5 little defense.

6 Q Okay. Don't want to hurt a pulling guard,
7 right?

8 A Well, that and I just don't have the stamina
9 to play both.

10 Q Now, is -- I think the next game after
11 Branchville was Baptist Hill, which is up in Hollywood.
12 And you-all won that game.

13 A Uh-huh (affirmative).

14 Q Same type of ritual, somebody brought it on
15 the bus?

16 A Yes.

17 Q Somebody put a face on it?

18 A Yes.

19 Q Okay. Do you remember who would have put a
20 face on it other than Daniel?

21 A Trey Perry.

22 Q Trey did?

23 A Yes.

24 Q Do you know who bought the watermelon each
25 week?

1 A It was normally Daniel, yeah.

2 Q Would I be correct this whole idea was
3 Daniel's idea?

4 A In part. It was like he kind of -- he bought
5 it and then drew it the first time, but then the idea
6 to do it every time, to like keep it going was kind of
7 like a -- what's the word, superstition was just
8 mostly -- like the older people on the team were like,
9 "Yeah, we -- we -- we've been losing, we need something
10 to kind of" --

11 Q Was it a --

12 A -- "pump us up."

13 Q -- senior kind of driven thing?

14 A Senior and junior.

15 Q Okay, all right. Baptist Hill, which is up
16 in Hollywood, South Carolina, you-all won --

17 A Uh-huh.

18 Q -- 33 to nothing?

19 A Yes, sir.

20 Q Okay. Predominantly African-American team?

21 A Yes.

22 Q Next game was Burke, I think you-all played
23 that at home.

24 A Yes.

25 Q Okay.

1 A That was -- yeah.

2 Q Okay. Predominantly African-American?

3 A Yes, sir.

4 Q And then North Charleston, I understand it's
5 predominantly African-American also.

6 A Yes, sir.

7 Q At each one of those games, the watermelon
8 was there?

9 A Yes, sir.

10 Q Okay. And each game, did it have the name
11 Bond-Wilson [sic], or was it given different names?

12 A It changed based on like the streak, it went
13 from Bonds-Wilson Junior, then one, two, three, four.

14 Q Okay.

15 A So it was always one behind the streak, I
16 think.

17 Q Okay. Now, Garrett Academy Tech, which is up
18 in North Charleston, you-all played at North Charleston
19 at their school?

20 A For Garrett?

21 Q Yeah.

22 A We didn't -- we did not play at North
23 Charleston High School stadium, though.

24 Q Okay. Did you play at Garrett's field?

25 A We played at Garrett.

1 Q Okay. Now, did the watermelon go to that
2 game?

3 A It went with us on the bus, but we mistakenly
4 left it on the bus.

5 Q Okay. Who was in charge of the watermelon
6 that day, was it Daniel?

7 A I mean, Daniel brought it on the bus, but
8 once it's there, it's just like it's a piece -- kind of
9 a piece of equipment, it's just remember to take it.

10 Q Okay. Who forgot it?

11 A Just all of us. No one remembered.

12 Q So you-all forgot the watermelon who had been
13 you-all's good luck charm for --

14 A Yes.

15 Q Okay. Almost lost the game?

16 A Yeah.

17 Q Pretty excited you-all won by one?

18 A Yes, sir.

19 Q Okay. Somebody go get the watermelon off the
20 bus so you-all could celebrate?

21 A We -- we got it once we went back to the bus.

22 Q Why didn't you-all go get it off the bus and
23 bring it to the field to celebrate like you had before?

24 A Well, the bus was parked in a field kind of
25 far away from the -- from the school and it wasn't

1 like -- it wasn't like easily accessible like we could
2 have just run over and grabbed it real quick and come
3 back. And by the time we -- since we didn't have it,
4 we instantly started cleaning up equipment. So we're
5 all -- it's our -- it's the players' responsibility to
6 take everything back, so we were just taking everything
7 back and it was just -- I don't know, just too much
8 going on to remember to...

9 Q Okay. When you were at the Bishop Hill -- I
10 mean -- Bishop -- Baptist Hill High School --

11 A Uh-huh (affirmative).

12 Q -- up in Hollywood, and then at North -- at
13 -- that's all over with now -- Baptist Hill, did
14 you-all take the watermelon there?

15 A To just -- or Baptist Hill are you --

16 Q Yeah.

17 A Yes, we did take it with us.

18 Q Okay. Did you-all bust it on the field
19 there?

20 A No...

21 Q Okay. Where did you-all bust it after the
22 Baptist Hill game?

23 A We took it back to the school because all
24 their power went out the second the game ended and it
25 was dark and...

1 A Yes, sir.

2 Q Okay. What happened when you got back to the
3 school?

4 A Well, we got back to the school and we're
5 getting -- just taking our -- taking our gear off,
6 putting it all up, and when we hear that the freshmen
7 are doing their lock-in, so instead of saying, hey,
8 like everyone is just kind of pumped up, and like
9 instead of doing it back here, let's go do it in the
10 middle of the -- just give them something interesting
11 to watch.

12 Q Okay.

13 A Just kind of let them know we won the game
14 and all.

15 Q Okay. What did you-all do?

16 A We ran to the -- the -- there -- in our kind
17 of center area, it's like a courtyard, there's a
18 concrete pathway that walks -- goes to the middle
19 diagonally and there's a square in the middle of that,
20 and we gather around that square.

21 Q And somebody obviously had the watermelon.

22 A Yes.

23 Q Do you remember who?

24 A I do not.

25 Q And somebody obviously threw it.

1. A Whoever had it is the one who threw it.

2. Q Okay. What sounds were you-all making then?

3. A I think we were just cheering, actually

4 like -- I think we were just cheering.

5. Q Not sure?

6. A Unsure, yeah.

7. Q Yeah, okay. Did you-all eat the watermelon

8 off the --

9. A We did.

10. Q Okay. Did you clean it up, or did you get in
11 trouble for not cleaning it up?

12. A That's the one time we -- we didn't get in
13 trouble for not cleaning it up, but everyone walked
14 away and then a few stayed behind and kind of -- mostly
15 underclassmen, I think.

16. Q Were any staff or teachers out there when
17 you-all did that?

18. A Yes.

19. Q Who do you remember being out there?

20. A I remember seeing the art teacher and a
21 biology teacher.

22. Q Do you remember what the art teacher's name
23 was?

24. A Callicott.

25. Q Okay. What about the -- you said somebody

1 else.

2 A What was his name, Mr. -- he's a male biology
3 teacher. I don't remember -- oh, McCormick, McCormick.

4 Q Did they say anything to you-all?

5 A No.

6 Q Was there any coaches out there?

7 A No.

8 Q Obviously after the Garrett watermelon
9 busting back at school, there ended up being a meeting
10 of all of you-all in the auditorium at school.

11 A Yes.

12 Q Okay. And I think that was sometime around
13 the 17th, I may be wrong about my dates, but...

14 A Somewhere around --

15 Q Let me see if I can find the date. 13th,
16 okay. Let's see. 16th, that Thursday. Do you
17 remember how that came about?

18 A I remember walking into first period and the
19 they're like yeah -- someone -- or the teacher told me,
20 he was like, "Yeah, you need to go to the auditorium
21 about eight." So I walked over there just -- just by
22 myself, and then I get there and then I believe it was
23 our principal and then Lou Martin and Kevin Clayton,
24 they were standing there. And it was, "Yeah, you
25 should probably go get your stuff."

1 Then I go back, get my stuff. Then I go back
2 into the lecture hall and we all kind of just sit down
3 in a little group or just a little group in the -- and
4 then we're just sitting there, they're like, "You got
5 to spread out," then we spread out like two or three
6 seats apart. Everyone is just kind of sitting there.
7 Like we kind of realized that it's something going on
8 because you just -- like you're -- we just -- that
9 something was going on with the football team, you
10 could tell that.

11 And they started calling people in and then
12 we find out just from people saying things about the
13 watermelon.

14 Q Okay. Now, when you got to the -- to the
15 room, you said there was the principal.

16 A Yes.

17 Q Miss Peterson is her name?

18 A Yes.

19 Q And Mr. Martin.

20 A Yes.

21 Q Okay.

22 A Oh, no. Kevin Clayton was sitting in the
23 room we went to. I didn't know he was there until --

24 Q Okay.

25 A -- the interview.

1 Q And you were in the room -- in the
2 auditorium, okay.

3 A Uh-huh (affirmative).

4 Q Were you there during lunch?

5 A No.

6 Q Okay. You got out before lunch?

7 A Yes, sir.

8 Q If you needed to go to the bathroom, could
9 you go to the bathroom?

10 A Yes.

11 Q If you needed something, would somebody go
12 get it or bring it to you?

13 A Like if we needed to go to our locker to get
14 something, I -- I'd assume we could have just gone on
15 over.

16 Q When you got called back, tell me kind of --
17 walk me through what happened from the point that you
18 got called back.

19 A Oh, I walked in, they --

20 Q Who got you?

21 A Lou Martin just kind of came back in the door
22 and it's like the next person go.

23 Q Okay.

24 A So...

25 Q Didn't call your name out, just said next

1 person?

2 A No, just said next person.

3 Q And when Mr. Martin got you in the hallway --

4 A Uh-huh (affirmative).

5 Q -- did he say anything to you?

6 A He introduced himself, shook his hand, and
7 that was about it. He was like, "This way," and we
8 walked over there to the room we were being interviewed
9 in.

10 Q Okay. And then when you got in the room,
11 obviously I think you said there was another gentleman,
12 right?

13 A Uh-huh (affirmative).

14 Q Were you introduced to who he was?

15 A Yes.

16 Q Okay. What were you told about that
17 individual?

18 A Just told his name from what I remember.

19 Q Did he explain why he was there?

20 A Not that I remember, no.

21 Q What was the general -- what did Mr. Martin
22 ask you, do you remember?

23 A The first -- he started off with asking just
24 kind of like what happened, asking about the general
25 information, like why we -- why we smashed it. And

1 time, that was the article that everyone around had
2 read just because it was so -- it took -- it kind of
3 took things -- it was on a different level than all the
4 other articles it seemed because everyone -- everyone
5 you talked to at the time was like, "Yeah, did you read
6 this, did you read this, did you read this?" It kind
7 of spread through the news, it kind of spread through
8 like a wildfire throughout our school community.

9 And then people I talked to, it's like they
10 weren't asking me, "Did you read the Live 5 news
11 article about this happening?" It's like, "Oh, did you
12 read Chris Haire's article about how -- about what your
13 school -- about what your school did and how" -- it
14 just seemed much more serious than...

15 Q Who -- who asked you that specifically?

16 A I have no idea.

17 Q Can you name anyone who specifically asked
18 you about the Chris Haire article?

19 A Just classmates, no. I can't name exact
20 names.

21 Q All right. And of the -- even though you
22 can't name any specific names, can -- can you tell
23 me -- let me start over.

24 The classmates who asked you about this
25 article, were they friendly with you before this

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO. 14-CP-10-7203

James R. Moore, Jr., and Betty)
 Moore, Guardians Ad Litem for)
 R.A.M., A Minor; Amy Garrant and)
 Lee Garrand, Guardians Ad Litem)
 for R.C.G., A Minor, and Dean)
 Frailey and Kathryn Frailey,)
 Guardians Ad Litem for C.F.,)

Plaintiffs,)

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Eugene H. Walpole,)

Plaintiff,)

Civil Action No.:
 14-CP-10-7655

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

Defendants.)

Richard Nelson and Cheryl Nelson,)
 Guardians Ad Litem for D.G.N.,)
 a Minor,)

Plaintiffs,)

Civil Action No.:
 15-CP-10-605

vs.)

Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 Publishers, LLC,)

1 Adam Olsen Ackerman,)
) Civil Action No.:
 2 Plaintiff,) 15-CP-10-1044
)
 3 vs.)
)
 4 Charleston County School District,)
 Kevin Clayton, Axxis Consulting)
 5 Company and Jones Street)
 Publishers, LLC,)
 6)
 Defendants.)
 7)
 A.E.P., III,)
 8) Civil Action No.:
 Plaintiff,) 15-CP-10-2389
 9)
 vs.)
 10)
 Charleston County School District,)
 11 Kevin Clayton, Axxis Consulting)
 Company and Jones Street)
 12 Publishers, LLC,)
)
 13 Defendants.)
)

14 * * * * *

15 DEPOSITION OF: REECE A. MOORE
 16
 17 DATE TAKEN: Monday, August 3, 2015
 18
 19 TIME: 10:00 a.m.
 20
 21 PLACE: 123 Meeting Street
 Charleston, SC
 22 REPORTED BY: TERI L. SAMPSON, RPR,
 Notary Public and Certified
 23 Live Note Reporter
 24

25 * * * * *

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1 premeditated --

2 Q All right. Okay. After you -- after the
3 game and you won, how did the watermelon come about?

4 A Someone brought it on the field and we
5 smashed it and -- just out of excitement.

6 Q Do you remember who brought it on the field?

7 A No.

8 Q Do you know where they got the watermelon
9 from?

10 A Yes.

11 Q Where?

12 A Before the game, they went to a local
13 watermelon stand in North Charleston, bought the
14 watermelon, they decided to bring it to the game
15 because while driving with the watermelon, they threw
16 it out of the window, it did not break, and so it was
17 deemed to almost have some kind of magic to it, some
18 sort of -- there was some sort of superstition behind
19 it, so we brought it with us.

20 Q And you said "they," you knew a lot about it.
21 Who is "they"?

22 A Daniel, Daniel is probably the only one I
23 know for sure.

24 Q Okay. Daniel's last name?

25 A Nelson.

1 A No.

2 Q Okay. When you-all were standing around
3 smashing the watermelon, was anything said?

4 A Not audible.

5 Q Not audible? What do you mean by "not
6 audible"?

7 A No words, no discernible phrases or anything
8 like that.

9 Q Okay. And when you say that, what do you
10 mean?

11 A I don't understand.

12 Q Okay. It wasn't phrases or something you
13 could understand, were you-all making sounds, in other
14 words?

15 A We were.

16 Q Okay. What sounds were you-all making?

17 A I would characterize them as football grunts,
18 similar to what we did before the game.

19 Q Okay.

20 A Similar to what you would hear before any
21 football game, almost a deep voice grunt sort of thing.

22 Q Okay. And can you illustrate for me the type
23 deep grunt that you-all were making?

24 A Sure. I can give it a try.

25 Q Okay.

1 A I would say it was similar to like an ah ah,
2 something like that.

3 Q Okay.

4 A Less, less, yeah.

5 Q Okay.

6 A A bit louder, though.

7 Q Whole team doing that?

8 A I can't speak for anybody else, but it was a
9 very loud group of people.

10 Q How long from the time the watermelon came on
11 the field until it got smashed?

12 A Not very long.

13 Q How long --

14 A Just excitement.

15 Q How long did you-all do the deep voice
16 grunting?

17 A Not very long.

18 Q Okay. And you said somebody obviously held
19 the watermelon above their head and threw it on the
20 ground and smashed it?

21 A Sure.

22 Q Okay. Do you remember who was the first
23 person to smash it?

24 A No.

25 Q Okay. Did you ever smash the watermelon?

1 A I did not.

2 Q Were you ever asked to?

3 A No.

4 Q And do you know whose idea it was to smash
5 the watermelon that night?

6 A No.

7 Q Once you smashed the watermelon, what
8 happened then?

9 A Everybody went and grabbed a piece and
10 started eating it.

11 Q Okay. Did you-all leave residual watermelon
12 on the field or on the sidelines?

13 A I have no idea.

14 Q Did the coaches or anybody indicate to you to
15 pick it up or clean up or anything like that?

16 A I don't know. Not to me.

17 Q Okay. Did you hear anybody say anything
18 about the watermelon, like a name or anything like
19 that?

20 A No.

21 Q Did anybody draw any picture on the
22 watermelon for that game?

23 A For that game, I'm not sure. But the
24 following games there was a picture.

25 Q The following games was the watermelon given

1 a name?

2 A Bonds-Wilson, Bonds-Wilson Junior,
3 Bonds-Wilson, III, Bonds-Wilson, IV.

4 Q Who named it Bonds-Wilson?

5 A I don't know.

6 Q Did you ever ask anybody, "Why in the world
7 are we naming this watermelon Bonds-Wilson"?

8 A No.

9 Q Ever curious why somebody would want to name
10 a watermelon Bonds-Wilson?

11 A I would connect it to the name of our school.

12 Q Okay. Did -- you said a picture was drawn on
13 it, at least you remember, after that?

14 A Yes.

15 Q Okay. Do you remember who drew the picture?

16 A I don't know who drew it every time, no.

17 Q Okay. Do you know anybody that drew it?

18 A Daniel Nelson.

19 Q Was Daniel the one that was in charge of
20 buying the watermelon for the games?

21 A I don't know.

22 Q Did you ever buy a watermelon?

23 A I did not.

24 Q Did you ever discuss with your parents the
25 fact that you-all were naming the watermelon and

1 drawing pictures on it and then smashing it?

2 A No.

3 Q Did they know that?

4 A They knew we were smashing it, yes.

5 Q Okay. Did they know you-all were naming it

6 Bonds-Wilson?

7 A I didn't feel it necessary to tell them that.

8 Q Okay. And did you ever tell them that
9 you-all were drawing pictures on the watermelon?

10 A I did not.

11 Q Okay. Why not?

12 A Once again, I didn't feel it necessary.

13 Q All right. Tell me -- I think the next game
14 you-all had was against Branchville and it was at the
15 Academic Magnet High School and you-all won that game.
16 Do you remember that game?

17 A Not distinctly, no.

18 Q Okay. Did you-all do the watermelon after
19 each game?

20 A Each game we won, yes.

21 Q And after the first Military Magnet game,
22 each game the watermelon would have had a face and a
23 name?

24 A Yes.

25 Q Same procedure, everybody gets in the circle,

1 somebody smashes it, you-all are making the loud
2 grunting sounds?

3 A Yes.

4 Q It looks like, I'm just looking at the
5 schedule, you played Branchville at Academic Magnet,
6 you won it, and that -- that game was on September the
7 12th. And you-all did the watermelon then?

8 A Yes.

9 Q Okay. Picture, name?

10 A Yes.

11 Q Okay. Did it sit on the bench?

12 A I'm not sure.

13 Q Do you know who was custodian of the
14 watermelon prior to the game?

15 A No.

16 Q Did you ever see the watermelon sitting on
17 the bench?

18 A At the end of games, it would -- I know for
19 certain -- I mean, I'm playing in the game the whole
20 time.

21 Q I understand.

22 A So like at the end of games when it was over
23 and we would come to the bench, I would see it.

24 Q But you don't know who put it on the bench
25 or --

1 watermelon over to the football field?

2 A Yes. I saw Daniel carry it at least once
3 over to the football field.

4 Q When you went to Bishop [sic] Hill over in
5 Hollywood, were the coaches on the bus?

6 A Yes.

7 Q Okay. Do you remember where the watermelon
8 was on the bus that day?

9 A No.

10 Q Okay. Did you-all put -- when the
11 watermelon, you saw it on the bench, did it already
12 have the picture on it?

13 A Yes. The picture was drawn on before in the
14 locker room, before we would go anywhere.

15 Q Okay. In the locker room at Academic Magnet?

16 A Yes.

17 Q And I think I may have asked you this, if I
18 did, I apologize. Did you ever draw the picture?

19 A No.

20 Q Did you ever see anybody other than Daniel
21 draw the picture?

22 A Not that I remember.

23 Q And the locker room at Magnet, is it a big
24 locker room?

25 A It's not.

1 Q Okay. Coaches in the locker room?

2 A Not for -- no. They don't stay there while
3 we change and stuff like that.

4 Q They come in and talk to you-all before the
5 game?

6 A Not in the locker room, no.

7 Q Okay. Where do they usually have their
8 pre-game chitchat?

9 A Pre-game chitchat took place right outside
10 the locker room outside and then at whatever field we
11 were playing.

12 Q Did any of the coaches ever say anything, to
13 your knowledge, about the watermelon?

14 A Yes.

15 Q Who did?

16 A Coach Kamp would use it almost as sort of a
17 motivator, you know, we looked forward to winning,
18 obviously, and then with winning came that post-game
19 celebration.

20 Q Okay. When you say he used it as almost like
21 a motivator, what did he say?

22 A I can't remember exactly what he would say,
23 but it was just along the lines of, you know, let's get
24 that win, let's -- let's celebrate the way we always
25 do.

1 A I have no idea.

2 Q Then you-all would -- end of the game
3 somebody would go over and get it?

4 A Yes.

5 Q Did you-all -- where did you-all smash it
6 when you-all were at your own field?

7 A Right by our bench where we have our
8 end-of-game meetings.

9 Q Okay. Coaches there when it got smashed?

10 A Yes.

11 Q Coach Kamp?

12 A Yes.

13 Q Coach -- what was the second assistant?

14 A Rusciolelli.

15 Q Rusciolelli. I'll never be able to pronounce
16 that. And Coach Walpole?

17 A Yes.

18 Q Okay. Were they all within distance they
19 could see what was going on?

20 A Yes.

21 Q Could they hear what was going on?

22 A Yes.

23 Q Okay. Was it again people in a circle,
24 somebody throws it, you-all were chanting, grunting,
25 whatever the sounds were that you showed me earlier?

1 A Before -- it was almost kind of like a build
2 up, so before the watermelon was thrown, that's when
3 the grunting was being made.

4 Q Uh-huh (affirmative).

5 A And after the watermelon was thrown, it was
6 just kind of everybody who wanted some of the
7 watermelon would --

8 Q Okay.

9 A -- go grab a piece, we'd eat it, and get our
10 post game Gatorade, our snack, it was just kind of part
11 of the fun.

12 Q Did -- did the grunting start out kind of
13 soft and build until it was thrown and then it stopped,
14 or did it go on even after you threw it?

15 A It would stop after we threw it.

16 Q Okay. Did anybody -- lack of a better way of
17 phrasing it, did anybody have any words about the
18 watermelon in the circle?

19 A No.

20 Q Okay. Did anybody say anything about the
21 watermelon?

22 A No.

23 Q Okay. So it just came in, you-all started
24 grunting, ultimately it was over somebody's head and
25 thrown to the ground and smashed?

1 Q Now, what happened after Garrett, got on the
2 bus and went back to school?

3 A Yes.

4 Q Okay. Then kind of walk me through, did
5 you-all have the watermelon back at school?

6 A I'm not sure. I can't really remember.
7 There was one after one game where we did smash it in
8 our courtyard at school.

9 Q Okay. Do you know whose idea it was to smash
10 it in the courtyard?

11 A No.

12 Q Courtyard is kind of a gathering place for
13 the students?

14 A Sure. It was during a freshman lock-in where
15 the freshmen spend the night at the school, and so it's
16 just like this grassy area in the middle of the school
17 where we did it.

18 Q Did you participate in it at that point?

19 A What do you mean?

20 Q Did you go out where they were going to smash
21 the watermelon?

22 A Yes.

23 Q Did it have a face?

24 A I can't tell you for certain.

25 Q Okay. Were you-all still in uniform?

1 A I know I wasn't, so I'm assuming other people
2 weren't.

3 Q Okay.

4 A But I was still in my sweaty -- not my
5 jersey, just my other stuff.

6 Q Did you all stand in a circle and make the
7 grunting sounds and then throw it on the ground?

8 A Circle, I wouldn't say a circle. I'd say --

9 Q A group?

10 A -- like -- yes.

11 Q Okay. And did you-all eat the watermelon
12 there?

13 A Some people ate the watermelon. I never ate
14 the watermelon.

15 Q You never ate the watermelon?

16 A No.

17 Q You thought better of eating it after it had
18 been on the field?

19 A Yes.

20 Q Do you know if any of the coaches were out on
21 the courtyard where the watermelon got smashed?

22 A Coaches, no. Faculty members of AMHS, yes.

23 Q Okay. Do you remember what faculty members
24 were out there?

25 A No.

1 students or coaches on the football team before the
2 interviews took place?

3 A Yes. We were all in the auditorium. She
4 stood in front of us and told us she can't tell us what
5 is going on, she can't do anything about it. It's
6 above her.

7 Q But prior to that, nobody had talked to you
8 about what had happened?

9 A No.

10 Q Okay. Did you-all know that the school
11 was -- before this called meeting, did you-all know
12 that the school was looking into the watermelon?

13 A No.

14 Q You didn't anyway?

15 A No.

16 Q Okay. Do you know if any of the other
17 players or coaches were ever contacted by Miss
18 Peterson, the principal --

19 A I have no idea about the coaches, but I know
20 to the players, it was all a surprise.

21 Q Okay. Kind of walk me through what happened,
22 you-all were called out of class, I understand, around
23 eight to 8:30 in the morning.

24 A Yes.

25 Q Okay. And what happened then?

1 A So my teacher told me I was needed in the
2 auditorium, went in there, sat there for hours,
3 waiting, and then do you want me to talk about the --

4 Q All right. Let's -- let's -- let's -- you
5 walk into, I think it was the auditorium?

6 A Yeah.

7 Q Okay. When you got to the auditorium, who
8 else was there?

9 A Most of the football team, not everybody,
10 people were still coming in, but...

11 Q Where did you sit, do you remember?

12 A Middle of the auditorium.

13 Q Okay. Anybody sit near you?

14 A We weren't allowed to sit near each other.

15 Q Not allowed to talk to each other?

16 A No.

17 Q All right. And as -- when you got in and
18 everybody was in the room, what -- what then happened?

19 A We sat there and then Ms. Peterson came and
20 talked to us.

21 Q All right. What did Miss Peterson say?

22 A What I just said before, the --

23 Q Okay.

24 A -- whole -- I can't tell you.

25 Q Okay.

1 the room, do you remember his name?

2 A I can't think of it right now.

3 Q Okay. Was it a Mr. Martin?

4 A Yes.

5 Q Okay.

6 A Yes.

7 Q Now, at the Academic Magnet School, do
8 you-all have ID cards that you-all wear?

9 A We do.

10 Q Okay. Did he have an ID card on?

11 A I have no idea.

12 Q Okay. You didn't see one?

13 A Didn't look for one.

14 Q Now, what did they tell you was the reason
15 for them calling you back?

16 A I don't think I ever got a reason.

17 Q Okay. What type questions did they ask you?

18 A They asked me about the face on the
19 watermelon, they asked me about the sounds of the
20 watermelon, the sounds we made during -- during our
21 post-game celebration, they asked me if I knew the
22 negative connotations behind the watermelon. They
23 asked me if I had ever heard of Mr. Clayton's therapy
24 program or something, some -- I can't remember the name
25 of it right now, but it was some program that

1 Mr. Clayton ran. They asked me if I had participated
2 in it, whose idea it was, similar questions to what
3 you're asking me right now.

4 Q Okay, fine. And obviously you told him about
5 the face?

6 A Yes.

7 Q Okay. And you told him about the sounds, the
8 grunting sounds?

9 A Yes.

10 Q Okay. Did you illustrate the sounds to them
11 like you did to me?

12 A No.

13 Q Did you indicate that Daniel was the one that
14 brought the first watermelon?

15 A I don't know if I did or not.

16 Q Okay.

17 A I did, however, tell the story of how --

18 Q How it came --

19 A -- the watermelon came about.

20 Q Okay. Did you indicate to them who may have
21 drawn the picture on the watermelon?

22 A I don't think I did.

23 Q Did you see a picture of a watermelon?

24 A Did I see a picture of the watermelon?

25 Q The picture that was drawn on the watermelon.

1 A No, I did not. They just asked me to
2 describe what I thought it was.

3 Q All right. What did you describe?

4 A A smiley face, a simple -- really simple
5 face.

6 Q Were you -- got in the room sometime in the
7 morning around 8:30?

8 A The interview?

9 Q In the auditorium.

10 A Yes.

11 Q Okay. About what time was your interview?

12 A First -- or third period ended at 1:00, so I
13 would say 12:30.

14 Q Okay. While you were waiting to be
15 interviewed, did you work on homework?

16 A I didn't have any homework.

17 Q Okay. Did you have any tests?

18 A I mean, I had homework, I just didn't have it
19 with me.

20 Q Okay. Did you have any tests that day?

21 A Not that I can remember.

22 Q Okay. Did you have any deduction or anything
23 to your grades or your attendance from attending this
24 meeting?

25 A No deductions from my grades or attendance,

1 A I -- that's a tough question because then I
2 have to change my whole beliefs about -- had we known
3 it was offensive, I -- no, I don't think we would have
4 done it.

5 Q After you were interviewed -- well, let me
6 make sure. What else did Mr. Martin say during that
7 interview, do you remember, other than ask you
8 questions?

9 A No. I don't know.

10 Q Okay. Do you remember what Mr. Clayton would
11 have said in the --

12 A During the interview?

13 Q Yes.

14 A He told me to look up the negative
15 connotations of watermelon and he asked me about his
16 program --

17 Q Okay.

18 A -- whatever that program was.

19 Q But you say you never looked up watermelon?

20 A No, I didn't do that.

21 Q Okay. About how long did the interview last?

22 A Fifteen to thirty minutes.

23 Q After the interview, what happened?

24 A I was told to go back to class, and then
25 everybody in the whole school wanted to know what

1 happened.

2 Q Okay. Did you tell them?

3 A No, but they had already found out, high
4 school is a rumor mill, so...

5 Q What did people -- what did -- what was being
6 said was going on?

7 A People were asking just about the watermelon
8 and they were just kind of furious that day, but then
9 the following days, it was jokes, it was -- it was
10 harassment about the whole thing.

11 Q A bunch of jokes?

12 A A bunch of jokes, a bunch of harassment.

13 Q Picking at you about it?

14 A Teachers talking about it, teachers wanting
15 to have discussions about it. It kind of made --

16 Q Okay.

17 A We were the most -- we were in the spotlight
18 for a reason we didn't want to be, we didn't feel we
19 should have been in the spotlight for.

20 Q Okay. Teachers talking to you-all about the
21 connotation of watermelon?

22 A No. Teachers talking about everything, all
23 of the -- all of the facts of this whole thing, having
24 class-wide discussions, just making it even bigger than
25 it --

1 Q Really was?

2 A -- than it already was.

3 Q Did anybody ever say anything to you
4 negative?

5 A Sure. I don't -- I can't -- I don't know
6 their intentions, but, you know, calling us racist,
7 calling us, you know, watermelon smashers, stuff like
8 that, and...

9 Q Who called you a racist?

10 A Who called me a racist, I would say many
11 kids, many kids in my school. I can't tell you names
12 for sure, but it just kind of became a thing, "Football
13 team is filled with racists," during the soccer season,
14 "Oh, at least they're not the football team."

15 Q All right. Well, name for me a student that
16 you recall, a name who called you a racist.

17 A I can't tell you anyone by name.

18 Q Okay. How big is Academic Magnet?

19 A Six, 700 kids.

20 Q And of that, is it predominantly white?

21 A I think so.

22 Q Okay. Any of the African-American kids say
23 anything to you?

24 A To me, no, but --

25 Q Okay.

1 Internet.

2 A Yes.

3 Q Did you ever see your name on TV or the
4 Internet or in the newspaper, anything like that?

5 A Oh, all the time associated with the football
6 team, I was on the cover of the sports page one time,
7 Reece Moore, Academic Magnet, those could two kind of
8 go hand in hand.

9 Q Okay. But anything about the watermelon
10 incident? I understand you would have been on the
11 football team, you probably either scored some scores,
12 there were articles about the team, I think this was
13 one of the first times you-all had had a -- a winning
14 season. Is that right?

15 A Yes.

16 Q Okay. So I know there were sports articles
17 about the team and a picture of the team. But do you
18 ever remember your name being mentioned with anything
19 about the watermelon incident and the investigation?

20 A No.

21 Q Okay. Did you ever see anyone refer to you
22 in -- either on the Internet, newspapers, anything,
23 about Reece being a racist?

24 A No.

25 Q Okay. Anything about Reece being racially

1 insensitive?

2 A No.

3 Q Other than being on the -- on the football
4 team, there would be no way to associate you with this
5 incident, is that right?

6 A There would be no way to associate my --

7 Q You with this incident.

8 A I don't understand the question.

9 Q All right. Other than the fact you're on the
10 football team, there's nothing that would indicate that
11 you were ever involved in this situation, correct?

12 A I attended Academic Magnet High School. I
13 mean --

14 Q Well --

15 A -- you --

16 Q -- not --

17 A -- you --

18 Q -- everybody at Academic Magnet High
19 School --

20 A Sure. But you're representing your high
21 school. That's why people wear class rings. That's
22 why -- you're supposed to be proud of your high school.

23 Q Okay. But my question is, other than the
24 fact that you were on the team, okay, nobody would know
25 one way or the other whether you participated in this

1 that Mr. Lindemann [sic] just showed you, she said the
2 team made monkey noises, named the watermelon
3 Bonds-Wilson, and participated in a ritual after
4 defeating predominantly black teams, would you -- do
5 you believe that -- or are you alleging that those
6 statements by the school district officials implied you
7 were racist?

8 A I believe those statements by the school
9 district imply that we did something wrong and those
10 wrong actions were derogatory and racist in nature,
11 yes.

12 Q Okay. What damages or injury do you allege
13 to have incurred as a result of this article?

14 A Can you define damages and injury for me?

15 Q I --

16 A I'm not sure I --

17 Q Okay. So I -- I need you to tell me what --

18 A What has come as a result?

19 Q What -- what happened to you, what -- what
20 are you seeking redress for?

21 A Okay. So we can start in many ways. First,
22 my peers and fellow classmates think lower of me.

23 Q Can you -- let's stop one second. Well, no,
24 actually, you go ahead. Keep going.

25 A Okay. My peers and classmates think lower of

1 me. They call my teammates and I racist. I can't
2 determine if they were joking or not. How am I -- I
3 faced harassment for weeks, still face harassment.
4 Faced harassment in spring -- the spring semester as
5 part of the soccer team.

6 I've had other professionals -- I've had
7 professors -- a professor in particular, my thesis
8 advisor at the College of Charleston, talk to me about
9 it, he thought what we were doing was questionable, and
10 so I have to face that in every -- in every situation.

11 Two weeks -- not even two weeks ago, last
12 week at work, a co-worker of mine is a teacher at Cane
13 Bay High School, was talking about that -- was talking
14 about Academic Magnet, not knowing that I went to
15 Academic Magnet, not knowing that I went -- was on the
16 football team, saying, you know, at least -- "At least
17 we're not smashing watermelons and being racist," and
18 I -- I have to defend that, like I can't let my school
19 be -- or my teammates be portrayed that way. And so
20 having that -- that idea surround your school and being
21 defamed in that way is a damage.

22 I have friends in North Carolina who, like I
23 said earlier, were texting me about this saying, "Is
24 this true," because they see on the news, you know,
25 these -- these allegations, and so I have to defend

1 that in other states.

2 Talking about colleges, so in my
3 pre-admission decision interview with Columbia, I'm
4 asked that question. How do I defend that? Like I
5 shouldn't have to defend that. That shouldn't be
6 associated with me. Any college could look that up.
7 It came up immediately. Look up Academic Magnet High
8 School. I have football on my extra curricular
9 activities as part of my common application.

10 In my interview with UNC Chapel Hill, me and
11 two people, they're asking me about this incident. Who
12 is to say -- I didn't get accepted into Columbia. I
13 didn't get the scholarship from USC. That's a \$30,000
14 scholarship. Who's to say that's not why. Because
15 they could think it speaks to my character when really
16 it doesn't.

17 Q So you said -- first you said that your peers
18 think lower of you. Could you give me the names of any
19 of your peers who said that they think lower of you
20 because of this incident?

21 A I can't speak specifically to any names.

22 Q Okay. So you said that you've been harassed
23 because of this incident. Could you tell me the names
24 of someone who has harassed you because of this
25 incident?

1 There's -- there's no other way.

2 Q Okay. Could -- could racism also be -- do
3 you think that people can have different opinions as to
4 what is racist?

5 A Absolutely.

6 MR. PARKER: They can about watermelons.

7 BY MS. JEFFERSON:

8 Q Do you --

9 MR. PARKER: I'm teasing.

10 BY MS. JEFFERSON:

11 Q Do you think the Confederate flag is racist?

12 A Do I think the Confederate flag is racist,
13 how can a flag be racist? Like are you asking about
14 the idea of the flag or the flag itself?

15 Q I'm asking you, do you think the Confederate
16 flag is a racist symbol?

17 A Do I -- no.

18 Q Do you think the word "nigger" is racist?

19 A Yes.

20 Q Do you think the word "nigga" is racist?

21 A When those -- when those words are used, in
22 what context are they being used?

23 Q So context matters for determining whether
24 something is racist?

25 A No, I'm just --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, TERI L. SAMPSON, Registered Professional Reporter, Notary Public and Certified Live Note Reporter, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 10th day of August, 2015, in the Town of Goose Creek, County of Berkeley, State of South Carolina.


Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:

