

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Hon. R. Markley Dennis, Jr., Circuit Court Judge
Unpublished Opinion 2017-UP-282
Circuit Court Case No. 2011-CP-10-9200

RECEIVED

OCT 23 2017

S.C. SUPREME COURT

Appellate Case No. 2015-001920

Mother Doe A, ... Petitioner

v.

The Citadel Respondent

APPENDIX – VOLUME I

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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

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

RECEIVED

APR 04 2016

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

And

Case No.: 2013-CP-10-6330

John Doe 201 and Jane Doe 201.....Appellants,

v.

The Citadel.....Respondent.

**APPELLANTS' RECORD ON APPEAL
Volume I of III**

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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. 2011 CP-10-9200

FILED

Mother Doe A

The Citadel

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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's Renewed Motion for Summary Judgment, filed on 1/26/2015, is GRANTED; Formal order to follow.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2060
Judge Code

1/27/2015
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MOTHER DOE A,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-9200

FILED
2015 MAY 29 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

**[PROPOSED] ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Notice of Motion and Renewed Motion of the Defendant The Citadel, The Military College of South Carolina ("Defendant" or "Citadel") for Summary Judgment ("Renewed Motion for Summary Judgment") under Rule 56 of the South Carolina Rules of Civil Procedure.

Plaintiff commenced this action on December 14, 2011 in her own right, alleging that she sustained injuries resulting from the sexual abuse of her son by Louis ReVille ("ReVille"). On December 12, 2013, Plaintiff filed an Amended Complaint, asserting claims under the following legal theories: (a) gross negligence/failure to warn; (b) negligent hiring, retention and supervision; (c) the Jessica Horton Act, S.C. Code § 59-154-10; (d) civil conspiracy; (e) S.C. Code § 63-7-310; (f) intentional infliction of emotional distress/outrage; and (g) loss of services.

On May 2, 2014, The Citadel filed its original Notice of Motion and Motion for Summary Judgment, ("Initial Motion for Summary Judgment") asserting that the Court should enter judgment against Plaintiff in this matter (and against plaintiffs in other related cases) for various reasons. On September 19 and 22, 2014, the parties submitted memoranda in support of and in opposition to The Citadel's Initial Motion for Summary Judgment (some of which incorporated and referenced memoranda filed in related lawsuits). The Court conducted oral

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argument, and on September 24, 2014, by Form 4 Order, it indicated it would deny The Citadel's Initial Motion for Summary Judgment, with a "[f]ormal order to follow." The Court formally denied The Citadel's Initial Motion for Summary Judgment on December 1, 2014.

The issues addressed herein have been thoroughly briefed by the parties in connection with The Citadel's initial Motion for Summary Judgment, and the Court conducted oral argument on January 26 and 27, 2015. After considering the parties' arguments, relevant case law, and the detailed record, taking the evidence in the light most favorable to the Plaintiff, this Court hereby GRANTS Defendant's Renewed Motion for Summary Judgment.¹

INTRODUCTION

On April 23, 2007, the father of a camper at The Citadel's summer camp ("Camper Doe") reported to The Citadel that a counselor had engaged in sexual misconduct with his son at the camp five years earlier. Camper Doe's father was referred to The Citadel's in-house counsel, Mark Brandenburg, with whom he spoke by telephone. During that conversation, Camper Doe's father said that on one occasion during the camp, a counselor named "Skip" invited his son, then a minor, into his room and the two of them watched pornography and masturbated while Camper Doe was in "Skip's" room. Attorney Brandenburg later spoke with Camper Doe by telephone. Camper Doe reported that "Skip" had invited him into his room and showed him pornography and convinced him to masturbate while in the room. By reviewing camp records, Brandenburg was able to identify "Skip" as Skip ReVille. Brandenburg contacted ReVille, who had been

¹ The findings in this Order apply only to claims by parents of ReVille's downstream victims and do not impact any existing or potential claims by victims of ReVille's abuse, including the claims asserted in the following cases: John Doe Camper v. The Citadel, C/A No. 2012-CP-10-1860; John Doe 2 v. The Citadel, C/A No. 2012-CP-10-1858; Mother Doe 2, on behalf of, John Doe 3 v. The Citadel, C/A No. 2012-CP-10-1859; Camper Doe 6 v. The Citadel, C/A No. 013-CP-10-5247; and John Doe, a minor, by his Guardian Ad Litem, John Roe v. The Citadel, C/A No. 2013-CP-10-4770; John Doe 201 and Jane Doe 201 v. The Citadel et al., C/A No. 2013-CP-10-10330; John Doe A v. The Citadel, C/A No. 2014-CP-10-1476; and John Doe 4 v. The Citadel, C/A No. 2014-CP-10-6995.

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working as a part-time tutor at The Citadel's Writing Center. ReVille denied Camper Doe's allegations.

Brandenburg continued his investigation on July 1, 2007, when he met with Camper Doe, then nineteen years old, and his parents in Texas. Following that interview, there ensued discussions among Brandenburg, Camper Doe, and the South Carolina State Insurance Reserve Fund about possible settlement of Camper Doe's potential claims against The Citadel. However, at some point that summer, Mr. Brandenburg and Camper Doe fell out of touch with one another. Brandenburg attempted to contact potential witnesses who may have been present during the incident that Camper Doe reported; however, he did not contact any who corroborated Camper Doe's complaint. The Citadel's investigation ended without the complaint being reported to law enforcement authorities.

In October 2011, multiple incidents of sexual misconduct by ReVille came to light. ReVille was arrested and confessed to abusing many boys over a period of years. Charges were filed against ReVille in Charleston, Berkeley, and Dorchester counties. On June 13, 2012, ReVille pleaded guilty to numerous criminal charges involving sexual misconduct and was sentenced to fifty years in prison.

ReVille abused Plaintiff's son in 2007 and 2008. She alleges that The Citadel negligently failed to adequately investigate Camper Doe's complaint and negligently failed to report the complaint to law enforcement authorities, which would have prevented ReVille from abusing her son.² She further alleges that The Citadel deliberately covered up Camper Doe's complaint in order to protect The Citadel's reputation. She seeks to recover what she terms loss of services of her son, which includes loss of companionship and wounded feelings. Plaintiff has not submitted evidence of pecuniary loss for medical expenses or loss of services. For the reasons that follow, this Court must grant The Citadel's Renewed Motion for Summary Judgment.

² Plaintiff's son has filed a separate action, which is not subject to the instant Motion.

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ANALYSIS

A. Plaintiff's Outrage Claim Fails for Several Reasons

1. The South Carolina Tort Claims Act Bars Plaintiffs' Outrage Claim

The South Carolina Tort Claims Act ("Act") "establish[es] limitation[s] on an exemption to the liability of the state [and] . . . must be liberally construed in favor of limiting the liability of the state." See S.C. Code Ann. § 15-78-20(f). Plaintiff does not dispute that the Act applies to The Citadel and governs her claims in this case. The Act states that a "loss" "does not include the intentional infliction of emotional harm." See S.C. Code § 15-78-30(f). The Act also provides that a governmental entity may not be held liable for "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." See S.C. Code § 15-78-60(17) (emphasis added). These provisions bar claims for intentional infliction of emotional distress. See *Newman v. South Carolina Dep't of Employment and Workforce*, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010), *report and rec. adopted*, 2010 WL 4666360 (D.S.C. Nov. 18, 2010); *Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *Harkness v. City of Anderson*, 2005 WL 2777574, at 4 (D.S.C. Oct. 25, 2005) ("Defendants argue they are immune from suit pursuant to the South Carolina Tort Claims Act . . . on the claim of outrage, otherwise known as intentional infliction of emotional distress. [Citation omitted.] The court agrees."); *Trask v. Beaufort Cty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) ("Under the Tort Claims Act, a coroner is immune from suit for 'the intentional infliction of emotional harm.'"); *accord Lindquist v. Tanner*, 2012 WL 3839237, at *4 (D.S.C. April 12, 2012) ("Plaintiff concedes that her claim for 'intentional' infliction of emotional distress against the County Recreation Commission is barred by the South Carolina Tort Claims Act."), *report and rec. adopted in part*, 2012 WL 3839235 (D.S.C. Sept. 4, 2012). Plaintiff's

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outrage claim is barred by the Act.

2. Plaintiff's Outrage Claim is Barred Because No Conduct Was Directed Toward Plaintiff

The South Carolina Supreme Court has held that an outrage claim cannot succeed where Defendant's conduct was not specifically and knowingly directed at Plaintiff:

The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant. *Christensen v. Superior Court*, 54 Cal.3d 868, 820 P.2d 181, 2 Cal.Rptr.2d 79 (1991). It is not enough that the conduct is intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware. *Id.* at 903, 820 P.2d at 202, 2 Cal.Rptr. at 100; see also W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on Torts* § 12 (1984 & Supp. 1988) (hereinafter *Prosser & Keeton*). There is no evidence that respondents targeted appellants to be harmed by their allegedly tortious acts.

The harm suffered by appellants arose only indirectly from respondents' publishing allegedly false information about Bodie. There are situations when plaintiffs may recover for intentional infliction of emotional distress for harm they suffer as the result of acts which have injured another. The Restatement (Second) of Torts § 46(2) (1965) provides:

§ 46. Outrageous Conduct Causing Severe Emotional Distress

.....

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

- (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
- (b) to any other person who is present at the time, if such distress results in bodily harm.

As a matter of policy, courts have limited such recovery "to the most extreme cases of violent attack, where there is some especial likelihood of fright or shock." *Prosser & Keeton* § 8. See, e.g., *Courtney v. Courtney*, 186 W.Va. 597, 413 S.E.2d 418 (1991) (assault on mother in son's presence stated cause of action for intentional infliction of emotional distress by son).

There being no evidence that respondents physically attacked Bodie in the presence of appellants, we must hold that appellants do not possess a cause of

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action for intentional infliction of emotional distress arising under section 46(2).
See Upchurch v. New York Times, Inc., 314 S.C. 531, 536-37, 431 S.E.2d 558, 561-62 (1993) (emphasis added); *Roberts v. Simmons*, 2014 WL 7005250, at *6 (D.S.C. Dec. 11, 2014) ("The undersigned recommends dismissal of this claim. As a preliminary matter, it is not clear that Defendant's alleged conduct was directed at the Plaintiff."); *Fulghum v. Wise Seats, Inc.*, 2012 WL 1032594, at *4 (D.S.C. Mar. 27, 2012) ("Here, the conduct upon which Plaintiff bases his claim . . . is not tortious conduct that was specifically directed towards Plaintiff.").

The South Carolina Court of Appeals held in an unpublished decision that the parents of a minor sexual abuse victim could not sue a school for outrage, because there was no evidence that the school's alleged conduct was directed at the particular plaintiff. *See Doe v. Rojas*, 2007 WL 8327520, at *4 (Ct. App. April 26, 2007) ("[T]he record contains no evidence that the School District, in failing to take any preemptive action to prevent the abuse, targeted or directed any of its conduct towards the Does. Further, no evidence suggests the School District's actions after discovering Rojas' misconduct was directed towards the Does.").

Plaintiff has not proffered any evidence that The Citadel directed its actions against her directly. There is no evidence that The Citadel knew ReVille was abusing Plaintiff's son or had any contact whatsoever with her son or with her. Plaintiff was not present during any of the alleged acts of abuse and did not witness any abuse. Under such circumstances, Plaintiff cannot succeed on an outrage claim against The Citadel.

B. Plaintiff's Negligence (and Conspiracy) Claims Fail Because She Has Not Shown Any Recoverable Damages

1. Plaintiff May Not Recover Emotional Distress Damages in Her Negligence Claim

South Carolina law once appeared to permit recovery for negligently inflicted emotional distress. In *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604, 103 S.E.2d 265, 270 (1958), a negligently operated truck struck the plaintiff's home, allegedly causing fright, exposure to the cold, weight loss, fever and a skin condition. The Court considered whether

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damages might be "recoverable for shock, fright and emotional upset when there is no physical impact." Ultimately, the Court concluded that the question of whether the shock caused physical injury was properly submitted to the jury. *See id.*, 232 S.C. at 607-08, 103 S.E.2d at 272. In reaching that conclusion, the Court metaphysically connected physical and psychic harms:

"The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other. It must be conceded that a nervous shock or paroxysm, or a disturbance of the nervous system, is distinct from mental anguish, and falls within the physiological, rather than the psychological, branch of the human organism."

See id., 232 S.C. at 605, 103 S.E.2d at 271 (citations omitted).

Subsequently, the Court cited *Padgett* stating that "[w]e have recognized the rule that there is no liability for emotional distress without a showing that the distress inflicted is extreme or severe." *See Rhodes v. Security Fin. Corp. of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). The Court observed that "[w]hile there is testimony that appellant was emotionally upset from the attempt to collect the forged note, there is no showing that the attempts by respondent's agents to collect were unreasonable or abusive, nor that appellant's emotional upset was other than transient and trivial." *See id.* With *Rhodes*, the Court began to limit recovery for negligent infliction of emotional distress.

The Court next stated in *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 770, 259 S.E.2d 812, 813 (1979), that "[i]n order to prevail in a tortious action in which the sole damages alleged are those of mental anguish, plaintiff must show that the conduct on the part of defendant was extreme and outrageous, causing distress that is of an extreme or severe nature." The Court later quoted the language from *Hudson* and *Rhodes* and recognized the tort of *intentional* infliction of emotional distress. *See Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

Importantly, the Supreme Court in *Dooley v. Richland Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), rejected an invitation to recognize a general tort of negligent infliction of emotional distress because the plaintiff failed to show any physical injury supporting her claim. The Court

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stated that one criticism of permitting a tort for negligent infliction of emotional distress is "that it will allow for fraudulent claims" and that "[o]ne method of eliminating this danger has been to require some type of physical injury in addition to any claimed emotional injury." *See id.*, 283 S.C. at 375, 322 S.E.2d at 671. Later that year, the Court refused to permit the recovery of emotional distress damages in a legal malpractice claim, despite a litany of claimed "physical" manifestations of the distress. *See Caddel v. Gates*, 284 S.C. 481, 327 S.E.2d 351 (1984).

In *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), the Supreme Court recognized the tort of negligent infliction of emotional distress, but restricted it to very limited circumstances. Importantly, the Supreme Court limited it to claims by a bystander who observes an accident that actually causes death or serious physical injury:

- (a) the negligence of the defendant must cause death or serious physical injury to another;
- (b) the plaintiff bystander must be in close proximity to the accident;
- (c) the plaintiff and the victim must be closely related;
- (d) the plaintiff must contemporaneously perceive the accident; and
- (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

See id., 286 S.C. at 582, 336 S.E.2d at 465.

The modern rule of the Supreme Court has been to recognize emotional distress damages in three circumstances: (a) when accompanied by physical trauma; (b) outrage; and (c) negligent infliction in a "bystander" situation. The Court has refused to extend liability for emotional distress beyond these limited circumstances:

- In *Hansson v. Scalise Bldrs. of S.C.*, 374 S.C. 352, 358-59, 650 S.E.2d 68, 72 (2007), the Court held in the context of an outrage claim: "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional

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distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something 'more' — in the form of third party witness testimony and other corroborating evidence — in order to make a prima facie showing of 'severe' emotional distress."

- In *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013), the Court refused to allow a claim for emotional distress damages flowing from trespass and nuisance in the form of odors from a landfill.

A case almost directly on point with the present case (a sexual abuse case arising under the Act) is *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007). There, the Court refused to extend the negligent infliction of emotional distress damages to encompass a claim by parents stemming from sexual activity between their daughter and a school teacher, stating: "[b]ecause South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law."

To the extent she seeks to recover in negligence for emotional distress, Plaintiff's claims are not within any cause of action for emotional distress recognized by the Supreme Court. She does not claim that The Citadel caused any physical impact to her or that she was a bystander observing her son's abuse. Plaintiff seeks the "stealth recognition of an entirely new tort" for negligent infliction of emotional distress in the absence of any physical impact or the death or serious injury of a bystander, based solely on the *knowledge* that Plaintiff's son was abused. No contemporary South Carolina authority recognizes such a claim.

2. Plaintiff's Recoverable Damages Are Limited to Medical Expenses for Injuries to Plaintiff's Son and Loss of Services, Neither of Which Are Supported By a Scintilla of Evidence

The Supreme Court has concluded that, in cases such as this, a parent's potential damages are extremely limited. In *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), cited *supra*, a student's parents sued a school district, alleging that a teacher was

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involved in a sexual relationship with their daughter. The parents further alleged that the school had prior complaints and warnings regarding the teacher's inappropriate interest in young girls and should have known about this relationship. The trial court granted the school district's motion to dismiss. On appeal, the Supreme Court affirmed in part and reversed in part. The Court first concluded, as discussed in the preceding section, that the *parents* could *not* assert a claim for negligently inflicted emotional distress. *See id.*, 375 S.C. at 68, 651 S.E.2d 307 (emphasis added).

Next, the Court analyzed the plaintiffs' loss of filial consortium claim and expressly held that South Carolina law does not recognize such a claim. Specifically, the Court held that "our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium." *See id.*, 375 S.C. at 69-70, 651 S.E.2d at 308. The Court held that the plaintiffs could state a claim to seek recovery for their daughter's medical expenses. *See id.*, 375 S.C. at 71-72, 651 S.E.2d at 309.

Justice Pleicones argued in dissent that the South Carolina common law has long permitted recovery for loss of companionship of a child. *See Webb v. Southern Ry. Co.*, 104 S.C. 89, 88 S.E. 297 (1916). While he agreed with the majority that no claim existed for negligent infliction of emotional distress, he argued that the Tort Claims Act preserves the common law claim for loss of parental consortium. While this Court finds Justice Pleicones' reasoning persuasive, it is compelled to follow the mandate of the majority of the Supreme Court.

Following the *Greenville County School District* case, a parent may recover two forms of damages for injury to a child: (a) medical expenses the parent paid for the care of the child; and

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(b) the loss of the child's services as a result of the injury. See *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990) (holding that medical expenses and lost services may be recoverable losses under the South Carolina Tort Claims Act). Plaintiff has not presented evidence of either type of damage. At their core, Plaintiffs' claimed damages are all for harm to Plaintiff's familial relationship with her son. These are loss of consortium damages that are precluded by the Supreme Court's holding in *Greenville County School District*. For this reason, The Citadel is entitled to summary judgment as to all of Plaintiff's negligence-based claims.

C. Plaintiff's Conspiracy Claim Fails Because There Is No Evidence of Special Damages and Because That Claim Is Barred by the Act

To succeed on her civil conspiracy claim, Plaintiff must show special damages attributable to the alleged conspiracy, meaning damages *different* from the damages she seeks in her other claims:

[C]ivil conspiracy requires that the plaintiff claim special damages. In this case, the Gordons' amended complaint fails to allege any special damages incurred as a result of any conspiracy. They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages. See *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Accordingly, we conclude the circuit did not err in granting a directed verdict.

See *Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831-32 (Ct. App. 2011). Plaintiff has not presented any evidence of special damages in support of her conspiracy cause of action. Instead, Plaintiff seeks to recover the same damages as her other causes of action. For this reason, The Citadel is entitled to summary judgment as to Plaintiff's civil conspiracy count.

Moreover, Plaintiff's conspiracy claim is barred by the Act, which prohibits claims arising out of "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." See S.C. Code § 15-78-60(17) (emphasis

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added). A conspiracy claim, by its very nature, requires as an element an intention to harm the Plaintiff. See *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage."). As a result, for this additional reason, Plaintiff's conspiracy claim fails.

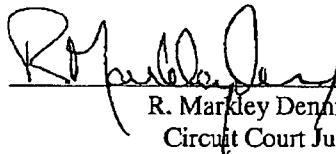
CONCLUSION

For the reasons discussed above, the Court grants Defendant The Citadel's Renewed Motion for Summary Judgment and hereby enters summary judgment against Plaintiff on all of her claims in this lawsuit.

AND IT IS SO ORDERED!

Dated: May 26, 2015
Charleston, South Carolina

BY THE COURT:



R. Mardey Dennis, Jr.
Circuit Court Judge

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) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

)
) Civil Action No.: 2011-CP-10-9200

) :
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PLAINTIFF'S MOTION TO
ALTER OR AMEND

))

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**PLAINTIFF'S MOTION TO
ALTER OR AMEND**

FILED
2015 JUN 15 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Mother Doe A, moves the Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter, amend or vacate its May 29, 2015 Order granting summary judgment in favor of the Defendant, The Citadel, as to each of the seven causes of action alleged in the amended complaint. The Plaintiff received written notice of entry of the order on June 4, 2015. This motion incorporates the facts set forth in Plaintiff's initial Memorandum in Opposition to Defendant's Motion for Summary Judgment, filed on September 22, 2014. Viewing the facts in the light most favorable to the Plaintiff, reconsideration of the Court's May 26, 2015 Order is proper based upon the following grounds:

- (1) The Order at pages 1 and 2 recites the procedural history of the case but omits reference to the certain relevant facts, including:
- (a) That the defendant's amended motion for summary judgment was taken up on January 26, 2015, after the parties had selected a jury in preparation for trial;

- (b) That the plaintiff dropped the causes of action alleged pursuant to the Jessica Horton Act, S.C. Code § 59-154-10, and the Reporting Statute, S.C. Code § 63-7-310;
 - (c) That various cases were consolidated for discovery and that The Citadel filed a motion for summary judgment on March 6, 2014 in several of the consolidated cases, to which this Plaintiff responded with a memorandum in opposition, followed by a reply brief submitted after the motions were heard by the Court on April 18, 2014. The reply brief, filed on April 25, 2014, addressed the issues of “specific threat of harm” and other factual disputes concerning the duty owed by the Citadel. The Court later denied The Citadel’s motion for summary judgment in its entirety;
 - (d) That on May 2, 2014, The Citadel filed a summary judgment motion in the present case, which the Court denied by form order on September 24, 2014, after hearing arguments solely on the issue of loss of services. The formal written order was entered on December 1, 2014.
- (2) At footnote 1 on page 2, the Order includes a scrivener’s error that the civil action of John Doe 201 and Jane Doe 201 v. The Citadel et al., No. 2013-CP-10-10330, is among the cases *unaffected* by the order as to Mother Doe A. The parties stipulate that the rationale of the Mother Doe A order applies to the intangible injuries and tangible costs also incurred by the Doe 201 parents for treating their child.
- (3) At pages 2 and 3, the Order recites the basic facts of the claims but fails to note that The Citadel actively concealed ReVille’s known record of abusing children, and facilitated

ReVille's ability to obtain access to the children he sought to abuse, conduct which is undisputed.

- (4) At page 4, the Order notes the definition of "loss" in S.C. Code § 15-78-30(f) excludes "the intentional infliction of emotional harm," but fails to note that the same provision specifically includes "pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence," and that Mother Doe A (and the Doe 201 parents in their action) alleges negligence claims pursuing damages within that definition.
- (5) The Order fails to apply the exception within the South Carolina Tort Claims Act permitting claims of outrage when based on reckless conduct, as distinguished from "intentional" conduct. See e.g., Bass v. S. Carolina Dep't of Soc. Servs., 742 S.E.2d 667, 672 (Ct. App. 2013), reh'g denied (May 21, 2013) (intentional infliction of emotional distress claim permitted based on reckless, rather than intentional, conduct by DSS); Davis v. Richland Cnty., No. 4:12-CV-3429-RMG, 2014 WL 3805802, at *3 (D.S.C. July 30, 2014) ("A plaintiff can state a claim for infliction of emotional distress [or outrage] by alleging that the defendant acted recklessly, rather than intentionally.").
- (6) At pages 6 through 9, the Order errs in applying to the amended complaint criteria for negligent infliction of emotional distress claims, when the amended complaint alleges no claim for negligent infliction of emotional distress. Instead, the five causes of action which remain include: gross negligence (failure to warn); negligent hiring, retention, and supervision; civil conspiracy; outrage; and loss of services to recover intangible injuries and the costs and expenses incurred in treating her child (and fully applicable to the intangible and tangible costs incurred by the Doe 201 parents).
- (7) Beginning on page 9, the Order errs by:

- (a) Misapprehending the scope of damages within the common law claim of a parent's loss of services claim. In particular, the order improperly restricts the claim to claims for only medical expenses, and excludes claims for intangible injury;
- (b) Overlooking the Plaintiff's testimony regarding her incurred (as the Doe 201 parent also incurred) costs for medical expenses. See Exhibit 32, Mother Doe A Deposition at pages 105, 106, 108, 112, 114, 115, 174; Exhibit 1, the trial designations from the Deposition of Chet Williams, the mental health professional who treated Mother Doe A's son.
- (c) Improperly applying the 1712 Reception Statute, S.C. Code § 14-1-50, which adopts the English common law until altered by the legislature, by confusing the common law loss of services claim with the separate and distinct common law (and now statutory, in S.C. Code § 15-75-20) loss of consortium claim based on an incorrect interpretation of dicta in Doe v. Greenville County School District, 651 S.E.2d 305 (2007), a loss of consortium case. See e.g., Medlin v. United States, 244 F.Supp. 403, 411 (D.S.C. 1965); Webb v. Southern Railway, 88 S.E. 297 (1916) (mother's claim when her son was injured included her intangible injuries); Villepigue v. Shular, 1849 WL 2667, 34 S.C.L. 462, 3 Strob. 462 (Ct. App. 1849) (setting forth rationale for using loss of services fiction for a parent's intangible as well as tangible injuries when a child is harmed, loss of services being presumed); Dobson v Cothran, 16 S.E. 679 (1891).

- (8) The Order fails to consider that S.C. Code §15-78-70(c) permits conspiracy claims against Citadel officials even though the statute requires that only The Citadel be named as a party defendant. See Flateau v. Harrelson, 584 S.E.2d 413, 418 (Ct. App. 2003) (“When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.”) (quoting Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 321 n. 1, 566 S.E.2d 536, 539 n. 1 (2002)). A conspiracy claim that alleges actual malice or intent to harm falls outside the scope of immunity under the Tort Claims Act. See Pridgen v. Ward, 705 S.E.2d 58, 64 (Ct. App. 2010); DeCecco v. Univ. of S. Carolina, 918 F. Supp. 2d 471, 500 (D.S.C. 2013) (school officials immune from suit individually because no evidence they lost immunity by acting with “actual fraud, actual malice, intent to harm, or a crime involving moral turpitude”); Smith v. Ozmint, 394 F.Supp.2d 787, 792 (D.S.C. 2005) (state employee can be held personally liable for some intentional torts committed within the scope of his employment); DiLorenzo v. S. Carolina Dep’t of Corr., No. 2:10-CV-02356-RMG, 2010 WL 5389994, at *3 (D.S.C. Dec. 22, 2010) (intentional infliction of emotional distress claim not subject to dismissal where plaintiff alleged intent to harm within her claim for intentional infliction of emotional distress). Construed in the light most favorable to the Plaintiff, the facts support the reasonable inference that Brandenburg, Rosa, Trez, and Garrott knowingly conspired with ReVille to conceal his sexual interest in children, enabled his future employment around children, and insulated ReVille from law enforcement, knowing that other children would be sexually abused by ReVille, and therefore acted with an intent to harm future victims like the Plaintiff and

her child. The conspiracy claim is not barred by the immunity provisions of the Tort Claims Act.

- (9) The Order fails to consider the import of S.C. Code § 15-3-555 in construing claims to “a person” by failing to acknowledge that such claims are not limited to only the person directly abused.

Accordingly, for the above-stated reasons, the Court should alter, amend or vacate its May 29, 2015 Order, and find the evidence and arguments presented raise genuine issues of material fact for trial. Should the Court grant Plaintiff’s request to alter or amend, Plaintiff further moves pursuant to Rule 42(a), SCRCF, to consolidate for trial the instant matter with the related action filed by Plaintiff’s son, captioned John Doe A v. The Citadel, C/A No. 2014-CP-10-1476.

CONCLUSION

Based upon the grounds articulated herein, the Court should: (1) alter or amend its May 29, 2015 Order granting the Defendant’s Renewed Motion for Summary Judgment; (2) reverse the grant of summary judgment as to Mother Doe A and the resulting effect on the Doe 201 claim pursuant to stipulation; and (3) consolidate the Mother Doe A claim for trial with the related action filed by her son, John Doe A.

--Signature Page to Follow--

Respectfully submitted,

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Attorneys for the Plaintiff Mother Doe A

June 17, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

11-CP-10-9200

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

This 15th day of June, 2015

Mary K. Thordarson

FILED

2015 JUN 15 PM 3:13

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-10-9200

Plaintiff,

Defendant.

ORDER

FILED
2015 AUG -6 PM 12:51
JULIE J. ARMSTRONG
CLERK OF COURT

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

August 3, 2015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Mother Doe A, <i>et. al.</i> ,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 11-CP-10-9200
	)	
The Citadel,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 26th and 27th, 2015, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Gregg Meyers, Esq.
 Chip Sloan, Esq.
 Kristen Fehsenfeld, Esq.
 Appearing for Mother Doe A

Dawes Cooke, Esq.
 Randall Stoney, Esq.
 Chris Kovatch, Esq.

ALSO ATTENDING:

Mullins McLeod, Esq.
 Mark Brandenburg, Esq.

Rutledge Young, Esq.
 The Citadel Board of Visitors

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
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1 JANUARY 26, 2015 9:00 A.M.

2 (PANEL STAUTORILY QUALIFIED)

3 THE COURT: Let me tell you my game
4 plan. I will ask individual *voir dire*:

5 Homosexuality. I'll do that in an
6 individual *voir dire*.

7 Sex abuse, having been abused sexually or
8 ever been involved in that, that's going to
9 be an individual question.

10 Those are just some examples and we can
11 talk about those after the general ones. I'm
12 basically taking those things -- which I
13 don't find objectionable, but if you have any
14 specific ones, let me know. I'll be happy to
15 ask. Is there anything specific before we
16 start the qualification, gentlemen?

17 DAWES COOKE: Your Honor, we did
18 submit some proposed *voir dire*. It's got the
19 witnesses on it.

20 THE COURT: All right, I haven't
21 seen it. If you have that, I'll be happy to

22 ---

23 DAWES COOKE: All right.

24 GREGG MEYERS: I'm just trying to
25 clarify, Your Honor, ---

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1 THE COURT: What I have from y'all
2 is the plaintiff's proposed jury question-
3 naire.

4 GREGG MEYERS: That's what I was
5 trying to clarify, Your Honor.

6 THE COURT: And it lists witnesses
7 and other things, which I've utilized to get
8 my general questions from there. I assume
9 that is your proposed voir dire.

10 GREGG MEYERS: Yes, sir.

11 THE COURT: But you have one that
12 you ---

13 DAWES COOKE: What we've done is
14 we've cleaned it up.

15 THE COURT: That's fine. I will
16 be happy to look at it. That's precisely
17 what I need.

18 DAWES COOKE: (Tenders), ---

19 THE COURT: Thanks, Dawes. Are
20 there any overlaps on your witnesses?

21 GREGG MEYERS: I think there are.

22 THE COURT: Let me tell you what
23 my gameplan is, folks, so that you all will
24 be privy to it. Obviously we're going to
25 generally qualify. Then once we generally

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1 qualify, we have a room -- we have Courtroom
2 4B where we are going to put them. I'm
3 guessing that it is probably going to take us
4 close to 12:00. My thought is to go ahead
5 and take lunch and then have them come back.

6 We will have the list. The list, as
7 we've talked about in our general
8 discussions, will be a random list. We will
9 take them in an order, and I am going to
10 bring them in one at a time. Once we ask
11 those questions -- once I ask those
12 questions, if you want, -- after I've covered
13 some, if I don't cover something you want to
14 cover, go ahead and ask it.

15 I will tell you, as I have done in death
16 penalty cases, I'm not going to require the
17 witness to answer that question but I'm going
18 to afford you the opportunity if you want.
19 It's not going to be your question -- I'm
20 taking your questions and I'm going to ask
21 those questions. But if I don't cover an
22 area that you want to go into a little bit
23 more in depth, then that's fine. I'll afford
24 you that opportunity.

25 After we have completed that voir

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1 dire of that witness (sic), I'm going to ask
2 the plaintiff what do they wish to do. Then
3 I'm going to ask the defendant, 'what do you
4 wish to do?' We will strike as we go.

5 We will bring that person that is
6 stricken and I'll tell them to call back
7 after six tonight. If there -- if they are
8 included, I'll tell them that they need to
9 report tomorrow -- we have something in the
10 morning? I'm going to tell them to report at
11 9:45. Okay?

12 So hopefully -- you know, I don't
13 know what it is going to look like. The good
14 thing about it, with the numbers that we have
15 that stuck around, that were willing to do
16 it, I think we will have enough to get our
17 jury without any question.

18 DAWES COOKE: Did you say that you
19 were going to pick twenty-eight? I think
20 you'd mentioned that number.

21 THE COURT: What I am going to do
22 is I'm going to pick three alternates, out of
23 an abundance of caution. So that will be a
24 total of three, nine, -- well, seventeen
25 strikes. So there will be twenty-nine from

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1 twelve, and then there will be ---

2 CLERK, DON MICHELE: Fifteen and
3 eight will be twenty-three.

4 THE COURT: Thirty-five -- thirty-
5 two --- a total of thirty-two persons.

6 DAWES COOKE: So we still each get
7 our four and then one for the alternates?

8 THE COURT: Yeah, but we -- in
9 theory, we could go through the first fifteen
10 and be finished.

11 DAWES COOKE: (Affirmative nod),
12 right.

13 THE COURT: I mean, that's -- it
14 just depends.

15 GREGG MEYERS: I am sure that
16 will happen, Your Honor.

17 THE COURT: I'm positive it'll
18 happen! I'll tell you this, and we were
19 talking about it coming up. I don't believe
20 that I could ask for or that y'all could ask
21 for a better panel of people from which to
22 pick this type of case. I really don't. I
23 mean, I was amazed at both the ages, the
24 maturity and the jobs of the people that were
25 willing to stick around for two weeks.

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1 That's incredible.

2 I know you all have said and
3 intimated three (weeks) but, folks, we are
4 going to get this case done in two weeks.
5 I can promise you that.

6 GREGG MEYERS: I wonder if I
7 could just clarify, ---

8 THE COURT: Sure.

9 GREGG MEYERS: Since this is a
10 little out of the normal, I just want to make
11 sure that I am not treading in the wrong
12 area.

13 THE COURT: Sure.

14 GREGG MEYERS: My understanding
15 of what you have just explained is that
16 you're working from the questionnaire, for
17 example, that we submitted.

18 THE COURT: Yeah.

19 GREGG MEYERS: You may not hit
20 every subject on that questionnaire, but I'm
21 at liberty to at least make an attempt to
22 make an inquiry; if you don't think it is
23 appropriate, you'll ---

24 THE COURT: I'll stop you. For
25 instance -- if you want to look at it, I've

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1 highlighted my file copy. You'll have an
2 idea but that doesn't mean that it is not
3 going (to be) asked. For instance, number
4 eight, "Has any member experienced a family
5 tragedy?" I am not sure what you are talking
6 about in that regard. Whether it's in
7 connection with -- I would probably ask if
8 you've had a son or had a child that's had a
9 serious injury or problem. That would be
10 something that would be -- but we're going to
11 ask -- do you still want to find out the
12 number of parents or do you all have that
13 information already?

14 GREGG MEYERS: Well, we have some
15 indication about that but I'd still like to
16 know ---

17 THE COURT: I am going to ask them
18 in general, that everybody -- 'if you're a
19 parent, stand up.' I'm not going to make
20 that any -- whether or not that would affect
21 them, just to say 'how old are your children'
22 and, uh, 'how many do you have?'

23 GREGG MEYERS: Thank you.

24 DAWES COOKE: I know I'm slow on the
25 uptake but -- so we'll have the list of the

1 whole thirty-two ---

2 THE COURT: Yeah, in the order in
3 which they will be. I mean, we're not going
4 to -- the main problem that you have in a
5 capital case, I don't -- I've done it before
6 and now that I don't sequester, I may start
7 considering doing it this way again.

8 My first capital case, although we
9 had -- Steven John got a mistrial at the end
10 of the guilt phase, but that wasn't -- the
11 problem was -- imagine this, they acquitted
12 his codefendant. I did something that I will
13 never do again and that's try codefendants in
14 a capital case. There were *Bruton* issues,
15 unbelievable *Bruton* issues. That's why we
16 talked about *Bruton* issues at our meeting in
17 Columbia, about how do you really correct a
18 problem, redact it, so that you -- using
19 neutral pronouns. How do you do that so that
20 it doesn't really implicate somebody? So the
21 best thing to do is never to try them
22 together. But, anyway.

23 We got through the first part. We
24 got back and -- Steven John was co-counsel to
25 Ms. West, who was a public defender, and I

1 think still is, over in Horry County. And,
2 uh, he said, 'Judge, I hate to do this but
3 there's a juror that we -- when we came, my
4 client, Mr. Huggins' sister recognized that
5 juror as have gone to class with them. If we
6 had known that, we would have excused them.'

7 I said, 'that's baloney.' Why would
8 you want to excuse someone who knew your
9 client's family?

10 'Nope, we would have and we had a
11 strike.' We had a case that 'had we known
12 it' and 'we had a strike', then you have to
13 declare a mistrial. So I did. But, anyway.

14 In that case, we struck as we went
15 and we sequestered them.

16 It shouldn't be a problem with this
17 because there is really no real concern about
18 that.

19 So, yeah, they'll be in the order.
20 I have redrawn, in a criminal case we do the
21 pool so that we can redraw. This one, I am
22 not. It's drawn at random and we will strike
23 as we go. Okay?

24 RANDALL STONEY: Your Honor, we
25 tendered our *voir dire* and, unfortunately,

1 that may be our only copy.

2 THE COURT: I will give it back to
3 you and I won't write on it either.

4 DAWES COOKE: I've got another copy.

5 RANDALL STONEY: The reason was
6 that we took the -- we sanitized it.

7 THE COURT: Okay. I appreciate
8 you doing that. Give me just a second,
9 (sidebar with clerk).

10 Folks, let's do this so that we
11 don't have to draw but once. We're going to
12 draw the panel. They are going to be on a
13 random strike list. So -- because if I
14 excuse somebody for cause, that juror will be
15 stricken in the order in which they appear.
16 Do you waive the demand for -- and I'm
17 talking about general qualification now. Do
18 you waive the right to have it redrawn so
19 that we can -- for instance, if there are ten
20 people that are excused in the general, then
21 we would draw a random -- they may be in a
22 different order. Do you all -- just to
23 expedite it, will you go with it as it is?

24 DAWES COOKE: Yes.

25 GREGG MEYERS: Yes, sir.

1 THE COURT: All right, we will
2 just make that notation that I make my strike
3 for cause and that list then will be the
4 record.

5 GREGG MEYERS: Your Honor, we saw
6 on the list -- I saw only a few people that
7 attended The Citadel.

8 THE COURT: Yeah.

9 GREGG MEYERS: We do want to
10 assert cause, a strike against anybody who
11 attended The Citadel as an undergraduate, not
12 for graduate purposes.

13 THE COURT: All right.

14 GREGG MEYERS: I don't know if
15 this is the time that you would ask that
16 question.

17 THE COURT: I will be happy to
18 excuse that person. Listen, I'm going to err
19 on the side of caution here, I assure you.
20 If you want them excused, I am going to
21 excuse them.

22 Frankly, I will tell you this. I
23 was talking to my brothers and sisters at the
24 convention about this case and I just -- I
25 just posed the question to them, and some of

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1 them are Citadel people too, several of them
2 are. They said, 'Hummm, I don't know. It
3 may be offensive to me.' I said 'yeah, that
4 would be my feeling', that there is -- there
5 really is -- that sword cuts both ways.

6 GREGG MEYERS: We agree. We just
7 thought those passions might be used in a way
8 that ---

9 THE COURT: There is no need to do
10 that, (affirmative nod). There is no need to
11 put that person in that dilemma, I don't
12 think.

13 If you object to it, I'll let you
14 put that on the record, your basis for the
15 objection.

16 DAWES COOKE: I just heard the tail-
17 end of it. This was?

18 THE COURT: Anybody that is an
19 undergraduate of The Citadel, is a graduate
20 -- not graduate school but undergraduate, as
21 I understood it.

22 GREGG MEYERS: Yes.

23 THE COURT: Then they wish them to
24 be removed.

25 DAWES COOKE: Well, you know, we

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1 talked about that pretrial.. I would think
2 that you would ask them, you know, if they
3 could be ---

4 THE COURT: I appreciate it. I am
5 not going to put them -- whether you're
6 related or -- I mean, your first cousin. I
7 mean, I just -- out of an abundance of
8 caution, but you can put your objection on
9 the record. Hopefully there won't be that
10 many. I know that one that worked for them
11 was a "no." She won't be there. I will
12 definitely excuse any person who ---

13 GREGG MEYERS: Yes, that was the
14 other person that we felt was in an unusual
15 posture. I thought that if she was employed
16 by The Citadel ---

17 THE COURT: Yeah, I would
18 definitely not have her; just as I don't have
19 anybody that is employed with the law firm.

20 GREGG MEYERS: Yeah.

21 THE COURT: I mean, I -- even not
22 a lawyer. I am not going to do that.

23 Are we ready? As far as you all
24 know?

25 DAWES COOKE: I think so.

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1 GREGG MEYERS: As I will ever be.

2 THE COURT: (Sidebar with law
3 clerk). Listen, my clerk is asking me about
4 victims. Anybody that is going to testify --
5 I am not going to say 'this is a victim', but
6 anybody that is going to testify needs to be
7 disclosed. I mean, I'm not going to -- I
8 don't want to know their status or what
9 they're going to testify to. We have all the
10 names of everybody who is going to testify?

11 Let me also finish while y'all are
12 talking with Chip -- after we get our jury,
13 then we will go through the Motions *in*
14 *limine*. I appreciate everybody briefing
15 those. We will incorporate all the briefs
16 and reply briefs. I think I -- I don't think
17 that's going to take a lot of time because
18 I've gone through it. I spent yesterday
19 morning and yesterday evening, until about
20 7:30 last night, reading and doing additional
21 research on my part to help me. I think I am
22 pretty much comfortable with what I am going
23 to do with each one. I would anticipate,
24 depending on the jury, that hopefully we
25 would be finished before 5:00 o'clock. I'm

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1 willing to stay as long as necessary.

2 GREGG MEYERS: We are going to
3 have to add some names.

4 THE COURT: All right, give me
5 some names.

6 MR. SLOAN: There are some page/
7 line designations for Camper Doe.

8 THE COURT: I just want the names.

9 GREGG MEYERS: Can we come up and
10 do these with Your Honor, more descriptive?

11 THE COURT: Yes.

12 (OFF RECORD BENCH CONFERENCE)

13 RANDALL STONEY: There is something
14 that I am unclear about. Anonymous
15 designations will no longer be used? We will
16 use the individual's name?

17 THE COURT: Nope, it just
18 means that -- the style of the case will stay
19 as it is. What you are going to do is -- the
20 person is going to testify and they're not
21 going to tell you 'my name is Camper Doe.'
22 They are going to give their name.

23 RANDALL STONEY: All right.

24 THE COURT: So when they take the
25 stand to testify, they're going to have to

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1 identify themselves.

2 RANDALL STONEY: So my next
3 question then is regard to the witnesses.
4 When you ask/inquire of the jury, you will
5 likewise have to identify them by their
6 actual names?

7 THE COURT: That is what I just
8 did. I just got the names of the people.
9 I am going to give additional names. You are
10 not going to -- I am not going to tell you
11 whether they are victims or who they are.
12 But they're going to be people whose names
13 are going to be given, because those people
14 are going to identify themselves when they
15 testify. I think that I answered your
16 question.

17 RANDALL STONEY: You did. Thank
18 you.

19 GREGG MEYERS: Your Honor, may I?

20 THE COURT: Sure.

21 DAWES COOKE: I'm sorry that I
22 wasn't clear about this, but we may not have
23 given these names (tendering).

24 THE COURT: I understand. I've
25 got a list. Anything that you haven't filed

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1 until this morning, that's fine. I am going
2 to give the name. I'm not going to just say
3 "Camper Doe."

4 RANDALL STONEY: That's fine. You
5 know, we have worked real hard to ---

6 THE COURT: That's fine. Thank
7 you, appreciate that.

8 RANDALL STONEY: Yes, sir.

9 DAWES COOKE: These go with the
10 Motions, (tendering).

11 THE COURT: Is that what you sent
12 online?

13 DAWES COOKE: Yes.

14 THE COURT: I've got it. If you
15 have filed the original -- I'm assuming that
16 everything that's been sent to me online has
17 been originally filed.

18 DAWES COOKE: Yes, sir.

19 THE COURT: Very good.

20 DAWES COOKE: Some not until this
21 morning.

22 THE COURT: I've copied all of it.
23 I've read them all.

24 DAWES COOKE: There were some that
25 we didn't file until this morning, that's

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1 what I am saying.

2 THE COURT: Anything that hasn't
3 been sent online -- because if it's been sent
4 online, I've got it.

5 DAWES COOKE: I think it was sent
6 this morning.

7 THE COURT: I haven't seen it yet,
8 but that's fine. That helps me. Thank you,
9 Dawes.

10 DAWES COOKE: Thank you.

11 THE COURT: By the way, let me
12 tell you ---

13 CLERK DON MICHELE: Here are the
14 random strike lists.

15 THE COURT: Thank you. --- all
16 that when I walked in -- which news source
17 was it?

18 LAW CLERK: ABC.

19 THE COURT: ABC, (affirmative
20 nod), gave me a submission wanting to bring a
21 camera. It's captioned Skip ReVille. I
22 said, it's not going to be a Skip ReVille
23 trial. If they want to come here -- in
24 fact, they inquired first if this was a
25 criminal case. I said no, that it is not a

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1 criminal case. It's a civil case. Nobody --
2 somebody -- that was somebody that called
3 last week. But this one isn't. I will
4 approve a camera but I've told them that they
5 can't come during the jury part. So there
6 may be one here tomorrow.

7 DAWES COOKE: Even my kids asked me
8 what is going to happen to Skip ReVille in
9 this trial.

10 THE COURT: Well, one of the
11 things -- the afternoon session that I went
12 to -- Mr. Stoney, I saw you at the
13 convention. The morning session was a good
14 thing, any of y'all that went to the civil
15 presentation, there was a trial much as we
16 did here several years ago when a jury from
17 Hanahan and a jury, I think from Charleston,
18 to show the difference, went through a trial.
19 They had little buttons and we were marking
20 -- well, that's what they did.

21 Well, somebody -- and y'all excuse
22 my cynicism, but maybe y'all can help me
23 understand how this was beneficial to a trial
24 judge to sit through, first of all, watching
25 them instruct on how to work the little

1 clickers. Then the instruction of what they
2 told the jurors, some of whom didn't follow
3 the instructions at all.

4 The first juror -- and then they
5 critiqued the opening statement. The first
6 person who was -- it was an unfair/bad faith
7 against an insurance company, failure to pay.
8 He said -- when they asked 'any comments?'
9 He said, 'Yeah, I like the plaintiff's
10 attorney because, I tell you what, I had one
11 of those cases and, boy, he was right on as
12 to what they needed to do. We did the same
13 thing.' I thought, well, 'this is real
14 helpful.' He wouldn't even be on the jury in
15 the first place. .

16 They see only a portion of it,
17 because I think it went through Saturday --
18 but how does seeing the first third of a case
19 -- how does that help me? Maybe I am missing
20 something. But, anyway.

21 The second part was a gentleman that
22 talked about a case -- I've seen it a couple
23 of years ago. It's a fantastic -- I'd love
24 to get it -- you talk about something that
25 would be great to show to them? It doesn't

1 take that long but it really does sort of
2 help them to understand how frustrated we are
3 with what we have to deal with; not being
4 able to talk or to tell anybody about it. It
5 established going around the country talking
6 about how we as judges and lawyers need to
7 spend more time at what he called "pre-
8 instruction", to give them an overview of
9 what to do. I've been trying to do that.

10 I may bore y'all some more but, uh,
11 -- please free to do that, if you need to, in
12 your opening statements because he said that
13 studies are showing that jurors are very
14 appreciative and it helps tremendously.

15 I think most people come here with a
16 desire/want to do what is right. I really
17 do. Now that we have gotten this part --
18 maybe I am naïve and Pollyanna in my thoughts
19 about that, but I truly believe it. I think
20 whatever we do to help them is a good thing.

21 CLERK DON MICHELE: The jury is
22 outside.

23 THE COURT: Okay, let's bring them
24 in.

25 (JURY PANEL IN @ 11:53 A.M.)

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1

2

(OFF RECORD BENCH CONFERENCE WITH CLERK)

3

4

THE COURT: Okay, so twenty-seven
is off. That's number seventeen?

5

6

CLERK: Correct, it was a possible
yesterday but he's a "no" now.

7

8

9

10

11

THE COURT: Number seventeen on
your list, I am going to excuse that. So
number seventeen on your list (Juror Number
27), I am going to excuse that juror because
he was a "no".

12

13

CLERK DON MICHELE: And I think
it's the same for number fifteen.

14

15

16

17

18

THE COURT: My list is on my desk.

CLERK DON MICHELE: Gentlemen, on
your list, number nineteen -- they were
"possibles." There were four that said that
they were not sure and in the end ---

19

20

THE COURT: So seventeen and
nineteen?

21

22

23

COURT REPORTER: Are we talking
about juror numbers or the numbers on the
list?

24

25

CLERK DON MICHELE: The numbers
on the list, not the juror numbers.

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1 THE COURT: All right, so those
2 need to be removed.

3 (JUROR NUMBER 27 EXCUSED)

4 (JUROR NUMBER 15 EXCUSED)

5 CLERK DON MICHELE: So you want
6 us to take those off?

7 THE COURT: Yes.

8 CLERK DON MICHELE: Do you want
9 us to go ahead and call the names?

10 THE COURT: Yes.

11 CLERK DON MICHELE: Is Juror
12 Number 17, Darrin Bizal, or Juror Number 19
13 (sic), Deontes Backman, in the courtroom?

14 JUROR NUMBER 15: Yeah, right here.

15 CLERK DON MICHELE: Step over
16 here, please.

17 JUROR NUMBER 27: (Raises hand)

18 CLERK DON MICHELE: (Sidebar with
19 jurors).

20 THE COURT: Just for your
21 information, we are not calling people out.
22 Those are people that said "maybe", or "not",
23 and they were inadvertently placed on the
24 list that we drew. So that's why that was
25 done. We are not kicking anybody else out, I

1 promise you.

2 Ladies and gentlemen, thank you very
3 much. I appreciate it. It went well this
4 morning. I confess that every time that we
5 deal with a case that is not your typical
6 case, and this is not your typical case, and
7 we are dealing with a multi-week case, maybe
8 it's unnecessary but I fret a little bit
9 about that. I know that it is disruptive to
10 be on a jury and I -- I worry about whether
11 or not we're going to have enough people to
12 be able to work, be able to get a jury.

13 I will tell you that I said, coming
14 upstairs, 'wow, what a great panel.' I thank
15 you for that, and I mean it sincerely.

16 This is the second qualification and
17 now I will tell you what the case is -- a
18 little bit about it. It is a case entitled
19 Mother Doe A versus The Citadel. I am sure
20 that you can say, 'yeah, well, I have an idea
21 what that means.'

22 We allow, in situations where there
23 are some very private allegations, private
24 situations, a party to proceed as "Doe."
25 When the person testifies, you will have a

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1 chance to -- they will not say 'I am Mother
2 Doe.' They will give you their name. But
3 that's the style -- we are allowed to bring a
4 case in that fashion.

5 This case involves allegations --
6 what I am going to share with you is what is
7 alleged. It is not evidence. Evidence is
8 what you will hear through the trial of the
9 case. But The Citadel is accused of
10 basically having in their employ or having
11 had involvement with a person who allegedly
12 sexually abused and molested a child of
13 Mother Doe. That child has brought the suit
14 and Mother Doe has brought the case in this
15 case.

16 I share that with you only to tell
17 you a little bit of what the case -- there
18 are multiple causes of action. It is a
19 negligence case, primarily, where it is
20 alleged that The Citadel didn't do what it
21 is supposed to do or should have done when it
22 had certain knowledge; that basically as a
23 result of that, Mother Doe and the child
24 suffered injury or damage. That is what we
25 are here about, to decide that.

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1 I will tell you right off from the
2 start that this type of action is very
3 appropriate and our law, in our courts in
4 this state -- not only in this state but in
5 every state in the United States. Persons
6 who are alleged to have suffered injury or
7 damage because of another's carelessness have
8 a right to bring that and have that matter
9 resolved in the court.

10 And if they prove the essential
11 elements required of them, that is that the
12 party against whom the claim is made did
13 something and -- and this applies to the
14 various causes of action that may be
15 involved: there is a tort of outrage, that
16 the conduct was outrageous and that 'that
17 conduct caused me injury or damage.'

18 I'll define for you at the
19 appropriate time -- as I told you, at the end
20 of the trial -- what each cause of action,
21 what elements are required to be established
22 by the preponderance of the evidence or the
23 greater weight of the evidence. That, ladies
24 and gentlemen, is the standard that you will
25 typically be applying. That standard is

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1 really -- it is a probability standard, is it
2 more likely so than not?

3 If in going through the evidence
4 your answer to each one of those elements is
5 'yes, I think that is most probably
6 established', then you would be instructed to
7 return a verdict which is fair, just and
8 reasonable to compensate the plaintiff for
9 the damage which they have established.

10 Likewise, if your answer in going
11 through it as to any of the elements is,
12 'well, I am not -- it could be, it might be',
13 that's not sufficient because that doesn't
14 meet that standard.

15 The plaintiff has the burden of
16 proving.

17 The defendant has nothing to prove,
18 disprove, explain; no responsibility
19 whatsoever with respect to the cause of
20 action that is brought against it.

21 If that is your conclusion at the
22 end, that the plaintiff has failed to meet
23 the burden of proof, then therefore the
24 defendant is entitled to a verdict.

25 That's the essence of what we will

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1 be doing. We will be trying this case. At
2 the end, I will give you instruction as to
3 the various causes of action and you will be
4 instructed to make your decision on whether
5 to not you believe that the plaintiff has met
6 his burden of proof or her burden of proof in
7 this case.

8 Now, having said that, there are
9 some questions that I need to ask you a
10 little bit. First of all, are there any
11 members of the jury panel who were graduates
12 of The Citadel, undergraduates, or who are
13 employed with The Citadel? If so, please
14 stand?

15 JUROR NUMBER 358: I am a graduate.
16 I am not employed by them.

17 THE COURT: Of The Citadel?

18 JUROR NUMBER 358: Yes.

19 THE COURT: Undergraduate?

20 JUROR NUMBER 358: (Affirmative
21 nod).

22 THE COURT: Your name and number?

23 JUROR NUMBER 358: Robert Scott,
24 375 (sic).

25 THE COURT: All right, Mr. Scott.

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1 And you are?

2 JUROR NUMBER 147: I am Stephen
3 Goenner, Juror Number 147. I am a graduate
4 of The Citadel.

5 THE COURT: Very well. Gentlemen,
6 I appreciate it. The next questions that I
7 will be asking you, whether or not you could
8 be fair and impartial, I am not going to put
9 you in that dilemma. I am going to excuse
10 you from participating in this dispute. I
11 ask you to call the number after six tonight.
12 Your numbers, again?

13 JUROR NUMBER 358: Three seventy-five
14 (sic).

15 THE COURT: All right.

16 JUROR NUMBER 147: One forty-seven.

17 CLERK DON MICHELE: And Juror
18 375, the name?

19 JUROR NUMBER 358: Robert Scott.

20 CLERK DON MICHELLE: Robert Scott
21 is Juror Number 358.

22 THE COURT: Thank you.

23 (JUROR NUMBER 358 EXCUSED)

24 (JUROR NUMBER 147 EXCUSED)

25 THE COURT: All right.

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1 JUROR NUMBER 252: Your Honor, ---

2 THE COURT: Yes, ma'am?

3 JUROR NUMBER 252: I am not a
4 graduate of The Citadel, but I got my MBA at
5 The Citadel.

6 THE COURT: You didn't go to
7 undergraduate school there?

8 JUROR NUMBER 252: (No verbal
9 response).

10 THE COURT: Would that affect or
11 influence you in this dispute?

12 JUROR NUMBER 252: No.

13 THE COURT: Will you be able to
14 have that knowledge, obviously, but fairly
15 and impartially analyze the evidence and
16 decide what you believe to be the true facts
17 and then fairly and impartially apply the law
18 to those facts?

19 JUROR NUMBER 252: Yes.

20 THE COURT: And your decision then
21 would be based on the evidence and the law
22 and fair to both sides?

23 JUROR NUMBER 252: Yes, sir.

24 THE COURT: Your number, please?

25 JUROR NUMBER 252: I'm 252.

1 THE COURT: Thank you, 252 will
2 remain.

3 (PHONE RINGING IN COURTROOM)

4 THE COURT: Phones, if you have
5 them, turn them off please. Which was the
6 other one? That was 252.

7 COURT REPORTER: Juror Number 147
8 and Juror Number 358, excused.

9 THE COURT: Thank you. Okay,
10 number one (on list). Number one (Juror
11 Number 358) is excused by the Court.

12 Number twenty-two on the list (Juror
13 Number 147) was excused by the Court.

14 (JUROR NUMBER 147 EXCUSED)

15 (JUROR NUMBER 358 EXCUSED)

16 THE COURT: Okay. All right. Are
17 there any others? (No response). There
18 appear to be none.

19 I am going to ask the attorneys now
20 to identify themselves. We will start with
21 the attorneys representing Mother Doe. If
22 you would, identify yourself and the party --
23 obviously you're representing Mother Doe.
24 You don't have to ---

25 GREGG MEYERS: Thank you. Ladies

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1 and gentlemen, my name is Gregg Meyers. I
2 worked for a long time in Charleston and for
3 the last few years I've been working out of
4 St. Paul, Minnesota, with a law firm called
5 Jeff Anderson & Associates.

6 CHIP SLOAN: My name is Chip Sloan.
7 I work for Pierce Herns Sloan & Wilson here
8 in Charleston.

9 THE COURT: Are there any -- oh,
10 I'm sorry.

11 KRISTEN FEHSENFELD: My name is
12 Kris Fehsenfeld. I work at Pierce Herns
13 Sloan & Wilson.

14 THE COURT: Your last name?

15 KRISTEN FEHSENFELD: Fehsenfeld.

16 THE COURT: Thank you. Are there
17 any members of the jury panel related by
18 blood or marriage, have any business dealings
19 with, socially or casually acquainted with,
20 ever been represented by any of the attorneys
21 or their law firms? If so, please stand.
22 (No response). Thank you, there appear to be
23 none.

24 THE COURT: I would ask now that
25 the attorneys for The Citadel identify them-

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1 selves.

2 DAWES COOKE: My name is Dawes
3 Cooke. I am with the law firm of Barnwell
4 Whaley Patterson & Helms.

5 This is Ms. Mason, a paralegal in
6 our firm.

7 I will let the other attorneys
8 introduce themselves.

9 I guess Mr. Brandenburg will be
10 introduced later?

11 THE COURT: You will be introduced
12 as -- he will be introduced. He is not an
13 attorney representing ---

14 DAWES COOKE: Not the attorney.

15 THE COURT: I mean, he is an
16 attorney but he's not representing The
17 Citadel.

18 DAWES COOKE: Correct.

19 THE COURT: Yes, sir?

20 RANDALL STONEY: Thank you, Your
21 Honor. Ladies and gentlemen, my name is Ran
22 Stoney. I work for Barnwell Whaley Patterson
23 & Helms also, and represent The Citadel.
24 Thank you.

25 THE COURT: Thank you. Are there

1 any members -- I'm sorry. Go ahead.

2 CHRIS KOVATCH: Good afternoon.

3 My name is Chris Kovatch and I am with
4 Barnwell Whaley also.

5 THE COURT: Thank you, Mr.
6 Kovatch.

7 RUTLEDGE YOUNG: Lastly, Your
8 Honor, my name is Rutledge Young. I work
9 with the law firm of Duffy & Young.

10 THE COURT: Thank you. Are there
11 any members of the jury panel related by
12 blood or marriage, have any business dealings
13 with, socially or casually acquainted with,
14 have been represented by any of the attorneys
15 or their law firms? If so, please stand.
16 Yes?

17 JUROR NUMBER 279: My father was
18 Robert Patterson of Barnwell Whaley.

19 THE COURT: Your number, please.

20 JUROR NUMBER 279: I don't know my
21 number. Patricia Mulligan.

22 THE COURT: Would that affect or
23 influence you in this matter?

24 JUROR NUMBER 279: Uh, ---

25 THE COURT: Thank you. I'm not

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1 going to put you in that position. I had the
2 privilege of practicing law, what a great
3 practitioner, what a great friend of the
4 court. Thank you very much.

5 THE COURT: Number fifty-nine (on
6 the list) is excused.

7 COURT REPORTER: On the list, Juror
8 Number 279.

9 THE COURT: On the list, (affirma-
10 tive nod).

11 (JUROR NUMBER 279 EXCUSED)

12 THE COURT: Okay. Yes?

13 JUROR NUMBER 385: I believe that
14 I was involved in a mediation with Mr. Cooke.

15 THE COURT: Would that affect you
16 in any way?

17 JUROR NUMBER 385: I don't believe
18 so.

19 THE COURT: And I thank you for
20 your answer but the question is, could you
21 set that aside and make a commitment to the
22 parties that it would not influence your
23 decision on the facts and the law?

24 JUROR NUMBER 385: Okay,
25 (affirmative nod).

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1 THE COURT: And would you base
2 your decision on the evidence and the law and
3 would it be fair to both sides?

4 JUROR NUMBER 385: Yes.

5 THE COURT: Your number, please?

6 JUROR NUMBER 385: Number 385.

7 THE COURT: Juror Number 385 will
8 remain. Yes, ma'am?

9 JUROR NUMBER 364: My name is Pam
10 Sheff. Larry Duffy was my divorce attorney.

11 THE COURT: Would that -- but
12 that's a different.

13 JUROR NUMBER 364: That was
14 different.

15 THE COURT: That is not the same.
16 But the fact that Larry Duffy was your
17 divorce attorney, would that influence you in
18 this case?

19 JUROR NUMBER 364: No, sir.

20 THE COURT: Will you base your
21 decision on the evidence and the law and will
22 it be fair to both sides?

23 JUROR NUMBER 364: I will be fair to
24 both sides.

25 THE COURT: Thank you. Your

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1 number again?

2 JUROR NUMBER 364: Three sixty-
3 four.

4 THE COURT: Thank you, ma'am.
5 Yes?

6 JUROR NUMBER 175: I am Shirley
7 Hendrix. I am Number 175. I have a social
8 friend in Mr. Duffy.

9 THE COURT: Would that affect you
10 in any way?

11 JUROR NUMBER 175: I don't think
12 so.

13 THE COURT: And would you -- well,
14 I appreciate that response but can you make a
15 commitment to both sides that it would not
16 influence your decision?

17 JUROR NUMBER 175: I can.

18 THE COURT: And would you base
19 your decision on the evidence and the law and
20 would it be fair to both sides?

21 JUROR NUMBER 175: Yes.

22 THE COURT: Thank you so much.
23 Are there any others? (No response). Thank
24 you, there appear to be none.

25 I am going to identify a number of

1 persons, ladies and gentlemen. There are
2 many, so bear with me. If you are related by
3 blood or marriage to any of these
4 individuals, have any business dealings with
5 them, are socially or casually acquainted
6 with any of them, you need to stand and share
7 that information with the court:

8 The Citadel President, who is
9 General John Rosa.

10 Mark Brandenburg, who is an attorney
11 for The Citadel.

12 Colonel Joseph Trez

13 Jenny Garrott

14 Colonel John Lackey

15 Major William Bates

16 Chris Fudge

17 Dennis Carpenter

18 Chris Poston

19 Patrick Reid

20 Hunter Reid

21 O.C. Evans

22 Anna Bronke

23 Theresa Beacham

24 Gly Cowlshaw

25 Amy Huddeck

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1 Brendan Diffley
2 Clay Maynor
3 Jimmy Millar
4 Joe Hulsey
5 Reverend Samuel Joyner
6 Luke Jones
7 Janet Warren
8 Gary Margolis
9 Ann Franke
10 Greg McCrary
11 Louis ReVille
12 Carrie ReVille
13 Anna Bronke-Lutz
14 Jennifer Shield
15 Patrick Kinnard
16 William Fletcher
17 Carol Shakeshaft
18 Elizabeth Ralston
19 Katherine Emerick
20 Brandon Diffley
21 Joe Hulsey
22 Gus Burnham
23 Tucker Burnham
24 Marcus Colvin
25 Louis ReVille, which I think I've

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1 already said.

2 Lori Penland

3 Any of those? Yes, sir?

4 JUROR NUMBER 112: Juror Number
5 112, General John Rosa is a family friend.

6 THE COURT: Would that influence
7 you in this case?

8 JUROR NUMBER 112: No, sir.

9 THE COURT: If General Rosa
10 testifies, will you be able to consider his
11 testimony the same as any witness?

12 JUROR NUMBER 112: Yes, sir.

13 THE COURT: And will you base your
14 decision on the evidence and the law and will
15 that decision be fair to both sides?

16 JUROR NUMBER 112: Yes, sir.

17 THE COURT: Again, your number?

18 JUROR NUMBER 112: One twelve
19 (112).

20 THE COURT: Thank you, sir. You
21 may be seated. Yes?

22 JUROR NUMBER 106: General Rosa was
23 one of my directors for my ---

24 THE COURT: Would that affect or
25 influence you, ma'am?

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1 JUROR NUMBER No.

2 THE COURT: If he testifies will
3 you be able to consider his testimony the
4 same as any witness?

5 JUROR NUMBER 106: Yes, sir.

6 THE COURT: And will you base your
7 decision on the evidence and the law and will
8 that decision be fair to both sides?

9 JUROR NUMBER 106: Yes, sir.

10 THE COURT: Your name and number?

11 JUROR NUMBER 106: One-o-six
12 (106).

13 THE COURT: Thank you. Are there
14 others? (No response), thank you. There
15 appear to be none.

16 Has any member of the jury panel or
17 any member of your family ever attended,
18 worked for, donated money to or otherwise
19 participated in the Summer Camp Programs,
20 Sports Camp Programs or programs affiliated
21 with The Citadel. If so, please stand?

22 JUROR: Would you re-ask that
23 question?

24 THE COURT: Yes. If you or any
25 member of your family has ever participated

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1 in, supported, contributed money to, worked
2 for, attended any of the summer camps that
3 The Citadel has sponsored over the years.
4 Yes, ma'am?

5 JUROR NUMBER 385: I have three
6 nephews that attended The Citadel summer camp
7 programs, various times.

8 THE COURT: Would that affect or
9 influence you in this case?

10 JUROR NUMBER 385: No, sir.

11 THE COURT: If you heard testimony
12 concerning persons attending that camp, would
13 that influence or affect how you viewed that
14 testimony?

15 JUROR NUMBER 385: No, sir.

16 THE COURT: Would you base your
17 decision on the evidence and the law and
18 would it be fair to both sides?

19 JUROR NUMBER 385: Yes, sir.

20 THE COURT: Your number again?

21 JUROR NUMBER 385: Three eighty-
22 five (385).

23 THE COURT: Yes, ma'am?

24 JUROR NUMBER 14: My father was a
25 1966 graduate of The Citadel and is an active

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1 member of the alumni association.

2 THE COURT: Would that affect or
3 influence you in any way, ma'am?

4 JUROR NUMBER 14: No.

5 THE COURT: Would you base your
6 decision on the evidence and the law and
7 would it be fair to both sides?

8 JUROR NUMBER 14: Yes.

9 THE COURT: Your number again?

10 JUROR NUMBER 14: Fourteen (14).

11 THE COURT: Thank you. Yes, sir?

12 JUROR NUMBER 258: Clifton McDonald,
13 258.

14 THE COURT: Yes, sir?

15 JUROR NUMBER 258: I went to the
16 summer camp a long time ago.

17 THE COURT: You attended?

18 JUROR NUMBER 258: Yes, sir.

19 THE COURT: Would that affect or
20 influence you in this particular case?

21 JUROR NUMBER 258: No, sir.

22 THE COURT: Will you be able to
23 apply your experiences fairly and impartially
24 in analyzing any testimony concerning anyone
25 attending that camp, ---

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1 JUROR NUMBER 258: Yes.

2 THE COURT: --- should you hear
3 such testimony.

4 JUROR NUMBER 258: Yes, sir.

5 THE COURT: Would you base your
6 decision on the evidence and the law and
7 would it be fair to both sides?

8 JUROR NUMBER 258: It will.

9 THE COURT: Thank you, sir, you
10 may be seated. Yes, ma'am?

11 CHIP SLOAN: I'm sorry, Your Honor.
12 I need that juror number one more time.

13 THE COURT: Two fifty-eight (258).

14 JUROR NUMBER 148: Juror 148.
15 My little brother attended summer camp at The
16 Citadel for years.

17 THE COURT: Would that affect you
18 in any way, ma'am?

19 JUROR NUMBER 148: No.

20 THE COURT: If there is testimony
21 about attending that camp at any time, would
22 that influence or affect you unnecessarily or
23 unduly?

24 JUROR NUMBER 148: No, sir.

25 THE COURT: Would you base your

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1 decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 148: Yes, sir.

4 THE COURT: Your number again?

5 JUROR NUMBER 148: One forty-eight
6 (148).

7 THE COURT: Thank you. Yes,
8 ma'am?

9 JUROR NUMBER 299: Yes, Your Honor.
10 My brother-in-law and my nephew attended a
11 couple of summer camps at The Citadel.

12 THE COURT: Will that affect you
13 in any way?

14 JUROR NUMBER 299: No, Your Honor.

15 THE COURT: Would you base your
16 decision on the evidence and the law and
17 would it be fair to both sides?

18 JUROR NUMBER 299: Yes, Your
19 Honor.

20 THE COURT: Your number again?

21 JUROR NUMBER 299: Two ninety-nine
22 (299).

23 THE COURT: Thank you. Are there
24 others? (No response), thank you. There
25 appear to be none.

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1 Are there any members of the jury
2 panel -- I know that I asked you about Louis
3 -- familiar with Louis "Skip" ReVille? If
4 so, please stand. (No response). Thank you,
5 there appear to be none.

6 Has any member of the jury panel
7 undergone Darkness to Light training or
8 completed other training regarding prevention
9 of child sexual abuse? If so, please stand.
10 Okay, we will start here and work our way
11 back.

12 JUROR NUMBER 237: My name is
13 Cynthia Sunde. I don't know the number. I'm
14 sorry. It was through my church, Darkness to
15 Light training.

16 THE COURT: Would that influence
17 you in this case?

18 JUROR NUMBER 237: (Negative
19 gesture).

20 THE COURT: Would you apply your
21 knowledge gleaned from that course, from your
22 study, fairly and impartially in analyzing
23 the evidence?

24 JUROR NUMBER 237: I would.

25 THE COURT: Would you base your

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1 decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 237: Yes.

4 THE COURT: And do we have her
5 number?

6 LAW CLERK: Two thirty-seven
7 (237).

8 THE COURT: Juror Number 237.
9 Thank you.

10 JUROR NUMBER 446: Hannah
11 Yaldaparast, Juror Number 446. I did the
12 Darkness to Light training through
13 Patterson's Academy, their summer camp.

14 THE COURT: Would that affect you
15 in any way in this case?

16 JUROR NUMBER 445: (Negative
17 gesture).

18 THE COURT: Would you be able to
19 apply your knowledge and experience fairly
20 and impartially in analyzing the evidence?

21 JUROR NUMBER 446: Yes, sir.

22 THE COURT: Would you base your
23 decision on the evidence and the law ---

24 JUROR NUMBER 446: Yes, sir.

25 THE COURT: --- and would that

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1 decision be fair and impartial to both sides?

2 JUROR NUMBER 446: Yes, sir.

3 THE COURT: Your number again?

4 JUROR NUMBER 446: Four four six

5 (446).

6 THE COURT: Thank you. Yes,
7 ma'am?

8 JUROR NUMBER 106: Annette
9 Dunmeyer. I did training for Darkness to
10 Light. Number 106.

11 THE COURT: Would that affect you
12 in this case?

13 JUROR NUMBER 106: It may.

14 THE COURT: Thank you, ma'am.
15 Your number again?

16 JUROR NUMBER 106: One-zero-six
17 (106).

18 THE COURT: Thank you, ma'am.
19 That's number thirty-one on the list. Number
20 thirty-one on the list is excused by the
21 court. Thank you, ma'am. Call the number
22 after six tonight.

23 (JUROR NUMBER 106 EXCUSED)

24 THE COURT: Okay. Yes, ma'am?

25 JUROR NUMBER 43: Number 43, Marlo

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1 Burgess. I've done Darkness training.

2 THE COURT: Will that affect you,
3 ma'am?

4 JUROR NUMBER 43: No.

5 THE COURT: Will you be able to
6 apply your knowledge and experience fairly
7 and impartially in analyzing the evidence?

8 JUROR NUMBER 43: Yes, sir.

9 THE COURT: Would you base your
10 decision on the evidence and the law and
11 would it be fair to both sides?

12 JUROR NUMBER 43: Yes, sir.

13 THE COURT: Your number?

14 JUROR NUMBER 43: Forty-three (43).

15 THE COURT: Yes, ma'am?

16 JUROR NUMBER 175: Shirley

17 Hendricks, Number 175. I've had Darkness to
18 Light training working with school programs.

19 THE COURT: Thank you. Would that
20 affect you in any way?

21 JUROR NUMBER 175: Yes, sir.

22 THE COURT: It would?

23 JUROR NUMBER 175: It would.

24 THE COURT: Thank you, ma'am.

25 Your number again?

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1 JUROR NUMBER 175: One seventy-
2 five (175).

3 THE COURT: Juror Number 175 --
4 and that is number sixty (on our list) is
5 excused by the court. Thank you, ma'am.
6 Call the number after six tonight.

7 (JUROR NUMBER 175 EXCUSED)

8 THE COURT: Yes, sir?

9 JUROR NUMBER 144: Chris Gilbert,
10 Number 144. I've not gone through Darkness
11 to Light but similar programs with the Boy
12 Scouts of America.

13 THE COURT: Would that affect you
14 in any way, sir?

15 JUROR NUMBER 144: No, sir.

16 THE COURT: And will you be able
17 to apply your knowledge and experience gained
18 through that fairly and impartially in
19 analyzing the evidence?

20 JUROR NUMBER 144: Yes, sir.

21 THE COURT: Will you base your
22 decision on the evidence and the law and will
23 that decision be fair to both sides, sir?

24 JUROR NUMBER 144: (Affirmative
25 nod), it will.

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1 THE COURT: Again, your number?

2 JUROR NUMBER 144: One forty-four
3 (144).

4 THE COURT: Yes?

5 JUROR NUMBER 325: George
6 Rauton, 325. I'm associated with the
7 Charleston Exchange Club, Coastal Fair, which
8 is a major contributor to the Darkness to
9 Light. I've seen a lot of their films. It
10 would not affect me.

11 THE COURT: It would not affect
12 you?

13 JUROR NUMBER 325: No, sir.

14 THE COURT: Would you apply your
15 knowledge and experience fairly and
16 impartially, sir?

17 JUROR NUMBER 325: Yes.

18 THE COURT: Would you base your
19 decision on the evidence and the law and
20 would it be fair to both sides?

21 JUROR NUMBER 325: Yes, Your Honor.

22 THE COURT: Your number again?

23 JUROR NUMBER 325: Three twenty-
24 five (325).

25 THE COURT: Thank you so much.

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1 You may be seated. Yes, ma'am?

2 JUROR NUMBER 385: May I go back
3 one question?

4 THE COURT: Sure.

5 JUROR NUMBER 385: That question
6 was are you familiar with Louis ReVille?

7 THE COURT: Yes.

8 JUROR NUMBER 385: Is that what you
9 said?

10 THE COURT: Yes.

11 JUROR NUMBER 385: I am.

12 THE COURT: I am going to ask you
13 to come forward and I'll -- I'll come down
14 there. Attorneys may approach as well.

15 SIDEBAR:

16 THE COURT: Right here with
17 this lovely lady (court reporter).

18 COURT REPORTER: Please give
19 me your number.

20 JUROR NUMBER 385: Three
21 eighty-five (385).

22 THE COURT: Yes, ma'am, how
23 are you familiar with Mr. ReVille?

24 JUROR NUMBER 385: I think
25 that he was an employee of the First Baptist

1 church school where my daughter attended.

2 THE COURT: Okay.

3 JUROR NUMBER 385: Other than
4 that, I don't know who he is.

5 THE COURT: Would that affect
6 you ---

7 JUROR NUMBER 385: I don't
8 know.

9 THE COURT: I am going to
10 excuse you.

11 JUROR NUMBER 385: Okay.

12 THE COURT: Is that one of the
13 places that he worked?

14 GREGG MEYERS: Yes, Your
15 Honor, it's possible.

16 THE COURT: Do you think that
17 would affect you?

18 JUROR NUMBER 385: It could.
19 I don't know that it would, but I can
20 understand ---

21 THE COURT: Okay. Out of an
22 abundance of caution -- your number?

23 JUROR NUMBER 385: Three
24 eighty-five (385).

25 THE COURT: Thank you so much.

1 (SIDEBAR CONCLUDED)

2 THE COURT: Juror Number 385 will
3 be excused from participation in this excuse.

4 CLERK DON MICHELE: Number twelve
5 on the list.

6 THE COURT: Number twelve is
7 excused by the court.

8 (JUROR NUMBER 385 EXCUSED)

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 95: My name is Lile
11 Dixon, Number 95, and I am a Spanish
12 interpreter for Child Protective Services and
13 Adult Protective Services.

14 THE COURT: Would that affect you?

15 JUROR NUMBER 95: It involves the
16 Darkness to Light training, yes.

17 THE COURT: But in your dealing
18 with that in your dealings as an interpreter,
19 you obviously interpret in a number of
20 situations from time to time. Is that
21 correct?

22 JUROR NUMBER 95: Yes, sir.

23 THE COURT: Would you apply your
24 experiences fairly and impartially ---

25 JUROR NUMBER 95: Yes.

1 THE COURT: Will you base your
2 decision on the evidence and the law and will
3 that decision be fair to both sides?

4 JUROR NUMBER 95: Yes.

5 THE COURT: Number 95 will remain.
6 Thank you, ma'am. Any others? (No
7 response).

8 All right. How are we going to do
9 this one? If any member of the jury panel is
10 a parent, I need for you to stand and --
11 let's start with the first row and work our
12 way back. Just tell me your children and
13 their ages, and give me your name and number.
14 We'll start -- and those at the back, you can
15 just wait and we will do it a row at a time
16 and that way you won't have to stand so long.
17 First row first.

18 JUROR NUMBER 341: Tamera Roman,
19 Number 341. Three children: ages twenty-
20 five, twenty-six and twenty-seven.

21 THE COURT: Thank you.

22 JUROR NUMBER 237: Cynthia Sunde,
23 Juror Number 237. One child, nineteen.

24 JUROR NUMBER 344: Brenda Roscher,
25 Number 344. I have two daughters, thirty and

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1 thirty-four.

2 JUROR NUMBER 31: Joseph Boyd,
3 Juror Number 31. I have two daughters, one
4 forty-three and one thirty-three.

5 JUROR NUMBER 407: Juror 407. I
6 have two and four step-, so I have six, ages
7 twenty-one to thirty-two.

8 THE COURT: Second row?

9 JUROR NUMBER 252: My number is
10 252. I have two boys: twenty-one, twenty-
11 four.

12 JUROR NUMBER 364: My number is
13 364. I have one son who is thirty-one.

14 JUROR NUMBER 111: Juror Number
15 111. Three sons: thirty, thirty-five and
16 forty-five.

17 JUROR NUMBER 95: Juror Number 95.
18 I have two sons and a daughter: forty-one,
19 thirty-seven and twenty-six.

20 JUROR NUMBER 258: Juror Number
21 258. Three sons: twenty-seven, twenty-four
22 and seventeen.

23 JUROR NUMBER 425: Juror Number
24 425. I have three children and four
25 grandchildren: Sons, thirty-four and thirty.

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1 Daughter, twenty-eight. I have three
2 grandsons: five, three and one. One
3 granddaughter, who is one.

4 JUROR NUMBER 325: I have two
5 children, two grandchildren and two great-
6 grandchildren. The ages of my children are
7 fifty-one and fifty-eight.

8 COURT REPORTER: Your number, sir?

9 THE COURT: Your number?

10 JUROR NUMBER 325: Three twenty-
11 five (325).

12 JUROR NUMBER 45: Juror Number 45,
13 one daughter two years old.

14 THE COURT: Next row, please.

15 JUROR NUMBER 330: My son is
16 thirty.

17 COURT REPORTER: Her number?

18 THE COURT: Number, please?

19 JUROR NUMBER 330: Three thirty
20 (330).

21 JUROR NUMBER 376: Number 376, I
22 have a twenty-three year old son.

23 JUROR NUMBER 391: I am Juror 391.
24 I have twin girls who are thirty-six and a
25 son who is twenty-nine.

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1 JUROR NUMBER 192: I don't know my
2 juror number, but I'm Michael Hunt, H-u-n-t.
3 I have four children. I have a three-year-
4 old daughter, a five-year-old son, a twelve-
5 year-old daughter and a sixteen-year-old
6 stepdaughter.

7 JUROR NUMBER 43: Juror Number 43,
8 Marlo Burgess. I have a five-year-old son
9 and an eleven-year-old son.

10 JUROR NUMBER 199: Juror 199,
11 Harold Jarrett. Two children, a daughter
12 forty-nine and a son forty-seven; two grand-
13 daughters, one seventeen and one sixteen.

14 THE COURT: Next row.

15 JUROR NUMBER 144: Chris Gilbert,
16 Number 144. I have two sons, twenty-four and
17 seventeen, and a daughter who is nineteen.

18 JUROR NUMBER 16: Barry Baird,
19 Number 16. I have two sons; one eight, one
20 ten.

21 JUROR NUMBER 188: Scott Howell,
22 Juror Number 188. I have two daughters;
23 twenty-four and nineteen.

24 JUROR NUMBER 315: I am Cassandra
25 Poinsett. I am Juror 315. I have four

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1 children. I've got three girls. My oldest
2 daughter is thirty-four, I have one thirty-
3 two, my son today turned twenty-seven and my
4 youngest daughter is twenty-three.

5 JUROR NUMBER 100: My name is
6 Angelia Drayton and my number is 100. I have
7 four kids. I have two boys, one twenty-seven
8 and one thirty-four. I have two girls, one
9 twenty-one and one is twenty-nine.

10 JUROR NUMBER 17: Ellen Baldino,
11 Number 17. I have one son, age two.

12 JUROR NUMBER 91: Terri Delatour-
13 DuPavillion. I am Number 91. I have a
14 twenty-one year old daughter.

15 JUROR NUMBER 200: Mark Jeffcoat,
16 Juror Number 200. I have two children, a son
17 thirty-one, a daughter twenty-eight and a
18 two-year-old grandson.

19 THE COURT: Yes?

20 JUROR NUMBER 299: Katie O'Neill,
21 Juror 299. I have one daughter, she is
22 sixteen months old.

23 JUROR NUMBER 247: Denise
24 Maksimowitz, Number 247. I have two
25 children, a daughter who is forty-three,

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1 a son who is thirty-nine; and five
2 grandchildren: twenty-one, thirteen, nine,
3 seven, and -- (pause).

4 THE COURT: Thank you very much,
5 ladies and gentlemen. Congratulations to all
6 of you as well.

7 Are there any members of the jury
8 panel or any member of your family who have
9 participated in any activity, program or had
10 any involvement with the following agencies
11 or institutions:

12 Pinewood Preparatory School
13 Coastal Christian Preparatory
14 Eastbridge Presbyterian Church
15 Velocity Sports Performance
16 Bishop England High School
17 Rawlins Middle School for Arts
18 Moultrie Middle School and
19 Mt. Pleasant Recreational Department

20 JUROR NUMBER 70: John Constantine,
21 Number 70. I graduated Bishop England.

22 THE COURT: If you heard testimony
23 concerning that school, of anyone, would you
24 be able to -- would that unduly influence
25 you, sir?

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1 JUROR NUMBER 70: No, Your Honor.

2 THE COURT: Would you base your
3 decision on the evidence and the law and
4 would it be fair to both sides?

5 JUROR NUMBER 70: Yes, sir.

6 THE COURT: Will you base your
7 decision on the evidence and the law ---

8 JUROR NUMBER 70: Uh, -- yes, sir.

9 THE COURT: Sorry, I just asked
10 you that. Thank you. You will be fair to
11 both sides?

12 JUROR NUMBER 70: Yes, sir.

13 THE COURT: Your number again?

14 JUROR NUMBER 70: Seventy (70).

15 THE COURT: Yes, sir?

16 JUROR NUMBER 325: George Rauton,
17 325. My daughter was a teacher at Pinewood,
18 Pinewood Preparatory, a few years. She is
19 not now.

20 THE COURT: Would that affect or
21 influence you in this dispute?

22 JUROR NUMBER 325: No, Your Honor.

23 THE COURT: If there is testimony
24 concerning Pinewood, would that unduly
25 influence you at all?

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1 JUROR NUMBER 325: Yes, Your Honor.

2 THE COURT: It would unduly
3 influence you?

4 JUROR NUMBER 325: Oh -- no, sir.

5 THE COURT: You would be able to
6 consider that testimony the same as any
7 testimony?

8 JUROR NUMBER 325: Yes, sir.

9 THE COURT: And you'd base your
10 decision on the evidence and the law, and it
11 would be fair to both sides?

12 JUROR NUMBER 325: Yes, Your Honor.

13 THE COURT: Thank you, sir. You
14 may be seated. Yes, ma'am?

15 JUROR NUMBER 364: Number 364. My
16 son went to Moultrie Middle School and also
17 participated in a lot of the activities with
18 the Mt. Pleasant Recreational Department.

19 THE COURT: Would that influence
20 you in this case?

21 JUROR NUMBER 364: No, sir.

22 THE COURT: If you heard testimony
23 concerning someone's involvement with any of
24 those programs or that school, would that
25 affect you unduly?

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1 JUROR NUMBER 364: No, sir.

2 THE COURT: Would you base your
3 decision on the evidence and the law and will
4 it be fair to both sides?

5 JUROR NUMBER 364: Yes, sir.

6 THE COURT: Your number again?

7 JUROR NUMBER 364: Three-six-four
8 (364).

9 THE COURT: Thank you. Yes,
10 ma'am?

11 JUROR NUMBER 252: Number 252.
12 Both of my sons also graduated from Moultrie
13 and participated in recreational ---

14 THE COURT: Would that affect you
15 in any -- unduly?

16 JUROR NUMBER 252: No, sir.

17 THE COURT: Will you be able to
18 base your decision on the evidence and the
19 law ---

20 JUROR NUMBER 252: (Affirmative
21 nod).

22 THE COURT: --- and will it be
23 fair to both sides?

24 JUROR NUMBER 252: Yes, sir.

25 THE COURT: Yes, ma'am?

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1 JUROR NUMBER 413: Number 413. I
2 have two uncles that attended and graduated
3 from Bishop England.

4 THE COURT: Would that affect you
5 in any way?

6 JUROR NUMBER 413: No, sir.

7 THE COURT: Would any testimony
8 about Bishop England, you could consider that
9 the same as any other evidence?

10 JUROR NUMBER 413: Yes, sir.

11 THE COURT: And you would base
12 your decision on the evidence and the law and
13 it would be fair to both sides?

14 JUROR NUMBER 413: Yes, sir.

15 THE COURT: Yes, sir?

16 JUROR NUMBER 188: Scott Howell,
17 188. My twenty-four year old daughter
18 attended kindergarten at Pinewood.

19 THE COURT: Okay. Would that
20 affect you in any way, sir?

21 JUROR NUMBER 188: No, Your Honor.

22 THE COURT: And would you base
23 your decision on the evidence and the law and
24 would it be fair to both sides?

25 JUROR NUMBER 188: Yes, sir, Your

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1 Honor.

2 THE COURT: Your number again?

3 JUROR NUMBER 188: One eighty-
4 eight (188).

5 THE COURT: Thank you, sir. Yes?

6 JUROR NUMBER 293: I was a student
7 at Moultrie Middle School and was active in
8 sports with the MPRD.

9 THE COURT: Okay. Would that
10 affect you in any way, sir?

11 JUROR NUMBER 293: No, sir.

12 THE COURT: And if there was
13 testimony concerning that, would you be able
14 to consider that testimony the same as any
15 testimony?

16 JUROR NUMBER 293: Yes, sir.

17 THE COURT: Would you base your
18 decision on the evidence and the law and it
19 would be fair to both sides?

20 JUROR NUMBER 293: Yes, sir.

21 THE COURT: Your number again?

22 JUROR NUMBER 293: Two-nine-three
23 (293).

24 THE COURT: Thank you. Yes,
25 ma'am?

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1 JUROR NUMBER 280: I am Caroline
2 Mullis. I believe that my number is 280.
3 I also went to Moultrie Middle School and
4 played recreational sports with Mt. Pleasant.

5 THE COURT: Would that affect you
6 in any way?

7 JUROR NUMBER 280: No, sir.

8 THE COURT: Would you base your
9 decision on the applicable law and be fair to
10 both sides?

11 JUROR NUMBER 280: Yes, sir.

12 THE COURT: Thank you. Yes,
13 ma'am?

14 JUROR NUMBER 84: Lawanda Davis,
15 Number 84. I graduated from Bishop England
16 High School.

17 THE COURT: Would that influence
18 or affect you in this case?

19 JUROR NUMBER 84: No, sir.

20 THE COURT: And if you heard
21 testimony concerning something involving that
22 school, would you be able to evaluate that
23 testimony fairly and impartially?

24 JUROR NUMBER 84: Yes, sir.

25 THE COURT: Thank you. Yes,

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1 ma'am?

2 JUROR NUMBER 247: Denise

3 Maksimowitz, and I believe that my two
4 grandsons played soccer with Mt. Pleasant
5 Recreational.

6 THE COURT: Would that affect or
7 influence you in any way?

8 JUROR NUMBER 247: No.

9 THE COURT: Would you base your
10 decision on the evidence and the law and
11 would it be fair to both sides?

12 JUROR NUMBER 247: Yes.

13 THE COURT: Are there others? (No
14 response). Thank you. There appear to be
15 none.

16 Has any member of the jury panel
17 even been employed as a counselor at an
18 overnight summer camp? If so, please stand.
19 Yes?

20 JUROR NUMBER 43: I was -- Juror
21 Number 43, Marlo Burgess. In college I
22 worked at Camp St. Christopher.

23 THE COURT: All right. Would you
24 be able to apply that experience fairly and
25 impartially if you heard testimony concerning

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1 overnight camps? .

2 JUROR NUMBER 43: Yes, sir.

3 THE COURT: Would you base your
4 decision on the evidence and the law and
5 would it be fair to both sides?

6 JUROR NUMBER 43: Yes.

7 THE COURT: Your number again?

8 JUROR NUMBER 43: Forty-three (43).

9 THE COURT: Thank you. Yes, sir?

10 JUROR NUMBER 112: Juror 112. A
11 volunteer counselor for Special Olympics
12 (phonetic).

13 THE COURT: Would that affect or
14 influence your decision?

15 JUROR NUMBER 112: No, sir.

16 THE COURT: Would you be able to
17 apply your experiences in that capacity
18 fairly and impartially in analyzing the
19 evidence?

20 JUROR NUMBER 112: Yes, sir.

21 THE COURT: Would you base your
22 decision on the evidence and the law and
23 would it be fair to both sides?

24 JUROR NUMBER 112: Yes, sir.

25 THE COURT: Thank you. Yes, sir?

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1 JUROR NUMBER 144: Chris Gilbert,
2 Juror 144. In my much younger days, Your
3 Honor, I served as a camp counselor for two
4 different camps in St. Louis-- or outside St.
5 Louis, Missouri.

6 THE COURT: Would you be able to
7 apply that experience gleaned in that
8 capacity fairly and impartially?

9 JUROR NUMBER 144: Yes, sir.

10 THE COURT: Would you base your
11 decision on the evidence and the law and
12 would it be fair to both sides?

13 JUROR NUMBER 144: Yes, sir.

14 THE COURT: Thank you so much.
15 You may be seated. Are there others? (No
16 response). There appear to be none.

17 Is there any member of the jury
18 panel who have read articles, watched TV
19 programs, had any discussion or any knowledge
20 about the arrest, investigation or conviction
21 of Louis "Skip" ReVille? If so, please stand
22 -- (number of jurors respond by standing).

23 All right, we will bring you forward
24 one at a time and let you discuss it with us.
25 Attorneys may approach.

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1 BAILIFF: Juror Number 14.

2 SIDEBAR:

3 THE COURT: Yes, sir?

4 JUROR NUMBER 14: I ---

5 COURT REPORTER: May I have
6 your number for the record?

7 JUROR NUMBER 14: My name is
8 Jane Babb and I am Juror Number 14.

9 COURT REPORTER: Thank you.

10 THE COURT: If you could just
11 slide over here and face this way.

12 JUROR NUMBER 14: Okay. All I
13 know is what I saw in news articles and I
14 recognized the name. That's all.

15 THE COURT: Would that affect
16 you?

17 JUROR NUMBER 14: No.

18 THE COURT: You would be able
19 to consider only the testimony and to apply
20 it fairly and impartially to the facts that
21 you hear?

22 JUROR NUMBER 14: Yes.

23 THE COURT: Any other
24 questions? (No verbal response from
25 counsel).

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1 (SIDEBAR ENDED)

2 THE COURT: Juror Number 14 will
3 remain.

4 SIDEBAR:

5 THE COURT: Y'all can ask any
6 other questions that you need to when we get
7 them on individual voir dire. Your name and
8 number, please?

9 JUROR NUMBER 382: Martha
10 Rachel Sneed, Number 382.

11 THE COURT: What do you know?

12 JUROR NUMBER 382: I just
13 remember seeing it all over the news.

14 THE COURT: Would that affect
15 you in this case?

16 JUROR NUMBER 382: No, sir.

17 THE COURT: Would you be
18 unduly influenced by anything you saw on the
19 news?

20 JUROR NUMBER 382: No, sir.

21 THE COURT: Would you base
22 your decision on the evidence and the law and
23 would it be fair to both sides?

24 JUROR NUMBER 382: Yes, sir.

25 (SIDEBAR CONCLUDED)

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1 THE COURT: Thank you.

2 GREGG MEYERS: What was that
3 juror's name?

4 THE COURT: Number 382.

5 COURT REPORTER: Martha Rachel
6 Sneed.

7 THE COURT: Okay. Juror Number
8 382 will remain.

9 SIDEBAR:

10 THE COURT: Your name and
11 number, please?

12 JUROR NUMBER 292: Janet
13 Newham, Number 292.

14 THE COURT: All right. What
15 do you know?

16 JUROR NUMBER 292: Nothing
17 specific, general news items in the paper.

18 THE COURT: Would that affect
19 you in this case?

20 JUROR NUMBER 292: No, sir.

21 THE COURT: Would you make
22 your decision based on the evidence and the
23 law, ---

24 JUROR NUMBER 292: (Affirmative
25 nod).

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1 THE COURT: --- and it would
2 be fair to both sides?

3 JUROR NUMBER 292: Yes, sir.

4 THE COURT: Thank you.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Number 292 will
7 remain.

8 SIDEBAR:

9 THE COURT: Yes, sir, your
10 name and number?

11 JUROR NUMBER 31: Joe Boyd,
12 Number 31.

13 THE COURT: Okay. What do you
14 know about Mr. ReVille?

15 JUROR NUMBER 31: Not much. I
16 heard some news reports when he was arrested.

17 THE COURT: If you heard some
18 testimony about allegations of sexual abuse,
19 would that unduly influence you?

20 JUROR NUMBER 31: No, sir.

21 THE COURT: You would base
22 your decision on the evidence and the law
23 considering both sides?

24 JUROR NUMBER 31: Oh, yes.

25 THE COURT: And your decision

1 would be fair and impartial to both sides?

2 JUROR NUMBER 31: It would.

3 THE COURT: Thank you, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 31 will

6 remain.

7 SIDEBAR:

8 THE COURT: Your name and
9 number?

10 Juror number 112: Bret Epps,
11 Number 112.

12 THE COURT: What information
13 do you have?

14 JUROR NUMBER 112: Just heard
15 the news reports. I don't know the results.

16 THE COURT: Do you remember
17 anything specifically about the allegations?

18 JUROR NUMBER 112: Yes, that
19 there was sexual molestations that went on at
20 The Citadel that were not taken care of or
21 were inappropriately handled and that some-
22 body was responsible for it.

23 THE COURT: Would that
24 influence you in this case?

25 JUROR NUMBER 112: I don't

1 think so.

2 THE COURT: Out of an
3 abundance of caution, because you used the
4 term "inappropriately handled", I am going
5 to excuse you from participation in this
6 dispute.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 112 will be
9 excused from participation. Call the number
10 after six tonight, sir. Thank you.

11 (JUROR NUMBER 112 EXCUSED)

12 THE COURT: Okay.

13 SIDEBAR:

14 THE COURT: Your name and
15 number?

16 JUROR NUMBER 344: Number 344,
17 Brenda Roscher.

18 THE COURT: What do you know?

19 JUROR NUMBER 344: Honestly,
20 I've heard enough that I don't know that I
21 can be impartial.

22 THE COURT: I appreciate that.
23 That's exactly why we ask these questions. I
24 admire you for being forthright. That's why
25 I admire this system so much and you're a

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1 classic example of it. Thank you for that.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 344 is excused.

4 Call the number after six tonight.

5 (JUROR NUMBER 344 EXCUSED)

6 THE COURT: Thank you.

7 SIDEBAR:

8 THE COURT: Your name and
9 number, sir?

10 JUROR NUMBER 425: Wayne Wells,
11 425.

12 THE COURT: Yes, sir, Mr.
13 Wells. What do you know?

14 JUROR NUMBER 425: I don't
15 remember a lot. I know I heard some news
16 reports and read some articles.

17 THE COURT: Would it affect or
18 influence you in this case?

19 JUROR NUMBER 425: No.

20 THE COURT: Would you be able
21 to set aside what you've heard and make your
22 decision based on the evidence presented in
23 this trial, ---

24 JUROR NUMBER 425: Yes, sir.

25 THE COURT: --- and not be

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1 influenced by what you may have heard before?

2 JUROR NUMBER 425: Yes, sir.

3 THE COURT: You can make that
4 commitment?

5 JUROR NUMBER 425: Yes, sir.

6 THE COURT: So your decision
7 would be based on the evidence and the law
8 and would be fair to both sides?

9 JUROR NUMBER 425: Yes, sir.

10 THE COURT: Thank you very
11 much.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 425 will
14 remain.

15 RANDALL STONEY: What was his name?

16 COURT REPORTER: Mr. Wayne Wells,
17 425.

18 SIDEBAR:

19 THE COURT: Yes, ma'am, your
20 name?

21 JUROR NUMBER 267: Suzanne
22 Mesznereltrich.

23 THE COURT: What is your
24 number?

25 JUROR NUMBER 267: Number 267.

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1 THE COURT: How do you know
2 Mr. ReVille?

3 JUROR NUMBER 267: I don't.
4 I just recall the name from news reports.

5 THE COURT: Would that affect
6 you in any way?

7 JUROR NUMBER 267: This isn't
8 that trial, is it? This is not a criminal
9 case, you said?

10 THE COURT: No, but the fact
11 that he was convicted, would you be able to
12 evaluate the evidence fairly and impartially
13 in this case and base your decision on what
14 you hear in this case?

15 JUROR NUMBER 267: I would.

16 THE COURT: So you would not
17 be influenced by what you heard in that case?

18 JUROR NUMBER 267: No.

19 THE COURT: And you would base
20 your decision on the evidence and the law and
21 that decision would be fair to both sides?

22 JUROR NUMBER 267: Yes, sir.

23 THE COURT: You can make that
24 commitment to both sides, that what you may
25 have heard would not unduly influence you in

1 this case?

2 JUROR NUMBER 267: I can.

3 (SIDEBAR CONCLUDED)

4 THE COURT: Juror Number 267 will
5 remain. Thank you.

6 SIDEBAR:

7 THE COURT: Let's trade
8 places.

9 JUROR NUMBER 159: Okay.

10 THE COURT: Your name and
11 number, sir?

12 JUROR NUMBER 159: Fred Guthier.

13 THE COURT: What knowledge or
14 information do you have?

15 JUROR NUMBER 159: I remember
16 reading an article or articles in the Post &
17 Courier of allegations of sexual harassment.

18 THE COURT: Would that affect
19 or influence you in any way in this case?

20 JUROR NUMBER 159: No.

21 THE COURT: Would you be able
22 to set that aside and not use -- not be
23 influenced by anything that you heard or read
24 in that case but make a decision on the
25 evidence and the law that you hear in this

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1 case?

2 JUROR NUMBER 159: (Affirmative
3 nod), I can make my decision based on the
4 evidence and the law.

5 THE COURT: In this case?

6 JUROR NUMBER 159: Yes, sir.

7 THE COURT: And you can make
8 that commitment to both sides?

9 JUROR NUMBER 159: Yes.

10 THE COURT: Number 159?

11 JUROR NUMBER 159: That's
12 right.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 159 will
15 remain.

16 SIDEBAR:

17 THE COURT: Come on up. Thank
18 you. Your name, please?

19 JUROR NUMBER 111: I'm Leah
20 Edwards.

21 THE COURT: Okay, Ms. Edwards,
22 what do you know?

23 JUROR NUMBER 111: I read
24 about it in the paper and saw some reports on
25 the news, television.

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1 THE COURT: Would that affect
2 or influence you?

3 JUROR NUMBER 111: Probably
4 not.

5 THE COURT: Do you recall
6 anything specific?

7 JUROR NUMBER 111: Yes, sir,
8 the name, Skip ReVille, and something to do
9 with The Citadel, some improprieties with
10 students -- or campers or something to do
11 with The Citadel that was not quite --
12 proper. I just recall following it.

13 THE COURT: You followed it,
14 why?

15 JUROR NUMBER 111: It was
16 just there on the news. I saw it however
17 many times it was on there.

18 THE COURT: Do you believe
19 that would influence you in this case?

20 JUROR NUMBER 111: Hummm --
21 (pause).

22 THE COURT: I've learned over
23 the years that when someone says "hummm", that
24 tells me something. I appreciate that.
25 Thank you. That's fine, I appreciate your

1 candor.

2 (SIDEBAR CONCLUDED)

3 THE COURT: Number 111 will be
4 excused from participation in this case.
5 Please call the number after six tonight.

6 (JUROR NUMBER 111 EXCUSED)

7 THE COURT: Okay.

8 SIDEBAR:

9 THE COURT: Your name and
10 number?

11 JUROR NUMBER 247: Denise
12 Maksimowitz, I'm Juror Number 247.

13 THE COURT: Yes, ma'am, what
14 do you remember?

15 JUROR NUMBER 247: I remember
16 when it was on the news that he was arrested,
17 kinda what went on then. I believe that he
18 was found guilty or that he cooperated and
19 that was on the news also, that he gave
20 evidence against himself, and I believe that
21 he was given a sentence.

22 THE COURT: Okay. Would any
23 of that influence you in this dispute?

24 JUROR NUMBER 247: I don't
25 believe so, no.

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1 THE COURT: I appreciate that
2 but can you make a commitment to both sides
3 that you will not be influenced by any
4 decision of his guilt or sentence?

5 JUROR NUMBER 247: Yes.

6 THE COURT: And you could
7 consider the testimony in this case fairly
8 and impartially and evaluate it fairly and
9 impartially?

10 Juror number 247: Yes.

11 THE COURT: Thank you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 247 will
14 remain. Thank you. Y'all can ask follow-up
15 questions during voir dire.

16 SIDEBAR:

17 THE COURT: Your name and
18 number?

19 JUROR NUMBER 95: Number 95.

20 THE COURT: Yes, ma'am, what
21 do you remember?

22 JUROR NUMBER 95: I remember
23 that he was charged with molestation of some
24 children at The Citadel, a number of --
25 sorry, I've got a frog in my throat.

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1 THE COURT: That's okay.

2 JUROR NUMBER 95: I think it
3 was at the school where he was teaching in
4 Summerville also, or something related to
5 that. That's all that I can remember.

6 THE COURT: Would that affect
7 you?

8 JUROR NUMBER 95: No.

9 THE COURT: You would be able
10 to set that aside and be able to make a
11 decision based on what you hear in this case?

12 JUROR NUMBER 95: Yes, sir.

13 THE COURT: And not be
14 influenced by what you've heard or read about
15 Mr. ReVille's involvement on any criminal
16 side?

17 JUROR NUMBER 95: Correct.

18 THE COURT: You would not be
19 influenced by that?

20 JUROR NUMBER 95: No.

21 THE COURT: And your decision
22 would be fair to both sides?

23 JUROR NUMBER 95: Yes.

24 THE COURT: Thank you.

25 (SIDEBAR CONCLUDED)

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1 THE COURT: Number 95 will remain.

2 SIDEBAR:

3 THE COURT: How are you, sir?

4 JUROR NUMBER 192: I'm well.

5 Yourself?

6 THE COURT: Your name and
7 number, please.

8 JUROR NUMBER 192: Michael Hunt
9 is my name. I don't know my juror number.
10 Sorry.

11 THE COURT: That's all right.
12 We will help you.

13 COURT REPORTER: Number 192.

14 THE COURT: You are Number
15 192.

16 THE COURT: Okay. Tell me
17 what you know.

18 JUROR NUMBER 192: I don't
19 recall specifics. I recall that a couple of
20 years it was on TV about this man. I don't
21 watch a whole lot of news, but I came up just
22 to say that I've heard the name; but I don't
23 recall specifics.

24 THE COURT: Sure. So you
25 don't remember any specifics?

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1 JUROR NUMBER 192: I'm sorry,
2 I do not. No, sir.

3 THE COURT: So would you be
4 influenced by what you've heard?

5 JUROR NUMBER 192: I don't even
6 remember what I've heard, to be fair.

7 THE COURT: Very well. So you
8 can make the commitment that that would not
9 influence you?

10 JUROR NUMBER 192: Yes, sir.

11 THE COURT: Would you base
12 your decision on the evidence and the law?

13 JUROR NUMBER 192: Absolutely.

14 THE COURT: And it would be
15 fair to both sides?

16 JUROR NUMBER 192: Absolutely.

17 THE COURT: Thank you, sir.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Number 192 will
20 remain. Thank you.

21 SIDEBAR:

22 JUROR NUMBER 199: Juror 199,
23 Harold Jarrett.

24 THE COURT: Thank you, Mr.
25 Jarrett. What do you know about this?

1 JUROR NUMBER 199: I don't
2 remember a whole lot. I am casually aware of
3 it through the television news, and that's
4 about all. But I -- I've heard about it, but
5 that's all.

6 THE COURT: Sure. Would that
7 affect you in any way?

8 JUROR NUMBER 199: No, sir.

9 THE COURT: Would you be able
10 to make a decision based on the evidence in
11 this case and not be influenced by what
12 you've heard?

13 JUROR NUMBER 199: Yes, sir.

14 THE COURT: You can make that
15 commitment to both sides?

16 JUROR NUMBER 199: Yes, sir.

17 THE COURT: Thank you, sir.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Number 199 will
20 remain. Thank you, sir.

21 SIDEBAR:

22 THE COURT: Hi.

23 JUROR NUMBER 43: Hey. Number
24 43, Marlo Burgess.

25 THE COURT: Thank you, Ms.

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1 Burgess. What do you know?

2 JUROR NUMBER 43: Just heard it
3 on the news.

4 THE COURT: Do you remember
5 particulars?

6 JUROR NUMBER 43: No.

7 THE COURT: Would that affect
8 you in ---

9 JUROR NUMBER 43: No.

10 THE COURT: Will you be able
11 to make a commitment that it will not
12 influence you in evaluating the evidence in
13 this case?

14 JUROR NUMBER 43: Yes, sir.

15 THE COURT: Would you base
16 your decision on the evidence and the law in
17 this case?

18 JUROR NUMBER 43: Yes.

19 THE COURT: And your decision
20 would be fair to both sides?

21 JUROR NUMBER 43: Yes.

22 THE COURT: Thank you so much.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Juror Number 43 will
25 remain.

1 SIDEBAR:

2 JUROR NUMBER 144: Last, but not
3 least.

4 THE COURT: Oh, for sure.
5 Your number?

6 JUROR NUMBER 144: Chris
7 Gilbert, Number 144.

8 THE COURT: Yes, sir. What do
9 you recall?

10 JUROR NUMBER 144: Whatever I
11 read was a few years back and I recall the
12 name in a very general sense.

13 THE COURT: Would that affect
14 you in deciding this case?

15 JUROR NUMBER 144: No, sir.

16 THE COURT: You can set that
17 aside and decide this case based on the
18 evidence in this case?

19 JUROR NUMBER 144: Absolutely.

20 THE COURT: You can evaluate
21 the evidence in this case and not be
22 influenced by what you may have seen or read
23 in the news?

24 JUROR NUMBER 144: Yes, sir.

25 THE COURT: Would you base

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1 your decision on the evidence and the law and
2 would it be fair to both sides?

3 JUROR NUMBER 144: I can,
4 (affirmative nod).

5 THE COURT: Your number again?

6 JUROR NUMBER 144: Number 144.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 144 will
9 remain. Thank you. Are there any others?
10 (No response). Thank you. There is no
11 response.

12 Are there any members of the jury
13 panel that ---

14 BAILIFF: Your Honor, we have
15 one juror who stepped to the restroom.

16 THE COURT: Okay, sure. Let's
17 wait for just a second. Is there anybody
18 else that needs to take a break? If you do,
19 feel free to do so. We are getting close to
20 finishing the qualification. I am cognizant
21 of the hour. You didn't know that you'd be
22 starting a diet today. I promise we won't be
23 much longer.

24 (JURORS RETURN TO COURTROOM)

25 THE COURT: Okay, do we have them

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1 all?

2 BAILIFF: Yes, sir.

3 THE COURT: The next question,
4 ladies and gentlemen, is has any member of
5 the jury panel ever brought a suit, made a
6 claim or had one made against them. It
7 doesn't have to have been tried in this
8 court; it could have been tried in any court.
9 If you have ever done that, please stand.
10 Yes, sir?

11 JUROR NUMBER 32: Tim Brunner. My
12 number is fifty-two (sic).

13 THE COURT: What was it?

14 JUROR NUMBER 32: I was a party in a
15 civil lawsuit.

16 THE COURT: Against?

17 JUROR NUMBER 32: (No verbal
18 response).

19 THE COURT: What was the nature of
20 the suit?

21 JUROR NUMBER 32: Can I speak to you
22 in private?

23 THE COURT: Was it an automobile
24 accident?

25 JUROR NUMBER 32: No, sir.

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1 THE COURT: Yes, please come
2 forward. I tell you what. If you will hold
3 on just a second, we will come back to you.

4 JUROR NUMBER 32: Okay.

5 THE COURT: Yes, sir?

6 JUROR NUMBER 325: George Rauton,
7 325. I had brought suit against an insurance
8 company when I was in business and we had a
9 fire.

10 THE COURT: Has that matter been
11 resolved?

12 JUROR NUMBER 325: Yes, sir.

13 THE COURT: You brought the claim?

14 JUROR NUMBER 325: Yes, sir.

15 THE COURT: Would that affect or
16 influence you in this dispute?

17 JUROR NUMBER 325: No, sir.

18 THE COURT: Thank you, sir. You
19 may be seated. Yes, ma'am?

20 JUROR NUMBER 366: I had a claim
21 against auto insurance.

22 THE COURT: Has that been
23 resolved, ma'am?

24 JUROR NUMBER 366: Yes, it's been
25 resolved.

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1 THE COURT: And you brought the
2 claim?

3 JUROR NUMBER 366: (Affirmative nod).

4 THE COURT: Would that affect you
5 in this dispute?

6 JUROR NUMBER 366: No.

7 THE COURT: Your number, please?

8 JUROR NUMBER 366: Three sixty-six
9 (366).

10 THE COURT: Your name?

11 JUROR NUMBER 366: Annabell
12 Simmons.

13 THE COURT: Ms. Simmons, thank
14 you. Yes, ma'am?

15 JUROR NUMBER 267: We had a
16 workman's claim related to construction.

17 THE COURT: Construction?

18 JUROR NUMBER 267: Yes.

19 THE COURT: Has it been resolved?

20 JUROR NUMBER 267: Yes, sir.

21 THE COURT: You brought the claim?

22 JUROR NUMBER 267: No, my husband
23 did.

24 THE COURT: Would that affect or
25 influence you in any way?

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1 JUROR NUMBER 267: Not at all.

2 COURT REPORTER: Her number again,

3 Judge?

4 THE COURT: Your number?

5 JUROR NUMBER 267: Two sixty-seven

6 (267).

7 COURT REPORTER: Thank you.

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER 315: It's in

10 reference to an auto claim that I haven't --

11 it's an automobile claim but it hasn't been

12 ---

13 THE COURT: It is still pending?

14 JUROR NUMBER 315: Yes.

15 THE COURT: Would that affect you

16 in any way?

17 JUROR NUMBER 315: No.

18 THE COURT: Yes, sir?

19 JUROR NUMBER 192: I guess that I

20 was a defendant in a federal case, a national

21 business complex litigation. It wouldn't

22 affect me.

23 THE COURT: Has it been resolved?

24 JUROR NUMBER 192: Oh, yeah.

25 THE COURT: And it would not

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1 influence you?

2 JUROR NUMBER 192: No, sir.

3 THE COURT: Thank you, Mr. Hunt.

4 Yes.

5 JUROR NUMBER 95: I had a case for

6 -- it was, I guess, a products claim.

7 THE COURT: Has it been resolved?

8 JUROR NUMBER 95: Yes.

9 THE COURT: Would that affect or
10 influence you?

11 JUROR NUMBER 95: No, no.

12 THE COURT: All right, thank you.

13 All right, now you may come forward, ---

14 COURT REPORTER: Her number, Judge?

15 THE COURT: Your number?

16 CLERK DON MICHELE: The last one
17 was Juror Number 95.

18 COURT REPORTER: Thank you.

19 THE COURT: Juror 32 may come
20 forward, the attorneys may approach.

21 SIDEBAR:

22 THE COURT: Your name and
23 number, please?

24 JUROR NUMBER 32: Tim
25 Brummer, Number 32.

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1 THE COURT: All right. What
2 is your situation?

3 JUROR NUMBER 32: I was a
4 police officer and there were two civil suits
5 filed against me.

6 THE COURT: What were the
7 allegation?

8 JUROR NUMBER 32: I -- for use
9 of excessive force.

10 THE COURT: Assault type?

11 JUROR NUMBER 32: Yes, sir.

12 THE COURT: Has that been
13 resolved?

14 JUROR NUMBER 32: Yes, sir.

15 THE COURT: Would that affect
16 or influence you?

17 JUROR NUMBER 32: No, sir.

18 THE COURT: And in this
19 dispute there may be some -- not specifically
20 but there could be some carryover such as
21 assault(s) at some point, or that type of
22 thing. Would that unduly influence you?

23 JUROR NUMBER 32: No, sir.

24 THE COURT: Would you base
25 your decision on the evidence and the law and

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1 would it be fair to both sides?

2 JUROR NUMBER 32: Yes, sir.

3 THE COURT: You would be able
4 to apply your experiences fairly and
5 impartially?

6 JUROR NUMBER 32: Yes, sir.

7 THE COURT: Thank you very
8 much.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 32 will remain.
11 Thank you, sir. All right. Are there any
12 others? (No verbal response). Thank you,
13 there appear to be done.

14 Are there any members of the jury
15 panel that any specialized specific training
16 in investigative techniques, or that is part
17 of your job, have been trained to conduct
18 investigations? If so, please stand.

19 JUROR NUMBER 32: Juror Number 32,
20 the same reason.

21 THE COURT: You were a police
22 officer?

23 JUROR NUMBER 32: Yes.

24 THE COURT: And would you apply
25 your experience and knowledge in investiga-

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1 tions fairly and impartially?

2 JUROR NUMBER 32: Yes, sir.

3 THE COURT: Would you base your
4 decision on the evidence and the law and
5 would it be fair to both sides?

6 JUROR NUMBER 32: Yes, sir.

7 THE COURT: Your number again, for
8 the record?

9 JUROR NUMBER 32: Thirty-two (32).

10 THE COURT: Are there any others?
11 (No response). Thank you. There appear to
12 be none.

13 Are there any members of the jury
14 panel who have any specialized training in
15 legal -- and I know you've had some, so you
16 don't have to respond to that one again.

17 JUROR NUMBER 32: (Affirmative nod).

18 THE COURT: Yes, ma'am?

19 JUROR NUMBER 267: I am retired
20 general counsel.

21 THE COURT: Would you apply your
22 knowledge of the law fairly and impartially?

23 JUROR NUMBER 267: Yes, sir.

24 THE COURT: Would you accept the
25 law as I give it to you and set aside your

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1 belief of what the law is or should be?

2 JUROR NUMBER 267: Yes, sir.

3 THE COURT: Will you base your
4 decision on the evidence and the law and will
5 it be fair to both sides?

6 JUROR NUMBER 267: Yes, it will.

7 THE COURT: Your number again?

8 JUROR NUMBER 267: I'm 267.

9 THE COURT: Thank you. Yes?

10 JUROR NUMBER 299: Juror 299, Katie
11 O'Neill. I'm an attorney.

12 THE COURT: Would you apply your
13 knowledge of the law fairly and impartially?

14 JUROR NUMBER 299: Yes, Your Honor.

15 THE COURT: Will you accept the
16 law as I give it to you and set aside your
17 belief as to what the law is or should be?

18 JUROR NUMBER 299: Yes, sir, Your
19 Honor.

20 THE COURT: And will you be fair
21 and impartial in deciding the case for both
22 sides?

23 JUROR NUMBER 299: Yes, Your Honor.

24 THE COURT: Any others? (No
25 response). Thank you. There appear to be

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1 none.

2 Has any member of the jury panel
3 ever worked for a company or an agency where
4 your responsibility was to draft or be
5 involved in developing written policies and
6 procedures for that company? If so, please
7 stand. Yes?

8 JUROR NUMBER 341: Tamaera Roman,
9 Number 341. I worked with welfare and the
10 child support enforcement department, and
11 also -- initiated, developed standard
12 operating procedures, standards, policies,
13 quality, like that.

14 THE COURT: Okay. Would you apply
15 your knowledge fairly and impartially in
16 analyzing the evidence in this case?

17 JUROR NUMBER 341: Yes.

18 THE COURT: And if there was
19 testimony concerning policy procedures, would
20 you be unduly influenced by your experiences;
21 or, can you fairly and impartially apply
22 those experiences?

23 JUROR NUMBER 341: (Affirmative
24 nod), -- yes.

25 THE COURT: You could fairly and

1 impartially?

2 JUROR NUMBER 341: Yes.

3 THE COURT: Thank you, you may be
4 seated. Yes?

5 JUROR NUMBER 292: Janice
6 Newham, Juror Number 292. When I senior vice
7 president with the Charleston Metro Chamber
8 of Commerce, that was part of my role.

9 THE COURT: Similarly, would that
10 influence or affect you in this dispute?

11 JUROR NUMBER 292: No, sir.

12 THE COURT: You could fairly and
13 impartially apply that knowledge?

14 JUROR NUMBER 292: Yes.

15 THE COURT: Thank you.

16 JUROR NUMBER 31: Joe Boyd, Juror
17 Number 31. I was a safety director
18 overseeing standard operating procedures for
19 our safety of the whole corporation.

20 THE COURT: Would that affect you
21 in this dispute?

22 JUROR NUMBER 31: No.

23 THE COURT: Would you be able to
24 apply that knowledge fairly and impartially
25 in analyzing ---

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1 JUROR NUMBER 31: Yes, sir.

2 THE COURT: Thank you. Yes,

3 ma'am?

4 JUROR NUMBER 252: Number 252. I
5 was a hospital administrator for MUSC.

6 THE COURT: And you developed
7 policy in connection with that?

8 JUROR NUMBER 252: (Affirmative nod).

9 THE COURT: Would that affect you
10 in any way?

11 JUROR NUMBER 252: No, sir.

12 THE COURT: And would you be able
13 to apply your experiences fairly and
14 impartially?

15 JUROR NUMBER 252: Yes.

16 THE COURT: Thank you, you may
17 have a seat. Yes?

18 JUROR NUMBER 228: Chad Lavenhousez,
19 228. I am the chief pharmacist, so I do make
20 service line policies for the pharmacy.

21 THE COURT: Would that affect you
22 in this case?

23 JUROR NUMBER 228: No, sir.

24 THE COURT: Would you apply your
25 experiences fairly and impartially?

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1 JUROR NUMBER 228: Yes.

2 THE COURT: Thank you, you may be
3 seated. Yes, sir?

4 JUROR NUMBER 188: Scott Howell,
5 188. In my current capacity, I draft policy.

6 THE COURT: Would that affect you
7 in this case?

8 JUROR NUMBER 188: No.

9 THE COURT: You would be able to
10 apply that experience fairly and impartially?

11 JUROR NUMBER 188: Absolutely.

12 THE COURT: Thank you, sir. You
13 may take your seat. Yes, sir?

14 JUROR NUMBER 16: Barry Baird,
15 Juror Number 16. I am a division director of
16 pharmacy for ACA, and I develop policy around
17 medications.

18 THE COURT: Would that affect you
19 in this case?

20 JUROR NUMBER 16: No, sir.

21 THE COURT: Would you be able to
22 apply your experience and knowledge fairly
23 and impartially?

24 JUROR NUMBER 16: Yes, sir.

25 THE COURT: Thank you, sir, you

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1 may be seated. Yes, ma'am?

2 JUROR NUMBER 267: I was general
3 counsel for a public company and I developed
4 policy and drafted documents.

5 THE COURT: Would that affect you
6 in this dispute?

7 JUROR NUMBER 267: No, sir.

8 THE COURT: Can you apply that
9 experience fairly and impartially?

10 JUROR NUMBER 167: Yes, sir.

11 THE COURT: Thank you, ma'am.
12 Yes, ma'am?

13 JUROR NUMBER 364: I was a nurse
14 manager at MUSC and in that role developed
15 policy.

16 THE COURT: Would that affect you
17 in this dispute?

18 JUROR NUMBER 364: No, sir.

19 THE COURT: Would you be able to
20 apply your experience fairly and impartially?

21 JUROR NUMBER 364: Yes, sir.

22 THE COURT: Thank you very much.
23 You may be seated. Are there others? (No
24 response) Thank you. There appear to be
25 none.

1 Based on what you have heard thus
2 far about this dispute, is there anything
3 about your life's experiences, something that
4 may have happened to you, a family member, a
5 close personal friend, some philosophy that
6 you may have, some strong feelings that you
7 may have that would affect or influence your
8 ability to fairly and impartially analyze the
9 evidence in this case? (No response).

10 That is to evaluate the evidence at
11 the appropriate time and decide what you
12 believe to be the facts? (No response).

13 Is there anything in your past that
14 would affect you or influence your ability to
15 do that? If so, please stand.

16 Yes, ma'am, come on forward.
17 Attorneys may approach.

18 SIDEBAR:

19 JUROR NUMBER 407: I was
20 wondering when you were going to get to that
21 question.

22 THE COURT: It's a process.

23 JUROR NUMBER 407: I am Mary
24 Toomiremayo, Juror 407. I am currently being
25 treated for breast cancer, so I'm on a lot of

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1 prescriptions, pain medications, and my mind
2 is not as clear as I'd like for it to be for
3 this. I don't think I could concentrate on
4 the testimony.

5 THE COURT: Sure. Your
6 number, again?

7 JUROR NUMBER 407: Number 407.

8 THE COURT: Thank you.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 407 will be
11 excused from participation in this dispute.

12 (JUROR NUMBER 407 EXCUSED)

13 THE COURT: Have a great day.
14 Call the number after six tonight. Okay, we
15 have another one. You may come forward.

16 SIDEBAR:

17 THE COURT: Yes? Your
18 number?

19 JUROR NUMBER 341: I'm 341.

20 THE COURT: Yes, ma'am?

21 JUROR NUMBER 341: Your Honor,
22 I was raped and there is no way I can be
23 impartial.

24 THE COURT: I understand.
25 There is no way that we would want to put you

1 through that. What is your jury number?

2 JUROR NUMBER 341: Three
3 forty-one (341).

4 THE COURT: That's why I asked
5 it that way in follow up. I appreciate and
6 I thank you for coming forward.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror Number 341 is
9 excused. Call the number after six tonight.
10 Thank you.

11 (JUROR NUMBER 341 EXCUSED)

12 THE COURT: Any others?
13 Gentlemen, are there any questions of a
14 specific nature that you'd ---

15 RANDALL STONEY: Can you give us
16 just a second?

17 THE COURT: Certainly. Take your
18 time.

19 (OFF RECORD SIDEBAR AMONG COUNSEL)

20 RANDALL STONEY: Your Honor, we
21 think that we are okay.

22 THE COURT: I might ask one, Mr.
23 Stoney. Let me ask, has any member of the
24 jury panel ever been involved, either as a
25 witness, as someone that was making an

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1 accusation, someone who was supporting
2 someone, in a criminal prosecution involving
3 alleged sexual abuse or a sex crime? If you
4 have been involved in any capacity, please
5 stand. Okay, I will ask those persons to
6 come forward. Attorneys may approach.

7 BALIFF: Juror Number 14.

8 SIDEBAR:

9 JUROR NUMBER 14: Hi, I'm
10 Jane Babb, Juror Number 14. I don't recall
11 exactly when it was but about three years ago
12 I did sit on a jury that was fourteen charges
13 of criminal sexual misconduct.

14 THE COURT: Would that affect
15 you?

16 JUROR NUMBER 14: No.

17 THE COURT: Could you set that
18 experience aside and decide this case based
19 on the evidence in this case?

20 JUROR NUMBER 14: Yes.

21 THE COURT: Based on the
22 evidence and law in this case?

23 JUROR NUMBER 14: Yes.

24 THE COURT: You would base
25 your decision on the evidence and the law and

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1 would it be fair to both sides?

2 JUROR NUMBER 14: Yes.

3 THE COURT: Thank you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 14 will remain.

6 Thank you.

7 BAILIFF: Juror 391.

8 SIDEBAR:

9 THE COURT: Yes, ma'am?

10 JUROR NUMBER 391: Gosh, it
11 was back in the eighties that my husband was
12 a soccer coach, Key West Soccer, and one of
13 the husbands of a girlfriend of mine brought
14 her husband to court on allegations of sexual
15 abuse towards children. He was a soccer
16 coach under my husband and she was my friend,
17 so there was some close involvement.

18 THE COURT: Would that affect
19 you in this case?

20 JUROR NUMBER 391: I don't
21 know.

22 THE COURT: And your number?

23 JUROR NUMBER 391: Three
24 ninety-one (391).

25 THE COURT: There are a lot of

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1 similarities to this case, allegations, so
2 out of an abundance of caution I am going to
3 excuse you.

4 JUROR NUMBER 391: I'm sorry.

5 THE COURT: No, no, that's no
6 problem. You did the right thing. Don't
7 apologize. Thank you.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror Number 391 is
10 excused. Please call the number after six
11 tonight.

12 (JUROR NUMBER 391 EXCUSED)

13 THE COURT: Yes, sir?

14 BAILIFF: Juror Number 200.

15 SIDEBAR:

16 THE COURT: Yes, sir? How are
17 you, sir?

18 JUROR NUMBER 200: Fine.

19 THE COURT: Your name?

20 JUROR NUMBER 200: Mark
21 Jeffcoat.

22 THE COURT: Yes, sir?

23 JUROR NUMBER 200: About
24 twenty-five years ago I had a kid that worked
25 for me and there was molestation, and I had

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1 to testify in the case.

2 THE COURT: Would that affect
3 you in this case?

4 JUROR NUMBER 200: No.

5 THE COURT: You could set that
6 aside and decide this case based on the
7 evidence and the law presented in this case?

8 JUROR NUMBER 200: Yes.

9 THE COURT: And your decision
10 would be fair to both sides?

11 JUROR NUMBER 200: Yes.

12 THE COURT: Thank you, sir.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Juror Number 200 will
15 remain.

16 BAILIFF: Juror 192.

17 SIDEBAR:

18 JUROR NUMBER 192: Sorry.

19 THE COURT: No problem.

20 JUROR NUMBER 192: I actually
21 served on a jury that involved a child
22 molestation case, it was probably twenty
23 years ago.

24 THE COURT: Would that affect
25 or influence in this case?

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1 JUROR NUMBER 192: No, sir,
2 not at all.

3 THE COURT: And can you -- will
4 you set that aside and decide this case on the
5 evidence and law in this case?

6 JUROR NUMBER 192: Yes, sir.

7 THE COURT: Thank you. You
8 can make a commitment that you can be fair
9 and impartial to both sides?

10 JUROR NUMBER 192: Yes, sir.

11 THE COURT: Thank you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 192 will
14 remain. Are there others? (No response).

15 (OFF RECORD SIDEBAR WITH COUNSEL)

16 THE COURT: All right, I will ask
17 that. This is sort of a collaboration with
18 counsel.

19 Does any member of the jury have any
20 specialized training in the field of
21 psychology, mental health or counseling of
22 persons who have some mental disorder or the
23 like? If so, please stand.

24 JUROR NUMBER 17: I am Ellen
25 Baldino. I am not specifically specialized

1 but I am a physician's assistant and interact
2 with patients.

3 THE COURT: Would you apply your
4 knowledge gleaned in that capacity fairly and
5 impartially in analyzing the testimony?

6 JUROR NUMBER 17: Yes.

7 THE COURT: And you would base
8 your decision on the evidence and the law and
9 be fair to both sides?

10 JUROR NUMBER 17: Yes.

11 THE COURT: Thank you. Yes,
12 ma'am?

13 COURT REPORTER: Her number, Your
14 Honor?

15 THE COURT: Your number, ma'am?

16 JUROR NUMBER 17: Number 17.

17 COURT REPORTER: Thank you.

18 THE COURT: Seventeen (17). Yes?

19 JUROR NUMBER 413: Juror Number
20 413. I was a psychology minor.

21 THE COURT: Would that affect you
22 in this case?

23 JUROR NUMBER 413: (Negative
24 gesture).

25 THE COURT: Would you apply your

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1 knowledge fairly and impartially?

2 JUROR NUMBER 413: Yes, sir.

3 THE COURT: Thank you, you may be
4 seated. Yes, ma'am?

5 JUROR NUMBER 366: I am Juror Number
6 3266. I have a degree in special education
7 and do from time to time counsel parents and
8 students.

9 THE COURT: Thank you, ma'am.
10 Would you be able to apply your life
11 experience and your knowledge fairly and
12 impartially?

13 JUROR NUMBER 366: Yes.

14 THE COURT: And your decision
15 would be fair to both sides?

16 JUROR NUMBER 366: Yes.

17 THE COURT: Thank you. Your
18 number again?

19 JUROR NUMBER 360: Three sixty
20 (360).

21 THE COURT: Yes, ma'am?

22 JUROR NUMBER 299: Juror Number
23 299, Katie O'Neill. I was a psychology major
24 in college.

25 THE COURT: Would you apply your

1 knowledge fairly and impartially?

2 JUROR NUMBER 299: Yes, Your Honor.

3 THE COURT: Thank you, ma'am.

4 Anyone else?

5 JUROR: What was the question?

6 THE COURT: The question was if
7 you have specialized training in psychology
8 or counseling or in dealing with persons who
9 are mentally challenged in any fashion. Yes?

10 JUROR NUMBER 43: I am certified
11 as a mentally handicap teacher.

12 THE COURT: Would you apply that
13 knowledge fairly and impartially?

14 JUROR NUMBER 43: Yes, sir.

15 THE COURT: Would you base your
16 decision on the evidence and the law and
17 would it be fair to both sides?

18 JUROR NUMBER 43: Yes, sir.

19 THE COURT: Your number?

20 JUROR NUMBER 43: Forty-three (43).

21 THE COURT: Yes, ma'am?

22 JUROR NUMBER 225: I also work for
23 the school.

24 THE COURT: Would you apply your
25 knowledge fairly and impartially?

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1 JUROR NUMBER 225: Yes, sir.

2 THE COURT: Your number?

3 JUROR NUMBER 225: Two twenty-five
4 (225).

5 THE COURT: Thank you. Yes, sir?

6 JUROR NUMBER 144: Chris Gilbert,
7 Number 144. Undergraduate with a degree in
8 Special Ed, sought after-education for the
9 mentally handicapped.

10 THE COURT: Would you apply that
11 knowledge fairly and impartially, sir?

12 JUROR NUMBER 144: Yes, sir.

13 THE COURT: Thank you. Any
14 others? (No response). There appear to be
15 none.

16 Any other specific questions now,
17 gentlemen?

18 GREGG MEYERS: None from the
19 plaintiff.

20 DAWES COOKE: None, Your Honor.

21 THE COURT: The last question that
22 I have for you is kind of what we have been
23 talking about. I was just telling them that
24 I bet y'all get tired of hearing me 'would
25 that affect you', 'will you base your

1 decision on the evidence and the law', 'will
2 it be fair to both sides.' You should try
3 saying it. But having said that, I am in no
4 way minimizing the significance of what I
5 just said because it is really the essence of
6 what this is all about.

7 What each of you that are selected
8 will do when we start this trial is that you
9 will raise your hand, similar to what I did
10 when I assumed this role of being a judge.
11 You will make a commitment to the court, to
12 the parties, to their attorneys that you
13 will, at the appropriate time, apply that
14 knowledge that you brought with you fairly
15 and impartially in analyzing the evidence in
16 this case and decide what you believe to be
17 the true facts considering only the evidence,
18 the testimony of the witnesses and any
19 exhibits that might be introduced through
20 that testimony.

21 Once you decide those facts, then
22 taking the law as I give it to you and -- and
23 you heard me ask some 'will you set aside
24 what you believe the law to be and what you
25 think that it should be', and -- and we live

1 in an information society. I'll never forget
2 my father, who is no longer with us. I
3 remember returning one time from a trip to
4 the hospital toward the latter stage of his
5 life, trying to make conversation because he
6 was kinda glum. I said, 'What do you think
7 about the internet?' It had just started..
8 He said, "don't like it." I asked why and he
9 said, "too much information." Sometimes I
10 think he may be right.

11 One of the things that you have to
12 be caution about, and as we all know there
13 are many of us who *Google*. You might be
14 right but you might be wrong because it may
15 have changed, and therein lies the problem.

16 I recognize that we're -- that
17 anybody has an opportunity to do that.
18 You're going to be instructed that you can't
19 during this trial, for obvious reasons which
20 we will talk about.

21 You'll have to set aside what you
22 believe the law is or should be and take it
23 as I give it to you, and to apply it fairly
24 and impartially. You will make that
25 commitment to the parties.

1 Is there anything that you've heard
2 about this dispute that would give you any
3 concern about your ability to make that
4 commitment? If so, please stand. (No
5 response). Thank you very, very much.

6 We are going to take a break now.
7 We're getting closer to being there. When
8 you come back, they will take to the court-
9 room right next door. They will show you
10 where you are to report. We will bring you
11 in one at a time as there may be some more
12 questions that we will ask. As I told one of
13 the jurors, there are some questions that we
14 -- I'm not trying to pry into your lives but
15 they are questions that are better served by
16 a more private discussion. We may be asking
17 you about some of those things. Don't worry
18 about it. It's nothing -- if you choose not
19 to answer it, that's your business. Clearly
20 that's just to further help you make your
21 decision as to whether or not you can be fair
22 and impartial.

23 Thank you for your patience with us.
24 This day is kind of a blown day but I hope
25 that you have a good lunch, and we should

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1 have a jury before too much later in the day.
2 Thank you. Be back in the room, please, at
3 2:30. Thank you.

4 (JURY PANEL OUT @ 1:25 P.M.)

5 THE COURT: Why don't we do this,
6 gentlemen, let's just chat about what we do
7 next. When they come back, why don't we have
8 them just come up and stand like they did
9 before and we can ask what we need to ask
10 them. Does anybody have any problem with
11 that?

12 GREGG MEYERS: Only that
13 sometimes I had a little trouble hearing.

14 THE COURT: This will be speaking
15 -- we will have them speak up.

16 GREGG MEYERS: Okay.

17 THE COURT: We are going to be
18 talking and I'll talk in a voice that Deb
19 (court reporter) can hear me. We will just
20 do it that way rather than me sit up there
21 and put them in the box. I just -- that
22 bothers me a little bit.

23 GREGG MEYERS: Okay.

24 THE COURT: Then as I stated, just
25 like some of the jurors made an expression

1 with the fact that there were some things, I
2 -- if you want to follow up on a question,
3 that will be fine. But I will ultimately
4 make the final decision whether or not they
5 are -- I am going to go through -- I'm going
6 to go through your questions at lunch and I'm
7 going to make basically -- basically the
8 question is that I am going to have each
9 juror, as to specifics concerning the case,
10 and then I'm going to -- I'm going to do it
11 just like a death penalty case. I will do
12 the questions and then I will open it up to
13 you. But even if you ask a question, what
14 I've found in my death penalty cases, I just
15 put that in my questions that I ask -- if you
16 bring up something that I think, 'yeah,
17 that's a good question', I'll just ask that
18 of everyone. The first couple, you may have
19 some (questions) but I will probably start
20 covering that thereafter. Thank you.

21 All right, we will be at-ease until

22 2:30

23 (LUNCH RECESS)

24 THE COURT: Just so you know,
25 first I'm going to ask if they've ever been a

1 juror in a civil case before.

2 Secondly, I'm going to ask about
3 family tragedies, those types of things.

4 Then I'll ask specifically if
5 there's been any problem with any child.

6 Then I am going to ask -- the next
7 question is 'have you or any family member
8 ever suffered from any sexual abuse?'

9 Then I am going to ask about post-
10 traumatic stress disorder.

11 Then I'm going to ask about the
12 addiction -- any family member recovering,
13 who was sexually abuse. Recovery from any
14 addiction.

15 I am sure -- I'm not sure why but
16 there's a question about whether they have
17 ever done any research on the sexual offender
18 registry. Is there some issue with that, or
19 are y'all just curious whether or not they've
20 ever conducted any independent investigation.

21 GREGG MEYERS: I think a lot of
22 people do just to know who ---

23 DAWES COOKE: Yeah, I think a
24 lot of people do. That wouldn't necessarily
25 disqualify them.

1 THE COURT: I agree, not for that
2 purpose. I'm asking that question.

3 Ever been witness to sexual
4 harassment or sexual discrimination in the
5 workplace. I will ask that.

6 Ever been falsely accused of crime.
7 I will ask that question.

8 Then rather than a "violent crime",
9 I will ask whether they've ever been the
10 victim of any crime, period.

11 Those are my general questions.
12 Whatever they -- their answers may
13 necessitate further questioning, but I think
14 that covers the essence of what we are
15 looking for.

16 DAWES COOKE: And we are not
17 striking yet?

18 THE COURT: We are going to
19 strike. When I finish my questions, if there
20 are no more, then that person will step
21 outside and we will strike -- make a
22 determination whether that person sits or
23 not. If that person sits, then we will bring
24 them in and I'll instruct them. The bailiff
25 will take them to show them where they can

1 park tomorrow, and they will be on their
2 merry way. If they are stricken, then they
3 will be excused and told to call back tonight
4 after six o'clock.

5 GREGG MEYERS: Your Honor, your
6 idea is that the witness will sit in that
7 chair?

8 THE COURT: Is that okay with
9 everyone? I'm just trying to figure a
10 setting where they would be most comfortable.

11 GREGG MEYERS: I was just -- I
12 appreciate the mic. I seem to be losing some
13 hearing.

14 THE COURT: I tell you something,
15 being in Columbia and going out and sitting
16 with a group of people in a couple of places
17 in Columbia, one of them -- we all went to
18 Liberty Tavern for lunch. There were ten or
19 twelve of us and it's just impossible to --
20 if there is any noise, -- if it is quiet, I
21 can hear pretty much. Boy, if there back-
22 ground noise, (negative gesture).

23 GREGG MEYERS: Ambient noise,
24 yeah.

25 THE COURT: Goodbye. Then that

1 thing (jury assembly room) downstairs, that's
2 the biggest joke in the world; that and the
3 hinges on these gates.

4 All right. Are we ready to start?

5 DAWES COOKE: Yes, sir.

6 THE COURT: Let me put on the
7 record just so that everybody -- I think that
8 we have compared them so that the record
9 reflects that -- the court, for cause, has
10 stricken on our strike list jurors numbered
11 one, two, nine, twelve, seventeen, eighteen,
12 nineteen, twenty-one, twenty-two, thirty-one,
13 thirty-three, thirty-eight, fifty-nine and
14 sixty. Any objections from anyone concerning
15 those strikes?

16 DAWES COOKE: That's what I've got.

17 GREGG MEYERS: None by the
18 plaintiff, Your Honor.

19 THE COURT: Any from the
20 defendant?

21 DAWES COOKE: None, Your Honor.

22 THE COURT: See who is our first
23 one.

24 (JUROR NUBMER 354 ENTERS COURTROOM)

25 THE COURT: Good afternoon, Mr.

1 Schlabs.

2 EXAMINATION OF PHILIP SCHLABS

3 BY THE COURT:

4 Q. Please state your name and your
5 juror number for us.

6 A. My name is Philip Schlabs, Number
7 354.

8 Q. Good afternoon, Mr. Schlabs. As I
9 mentioned to you, I have a couple of
10 questions that I need for you to answer.
11 If you have any concern, just express that.
12 Again, I am not trying to pry into anything.
13 There are some issues in this case,
14 obviously, that necessitate further inquiry.
15 We thought that we'd do it in a more private
16 setting than we did before.

17 First of all, have you ever been a juror
18 in a civil case before?

19 A. No.

20 Q. Have you ever had any -- either in
21 your family, your personal family, or your
22 family/siblings, any family tragedies?

23 A. No.

24 Q. Do you have children?

25 A. No.

1 Q. Have you ever had a family member,
2 to your knowledge, that was sexually abused?

3 A. No.

4 Q. Do you know of anyone, a family
5 member or close personal friend, who suffers
6 from post-trauma stress disorder?

7 A. I do.

8 Q. Tell me about that.

9 A. I had a girlfriend that was sexually
10 assaulted prior to me meeting her and she
11 suffers post-trauma stress now.

12 Q. If you heard testimony in this trial
13 of a person who allegedly suffered post-
14 traumatic stress from sexual abuse, would
15 that unduly affect your ability to evaluate
16 that testimony?

17 A. I don't think so. Could you -- may
18 I ask a question?

19 Q. Sure.

20 A. After our meeting this morning, it
21 sounded like the decision that you were
22 asking the jury to ponder was whether The
23 Citadel had knowledge of -- or ---

24 Q. At this point, I -- because you've
25 heard no evidence about anything.

1 A. Right.

2 Q. Just that The Citadel is being
3 accused of not -- basically violating or
4 breaching a duty of care is the way that we
5 would couch it; which means that they were
6 careless. And there were some other causes
7 of action.

8 A. So the sexual assault is assumed or
9 is that a separate thing?

10 Q. There is an allegation that a sexual
11 assault occurred at a time and a place and it
12 is further alleged that The Citadel knew or
13 should have known that it was doing and they
14 didn't take proper steps and actions.

15 A. Okay.

16 Q. That is what is alleged.

17 A. Right.

18 Q. There is no evidence yet.

19 A. I feel like it's two different
20 issues.

21 Q. Of course what you would be asked to
22 do is to decide the evidence and then I will
23 give you the law that you have to apply to
24 those facts.

25 A. (Affirmative nod).

1 Q. My concern is, do you have some --
2 it sounds to me like, and I'm not trying to
3 be presumptuous here but it sounds like you
4 may have some issues from your friend's
5 situation of being sexually abused.

6 A. I would like to think that, you
7 know, I can put emotional things aside.

8 Q. Oh, I understand that. The question
9 is, can you make a commitment to both of
10 these parties that you would?

11 A. I believe so.

12 Q. I appreciate that. This is one of
13 those strange times in our lives that that is
14 a pretty good answer, and I don't have any
15 personal problems with it.

16 A. Okay.

17 Q. But it has to be 'absolutely I can.'

18 A. I don't know.

19 Q. I am going to help you.

20 A. I can't say -- you know, I can't say
21 for sure.

22 Q. I understand that. You don't have
23 to feel bad or feel guilty about that. That
24 is why I love this system the way I do. You
25 have ever right to feel the way you do, and

1 have that concern. There is nothing wrong
2 with that, none whatsoever.

3 A. Thank you.

4 THE COURT: I am going to excuse
5 Mr. Schlabs from further participation. If
6 you will, please call the number after
7 tonight at six. Have a great day, sir.
8 Thank you so very much.

9 (JUROR NUMBER 354 EXCUSED AND
10 EXITS COURTROOM)

11 THE COURT: Any objection from the
12 plaintiff?

13 GREGG MEYERS: I'd rather have
14 him, but I understand.

15 THE COURT: Yeah. What I saw with
16 his body language -- and I want to put on the
17 record that I understand that it was
18 traumatic for his friend.

19 CLERK DON MICHELE: Ready for the
20 next one, sir?

21 THE COURT: Just one minute. Any
22 objection from the defendant?

23 DAWES COOKE: No objection.
24 Judge, could I just make one comment? When
25 he started asking what the case was about, I

1 -- I think you may have said that The Citadel
2 had know--, ---

3 THE COURT: I said "knew or should
4 have known."

5 DAWES COOKE: That is not quite
6 exactly what they are claiming.

7 THE COURT: All right.

8 DAWES COOKE: Because he was abused^d
9 later. So something to the effect of The
10 Citadel should have prevented it or something
11 like that ---

12 THE COURT: I will use that The
13 Citadel failed or breached its duty of care.
14 How about that?

15 DAWES COOKE: You did say that.

16 THE COURT: And I apologize about
17 that.

18 DAWES COOKE: No, no, no ---

19 THE COURT: This is a totally
20 different setting. I agree with you.

21 DAWES COOKE: Thank you.

22 THE COURT: Bring in our next one.
23 Were y'all able to hear everything on that?

24 GREGG MEYERS: He was a little
25 bit faint but I could hear him.

1 THE COURT: Okay. Let's test the
2 microphone -- can you turn it up a little
3 bit? I tell you, the microphones in Horry
4 County are frightening. You walk out on the
5 bench talking and everybody hears you.

6 COURT REPORTER: They're wonderful.

7 THE COURT: They really are. I
8 don't know who installed them but we need
9 that here.

10 (JUROR NUMBER 31 ENTERS COURTROOM)

11 EXAMINATION OF JOSEPH S. BOYD

12 BY THE COURT:

13 Q. How are you, sir?

14 A. Fine, thank you.

15 Q. Good to see you. State your full
16 name and your juror number?

17 A. Joseph Stanley Boyd, Jr. Juror
18 Number 31.

19 Q. Thank you, Mr. Boyd. As I mentioned
20 to you, there are some questions that I have.
21 I'm not trying to pry. If there are
22 questions that you prefer not to answer, just
23 let me know.

24 A. Okay.

25 Q. As you can imagine, the nature of

1 this suit warrants further inquiry and we
2 thought it would be better to do that in this
3 setting.

4 A. Okay.

5 Q. First of all, have you ever been a
6 juror in a civil case?

7 A. Yes, I have.

8 Q. Tell me about it.

9 A. It was probably about seven or eight
10 years ago or longer, and it was a City of
11 Charleston police car and a raid on a home
12 that was the wrong home. There were drugs
13 involved.

14 Q. Was it a suit for damages?

15 A. Yes, it was.

16 Q. Okay. You completed that case?

17 A. Yes.

18 Q. The jury returned a verdict?

19 A. (Affirmative nod), yes.

20 Q. Do you recall what the verdict was?

21 A. We found for the plaintiff.

22 Q. And awarded damages?

23 A. Awarded \$250,000 in damages.

24 Q. And you understand that case rises
25 and falls on its merits, its elements?

1 A. Right.

2 Q. And that would not influence you in
3 this case?

4 A. No. Not at all.

5 Q. Very well. Have you ever suffered
6 any family tragedies, with siblings or
7 children?

8 A. Tragedies in what respect?

9 Q. A child severely injured or a
10 brother/sister, that type of thing?

11 A. No, other than my parents passing
12 away a few years ago. (Negative gesture),
13 other than that.

14 Q. Okay. In the normal transition of
15 life?

16 A. Right.

17 Q. Have you ever had a family member or
18 close personal friend who was sexually
19 abused?

20 A. No.

21 Q. Do you have any family members or
22 close personal friends who suffer from post-
23 traumatic stress disorder?

24 A. No, not that I know of.

25 Q. Have you ever personally researched

1 the sex offender registry?

2 A. I think that I did once years ago
3 when it was first publicized on the Internet.

4 Q. But not something that you do on a
5 frequent basis?

6 A. No, it's not.

7 Q. Have you ever witnessed sexual
8 harassment or sexual discrimination in the
9 workplace?

10 A. No.

11 Q. That you were aware of?

12 A. Not that I'm aware of, no.

13 Q. Have you or any family member ever
14 been falsely accused of a crime?

15 A. No.

16 Q. Have you or a close family member
17 been the victim of a crime?

18 A. Other than someone broke in my car
19 one time, that was a few years ago.

20 Q. Was that person ever apprehended?

21 A. I don't believe so.

22 Q. That would not influence you?

23 A. Not at all.

24 THE COURT: Any other questions
25 from the plaintiff?

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1 GREGG MEYERS: None from me, Your

2 Honor.

3 THE COURT: From the defendant?

4 DAWES COOKE: None. Thank you.

5 THE COURT: All right, I have
6 going to ask you, sir, if you would step
7 outside for just a second. We will be with
8 you in a moment -- and you can leave your
9 jacket right there.

10 (JUROR EXITS COURTROOM)

11 THE COURT: Just for the record,
12 I had mentioned the question about recovery
13 from sex offense. He doesn't know any sex
14 offender, so there is no need to ask that
15 question. I assume that was the connection?
16 To be related to a sex offense -- sex
17 offender situation.

18 What says the plaintiff?

19 GREGG MEYERS: Please seat the
20 juror, Your Honor.

21 THE COURT: Defendant?

22 DAWES COOKE: I'm sorry?

23 THE COURT: They said to seat him.
24 It's your turn.

25 DAWES COOKE: May I have a second

1 to confer?

2 THE COURT: Yes, sir.

3 DAWES COOKE: Please seat the
4 juror.

5 THE COURT: Very well, he will be
6 our juror one. Invite Mr. Boyd to return.

7 (JUROR ENTERS COURTROOM)

8 THE COURT: Mr. Boyd, thank you
9 very much. You've been selected to serve on
10 this juror with me. You and I will judge
11 this case together. I am going to ask that
12 you -- we're going to keep you in the jury
13 room for just a few moments, then we will
14 take a break and they'll take you down and
15 show you the parking. Please report to the
16 jury room by 9:45 tomorrow.

17 Please remember that you are not at
18 liberty to talk about this case. You've
19 heard no evidence. Don't allow anybody to
20 talk with you about the case. No need to
21 speculate or conduct any independent
22 research. Have a good evening, sir. Look
23 forward to working with you.

24 (JUROR NUMBER 31 SEATED)

25 (JUROR 31 EXITS COURTROOM)

1 THE COURT: Bring in the next one.

2 (JUROR NUMBER 237 ENTERS COURTROOM)

3 EXAMINATION OF CYNTHIA SUNDE

4 BY THE COURT:

5 Q. Good afternoon, ma'am. How are you?

6 A. Good. How are you?

7 Q. State your name and your juror
8 number, please, for the record.

9 A. Cynthia Sunde. Juror Number 237.

10 Q. Thank you, Ms. Sunde. I appreciate
11 it. I mention to you when we broke for lunch
12 that there are several questions now that we
13 would rather do in this setting. Obviously,
14 as you can imagine, some of them are very
15 personal -- maybe too personal, but I am not
16 trying to pry.

17 A. Okay.

18 Q. Have you ever sat as a juror in a
19 civil case?

20 A. I think I may have once.

21 Q. But you don't recall.

22 A. Four or five years ago. Yeah.

23 Q. You don't have any independent
24 recollection?

25 A. No.

1 Q. Have you ever suffered any family
2 tragedy, injury or serious problem with a
3 family member, your child, children,
4 siblings?

5 A. Other than natural causes.

6 Q. Sorry?

7 A. (Negative gesture), other than
8 natural causes.

9 Q. Okay. Have you, a member of your
10 family or close personal friend ever been
11 accused of sexual abuse? The offense of
12 sexual abuse?

13 A. No.

14 Q. Do you or do you know of anyone, a
15 family member, who suffers from post-trauma
16 stress disorder?

17 A. Not that I know of.

18 Q. Have you ever witnessed sexual
19 harassment or sexual discrimination in the
20 workplace?

21 A. Not that I know of.

22 Q. Okay. Have you or a family member
23 ever been falsely accused of a crime?

24 A. No.

25 Q. Have you ever been the victim of a

1 crime?

2 A. No. Well, a car that was broken
3 into, that kind of thing, but nothing --
4 (negative gesture).

5 Q. And that occurred some time ago?

6 A. Yeah.

7 Q. Was the person ever apprehended?

8 A. No.

9 Q. Would that influence you in any way?

10 A. No.

11 THE COURT: Any further questions?
12 From the plaintiff?

13 GREGG MEYERS: Your Honor, would
14 you clarify the third question that you
15 asked?

16 THE COURT: Whether you know of
17 anyone, or a family member, who suffers from
18 post-trauma stress disorder?

19 JUROR NUMBER 237: Not that I know
20 of.

21 GREGG MEYERS: I'm sorry. I have
22 that as the fourth question. I was referring
23 to sexual abuse, and I think you asked that
24 as whether anyone had been accused of ---

25 EXAMINATION CONTINUED

1 BY THE COURT:

2 Q. Whether you or any family member
3 have ever been accused of or been the victim
4 of sexual harassment?

5 A. No, not that I know of.

6 THE COURT: What else?

7 GREGG MEYERS: And then I think
8 the question about the registry?

9 THE COURT: Oh, yes, the registry.
10 I'm sorry.

11 EXAMINATION CONTINUED

12 BY THE COURT:

13 Q. Have you ever researched the
14 registry, the sex offender registry?

15 A. Yes.

16 Q. Numerous occasions?

17 A. No. A long time ago.

18 Q. Okay.

19 A. And I do want to say -- I hadn't
20 thought about this but my ex-husband, he's a
21 sex offender, from what I know.

22 Q. He is a sex offender?

23 A. Yes.

24 Q. Was he convicted of that?

25 A. Yes, but I was not privy of any of

1 that information.

2 Q. So that occurred after y'all parted
3 ways?

4 A. Yes. He was in the military and --
5 it was prior to us separating and divorcing,
6 but shortly after that ---

7 Q. But you were not aware of it at the
8 time?

9 A. Right.

10 Q. Do you today know any of the
11 particulars?

12 A. No.

13 Q. Would that affect or influence you
14 in any way in this case?

15 A. No.

16 THE COURT: Any additional
17 questions?

18 GREGG MEYERS: No. Thank you,
19 Your Honor.

20 THE COURT: Any additional
21 questions?

22 DAWES COOKE: None from the
23 defendant.

24 THE COURT: If you would step out
25 just for a second, we will be with you in

1 just a moment.

2 (JUROR NUMBER 237 EXITS COURTROOM)

3 THE COURT: What says the
4 plaintiff?

5 GREGG MEYERS: Please seat the
6 juror, Your Honor.

7 THE COURT: What says the
8 defendant?

9 DAWES COOKE: Strike the juror.

10 THE COURT: Ask her to step back
11 in.

12 (JUROR ENTERS COURTROOM)

13 THE COURT: Ms. Sunde, you have
14 been excused from further participation in
15 this trial. I appreciate it. You can exit
16 through this door here. Call the number
17 after six tonight and follow that
18 instruction.

19 (JUROR NUMBER 237 EXCUSED)

20 (JUROR EXITS COURTROOM)

21 THE COURT: Next, Mr. Constantine.

22 (JUROR NUBMER 70 ENTERS COURTROOM)

23 EXAMINATION OF JOHN CONSTANTINE

24 BY THE COURT:

25 Q. Good afternoon, sir. Give us your

1 name and juror number, please.

2 A. My name is John Peter Constantine
3 and my juror number is 70.

4 Q. Mr. Constantine, I have several
5 questions for you. If any of them are
6 uncomfortable for you, just tell me that.

7 A. Okay.

8 Q. We are not trying to make you feel
9 uncomfortable but obviously there is some
10 additional information that we need. First
11 of all, have you ever been a juror in a civil
12 case?

13 A. I have not.

14 Q. Have you ever had or suffered any
15 family tragedy?

16 A. Not close.

17 Q. Close personal friend or family
18 member?

19 A. It was my father's mother.

20 Q. That was what, basically? What was
21 the tragedy?

22 A. She died of natural causes.

23 Q. That would not affect or influence
24 you?

25 A. No, sir.

1 Q. Okay. Have you, a family member or
2 a close personal friend ever been accused of
3 sexual abuse or ever been the victim of
4 sexual abuse?

5 A. No, Your Honor.

6 Q. Do you have any family member or
7 close family friend(s) that you're aware
8 suffers from post-trauma stress disorder?

9 A. No, Your Honor.

10 Q. Have you ever researched the sex
11 offender registry?

12 A. I have not.

13 Q. Have you ever witnessed sexual
14 harassment or sexual discrimination in the
15 workplace, to your knowledge?

16 A. No, Your Honor.

17 Q. Have you or a family member ever
18 been falsely accused of a crime?

19 A. No, Your Honor.

20 Q. Have you or a family member ever
21 been the victim of a crime?

22 A. No, Your Honor.

23 THE COURT: Any additional
24 questions, from the plaintiff?

25 GREGG MEYERS: No, Your Honor.

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1 THE COURT: From the defendant?

2 DAWES COOKE: None.

3 THE COURT: If you could step out
4 just for a moment, we will be with you
5 momentarily.

6 (JUROR NUMBER 70 EXITS COURTROOM)

7 THE COURT: What says the
8 plaintiff?

9 GREGG MEYERS: Strike the juror.

10 THE COURT: Ask Mr. Constantine to
11 step back in.

12 (JUROR NUMBER 70 ENTERS COURTROOM)

13 THE COURT: Thank you, sir. We
14 appreciate your help. You've been excused
15 from further participation in this dispute.
16 Please call the number after six tonight and
17 follow that instruction.

18 (JUROR NUMBER 70 EXCUSED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Next.

21 DAWES COOKE: Judge, we each have
22 four strikes and then the alternates?

23 THE COURT: Yes, three alternates.

24 (JUROR NUMBER 446 ENTERS COURTROOM)

25 EXAMINATION OF HANNAH YALDAPARAST

1 BY THE COURT:

2 Q. Hi. Markeley Dennis. Nice to see
3 you.

4 A. Hannah.

5 Q. Take the seat, please, and state
6 your full name for the record and your juror
7 number.

8 A. I'm Hannah Yaldaparast, 446.

9 Q. Thank you, Ms. Yaldaparast, we
10 appreciate that. Is this the first time
11 you've ever been a juror in a civil trial?

12 A. Yes, sir.

13 Q. Have you or any -- have you ever had
14 any family tragedy of close family members?

15 A. No, sir.

16 Q. Have you or any family member ever
17 been the victim of or ever been accused of
18 committing the crime of sexual abuse?

19 A. No, sir.

20 Q. Do you know of any family member or
21 close personal friend who suffers from post-
22 trauma stress disorder?

23 A. No, sir.

24 Q. Have you ever researched the sex
25 offender registry?

1 A. No, sir.

2 Q. Have you ever witnessed any sexual
3 harassment or sexual discrimination in the
4 workplace?

5 A. No, sir.

6 Q. Have you or a family member ever
7 been falsely accused of a crime?

8 A. No.

9 Q. Have you or a family member ever
10 been the victim of a crime?

11 A. No, sir.

12 THE COURT: Any additional
13 questions from the plaintiff?

14 GREGG MEYERS: None, Your Honor.

15 THE COURT: From the defendant?

16 DAWES COOKE: None.

17 THE COURT: If you would step out
18 just for a moment, we will be with you in a
19 moment.

20 (JUROR NUMBER 446 EXITS COURTROOM)

21 THE COURT: Says the plaintiff?

22 GREGG MEYERS: Please seat the
23 juror.

24 DAWES COOKE: Seat the juror.

25 THE COURT: Ask her to step in.

1 (JUROR NUMBER 446 ENTERS COURTROOM)

2 THE COURT: Thank you very much.
3 You've been selected to serve on this jury
4 with me. We will get started tomorrow. I'm
5 going to ask that you go back to the jury
6 room for just a few minutes, then they will
7 come and get you to show you where you park
8 throughout the trial. They have parking
9 places for you.

10 While you are out and away from this
11 place, do not speculate. Of course, you've
12 heard no evidence about this case. Don't
13 talk with anyone about it or permit anyone to
14 talk with you about it.

15 I'd ask that you return to your jury
16 room by 9:45 tomorrow. Thank you very much.
17 Have a great afternoon.

18 (JUROR NUMBER 446 SEATED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Ms. Sneed.

21 (JUROR NUMBER 382 ENTERS COURTROOM)

22 EXAMINATION OF MARTHA SNEED

23 BY THE COURT:

24 Q. Ms. Sneed, please take a seat. Give
25 us your full name and your juror number.

1 A. Martha Rachel Sneed and my birthdate
2 is March 25th, 1983.

3 Q. Thank you.

4 A. Oh, -- my jury number! Sorry!
5 Number 382.

6 Q. We now have your birthdate, so
7 that's good. It's in March, so we are
8 getting close to it.

9 Is this the first time that you've ever
10 been a juror in a civil trial?

11 A. Yes.

12 Q. Have you ever had or experienced any
13 family tragedies in your life?

14 A. Just deaths to cancer.

15 Q. Deaths to cancer?

16 A. (Affirmative nod).

17 Q. Of who? Whom?

18 A. My aunt and my uncle.

19 Q. Did that have any undue influence on
20 you? Was it sudden deaths, or was it ---

21 A. No, it was prolonged.

22 Q. Prolonged cancer?

23 A. (Affirmative nod).

24 Q. Would that affect or influence you
25 in any way in this dispute, to your know-

1 ledge?

2 A. No.

3 Q. Have you or a family member ever
4 been the victim or been accused of committing
5 the offense of sexual abuse, the act of
6 sexual abuse?

7 A. No.

8 Q. Do you know of any family member or
9 close personal friend who suffers from any
10 post-trauma stress disorder?

11 A. No.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. No.

15 Q. Have you ever witnessed any sexual
16 harassment or sexual discrimination?

17 A. No.

18 Q. Have you or a family member or close
19 personal friend ever been falsely accused of
20 a crime?

21 A. No.

22 Q. Have you ever been the victim of a
23 crime?

24 A. No.

25 THE COURT: Any additional

1 questions from the plaintiff?

2 GREGG MEYERS: None, Your Honor

3 THE COURT: From the defendant?

4 DAWES COOKE: None.

5 THE COURT: If you would step out
6 just for a moment, we'll be with you in just
7 a second.

8 (JUROR NUMBER 382 EXITS COURTROOM)

9 THE COURT: What says the
10 plaintiff -- I almost said what says the
11 State.

12 DAWES COOKE: Please seat the juror.

13 DAWES COOKE: Seat the juror.

14 THE COURT: Ask Ms. Sneed to
15 return.

16 (JUROR NUMBER 382 ENTERS COURTROOM)

17 THE COURT: Ms. Sneed, thank you
18 very much. Appreciate it. You've been
19 selected to assist in resolving this dispute.

20 They are going to take you to the
21 jury room in just a few moments and then in a
22 few minutes they'll take you down and show
23 you the parking place they've provided for
24 you this week.

25 I ask you to be back in your jury

1 room at 9:45 in the morning.

2 Don't talk with anyone about this
3 case or permit anybody to talk with you about
4 it. Don't speculate about it.

5 Have a good evening. We will see
6 you tomorrow.

7 (JUROR NUMBER 382 SEATED)

8 (JUROR EXITS COURTROOM)

9 THE COURT: Ms. Babb.

10 (JUROR NUMBER 14 ENTERS COURTROOM)

11 EXAMINATION OF JANE BABB

12 BY THE COURT:

13 Q. Ms. Babb, how are you?

14 A. I'm good.

15 Q. Great. If you will, have a seat and
16 tell us your full name and juror number.

17 A. Jane Babb, B-a-b-b. Juror Number
18 14.

19 Q. Thank you, Ms. Babb. I have a few
20 questions for you. First, is this the first
21 time that you've been a juror in a civil
22 trial?

23 A. I was a juror but I don't know if it
24 was a civil trial or a criminal case.

25 Q. You don't recall?

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A. No.

Q. Have you had any -- suffered any family tragedies in your life?

A. No.

Q. Have you or a family member ever been the victim of or ever been accused of committing the offense of sexual abuse?

A. No.

Q. Do you have any family members or close personal friends who suffer from post-traumatic stress disorder?

A. Not that I know of.

Q. Have you ever witnessed sexual harassment or sexual discrimination?

A. No.

Q. Have you or a family member ever been falsely accused of a crime?

A. No.

Q. Have you been the victim of a crime?

A. (Negative gesture).

THE COURT: Any additional question, from the plaintiff?

GREGG MEYERS: None, Your Honor.

THE COURT: From the defendant?

DAWES COOKE: None. Thank you.

1 THE COURT: If you could step out
2 just for a moment, we will be with you in a
3 second.

4 (JUROR NUMBER 14 EXITS COURTROOM)

5 THE COURT: Says the plaintiff?

6 GREGG MEYERS: Please seat the
7 juror.

8 THE COURT: Defendant?

9 DAWES COOKE: Strike the juror.

10 THE COURT: Please ask Ms. Babb to
11 step in.

12 (JUROR NUMBER 14 ENTERS COURTROOM)

13 THE COURT: Thank you, Ms. Babb,
14 for assisting us. You've been excused from
15 further participation in this trial. You can
16 leave through that door.

17 Please call the number after six
18 tonight and follow the instructions. Thank
19 you so much for your help. Appreciate it.

20 (JUROR NUMBER 14 EXCUSED)

21 (JUROR EXITS COURTROOM)

22 THE COURT: Next is Ms. Newham.

23 (JUROR NUMBER 292 ENTERS COURTROOM)

24 EXAMINATION OF JANET NEWHAM

25 BY THE COURT:

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1 Q. Hi, Ms. Newman. How are you?

2 A. Fine, thank you, sir.

3 Q. Good. Please take a seat and, if
4 you will, state your name and juror number,
5 please.

6 A. My name is Janet Newham, Number 292
7 N-e-w-h-a-m.

8 Q. Thank you. We have several
9 questions. The first one is, is this the
10 first time that you've been a juror in a
11 civil dispute? A civil trial?

12 A. No, sir.

13 Q. All right, tell me -- you've been
14 before?

15 A. (Affirmative nod).

16 Q. What did it involve?

17 A. It was probably twenty-five years
18 ago, was in Frederick, Maryland, and was a
19 child molestation case.

20 Q. Really?

21 A. (Affirmative nod).

22 Q. Do you recall much about that case?

23 A. Bits and pieces, unfortunately not
24 the whole thing.

25 Q. You understand that this is

1 basically -- that the allegations is some
2 sexual abuse of a child, in this case?

3 A. I didn't know that.

4 Q. Those are some of the allegations in
5 this case. Would that -- the fact that
6 you've been on a jury, would that influence
7 you in this case?

8 A. I don't believe so.

9 Q. Well, I appreciate that answer. I
10 guess my question is, could you make a
11 commitment to both sides that it would not?

12 A. Yes.

13 Q. And you understand that this case
14 has its own set of facts?

15 A. (Affirmative nod).

16 Q. And you would be instructed to
17 follow the law that I give you not-
18 withstanding what the court may have
19 indicated to you in that other trial?

20 A. Yes, sir.

21 Q. And you could do that?

22 A. Yes, sir.

23 Q. And would do that?

24 A. Yes, sir.

25 Q. And your decision would be fair to

1 both sides?

2 A. Yes, sir.

3 Q. Do you recall what the verdict was?

4 A. The verdict was not guilty.

5 Q. Have you, a family member or a close
6 personal friend ever been the victim of or
7 been accused of sexual abuse?

8 A. No, sir.

9 Q. Do you know of any family members or
10 close personal friends who suffer from post-
11 trauma stress disorder?

12 A. No, sir.

13 Q. Have you ever researched the sex
14 offender registry?

15 A. No, sir.

16 Q. Have you ever witnessed, to your
17 knowledge, sexual harassment or sexual
18 discrimination?

19 A. Yes.

20 Q. Tell me about it.

21 A. Sexual discrimination. I guess
22 harassment/discrimination ---

23 Q. Okay.

24 A. --- as it is defined, uh, -- I think
25 as people. I think that as people our

1 society has become more knowledgeable about
2 what that is.

3 Q. Right.

4 A. Being in the corporate world for so
5 long, there was an emphasis on training
6 everyone for that. With a lot of training
7 for that, you just see people say and do
8 things from time to time that you have been
9 trained not to.

10 Q. I understand. Would any of that
11 influence or affect you in this trial?

12 A. I don't believe so.

13 Q. Okay. And you would apply the
14 knowledge gleaned from your work experience,
15 as you have just related, fairly and
16 impartially?

17 A. Yes, sir.

18 Q. Have you, a family member or close
19 personal friend every been falsely accused of
20 a crime?

21 A. No, sir.

22 Q. Have you ever been the victim of a
23 crime?

24 A. No, sir.

25 THE COURT: Any additional

1 questions from the plaintiff?

2 GREGG MEYERS: Could I ask if the
3 juror has ever had a family tragedy?

4 THE COURT: I asked her that and
5 she said no.

6 GREGG MEYERS: I apologize, I
7 missed that.

8 JUROR NUMBER 292: Family tragedy?

9 THE COURT: Yeah. Didn't I ask
10 you that?

11 JUROR NUMBER 292: I don't believe
12 so, but the answer is no.

13 THE COURT: Okay, the answer is
14 no.

15 GREGG MEYERS: No other questions.
16 Thank you.

17 DAWES COOKE: No questions.

18 THE COURT: If you would, step out
19 and we will be with you in just a moment.

20 (JUROR NUMBER 292 EXITS COURTROOM)

21 THE COURT: I may not have asked
22 that, Mr. Meyers. Good catch.

23 GREGG MEYERS: Please strike the
24 juror.

25 THE COURT: Okay.

1 THE COURT: Ask Ms. Newham to come
2 in.

3 (JUROR NUMBER 292 ENTERS COURTROOM)

4 THE COURT: Thank you, Ms. Newham.
5 You may be excused from any further
6 participation in this trial. Have a great
7 day. Thank you for all your help. Call the
8 number after six tonight and follow the
9 instructions. You may exit through this door
10 here.

11 (JUROR NUMBER 292 EXCUSED)

12 (JUROR EXITS COURTROOM)

13 THE COURT: Moving on.

14 (JUROR NUMBER 332 ENTERS COURTROOM)

15 EXAMINATION OF RICHARD D. RICHARDSON

16 BY THE COURT:

17 Q. Good afternoon, sir. Take a seat.
18 State your full name, please, for us and give
19 us your juror number, please.

20 A. My full name is Richard Dan
21 Richardson, Juror Number 332.

22 Q. Mr. Richardson, I have several
23 questions for you. The first one is, is this
24 the first time that you've ever been a juror
25 on a civil trial?

1 A. Yes, Your Honor.

2 Q. Have you suffered -- you in your
3 family life ever had any family tragedies?

4 A. Aside from the death of a loved one,
5 no.

6 Q Was it a death -- if there is such a
7 thing as "normal", but through the course of
8 life?

9 A. Natural causes.

10 Q. Were they young or old?

11 A. Grandparents.

12 Q. Grandparents?

13 A. (Affirmative nod).

14 Q. Have you or any family member ever
15 been the victim of or been accused of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. Yes, Your Honor.

22 Q. Tell me about that.

23 A. A good friend of mine, a veteran of
24 the most recent war effort, came home with no
25 personal injury but a lot of mental stress

1 and -- stress in that way.

2 Q. Okay. If you heard testimony in
3 this trial from someone who may be suffering
4 from post-trauma stress disorder, would --
5 the fact that you have that friend, would
6 that unduly influence you?

7 A. No, sir.

8 Q. Would you be able to apply your
9 life's experiences with your friend and your
10 knowledge of that fairly and impartially?

11 A. Yes, Your Honor.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. I have not, sir.

15 Q. Have you ever witnessed sexual
16 harassment or sexual discrimination in the
17 workplace?

18 A. No, sir.

19 Q. Have you, a family member or close
20 personal friend ever been falsely accused of
21 a crime?

22 A. No, sir.

23 Q. And have you ever been the victim of
24 a crime?

25 A. I have not, sir.

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1 DAWES COOKE: Any additional
2 questions from the plaintiff?

3 GREGG MEYERS: None from us, Your
4 Honor.

5 DAWES COOKE: None.

6 THE COURT: If you would, step out
7 just for a moment.

8 (JUROR NUMBER 332 EXITS COURTROOM)

9 THE COURT: Plaintiff?

10 GREGG MEYERS: Please excuse the
11 juror.

12 THE COURT: Okay, that leaves you
13 with one strike. Ask Mr. Richardson to come
14 back in.

15 (JUROR NUMBER 332 ENTERS COURTROOM)

16 THE COURT: Thank you, Mr.
17 Richardson. Thank you for all your help
18 today. You have been excused from any
19 further participation in this. Please call
20 the number after six tonight and follow the
21 instructions.

22 (JUROR NUMBER 332 EXCUSED)

23 (JUROR EXITS COURTROOM)

24 THE COURT: This is the police officer?

25 (JUROR NUMBER 32 ENTERS COURTROOM)

EXAMINATION OF TIMOTHY BROMMER

BY THE COURT:

Q. Sir, did you have a good lunch?

A. It was good.

Q. If you would, state your name for
the record and your juror number.

A. Timothy Brommer, Juror Number 32.

Q. Thank you, sir. Several questions
that we have as follow up from this morning.
Is this the first time that you've ever been
on a jury in a civil trial?

A. Yes.

Q. Have you suffered any family
tragedies in your life?

A. No.

Q. Have you or a member of your family
ever been the victim of or been accused of
sexual abuse?

A. No.

Q. Do you know of any family members or
close personal friend who suffers from post-
traumatic stress disorder?

A. No.

Q. Have you ever researched the sex
offender registry?

1 A. Not other than in an official
2 capacity.

3 Q. Not in ---

4 A. Not as a civilian. As a police
5 officer, if I had to, I would have.

6 Q. But you don't have any independent
7 recollection?

8 A. No.

9 Q. The only -- but only in your
10 capacity as a police officer?

11 A. Correct.

12 Q. Have you ever witnessed sexual
13 harassment or sexual discrimination in the
14 workplace?

15 A. Probably. I don't remember anything
16 specific off the top of my head.

17 Q. But you feel that you may have seen
18 that in your life?

19 A. Possibly. Nothing serious enough to
20 where I recall specifically.

21 Q. Would that -- since you can't
22 recall, it would not influence you in this
23 trial?

24 A. No, it wouldn't.

25 Q. Have you or a family member, close

1 personal friend, ever been falsely accused of
2 a crime?

3 A. No.

4 Q. Have you ever been the victim of a
5 crime?

6 A. Yes.

7 Q. Tell me what.

8 A. As a police officer, getting
9 assaulted in the course of doing my duties.

10 Q. Would that affect or influence you
11 in any way?

12 A. No.

13 THE COURT: Any additional
14 questions from the plaintiff?

15 GREGG MEYERS: None, Your Honor.
16 Thank you.

17 THE COURT: From the defendant?

18 DAWES COOKE: None.

19 THE COURT: If you would step out,
20 we will be with you in just a moment.

21 (JUROR NUBMER 32 EXITS COURTROOM)

22 THE COURT: Says the plaintiff?

23 GREGG MEYERS: Strike the juror.

24 THE COURT: Let's bring him in.

25 (JUROR NUMBER 32 ENTERS COURTROOM)

1 THE COURT: Thank you, sir. You
2 have been excused from any further
3 participation in this one. If you would,
4 call the number after six tonight and follow
5 the instructions. Have a great day. Thank
6 you, sir.

7 (JUROR NUMBER 32 EXCUSED)

8 (JUROR EXITS COURTROOM)

9 THE COURT: Mr. Wells.

10 (JUROR NUMBER 425 ENTERS COURTROOM)

11 EXAMINATION OF WAYNE E. WELLS

12 BY THE COURT:

13 Q. Hello, Mr. Wells.

14 A. Hey.

15 Q. How are you this afternoon?

16 A. Fine.

17 Q. Good. Take your seat there, get
18 comfortable. State your full name and your
19 juror number.

20 A. Wayne Edmond Wells, 425.

21 Q. Thank you, sir. A couple of
22 questions for you. Is this the first time
23 you've ever been a juror in a civil trial?

24 A. (Negative gesture) -- I was a juror
25 on a criminal trial in '84.

1 Q. But not a civil trial?

2 A. Not a civil trial.

3 Q. Do you remember what the case was in
4 the criminal trial?

5 A. It was a rape case.

6 Q. Would that affect or influence you
7 in this case?

8 A. No, sir.

9 Q. And you understand that this case
10 would be based on its facts and circumstances
11 and the law in this case?

12 A. Yes, sir.

13 Q. Have you suffered any family
14 tragedies in your life?

15 A. My dad died of cancer five years
16 ago.

17 Q. Was that a sudden occurrence?

18 A. No, he fought it for nine years.

19 Q. Long?

20 A. (Affirmative nod).

21 Q. Protracted?

22 A. Yes, sir.

23 Q. Would that unduly influence you?

24 A. No, sir.

25 Q. Have you or a family member or close

1 personal friend ever been accused of or ever
2 been the victim of sexual abuse?

3 A. Yes, sir.

4 Q. You have?

5 A. Yes, sir.

6 Q. Tell me about it.

7 A. It was me. I was ten, eleven years
8 old and a couple of the older boys in the
9 neighborhood -- (pause).

10 Q. Okay. Would that influence you in
11 this case?

12 A. I made peace with that a few years
13 ago. No.

14 Q. I understand that but would it
15 affect how you viewed the evidence in this
16 case in any way?

17 A. No, sir.

18 Q. You would be able to apply that
19 experience fairly and impartially?

20 A. Yes, sir.

21 Q. And your decision would be based on
22 the evidence and the law?

23 A. Yes, sir.

24 Q. Do you have any family members or
25 close personal friends who suffer from post-

1 traumatic stress disorder?

2 A. No, sir.

3 Q. Have you or a family member ever
4 suffered from any addiction and/or dealt with
5 addiction which was due to sexual abuse?

6 A. No.

7 Q. Have you ever researched the sex
8 offender registry?

9 A. Researched it?

10 Q. (Affirmative nod).

11 A. No, sir.

12 Q. Have you ever witnessed sexual
13 harassment or sexual discrimination in the
14 workplace?

15 A. Yes, sir.

16 Q. Can you tell me a little bit about
17 that?

18 A. When I was working for Piggly
19 Wiggly, I had a cashier and the overnight
20 manager was constantly making comments about
21 her. She went to management and a couple of
22 weeks later she was fired.

23 Q. She was fired?

24 A. (Affirmative nod), she was fired.

25 Q. Would that affect of influence you

1 in this dispute?

2 A. No, sir.

3 Q. Again, you would be able to apply
4 that life's experience fairly and
5 impartially?

6 A. Yes, sir.

7 Q. Okay. Have you, a family member or
8 a close personal friend ever been falsely
9 accused of a crime?

10 A. No, sir.

11 Q. Have you ever been the victim of a
12 crime -- other than of course what you shared
13 earlier about early in your life?

14 A. I don't -- no. I mean, not a crime.
15 I mean, when I was younger, I got beat up a
16 couple of times.

17 Q. Okay.

18 THE COURT: Any additional
19 questions from the plaintiff?

20 GREGG MEYERS: I would just ask
21 the outcome of the criminal case that happen-
22 ed to the juror?

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Do you recall?

1 A. Yes, the young gentlemen was found
2 guilty.

3 Q. And the crime was, again?

4 A. Rape. It was -- well, in technical
5 terms it was digital penetration without
6 permission.

7 Q. Criminal sexual conduct?

8 A. (Affirmative nod), criminal sexual
9 conduct.

10 THE COURT: Any additional
11 questions?

12 DAWES COOKE: Could we ask whether
13 as a result of the experience that he had as
14 a child whether any charges were brought
15 against ---

16 EXAMINATION CONTINUED

17 BY THE COURT:

18 Q. Were any charges brought against any
19 of the persons?

20 A. No, that was '66, '67 and it was
21 much different back then. I never really
22 talked about it until I talked to a
23 psychiatrist in the late '70s.

24 Q. So you sought counseling for it?

25 A. Yes, sir, I had some counseling.

1 Q. Do you seek counseling for that now?

2 A. No.

3 Q. And I think you said you put that to
4 rest?

5 A. I made peace with that like twenty-
6 five or thirty years ago.

7 THE COURT: Nothing further.
8 Thank you. You may step out and we will be
9 with you in just a moment.

10 (JUROR NUMBER 425 EXITS COURTROOM)

11 THE COURT: Any challenge for
12 cause?

13 GREGG MEYERS: None.

14 DAWES COOKE: Yes, Your Honor.
15 As the victim of sexual assault as a child,
16 I believe that he couldn't be fair. He's
17 received psychotherapy for his ---

18 THE COURT: He stated very
19 categorically, very effectively I thought, --
20 as you may have sensed in my voice, I almost
21 became possibly accusatory as whether 'you
22 can possibly do that' and he allayed that
23 right off the bat.

24 Let the record reflect that the
25 juror couldn't have been more direct, less --

1 no showing of passion whatsoever, just a very
2 methodical response to it.

3 So I -- I understand and I had that
4 in my mind, but given his responses,
5 (negative gesture). Then going back through
6 it, talking about the counseling, he further
7 confirmed.

8 I respectfully deny cause. Do you
9 move to strike?

10 DAWES COOKE: Yes, please.

11 THE COURT: Okay. Let the record
12 reflect that as to number fifteen on the list
13 (Juror Number 415, Wayne Wells) that there
14 was a challenge for cause denied, that the
15 defendant -- and that is protected. Thank
16 you.

17 (JUROR NUMBER 425 ENTERS COURTROOM)

18 THE COURT: Thank you, Mr. Wells.
19 I appreciate it. You've been excused from
20 participation in this dispute. If you will,
21 call the number after six tonight and follow
22 that instruction. Thank you. Appreciate it.
23 Have a great day. You may exit through that
24 door.

25 (JUROR NUMBER 415 EXCUSED)

1

(JUROR EXITS COURTROOM)

2

THE COURT: Okay.

3

(JUROR NUMBER 228 ENTERS COURTROOM)

4

EXAMINATION OF CHAD LAVINGHOUSEZ

5

BY THE COURT:

6

Q. If you will, just take a seat.

7

A. Yes, sir.

8

Q. State your full name and juror

9

number.

10

A. Chad Lavinghousez. 228.

11

Q. Thank you. I have several questions

12

for you. First one, is this the first time

13

you've been a juror in a civil case?

14

A. Yes, sir.

15

Q. Have you in your life experienced

16

any family tragedies?

17

A. No, sir.

18

Q. Okay. Have you or a family member

19

or close personal friend ever been accused of

20

or been the victim of sexual abuse?

21

A. Not a close friend. One of my

22

friend's cousins -- but not a direct ---

23

Q. Were you involved in that?

24

A. No, sir.

25

Q. Do you have any direct or indirect

1 -- independent knowledge of that?

2 A. No, sir.

3 Q. Do you recall anything specific
4 about being ---

5 A. I believe that there was child
6 pornography found on his computer. That was
7 -- (pause).

8 Q. That was the extent of it?

9 A. Yes, sir.

10 Q. Would that affect or influence you
11 in any way, sir?

12 A. No, sir.

13 Q. You would be able to consider the
14 evidence fairly and impartially, without
15 being influenced by that knowledge?

16 A. Yes, sir.

17 Q. Have you or any family member or
18 close personal friend ever been diagnosed or
19 suffered from post-trauma stress disorder?

20 A. No, sir.

21 Q. Have you ever witnessed sexual
22 harassment or sexual discrimination in the
23 workplace?

24 A. No, sir.

25 Q. Have you ever researched the sex

1 offender registry?

2 A. No, sir.

3 Q. Have you, a family member or a close
4 personal friend ever been falsely accused of
5 a crime?

6 A. No, sir.

7 Q. Have you ever been the victim of a
8 crime?

9 A. When I -- it's kind of -- I was
10 punched in the face before but that was it.

11 Q. Was there a criminal prosecution?

12 A. There was a cop present and they
13 arrested the guy but I wasn't involved in
14 that, other than he had to pay for the
15 replacement of my glasses.

16 Q. Okay. How long ago did that occur?

17 A. That was September of 2011.

18 Q. Would that influence you in this
19 case at all?

20 A. No, sir.

21 THE COURT: Any additional
22 questions from the plaintiff?

23 GREGG MEYERS: None, Your Honor.

24 THE COURT: From the defendant?

25 DAWES COOKE: The incidence where

1 somebody had child pornography, were there
2 criminal charges brought as a result of that?

3 EXAMINATION CONTINUED

4 BY THE COURT:

5 Q. Were there criminal charges, to your
6 knowledge, against the person with the
7 computer?

8 A. From what I know, yes.

9 Q. There were?

10 A. But I don't know the extent.

11 Q. You don't know what -- you don't
12 know the outcome?

13 A. I know that he was found guilty of
14 whatever the child pornography was on his
15 computer, but I don't know anything in
16 particular.

17 Q. How long ago was that?

18 A. (Negative gesture), six years?
19 Seven years? Something like that.

20 THE COURT: Anything else?

21 DAWES COOKE: No, sir. Thank you.

22 THE COURT: Thank you. If you
23 would step out, we will be with you in just a
24 moment, sir.

25 (JUROR NUMBER 228 EXITS COURTROOM)

1 THE COURT: Any challenge for cause?

2 GREGG MEYERS: None.

3 DAWES COOKE: Seat the juror.

4 THE COURT: Okay, ask him to come
5 in, please.

6 (JUROR NUMBER 228 ENTERS COURTROOM)

7 THE COURT: Thank you so much,
8 sir. You've been selected to assist us in
9 resolving this dispute. I'm going to let you
10 go to your jury room for just a minute and
11 then they will take you down, very shortly,
12 and show you where you'll park.

13 Be back in your jury room by 9:45
14 tomorrow. While you are out, don't talk to
15 anyone about this case or permit anyone to
16 talk about it in your presence. Don't
17 conduct any independent research. We will
18 see you tomorrow.

19 (JUROR NUMBER 228 SEATED)

20 (JUROR EXITS COURTROOM)

21 THE COURT: Bring in Mr. Rauton.

22 (JUROR NUMBER 325 ENTERS COURTROOM)

23 EXAMINATION OF GEORGE RAUTON

24 BY THE COURT:

25 Q. Good afternoon, sir.

1 A. Good afternoon.

2 Q. How are you?

3 A. Fine.

4 Q. If you would, just take a seat.

5 Give us your name and give us your juror
6 number?

7 A. George Rauton, Number 325.

8 Q. Thank you, Mr. Rauton. I have
9 several questions for you. Is this the first
10 time that you've ever served as a juror on a
11 civil trial?

12 A. Yes, sir.

13 Q. It is?

14 A. Yes, sir.

15 Q. Have you in your life suffered any
16 family tragedies?

17 A. Such as?

18 Q. That's a very good question, because
19 it's not very clear. Obviously if we live
20 long enough we may experience the death of a
21 loved one through the normal course of life.

22 A. (Affirmative nod).

23 Q. But basically the untimely death of
24 someone, the untimely injury to someone such
25 as they were incapacitated -- an

1 incapacitated person?

2 A. Yes. Most recently -- I have a twin
3 brother, had a twin brother. He suddenly --
4 he had surgery and passed away October 17th,
5 2014.

6 Q. I am sorry to hear that.

7 A. Thank you.

8 Q. Would that affect you in this trial,
9 sir?

10 A. No, sir.

11 Q. And it wouldn't unduly influence
12 your view of any evidence; is that correct?

13 A. Right. No, sir.

14 Q. Have you, a close personal friend or
15 family member ever been the victim of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you know of any family member(s)
19 or close personal friends who suffer from
20 post-traumatic stress disorder?

21 A. No, sir.

22 Q. Okay. Have you ever witnessed
23 sexual harassment or sexual discrimination
24 in the workplace, to your knowledge?

25 A. No, sir, not in the workplace. We

1 had a situation in our church not long ago,
2 that I was just slightly involved in.

3 Q. Were you involved in it in the sense
4 of part of an investigating body or were you
5 ---

6 A. I was one of three people, or either
7 four people, that was asked to go to the
8 person -- well, first to see what we needed
9 to do. Fortunately we went to our church's
10 attorneys and a lady on the staff told us
11 exactly what to do. We did it, that was it.

12 Q. Were there any criminal charges
13 brought?

14 A. Not to my knowledge.

15 Q. Was any remedial action taken, such
16 as dismissing that person or anything?

17 A. Yes, sir, that was the information
18 that we got. We were told how to do it and
19 we made the statement and it was over with
20 and accomplished. No complications.

21 Q. That would not influence you?

22 A. No, sir.

23 Q. Have you ever researched the sex
24 offender registry?

25 A. No, sir.

1 Q. Have you or a family member or close
2 personal friend ever been the victim or
3 falsely accused of a crime?

4 A. No, sir.

5 Q. Have you ever been the victim of a
6 crime? Or has a close personal friend?

7 A. Not that I can think of right this
8 second.

9 Q. Thank you, sir.

10 THE COURT: Any additional
11 questions from the plaintiff?

12 GREGG MEYERS: None, Your Honor.
13 Thank you.

14 THE COURT: From the defendant?

15 DAWES COOKE: Could we ask,
16 without getting into great details, the
17 circumstances that he was called upon to
18 investigate.

19 EXAMINATION CONTINUED

20 BY THE COURT:

21 Q. What were the allegations?

22 A. The allegation was that -- this
23 person was on staff with the church and there
24 were some things going, like inviting young
25 men to go on a camping trip and that type

1 thing that was not aboveboard. That was what
2 was involved.

3 Q. So there were allegations or
4 assertions of homosexuality?

5 A. Yes.

6 Q. Would that -- would that -- is that
7 a problem for you?

8 A. No, sir.

9 Q. Do you have any personal beliefs or
10 philosophies about homosexuality?

11 A. No, sir.

12 THE COURT: Anything else?

13 DAWES COOKE: No, sir. Thank you.

14 THE COURT: Thank you very much.

15 If would you step out, we'll be with you in a
16 moment.

17 (JUROR NUMBER 325 EXITS COURTROOM)

18 THE COURT: That creates something
19 that I've been meaning to ask. We haven't
20 had anybody even close, I don't think, but
21 I'm going to probably include that in the
22 inquiries, about homosexuality, as well.
23 Any objection from the plaintiff?

24 GREGG MEYERS: None, Your Honor.

25 THE COURT: Any objection from the

1 defendant to including that in my questions?

2 DAWES COOKE: No objection.

3 THE COURT: Is there any challenge
4 for cause, Mr. Meyers?

5 GREGG MEYERS: None, Your Honor.

6 DAWES COOKE: Seat the juror,
7 please.

8 THE COURT: Seat the juror. Thank
9 you. Have Mr. Rauton come back in.

10 (JUROR NUMBER 325 ENTERS COURTROOM)

11 THE COURT: Thank you, sir. We
12 appreciate your patience. You've been
13 selected to assist us in further resolving
14 this case. We will resume this at 9:45
15 tomorrow. They are going to show you to the
16 jury room where you are going to need to
17 report, then they are going to take you down
18 and show you where your parking place is for
19 the duration of the trial.

20 Don't discuss this case with anyone
21 or allow anyone to talk about it in your
22 presence. Have a great evening and we will
23 see in the morning at 9:45. Appreciate it.

24 (JUROR NUMBER 325 SEATED)

25 (JUROR EXITS COURTROOM)

1 THE COURT: Who is next?
2 (JUROR NUMBER 258 ENTERS COURTROOM)
3 EXAMINATION OF CLIFTON L. MCDONALD
4 BY THE COURT:
5 Q. Good to see you, sir. Had a good
6 afternoon thus far? I hope.
7 A. So far, (affirmative nod).
8 Q. So far?
9 A. (Affirmative nod).
10 Q. Have a seat and, if you would, state
11 your name for the record and juror number.
12 A. My name is Clifton L. McDonald and I
13 am Juror Number 258.
14 Q. Thank you, sir. There are some
15 questions that I have for you, Mr. McDonald.
16 The first one is, is this the first time that
17 you've ever sat on a civil jury?
18 A. Yes, it is.
19 Q. In your lifetime, have you ever had
20 any family tragedies?
21 A. My father passed away.
22 Q. Was that a normal -- was that a ---
23 A. He had a heart attack.
24 Q. Suddenly?
25 A. Yes.

1 Q. How long was that?

2 A. Five years ago.

3 Q. Would that unduly influence you in
4 any way in this case? I know that was
5 probably not an exciting time in your life,
6 certainly a traumatic time, but would that
7 unduly influence you now?

8 A. No, sir.

9 Q. It wouldn't affect how you would
10 view the evidence in this case?

11 A. No.

12 Q. Have you or a family member or close
13 personal friend ever been the victim of or
14 ever been accused of committing a sexual
15 abuse or a sexual offense?

16 A. No, sir.

17 Q. Do you know any family members or
18 close personal friends who suffer from post-
19 trauma stress disorder?

20 A. No.

21 Q. Have you ever researched the sex
22 offender registry?

23 A. I have looked, yes.

24 Q. Have you done it frequently or do
25 you do it just on occasion or what?

1 A. On occasion.

2 Q. Do you recall what precipitated your
3 looking at the registry?

4 A. Just curious of who was in my
5 neighborhood.

6 Q. Would that affect you in any way in
7 this case?

8 A. No.

9 Q. Have you ever witnessed any sexual
10 harassment or discrimination in the work-
11 place?

12 A. No.

13 Q. Do you have personal feelings,
14 strong feelings or any personal philosophy
15 concerning homosexuality?

16 A. No.

17 Q. Have you or a family member ever
18 been falsely accused of a crime?

19 A. No.

20 Q. Have you ever been the victim of a
21 crime?

22 A. Yes.

23 Q. Tell me about that.

24 A. A hit-and-run. They hit our parked
25 vehicle and left.

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1 Q. Left?

2 A. Yeah, (affirmative nod).

3 Q. Were they ever apprehended?

4 A. No.

5 Q. How long ago was that?

6 A. Two years ago.

7 Q. Would that affect you, Mr. McDonald,
8 in any way in this case?

9 A. No.

10 THE COURT: Any additional
11 questions from the plaintiff?

12 GREGG MEYERS: None, Your Honor.
13 Thank you.

14 THE COURT: From the defendant?

15 DAWES COOKE: Mr. McDonald said
16 earlier that he'd went to summer camp.

17 JUROR NUMBER 258: Yes.

18 DAWES COOKE: Could we ask which
19 camp that was?

20 THE COURT: Yes.

21 EXAMINATION CONTINUED

22 BY THE COURT:

23 Q. What camp was that?

24 A. It was The Citadel summer camp.

25 Q. What year was that?

1 A. I guess I was about thirteen, so --
2 I'm forty-nine right now, so about thirty-
3 something years ago.

4 Q. And I believe that you indicated
5 that that experience would not influence you
6 in any way?

7 A. (Affirmative nod), no.

8 Q. And that if there were some
9 assertions or allegations or discussions
10 about The Citadel camps that that wouldn't
11 influence how you viewed that evidence
12 either?

13 A. No.

14 THE COURT: Anything else?

15 DAWES COOKE: That's fine.

16 THE COURT: Anything further from
17 the plaintiff?

18 GREGG MEYERS: No, Your Honor.

19 THE COURT: Thank you, Mr.

20 McDonald. If you would step out, we will be
21 with you in just a moment.

22 (JUROR NUMBER 258 EXITS COURTROOM)

23 THE COURT: Any challenge for
24 cause?

25 GREGG MEYERS: None.

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1 DAWES COOKE: Seat the juror.

2 THE COURT: Bring him in, please.

3 (JUROR NUMBER 258 ENTERS COURTROOM)

4 THE COURT: Thank you, Mr.

5 McDonald. We look forward to working with
6 you. You've been selected to assist in
7 resolving this dispute.

8 You'll need to be back in your jury
9 room -- and they'll show you that in just a
10 moment -- by 9:45 in the morning. Have a
11 great evening.

12 Please don't discuss this case with
13 anyone or permit anyone to talk with you
14 about it or in your presence.

15 They will also show you where you
16 will be parking for the duration of the
17 trial. Thank you. See you in the morning.

18 (JUROR NUMBER 258 SEATED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: Ms. Raulston.

21 (JUROR NUBMER 324 ENTERS COURTROOM)

22 EXAMINATION OF JOANNA RAULSTON

23 BY THE COURT:

24 Q. Hi, Ms. Raulston. Come on in and
25 have a seat. Good afternoon. How are you?

1 A. Fine, thank you.

2 Q. If you would, state your full name
3 and give us your juror number, please.

4 A. Joanna Raulston, 324.

5 Q. Thank you, Ms. Raulston. We have
6 several questions for you. First, is this
7 the first time that you've ever been a juror
8 in a civil case?

9 A. Yes.

10 Q. Have you had any family tragedies in
11 your life?

12 A. Yes.

13 Q. Tell me about them.

14 A. My younger brother committed
15 suicide.

16 Q. How long ago was that?

17 A. About four years ago.

18 Q. Was it a sudden, unexpected
19 situation? Had he had any problems, mental
20 problems before then?

21 A. Not that we knew of.

22 Q. Not that you knew of?

23 A. (Negative gesture).

24 Q. And were you present when that
25 occurred?

1 A. No.

2 Q. That would not unduly influence you
3 or affect you in this case?

4 A. No.

5 Q. Anything else?

6 A. No.

7 Q. The -- have you, any family member
8 or close personal friend ever been accused of
9 or ever been the victim of sexual abuse?

10 A. No.

11 Q. Do you know of any family members or
12 close personal friends who suffer from post-
13 trauma stress disorder?

14 A. No.

15 Q. Have you ever researched the sex
16 offender registry?

17 A. Yes.

18 Q. Tell me about that.

19 A. I am actually new to the Charleston
20 area, so I did a search of people around me.

21 Q. I understand. Do you do that on a
22 regular basis?

23 A. I've only done it once.

24 Q. Only once?

25 A. (Affirmative nod).

1 Q. And the purpose was to ascertain if
2 there were any persons living nearby?

3 A. Yes.

4 Q. Have you ever witnessed any sexual
5 harassment or any sexual discrimination?

6 A. No.

7 Q. Do you have any personal strong
8 feelings or philosophies concerning homo-
9 sexuality?

10 A. No.

11 Q. Have you or any family member ever
12 been falsely accused of a crime?

13 A. No.

14 Q. And have you ever been the victim of
15 a crime?

16 A. No.

17 THE COURT: Any additional
18 questions from the plaintiff?

19 GREGG MEYERS: None. Thank you,
20 Your Honor.

21 DAWES COOKE: None, Your Honor.

22 THE COURT: If you would step
23 outside, ---

24 JUROR NUMBER 324: I have a ---

25 THE COURT: If you'll step out,

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1 we'll be with you in just a moment.

2 (JUROR NUMBER 324 EXITS COURTROOM)

3 THE COURT: Any challenge?

4 GREGG MEYERS: No challenge.

5 THE COURT: Defense?

6 DAWES COOKE: No challenge. Seat

7 the juror, please.

8 THE COURT: Let me, just for my
9 edification, -- and I -- it shows that -- I
10 love what I am in so many ways, but what is
11 the -- has there been threats of suicide in
12 this case?

13 GREGG MEYERS: No, sir.

14 THE COURT: Okay. I just wanted
15 to have that in mind. No problem. Bring her
16 in.

17 (JUROR NUMBER 324 ENTERS COURTROOM)

18 THE COURT: Thank you, Ms.
19 Raulston. I am please to inform you that you
20 have been selected to help further resolve
21 this case.

22 Please be back at 9:45 tomorrow.
23 They are going to take you and show you the
24 jury room and where you will be parking for
25 the duration of the trial.

1 Please, while you are out, don't
2 allow anybody to talk to you about the case
3 or talk about it in your presence. Don't
4 conduct any independent research.

5 See you tomorrow, 9:45.

6 (JUROR NUBMER 324 SEATED)

7 (JUROR EXITS COURTROOM)

8 THE COURT: Do y'all need a break?

9 DAWES' COOKE: I've never turned down
10 a break in my life, but ---

11 THE COURT: Next juror, let's do
12 this and then we will take a break.

13 (JUROR NUMBER 252 ENTERS COURTROOM)

14 EXAMINATION OF VICKI MARASI

15 BY THE COURT:

16 Q. How are you?

17 A. Good.

18 Q. If you would, have a seat and tell
19 us your full name and juror number.

20 A. Vicki Ann Marsi. My number is 252.

21 Q. Thank you, Ms. Marsi. I have
22 several questions for you. The first one is,
23 is this the first time you've ever served on
24 a civil jury?

25 A. No

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1 Q. Tell me. You've been before?

2 A. (Affirmative nod).

3 Q. Where?

4 A. It was when you were over across the
5 street in another building, for a traffic
6 violation case.

7 Q. A traffic case?

8 A. (Affirmative nod).

9 Q. Do you recall what the case was
10 about?

11 A. I do. It was somebody that had just
12 stopped in the middle of the road and got
13 rear-ended. It was to determine who was at
14 fault.

15 Q. And were they seeking damages?

16 A. Yes.

17 Q. Do you remember the result?

18 A. I do. It was a hung jury.

19 Q. So they couldn't decide?

20 A. No.

21 Q. Do you understand that that case --
22 and that case would not influence you in any
23 way in this particular situation, because
24 this case would obviously rises and falls on
25 its own facts and law? Correct?

1 A. Yes.

2 Q. Have you ever experienced or
3 suffered any family tragedies in your life?

4 A. Fortunately not.

5 Q. Good. Have you or a family member
6 ever been accused of or ever been the victim
7 of a sexual abuse?

8 A. No.

9 Q. Do you know of any family members or
10 close personal friends that suffer from post-
11 trauma stress disorder?

12 A. No, I don't believe I do.

13 Q. Okay. Have you ever researched the
14 sex offender registry?

15 A. No.

16 Q. Have you ever witnessed sexual
17 harassment or sexual discrimination in the
18 workplace, anywhere for that matter?

19 A. No, I don't think so.

20 Q. Do you have any strong feelings or
21 personal philosophies about homosexuality?

22 A. Uh, -- no.

23 Q. Would not be unduly influenced by
24 any testimony about homosexuality, that would
25 cause you to feel one way or the other?

1 A. (Negative gesture).

2 Q. Have you or a family member ever
3 been falsely accused of a crime?

4 A. No.

5 Q. Have you ever been the victim of a
6 crime?

7 A. No, sir.

8 THE COURT: Any additional
9 questions from the plaintiff?

10 GREGG MEYERS: None, Your Honor.

11 THE COURT: From the defendant?

12 DAWES COOKE: Could we ask Ms. Marsi
13 -- I believe that she told us that she got a
14 graduate degree from The Citadel. Could we
15 ask what year that was?

16 THE COURT: Yeah.

17 EXAMINATION CONTINUED

18 BY THE COURT:

19 Q. When was that?

20 A. It was 1993.

21 Q. That would not affect or influence
22 you at all in this dispute?

23 A. (Negative gesture).

24 THE COURT: Anything else?

25 DAWES COOKE: That's all.

1 THE COURT: Thank you. If you
2 would step out, we'll be with you in just a
3 moment.

4 (JUROR NUMBER 252 EXITS COURTROOM)

5 THE COURT: Challenge from the
6 plaintiff?

7 GREGG MEYERS: None.

8 THE COURT: From the defendant?

9 DAWES COOKE: Seat the juror,
10 please.

11 THE COURT: That would be number
12 eight. Four more to go. Let's ask her to
13 step back in.

14 (JUROR NUMBER 252 ENTERS COURTROOM)

15 THE COURT: Ms. Marsi, thank you
16 very much. You've been selected to assist us
17 in resolving this dispute.

18 So I will need you back at 9:45 in
19 the morning. They will show you the jury
20 room where you need to report and they will
21 also take you down and show you the parking
22 space that you will have for the duration of
23 the trial.

24 Please, while you are out don't
25 discuss this case with anyone or permit

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1 anyone to talk with you about it. Don't do
2 any independent investigations. I'll see you
3 tomorrow at 9:45. Have a good evening.

4 (JUROR NYUMBER 252 SEATED)

5 (JUROR EXITS COURTROOM)

6 THE COURT: Let's take a short
7 recess. Let's take ten minutes.

8 (BRIEF RECESS)

9 THE COURT: I believe the
10 defendant has one strike remaining. Is that
11 correct?

12 DAWES COOKE: Yes, sir.

13 THE COURT: Okay. Bring in our
14 next juror.

15 (JUROR NUMBER 366 ENTERS COURTROOM)

16 EXAMINATION OF ANNABELL SIMMONS

17 BY THE COURT:

18 Q. How are you?

19 A. I'm good.

20 Q. Good. Sorry to keep you waiting.
21 If you would have a seat, please, ma'am.

22 A. Okay.

23 Q. When you're comfortable, state your
24 name, please, and your juror number for us.

25 A. I'm Annabell Simmons, Juror Number

1 366.

2 Q. Thank you, Ms. Simmons. I have a
3 couple of questions for you. First of all,
4 is this the first time that you've ever
5 served as a juror in a civil trial?

6 A. Yes.

7 Q. Have you experienced or suffered in
8 your family any tragedies in your life?

9 A. Like?

10 Q. Well, that's a good question. The
11 untimely death of a loved one, injury or
12 severe injury to a child, anything of that
13 nature?

14 A. My sister died in '06 from cancer,
15 she suffered for eight years; but nothing
16 other than that.

17 Q. Nothing other than that?

18 A. No.

19 Q. And that wouldn't influence you,
20 would it, in this trial?

21 A. No.

22 Q. Have you or a family member ever
23 been accused or ever been the victim of
24 sexual abuse?

25 A. No.

1 Q. Have you or any family member ever
2 been diagnosed with post-trauma stress
3 disorder?

4 A. No.

5 Q. Do you know of anyone who has been?

6 A. Just the clients that I serve.

7 Q. In that capacity, you've talked
8 with them and counseled them with that?

9 A. No. We have a therapist that comes
10 in and a psychiatrist that deals with that.

11 Q. So they come in and deal with that?

12 A. Right.

13 Q. Would that affect or influence you
14 in this dispute if there was testimony that
15 someone had post-trauma stress disorder?
16 Would you be able to apply your knowledge
17 fairly and impartially?

18 A. Yes.

19 Q. And you would base your decision on
20 the evidence and the law?

21 A. Yes.

22 Q. Have you ever researched the sex
23 offender registry, Ms. Simmons?

24 A. No, I've never had any reason to.

25 Q. Have you ever witnessed sexual

1 harassment or sexual discrimination in the
2 workplace?

3 A. No.

4 Q. Do you have any strong feelings or
5 philosophies concerning homosexuality?

6 A. No.

7 Q. Have you or any close -- a member of
8 your family or close personal friend ever
9 been falsely accused of a crime?

10 A. Not that I know of.

11 Q. Have you ever been the victim of a
12 crime?

13 A. No.

14 THE COURT: Any additional
15 questions from the plaintiff?

16 GREGG MEYERS: No, Your Honor.

17 THE COURT: From the defendant?

18 DAWES COOKE: I think Ms. Simmons
19 said that she works with special needs
20 children. Could we ask whether she's taken/
21 taking care of any children that were victims
22 of sexual abuse?

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Have you ever to your knowledge

1 dealt with any children who have been
2 sexually abused?

3 A. Not that I know of.

4 DAWES COOKE: Nothing further.
5 Thank you.

6 THE COURT: Thank you. If you
7 would step out, we will be with you in just
8 a moment.

9 (JUROR NUMBER 366 EXITS COURTROOM)

10 THE COURT: Any challenge?

11 GREGG MEYERS: No challenge, Your
12 Honor.

13 DAWES COOKE: Seat the juror, Your
14 Honor.

15 THE COURT: Very well. Ask her to
16 step in, please.

17 (JUROR NUMBER 366 ENTERS COURTROOM)

18 THE COURT: Ms. Simmons, I'm
19 pleased to inform you that you've been
20 selected to assist in further resolving this
21 dispute. We will renew this tomorrow at
22 9:45. When you leave now they'll saw you the
23 jury room where you will need to report and
24 they will also take you down and show you
25 where you will be able to park for the

1 duration of the trial.

2 While you are out, please don't talk
3 to anybody about this case or allow them to
4 talk about it in your presence. Don't
5 conduct any independent research. We'll see
6 you tomorrow at 9:45.

7 (JUROR NUMBER 366 SEATED)

8 (JUROR EXITS COURTROOM)

9 (JUROR NUMBER 299 ENTERS COURTROOM)

10 EXAMINATION OF KATIE O'NEILL

11 BY THE COURT:

12 Q. Ms. O'Neill?

13 A. Yes.

14 Q. Hi. Thank you for your patience.
15 Please have a seat. Please give us your full
16 name and your juror number.

17 A. Katie Beecher O'Neill, Juror Number
18 299.

19 Q. Ms. O'Neill, I have several
20 questions for you. First, have you ever been
21 a juror in a civil case other than this one?

22 A. No, Your Honor.

23 Q. Have you had or experienced any
24 family tragedies in your life?

25 A. Tragedies?

1 Q. Such as the untimely death of a
2 loved one, serious injury to a loved one, or
3 that type of thing?

4 A. My brother had serious injuries. He
5 was in a motorcycle accident when I was eight
6 years old. He is a paraplegic, but he's
7 doing great.

8 Q. That would not affect or influence
9 you in this case?

10 A. Not at all.

11 Q. And that was several years ago?

12 A. Yes, sir. I was eight, so twenty-
13 four years ago.

14 Q. Have you, a family member or close
15 personal friend ever been the victim of or
16 ever been accused of sexual abuse?

17 A. My mother was the victim of sexual
18 abuse when she was a child.

19 Q. Do you have any independent know-
20 ledge of that?

21 A. Just from what my mother has told me
22 about it.

23 Q. When did you learn of that?

24 A. Probably when I was a teenager she
25 finally told me about it.

1 Q. Have you talked with her recently,
2 had any recent conversations about it?

3 A. No, sir, it's not something that we
4 discuss.

5 Q. I understand that. Would that
6 affect you in any way if there was testimony
7 in this case about sexual abuse?

8 A. No, Your Honor, it wouldn't.

9 Q. It would not?

10 A. (Negative gesture).

11 Q. And you would not be influenced in
12 any of your decisions?

13 A. No, sir.

14 Q. Do you know of anyone, a family
15 member, a close personal friend, who suffers
16 from post-trauma stress disorder?

17 A. No, sir, I do not.

18 Q. Your mother hasn't suffered from any
19 addictions because of the sexual abuse, has
20 she?

21 A. No, sir.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. No, sir.

25 Q. Have you ever witnessed sexual

1 harassment or sexual discrimination in the
2 workplace?

3 A. No, sir.

4 Q. Do you have any strong feelings
5 about homosexuality?

6 A. No, sir.

7 Q. Have you or a family member ever
8 been falsely accused of a crime?

9 A. No, sir.

10 Q. Ever been the victim of a crime?

11 A. No, sir.

12 THE COURT: Any additional
13 questions from the plaintiff?

14 GREGG MEYERS: Your Honor, if I
15 remember correctly, Ms. O'Neill had family
16 members that participated in The Citadel
17 summer camps. Does she happen to know what
18 years?

19 JUROR NUMBER 299: I think it was
20 actually last summer that my brother-in-law
21 and my nephew went to the baseball camp -- or
22 it may have been summer before last actually.

23 EXAMINATION CONTINUED

24 BY THE COURT:

25 Q. Would that influence or affect you

1 if there was testimony concerning
2 participants in a summer camp?

3 A. No, sir, it would not.

4 GREGG MEYERS: No other questions,
5 Your Honor. Thank you.

6 THE COURT: Mr. Cooke?

7 DAWES COOKE: With regard to her
8 mother, could we ask whether she has suffered
9 any long-term affects as a result of her
10 experience as a child.

11 EXAMINATION CONTINUED

12 BY THE COURT:

13 Q. Does she have any -- has she had
14 counseling, or do you know?

15 A. I think she saw a psychologist but
16 she isn't undergoing any current treatment.
17 I think my mom has had some issues with
18 depression over the years, but she also
19 suffers from MS and I think that plays a role
20 in it as well.

21 Q. But you haven't noticed anything
22 specific from what she would have said or
23 attributed specifically to the sexual abuse?

24 A. No, sir.

25 THE COURT: Anything else?

1 DAWES COOKE: The last thing,
2 could we ask, Your Honor, if the abuse was
3 from a family member or someone outside the
4 family?

5 EXAMINATION CONTINUED

6 BY THE COURT:

7 Q. Do you know the specifics of ---

8 A. Yes, I do. It was my grandfather.

9 Q. Anything else?

10 A. No.

11 Q. Thank you.

12 THE COURT: If you would step out,
13 we will be with you in just a second.

14 GREGG MEYERS: Your Honor, could
15 I ask her a quick question?

16 THE COURT: Yeah.

17 GREGG MEYERS: She said that her
18 mother had something -- some other? MF?

19 THE COURT: MS, multiple
20 sclerosis.

21 JUROR NUMBER 299: Multiple
22 sclerosis.

23 GREGG MEYERS: Thank you, I'm
24 sorry. I just didn't hear it distinctly.

25 THE COURT: We will be with you in

1 just a moment.

2 (JUROR NUMBER 299 EXITS COURTROOM)

3 THE COURT: Challenge?

4 GREGG MEYERS: No challenge.

5 THE COURT: Defense?

6 DAWES COOKE: Seat the juror.

7 THE COURT: Thank you. Ask her
8 to return.

9 (JUROR NUMBER 299 ENTERS COURTROOM)

10 THE COURT: Ms. O'Neill, thank you
11 very much. You've been selected to further
12 assist us in resolving this dispute.

13 We will resume this tomorrow at
14 9:45. When you exit, they will show you your
15 jury room and then they will take you down
16 and show you where your parking space will be
17 for the duration of the trial.

18 Please don't discuss this case with
19 anyone while you are out, don't allow anybody
20 to talk about it in your presence. Don't
21 conduct any independent investigation and
22 I'll see you tomorrow at 9:45.

23 (JUROR NUMBER 299 SEATED)

24 (JUROR EXITS COURTROOM)

25 (JUROR NUMBER 192 ENTERS COURTROOM)

1 EXAMINATION OF MICHAEL C. HUNT

2 BY THE COURT:

3 Q. All right. Mr. Hunt, how are you,
4 sir?

5 A. Fine, thank you.

6 Q. Good. If you would, have a seat.
7 State your full name for us and give us your
8 juror number.

9 A. Michael Christopher Hunt, Juror
10 Number 192.

11 Q. Thank you, Mr. Hunt. We have
12 several questions for you. The first one is,
13 is this the first time that you've ever
14 served as a juror in a civil case?

15 A. I served as a juror twice, one was
16 for a traffic ticket and once when a gentle-
17 man was charged with rape.

18 Q. Do you remember the outcome in each
19 one?

20 A. The Folly Beach trial, the ticket
21 was Guilty. I believe that it was a county
22 case that I mentioned before, and he was
23 found Guilty.

24 Q. Okay. Would that affect or
25 influence you, either of those, in any way in

1 this dispute?

2 A. No, sir.

3 Q. You understand that you would be
4 instructed to decide this case based on the
5 evidence and the law in this case?

6 A. I do.

7 Q. And apply the law in this case?

8 A. Yes, sir.

9 Q. Have you ever suffered or
10 experienced any family tragedies in your
11 life?

12 A. No, sir.

13 Q. Have you or a family member or close
14 person friend ever been accused of committing
15 sexual abuse or been the victim of sexual
16 abuse?

17 A. No, sir.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. No, sir.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. I have not.

25 Q. Have you ever witnessed sexual abuse

1 or sexual harassment -- I mean sexual
2 discrimination or sexual harassment in the
3 workplace?

4 A. No, sir.

5 Q. Do you have any strong feelings or
6 personal philosophies regarding homo-
7 sexuality?

8 A. No, sir.

9 Q. Have you or a family member ever
10 been falsely accused of a crime?

11 A. No, sir. Well, I was sued for my
12 company because we had some cargo that was
13 going overseas and it was incorrectly -- we
14 were found innocent; they sued us just to get
15 damages.

16 Q. So they were suing for damages?

17 A. Correct.

18 Q. It was not a criminal action?

19 A. Correct.

20 Q. So it was a civil proceeding then?

21 A. Yes, sir. I don't understand all
22 the terminology.

23 Q. I understand. It was resolved in
24 your favor?

25 A. Yes, sir.

1 Q. Good. Would that influence or
2 affect you in any way?

3 A. No, sir.

4 Q. Have you ever been the victim of a
5 crime?

6 A. No, sir.

7 THE COURT: Any additional
8 questions, from the plaintiff?

9 GREGG MEYERS: Your Honor, Mr.
10 Hunt, if I remember correctly had a -- some
11 experience in testifying in a child
12 molestation case?

13 JUROR NUMBER 192: Yeah, I served
14 as a juror -- or was on the jury for ---

15 GREGG MEYERS: Oh, that was the
16 case that ---

17 JUROR NUMBER 192: Right. I
18 apologize if misworded that.

19 THE COURT: That's fine.

20 GREGG MEYERS: No further
21 questions.

22 THE COURT: Anything further?

23 DAWES COOKE: No questions.

24 THE COURT: Thank you, Mr. Hunt.

25 If you would step out, we will be with you in

1 a few minutes.

2 (JUROR NUMBER 192 EXITS COURTROOM)

3 THE COURT: Challenge?

4 GREGG MEYERS: No challenge.

5 DAWES COOKE: Seat the juror.

6 THE COURT: Okay.

7 (JUROR NUMBER 192 ENTERS COURTROOM)

8 THE COURT: Mr. Hunt, I am pleased
9 to inform you that you've been selected to
10 assist us further in resolving this dispute.

11 We will resume this tomorrow at
12 9:45. When you exit, they will show you to
13 your jury room and then take you down to show
14 you your parking place for the duration of
15 the trial.

16 Please, while you are out don't
17 discuss this case with anyone or permit
18 anyone to talk about it in your presence.
19 I will see you tomorrow at 9:45.

20 (JUROR NUMBER 192 SEATED)

21 (JUROR EXITS COURTROOM)

22 THE COURT: Next.

23 DAWES COOKE: Judge Dennis, on the
24 alternates, do we each get one strike on the
25 alternates?

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1 THE COURT: Yeah.

2 GREGG MEYERS: And we are picking
3 three?

4 THE COURT: Picking three and each
5 side may excuse one -- use a strike for each
6 one.

7 (JUROR NUMBER 43 ENTERS COURTROOM)

8 EXAMINATION OF MARLO BURGESS

9 BY THE COURT:

10 Q. Hello, Ms. Burgess.

11 A. Hi.

12 Q. How are you?

13 A. Good. How are you?

14 Q. Fine. Long day.

15 A. Yes.

16 Q. If you would take your seat and then
17 tell us your full name and your juror number,
18 please.

19 A. Marlo Burgess, Juror 43.

20 Q. Ms. Burgess, I have some questions
21 for you. Is this the first time you've ever
22 served on a civil jury?

23 A. Yes.

24 Q. Have you in your life ever
25 experienced or suffered any family tragedy?

1 A. (No verbal response).

2 Q. And that's kind of -- I've had lots
3 of people say, 'what do you mean?' The
4 untimely death of someone; an injury to a
5 young person, a family member, a child;
6 anything of that nature?

7 A. No.

8 Q. Have you or a family member ever
9 been the victim of or ever been accused of
10 sexual abuse?

11 A. No.

12 Q. Do you have any family members or
13 close personal friends who suffer from post-
14 traumatic stress disorder?

15 A. Not that I know of.

16 Q. Have you ever researched the sex
17 offender registry?

18 A. Yes.

19 Q. For what purpose?

20 A. Buying a house.

21 Q. You wanted to see who would be
22 living around you?

23 A. Yeah.

24 Q. Has that happened frequently or have
25 you just done that on occasion?

1 A. (No verbal response).

2 Q. From time to time?

3 A. (Affirmative nod), time to time.

4 Q. And solely for the purpose of seeing
5 who is living in the neighborhood?

6 A. Yes.

7 Q. Have you ever witnessed sexual
8 harassment or sexual discrimination in the
9 workplace?

10 A. No.

11 Q. Do you have any strong feelings or
12 personal philosophies concerning homo-
13 sexuality?

14 A. Have you, a family member or close
15 personal friend ever been falsely accused of
16 a crime?

17 A. No.

18 Q. Have you ever been the victim of a
19 crime?

20 A. No.

21 THE COURT: Any additional
22 questions, from the plaintiff?

23 GREGG MEYERS: Yes, Your Honor.
24 If I am remembering correctly, Ms. Burgess at
25 one time was working for the Camp St.

1 Christopher.

2 JUROR NUMBER 43: Yes.

3 GREGG MEYERS: Do you recall when
4 that was?

5 JUROR NUMBER 43: (No verbal
6 response).

7 GREGG MEYERS: Roughly?

8 JUROR NUMBER 43: Roughly '89, '90.

9 GREGG MEYERS: Thank you.

10 EXAMINATION CONTINUED

11 BY THE COURT:

12 Q. Were you a counselor?

13 A. Yes.

14 THE COURT: Anything further, from
15 the defendant?

16 DAWES COOKE: (Negative gesture).

17 THE COURT: If you will step out,
18 we will be with you shortly.

19 (JUROR NUMBER 43 EXITS COURTROOM)

20 GREGG MEYERS: No challenge.

21 DAWES COOKE: Seat the juror.

22 THE COURT: Very good. All right.

23 Let's have an understanding on this one, that
24 the -- the civil rules provide that we can
25 select our alternates one, two three and then

1 if we need them, that's the way that they are
2 used: one, two three. In criminal I've --
3 most people agree to use the civil approach
4 but I have had them make us redraw our whole
5 panel (sic). But I believe that's the way
6 that it will be. The first one to come in,
7 the second person, then the third person.

8 Ask Ms. Burgess to step in. She is
9 number twelve, I think. Is that correct?

10 COURT REPORTER: Yes, sir.

11 (JUROR NUMBER 43 ENTERS COURTROOM)

12 THE COURT: Ms. Burgess, thank
13 you. You have been selected to assist us
14 further in resolving this dispute. That will
15 take place tomorrow, we will resume at 9:45.
16 I ask that you return to your jury room at
17 that time.

18 Now they're going to show you where
19 the jury room is and then they'll take you
20 down and show you the parking place that they
21 will provide you for the duration of the
22 trial.

23 Please do not discuss this case with
24 anyone or allow anyone to talk about it in
25 your presence. Have a good evening. I'll

1 see you tomorrow at 9:45.

2 (JUROR NUMBER 43 SEATED)

3 (JUROR EXITS COURTROOM)

4 THE COURT: If you'll bring in Mr.
5 Davis, we will begin the selection of
6 alternates.

7 (JUROR NUBMER 85 ENTERS COURTROOM)

8 EXAMINATION OF SOLOMON DAVIS

9 BY THE COURT:

10 Q. Hello, Mr. Davis.

11 A. Hi.

12 Q. How are you, sir?

13 A. Fine.

14 Q. Come on in, take a seat. We need to
15 ask you a couple of questions.

16 A. Okay.

17 Q. State your full name and your juror
18 number, please, sir.

19 A. Solomon Davis, Number 85.

20 Q. Mr. Davis, is this the first time
21 you've ever served as a juror in a civil
22 case?

23 A. Yes.

24 Q. Have you ever experienced or
25 suffered any family tragedies in your life?

1 A. Say that again?

2 Q. Such as the untimely death of a
3 loved one, close personal friend, or some
4 tragic injury to someone, a loved one, family
5 member.

6 A. I guess not untimely.

7 Q. An untimely death, not somebody that
8 -- for instance it was mentioned this morning
9 that my father died, he'd been through -- he
10 was eighty-some years old. Have you had any
11 unusual or untimely death?

12 A. No.

13 Q. Okay. Have you or a family member,
14 or close personal friend, ever been accused
15 of committing sexual abuse or ever been the
16 victim of sexual abuse?

17 A. No.

18 Q. Do you have any family members or
19 close personal friends who suffer from post-
20 traumatic stress disorder?

21 A. (Negative gesture).

22 Q. That was a "no"?

23 A. (Negative gesture).

24 Q. I need for you to speak up, sir.

25 A. Sorry. "No."

1 Q. Thank you, sir. Have you ever
2 researched the sex offender registry?

3 A. No.

4 Q. Have you ever witnessed sexual
5 harassment or sexual discrimination in the
6 workplace?

7 A. No.

8 Q. Do you have any strong feelings or
9 personal philosophies concerning homo-
10 sexuality?

11 A. No.

12 Q. Have you, a family member or a close
13 personal friend ever been falsely accused of
14 a crime?

15 A. No.

16 Q. Have you ever been the victim of a
17 crime?

18 A. No.

19 Q. All right.

20 THE COURT: Any additional
21 questions, from the plaintiff?

22 GREGG MEYERS: No, Your Honor.

23 THE COURT: Any additional
24 questions, from the defendant?

25 DAWES COOKE: None.

1 THE COURT: If you will step out,
2 we will be with you in just a moment, sir.

3 (JUROR NUMBER 85 EXITS COURTROOM)

4 THE COURT: Says the plaintiff?

5 GREGG MEYERS: Seat the juror.

6 THE COURT: Says the defendant?

7 DAWES COOKE: Seat the juror.

8 THE COURT: Very well, Alternate
9 Number 1. Invite Mr. Davis to return.

10 (JUROR NUMBER 85 ENTERS COURTROOM)

11 THE COURT: Mr. Davis, I'm pleased
12 to inform you that you have been selected to
13 assist us in continuing this trial. You will
14 be Alternate Number 1.

15 I need for you to be back in your
16 jury room at 9:45 tomorrow morning. They
17 will show -- when you exit, they will show
18 you the jury room and then take you and show
19 you where you will park.

20 While you are out, don't talk with
21 anyone or allow anyone to talk with you about
22 this case or have any conversation about the
23 case. Don't do any independent research. We
24 will see you tomorrow at 9:45.

25 (JUROR NUMBER 85 SEATED AS ALTERNATE 1)

(JUROR EXITS COURTROOM)

(JUROR NUMBER 95 ENTERS COURTROOM)

EXAMINATION OF LILE DIXON

BY THE COURT:

Q. Hi, Ms. Dixon.

A. Hi.

Q. How are you?

A. Good.

Q. I bet you thought, 'boy, they're
never going to get to me.'

A. No, I didn't think that.

Q. If you could come have a seat,
please, ma'am. I need for you to get
comfortable.

A. Okay.

Q. State your name and your juror
number, please, for us.

A. My name is Lile Dixon and my juror
number is 95.

Q. Thank you. Ms. Dixon, I have a few
questions for you. The first is, is this the
first time you've ever served as a juror in a
civil trial?

A. Yes.

Q. Have you ever experienced or

1 suffered any family tragedies in your life?

2 A. Yes.

3 Q. Tell me about it.

4 A. Well, when my father passed away and
5 when my mother passed away.

6 Q. What was the reason for the death?
7 Was it an illness or ---

8 A. My father died with a heart attack
9 and my mother died of lung cancer.

10 Q. Was the heart attack of sudden
11 onset?

12 A. It was a sudden onset.

13 Q. Your mother's lung cancer, was it an
14 extended illness?

15 A. Yes.

16 Q. Would either of those affect you in
17 any way, your deliberations in this case?

18 A. No, Your Honor.

19 Q. Have you or a family member ever
20 been the victim of or ever been accused of
21 sexual abuse?

22 A. No.

23 Q. Have you or do you know of anyone
24 who has ever been diagnosed with post-trauma
25 stress disorder?

1 A. I was in the military. I was in the
2 Army, so I experienced some sexual harassment
3 there.

4 Q. You have?

5 A. (Affirmative nod).

6 Q. And did you suffer post-trauma
7 stress disorder from that?

8 A. It's pending.

9 Q. Pending?

10 A. Yes.

11 Q. Have you been treated for that?

12 A. No, sir.

13 Q. Would it -- would that affect or
14 influence how you viewed the evidence in the
15 case if there was any evidence about post-
16 trauma stress disorder?

17 A. No, Your Honor.

18 Q. Would you be able to apply your
19 knowledge fairly and impartially?

20 A. Yes.

21 Q. You said that you witnessed sexual
22 harassment or discrimination in the work-
23 place?

24 A. Well, sexual harassment in the
25 military, when I was on active duty, I

1 experienced ---

2 Q. Against you?

3 A. Yes.

4 Q. Were there any charges brought for
5 that?

6 A. No.

7 Q. Was any action taken to punish the
8 person?

9 A. No.

10 Q. Was it reported?

11 A. No.

12 Q. Have you, a family member or close
13 personal friend ever been falsely accused of
14 a crime?

15 A. No.

16 Q. Do you have any strong feelings or
17 personal philosophies concerning
18 homosexuality?

19 A. No.

20 Q. Have you ever been the victim of a
21 crime, other than -- assuming that sexual
22 harassment could possibly fall in that
23 category?

24 A. No.

25 THE COURT: Any questions from the

1 plaintiff?

2 GREGG MEYERS: None,, Your Honor.

3 THE COURT: From the defendant?

4 DAWES COOKE: I believe that Ms.
5 Dixon said earlier that she is an inter-
6 preter, under contract, and that she works
7 with Child Protective Services. Could we ask
8 whether she -- if that causes her to interact
9 with victims of sexual abuse?

10 EXAMINATION CONTINUED

11 BY THE COURT:

12 Q. Do you have interaction with persons
13 that suffer from sexual abuse or experience?

14 A. I do.

15 Q. What knowledge have you gleaned from
16 that?

17 A. (No verbal response).

18 Q. Do you have any independent
19 knowledge or professional knowledge
20 concerning that or do you simply interpret
21 what ---

22 A. My job is to simply interpret
23 communication between clients.

24 Q. Do you have any independent under-
25 standing of that other than what the person

1 is saying that you -- what has been stated,
2 that you interpret?

3 A. Right. That's ---

4 THE COURT: Anything else?

5 DAWES COOKE: The sexual harassment
6 that she experienced in the service, was
7 there any assault or physical component to
8 that?

9 EXAMINATION CONTINUED

10 BY THE COURT:

11 Q. Do you recall anything about it?

12 A. No.

13 Q. I'm not going to say this about my
14 court reporter, though she could tell you
15 about it, but I've had persons say 'I am just
16 taking down words, I am not connected.' But
17 you don't have any independent recollection
18 of any of the cases that you have
19 interpreted, dealing with sexual harassment?

20 A. No.

21 Q. And would you not be influenced by
22 that, sexual abuse of victims?

23 A. Not at all.

24 THE COURT: Okay. Anything else
25 from anyone?

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1 DAWES COOKE: No, Your Honor.

2 THE COURT: If you would step out,
3 we will be with you in just a moment. Thank
4 you.

5 (JUROR NUMBER 95 EXITS COURTROOM)

6 THE COURT: Says the plaintiff?

7 GREGG MEYERS: Seat the juror.

8 THE COURT: Defendant?

9 DAWES COOKE: Excuse the juror.

10 THE COURT: Let's bring her back
11 in.

12 (JUROR NUBMER 95 ENTERS COURTROOM)

13 THE COURT: Thank you, Ms. Dixon.
14 Appreciate it. You've been excused from
15 further participation in this dispute. Have
16 a great day. Call the number after six
17 tonight and follow those instructions.

18 (JUROR NUMBER 95 EXCUSED)

19 (JUROR EXITS COURTROOM)

20 THE COURT: I believe Mr.
21 Fieselman is next.

22 (JUROR NUMBER 119 ENTERS COURTROOM)

23 EXAMINATION OF HENRY J. FISELMAN

24 BY THE COURT:

25 Q. Hello, Mr. Fieselman.

1 A. Hey.

2 Q. Come on it and have a seat, please,
3 sir.

4 A. Yes, sir.

5 Q. Thank you for your patience.
6 Appreciate it.

7 A. That's fine.

8 Q. If you would, state your full name
9 for us and give us your juror number.

10 A. Henry John Fieselman, 119.

11 Q. Mr. Fieselman, I have some questions
12 for you. First of all, is this the first
13 time you've ever served as a juror on a civil
14 case?

15 A. Talking money? That's civil?

16 Q. Yes. Civil.

17 A. I've done two.

18 Q. You've done two? Were they criminal
19 cases?

20 A. No.

21 Q. Oh, you've done two criminal (sic)
22 cases.

23 A. Civil cases.

24 Q. I meant civil cases. What were the
25 civil cases? Do you remember?

1 A. Accidents.

2 Q. Accidents?

3 A. Yes.

4 Q. And you would decide damages?

5 A. Yes.

6 Q. Do you remember the results or
7 determination in either or both?

8 A. Seems like -- I don't remember the
9 first one -- (negative gesture).

10 Q. I understand. You don't have any
11 independent recollection?

12 A. Not of that one. The next one, the
13 jury decided not to ---

14 Q. --- award any damages?

15 A. (Affirmative nod).

16 Q. So you found for the defendant?

17 A. Correct.

18 Q. Do you think that you awarded some
19 damages in the first, but you just don't know
20 what it was?

21 A. Actually I think that was the same
22 thing, too.

23 Q. You do?

24 A. Yes.

25 Q. A defense verdict?

1 A. (Affirmative nod), it was a long
2 time ago.

3 Q. Have you ever experienced or
4 suffered any family tragedies in your life?
5 That's -- let me refine that. Sudden deaths,
6 unexpected deaths, serious injury to a family
7 member, young persons, that type of thing?

8 A. My youngest brother ----

9 Q. What was ---

10 A. --- committed suicide.

11 Q. Committed suicide?

12 A. Yes.

13 Q. How long ago was that, sir?

14 A. Two years ago.

15 Q. Would that affect or influence you
16 in any way, sir?

17 A. No.

18 Q. Will you be able to deal with this
19 case without being influenced by that?

20 A. I can deal with. I feel that I can
21 be fair.

22 Q. Good. Was -- had he been suffering
23 from any problems, any mental problems,
24 before that?

25 A. No, it was medical.

1 Q. Medical?

2 A. Yes.

3 Q. Have you or a family member or close
4 personal friend ever been accused of sexual
5 abuse or ever been the victim of sexual
6 abuse?

7 A. No.

8 Q. Do you know of anyone or a family
9 member who suffers from or has been diagnosed
10 with post-trauma stress disorder?

11 A. No.

12 Q. Have you ever researched the sex
13 offender registry?

14 A. No.

15 Q. Have you ever witnessed sexual
16 harassment or sexual discrimination in the
17 workplace?

18 A. No, not in the workplace.

19 Q. Do you have any strong feelings or
20 personal philosophies concerning homo-
21 sexuality?

22 A. To me that's a person's choice.

23 Q. And you don't have ---

24 A. I hold no judgments in that.

25 Q. Thank you, sir. Have you or a

1 family member ever been falsely accused of a
2 crime?

3 A. No.

4 Q. Have you ever been the victim of a
5 crime?

6 A. No -- well, just a minor crime.

7 Q. What was that?

8 A. Stolen from us.

9 Q. Was someone prosecuted for that?

10 A. No.

11 THE COURT: Any questions further,
12 from the plaintiff?

13 GREGG MEYERS: None.

14 DAWES COOKE: None. Thank you.

15 THE COURT: If you will step out,
16 we will be with you in just a moment.

17 (JUROR NUMBER 119 EXITS COURTROOM)

18 THE COURT: Plaintiff?

19 GREGG MEYERS: Plaintiff strikes
20 the juror.

21 THE COURT: Strikes the juror.
22 Okay. All right. Ask him to step in,
23 please.

24 (JUROR NUMBER 119 ENTERS COURTROOM)

25 THE COURT: Thank you, Mr.

1 Fieselman. I appreciate that, sir. You are
2 -- you will be excused from any further
3 participation in this matter. If you will,
4 exit through that door and call the number
5 after six tonight and follow those
6 instructions. Appreciate it. It was a
7 pleasure to work with you today. Thank you,
8 sir.

9 (JUROR NUMBER 119 EXCUSED)

10 (JUROR EXITS COURTROOM)

11 THE COURT: Ms. Shepp.

12 DAWES COOKE: We still have two
13 strikes left?

14 THE COURT: You do. You have
15 exhausted strikes on this particular one --
16 wait a minute, excuse me. Yes, you did on
17 Dixon and you did on Fieselman, so the next
18 one is for cause.

19 DAWES COOKE: Okay.

20 THE COURT: We did ---

21 (JUROR NUMBER 364 ENTERS COURTROOM)

22 EXAMINATION OF PAMELA SHEPP

23 BY THE COURT:

24 Q. How are you, Ms. Shepp.

25 A. Good.

1 Q. Come on in, this is the wonderful
2 seat for you.

3 A. Thank you.

4 Q. If you would, state your name for
5 the record and your juror number please.

6 A. My name is Pamela Shepp and my
7 number is 364.

8 Q. Thank you, Ms. Shepp. There are
9 some questions that I have for you. Is this
10 the first time you've ever been a juror in a
11 civil case?

12 A. Yes.

13 Q. Have you ever experienced or
14 suffered any family tragedies in your life?

15 A. Well, personal losses. Not ---

16 Q. Let me rephrase it a little bit.
17 The unexpected death of a loved one or ---

18 A. (Affirmative nod).

19 Q. --- tragic injury to a young person
20 or family member?

21 A. My mother died from lung cancer.
22 When she was sixty, she was diagnosed and
23 died two weeks later.

24 Q. Wow.

25 A. That was devastating.

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1 Q. Absolutely. How long ago was that?

2 A. About nineteen years ago.

3 Q. Any others other than that one?

4 A. That was the worst.

5 Q. Sorry for that experience.

6 A. Thank you.

7 Q. That would not influence or affect
8 you in this case, would it?

9 A. I don't think so.

10 Q. You could make a commitment ---

11 A. I could make a commitment.

12 Q. --- that it would not?

13 A. Yes.

14 Q. Have you, a family member or a close
15 personal friend ever been accused of or ever
16 been the victim of sexual abuse?

17 A. No.

18 Q. Have you or a family member or close
19 personal friend been diagnosed with post-
20 trauma stress disorder?

21 A. No.

22 Q. Have you ever researched the sex
23 offender registry?

24 A. You know, I may have done that when
25 our child was younger.

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1 Q. But you haven't done it recently?

2 A. No, not in twenty years.

3 Q. Have you ever witnessed sexual
4 harassment or sexual discrimination?

5 A. No.

6 Q. Do you have any strong feelings one
7 way or the other, or personal philosophies,
8 concerning homosexuality.

9 A. No.

10 Q. Have you or a family member or close
11 personal friend ever been falsely accused of
12 a crime?

13 A. No, thankfully.

14 Q. Have you ever been the victim of a
15 crime?

16 A. No.

17 THE COURT: Any additional
18 questions, from the plaintiff?

19 GREGG MEYERS: None, Your Honor.
20 Thank you.

21 THE COURT: From the defense?

22 DAWES COOKE: None. Thank you.

23 THE COURT: If you will step out,
24 we will be with you in just a moment.

25 (JUROR NUMBER 364 EXITS COURTROOM)

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1 THE COURT: Any challenge from the
2 plaintiff?

3 GREGG MEYERS: No challenge, Your
4 Honor.

5 THE COURT: From the defendant?

6 DAWES COOKE: None.

7 THE COURT: Ask her to come in,
8 please.

9 (JUROR NUMBER 364 ENTERS COURTROOM)

10 THE COURT: Thank you, ma'am. I
11 am pleased to inform you that you are going
12 to get to serve with us and help us resolve
13 this dispute.

14 I will need for you to return at
15 9:45 in the morning. They will show you your
16 jury room where you need to report and will
17 also show you where your parking place will
18 be for the duration of the trial.

19 JUROR NUMBER 364: I hope that it is
20 closer.

21 THE COURT: It is. It's right out
22 the back.

23 JUROR NUMBER 364: I am good with
24 this, yes.

25 THE COURT: Please, while you are

1 out, don't discuss the case with anyone or
2 allow anyone to talk with you about. Have a
3 good day and we will see you tomorrow at
4 9:45.

5 (JUROR NUMBER 364 SEATED AS ALTERNATE 2)

6 (JUROR EXITS COURTROOM)

7 (JUROR NUMBER 199 ENTERS COURTROOM)

8 EXAMINATION OF HAROLD JARRETT

9 BY THE COURT:

10 Q. Hello, Mr. Jarrett. How are you,
11 sir?

12 A. Very well, thank you.

13 Q. Wondered if we were ever going to
14 get to you?

15 A. I thought I was going to be the last
16 one, but that's okay.

17 Q. Couple of questions for you, and it
18 won't take much more of your time.

19 A. Okay.

20 Q. Is this the first time that you have
21 ever served on a civil case as a juror?

22 A. I believe that it is. I've served
23 on another case but I don't think that it was
24 civil. That was many years ago.

25 Q. Do you remember what the case is

1 about?

2 A. I don't even remember.

3 Q. Okay. Have you experienced in your
4 lifetime or suffered any family tragedies?

5 A. No. I've been very fortunate.

6 Q. Good. Glad for you. Have you or a
7 family member or close personal friend ever
8 been the victim of sexual abuse or ever been
9 accused of committing sexual abuse?

10 A. Thank goodness no.

11 Q. Have you or a family member, close
12 personal friend, been diagnosed with post-
13 trauma stress disorder?

14 A. No, sir.

15 Q. Have you ever researched the sex
16 offender registry?

17 A. No, I haven't.

18 Q. Have you ever witnessed sexual
19 harassment or sexual discrimination in the
20 workplace?

21 A. Yes, I have.

22 Q. Tell me about it.

23 A. It was when I was working at
24 Lockheed. There were a couple of ladies that
25 worked on the production line and would

1 basically get passed over every time there
2 was a promotion.

3 Q. You considered that to be sexual
4 discrimination?

5 A. I thought it was.

6 Q. Did you take any action or get
7 involved in that in any fashion?

8 A. I became the president of the union.

9 Q. That was good. Did you achieve any
10 results as the result of your position?

11 A. Not with them but I felt like I did
12 in other things.

13 Q. Would that experience affect you or
14 influence your thought process in analyzing
15 this case?

16 A. I don't think so.

17 Q. Can you take that experience and
18 apply it fairly and impartially?

19 A. I think that I can.

20 Q. And would you take that experience
21 and the evidence and the law and be fair to
22 both sides?

23 A. (Affirmative nod), that's what we
24 are here for.

25 Q. Thank you, sir. Have you or a

1 family member or a close personal friend ever
2 been falsely accused of a crime?

3 A. No, sir.

4 Q. Do you have any strong feelings or
5 personal philosophies concerning homo-
6 sexuality?

7 A. I did at one time but I think I've
8 moved on.

9 Q. Okay. Before, would you -- when you
10 say that you did, did you have what you would
11 consider to be a bias about homosexuality?

12 A. Probably.

13 Q. Do you feel, if you heard testimony
14 concerning homosexuality now that that would
15 influence your decision in any way?

16 A. No.

17 Q. It would not?

18 A. No.

19 Q. You would set that aside?

20 A. Yes, I have. I've grown up.

21 Q. Thank you, sir. Have you, a family
22 member -- I think that I asked you. You've
23 never been accused of any crime?

24 A. No, sir.

25 Q. Have you ever been the victim of any

1 crime?

2 A. No, sir.

3 THE COURT: Any additional
4 questions, from the plaintiff?

5 GREGG MEYERS: No, sir.

6 THE COURT: From the defendant?

7 DAWES COOKE: None.

8 THE COURT: Thank you. If you
9 will step out, we will be with you
10 momentarily.

11 (JUROR NUMBER 199 EXITS COURTROOM)

12 GREGG MEYERS: Let me ask that you
13 strike for cause. Maybe he has "grown up"
14 but I'd rather not have a wild card in the
15 room, so to speak. So I would move to strike
16 for cause on the ground of past bias as
17 openly acknowledged by the juror.

18 THE COURT: What is your position?

19 DAWES COOKE: He said that he
20 could be fair. It would be hard to strike
21 him for just for that reason.

22 THE COURT: Let me respond for
23 the record in case they have to review this.
24 I might as well be honest, I had some
25 personal bias too when I was growing up. I

1 grew up, have dealt with that as I aged. I
2 am not proud of that in my life, but I
3 confess that. I've cried many times about
4 some of the thoughts that I have had. I
5 think that people can grow up. I pray that
6 I have too. So I respect your opinion but I
7 also respect his, that he has changed his
8 philosophy. So I will deny for, cause.

9 GREGG MEYERS: Fair enough, Your
10 Honor.

11 THE COURT: Do you wish to strike
12 him?

13 GREGG MEYERS: I think I only
14 have one ---

15 THE COURT: No, this is a new
16 batch. You have your strike. This is
17 Alternate 3. We start anew and you each have
18 one.

19 GREGG MEYERS: Well, in that
20 case, I am confused. Could I just have a
21 moment, please?

22 THE COURT: You struck Mr.
23 Fieselman.

24 GREGG MEYERS: I didn't know that
25 I had another strike.

1 THE COURT: We have started with
2 the third alternate, will deal with the next
3 three persons and you each have a strike.

4 GREGG MEYERS: I will strike him.
5 I thought that I was out of strikes.

6 THE COURT: No problem. Have him
7 step in, please.

8 (JUROR NUMBER 199 ENTERS COURTROOM)

9 THE COURT: Thank you very much,
10 sir. Appreciate your help in this case.
11 You've been excused from further participa-
12 tion. Call the number after six tonight and
13 follow that instruction. You may exit through
14 this door right here. Thank you, sir.

15 (JUROR NUMBER 199 EXCUSED)

16 (JUROR EXITS COURTROOM)

17 THE COURT: Mr. Baird.

18 (JUROR NUMBER 16 ENTERS COURTROOM)

19 EXAMINATION OF BARRY BAIRD

20 BY THE COURT:

21 Q. Hello, Mr. Baird. Come on in and
22 have a seat, sir. Thank you for your
23 patience. I appreciate it.

24 A. Yes, sir.

25 Q. If you would, state your full name

1 for us and give us your juror number.

2 A. Barry Baird, Number 16.

3 Q. Mr. Baird, I have some questions for
4 you that I need for you to answer, if you
5 could. First, is the first time you've ever
6 been a juror in a civil case?

7 A. I've gotten this far but I haven't
8 ever been selected.

9 Q. You've never been selected for an
10 actual trial?

11 A. That's correct.

12 Q. Have you suffered or experienced any
13 family tragedies in your life?

14 A. None that I can think of, none
15 major.

16 Q. Have you, a member of your family or
17 close personal friend ever been accused of or
18 been the victim of sexual abuse?

19 A. No, sir.

20 Q. Do you know of anyone or a family
21 member who suffers from post-trauma stress
22 disorder?

23 A. No, sir.

24 Q. Have you ever researched the sex
25 offender registry?

1 A. Yes.

2 Q. What was the reason for that?

3 A. I have two children and I searched
4 around my neighborhood.

5 Q. Very good. Do you view it
6 frequently?

7 A. No.

8 Q. Have you ever witnessed any sexual
9 harassment or sexual discrimination in the
10 workplace?

11 A. I can't say that I have. No, sir.

12 Q. Do you have any strong feelings,
13 personal philosophies, concerning
14 homosexuality?

15 A. No.

16 Q. Have you or a family member ever
17 been falsely accused of a crime?

18 A. No, sir.

19 Q. Have you ever been the victim of a
20 crime?

21 A. No. Not that I can think of.

22 THE COURT: Any additional
23 questions, from the plaintiff?

24 GREGG MEYERS: None. Thank you,
25 sir.

1 THE COURT: Any additional
2 questions, from the defendant?

3 DAWES COOKE: None. Thank you.

4 THE COURT: Mr. Baird, if you will
5 step out, we will be with you momentarily,
6 sir.

7 (JUROR NUMBER 16 EXITS COURTROOM)

8 THE COURT: Plaintiff?

9 GREGG MEYERS: Seat the juror.

10 THE COURT: Defendant?

11 DAWES COOKE: Seat the juror.

12 THE COURT: Thank you. Bring Mr.
13 Baird back in.

14 (JUROR NUMBER 16 ENTERS COURTROOM)

15 THE COURT: Mr. Baird, I'm pleased
16 to inform you that you've selected to assist
17 us in resolving this dispute.

18 We will resume this tomorrow at
19 9:45. When you exit, they will show you the
20 jury room to where you need to report and
21 they will also take you down and show you the
22 parking place for the duration of the trial.

23 Please while you are out, do not
24 discuss this case with anyone or permit
25 anyone to talk about it in your presence.

1 Have a good evening. I will see you tomorrow
2 at 9:45.

3 (JUROR NUMBER 16 SEATED AS ALTERNATE 3)

4 (JUROR EXITS COURTROOM)

5 THE COURT: All right, that is our
6 jury and alternates. Any Motions regarding
7 the selection?

8 GREGG MEYERS: We feel we have
9 something that we feel like we need to
10 disclose, Your Honor.

11 KRISTEN FESHENFELD: I just
12 realized that I went to law school with Katie
13 O'Neill. Her middle name was her name in law
14 school and I didn't recognize it. I wasn't a
15 friend to her, but ---

16 THE COURT: She obviously didn't
17 recognize or remember ---

18 KRISTEN FESHENFELD: Right. We
19 were in the same class.

20 THE COURT: She must not have
21 remembered it. I don't know what that says.
22 I don't think that she's "a plant", but --
23 anyway, what is your position on that?

24 DAWES COOKE: She didn't disclose
25 that she knew anybody so I am assuming -- no

1 offense -- that you didn't make a particular
2 impression on her.

3 KRISTEN FESHENFELD: Right.

4 THE COURT: I didn't sense
5 anything from her that she was trying to hide
6 anything.

7 DAWES COOKE: No.

8 GREGG MEYERS: We felt that was
9 correct but we just wanted to tell the court.

10 THE COURT: Do you have any
11 objection to her serving?

12 DAWES COOKE: No objection.

13 THE COURT: All right. She
14 impressed me as being an abundantly fair
15 person. Okay. Thank you.

16 Any Motion regarding the selection
17 of the jury, from the plaintiff?

18 GREGG MEYERS: None from the
19 plaintiff.

20 THE COURT: Any Motion from the
21 defendant?

22 DAWES COOKE: None, Your Honor.

23 THE COURT: Thank you. We will
24 dismiss these jurors and then we will come
25 back in and deal with some other little

1 matters we may have. Thank you all. I
2 appreciate your patience your patience with
3 me and I look forward to working with each
4 one of you.

5 (REMAINING JURORS RELEASED)

6 (OFF RECORD DISCUSSIONS)

7 (COURT IN RECESS)

8 (TRANSCRIPT CONTINUED NEXT PAGE)

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1
2 JANUARY 27, 2015

9:34 A.M.

3
4 THE COURT: Okay, gentlemen, thank
5 you all very much. Are we ready?

6 DAWES COOKE: I think we are,
7 Your Honor.

8 THE COURT: Okay.

9 DAWES COOKE: We talked some
10 over the evening. I'm not sure we're really
11 on the same page as to where to go, but we do
12 have our Motions and I'm ready to argue that
13 unless you want to hear from Mr. Meyers.

14 THE COURT: Let me go grab my
15 computer because I've copied some stuff --
16 some interesting comments in the case, along
17 with what we talked about yesterday that may
18 be of assistance for purposes of the record.
19 I'll be right back.

20 (BRIEF RECESS)

21 THE COURT: Okay.

22 GREGG MEYERS: Your Honor, if I
23 could give you what our thinking was.

24 THE COURT: Sure.

25 GREGG MEYERS: Our thinking was,

1 after ---

2 THE COURT: On the record? Or do
3 you want this -- do you want this to be
4 formal or informal?

5 GREGG MEYERS: Informal is fine.

6 THE COURT: Let's do an informal
7 discussion and then we can go on the record.

8 (OFF RECORD DISCUSSION)

9 THE COURT: Now we can go back on
10 the record.

11 DAWES COOKE: On the record,
12 then.

13 THE COURT: On the record.

14 DAWES COOKE: Your Honor, ---

15 GREGG MEYERS: Perhaps we should,
16 for the benefit of the record, put on the
17 record that the Court and counsel have spent
18 ten minutes or so discussing various options
19 for scheduling, sequencing and we have
20 decided to go forward on the issues that are
21 present before the Court.

22 THE COURT: That's an accurate
23 statement. All discussions really were
24 germane to the management of multiple cases,
25 what was the best and most feasible approach

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1 to take from the standpoint of both sides to
2 determine how to proceed to best facilitate
3 the resolution of the case before the Court
4 today as well as to assist, maybe, in
5 resolution of the cases that may follow.

6 DAWES COOKE: Thank you, Your
7 Honor.

8 THE COURT: Thank you.

9 DAWES COOKE: So, as Your Honor
10 knows, we moved for summary judgment in this
11 case many months ago, sometime last year, and
12 the Court heard it and denied the Motion.

13 Under the Rule, of course a ruling
14 is not final until all issues of a case are
15 decided. So we're asking the Court to
16 reconsider its denial of summary judgment in
17 this case. It was based on two main grounds
18 as to all causes of action, and then I will
19 address a couple of the individual causes of
20 action separately.

21 THE COURT: Okay.

22 DAWES COOKE: As to all causes
23 of action, the first ground is that the
24 plaintiff has not suffered any compensable
25 injury. This is a parent's case, not the

1 child's case. It is a case which is styled
2 loss of services. But in fact, under the *Doe*
3 *v. Greenville School System* case, the only
4 elements that are actually recoverable for a
5 parent would be literally pecuniary loss and
6 loss of services; such as if the child worked
7 in a parent's store, on a farm, or medical
8 expenses. In this case the plaintiff has
9 produced no evidence of either of those.
10 We asked in discovery to itemize medical
11 expenses and to this day they have not
12 produced any financial or pecuniary loss for
13 medical expenses, and there's been no
14 testimony that the child worked for the
15 family or provided services that could be
16 monetized. So it is manifestly clear that
17 this is a claim arising out of the change in
18 relationship between the parent and the
19 child, the mother and the child. That is
20 exactly what the Court held in the *Doe v*
21 *Greenville School* case. Justice Pleconis
22 very vigorously argued against that in his
23 dissent.

24 We would take the position, with all
25 due respect that Justice Pleconis, that he

1 probably overlooks the evolution of recovery
2 for intangible loss in general. . It used to
3 be, in the old days, that you could recover
4 for emotional distress in a number of
5 different circumstances. Then beginning with
6 the *Augusta Sash* and other case, *Augusta Sash*
7 and other cases, the Supreme Court has very
8 tightly restricted instances in which you can
9 recover for nonphysical injuries. So that
10 paralleled, really, the Court pulling back
11 from some of the older common law cases that
12 allowed general recovery for loss of
13 relationship with a child. The Court has
14 said that that is for the legislature, to
15 have a filial loss of consortium. So that's
16 the first ground.

17 The second is that, you know, based
18 on *Doe v. Marion*, *Doe v. WalMart*, the other
19 cases that we have cited, there is no duty
20 that would be owed to what we call the down-
21 stream people. This argument would apply,
22 just as well, to the child but even more so
23 to the parent because the parent is even more
24 remote as a potential person to whom a duty
25 is owed. There was no special relationship

1 with Mother Doe A or her son. He never
2 attended the camp, there was no nexus between
3 the molestation of her child and Mr.
4 ReVille's employment at The Citadel. He was
5 not an employee at the time that he did the
6 act; therefore, The Citadel had no special
7 relationship with him. They did not
8 voluntarily undertake a duty to her.

9 In your original Order, you said
10 that that was a strong point for the
11 plaintiff, that they voluntarily undertook to
12 do this investigation. But they didn't
13 undertake that duty to her and there is no
14 evidence that she relied upon that
15 investigation or even knew about that.
16 That's an essential element, assuming a duty,
17 uh, -- cause of action.

18 They did not negligently create the
19 risk. Plaintiffs argue that they did but if
20 you look at *Doe v. WalMart Stores*, when they
21 created a risk they looked at whether they
22 actually caused the child molester to molest,
23 not whether they enabled them or failed to
24 stop them. Of course, if you expand a
25 failure to prevent an injury to, that's the

1 equivalent of creating the risk. That would
2 succumb the rule rather than the exception,
3 because in every case where you'd fail to
4 stop somebody you would be said to increase
5 the risk of that person. I think Doe v.
6 WalMart makes it clear that that is not the
7 case.

8 The statutory duties, we've argued
9 how each of the acts does not apply in this
10 situation. But even if it did, the public
11 duty rule steps in and says that when you owe
12 a duty to all of us -- and Your Honor very
13 cogently stated, in oral argument previously,
14 that this is a duty that they owed to all of
15 us -- that is exactly when the public duty
16 rule steps in and says that's a problem, that
17 it is a not a duty owed to a specific
18 individual. So that's as to those claims.

19 As to the outrage and intentional
20 infliction of emotional distress, I would
21 like to cite some new authorities beyond ---

22 THE COURT: Okay.

23 DAWES COOKE: --- those that the
24 Court has seen. I will begin with the Tort
25 Claims Act itself, Section 15-78-20(f), which

1 defines what a loss is that is recoverable.
2 It says that a, (reading): "loss means
3 bodily injury, disease, death or damage to
4 tangible property, including lost wages and
5 economic loss to the person who suffered
6 injury, disease or death. Pain and
7 suffering, mental anguish and other elements
8 of actual damages are recoverable in an
9 action for negligence; but does not include
10 the intentional infliction of emotional
11 distress."

12 And then there is a, uh, -- and I've
13 got extra copies of these that I can hand up.

14 THE COURT: Okay.

15 GREGG MEYERS: Could we -- it's
16 not emotional distress. It is emotional
17 harm. That is going to wind up being
18 important.

19 THE COURT: Okay, that's fine.
20 Well, you can respond to that.

21 GREGG MEYERS: Thank you.

22 DAWES COOKE: There's an
23 unpublished District of -- it's published,
24 I'm sorry. It's a District of South Carolina
25 case called *Ward v City of North Myrtle Beach*

1 where they applied that very section, said
2 that a claim of outrage is not recoverable.

3 Of course, outrage is the same as
4 what we've been calling intentional
5 infliction of emotional distress.

6 There is another important doctrine
7 that's not specific to the Tort Claims Act.
8 Under *Upchurch v. N.Y. Times Company*, this
9 was a 1993 case by the Supreme Court of South
10 Carolina that says, (reading), "It is not
11 enough that the conduct is intentional and
12 outrageous. It must be conduct directed at
13 the plaintiff or occur in the presence of a
14 plaintiff, of whom the defendant is aware.
15 There is no evidence that respondents
16 targeted appellants to be harmed by their
17 allegedly tortious acts."

18 And the Court goes on to describe
19 that an example of when you could have such a
20 claim would be if I physically assaulted John
21 Doe in front of his mother, that would be --
22 and they literally say that you have to
23 physically assault him in the presence of his
24 mother for her to have a claim of intentional
25 infliction of emotional distress.

1 There is an unpublished decision by
2 the Court of Appeals for South Carolina
3 called *Doe v. Rojas*, which cites the N.Y.
4 *Times* case in an exact same situation of a
5 sexual assault and a parent claiming damages
6 as a result of a sexual assault ---

7 THE COURT: Can you hand me a copy
8 of that case?

9 DAWES COOKE: (Tenders copy to
10 Mr. Meyers and to the Court).

11 GREGG MEYERS: Thank you.

12 THE COURT: Thank you, sir.

13 DAWES COOKE: Then on the
14 conspiracy cause of action. First of all,
15 under the -- the claim there is that the --
16 excuse me, the plaintiff claims that she was
17 injured because of a conspiracy between the
18 defendants and Skip ReVille to hide his
19 molestation or his bad acts.

20 *Gordon v. Busby*, a 2011 case, holds
21 that to have a conspiracy claim that you have
22 to have special damages, which is different
23 from damages that would otherwise be
24 recoverable in your main cause of action.

25 They're claiming in this case that

1 the conspiracy is the very act that gave rise
2 to their injury. Therefore there would be no
3 special damages recoverable from that.

4 But, more importantly, conspiracy is
5 an intentional tort. The *Pye v. Estate of*
6 *Fox*, the essential consideration in civil
7 conspiracy is not whether lawful or unlawful
8 acts or means are employed to further the
9 conspiracy but whether the primary purpose or
10 object of the combination is to injure the
11 plaintiff.

12 That's the main element of the claim
13 for conspiracy. So for that reason that
14 would, by definition, include the intent to
15 injure, which is expressly excluded from the
16 scope of the South Carolina Tort Claims Act.

17 There are a couple of other
18 individual causes of action that allege
19 breach of the Tort Act, breach of other
20 specific Acts. I believe that we previously
21 discussed those, that they do not give rise
22 to a private cause of action. For reasons
23 that we've already/previously -- those would
24 be other specifications of negligence under
25 the Tort Claims Act. For that reason, all

1 the other grounds would apply to those causes
2 of action as well.

3 THE COURT: Thank you.

4 DAWES COOKE: Thank you.

5 THE COURT: Mr. Meyers?

6 GREGG MEYERS: Thank you. Let me
7 start with where I agree with Mr. Cooke.

8 THE COURT: Okay.

9 GREGG MEYERS: The reporting Act,
10 -- and for discussion, we agree these are not
11 independent causes of action. They impose
12 duties on The Citadel, which The Citadel has
13 adopted.

14 THE COURT: Sure.

15 GREGG MEYERS: The heart of this
16 case is what The Citadel has voluntarily
17 assumed.

18 Now, let me take them in a little --
19 in the order that -- as best I can, the order
20 in which Dawes presented them.

21 He is incorrect in reading the
22 elements of outrage. The elements of outrage
23 are not confined to the intent to harm. The
24 elements include intent or reckless conduct
25 which harms. The Court of Appeals most

1 recently affirmed that in 2011 where they
2 just reiterated those elements. It's always
3 been part of the elements. The defendants
4 intentionally or recklessly inflicted severe
5 emotional distress.

6 Now, the statute, in defining "loss"
7 says -- as I pointed out, Mr. Cooke read it
8 entirely correctly with the exception of the
9 last word. The statute, the Tort Claims Act,
10 by which the legislature reaches out to alter
11 common law and says 'we are going to make
12 sure that people can sue the State' for
13 things like mental distress -- mental anguish
14 rather -- and pain and suffering. Those
15 things are explicitly included. But it does
16 exclude, by saying that it does not include,
17 the intentional -- the intentional --
18 infliction of emotional harm. It does not
19 say that you cannot sue for the intentional
20 infliction of emotional distress. It says
21 that 'if you intend to hurt somebody, State
22 employee', you can't sue the State for that.

23 We cannot claim that they intended
24 the harm to either the child or this mother.
25 They were well aware, as the documents are

1 going to reflect, that Skip ReVille had ended
2 his employment with The Citadel, according to
3 them, and we're a little fuzzy about what his
4 exact end date was. They were aware that he
5 had applied for unemployment. They
6 originally opposed his unemployment. Then
7 somewhere thereafter, they have a meeting
8 where they tell him to lie low, they withdraw
9 their appeal. They also are lying low.

10 In the Margolis report, there is
11 explicit recognition by The Citadel's general
12 counsel that where ReVille is working
13 matters. He tries to defend his position by
14 saying, it's on Page 27, that he was not
15 working in a context around children.

16 Well, when they know that he has
17 ended his employment at The Citadel and they
18 know that he's looking for work, because he's
19 filed for unemployment -- which you must do
20 when you file for unemployment, -- and they
21 are aware that he could be working around
22 children, as he has done his entire
23 professional career, short as it was at that
24 point, they are aware that they are sending
25 him off with a record that they themselves

1 have deliberately kept clean despite
2 infraction after infraction after infraction.

3 In the conspiracy cause of action,
4 what they've deprived the mother of is
5 slightly different than the abuse itself.
6 What they've deprived the mother of is the
7 opportunity to consciously choose whether or
8 not to send her twelve-year-old son to tennis
9 lesson with a man known to have a sexual
10 interest in children.

11 She doesn't get that information.
12 They have it, they keep a close hold, they
13 don't tell the public, they don't report, and
14 they are aware, consciously aware, that they
15 are sending him off to the world to find some
16 other job.

17 Part of what our attack is on behalf
18 of Mother Doe A is that The Citadel, through
19 its actions and its knowledge that it
20 withheld, assumed duties -- very
21 particularly, not just to the public
22 generally but to a particular class of the
23 public who was going to put their children
24 around Skip ReVille, who they knew had a
25 sexual interest in children.

1 So we contend that the causes of
2 action do survive. The claim for loss of
3 services, we have debated that. If the Court
4 rules and grants summary judgment on the loss
5 of services under *Doe v. Greenville*, we are
6 back in the same position with respect to the
7 outrage cause of action. The conspiracy
8 cause of action is related but slightly
9 different, and the two negligence causes of
10 action -- the claim for gross negligence
11 itself and the claims for negligence in their
12 hiring and retention and supervision of
13 Reville because of the repeated instances
14 where he was caught. This is not a master
15 criminal, he is operating in the open, he has
16 violated their rules repeatedly, they catch
17 him repeatedly. And they do nothing to
18 enforce what was terminable offenses at the
19 time, or even to report it, so that his
20 record stays clean.

21 When General Rosa stands up, on
22 November 12th, 2011, he says to the public,
23 'We checked his personnel file and there were
24 no other complaints.' Now, that is not a
25 true statement. There were other complaints.

1 They chose not to write any of them down.
2 There has never been a subsequent press
3 conference where General Rosa says, 'I've
4 learned this since I stood up on November
5 12th, 2011.' There has been no effort to try
6 to correct that impression with the public.
7 They tried to embrace their own oversights to
8 argue that it justified them sending him out
9 in the world without any notice.

10 We think that we are in the heart of
11 outrage with these claims, in the heart of
12 negligence. We are -- the conspiracy is
13 unconventional but we think that it is
14 distinguishable from the abuse itself. We
15 think the mother's dismay at what the son,
16 a) carried by himself for four years; b)
17 went through; and now what she has to deal
18 with -- not what he has to deal with, what
19 she has to deal with as a result of what
20 happened to him and the repeated problems in
21 her family; which she will be very articulate
22 about.

23 She, in fact, expressed to some
24 extent in one of the letters that was written
25 anonymously to the court at sentencing -- one

1 of those letters was hers. She articulates,
2 even in that letter, before any of these
3 civil cases were going, that the damage done
4 -- that is on her plate now, not only to her
5 but what she now has to deal with; which are
6 separate from the loss of services, which is
7 the relationship between mother and son.

8 So even if the Court disposes of
9 loss of services on summary judgment, we
10 think the other causes of action have factual
11 issues in dispute. It's about the assumed
12 duty that The Citadel undertook. We think
13 that gets us around both the public duty role
14 and puts us right in the heart of elements of
15 each cause of action. That's the heart of
16 our position.

17 THE COURT: Response?

18 DAWES COOKE: Yes, sir, and
19 I'll try to keep this brief, Your Honor.
20 Appreciate your patience.

21 I go back to the *Upchurch v. New*
22 *York Times* case regarding the outrage claims.
23 That was the case where the plaintiff's son
24 died unexpectedly after exercising and the
25 newspaper reported that there was some

1 implication that there may have been cocaine
2 involved. The parents sued for outrage and
3 intentional infliction of emotional distress.
4 That's where the Court said what I just
5 quoted a few minutes ago, which is that even
6 though it would be foreseeable that the
7 parents would suffer from this and be
8 injured, the conduct was not directed at
9 them. It says specifically that in order to
10 even have an outrage claim the two parties
11 must have at least known each other and the
12 conduct be directed to them. In this case,
13 there is no evidence that The Citadel knew
14 the plaintiff or knew the plaintiff's son at
15 all. Therefore, just -- they don't even get
16 out of the starting gate on the intentional
17 infliction case.

18 The other thing that I would like to
19 address is their negligent hiring and their
20 negligent supervision claim. We addressed
21 that separately in what we've styled as
22 another Motion in *limine*, but it's really a
23 Motion for summary judgment as to that cause
24 of action.

25 There is no liability in South

1 Carolina, there is no duty to protect the
2 public from a former employee. We cited the
3 *Degenhart v. Knights of Columbus* case in
4 South Carolina where even if he were a
5 current employee, they would have to show
6 that he used the instrumentalities of the
7 employer or that the injury occurred on the
8 premises of the employer and that the
9 employer had the ability to control him, and
10 knew that they had the ability to control
11 him. As a matter of logic, that's not
12 possible when you're talking about a former
13 employee. So no matter how badly they
14 supervised him or failed to supervise him
15 back in 2002, that cannot give rise as a
16 matter of law to a person who is, ten years
17 later, or eight or nine years later, injured
18 by that employee.

19 We cited a number of cases from
20 other jurisdiction but a good one from
21 California involved a plumbing company that
22 sent their plumber to the plaintiff
23 decedent's home. They became friends. Then
24 later, after he is no longer employed by the
25 plumbing company, he kills her. There the

1 defendant plumbing company actually put this
2 person in her home and created this relation-
3 ship, or allowed this relationship to occur
4 but he was no longer employed and no longer
5 under their control when he committed this
6 horrible offense. The Supreme Court said
7 that there just is no liability, that you've
8 got to stop somewhere and there's no
9 liability for a former employee.

10 So all of these claims are too
11 remote. When we're arguing the absence of a
12 duty to the downstream people, I think Your
13 Honor was very concerned about where the
14 Court may be going with regard to if you
15 actually know that there is a sexual predator
16 in your midst and you don't take action, that
17 -- and that may be one thing. That may be an
18 area where the Supreme Court is ready to move
19 off of *Doe v. Marion* and *Doe v. WalMart* and
20 other cases. But we haven't seen any
21 inclination that they would do that with
22 regard to mere negligent failure to discover
23 these propensities. That's all of -- that is
24 all of the negligent hiring, negligent
25 supervision claims. Thank you.

1 THE COURT: Do you have anything
2 that you ---

3 GREGG MEYERS: If I may make two
4 points, Your Honor.

5 THE COURT: Sure.

6 GREGG MEYERS: First of all, a
7 case against a media defendant is different
8 from a case where the state legislature has
9 articulated. So the case against the New
10 York Times is a very different context and
11 very different factors in play, because of
12 the media protection.

13 The assumed duty is what takes us
14 beyond the negligence claims.

15 THE COURT: Let me -- while you're
16 standing. Because -- I'm obviously going to
17 go back and read -- I want to read *Upchurch*
18 because -- and I agree with you -- it
19 obviously doesn't deal with the Tort Claims
20 Act.

21 But it seems to me, just listening
22 to this, and I don't have any real problem
23 with all of the things that you have asserted
24 -- I think probably somewhere in the record
25 that I've probably said it. But the real

1 catch to me seems to be -- it seems to me to
2 be a common thread in all of them, the lack
3 of specificity -- and that's just my choice
4 of words -- as to the person. There is no
5 question -- I mean, Lord knows that we have
6 enough data to know that pedophilia creates
7 risk of harm. I mean, there's no question
8 about that. Debating as to what sort of
9 percentages there are with recidivism, and we
10 see this in the Sexually Violent Predator
11 Act, we hear that testimony frequently, uh,
12 but there's no question that there's a
13 problem, there is no question that there is
14 a significant risk.

15 But the one thing, even in the Row
16 case, and I want to read that again
17 specifically, but it talks about not the
18 public -- not the fact that, 'Yes, there are
19 people at risk, but is this person at risk?'
20 That seems to be the focal point that the
21 Court has taken. We are not going to bring
22 this -- create this duty.

23 Now, I don't have any problem with
24 -- I can easily work through the process of
25 saying that they undertook some duty, from a

1 summary judgment standpoint. I think that
2 there is a question of fact there for that;
3 to be candid with you -- Jessica's Law, that
4 alone tells me something. 'What was your
5 obligation? What did you have an obligation
6 to do under that law?' I agree that it is
7 not a separate cause of action but it clearly
8 says what -- something that you had a
9 responsibility to do and it wasn't done.

10 Now, whether or not that was
11 proximate cause, that's an issue for the jury
12 too. But the problem that I get, too, again
13 is that 'does it carry forward to this
14 person?' Because at this point this person
15 didn't even exist.

16 GREGG MEYERS: And the ---

17 THE COURT: In the sense of being
18 at harm. It was a threat, but it was a
19 threat to everybody. You know, that's what
20 I said -- it needs to be addressed. I want
21 it to be framed, so that we can address it.

22 GREGG MEYERS: Two things, Your
23 Honor. I won't argue with The Citadel's ---

24 THE COURT: I don't ---

25 GREGG MEYERS: --- consciousness

1 or their awareness that he was working --
2 that's a fact that bears on that question.

3 THE COURT: I don't ---

4 GREGG MEYERS: And I would encourage
5 the Court, in any ruling, to be specific as
6 to both the mother and the child, because
7 they may be treated differently under the law
8 as to that question.

9 THE COURT: Well, I think both of
10 them would fall into the same category with
11 respect to the specificity. Don't you?

12 GREGG MEYERS: Well, ---

13 THE COURT: I mean, I understand
14 the mother isn't at personal risk because the
15 mother isn't the child.

16 GREGG MEYERS: There is a
17 difference.

18 THE COURT: Right.

19 GREGG MEYERS: But clearly those
20 interests are very closely aligned.

21 THE COURT: I don't quarrel with
22 that but I just think that you've got to get
23 to the point of -- and then whether or not
24 the mother's was foreseeable, versus the
25 child's foreseeable, to me that's a jury

1 issue.

2 GREGG MEYERS: I'm thinking of
3 the context where we have child cases and
4 parent cases.

5 THE COURT: Oh, I understand.

6 GREGG MEYERS: Just in terms of
7 if the Court is looking for a ruling, I was
8 trying to separate out the ones in front of
9 you right now versus the ones that are
10 downstream.

11 THE COURT: And I don't quarrel
12 with that. Obviously the only thing that I
13 can do with this is -- obviously his desire
14 to have sex with children doesn't affect the
15 mother. I mean, that is not a risk to her.
16 It's a risk in the context that she had a
17 child. I understand that.

18 GREGG MEYERS: It's not a
19 physical risk to her.

20 THE COURT: No, I understand that.

21 GREGG MEYERS: But it is a
22 tremendous emotional risk.

23 THE COURT: I understand. You
24 don't have to convince me of that. I concur
25 whole-heartedly. I don't think that there's

1 been a case that -- well, I didn't see these
2 others, but I haven't had one where the
3 damage issue is so enormous as it is in this
4 case. There is no question about that. To
5 me -- of course, I don't make that judgment.
6 That would be up to a jury. But there is
7 absolutely no question of the damages here.

8 This isn't 'imagine', this isn't
9 some minute little -- 'well, you damaged me
10 just a little.' This is serious, serious
11 consequences of what occurred.

12 The question comes, is whether or
13 not, it seems to me, and I'm going to look at
14 your -- I want to read those cases
15 specifically. But it just seems to me, as
16 much as I agree with Justice Pleconis insofar
17 as the loss of consortium of a child -- I
18 can't think of a more realistic damage,
19 having three children and having six grand-
20 children.

21 But by the same token, the
22 legislature has chosen not to act. It seems
23 to me that they've kind of dropped it in
24 there. I am not faulting the legislature at
25 all. I'm just simply stating. It seems that

1 what the implication is from the Doe (sic)
2 case that this is something that we can
3 address, if they choose to. The bottom line
4 is, if they finally do that, so be it. They
5 can frame it very clearly in the law by
6 defining what obligations there are.

7 The real catch -- and we can get
8 through the special relationship because of
9 the voluntary actions, I think. I really do
10 think that gets you around that problem.

11 THE COURT: It is one of the
12 exceptions.

13 THE COURT: And it is an
14 exception, (affirmative nod). The question
15 then come, can you go beyond that here?
16 Because it's not specific as to this
17 plaintiff. Therein lies -- it seems to be
18 the common thread that I'm hearing in the
19 arguments and in reading the cases. But let
20 me look at it. Okay? Thank you. We will
21 be at-ease for a few minutes. Thank you.
22 I may be a little bit longer than a few
23 minutes.

24 (BRIEF RECESS 10:18 - 10:43 A.M.)

25 THE COURT: Thank you all for your

1 patience. First of all, let me make sure
2 that we incorporate all the memoranda that
3 have been submitted in conjunction with this
4 Motion. That would include -- because there
5 is some overlap -- the Motions in *limine* that
6 were filed and the responses to the Motions
7 in *limine*, both sides. All of those cases
8 are also incorporated for purposes of review,
9 should that become necessary.

10 GREGG MEYERS: Your Honor, could
11 I say one thing?

12 THE COURT: Sure.

13 GREGG MEYERS: And I apologize
14 for interrupting.

15 THE COURT: No problem.

16 GREGG MEYERS: Because so many of
17 those Motions came in yesterday, we didn't --
18 we haven't formally responded to them. There
19 is simply one fact that I want to make sure
20 that the Court is aware of.

21 THE COURT: All right.

22 GREGG MEYERS: That is, that in
23 his 30(b)(6) deposition the General Counsel
24 indicated that he acknowledged assuming the
25 duty of future victims. That's the phrase,

1 "future victims." So that is acknowledged.
2 I just want to put that ---

3 THE COURT: Let me be sure that I
4 understand. We agree that, so that there is
5 not an issue of fact as to what he said, he
6 said "to future victims", in the plural.

7 MR. SLOAN: Yes, Your Honor, I
8 believe that's in the deposition. I can find
9 it.

10 THE COURT: That's fine.

11 DAWES COOKE: I would be willing
12 to supplement the record as to what was
13 actually said, because I couldn't find ---

14 THE COURT: That's fine. So that
15 we are clear, we're relying on deposition
16 testimony to support certain factual
17 statements that have been made here. There's
18 no question about that

19 GREGG MEYERS: Right.

20 THE COURT: Insofar as the record
21 if it becomes necessary, to agree upon -- I
22 will just say all pertinent portions of any
23 deposition are incorporated in this Motion.

24 GREGG MEYERS: Fair enough.

25 THE COURT: For both sides.

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1 DAWES COOKE: Thank you.

2 THE COURT: That will cover, I
3 think would cover ---

4 GREGG MEYERS: And I would stand
5 corrected on the exact language if ---

6 THE COURT: Well, ---

7 GREGG MEYERS: Whatever it says.

8 THE COURT: In some ways, it
9 might be -- therein lies the crux of the
10 issue. One that precipitated our
11 conversation whether or not -- however we
12 want to frame it, but it is what it is and
13 we're now here.

14 First of all, I guess I will go in
15 reverse order. As I stated yesterday and
16 I've reviewed again, I believe that *Doe v.*
17 *Greenville School System* -- and we have the
18 cites there, I think we all know which case
19 that I am talking to. If you want me to cite
20 it specifically for purpose of our discussion
21 ---

22 GREGG MEYERS: We do.

23 THE COURT: I think we all are
24 aware of that.

25 GREGG MEYERS: We are aware.

1 THE COURT: Because I -- I think
2 that I indicated to you that I think the
3 logic of Justice Pleconis' dissent in that
4 case is very persuasive, however it is not
5 the law of this state, because there were
6 four other Justices that disagreed with him.

7 Basically as I read that, the filial
8 loss of consortium is not available in this
9 state under common law. It was suggested
10 maybe that's a legislative matter and the
11 legislature, thus far, has not addressed
12 that.

13 Notwithstanding the case that was
14 cited, and I think that you mentioned, Mr.
15 Meyers, in our discussion yesterday the 1913
16 case -- it's an old case nevertheless.

17 GREGG MEYERS: *Wynne v. Southern*
18 *Railway.*

19 THE COURT: That seems to imply
20 that it is broader than just simply what
21 they've ultimately concluded, that is that
22 basically you're entitled to medical expenses
23 and loss of service; which the Court has said
24 is restricted to 'what function have you
25 performed?'

1 GREGG MEYERS: Yeah, and I would
2 say that they are two different things. One
3 is talking about loss of consortium and the
4 other is talking about loss of services.

5 THE COURT: And I would agree that
6 you have constantly -- and I -- my feeling is
7 that in that case, that really is -- that had
8 to have been discussed, because there would
9 have been no reason for Justice Pleconis to
10 write in his Opinion that he believes filial
11 loss of consortium is here. So there's no
12 question it had that under consideration, the
13 difference in the terminology. But be that
14 as it may, I believe that that case is the
15 law of the case and therefore I would grant
16 summary judgment that those are the only
17 damages that this plaintiff is entitled to
18 recover in this action.

19 GREGG MEYERS: The case as a
20 whole, not that cause of action, is what
21 you're saying?

22 THE COURT: The case as a whole,
23 because I'm about to say this. And it really
24 doesn't make any difference because they've
25 said -- I mean -- as to outrage. Because in

1 this particular case, and I hear your
2 argument but, just as we have discussed, and
3 I am going to look at my -- give me a moment
4 to get my (reviewing file).

5 Let's first of all deal with the
6 intentional infliction of emotional distress.
7 I don't think that there is any question that
8 it didn't occur in her presence. You've
9 cited the statute which specifically says
10 that. So clearly from that standpoint, I'll
11 cite basically the existing law and the
12 statute that I believe would grant --
13 entitled -- that they would be entitled to
14 summary judgment on the issue of intentional
15 infliction of emotional distress.

16 I am cognizant of the fact that that
17 is one of the elements of the tort of outrage
18 in making that determination. The tort of
19 outrage, though, is when you take the
20 *Upchurch* case and the *Rojas* case and read
21 them together, which I think you can do very
22 easily, because I -- you've raised the issue
23 that this is dealing with, uh, -- excuse me.
24 In the *Upchurch* case -- excuse me. Certainly
25 in dealing with the *New York Times* and the

1 Rojas case, dealing with public entities, but
2 -- in the Rojas case, it talks about a number
3 of things. It mentions in the cite when it
4 references the *Upchurch* case, which I think
5 is a significant cite, in support of for its
6 decision. I quote, "It is not enough that
7 the conduct is intentional and outrageous.
8 It must be conduct directed at the plaintiff
9 or occur in the presence of the plaintiff, of
10 whom the defendant is aware."

11 Now, inferentially you could argue,
12 I guess for purposes of my ruling "victims"
13 -- I think they deal with specificity there.
14 It furthermore goes on to state in that
15 Opinion, "*The Does have shown no hostile or*
16 *abusive encounters or coercive or oppressive*
17 *conduct.*"

18 Again, "encounters", it talks about
19 being in in the presence of. That's what the
20 *Hudson v. Ford* case was, something that
21 occurred. It is something that has occurred
22 throughout and it's consistent. Specifically
23 this plaintiff has not had that experience.

24 Now, we were talking earlier about
25 distinctions of this case versus the

1 individuals. There is a major one in that
2 regard, because clearly that is not -- this
3 person does not fall in that category. That
4 is distinguishable, but that's not before me
5 now. I just make that note for the record
6 should that become necessary to deal with
7 that issue in the future.

8 In fact, the Court says in *New York*
9 *Times* -- I think I've already reported that.

10 That segues into the action itself
11 for the negligence, because the Court noted
12 in *Rojas* that while their ruling -- they
13 ruled that it was not outrageous because it
14 didn't meet any of the elements; didn't meet
15 the elements, period. But it says that this
16 doesn't address the negligence action. So
17 the negligence action, we have.

18 Frankly, this is one of the
19 consistencies that I find throughout. Did I
20 leave my notes -- (reviewing file) no, here it
21 is. This comes from the *Bibby* case, which is on
22 cert, but it really is paraphrasing what's been
23 said in *Doe v. Marion*, all of the cases that
24 we've dealt with and what's been argued. The
25 Court -- it's a two-to-one Decision, I would note

1 as well for the purposes of the record, Court of
2 Appeals, and that cite is 410 South Carolina 287,
3 decided October 1st, 2014. The Court, in making
4 the final statement, states as follows: "We find
5 the record contains no evidence respondent has
6 knowledge of a specific threat of harm to a
7 specific individual. It is not simply the
8 foreseeability of the victim which gives rise to
9 a person's liability for failure to warn, rather
10 it is the person's awareness of a distinct,
11 specific, overt threat of harm which the
12 individual makes towards a particular victim."

13 I think that is really the summary of
14 our law and where we are. We talk about it being
15 the public at-large but this case, without
16 stating that, is saying the same thing.

17 Again, the statement, does that create
18 an issue of fact as to this defendant. She's not
19 a victim that I'm aware -- she's a victim, Mr.
20 Meyers. You've argued that and I don't disagree
21 with you. She's definitely a victim in the sense
22 of suffering damages as a parent, but I don't
23 think that's what the Court is talking about. I
24 think they're talking about a specific victim of
25 an overt act, which was obviously the acts of Mr.

1 ReVille. I can say the acts, because he pled
2 guilty to them.

3 So clearly in this particular case --
4 and the conspiracy, I would agree with counsel's
5 argument and the -- and the support in the
6 memorandum for the civil conspiracy. Again, no
7 overt act towards this defendant (sic) -- I mean,
8 this plaintiff specifically.

9 And that seems to be the consistent
10 thread, as I stated before we left, throughout
11 this matter. So I think I've addressed all of
12 them. If I haven't, let me hear from you now.

13 DAWES COOKE: I think the only ones
14 you hit specifically are the statutory ones but I
15 believe counsel agreed those are the ones ---

16 THE COURT: Yeah, and I've never and
17 I don't think they've ever -- to be candid with
18 you, they've never argued this statute. They may
19 have pled it so that it could be inferred that
20 way but they haven't.

21 I think the statute -- and I think that
22 we talked about the Jessica Law. There is no
23 question that may create the duty. The problem
24 that we have is we get through whether or not --
25 just breaching the duty, we still can't get to

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1 the specific individual, as I see it in what the
2 law requires here today.

3 DAWES COOKE: I think with that that
4 you've addressed all of the causes of action.

5 THE COURT: Do you concur, Mr.
6 Meyers? Because I don't want to leave something.

7 GREGG MEYERS: With what proposition?

8 THE COURT: The proposition that my
9 ruling covers everything that you needed to frame
10 going forward?

11 GREGG MEYERS: I don't believe that the
12 court addressed conspiracy.

13 THE COURT: I did. I'm relying on
14 counsel's submissions and argument. I agree --
15 because it really is connected with everything
16 else.

17 GREGG MEYERS: Then I agree that the
18 court has covered it.

19 THE COURT: Thank you, sir. Thank you
20 all. Let me state this again for -- and I've
21 said it on numerous occasions. I'm not asking
22 for any money or support, either, for anything
23 but it's true -- something that I knew as a
24 lawyer, having the pleasure to practice law with
25 y'all, with you. But having the pleasure of

1 serving our profession in this role, it's a
2 distinct privilege to work with such wonderful
3 professionals. I just can't thank you enough for
4 your thoroughness, for your passion -- each side.
5 Thank you.

6 GREGG MEYERS: Thank you.

7 DAWES COOKE: Thank you. Do you want
8 us to stay while the jury is dismissed?

9 THE COURT: I'll go tell them. I
10 won't bring them in unless you want me to do
11 that. What I generally do, over the years, is
12 step back and explain to them that there were
13 matters of law that I had to address, and that
14 that was my job. That I've ruled as a matter of
15 law.

16 DAWES COOKE: Thank you.

17 THE COURT: And I tell them that we
18 couldn't have resolved the dispute without them.
19 Sometimes I think that's the judge's way of
20 'throwing them a bone' but it's true.

21 Maybe I should have ruled earlier but I
22 had to get this case in a posture to where the
23 record would support it to where we wouldn't have
24 a situation where it comes back on the falsity of
25 the record. We don't have that. We have lawyers

Mother Doe A v. The Citadel
Case No. 11-CP-10-9200
Hearing of January 26-27, 2015
Before The Honorable R. Markley Dennis

300

1 that have done a tremendous job for their
2 clients. So, thank you.

3 DAWES COOKE: Thank you.

4 GREGG MEYERS: Thank you, Your Honor.

5 THE COURT: Thank all of you.

6 (JURY DISMISSED)

7 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on January 26-27th, 2015, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.

Wm Lloyd Garrison

Deborah Garrison

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MOTHER DOE A,

Plaintiff,

v.

THE CITADEL,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-10-9200

) **NOTICE OF MOTION AND RENEWED**
) **MOTION FOR SUMMARY JUDGMENT**
)
)
)
)
)

TO: GREGG MEYERS, ESQUIRE, LOUIS P. HERNES, ESQUIRE AND ALLAN P. SLOAN III, ESQUIRE, ATTORNEYS FOR PLAINTIFF, MOTHER DOE A:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel, hereby move this Court, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this motion¹ are that:

INTRODUCTION

The Citadel (in this and other lawsuits stemming from allegations of sexual abuse by Louis "Skip" ReVille) filed a Motion for Summary Judgment arguing, *inter alia*, that Plaintiff's claim must fail because South Carolina does not permit recovery for damage to a parent's relationship with her child and because South Carolina does not recognize a legal duty owed by The Citadel to the Plaintiff. The Court denied these Motions for Summary Judgment, observing at oral argument that the Supreme Court might be poised to change the law in these areas.

¹ The Citadel incorporates by reference, as if set forth at length, any and all Motions for Summary Judgment (and supporting memoranda) it has submitted previously in this case or in the cases captioned: (a) *John Doe 2 v. The Citadel*, (Case No. 2012-CP-10-1858); (b) *Mother Doe on behalf of John Doe 3 v. The Citadel*, (Case No. 2012-CP-10-1859); (c) *John Doe Camper v. The Citadel*, (Case No. 2012-CP-10-1860); and (d) *Camper Doe 6 v. The Citadel*, (Case No. 2013-CP-10-5247).

However, the Court did note that it considered granting the Motions so that the appellate courts could provide guidance on the important legal issues that control this case. Now that the Supreme Court has denied The Citadel's petition for certiorari, the only vehicle by which this Court and the litigants can learn — without first enduring a difficult and harmful trial — whether the law has in fact changed is for this Court to grant summary judgment so that Plaintiff can appeal. This Court has aptly observed that nobody will benefit from a public trial of this case. Each participant will be ill-served by having to try this case if the law does not recognize the claim that the Plaintiff is making.

RENEWED MOTIONS FOR SUMMARY JUDGMENT

I. Plaintiff's claims fail because she has not sustained any proximately caused injury recoverable under South Carolina law.

- A. The only damages Plaintiff, who was not a victim of ReVille but the parent of a victim, may recover are: (a) medical expenses she paid for her son's treatment; and (b) pecuniary harm from loss of her son's services. *See Wright v. Colleton Cty. Sch. Dist.*, 301 S.C. 282, 391 S.E.2d 564 (1990).
- B. Plaintiff does not seek to recover such damages in this case. Instead, she seeks to recover damages for the intangible loss of her son's companionship and harm to her relationship with him; in other words, whatever label she applies to them, Plaintiff is seeking loss of filial consortium.
- C. The South Carolina Supreme Court, in a sexual abuse case, has expressly forbidden a parent from recovering the very type of damages Plaintiff seeks to recover here. *See Doe v. Greenville Cty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007) ("Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with their child and not a claim for loss of services, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim for loss of filial consortium.") (see Tab A).
- D. Plaintiff can cite no South Carolina authority permitting a parent (in a context outside of the ancient tort of seduction or abduction) to recover damages for intangible losses she has suffered because of injury to her son. Plaintiff's argument, based on old common law, mirrors the dissent in *Doe v. Greenville Cty. Sch. Dist.*, *supra* (see Tab A).
- E. In a similar case involving a claim filed by Plaintiff's counsel, Judge Miller granted a Motion to Dismiss, holding that *Doe v. Greenville County* precludes the very types of damages Plaintiff seeks here, such as: (a) "the shame, humiliation, and mental anguish

caused by the defendant's conduct in permitting her child to undergo sexual contact"; (b) the parent's being forced to "grapple with the added problems of raising her child after the improper sexual contact"; and (c) loss of her child's "companionship." *See Doe v. Brookwood Community Church*, Civ. Action No. 2011-CP-23-1106 (Dec. 13, 2011) (*see* Tab O). Judge Miller stated that "those are the precise elements of damages that the Supreme Court identified in *Doe* as being recoverable only in an action for filial consortium which is not recognized under South Carolina law."

II. As to Plaintiff's negligence-based claims, The Citadel did not owe a duty of care to Mother Doe A

A. Although there is no duty to control a third-party or warn a potential victim of a risk from a third-party, there are exceptions to this rule: (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant. *See Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002).

1. The Citadel had no "special relationship" with Mother Doe A or her son

- a. There is no evidence whatsoever that anyone at The Citadel knew either Mother Doe A or her son or that her son was exposed to ReVille in any way.
- b. There is no evidence that The Citadel had the ability to monitor, supervise or control Mother Doe A. *See Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011) ("Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either.") (*see* Tab B).

2. The Citadel had no "special relationship" with ReVille

- a. There is no evidence that The Citadel had the ability to monitor, supervise or control ReVille. *See Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011) ("Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either.") (*see* Tab B).
- b. There is no evidence that The Citadel was aware of a specific threat by ReVille to harm Mother Doe A or her son. *See Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) ("Petitioner's claim fails to allege a specific threat against James Doe necessary to create a duty to warn.") (*see* Tab C).

3. The Citadel did not voluntarily undertake a duty to Mother Doe A

- a. There is no evidence that The Citadel undertook a duty specifically to Mother Doe A. See *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504-05, 737 S.E.2d 512, 514 (Ct. App. 2012) (refusing to extend doctrine beyond Section 323 formulation) (see Tab D).
 - b. There is no evidence that Mother Doe A relied on anything The Citadel allegedly did. See *Underwood v. Coponen*, 367 S.C. 214, 625 S.E.2d 236 (Ct. App. 2006) ("While Taylor did trim the tree occasionally for the purpose of clearing the stop sign and his failure to trim the tree might have increased the risk that the sign would be obstructed, neither Underwood nor Coponen knew that Taylor trimmed the tree, and thus they did not rely on his doing so.") (emphasis added) (see Tab E); *Staples v. Duell*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App. 1997) ("Without previous knowledge of the policy, Staples could not have relied on the policy. Thus, Duell's policy of looking for dead trees did not create a duty for which he could be held liable.") (see Tab F).
4. The Citadel did not negligently or intentionally create the risk.
 - a. Plaintiffs rely heavily on the created risk exception to the no-duty rule. Under Plaintiff's argument the exception would swallow the rule, because anyone who fails to cause an injury can be said to have created an enhanced risk of the injury occurring. The Citadel did not create ReVile's desire to abuse children or encourage ReVile to abuse children. Moreover, it did not control ReVile or have custody over Mother Doe A or her son. See *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247-48, 711 S.E.2d 908, 912 (2011) ("Wal-Mart did not negligently or intentionally create the risk of the father's sexual abuse.") (see Tab B).
 - b. Plaintiff can cite no South Carolina authority imposing a duty under circumstances such as those in this case. It is not enough to say that the Defendant's failure to protect the Plaintiff from harm created an enhanced risk of that harm. The Defendant must have directly created the risk in order for this exception to apply.
 5. No statute imposed a duty on The Citadel.
 - a. Under the "public duty rule," public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually. See e.g., *Trask v. Beaufort Cty.*, 392 S.C. 560, 567, 709 S.E.2d 536, 539 (S.C. App. 2011) (see Tab G); *Brown v. Brown*, 360 S.C. 7, 11, 598 S.E.2d 728, 731 (Ct. App. 2004) ("To the extent Woodrow relies on violations of a statute or statutes, we agree with the trial court his claims are barred by the public duty rule. We note the code sections corresponding to Woodrow's claims merely recite in broad terms when circumstances make it unlawful to operate a motor vehicle, procedures surrounding incidents of possible DUI or, as in the case of the latter section, the general licensing requirement for motorists. None of the statutes implicated by Woodrow's claims identify any particular class of victims or

any particular harm that would create a special duty exception to the general rule.") (see Tab H). "The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach." *Vaughan v. Town of Lyman*, 370 S.C. 436, 442, 635 S.E.2d 631, 634 (2006). This Court has said that The Citadel owed a duty "to all of us" to stop ReVille. Contrary to establishing a basis for liability, this observation demonstrates that the public duty rule applies.

- b. The mandatory reporting statute does not impose a duty of care. See *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 248, 711 S.E.2d 908, 912 (2011) ("Wal-Mart's duty to report under the Reporter's Statute cannot give rise to civil liability.") (see Tab B); accord *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (see Tab C). Moreover, the South Carolina Office of the Attorney General has opined that the mandatory reporting statute would not apply where, as Camper Doe did here, an adult comes forward with accusations of abuse that occurred during his childhood. See June 30, 2014 Office of the Attorney General Opinion ("[T]his Office believes a court will conclude that a mandatory reporter would not have to report . . . when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in 63-3-20(3)) has been or may be abused or neglected" (See Tab I).
- c. The Jessica Horton Act does not apply because it was not in effect until after Camper Doe's report. See *Southeastern Site Prep, LLC v. Atlantic Coast Bldgs. and Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011) (citation omitted) ("[W]here a statute . . . creates new obligations [or] imposes a new duty . . . it will be construed as prospective only."). Moreover, that statute was not triggered because it did not allege "criminal sexual conduct" as that offense is defined under South Carolina law. Finally, "the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability." *Doe v. Marion*, 373 S.C. 390, 396, 645 S.E.2d 245, 248 (2007) (see Tab C).
- d. The Clery Act plainly states that it does not "[e]stablish a standard of care." See 20 U.S.C. § 1092(f)(14)(A).
- e. The OCR Guidance upon which Plaintiff relies to establish a duty of care under Title IX may not be used to establish an actionable violation of Title IX. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998).

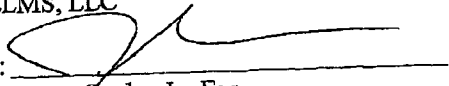
III. As to Plaintiff's non-negligence claims (outrage and civil conspiracy), the South Carolina Tort Claims Act bars Plaintiff's claims against The Citadel.

1. The South Carolina Tort Claims Act precludes these claims because they involve allegations of intent to harm and intentional infliction of emotional distress. See S.C. Code Ann. § 15-78-60(17) (stating that "governmental entity is not liable for a loss resulting from ... employee conduct ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude") (see Tab J); S.C. Code § 15-78-30(f) (noting that a "loss" under the Act "does not include the intentional infliction of emotional harm") (see Tab K); accord *Kinard v. City of Greenville*, 2012 WL 1340103, at *7 (D.S.C. April 18, 2012) ("[T]he City has immunity for the claims made against it for the intentional tort of assault and battery and accordingly these claims against the City are dismissed with prejudice.") (see Tab L); *Landrum v. Spartanburg Cty.*, 2011 WL 3652291, at *5 (D.S.C. Aug. 18, 2011) ("The County has immunity for the claims made against it for the intentional torts of assault and battery; therefore, the County is entitled to summary judgment on these claims.") (see Tab M); see also *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage.").

CONCLUSION

For the foregoing reasons, this Court should revisit its prior decision and grant The Citadel summary judgment. This will allow the parties to pursue a prompt and final appellate resolution of the key issues.

BARNWELL, WHALEY, PATTERSON, AND
HELMS, LLC

By: 

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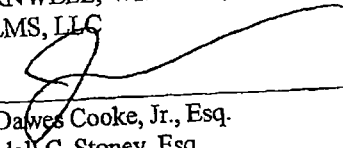
Dated: January 26, 2015
Charleston, South Carolina

consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage.”).

CONCLUSION

For the foregoing reasons, this Court should revisit its prior decision and grant The Citadel summary judgment. This will allow the parties to pursue a prompt and final appellate resolution of the key issues.

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Dated: January 26, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

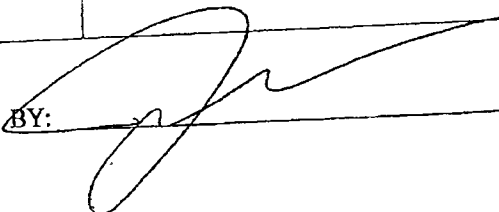
The undersigned hereby certifies that a true copy of the Defendant's Notice of Motion and Renewed Motion for Summary Judgment were served upon all counsel of record via hand delivery on this 26th day of January, 2015.

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BY: 

 West Reporter Image (PDF)

375 S.C. 63, 651 S.E.2d 305, 224 Ed. Law Rep. 975

Judges and Attorneys

Supreme Court of South Carolina.
 John DOE and Jane Doe, Appellants
 v.
 GREENVILLE COUNTY SCHOOL DISTRICT, Respondent.

No. 26372.
 Heard May 3, 2007.
 Decided Aug. 27, 2007.
 Rehearing Denied Oct. 19, 2007.

Background: Student's parents brought action against school district, asserting several causes of action arising from incidents of sexual activity between female student and a substitute teacher. The Circuit Court, Greenville County, Larry R. Patterson, J., granted district's motion to dismiss all causes of action, and parents appealed.

Holdings: The Supreme Court, Toal, C.J., held that:
 (1) cause of action by a parent for negligent infliction of emotional distress as result of injury to his or her child is limited to "bystander liability" scenario;
 (2) South Carolina law does not provide a cause of action for filial consortium;
 (3) complaint stated a claim for negligent supervision sufficient to survive a motion to dismiss for failure to state a claim; and
 (4) district did not have any fiduciary duty or assumed duty in loco parentis.

Affirmed in part, reversed in part.

Pielcones, J., concurred in part and dissented in part with opinion.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)6 Proceedings and Effect

307Ak681 k. Matters considered in general. Most Cited Cases

Generally, in considering a motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Rules Civ.Proc., Rule 12(b)(6).

[2] ☒ KeyCite Citing References for this Headnote

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

- 307AIII(B)4 Pleading, Defects In, in General
- 307Ak623 Clear and Certain Nature of Insufficiency
- 307Ak624 k. Availability of relief under any state of facts provable. Most Cited Cases

A motion to dismiss for failure to state a claim may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Rules Civ.Proc., Rule 12(b)(6).

[3] KeyCite Citing References for this Headnote

- 115 Damages
 - 115III Grounds and Subjects of Compensatory Damages
 - 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses
 - 115III(A)2 Mental Suffering and Emotional Distress
 - 115k57.26 Injury or Threat to Another; Bystanders
 - 115k57.27 k. In general. Most Cited Cases

Cause of action by a parent for negligent infliction of emotional distress as result of injury to his or her child is limited to "bystander liability" scenario.

[4] KeyCite Citing References for this Headnote

- 115 Damages
 - 115III Grounds and Subjects of Compensatory Damages
 - 115III(A) Direct or Remote, Contingent, or Prospective Consequences or Losses
 - 115III(A)2 Mental Suffering and Emotional Distress
 - 115k57.26 Injury or Threat to Another; Bystanders
 - 115k57.27 k. In general. Most Cited Cases

In order to prevail on a cause of action for negligent infliction of emotional distress under the bystander liability scenario, a plaintiff must show that: (1) the negligence of the defendant caused death or serious physical injury to another, (2) the plaintiff bystander was in close proximity to the accident, (3) the plaintiff and the victim are closely related, (4) the plaintiff contemporaneously perceived the accident, and (5) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

[5] KeyCite Citing References for this Headnote

- 285 Parent and Child
 - 285k7 Actions for Injuries To, Loss of Services, Control, or Society of Child
 - 285k7(1) k. Right of action in general. Most Cited Cases

South Carolina law does not provide a cause of action for filial consortium. Code 1976, § 15-75-20.

[6] KeyCite Citing References for this Headnote

- 350 Seduction
 - 350I Civil Liability
 - 350k1 k. Nature and elements of cause of action in general. Most Cited Cases

A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse.

[7] ☒ [KeyCite Citing References for this Headnote](#)

↳ 350 Seduction

↳ 350I Civil Liability

↳ 350k3 Grounds of Action

↳ 350k6 k. Right of action of woman seduced. [Most Cited Cases](#)

The right to sue upon an action for seduction belongs to the victim of the seduction.

[8] ☒ [KeyCite Citing References for this Headnote](#)

↳ 350 Seduction

↳ 350I Civil Liability

↳ 350k14 k. Parties and persons liable. [Most Cited Cases](#)

The defendant to a seduction action must be the perpetrator of the seduction.

[9] ☒ [KeyCite Citing References for this Headnote](#)

↳ 141E Education

↳ 141EII Public Primary and Secondary Schools

↳ 141EII(E) Pupils or Students

↳ 141EII(E)8 Injuries to Pupils or Students

↳ 141Ek800 Particular Injuries

↳ 141Ek808 Duty to Protect Against Intentional Injuries

↳ 141Ek808(1) k. In general. [Most Cited Cases](#)

(Formerly 345k89.3 Schools)

↳ 141E Education ☒ [KeyCite Citing References for this Headnote](#)

↳ 141EII Public Primary and Secondary Schools

↳ 141EII(E) Pupils or Students

↳ 141EII(E)8 Injuries to Pupils or Students

↳ 141Ek811 Actions

↳ 141Ek818 k. Pleading. [Most Cited Cases](#)

(Formerly 345k89.3 Schools)

Complaint by female student's parents, which alleged that school district acted with gross negligence in failing to protect their daughter from the known danger of a substitute teacher's inappropriate interest in young girls and which alleged that parents had incurred medical expenses as a result of the negligence, stated a claim for negligent supervision sufficient to survive a motion to dismiss for failure to state a claim, although parents had not indicated any intent to present any medical bills, which trial court found necessary to show allowable damages. [Code 1976, § 15-78-60\(25\)](#).

[10] ☒ [KeyCite Citing References for this Headnote](#)

↳ 272 Negligence

↳ 272V Heightened Degrees of Negligence

↳ 272k273 k. Gross negligence. [Most Cited Cases](#)

"Gross negligence" is defined as the failure to exercise slight care.

[11] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272V Heightened Degrees of Negligence
 - 272k273 k. Gross negligence. Most Cited Cases

"Gross negligence" is a relative term, and means the absence of care that is necessary under the circumstances.

[12] ☒ KeyCite Citing References for this Headnote

- 141E Education
 - 141EII Public Primary and Secondary Schools
 - 141EII(E) Pupils or Students
 - 141EII(E)8 Injuries to Pupils or Students
 - 141Ek800 Particular Injuries
 - 141Ek809 Sexual Abuse, Harassment, or Misconduct
 - 141Ek809(2) k. By teachers or other employees. Most Cited Cases
(Formerly 345k89.2 Schools)

- 285 Parent and Child ☒ **KeyCite Citing References for this Headnote**
 - 285k15 k. Persons in loco parentis. Most Cited Cases

- 350 Seduction ☒ **KeyCite Citing References for this Headnote**
 - 350I Civil Liability
 - 350k3 Grounds of Action
 - 350k4 k. In general. Most Cited Cases

School district did not have any fiduciary duty or assumed duty in loco parentis to parents of female student who was involved in a sexual relationship with a substitute teacher. Code 1976, § 15-78-60(25).

[13] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272II Necessity and Existence of Duty
 - 272k210 k. In general. Most Cited Cases

An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.

[14] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272II Necessity and Existence of Duty
 - 272k210 k. In general. Most Cited Cases

Without a duty, there is no actionable negligence.

[15] ☒ KeyCite Citing References for this Headnote

- 272 Negligence

272XVIII Actions

272XVIII(D) Questions for Jury and Directed Verdicts

272K1692 k. Duty as question of fact or law generally. Most Cited Cases

The existence of a duty owed is a question of law for the courts.

****306** Gregg E. Meyers, of Charleston, for Appellants.

Christopher R. Antley, of Devlin & Parkinson, of Greenville, for Respondent.

Chief Justice TOAL:

***66** John Doe and Jane Doe ("Mr. and Mrs. Doe") sued the Greenville County School District ("the School District") asserting several causes of action arising from incidents of sexual activity between Mr. and Mrs. Doe's minor daughter and a substitute teacher employed by the School District. The trial court granted the School District's motion to dismiss all causes of action, and Mr. and Mrs. Doe appealed. We affirm in part and reverse in part.

FACTUAL/PROCEDURAL BACKGROUND

In 2001, Mr. and Mrs. Doe discovered that their fourteen-year old daughter was involved in a sexual relationship with a substitute teacher from her school. The substitute teacher was charged and convicted of criminal sexual conduct with a minor as a result of this inappropriate relationship. Ultimately, Mr. and Mrs. Doe sued the School District alleging several causes of action based upon the alleged negligent supervision on the part of the School District. FN1 Specifically, Mr. and Mrs. Doe allege that the School District had prior complaints and warnings regarding the substitute teacher's inappropriate interest in young girls, and that the School District knew or should have known about the development of this relationship.

FN1. Mr. and Mrs. Doe's daughter is not a party to this action. A separate suit was filed on her behalf and was settled at trial.

The School District filed a motion to dismiss all causes of action, and the trial court granted the motion. Mr. and Mrs. Doe appealed, and this Court certified the case from the court of appeals pursuant to Rule 204(b), SCACR. Mr. and Mrs. Doe raise the following issue for this Court's review:

Did the trial court err in granting the School District's motion to dismiss Mr. and Mrs. Doe's claims?

****307 STANDARD OF REVIEW**

[1] ☒ [2] ☒ Generally, in considering a Rule 12(b)(6), SCRPC, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). The motion may not be sustained if the facts alleged in the ***67** complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Id.

LAW/ANALYSIS

Mr. and Mrs. Doe argue that the trial court erred in granting the School District's motion to dismiss. We agree that the trial court erred in granting the School District's motion to dismiss Mr. and Mrs. Doe's action for negligent supervision. We disagree, however, with Mr. and Mrs. Doe's argument that the trial court erred in granting the School District's motion to dismiss the causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*.

A. Negligent Infliction of Emotional Distress

[3] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claim against the School District for negligent infliction of emotional distress. Specifically, Mr. and Mrs. Doe argue that the trial court mistakenly perceived their claim for negligent infliction of emotional distress as a bystander liability claim similar to that discussed in *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985). Mr. and Mrs. Doe contend that their claim should have been regarded as another basis upon which emotional distress could be inflicted through negligent acts. We disagree.

[4] ☒ In *Kinard*, this Court recognized that a parent may bring a cause of action for negligent infliction of emotional distress as a result of injury to his or her child. *Kinard*, 286 S.C. at 582, 336 S.E.2d at 467. The Court instructed that such an action is strictly limited to the "bystander liability" scenario. *Id.* In order to prevail on this cause of action, a plaintiff must show that:

- (a) the negligence of the defendant caused death or serious physical injury to another;
- (b) the plaintiff bystander was in close proximity to the accident;
- (c) the plaintiff and the victim are closely related;
- (d) the plaintiff contemporaneously perceived the accident; and

*68 (e) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Id. at 582-83, 336 S.E.2d at 467. This Court has not otherwise defined the parameters of a cause of action for the negligent infliction of emotional distress arising out of an injury to someone other than the plaintiff. 11 S.C. JUR. *Damages* § 21 (1992).

In this case, Mr. and Mrs. Doe admit that they did not and cannot allege facts which would support a bystander liability cause of action. Because South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law.

Therefore, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's cause of action for negligent infliction of emotional distress.

B. Loss of Consortium

[5] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claim for loss of consortium. Mr. and Mrs. Doe contend that this Court's decision in *Taylor v. Medenica*, 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996), is not dispositive in this case because Taylor dealt only with a child's claim for loss of parental consortium. Additionally, Mr. and Mrs. Doe argue that the Court should acknowledge their claim because South Carolina has long acknowledged claims arising from the seduction of a child. We disagree.

At common law, a father possessed the right to maintain an action for the injuries of his minor child. See *Hughey v. Ausborn*, 249 S.C. 470, 476, 154 S.E.2d 839, 841-42 (1967). This right was based upon the concept that a father was entitled to compensation for the loss of services and earning capacity of his minor child. *Id.* Additionally, the father could recover for other pecuniary losses, including medical expenses incurred as a result of the injury. *Id.* Conversely, the common law right of a husband to recover damages for loss of consortium resulting from the injury of his wife was more encompassing. A spousal loss of consortium claim was based *69 upon the husband's right to the companionship, aid, society, and services of his wife. *Cook v. Atlantic Coast Line R. Co.*, 196 S.C. 230, 243-44, 13 S.E.2d 1, 7 (1941). This common law right belonged only to the husband, and therefore, a wife could not recover similar damages resulting from the injury of her husband. In 1969, the South Carolina legislature

adopted Code § (56) 615, which is now codified at S.C.Code Ann. § 15-75-20 (2005), to allow both spouses the right to recover for loss of consortium.

In Taylor v. Medenica, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court for the District of South Carolina adopted the Taylor analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. Kirkland v. Sam's East, Inc., 411 F.Supp.2d 639, 641 (D.S.C.2005). Today, we extend our Taylor analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.

The dissent would find that parents have a common law right to sue for loss of filial consortium despite the clear distinctions between a parent's claim for loss of services and a spouse's claim for loss of consortium found in our previous jurisprudence. The cases which the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium. See Wright v. Colleton County, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (providing that a parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss"); see also, e.g., Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child). As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, *70 companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

[6] ☒ [7] ☒ [8] ☒ Additionally, Mr. and Mrs. Doe's claim that South Carolina's recognition of a cause of action for seduction is a valid basis for recognizing a claim for loss of filial consortium is misleading. A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse. See 18 S.C. JUR. Seduction § 2 (1993). The right to sue upon an action for seduction belongs to the victim of the seduction. See 18 S.C. JUR. Seduction § 9. However, traditionally, a claim for seduction was a father's (or mother's in the absence of the father) right of action for the loss of his daughter's services. See 18 S.C. JUR. Seduction § 8. In either case, the defendant to the action must be the perpetrator of the seduction. See 18 S.C. JUR. Seduction § 2. Clearly, the School District is not the perpetrator of the seduction in this case. Accordingly, this Court's recognition of a claim for seduction would not lend support to Mr. and Mrs. Doe's argument that this Court should recognize a claim for loss of filial consortium.

Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with *309 their child and not a claim for loss of services, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim for loss of filial consortium.

C. Negligent Supervision

[9] ☒ Mr. and Mrs. Doe contend that the trial court erred in dismissing their claim for negligent supervision. We agree.

The South Carolina Tort Claims Act ("TCA") addresses the circumstances under which a governmental entity is liable for tortious conduct of its employees. The TCA states that "a governmental entity [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained *71 herein." S.C.Code Ann. § 15-78-40 (2005). One limitation contained in the

TCA provides that a governmental entity will not be liable for a loss resulting from any "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, ... except where the responsibility or duty is exercised in a grossly negligent manner." S.C.Code Ann. § 15-78-60(25) (2005).

[10] ☒ [11] ☒ Gross negligence is defined as "the failure to exercise slight care." Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). It has also been defined as "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Id. Gross negligence "is a relative term, and means the absence of care that is necessary under the circumstances." Id.

The trial court found that this cause of action could survive a motion to dismiss, but only to recover for allowable damages, such as medical bills. The trial court went on to find that Mr. and Mrs. Doe had not indicated any intention to present any medical bills. Therefore, the trial court dismissed the claim.

Mr. and Mrs. Doe's complaint alleges that the School District acted with gross negligence in failing to protect their daughter from the known danger of the substitute teacher's inappropriate interest in young girls. The complaint also alleges that Mr. and Mrs. Doe have incurred medical expenses as a result of the School District's negligence.^{FN2} Looking only at the face of the complaint, Mr. and Mrs. Doe's claim for negligent supervision was improperly dismissed. In dismissing this claim, the trial court impermissibly looked beyond the complaint and made a determination on the facts of the case. Whether Mr. and Mrs. Doe are able to show that they have incurred medical bills for which they have not already been *72 compensated is not an issue to be determined upon a motion to dismiss pursuant to Rule 12(b)(6).

^{FN2} Mr. and Mrs. Doe allege that they have incurred medical bills for the care of their daughter as a result of this incident. It is unclear from the briefs whether the medical costs resulting from this incident were considered in the settlement of their daughter's claims against the School District.

Accordingly, based only on the allegations set forth in the complaint, the trial court erred in dismissing Mr. and Mrs. Doe's cause of action for negligent supervision.

D. Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*

[12] ☒ Mr. and Mrs. Doe argue that the trial court erred in dismissing their claims for breach of fiduciary duty and for breach of an assumed duty *in loco parentis*. We disagree.

[13] ☒ [14] ☒ [15] ☒ An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). Without a duty, there is no actionable negligence. Id. The existence of a duty owed is a question of law for the courts. Doe v. Batson, 345 S.C. 316, 323, 548 S.E.2d 854, 857 (2001).

In the instant case, the trial court found that Mr. and Mrs. Doe's claims for breach of fiduciary duty and breach of an assumed *310 duty *in loco parentis* were based only on their claim of negligent supervision. The trial court further found that these causes of action were alleged as an attempt to heighten any duty owed by the School District in this situation.

We agree with the trial court's analysis of these causes of action. The Legislature has clearly provided that the School District may be liable for negligent supervision of a student only if that duty was executed in a grossly negligent manner. See S.C.Code Ann. § 15-78-60(25). Mr. and Mrs. Doe have not alleged any facts under which this Court could find another duty owed by the School District other than

the duty of supervision as outlined by the Tort Claims Act.

Accordingly, we hold that the trial court did not err in dismissing the causes of action for breach of fiduciary duty and breach of an assumed duty *in loco parentis*.

*73 CONCLUSION

For the foregoing reasons, we affirm the trial court's dismissal of Mr. and Mrs. Doe's causes of action for negligent infliction of emotional distress, loss of consortium, breach of fiduciary duty, and breach of an assumed duty *in loco parentis*. Additionally, we reverse the trial court's dismissal of Mr. and Mrs. Doe's causes of action for negligent supervision.

MOORE, BURNETT, JJ., and Acting Justice ALEXANDER S. MACAULAY, concur. PLEICONES, J., concurring in part, dissenting in part in a separate opinion.

Justice PLEICONES, concurring in part and dissenting in part:

I agree with the majority that we should reverse the trial court's dismissal of the Does' negligent supervision claim, but I would also reinstate the loss of consortium claim. Like the majority, I would uphold the trial court's dismissal of the negligent infliction of emotional distress claim and affirm the trial court's dismissal of the breach of fiduciary duty claim and the breach of an *In loco parentis* claim. I have explained my reasoning for each of these conclusions using the order established in the majority opinion.

A. Negligent Infliction of Emotional Distress

I would affirm the dismissal of this cause of action for the reasons given by the majority.

B. Loss of Consortium

The trial judge held that South Carolina does not recognize a cause of action for the parents' loss of their minor child's consortium. The majority affirms. I respectfully disagree. As explained below, I believe this holding is based on a misapplication of the Court's decision in Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996).

At common law, a man could sue for loss of his wife's consortium, but not vice-versa. Berry v. Myrick, 260 S.C. 68, 194 S.E.2d 240 (1973). Moreover, he could sue for loss of his minor child's services and his companionship, that is, his consortium.^{FN3} E.g., *74 Berger v. Charleston Consol. Ry. Gas & Elec. Co., 93 S.C. 372, 76 S.E. 1096 (1913) (action by father for past and future medical expenses, and loss of his injured child's services); Webb v. Southern Ry. Co., 104 S.C. 89, 88 S.E. 297 (1916) (action by mother for loss of child's services and companionship); see also Wright v. Colleton County, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) ("parent's claims for loss of [child's] services and [her] medical expenses are within the statutory definition of "loss" as contained in [tort claims act] ..."). Just as the common law did not permit a wife to sue for loss of her husband's consortium, it did not permit a child to sue for loss of parental services.

^{FN3}. It may be that the difference between my view and that of the majority is one of definition, and I will readily acknowledge that "spousal consortium" includes conjugal elements obviously not included in "filial consortium." I note the broadening of the term beyond the tort field in parental rights cases, where we have repeatedly spoken of a child's right to his parent's consortium. E.g. SCDSS v. Seegars, 367 S.C. 623, 627 S.E.2d 718 (2006).

In 1969, the General Assembly enacted what is now S.C. Code Ann. § 15-75-20 (2005), in order to abrogate the common law rule that a wife had no claim for loss of her husband's consortium. See Berry v. Myrick ("The obvious purpose of the General Assembly **311 in enacting this provision was to extend to the wife the right to recover for the loss of consortium of her husband, which right existed only in favor of the husband under the common law"). In Taylor v. Medenica, the Court was asked to recognize

a cause of action by a child for loss of parental consortium claim, a claim not cognizable under common law. The opinion states "By enacting [§ 15-75-20] the legislature has provided for loss of consortium actions for spouses. The statute has not been amended to provide for a similar cause of action for children. Whether South Carolina should recognize a cause of action for loss of parental consortium is a matter best left to the General Assembly." *Taylor v. Medenica* merely holds that any extension of consortium claims beyond that permitted at common law should be left to the General Assembly, not as the majority would read it, that by enacting § 15-75-20 the General Assembly abolished the common law right of a parent to sue for loss of her child's consortium.

Since a parent has the right to sue for loss of her child's consortium at common law,^{FN4} a right preserved under the South *75 Carolina Tort Claims Act,^{FN5} I would reverse the trial court's dismissal of the Does' consortium claim.

FN4. *Webb v. Southern Ry. Co., supra.*

FN5. *Wright v. Colleton County, supra.*

C. Neglect Supervision

The trial court held the Does' negligent supervision claim was proper, but noted that only medical expenses would be recoverable under this theory. See *Wright v. Colleton County, supra*. The trial court held, however, that the Does' claim must be dismissed because they pleaded no such damages. I agree with the Does that they did plead these damages in paragraph 38 of their complaint. I would therefore reverse the dismissal of this claim.

D. Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*

The trial judge also dismissed the Does' claims for breach of an assumed duty *In loco parentis* and breach of fiduciary duty, finding no such heightened duties exist in a school-student setting. The question of duty is one for the court. E.g., *Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 620 S.E.2d 326 (2005). I can find no error in the trial court's conclusion that these two heightened duties do not exist. I agree with the majority that we should affirm the dismissal of these two claims.

CONCLUSION

For the reasons given above, I concur in part and dissent in part.

S.C., 2007.

Doe v. Greenville County School Dist.

375 S.C. 63, 651 S.E.2d 305, 224 Ed. Law Rep. 975

Judges and Attorneys ([Back to top](#))

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Judges

- **Macaulay, Hon. Alexander Stephens**

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Anderson, South Carolina 29622

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- **Pleicones, Hon. Costa M.**

State of South Carolina Supreme Court

Columbia, South Carolina 29201

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- **Toal, Hon. Jean Hoefer**

State of South Carolina Supreme Court

Columbia, South Carolina 29201

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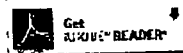
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393 S.C. 240, 711 S.E.2d 908

Judges and Attorneys

Supreme Court of South Carolina.
J. DOE, by and through his Guardian ad Litem, F. DOE, Appellant,
v.
WAL-MART STORES, INC. and Dorchester County Department of Social Services, Defendants,
of which Wal-Mart Stores, Inc. is the Respondent.

No. 26993.
Heard Feb. 15, 2011.
Decided June 27, 2011.

Background: Child's great uncle filed a negligence complaint against retail store after store failed to report suspected abuse depicted in photographs great aunt attempted to have developed at store. The Circuit Court, Charleston County, Roger M. Young, J., granted store summary judgment. Great uncle appealed.

Holding: The Supreme Court, Pleicones, J., held that retail store was not civilly liable due to store employees' failure to report suspected child abuse, as required by the South Carolina Reporter's Statute.

Affirmed.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

- 13 Action
 - 13I Grounds and Conditions Precedent
 - 13k3 k. Statutory rights of action. [Most Cited Cases](#)

• 211 Infants  [KeyCite Citing References for this Headnote](#)

- 211X Child Abuse Reporting
 - 211k1507 Particular Reporters
 - 211k1508 k. In general. [Most Cited Cases](#)
(Formerly 211k13.5(2))

Retail store was not civilly liable due to store employees' failure to report suspected child abuse, as required by the South Carolina Reporter's Statute, depicted in photographs of child great aunt tried to develop at store, in great uncle's negligence action against retail store; the reporting statute did not create private cause of action for negligence based on failure to report suspected or known child abuse. Code 1976, § 63-7-310(A).

[2]  [KeyCite Citing References for this Headnote](#)

- 272 Negligence
 - 272I In General
 - 272k202 k. Elements in general. [Most Cited Cases](#)

In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages.

[3] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272XVIII Actions
 - 272XVIII(D) Questions for Jury and Directed Verdicts
 - 272k1693 k. Negligence as question of fact or law generally. Most Cited Cases

Whether a defendant has acted negligently is a mixed question of law and fact.

[4] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272II Necessity and Existence of Duty
 - 272k220 k. Protection against acts of third persons. Most Cited Cases
- 272 Negligence ☒ KeyCite Citing References for this Headnote
 - 272II Necessity and Existence of Duty
 - 272k221 k. Duty to warn. Most Cited Cases

There is no general duty to control the conduct of another or to warn a third person or potential victim of danger.

[5] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272II Necessity and Existence of Duty
 - 272k220 k. Protection against acts of third persons. Most Cited Cases

There are five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger: (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant.

[6] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272II Necessity and Existence of Duty
 - 272k221 k. Duty to warn. Most Cited Cases

The defendant may have a common law duty to warn potential victims under the special relationship exception when the defendant has the ability to monitor, supervise, and control an individual's conduct and when the individual has made a specific threat of harm directed at a specific individual.

[7] ☒ KeyCite Citing References for this Headnote

- 272 Negligence

- ↳ 272III Standard of Care
- ↳ 272k230 k. In general. Most Cited Cases

The fact finder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case.

[8] ☒ KeyCite Citing References for this Headnote

- ↳ 211 Infants
 - ↳ 211X Child Abuse Reporting
 - ↳ 211k1507 Particular Reporters
 - ↳ 211k1508 k. In general. Most Cited Cases
(Formerly 211k13.5(2))

Retail store did not owe a common law duty to child victim to report suspected child abuse, which was allegedly depicted in photographs great aunt tried to develop at store; store did not have a special relationship with child victim, it had no general duty to control the conduct of child victim's father, child's alleged abuser, and store did not negligently or intentionally create the risk of father's sexual abuse.

***909** Russell S. Stemke, of Isle of Palms, for Appellant.

Regina H. Lewis, of Gaffney, Lewis & Edwards, of Columbia, for Respondent.

Justice PLEICONES.

***242** Appellant brought an action against respondent Wal-Mart Stores, Inc. ("Wal-Mart")-alleging various theories of negligence. The circuit court granted summary judgment in favor of Wal-Mart. We affirm.

FACTS

This case arises from the physical and sexual abuse of then three-year-old J. Doe ("the victim"). The facts, in the light most favorable to appellant, are as follows. Appellant, F. Doe, is the victim's guardian ad litem and great uncle. F. Doe and his wife ("the aunt") often kept the victim for months at a time. According to the aunt, both of the victim's parents physically abused him beginning when he was three months old. She claimed she had seen bruising on the victim's legs and buttocks, and had observed the father "thump" the victim in the mouth and hit the child with a fly swatter. She did not, however, report the abuse to DSS or the police or seek medical attention for the victim. The aunt did not report the abuse because she feared DSS would remove the victim from his parents' home and she would not be allowed to see him.

In August 1997, upon picking up the victim from his parents' house, the aunt was informed by the victim's mother that the victim had bruises on his buttocks because he had fallen down the steps. After arriving at her house, the aunt examined the victim and found two "wide strips" of bruising on his buttocks. Again, she did not contact the police or DSS or seek medical treatment. Instead, she took two photographs of the victim's buttocks.

After the victim had been in the aunt's custody for several hours, the victim's father called her and told her to bring the victim home because DSS was there. The aunt took the victim home as requested, but did not attempt to speak with the DSS worker who was investigating the abuse allegations. ***243** This investigation did not result in the victim's removal from the home.

Several days later, the aunt took the roll of film, which included other unrelated photographs, to Wal-Mart to be developed. When the aunt retrieved the photos, a photo technician informed her she had destroyed some of the photos because of a store policy requiring the destruction of photos depicting nudity. The aunt explained to the employee she needed the photos to give to DSS and pleaded with her

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to provide the photos. The aunt claimed the employee refused and told her ****910** she was required to "destroy them," which the aunt believed meant the employee had destroyed the photos and the negatives. The employee did not, however, destroy the negatives. The aunt left the store with the remainder of the photos and all of the negatives, but erroneously believed the negatives depicting the victim's buttocks had been destroyed.

According to the aunt, the victim's father began sexually abusing him in September 1997, approximately one month after the incident that had caused the aunt to take the photos and DSS to investigate. In December 1997, while giving the victim a bath, the aunt noticed signs of sexual abuse. The aunt took the victim to a doctor who examined the victim and determined he had been sexually abused. The aunt and the doctor contacted DSS, and the victim was placed in the aunt's custody.

Father pled guilty to first degree criminal sexual conduct and was sentenced to twenty-five years' imprisonment.

In 2003, appellant instituted this action, arguing the victim's injuries from the sexual abuse were a result of (1) Wal-Mart's failure to report the suspected physical abuse depicted in the photos as required by the Reporter's Statute; FN1 and/or (2) Wal-Mart's negligent hiring and supervision of its employees and its violations of approximately twenty internal company policies. The circuit court granted Wal-Mart's motion for summary judgment.

FN1. S.C. Code Ann. § 63-7-310 (Supp. 2010).

***244 ISSUE**

Did the circuit court err in granting summary judgment in favor of Wal-Mart?

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. at 493-94, 567 S.E.2d at 860.

LAW/ANALYSIS

The circuit court granted summary judgment in favor of respondent, finding Wal-Mart incurred no civil liability for failing to report the suspected child abuse as required by the Reporter's Statute. The circuit court also found Wal-Mart had no common law duty to warn or protect the victim, and that Wal-Mart's internal policies did not create such a duty.

I. Civil Liability Under the Reporter's Statute

[1] ☒ Appellant first argues the circuit court erred in finding Wal-Mart did not have any civil liability for failing to report the suspected child abuse as required by the South Carolina Reporter's Statute. We disagree.

The Reporter's Statute provides, in pertinent part:

... [P]ersons responsible for processing films ... must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20. FN2

FN2. Section 63-7-20 defines "child abuse or neglect" as a number of actions carried out expressly by "the parent, guardian, or other person responsible for the child's welfare."

***245** S.C. Code Ann. § 63-7-310(A) (Supp.2010).

In *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007), the Court found there could be no private right of action for failing to report suspected or known child abuse in accordance with § 63-7-310. In deciding whether § 63-7-310 gives rise to a private cause of action for negligence *per se*, the Court noted ****911** the main factor in determining whether a statute creates a private cause of action is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability.

Id. at 396, 645 S.E.2d at 248 (quoting *Dorman v. Alken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990)).

The Court first observed § 63-7-310 is silent as to civil liability for failure to report. Noting other provisions in the Reporter's Statute do impose civil liability,^{FN3} the Court found the legislature's silence as to civil liability in § 63-7-310 indicated its intent not to create civil liability for failing to report as required. *Id.* at 397, 645 S.E.2d at 249 (citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding when one provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist)).

FN3. Namely, §§ 20-7-567 and -570 (now §§ 63-7-440 and -430) impose civil liability for making a false report.

Further, the Court looked to the purpose of the Children's Code and determined § 63-7-310 is concerned with the protection of the public and not with the protection of an individual's private right. *Id.* at 398, 645 S.E.2d at 249. The Court also noted other jurisdictions have interpreted similar statutes and reached the same conclusion. *Id.* at 198 n. 4, 645 S.E.2d at 249 n. 4.

***246** Because, consonant with *Doe v. Marion*, there can be no private cause of action under § 63-7-310, we find the circuit court properly granted summary judgment in favor of respondent as to this claim.

II. Other Causes of Action

Appellant also asserts the circuit court erred in granting summary judgment in favor of Wal-Mart on various other theories of common law negligence. We disagree.

Respondent has an internal policy against developing photos depicting nudity. The policy requires employees to bring to the attention of the store manager pornographic pictures of children where child abuse is suspected. It also prohibits the printing of pictures depicting nudity and requires they be shredded if printed in error. There is an exception for cases of suspected child abuse, where the developed photos must be kept as evidence. However, the policy requires processed negatives be returned to the customer.

[2] [3] In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. Doe v. Marion, 373 S.C. at 400, 645 S.E.2d at 250. Whether a defendant has acted negligently is a mixed question of law and fact. Moore v. Weinberg, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct.App.2007). First, the court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, the defendant is entitled to a judgment as a matter of law. Id. (internal citations omitted).

[4] [5] "Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." Falle v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). We recognize five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Id.

[6] The defendant may have a common law duty to warn potential victims under the "special relationship" exception when the defendant "has the ability to monitor, supervise, and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." Doe v. Marion, *supra* (quoting Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)).

[7] Once a duty has been established, it is the further function of the court to determine and formulate the standard of conduct to which the duty requires the defendant to conform. 57A Am.Jur.2d Negligence § 132. "The fact finder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case." Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006). "The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." Id. (citing Peterson v. Natl. R.R. Passenger Corp., 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005)). It follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established.

[8] The circuit court found Wal-Mart neither owed any common law duty to the victim, nor did it create or undertake any duty when its employees failed to follow Wal-Mart's internal policies.

We find the circuit court properly granted summary judgment as to these alternative causes of action because Wal-Mart owed no duty to the victim. It is clear Wal-Mart had no general duty to control the conduct of the victim's father or warn the victim of the danger of the sexual abuse. Further, none of the exceptions enumerated in Falle apply here. Wal-Mart had no special relationship with either the victim or his father because it did not have the ability to monitor, supervise, or control either. Doe v. Marion, *supra*. Wal-Mart did not negligently or intentionally create the risk of the father's sexual abuse. Lastly, as discussed above, Wal-Mart's duty to report under the Reporter's Statute cannot give rise to civil liability.

We also hold Wal-Mart did not voluntarily undertake a duty. It is undisputed that Wal-Mart created an internal policy that was subsequently violated when the photo technician destroyed the photos and did not inform the store manager or keep them as evidence. However, this internal policy cannot be said to constitute the voluntary undertaking of a duty. Rather, it could simply serve as evidence of the standard of care, once that duty was established by law. See Madison, *supra*.

CONCLUSION

We find the circuit court's grant of summary judgment in favor of Wal-Mart was proper because there can be no civil liability under the Reporter's Statute and Wal-Mart owed no duty to the victim. Accordingly, the order of the circuit court is

AFFIRMED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

S.C., 2011.

Doe ex rel. Doe v. Wal-Mart Stores, Inc.
393 S.C. 240, 711 S.E.2d 908

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State of South Carolina Supreme Court
Columbia, South Carolina 29201

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• **Hearn, Hon. Kaye G.**

State of South Carolina Supreme Court
Columbia, South Carolina 29201

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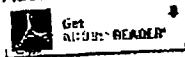
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373 S.C. 390, 645 S.E.2d 245

Judges and Attorneys

Supreme Court of South Carolina.

John DOE, Individually and as Guardian and next friend for his minor child, James Doe, Petitioners,
v.Robert Francis MARION, Jr., M.D., Individually, Parkwood Pediatrics Group, Carolina Family Care, Inc.,
Walton L. Ector, M.D., Individually, William Gamble, M.D., Individually, Malcolm Rhodes, M.D.,
Individually, William Fred O'Dell, M.D., Individually, Carol Graf, M.D., Individually, Carol Graf, M.D. &
Associates, P.A., and Pit Marion, Individually,
of Whom Carol Graf, M.D., and Carol Graf, M.D. & Associates, P.A., are, Respondents.

No. 26323.

Heard March 20, 2007.

Decided May 7, 2007.

Background: Father brought action against multiple defendants seeking to recover damages arising from a physician's sexual abuse of son and psychiatrist's failure to notify of sexual abuse. The Circuit Court, Charleston County, Thomas L. Hughston, Jr., J., granted psychiatrist's motion to dismiss. Father appealed. The Court of Appeals, 361 S.C. 463, 605 S.E.2d 556, affirmed.

Holdings: After granting father's request for a writ of certiorari, the Supreme Court, Burnett, J., held that:

- (1) child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse, and
- (2) psychiatrist who treated physician beginning several years before physician allegedly sexually molested a child did not have a common law duty during his treatment of the physician to warn future foreseeable victims of physician's predilection for child molestation of his patients.

Affirmed.

West Headnotes

[\[1\] !\[\]\(d6a66bd1bf754cda77604477c608c8ca_img.jpg\) KeyCite Citing References for this Headnote](#)[30 Appeal and Error](#)[30XVI Review](#)[30XVI\(A\) Scope, Standards, and Extent, in General](#)[30k862 Extent of Review Dependent on Nature of Decision Appealed from](#)[30k863 k. In general. Most Cited Cases](#)

In reviewing the dismissal of an action for failure of the pleading to state facts sufficient to constitute a cause of action, the appellate court applies the same standard of review as the trial court. Rules Civ.Proc., Rule 12(b)(6).

[\[2\] !\[\]\(bfaa817681420cc91786c1f29676b750_img.jpg\) KeyCite Citing References for this Headnote](#)[307A Pretrial Procedure](#)[307AIII Dismissal](#)[307AIII\(B\) Involuntary Dismissal](#)

- 307AIII(B)6 Proceedings and Effect
- 307Ak681 k. Matters considered in general. Most Cited Cases

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Rules Civ.Proc., Rule 12(b)(6).

[3] ☒ KeyCite Citing References for this Headnote

- 307A Pretrial Procedure
 - 307AIII Dismissal
 - 307AIII(B) Involuntary Dismissal
 - 307AIII(B)4 Pleading, Defects In, In General
 - 307Ak623 Clear and Certain Nature of Insufficiency
 - 307Ak624 k. Availability of relief under any state of facts provable. Most Cited Cases

◦ 307A Pretrial Procedure ☒ KeyCite Citing References for this Headnote

- 307AIII Dismissal
 - 307AIII(B) Involuntary Dismissal
 - 307AIII(B)6 Proceedings and Effect
 - 307Ak679 k. Construction of pleadings. Most Cited Cases

If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal for failure of the pleading to state facts sufficient to constitute a cause of action is improper. Rules Civ.Proc., Rule 12(b)(6).

[4] ☒ KeyCite Citing References for this Headnote

- 307A Pretrial Procedure
 - 307AIII Dismissal
 - 307AIII(B) Involuntary Dismissal
 - 307AIII(B)4 Pleading, Defects In, In General
 - 307Ak622 k. Insufficiency in general. Most Cited Cases

◦ 307A Pretrial Procedure ☒ KeyCite Citing References for this Headnote

- 307AIII Dismissal
 - 307AIII(B) Involuntary Dismissal
 - 307AIII(B)6 Proceedings and Effect
 - 307Ak679 k. Construction of pleadings. Most Cited Cases

For the purpose of a motion to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, the question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6).

[5] ☒ KeyCite Citing References for this Headnote

- 307A Pretrial Procedure
 - 307AIII Dismissal
 - 307AIII(B) Involuntary Dismissal
 - 307AIII(B)4 Pleading, Defects In, In General

↪ 307Ak622 k. Insufficiency in general. Most Cited Cases

The complaint should not be dismissed for failure of the pleading to state facts sufficient to constitute a cause of action merely because the court doubts the plaintiff will prevail in the action. Rules Civ.Proc., Rule 12(b)(6).

[6] ☒ KeyCite Citing References for this Headnote

↪ 13 Action

- ↪ 13I Grounds and Conditions Precedent
- ↪ 13k3 k. Statutory rights of action. Most Cited Cases

↪ 211 Infants ☒ KeyCite Citing References for this Headnote

- ↪ 211X Child Abuse Reporting
- ↪ 211k1516 Actions and Proceedings
- ↪ 211k1518 k. Right of action, parties, and standing. Most Cited Cases
(Formerly 211k13.5(2))

Child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse; statute did not include language creating civil liability for failure to report suspected or known child abuse, and the purpose of the statute was to protect the public and was not to protect an individual's private right. Code 1976, § 20-7-510.

[7] ☒ KeyCite Citing References for this Headnote

↪ 13 Action

- ↪ 13I Grounds and Conditions Precedent
- ↪ 13k3 k. Statutory rights of action. Most Cited Cases

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.

[8] ☒ KeyCite Citing References for this Headnote

↪ 13 Action

- ↪ 13I Grounds and Conditions Precedent
- ↪ 13k3 k. Statutory rights of action. Most Cited Cases

The general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

[9] ☒ KeyCite Citing References for this Headnote

↪ 13 Action

- ↪ 13I Grounds and Conditions Precedent
- ↪ 13k3 k. Statutory rights of action. Most Cited Cases

When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.

[10] ☒ KeyCite Citing References for this Headnote

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(D) Duties and Liabilities to Non-Patients

198Hk753 Acts of Mental Health Patients

198Hk757 k. Released or non-committed patients. Most Cited Cases

Psychiatrist who treated physician beginning several years before physician allegedly sexually molested a child, one of physician's patients, did not have a common law duty during his treatment of the physician to warn future foreseeable victims of physician's predilection for child molestation of his patients; physician did not specifically threaten any readily identifiable third party, such as the child who was allegedly molested.

[11] ☒ KeyCite Citing References for this Headnote

272 Negligence

272I In General

272k202 k. Elements in general. Most Cited Cases

In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages.

[12] ☒ KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k221 k. Duty to warn. Most Cited Cases

The defendant may have a common law duty to warn potential victims under the "special relationship" exception to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger when the defendant has the ability to monitor, supervise and control an individual's conduct and when the individual has made a specific threat of harm directed at a specific individual.

****246** J. Graham Sturgis, Jr., of Charleston; Gary B. Blasingame and Henry G. Garrard, III, of Blasingame, Burch, Garrard & Ashley, P.C., and Michael O. Crain, of Oliver and Crain, all of Athens, GA, for Petitioners.

Carol B. Ervin and Stephen L. Brown, of Young, Clement, & Rivers, LLP, of Charleston, for Respondents.

Justice BURNETT.

393** John Doe (Petitioner) brought an action on behalf of his minor son, James Doe, to recover damages arising from the sexual abuse of James Doe by Robert Francis Marion, Jr., M.D. Petitioner also alleged Carol Graf, M.D. *247** and Carol Graf, M.D. & Associates (Respondents) were negligent in failing to report to authorities or warn future victims of Dr. Marion's predilection for child molestation. The trial court disagreed and dismissed the case. The Court of Appeals affirmed. Doe v. Marion, 361 S.C. 463, 605 S.E.2d 556 (Ct.App.2004). We granted Petitioner's request for a writ of certiorari to review the decision of the Court of Appeals, and we affirm.

***394 FACTUAL/PROCEDURAL BACKGROUND**

James Doe was a patient of Parkwood Pediatrics Group (Parkwood) from 1990 to 1998. Dr. Marion was a member of Parkwood until 1985 when he was asked to leave due to complaints of sexual abuse and molestation against him. Dr. Marion established a solo practice and began treating James Doe in

1999 after James Doe's mother transferred him from Parkwood to Dr. Marion. James Doe was allegedly sexually abused by Dr. Marion for a period of several years beginning in 1999.

Dr. Marion received psychiatric treatment from Dr. Graf beginning in 1984 for his predilection for child molestation. Dr. Graf also treated a victim of Dr. Marion who informed Dr. Graf of the molestation. Petitioner alleges Dr. Graf was negligent *per se* in her failure to notify the appropriate authorities of Dr. Marion's child molestation and abuse and in breaching her duty to report suspected sexual abuse of a child pursuant to S.C.Code Ann. § 20-7-510 (Supp.2002). Petitioner also alleges Dr. Graf was negligent under common law principles for her failure to warn "reasonably foreseeable" future minor patients of Dr. Marion. Finally, Petitioner alleges Carol Graf, M.D. & Associates, P.A., is vicariously liable for Dr. Graf's negligence.

Respondents were dismissed from the initial suit after the trial court granted their motions to dismiss under Rule 12(b)(6), SCRPC. The trial court found: (1) no common law duty to warn existed because there was not a specific threat to a specific individual; and (2) § 20-7-510 did not create a private right of action for failing to report, and if it did, it would only apply to threats to a specific child, not any possible future victims.

The Court of Appeals affirmed the dismissal in Doe v. Marion, 361 S.C. 463, 605 S.E.2d 556 (Ct.App.2004). The Court of Appeals found Petitioner failed to allege a specific threat necessary to compel a duty to warn and, therefore, the trial court correctly determined no legal duty existed under the common law. The Court of Appeals also found § 20-7-510 does not create a private cause of action and, consequently, the trial court correctly determined Dr. Graf was not negligent *per se*.

***395 ISSUES**

- I. Did the Court of Appeals err in finding S.C.Code Ann. § 20-7-510 (Supp.2002) does not give rise to a private cause of action for negligence *per se*?
- II. Did the Court of Appeals err in finding a physician/psychiatrist is not liable under common law negligence principles for failing to report to authorities or warn future victims about the predilection for child molestation of her patient?

STANDARD OF REVIEW

[1] [2] [3] [4] [5] In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most favorable to the plaintiff, ****248** and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

LAW/ANALYSIS

I. Negligence Per Se

[6] Petitioner argues the Court of Appeals erred in affirming the trial court's dismissal of Petitioner's claims for negligence against Dr. Graf. Specifically, **Petitioner contends *396 S.C.Code Ann. § 20-7-510 creates a private cause of action for negligence per se. We disagree.**

Section 20-7-510 provides, in pertinent part:

(A) A physician ... shall report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child's physical and mental health or welfare has been or may be adversely affected by abuse or neglect.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.^{FN1}

FN1. Section 20-7-510(A) was amended in 2003 and now reads: "A physician ... must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in section 20-7-490." The amendments do not affect the analysis of Petitioner's argument.

Petitioner argues the statute imposes a duty on Dr. Graf to report Dr. Marion's predilection for sexual abuse and/or molestation of children to the appropriate authorities. Petitioner argues the purpose of the Children's Code ^{FN2}, and specifically of the reporting statute, is to protect children from the type of harm James Doe suffered.

FN2. South Carolina Code Ann. §§ 20-7-10 to -9740 (1976 & Supp.2006).

☒ ☒ ☒ In determining whether a statute creates a private cause of action, the main factor is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

*397 Dorman v. Aiken Communications, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting Whitworth v. Fast Fare Markets of South Carolina, Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party. Citizens of Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).

While § 20-7-510 is silent as to civil liability, §§ 20-7-567 & -570 (Supp.2005) ^{FN3} do impose ~~**240~~ liability for making a false report. Sections 20-7-567 & -570 indicate the legislature intended to impose civil liability and establish private causes of action in certain instances. The fact that such language is missing from § 20-7-510 indicates the legislative intent was for the reporting statute not to create civil liability. See Byrd v. Irmo High Sch., 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding when one provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist); *398 State v. Hood, 181 S.C. 488, 188 S.E. 134 (1936) ("It is presumed that the Legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so."). Further, in Rayfield v. South Carolina Department of Corrections, 297 S.C. 95, 374 S.E.2d 910 (1988), this Court stated:

FN3. South Carolina Code Ann. § 20-7-567 states:

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(A) It is unlawful to knowingly make a false report of abuse or neglect.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than ninety days, or both.

South Carolina Code Ann. § 20-7-570 provides:

(A) If the family court determines pursuant to Section 20-7-695 that a person has made a report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 20-7-567, the department may bring a civil action to recover the costs of the department's investigation and proceedings associated with the investigation, including attorney's fees. The department also is entitled to recover costs and attorney's fees incurred in the civil action authorized by this section. The decision of whether to bring a civil action pursuant to this section is in the sole discretion of the department.

(B) If the family court determines pursuant to Section 20-7-695 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 20-7-567, a person who was subject of the false report has a civil cause of action against the person who made the false report and is entitled to recover from the person who made the false report such relief as may be appropriate, including:

(1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

[W]e are able to derive a test for determining when a duty created by statute will support an action for negligence. In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

In determining Dr. Graf had no duty to report, we look to the purpose of the Children's Code and determine **the statute in question is concerned with the protection of the public and not with the protection of an individual's private right** ^{FN4}; Section 20-7-480 ^{FN5} states the purpose of the Children's Code and ***399** focuses entirely, although not explicitly, on the duties of the Department of Social Services (DSS). See, e.g., *S.C. Dep't of Social Servs. v. Pritcher*, 329 S.C. 242, 246, 495 S.E.2d 242, 244 (Ct.App.1997) ("SCDSS has been designated as the state agency primarily responsible for implementing the child welfare scheme for the protection of children in South Carolina.").

^{FN4}. Other jurisdictions have interpreted similar statutes and reached the same conclusion. For example, the Alabama Supreme Court held:

The Child Abuse Reporting Act creates a duty owed to the general public, not to specific individuals, and, consequently, it does not create a private cause of action in favor of individuals. Therefore, to the extent that the plaintiffs rely on that statute, they fail to

state a cause of action, and the trial court properly dismissed the claims insofar as they were based on the statute.

C.B. v. Bobo, 659 So.2d 98 (Ala.1995); see also *Arbaugh v. Board of Educ., County of Pendleton*, 214 W.Va. 677, 591 S.E.2d 235 (2003); *Cechman v. Travis*, 202 Ga.App. 255, 414 S.E.2d 282 (1991); *Fischer v. Metcalf*, 543 So.2d 785 (Fla.Dist.Ct.App.1989); *Borne v. Northwest Allen County Sch. Corp.*, 532 N.E.2d 1196 (Ind.Ct.App.1989); but see *Ham v. Hospital of Morristown*, 917 F.Supp. 531 (E.D.Tenn.1995); *Landeros v. Flood*, 17 Cal.3d 399, 131 Cal.Rptr. 69, 551 P.2d 389 (1976).

FN5. Section 20-7-480 declares:

(B) It is the purpose of this article to:

(1) acknowledge the different intervention needs of families;

(2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;

(3) ensure permanency on a timely basis for children when removal from their homes is necessary;

(4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and

(5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

Petitioner cites *Jensen v. Anderson County Department of Social Services*, 304 S.C. 195, 403 S.E.2d 615 (1991), to support his contention § 20-7-510 creates a private cause of action. In *Jensen*, this Court upheld a private cause of action when a DSS worker failed to properly investigate claims of abuse of a young man. After the young man's brother was beaten to death by his mother's boyfriend, the administratrix of the brother's estate brought an action against **250 DSS and the social worker. While public officials are generally not liable for their negligence in public duties, this Court noted an exception exists when a duty is owed to an individual rather than the public, i.e., a "special duty." FN6

FN6. A "special duty" exists when the following six elements are present:

(1) an essential purpose of the statute is to protect against a particular kind of harm;

(2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;

(3) the class of persons the statute intends to protect is identifiable before the fact;

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(4) the plaintiff is a person within the protected class;

(5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and

(6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Jensen, 304 S.C. at 200, 403 S.E.2d at 617.

This case is distinguishable from Jensen because there existed no special duty between Dr. Graf and James Doe. Dr. Graf was not a public official. She never had contact with James Doe. In fact, James Doe was not even born when Dr. Graf began treating Dr. Marion in 1984. Therefore, the Court of Appeals did not err in affirming the dismissal of the action and finding § 20-7-510 does not create a private cause of action for negligence *per se*.

***400 II. Common Law Negligence**

[10] ☒ Petitioner argues the Court of Appeals erred in affirming the trial court's dismissal of Petitioner's claim for common law negligence. Specifically, Petitioner argues Dr. Graf had a duty to warn all future foreseeable victims which arose out of the "special relationship" created in the psychiatrist-patient relationship. We disagree.

[11] ☒ In order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) ("The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict."). In Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002), this Court recognized five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger:

- (1) where the defendant has a special relationship to the victim;
- (2) where the defendant has a special relationship to the injurer;
- (3) where the defendant voluntarily undertakes a duty;
- (4) where the defendant negligently or intentionally creates the risk; and
- (5) where a statute imposes a duty on the defendant.

350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).

[12] ☒ The defendant may have a common law duty to warn potential victims under the "special relationship" exception when the defendant "has the ability to monitor, supervise and control an individual's conduct" and when "the individual has made a specific threat of harm directed at a specific individual." Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). In Bishop, this Court relied on "[t]he seminal case on the liability of one treating a *401 mentally afflicted patient for failure to warn or protect third persons threatened by a patient" and stated:

When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.

***251** *Bishop*, 331 S.C. at 87, 502 S.E.2d at 82 (quoting *Tarasoff v. Regents of Univ. of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976)). The key is there must be a specific threat made by the patient to harm a readily identifiable third party. *Id.*

Petitioner argues Dr. Graf had a duty to warn James Doe because he was a member of a readily identifiable group of future patients of Dr. Marlon. In *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct.App.1996), the Court of Appeals rejected a similar argument, holding "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim."

Petitioner's claim fails to allege a specific threat against James Doe necessary to create a duty to warn. Therefore, the Court of Appeals did not err in affirming the trial court's dismissal of Petitioner's claims.

CONCLUSION

We affirm the decision of the Court Appeals and find: (1) § 20-7-510 does not create a private right of action for negligence *per se*; and (2) a physician/psychiatrist is not liable under common law negligence principles for failing to report or warn about the predilection for child molestation of her *402 patient in the absence of a specific threat to an identifiable party.

AFFIRMED.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

S.C., 2007.
Doe v. Marlon
373 S.C. 390, 645 S.E.2d 245

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Judges

- **Burnett, Hon. E. C. III**

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- **Hughston, Hon. Thomas Leslie Jr.**

State of South Carolina Circuit Court, 9th Circuit
Charleston, South Carolina 29401-2258

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Columbia, South Carolina 29201

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• **Pleicones, Hon. Costa M.**

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• **Toal, Hon. Jean Hoefler**

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401 S.C. 500, 737 S.E.2d 512, 289 Ed. Law Rep. 388, 34 IER Cases 1395

Judges, Attorneys and ExpertsCourt of Appeals of South Carolina.
Patricia Rhodes JOHNSON, Appellant,
v.ROBERT E. LEE ACADEMY, INC., Jennifer Hostetler, Marc Quigley, Moore, Beauston & Woodham, LLP,
Moore, Kirkland & Beauston, LLP and City of Bishopville, Defendants,
Of Whom Moore, Beauston & Woodham, LLP is the, Respondent.
Appellate Case No. 2011-198446.

No. 5067.

Heard Nov. 13, 2012.

Decided Dec. 28, 2012.

Background: Former bookkeeper/office manager of school brought negligence action against accounting firm hired by school to investigate missing money. The Circuit Court, Lee County, W. Jeffrey Young, J., granted summary judgment in favor of accounting firm. Bookkeeper/office manager appealed.

Holding: The Court of Appeals, Konduros, J., held that accounting firm hired by school to assist authorities owed no duty of care to bookkeeper/office manager.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote 11A Accountants 11Ak9 k. Duties and liabilities to third persons. Most Cited Cases

Former bookkeeper/office manager fired by school after funds went missing was not client of accounting firm hired by school to assist law enforcement in investigating missing funds, and therefore, firm owed bookkeeper/office manager no duty of care, as required to support negligence action, where firm did not render a service to bookkeeper/office manager.

[2] KeyCite Citing References for this Headnote 272 Negligence 272XVIII Actions 272XVIII(D) Questions for Jury and Directed Verdicts 272k1692 k. Duty as question of fact or law generally. Most Cited Cases

Whether the law recognizes a particular duty is an issue of law to be determined by the court.

[3] KeyCite Citing References for this Headnote 272 Negligence

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- ↪ 272II Necessity and Existence of Duty
- ↪ 272k210 k. In general. Most Cited Cases

An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.

[4] ☒ KeyCite Citing References for this Headnote

- ↪ 272 Negligence
- ↪ 272II Necessity and Existence of Duty
- ↪ 272k210 k. In general. Most Cited Cases

Ordinarily, the common law imposes no duty on a person to act.

[5] ☒ KeyCite Citing References for this Headnote

- ↪ 272 Negligence
- ↪ 272II Necessity and Existence of Duty
- ↪ 272k217 Voluntarily Assumed Duty
- ↪ 272k218 k. In general. Most Cited Cases

- ↪ 272 Negligence ☒ KeyCite Citing References for this Headnote
- ↪ 272III Standard of Care
- ↪ 272k234 k. Voluntarily assumed duties. Most Cited Cases

Where an act is voluntarily undertaken, the actor assumes the duty to use due care.

***512** James B. Moore, III and J. Edward Bell, III, both of Law Office of J. Edward Bell, LLC, of Georgetown, for Appellant.

Mason A. Summers, Anthony E. Rebollo, and Francis Marion Mack, all of Richardson Plowden & Robinson, PA, of Columbia, for Respondent.

KONDUROS, J.

***501** Patricia Johnson appeals the circuit court's grant of summary judgment to the accounting firm Moore, Beauston, & Woodham, LLP (MBW) with respect to her negligence claim. We affirm.

FACTS/PROCEDURAL HISTORY

Johnson was employed as the bookkeeper and office manager at Robert E. Lee Academy in Lee County, South Carolina. Her responsibilities in that role included collecting and depositing ***502** tuition and other incoming funds. Around the middle of May 2006, Johnson had collected funds including \$9,100 in cash plus additional cash and checks. On May 17, Johnson accounted for the \$9,100 in her record keeping and planned to deposit the funds in the bank. Not having time to reconcile the additional cash and checks, she placed those funds in a container in the school's vault. According to bank records, the \$9,100 deposit was made the morning of May 18. Johnson was delayed in depositing the other monies for various personal reasons, and when she arrived at work on May 23, the container was missing. She reported this to the school principal, Mrs. Virginia Stokes.

***513** The school began an investigation into the missing funds and the Bishopville Police Department was brought in to assist. As part of the investigation, Johnson made a list of deposits from the weeks immediately preceding the disappearance of the funds and that list showed Johnson had made the \$9,100 deposit. The school's monthly statement from the bank also showed the deposit.

Johnson was fired from her position at the school, and the school board hired MBW to investigate the

missing funds.^{FN1} Marc Quigley was the accountant from MBW assigned to this task. Quigley met with the Bishopville Police investigating officer, Calvin Collins, and Agent Glen McClellan from the South Carolina Law Enforcement Division on August 8. Agent McClellan testified in his deposition Quigley indicated funds appeared to be missing. A schedule of deposits compiled by MBW and the list created by Johnson were inconsistent because the MBW list did not show the \$9,100 deposit. Agent McClellan also indicated he provided Quigley with his email address should further information come to light about which the authorities should know. According to Quigley, he emphasized to Officer Collins and Agent McClellan during this meeting his review was still in the preliminary stages and had not been finalized. Later that same day, Quigley compared the financial records and lists and realized the \$9,100 deposit had been made. He emailed Agent McClellan with that *503 information the same day and also informed Katherine Woodham, a Robert E. Lee Academy school board member involved in the investigation. No one informed the Bishopville Police Department of this discovery. An arrest warrant accusing Johnson of misappropriating \$9,100 was issued on August 15 and Johnson turned herself in to authorities on August 16.^{FN2} The charges against Johnson were subsequently dropped.

^{FN1}. Whether MBW was hired to perform an actual audit or just to investigate the missing funds is disputed; however, that does not affect our analysis of the issues on appeal.

^{FN2}. The record is unclear as to exactly the amount of funds that were unaccounted.

Johnson sued Robert E. Lee Academy, Jennifer Hostetler and Marc Quigley (both of MBW), MBW, and the City of Bishopville for defamation, abuse of process, malicious prosecution, negligence, and false imprisonment. The claims against MBW were all dropped with the exception of the defamation and negligence claims. The circuit court granted summary judgment in MBW's favor on both remaining causes of action. With respect to the negligence claim, the circuit court determined that because Johnson was not a client, MBW owed no duty of care thereby eliminating that claim as a matter of law. This appeal followed.

STANDARD OF REVIEW

A trial court may grant a party's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment." Epstein v. Coastal Timber Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011). "This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (Internal citations omitted).

*504 LAW/ANALYSIS

[1] ☒ Johnson maintains the circuit court erred in finding MBW owed her no duty. She contends Quigley's actions constituted a voluntary undertaking that gave rise to a duty of care toward her. We disagree.

[2] ☒ [3] ☒ [4] ☒ [5] ☒ "Whether the law recognizes a particular duty is an issue of law to be determined by the court." Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). "An affirmative legal duty exists only if created by statute, contract, relationship, status, **514 property interest, or some other special circumstance." Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). "Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily

undertaken, however, the actor assumes the duty to use due care." *Id.* at 456-57, 578 S.E.2d at 714 (citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

The recognition of a voluntarily assumed duty in South Carolina jurisprudence ^{FN3} is rooted in the Restatement of Torts, which states:

^{FN3}. See *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006) (recognizing a duty may arise under section 323); *Russell v. City of Columbia*, 305 S.C. 86, 89-90, 406 S.E.2d 338, 340 (1991) (relying in part on section 323 to find duty may exist between volunteer defendant and plaintiff); *Sherer v. James*, 290 S.C. 404, 407-08, 351 S.E.2d 148, 150 (1986) (internal citation omitted) ("Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another to use due care to avoid increasing the risk of harm." We agree with this rationale.); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 423, 321 S.E.2d 46, 51 (1984) (finding common law duty of care arose under section 323 when lender undertook to repair defects in condominiums); *Shropshire v. Jones*, 277 S.C. 468, 471, 289 S.E.2d 410, 411 (1982) (stating cause of action for negligent performance of gratuitous promise is summarized in Restatement section 323); *Staples v. Duell*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct.App.1997) (noting the South Carolina Supreme Court recognized section 323(a) "as relating to the element of duty."); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 444-45, 494 S.E.2d 827, 832-33 (Ct.App.1997) (finding no duty under section 323 when visitor to apartment building did not rely on any security measures undertaken by the building, and any measures taken were for protection of the tenants).

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, ~~is~~ is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323.

The relationship between Johnson and MBW does not fit within the parameters set forth in section 323(a). Section 323(a) contemplates a party relying on the rendering of services to another for the other's protection. Even assuming Quigley acted voluntarily, he assisted the Bishopville Police Department in its investigation.^{FN4} He did not render a service to Johnson; he assisted authorities. Additionally, his conduct was not undertaken for Johnson's protection and any negligence in his performance did not result in her physical harm.^{FN5}

^{FN4}. While we do not need to reach the factual issue of whether Quigley's conduct arose to the level of volunteer, we generally agree with Chief Justice Toal's statement that "[i]t simply does not square with common sense experience to characterize a ... response to a governmental inquiry as voluntary." See *Miller v. City of Camden*, 329 S.C. 310, 318, 494 S.E.2d 813, 817 (1997) (Toal, C.J., dissenting in part, concurring in part).

^{FN5}. We are cognizant of Restatement (Second) of Torts section 324A, although that section has not been adopted by our courts and is not specifically argued by Johnson on appeal. See *Miller*, 329 S.C. at 315 n. 2, 494 S.E.2d at 816 n. 2 (declining to adopt section 324A). Section 324A contemplates a duty arising on the part of one who undertakes to

render a service to another for the protection of a third party from physical harm. However, even applying section 324A to these circumstances, Johnson's cause of action fails because Quigley's cooperation with police was not intended to protect any party from physical harm.

Furthermore, contorting the Restatement to create a precedent that may have a chilling effect on cooperation with the authorities or other conduct that injures to the public good is ill-advised and poor public policy. See Underwood v. Coponen, 367 S.C. 214, 219 n. 3, 625 S.E.2d 236, 239 n. 3 (Ct.App.2006) ("If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devices, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a *506 public roadway or highway in an effort to shield themselves from unwarranted liability."); Staples, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct.App.1997) (declining to impose duty on defendant to inspect property **515 under circumstances as doing so "would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land"). Other causes of action exist to address when citizens have been maliciously accused of or prosecuted for a crime.

Additionally, in Hendricks, 353 S.C. at 456-58, 578 S.E.2d at 714-15, the South Carolina Supreme Court signaled a reluctance to expand the voluntary assumption of duty doctrine beyond the circumstances set forth in the Restatement 323 and recognized in our jurisprudence.

We believe recognizing a duty flowing from advisors to students is not required by any precedent and would be unwise, considering the great potential for embroiling schools in litigation that such recognition would create. Further, the Court of Appeals citation to Miller [329 S.C. at 318, 494 S.E.2d at 817] indicating a duty may have been created by Clemson's voluntary undertaking to advise Hendricks to ensure NCAA eligibility, is inapposite. The line of cases Miller discusses have thus far been limited to situations in which a party has voluntarily undertaken to prevent physical harm, not economic injury.

Id. at 458, 578 S.E.2d at 715.

The circumstances of this case do not fit within the existing voluntary assumption of duty framework, and we decline to expand that doctrine under the facts presented.^{FN6}

^{FN6}. South Carolina has recognized an accountant may have a duty to a third party under a negligent misrepresentation cause of action. See ML-Lee v. Deloitte, 327 S.C. 238, 241 n. 3, 489 S.E.2d 470, 471 n. 3 (1997) ("We adopt the [Restatement (Second) of Torts] § 552 standard of liability.... Under § 552, an accountant has a duty to exercise reasonable care or competence in obtaining or communicating information."). However, to successfully pursue such a claim, the plaintiff must have relied on the accountant's misrepresentation, and Johnson conceded at oral arguments she did not rely on Quigley's statements.

Additionally, Johnson submitted with her Rule 59(e), SCRPC, motion the affidavit of John Hamilton, a certified public accountant, who opined MBW owed Johnson a duty of care under the circumstances. However, the existence of a *507 legal duty is a question of law for the court, and Hamilton's affidavit does not call into question any facts in the case. See Hendricks, 353 S.C. at 456, 578 S.E.2d at 714 ("Whether the law recognizes a particular duty is an issue of law to be decided by the Court."). The affidavit simply proposes extending the potential third-party liability of an accountant beyond the limitations placed thereon by the Restatement. Consequently, his affidavit did not create a genuine issue of material fact warranting the reconsideration of the circuit court's decision as to summary judgment.

Because MBW did not render a service to Johnson or for her protection from physical harm, we

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conclude MBW owed no duty of care to Johnson as a matter of law arising out of Quigley's conduct in communicating with police officials regarding the investigation into REL's missing funds. The circuit court's grant of summary judgment is

AFFIRMED.

SHORT and **LOCKEMY**, JJ., concur.

S.C.App., 2012.

Johnson v. Robert E. Lee Academy, Inc.

401 S.C. 500, 737 S.E.2d 512, 289 Ed. Law Rep. 388, 34 IER Cases 1395

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Judges

- **Konduros, Hon. Aphrodite K.**

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Columbia, South Carolina 29201

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- **Lockemy, Hon. James E.**

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- **Short, Hon. Paul E. Jr.**

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- **Young, Hon. William Jeffrey**

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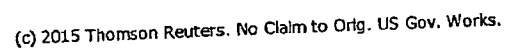
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367 S.C. 214, 625 S.E.2d 236

Judges and Attorneys

Court of Appeals of South Carolina.
David R. UNDERWOOD, Appellant,

v.

Laurine H. COPONEN, Carolyn T. Webb, as Personal Representative of the Estate of Ansel B. Taylor, and
County of Greenville, Defendants,
Of Whom Carolyn T. Webb, as Personal Representative of the Estate of Ansel B. Taylor is the
Respondent.

No. 4067.

Submitted Nov. 1, 2005.

Decided Jan. 9, 2006.

Background: Motorist brought action against property owner's estate alleging negligent failure to trim tree on property, thereby contributing to motorist's accident in intersection. Estate moved for summary judgment. The Circuit Court, Greenville County, John C. Few, J., granted summary judgment. Motorist appealed.

Holding: The Court of Appeals, Short, J., held that property owner did not assume a duty to keep tree from blocking stop sign.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

272 Negligence

272I In General

272k202 k. Elements in general. Most Cited Cases

To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that, as a proximate result of the breach, the plaintiff suffered damage.

[2] KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k210 k. In general. Most Cited Cases

272 Negligence KeyCite Citing References for this Headnote

272XVIII Actions

272XVIII(D) Questions for Jury and Directed Verdicts

272k1692 k. Duty as question of fact or law generally. Most Cited Cases

In deciding whether a defendant acted negligently, the court must determine, as a matter of law,

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whether the law recognizes a particular duty; if there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.

[3] ☒ KeyCite Citing References for this Headnote

- 272 Negligence
 - 272XVII Premises Liability
 - 272XVII(B) Necessity and Existence of Duty
 - 272k1018 k. Duty to inspect or discover. Most Cited Cases

Urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe.

[4] ☒ KeyCite Citing References for this Headnote

- 48A Automobiles
 - 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places
 - 48AVI(A) Nature and Grounds of Liability
 - 48Ak269 k. Property adjacent to highway. Most Cited Cases

- 268 Municipal Corporations ☒ KeyCite Citing References for this Headnote
 - 268XII Torts
 - 268XII(C) Defects or Obstructions in Streets and Other Public Ways
 - 268k808 Liabilities of Abutting Owners
 - 268k808(1) k. In general. Most Cited Cases

Landowners have a duty of reasonable care to make certain their trees are safe for travelers of streets adjoining their land.

[5] ☒ KeyCite Citing References for this Headnote

- 48A Automobiles
 - 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places
 - 48AVI(A) Nature and Grounds of Liability
 - 48Ak269 k. Property adjacent to highway. Most Cited Cases

Property owner did not assume a duty to keep a tree on his property from blocking a stop sign, and therefore, property owner was not negligent in failing to trim the tree, even though property owner occasionally trimmed the tree for the purpose of clearing the stop sign and his failure to trim the tree might have increased the risk that the sign would be obstructed; neither the driver that ran the stop sign nor the motorist that was injured by collision with driver that ran the stop sign was aware that property owner occasionally trimmed the tree and did not rely on his doing so.

***237** William H. Ehlires, II, of Greenville, for Appellant.

John P. Riordan and Zandra L. Johnson, both of Greenville, for Respondent.

SHORT, J.:

***215** Laurine Coponen ran through a stop sign at an intersection and collided with David Underwood's car. Underwood brought an action against Carolyn Webb, the personal representative of Ansel Taylor's estate, alleging Taylor was negligent ***216** in failing to trim a tree located on his property, thereby contributing to the accident. The trial court granted Webb's motion for summary judgment, which Underwood now appeals. We affirm.^{FN1}

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FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.

FACTS

On May 4, 2002, Underwood was driving on Ansel School Road in Greenville County when Coponen ran through a stop sign at the intersection of Ansel School Road and Sharon Drive and collided with Underwood's car. Coponen testified that she did not see the stop sign because the limbs of a tree located on Taylor's property were partially blocking the sign. The respondent, Webb, is the personal representative of Taylor's estate. Taylor's wife testified that Taylor was aware the tree's limbs could obscure the stop sign and occasionally trimmed the tree to prevent it from doing so. Coponen testified that she had driven on Sharon Drive before; however, she also testified that she was not looking for a stop sign because she mistakenly thought she was on another road that did not have stop signs.

Underwood initially brought this action solely against Coponen, alleging that she was liable for his injuries from the collision because she was negligent in running the stop sign. However, on October 23, 2003, Underwood amended his complaint to include both Webb and Greenville County as additional defendants, alleging that either or both were negligent in failing to trim the tree located on Taylor's property, thereby contributing to the accident. Webb filed a motion for summary judgment. After a hearing on November 2, 2004, the trial judge granted Webb's motion. A settlement was reached between Underwood and the other defendants. Underwood now appeals.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, we apply the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure: ***217** summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. ****238** Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. at 494-495, 567 S.E.2d at 860. "If triable issues exist, those issues must go to the jury." Nelson v. Charleston County Parks Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004).

LAW/ANALYSIS

Underwood argues the trial court erred by granting Webb's motion for summary judgment because Taylor owed a duty of care to Underwood as a matter of law. We disagree.

[1] ☒ [2] ☒ "To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage." Staples v. Duell, 329 S.C. 503, 506, 494 S.E.2d 639, 641 (Ct.App.1997). "The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000).

[3] ☒ [4] ☒ In South Carolina, urban landowners have a duty of reasonable care to inspect trees on their property and to make certain they are safe. Staples, 329 S.C. at 508, 494 S.E.2d at 641-42 (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts, § 57 at 391 (5th ed.1984)); Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 288, 356 S.E.2d 123, 127 (Ct.App.1987). Also, landowners have a duty of reasonable care to make certain their trees are safe for travelers of streets adjoining their land. Staples, 329 S.C. at 508, 494 S.E.2d at 642. In Israel v. Carolina Bar-B-Que, 292 S.C. 282, 288-90, 356 S.E.2d 123, 127-28 (Ct.App.1987), we held that a landowner has a duty to protect others from "defective or unsound trees on his premises" and found the landowner was liable for the damage caused by the fallen tree limb ***218** because there was evidence that the owner either saw

or could have seen upon reasonable inspection that the tree that caused the damage was partially decayed.

In this case, Taylor's tree was not unsafe or defective. The tree limb did not fall and injure Coponen. The only effect the tree limb had was that it partially obscured the stop sign, which Coponen testified that she was not looking for because she thought that she was driving on another street, which does not have stop signs. Therefore, the rule set forth in *Israel* does not apply to the facts in this case.^{FN2}

FN2. In making their decision, the *Israel* court adopted Illinois' ruling in *Mahurin v. Lockhart*, 71 Ill.App.3d 691, 28 Ill.Dec. 356, 390 N.E.2d 523 (1979). Therefore, it is worth noting that subsequent to publishing the *Mahurin* decision, Illinois issued several opinions on visual obstructions. In *Nichols v. Sitko*, 157 Ill.App.3d 950, 109 Ill.Dec. 903, 510 N.E.2d 971, 974 (1987), the court refused to extend the *Mahurin* rule, which involved an injury caused by a fallen dead branch, to an alleged visual obstruction from overgrown weeds. The court reasoned that the alleged obstruction was "no different from obstructions which are caused by houses and buildings encountered routinely in daily life." *Id.* Also, in *Adame v. Munoz*, 287 Ill.App.3d 181, 222 Ill.Dec. 619, 678 N.E.2d 26, 29 (1997), the court held that there is no duty "on the part of landowners to maintain their property in such a way that it does not obstruct the view of travelers on an adjacent highway, and this refusal to find such a duty applies even where the obstruction is an artificial condition."

[5] ☒ Underwood also claims that because Taylor periodically trimmed the tree on his property, he undertook the duty to keep his tree from blocking the stop sign. However, the Restatement (Second) of Torts provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Staples, 329 S.C. at 510, 494 S.E.2d at 643 (quoting **239 Restatement (Second) of Torts § 323(a) (1965)). While Taylor did trim the tree occasionally for the purpose of clearing the stop sign and his failure to trim the tree might have increased the *219 risk that the sign would be obstructed, neither Underwood nor Coponen knew that Taylor trimmed the tree, and thus they did not rely on his doing so. Therefore, Taylor's occasional trimming of his tree did not create a duty for which he can be held liable. ^{FN3} Additionally, even if Taylor had assumed a duty to trim the trees, he could have abandoned the duty at any time so long as his actions did not increase any risk that might have existed. See *Id.* at 506, 494 S.E.2d at 641 (affirming the trial court's ruling that the defendant's policy of searching for dead trees did not create a duty because he could have abandoned the policy at any time as long as doing so would not increase the risk of harm).

FN3. We further note that not imposing a duty on Taylor promotes good public policy. If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devices, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability.

AFFIRMED.

GOOLSBY, and ANDERSON, JJ., concur.

S.C.App.,2006.
Underwood v. Coponen
367 S.C. 214, 625 S.E.2d 236

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Judges

• **Anderson, Hon. Ralph King Jr.**

State of South Carolina Circuit Court, 12th Circuit
Florence, South Carolina 29501

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• **Few, Hon. John C.**

State of South Carolina Court of Appeals
Columbia, South Carolina 29201

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• **Goolsby, Hon. C. Tolbert Jr.**

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• **Short, Hon. Paul E. Jr.**

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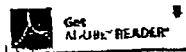
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329 S.C. 503, 494 S.E.2d 639

Judges and Attorneys

Court of Appeals of South Carolina.
Julie STAPLES, Appellant,
v.
Charles DUELL, d/b/a Middleton Place, Respondent.

No. 2756.
Heard Sept. 10, 1997.
Decided Nov. 24, 1997.

Motorist who was injured when she struck tree which had fallen onto highway from adjacent rural property sued property owner. The Circuit Court, Charleston County, John C. Hayes, III, J., granted owner's motion for directed verdict, and motorist appealed. The Court of Appeals, Howell, C.J., held that: (1) owner of rural land does not owe duty to inspect or improve property, and (2) actions of owner in adopting policy of searching for dead trees did not result in assumption of duty owed to motorist.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

- 388 Trial
 - 388VI Taking Case or Question from Jury
 - 388VI(D) Direction of Verdict
 - 388k178 k. Hearing and Determination. Most Cited Cases

In deciding motion for directed verdict, evidence and all reasonable inferences must be viewed in light most favorable to nonmoving party.

[2] KeyCite Citing References for this Headnote

- 388 Trial
 - 388VI Taking Case or Question from Jury
 - 388VI(A) Questions of Law or of Fact in General
 - 388k142 k. Inferences from Evidence. Most Cited Cases

If more than one inference can be drawn from evidence, case must be submitted to jury, but if evidence yields only one inference, directed verdict in favor of moving party is proper.

[3] KeyCite Citing References for this Headnote

- 272 Negligence
 - 272I In General
 - 272k202 k. Elements In General. Most Cited Cases
(Formerly 272k1)

To prevail on theory of negligence, plaintiff must establish three elements: (1) that defendant owed

plaintiff duty of care, (2) that by some act or omission, defendant breached that duty, and (3) that as proximate result of breach, plaintiff suffered damage.

[4] ☒ [KeyCite Citing References for this Headnote](#)

↳ 272 Negligence

↳ 272XVIII Actions

↳ 272XVIII(D) Questions for Jury and Directed Verdicts

- ↳ 272k1692 k. Duty as Question of Fact or Law Generally. [Most Cited Cases](#)
(Formerly 272k136(3))

↳ 272 Negligence ☒ [KeyCite Citing References for this Headnote](#)

↳ 272XVIII Actions

↳ 272XVIII(D) Questions for Jury and Directed Verdicts

- ↳ 272k1694 k. Standard of Proof; Evidentiary Showing Required. [Most Cited Cases](#)
(Formerly 272k136(3))

Issue of negligence is mixed question of law and fact; court must first determine whether duty arises in one party to exercise reasonable care for benefit of another under facts of given case, existence and scope of which duty are questions of law, and thereafter, jury determines whether breach of duty has occurred and resulting damages.

[5] ☒ [KeyCite Citing References for this Headnote](#)

↳ 48A Automobiles

↳ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

↳ 48AVI(A) Nature and Grounds of Liability

- ↳ 48Ak268 k. Falling Objects. [Most Cited Cases](#)

↳ 48A Automobiles ☒ [KeyCite Citing References for this Headnote](#)

↳ 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places

↳ 48AVI(A) Nature and Grounds of Liability

- ↳ 48Ak269 k. Property Adjacent to Highway. [Most Cited Cases](#)

Owner of rural property adjacent to highway did not owe duty of care to motorists on highway to inspect and improve land, and thus was not liable for injuries sustained by motorist who struck dead tree which had fallen from property onto highway.

[6] ☒ [KeyCite Citing References for this Headnote](#)

↳ 272 Negligence

↳ 272XVII Premises Liability

↳ 272XVII(B) Necessity and Existence of Duty

- ↳ 272k1018 k. Duty to Inspect or Discover. [Most Cited Cases](#)
(Formerly 272k50, 272k2)

Rural and urban landowners have different duties and responsibilities, so that, unlike urban landowner, rural landowner does not have duty to inspect and improve his land.

[7] ☒ [KeyCite Citing References for this Headnote](#)

↳ 272 Notice

← 277k4 Constructive Notice
277k5 k. In General. Most Cited Cases

"Constructive notice" is notice that reasonable person should know and carries duty of reasonable care.

[8] ☒ KeyCite Citing References for this Headnote

← 48A Automobiles
 ← 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places
 ← 48AVI(A) Nature and Grounds of Liability
 ← 48AK252 k. In General. Most Cited Cases

State highway department has duty to protect commuters along highways.

[9] ☒ KeyCite Citing References for this Headnote

← 272 Negligence
 ← 272III Standard of Care
 ← 272k234 k. Voluntarily Assumed Duties. Most Cited Cases
 (Formerly 272k1)

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (1) his failure to exercise such care increases risk of such harm, or (2) harm is suffered because of other's reliance upon undertaking. Restatement (Second) of Torts § 323(a).

[10] ☒ KeyCite Citing References for this Headnote

← 48A Automobiles
 ← 48AVI Injuries from Defects or Obstructions in Highways and Other Public Places
 ← 48AVI(A) Nature and Grounds of Liability
 ← 48AK268 k. Falling Objects. Most Cited Cases

Rural landowner's policy of searching for dead trees on property did not result in assumption by landowner of duty owed to motorists on highway adjacent to property, for breach of which landowner could be held liable in action by motorist who was injured when she struck tree which had fallen from property onto highway; policy did not increase risk of harm to motorist, and motorist did not have prior knowledge of policy and thus did not detrimentally rely on it. Restatement (Second) of Torts § 323(a).

****640 *505** Daniel A. Beck, Charleston, for appellant.

Benjamin A. Moore, Jr., and James D. Myrick, of Buist, Moore, Smythe & McGee, Charleston, for respondent.

HOWELL, Chief Judge:

Julie Staples brought this suit against Charles Duell for damages arising out of an automobile accident that occurred near Duell's property on Highway 61. Both parties moved for a directed verdict. The trial judge denied Staples's motion, but granted Duell's motion, finding that Duell owed no duty of care to Staples. We affirm.

I.

During the early morning hours of May 24, 1997, Staples was driving from Charleston toward

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Summerville on Highway 61. As she drove, Staples encountered a dead pine tree in the road. Staples swerved but collided with the tree, causing her to suffer multiple injuries.

The tree with which Staples collided was a dead pine measuring about 100 feet in length. The tree fell approximately sixty feet from the roadway and was located on land owned by Duell. For about two miles between Charleston and Summerville, Duell owns land on both sides of Highway 61. Along Duell's two mile stretch of Highway 61, there are no residences except one cabin. According to department of transportation records, approximately 13,500 vehicles a day pass by Duell's two-mile stretch of land on Highway 61.

Located on the property owned by Duell is Middleton Place National Historic Landmark. Part of Middleton Place is a tourist attraction which receives an estimated 100,000 admission-paying visitors a year. The only public entrance or exit to Middleton Place is on Highway 61. Duell maintains a two hundred and fifty foot buffer zone of trees on both sides of *506 Highway 61, to protect the scenic beauty of the road. The highway department owns a fifty foot right-of-way along Highway 61.

Duell employed James Woddle to "take care of the woodlands and security" for Middleton Place. Woddle's job duties included *641 twice a day driving around the perimeter of Middleton Place to inspect the premises. During his inspections, Woddle looked for trespassers, abandoned vehicles, and dead trees.

In granting Duell's motion for a directed verdict, the trial court held that because the land from which the tree fell was rural, Duell had no common law duty to prevent the dangerous condition caused by the dead pine tree. The trial court further concluded that even if Duell adopted a policy of searching for dead trees along the roadway, Duell's policy did not create a duty because Duell could have abandoned it at any time and it did not increase the risk. Staples appeals the trial court's decision to grant Duell's motion for a directed verdict.

II.

[1] [2] "In deciding a motion for directed verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. If more than one inference can be drawn from the evidence, the case must be submitted to the jury.... [I]f the evidence yields only one inference, a directed verdict in favor of the moving party is proper." Tumblin v. Ball-Incon Glass Packaging Corp., 324 S.C. 359, 365, 478 S.E.2d 81, 84 (Ct.App.1996).

[3] [4] To prevail on a theory of negligence, the plaintiff must establish three elements: (1) that defendant owed plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage. Estate of Cantrell v. Green, 302 S.C. 557, 397 S.E.2d 777 (Ct.App.1990).

The issue of negligence is a mixed question of law and fact. The court must first determine whether a duty arises in one party to exercise reasonable care for the benefit of another under the facts of a given case. The existence and *507 scope of the duty are questions of law. Thereafter, the jury determines whether a breach of the duty has occurred, and the resulting damages.

Miller v. City of Camden, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct.App.1994), cert. granted, (June 16, 1995) (citations omitted).

III.

[5] Staples argues that the trial court erred in finding that Duell did not have a duty to inspect and improve his land.^{FN1} We disagree.

^{FN1}. In her final brief, Staples did not argue the classification of Duell's property as urban

or rural land constituted a jury question. We, therefore, do not address whether the trial court erred in declining to submit the rural or urban issue to the jury. See State v. McLaughlin, 307 S.C. 19, 413 S.E.2d 819 (1992) (citing State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981), for the proposition that exceptions not argued in brief are deemed abandoned).

[6] ☒ In South Carolina rural landowners and urban landowners have different duties and responsibilities. In Israel v. Carolina Bar-B-Que, Inc., 292 S.C. 282, 356 S.E.2d 123 (Ct.App.1987), this court quoted W. Page Keeton et al., *Prosser and Keeton on the Law of Torts*, § 57, at 391 (5th ed. 1984), in holding:

The rule of non-liability for natural conditions was obviously a practical necessity in the early days, when land was very largely in a primitive state. It remains to a considerable extent a necessity in rural communities, where the burden of inspecting and improving the land is likely to be entirely disproportionate not only to any threatened harm but even to the value of the land itself. But it is scarcely suited to cities, to say that a landowner may escape all liability for serious damage to his neighbors, merely by allowing nature to take its course. A different rule accordingly has been developed as to urban centers.

This is well illustrated by the cases of dangerous trees. It is still the prevailing rule that the owner of rural land is not required to inspect it to make sure that every tree is safe, and will not fall over into the public highway and kill a person, although there is already some little dissent even as to this, and, at least if the defendant knows that the tree is *508 dangerous, he may be required to take affirmative steps. But when the tree is in an urban area, and may fall into a city street, the **642 landowner now has a duty of reasonable care, including inspection to make sure that the tree is safe. Recent decisions have extended the right to reasonable protection from travelers on the street to adjoining landowners as well.

Israel, 292 S.C. at 288, 356 S.E.2d at 127. See generally Thomas R. Trenkner, Annotation, Liability of Private Owner or Occupant of Land Abutting Highway for Injuries or Damage Resulting from Tree or Limb Falling onto Highway, 94 A.L.R.3d 1160 § 3 (1979). Even though other jurisdictions may be rethinking their approach to landowner liability, South Carolina follows the traditional rural and urban distinction. Cf. Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 492 S.E.2d 811 (Ct.App.1997). The policy reasons which were present at the inception of the rural landowner rule still exist in rural South Carolina today. See *Prosser and Keeton, supra*, § 57. To restrict or reverse the rural landowner rule would "impose a new and unusual burden upon the owners of forest lands." Chambers v. Whelen, 44 F.2d 340, 341 (4th Cir.1930) (holding a landowner not liable for an accident on a country road caused by a tree which fell from the landowner's property).

[7] ☒ [8] ☒ Staples also argues that constructive notice of the dead tree created a duty for Duell to safely remove the tree.^{FN2} Constructive notice is notice that a reasonable person should know and carries a duty of reasonable care. See Hightower v. Greenville County, 255 S.C. 192, 195, 177 S.E.2d 785, 786 (1970) ("Where a defect or dangerous condition, not created by its act or that of its agents, has existed for such length of time that in the exercise of reasonable care the defect should have been discovered and remedied, the county is chargeable with knowledge of such defect, and consequently with negligence in not having remedied it."). Accordingly, we believe that it is illogical to say that rural landowners have no duty to inspect and improve their property, but then to charge a rural landowner with a duty arising out of constructive notice. Thus, in *509 this case, once the trial judge ruled that Duell's land was rural, all of Staples's evidence and testimony concerning what Duell or Woddle should have known or noticed became irrelevant because Duell was not liable for constructive notice.^{FN3}

^{FN2}. Actual notice is not an issue in this case because Duell testified that neither he nor

Woddle was aware of the dead tree, and Staples offered nothing to refute Duell's assertion.

FN3. Our holding is easily reconcilable with *Inabinett v. State Highway Department*, 196 S.C. 117, 12 S.E.2d 848 (1941). *Inabinett* dealt with the state highway department's liability for injuries resulting from a fallen tree, where the highway department had actual or constructive notice of the tree's condition. *Id.* at 123, 12 S.E.2d at 851. Unlike a rural landowner, however, the highway department has a duty to protect commuters along the highways.

IV.

Staples invites us to carve out a commercial exception to the rule imposing no duty on rural landowners to inspect their land. We decline.

Staples argues without citation to legal authority that because Highway 61 is the only means available for the public to reach Middleton Place, Duell had a duty to insure safe passage for everyone travelling along Highway 61. Adopting Staples's exception would effectively place on every farmer, rancher, and country store owner the puzzling and onerous task of determining whether their property is subject to a higher standard of care than that of other rural landowners. In addition, Staples's novel contention undermines the rural landowner rule's policy of protecting rural landowners from the burden of inspecting and improving land where the likely benefit is most often minimal. See *Prosser and Keeton, supra*, § 57. We believe that in actual practice, Staples's exception could produce bizarre and inconsistent results and we therefore do not adopt it.

V.

Staples also argues that Duell assumed a duty by implementing a policy to search for dead trees. We disagree.

[9] ☒ Even though there was conflicting evidence about whether Duell instituted an official ****643** policy for Woddle to inspect the premises for dead trees, we assume for the purposes of review that such a policy existed. The Restatement (Second) of Torts § 323(a) (1965), states:

***510** One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

In *Sherer v. James*, 290 S.C. 404, 351 S.E.2d 148 (1986), the South Carolina Supreme Court recognized section 323(a) "as relating to the element of duty." *Id.* at 407, 351 S.E.2d at 150.

[10] ☒ Because the rural landowner rule relieved Duell of any duty to inspect or improve his land, in order to prevail, section 323(a) mandates that Staples prove either that Duell's policy of searching for dead trees increased her risk of harm or that she detrimentally relied on Duell's policy. First, Staples presents no evidence that Woddle's act of simply patrolling the area looking for dead trees increased her risk of harm. Duell's policy of inspecting for dead trees did not hasten the decay of trees or affect when and where dead trees might fall. Second, Staples made no allegation that she knew of the policy of searching for dead trees before the accident. Without previous knowledge of the policy, Staples could not have relied on the policy. Thus, Duell's policy of looking for dead trees did not create a duty for which he could be held liable.

Not imposing a duty on Duell in this case promotes good public policy. To impose a duty on Duell

would create the highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land. The better policy for this court to endorse is that rural landowners who inspect their lands for potential dangers are not creating a duty for themselves unless their inspection either increases the risk of harm to others or others detrimentally rely on their inspection.

VI.

We hold that the trial judge correctly applied the rural landowner test to find that Duell, as a rural landowner, did not have a duty to inspect and improve his land along Highway 61. *511 In addition, we hold that Duell did not create a legal duty by instituting a policy of searching for dead trees along the highway.

For all of the foregoing reasons, the judgment of the lower court is hereby

AFFIRMED.

HEARN and STILWELL, JJ., concur.

S.C.App., 1997.
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Judges

- **Hayes, Hon. John C. III**

State of South Carolina Circuit Court, 16th Circuit
Union, South Carolina 29379

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- **Hearn, Hon. Kaye G.**

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- **Howell, Hon. William T.**

State of South Carolina Court of Appeals
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392 S.C. 560, 709 S.E.2d 536

Judges and Attorneys

Court of Appeals of South Carolina.

L. Paul TRASK, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased; and Meredith C. Trask, Appellants,

v.

BEAUFORT COUNTY; Curtis M. Copeland in His Official Capacity as Coroner of Beaufort County; Judy R. Copeland, as Personal Representative of the Estate of Curtis M. Copeland; and Copeland Company of Beaufort, LLC, Respondents.

No. 4799.

Heard Oct. 6, 2010.

Decided March 2, 2011.

Rehearing Denied June 3, 2011.

Background: Parents of 20-year-old driver who was killed in accident after consuming alcohol filed negligence claims against county coroner, both in his official capacity and individually, as operator of crematory, in connection with cremation of body without an autopsy or toxicology tests. The Circuit Court, Beaufort County, Doyet A. Early, III, J., granted summary judgment to coroner. Parents appealed.

Holding: The Court of Appeals, Few, C.J., held that statutes relied upon by parents did not create a special duty of care owed to them by coroner.

Affirmed.

West Headnotes

[1] ☒ KeyCite Citing References for this Headnote

◄ 272 Negligence

◄ 272II Necessity and Existence of Duty

◄ 272k210 k. In general. Most Cited Cases

◄ 272 Negligence ☒ KeyCite Citing References for this Headnote

◄ 272XVIII Actions

◄ 272XVIII(C) Evidence

◄ 272XVIII(C)1 Burden of Proof

◄ 272k1550 k. In general. Most Cited Cases

In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to him by the defendant.

[2] ☒ KeyCite Citing References for this Headnote

◄ 272 Negligence

◄ 272II Necessity and Existence of Duty

◄ 272k210 k. In general. Most Cited Cases

- ⌵ 272 Negligence ☒ KeyCite Citing References for this Headnote
 - ⌵ 272II Necessity and Existence of Duty
 - ⌵ 272k222 k. Duty based upon statute or other regulation. Most Cited Cases

Though the common law generally does not impose a duty to act, a statute may create an affirmative duty owed to a plaintiff.

[3] ☒ KeyCite Citing References for this Headnote

- ⌵ 272 Negligence
 - ⌵ 272II Necessity and Existence of Duty
 - ⌵ 272k222 k. Duty based upon statute or other regulation. Most Cited Cases

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff in a negligence action must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

[4] ☒ KeyCite Citing References for this Headnote

- ⌵ 283 Officers and Public Employees
 - ⌵ 283III Rights, Powers, Duties, and Liabilities
 - ⌵ 283k115 Liabilities for Negligence or Misconduct
 - ⌵ 283k116 k. In general. Most Cited Cases

"Public duty rule" holds that public officials are generally not liable to individuals for their negligence in discharging public duties, as the duty is owed to the public at large rather than anyone individually.

[5] ☒ KeyCite Citing References for this Headnote

- ⌵ 283 Officers and Public Employees
 - ⌵ 283III Rights, Powers, Duties, and Liabilities
 - ⌵ 283k115 Liabilities for Negligence or Misconduct
 - ⌵ 283k116 k. In general. Most Cited Cases

The public duty rule represents a presumption that a statute creating or defining the duties of a public official has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public, and thus does not satisfy the elements required to create a duty of care.

[6] ☒ KeyCite Citing References for this Headnote

- ⌵ 157 Evidence
 - ⌵ 157II Presumptions
 - ⌵ 157k83 Official Proceedings and Acts
 - ⌵ 157k83(1) k. In general. Most Cited Cases

The presumption of no duty of care arising from a statute creating or defining the duties of a public official may be overcome when the statute creates a "special duty" to the plaintiff.

[7] ☒ KeyCite Citing References for this Headnote

after driver's death of a potential civil action against gas station operator that sold beer to driver, parents authorized the cremation, and they failed to show it was possible to obtain a toxicology test or how results of that test would be vital to their ability to prevail in a civil action.

[11] ☒ KeyCite Citing References for this Headnote

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, In General

30k838 Questions Considered

30k843 Matters Not Necessary to Decision on Review

30k843(2) k. Review of specific questions in general. Most Cited Cases

Appellate court did not need to reach issue of whether county had control over county coroner, on appeal of summary judgment for both parties in negligence suit premised on the actions and inactions of coroner, after finding that coroner owed no duty to plaintiffs and was therefore not liable.

[12] ☒ KeyCite Citing References for this Headnote

272 Negligence

272II Necessity and Existence of Duty

272k210 k. In general. Most Cited Cases

If no duty exists, the defendant is entitled to judgment as a matter of law in negligence action.

****537** Stephen P. Groves, Thomas S. Tisdale, Jr., and Jeffrey S. Tibbals, all of Charleston, for Appellants.

Andrew F. Lindemann, of Columbia; and Marshall H. Waldron, Jr., of Beaufort; for Respondents.

FEW, C.J.

***563** The primary issue in this appeal is whether various statutes governing coroners and crematory operators give rise to private rights of action for civil damages. We agree with the circuit court that they do not, and affirm. We also affirm the circuit court's ruling granting summary judgment for the defendants for spoliation of evidence and intentional infliction of emotional distress.

***564 I. Facts**

On November 21, 2005, Paul Trask, III, a twenty-year-old, consumed beer at his parents' home in Beaufort.^{FN1} Shortly before midnight Paul drove his father's car to a Hess gas station named Xpress Lane on Boundary Street. The gas station attendant sold Paul two twenty-four-ounce cans of beer without verifying his age. Paul Trask, Jr. described the store video as showing his son "going into the Xpress Lane store and immediately going in, going to the bathroom, pretty clear he had been drinking beer, coming out, he seems steady, but we know he's been drinking beer." Paul consumed the beer he ***538** purchased from Xpress Lane while driving approximately twenty-two miles to Fripp Island, but was turned away at the security gate. After driving almost four miles away from Fripp Island, Paul lost control of the car, ran off the road, and collided with large pine trees. The car caught on fire and Paul died from the injuries he sustained in the accident, either the impact, fire, or a combination.

FN1. We recite the facts, derived primarily from the complaint and Mr. Trask's deposition, in the light most favorable to the Trasks. See Nelson v. Piggy Wiggy Cent., Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct.App.2010) (noting in a summary judgment case "the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party").

On May 22, 2006, Mr. Trask and his wife filed a wrongful death and survival action against Hess Corporation and Xpress Lane, Inc., which we refer to as the Xpress Lane suit. The Trasks alleged Paul's death "was the proximate result of the alleged negligence of [Hess and Xpress Lane], in several particulars, including: the negligent sale of alcohol to a minor." ^{FN2} They claimed the beers Xpress Lane sold to Paul "were the beers that caused his intoxication." Hess and Xpress Lane agreed to pay the Trasks \$750,000 to settle the case before trial. As required by law, the Trasks requested the circuit court approve the settlement, which it did on January 9, 2008. However, Mr. Trask later testified "that it was worth more than \$750,000" and explained, "we were only able to negotiate a very partial settlement in the Xpress Lane case because we had no definitive toxicology results to prove *565 ... that Paul was intoxicated.... And so I would say that caused great damage to the Xpress Lane suit."

FN2. This quotation is from the "Petition for Approval of Settlement" in the Xpress Lane suit.

In this action the Trasks have sued Beaufort County and Curtis Copeland, ^{FN3} both in his official capacity as the coroner of Beaufort County and in his individual capacity as a crematory operator. They seek damages for the reduced settlement value of the Xpress Lane suit along with damages for emotional harm. The Trasks contend various statutes create duties owed to them which Copeland breached individually and officially. This case is troubling because Copeland did violate at least some of the statutes, and conducted himself in a manner we believe was inappropriate. We hold, however, that the law does not provide a remedy for this conduct in the form of civil damages.

FN3. Mr. Copeland passed away after oral argument. Judy R. Copeland, the personal representative of his estate, has been substituted for him in his individual capacity.

Shortly after the accident occurred, Copeland went to the scene. At around 1:00 a.m. on November 22, after he learned who owned the car, Copeland drove to the Trasks' home to inform them of the accident and death. When Copeland arrived at their home, he did not know who was killed in the accident; he knew only that the car belonged to Mr. Trask. Once the Trasks determined Paul was the only family member not at home, they realized he had been the driver. Later that day family and friends of the Trasks gathered at Mr. Trask's mother's home. Copeland went there around noon to discuss the funeral arrangements. In addition to being the county coroner, Copeland also owned Copeland Company of Beaufort, LLC, which owns and operates Copeland Funeral Home and Coastal Cremation Services. At the gathering, the Trasks told Copeland they wanted Paul's body cremated and signed the cremation authorization form. Although they signed the form sometime between noon and one o'clock, Copeland instructed them to write the time as 9:15 a.m. The following day Coastal Cremation Services cremated Paul's body.

The Trasks contend two statements made by Copeland caused them emotional distress. First, when Copeland was leaving the Trasks' home after telling them about the accident, Mrs. Trask asked him if he planned to perform an autopsy on *566 Paul's body. Copeland responded there was no need to perform an autopsy because "the cause of death is obvious." Second, a few months later the Trasks asked Copeland how badly Paul's body was burned in the accident, to which he responded, "you couldn't tell if the body was black, white, or Mexican."

The Trasks allege Copeland, as coroner, was required, but failed, to positively identify the body in the car as their son, to conduct an autopsy, and to prepare a toxicology report on the body. They claim that because Copeland individually cremated the body **539 without conducting a toxicology test officially

as coroner, the resulting lack of knowledge of Paul's blood alcohol level "made it difficult, if not impossible, for the Trasks to establish and prove otherwise valid claims against the Xpress Lane and Hess Corporation" and forced them to settle for less money.

The Trasks filed this action on April 11, 2007, with claims for negligence and negligent supervision and training against Beaufort County and Copeland officially; for negligent spoliation of evidence against Beaufort County; for negligence and intentional or negligent spoliation of evidence against Copeland individually and Copeland Company; and for intentional infliction of emotional distress against Copeland individually.^{FN4} The Trasks moved for partial summary judgment based on liability. All Respondents filed motions for summary judgment. The trial court filed its order on January 2, 2009, granting summary judgment for Respondents. The Trasks appeal the entire order.

FN4. In their complaint, the Trasks sought damages for wrongful death and survival actions. Because the Trasks conceded they were not alleging a wrongful death or survival action against Respondents, we do not address that claim.

II. Determining the Existence of a Private Right of Action

[1] ☒ [2] ☒ In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to him by the defendant. See McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 390-91, 684 S.E.2d 566, 571 (Ct.App.2009) ("An essential element in a negligence cause of action is the existence of a legal *567 duty of care owed by the defendant to the plaintiff. Without such a duty, a plaintiff cannot establish negligence.") (Internal quotation marks and citation omitted); Chastain v. Hiltabidle, 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct.App.2009) ("If no duty exists, the defendant is entitled to judgment as a matter of law."). Though the common law generally does not impose a duty to act, a statute may create an affirmative duty owed to a plaintiff. Vaughan v. Town of Lyman, 370 S.C. 436, 441, 635 S.E.2d 631, 634 (2006).

[3] ☒ In Rayfield v. South Carolina Department of Corrections, 297 S.C. 95, 103, 374 S.E.2d 910, 914 (Ct.App.1988), cert. denied, 298 S.C. 204, 379 S.E.2d 133 (1989), this court set forth the analysis to apply when determining whether a statute creates a duty whose breach allows for a private right of action:

In order to show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.

If the plaintiff demonstrates these two elements, he has established the first element of a negligence claim—a duty owed to him by the defendant. 297 S.C. at 103, 374 S.E.2d at 915.

[4] ☒ [5] ☒ However, when the statute at issue creates or defines the duties of a public official, the public duty rule applies. 297 S.C. at 105, 374 S.E.2d at 915. "This rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually." Vaughan, 370 S.C. at 441, 635 S.E.2d at 634 (quoting Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999)). The public duty rule represents a presumption that such a statute "has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public," and thus does not satisfy the elements of the two-part Rayfield test. 297 S.C. at 105, 374 S.E.2d at 915.

*568 [6] ☒ The presumption may be overcome when the statute creates a "special duty" to the

plaintiff. 297 S.C. at 106, 374 S.E.2d at 916. In *Rayfield*, this court stated:

A special duty exists if: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not to cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Id.; see also *Vaughan*, 370 S.C. at 441, 635 S.E.2d at 634 (referring to the six-part *Rayfield* test as "the well established 'special duty' exception"); *Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 203, 403 S.E.2d 615, 619 (1991) (adopting the six-part *Rayfield* test and calling it an "exception to the public duty rule"). If a special duty is found to exist after analyzing a statute under this test, courts can be sure the Legislature intended that a plaintiff within the protected class injured by a public official's breach of the duty have a private right of action against the official. 304 S.C. at 201, 403 S.E.2d at 618; see *Vaughan*, 370 S.C. at 442, 635 S.E.2d at 634 ("The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action.... [T]he dispositive issue is ... whether the statute was intended to provide ... a private right of action....").

We must analyze the one statute alleged to have been violated by Copeland individually under the general two-part test and those alleged to have been violated by Copeland officially under the special duty exception to the public duty rule.

A. Section 16-17-600 Does Not Create a Duty Owed by Copeland Individually and Copeland Company to the Trasks

[7] ☒ The only allegation of negligence against Copeland individually and Copeland Company is that they breached a *569 statutory duty contained in section 16-17-600 of the South Carolina Code (Supp.2010). The section provides:

(A) It is unlawful for a person willfully and knowingly, and without proper legal authority to: (1) destroy or damage the remains of a deceased human being;....

A person violating the provisions of subsection (A) is guilty of a felony....

A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate.

§ 16-17-600(A).^{FN5} The Trasks contend this statute creates an actionable duty under the two-part *Rayfield* test. Specifically, they argue the statute's essential purpose "is to ensure dead bodies are not destroyed without proper authority." Even if that is the essential purpose, however, it is not the harm the Trasks claim they suffered. At oral argument, the Trasks' counsel stated the harm they suffered was a loss of settlement value of the Xpress Lane suit because Paul's body was no longer available. Additionally, Mr. Trask stated in his deposition: "Mr. Copeland performed an illegal cremation on my son's body, which had the effect of destroying any opportunity to, number one, know for certain whether or not it was our son, Paul,^{FN6} number two, the actual cause of his death, whether it was the crash itself or whether he burned to death. We have been denied the toxicology results as a result of the illegal cremation...." Therefore, the harm they claim to have suffered is that Paul's body was no longer available for an autopsy and a toxicology test.

^{FN5}. Subsections (B) and (C) prohibit actions of theft, destruction, vandalism, or

desecration on burial grounds or in a graveyard. S.C.Code Ann. § 16-17-600(B)-(C) (Supp.2010).

FN6. In several causes of action, the Trasks claimed damages for uncertainty as to whether Paul is dead because his body was never "positively identified." However, the Trasks later conceded the body from the accident was their son. Mr. Trask stated: "I acknowledge that my son is dead."

570** The essential purpose of section 16-17-600 is not to preserve a body as evidence for a civil action. Accordingly, the Trasks fail to meet the first element of the two-part *541** Rayfield test. The Trasks argue, however, that the statute's specific reference to a crematory operator's immunity for civil liability demonstrates the Legislature intended for its violation to serve as the basis for civil liability. We disagree. Section 16-17-600 is a criminal statute which provides only for criminal sanctions. See Dorman v. Aiken Commons, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 688-89 (1990) (refusing to find a private right of action for "a criminal statute which provides only for criminal sanctions" because "[t]he primary consideration in deciding whether a private cause of action should be implied under a criminal statute is legislative intent"). We find section 16-17-600 does not create a duty of due care owed by Copeland or Copeland Company to the Trasks; and therefore they do not have a private right of action for its breach. **FN7**

FN7. Because we find section 16-17-600 created no duty owed by Copeland to the Trasks, we do not reach the issue of whether the coroner could be immune from liability under the Safe Cremation Act. S.C.Code Ann. §§ 32-8-300 to -385 (2007 & Supp.2010).

B. No Duties Exist as to the Negligence Claims Against Copeland Officially

The Trasks allege the following statutory duties were breached by Copeland officially: (1) to perform an autopsy to ascertain the cause of death pursuant to section 17-7-10 of the South Carolina Code (2003); (2) to perform a toxicology test of the victim of a motor vehicle accident pursuant to section 17-7-80 of the South Carolina Code (2003); and (3) to take certain steps pursuant to sections 17-5-570(B) and -590 of the South Carolina Code (2003 & Supp.2010), which are required when a body cannot be identified. Copeland pled the public duty rule as a defense to these claims. We agree with the trial court that none of these statutes satisfy the elements of the six-part Rayfield test, and thus no special duty exists under any of them and the Trasks have no private rights of action.

[8] ☒ First, the Trasks allege section 17-7-10 creates a special duty. It states: "The coroner of the county in which a ***571** body is found dead ... shall order an autopsy or post-mortem examination to be conducted to ascertain the cause of death." § 17-7-10. The essential purpose of the statute is "to ascertain the cause of death." The "particular kind of harm" the Trasks claim to have suffered is that an autopsy would have provided evidence for the Xpress Lane suit, and they were not satisfied with the level of detail in the coroner's explanation of the cause of death. Mr. Trask testified an autopsy "would have confirmed the results of a toxicology examination, would have determined the actual cause of death, whether it be the crash itself or by the fire." The essential purpose of the statute is neither to provide evidence for a civil lawsuit nor to ensure that the family of a deceased person is given its desired level of detail regarding the cause of death. **FN8** Accordingly, the Trasks' negligence claim against Copeland officially under section 17-7-10 is barred by the public duty rule.

FN8. "Cause of death" is a defined term and "refers to the agent that has directly or indirectly resulted in a death." S.C.Code Ann. § 17-5-5(2) (2003). In this case, the

Coroner's Report states the "Manner of Death" is "Accident" and the "Cause of Death" is "Multiple Injuries Extreme."

[9] ☒ Second, the Trasks allege section 17-7-80 creates a special duty. Title 17 is labeled "Criminal Procedures," and section 17-7-80 states:

Every coroner ... shall examine the body within eight hours of death of any driver and any pedestrian, sixteen years old or older, who dies within four hours of a motor vehicle accident ..., and take or cause to have taken by a qualified person such blood or other fluids of the victim as are necessary to a determination of the presence and percentages of alcohol or drugs. Such blood or other fluids shall be forwarded to the South Carolina Law Enforcement Division within five days after the accident in accordance with procedures established by the Law Enforcement Division.

The Trasks argue the essential purpose of the section "is to protect those who may perish in a motor vehicle accident, as well as their survivors, their estates, and their heirs, **542 and equally importantly, to accurately ascertain the cause of the decedent's death." They contend if Copeland had taken a toxicology sample, they "would have known what effect alcohol *572 had on Paul's ability to drive, whether it likely impaired his driving, and whether it significantly contributed to his death." We do not believe the essential purpose of the statute is to protect against this "particular kind of harm." Rather, because the statute requires the toxicology sample be sent to the South Carolina Law Enforcement Division, we find the purpose of the statute is one of law enforcement. Therefore, any benefit or injury to the Trasks from its performance or nonperformance in determining whether alcohol played a role in their son's death is incidental to its essential purpose. The Trasks' negligence claim against Copeland officially under section 17-7-80 is also barred by the public duty rule.

Third, and finally, the Trasks allege sections 17-5-570(B) and 17-5-590 create a special duty when a body is not identifiable. Because the Trasks concede that Paul died in the accident, we need not address this further. Even under their own theory, they are not within the protected class: families of unidentifiable deceased persons. Accordingly, the Trasks' claims based on these statutory duties are barred by the public duty rule.

III. Third Party Spoliation of Evidence

[10] ☒ The Trasks also allege a third party spoliation of evidence cause of action. In Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 36, 659 S.E.2d 122, 124 (2008), the supreme court refused to adopt the tort of third party evidence spoliation. However, it stated, "we decline to address whether we would, under other factual circumstances, adopt the tort." *Id.* The supreme court then listed the elements of negligent and intentional third party spoliation as stated in Hannah v. Heeter, 213 W.Va. 704, 584 S.E.2d 560, 569-70, 573 (2003). Austin, 377 S.C. at 34-35, 659 S.E.2d at 123-24. As the supreme court did in Austin, we find the Trasks fail to meet those elements. The Trasks have not presented any evidence that Copeland or Beaufort County had knowledge two days after Paul's death of a potential civil action against Hess Corporation and Xpress Lane, or that Paul's body would be considered evidence in such a lawsuit. More importantly, the Trasks authorized the cremation of Paul's body. They also failed to show it was possible to obtain a toxicology test, and did not show how the results of that test would be vital to *573 their ability to prevail in a civil action. The circuit court correctly granted summary judgment as to this claim.

IV. Intentional Infliction of Emotional Distress

The second category of damages the Trasks claim from Copeland's conduct is emotional harm. They allege Copeland is liable for intentional infliction of emotional distress for the two statements he made to the Trasks. The statements were made in response to questions from the Trasks about the performance of an autopsy and the details of the accident. These are questions properly addressed to a coroner, not a funeral home owner. Under the Tort Claims Act, a coroner is immune from suit for "the intentional infliction of emotional harm." S.C.Code Ann. § 15-78-50 (2005) ("Any person who may suffer a loss

proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided." (emphasis added); § 15-78-30 (2005) (" 'Loss' ... does not include the intentional infliction of emotional harm."). We agree with the trial court that the Trasks cannot "circumvent the bar of sovereign immunity by raising alleged acts by Copeland acting as the Coroner and then seeking to recover for those acts against Copeland individually."

V. Beaufort County is Not Liable for the Acts or Omissions of Copeland Officially

[\[11\]](#) ☒ [\[12\]](#) ☒ The negligence claim against Beaufort County for Copeland's failure to perform a toxicology test in his official capacity and the claim of negligent supervision and training were properly dismissed because Copeland owed no duty to the Trasks arising from his official actions or inactions. In this ***543** case, Beaufort County cannot be vicariously liable for Copeland's conduct because Copeland is not liable. "If no duty exists, the defendant is entitled to judgment as a matter of law." Chastain, 381 S.C. at 519, 673 S.E.2d at 832. Therefore, we need not reach the issue of whether Beaufort County has control over the coroner. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (recognizing that an appellate court need not address remaining issues when resolution of one issue is dispositive).

*574 VI. Conclusion

In this case, much of the coroner's conduct is troubling, but none of it is actionable. Because we find the statutes at issue do not give rise to private rights of action, because South Carolina has not recognized the tort of third party spoliation of evidence, and because the Trasks fail to state a claim for intentional infliction of emotional distress, we find the circuit court was correct in granting summary judgment.

AFFIRMED.

HUFF and GEATHERS, JJ., concur.

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Judges

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- **Few, Hon. John C.**

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- **Geathers, Hon. John D.**

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- **Huff, Hon. Thomas E.**

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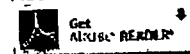
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360 S.C. 7, 598 S.E.2d 728

Judges and Attorneys

Court of Appeals of South Carolina.
Woodrow Wilson BROWN, Appellant,
v.

Joseph Wilson BROWN and Town of Harleyville, Respondents.

No. 3827.

Submitted April 6, 2004.

Decided June 21, 2004.

Background: Motorist brought negligence action against town after police officer allowed him to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, and he ran off road. The Circuit Court, Dorchester County, James C. Williams, Jr., J., granted summary judgment in favor of town. Motorist appealed.

Holdings: The Court of Appeals, Stilwell, J., held that:

- (1) public duty rule barred motorist's statutory negligence claims;
- (2) officer properly exercised his discretion in selecting motorist as replacement driver; and
- (3) town was immune from claim that it failed to properly train and supervise its police officers.

Affirmed.

West Headnotes

[1] [KeyCite Citing References for this Headnote](#)

.. 268 Municipal Corporations

.. 268XII Torts

.. 268XII(A) Exercise of Governmental and Corporate Powers in General

.. 268k723 k. Nature and Grounds of Liability. Most Cited Cases

"Public duty rule" is only implicated when a plaintiff relies upon a statute as creating a duty.

[2] [KeyCite Citing References for this Headnote](#)

.. 268 Municipal Corporations

.. 268XII Torts

.. 268XII(A) Exercise of Governmental and Corporate Powers in General

268k723 k. Nature and Grounds of Liability. Most Cited Cases

Under the public duty rule, a statute prescribing the duties of a public officer does not, without more, impose on him a duty of care toward individual members of the public in the performance of his duties.

[3] [KeyCite Citing References for this Headnote](#)

.. 268 Municipal Corporations

.. 268XII Torts

- 268XII(B) Acts or Omissions of Officers or Agents
 - 268k747 Particular Officers and Official Acts
 - 268k747(3) k. Police and Fire. Most Cited Cases

Public duty rule barred statutory negligence claims in motorist's action against town after police officer allowed him to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, and he ran off road; statutes corresponding to motorist's claims merely recited in broad terms when circumstances made it unlawful to operate motor vehicle, procedures surrounding incidents of possible driving under the influence (DUI), and general licensing requirement for motorists, but no statutes implicated by motorist's claims identified any particular class of victims or any particular harm that would create special duty exception to general rule. Code 1976, § 15-78-60.

[4] ☒ KeyCite Citing References for this Headnote

- 268 Municipal Corporations
 - 268XII Torts
 - 268XII(B) Acts or Omissions of Officers or Agents
 - 268k747 Particular Officers and Official Acts
 - 268k747(3) k. Police and Fire. Most Cited Cases

Police officer properly exercised his discretion in selecting motorist, who was passenger in vehicle driven by driver who had been drinking alcohol, as replacement driver, and thus, town was immune to motorist's negligence claim under tort claims act; officer had choice of issuing citation to original driver and having car towed, or selecting another driver, and so officer chose motorist to drive after he volunteered and satisfactorily completed sobriety tests, motorist admitted that he was in better condition to drive than original driver, and other passenger expressly refused to drive, and police trainer stated that officer operated pursuant to accepted law enforcement practices. Code 1976, § 15-78-60(5).

[5] ☒ KeyCite Citing References for this Headnote

- 268 Municipal Corporations
 - 268XII Torts
 - 268XII(B) Acts or Omissions of Officers or Agents
 - 268k747 Particular Officers and Official Acts
 - 268k747(3) k. Police and Fire. Most Cited Cases

Town was immune from motorist's claim under tort claims act that town failed to properly train and supervise its police officers after officer allowed motorist to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, where officer's decision in selecting motorist to be replacement driver met requirements to establish discretionary immunity under tort claims act. Code 1976, § 15-78-60(5).

****729 *8** Helen Tyler McFadden, of Kingstree, for appellant.

Christy Stephens, of Walterboro, for respondents.

STILWELL, J.:

Woodrow Brown brought this action against Joseph Wilson Brown and the Town of Harleyville alleging negligence by a *9 police officer resulting in injury to Woodrow. The trial court granted summary judgment in favor of the town. We affirm. FN1

FN1. We decide this case without oral argument pursuant to Rule 215, SCACR.