

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-00013

Maureen T. Coffey, ... Respondent,

v.

Community Services Associates, Inc. and
George F. Breed, Jr. Appellants.

RECORD ON APPEAL
VOLUME III

Mark S. Barrow, Esquire
William R. Calhoun, Jr., Esquire
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
**ATTORNEYS FOR APPELLANT
COMMUNITY SERVICES ASSOC.,
INC.**

Weston Adams, III, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211
(803) 779-2300
**ATTORNEY FOR APPELLANT
GEORGE F. BREED, JR.**

Robert V. Mathison, Jr., Esquire
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29928
(843) 785-6503

C. Mitchell Brown, Esquire
Nelson, Mullins, Riley,
Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 255-9595
**ATTORNEYS FOR
RESPONDENT**

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1 Q How long did you work for them?
2 A Until approximately '87.
3 Q Did you attain any rank there?
4 A Section commander.
5 Q And what exactly does that mean?
6 A You're in charge of a section.
7 Sometimes it's a shift. They have
8 -- I don't know what it is now.
9 Q In your case, was it the shift,
10 or was it division within the
11 organization?
12 A It would -- it varied. It
13 depended on what -- if I was in
14 -- when I was in patrol, it was
15 a shift. When I was in another
16 section, I might head up a section.
17 Q Okay. What caused you to leave
18 Frederick County?
19 A I was contacted by the Office of
20 Special Investigations and asked
21 if I'd be interested in coming to
22 work for them.
23 Q And for those of us who are neophytes
24 in the area, what is the office of
25 special investigations?

1 A *It's a branch of the Department of*
2 *Defense, based at the Pentagon.*

3 Q *And what were you asked to do in*
4 *connection with this job?*

5 A *I was asked to -- if I was*
6 *interested in a security manager*
7 *special agent's position. This*
8 *particular group oversaw black*
9 *projects.*

10 Q *Black projects?*

11 A *Yes.*

12 Q *Does that mean things that are*
13 *not necessarily things that are*
14 *going to be made public?*

15 A *Correct.*

16 Q *Okay. And were you interested in*
17 *that type of activity?*

18 A *It was interesting.*

19 Q *Did you accept the job?*

20 A *Yes, I did.*

21 MR. MATHISON: *Going to Page 17, Line -- actually,*
22 *it's the bottom of Page 16. No, top of Page 17. Begins*
23 *with trenchant question Yeah.*

24 A *Yes, I do.*

25 Q *Well, what was it you were doing*

1 generically, as opposed to
2 specifically?
3 A Protecting technologies for the
4 U.S. Government.
5 Q Protecting them from foreign
6 competition or from espionage?
7 Which?
8 A That is correct, espionage.
9 MR. MATHISON: Going to Line 18 -- excuse me. Line
10 19.
11 Q And how long did you work at this
12 office of special investigations?
13 A Until approximately mid-'89.
14 Q So that was a two-year stint?
15 A Correct.
16 Q And why did you leave, if, in
17 fact, you did?
18 A I was contacted by Sea Pines,
19 asked if I was interested in
20 coming down for an interview,
21 and came down for an interview.
22 Q That was in May of 1989?
23 A Approximately.
24 MR. MATHISON: Going to Page 22, Line 5.
25 Q Okay. When you signed on for

1 your first stint here at Hilton
2 Head Island, for whom were you
3 working?

4 A The entity?

5 Q Uh-huh.

6 A Sea Pines Plantation Company,
7 I believe.

8 Q And what was your job title?

9 A Assistant director of security.

10 Q And who was the director of
11 security?

12 A A gentleman by the name of Enos
13 Phillips.

14 Q And what were you doing in your
15 capacity as assistant director?

16 A Overseeing staff issues,
17 operational issues, budgetary
18 issues.

19 Q How long before you replaced Mr.
20 Phillips?

21 A I want to say -- I'm going to --
22 a year and a half.

23 MR. MATHISON: Going to Line -- going to Page 23,
24 Line 17.

25 Q Well, when you were called that

1 you became an employee of Community
2 -- well, when do you recall that you
3 became an employee of Community
4 Services Associates?

5 A Whatever date Community Services
6 Associates hired or took over
7 that management responsibility.

8 MR. MATHISON: Going to Page 25, Line 12.

9 Q Okay. The black ops that you --
10 in which you participated, are
11 you, at this juncture, clear to
12 talk about those things?

13 A No.

14 Q So, as to anything that you did
15 while you were working for the
16 Department of Defense, your lips
17 are sealed? Is that it?

18 A I'm not permitted to discuss what
19 I was privy to.

20 Q Have you had any subsequent duties,
21 official or otherwise, for the
22 Office of Special Investigations
23 at the Department of Defense?

24 A I've not had any contact with
25 the Office of Special Investigations.

1 Q Any other duties coming from the
2 Defense Department itself, outside
3 of the Office of Special
4 Investigations?

5 A I do contract investigations for
6 the Department of Defense on
7 occasion.

8 MR. MATHISON: Going to Line 17, on Page 26.

9 Q Well, then, what is it that you
10 would be doing?

11 A I work directly for a contract
12 organization, who has a contract
13 at the Department of Defense.
14 Strictly with national security
15 and background investigations for
16 potential and current employees.

17 Q So you're telling me that,
18 effectively, you're running screens
19 on people who are potential job
20 applicants. Is that what you're
21 saying? Or, is that what you're
22 doing?

23 A I don't understand screens on
24 people.

25 Q You're checking people's pedigree

1 to see whether they're suitable
2 for employment.

3 A I gather raw data and submit it.

4 MR. MATHISON: Going to Line 11, same page.

5 Q You're not going from pillar to
6 post, from courthouse to courthouse,
7 looking to find out whether the
8 people have judgments against them,
9 are you?

10 A Yes.

11 Q You are?

12 A Yes.

13 Q So that, you're not using computer
14 searches to find this information?

15 A Correct, We do not.

16 Q And you're doing this for the
17 government?

18 A Correct.

19 MR. MATHISON: Going to Page 28, Line 5. Actually,
20 Line 3.

21 Q How many of these contracts --
22 strike that. What department of
23 the government are you doing these
24 contracts services for?

25 A I have clearances with the

1 Department of Defense, National
2 Security Agency, Customs and Border
3 Protection, Immigrations, Customs
4 Enforcement, and Securities and
5 Exchange Commission.

6 Q And would I be accurate in saying
7 that, what you're doing, essentially,
8 is background checks for people with
9 -- that either are going to be
10 employed, or somehow going to be
11 interacting with these various
12 agencies?

13 A Yes.

14 Q What would make you uniquely
15 suited to do this, that they couldn't
16 actually have somebody on their own
17 payroll do it for them?

18 A I can't speak for them.

19 Q How many times have you done
20 this in the last five years?

21 A Maybe a dozen times.

22 Q When you're given a contract,
23 is it for an individual, or is
24 it for a group of individuals?
25 How is it done?

1 A It's usually for one individual. \

2 Q And you're telling me that you go

3 literally from place to place,

4 fact-checking, to make certain

5 that the person is what he

6 represents he is?

7 A Correct.

8 Q Do you take time off from your

9 employment at Sea Pines to do that?

10 A Correct.

11 Q Is that something that's written

12 into your contract?

13 A Is what written in my contract?

14 Q That you can have leave time,

15 essentially, to work on government

16 contracts?

17 A I've got leave time. How I use

18 the leave time is entirely up to

19 me.

20 MR. MATHISON: Going to Page 31, Line 14.

21 Q Have you ever had your deposition

22 taken before?

23 A Yes.

24 Q How many times?

25 A Several.

1 Q Can you tell me the cases in
2 which your deposition has been
3 taken?

4 A There was a turkey case. There
5 was a bicycle accident case. A
6 tripping-over-a-rope case, an
7 employment case. That's all I
8 can recall right now.

9 MR. MATHISON: Going to Page 34, Line 32.

10 Q In that case, which is the turkey
11 case, known to the participants,
12 if not everybody else, as Klippel,
13 K/l/i/p/p/e/l, versus who? Do
14 you remember who the defendant is?
15 Mister --

16 A I believe it was Dupps.

17 Q Dupps, D/u/p/p/s?
18 (Witness nods head.)

19 Q Did you testify at that case?

20 A I don't believe so. I did give
21 a deposition.

22 MR. MATHISON: Going to Page 36, Line 6.

23 Q Well, you gave a deposition
24 in the case; didn't you?

25 A Yes, I did.

1 Q And what did you, at the time,
2 know of the details?
3 A I knew the details of the part
4 that I gave deposition to. I
5 don't recall the specifics.
6 MR. MATHISON: At the bottom of page, Line 25.
7 Q Okay. Do you remember whether
8 you were asked in the deposition,
9 whether you recorded your telephone
10 calls incoming to Sea Pines
11 Security?
12 A I don't recall if I was asked that
13 specific question.
14 Q Did you, at the time -- and I
15 believe the time was 2008 --
16 record your calls incoming to
17 Sea Pines Plantation?
18 A There's a system in place to
19 document calls coming into our
20 dispatch center.
21 Q And do you remember whether you
22 testified that you could recover
23 recorded calls in the deposition
24 that was given in the Klippel case?
25 A I do not recall.

1 Q What has become of the recordings
2 of the telephone conversations
3 that you had from 2008?
4 A Well, I didn't have, personally,
5 any recordings. We have, throughout
6 the years, gone through several
7 incarnations of technology, and
8 as a default or broke down, those
9 recordings are lost.
10 Q Were there recordings that were
11 not lost as of the time you
12 gave your deposition in the
13 case of Klippel versus Dupps?
14 A I don't recall.
15 Q Did you produce any recordings
16 of telephone conversations at
17 the behest of the lawyers in
18 Klippel versus Dupps?
19 A I'm sorry. I do not recall.
20 Q I'm not -- trying not to tax your
21 recollection. This case was
22 tried in January of 2010. Are
23 you saying you can't recall
24 what happened two years ago?
25 A I'm telling you I can't recall

1 the question you just asked.

2 MR. MATHISON: Going to Page 39. And I believe that
3 the discussion of that has been objected to. So let's go
4 to Page 42, Line 2.

5 Q And you have tape recordings
6 of telephone conversations from
7 2008.

8 A No.

9 Q What happened to them since you
10 gave your deposition testimony
11 in 2008?

12 A What?

13 Q What happened to the telephone
14 conversations that you recorded
15 in 2008 that existed then and
16 that don't exist now?

17 A What telephone conversations
18 are you speaking of?

19 Q The ones that were recorded
20 that were testified about in
21 the Klippel case?

22 A I don't know that they were. I
23 have got no -- no recordings that
24 I'm aware of from 2008.

25 Q Are there recording devices on

1 all of the telephones at Community
2 Services Associates, so that, at
3 any given time, a statement or a
4 recording can be taken?

5 A No.

6 Q Are there on any of the telephones?

7 A When?

8 Q In 2008?

9 A I can't speak to that. As I
10 said, that there are -- we had gone
11 through many incarnations with
12 technology. Many of the
13 machines record over themselves
14 beyond a certain point. They've
15 got a limited capacity.
16 Some were on older. The unit's
17 tapes, as opposed to the computer
18 hard drive. In any case, any of
19 those are no longer in existence.

20 Q What you're saying is that you did
21 routinely tape-record people who
22 were making telephone calls to you,
23 and then basically recorded over
24 what had been recorded before? Is that
25 what your testimony is?

1 A No.

2 Q Well, how many people did you

3 tape-record in 2008?

4 A I didn't.

5 Q Pardon?

6 A I didn't tape record anybody.

7 Q How many people did your officers

8 tape record?

9 A The officers didn't.

10 Q Are you -- if you have the recording

11 devices, are you telling me that

12 you didn't use them?

13 A No.

14 Q Pardon me?

15 A No.

16 Q So you're not telling me you

17 didn't use them. You did use them.

18 Is that what you're saying? Did

19 you use recording devices that

20 you had on your telephone in 2008?

21 A I did not use any recording devices

22 in 2008.

23 MR. MATHISON: Top of Line -- Page 45.

24 Q Did your officers use them?

25 A The officers did not.

1 Q Are you currently recording
2 people that are making incoming
3 calls to Sea Pines Security?
4 A There is currently a system in
5 place that's -- records calls into
6 our dispatch center.
7 Q What do you do with the calls
8 after they're recorded?
9 A Nothing.
10 Q Are they archived?
11 A No.
12 Q Well, are you telling me that
13 you just are -- get recorded
14 and then forgotten about?
15 A No.
16 Q Well, what did you do with
17 them, then?
18 A Nothing. The mechanics of the
19 hardware we have has got a
20 limited capacity, storage capacity.
21 Beyond a certain point, beyond a
22 certain time period, it records
23 over itself.
24 Q What did you do with the calls
25 that you deemed significant,

1 worthy of identification and
2 preservation?

3 A Should that situation or scenario
4 occur, we would go back, see
5 if it was still on the hard drive,
6 and make a copy of it.

7 Q And how long do you -- how long
8 do you have, typically, in the
9 current iteration of your
10 technology, before something is
11 no longer there for you to recover
12 it?

13 A That's a moving target. It
14 depends on the volume of calls,
15 the volume of radio transmissions.
16 It can be -- any number of
17 factors will dictate the
18 capacity of how many calls are --

19 Q Well, I'm assuming it moves
20 between zero and some finite
21 number. Isn't that true?

22 A I don't know.

23 Q You don't know what the -- to
24 use your terminology -- parameters
25 are?

1 A Correct.

2 Q What's the point of recording

3 them at all if you don't keep them?

4 A There could be a scenario that if a

5 person called up, could only give

6 out a certain amount of information

7 that wasn't understood, it would be

8 -- it would enable the officer to

9 play it back and try to discern,

10 say, a correct address.

11 Q Okay. In 2008, were the calls made

12 to your dispatcher routinely recorded?

13 A I do not know.

14 Q Well, if an officer testified that

15 they were, would you believe him?

16 A Yes.

17 Q Your answer was 'Yes.' Isn't

18 that correct?

19 A I would.

20 Q You would believe him.

21 A I would believe his answer.

22 Q Okay. So your officers, if and

23 to the extent they believed their

24 calls were recorded in 2008, you

25 believe they're recorded. Is that

1 what you're saying?

2 A No. I'd believe that officer
3 believed they were recorded.

4 Q Okay. Well, why would he believe
5 that if it weren't true?

6 A I can't speak for that officer.

7 Q Were you routinely telling people
8 that all of their calls were recorded?

9 A No.

10 MR. MATHISON: Down to Line 6 on Page 48.

11 Q If someone called an on-duty
12 officer at a telephone on the
13 premises on Greenwood Road, could
14 that officer record the call if
15 he wanted to?

16 A I don't understand that scenario
17 you just described.

18 Q An officer sitting in your security
19 headquarters.

20 A Uh-huh.

21 Q Receiving a call from either a
22 complaining witness or someone
23 who wanted to report something,
24 could he record that call by
25 flipping a switch, a device that

1 *simply memorialized it?*
2 A No.
3 Q And that's not -- he couldn't do
4 that now? Is that what you're saying?
5 A Correct.
6 Q And he couldn't do that in 2008.
7 A Correct.
8 Q Could you do it?
9 A Can I do it? No.
10 Q No. Could you do it, and did you
11 do it in 2008?
12 A I don't recall.
13 Q But you couldn't do it now. Is
14 that right?
15 A Correct.
16 MR. MATHISON: Going to the bottom of Page 49, at
17 Line 24.
18 Q Do you have video cameras all over
19 Sea Pines Plantation?
20 A Define all over.
21 Q At various points that you consider
22 a particular -- of particular interest.
23 Like at your gates, at the swimming
24 pools. And for awhile, on the street
25 where my client's mother lived.

1 A Which one, specifically?
2 Q Do you have video of cameras at the
3 gates?
4 A Yes.
5 Q Both of them? What do you do with
6 video that you run off those cameras?
7 Do you throw them away?
8 A Again, it's fed into a computer
9 database. Beyond a certain point,
10 it re-records over itself.
11 Q So, if someone goes through that
12 material after it's generated, and
13 decides whether it's important or
14 not before it's recorded over?
15 A No.
16 Q Why would you keep it at all, then?
17 A If something occurred within a certain
18 window of time or opportunity, it
19 would -- it was brought to our attention,
20 and we could perhaps capture information
21 off of those tape -- off of those video
22 cameras.
23 Q How long do you keep the video cameras
24 of the activity at the gate? How long
25 do you keep that video tape?

1 A There is no video tape.
2 Q There's no video tape? Pardon?
3 A There is no tape. It's a mechanism
4 of computer database with a limited
5 capacity. And again, that varies with
6 the volume of activity that is recorded,
7 traffic.
8 Q Well, I went down there, right now,
9 and managed to get access -- if I
10 went down there right now, and managed
11 to get access to your computer
12 database, how far back would I be
13 able to go to see who came through
14 the gate?
15 A I don't know.
16 MR. MATHISON: At Line 25.
17 Q Who, on your payroll, sir, actually
18 runs the equipment and takes care of
19 it?
20 A The equipment runs itself. The vendor
21 is located in Canada.
22 Q Forgive me for being intrigued at
23 the prospect that there might be
24 someone on your staff that knows more
25 about this than you do. Since you

1 don't know how long it can archive,
2 someone does; don't you think?
3 A No.
4 Q So there's no one in your office
5 staff that would know how to use this
6 equipment, and how long it could be
7 -- the data generated could be saved?
8 A Not that I'm aware of.
9 Q Who reviews it? You or someone else?
10 A Define reviews.
11 Q Looks at it.
12 A The recordings?
13 Q Yes.
14 A Nobody.
15 Q So you're telling me that you've
16 invested in cameras and you put them
17 up at various places in Sea Pines,
18 and no one looks at what they generate?
19 A Not unless there's cause.
20 MR. MATHISON: Going to Line 22, on Page 53.
21 Q Did you, at one juncture, put a
22 security camera on Gadwall?
23 A Yes.
24 Q What was the purpose of putting that
25 security camera there?

1 A It was at the request and behest of
2 Mrs. Coffey, who owned that residence,
3 approximately a year to 18 months ago,
4 because of an issue she was having
5 with a neighbor of hers.

6 MR. MATHISON: Going to Page 54, Line 23.

7 Q Before she left, was Marie Degler in
8 charge of your security cameras and
9 security telephone system?

10 A No.

11 Q Did she have anything to do with
12 your special operations, in terms of
13 either voice recording or video
14 recording?

15 A No.

16 Q What did she do?

17 A For the most part, clerical.
18 Tracked when oil changes were required,
19 uniform issuance.

20 Q What was her job title?

21 A Lieutenant.

22 Q And how long had she been with you
23 when she left?

24 A I don't know.

25 Q Do you recall when she left?

1 A No.

2 Q Did she leave in 2008?

3 A I don't recall.

4 Q Think it was fewer years than that,

5 or more?

6 A I don't know.

7 Q Are all your cars equipped with video

8 equipment?

9 A They are now.

10 Q In 2008, were all the cars equipped

11 with video equipment?

12 A I can't speak for 2008.

13 MR. MATHISON: At Line -- Page 56, Line 10.

14 Q What happens to the data generated

15 by these cameras?

16 A Today?

17 Q In 2008.

18 A I -- the -- don't know. I believe

19 we had an older system, and if

20 something was recorded, it was on

21 video tapes.

22 Q Okay. So that it wasn't basically

23 banked in a computer. What happened

24 to the video tapes?

25 A I don't know.

1 MR. MATHISON: Page 57, Line 4.

2 Q Do you still have your 2008 video tapes
3 from your vehicle cameras?

4 A I don't know.

5 Q If you did have them, who in your
6 employ would be responsible for them?

7 A Probably. I don't know.

8 Q Do you have someone on your staff who
9 collects this kind of data? And by
10 that, I mean video tape during the
11 period that you had video tape, or
12 audio tape. Is there someone who
13 is the go-to person for that kind
14 of stuff?

15 A In 2008?

16 Q Yes. Or now, for that matter.

17 A Two different mechanisms.

18 Q Well, give me the individual in 2008
19 for that mechanism, and then we'll
20 work on --

21 A 2008 would be the individual officer.

22 Q Are you telling me the officers kept
23 their own tapes, and didn't turn them
24 in?

25 A The officers would maintain the control

1 of their own tapes until such time as
2 their case had been heard, or until
3 they're no longer usable, or until they
4 ended their employ. And then they would
5 -- it's property of CSA. They would turn
6 them in to CSA.

7 Q Do you have any telephone convers --

8 MR. MATHISON: Forgive me. That's Page 58, at Line
9 19.

10 Q Do you have any telephone conversations
11 from 2008 that haven't been destroyed?

12 A No.

13 Q Do you have any video tapes from 2008
14 that have not been destroyed?

15 A Not to my knowledge.

16 Q Do you have any idea how far back the
17 current data that you're keeping goes?

18 A What data?

19 Q Data that's being collected either by
20 your video cameras or data that's being
21 collected by your audio mechanisms?

22 A I don't have an exact amount of time. I
23 -- it has been my experience it runs
24 about six months.

25 Q Which runs six months? Audio or video?

1 A I believe both.

2 Q So that we're -- so that you're

3 constantly turning over?

4 A Correct.

5 Q Everybody, if you will. And who's the

6 person currently in charge of that aspect

7 of your operation at Sea Pines Security?

8 A What aspect?

9 Q The collection of this data.

10 A It's a matter of the mechanics of the

11 machine. There's nobody that has to.

12 Q My assumption is the machine feeds into a

13 computer. Isn't that correct?

14 A The machine is the computer.

15 Q Okay. And who is it that can access this

16 information now?

17 A Well, there's two ways: either through a

18 laptop or through the dispatch center.

19 Q And who is entitled to access the

20 information?

21 A Me.

22 Q And who else?

23 A Anybody I designate.

24 Q Do you need a password to get it?

25 A I believe so.

1 Q Do you have the password?
2 A To what?
3 Q The information that you have access to.
4 A It depends on which information.
5 Q Who else has the password?
6 A I don't know.
7 Q You don't know, or you're not willing to
8 tell me. Which?
9 A I don't --
10 Q Well, you have it. You don't know who
11 else has it.
12 A No.
13 Q Forgive me, sir. But if you have it, and
14 you don't know who else has it, doesn't
15 that mean no one else has it?
16 A No. It's just I don't know who else has
17 it.
18 MR. MATHISON: Going to Page 62, Line 5.
19 Q How would an officer file and incident
20 report in 2008?
21 A Somebody would call up, request an
22 officer; the officer would respond. Would
23 take the information down, and submit a
24 report to the Beaufort County Sheriff's
25 Department.

1 Q Then the officer would conduct some kind
2 of investigation into whatever was being
3 complained about. And then, how would he
4 file with you -- with you some indication
5 of the outcome of what he had done?

6 A Officers don't apply with me anything. If
7 the officer responds to a calling, they
8 take the information and submit it to the
9 Beaufort County Sheriff's Department.

10 MR. MATHISON: Page 63, Line 22.

11 Q Isn't it a fact, sir, that, in 2008, some
12 investigations undertaken by your officers
13 resulted in reports that did not
14 automatically go to the Beaufort County
15 Sheriff's Office?

16 A No.

17 Q Okay. You're saying that every report
18 went to the Beaufort County Sheriff's
19 Office?

20 A To my knowledge, yes.

21 Q What does it mean to quote, 'pull a case
22 number,' sir?

23 A I don't know.

24 Q You don't know what pulling a case number
25 is?

1 A No.

2 Q What percentage of incidents that were
3 investigated by Sea Pines Security in
4 2008, resulted in an incident report where
5 a case number was pulled?

6 A I don't understand the question or the
7 terminology.

8 Q What percentage of incidents that were
9 investigated by Sea Pines Security in
10 2008, resulted in a report being made to
11 the Beaufort County Sheriff's Office?

12 A I do not know.

13 Q Was it more than half or less than half?

14 A I do not know.

15 Q How many didn't end up being reported to
16 the Beaufort County Sheriff's Office?

17 A How many what didn't get reported to the
18 Beaufort County Sheriff's office?

19 Q Incidents you investigated.

20 A If we had called for a criminal complaint,
21 and the officer arrives and, in fact, one
22 has occurred, they'll do a criminal
23 incident report and turn it in to the
24 Sheriff's Department. That's the process.

25 Q But if someone determines there hasn't

1 been any crime committed, or there was
2 insufficient evidence, then nothing is
3 submitted to the Beaufort County Sheriff's
4 Office. Isn't that the way it worked?

5 A It can.

6 Q And did, and didn't it? Didn't it? Not
7 everything that your officers investigated
8 resulted in a report to the Beaufort
9 County Sheriff's Office; did it?

10 A I don't understand the question.

11 Q What was confusing about that?

12 A Officers, in the course of a day, will do
13 many things. Barking dog, things in the
14 roadway. It's not going to necessarily
15 generate a report, and it's not going to
16 be sent to the Beaufort County Sheriff's
17 Office.

18 Q So something that resulted in an
19 investigation can conceivably lead to your
20 not filing a report with the BCSO. Isn't
21 that correct?

22 A If your question is, if an officer goes to
23 a barking dog, investigates that call,
24 and, in fact, there is no barking dog,
25 there would be no report to forward to the

1 Beaufort County Sheriff's Department.

2 Q So it's a determination made either by the

3 officer, or by whoever at the office -- by

4 whoever the officer reports to, as to

5 whether or not a report is filed with

6 BCSO.

7 A It's usually the case the officer making

8 that determination.

9 MR. MATHISON: Go to Line 69, Page 3.

10 Q Was there a problem locally with the fact

11 that a number of incidents taking place

12 inside plantations, that is on private

13 property, were either not being

14 investigated, or after an investigation,

15 not being reported to the Beaufort County

16 Sheriff's office?

17 A In Sea Pines?

18 Q I didn't ask -- I didn't ask you that,

19 sir. I said, was there a problem on

20 Hilton Head in plantations with private

21 security services?

22 A I'd heard that.

23 Q Heard it from whom, sir?

24 A I don't recall.

25 Q Is one of the reasons that crime and the

1 reporting of a crime is a touchy situation
2 on a resort island, the fact that crime is
3 bad for business?

4 A I'm not a business man, Mr. Mathison. I
5 can't speak to that.

6 MR. MATHISON: Go to Page 71, Line 8.

7 Q Mr. Breed, was Sea Pines under-reporting
8 incidents at the time of 2008?

9 A No.

10 MR. MATHISON: Go to Page 72, Line 9.

11 Q Do you routinely keep track of statistics
12 in terms of investigations, criminal
13 investigations, in Sea Pines?

14 A We do keep track of every report that
15 generates a criminal case number.

16 Q And what generates a criminal case number?
17 Wouldn't that be what I'm referring to as
18 pulling a case number?

19 A I don't know what you're referring to.

20 Q Okay. When the system at Sea Pines
21 Security -- within the system at Sea Pines
22 Security, everything that has a case
23 number from the Beaufort County Sheriff's
24 Office is, in fact, reported to the
25 sheriff's office. Isn't that right?

1 A That's correct.

2 Q That's how you get the case number.

3 A I believe so.

4 Q Do you get the number before you make your

5 report, or do they make the report and

6 then it gets a number? Which is it?

7 A I don't know.

8 Q That which is not reported to Beaufort

9 County Sheriff's Office never gets a case

10 number.

11 A Of what's not reported to Beaufort County

12 Sheriff's Office?

13 Q The proverbial person investigating the

14 barking dog, they can't find the dog.

15 A You mean, if no crime is committed and

16 there's nothing to report?

17 Q Correct. So if you investigate, and you

18 find no evidence that a crime has been

19 committed, you never pull a case number.

20 Is that right?

21 A Again, I don't know about the terminology.

22 But if there's no crime that's being

23 committed or has been committed, then no

24 criminal case number is affixed to or

25 assigned to it.

1 Q Isn't it true -- is it true or not that
2 one of the complaints you had about
3 Officer Jolin's handling of the incident
4 on May 20, 2008 was that he had, in fact,
5 reported his encounter with a person
6 believed to be Otis Coffey to the
7 Beaufort County Sheriff's Office?

8 A I don't understand your question.

9 Q Did you get angry at Sergeant Jolin
10 because he had reported an encounter with
11 a black male on the beach, to the Beaufort
12 County Sheriff's Office?

13 A I'm not familiar with the scenario you
14 just described. But no, I have not
15 gotten angry with Sergeant Jolin.

16 Q Did you say something to the effect that
17 he should not have reported it as an
18 incident to the Beaufort County Sheriff's
19 Office?

20 A I'm not familiar with the scenario you
21 just described.

22 Q It is true, however, that no charge was
23 ever brought as a result of the incident
24 on May 20, 2008.

25 A I'm not familiar with the incident you're

1 referring to.

2 Q The incident I'm referring to is the one
3 where Officer Jolin, or Sergeant Jolin,
4 prepared an incident report. You're not
5 familiar with that incident report?

6 A No, not without seeing it, no.

7 MR. MATHISON: Going to Page 77. Excuse me. I need
8 to pass that one. 78.

9 MS. JOLLEY: I believe it's the bottom of Page 89.

10 MR. MATHISON: Oh, I see now. Thank you, Kelly.
11 You sure that --

12 MS. JOLLEY: Oh, actually, -- no.

13 MR. MATHISON: I don't -- I don't think that's
14 correct. Actually, the coloring doesn't exactly line up
15 with what's here. But assuming that all of this is
16 accurate on your sheet, we're just going to skip over
17 that, because what's left of it doesn't make sense in
18 context.

19 Mike, let's go to Page 96. Actually, let's -- well,
20 let's see here. Go to Page 95, at Line 24. No.

21 MS. JOLLEY: It's the bottom of 96. I think Line
22 23.

23 MR. MATHISON: I've got 95, 24 through 96, 8. I
24 don't have anything after 8 in the objected to material.
25 Is that not what you have?

1 MS. JOLLEY: I have that through that Page 96, Line
2 17 was objected to.

3 MR. MATHISON: Well, it's not on -- it's not on here
4 that way. Hold on one second. All right. At the bottom
5 of Page 96, at Line 23.

6 Q I'm handing you this document, and ask if
7 you can identify it for me, please.

8 A Yes. It appears to be the letter I wrote
9 to the Commission on Judicial Conduct.

10 Q And did you prepare that letter?

11 A Yes, I did.

12 Q Did you mail it?

13 A Yes, I did.

14 Q Personally?

15 A I don't recall.

16 Q Do you know when you prepared it?

17 A No. On or about June 6, 2008.

18 Q Did you consult with anyone before you
19 prepared it?

20 A As it relates to what?

21 Q Its content.

22 A Define consult.

23 Q Did you ask anybody for information about
24 what you put in the letter?

25 A I made inquiries, contacts about the

1 content of the letter, my initial
2 concerns.
3 Q All right. And who did you make inquiries
4 to?
5 A Greg DeLoach.
6 Q And how long before -- how long before you
7 wrote the letter did you contact Mr.
8 DeLoach?
9 A The draft of the letter or the final
10 product?
11 Q Does a draft of the letter exist, Mr.
12 Breed?
13 A Well, when I say 'draft,' I mean the
14 content of the letter, as opposed to the
15 introduction.
16 Q I'm not following you. Are you saying
17 draft means, to you, content? Is that
18 what you're saying?
19 A It can be, yes.
20 Q Did you discuss this matter with anyone
21 other than Mr. DeLoach?
22 A Yes.
23 Q Who else?
24 A Captain McSwain.
25 Q How long before you wrote the letter?

1 A I don't recall.

2 Q Well, a week? A month?

3 A Well, it's got to be, I'm assuming,

4 some time after May 23rd or before June

5 6th.

6 Q Why May 23rd?

7 A One of our officers had contact with Ms.

8 Coffey on that date.

9 Q On May 23rd?

10 A Apparently.

11 Q Did you consult with anyone else?

12 A Again, I looked. I wouldn't use the

13 termination -- the term 'consult.' And I

14 believe Officer Jolin.

15 Q When did you discuss the matter with

16 Officer Jolin?

17 A I don't believe I discussed the matter

18 with Officer Jolin. It was in that same

19 time frame.

20 Q Did you discuss the contents of this

21 letter with Corporal Florencio?

22 A I don't believe so.

23 Q Why did you discuss the content of the

24 letter with Officer Jolin?

25 A Where I referenced the content or the

1 contact in the letter, I wanted to be sure
2 that I was accurate.

3 Q Why did you talk to Captain McSwain?

4 A For the same reason.

5 Q Why did you talk to Mr. DeLoach?

6 A It was my understanding that he was her
7 direct report, and that the municipal
8 court fell under his area of
9 responsibility.

10 Q So you believe the Judge reported to Mr.
11 DeLoach?

12 A I believed that there was a direct report,
13 yes.

14 MR. MATHISON: Going to Line 18 on that page.

15 Q I have a copy of your letter produced by
16 Mr. DeLoach right here. If I had that
17 examined, would your fingerprints have
18 been on that before you put them on it
19 right now?

20 A Probably.

21 Q And isn't it a fact that you delivered
22 that letter to Mr. DeLoach some time after
23 it was written?

24 A I believe I did -- or I believe it was.

25 Q Did you deliver it in person, or did you

1 have someone deliver it for you?

2 A I don't recall.

3 Q So, if I understand correctly, you talked

4 to Mr. DeLoach in advance of writing the

5 letter, and then you had a copy delivered

6 to him. Isn't that right?

7 A I believe so.

8 Q And you believe that, to use your

9 expression, Judge Coltrane reported to Mr.

10 DeLoach in the chain of command. Is

11 that right?

12 MR. HALIO: I'm sorry.

13 MS. JOLLEY: Judge Coffey.

14 MR. MATHISON: Excuse me, I'm sorry. Judge Coffey.

15 Let me just say the whole thing over again.

16 Q And you believe that, to your -- to use

17 your expression, you -- Judge Coffey

18 reported to Mr. DeLoach in the chain of

19 command. Is that correct?

20 A Correct. That was one of the -- one of

21 the reasons.

22 Q How many times did you use the words

23 'biased, prejudiced,' and 'partiality' in

24 some form, in the letter?

25 A I don't know.

1 MR. MATHISON: Moving to Page 103, Line 4.

2 Q Is it your opinion that Judge Coffey was

3 biased -- isn't it your opinion that Judge

4 Coffey was biased, partial, and

5 prejudiced?

6 MR. MICHAEL MATHISON: I'm sorry. 103, Line 4?

7 MR. MATHISON: 4.

8 A I believe that the -- that's reflected in

9 here. I believed that to be the truth as

10 reflected in this letter, referring to the

11 scenario described in that letter.

12 Q And I'm going to hand you your answers to

13 interrogatories, and I'm going to ask you

14 to read an Interrogatory Number 19 and

15 the answer.

16 A 'Uh-huh. No.'

17 Q Read the interrogatory, and then read the

18 answer.

19 A 'Identified by case number, case name,

20 court, and jurisdiction, each case in

21 which the defendant contacted plaintiff

22 acted in bias.'

23 Q All right. Now, you need to slow down,

24 Mr. Breed, and read it so that the

25 reporter can actually --

1 A *'Identified by case name, case number,*
2 *court and jurisdiction, each case in which*
3 *the defendant contends the defendant*
4 *contents that the plaintiff has acted*
5 *with bias, partiality, or prejudice.'*

6 Q *I think that contends is what is meant by*
7 *the typed version.*

8 A *It's not what it says.*

9 Q *Well, I didn't type it.*

10 MR. MATHISON: *I'll speak for you and me.*

11 MR. MICHAEL MATHISON: *Guilty.*

12 Q *So, if your answer to the interrogatory is*
13 *correct -- is it correct?*

14 A *Right. I cannot.*

15 Q *There's not a single case in which --*

16 A *I cannot site any case.*

17 Q *-- in which she's shown any bias or*
18 *prejudice or partiality?*

19 A *Not in contact with me, no.*

20 Q *Okay. So a great deal of what's in this*
21 *letter is just completely wrong; isn't it?*

22 A *No. You're incorrect.*

23 Q *Well, explain to me, if there's no case in*
24 *which you can show that she's been biased*
25 *or prejudiced or partial, what it is that*

1 you're attempting to say with this letter
2 that you wrote on June 6th?

3 A One's referring to a criminal case before
4 her. This is referring to scenarios that
5 occurred beginning of 2004, and again in
6 2008.

7 MR. MATHISON: At Line 19. I think that we have to
8 include the question.

9 Q Well, it's pretty all-purpose. It's
10 uniform. What I'm getting at is why would
11 you call somebody biased, prejudiced, and
12 partial, if you didn't believe it?

13 A I did believe it. I believe that this --
14 these scenarios I describe today, I
15 believe that that --

16 Q Why don't you be a little more specific
17 when you're talking about scenarios?
18 You're not talking about judging cases;
19 are you?

20 A I'm not speaking of actions on the Bench.

21 Q In point of fact, you don't have any issue
22 with anything Judge Coffey has ever done
23 on the Bench; do you?

24 A I'm unaware of --

25 Q Do you have any issue with anything she's

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done on the Bench or not?

A No.

MR. MATHISON: At Line 19 on the same page.

Q Well, if you don't believe that she was biased, partial, and prejudiced, why did you keep putting it in three pages of the letter?

A I do -- I do believe that she was biased and partial.

Q In what respect?

A What I reflected in that letter.

Q Well, tell me what facts of the letter you believe is biased or partial or prejudiced.

A I refer to a 2004 -- I can read this. Do you want me to read it?

Q You can just tell me what you think.

A Again, I want to be accurate. It refers to 2004. 'The burglaries in the community that the Beaufort County Sheriff's Office; Otis Coffey was a primary suspect; that, during the course of one of these burglaries, on 12-04, Otis Coffey's vehicle is reported backed into a driveway with a person unknown to him, while off

1 the roadway, and exited his vehicle. Our
2 officers of Beaufort County responded.
3 Otis Coffey eventually re-appeared in
4 another vehicle with the company of his
5 father.'

6 Q Excuse me. Stop right there.

7 A Uh-huh.

8 Q You've given a lot of description about
9 Otis Coffey.

10 A Uh-huh.

11 Q But not anything about Judge Coffey. What
12 does that have to do with what you're
13 upset about Judge Coffey -- excuse me --
14 what you're upset at Judge Coffey about?

15 A If you'll allow me to proceed.

16 Q Okay.

17 A Okay. The father of Judge, Otis Coffey,
18 attempting to insert himself and into
19 Res Process.

20 Q What does that have to do with Judge
21 Coffey?

22 A Continuing. -- into the Res Process,
23 and then proceeded to call Judge Coffey
24 by his cell phone, and presented the
25 phone to the on-scene supervisor. Some

1 time after --

2 Q I'm sorry, sir. But I don't see where any

3 of this has to do with Judge Coffey.

4 MR. MATHISON: Going to 109, Line 2.

5 Q What should Judge Coffey have done

6 differently, based on what you just said?

7 A The -- one of the on-scene officers was

8 given the phone to talk to Judge Coffey.

9 Q And?

10 A While her brother was in the process of

11 being arrested.

12 Q Was he arrested?

13 A I believe he was.

14 Q What happened that was untoward?

15 A She got on the phone with one of the

16 officers on the scene.

17 Q To what end, sir?

18 A I was not privy to the situation.

19 Q Then what conceivable difference in the

20 outcome could this have made?

21 A We'll never know.

22 Q This arrest, what was he being arrested

23 for? Trespassing?

24 A I don't have that in front of me.

25 Q You don't know that to be a fact, though?

1 A No, I don't.

2 Q Well, would you mind consulting with your

3 records?

4 A Sure.

5 Q So that you could go ahead and just admit

6 that? Right?

7 A I'll consult with the records.

8 Q Between now and tomorrow, if you'd come

9 back, just tell me whether this is the

10 trespassing arrest.

11 A Okay.

12 Q So you believe Judge Coffey should not

13 have talked to the officer during the

14 course of an arrest that took place?

15 A Correct.

16 MR. MATHISON: Going to Page 111, Line 21.

17 Q Okay. So that's your first concern;

18 Judge Coffey talked to an officer. What's

19 your next concern?

20 A Continuing. 'Some time after this arrest,

21 Captain Toby McSwain had a meeting with

22 Judge Coffey, and advised her that Otis

23 was a prime suspect.'

24 Q Read slower for the court reporter.

25 A I'm sorry. 'That Otis was the prime

1 suspect in a rash of burglaries occurring
2 over the previous several months. Judge
3 Coffey stated to Captain McSwain that she
4 was going to get him out of town, or words
5 to that effect. From the date of that
6 arrest and after the statement of
7 burglaries -- and after the statement of
8 burglaries ceased.' Continuing.

9 Q Now, tell me what is the matter from your
10 standpoint.

11 A Well, you've got a law enforcement
12 representative advising a sitting judge
13 that a close relative is a suspect in a
14 series of burglaries, and she advises him
15 that she's going to remove him from the
16 area.

17 Q Well, apart from the plausibility of the
18 statement, which I can't hold you
19 responsible for, would that have solved
20 your problem?

21 A I can't -- I can't speculate or
22 hypothesize on whether it would or
23 wouldn't.

24 MR. MATHISON: Going down to Line 14, on Page --

25 MS. JOLLEY: No. It's Line -- it's Page 113, Line

1 12.

2 MR. MATHISON: That's your, witness.

3 A We'll never know.

4 MR. MATHISON: Thank you, Kelly.

5 MS. JOLLEY: Um-hmm.

6 MR. MATHISON: Going to Page 114, and Line 14.

7 Q Well, let's think about it in a
8 different light. Did anybody ever charge
9 Otis Coffey with anything that you believe
10 he did in 2004, other than trespassing?

11 A I do not know.

12 Q Did your company participate in making any
13 charges?

14 A Did our organization?

15 Q Yes.

16 A No.

17 Q Are you aware of Beaufort County Sheriff's
18 office having charged Otis Coffey with
19 anything except trespassing?

20 A That is unknown to me.

21 MR. MATHISON: At Line 8.

22 Q And just so that I understand, what makes
23 you think that Judge Coffey could get her
24 brother to move out of Sea Pines?

25 A Her statement makes me think that.

1 Q But she didn't make any statement to you;
2 did she?
3 A No.
4 Q Okay. The fact that somebody told you
5 that she had said that. Isn't that right?
6 A I reflected that in the letter.
7 Q And the person that she -- that said that
8 is Toby McSwain. Is that right?
9 A That's correct.
10 Q Well, why did you feel it necessary --
11 MR. MATHISON: Excuse me. I'm at 116, Line 4.
12 Q Why did you feel it necessary to go back
13 and ask them again before you sent the
14 letter?
15 A Because I was quoting him in this letter,
16 and I wanted to make sure that I was as
17 accurate as I could be.
18 MR. MATHISON: At Line 24, on Page 160.
19 Q So what is it that you lost the
20 opportunity to do as a consequence of Mr.
21 Coffey no longer being a resident of Sea
22 Pines?
23 A I didn't lose any opportunity. However,
24 there is the possibility of the lost
25 opportunity to close out criminal cases

1 when you remove the suspect, or cause a
2 suspect to be removed from an area.

3 MR. MATHISON: At Page 118, Line 12.

4 Q Is there anything else in this letter that
5 you consider one of the scenarios that you
6 think is indicative of Judge Coffey's
7 bias, partiality, and prejudice?

8 A The contents of the letter speaks to that,
9 Mr. Mathison.

10 MR. MATHISON: Line 21, same page.

11 Q On May 21, 2008 --

12 MR. MATHISON: Excuse me. That's --

13 I assume that X means stop. Is that right, Kelly?

14 MS. JOLLEY: On 118, I believe we were trying to go
15 through 119, 5.

16 MR. MATHISON: There's an X on mine, at the end of
17 17. I meant shall I go further?

18 MS. JOLLEY: Yes, please. Our designation went
19 through Page 119.

20 MR. MATHISON: Okay.

21 Q I'm asking you if there's another fact.
22 The contents speak for themselves. I'm
23 looking for facts, sir. Find me a fact in
24 there.

25 A On May 21, 2008, one of our patrol

1 officers found a vehicle parked in a
2 roadway in front of 4 Gadwall. The
3 vehicle was found to be registered to
4 Michael Coffey. Several attempts were
5 made by phone and in person -- I'm sorry
6 -- in person at 4 Gadwall to have the
7 vehicle removed from the road.

8 Q Excuse me. What does that have to do with
9 my client, Judge Coffey?

10 A I'll continue the paragraph. With no
11 response after approximately one hour
12 until vehicle responded, at which time
13 both Otis Coffey and Ann Coffey emerged
14 from the home. The officer issued Mrs.
15 Coffey a parking citation.

16 During the process, Mrs. Coffey asked
17 the officer if he was new to the
18 department. The officer stated that he
19 had been employed there for many years.
20 Mrs. Coffey then stated, 'You do know who
21 the judge is; don't you? My daughter.'

22 Q And what does that have to do with Judge
23 Coffey?

24 A I think it speaks to a -- an assumption,
25 an exercise in influence.

1 Q By whom?
2 A By Judge Coffey.
3 Q The fact that her mother said something?
4 A Yes.
5 MR. MATHISON: Question in Line 10.
6 Q Well, you're putting words in my client's
7 mouth, essentially, out of her mother's
8 mouth. Isn't that right?
9 A I quoted the mother in this.
10 MR. MATHISON: Going now, Mike, to Page 123, Line
11 11.
12 Q Okay. Is there anything else that you
13 believe factually that's an indication
14 that the judge is biased or partial?
15 A Yes. On May 23rd, approximately 5:32
16 p.m., one of my patrol officers, a retired
17 Indiana police officer, who was a new
18 hire, observed a person unknown to him,
19 later identified as Judge Maureen Coffey,
20 walking outside of the street of the
21 Coffey residence, and offered a
22 pleasantry. Judge Coffey replied, 'We
23 needed to quit harassing him.' The
24 officer stated that he did not know what
25 she was referring to. She replied that

1 she was the judge for the Town of Hilton
2 Head.

3 The officer said that he had never
4 met her, and nor was he aware of who she
5 was, and that he was new to the area.
6 Judge Coffey stated that she would go see
7 Chief Breed, but did not have the time.
8 Further, that she does not know if he's
9 guilty or not, and that she was going to
10 have him moved out.

11 Q Okay. And what's the matter with that?

12 A The same thing. It's inserting yourself
13 into scenarios involving crimes, and
14 stating that she was going to have the
15 suspect moved out.

16 MR. MATHISON: Going to Page 125 at Line 13.

17 Q And how was it that she interfered with or
18 impeded with what you were trying to do?

19 A Her statement that she was going to have
20 him moved out.

21 Q Isn't that what you wanted?

22 A I beg your pardon?

23 Q Didn't you want the problem to go away?

24 A I wanted the problem addressed.

25 Q I mean, let's be realistic here. You've

1 *banished people from Sea Pines before;*
2 *haven't you?*
3 A *I don't have the power to banish people.*
4 Q *Well, didn't you leave word that Ms.*
5 *Coffey needed to come see you?*
6 A *No.*
7 Q *Not Maureen Coffey. Her mother, Ann*
8 *Coffey.*
9 A *No.*
10 Q *And didn't you suspend Ann Coffey's guest*
11 *pass privileges?*
12 A *No.*
13 MR. MATHISON: *Going to Page 127, at Line 12.*
14 Q *Okay. Did you change Ann Coffey's guest*
15 *pass privileges?*
16 A *No.*
17 Q *Why couldn't she phone in guest passes for*
18 *over a year?*
19 A *I have no idea.*
20 MR. MATHISON: *Going to Line 130. I mean -- excuse*
21 *me. Page 130.*
22 Q *All right. Would you refer back to your*
23 *letter, and I want to know if there's any*
24 *other fact in there that you believe is*
25 *indicative of Judge Coffey's bias,*

1 prejudice, or partiality.

2 A Everything that's reflected in there after
3 the second paragraph, and --

4 Q No, sir. I want the facts; not
5 generalities.

6 A Mr. Mathison, this letter speaks for
7 itself. That's what I believed to be the
8 facts, and at the time, and that's what I
9 believe to be the facts today.

10 MR. MATHISON: Go to 131, at Line 13.

11 Q Can you think of another fact, as
12 opposed to a conclusion, that would lead
13 one to conclude that -- that would lead
14 one to believe that Judge Coffey was
15 biased or prejudiced?

16 A Again Mr. Mathison, everything that I have
17 and I submitted is in that letter.

18 Q Well, I'm having a hard time figuring out
19 one thing, sir. We agree that Judge
20 Coffey evidently never did anything on the
21 Bench that you consider to be biased or
22 prejudiced. Would it be safe for me to
23 say that you believe she did something
24 that hindered or interfered with an
25 investigation?

1 A Correct.

2 Q Do you say in your letter that it was, in

3 fact, your investigation that she was

4 interfering with?

5 A No.

6 Q Pardon? Did you say in your letter that

7 she hindered your investigation?

8 A I don't believe so.

9 Q Whose investigation did she hinder?

10 A Beaufort County Sheriff's Department.

11 Q And who expressed that opinion to you?

12 A Who expressed what opinion to me?

13 Q Who told you that the Beaufort County

14 Sheriff's Office believed that their

15 investigation had been hindered or

16 impaired?

17 A This speaks to --

18 Q I didn't ask you what this speaks to. I

19 said, who at the Beaufort County Sheriff's

20 Office told you that they believed their

21 investigation had been hindered or

22 impaired?

23 A I don't recall. I don't recall.

24 MR. MATHISON: At Page 133, Line 5.

25 Q Did anyone ever tell you the Beaufort

1 County Sheriff's Office believed their
2 investigation had been hindered or
3 impaired?
4 A I don't recall.
5 Q Isn't it presumptuous of you to be making
6 a case for the Beaufort County Sheriff's
7 Office that the Beaufort County Sheriff's
8 Office was hindered and impaired, if, in
9 fact, they don't believe it?
10 A No.
11 Q Who gave you the right?
12 A I'm a citizen of Beaufort County. I'm the
13 Director of Security for Sea Pines.
14 Q The fact of the matter is, Mr. Breed, that
15 this letter you -- in this letter, you
16 presupposed that it's your investigation
17 that's being impaired. Isn't that
18 correct?
19 A That's incorrect.
20 Q And isn't it a fact that, under
21 Plaintiff's Exhibit 3 --
22 MS. JOLLEY: Line 1.
23 MR. MATHISON: That's still in. I think -- I think
24 that's the -- I'm just going to skip that.
25 MS. JOLLEY: I believe you're right. I think it's

1 still in.

2 Q And isn't it a fact that under Plaintiff's
3 Exhibit Number 3, you don't have the right
4 to conduct an investigation? Isn't that a
5 fact, sir? You did not have the right to
6 conduct an investigation into peeping Toms
7 and breaking and entering at Sea Pines
8 Plantations.

9 A Regulations do not permit us to conduct
10 criminal investigations.

11 Q So, to the extent that your letter
12 addressed to the Judicial Conduct
13 Commission presupposes that you're
14 conducting an investigation, it's
15 unlawful; isn't it?

16 A I don't know.

17 MR. MATHISON: And here's an objection, Mike. You
18 have to --

19 A I don't know what it presupposes, Mr.
20 Mathison. I spoke to what I believe to be
21 the facts, and what I still believe.

22 MR. MATHISON: Going to Page 136.

23 Q Do you have any reason to why it took
24 your letter ten days to get from here to
25 Columbia? That is, why something dated

1 June 6th didn't get to Columbia until June
2 16th?

3 A No.

4 Q Did you mail the letter on or about June
5 6, or could you have waited a while before
6 you mailed it?

7 A I don't recall.

8 Q Did you receive any kind of acknowledgment
9 from the Commission on Judicial Conduct
10 when you sent the letter?

11 A I may have. I do not recall.

12 MR. MATHISON: Page 137, Line 20.

13 Q Did you talk to a lawyer before you sent
14 the letter?

15 A No.

16 MR. MICHAEL MATHISON: Oh, I'm sorry. What's the
17 line?

18 MR. MATHISON: It's Line 20.

19 A The only lawyer that I know is Greg
20 DeLoach.

21 Q Has he ever helped you in a capacity as a
22 lawyer, as opposed to a friend?

23 A Only as it relates to Town issues. But
24 again, it wouldn't be helping me. It
25 would be discussing issues that related to

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road races or --

Q So he's the person that you would go to if you were hoping to navigate through a Town problem.

A In some cases. It depends on what department it was related to.

Q Did you ask Mr. DeLoach about the substance of anything that you put in this letter about Maureen Coffey?

A I don't understand the question.

Q Did you ask him about some of the facts that we just discussed?

A I don't recall the conversation or any questions that I might have asked as it relates to the letter.

Q Did you believe that simply by virtue of sending this letter, Plaintiff's Exhibit 4, to the Commission on Judicial Conduct, that, somehow, you were protected or immunized from negative consequences?

A That was not a part of my thought process.

Q Did you believe that you could show the letter to anyone with impunity as a result of having addressed it to the Commission on Judicial Conduct?

1 A I -- that wasn't something I thought
2 about.
3 Q It's not something about which you were
4 concerned?
5 A It wasn't something I thought about.
6 Concern would speak to something that I
7 thought about.
8 Q Other than Mr. DeLoach and Captain McSwain
9 and Officer Jolin, with whom I believe you
10 said you discussed the contents of the
11 letter, did you discuss it with anyone
12 else?
13 A Might have been Corporal Wright, but he
14 was referenced in there. And again, I
15 wouldn't use the term 'discussed,' as
16 opposed to sharing the content to confirm
17 what it was -- that it was accurate.
18 Q Did any of these people that you discussed
19 it with agree with your conclusion that
20 Maureen Coffey was biased and prejudiced
21 and partial?
22 A That wasn't the discussion I had with
23 any of those individuals.
24 Q So you didn't tell them that you believed
25 what you believed -- so that you didn't

1 tell them that you believed that she was
2 biased or prejudiced.

3 A I don't believe that was part of any
4 discussion I had with them.

5 Q Were you suffering from any illness or
6 problems in May or June of 2008?

7 A Could you be more specific?

8 Q Were you suffering from an illness of any
9 kind in May or June of 2008?

10 A I don't recall.

11 Q Did you expect that, after this letter was
12 mailed, that Judge Coffey would have to
13 recuse herself in Sea Pines Cases?

14 A I made no assumptions. That's not my
15 role.

16 MR. MATHISON: Page 142, Line 4.

17 Q The Commission ultimately did make a
18 determination on or about October 1. They
19 sent you a letter that said they didn't
20 find any wrongdoing on her part. Isn't
21 that right?

22 A That's correct.

23 Q Do you agree with that or not?

24 A That's not my position or it's not my role
25 to agree or disagree. It's their findings

1 and --

2 Q At the time that you were thinking about

3 and actually preparing this letter to the

4 Commission on Judicial Conduct, did you

5 understand that the proceedings were

6 confidential?

7 A No.

8 Q Where did you get your understanding on

9 whether they were confidential or not?

10 A I did not.

11 Q Did you ask Mr. DeLoach whether they were?

12 A No.

13 Q Did you ask Mr. DeLoach anything about the

14 Commission on Judicial Conduct?

15 A No. I didn't know it existed.

16 Q Well, where did you learn about it?

17 A Mr. DeLoach.

18 Q He told you about it?

19 A Correct.

20 MR. MATHISON: Going on to Page 145, at Line 3.

21 Q The letter that was sent on June 6, 2008.

22 Is that right?

23 A That's the date that's on the letter.

24 Q It was sent some time before June 16th?

25 A Correct.

1 Q So we know that for a fact.
2 A Yes, that's correct.
3 Q Do you know when Judge Coffey actually
4 found out about it?
5 A No.
6 Q If you weren't concerned about getting
7 sued, why did you deed your interest in
8 your house to your wife on June 1st --
9 excuse me -- July 1, 2008?
10 A Medical issues.
11 Q I thought I just asked you whether you had
12 medical issues, Mr. Breed. And you told
13 me you didn't.
14 A I didn't say that.
15 Q What were the medical that caused you on
16 July 1st to quitclaim your one-half
17 interest in your house to you wife?
18 MR. MATHISON: There's an objection here, your
19 Honor. There's an interplay between counsel. I'm not
20 going to read it.
21 THE COURT: Don't. Just skip over it.
22 MR. MATHISON: And I'm going to the next.
23 Q Answer the question, please.
24 A Would you repeat the question?
25 Q What medical issues caused you to

1 quitclaim claim your one-half interest in
2 your house to your wife, on or about June
3 July 1, 2008?

4 MR. MATHISON: More objections.

5 A I prefer not to answer it.

6 Q I hand you this document and ask you to
7 identify it for me, please.

8 A Yes, I believe it's a quitclaim deed.

9 Q Did you sign it?

10 A Yes.

11 Q And is it in favor of your wife?

12 A Yes.

13 Q And does it convey to her a one-half
14 interest in your house, which you had
15 owned with her for in excess -- excuse me
16 -- for nearly 17 years?

17 A Yes.

18 Q And was it recorded at exactly one day
19 after it was signed?

20 A Yes.

21 Q July 2nd?

22 A Yes.

23 Q What was it -- what was the need for speed
24 so that you would sign a deed on the 1st
25 of July, and have it recorded on the

1 2nd of July?

2 A I don't understand.

3 Q Why was it so urgent that you get this

4 deed signed and recorded?

5 A Again, I don't understand. I can't speak

6 to when it was recorded. It's been

7 researched, and we just went to the

8 attorney's office and signed a quitclaim

9 deed.

10 Q Who is we?

11 A My wife and I.

12 Q Why did she go?

13 MR. MICHAEL MATHISON: What was that?

14 MR. MATHISON: Excuse me.

15 Q Why did she need to go?

16 A Or perhaps she was not with me.

17 Q Well, which is it? She was or she wasn't?

18 A I don't recall.

19 MR. MATHISON: I moved the introduction of the

20 quitclaim deed as Plaintiff's Exhibit 5 in the

21 deposition. I'm going to put that in, included with

22 this, if that's all right with you. Quitclaim deed, I'm

23 offering it.

24 THE COURT: I heard that. I'm looking to you. Is

25 there's any objection.

1 MR. HALIO: None, other than we've already put it in
2 the record before.

3 THE COURT: You've already testified to it.

4 MR. MATHISON: At the bottom of --

5 MS. JONES: Just reserve in our objection, your
6 Honor. You know we've already been through all that.

7 MR. MATHISON: At the bottom of Page 148, at Line
8 23.

9 Q And I'm going to ask you again, what was
10 the reason that you executed this hurry-
11 up, quitclaim deed in favor of your wife?

12 MR. MATHISON: There was an objection. There was no
13 answer.

14 Q Why did you sign the deed on July 1,
15 giving your wife the one-half interest
16 that you'd owned 17 years?

17 A Medical reasons.

18 MR. MATHISON: Going to Page 151, Line 13.

19 Q The fact of the matter is, Mr. Breed, you
20 were afraid that you were going to get
21 sued. Isn't that right?

22 A That was never a part of my thought
23 process.

24 MR. MATHISON: And at 152, Line 21.

25 Q I understand. How much did you get for

1 your deed? How much did your wife pay you
2 for your one-half interest?

3 A I don't know.

4 Q You don't know?

5 A No.

6 Q You didn't get any money, right? There's
7 a recited consideration fee of \$10.00.
8 I'm assuming you didn't even get that,
9 right?

10 A Well, if it says \$10.00, I got \$10.00.

11 Q Was there a title search done before this
12 was --

13 MR. MATHISON: Then, there's an interruption,
14 without an objection. And I continued.

15 Q Commissioned. I'm sorry. Was there a
16 title search done before it was
17 commissioned?

18 A I don't know.

19 Q Did you pay for one?

20 A I don't recall.

21 MR. MATHISON: Going to Page 158, at Line 9 -- at
22 Line 8.

23 Q Did you continue to live in the same house
24 with your wife after transfer of the title
25 to her?

1 A Yes.

2 Q And did she subsequently sell that house
3 for \$390,000.00, to a woman named Ann D.
4 Fraley, as trustee?

5 A I believe so.

6 MR. MATHISON: Going to Page 159, at Line 10.

7 Q And then, do you know whether or not your
8 wife purchased the house in which you live
9 now, on or about December 7, 2010, for
10 \$565,000.00?

11 A Yes.

12 MR. MATHISON: Page 160, Line 7.

13 Q Before you sent the letter, which is
14 Plaintiff's Exhibit 4, did you consult
15 with anyone at Community Services
16 Associates?

17 A Consult?

18 Q Yes.

19 A Would you please define consult?

20 Q I believe -- excuse me - talk to.

21 A I believe I provided Cary Kelley a copy,
22 and advised him then.

23 Q I said before you wrote the letter.

24 A Oh. I don't believe so.

25 MR. MATHISON: Continuing at Line 18.

1 MS. JOLLEY: We have 160, from 18 to 25.

2 MR. MATHISON: I'm continuing, but that's what I was
3 about to do.

4 MS. JOLLEY: Okay.

5 MR. MATHISON: Continuing, Mikey, from Line 18.

6 Q Did you supply him with a copy of the
7 letter before or after you mailed the
8 letter?

9 A Before.

10 Q Did you supply a copy of the letter to
11 anyone else associated with Community
12 Services Associates, including, without
13 limitation, folks who were on the Security
14 Committee?

15 A I don't recall, but I don't believe so.

16 Q Did Mr. Kelley authorize you to send the
17 letter?

18 A I don't -- it was not authorization or
19 non-authorization. That was not part of
20 the conversation.

21 Q Did Mr. Kelley object to your sending the
22 letter?

23 A No.

24 Q Did you and Mr. Kelley discuss the
25 contents of the letter?

1 A I don't recall.

2 Q How long after submitting a copy of the

3 letter to Mr. Kelley did you wait before

4 you mailed it?

5 A I don't recall.

6 Q Is that what could account for the missing

7 ten days?

8 A I don't know. I don't know that they're

9 missing.

10 Q The time between the date on your letter

11 --

12 A Right.

13 Q -- and the date of receipt.

14 A I understand. But I have no idea.

15 Q Did Mr. Kelley ever make any statements or

16 suggestions about the contents of your

17 letter?

18 A Not to my recollection, no.

19 Q Did Mr. Kelley ever express any misgivings

20 about your writing it?

21 A No.

22 Q Did you tell Mr. Kelley that, before

23 mailing, you had discussed the contents of

24 the letter with other people, that is,

25 with Mr. DeLoach or Mr. McSwain or Mr.

1 Jolin, or as I think you said, Corporal
2 Wright.
3 A I don't recall.
4 Q Did you tell Mr. Kelley that you were
5 going to deliver a copy of the letter to
6 Mr. DeLoach after you finished it?
7 A No.
8 Q Do you know whether it was necessary for
9 you to obtain approval or authorization
10 from someone, from someone higher up in
11 your organization, before you sent this
12 letter?
13 A No.
14 Q Did you interpret Mr. Kelley's silence, if
15 that's what it was, after delivering this
16 letter, as acquiescence to whatever you
17 were doing?
18 A I made no interpretation one way or
19 another.
20 Q Well, if he told you not to send it, would
21 you have stopped?
22 A I would have stopped.
23 Q Did it occur to either one of you that you
24 might want to present it to the board of
25 directors and see whether they were

1 interested in having the letter sent?

2 A I can't speak for what he thought or his

3 thought process. But I gave it my direct

4 report.

5 Q You did what, sir?

6 A I gave it to my direct report, which was

7 Cary Kelley.

8 Q That direct report means the next in your

9 chain of command? Is that right?

10 A Yes.

11 Q Are you telling me that you don't know

12 what he did with it after he got it?

13 A Correct.

14 Q Was it your understanding --

15 MR. MATHISON: And I'm at 164, Line 20.

16 Q Was it your understanding that you had the

17 authority to do what you did?

18 A That wasn't part of my thought process.

19 I'm a citizen of Beaufort County, as well

20 as the director of security for Sea Pines.

21 Q As a citizen of Beaufort County, was it

22 necessary to write on CSA administrative

23 office stationery?

24 A Was it necessary?

25 Q Yes, sir.

1 A No, it was not necessary.

2 MR. MATHISON: At Line 18.

3 Q Well, did you have authority to write the

4 letter, in your own opinion?

5 A I can't answer that. I just don't -- I

6 have no reason to -- I'm unaware of

7 anything that would keep me from writing a

8 letter.

9 MR. MATHISON: On Page 166, Line 2.

10 Q Well, didn't you write the letter -- well,

11 didn't you write a letter on private

12 stationery?

13 MR. MATHISON: I think that one's bad.

14 MR. HALIO: No, it's not, but can you just read it.

15 MR. MATHISON: Pardon?

16 MR. HALIO: Can you just read it?

17 Q Didn't you write a letter on private

18 stationery instead of Community Service

19 Associates stationery?

20 A I was writing it as the director of

21 security.

22 Q And my question is, did you have the

23 authority to do that from your employer,

24 Community Services Associates?

25 A Again, I don't understand the question.

1 Do I have the authority? I'm unaware of
2 any authority that is required to write a
3 letter.

4 MR. MATHISON: At Line 17 on the same page.

5 Q Why did you ultimately share the contents
6 of this letter with the board of directors
7 of Community Services Associates?

8 A I did not.

9 Q Wasn't the letter, in fact, disseminated
10 at the meeting that was held on June 24,
11 2008?

12 A What meeting?

13 Q Meeting of the board of directors.

14 A If it was, I was not in attendance.

15 Q Mr. Breed, if you hadn't -- didn't have to
16 get the approval in advance to send the
17 letter, why did you share it with them
18 after the fact?

19 MR. MICHAEL MATHISON: Object to form. Sorry.

20 A Share it with who?

21 Q The board.

22 A I did not share it with the board.

23 Q Well, who did?

24 A I don't know.

25 MR. MATHISON: That concludes that portion of

1 the deposition, your Honor. Going to the second portion
2 now.

3 THE COURT: It'll probably be much shorter.

4 MR. MATHISON: It is, but --

5 THE COURT: Let's go. Let's finish up this portion
6 of it.

7 MR. MATHISON: Have you got the second portion,
8 Mike? Question -- and again, this is Mr. Breed.

9 THE COURT: Before we start this, if you don't mind
10 -- ladies and gentlemen, are you all all right to
11 continue? Everyone's okay? Okay. And if anyone wants
12 to stand up and take stretch, you're welcome to. But you
13 all are all right to go on? Okay. I just would like to
14 get this one done today. Thank you.

15 All right, Mr. Mathison, why don't you go ahead. We
16 can stretch and listen.

17 MR. MATHISON: Okay. Again, this is Mr. Breed on
18 the following day. At Line 6, Mike, on Page 6.

19 Q Also, yesterday, I represented to you that
20 the copy of the letter dated June 6, 2008,
21 that I asked you to identify, which has
22 been marked as Plaintiff's Exhibit 4, was
23 substantially identical to the document
24 that your lawyers produced as having come
25 from your file. I'm handing you this

1 document, which I represent to you, is
2 from your production, and I ask you
3 whether or not it is in fact, identical,
4 including the signature on the one that
5 was identified yesterday.
6 A It appears to be.
7 Q Does the signature look identical to you
8 as though each is a copy of the same
9 original, or at least of the same copy?
10 A It appears to be.
11 MR. MATHISON: At Line 25.
12 Q Now, do you know whether you have
13 produced, in response to the plaintiff's
14 production requests, any document, other
15 than the one that bears your signature,
16 that we just looked at?
17 A I don't understand.
18 Q Have you produced an unsigned copy of your
19 letter dated June 6, 2008?
20 A I don't recall. I don't --
21 Q Have you produced any draft or notes or
22 other document of this letter in a
23 preliminary form? That is to say, either
24 not signed, or not completed, or with
25 innerlineations or anything like that?

1 A Not that I recall.

2 Q Do you have such a document?

3 A Not that I am aware of.

4 MR. MATHISON: Go to Page 9, Line 3.

5 MS. JOLLEY: Page 8, Line 2.

6 MR. MATHISON: I'm sorry, Kelly. I need your -- I'm

7 sorry. I need your counter.

8 MS. JOLLEY: Here. Do you want to switch copies?

9 THE COURT: I've got one right here, too.

10 MR. MATHISON: I thought it was going too smoothly.

11 MS. JOLLEY: There's another one.

12 MR. MATHISON: Why don't you give me that one.

13 MS. JOLLEY: Well, that's my copy.

14 MR. MATHISON: How many of them have you got? If

15 you've got it --

16 MS. JOLLEY: Where's my Volume 2, if you're taking

17 this.

18 MR. MATHISON: I don't think I have your copy.

19 MS. JOLLEY: I gave you both of them. I apologize.

20 I gave you both copies. It's in that deposition, the

21 tabbed one.

22 MR. MATHISON: Give me the counter.

23 MS. JOLLEY: It's right here.

24 MR. MATHISON: Here.

25 MS. JOLLEY: Here. I'll take this one and you take

1 that one.

2 MR. MATHISON: Okay. Okay, Mike, let's go to --

3 MR. MICHAEL MATHISON: Page 8.

4 MS. JOLLEY: Line 2.

5 MR. MATHISON: Excuse me just a second. What color

6 is yours? We switched.

7 MS. JOLLEY: Yeah. We're here at Page 8, Line 2.

8 MR. MATHISON: I understand, but I --

9 MS. JOLLEY: Green. Green. The yellow should be --

10 MR. MATHISON: Okay. At Page 8, Line 2.

11 Q Do you know what a security bridge report

12 is?

13 A Yes.

14 Q All right. Well, tell me what it is.

15 A Just a snapshot synopsis of items of

16 general interest.

17 Q Synopsis?

18 A Yeah.

19 Q A summary.

20 A Yes.

21 Q And why did you do a bridge report?

22 A I think my description just answered that.

23 It's a snapshot. It's a summary of items

24 of general interest.

25 Q Do you do it because the security

1 committee doesn't meet every month?

2 A I don't know the genesis of it, but --

3 Q Does the term bridge connote that you're

4 basically filling in the blanks between

5 one meeting and the next meeting?

6 A I can't speak to the definition.

7 Q What are you bridging?

8 A I -- I really can't offer an answer.

9 Q Who prepares the bridge reports?

10 A Those are a compilation of the contents

11 during the month, and then it is pared

12 down to a digestible amount by me.

13 Q And then disseminated --

14 MR. MATHISON: That says no whom, but it should be

15 by whom. Or to whom.

16 A Cary Kelley?

17 Q To whom?

18 A Cary Kelley.

19 Q Does he then disseminate the bridge report

20 to the security committee?

21 A I don't know.

22 Q I'm handing you this document, which is

23 dated June 11, 2008, and ask if you

24 prepared that?

25 A It appears so.

1 Q And when you said you delivered a copy of
2 your letter to Mr. Kelley, is this the
3 report with which you delivered that
4 letter?
5 A I don't believe so.
6 Q Would you look at the last paragraph on
7 the second page. That is, of the report.
8 A Uh-huh.
9 Q Would you read that into the record,
10 please, slowly.
11 A The last -- the entire paragraph?
12 Q Please.
13 A 'This security department has, is, and
14 will always be diligent as proactive and
15 reactive services and resources to protect
16 the residents and businesses in this
17 community. Along with these
18 responsibilities come various constraints
19 that must be adhered to, and parameters
20 that must be followed. What one would
21 like to do, and what the law allows, are
22 many times in conflict. As well, what one
23 may discuss in public would be
24 counterproductive and imprudent.'
25 'That said, I am attaching a letter

1 that was sent to the South Carolina
2 Judiciary Complaint Commission, that may
3 speak to a few of the hurdles that we have
4 faced concerning a recent but negated
5 burglaries, peeping Tom reports.'

6 Q Does that paragraph refer to your letter
7 dated June 6, 2008?

8 A It refers --

9 Q That's been marked as Plaintiff's Exhibit
10 4.

11 A It refers to the letter.

12 Q And my question, again, is, is this the
13 medium, is this the vehicle, with which
14 you sent the letter that has been marked
15 as Plaintiff's Exhibit 4 to Mr. Kelley?

16 A I don't recall.

17 Q Well, did you send -- other than this, did
18 you send it before? Did you send it
19 after?

20 A I don't recall.

21 Q But you definitely sent it with this
22 transmittal?

23 A I do not recall.

24 Q Well, it says so, sir, and your
25 handwriting indicates that it is coming

1 with a report; doesn't it?

2 A Well, it's not my handwriting. But again,
3 sir, I don't recall.

4 Q So you don't know whether you sent it to
5 him. Is that your testimony?

6 A I don't know that I sent him what?

7 Q The letter dated June 6, 2008.

8 A I did give them the letter.

9 Q Okay. You just don't know whether you did
10 it with this memorandum or not.

11 A That is correct.

12 Q Do you know what he did with this
13 memorandum, and your letter -- and your
14 letter, after he got it?

15 A No.

16 Q The only copy we have of your letter is
17 dated June 6th, and it's signed. Isn't
18 that right?

19 A I don't know what you have in your
20 possession, and that's the one I just
21 looked at.

22 Q Do you have anything other than the one
23 we just looked at?

24 A Not that I am aware of, sir.

25 Q Specifically, do you have an unsigned

1 copy?

2 A No, sir, I do not believe so.

3 Q At the time that you transmitted your

4 letter to Mr. Kelley, did you tell him

5 that you had already sent it?

6 A I do not believe so.

7 Q Had you already sent it?

8 A At what time, sir?

9 Q When you delivered the letter to Mr.

10 Kelley.

11 A No, sir, I did not.

12 Q Had you already signed and dated it?

13 A I do not recall.

14 Q Is there a copy of the letter that has

15 also been furnished -- is there a copy of

16 the letter that has not been furnished

17 because it no longer exists?

18 A I do not recall.

19 Q Have you destroyed any copies of the

20 letter?

21 A No.

22 Q You can't identify the memorandum that the

23 so-called bridge report as being prepared

24 by you?

25 A The final bridge report, I believe, was

1 prepared by me.

2 Q Or prepared for you with your

3 authorization? Which?

4 A I don't recall. I believe, but I don't

5 recall the evolution of this particular

6 report.

7 Q Well, who works them up if you don't?

8 A I don't understand what you mean by 'works

9 them up.'

10 Q Actually puts together the information

11 that goes in them.

12 A Well, again, there -- it's a compilation

13 of a period of time, activity of our

14 security operation. And then it is pared

15 down to a digestible amount of items of

16 interest.

17 Q I understand that. Who does that?

18 A I do the paring down.

19 Q Did you, in fact, put the confidential

20 last paragraph into this memorandum?

21 A I do not recall.

22 Q Would the fact that you used the term

23 confidential, indicate that, at the time

24 you wrote the letter, you believed that

25 its contents were, in fact, confidential?

1 A No. I don't -- I can't speak to what my
2 thought process was at that time.

3 Q Other than the fact that you put in bold
4 print, all caps, confidential, is that
5 what you're saying?

6 A No. I just said I could not recall my
7 thought processes at the time.

8 MR. MATHISON: And at this juncture, your Honor, we
9 marked the bridge report dated June 11, 2008, which is
10 already put in the record.

11 Q And if I understand correctly, if you had,
12 in fact, mailed your letter of June 6 on
13 the date it says, it would have already
14 gone by the time this memorandum, which is
15 Plaintiff's Exhibit 8, was prepared.

16 A I have no way of knowing that, sir.

17 Q Well, if it has a different date on it --
18 it's June 11, 2008. Isn't that correct?

19 A That's what the date is.

20 Q Okay. Your letter didn't stop there;
21 did it? It didn't stop with Mr. Kelley.

22 A I do not know.

23 Q You don't know whether your letter was
24 published further?

25 A No, sir.

1 Q Did you attend a Community Services
2 Associates meeting held on June 6, 2008?
3 June 24, 2008.
4 A Can you be more specific?
5 Q I asked you a question, which was, did you
6 attend a meeting on June 24, 2008?
7 A I do not recall.
8 Q If, in fact, you're listed as being
9 present at such a meeting in the minutes,
10 would you consider that would be a pretty
11 strong indication that you were?
12 A I can't speak to that.
13 Q I'm handing you this document, which
14 purports to be the minutes of the meeting
15 prepared on June 24th, with an attached
16 document to it, and ask if you can
17 identify those for me, please.
18 A No, sir, I cannot.
19 Q You're saying that you can't identify the
20 minutes of the organization for which you
21 work?
22 A I cannot identify this particular
23 document. No, sir, I cannot.
24 Q Why is that?
25 A I'm unfamiliar with it. I don't know

1 anything about this.

2 Q Don't you review the minutes periodically,

3 sir?

4 A It appears to be, or it states, it's board

5 minutes. I don't review minutes.

6 Q Who prepares the minutes for the Community

7 Services Associates board?

8 A I don't know, sir.

9 Q You don't know who prepares the minutes?

10 A No, sir.

11 Q Would you look at Page 2?

12 A Yes, sir.

13 Q Read what Item D says slowly enough for

14 the court reporter can take it down.

15 A 'Security issues. A copy of a

16 confidential letter from Mr. Breed was

17 distributed at the meeting. The

18 correspondence is in connection with a

19 recent case in Sea Pines. Discussion was

20 held. An acknowledgment of receipt had

21 been received, but not a formal response.'

22 Q All right. Did you participate in that

23 conversation?

24 A No, sir, I did not.

25 Q Who released your letter to all of the

1 people at the meeting?

2 A I do not know.

3 Q Is there, in fact, attached to this

4 letter, a copy of your letter dated --

5 MR. MATHISON: It should be minutes.

6 Q -- attached to these minutes, a copy of

7 your letter dated June 6?

8 A It appears so, yes.

9 Q And what is it in bold print on the top

10 right of it?

11 A 'Confidential. Do not disseminate.'

12 Q Why was that put on there?

13 A I do not recall.

14 Q Do you know whether the letter was

15 distributed in advance of the meeting or

16 only at the meeting?

17 A I do not know.

18 Q Do you know whether the packages were

19 delivered to Community Service Associates

20 board members, typically, two days in

21 advance of each meeting?

22 A I'm unaware of the process, sir.

23 Q Do you customarily attend Community

24 Service Associates board meetings?

25 A No, sir. I do now, but I did not at that

1 time.

2 Q Do you have a recollection of attending
3 one or more during 2008 or '9?

4 A I did not.

5 Q Looking at the roll call of people at
6 the --

7 MR. MATHISON: That's -- forgive me. That's not on
8 there. That's out. Moving to Page 20, at Line 16.

9 Q Have you ever seen the document that I've
10 just presented to you before?

11 A I do not recall ever seeing that document.

12 Q Have you ever seen your copy of the
13 letter, which is attached, without your
14 signature on it?

15 A I don't understand.

16 Q If you look at the letter which is
17 attached, it's the second attachment to
18 this.

19 A Uh-huh.

20 Q Meeting minutes. Is there a signature on
21 it or not?

22 A No, there's not.

23 Q And I'm asking you, do you recall having
24 seen a version of your letter which is
25 unsigned?

1 A I don't recall.

2 Q Have you ever seen a version of your
3 letter which has, in large bold print, on
4 the front page, 'Confidential. Do Not
5 Disseminate?'

6 A I do not recall.

7 MR. MATHISON: Like the CSA meeting minutes for June
8 24, they're marked. Those have already been put in the
9 record, your Honor, through Mr. Birdwell. The bottom of
10 that page, Mike, Line 21.

11 Q Are you quite certain that you did not
12 attend this meeting, Mr. Breed?

13 A I do not recall that I ever attended that
14 meeting.

15 Q And I ask, does that mean that you believe
16 that you never went, or you just can't
17 really recall whether you went or not?

18 A I believe I never went to that meeting.

19 Q Okay. Was that anything you and Mr. Kelley
20 had discussed in advance, your not
21 attending?

22 A It was something that would not have been
23 discussed, to my recollection. I had
24 not routinely attended these meetings.

25 Q And if I understand your testimony

1 correctly, before you sent the letter, you
2 didn't get approval of the CSA board.
3 A I did not seek approval.
4 Q Well, you didn't seek it, and therefore,
5 you didn't get it. Isn't that right?
6 A I did not seek the approval.
7 Q Okay. So what was the point of giving it
8 to them after you had already let the
9 horse out of the barn?
10 A Giving it to whom, sir?
11 Q The CSA board.
12 A I never gave it to the CSA board.
13 Q You don't know what Mr. Kelley was doing in
14 giving it to the board?
15 A I don't know what he did.
16 Q Well, the only person to whom you gave it,
17 according to your testimony, was Mr.
18 Kelley. Unless, of course, you're telling
19 me that Mr. DeLoach gave it to them.
20 You're not telling me that; are you?
21 A No, I'm not.
22 Q And you're not telling me that Mr. McSwain
23 gave them to them; are you?
24 A No, I'm not.
25 Q So wouldn't one deduce from your testimony

1 that it was either Mr. Kelley or no one?

2 A I've tried to give you an honest answer. I

3 can't deduce what Mr. Kelley may or may

4 not have done.

5 Q Did he discuss with you the fact that he

6 was going to release the information to

7 the CSA board of directors?

8 A Not that I recall.

9 Q And did the CSA board of directors include

10 people that had no affiliation with any of

11 the entities that comprised CSA, meaning,

12 Sea Pines Resort and Community Service

13 Associates, and/or the Association of Sea

14 Pines Plantation Property Owners?

15 A I can't speak to their affiliation.

16 Q What was the point of giving the letter to

17 these people?

18 A I didn't give the letter to those people.

19 Q I didn't ask you that. I said, what was

20 the point?

21 A I can't speak to that.

22 Q Yesterday, we discussed your having

23 transferred the title to your house --

24 MR. MATHISON: That's not in.

25 MS. JOLLEY: Your designation ends at Line 15.

1 MR. MATHISON: I understand. Let's go to Page 25,
2 Line 23.

3 Q The letter was released by someone to the
4 Community Services Associates Board. Do
5 you know how many people were shown the
6 letter after its release?

7 A No, sir.

8 Q Do you know whether everybody on this list
9 received a copy of the letter, that is to
10 say, approximately 14 people?

11 A No, sir, I can't.

12 MR. MATHISON: At Line 16.

13 Q I'm handing you this letter, which I
14 believe is what you received from the
15 Commission on Judicial Conduct. It's a
16 letter dated October 1, 2008, addressed to
17 you. Is this what we discussed yesterday,
18 the letter indicating that the Commission
19 was dismissing your complaint against
20 Judge Coffey?

21 A Yes, sir, it appears so.

22 MR. MATHISON: At this point, your Honor, this was
23 marked and introduced as a plaintiff's exhibit. It's
24 already in the record.

25 Q When you received that report or letter,

1 Mr. Breed, what, if anything, did you do
2 with it?
3 A I don't recall.
4 Q Did you take a copy and deliver it to Greg
5 DeLoach at Town Hilton Head Island?
6 A I don't believe so, but I don't recall.
7 Q Did you take a copy and deliver it to Toby
8 McSwain of the Beaufort County Sheriff's
9 office?
10 A I do not think so.
11 Q Did you put up a copy in the security
12 offices so that the people that worked for
13 you could see what the outcome of your
14 complaint was?
15 A No, I did not.
16 Q Did you give a copy of it to Cary Kelley so
17 that he knew what the outcome of the
18 complaint was?
19 A I don't recall, but I believe I shared that
20 with him.
21 Q You shared it, meaning you gave him a copy
22 or you shared the outcome?
23 A I do not recall.
24 Q Did Mr. Kelley ever take Plaintiff's
25 Exhibit 10, which is the letter of October

1 1st dismissing the complaint, and
2 distribute it to the board of Community
3 Services Associates?

4 A I don't know what Mr. Kelley did.

5 Q Did you ever do it?

6 A No, I did not.

7 MR. MATHISON: Line 2 at Page 21 -- 29.

8 Q Were you interested in people that you had
9 informed about your letter knowing that
10 Judge Coffey had been exonerated?

11 A I made Mr. Kelley aware of the letter. I
12 made him aware of the findings.

13 Q But you didn't bother to talk to your
14 friend Mr. DeLoach; did you?

15 A I don't recall.

16 Q And you didn't talk to your friend Mr.
17 McSwain; did you?

18 A I don't believe so.

19 MR. MATHISON: Going to Page 33, Line 18.

20 Q Was your deposition taken in the case of
21 Robert Klippel and his sister Jennifer
22 Klippel versus Ralph Dupps, Jr.?

23 A Yes, sir.

24 Q And was it taken on or about February 18,
25 2009?

1 A Yes, sir.

2 Q And have I handed you a copy of the first

3 48 pages of that deposition?

4 A Yes, sir.

5 Q And yesterday, you indicated that you had,

6 in fact, given a deposition in this case,

7 and that you had also testified at the

8 trial. Is that correct?

9 A I believe so.

10 Q Do you know the purpose for which the

11 deposition was introduced at the trial, if

12 you testified at the trial?

13 A No, sir.

14 Q Can you identify what you've got in your

15 hand as your deposition, or not?

16 A It appears to be.

17 MR. MATHISON: That was marked as an exhibit in the

18 deposition, but it's been ruled out in this case. But as

19 I understand it, the evidence is remaining in.

20 MR. HALIO: Objection.

21 MR. MATHISON: Up until -- excuse me just a second.

22 It's -- forgive me. 33 through 36 is, I believe, in. Is

23 that not correct, Kelly?

24 MS. JOLLEY: I had that it was ruled out. I thought

25 it was 36 through 41, and then 42 through 43 or object to

1 ruled out. 33 through 36?

2 MR. MATHISON: What I have is -- where you've got --
3 I see where your objections are, but I'm -- the objection
4 that you've got here starts at Page 36.

5 MR. HALIO: I've got the notes. 33 is canned,
6 according to the notes.

7 THE COURT: And you all have my copies.

8 MR. HALIO: That's yours.

9 MR. MATHISON: That's correct. And I'm still -- I
10 haven't gotten to 36 yet. But I do remember you did not
11 want the deposition in, and it was marked at that
12 juncture, and it's not in the case. But there are
13 questions asked about it.

14 THE COURT: Okay. Well then, it's out. And again,
15 I can't look at it, because you all have my copy of the
16 deposition, so.

17 MR. MATHISON:

18 Q Yesterday I think you testified that you'd
19 given your deposition in four cases. Is
20 that right?

21 A I don't recall.

22 Q Did you tell me that you'd given a
23 deposition in the turkey case, which is
24 what we've got right here?

25 A Yes, sir.

1 Q And didn't you also say that you'd been
2 involved in a bicycle case?
3 A Yes.
4 Q And a jump rope case.
5 A It was a rope case, yes.
6 Q And an employment case.
7 A Correct.
8 Q Isn't it true that you've actually had your
9 deposition taken between 15 and 30 times?
10 A I don't recall. That's deposition
11 testimony.
12 Q I'd ask you to turn to Page 11 of the
13 deposition.
14 A Yes.
15 Q And read Lines 15 through 25.
16 A Question: All right. Have you ever given
17 a deposition before?
18 Yes, I have.
19 How many times?
20 I'd have to hazard a guess,
21 15, 20, maybe 30.
22 And what types of cases have you
23 given your deposition? Criminal?
24 Civil?
25 MR. MATHISON: At Line 6.

1 Q Now, sitting here, would you say it's
2 closer to four, or closer to 30, that
3 you've given your deposition?
4 A I don't recall. It's a pretty broad span
5 of time.
6 Q So you don't know whether it's four or
7 30.
8 A Correct.
9 Q But it's more than -- it's at least one
10 more; isn't it?
11 A I don't recall.
12 Q So you don't know whether it's four or
13 30, but it's at least more than -- more
14 than -- at least one or more; isn't it?
15 A I don't recall.
16 Q Well, have you been involved in any
17 lawsuits personally?
18 A Yes.
19 Q And this one, obviously, is one of them.
20 Is that correct?
21 A Correct.
22 Q Have you been a plaintiff in a lawsuit that
23 you can recall?
24 A Yes.
25 Q Specifically, have you been a plaintiff in

1 a slander action?

2 A I don't know how it was filed, but I have
3 been a plaintiff in an action.

4 Q I'm directing your attention to Page 13 of
5 the deposition.

6 A Yes.

7 Q And I ask that, if you would read slowly
8 enough so that the court reporter can get
9 it, the questions and answers that appear
10 on Page 1. Excuse me, Line 1 through Line
11 24.

12 A 'How many lawsuits have you personally been
13 involved in?

14 One. Well, when you say me, as a
15 plaintiff, or just a defendant?

16 Either one. Two.

17 Okay. What was the nature of those
18 lawsuits?

19 One, I filed an action against an
20 individual who slandered me.

21 All right. And what's the nature of
22 the other one?

23 I'm currently involved in a suit of a
24 similar nature.'

25 MR. MATHISON: Okay. Just stop right there, Mike.

1 And here follows details of the slander lawsuit, your
2 Honor, which we're keeping --

3 THE COURT: Okay.

4 MR. MATHISON: I have to --

5 THE COURT: Mr. Matheson, when there's been portions
6 that are cut or there's objections, you don't speak them;
7 you don't talk them; you just keep going past them.

8 MS. JOLLEY: I believe the rest of that's out until
9 Page 23, Line 20.

10 MR. MATHISON: May it please the Court. I believe
11 that you indicated that I could state, not in this
12 detail, that the -- that the case was --

13 MR. HALIO: Can we --

14 THE COURT: Okay. No. What we're going to do is --
15 you've read the portion of what you've got. You're not
16 going to just give a statement.

17 MR. MATHISON: May we approach?

18 THE COURT: Sure.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS. PRESENT:

21 THE COURT, MR. MATHISON, MR. HALIO,

22 MS. JOLLEY.

23 BACK ON THE RECORD.

24 CONTINUE MR. MATHISON READING

25 DEPOSITION OF GEORGE F. BREED, JR.:

1 MR. MATHISON: Go to -- go to Page 43, at Line 20.

2 Q Yesterday, we had some discussion about

3 your having talked to Judge Herring. I

4 believe that you all went to Truffles.

5 Is that right?

6 A I believe that's correct.

7 Q Did you talk to Judge Herring on the phone

8 when the need arose?

9 A When what need arose?

10 Q The need to communicate between your office

11 and the court, or the court and your

12 office.

13 A I believe I have spoken to Judge Herring on

14 the phone.

15 Q And if I understand correctly, you knew

16 Judge Finger well, enough that, either

17 before or after he was on the Bench, you

18 had him represent you. Is that right?

19 A I had Terry Finger represent me as an

20 attorney.

21 Q So you had no problem getting in touch with

22 him, if and when you needed to talk to

23 him. Is that right?

24 A He's in the phone book.

25 Q If you had a problem with Maureen Coffey or

1 her family, why didn't you simply call on
2 the phone and discuss it?
3 A Sir, that's not my role.
4 Q Wouldn't that have been your role if it had
5 been Mr. Herring or if it had been Terry
6 Finger?
7 A That role doesn't change.
8 Q What's the difference between Judge Coffey
9 and Judge Finger and Judge Herring in
10 terms of calling them on the telephone
11 and say, look I got a problem; can you do
12 something about this?
13 A That depends on what the problem is and
14 what venue it -- it's involved in.
15 Q But the fact is, you never called Maureen
16 Coffey and told her that you had a problem
17 with her; did you?
18 A No, I did not.
19 Q And you didn't call her and tell her that
20 you had a problem with her mother; did
21 you?
22 A No, I did not.
23 Q And you didn't call her and tell her that
24 you had a problem with her father, Dr.
25 Coffey.

1 A I didn't know her father.
2 Q Well, he's featured in your letter of June
3 6, 2008, isn't he?
4 A He is.
5 Q For his participation in an event that you
6 described in 2004.
7 A He is mentioned in there, correct.
8 Q It just strikes me, and correct me if I'm
9 wrong, that, if you were this concerned,
10 why didn't you just ask the person that
11 you felt was causing you the problems?
12 A That is not my role, Mr. Mathison. That's
13 the purview of the Judicial Review Board.
14 Q Yesterday, I asked you whether you tape-
15 recorded telephone conversations. Isn't
16 that correct?
17 A I don't recall the exact question, but I
18 believe so.
19 Q Isn't it a fact that you tape-recorded a
20 telephone conversation with Judge Herring
21 while he was a sitting judge?
22 A I believe I remember that.
23 Q And isn't it a fact that you did not
24 disclose to Judge Herring that you were
25 tape-recording the telephone conversation

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with him?

A I don't recall that.

Q Would you please go to Page 36 of the deposition?

A Okay.

Q Why did you tape-record Judge Herring?

A I don't recall the thought process was at that time.

Q Why did you not tell Judge Herring that you were tape-recording him?

A Again, I do not recall the thought processes or the genesis of that.

Q Would you look at Page 37 and read from Line 1 to Line 9?

A Okay. 'Why did you tape the one with Jim Herring?'

'If memory serves me, it was because of the concern and the request for further, stronger action as it relates to this, the involvement of other agencies, and a phone call from the Court requesting a criminal case number. I thought it was prudent to document that conversation.'

'Did you tell Judge Herring that you were taping the conversation?'

1 'No, I did not.'

2 'What kind of device do you use to

3 tape telephone conversations?'

4 'It's a computer database.'

5 'And so, how do you determined

6 what conversations to tape and what not to

7 tape?'

8 'I just explained what determined

9 this one.'

10 'But I'm talking about generally.'

11 'That would depend on circumstances.

12 I can't answer that unless it's a specific

13 incident.'

14 'What percentage of your telephone

15 conversations do you tape?'

16 'Mine?'

17 'Yes.'

18 'Minimal.'

19 'How long do you keep the tape--

20 recordings?'

21 'Until it refreshes itself. That can

22 vary.'

23 Q What was unique about your conversation

24 with Judge Herring that made you want to

25 tape-record it, as opposed to other

1 conversations that you don't tape-record?

2 A I don't recall anything beyond this -- this
3 deposition as it relates to that.

4 Q Do you make a habit of tape-recording
5 sitting judges without telling them that
6 you're doing it?

7 A No.

8 Q And it's true --

9 MR. MATHISON: I'm at 13, Mike.

10 MS. JOLLEY: No.

11 MR. MATHISON: You want that in?

12 MS. JOLLEY: Page 49 through 12, Lines 7 through 12.

13 MR. MATHISON: Okay.

14 Q Do you know whether it's lawful to do it?

15 A To do what, sir?

16 Q To tape-record a judge or anyone, without
17 telling them that you're doing it?

18 A I believe in this jurisdiction it is.

19 Q And it's true, is it not, that, although
20 you didn't tape-record all of your own
21 conversations --

22 MS. JOLLEY: That was it. That was it. It ended at
23 Line 12.

24 MR. MATHISON: Ours didn't. You're over me on Line
25 49. Mine goes to all the way through Page 50.

1 MS. JOLLEY: I apologize.

2 MR. MATHISON: I start again at 49, 13, Kelly.

3 Q And it's true, is it not, that, although
4 you didn't tape-record all of your
5 conversations as a matter of routine, your
6 deputies, during this period, were taping
7 their conversations?

8 A They had no control over whether it was or
9 it wasn't.

10 Q Would you look at Page 38, specifically, at
11 Line 11. The question that starts there,
12 would you read that, and then through Line
13 14.

14 A 'Do you require any of your officers tape
15 their telephone conversations?'

16 'All phones in security, in most
17 cases, are automatically recorded.'

18 'So you do not tape some of yours?'

19 Q And then it says, 'I do not tape most of
20 mine, but every officer's telephone
21 conversation is recorded.' Isn't that
22 right?

23 A I do not know.

24 Q Isn't that what the testimony says, sir?
25 It's automatically recorded. Isn't that

1 what you said?

2 A They're varying -- there are some variables
3 that place some of -- all of the hardware
4 might not be hooked up. The database
5 might not be working. I can't speak for
6 what happened at a particular span of
7 time.

8 Q Yesterday, I asked you whether you had an
9 I.T. manager. Is that right?

10 A I don't remember the terminology you used,
11 or the phrase of the question.

12 Q When was the I.T. -- who was the I.T.
13 manager at the time that you gave this
14 deposition?

15 A For CSA, I believe it was Tracey McNeill
16 functioning in that capacity.

17 Q That was in 2009. Is that correct?

18 A I couldn't speak to the exact date.

19 Q Well, at the time that you gave the
20 deposition, was it in 2009?

21 A Okay.

22 Q Was she the I.T. manager in 2008?

23 A For CSA?

24 Q Uh-huh.

25 A I don't recall.

1 Q But she could have been.
2 A I don't even know if we had one, but I
3 can't speak to that.
4 Q Did she have a password access to the
5 computers that were being used on-site by
6 your officers?
7 A I do not know.
8 Q Did she have password access to your
9 computer?
10 A My personal computer?
11 Q Yes, sir.
12 A No.
13 Q Did you, in 2008 and 2009, have on-site
14 access, both to a personal computer and a
15 corporate or business computer?
16 A No.
17 Q So you had a single computer. Is that
18 correct?
19 A I believe so.
20 Q Did you have an email address, other than
21 SecureGate?
22 A I don't recall, but I don't believe so.
23 Q Have you produced any documents that
24 purport to be your email that don't have
25 the SecureGate address on them?

1 A I don't know without looking at all of
2 them. I don't believe so.
3 Q Have you had another email address than
4 SecureGate since 2008?
5 A I don't believe so.
6 Q Who purchased computers when the computers
7 were replaced?
8 A Which computers?
9 Q Computers at CSA.
10 A Specifically, what area?
11 Q Did Ms. McNeill purchase computers, or did
12 you purchase them?
13 A Again, I can't speak to which computer,
14 what time frame, or what location.
15 Q During 2008 and 2009.
16 A I have no idea.
17 Q Did anyone other than you and Ms. McNeill
18 purchase computers?
19 A I don't recall.
20 Q When, if ever, have you changed your server
21 at Sea Pines Security?
22 A I don't understand the question.
23 Q Do you operate on a network, sir?
24 A Do I, or does security?
25 Q Does security?

1 A I believe they do.
2 Q Don't they have an in-house server?
3 A I believe they do.
4 Q Has the server been changed since 2008?
5 A I have no idea.
6 Q So I'd have to ask somebody who knows about
7 those things. Is that what you're saying?
8 A Yes.
9 Q Would that be Ms. McNeill?
10 A I -- that might be an option.
11 Q Well, if not she, who else has the
12 prerogative to make that kind of decision?
13 A I do not know.
14 Q If your server has not been changed, isn't
15 it a fact that you can recover all of your
16 email from 2008?
17 A I do not know.
18 Q Have you made an effort to recover your
19 email in order to respond to the
20 plaintiff's request for production?
21 A Have I made an effort to recover my email?
22 Q Yes, sir.
23 A Yes, sir, I have.
24 Q Is your email on the server that provides
25 service for the rest of the network at Sea

1 Pines Security?

2 A I don't believe it is.

3 Q Then, what server are you using?

4 A I'm not using a server.

5 Q Are you telling me that your computer is

6 not in the Sea Pines Security network?

7 A Correct.

8 Q Do you still have a Hewlett-Packard

9 computer?

10 A I don't know the name of it.

11 Q You don't know what kind of computer you

12 have?

13 A Honestly, no.

14 Q SecureGate is an America Online address; is

15 it not?

16 A Yes, it is.

17 Q How long have you had an account with

18 America Online?

19 A I believe 17 years.

20 Q Certainly, since 2008. Isn't that correct?

21 A Yes, sir.

22 Q Do you know whether America Online, AOL,

23 maintains an archive of your email?

24 A I can't speak for America Online.

25 Q Have you made an effort to access your

1 email for 2008, from AOL?

2 A Yes, I have.

3 Q How did you communicate with them?

4 A I didn't communicate with AOL. I made

5 every attempt that I knew was available to

6 me to access into emails.

7 Q Well, do you routinely archive your emails?

8 A Define archive. No, I don't.

9 Q Keep them, put them in a library.

10 A No.

11 Q So they're just left random, willy-nilly.

12 Is that what you're telling me?

13 A I wouldn't use -- I wouldn't describe it

14 quite like that. Witness shakes head.

15 The mechanism is what the mechanism is.

16 Q Well, how often does the mechanism expire,

17 when your emails go off your screen so

18 that you can't recover them easily?

19 A I don't know. I think it's a time-based

20 or volume-based beyond a certain point or

21 certain number. It just, again, like a

22 computer database will refresh itself.

23 Q Do you know whether there's an archive of

24 your email that's maintained by AOL that

25 can be retrieved?

1 A By AOL?
2 Q Yes, sir.
3 A No, I do not.
4 Q Would you mind finding out if you can
5 retrieve it?
6 A I will make every effort to contact AOL to
7 see if that is, in fact, possible.
8 Q Specifically, I want your email related to
9 this case from 2008.
10 A Okay.
11 Q Did you communicate with anyone about this
12 case in 2008 on a computer other than
13 SecureGate?
14 A I don't recall.
15 Q Well, do you know whether you had another
16 email address or not?
17 A I don't believe I did.
18 Q Did you use other people's email with their
19 permission?
20 A I don't think I ever did.
21 Q Your attorneys made a good-faith
22 presentation of a document production, I
23 believe, of materials that you gave them,
24 which included an email or two from 2008,
25 but did not include the one I'm about the

1 hand you. Can you explain -- excuse me,
2 can you tell me why you didn't give them
3 that email?
4 A What was your -- what was your question,
5 sir?
6 Q Why didn't you provide the email to your --
7 that email to your attorney so that he
8 could provide it to me?
9 A If I didn't have it, I didn't provide it.
10 Unless I printed it out, I wouldn't have
11 had it.
12 Q Your position is that you have nothing left
13 from 2008, unless you printed it out?
14 A Correct.
15 Q Do you know where the email in front of you
16 came from?
17 A No, sir.
18 Q Do you know who polygraph99@hotmail.com is?
19 A I believe so.
20 Q Who is it?
21 A I believe it's Captain McSwain.
22 Q And do you know who Meredith Hatch is?
23 A I know of her.
24 Q Can you identify that as your email?
25 A It appears to be. Did you want me to add

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to that?

Q I want you to hold on to it, yes. I'm going to ask you a question or two about it. How much more email from this period of time could there be if we could recover it from AOL?

A I couldn't hazard a guess.

Q How many more emails similar in tone were written about either Otis Coffey or his sister, Maureen Coffey?

A I have no idea.

Q But there could be more; couldn't there?

A Again, I have no idea.

Q Why does the Beaufort County Sheriff's Office have a pretty good archive of your email when you don't have any?

A I can't speak to how their operation functions.

Q Have you had a chance to review the memorandum?

A Yes.

Q Having reviewed it, does that refresh your recollection that you were making reference to an incident that took place at approximately midnight on the day you

1 wrote that memorandum?

2 A Somewhat.

3 Q Do you recall whether the actual time that

4 you prepared the memorandum and sent it

5 was 5:21 a.m., or could that be a time

6 from west coast or some other spot that

7 from time to time appears on email?

8 A I can't speak to the time or day.

9 Q Do you customarily go into the office at

10 5:21 a.m.?

11 A Customarily?

12 Q Uh-huh.

13 A Not usually.

14 Q Could this have been generated from a home

15 computer?

16 A It could have.

17 Q At the time that you sent this memorandum,

18 had you had an opportunity to review the

19 report that had been done by Officer

20 Jolin?

21 A No, sir.

22 Q The facts that are set forth in this

23 memorandum, were they based on what the

24 dispatcher had told you?

25 A If memory serves, what is reflected in this

1 email are the facts that were shared with
2 me by Officer Jolin.

3 Q Are you telling me that you, and Officer
4 Jolin spoke between midnight and 5:21
5 a.m.?

6 A I'm telling you that Officer Jolin spoke to
7 me on the night of this occurrence.

8 Q Did you also speak to the dispatcher on the
9 night of the occurrence?

10 A I believe I was called by the dispatcher on
11 the night of the occurrence.

12 Q And weren't you patched in to several -- in
13 several times, as events unfolded so that
14 you understood what was going on as the
15 sequence took place?

16 A I don't understand 'patch in.'

17 Q Kept up to date. Didn't the dispatcher
18 keep you informed?

19 A No, not to my recollection.

20 Q Well, then, when was it that you gained the
21 information that you put in this
22 memorandum?

23 A At or very close to the time that it
24 occurred.

25 Q What was the point of sending the

1 memorandum to Toby McSwain and Meredith
2 Hatch?

3 A As a matter of notification of date.

4 Q Was the point of referring to the suspect's
5 little butt?

6 A I can't speak to my thought process at that
7 time.

8 Q Did you have any particular anger or
9 animus toward Otis Coffey?

10 A No.

11 Q Do you routinely describe trying to get
12 suspect's little butt?

13 A I have no way of knowing how often I've
14 ever used a particular terminology.

15 Q Do you know whether Captain McSwain shared
16 your desire to get Otis Coffey's little
17 butt?

18 A I can't speak for Captain McSwain.

19 Q Why were you sending this to him?

20 A Again, the Beaufort County Sheriff's
21 Department was the investigating agency,
22 and to keep them apprised.

23 Q Would I be correct to assume that the
24 reason you sent a copy of this to Meredith
25 Hatch is because she was in charge of the

1 investigation of the peeping Toms and
2 break-ins?

3 A I don't recall the genesis, but I believe
4 she was a -- one of the investigating
5 officers.

6 Q And if I understand correctly, BCSO, the
7 sheriff's department, had to do the
8 investigation on this type of situation.
9 Is that correct?

10 A They handle all criminal investigations.

11 Q What made you think that Mr. Coffey thought
12 that he, 'had cover?'

13 A I can't speak to my thought process at the
14 time.

15 Q Were you referring to the fact that he was
16 the sister of Judge Coffey?

17 A I don't believe so. Reading this email, it
18 appears he had to run into the house. All
19 the interior lights were cut off. And
20 then, when Beaufort County and our
21 officers arrived, Mrs. Coffey, Maureen
22 Coffey's mother, said -- came to the door
23 and said nobody was there.

24 Q Did you make reference to the fact you did
25 not want whoever from the Beaufort County

1 *Sheriff's Office went to go --*
2 MR. MATHISON: *Excuse me. Excuse me.*
3 Q *-- not to go to Judge Coffey for a*
4 *warrant?*
5 A *I'm sorry. Would you repeat the question.*
6 Q *Let me rephrase it.*
7 A *Okay.*
8 Q *The last sentence in the third paragraph*
9 *says, and I quote, 'and for heaven sakes,*
10 *you know not where to go to get the search*
11 *warrant.' Isn't that what it says?*
12 A *That's what it says.*
13 Q *Were you referring to Judge Coffey as the*
14 *place not to go?*
15 A *I believe so.*
16 Q *What would induce a law officer in any*
17 *organization to go to the sister of the*
18 *suspect to get a warrant?*
19 A *I can't speak for that.*
20 Q *Do you believe, or were you -- did you*
21 *believe that Judge Coffey would not issue*
22 *a search warrant?*
23 A *I don't know what she would have done.*
24 Q *Did anyone attempt to attain a search*
25 *warrant?*

1 A I do not know.
2 Q Did you?
3 A No.
4 Q Did anyone attempt to obtain an arrest
5 warrant?
6 A For whom?
7 Q Otis Coffey, the person described in the
8 email.
9 A I don't believe, at that time.
10 Q Subsequently, when you got to the office,
11 did you find a report prepared by Sergeant
12 Jolin?
13 A I don't believe I did.
14 Q Specifically, did you see an incident
15 report that he had generated before he
16 went home?
17 A Is that the end of the question?
18 Q Yes.
19 A I don't believe I did.
20 Q Did you have a telephone conversation with
21 Sergeant Jolin the morning after this
22 event?
23 A If the morning is limited to on the scene,
24 yes. If it was beyond that, no.
25 Q Do you know whether you had a telephone

1 conversation with Sergeant Jolin after he
2 went on duty on May 21, 2008?

3 A No.

4 Q Did you have a telephone conversation with
5 Corporal Florencio, requesting that she
6 come to your office to assist Sergeant
7 Jolin in reforming his report of the
8 incident that took place on May 20?

9 A I don't recall, but I do not believe so.

10 Q Did officer -- or Corporal Florencio come
11 to your office and prepare a revised
12 report?

13 A I am unaware of her coming to my office.

14 Q Have you ever discussed the incident that
15 took place on May 20th, at about midnight,
16 with Corporal Florencio?

17 A This incident?

18 Q Yes.

19 A I believe she was copied on the email.

20 Q In addition to that.

21 A Oh, I don't --

22 Q Discussed?

23 A I don't recall.

24 Q Does Sea Pines Security have a copy of more
25 than one incident report prepared for this

1 event by Sergeant Jolin?

2 A I don't know.

3 Q Could Officer Florencio have accessed

4 Sergeant Jolin's computer account for

5 purposes of revising this report?

6 A Under normal circumstances, I would say no.

7 Q Meaning it was password protected?

8 A I believe it was.

9 Q So she would either have to have the

10 password from Sergeant Jolin or from

11 someone else in your office. Is that

12 correct?

13 A I can't speak to your question. I have no

14 idea.

15 MR. MATHISON: At Line 69, Page 69, Line 20.

16 Q Do you recall telling Officer Jolin that he

17 would not need just 80 percent or 90

18 percent, but instead he would be a hundred

19 percent certain that the person he saw was

20 Otis Coffey?

21 A No.

22 Q What became of the incident report that

23 Sergeant Jolin prepared initially?

24 A I do not know.

25 Q Why did you not produce a copy of the one

1 that he prepared?

2 A I don't maintain the records. I don't --

3 I don't know what you're referring to.

4 Q Have you ever seen that report before?

5 A I don't recall. As a matter of this

6 process perhaps, not prior to this.

7 MR. MATHISON: Page 71, Line 10.

8 Q Is there a positive identification of Otis

9 Coffey in that document?

10 A On the second page, under general

11 information?

12 Q Yes, sir.

13 A It does not appear to be.

14 Q Okay. Do you know whether that's the only

15 version of the report that you produced?

16 A I do not.

17 Q Do you know whether this came out of the

18 server of the computer that Sergeant Jolin

19 was using?

20 A I do not.

21 Q As opposed to out of the file somewhere?

22 A I do not know.

23 Q Do you know what -- do you know why the

24 Beaufort County Sheriff's Office does not

25 have that report?

1 A I do not.

2 MR. MATHISON: At Line 20.

3 Q How did the report go from Sea Pines
4 Security to the Beaufort County Sheriff's
5 Office?

6 A I do not know.

7 Q In the normal course of events, how would
8 it go?

9 A In many cases, a patrol officer will take
10 reports, hand-courier them over to the
11 Beaufort County Sheriff's Department, and
12 deliver them that way.

13 Q And who determines, if there are multiple
14 iterations of the same report, who
15 determines which one gets delivered?

16 A I don't know. Just when everyone's turned
17 in.

18 Q Have you ever seen your revised version of
19 this report, Mr. Breed?

20 A I don't recall seeing that report, except
21 during this process. So whether it was
22 revised or not, I would have no way of
23 knowing.

24 MR. MATHISON: Thereupon, the incident report was
25 marked, and it's been marked in evidence. At Line 21.

1 Q Did you have a meeting with Sergeant Jolin
2 a day or two after the events that took
3 place on May 20th, when Sergeant Jolin
4 told you that he did not want to swear out
5 a warrant?

6 A I recall a brief meeting.

7 Q And who else was present during this
8 meeting?

9 A A Lieutenant Bill Campbell.

10 Q And did you tell Sergeant Jolin, as a
11 result of his having concerns, that you
12 would see to it the process was stopped?

13 A That was not my verbiage.

14 Q What did Sergeant Jolin tell you?

15 A Sergeant Jolin said that, as it related
16 to -- I believe he was in the process of
17 looking at a warrant for fleeing, and I
18 believe he stated that he did not feel one
19 hundred percent certain that he could
20 identify as being Otis Coffey. After he
21 said that, I advised him that if he didn't
22 feel comfortable, if he could not swear
23 to that, then he should not sign it.

24 Q And what were you talking about signing it
25 -- talking about signing is basically an

1 affidavit that would have been on a
2 warrant that looked like what I'm handing
3 to you. Isn't that correct?

4 A I'm unfamiliar with that process. I can't
5 speak to this.

6 Q Well, then, please read it and tell me if
7 it is, in fact, what you were referring
8 to.

9 A I wasn't referring -- I never saw his -- I
10 don't believe I ever saw his affidavit
11 until we got in this process. He was
12 referring to the affidavit verbally, and
13 his memory. Afterwards was perhaps not as
14 clear as it was on the night of the
15 incident, and said that he didn't feel
16 comfortable, one hundred percent
17 comfortable, that it was Otis Coffey. And
18 I merely stated to him that, since, as
19 much as he's got to swear to it -- swear
20 to it, and his signature's got to be on
21 it, that he should not sign it.

22 Q Okay. And consequently, there was no
23 warrant sworn out for the fleeing to evade
24 detention. Is that correct?

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

1 Q You don't know whether there was a warrant
2 sworn out?

3 A I don't now how it was couched or what
4 warrant was attempted to be secured, and I
5 can't speak -- I don't believe there was
6 any warrant eventually secured.

7 Q Is it your testimony that, before I handed
8 it to you, you've never seen the affidavit
9 that's on the table in front of you?

10 A No. It's my testimony that I don't recall
11 ever seeing this until we began in this
12 process.

13 Q And you don't know prepared it; do you?

14 A No.

15 MR. MATHISON: Let's mark that one as Plaintiff's
16 Exhibit 14 [sic]. That was marked for identification in
17 this case, your Honor, and it still has not come in.

18 COPY OF DOCUMENT REFERRED TO AS
19 AFFIDAVIT (INCIDENT REPORT) MARKED
20 PLAINTIFF'S EXHIBIT NUMBER 28,
21 FOR IDENTIFICATION.

22 Q Feel free to read it. Do you know what,
23 in this affidavit, that Sergeant Jolin
24 objected to?

25 A I can't speak to that affidavit, no, sir.

1 Q Well, what did he tell you he objected to?
2 He just didn't feel that he could identify
3 Otis Coffey? Wasn't positive?
4 A If I recall correctly, he said he was not
5 one hundred percent. He could not be one
6 hundred percent sure now.
7 Q How did this incident report, where Page 2
8 says that he could positively identify
9 Otis Coffey, get into the Beaufort County
10 Sheriff's Office.
11 A I have no idea.
12 Q But you believe it was hand-carried by a
13 deputy. Do you believe it was hand-
14 carried by a deputy?
15 A I have no belief one way or the other. I
16 do not know.
17 Q Did you transmit that sort of thing
18 electronically at the time?
19 A I don't believe so.
20 Q So it had to be hand-carried or mailed.
21 A I can't speak to that. I don't know how it
22 got there.
23 Q I'm sorry, sir. But you're the chief of
24 security. And I'm asking you, how do you
25 deliver an incident report, customarily,

1 from Sea Pines Security to the Beaufort
2 County Sheriff's Office.

3 A Yes, sir. And I --

4 Q And I'm asking you to tell me how that's
5 done.

6 A Customarily, an officer will go to
7 dispatch, collect any reports, and take
8 them, hand-carry them to Beaufort County
9 Sheriff's Office.

10 Q And if he had two reports, one of which
11 that could make the positive
12 identification, and the other which said
13 he couldn't, which one would get selected?

14 A It's not a question of selected. It's
15 whatever's placed in the report box to be
16 sent to the Beaufort County Sheriff's
17 Office. If the reports are in that box,
18 it will go to the Sheriff's Office.

19 Q So it's a function of who put the report in
20 the box? Is that what you're saying?

21 A A box, envelop, a dispatch center. The
22 minutia, mechanics, I'm not that familiar
23 with.

24 Q Do you know whether -- strike that. I'm
25 handing you this document, and I ask you

1 whether you've ever seen that version of
2 Page 2 of the incident report before.

3 A No, sir. I don't believe I have. Unless
4 it was through this process, I don't.

5 Q Can you see any differences between that
6 and the Page 2, and the one that you
7 already looked at?

8 A These two?

9 Q Yes, sir.

10 A There is some verbiage change. One says
11 date and time listed as reporting officer.
12 This one says I was conducting an extra
13 patrol. There's some capitalization,
14 punctuation differences -- differences.
15 This one includes the name Otis Coffey.

16 Q And the one I just handed you includes a
17 positive identification of Otis Coffey;
18 does it not?

19 A If you just handed me this one.

20 Q Yes, sir.

21 A That's correct.

22 Q Whereas, the one that's been marked as
23 Plaintiff's Exhibit 13, on Page 2, does
24 not.

25 A This go with this?

1 Q Yes.

2 A It does on the front, but not on this
3 supplemental.

4 Q Okay. And you don't -- do you have any
5 knowledge as to how the second page got
6 changed?

7 A No, sir.

8 Q Have you ever seen the second page before?

9 A Not before this process. No, sir.

10 MR. MATHISON: And then, that incident report is
11 marked, and it came into evidence, and is in evidence in
12 this case.

13 Q And in your answers to the plaintiff's
14 interrogatories, did you indicate that you
15 have no knowledge of Otis Coffey ever
16 being prosecuted or convicted for any of
17 the offenses that you believe were taking
18 place in Sea Pines in 2008?

19 A Will you rephrase the question?

20 Q I'll just ask it differently. Do you have
21 any knowledge that Otis Coffey was ever
22 prosecuted or convicted for any of the
23 offenses that you believe were going on at
24 Sea Pines in 2008?

25 A I am unaware of his judicial actions that

1 were -- concerned Otis Coffey, outside of
2 the trespassing that involved our
3 officers.
4 Q In 2004?
5 A Best of my recollection.
6 Q Well, you produced a ticket that says 2004.
7 A Best of my recollection, sir.
8 Q Do you know whether a number of cases for
9 peeping Tom or breaking and entering in
10 2004, for which you thought Otis Coffey
11 might be responsible, were closed by the
12 arrest and conviction of a man named John
13 Levy?
14 A I do not know.
15 Q Do you know who John Levy is?
16 A If memory serves, I believe he was a person
17 that was arrested for -- and I don't know
18 what crime he was charged with, but I know
19 he was arrested.
20 Q And convicted. Do you know that?
21 A I don't know.
22 Q Do you know that there was a security tape
23 that somehow was missing and didn't show
24 up for six months, that had pictures of
25 Mr. Levy actually going into a house? Do

1 you have any knowledge of a security
2 tape camera footage of Mr. Levy?
3 A I have no knowledge of a security tape of
4 Mr. Levy.
5 Q Did you have an email correspondence with
6 the representatives of Sea Pines
7 Associates, on or about May 20th, in
8 which you suggested that an individual had
9 been -- had, quote, 'been busting your
10 chops?'
11 A I don't recall.
12 Q Specifically, did you have an email
13 dialogue with Steve Birdwell about his
14 having busted your chops?
15 A I don't recall.
16 Q Was Mr. Birdwell concerned about the number
17 of pending prowlers and peeping Tom cases
18 in Sea Pines?
19 A I can't speak to what Mr. Birdwell was
20 concerned with.
21 Q Did he express concern to you about the
22 number of them?
23 A I don't recall.
24 Q Do you recall whether that was discussed at
25 a meeting, either at the security

1 committee or the directors of CSA?

2 A I would not have been part of the directors
3 of CSA meeting, and I don't recall it
4 being discussed at the security committee.

5 Q Well, look at your memo, then, the bridge
6 report. If I recall correctly, you don't
7 know what a bridge report is, but you've
8 prepared them.

9 A I'm not sure that's exactly what I said,
10 but what's your question again, sir?

11 Q At the bottom of the page, the first page,
12 does that paragraph provide an explanation
13 or an excuse for why one has been caught
14 and prose -- no one has been caught and
15 prosecuted, as a result of these
16 prowler/peeping Tom cases?

17 A Not on the first page, no, sir.

18 Q Hand it back, please. I'm sorry. At the
19 bottom of the second page.

20 A What was the question as it relates to
21 this?

22 Q Does it provide an explanation or a
23 rationalization for why you haven't been
24 successful in closing the cases that are
25 pending?

1 A It provides nothing beyond what it says
2 there.
3 Q Well, what does it say?
4 A I can read it again?
5 Q Just read the last half of it.
6 A 'What one would like to do, and what the
7 law allows, are, at times, in conflict.
8 As well, what one may discuss in a public
9 forum would be counterproductive and
10 imprudent.'
11 'That said, I'm attaching the letter
12 that was sent to the South Carolina
13 Judiciary Complaint Commission, that may
14 speak to a few of the hurdles that we face
15 concerning our recent but negated
16 burglaries/peeping Tom reports.'
17 Q Hurdles. Is that correct?
18 A That's what it says.
19 Q So, in your opinion, Maureen Coffey was
20 what had prevented you from closing these
21 cases? Is that what you're saying?
22 A If you're speaking of that, I don't know.
23 I don't recall my thought process at that
24 time.
25 MR. MATHISON: At Line 12.

1 Q Wasn't that effectively trying to excuse
2 the ability to close the cases by saying
3 that this woman interfered with your
4 investigation?

5 A I can't speak to my thought processes, sir.
6 That's not what it says.

7 MR. MATHISON: Thereupon, the bridge report is
8 identified, and it's also come into evidence in this
9 case. Go to Line 10 on Page 87.

10 Q Do you know, do you remember sending it?

11 A No, I do not.

12 Q Do you remember the occasion for sending
13 it?

14 A No, sir, I do not.

15 Q Do you have any idea what happened in
16 January of 2009, that would induce you to
17 send that to Cary Kelley?

18 A I do not.

19 Q Would it be safe to assume that you sent
20 that to him -- he did not -- when you sent
21 that to him, that you had talked to Mr.
22 McSwain or Mr. DeLoach?

23 A I do not know what he knows or when he
24 knew it.

25 MR. MATHISON: Forgive me, your Honor. I misspoke

1 of the previous document that was identified as,
2 evidently, the email, about which this dialogue takes
3 place. And it has not been introduced, but will be at
4 the close --

5 MR. HALIO: Your Honor, could we just read the
6 testimony and not --

7 THE COURT: Just read the testimony and let's go.

8 CONTINUE MR. MATHISON READING

9 DEPOSITION OF GEORGE F. BREED, JR.:

10 Q Had you talked to him before you sent him
11 that email about your having discussed the
12 contents of your letter of June 6th, both
13 with Toby McSwain and Greg DeLoach?

14 A Would you repeat that? Have I spoken to
15 Cary Kelley prior to this email?

16 Q Had you told Mr. Kelley, before that email,
17 that you had discussed the contents of
18 your letter of June 6th, both with, or
19 either with, Toby McSwain and Greg
20 DeLoach?

21 A I do not recall.

22 Q And could -- would you concede that you and
23 Mr. McSwain are friends; aren't you? Do
24 you concede that you were friends?

25 A Yes, we are.

1 Q And by that, I mean social friends, more
2 than just acquaintances in a professional
3 world.
4 A We've never been out to dinner or
5 anything, but --
6 Q But what?
7 A We are -- I do know him from different
8 functions, Heritage functions.
9 Q And his wife works for the Heritage;
10 doesn't she?
11 A Yes, she does.
12 Q And you have had occasions to interact
13 with her on many occasions, because of her
14 working for the Heritage. Isn't that
15 right?
16 A I do.
17 Q And do you concede that you and Mr.
18 DeLoach are friends. Isn't that right?
19 A I do not see him often, but I am well
20 acquainted with him.
21 Q Do you have lunch with him from time to
22 time at the famous Mexican establishment,
23 Fiesta Fresh?
24 A From time to time, yes, sir, I do.
25 MR. MATHISON: Line 90. Excuse me. It actually

1 should be marked at the question.

2 Q Are you talking -- are you taking him out
3 just to, you know, exploit a professional
4 resource, or are you taking him out
5 because you enjoy his company?

6 A Who are we speaking of?

7 Q Mr. DeLoach.

8 A I enjoy Mr. DeLoach's company.

9 Q And do you know him well enough to have a
10 correspondence by email that allows you to
11 send pictures of your vacations to him,
12 and him to comment on that, and things
13 like that? Isn't that correct?

14 A I believe so.

15 MR. MATHISON: At Page 93, Line 6.

16 Q Well, just generally, are the contents of
17 what you said in your deposition taken in
18 2009, I believe it was February 18th, true
19 to the best of your knowledge?

20 A You want me to speak to the whole document?

21 Q Well, are you in the habit of not telling
22 the truth?

23 A No, sir, I'm not.

24 Q Then, wouldn't we be correct to assume that
25 what you said in that is true?

1 A I choose not to assume.
2 Q Then go ahead and read the whole document.
3 And then we can -- you can tell me what
4 your position -- what portions of the
5 document aren't true.
6 Let's take a break.
7 Have you had an opportunity to review it?
8 A Yes.
9 Q Is it substantially true, to the best of
10 your knowledge?
11 A To the best of my knowledge.
12 Q Could you identify anything that isn't
13 true that you can see sitting here right
14 now?
15 A There was so much minutia there, without
16 referring to records or references, it'd
17 be difficult to say with certainty.
18 Q Can you identify that as something that
19 came from your computer? Isn't that
20 right?
21 A It appears to be, yes, sir.
22 Q SecureGate is you?
23 A Yes, sir.
24 Q All right. But you just don't have any
25 recollection of what you were thinking

1 when you wrote it. Is that right?

2 A Correct.

3 MR. MATHISON: Another exhibit was introduced at
4 this point, and it is not in the record, but I will offer
5 it at the conclusion of the deposition.

6 Q Subsequently, did you have occasion to
7 send another email to Mr. Kelley on or
8 about February 26?

9 A I don't recall. I don't recall this.

10 Q Do you have any idea when the dialogue was
11 between you and Mr. Kelley at the time
12 that led to this flurry of activity or
13 interests in the terms of this case?

14 A No. I'd have to -- depends on when the
15 action was filed.

16 Q Well, if I represented to you that it was
17 filed about the end of November in 2008,
18 would that help you?

19 A No.

20 Q Did your computer -- your computer did,
21 however, send that email to Mr. Kelley;
22 didn't it?

23 A It appears that I sent the email.

24 Q Okay. Let's mark that one as Plaintiff's
25 Exhibit 17.

1 MR. MATHISON: Another exhibit was entered, your
2 honor. It would be offered after the deposition.

3 Q And then, literally, only 36 or 38
4 minutes later, you send another email
5 about the same subject to the same person,
6 Mr. Kelley. Handing you this document,
7 another email also dated February 26,
8 2009.

9 A I'd have the same recollection. I do not
10 recall this email, but it appears to have
11 come from me.

12 Q Were all these emails an effort on your
13 part to respond to inquiries by Mr. Kelley
14 about what had gone on?

15 A I do not know what precipitated this.

16 Q I represent to you that what has been
17 handed to you as the last two exhibits,
18 and the one that you're currently looking
19 at, has been supplied by your counsel as
20 part of your production, and would note
21 that there are no intermitting emails
22 apparently from Mr. Kelley. Do you think
23 that has a significance?

24 A I can't speak as to that, as I do not know
25 what the genesis of this was.

1 Q And the genesis is this second email, dated
2 February 26th, that was actually sent
3 38 minutes after Plaintiff's Exhibit 17.

4 A I don't know what the genesis of this is.
5 You just gave a date and time.

6 MR. MATHISON: Thereupon, that email was entered,
7 and I will offer that.

8 Q Mr. Breed, if John Levy really did commit
9 the crimes at Sea Pines in 2004, about
10 which you were concerned, believing that
11 Otis Coffey was responsible for them,
12 and he subsequently was convicted, how is
13 it possible that Maureen Coffey in any way
14 interfered with convictions of Mr. Levy?

15 A I don't understand the question.

16 Q Well, you don't seem to know whether John
17 Levy was convicted of the crimes that you
18 thought of as committed; do you?

19 A I don't know.

20 Q Do you know whether he was convicted of the
21 crimes that you thought Otis had
22 committed?

23 A I do not know what crimes he was convicted
24 for.

25 Q Okay. But if he was convicted for the ones

1 that you thought Otis was committing,
2 then, quite obviously, there was no
3 interference in the investigation.

4 A That's a hypothetical assumption. I can't
5 -- I can't speak to that.

6 Q Do you think it's a correct hypothetical
7 assumption?

8 A Again, it's hypothetical. I can't speak to
9 that.

10 MR. MATHISON: There is an exhibit identified in 19,
11 on Page 101, and I will offer that. Another one
12 identified at Page 102, and I will offer that.

13 THE COURT: Mr. Mathison, we're going to take care
14 of that after the jury leaves.

15 MR. MATHISON: I understand. I'm just -- I'm not
16 going to read the text around those, is what I'm saying.

17 THE COURT: Well, you didn't tell me what you wanted
18 to offer. We're going to do that after the jury has
19 left.

20 CONTINUE MR. MATHISON READING

21 DEPOSITION OF GEORGE F. BREED, JR.:

22 Q Do you know whether Plaintiff's Exhibit --

23 MR. MATHISON: Mikey, I'm on Page 104.

24 Q Do you know whether Plaintiff's Exhibit 21
25 is a geographic depiction of the site set

1 forth in what are labeled -- I guess
2 they're blotter reports, three pages of
3 which I'm handing to you?

4 A Without going over each one, it appears
5 that the start date on the first one and
6 the ending date correlates with the start
7 and ending date on this map here.

8 Q So you think that those were done by your
9 office too, indicating activity that was
10 reported to you in 2008?

11 A Perhaps, yes.

12 Q Let's move the three pages as Plaintiff's
13 Exhibit 22. Wasn't that a compilation and
14 a collection, or an evaluation, if you
15 will, of the data, the raw data, that you
16 had in an effort to determine what crimes
17 were being committed?

18 A It appears to be a tracking mechanism to
19 keep track of the crimes that have
20 occurred.

21 Q And isn't this what you were suggesting in
22 this CSA publication and what you were
23 doing?

24 A I don't know what I was suggesting in that
25 publication, beyond describing the

1 process.

2 Q Is the description of the process that you

3 put in there accurate?

4 A It's a description of the process.

5 MR. MATHISON: At the bottom of Page 106.

6 Q And I'm handing you a document that I'll

7 represent to you as being from the

8 security committee meeting, minutes of the

9 security committee meeting, held on May

10 21, 2008, and ask if you can identify that

11 or not.

12 A I can't identify it. It's -- it appears to

13 be minutes or --

14 Q It appears to be minutes that have marks on

15 them, right?

16 A I'm not sure it's minutes. It appears to

17 be paragraphs. I don't know. There's no

18 indication of where they came from. It's

19 five to six paragraphs speaking to

20 everything from bike paths, gas prices,

21 security camera systems.

22 Q All right. Would you read the paragraph

23 next to which there's a star in the left-

24 and margin, which appears to be in

25 italics?

1 A Okay. 'For every one hour in a vehicular
2 patrol, 15 minutes of foot patrol will be
3 initiated. The officers had park, cut off
4 -- I'm sorry. Okay. For every one hour
5 of the vehicular patrol, 15 minutes of
6 foot patrol will be initiated. The
7 officers at a park, cut off, and lock the
8 vehicle; call out to dispatch and been
9 seen. Where it is well be kept on at all
10 times, and focus on areas of current
11 concern, South Beach T Roads, biker paths
12 near Gadwall, Harbor Town, Beach Club,
13 Heritage Woods, et cetera.'

14 Q Is that the area in which you were
15 conducting saturation patrols?

16 A Those were areas that we're conducting
17 saturation patrols.

18 Q But those areas are not just in one spot on
19 Sea Pines; are they?

20 A I don't understand.

21 Q Gadwall is not necessarily the same place
22 as some of the other areas in which you
23 were conducting saturation patrols.

24 A Many of those areas -- areas are not in the
25 areas that we've been conducting

1 saturation. I don't understand your --
2 Q My question is, were you conducting an
3 investigation with respect to the events
4 that have been identified in Plaintiff's
5 Exhibit 22?
6 A We were conducting saturation patrols in
7 the locations indicated, not to the
8 exclusion of the rest of the community.
9 MR. MATHISON: Please go to Page 112, Line 7.
10 Q Isn't it a fact that, on or shortly after
11 Sea Pines Security and Beaufort County
12 Sheriff's Office went to Ms. Coffey's
13 house at midnight on May 20th, or just
14 after midnight, the very next morning at
15 6:30, Sea Pines Security showed up and
16 tried to tow her car away.
17 A I don't know that to be the case.
18 Q If they showed up in one of your vehicles,
19 it had a camera on it; didn't it?
20 A Some do.
21 Q And the moment you turn the blue light on,
22 there would be video tape shot of what
23 they were doing. Isn't that right?
24 A I don't know. If the unit's working, if
25 it's functioning correctly, if the officer

1 turned the blue lights on.

2 Q Do you have the video tape of the towing

3 incident that took place on or about May

4 21st?

5 A I'm not familiar with the details of that.

6 Q Well, who would I have to talk to, to get

7 familiar with the details?

8 A Who initially observed the vehicle?

9 Q Well, if I told you it was Lieutenant

10 Campbell, would that -- could I get the

11 tape from him?

12 A If it -- one still exists, and if one was

13 even created.

14 Q Based on your testimony in the deposition

15 in the Klippel case, it's clear that all

16 of your officers, as a matter of routine,

17 were having their calls recorded. Was the

18 call made by Corporal Florencio to

19 Sergeant Jolin, on or about May 22nd,

20 recorded?

21 A I have no idea what you're speaking of.

22 Q Do you know whether Corporal Florencio

23 insists that she made a call from your

24 office on a speaker phone to Sergeant

25 Jolin in order to revise Sergeant Jolin's

1 report?

2 A Are you asking me if I was aware of that?

3 Q Yes.

4 A At the time?

5 Q Well, first, at the time.

6 A No.

7 Q Are you aware of it now?

8 A Yes.

9 Q Where is the recording of that telephone

10 call?

11 A I don't know.

12 Q Wouldn't it just be a matter of identifying

13 which phone it was made on, and there

14 would automatically be a record, according

15 to your testimony in the Klippel case?

16 A No.

17 Q Why not?

18 A There can be many reasons why not. We

19 don't have that system any more, depending

20 on what kind of system it was. If it was

21 a tape at the time, the tapes were used

22 and eventually destroyed. When it became

23 -- become unusable, if it's a computer

24 database, eventually, again, it records

25 over itself.

1 Q Have you looked for a recording of that
2 telephone call?
3 A One would not exist in 2008.
4 Q Did you destroy all of the data when you
5 changed the system?
6 A The machines, if memory serves me,
7 basically destroys itself. It just broke
8 down. It was replaced and we went to a
9 new model.
10 Q Did you save the recording of your
11 conversation with Judge Herring when he
12 called your office?
13 A I believe I did.
14 Q Was that because you considered what he was
15 saying and doing significant?
16 A I don't recall my thought process.
17 Q Wasn't Detective Florencio's call to
18 Sergeant Jolin significant?
19 A I don't know that that call took place.
20 Q Do you know whether you may have called
21 Jolin the morning after the events that he
22 reported?
23 A I did not.
24 Q But if you had, it would have been recorded
25 if you made it on any phone, other than

1 your office phone.

2 A I do not know.

3 Q Well, your deposition testimony says that

4 all calls in your office by security

5 officers were recorded. Isn't that what

6 it says?

7 A What deposition?

8 Q The Klippel -- Klippel deposition, sir.

9 A At that time, there were different pieces

10 of hardware. The individual phone

11 instruments, various ones in the office

12 were hooked up to automatically record.

13 Whether it was functioning correctly at

14 the time, I don't know.

15 Q Have you made an effort to find a recording

16 of the telephone call made by you to

17 Sergeant Jolin on or about May 21, 2008?

18 A No such phone call exists, as no such phone

19 call was ever made.

20 Q So you've not made an effort to recover

21 the recording of it.

22 A It does not exist.

23 Q Furnished to me in response to my

24 production requests were a number of

25 statements by people that worked for you.

1 Do you know why none of them, except one,
2 was signed?

3 A No.

4 Q Do you know why the one that was signed
5 got signed?

6 A I don't recall.

7 MR. MATHISON: Page 119, Line 2.

8 Q I represent to you that there are three
9 different statements that appear to be
10 from Lieutenant W.A. Campbell. Is there a
11 reason that he has three statements, as
12 opposed to one?

13 A Don't know.

14 MR. MATHISON: Skipping over to Page 122, at Line

15 14. No. Excuse me. Line 17.

16 Q Have you heard the rumor at your office
17 that Judge Coffey and Jolin were having a
18 sexual affair?

19 A I don't recall hearing much about Judge
20 Coffey in any circumstance.

21 Q Is that a no?

22 A I do not recall hearing anything about
23 her.

24 Q Did you say anything about Judge Coffey
25 having had an affair with Sergeant Jolin?

1 A No.

2 Q Did any of your lieutenants say that she

3 had had an affair with Sergeant Jolin?

4 A I cannot speak for my lieutenants.

5 Q They never did -- would I be correct in

6 assuming that they did not say it in your

7 presence?

8 A I don't recall ever hearing such a thing.

9 Q Do you know of any credible evidence that

10 would support the conclusion that Sergeant

11 Jolin and Maureen Coffey had an affair?

12 A Again, I do not -- I'm totally unaware of

13 what you're sharing with me. So, no.

14 MR. MATHISON: Skipping over to Page 126, Line 10.

15 Q Mr. Breed, does every officer prepare a

16 daily report when they're on duty?

17 A I believe they do.

18 Q Do you review the daily reports?

19 A Sometimes I do, sometimes I don't.

20 Q Is a synopsis of all the officers' daily

21 reports prepared each 24-hour cycle for

22 your review?

23 A I don't believe so.

24 Q Would you look at Plaintiff's Exhibit 11,

25 specifically, Page 15, Line 24.

1 A What page, again?
2 Q 15.
3 A Line 4. I don't specifically look for a
4 report about, say, turkeys. Nor do I
5 recall when or if I saw a report about
6 turkeys. There's a daily synopsis that's
7 prepared for me every 24 hours that
8 touches on general items of interest
9 during the previous 24 hours.
10 Q All right. What I'd like to know is,
11 where is the synopsis that was done for
12 May 20th, May 21st, May 22nd, and May
13 23rd, 2008?
14 A I can't speak to that. I can just speak to
15 at the point in time which I spoke to
16 this.
17 Q Well, that point in time you spoke to that
18 was 2009.
19 A Okay.
20 Q Isn't that correct? Less than a year after
21 the events about which I'm interested?
22 A That's what it looks like.
23 Q And I, again, I ask you, where is the
24 synopsis of the daily reports for the four
25 days in May in which I am interested?

1 A Well, there's no synopsis, beyond the daily
2 blotter, the radio logs, that is
3 documented by the dispatcher.
4 Q That was my next question. The dispatcher
5 is the person that prepares this synopsis
6 for you. Isn't that correct?
7 A I believe so.
8 Q And where are they kept, the synopses?
9 A I do not know.
10 Q Would you mind looking and finding the
11 synopses for the four days in question? I
12 want May 20th, May 21st, May 22nd,
13 May 23rd.
14 A Again, please.
15 Q May 20th, May 21st, May 22nd, May 23,
16 2008. And if you have the reports, I want
17 them, too.
18 A What reports, sir?
19 Q The reports from which the synopses are
20 prepared, since my understanding, based
21 on your testimony in the Klippel
22 deposition, is that they are a summary, if
23 you will, or a condensation of what's in
24 the full reports.
25 Is it true, Mr. Breed, that the only a

1 report in which someone makes a finding of
2 criminal conduct of some description is
3 passed on to the Beaufort County Sheriff's
4 Office?

5 A I'm not sure I understand your definition.

6 Q Question. Report.

7 MR. MATHISON: I'm at Line 23 on Page 129.

8 Q Report is the question.

9 A In most cases.

10 Q But if it has arisen -- if it has arisen
11 to a level of a crime, what are they
12 supposed to do? What's the protocol?

13 A If a crime has being committed, they'll
14 document it in a written report, attach a
15 case number, and then submit it to the
16 sheriff's office.

17 Q And the determination of whether the crimes
18 have been committed, initially, is in the
19 eye of the deputy or the specific
20 security officer himself.

21 A They make the determination, correct.

22 Q Did you have any conversation about
23 Sergeant -- with Sergeant Jolin about
24 whether he should have reported the
25 incident on the night of May 20th to the

1 Beaufort County Sheriff's Office?

2 A What incident?

3 Q The incident where there was an encounter

4 with a black male on a bicycle that led to

5 security and Beaufort County Sheriff's

6 Office to show up at Ann Coffey's door.

7 A I had no conversation with Sergeant Jolin

8 beyond the time that it was occurring or

9 directly thereafter.

10 Q Do you know whether Community Service

11 Associates decided, in 2009, to pay your

12 attorney's fee for defending this case?

13 A I have no knowledge of that.

14 Q Did you attend a meeting at Community

15 Services Associates Board in which that

16 was voted on?

17 A No, I did not.

18 Q Do you know whether Community Service

19 Associates has, in fact, paid your

20 attorney's fees?

21 A I do not.

22 Q I'm handing you this document, and I ask

23 if you can identify it for me, please.

24 A What's the date of that one? I'm sorry. I

25 can't identify it.

1 Q Why not? Excuse me, pardon me.
2 A I can't identify it.
3 Q Would you turn to the second page and look
4 at what has been set forth in paragraph
5 3?
6 A Okay. However, the entire -- everything
7 under 2?
8 Q Actually, just through the end of the first
9 paragraph.
10 A Okay.
11 Q Were you aware that your employer had
12 agreed to pay your entire litigation cost
13 in this case?
14 A No, I was not.
15 Q Were you aware that your employer had
16 agreed to pay whatever the judgment or
17 settlement amount might be realized in
18 this case?
19 A No, I was not.
20 Q You're telling me that this is -- this was
21 done without your knowledge?
22 A Correct.
23 Q Did you know about it before I brought it
24 up right now?
25 A No, I did not.

1 Q And if I understand correctly, you've never
2 seen the CSA minutes that I just handed to
3 you before?
4 A That's correct.
5 MR. MATHISON: I'm at 134, Line 12.
6 Q Are you familiar with a woman by the name
7 of Fugate?
8 A It doesn't -- again, I'm not familiar with
9 it off the top of my head.
10 Q Did Sea Pines Security reach an agreement
11 with Ms. Fugate whereby her son would be
12 allowed to pay off -- her grandson,
13 actually -- would be allowed to pay off
14 the expense of some damage he did to
15 property in Sea Pines over a period of
16 time?
17 A I wasn't familiar with that, sir.
18 Q Do you know whether he made the payments or
19 not?
20 A No, sir. Unfamiliar with that.
21 Q Do you know whether Sea Pines Security went
22 ahead and had him arrested anyway?
23 A I am unfamiliar with that.
24 Q Do you -- have you ever spoken to Ms.
25 Fugate?

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A I don't recall her. If I had, I don't recall it.

Q You have told me before we digressed that you attended the --

MR. MATHISON: Excuse me.

MS. JOLLEY: Line 15.

MR. MATHISON: At Line 15.

Q On your stationery, after your name, you typically have put a number of initials. For example, on Plaintiff's Exhibit --

MR. MATHISON: It's not 72. It's actually 23.

Q On an email under your name, there are the following designations. The first one is DAB, CAS. What does that mean, sir?

A It's a designation of diplomat of the American Society for Forensic Examiners. Homeland Security, CHSV is level five, Homeland Security certification. CFE is a certified fraud examiner.

Q And then after --

MS. JOLLEY: Line 4, Page 137.

MR. MATHISON: Line 4.

A CFE is a certified fraud examiner. CPP is a certified protection professional, and PCI is a professional certified

1 investigator. And again, diplomat for the
2 American Board of Certification of
3 Homeland Security.

4 MR. MATHISON: And there ends the deposition.

5 BY THE COURT:

6 THE COURT: All right, ladies and gentlemen. I
7 think it's more than time to go and break for the
8 evening. Ladies and gentlemen, I look forward to seeing
9 you all back at 10:00 a.m., on Monday morning. We're
10 going to go ahead and continue the trial of this case.

11 Again, ladies and gentlemen, do not discuss the
12 case. Do not read anything either on the newspaper,
13 online. If you see anything on T.V. It would be
14 inappropriate. Additionally, you're not to do any
15 independent research. I haven't said this before, but i
16 probably should have. There's to be no blogging about
17 this. If you happen to use any social web sites, you are
18 not to post anything on it, or even state that you are
19 juror in this case. It invites comment.

20 Ladies and gentlemen, go home and get a good night's
21 sleep. Get a good weekend's sleep. I look forward again
22 to seeing you all back at 10:00 a.m. And again, thank
23 you all for arranging your schedules next week. I
24 appreciate it. We'll see you at 10:00.

25 Thank you, Bob.

1 THE COURT: That came in through the deposition of
2 Mr. -- or I'm sorry -- Mr. Breed.

3 MR. MATHISON: Yes. And I've done that. We're
4 ready to go.

5 THE COURT: And who from you all are going to look
6 at all of them and see which ones we need to go through
7 with the objections?

8 MR. MATHISON: Your Honor, I can tell you what the
9 status of them is. I've given them the same catalogue
10 that I've got.

11 THE COURT: Okay.

12 REPORTER'S NOTE: AS MR. MATHISON
13 WAS GOING OVER THESE EXHIBITS, HE
14 WAS REFERRING TO THE EXHIBIT NUMBERS
15 ASSIGNED AT THE DEPOSITION.
16 CONSEQUENTLY, THE EXHIBIT NUMBERS
17 HE MENTIONS DO NOT COINCIDE WITH
18 THE ACTUAL TRIAL EXHIBIT NUMBERS.

19 MR. MATHISON: The first letter, which is the letter
20 by Mr. Breed to Mr. Herring, you've ruled out.

21 THE COURT: Correct.

22 MR. MATHISON: It's been ruled out. The second
23 exhibit has also been ruled out. That's the letter from
24 Mr. Herring to Mr. Breed.

25 The third letter, which is the interpretation of the

1 applicable statute and regulations by Mr. Weir; it's
2 actually a memorandum; you ruled that out.

3 THE COURT: That's not coming in, considering he
4 also, at the end of it, says is that SLED's going to
5 prosecute anyone violating it. Last time I checked, SLED
6 Didn't have that ability, but.

7 MR. MATHISON: Plaintiff's Exhibit 4 is the Breed
8 letter of June 6th. That's already in. Plaintiff's
9 Exhibit 5 is the quitclaim deed, which we maintain is a
10 fraudulent purveyance. I'm moving the introduction of
11 that.

12 THE COURT: Okay. Wait a minute. Now, are we
13 agreeing to that or not?

14 MS. JONES: No, your Honor. We don't agree to --

15 THE COURT: That's what we need to be doing here.
16 So it's the -- you say the fraudulent -- so you're saying
17 it's him conveying his half-interest in his house over to
18 his wife?

19 MR. MATHISON: That's correct. And the evidence has
20 already been read to the jury with respect to that.

21 THE COURT: Right. It's not coming in. It's
22 already been testified to. It would be cumulative.

23 MR. MATHISON: I don't understand the ruling, your
24 Honor.

25 THE COURT: It's cumulative. It's already been

1 testified to. You don't get five shots at it.

2 MR. MATHISON: In the context in which it was
3 discussed with the jury, it was, in fact, introduced in
4 the record. I think that I need to put it in so that
5 they can find it.

6 THE COURT: It was read to them, correct?

7 MR. MATHISON: No. The deed wasn't. The fact that
8 there was a deed was. There was testimony about that.

9 THE COURT: Right.

10 MR. MATHISON: But the deed itself was moved into
11 evidence, and they acknowledge that there was no
12 objection made at the deposition. And the objection made
13 to you was that it was unduly prejudiced. Prejudicial.

14 THE COURT: Well, I can tell you that it's
15 cumulative, so the deed is not coming in. It has been
16 testified to. It has been admitted that he, in fact, did
17 do that.

18 MR. MATHISON: The next exhibit is Plaintiff's
19 Exhibit 6. This is the deed where his wife conveyed
20 property subsequently. There's also been testimony about
21 this. That was also read to the jury. I don't believe
22 there was any objection to this.

23 MS. JONES: There was an objection. This is where
24 she sold the house, subsequently, and then purchased
25 another house.

1 THE COURT: Right. Okay. Well, number one --
2 MS. JONES: And it was --
3 THE COURT: -- it was testified to, first off. And
4 number two, I think it's irrelevant at this point.
5 MR. MATHISON: All right. In Volume 2 from Mr.
6 Breed, the first is the ticket that was written to Otis
7 Coffey on or about December 10, 2004.
8 THE COURT: For what?
9 MR. MATHISON: Trespassing.
10 THE COURT: It was the trespassing ticket.
11 MR. MATHISON: That's the celebrated trespassing
12 ticket.
13 THE COURT: Okay.
14 MR. MATHISON: There is testimony in the record. To
15 the best of my knowledge, that was not objected to.
16 THE COURT: And he was -- that was the one where he
17 was subsequently convicted, apparently spent the night in
18 jail on a trespassing ticket, was convicted?
19 MR. MATHISON: That's correct. That's right.
20 THE COURT: Okay.
21 MR. MATHISON: That is --
22 THE COURT: Any objection to that?
23 MS. JONES: No, your Honor.
24 THE COURT: Okay. That's in.
25 DOCUMENT REFERRED TO AS TRESPASS

1 TICKET DATED ON OR ABOUT DECEMBER 10,
2 2004 TO OTIS COFFEE, MARKED PLAINTIFF'S
3 EXHIBIT NUMBER 29, ADMITTED AS EVIDENCE.

4 MR. MATHISON: The next document, your Honor, is the
5 bridge report dated June 11, 2008, on the second page of
6 which Mr. Breed says, *That's it. I'm attaching a letter*
7 *that was sent to the South Carolina Judiciary Complaint*
8 *Commission that may speak to a few of the hurdles that --*

9 THE COURT: That's fine. That's coming in.

10 COPY OF DOCUMENT REFERRED TO AS
11 JUNE 11, 2012 BRIDGE REPORT,
12 MARKED PLAINTIFF'S EXHIBIT NUMBER 23,
13 ADMITTED AS EVIDENCE.

14 MR. MATHISON: The next document is Plaintiff's
15 Exhibit 9. This is the meeting minutes of Community
16 Services Associates. It's already in evidence.

17 COPY OF DOCUMENT REFERRED TO AS
18 MAY 20, 2008 MEETING MINUTES OF
19 COMMUNITY SERVICES ASSOCIATES,
20 MARKED PLAINTIFF'S EXHIBIT NUMBER 21,
21 ADMITTED AS EVIDENCE.

22 MR. MATHISON: The next document is what we believe
23 was attached to that meeting minutes, which is another
24 copy of the letter, dated June 6, 2008. This one marked
25 prominently on the top right corner, *Confidential. Do*

1 not Disseminate.

2 I don't think that I can put that in through Mr.
3 Breed, because Mr. Breed denied that he'd been there,
4 that is, at the meeting; and denied that he'd seen this
5 document, the one with *confidential* on it. So I'm not
6 offering it in the -- in the deposition, it was put in
7 for identification only, so that --

8 THE COURT: It's not coming in.

9 MR. MATHISON: The next is the deposition of Mr.
10 Breed that was taken in the Klippel case. You allowed me
11 to cross-examine him with it. The evidence that I
12 extracted from him as a consequence of what he had said
13 in the Klippel case is already in the record, but I
14 believe that you ruled the deposition out, on the grounds
15 that it would be confusing to the jury.

16 THE COURT: We're not trying the Klippel case.

17 MR. MATHISON: The next document is the email sent
18 from Mr. Breed to Toby McSwain on May 20, 2008. That's
19 already in evidence.

20 The next document, Plaintiff's Exhibit 13, is the
21 incident report in its first iteration, which is already
22 in evidence.

23 The next document is the affidavit, which I believe
24 was prepared for Mr. Jolin to sign. It's in for
25 identification only. So far nobody has -- Mr. Breed

1 couldn't identify it either. He claimed he'd never seen
2 it.

3 THE COURT: It's not in.

4 MR. MATHISON: The next document is Plaintiff's
5 Exhibit 15. That's the second page of the revised email.
6 And that document is already in evidence.

7 The next document is Mr. Breed's email of January
8 24, 2009, where he basically says that he only talked
9 about his letter with two people, Mr. McSwain and with
10 Greg DeLoach, at the Town of Hilton Head. And I move the
11 introduction of that.

12 THE COURT: I'm going to let those in.

13 COPY OF DOCUMENT REFERRED TO AS

14 MR. BREED'S EMAIL DATED JANUARY 24,

15 2009 MARKED PLAINTIFF'S EXHIBIT

16 NUMBER 30, ADMITTED AS EVIDENCE.

17 MR. MATHISON: The next one is Plaintiff's Exhibit
18 17. This is more colloquy between Breed and Cary Kelley.
19 This one actually takes place 38 minutes after the
20 previous email. I don't need that to go in, and
21 consequently, don't move that it go in. And he did
22 identify, however, in his deposition.

23 THE COURT: That's not coming in, because you're not
24 moving it in.

25 MR. MATHISON: I don't want it in. The next

1 document is Plaintiff's Exhibit 18, which is a Breed
2 email, again, dated February 26, talking about my
3 client's allegations and her complaint as it then
4 existed. I don't need that one to go in, although he did
5 identify it.

6 The next document is Plaintiff's Exhibit 19. That's
7 a map prepared by somebody in Sea Pines Security,
8 purporting to be of the location of the 2004 cases. I,
9 in order to abbreviate the session on Friday, did not
10 read that portion, although it had been marked and had
11 not been objected to. So I don't plan on putting that
12 in.

13 The next is the incident location, which went with
14 the 2004 map. Again, I did not read the two pages on
15 which those two exhibits were discussed and identified.
16 Don't need them in.

17 The next document is Plaintiff's Exhibit 21. That's
18 a map from 2008. I did read that to the jury, and I ask
19 that that go in.

20 THE COURT: Any objections?

21 MS. JONES: No objection.

22 THE COURT: It's in.

23 COPY OF DOCUMENT REFERRED TO AS

24 MAP FROM 2008, MARKED PLAINTIFF'S

25 EXHIBIT NUMBER 31, ADMITTED AS EVIDENCE.

1 MR. MATHISON: And with that, Plaintiff's Exhibit 22
2 is a description of events that was prepared by someone
3 in connection with Sea Pines Security, which -- and I
4 want that one in, too. I read that to the jury. I don't
5 believe that's objectionable. This is a series of --

6 MS. JONES: No objection.

7 THE COURT: No objection.

8 COPY OF DOCUMENT REFERRED TO AS
9 DESCRIPTION OF EVENTS PREPARED
10 BY SOMEONE AT SEA PINES SECURITY
11 MARKED PLAINTIFF'S EXHIBIT NUMBER 32,
12 ADMITTED AS EVIDENCE.

13 MR. MATHISON: The next document is a Sea Pines
14 Security update, in which the methodology that they use
15 to describe, specifically in the second paragraph:

16 *It is the security department's practice to discern*
17 *when crime reports reflect a pattern of similar*
18 *geographic location and crime methodology that initiates*
19 *a focused enforcement program. This process consists of*
20 *gathering all pertinent data, analyzing the results, and*
21 *focusing the department's resources where they would most*
22 *likely result in successful closure.*

23 *A large part of this program involves community*
24 *organization, involvement, and the positive results are a*
25 *three-fold for residents, etcetera.*

1 I move the introduction of that document.

2 MS. JONES: No objection.

3 THE COURT: Okay. Without objection.

4 COPY OF DOCUMENT REFERRED TO AS
5 SEA PINES SECURITY UPDATE MARKED
6 PLAINTIFF'S EXHIBIT NUMBER 33,
7 ADMITTED AS EVIDENCE.

8 MR. MATHISON: The next document is two -- excuse me
9 -- three different unsigned affidavits that appear to
10 have been prepared either for or by Officer Campbell, and
11 he could not identify them in the deposition, and I
12 didn't read that part, and I don't want them in at this
13 juncture.

14 The next document is a report of the executive
15 committee of -- excuse me -- the security committee for
16 Community Services Associates. And Mr. Breed claimed he
17 could not identify this either. This is in for
18 identification only. And I would ask that it be put in
19 here for identification only. In case I can tie someone
20 else into it when their people start testifying.

21 COPY OF DOCUMENT REFERRED TO AS
22 REPORT OF SECURITY COMMITTEE FOR
23 COMMUNITY SERVICES ASSOCIATES
24 MARKED PLAINTIFF'S EXHIBIT NUMBER 34,
25 FOR IDENTIFICATION.

1 MR. MATHISON: The last -- excuse me, not the last
2 -- the 26th exhibit is the minutes of the meeting of
3 January 8, 2009. Those minutes are already in the
4 record. And there is a bullet-point summary that came
5 from the defendants' file, about which he was asked
6 questions. It was marked for identification. It's not
7 read in, and I'm not asking that it be put in at this
8 juncture. All I am asking that it be marked for
9 identification.

10 MS. JONES: Would that be 27?

11 MR. MATHISON: Yes.

12 MS. JONES: Okay.

13 THE COURT: Okay.

14 MR. MATHISON: That's it, your Honor.

15 COPY OF DOCUMENT REFERRED TO AS

16 JANUARY 8, 2009 MINUTES MARKED

17 PLAINTIFF'S EXHIBIT NUMBER 24,

18 ADMITTED AS EVIDENCE.

19 THE COURT: All right. Let's get started then.
20 What else do we need to take up? When is Bill Howard --

21 MS. JONES: I have one question about one exhibit,
22 your Honor.

23 THE COURT: Sure.

24 MS. JONES: Plaintiff's Exhibit 15, I thought it was
25 Page 1 and Page 2 of the supplemental report. But the

1 only one that's marked in here is Page 2 of the
2 supplemental report.

3 MR. MATHISON: The only one that's in the
4 deposition, Celeste, is Page 2. Page 1 didn't go in, in
5 that deposition, just the second page.

6 MS. JONES: But Page 1 is in your exhibits here at
7 trial.

8 MR. MATHISON: It is. And that's why I'm not
9 putting in Page 2.

10 MS. JONES: Well, okay. Then, I think the record
11 may be confused a little bit if this is not the exhibit
12 numbers that Mr. Mathison was just reading into the
13 record do not correspond with the trial exhibit numbers.

14 THE COURT: Okay. He was reading deposition exhibit
15 numbers?

16 MR. MATHISON: Yes, your Honor.

17 THE COURT: Well, I think there were only maybe
18 three that I let in that weren't already in. So I think
19 you need to go through and find those, and get those
20 tagged as exhibits.

21 MS. JONES: I think that would be --

22 THE COURT: Exactly.

23 MS. JONES: We just need it for clarity.

24 THE COURT: I understand that.

25 MR. MATHISON: My understanding of your rulings is

1 that only three of them are going in that haven't already
2 gotten in.

3 THE COURT: The ones that we agreed on just as you
4 went through them. I assumed that what you were reading
5 me was trial exhibits, but --

6 MR. MATHISON: I'm sorry, your Honor. Forgive me,
7 but --

8 THE COURT: Okay. So the ones that we allowed in,
9 that you gave different numbers to that need to be given
10 to the court reporter with the proper exhibits for trial
11 exhibits.

12 MR. MATHISON: All right. You want me to move them
13 in front of the jury, or not in front of?

14 THE COURT: No. They're -- we can just put them in.
15 No need to do that. And this morning, what is the first
16 thing we're going to do? Are you going to do Mr.
17 Kelley's deposition?

18 MR. MATHISON: Yes, I am.

19 THE COURT: And do you have that all cued up and
20 you're ready to go with your son or a reader?

21 MR. MATHISON: I do.

22 THE COURT: Okay. And there's no question as to
23 what we're reading on this, correct? And will that be
24 your case after that, Mr. Mathison?

25 MR. MATHISON: We -- we'll ask the Court to take

1 judicial notice of the fact that Mr. Kelley is, in fact,
2 the registered agent for the association of Sea Pines
3 Plantation Property Owners. We'll ask that one of the
4 secretary of state documents establishing that be
5 introduced to do so. And we will also ask for the
6 introduction of the public document that's been
7 stipulated as being accurate, which is the 2011 annual
8 report issued by Community Services Associates.

9 Last, we'll ask that six of the defendants' answers
10 to interrogatories be read to the jury. There's already
11 one in, which is the answer to Number 19. And we're
12 going to ask that 10, 11, 12, 13, 14, and 15 also be read
13 in.

14 THE COURT: So let's go ahead, and whoever you're
15 going to have read, let's go ahead and put them in the
16 box here, and let's get going and get those few that
17 needed to be attached as exhibits, and let's get them in.
18 The jury's all here. We're ready to go.

19 And does anyone have a copy for me of Mr. Kelley's
20 deposition?

21 MS. JOLLEY: We can probably find one, your Honor.
22 Just one minute.

23 THE COURT: Actually, I take it back. I've got one
24 right there.

25 Good morning.

1 And we know, Mr. Mathison, that we are not reading
2 objections. Also, as things get moved in, we don't need
3 to read that either. Okay. So you've given -- Wanda, do
4 you have the documents that we just agreed are coming in?

5 COURT REPORTER: I do not.

6 MR. MATHISON: I'm doing that right now, your Honor.
7 It's just going to take a moment.

8 COURT REPORTER: Your Honor, do those have to be
9 marked before he starts to read?

10 THE COURT: Pardon?

11 COURT REPORTER: Do those need to be marked before
12 he starts to read?

13 THE COURT: Well, I know you can't do two things at
14 once, so it would just be nice to admit them right now,
15 for the record. The documents are actually being moved
16 in, so let's do that before we start. Okay?

17 OFF-THE-RECORD DISCUSSION BETWEEN
18 ATTORNEYS.

19 MR. MATHISON: These are the ones we've agreed on,
20 your Honor.

21 THE COURT: Okay. Give those to the court reporter.

22 MR. MATHISON: I'm sorry.

23 MARKING EXHIBITS.

24 COURT REPORTER: Are these all -- these are all
25 exhibits?

1 MR. MATHISON: Yes.

2 COURT REPORTER: Not I.D.'d, but exhibits.

3 THE COURT: These are exhibits that are going in.

4 MR. MATHISON: There's one for identification, which
5 is marked as being for identification. The first one is
6 in the record.

7 COURT REPORTER: Okay. All right.

8 MARKING EXHIBITS.

9 MR. MATHISON: May it please the Court. I'd also
10 like to mark the quitclaim deed for identification.

11 May it please the Court.

12 THE COURT: Yes.

13 MR. MATHISON: I'm going to mark quitclaim deed for
14 identification.

15 THE COURT: Okay.

16 MR. MATHISON: And that will be Plaintiff's Exhibit
17 36, for identification only.

18 COURT REPORTER: No. This will be 35. I've already
19 got it down.

20 MR. MATHISON: I'm sorry. 35 for identification.

21 COPY OF DOCUMENT REFERRED TO AS

22 QUITCLAIM DEED MARKED PLAINTIFF'S

23 EXHIBIT NUMBER 35, FOR IDENTIFICATION.

24 OFF-THE-RECORD DISCUSSION IN

25 COURTROOM WHILE MARKING EXHIBITS.

1 THE COURT: Ms. Jolley, have you had an opportunity
2 to go through and look at the interrogatories that he
3 wants to publish?

4 MS. JOLLEY: Ms. Jones has, your Honor.

5 THE COURT: I wondered if you have -- okay.

6 MR. HALIO: Is he just going to read them?

7 THE COURT: I assume.

8 MR. HALIO: Okay. He's got a right to do that.

9 THE COURT: Exactly. That's why I just wanted to
10 make sure. I just would like it to go smoothly so we can
11 finish up the case, his case, go ahead and hear motions
12 and --

13 MR. HALIO: We're with you on that, Judge.

14 THE COURT: Just move it along.

15 MR. HALIO: And I think you were about to ask me a
16 question a minute ago, before you got interrupted, and
17 the answer is right after lunch.

18 THE COURT: All right. Thank you.

19 Are we ready to go, you all?

20 MR. MATHISON: There is one issue that's come up,
21 your Honor. On Page 70, there's a discussion that goes
22 on for four questions and the four answers that has to do
23 with the eviction of a tenant at the behest of Mr. Breed.
24 Some children were identified as *incorrigible*.

25 THE COURT: Um-hmm.

1 MR. MATHISON: And Mr. Breed asked the landlord to
2 evict the children's parents. And that came from the
3 face of one of Mr. Breed's bridge reports. I have that
4 as undecided. Kelly says that you already decided that
5 one her way.

6 THE COURT: No.

7 MR. MATHISON: And we want to make sure that we
8 don't --

9 THE COURT: That's not coming in.

10 MR. MATHISON: All right.

11 THE COURT: The ultimate decision to evict had to be
12 made by the homeowner, not Mr. Breed, so.

13 MR. MATHISON: Well, the way it's relevant, your
14 Honor, is that I asked whether Mr. Breed, from time to
15 time, didn't banish people from Sea Pines Plantation.
16 Mr. Kelley said that --

17 THE COURT: Ban.

18 MR. MATHISON: Banish.

19 THE COURT: Oh, I understand the word. No, it's not
20 coming in.

21 MR. MATHISON: Kelly, 102 at line 20, that's now in.

22 MS. JOLLEY: Well, when we argued it, those were
23 out. I don't know if the Court's listened to it.

24 MR. MATHISON: Your Honor, you permitted the
25 conversation to take place about the payment of Mr.

1 Breed's cost of judgment and cost of settlement. That's
2 already come in, in the form --

3 THE COURT: Wait a minute. Cost of judgment and
4 cost of settlement?

5 MR. MATHISON: That's what we're using in lieu of
6 the term indemnity.

7 THE COURT: Okay. That didn't matter. That wasn't
8 the point, but yes, that's -- that portion has already
9 come in.

10 MR. MATHISON: Well, I'm saying it appears again in
11 Page 102, with a different witness, and I believe that it
12 needs to go in, or at least substantial portions of it.
13 There is a -- there is a provision on Page 103, where I
14 think that the word *indemnity* is used.

15 THE COURT: It's fine the way it is. That's in.

16 MR. MATHISON: Okay.

17 THE COURT: It's fine.

18 MR. MATHISON: All right. We're ready to go, your
19 Honor.

20 THE COURT: All right. Let's bring the jury in.

21 BAILIFF: Yes, your Honor.

22 THE COURT: All right, I will also say, you all, and
23 again, good morning. We're kind of in a little closer
24 quarters, as I'm sure you all appreciate this morning.
25 Again, do me a favor. As the testimony is read, and as

1 things go on, because we're so close, try to keep
2 activity to a minimum. It's such a close courtroom, if
3 any of you leave, everyone starts looking at you, and
4 they aren't listening to anything else. So just try to
5 keep it to a minimum. Of course, if you need to go, I
6 understand. It's not a problem.

7 BAILIFF: Jurors are entering, your Honor.

8 JURORS ENTER COURTROOM 10:12 A.M.

9 BAILIFF: Your Honor, the jury is seated.

10 THE COURT: Good morning, ladies and gentlemen.

11 GOOD MORNING RESPONSES FROM JURORS.

12 THE COURT: It's a pleasure to see you all. As you
13 know, we have moved courtrooms. We actually have another
14 term of court getting started this week, and we had a
15 large jury pool, so we had to go ahead and give them
16 Courtroom 1.

17 Ladies and gentlemen, at this time, we are going to
18 continue to trial this case. And the first thing we're
19 going to do this morning, my understanding, Mr. Mathison,
20 is read the deposition testimony of Cary Kelley. And of
21 course, Mr. Mathison will read the lawyer's portion, and
22 his son, Mike, will go ahead and read that portion from
23 Mr. Kelley.

24 Again, ladies and gentlemen, as I told you before, a
25 deposition testimony is to be judged and looked at just

1 as you would if that person was actually sitting here
2 testifying. All right?

3 Again, good morning. I'm glad you all are here, and
4 thank you all for being on time, and I think we're ready
5 to go.

6 MR. MATHISON: May it please the Court, ladies and
7 gentlemen. This is the testimony of Cary Kelley, the
8 gentleman right there, who's the executive vice president
9 of Community Service Associates.

10 At Page 7, Mike, Line 2.

11 READING DEPOSITION OF CARY A.

12 KELLEY. MR. ROBERT V. MATHISON

13 IS READING THE QUESTIONS; MR.

14 MICHAEL MATHISON IS READING THE

15 ANSWERS:

16 Q State your name for the record, please.

17 A Cary A. Kelley.

18 MR. MATHISON: At Page 8, Line -- excuse me. Page
19 9, Line 2. That's an answer.

20 A Education. I was an education major, and
21 then business management at Webster's.

22 Q I'm trying to think. You were too late
23 for the Salukis Golden Age in
24 Basketball; weren't you?

25 A Yes. Well, actually, I attended college

1 while on active duty in the Marine Corp.

2 MR. MATHISON: At Line 18.

3 Q What did you do in the Marine Corp?

4 A I was an infantry officer. I was an
5 infantry man first, and then once I got
6 commissioned, I was an infantry officer.

7 Q Well, take me through your military
8 career. How many years?

9 A Twenty-two years.

10 Q Starting as an enlistment -- enlisted man?

11 A Starting as a private.

12 Q Did you hold a commissioned rank when you
13 left, or were you a non-commissioned
14 officer?

15 A Commission rank.

16 Q And what was that?

17 A Chief Warrant Officer Four.

18 MR. MATHISON: Going to Page 12, Line 24.

19 Q Once you retired, what did you do?

20 A I went to work as a property manager at
21 Callawassie Island.

22 MR. MATHISON: Page 13, Line 8.

23 Q And how long were you there?

24 A Five years, until 2005.

25 Q What happened then?

1 A *Then, I was hired by Sea Pines, CSA.*
2 MR. MATHISON: *Page 18, Line 15.*
3 Q *What, exactly, is your role as the*
4 *executive vice president of CSA?*
5 A *I'm the chief operating officer,*
6 *essentially, for CSA.*
7 Q *Is there anyone over you, other than the*
8 *board of directors?*
9 A *No.*
10 MR. MATHISON: *Going to Page 19, Line 2.*
11 Q *You have a -- do you have a staff of*
12 *people who report to you?*
13 A *Yes.*
14 Q *In your capacity?*
15 A *Yes.*
16 Q *Is one of them a -- excuse me. Strike*
17 *that.*
18 MR. MATHISON: *At Line 16.*
19 Q *Does one of them have the title of chief*
20 *of security and head of community*
21 *relations?*
22 A *Community Affairs.*
23 Q *Community Affairs?*
24 A *Yes.*
25 Q *And who is that?*

1 A George Breed.

2 Q And is he below you on the flow chart, or

3 above you, or on the same plane?

4 A Below.

5 MR. MATHISON: At Page 20, Line 10.

6 Q I'm handing you this document, Mr. Kelley,

7 and ask if you can identify it for me,

8 please.

9 A Yes. It's a letter that George Breed

10 signed our complaint to the Commission

11 on Judicial Conduct.

12 Q When was the first time you saw that

13 letter?

14 A I don't remember the exact date, but it

15 was in 2008.

16 Q Do you remember whether you saw it before,

17 or after it was signed?

18 A I believe I saw a draft copy before.

19 Q And did you have any discussion with Mr.

20 Breed about the contents of the letter

21 before it was signed and sent?

22 A I don't recall specifics, what the

23 conversation was. I'm sure I asked him to

24 make sure that everything in there was

25 verified, and that we were not making any

1 misstatements in regards. And I did ask
2 for -- I did ask about the format in
3 regards to the complaint itself.

4 Q You asked about the format?

5 A Right. Did it follow what the Commission
6 said in regards to submitting a complaint.

7 Q Okay. How long before the date on that
8 letter did you and Mr. Breed start
9 discussing its germination, its
10 origination?

11 A I don't remember exactly when.

12 Q But you did do it beforehand?

13 A Yes.

14 Q Had you and Mr. Breed discussed Otis
15 Coffey before Mr. Breed wrote the letter?

16 A Yes.

17 Q In what connection had you discussed Mr.
18 Coffey?

19 A In connection with a spat of burglaries
20 and peeping Tom incidents. And I believe
21 that the feeling being he was the primary
22 suspect.

23 Q That was -- wasn't your feeling, was it?
24 That was Mr. Breed's feeling.

25 A Yes, it was Mr. Breed's feeling.

1 Q You would have no reason to have a feeling
2 one way or the other; would you; not
3 being in law enforcement.

4 A No. Not necessarily. My job as the chief
5 operating officer is to ensure that my
6 staff, when they're making these types of
7 decisions or bringing these issues
8 forward, that there's documentation to
9 support essentially what they're saying.

10 MR. MATHISON: Go to Page 31, Line 2.

11 Q In Paragraph 2, it says that board
12 members reviewed the April 22, 2008,
13 minutes. A motion was made by Mr. Minot.
14 Is that his name?

15 A Yes.

16 Q And seconded by Mr. Hattersley, to
17 approve the minutes as amended.

18 A Yes.

19 Q The motion was approved unanimously. Is
20 that what it says?

21 A That's what it says.

22 Q Is it your testimony that only after the
23 approval of the minutes, do they get
24 signed?

25 A Yes.

1 Q And up until then, what they are is they
2 are in draft form?

3 A Yes.

4 Q Why does the version that was given to Mr.
5 BirdWell, have 'draft' on it, while the
6 version that was supplied to me does not?

7 A This was in Mr. Birdwell's board package.

8 Q In other words, what was sent to him in
9 anticipation of the next meeting.

10 A It is a draft.

11 Q So then, in theory, what I'm looking at
12 here, of the May 20th meeting minutes, in
13 that form, would not have been sent out
14 until the following month?

15 A Yes.

16 Q Coming prior to the board meeting?

17 A Correct.

18 Q And do I understand correctly that the
19 materials that would be needed for an
20 upcoming board meeting are typically
21 delivered by Sea Pines Security Guards, to
22 the board of directors a day or two in
23 advance of the meetings.

24 A Actually, if they're delivered, they're
25 delivered the Friday before the Tuesday

1 meeting. And the majority of the board
2 members now get them via the website.
3 They're posted on the website with all
4 documentation, and they can access them at
5 that time. That's been changed through
6 the years.

7 Q When did the change occur?

8 A It's been incremental. Not all board
9 members wish to access their package that
10 way, so we still deliver some.

11 Q In 2008, were they still being delivered?

12 A I believe so.

13 Q And would you agree with me that there's
14 no mention of Mr. Breed's letter or
15 taking any action in this, in the minutes
16 of the May 20th meeting?

17 A Yes.

18 Q And assuming that the actual signed copy
19 that you're going to produce for these
20 minutes does not contain any either, would
21 that be sufficient for you to say that
22 you're certain it was not discussed with
23 the board at that time?

24 A Yes.

25 Q Let's mark the draft of the minutes as

1 Plaintiff's --

2 MR. MATHISON: The exhibit was admitted.

3 Q What is a bridge report, Mr. Kelley?

4 A Summary of security incidents.

5 Q Who typically generates the bridge report?

6 A Mr. Breed's department. I don't know who
7 specifically in his department, but Mr.
8 Breed.

9 Q And where does Mr. Breed -- excuse me.

10 Where does the bridge report go?

11 A Normally, to him, and I get a copy for my
12 review.

13 Q Then what happens to the bridge report?

14 Do you send it to the board?

15 A We had been. The board president -- and I
16 don't know exactly when -- last year's
17 board president wanted them in the board
18 packages. So we would provide them to the
19 board as a summary of actions that the
20 department was involved in during the
21 previous month.

22 Q In 2008, were they being supplied to the
23 board?

24 A I don't recall.

25 Q I'm handing you this document, and asking

1 if you can identify it for me, please.

2 A June 11, 2008, Security Bridge Report.

3 Marked Plaintiff's Exhibit 8, Breed.

4 Q Did you receive that report?

5 A I don't recall specifically, but I believe

6 I did, yes.

7 Q And if you'll look at the second page,

8 specifically, at the bottom of that page,

9 does it have any indication that Mr.

10 Breed's letter of June 6, 2008, may have

11 been attached?

12 A Yes.

13 Q What became of the copy that was attached

14 to Mr. Breed's letter?

15 A I do not recall.

16 Q I mean, to the bridge report?

17 A I don't recall. That may have been the

18 copy that was presented to the board, but

19 I don't recall.

20 Q Was the copy that was attached to this

21 bridge report signed or unsigned?

22 A I do not recall.

23 Q But it was -- under any set of

24 circumstances, the report was prepared

25 five days after the date of the letter on

1 June 6th. Isn't that correct?

2 A Yes. It appears so.

3 Q And my question to you is, had you at any
4 date prior to this date, June 11, 2008,
5 obtain the approval of any member of the
6 board?

7 A I do not recall.

8 Q Well, what member would have obtained --
9 would you have obtained the approval of?

10 A It's not a matter of approval. It's a
11 matter of passing information. And
12 normally, my direct contact is with the
13 president of the board.

14 Q And who was that at the time?

15 A In 2008?

16 Q Yes, sir.

17 A Hmm. Let me think. It was either John
18 McLauchlin or Pat Jenkins.

19 Q Was the president of the board typically
20 listed first in the board meeting minutes
21 or not?

22 A Not necessarily, no.

23 MR. MATHISON: And the introduction of that
24 document.

25 Q I'm handing you this document, which is

1 the Community Services Associates minutes
2 from the June 24, 2008, board meeting.
3 And I'm asking you if you can identify
4 that for me, please.

5 A Yes. This is the draft -- appears to be
6 the draft minutes from the June 24, 2008,
7 meeting. Did you want me to also receive
8 that?

9 Q I think this was actually attached to it.

10 A Was it?

11 Q Yes.

12 A Okay. It may have been a part of it.

13 Q I think it's attached to -- yes.

14 A Okay.

15 Q To those, at least in the form that it was
16 delivered to me.

17 A Okay. It's probably a part of the
18 package.

19 Q And I believe this was also attached.
20 That would fall hard on the heels of
21 Community Services Associates' job
22 description for the property inspector.

23 A Yes.

24 Q Was there discussion of Mr. Breed's letter
25 at this meeting?

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A It's indicated on Page 2 there was, yes.

Q And what, specifically, was discussed at the meeting about Mr. Breed's letter?

A I do not recall the specifics of the discussion. I'm sure it was just making him aware of the complaint itself and giving him a chance to read it.

Q Do you know whether or not they had an opportunity to read it in advance, because it had been delivered to them as part of their package before the meeting?

A If it was delivered as part of the package, then the answer is yes. If it wasn't, then I disseminated it during the meeting.

Q Did the bridge report get disseminated to anyone before the meeting?

A Again, the same applies. If it was part of the package, then it would have been delivered as part of the package. If not, it would have been disseminated at the meeting.

Q And if it were delivered as part of the package, it would have gone on Friday, before the meeting on the following

1 Tuesday.

2 A Yes, that's the usual schedule.

3 Q So, if I understand the chronology, at

4 some point prior to Mr. Breed writing the

5 letter, you and he discussed it, and you

6 may have been -- seen a proposal or a

7 draft of it. Is that correct?

8 A Correct.

9 Q And the date of his letter is June 6,

10 2010. Is that right?

11 A Yes.

12 Q And on June 11, 2010, you received a

13 bridge report from Mr. Breed, which had a

14 copy of the letter attached. Is that

15 right?

16 A Yes.

17 Q And you may have sent that copy of the

18 letter, along with the bridge report, to

19 all the members of the board.

20 A Yes.

21 Q And that may or may not have been done on

22 Friday, preceding the meeting that took

23 place on June 24th.

24 A Yes.

25 Q And there finally was a discussion with

1 the board on June 24th.

2 A Yes.

3 Q What was the point of telling the people

4 on the board on June 24th that this had

5 happened?

6 A I work for the board.

7 Q Is it, in fact, the case, that by the time

8 that this was discussed with the board, an

9 acknowledgment of receipt had already been

10 received, if not a formal response?

11 A That's what it indicates in the draft

12 minutes, yes.

13 Q Do you know whether, prior to this date,

14 June 24th, anyone on the board of

15 directors had any knowledge that Mr. Breed

16 had written a letter?

17 A Yes, I believe.

18 Q Who had knowledge of that?

19 A The security committee. The board member

20 that sat on the security committee would

21 have known, because George shared it with

22 the security committee.

23 Q And how do you know that George shared it

24 with the security committee?

25 A I directed him to, and he told me he had.

1 Q Who was the chairman of the security
2 committee?
3 A I do not recall in 2008 who the chairman
4 of the security committee was. I don't
5 recall.
6 Q Certainly, the security committee met, and
7 we have minutes of those meetings.
8 A Uh-huh.
9 Q Would you accept the fact that the
10 chairman, on or about this date, was, in
11 fact, the chairman that you directed him
12 to meet with?
13 A Yes.
14 Q And the only way you know that he met with
15 him is that Mr. Breed told you that he met
16 with him?
17 A I don't recall specifically, but I know
18 Mr. Breed told me he had shared it with
19 the committee. And I don't know whether
20 that was included in their committee
21 minutes.
22 Q Well, forgive me, but what would you make
23 of the fact that Mr. Breed told me he
24 didn't share it with the committee, and
25 didn't feel that he had any obligation to

1 do so?

2 A I can't speak for Mr. Breed.

3 Q Well, which is correct? Is what he told
4 me correct, or what you just told me
5 correct?

6 A I believe what I told you is correct. I
7 don't know. I don't have those records in
8 front of me.

9 MR. MATHISON: Go to Page 44, Line 8.

10 Q So you're saying that Mr. Breed told
11 somebody on the security committee, the
12 name of which you can't recall, but you
13 believe it was the head of the security
14 committee.

15 A No. Actually, my understanding was that
16 the letter and the contents were shared
17 with the security committee, which would
18 include the present chairman.

19 Q And if I present you a copy of the
20 security committee meeting minutes from on
21 or about June 24th, you would accept that
22 the person listed on there was the
23 chairman, was, in fact, the chairman;
24 wouldn't you?

25 A Yes.

1 Q Okay. And you instructed Mr. Breed to do
2 that. Is that right?
3 A That's my recollection, yes.
4 Q And he told you that he'd done it?
5 A That's my recollection.
6 Q Did he do it before or after he sent the
7 letter?
8 A If he did it at the security committee
9 meeting, the date that you indicated in
10 June, it would have been after the letter
11 was sent.
12 Q Well, then, I have to ask you, what's the
13 point of getting somebody's approval after
14 the fact?
15 A It wasn't approving it. It was giving
16 them information.
17 Q So is it --
18 A This is an operational matter. It's not a
19 board decision.
20 Q Well, if that's the case, if it's
21 operational, why did you tell them at all?
22 A Because I work for them, and it's my call.
23 Q So what you were doing was advising them
24 as a matter of courtesy after the fact?
25 A Absolutely.

1 Q And that would be the security committee,
2 as well as the board?

3 A That's my recollection. I know that I
4 shared it with the board, and it's my
5 recollection that Mr. Breed shared it with
6 the security committee.

7 Q But it's also your recollection that that
8 was done after the letter had been sent.

9 A Yes.

10 Q So is it possible that the bridge report
11 that we identified, ended up getting
12 disseminated not generally to the entire
13 board, but just for example, to the
14 security committee?

15 A No. At that time we were -- my belief is
16 that was being shared with the entire
17 board.

18 Q All right. Did Mr. Breed do anything
19 other than deliver the security report to
20 you?

21 A No.

22 Q So whoever was in charge, whoever
23 disseminated it, was somebody in your
24 office?

25 A Yes.

1 Q And you don't know whether it was
2 disseminated on or about the 11th of June,
3 or later, in preparation for the meeting
4 that took place on June 24th?

5 A I do not recall the exact date, no.

6 Q Which would be, I'm thinking out loud now,
7 but June 24th, if that's a Tuesday, it
8 seems to me that -- would that be the
9 20th, the preceding Friday? Is that what
10 it would be?

11 A That's normally the case, yes.

12 Q And the idea is that you deliver this
13 material so that people have an
14 opportunity to familiarize themselves with
15 it before the board meeting. Is that
16 correct?

17 A Yes.

18 Q Okay. If a board member had taken a look
19 at what Mr. Breed wrote, and had had a
20 problem with it --

21 A Uh-huh.

22 Q -- what, if anything, could he have done?

23 A He would have informed me of his issues
24 with that, and I would have tried to
25 address them as best I could.

1 Q But you --
2 A He or she. We do have female board
3 members.
4 Q But you're telling me that there was no
5 possible way that a board member could
6 have interdicted the process and prevented
7 it from happening.
8 A No, not at that point.
9 Q Well, obviously, because the letter had
10 already gone, correct?
11 A Yes. That's absolutely right.
12 Q All right. Were you convinced that [sic]
13 Mr. Breed put in is letter was accurate?
14 A Yes.
15 Q What, if anything, did you do personally,
16 to examine the credibility of some of
17 these statements that appear in
18 Plaintiff's Exhibit 1?
19 A What did I do?
20 Q Yes.
21 A I don't recall doing anything specific.
22 Q Do you know whether any member of the
23 board made inquiries, or otherwise
24 investigated whether or not what Mr. Breed
25 said was true?

1 A Do I have knowledge? No.
2 Q Would it be your opinion, since you're
3 convinced this is a 'operational
4 decision,' that no board member would have
5 the right to make inquiries into whether
6 [sic] Mr. Breed said was true?
7 A I never said they don't have the right to
8 ask about operational decisions. But
9 operational decisions are made by staff.
10 That's our responsibility.
11 Q Okay. And at the meeting of June 24th,
12 did anyone ask any questions about your
13 operational decision?
14 A Not that I recall.
15 Q Had there been any discussion that you're
16 aware of previously with the board about
17 difficulties with what you and/or Mr.
18 Breed perceived was Otis Coffey?
19 A I don't recall specifically any of those
20 discussions, no.
21 Q Had there been any discussions before June
22 24th between you or Mr. Breed and the
23 board about how Maureen Coffey may have
24 been impeding Mr. Breed's effort to
25 investigate what Otis Coffey may or may

1 not have been doing?

2 A No. And we don't investigate.

3 Q Well, follow up, if you like that better
4 than investigate.

5 A I don't think that's the right term,
6 either.

7 Q Have you ever told anyone on the board
8 that you believed Maureen Coffey was
9 interfering with whatever Mr. Breed was
10 attempting to do with respect to Otis
11 Coffey?

12 A No.

13 Q Had Mr. Birdwell, with Sea Pines,
14 specifically, expressed some reservations,
15 concerns, or compunctions, about problems
16 and resolving an outstanding case in these
17 open burglaries and peeping Toms?

18 A He mentions concerns about the fact that
19 we were having those issues, yes.

20 Q And was Mr. Breed's letter dated June 6,
21 Plaintiff's Exhibit 1, a response in part,
22 to Mr. Birdwell's concerns about the
23 matters that had been going on that hadn't
24 been solved?

25 A No.

1 Q Looking at Plaintiff's Exhibit 4, on the
2 second page -- it's right up here.
3 A Oh, this one?
4 Q Yes, sir.
5 A This is 3.
6 Q Well, let's look at that one anyway.
7 A Okay.
8 Q That's my numbering problem, not yours.
9 A Oh, the bridge report. Okay. It has
10 Exhibit 8, on the bottom, and 3 on the
11 top.
12 Q Yes, sir. Would you read the last
13 sentence to me in the confidential portion
14 of the bridge report?
15 A Yes. 'That said, I am attaching a letter
16 that was sent to the South Carolina
17 Judiciary Complaint Commission, that may
18 speak to a few of the hurdles that we may
19 have faced, concerning a recent but
20 negated burglary/peeping Tom reports.'
21 Q Isn't that Mr. Breed making an excuse for
22 why he hasn't been able to close those
23 cases?
24 A I do not know.
25 Q Well, what does it mean?

1 A It means he's attaching a letter that may
2 speak to some burglaries and peeping Tom
3 reports.
4 Q How about the hurdles? What does that
5 mean to you?
6 A Just that. That it includes some issues
7 that the letter evidently [sic] -- that
8 were causing some of the issues.
9 Q What are the hurdles?
10 A Well, according to our complaint, her
11 injecting herself into the -- basically,
12 into these matters.
13 Q So he was basically copping an excuse
14 here?
15 A No.
16 Q What does he mean by recent by negated
17 burglaries, peeping Tom reports?
18 A I can't speak to what he meant. You'd
19 have to ask Mr. Breed.
20 Q Well, you read it. Didn't you make an
21 effort to comprehend it?
22 A No. I can't speak for Mr. Breed. I
23 comprehended the letter. It's pretty
24 specific as to what we were complaining
25 about in regards to Judge Coffey.

1 Q And she -- and you were complaining that
2 somehow she had negated your efforts to do
3 what?
4 A Well, according to our complaint, she
5 interjected herself in a matter that
6 basically kept the sheriff's department
7 from closing their investigation.
8 Q Why didn't you have the sheriff's
9 department write the letter?
10 A Actually, it's my understanding, and the
11 letter indicates that the sheriff's
12 department was aware that the letter was
13 being written, and actually is quoted in
14 the letter.
15 Q Let's look at the letter, then. Which one
16 is that? Excuse me.
17 A Which one is that?
18 Q Plaintiff's Exhibit 1.
19 A There we go.
20 Q The portion that you're referring to is at
21 the top of the second page?
22 A Yes. Where it talks about Toby McSwain
23 had a meeting with Judge Coffey, and that
24 the Judge indicated to Captain McSwain she
25 was going to get him out of town.

1 Q When was that?

2 A I don't know. Doesn't say here.

3 Q Isn't it true that it was some time after

4 the 2004 rash of burglaries in Sea Pines?

5 A Yes. According to this, yes.

6 Q So how would you know anything about that?

7 A By reading this.

8 Q Mr. Kelley, --

9 A By reading this.

10 Q You weren't even employed there in 2004;

11 were you?

12 A No. But I was employed in June 6, 2008.

13 Q So you didn't know anything about it, and

14 you just took Mr. Breed at his word. Is

15 that right?

16 A Yes.

17 Q Okay. Now, after the meeting on June

18 24th, were there continuing discussions

19 between you and the members of the board,

20 about Mr. Breed's letter?

21 A Not to my knowledge, no.

22 Q Did anyone make inquiry of you about the

23 letter, or what had happened to it after

24 the board meeting on June 24th?

25 A Not that I recall.

1 Q Did anyone ask you about it during the
2 -- during the Coffee-with-Cary portion of
3 your meetings that you held with the
4 residents as a whole?

5 A I recall being asked about the Coffey
6 issue. Once the complaint and news
7 article showed up, then I was asked about
8 it.

9 Q Okay. Is it your testimony that you
10 weren't asked about it at any time before
11 November of 2008?

12 A It's my testimony I do not recall being
13 asked about it any time before then.

14 Q So you could have, but you don't recall.
15 Is that right?

16 A I do not recall.

17 Q Did you have any compunctions about
18 discussing it?

19 A No.

20 Q Well, then why the copy of the letter that
21 you attached to the minutes of June 24th
22 meeting have a stamp on the top on the
23 letter, 'Confidential. Do not
24 disseminate?'

25 A That is basically our attempt to keep from

1 *embarrassing anybody.*

2 Q *So it wasn't a matter of limiting the*
3 *circulation, so much as it was trying not*
4 *to embarrass people. Is that what you're*
5 *saying?*

6 A *No. We don't disseminate these things*
7 *into the larger public any more than we do*
8 *the bridge report. Most of that bridge*
9 *report involves our residents or their*
10 *guests. We are not into embarrassing*
11 *them. We are into reporting the issues*
12 *that we deal with.*

13 MR. MATHISON: *At the bottom of that page, Line 25.*

14 Q *The bridge report that you've got on June*
15 *11th doesn't have anything on the face of*
16 *it indicating that it's confidential, does*
17 *it?*

18 A *No. Page 2 states it's confidential.*

19 MR. MATHISON: *At Line 15 on the same page.*

20 Q *When did you learn that the Judicial*
21 *Conduct Commission had taken no action,*
22 *and had, in fact, dismissed Mr. Breed's*
23 *complaint against Ms. Coffey?*

24 A *I don't remember the exact date. When we*
25 *received the letter was when I was*

1 notified.

2 Q Who notified you?

3 A That, I do not recall specifically who.

4 Q Who notified the board?

5 A I did.

6 Q Why didn't Mr. Birdwell, know?

7 A I can't speak for Mr. Birdwell.

8 Q How did you notify the board?

9 A I do not recall, but I believe I mentioned

10 it in the meeting, that we were -- had

11 received it, and basically it was

12 unfounded or unsubstantiated, or whatever

13 the wording was in our response.

14 Q Why is that not reflected in the board

15 meeting minutes?

16 A I do not know.

17 Q So you don't know when you found out, you

18 don't know from whom you found out.

19 A The mail comes every day. I have staff

20 that delivers the mail. So it could have

21 been any of them.

22 Q Do you receive mail addressed to Mr.

23 Breed?

24 A No. I receive mail addressed to Community

25 Service Associates. But it could have

1 been one of his staff that brought me a
2 copy. It could have been my assistant
3 that brought me a copy. I don't recall.

4 Q Did you have anything with that -- did
5 you do anything with what you received,
6 sir?

7 A I read it and filed it away. That was --
8 as far as I was concerned, that was the
9 end of this issue.

10 Q Are you aware of any mention of the fact
11 that it was dismissed that appears in the
12 minutes of the board meeting?

13 A I don't recall. I don't recall.

14 Q Did you mention it to the board at any
15 point before you got sued?

16 A Again, I do not recall when I mentioned it
17 to the -- again, I do not recall when I
18 mentioned it and when I received that
19 letter. I believe it was late in 2008,
20 when we received the notification from the
21 Commission, but I don't recall the exact
22 date.

23 Q Why would that not be news, as worthy or
24 as remarkable as the fact that the letter
25 was written in the first place?

1 A *What extent? You mean informing the*
2 *board?*

3 Q *Yes.*

4 A *I would say I would inform the board. I*
5 *just don't know when that would've*
6 *occurred, is what I'm saying. The board*
7 *would have been told that we received a*
8 *response and it was dismissed.*

9 Q *They would have been, but you've got no*
10 *record of ever having done it. Isn't --*

11 A *I see nothing.*

12 Q *-- that right?*

13 A *No. I do not recall.*

14 Q *Were you embarrassed at the fact that you*
15 *took a shot at a sitting judge and missed?*

16 A *I didn't take a shot at a sitting judge in*
17 *a detrimental way. She's a public*
18 *official and open to scrutiny. We*
19 *followed the Judicial Commission's*
20 *guidance on how to present a complaint,*
21 *and we did it in a professional manner.*
22 *So I take exception to the fact that you*
23 *said we took a shot at a judge. That's*
24 *not what we did.*

25 Q *Were you embarrassed by the fact, whatever*

1 you did, that it didn't work out?

2 A No.

3 Q Okay.

4 A I'm embarrassed by the fact that no one on
5 the Commission called us as part of this
6 investigation.

7 Q I'm handing you the letter dated October
8 1st, 2008, and ask if you can identify it
9 for me.

10 A Yes. This is the letter from Judicial
11 Conduct stating that they reviewed it;
12 the results of the investigation. Their
13 investigation and the panel voted to
14 dismiss our complaint.

15 Q Yes, sir. Did you give that letter to
16 people on the board of directors?

17 A I do not recall.

18 Q Of Community Services Associates?

19 A I do not recall.

20 Q And is the reason you don't recall because
21 you were embarrassed about it and did not
22 want them to see?

23 A No.

24 Q Well, which among the people on the board
25 at the time, Ms. Jenkins, Mr. Sigmon,

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Mr. Carlson, Mr. Sowers, Mr. Minot,
which of those people would know that it
was dismissed?

A All of them.

Q Why would Mr. Birdwell not know it?

A He may not. He may not have been in the
meeting.

Q The meeting that you can't recall because
you don't know when it took place.

A Yes.

Q Right. But it probably took place
sometime after October 1st. Isn't that
right?

A Yes. It would have been hard to tell them
it had been dismissed if I hadn't received
the letter.

Q Were you and Mr. Breed concerned that
there might be repercussions as a result
of the letter that Mr. Breed wrote on June
6, 2008?

A No.

MR. MATHISON: Going to Page 63, at Line 7.

Q Prior to the institution of the lawsuit by
Ms. Coffey, do you know whether anyone on
behalf of the board of Community Service

1 Associates, made any investigation or any
2 inquiry into whether or not what Mr.
3 Breed had put in his letter was accurate?

4 A No.

5 Q Would it be safe for me to assume that you
6 did not make any inquiry into whether it
7 was accurate?

8 A No.

9 Q Well, what did you do? How did you
10 inquire?

11 A I don't recall specifically, but I know
12 that -- I know Toby McSwain, Captain
13 McSwain, and I know George Breed, and I
14 know that the facts in this thing as laid
15 out in regards to the historical documents
16 that I reviewed. And the documentation
17 being added with all the reports, and our
18 time lines, all seem to indicate that
19 these were correct.

20 Q So you did review the reports. Is that
21 right?

22 A The actual reports that show the number of
23 incidents in the plantation, when they
24 were occurring, and all those things, yes.

25 Q What did those lead you to conclude?

1 A That we had someone basically operating in
2 a consistent fashion within the
3 Plantation.
4 Q But why would you assume that that person
5 was Otis Coffey?
6 A Well, I'm going to rely on a professional
7 that's trained to, and has the background,
8 to basically make those kind of
9 conclusions. And that's what the
10 sheriff's department has kind of
11 indicated, that that was a good choice of
12 suspects.
13 Q Did you know that the person who's the
14 lead investigator for the Sheriff's
15 Department has testified under oath that
16 Ms. Coffey did not interfere with or
17 impede their investigation?
18 A No.
19 Q Does that coincide with what Mr. Breed
20 wrote in his letter on June 6?
21 A Well, when I read Mr. Breed's letter
22 Captain Toby McSwain, that that
23 reference to him, which my understanding
24 is he verified to be true, that does state
25 she injected herself into this issue.

1 Q In 2004?
2 A Yes.
3 Q So how does that -- how is that impeding
4 you in 2008?
5 A It's a pattern of impeding us.
6 Q A pattern of impeding. Did you look at
7 any of the incident reports that were
8 generated in connection with the items
9 that were cited in there by Mr. Breed?
10 A I don't recall..
11 Q Do you remember reading an incident report
12 by John Jolin that was prepared on or
13 about May 20th, 2008?
14 A No, I did not review it.
15 Q That would've been the same day -- the
16 night of the same day that, apparently,
17 Mr. BirdWell, was critical of the efforts
18 to close out these burglaries and peeping
19 Toms in Sea Pines. Did you not look and
20 see what that report said?
21 A No. Not at that time, no.
22 Q Did you look later?
23 A I saw the report later, once this -- these
24 issues came up, and was basically informed
25 that Jolin had changed the initial report.

1 Q Why was the report that you have a copy of
2 not delivered to the Beaufort County
3 Sheriff's Office?

4 A I don't know. It was changed.

5 Q Do you know whether the Beaufort County
6 Sheriff's Office only has the changed
7 report?

8 A No, I do not.

9 Q Do you know who delivered the report to
10 the Beaufort County Sheriff's Office?

11 A No, but I believe Officer Florencio was
12 the one that changed the initial report.

13 Q I ask you, do you know who delivered it?

14 A No.

15 MR. MATHISON: At Line 12, on Page 67.

16 Q Is your understanding that Beaufort County
17 Sheriff's Office and Sea Pines Security
18 officers showed up at Ann Coffey's house
19 on midnight on May 20th, 2008?

20 A I believe it's in one of those reports,
21 yes.

22 Q And what were they doing there?

23 A Well, I believe Jolin indicated that he
24 had identified Coffey, yelled at him, and
25 chased him, and dispatch sent patrol to

1 sit out front of Ms. Coffey's home to see
2 if he entered that residence.

3 Q But that's not in the report you all have.

4 A I can't speak to the report.

5 Q Well, then how do you know if it's not in
6 the report?

7 A It's in one of these documents that I have
8 already. I don't know specifically if
9 it's in that report, as I said, I don't
10 recall reading a report.

11 Q Did you ever review any of the so-called
12 synopses that are prepared every 24 hours
13 for Mr. Breed to review?

14 A No.

15 Q Have you reviewed any reports having to do
16 with the towing of Dr. Coffey's old car on
17 or about May 21, 2008?

18 A No.

19 Q Is it typical for Mr. Breed to prohibit
20 people that he deems undesirable from
21 coming into the Plantation?

22 A Not that I'm aware of.

23 Q Would you look at Plaintiff's Exhibit 3?

24 A The bridge report?

25 Q Yes.

1 A Okay.

2 Q First paragraph.

3 A Okay.

4 Q Doesn't that indicate that Mr. Breed has,
5 in fact, prohibited those people from
6 returning to Sea Pines Plantation?

7 A It says that he sent a letter from --
8 barring them from future entry into the
9 Plantation as a result of property damage,
10 yes.

11 Q And isn't it customary for him to do that
12 with respect to non-residents who he feels
13 are undesirable?

14 A Not to my knowledge.

15 Q You're saying this is the only time this
16 has ever happened?

17 A No.

18 Q Well, how many times has it happened?

19 A I do not know.

20 Q Do you participate in these decisions, or
21 Mr. Breed -- or does Mr. Breed do them
22 unilaterally?

23 A I don't recall participating in one
24 directly, so, no.

25 Q Does Mr. Breed make it an effort to drive

1 out undesirables who are not property
2 owners?

3 A No.

4 MR. MATHISON: Going to Page 71, Line 7.

5 Q So isn't that basically driving
6 undesirables out of Sea --

7 MS. JOLLEY: We've objected to this.

8 MR. MATHISON: You went -- your objection went --

9 MR. MIKE MATHISON: I think they designated it to
10 include it, if -- looks like.

11 MR. MATHISON: Go to -- go to Page 73, Line 10.

12 Q Did Mr. Breed typically shut down
13 people's gate privileges? And by that I,
14 mean the privilege to have other people
15 enter on their say-so?

16 A No.

17 Q Okay. Define for me what you mean --
18 excuse me. I'm sorry. Go ahead. Okay.

19 A Define for me what you mean by typically.

20 Q Was he authorized simply to prevent people
21 bringing guests into the plantation if he
22 desired to?

23 A On a whim, no.

24 MR. MATHISON: Go to Page 76, Line 3.

25 Q And you said that it would not have been

1 typical for Mr. Breed to shut down guest
2 pass privileges?

3 A There are normally two reason we will cut
4 -- shut down guest pass privileges. One
5 is unpaid assessments. We shut down your
6 guest pass privileges, your code, until
7 your assessments are brought up to date.
8 Or if we see a pattern of abuse, meaning
9 that we're seeing hundreds of guest
10 passes called in, using a specific code,
11 we'll shut it down to bring the owner in
12 to make sure everything's fine, and it's
13 not being abused.

14 Q Did Mr. Breed shut down Ann Coffey's guest
15 privileges in May of 2008?

16 A I don't know.

17 Q In order to do so, would he have had to
18 have gotten your approval?

19 A Depends on the circumstances.

20 Q Well, did he get your approval?

21 A I don't recall.

22 Q So you don't know whether her passes were
23 shut down.

24 A No.

25 Q Do you know whether an effort was made to

1 *prevent her from getting authorization for*
2 *her son to come into the Plantation?*

3 A *No.*

4 Q *You don't know that?*

5 A *No, I don't know that.*

6 Q *But it wouldn't surprise you if it had*
7 *happened; isn't that right?*

8 A *No, I can't say that.*

9 Q *So it would have surprised you.*

10 A *I can't say that.*

11 Q *You think Mr. Breed would have done that?*

12 A *I -- we just went over that. There has to*
13 *be a reason if he did it, and I don't know*
14 *what that is. I don't recall it being*
15 *done. You'd have to ask Mr. Breed if he*
16 *did so.*

17 Q *Did Mr. Breed have a pattern of telling*
18 *people to come and see him, and if they*
19 *didn't, shutting down their guest pass*
20 *privileges until they did?*

21 A *Not to my knowledge, no.*

22 Q *Do you?*

23 A *Normally, when Mr. Breed called and asked*
24 *you to come in, the owners would comply or*
25 *their representatives would comply.*

1 Q But if they didn't comply, did he shut
2 down their guest pass privileges?
3 A I'm not aware of that. You'd have to ask
4 Mr. Breed.
5 Q Would that coincide with your
6 understanding of his authority? Is that
7 within his authority to do that?
8 A As I said, if we see a pattern of abuse,
9 meaning we're getting hundreds of passes
10 called in on a guest pass code, which is
11 well, out of the norm, we will shut it
12 down and ask somebody to come in and see
13 us. Whether it's a rental management
14 company that the owner has given that
15 number to, or whoever, to come see us so
16 that we can have a discussion as to what's
17 going on there.
18 Q You don't have any evidence that Ann
19 Coffey was, you know, phoning in hundreds
20 of guest passes, do you?
21 A I'm not aware of that.
22 Q Then, why would Mr. Breed have shut down
23 her guest pass privileges?
24 A I'm not aware he did.
25 MR. MATHISON: At Line 8.

1 Q Do you know whether Mr. Coffey was in the
2 Plantation in 2004, when the events that
3 let to Mr. McSwain's concern arose?
4 A Do I? No. I was not on the Plantation in
5 2004.
6 Q Would it make a difference if he was not?
7 A You'll have to explain that to me. What
8 do you mean?
9 Q Do you think that the burglaries and
10 peeping Toms, to the extent they were
11 taking place in 2004, were being committed
12 by someone who lived outside the
13 Plantation?
14 A Again, we have crimes that are committed
15 inside the Plantation by folks that live
16 outside the Plantation. Sea Pines is a
17 gated community. You pay \$5.00, you're
18 in.
19 Q You said that you'd reviewed the reports,
20 and you had seen how there were
21 similarities between what happened in 2004
22 and 2008. Isn't that right?
23 A The maps, yes.
24 Q Okay.
25 A Tracking maps, yes.

1 Q And do you know whether Otis Coffey lived
2 in Sea Pines Plantation in 2004?
3 A I do not know, no.
4 Q Do you know whether he was arrested for
5 trespassing and prosecuted in 2004?
6 A No, I do not recall. I know he's -- it's
7 been my understanding he's been arrested
8 several times.
9 Q For what?
10 A Drugs, trespassing, I don't know what
11 else. That I don't have verification of
12 that. That's what I've been -- rumors.
13 Q Do you know whether he was living in the
14 Plantation in 2008?
15 A No, I do not.
16 Q Was curtailing his mother's guest pass
17 privileges an effort to prevent him from
18 coming back into the Plantation?
19 A Again, I do not know if her pass
20 privileges were curtailed.
21 Q Assume that they were. Was it an effort
22 to prevent him from coming in?
23 A I can't assume anything.
24 Q Why is that?
25 A Because I don't know that they were.

1 Q You assumed that George Breed was right
2 when he wrote the letter of June 6th;
3 didn't you?
4 A Absolutely. I trust his integrity.
5 Q Okay. Isn't it a fact that Mr. Breed was
6 attempting to exclude Otis Coffey from Sea
7 Pines Plantation with the efforts that he
8 was undertaking in May of 2008?
9 A What efforts are you referring to?
10 Q The letter, for one thing.
11 A The letter doesn't -- the letter speaks to
12 issues we were having that has to do with
13 Maureen Coffey's issue. Our issue's with
14 her conduct, not with his.
15 Q I see. What's the reason that you had
16 Maureen Coffey's mother's car towed?
17 A I didn't tow Maureen Coffey's mother's
18 car.
19 Q Your security company did.
20 A Well, okay. Well, I'm sure they had a
21 good reason to tow the car.
22 Q Well, what was the good reason?
23 A I don't know. Maybe it was illegally
24 parked.
25 Q And wasn't the effort to revoke Ann

1 Coffey's pass privileges an effort to
2 prevent her son from using those pass
3 privileges?

4 A Again, I have no knowledge of her pass
5 privileges being revoked.

6 MR. MATHISON: Mike, go to Page 85, Line 5.

7 Q Did you at any point prior to Community
8 Services Associates getting sued, disclose
9 to the board that Mr. Breed's complaint
10 had been dismissed?

11 A I do not recall when I let the board know
12 that the complaint had been dismissed or
13 what matter. I've already answered that
14 question.

15 Q So it's possible, if not probable, that
16 you might not have told them in October
17 when Mr. Breed found out, and you might
18 not have told them until after the suit
19 was filed in November. Is that right?

20 A No. I would've told them as soon as I was
21 notified. I just don't recall.

22 Q Well, where's the evidence of it?

23 A I don't know. It could have been -- it
24 could have just been a verbal notification
25 it's been dismissed.

1 Q A verbal notification to whom?
2 A Board members.
3 Q One? Four?
4 A All of them during the meeting. I don't
5 know. I don't recall.
6 Q But after the suit was filed, there were
7 conversations; were there not?
8 A The public record of that suit, of that
9 complaint being filed did bring questions,
10 yes.
11 Q And was that what this was about, because
12 there was no public record, you didn't
13 feel any obligation to discuss it?
14 A Discuss it with who?
15 Q The board.
16 A I did discuss it with the board.
17 Q But not in such a way that got
18 memorialized in the minutes.
19 A I'm not aware that it didn't. I haven't
20 looked at every set of minutes between
21 then and now.
22 Q Well, would you trust me if I tell you
23 that it's not in the minutes, at least in
24 the ones I've got?
25 A I trust that.

1 Q All right. Then why not?
2 A I don't know.
3 Q So you discussed it and it wasn't
4 significant enough to write in the
5 minutes?
6 A I don't know if I discussed it at a board
7 meeting.
8 MR. MATHISON: At Line 20, on Page 86.
9 Q Is it your understanding that Mr. Breed
10 told the Commission on Judicial Conduct
11 that from and after December 10, 2004,
12 the burglaries then plaguing the community
13 of Sea Pines ceased? That would be the
14 second paragraph on the second page.
15 A Yes.
16 Q Does it also say, and I'm quoting, in the
17 next paragraph: 'That the route of
18 travel, target times, dates, and M.O. are
19 very similar, almost exact to the cases
20 of approximately three-and-a-half years
21 ago, where Otis Coffey was the prime
22 suspect?
23 A Yes.
24 Q Do you know whether that's true or not?
25 A Do I know what's true?

1 Q The route of travel, target homes, times,
2 dates and M.O. were similar.
3 A From that documentation I saw on the maps,
4 it would appear to me to be so, yes.
5 Q What you're referring to, is there are
6 two maps, one from 2004, and one from
7 2008, each of which has dots or pins stuck
8 in it?
9 A Yes, sir.
10 Q Is that what you're referring to?
11 A Yes, sir.
12 Q But that doesn't tell you what times,
13 dates, and M.O., means of operation or
14 method of operation. Is that correct?
15 A No. Not on that chart, no.
16 Q So how do you know if that was true or
17 not?
18 A Well, I know based on my conversations
19 with Chief Breed.
20 Q So he told you it was true.
21 A Yes. He indicated that it is, in fact,
22 true.
23 Q Did he also tell you that a man named John
24 Levy pleaded guilty to a number of
25 incidents that were described or depicted

1 on the 2004 map?

2 A I do not recall that, no.

3 Q If John Levy had been convicted of a

4 number of these crimes in 2004, would that

5 be a strong indication that Otis Coffey

6 did not commit the ones he pleaded guilty

7 to?

8 A Yes. The ones he pleaded guilty to, yes.

9 Q So it would have been important to your

10 knowledge of what happened in 2004, to

11 find out whether those cases were actually

12 closed, by convicting someone other than

13 Otis Coffey.

14 A Yes.

15 Q And you didn't know that; did you?

16 A No.

17 Q And Mr. Breed doesn't say anything about

18 that in here; does he?

19 A No.

20 Q Does he also say that, and I'm quoting in

21 the next sentence, 'It was at about the

22 same time that it was learned that Otis

23 Coffey had returned to this community'?

24 A Yes, sir.

25 Q Is he referring to the Sea Pines

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Community?

A That's my understanding, yes.

Q Would it surprise you to learn that Otis Coffey at no point lived in Sea Pines in 2004?

A No.

Q So he's not telling the literal truth when he says that he returned to the community, if, in fact, he'd not lived in the community in 2004; is he?

A No. Community depends on your definition of community. Community can be all of Hilton Head. It could be Beaufort County, locally or Sea Pines. It's not definitive in this statement.

Q Dealing with the events of May 20th, does Mr. Breed indicate that the suspect was confronted and identified by the officer in question?

A Yes.

Q Do you know whether that's true or not?

A Yes. It's my understanding, yes.

Q Have you seen only the incident report that your company, CSA, produced in response to my request for production, or

1 have you seen another incident report
2 prepared by Sergeant Jolin?
3 A No. I don't recall which one I've seen,
4 to be perfectly honest with you. But I
5 have seen one. I don't know which one.
6 Q Have you seen them?
7 A I did, you know, I'm not aware of there
8 being -- other than the amended report,
9 his initial report being amended. I am
10 aware of that.
11 Q Okay. Have you ever seen the amended
12 report?
13 A No. Not unless it was in one of these
14 discovery documents. I have generated
15 quite a bit of paperwork.
16 Q How did you, or did you, confirm that the
17 officer had confronted and identified the
18 accused?
19 A No.
20 Q You didn't confirm that?
21 A No.
22 Q You took Mr. Breed's word for it.
23 A When all this came to light, Jolin no
24 longer worked there.. There was no way for
25 me to confront.

1 Q Did you --
2 A So, yes.
3 Q Did you make any effort to go back through
4 the reports and actually square them up
5 and see how they aligned?
6 A No.
7 Q I'm handing you this document, and asking
8 if you can identify it for me.
9 A It appears to be an email from Mr. Breed
10 to polygraph99..
11 Q Have you seen it before?
12 A As a result of -- I think I saw it
13 recently from Mr. Breed's deposition.
14 Q You've read Mr. Breed's deposition?
15 A No. The documents. I think they were
16 forwarded for review.
17 Q Who forwarded them?
18 MS. JOLLEY: I believe this was one of them.
19 MR. MATHISON: You left out the last sentence, Mike.
20 MR. MICHAEL MATHISON: I'm sorry?
21 MR. MATHISON: The last sentence on Line 10.
22 A I believe this --
23 MR. MICHAEL MATHISON: I'm sorry.
24 A No. The documents, I think they were
25 forwarded for review. I believe this was

1 one of them.

2 Q Who forwarded them?

3 A Before then, I hadn't seen them.

4 Q Who forwarded the documents for review.

5 A Mr. Halio.

6 Q So you reviewed it. Is that right?

7 A I read through it briefly, yes.

8 Q Okay. Did you see the document at the

9 time it was generated?

10 A Not to my knowledge, no.

11 Q Did you produce that document in response

12 to plaintiff's request for production?

13 A I did not, no.

14 Q Did anyone on your behalf?

15 A I do not know.

16 Q Did Mr. Breed communicate on an AOL

17 account as a matter of course, in working

18 for CSA?

19 A Yes.

20 Q Did he have another account which was

21 affiliated with his business, as opposed

22 to his personal account?

23 A I'm not aware of one, no.

24 Q Have you ever received email from Mr.

25 Breed that did not come from SecureGate?

1 A No, not to my knowledge.

2 Q Do you know where the email may be that

3 was generated during this period, that was

4 from and after May 20, 2008, through

5 December 31, 2008?

6 A No.

7 Q Do you know why you didn't produce any

8 email from Mr. Breed at SecureGate during

9 that period of time?

10 A From AOL, no. My understanding is that

11 AOL cleanses the email accounts after a

12 certain period of time, and some are not

13 available when the discovery showed.

14 That's my understanding.

15 Q Where did you get that understanding from?

16 A From Mr. Breed.

17 Q In other words, you asked him to produce

18 his email, and he said he couldn't because

19 AOL had cleansed his account?

20 A I didn't ask him. He just came -- he just

21 came out in the course of conversation.

22 MR. MATHISON: Go to Page 96, Line 19.

23 Q Do you know whether crime at Sea Pines

24 went up or went down in 2008?

25 A I can't recall. I believe the last

1 security report I had through the last ten
2 years shows a decrease in the amount of
3 crime.
4 Q That is from the entire ten-year period?
5 A From that -- through that ten-year period,
6 a decreasing amount.
7 Q So that the arc was down.
8 A The arc was down.
9 Q So it wouldn't surprise you if there was
10 less crime in 2008 in Sea Pines than there
11 was in 2007.
12 A No.
13 Q That's consistent with --
14 A Yes.
15 Q -- what would've been happening.
16 A Yes.
17 Q Do you know if you'd actually investigated
18 or done some -- made some inquiries at the
19 time the letter was written, Mr. Breed's
20 letter in 2008, whether you would've found
21 that email that you've got in your right
22 hand now?
23 A I don't know.
24 Q But according to what you told me about
25 the way you believe AOL handles its email,

1 you would've been more likely to find it
2 in 2008 than in 2012. Isn't that right?
3 A Likely, yes.
4 MR. MATHISON: At Line 9, on Page 98.
5 Q I'm handing you this document, which is
6 the minutes of the meeting dated January
7 8, 2009. It has the draft designation on
8 it, but other than that --
9 A Yes.
10 Q Can you identify that for me, please.
11 A It is the minutes of the -- draft minutes
12 of the January 8, 2009, luncheon meeting
13 with Community Services Associates.
14 Q And at least for lunch, Mr. Breed
15 attended; did he not?
16 A Actually, this does not show him in
17 attendance.
18 Q Actually, I believe it does, if you look a
19 little more carefully.
20 A I'm looking at the roll call, so staff,
21 myself, William Leitner, Jean Pearse.
22 Q Look above it.
23 A Yes, it does. Yep. George Breed, Cindy
24 Gray, William Leitner, David Henderson.
25 MR. MATHISON: Go to Page 100, Line 4.

1 Q And then after the celebratory part of the
2 meeting, most of the folks left the room;
3 didn't they?

4 A Yes.

5 Q But not all of them.

6 A No.

7 Q And it says 'some of the invited guests
8 remained;' doesn't it?

9 A Yes.

10 Q Was Mr. Breed one of the guests that
11 remained?

12 A I do not know. The minutes do not state
13 that he stayed.

14 Q But they state that someone stayed who was
15 not on the board.

16 A It says, 'The retiring board members and
17 most of the invited guests left the room
18 at this point, and Ms. Jenkins convened
19 the formal CSA board meeting.'

20 Q And then, the roll calls show 17 board
21 members -- or excuse me -- 16 board
22 members, with one being --

23 MR. MICHAEL MATHISON: You're reading -- I'm sorry.
24 You're reading the wrong --

25 MR. MATHISON: I'm sorry. Forgive me.

1 Q My question was not terribly trenchant.
2 My question was okay.
3 A And then, the roll call shows 17 board
4 members -- or, excuse me -- 16 board
5 members, with one being absent, and three
6 staff members, none of which being George
7 Breed.
8 Q But are you saying that Mr. Breed would
9 have been listed as a staff member if he'd
10 stayed?
11 A Well, he would have been listed staff
12 there as either a staff member or a guest,
13 and he's not listed on there.
14 Q Well, it doesn't say that guests -- which
15 guests stayed. It only says you -- who
16 was a board member that stayed, and staff.
17 Isn't that right?
18 A That's right.
19 Q So there's some guests that stayed that
20 aren't necessarily referenced in the
21 minutes.
22 A That may be. That would just lead you to
23 believe -- yes.
24 Q That's what it lead me to believe.
25 A Uh-huh.

1 MR. MATHISON: At Line 20, on Page 102.

2 Q Did the board decide at the meeting,
3 effectively, to pay Mr. Breed's legal fees
4 in the case?

5 A Yes.

6 Q Did the board also decide to pay whatever
7 judgment or settlement might be imposed or
8 required of Mr. Breed?

9 A Yes.

10 Q Did this occur after Ms. Coffey had filed
11 her lawsuit?

12 A Well, the minutes are dated after the
13 lawsuit had been filed, so I would have to
14 say yes. It seems to indicate that.

15 MR. MATHISON: Skip Lines 9, and resume at Line 15.

16 Q Is there any debate about this?

17 A No, not that I recall.

18 Q Did you say anything at all to the people
19 on the board before the matter was voted
20 on?

21 A I don't recall, but I probably did, just
22 to make sure they were aware of what the
23 complaint said, and the fact that he was
24 named individually.

25 Q And was there discussion among the folks

1 who were on the board at the meeting?

2 A Not that I recall. Motion was made and
3 the board supported it, and then voted.

4 Q And the man who made the motion was Mr.
5 Minot. Is that correct?

6 A That's what it says, yes.

7 Q And Mr. Minot, unless I am mistaken, was,
8 at the time, chairman of the finance
9 committee?

10 A He still is.

11 Q And did the finance committee discuss or
12 debate the wisdom of committing for Mr.
13 Breed's legal fees, cost of judgment, or
14 settlement?

15 A No.

16 Q How do you know?

17 A Not that I recall.

18 Q That --

19 A The finance committee hadn't met on this
20 point between the time the complaint was
21 filed and this board meeting occurred.

22 Q You're saying there hadn't been an
23 opportunity for the finance committee to
24 meet.

25 A I couldn't say that. I can't say that

1 they would have. It would have been an
2 issue that they would have discussed. I'm
3 sorry -- considered.

4 Q Well, do you know whether or not the
5 members of the finance committee may have
6 met informally or discussed informally
7 the wisdom of paying Mr. Breed's
8 attorney's fees, judgment, or settlement?

9 A No.

10 Q That's -- you don't know. Is that right?
11 Or?

12 A No, I don't know. They don't normally
13 meet informally.

14 Q Do you know whether any investigation was
15 undertaken by any member of the board into
16 the wisdom of standing good for Mr.
17 Breed's attorney's fees, judgment, or
18 settlement?

19 A No.

20 Q That's you don't know, or there was none?

21 A No, I don't know. I don't know if there
22 was any.

23 Q Did you do one?

24 A What's that?

25 Q Any investigation to determine the wisdom

1 of it?

2 A I feel it's the prudent thing to do.

3 MR. MATHISON: Skip from 106, Line 3, to 106, Line
4 8.

5 Q If the board undertook no investigation
6 and engaged in no discussion, and just
7 voted, basically, blindly in favor of this
8 provision, wouldn't that amount to a per
9 se breach of fiduciary duty? Please
10 answer the question.

11 A I have no idea what you mean.

12 Q Well, but you do, actually.

13 A No.

14 Q Because you belong to the Community
15 Associations Institute, and a great deal
16 of what you've learned in the course of
17 many years of attending conferences, such
18 as the one you put on --

19 A Uh-huh.

20 Q -- does, in fact, have to do with
21 fiduciary duty.

22 A Oh, I'm well aware of fiduciary
23 responsibility. Absolutely.

24 Q And I'm asking you whether voting on a
25 proposal with no investigation and no

1 debate doesn't amount to a per se breach
2 of fiduciary duty.

3 A As I indicated, I've got -- I've not aware
4 there was no investigation. And I do not
5 recall specifically what we discussed at
6 this meeting.

7 Q So there could have been discussion now.

8 A Absolutely.

9 Q Now that you see that it could be
10 advantageous to have had some discussion.

11 A No.

12 Q Is that right? Well, which is it? There
13 was discussion, or no discussion?

14 A As I indicated, as I recall, this was
15 January, 2009. So as I recall, I would
16 have given them the background, and spoke
17 to why this is basically in the best
18 interest of the community.

19 Q Well, how would you -- you have known the
20 background if you never went any farther
21 than asking George Breed?

22 A Now, at this point I've already discussed
23 this with counsel. We had a complaint
24 filed. We were being legally represented.
25 I've already met with our attorneys on

1 this.

2 Q Okay.

3 A Okay.

4 Q And by that, you mean people with the
5 McNair firm?

6 A Yes, sir.

7 Q All right. So what you're saying is that
8 you don't -- you don't tell -- don't tell
9 me what your attorneys told you, but as a
10 result of having met with your attorneys,
11 you said something to the board which
12 caused them to want to vote unanimously in
13 favor of reimbursing Mr. Breed for his
14 attorney's fees, cost of judgment, and
15 cost of settlement. Is that right?

16 A Yes.

17 Q Again, don't tell me what your lawyer told
18 you. Tell me what you told the board
19 members that made them want to do that.

20 A I just told them it made sense. It was
21 the right thing to do.

22 Q Why did it make sense?

23 A Because staff was acting in the best
24 interests of the community. It had
25 followed the guidelines on submitting a

1 *complaint to the Commission, and it was*
2 *their responsibility to take this action,*
3 *and to provide legal counsel to Mr. Breed,*
4 *because it's named individually in the*
5 *complaint.*

6 MR. MATHISON: Your Honor, may it please the Court.
7 I think we ought to take a break now, if we could.

8 THE COURT: Sure. Ladies and gentlemen of the jury,
9 do not discuss anything you've heard with each other, of
10 course. Go back to your jury room and get a cup of
11 coffee or a Coke, and we'll bring you right back in.
12 Thank you.

13 JURORS LEAVE COURTROOM 11:25 A.M.

14 BAILIFF: The jury is clear, your Honor.

15 THE COURT: Thank you. Is there any issue you need
16 to take up, or just --

17 MR. MATHISON: No, your Honor. I just --

18 THE COURT: I agree. The break is a nice spot. It
19 was a good spot for a break. No question.

20 MR. MATHISON: And I wanted to call your attention
21 to the fact I left out eight lines and two couplets, as
22 Cary Kelley knows where there might -- I thought there
23 was language that might come up against their concerns.

24 And I'm going to leave out, I believe, the text that
25 would come in at 110, Line 18, through 111, Line 14, if

1 you don't have any objection.

2 MS. JOLLEY: Are you going to take it out?

3 MR. MATHISON: I'm going to take it out.

4 MS. JOLLEY: Okay.

5 THE COURT: Okay. All right. Well, let's go ahead
6 and just take about a ten-minute break, you all. And I
7 will be back.

8 MR. MATHISON: Thank you, your Honor.

9 THE COURT: Thank you.

10 OFF THE RECORD 11:26 A.M.

11 BACK ON THE RECORD 11:38 A.M.

12 BAILIFF: Jurors are entering, your Honor.

13 JURORS ENTER COURTROOM 11:39 A.M.

14 BAILIFF: Jury is seated, your Honor.

15 BY THE COURT:

16 THE COURT: Thank you. Welcome back, ladies and
17 gentlemen. We're going to go ahead and continue with the
18 deposition testimony of Cary Kelley. Mr. Mathison.

19 CONTINUE READING DEPOSITION OF

20 CARY A. KELLEY:

21 MR. MATHISON: Mike, continuing at Page 112, Line
22 20.

23 Q Was the board unanimous vote, in addition
24 to whatever legal reasons there may have
25 been, an effort to close ranks and show

1 everyone in the community was united in
2 interest?

3 A Yes.¹ It would indicate that, yes.

4 Q Do you know how the board came to agree
5 with unanimity that reimbursing Mr. Breed
6 was a good idea?

7 A I don't recall.

8 Q That was the executive committee meeting
9 that took place on January 2, 2009?

10 A I don't recall. But normally, that early
11 meeting is to slate the officers, or to
12 discuss the slate of officers that will be
13 presented at the next board meeting.

14 Q Do you know whether the advisability of
15 paying Mr. Breed's legal expenses, and
16 picking up the tab for any judgment or
17 settlement that he might make, was, in
18 fact, discussed in this meeting?

19 A I do not recall.

20 Q Were you present at the meeting?

21 A I do not recall. Normally, I am, yes.

22 Q Were there minutes kept of those meetings;
23 are there not?

24 A Yes.

25 Q If the minutes reflect no discussion of

1 the issue, would that satisfy you that
2 there was no discussion?
3 A Yes.
4 MR. MATHISON: At the bottom of Page 114.
5 Q Going back to Plaintiff's Exhibit 1 for a
6 minute, if you would, look at Page 2. And
7 Mr. Breed indicates that after an
8 exhaustive search or investigation by
9 BCSO, that the primary suspect was Otis
10 Coffey. That is in 2004. Is that right?
11 A Let's see. What are we talking about
12 here? Is that in the second paragraph?
13 Oh, Number 1. Okay. I'm on the wrong
14 page. Yes, sir.
15 Q And if I understand correctly, that's
16 well, before you were employed by Sea
17 Pines. Isn't that right?
18 A Uh-huh. Yes.
19 Q So what, if anything, did you do to
20 confirm that Mr. Coffey had been the
21 primary suspect?
22 A I didn't confirm nothing.
23 Q How did you know it was the truth if he
24 did?
25 A Because Mr. Breed stated it was.

1 Q Do you know who the lead investigator was
2 in the 2004 investigation of Sea Pines?
3 A No.
4 Q Do you know who Angela Vennes is?
5 A No.
6 Q And if I recall correctly, Mr. Breed
7 didn't tell you that a man named John
8 Levy was arrested for some of the offenses
9 in Sea Pines in November of 2004.
10 A Not that I recall, no.
11 Q And if I recall correctly, he did not tell
12 you that Mr. Levy was convicted of all of
13 those offenses for which he was arrested.
14 A No. Not that I recall.
15 Q Did Mr. Breed tell you that one of his
16 security officers, Todd McNeill, received
17 the award of private security officer of
18 the year in 2004?
19 A No.
20 Q Did you -- did you know what Officer
21 McNeill did that was so --
22 A No.
23 Q -- noteworthy?
24 A No, I don't.
25 Q He was responsible for the arrest of John

1 Levy.

2 A Okay.

3 Q If you -- if you known of all --

4 MR. MATHISON: Forgive me.

5 Q If you'd known all that, would you have
6 agreed with Mr. Breed that Otis Coffey was
7 the primary suspect for those 2004 --

8 A The remaining ones, yes, probably.

9 Q The fact that he --

10 MS. JOLLEY: Objection. This isn't a part of the
11 destination.

12 MR. MATHISON: I thought this was what you wanted in
13 addition.

14 OFF-THE-RECORD DISCUSSION.

15 MR. MATHISON: Go over to 118, Mike. Line 11.

16 Q Excuse me -- when did you learn that Mr.
17 Breed had delivered his letter of June 6,
18 2008, to someone at the town of Hilton
19 Head Island?

20 A I don't recall the exact date. I know he
21 did indicate it was prior to it actually
22 being released. It was a draft of the
23 letter.

24 Q He told you that he had taken it to the
25 Town. Is that right?

1 A He told me that he had taken it to the
2 Town to Greg DeLoach, to insure that
3 everything made, you know, and Toby
4 McSwain, to make sure that nothing was
5 being stated that wasn't factual in
6 regards to Toby's statement and the
7 cannons and the format, and to make him
8 aware of it, the complaint.

9 Q Why did he tell you he'd taken it to the
10 Town?

11 A I don't recall. But I believe it's
12 because she works for the Town. That's
13 her direct report.

14 Q So he was attempting to serve notice, if
15 you will, on her employer?

16 A You'd have to ask Mr. Breed what his
17 intent was.

18 Q Well, did he tell you what he was doing --
19 did he tell you that he was going to do
20 it, or not?

21 A No. Not. No. Not that I recall. But
22 that's what I would have done it for.

23 Q That's what -- that's what you would have
24 done.

25 A Yes.

1 Q Is that right?

2 A Certainly.

3 Q And is it your testimony that he told you

4 that he went before he prepared the

5 letter?

6 A As I said, I don't recall the date that he

7 did it, but yes. It was before the letter

8 was released and mailed.

9 Q Did he tell you that, after he went the

10 first time, he went back again, or had the

11 letter delivered in final form?

12 A I don't recall that, no.

13 Q But some time on or before December 6,

14 2008, you knew that he'd taken the letter

15 to the Town, and your assumption was

16 because -- so that her employer would know

17 what Judge Coffey had been doing.

18 A No. You said December 6, 2008. No.

19 Q Well, when was it then?

20 A Well, the letter is dated June 6, 2008.

21 Q Excuse me. Would that have been before

22 that? Excuse me. Excuse me.

23 A It would have been before that.

24 Q Forgive me. Some time on or before June

25 6, 2008.

1 A Yes.

2 MR. MATHISON: Go to Line 21, on 121.

3 Q What was your point in going to the Town

4 in December of -- excuse me -- in January

5 -- excuse me -- in December of 2008?

6 A Are you referring to an email to Greg

7 DeLoach?

8 Q Yes, sir, I am.

9 A I believe that was in response to an

10 article that was going to be published in

11 the 'Island Packet,' which I had been

12 called about making a comment in response

13 to Ms. Coffey's article, and I said, 'No

14 comment,' was forwarded and just forwarded

15 a copy to Greg as a professional courtesy.

16 Q Why would Mr. DeLoach expect professional

17 courtesy from you, sir?

18 A I don't know whether he'd expect it or

19 not. It's just something that I -- I do.

20 Q Well, let me ask you this -- the email to

21 which you're referring is dated December

22 23, 2008. Is that correct?

23 A Yes, it is. It's copied.

24 Q And it makes reference to the fact that an

25 article will appear in the newspaper.

1 A Uh-huh.

2 Q On December 26th. That's the day after

3 Christmas. Is that right?

4 A Yes.

5 Q How did you know the article would appear

6 on that date?

7 A I don't recall. But it must have been in

8 the conversation with the 'Island Packet'

9 representative who called me for a

10 comment.

11 Q In other words, you didn't have a press

12 release indicating that you were preparing

13 to answer.

14 A No.

15 Q And you didn't have any kind of --

16 A Not that I recall.

17 Q No, not that you recall, which one?

18 A Not that I recall. It's 2008, but I

19 wouldn't make a comment on a pending

20 litigation issues in anything.

21 Q Okay.

22 A Other than to set -- other than to just

23 say no comment.

24 Q So you're saying that you do not recall

25 having issued a press release, or you did

1 not issue a press release.

2 A I did not to my knowledge, release -- I

3 did not, to my knowledge, release a press

4 release.

5 Q Okay. Was there any kind of public

6 relations gathering where you announced

7 that your -- your availability for

8 interviews?

9 A No.

10 Q What was attached to your email to Mr.

11 DeLoach?

12 A I believe it says our response to the

13 subject suit.

14 Q And your email is dated the 23rd. Is that

15 correct?

16 A Yes.

17 Q And is this the attachment, which is a

18 copy of the letter from Celeste Jones to

19 Clerk at Court for Beaufort County?

20 A I believe so, yes.

21 Q And is attached to Ms. Jones' letter a

22 copy of the answer of Community Services

23 Associates?

24 A Yes.

25 Q Is that what you're referring to when you

1 speak to Mr. DeLoach about the position of
2 Community Services Associates?
3 A Well, I respond as to the response to the
4 subject suit.
5 Q Okay. And why would Mr. DeLoach be
6 interested in that?
7 A As a professional courtesy, I thought he'd
8 want to know what our position is.
9 Q Because you got him tied up in the
10 beginning by going to see him.
11 A I didn't --
12 Q Not you personally, but Mr. Breed.
13 A No. Because he is the direct report to
14 Judge Coffey.
15 Q Okay. So you wanted him to see what your
16 lawyer had said about Judge Coffey and her
17 lawsuit. Is that what you're saying?
18 A No. I wanted him to see the response that
19 Community Services was making into regards
20 to a suit being filed by one of his
21 employees against us.
22 Q I see. Was that your effort to hope that
23 he would discourage her from pursuing her
24 case?
25 A No.

1 Q Well, then why send it? Why not wait for
2 the newspaper article to come out, and him
3 read it like everyone else?

4 A I already answered that. It's a
5 professional courtesy.

6 Q I see. You wanted to have -- him to have
7 a heads up. Is that right?

8 A As a supervisor, I thought it would be
9 appropriate. I always appreciate a heads
10 up.

11 MR. MATHISON: Go to Page 128, Line 9.

12 Q When you sign your name, Mr. Kelley, --
13 when you sign your name, Mr. Kelley, you
14 put 'CMCA' after it. What does that mean?

15 A Certified Manager of Community
16 Associations.

17 Q And this designation, is that a
18 designation that you get from Community
19 Association Institute?

20 A Yes.

21 Q And what does that indicate --

22 MR. MATHISON: Excuse me.

23 Q And does that indicate that you've
24 mastered a certain amount of course
25 material produced essentially by Community

1 Associations Institute?

2 A Yes. And taking the requisite tests.

3 MR. MATHISON: Go to 142, Line 2.

4 Q Does Mr. Breed routinely collect money for
5 malicious injury that's done to property
6 inside of the Plantation?

7 A Collect? He acts as a liaison in
8 instances where things have occurred in
9 order to basically make sure that the
10 restitution, the repairs, et cetera, are
11 taken care of. He has done that, yes.

12 et cetera one word two?

13 Q What gives him the legal capacity to see
14 to it that restitution is made, in advance
15 of proving someone is guilty of a crime?

16 A He meets with the person, and if the
17 person decides to make restitution on
18 their own after that meeting, that's up to
19 them.

20 Q So basically, your understanding is Mr.
21 Breed will meet with someone and tell him
22 that he has information leading to the
23 belief that he may have committed a crime,
24 and then collects the money. Is that
25 right?

1 A No. He has -- basically, my understanding
2 in most of these incidents is, he'll meet
3 with them and say, here's what we have in
4 regards to you being the cause of this
5 damage. And here are the estimates that
6 CSA has received to repair the damage, and
7 make restitution is an option. And they
8 tend to make restitution.
9 Q They pay, and then what happens after they
10 pay?
11 A CSA doesn't take legal action to basically
12 make them pay.
13 Q And this happens, actually, if you look at
14 these reports, fairly often; does it not?
15 A No. I would say -- I would not say fairly
16 often.
17 Q Well, what? Twice a year? Three times a
18 year?
19 A Maybe twice in the seven years I've been
20 there.
21 Q Does he get your approval in advance
22 before he does this sort of thing?
23 A Yes. He makes me aware of them, yes.
24 Q Well, before he does them, or afterwards?
25 A No, before.

1 Q So you're privy to this form of
2 collection. Is that correct?

3 A I'm privy to this form of -- yes, making
4 restitution.

5 MR. MATHISON: Omit from Page 144, Line 2, to Page
6 144, Line 23.

7 Q Well, if the man made restitution
8 according to you, he shouldn't have been
9 prosecuted; should he?

10 A Not necessarily. It depends. Are we
11 talking about criminal offenses? What are
12 we specifically discussing? I don't know.

13 Q Do you know whether a malicious injury --
14 do you know whether malicious injury to
15 property is a crime?

16 A I believe so, yes.

17 Q Okay. And many of his collections have
18 been in that sort of situation. Isn't
19 that right?

20 A Yes.

21 MR. MATHISON: Skip from 145, Line 14, to 145, Line
22 24.

23 Q Do you know whether Mr. Breed entered into
24 one of these restitution agreements with a
25 woman by the name of Fugate?

1 F/u/g/a/te/e.

2 A Not -- not that I recall. I don't recall

3 the name. It's pretty unique. It could

4 have happened, but I don't recall.

5 Q Do you know whether she had a grandchild

6 who got in trouble for destroying personal

7 property inside Sea Pines?

8 A I don't recall.

9 Q Do you know whether after an agreement was

10 reached for the young man to make

11 restitution, he was arrested?

12 A I don't recall.

13 Q Do you know anything about this either?

14 [sic] Is that right?

15 A I don't recall it, no.

16 Q So again, this would be one of those

17 incidents where, according to your

18 protocol, Mr. Breed should have gotten

19 your permission in advance. And if I am

20 right, he either did not do that, or this

21 incident never happened.

22 A If you're right, yes.

23 MR. MATHISON: Go to 151, Line 21.

24 Q And would your having had knowledge of

25 these documents, compliments of Mr. Halio,

1 be one of the reasons that you're
2 carefully distinguishing between an
3 investigation and something that's not an
4 investigation?

5 A No. We don't investigate. That's a
6 responsibility that we don't have, and we
7 can't. We don't have the authority to do
8 it. That's a well-known fact.

9 MR. MATHISON: Go to 155, Line 22.

10 Q Mr. Kelley, do you have email about this
11 matter during 2008, that has not been
12 produced?

13 A No. Not that I'm of -- no. I gave all
14 the emails that I had.

15 Q So any communication that you might have
16 made with the board of directors or with
17 Mr. Breed, and vice versa, would have been
18 included in your production, if there had
19 been any.

20 A Yes, absolutely.

21 Q Is it true, or is it only true if and to
22 the extent, that somehow your email had
23 been properly archived and preserved?

24 A No. It's everything that was on my
25 computer at the time of the discovery,

1 when the complaint showed was produced.
2 Yeah, once I was required to produce it,
3 it was produced.
4 Q So you haven't effectively lost any of the
5 email that you had in your possession in
6 2008, between then and now?
7 A No, not that I know of.
8 Q Do you know why Mr. Breed's email seems
9 not to be available?
10 A I can't speak to his email. He's not in
11 our server. He has an AOL account. So
12 again, I'm not familiar with the dynamics
13 of AOL.
14 MR. MATHISON: Go to 157, at Line 13.
15 Q If I recall correctly, you said you
16 weren't aware that Mr. Breed was suffering
17 from any illness in May or June of 2008.
18 A Well, even if I'm aware, I'm not going to
19 share that with you or anyone else. I
20 wouldn't share it.
21 Q I thought previously you said he wasn't.
22 A No. I said no.
23 Q You said no. What does that mean?
24 A What was your specific question back
25 there? I can't remember. Was it whether

1 I was aware of an illness?

2 Q Yes.

3 A A specific illness, and I said no.

4 Q Okay. And is that still your testimony.

5 A Yes.

6 Q Now having just enlightened me as to the

7 fact that essentially you said you

8 wouldn't tell me if you knew, --

9 A Uh-huh.

10 Q -- okay, you're required to tell me,

11 unless you've got a good reason not to.

12 A Well, as far as I know, health issues, I

13 can't release that. That's private

14 information, even if I knew.

15 Q Well, I'm --

16 A I can't ask employees that question.

17 MR. MATHISON: Excuse me, Mike.

18 Q Well, I'm asking you one, do you know?

19 A I said no.

20 Q Okay. But you're saying, if you did you

21 wouldn't tell me.

22 A That's what I said.

23 Q Okay.

24 A No.

25 Q If you look -- took that position, would

1 you be courteous enough to tell me that
2 you couldn't tell me for a reason. rather
3 than just saying no?
4 A No.
5 Q Do you concur in the admission that's been
6 made by your counsel that CSA is not aware
7 of a single court case in which Ms. Coffey
8 acted in a biased, prejudiced, or partial
9 way.
10 A I know of none. No.
11 Q Why do those terms keep occurring in Mr.
12 Breed's letter, which is Plaintiff's
13 Exhibit 1?
14 A You'd have to ask Mr. Breed. He wrote the
15 letter.
16 Q But you're the one that in theory, that
17 reviewed it and agreed with it.
18 A I reviewed it and had no problem with it.
19 I didn't write the letter, he did.
20 Q Right. But if your position is she wasn't
21 biased or prejudiced or partial in any
22 court case, why would you agree with
23 something that essentially, over and over,
24 says she was?
25 A That's not a court case. No charges have

1 *been filed.*

2 Q *So you're saying that she was biased or*
3 *prejudiced in what respect?*

4 A *I'm saying as outlined in that letter, she*
5 *acted outside the cannons, as we quoted,*
6 *and pulled down and put in that letter.*

7 Q *And tell me how she's biased and*
8 *prejudiced. I want you to tell me in your*
9 *own words, not the gobbledygook about*
10 *cannons.*

11 A *Who is the suspect in that letter?*

12 Q *According to Mr. Breed, it's Otis Coffey.*

13 A *And what is the relationship, the client*
14 *to Otis Coffey?*

15 Q *Sister.*

16 A *Exactly. That's bias. When she*
17 *interjects herself and quote, according to*
18 *what she told Toby McSwain, what she's*
19 *verified, 'I'm going to get him out of*
20 *town,' once she's made aware he's a*
21 *suspect. Is that not bias, and*
22 *inappropriate action on behalf of an*
23 *officer of the court?*

24 Q *So that's what you're saying. She biased*
25 *by virtue of being a suspect's brother?*

1 A No. By taking the action and introducing
2 -- interjecting herself in an ongoing
3 investigation.

4 Q Do you know whether Mr. McSwain went to
5 see Judge Coffey, or Judge Coffey went to
6 see Mr. McSwain?

7 A According to the letter, I believe Toby
8 McSwain went to see Judge Coffey.

9 Q And that's in 2004?

10 A Yes.

11 Q And you know an awful lot about what
12 happened in 2004, except you don't know
13 that those cases were closed, do you, by
14 the arrest of John Levy?

15 A Not all of them, according to you.

16 Q You didn't know any of them were closed,
17 until you walked in here today.

18 A No. I've already answered that question.

19 Q Did you or not?

20 A I said no.

21 MR. MATHISON: At page 162, Line 9.

22 Q Did you hear rumors that Ms. Coffey had a
23 sexual relationship with one of Mr.
24 Breed's officers?

25 A No.

1 Q When was the first time you learned about
2 that?
3 A When it showed up in the complaint.
4 Q Did you know in 2008, your security
5 officers were routinely tape-recording
6 telephone calls?
7 A Routinely?
8 Q Yes.
9 A I know that we do tape -- record telephone
10 calls, yes. And we also have video.
11 Q What's the reason for recording phone
12 calls?
13 A The same as the video. Certainly, if we
14 get complaints, et cetera, we can view the
15 tapes and their recordings, and get the
16 factual side of the story.
17 Q Do your officers' disclosures that a
18 recording is -- do your officers disclose
19 that a recording is taking place at the
20 time they answer the phone?
21 A That, I do not know. I don't believe
22 we're required to tell anyone.
23 Q Who told you that?
24 A I believe -- actually, I've heard that
25 from law enforcement.

1 Q Well, who in law enforcement --
2 A I don't recall.
3 Q -- told you that? Was it the federal law
4 enforcement officer?
5 A No. A local law enforcement officer.
6 Q What if you get an out-of-state call?
7 A I have no idea.
8 Q Did you approve the policy that every
9 incoming call is recorded?
10 A No. That was done -- that was in place
11 when I got here.
12 Q So that's been going on since before 2005?
13 A Yes.
14 Q Is it still going on?
15 A Yes.
16 Q Did you know that George Breed had tape-
17 recorded, or maybe not tape-recorded, had
18 recorded in some fashion --
19 MS. JOLLEY: Objection. May we approach?
20 THE COURT: You may.
21 OFF-THE-RECORD BENCH CONFERENCE,
22 OUT OF HEARING OF JURORS. PRESENT:
23 THE COURT: MR. MATHISON, MR. HALIO,
24 MS. JOLLEY.
25 CONTINUE MR. MATHISON READING

1 DEPOSITION OF CARY A. KELLEY:

2 MR. MATHISON: Go to 165, Line 10.

3 THE COURT: No, actually --

4 MR. MATHISON: That's beyond --

5 THE COURT: He needs to go further.

6 MR. MATHISON: Okay.

7 THE COURT: I think you want to start on Line 19.

8 MR. MATHISON: Let's start with Line 19, Mike.

9 Q Where are the recorded phone calls from
10 2008, and specifically, the calls that
11 took place on May 20th and 21st, 2008?

12 A My understanding is our tapes roll over,
13 which means they erase on a frequent --
14 on a frequent basis. So unless they're
15 captured soon, they're gone. It's not a
16 system that holds calls or video
17 perpetuity.

18 Q Did it -- did the system hold it long
19 enough for the lawsuit to get filed
20 against your company in 2008?

21 A Which lawsuit are you referring to?

22 Q This lawsuit.

23 A I don't -- again, I don't know of any
24 recording. I've already answered that
25 question.

1 Q You don't know of any that's presently in
2 existence. Isn't that what you're saying?

3 A I didn't -- no, I don't.

4 Q Okay. Do you know whether or not there is
5 a telephone call that allegedly took place
6 between Sergeant Jolin and Mr. Breed, on
7 or about May 20th?

8 A No.

9 Q At one point, if there was, and it
10 originated from your security office, it
11 would have been recorded; wouldn't it?

12 A It would have been recorded in the system,
13 and then you could've gone in, should the
14 need arise, and download it, put it on a
15 disc.

16 Q And do you know whether there's another
17 telephone conversation that originated in
18 your office, between a Detective Florencio
19 and Mr. Jolin, that took place one night
20 or one day after the original telephone
21 conversation?

22 A Yes. My understanding is that's when his
23 initial incident report was amended.

24 Q And that telephone conversation was also
25 recorded; wasn't it?

1 A Should have been, yes.

2 Q Do you know whether those records still
3 existed in November of 2008?

4 A No. Again, they roll over. And I don't
5 think, off the top of my head, I don't
6 know how frequent, but it's not a long
7 period of time that they're held.

8 MR. MATHISON: Going to 171, Line 15.

9 Q Do you know whether at the time these
10 events were unfolding in May of 2008, each
11 one of the cruisers that was operating in
12 Sea Pines Plantation was outfitted with a
13 camera?

14 A I do not know. I would assume so, yes.

15 Q Do you know whether every time an officer,
16 got out, he could turn the camera on if he
17 wanted to?

18 A Yes. I believe that's so.

19 Q Do you know why there's no video recording
20 of the towing of Ann Coffey's car?

21 A No.

22 Q Is that another one of those incidents
23 where, because the system is self-
24 renewing, that the video tape would just
25 disappear?

1 A No. The video tapes don't disappear.
2 They also may not have turned it on, felt
3 it wasn't necessary to video the towing.
4 I don't know. I can't speak for the
5 officer's action.

6 MR. MATHISON: Go to Page 175, Line 18.

7 Q Are you aware of an exchange between Mr.
8 Birdwell, and Mr. Breed, that took place
9 at the meeting on May 20, 2008, about Mr.
10 Birdwell's concerns regarding a then-
11 existent case, the peeping Toms and
12 burglaries?

13 A I believe I saw an email following the
14 meeting that made some reference to that.

15 Q Specifically, are you talking about the
16 email where Mr. Breed asked out loud
17 whether he, Mr. Birdwell, was quote,
18 'busting his chops'?

19 A Yes.

20 Q And what was it that was said that could
21 be construed as having quote, 'busted his
22 chops'?

23 A What was mentioned in the minutes
24 regarding, you know, their concerns over
25 the peeping Tom and the other incident.

1 Q But what I saw in the minutes, it looks
2 pretty antiseptic.

3 A Uh-huh.

4 Q And I'm asking you, what was actually said
5 that caused Mr. Breed to be concerned that
6 Sea Pines was upset with him?

7 A I believe it wasn't him. It was the fact
8 that the resort had indicated they had
9 concerns based on the peeping Tom. That's
10 all that -- and the other incident.
11 That's all that was mentioned during the
12 meeting.

13 Q What were the concerns that they had?

14 A That we were being proactive in trying to
15 assist and do what we could do to solve
16 those issues.

17 Q In other words, they wanted you to be more
18 proactive. Is that right?

19 A They wanted us to know that we're being as
20 proactive as we could be, yes.

21 Q And it was that night that the encounter
22 took place between Sergeant Jolin and the
23 unidentified black male, or Mr. Coffey,
24 depending upon whose view of things you've
25 got. Is that right?

1 A *That's what the statement said, yes.*

2 Q *Was there a cause and effect to your pro-*
3 *activity?*

4 A *We are always proactive.*

5 Q *Was Mr. Birdwell concerned that the*
6 *inability to close these cases could have*
7 *an adverse impact on business?*

8 A *I don't believe that was mentioned during*
9 *the meeting at all. It was just that we*
10 *have these incidents, and he had concerns.*

11 Q *Well, does he?*

12 A *You'd have to ask Mr. Birdwell.*

13 Q *Does it need to be mentioned for you to*
14 *understand what he's saying?*

15 A *No. What I just said, I don't recall that*
16 *being part of the conversation. I recall*
17 *him saying that they were concerned about*
18 *this peeping Tom incidents, as a number of*
19 *continuing and the fact that the other*
20 *incidents approximately the same time.*

21 Q *Did you assume that his interest was in*
22 *that of a public-spirited citizen?*

23 A *As a property owner, and as a business*
24 *manager.*

25 Q *He felt it was bad for the Plantation.*

1 A Well, he felt that there was -- there was
2 a concern. And as a board member, whose
3 fiduciary responsibility is to keep the
4 Plantation safe and secure.

5 Q And was Mr. Breed concerned that Mr.
6 Birdwell did not believe he was doing
7 enough?

8 A You'd have to ask Mr. Breed.

9 Q If he was concerned about that, didn't he
10 answer that concern in his confidential
11 last statement in Plaintiff's Exhibit 3,
12 which is the bridge report?

13 A Which one are you referring to?

14 Q The last paragraph, where he -- the
15 confiden --

16 A The confidential paragraph.

17 Q Yes, the paragraph where he makes
18 reference to the hurdles that you all have
19 had to overcome, and the efforts that have
20 been quote, 'negated'. Wasn't that --

21 A Well, he makes -- he states the hurdles
22 that we have faced concerning our recent
23 burglary, peeping Tom reports.

24 MR. MATHISON: Go to 182, Line 4.

25 Q I believe that you said that upon

1 observing Mr. Breed's letter dated June
2 6th, you did not look at any of the
3 reports, or incident reports, with respect
4 to the apparent crimes that dotted the
5 maps that you were looking at.

6 A No.

7 Q So that are you aware of whether the
8 suspect or suspects that was most often
9 submitted as the probable peeping Tom or
10 burglary culprit, was in fact a white man?

11 A Again, no.

12 Q Do you know whether seven out of the eight
13 identified individuals sent by Chief Breed
14 to the Beaufort County Sheriff's Office,
15 naming folks who lived in Sea Pines, and
16 who could have been implicated in these
17 burglaries and peeping Toms, were, in
18 fact, white?

19 A No.

20 Q Would you have discovered these facts if
21 you had inquired or looked behind what
22 George Breed told you, on or before June
23 6, 2008?

24 A I don't know.

25 Q Would it have been of some benefit to you,

1 and/or to the board of directors, to have
2 known the answers to the questions like
3 that before the letter was written?

4 A It would have now that, in hindsight, now
5 that I'm hearing this, it would have been
6 nice to know that some of those incidents
7 were, in fact, cleared, and to have a
8 clear understanding of what was left.

9 MR. MATHISON: That concludes the examination of Mr.
10 Kelley, your Honor. There are two exhibits -- actually,
11 there are three exhibits that would need to be marked in
12 connection with this, of the ten that were actually put
13 in the record. The other seven are already in the record
14 in this case.

15 THE COURT: Okay. Well, let's go ahead and mark
16 them.

17 MR. MATHISON: Well, one of them --

18 THE COURT: Can Ms. Jolley see them.

19 MR. MATHISON: I think it would be advantageous to
20 put them in, out of the presence of the jury. We've
21 got --

22 THE COURT: All right. Can we take that up on our
23 next break and go ahead --

24 MR. MATHISON: We certainly can.

25 THE COURT: -- and do whatever we need to do now

1 that the jury's here and we have just already taken a
2 break.

3 MR. MATHISON: That's correct. We can do that.

4 THE COURT: Okay.

5 MR. MATHISON: That's what I was suggesting,
6 because, when I started, one was in that's no longer in.

7 THE COURT: Okay. All right. Can Mike step down?

8 MR. MATHISON: He may. Thank you very much.

9 THE COURT: You may step down, sir.

10 MR. MATHISON: Your Honor, may it please the Court.

11 THE COURT: Yes, sir.

12 MR. MATHISON: At this juncture, we offer, by
13 stipulation, that the plaintiff's exhibit, the 2011,
14 Financial Statement of Community Service Associates, and
15 specifically the financial information that can be found
16 on Page 11.

17 MR. HALIO: Your Honor, we would acknowledge the
18 authenticity, but object to the admissibility at this
19 moment.

20 THE COURT: Okay. We'll go ahead and -- I can take
21 that up. You don't need to publish anything from it, but
22 I can take it up as to whether or not it goes in as an
23 exhibit.

24 MR. MATHISON: I understand, your Honor. I simply
25 want to make a record. And I'm offering it as an exhibit

1 for identification at this point, with the understanding
2 that, essentially, what I'm interested in is --

3 MR. HALIO: Your Honor, --

4 THE COURT: Again, it doesn't matter what you're
5 interested in. Just go ahead and mark it as an exhibit,
6 for identification, and we'll take it up outside of the
7 jury's presence.

8 MR. MATHISON: It's Plaintiff's Exhibit 36, your
9 Honor, for identification only.

10 COPY OF DOCUMENT REFERRED TO AS
11 2011 FINANCIAL STATEMENT OF
12 CSA, AND SPECIFICALLY, THE
13 INFORMATION THAT CAN BE FOUND
14 ON PAGE 11, MARKED PLAINTIFF'S
15 EXHIBIT NUMBER 36, FOR IDENTIFICATION.

16 BY THE COURT:

17 THE COURT: What else, Mr. Mathison?

18 MR. MATHISON: I have deposition answers submitted
19 by Community Service Associates, which I ask the Court's
20 permission to read into the record.

21 THE COURT: You mean interrogatories?

22 MR. MATHISON: Excuse me. Interrogatory answers.

23 THE COURT: All right. Go ahead, sir.

24 MR. MATHISON: The ones I intend to read are Number
25 10, 11, 12, 13, 14, and 15.

1 THE COURT: Just go ahead and read them, Mr.
2 Mathison.

3 MR. MATHISON: These are questions asked by the
4 plaintiff to the defendant, and the defendant then
5 answers. The first thing I will read is the question.
6 The second --

7 THE COURT: This is the -- just so I'm clear, this
8 is the Defendant CSA. Is that correct?

9 MR. MATHISON: That's correct.

10 THE COURT: Okay.

11 MR. MATHISON: It's actually --

12 THE COURT: CSA?

13 MR. MATHISON: It is.

14 THE COURT: Okay. Thank you.

15 READING INTERROGATORY ANSWERS

16 OF DEFENDANT CSA, MR. MATHISON:

17 *With respect to the letter of George*
18 *Breed, dated --*

19 MR. MATHISON: Excuse me.

20 *With respect to the letter of George*
21 *Breed, dated June 6, 2008, set forth (a) the*
22 *date; (b) the time; (c) the method of delivery*
23 *or transmission; (d) the identity of the*
24 *person or persons who delivered or transmitted*
25 *the letter; and (e) the identity of the person*

1 or persons to whom the letter was delivered or
2 transmitted, by the Town of Hilton Head
3 Island.

4 Answer: CSA does not believe that Mr.
5 Breed delivered the letter, dated June 6,
6 2008, to anyone at the Town of Hilton Head
7 Island. Mr. Breed brought his concerns to Mr.
8 DeLoach, who told him that he could file a
9 complaint. Therefore, the letter of George
10 Breed, dated June 6, 2008, addressed to the
11 Commission on Judicial Conduct, was not in
12 existence at that time.

13 MR. MATHISON: Interrogatory Number 11 asked this
14 question:

15 Set forth the reason or reasons that the
16 defendant delivered or transmitted George
17 Breed's letter of June 6, 2008, to the Town of
18 Hilton Head Island.

19 Answer: CSA did not deliver or transmit
20 Mr. Breed's letter of June 6, 2008, to the
21 Town of Hilton Head.

22 See answer to interrogatory Number 10.

23 CSA acknowledges that Mr. Breed voiced is
24 concerns to Mr. DeLoach, prior to June 6,
25 2008, and showed him a draft of the letter,

1 due to concerns about the propriety of the
2 plaintiff's interference with the
3 investigation of Otis Coffey, with regard to
4 crimes occurring in Sea Pines in 2004 and
5 2008.

6 MR. MATHISON: The next question or interrogatory
7 was:

8 With respect to the letter of George
9 Breed, dated June 6, 2008, set forth (a) the
10 date; (b) the time; (c) the method of delivery
11 or transmission; (d) the identity of the
12 person or persons who delivered or transmitted
13 the letter, and (e) the identity of the person
14 or persons to whom the letter was delivered or
15 transmitted, for all other persons, firms,
16 companies, corporations, and governmental
17 agencies, to whom or to which the letter was
18 delivered or transmitted, including without
19 limitation the Commission on Judicial Conduct,
20 the Beaufort County Sheriff's Office, Sea
21 Pines Resort, LLC, and the Association of Sea
22 Pines Plantation Property Owners.

23 Answer: A draft was hand-delivered by
24 George Breed to Cary Kelley prior to June 6,
25 2008. A draft was shown to Greg DeLoach prior

1 to June 6, 2008. June 6, 2008, mailed to
2 Commission on Judicial Conduct by George
3 Breed. Delivered by George Breed to Cary
4 Kelley on June 11, 2008. June 24, 2008,
5 distributed to CSA board. Shown to Toby
6 McSwain and John Jolin by George Breed, exact
7 date unknown.

8 MR. MATHISON: Interrogatory Number 13 says:

9 Set forth the name and address of each
10 person who participated in conceiving or
11 preparing the letter, dated June 6, 2008.

12 MR. MATHISON: The answer: George Breed.

13 14:

14 Set forth the name and address of each and
15 every person with whom the defendant,
16 including its employees, agents, officers, and
17 directors, has discussed the contents of the
18 letter dated June 6, 2008, and/or any
19 similar statement or remark disparaging the
20 plaintiff's character, honesty, and fitness to
21 engage in her business trade or profession.

22 Answer: The defendant objects to this
23 characterization of the letter. The contents
24 of the letter were discussed with Greg DeLoach
25 of the Town of Hilton Head, and the 2008 CSA

1 *board of directors, and in one Coffee-with-*
2 *Cary meeting after plaintiff initially filed*
3 *her suit.*

4 MR. MATHISON: The next question, Number 15, is:

5 *Set forth the name and address of each*
6 *employee, agent, officer, or director of the*
7 *defendant, who stated or intimated that the*
8 *plaintiff had engaged in a sexual affair with*
9 *a security guard.*

10 Answer: None.

11 MR. MATHISON: I already published to the jury
12 Interrogatory Number 19.

13 MR. HALIO: Objection.

14 THE COURT: Okay.

15 MR. HALIO: Objection.

16 MR. MATHISON: I don't plan on doing that again.

17 THE COURT: Okay.

18 MR. MATHISON: Thank you, your Honor.

19 THE COURT: Anything further?

20 MR. MATHISON: No, your Honor. That concludes the
21 plaintiff's case.

22 PLAINTIFF RESTS.

23 BY THE COURT:

24 THE COURT: All right. Go ahead and sit down, sir.
25 Ladies and gentlemen of the jury, at this time, the

1 plaintiff's have rested their case. There are a number
2 of matters that I need to take up with the attorneys
3 before we come back. So I'm going to go ahead and send
4 you to lunch at this time.

5 By the clock back there, it is 12:25, or roughly.
6 I'm going to ask that you all be back at 1:45, where
7 we're going to go ahead and continue with the trial of
8 this case.

9 Again, ladies and gentlemen, I remind you, do not
10 discuss the case. It wouldn't be appropriate to do so.
11 Go and get a nice lunch, come back. And we look forward
12 to seeing you.

13 And I understand we need to complete by 5:30 today,
14 which should be absolutely no problem whatsoever. So you
15 can anticipate that. All right.

16 Thank you, ladies and gentlemen. You're excused.

17 JURORS LEAVE COURTROOM 12:25 P.M.

18 BAILIFF: Jury is clear, your Honor.

19 THE COURT: All right. So do we need to take up --
20 there is a couple more exhibits we need to decide whether
21 or not come -- are moved in.

22 MR. MATHISON: I think we're in agreement as to the
23 two that are coming in. I'd ask that the bridge report
24 that you ruled out --

25 THE COURT: Um-hmm.

1 MR. MATHISON: -- to be marked for identification.
2 THE COURT: Okay. We'll go ahead and mark it for
3 identification. Or do you care, if it comes in? You
4 don't care if it comes in?
5 MS. JOLLEY: No objection.
6 THE COURT: They said it can come in. Is that
7 correct?
8 MS. JOLLEY: Yes.
9 THE COURT: So they'll -- go ahead and let's mark it
10 as an exhibit. They don't object to it.
11 MR. MATHISON: Well, you kept out what was in it.
12 What's in this -- the bridge report that I wanted to put
13 in, it's not the one dated June 11. It's the subsequent
14 one, which deals with --
15 MS. JONES: Oh, that's different.
16 MR. MATHISON: I don't think they want --
17 THE COURT: That's different. You're not agreeing
18 to that.
19 MR. MATHISON: They don't want that one in.
20 MS. JONES: I thought he was talking about the
21 original bridge report.
22 THE COURT: Okay. No, you're talking about the
23 subsequent one that's out. So it's staying out.
24 MR. MATHISON: That's the one that --
25 THE COURT: That's fine. Mark it for I.D.

1 MR. MATHISON: That's the one that --
2 THE COURT: Okay.
3 MR. MATHISON: -- discusses the eviction they
4 objected to.
5 THE COURT: Right. Okay. Okay. All right.
6 COPY OF DOCUMENT REFERRED TO AS
7 SUBSEQUENT BRIDGE REPORT, MARKED
8 PLAINTIFF'S EXHIBIT NUMBER 37,
9 FOR IDENTIFICATION.
10 BY THE COURT:
11 THE COURT: Anything else, other than, obviously, I
12 need to hear motions? Anything else other than motions?
13 MS. JOLLEY: Nothing.
14 THE COURT: Okay.
15 MS. JOLLEY: I'm not aware of anything else. Mr.
16 Mathison?
17 MR. MATHISON: No, your Honor.
18 THE COURT: Okay. All right. Well, why don't we go
19 ahead and, if you would like, we can go ahead and hear
20 motions. Okay. Unless you need a quick break. Are you
21 okay?
22 MS. JOLLEY: I'm good.
23 THE COURT: Okay.
24 MOTIONS FOR DIRECTED VERDICT,
25 MS. JOLLEY:

1 MS. JOLLEY: Defendants move, your Honor, for direct
2 verdict in this case. We'll go through the list.

3 THE COURT: Okay.

4 MS. JOLLEY: How about that?

5 THE COURT: Okay.

6 MS. JOLLEY: First, Your Honor, we ask on behalf of
7 Defendant Association of Sea Pines Plantation Property
8 Owners, Incorporated, and the advisory board, which of
9 course, have been known throughout the case as ASPPPO, --

10 MR. MATHISON: Excuse me, your Honor. Forgive me.
11 I forgot to put in something, which I told you I was
12 going to put in, which is the indication that Mr. Breed
13 is the agent of ASPPPO. Mr. Kelley is the agent of
14 ASPPPO. And I would ask to stop and re-make my record
15 and put that in.

16 MS. JOLLEY: Well, what are you putting in?

17 MR. MATHISON: I'm putting in a document from the
18 Secretary of State's Office, showing that Mr. Kelley is,
19 in fact, the registered agent. As I indicated, there
20 were three other things I was going to do, and that's one
21 of the ones that I expected to do.

22 MS. JOLLEY: We don't consent to any agency.

23 THE COURT: I don't think that, in fact, establishes
24 agency, but.

25 MR. MATHISON: I believe it does establish --

1 THE COURT: Is this for ASPPPPO?

2 MR. MATHISON: Yes, it does. It establishes general
3 agencies. And that's why --

4 THE COURT: I think for accepting documents.

5 MR. MATHISON: He is the general agent for the
6 Association of Sea Pines Plantation Property Owners.

7 THE COURT: Well, let me ask you this, Mr. Mathison.
8 If you, as an attorney, had been designated as the agent,
9 is that -- you're saying that everything you do and say
10 is on behalf of your client?

11 MR. MATHISON: If I'm authorized. And a registered
12 agent, is, in fact, a general agent. I've got --

13 THE COURT: My understanding is you're trying to use
14 this to the extent to say that he is an agent for --

15 MR. MATHISON: That's correct. I am. The first
16 sheet indicates --

17 THE COURT: This is for ASPPPPO.

18 MR. MATHISON: Yes, ma'am. There are actually two
19 indications that he is the designated agent for, or
20 registered agent for the Association of Sea Pines
21 Property Owners. They're the first two on that list.

22 THE COURT: You all want to weigh in on this?

23 MS. JOLLEY: Your Honor, we think the documents
24 speak for themselves. He's a registered agent. There --
25 we don't consent that he's any other agent, or that he

1 has a sort of general agency. And we don't believe that
2 this gives him anything like that.

3 MR. MATHISON: Actually, a registered agent, by
4 definition, is a general agent. That's the whole idea of
5 having one.

6 THE COURT: All right. You all, over lunch, can do
7 some research if you would like. All right. Anything
8 else, Mr. Mathison?

9 MR. MATHISON: That's -- forgive me. That is
10 something I should have put in before I closed, and I
11 told you in advance --

12 THE COURT: I heard. I heard that you had. No
13 one's arguing as to the timing of it.

14 MR. MATHISON: All right.

15 THE COURT: Yes.

16 MS. JOLLEY: May it please the Court. There's no
17 evidence that any individual acting in an official
18 capacity for or on behalf of ASPPPPO did any of the
19 allegedly wrongful acts that the plaintiff contends are
20 indicative of libel, slander, or civil conspiracy. And
21 we believe the court should render a direct verdict to
22 ASPPPPO on all of plaintiff's causes of action.

23 THE COURT: Just so I'm clear, the only cause of
24 action left as to ASPPPPO was the civil conspiracy.

25 MR. MATHISON: That is correct, your Honor.

1 THE COURT: Okay. Is that all we're going to do on
2 that one?

3 MS. JOLLEY: That's all we're doing on that one.

4 THE COURT: Mr. Mathison, why don't you go ahead and
5 address it, then?

6 MR. MATHISON: I believe that everything that Mr.
7 Kelley did in approving and in, essentially, protecting
8 later in endorsing or ratifying Mr. Breed's act were done
9 in his multiple capacities. The Community Service
10 Associates is a boiling nest of conflict of interest.
11 They merge in many respects. And Mr. Kelley himself,
12 because he's the principal executive officer of CSA
13 itself, he is also principal in the Forest Preserve and
14 Museum Association, which is figured in here. He is also
15 the only agent that I can find identified anywhere for
16 the Association of Sea Pines Plantation Property Owners.

17 Accordingly, every time he makes a decision, every
18 time he has a telephone conversation, every time he reads
19 and possibly reviews, and possibly endorses a letter like
20 that dated June 6th, he has, in fact, acted for all of
21 the people for whom he serves, as the centerpiece or the
22 connection through which they all merge.

23 In fact, he has so many different hats on, that the
24 only way to find evidence of a conspiracy is to have him
25 conspire with Mr. Breed, because Mr. Breed only has one

1 hat on. He only works for Community Service Associates.
2 So you have the agent of multiple organizations,
3 including ASPPPPO, and Mr. Kelley conspiring with the
4 agent of one organization, that is, Mr. Breed, for
5 Community Service Associates.

6 THE COURT: Anything else you want to put on there?
7 Okay. I can -- you know, we've talked about this, and I
8 struggled a little bit when you made the summary judgment
9 motion, and wanted to hear the testimony. Certainly,
10 throughout the trial of this case, and I do think there
11 has been adequate testimony that Mr. Kelley and Mr. Breed
12 did combine for the purpose of injuring Judge Coffey, and
13 that they have alleged adequate special damages to send
14 it to a jury.

15 I understand it's a little -- for me, I'm a little
16 concerned, I will -- I will tell you, in how this
17 verdict form is going to read, when it comes to that.
18 Because, obviously, they can only recover damages for one
19 injury. And I just don't want them doubling up with
20 there being two causes of action with ASPPPPO being in the
21 civil conspiracy. But I think we can deal with that on
22 the verdict form end.

23 But I'm going to -- I'm going to allow that to go to
24 the jury.

25 And I do think there was evidence that the two of

1 them got together, particularly with Mr. Kelley having
2 reviewed the complaint prior to, not it just being sent,
3 which, of course, they're able to do, but on the fact it
4 was turned over to the Town of Hilton Head and Judge
5 Coffey's bosses/colleagues.

6 MR. HALIO: And that is subject to whether or not
7 just being a registered agent is enough to bind ASPPPPO,
8 right?

9 THE COURT: I don't think it's just -- I think
10 they've established through their testimony that he --
11 and correct me if I'm wrong, and you maybe need to point
12 to it in the deposition specifically for me, but did you
13 ask him about ASPPPPO, Mr. Kelley specifically?

14 MR. MATHISON: I didn't ask him specifically in the
15 deposition. If I had, in the deposition, I would've read
16 it in.

17 THE COURT: Well, my question to you is, is where
18 have you established his position with ASPPPPO?

19 MR. MATHISON: I just did. He is the only agent
20 that I'm aware of, for ASPPPPO. ASPPPPO is a voluntary
21 organization. They have one employee, other than Mr.
22 Kelley, and that's the gentleman who does the covenant
23 enforcement. His job was effectively described in the
24 minutes to the meeting of June 24, 2008, because they
25 were looking for someone to replace him.

1 THE COURT: Well, go find me some agency case law.

2 MR. MATHISON: Your Honor, I'm familiar with --

3 THE COURT: Common sense tells me that I know he's
4 in charge of ASPPPPO and that he's an agent of it, but the
5 problem is, is you got to have testimony.

6 MR. MATHISON: I think, technically, he's not in
7 charge of ASPPPPO. I think, technically, he's an
8 administrative person who works for the board members who
9 are in charge of ASPPPPO. That's what I think his
10 capacity is.

11 And I believe that I don't need to look up the fact
12 that a registered agent, by virtue of his designation, is
13 considered to be a general agent for the person in all
14 respects. I don't know that I have to establish that
15 he's a general agent authorized to engage in
16 conspiracies, because I don't believe there will be any
17 law that says that.

18 I think a registered agent, by virtue of the
19 definition of it, is imbued with sufficient authority to
20 do all things, lawful and unlawful, as would any officer,
21 indeed, more so than an officer, because, by statutory
22 definition, he is the general agent.

23 THE COURT: Yes.

24 MS. JOLLEY: Your Honor, what would we have to see
25 in this case is something saying that the ASPPPPO board

1 made any acts showing that Cary Kelley had apparent
2 agency to act with them. And they'd have to show that,
3 in reviewing the George Breed letter, that Mr. Kelley did
4 so as an administrator, or whatever of ASPPPPO. There's
5 been no testimony about that in this case. And he did it
6 for ASPPPPO, and not CSA.

7 And quite frankly, all of the testimony that was
8 just read in, was read in regarding his position with
9 CSA. That's what they asked about. What is your job at
10 CSA? What did you do for CSA? There was nothing in this
11 record about Mr. Kelley's role with ASPPPPO, nothing about
12 what ASPPPPO really even does.

13 It's certainly true that, in arguments, there's been
14 several statements made about ASPPPPO, but quite frankly,
15 the standard here is that we have to have real material,
16 pertinent, and relevant evidence, not speculative and
17 theoretical deductions.

18 There's been a lot of deductions and suppositions,
19 but there is not evidence about ASPPPPO and Mr. Kelley's
20 role there in this case.

21 MR. MATHISON: I don't think that there's any
22 evidence that says in what role Mr. Kelley acted. By
23 virtue of being the executive vice president in an entity
24 that has no president, that's composed of several
25 different organizations which have been forged in some

1 kind of difficult Aeschylus of competing interest, with
2 residential property owners, commercial property owners,
3 Sea Pines Resort, which is clearly, was, the pre-imminent
4 commercial property owner.

5 Plus, a resident's non-profit, the role of which is
6 to enforce the covenants, all of those are joined in
7 Community Service Associates. I haven't differentiated
8 Mr. Kelley's role as working for Community Service
9 Associates or ASPPPPO; he's working for all of them.
10 Everything he does, he's working for all of them.

11 All of those entities have identifiable members of
12 the board, and all of them are entitled to
13 representation. And he's required to look out for the
14 interests of all of them.

15 In contradistinction, Mr. Breed does not work for
16 anybody, except CSA, as an officer on the ground.
17 Consequently, I believe that Mr. Kelley brings his
18 multiple interests to each act that he does. He's acting
19 on the behalf of all of the people for whom he works.

20 THE COURT: Okay. Well, I'm going to do a little
21 bit of research over lunch, and I'll let you know on
22 that.

23 MS. JOLLEY: Thank you, your Honor. I understand
24 that you've already stated what your ruling will be about
25 civil conspiracy, but I want to just put on the record,

1 if you don't mind.

2 THE COURT: Certainly.

3 MS. JOLLEY: We don't believe -- the defendants
4 don't believe there's any combination of defendants for
5 the purpose of injuring the plaintiff, Ms. Coffey, which
6 gave Ms. Coffey special damages, apart from any damages
7 she's alleging from any of the defamation claims.

8 We might could note that under *McMillan versus*
9 *Ocone Memorial Hospital*, a Corporation -- here we're
10 talking about CSA -- cannot be a party to a conspiracy
11 consisting of the corporation and managers, directors, or
12 other persons in control of the corporate affairs.

13 It's not -- it's -- frankly, I don't think it's
14 clear from the record what the plaintiff is alleging
15 occurred between Mr. Kelley and Mr. Breed, and Mr.
16 Breed's relationship with the board. I think the
17 testimony is pretty clear that Mr. Breed gave Mr. Kelley
18 a copy of his letter. Mr. Kelley gave a copy of the
19 letter to the board. They took it back up at the board
20 meeting.

21 Once he found out the letter being dismissed, the
22 testimony is he told the board. Is it clear what date?
23 No. But it's clear he told the board, and he reported it
24 to them as he explained, because that's what his job was
25 to do for CSA.

1 Again, the essential consideration is whether the
2 intent was for a combination to injure the plaintiff.
3 And I don't know what the alleged injury is supposed to
4 be. If it was that the letter was being given to Mr.
5 DeLoach in an attempt to remove her from office, well,
6 frankly, that's the defamation claim. I don't see where
7 the conspiracy is with that.

8 There is no evidence that Mr. Breed and Mr. Kelley
9 conspired to keep the board uninformed about what
10 happened. They filed -- Mr. Breed filed the complaint in
11 June of 2008. Mr. Kelley, then, at the next-scheduled
12 board meeting, notified the board that the complaint had
13 been filed; gave each member a copy of the letter; and
14 took it back up.

15 Once they found it had been dismissed, he told the
16 board that it had been dismissed. At that point, quite
17 frankly, Ms. Coffey filed the complaint. And then it was
18 discussed in board meetings, but at that point, it was
19 public record that there had been a complaint filed.

20 Again, we don't believe there's any special damages.

21 And finally, as we've argued several times before,
22 we believe that the plaintiff's claim is barred because
23 she is a public official. And her entire claim for civil
24 conspiracy here is that, members of the public, CSA, and
25 George Breed, and I suppose still ASPPPPO, conspired to

1 injure her in some way. Again, I'm not clear how. But
2 she can't do that. As a public official, she cannot
3 bring a claim against members of the public, especially
4 if the allegations that she -- they conspired to remove
5 her from office, I think Angus versus Burroughs and
6 Chapin Company says that that claim is not allowed.

7 That's all for civil conspiracy.

8 THE COURT: Mr. Mathison.

9 MR. MATHISON: I think there's more than adequate
10 evidence that there was, essentially, conspiracy for the
11 purpose of injuring the plaintiff, between Mr. Breed and
12 between Mr. Kelley. I think Mr. Kelley's multiple hats,
13 allow his act to be imputed to the people for whom he was
14 working. The multiple hats, I think the fact that he's
15 the registered agent for ASPPPO, in addition to being
16 registered agent for every other entity that Community
17 Service Associates has conceived of, puts him in a
18 position where there can be a conspiracy, not between a
19 manager and his own corporation, but between a manager
20 for one corporation and a manager for another. That's
21 what we've got here.

22 And with respect to the Angus case, I believe,
23 clearly, Angus is distinguishable For two reasons. While
24 I'm certain that there is some evidence from which
25 someone could infer that the Town of Hilton Head was

1 somehow implicated in the conspiracy about which I speak,
2 we have not sued the Town of Hilton Head. And Angus is,
3 by definition, at least my definition, not necessarily
4 Ms. Jolley's definition, limited to people who sue their
5 employer.

6 There have been no subsequent cases that have
7 expanded Angus, and there has been one case that has
8 limited Angus. Although, as Kelly points out, the
9 limitation is by the Court of Appeals on the Supreme
10 Court, and it might not be tolerated once the Supreme
11 Court gets their opportunity to consider it.

12 I believe that, in view of the fact that my client
13 is not an at-will employee, Angus doesn't apply. And
14 consequently, there are two reasons to distinguish our
15 case here from Angus. She's so not at-will that her
16 entire contractual history with the Town of Hilton Head
17 is now in this record. There's not been a moment, at
18 least in the last five years, that she hasn't been under
19 contract. And that contract cannot be terminated on a
20 whim. It does not make her at-will. There are certain
21 things that she would have to do. The commission of a
22 crime, for example, or possibly, the adjudication against
23 her of a grievance made by a person like Mr. Breed.

24 Her employment was threatened, but it was not --
25 she's not suing the people that had control of it, and

1 she was not at will in the first place. If she had been
2 at will, she probably wouldn't have a job at this
3 juncture.

4 And the special damages are -- I mean, I agree that,
5 essentially, what we've got here, is we've got a
6 situation, at least in the answers to interrogatories
7 where this was, if anything, a fallback position. And my
8 view of it is as follows.

9 One of two things could happen after -- well,
10 actually, one of three things could happen. After the
11 letter was launched, and I'd be less than candid if I
12 told you that I had any idea of whether the letter was
13 sent on June 6, or was shopped around until June 10. I
14 don't have any idea. All I know is that it took ten days
15 for that letter to get to Columbia and get the stamp on.

16 But what I'm getting at is, what could happen once
17 it was released? First thing that could have happened
18 is, before the Commission on Judicial Conduct even
19 received it, somebody at the Town of Hilton Head could
20 have said, this is awful, and what we need to do to avoid
21 public embarrassment is we need to terminate her
22 forthwith. That's one thing that could happen. It
23 didn't happen, but it could have.

24 Another thing that could happen is that the
25 Commission could have said, you know, that Mr. Breed was

1 right. Instead of saying there was no evidence to
2 support anything in his complaint, they could have said
3 you're right. And there could have been a censure, and
4 that censure could have led to public comment; it could
5 have led to her dismissal.

6 The third thing, however, was going to happen
7 regardless. It didn't matter what the outcome was.
8 Didn't matter what the judicial conduct commission did.
9 It didn't really matter what the Town did in response to
10 what I would consider a back-door effort to privately
11 seek a remedy.

12 And the third thing was this. She had to remove
13 herself as the attorney -- excuse me -- as the judge for
14 Sea Pines cases. And that removal was inevitable. It
15 had to happen. And Mr. Breed and Mr. Kelley, thereby,
16 solved a problem that they had, which is, if they were
17 doing some of the things we allege, such as, you know,
18 showing up at her mom's house after midnight, and towing
19 her mom's car, and shutting down her mom's gate
20 privileges, they could have reasonably anticipated that,
21 as a daughter or a sister, Maureen Coffey would be angry
22 about that.

23 And although I think their view was misplaced in
24 this case, they could have believed that she might have
25 somehow taken out her frustrations on their officers.

1 And this absolutely vaccinated them against the
2 possibility of having to deal with Maureen Coffey. They
3 knew that any judge under the circumstances would have
4 to, and she did, in fact, recuse herself, which solved
5 their problem. That's what I think is nefarious and what
6 amounts to conspiracy.

7 THE COURT: Yes.

8 MS. JOLLEY: Frankly, your Honor, now that we know
9 what the conspiracy is and the alleged damages are, I
10 think it's clear that there isn't a conspiracy resulting
11 in special damages to the plaintiff. Apparently, the
12 idea is that Mr. Breed and Mr. Kelley are supposed to
13 have known back in June, when Mr. Breed filed the
14 complaint, that five or six months later, Ms. Coffey was
15 going to file an action that would require that she
16 recuse herself, at her choice, even after the complaint
17 was dismissed.

18 The testimony of Mr. DeLoach was that he approached
19 Ms. Coffey about hearing cases again for Sea Pines after
20 the complaint was dismissed. And she told him her
21 counsel had suggested that she not do so, because she
22 planned to sue. That's her choice. That's not an
23 injury.

24 Not only that, I fail to see how, frankly, the
25 plaintiff having to hear fewer cases, injures her. Even

1 if this was some sort of conspiracy, and frankly, I don't
2 think there's any evidence that that was the conspiracy,
3 or that it's even reasonable. if the issue was that they
4 somehow thought, well, if we filed this, she'll
5 eventually sue us, and therefore, won't have to hear our
6 cases, that doesn't injure her. That's not special
7 damages.

8 And the last thing I want to note is that Angus
9 versus Burroughs and Chapin. We handed a copy of that up
10 at the very beginning of the case. That's clearly
11 against third parties. The other defendants were
12 Burroughs and Chapin, and the son knew. And the holding
13 of that Supreme Court case, which I can get the site
14 again, it's purely that. It's not against third parties.
15 You can't bring a civil conspiracy action against third
16 parties.

17 Thank you.

18 THE COURT: Okay. All right. Okay.

19 MS. JOLLEY: I'm sorry.

20 THE COURT: Oh, that's okay. Do you want to move on
21 as to defamation or?

22 MS. JOLLEY: Yes. I apologize.

23 THE COURT: Okay. That's okay.

24 MS. JOLLEY: First, your Honor, of course, in terms
25 of the defamation action for a public official, the

1 initial question is whether there is clear and convincing
2 evidence of actual malice. Defendants argue that, of
3 course, that there isn't clear and convincing evidence of
4 actual malice.

5 There's no evidence that -- there's not clear and
6 convincing evidence that defendants published the
7 defamatory statements knowing they were false, or in
8 fact, entertained serious doubts as to the truth of their
9 publication. There's no evidence that the defendant had
10 a high degree of awareness of probable falsity of any
11 statements. And I really believe the main case here is
12 *Elder versus Gaffney Ledger*.

13 Now, it's clear throughout, plaintiff's counsel's
14 argued that circumstantial may be used to show state of
15 mind indicative of actual malice. And that's correct,
16 under *Anderson versus Augusta Chronicle*. However, all of
17 the circumstantial evidence examined by the court in that
18 case was related to the article that was the subject of
19 that case. In other words, to the actual publication.

20 Here, there's been a lot of kind of bring-in
21 evidence about things other than the letter, but there
22 isn't actual evidence that Mr. Breed, in writing that
23 letter, entertained a high degree of awareness that the
24 letter was probably false. In fact, Mr. Breed's
25 testimony was that he believed it then, he believed it

1 now, and that he believes that the plaintiff, frankly,
2 has admitted to the factual precedence of the letter.

3 Absent evidence of sufficient caliber or quantity to
4 allow a rational find or fact, to find actual malice, by
5 clear and convincing evidence, that issue shouldn't be
6 submitted to the jury. It's, of course, a question for
7 the court.

8 Looking at the circumstantial evidence the Court
9 considered in *Elder*, it's very similar to this case.
10 First, there was a failure to investigate or verify
11 information that the reporter received via an anonymous
12 caller. There was a missing telephone recording the
13 plaintiff alleged Sossaman's employer had erased.
14 Sossaman was the actual reporter that had also been sued
15 individually. They tried -- they brought in Sossaman's
16 prior guilty plea for manufacturing marijuana. And then,
17 they also brought in alleged rudeness, by Sossaman to the
18 plaintiff's wife. And they said, look, these things are
19 all indicative of a state of mind, looking at
20 circumstantial evidence, that this person could have had
21 actual malice.

22 And what the Supreme Court said is, this evidence is
23 patently insufficient to demonstrate the defendant, in
24 fact, entertained serious doubts as to the truth of the
25 publication. And they said that shouldn't have gone to

1 the jury. So, that's our first one.

2 I'd just as soon go through all the defamation
3 things, but we can do it however you want.

4 THE COURT: Okay. You can go through it. Let's
5 just go ahead.

6 MS. JOLLEY: All right. We believe that there's no
7 causation. The plaintiff has not and cannot prove that,
8 but for the alleged defamatory publications, as opposed
9 to learning of -- and learn -- defending Breed's
10 complaint to the Commission, and quite frankly, the
11 later the Russell Keep complaint, which you have kept
12 out, but did, in fact, occur, which everyone agrees is
13 absolutely privileged itself. Quite frankly, she was not
14 fired. She had a term contract always. There's been
15 some evidence about whether most of those contracts were
16 two years. One of them was two years and some months.
17 She ended up getting another two-year contract, each time
18 her contract term ended, she did not have an automatic
19 renewal.

20 She had to renegotiate each time. That's clear from
21 the record. There's actually -- that's not even in
22 question. Each time she had to renegotiate. She had no
23 absolute right to a three-year contract. She had no
24 absolute right to any compensation or even a job from the
25 Town upon the termination of her contract. So those

1 damages are just speculative, at best.

2 Next, we believe that Breed's publication to Cary
3 Kelley or to the CSA Security Committee, and Cary
4 Kelley's publication to CSA, is subject to a qualified
5 privilege, because the communications remained in good
6 faith and in the usual course of business.

7 We're looking here at *Conwell versus Spur Oil*, 240,
8 *South Carolina* 170, a 1962 case. The plaintiff bears the
9 burden of proving that the privileged publication
10 exceeded or abused. Of course, it's for the Court to
11 decide whether the privilege exists. If the Court finds
12 that there is evidence in the record that that was
13 exceeded, then the jury gets to decide whether or not it
14 was, in fact, exceeded. However, I think there's no
15 question that there wasn't privilege, qualified
16 privilege, in that case.

17 We believe that Breed's publication to Greg DeLoach
18 was permissible public comment. Of course, in South
19 Carolina, citizens have a right to criticize public
20 office, officials, and their fitness for office, so long
21 as the criticism is fair, honest, and without common law
22 malice, which, of course, would have to be proved here,
23 in addition to actual malice. If there is a privilege
24 based on public comment, it is not actionable.

25 I think there's -- there's no question that the

1 fitness of a judge for office is a matter of public
2 concern. Whether you disagree or believe that the letter
3 was poorly written, it's clear that the point of the
4 letter was to let the judicial commission know. And in
5 giving that letter to Greg DeLoach was to let him know
6 that there were concerns by a citizen about Judge
7 Coffey's fitness for office and what they felt were
8 inserting herself into a criminal investigation involving
9 her brother and her family.

10 So we believe that, if there is public comment
11 privilege, then that claim is not actionable. So.

12 THE COURT: Okay.

13 MS. JOLLEY: We don't believe there's any other
14 defamatory statements that are attributable to Breed or
15 CSA. Frankly, there's been no testimony linking George
16 Breed to any claim that Mr. Jolin was having an affair
17 with Judge Coffey. There's been no testimony that would
18 link such statements to Mr. Kelley or any other person
19 having a position of control with CSA.

20 Insofar as there was testimony, which Officer Woods
21 refuted, that Sergeant Woods had said anything about
22 there being an affair going on, there is no evidence that
23 he said such things in the scope of his employment or
24 agent of the parent agency of CSA. And I don't think
25 that there's any way those statements, even if they were

1 true, could be taken back to CSA.

2 Plaintiff, of course, because she's a public
3 official, bears the burden of truth.

4 The proof of falsity, the standard of substantial
5 truth, we don't believe that there's evidence in the
6 record to show that plaintiff has proved that the letter
7 was substantially false and all throughout.

8 We don't believe there's any evidence of special
9 damages. I believe plaintiff is still attempting to say
10 that she is presumed damages. However, under *New York*
11 *Times versus Sullivan*, that presumption is in conflict
12 with the federal rule. And she has not shown actual
13 damages related to the proposed publication.

14 And the last ground, your Honor, is that there's no
15 punitive damages. There's no clear and convincing
16 evidence that defendants acted with constitutional actual
17 malice. And the plaintiff cannot recover punitive
18 damages, and her claim for punitive damages may not be
19 sent to the jury.

20 THE COURT: Okay. Mr. Mathison.

21 MR. MATHISON: May it please the Court. I'm not
22 sure that I got the entire list, but I gave you the most
23 important part. And basically, the showing on
24 constitutional actual malice, I think, not only exists,
25 but it certainly rises above and beyond clear and

1 convincing.

2 Just to start with, there's no explanation, and my
3 colleague has not addressed the fact that they said that
4 she had not been fair or impartial in adjudicating cases,
5 pretty clearly in the next to last paragraph of that
6 letter. And they made it a clear-cut statement, and they
7 have recanted or refuted that statement. Not a single
8 person, not one person in the defendants' array of people
9 who were offered for testimony has ever stated, other
10 than what they put in their answers to Interrogatory 19,
11 which is that Maureen Coffey has never, there's not one
12 case in which they can find that she did anything that
13 was not completely free of bias, free of partiality, and
14 free of prejudice. And yet that terminology, that
15 incarnation, is hammered home repeatedly in that letter.
16 And at least in one instance, it's made on a factual
17 basis that suggests that Mr. Breed knows of instances
18 that have already occurred where she was biased,
19 prejudiced and partial. That was an out and out, rank
20 lie, with no explanation.

21 If anything, the plaintiff ought to be entitled to a
22 directed verdict in its favor on that.

23 In addition, to prove constitutional actual malice,
24 if we just allow the declarant to profess his own belief
25 in that which he said, there would be no defamation law

1 left. And that's not what's required. Because under the
2 law as published in *Anderson versus Augusta Chronicle*,
3 the way it works is as follows:

4 *The Supreme Court has recognized that a plaintiff*
5 *will rarely find success in proving that a statement is*
6 *false from the mouth of the defendant himself.*

7 Well, I think that, if that were the standard,
8 there's no question but what they've won the case.
9 Because he would say it's true; he's said it's true.

10 However, the law is:

11 *Therefore, any direct or indirect evidence relevant*
12 *to the plaintiff's state of -- relevant to the*
13 *defendant's state of mind is admissible to prove actual*
14 *malice.*

15 And it's clear from *Anderson* that this burden may be
16 met by circumstantial evidence.

17 In addition, specifically, it says:

18 *The plaintiff may present confident circumstantial*
19 *evidence of bad faith to establish actual malice, despite*
20 *a defendant's contention the public [sic] was made with a*
21 *belief the statements were true.*

22 Well, I think that we've come up with abundant
23 evidence of actual malice. How does a person who,
24 regardless of whether he actually saw or tried to
25 reconcile the two incident reports that were prepared by

1 Jolin and for Jolin, how does he learn, by his own
2 admission, within several days, according to Officer
3 Woods, and certainly not later than a week after it
4 occurred, that he does not have a positive identification
5 of Otis Coffey out of Officer Jolin? How does that
6 person turn around and one week later write to the
7 Conduct Commission that he does have a positive
8 identification?

9 He knew to a substantial certainty that was a lie
10 when he wrote it, and he knew it not because he looked at
11 necessarily at the incident reports, but he had talked to
12 Jolin. And the evidence is clear that he knew it of his
13 own mind. Yet, he wrote something that was
14 demonstratively false.

15 What else bears directly on his state of mind?
16 Within three weeks of having written this letter, a man
17 confident that he was correct and he was telling the
18 truth, conveyed his interest in his house to his wife, an
19 interest that he'd own in common with her for sixteen and
20 a half years.

21 Two questions, two pages before he was asked why he
22 did that, he had testified unequivocally that he didn't
23 have any medical problems. I mean, he just said it.
24 None, or I can't recall. And then, all of the sudden,
25 when it became clear what was in store in terms of the

1 questions that were being asked, he came back and said,
2 well, he did it for medical reasons, not because he was
3 afraid of the plaintiff's judgment.

4 I believe that on the record in this case, that's an
5 indication that he's disingenuous. He never, ever
6 expressed what the medical problem was. I believe that's
7 evidence of constitutional actual malice.

8 In addition, starting just with the primary suspect
9 aspect of each of the statements made about Ms. Coffey's
10 brother. In 2004, there's ample evidence in the record
11 that the person about whom most of these crimes were, and
12 many of which were closed, was an offender by the name of
13 John Thomas Levy. He withheld that information from Cary
14 Kelley. He withheld it from the board of directors. He,
15 under oath, didn't know who Mr. Levy was, and yet from
16 the stand, Mr. McNeill, his officer, admitted that Mr.
17 Breed himself had submitted the report on Thomas Levy,
18 John Thomas Levy, and Mr. Breed himself had recommended
19 he, McNeill, receive officer of the year as a result of
20 his participating in his arrest.

21 This is a man who did not know of Mr. Levy's
22 existence when examined under oath; had, in fact,
23 participated directly in his arrest; and recommended one
24 of his officers for a citation, if you will, by the
25 Rotary Club, for his participation. That is, to my way

1 of thinking, evidence that goes directly to Mr. Breed's
2 state of mind.

3 With respect to the 2008 primary suspect allegation,
4 the person in charge of those investigations, Meredith
5 Florencio, testified for the Bench unequivocally and
6 unconditionally that Otis Coffey was never the primary
7 suspect in any of them. Mr. Breed, in addition, never
8 bothered to contact her. Investigation, or failure to
9 investigate, not only is a lynchpin of the decision in
10 *Elder*, but it's also a lynchpin in the decision in
11 *Augusta Chronicle*, the *Anderson* case.

12 — Because, what had happened there is, the man had
13 said something that maybe had been misinterpreted by the
14 newspaper reporter. It had to do with whether he had had
15 military service or whether he was adjusting claims for
16 an insurance company with respect to hurricane damage in
17 North Carolina. Somehow the two got conflated, and there
18 was many opportunities for the defendant to find out what
19 had actually happened, because the gentleman from
20 Clearwater, South Carolina had made an effort to tell
21 him.

22 In this situation, there was interaction between
23 Florencio before, during, and after the incident on May
24 20th and their letter on June 6th. Had Mr. Breed ever
25 once wanted to know the truth about the primary suspect,

1 all he had to do was ask her. So he had, in my view,
2 what is a state of mind that was open to debate in terms
3 of his honesty on the dates that the letter was written
4 for that reason as well.

5 In addition, there's the question of impeding an
6 investigation, obstructing an investigation. The
7 suggestion is that, somehow, Ms. Coffey, in 2008, caused
8 her brother to leave the jurisdiction. That just isn't
9 true. There's no evidence here that would suggest she
10 did that. The evidence is that her brother did move out
11 of the house to alleviate strain on Ms. Ann Coffey, but
12 he moved to Janesta Street, which if anything, is fewer
13 than ten minutes away by car from where Ann Coffey lives
14 on Gadwall inside Sea Pines.

15 It's an area from which, had he been the burglar
16 that they were worried about, he could have continued to
17 do what was going on in 2004, because, in 2004, although
18 Mr. Breed didn't seem to know it, Mr. Coffey didn't live
19 in Sea Pines. He lived somewhere else. The scourge of
20 Sea Pines in 2004 did not live there. His return to the
21 community was something that was made up. It was a
22 fiction.

23 There is nothing here, to my way of thinking, that
24 rises above someone being polite in terms of Ms. Coffey's
25 interactions with Mr. Baird, her interactions with the

1 officers on the phone in 2004. I don't know about you,
2 but if I get a call at 8:00 o'clock in the morning from
3 my father, I'm going to answer the phone. I'm not going
4 to have a filter on it that lets me know somehow
5 scientifically that my father is, God rest his soul,
6 standing next to deputies with my brother, although
7 that's entirely possible, or it would have been at one
8 point in time.

9 And you know, that's an innocent conversation. She
10 asks what's going on. Officer Calendine told her what
11 was going on. And nothing happened, other than the fact
12 that her brother was arrested. All right? If that's a
13 mortal sin, then I have no chance at heaven, your Honor.

14 Subsequently, in 2008, you've got a conversation
15 between Ms. Coffey and a deputy who came to the house and
16 was driving by on one of those saturation patrols, I
17 guess. And what she said is, that, please stop harassing
18 my mother. And he said that he didn't know what she was
19 talking about. And he, evidently, went back and told Mr.
20 Breed that this was somehow untoward. I don't understand
21 how it could have been.

22 What happened was that Otis Coffey did move out of
23 Sea Pines Plantation, but not far enough away that anyone
24 would have been inhibited if they had wanted to talk to
25 him. What we have here is, we have something that went

1 on for pretty close to five years, in which either Otis
2 Coffey is such a skillful burglar and peeping Tom that
3 nobody ever got enough evidence to actually interview
4 him, let alone arrest him, or he simply didn't do any of
5 this stuff. And the chase to find him was predicated by
6 the color of his skin or by some antipathy that had been
7 developed for him previously, as a result of something
8 that had happened that hasn't come in the record.

9 I don't know when trespassing became essentially a
10 warrant to assume that a person is doing all things wrong
11 inside your plantation. Consequently, I believe that,
12 without a doubt, there is sufficient evidence that Mr.
13 Breed knew what he was saying was false at the time he
14 said it, and that -- and/or that he was reckless in not
15 knowing it was false. And therefore, we should go to the
16 jury on constitutional actual malice. And since there's
17 enough clear and convincing evidence on that, I think
18 that the burden would also be met with respect to
19 punitive damages, because, while the standards are not
20 identical, they're sufficiently similar, that I don't --
21 I wouldn't try and parse the difference between the two.

22 I believe Kelly next alleged that there was no
23 causation; that somehow what Mr. Breed did is not
24 responsible for the damages that Ms. Coffey said that she
25 sustained. I don't think there's any doubt but what the

1 evidence is clear that she had a three-year contract that
2 expired in September of 2011; that she was not given the
3 opportunity to have a three-year contract again. It was
4 not a negotiated item. She was told that she could have
5 two, and no more. And effectively, that resulted in
6 damage.

7 The damages, the value of the third year, I realize
8 that my analogy to a professional baseball player may not
9 have been a perfect pitch, but it is, in fact, true. And
10 that's how one would measure the value of a contract.
11 That is, in fact, how one would measure the value of the
12 damages that come with a reduction in the contract term.

13 I believe that there's evidence that she had
14 additional babysitting charges as a result of the
15 headaches. I don't think that, if the headaches are
16 attributable, as she did, to the fact that this was done
17 to her, that you really need any causation beyond that.

18 She said she had a predisposition to have headaches
19 beforehand, but they were different in kind and quality.
20 She said that she was incapacitated by the headaches
21 within two to three months of the occurrence of this
22 event. I think it would be remarkable to have anyone
23 parse the headaches in terms of what percentage of the
24 headaches was caused by the fact that a judicial
25 complaint was filed or the fact that one that was filed

1 was without authorization and in violation of
2 confidentiality rules shared with her employer.

3 And while I'm at it, I think that the
4 confidentiality conundrum that Mr. Breed seems to have,
5 it's confidential when it suits his convenience and it's
6 not. That's another example of having guilty knowledge,
7 if you will, that would allow him to be considered
8 convincingly guilty of constitutional actual malice.

9 With respect to her sessions with Dr. Geiger, I
10 believe that there are clinical notes that reflect the
11 catastrophe of this event, dating from Dr. Geiger's
12 meeting with her on July 8th, and then again in August.
13 That is, July 8th of 2008. And I think that that's
14 sufficient cause, especially with her tying up the
15 medical effects that she attributed as resulting from it,
16 specifically, the headaches and the weight gain, to allow
17 Ms. Coffey to prove special damages.

18 I am not proceeding on the assumption that I get to
19 go to the jury on presumed malice alone. I honestly
20 don't understand the cases making a distinction between
21 what is a pressed defendant and what is a non-pressed
22 defendant. But in an abundance of caution, I'm going to
23 hope that this jury returns a verdict that has some
24 special damages in it, other than just the damage to
25 reputation.

1 As to reputation, I think that we've been impeded
2 here by not being allowed to put in a number that could
3 be supported as the plaintiff's reputation, but I don't
4 have any case law that suggests that your ruling is
5 inaccurate. I just don't believe that it's been
6 encountered in this context before.

7 I believe there's plenty of causation. I believe
8 the injury is, in fact, that which normally flows
9 proximately for what happened to her, and I don't think
10 the fact that stress causes this kind of secondary
11 symptoms is unusual. I think that there's a good
12 argument that could be made in this day and age, when
13 everyone has access to the Internet, that it's something
14 that probably does not require expert testimony. There
15 was expert testimony, however.

16 As to the privileges, I think, arguably, there's a
17 qualified privilege, but for the fact that Mr. Breed
18 worked for Mr. Kelley, and both of them worked for the
19 board of directors. All right? Something of this
20 magnitude, I think, should have been submitted to someone
21 on the board of directors in advance to get it approved.

22 If the board of directors was going to be
23 responsible, I think they had the right to have some
24 prior knowledge. They didn't have that right, and that's
25 pretty obvious. Both Mr. Breed and Mr. Kelley said to

1 them it was operational, it was something they could do.
2 They basically informed the board afterwards as a matter
3 of courtesy. By the time the board found out, they
4 couldn't do anything about it. They couldn't take back
5 what had been said; they couldn't unfire a gun. They
6 were dependant upon the situation in which they were
7 placed.

8 I believe that, over the course of time, what was
9 not a privileged publication became adopted by the board
10 in terms of going along with it. If, in fact, the
11 testimony is true and they never discussed it for the
12 ensuing six months, until after the lawsuit was filed, I
13 find that shocking. But I find that an acquiescence of
14 what Mr. Breed did and what Mr. Kelley apparently
15 tolerated, which would make it sufficient to be the act
16 of the CSA board.

17 In addition, I think that the indemnity proved two
18 things beyond a shadow of a doubt. One is that those
19 people believed what Breed said was true. And the other
20 is, that they ratified what he'd done by agreeing,
21 essentially, to pay for it. I believe that those
22 inferences can be drawn. I don't think that the
23 dissemination to the board was privileged in its first
24 instance. I don't think discussing it with Kelley was
25 privileged either.

1 With respect to Ms. Jolley's argument that this was,
2 you know, fair comment because my client is a public
3 official, while I dispute that, under the *Goodwin versus*
4 *Kennedy* decision, it's the law of this case, at least for
5 now. And my view is that if you're going to make a
6 public comment, you need to make it in public. There's
7 no reason that he couldn't have just said something to
8 the Town of Hilton Head town council.

9 The letter that you held out from Mr. Breed to Mr.
10 Herring was actually a letter to the town council,
11 written in 2004, complimenting him publicly to the town
12 council on something Mr. Herring had done to accomodate
13 Mr. Breed. Mr. Breed knew where to take any complaints
14 he had if he was really interested in having public
15 dialogue on the subject. He chose, instead, to take what
16 was nominally a confidential document, under
17 consideration by the Conduct on Judicial - the Commission
18 on Judicial Conduct, and circulate that in the back
19 channel to someone who he admits was his friend, to
20 someone he admits he knew was, or thought he knew, was
21 Maureen Coffey's direct report.

22 There's no question but what he did that in an
23 effort to, if not get her fired, get her, in some way,
24 impaired or impeded, in terms of what he thought she was
25 doing in the case.

1 And that brings me to another point. Because Mr.
2 Weir's memo never got in this case, there's a great deal
3 of evidence that suggests that Sea Pines was just out
4 there -- this is Sea Pines Security; Russell would be
5 upset if I didn't say that -- Sea Pines Security, a
6 division of Community Services Associates, was out there,
7 I mean, pulling stakeouts, saturation patrols, deciding
8 who it was that they were going to investigate.

9 The fact of the matter is, the investigation about
10 which Mr. Breed professed such indignation in his letter,
11 was not his. By law it couldn't be his. It wasn't Sea
12 Pines Security's. It was the Beaufort County Sheriff's
13 Office. And nobody from the Beaufort County Sheriff's
14 Office has endorsed this. I mean, there's an effort to
15 say that Mr. McSwain did in 2004, but nobody in the
16 present tense has endorsed this.

17 I mean, we've put three officers on the stand. They
18 don't say this is a good idea. They didn't say Otis
19 Coffey was a suspect. And Officer Florencio said beyond
20 the shadow of a doubt, Ms. Coffey never interfered in any
21 investigation by the BCSO.

22 Public comment, I realize that it's something that
23 stirs a lot of people's interest, but I think you have to
24 make it in public for it to be considered a public
25 comment. And I don't think sneaking around and giving

1 the letter to Mr. DeLoach would qualify.

2 Last -- and we concede that we have the burden of
3 proving falsity. I think the burden has been
4 established. Certainly, there's nothing in this record
5 that would convince anyone that Ms. Coffey is other than
6 unbiased and impartial when it comes to being a sitting
7 judge. We think that the only other evidence doesn't
8 really require expertise to figure out whether or not
9 she's discharged whatever duties she would have. The
10 question is, did she interfere with or obstruct
11 something. And we think the evidence is clear that she
12 didn't. We don't think there could be anything more
13 clear that there is no obstruction, if, in point of fact,
14 the person gets arrested while you're having a telephone
15 conversation with your father. We don't think that's
16 obstruction.

17 We don't think it's obstruction that the fact that
18 they couldn't get a conviction; that's not the result of
19 her obstruction.

20 THE COURT: Okay. Let me just --

21 MR. MATHISON: And for reasons that I have stated,
22 we do think that there's evidence of special damages.
23 And we're going to argue to the jury that they need to
24 find special damages in order to make our verdict good.

25 I think I covered them all.

1 THE COURT: Do you need to respond or?

2 MS. JOLLEY: It's --

3 THE COURT: You all don't think you need to?

4 MS. JONES: It's all right, your Honor.

5 THE COURT: Okay. You may if you want, but. I can
6 tell you, what I'm going to do is, just over the
7 remaining 20 minutes of our lunch hour, I am going to
8 just check some things as to the civil conspiracy cause
9 of action.

10 As far as the defamation claim is concerned, I'm
11 going to let it go to a jury. I mean, I do think there
12 is evidence, both circumstantial and some direct, that
13 this jury could find by clear and convincing evidence,
14 actual malice, and specifically, a reckless disregard of
15 the truth in the statements that are made.

16 As to the qualified privilege, I do think, arguably,
17 it could be Breed to the CSA board was a qualified
18 privilege. He could extend that. But the question of
19 whether or not it was exceeded, I think, is a jury issue
20 in this case, certainly.

21 As far as the fear of public comment is concerned, I
22 just think there are facts in this case make it a jury
23 issue, I really do. I think that's where this is all
24 going.

25 I do think, arguably, they have put up some special

1 damages. Again, I think it's going to be up to the jury.
2 Let's do this. Let's go ahead and break. I told the
3 jury to come back at about quarter till. That doesn't
4 give you all a whole lot of time.

5 MR. HALIO: Can we get a continuance?

6 THE COURT: Pardon?

7 MR. HALIO: Can we get a continuance till 2:00
8 o'clock?

9 THE COURT: Till 2:00 o'clock? What time is Bill
10 Howard coming?

11 MR. HALIO: He's supposed to be in the area now.

12 THE COURT: Okay.

13 MR. HALIO: I just want to have a chance to get
14 something to eat.

15 THE COURT: Absolutely. Okay. All right. Yeah.
16 I'll go ahead and give you all -- you can have until 2:00
17 o'clock. Hopefully, the jury won't be here too early.
18 And that will give me a little more time, as well.

19 In addition to Bill Howard, is there anyone else you
20 anticipate putting up, or are you going to make that
21 decision over lunch, or? I just want to anticipate for
22 the rest of today, tomorrow, kind of where we're going.

23 And let me tell you this, and I will go ahead and
24 just let you all know. My son graduates on Wednesday, at
25 7:00 o'clock, at Hilton Head High School, and I missed

1 the academic awards on Thursday night. I literally,
2 unfortunately, screeched in as it ended. And I am having
3 20 people over at my house after the graduation. So, the
4 point being that, if this jury is either out or we're
5 arguing and charging anywhere around that time, just
6 understand, I mean, I have to break.

7 So I just want you all to know that as far as your
8 scheduling is concerned. I mean if, like I said, I mean,
9 I'm not going to argue and charge them, you know, on
10 Wednesday afternoon, that is for sure.

11 And I will also tell you all, too, that I am also
12 considering, based on -- I wanted to say what based on,
13 but just based on this entire trial of limiting your
14 closing arguments. And not horrifically, but I'm
15 thinking you could do this each side in 45 minutes, is
16 what I'm comfortable with saying.

17 So I want you also to know that that's where I'm
18 going as well. So just to let you all know that. Let's
19 go ahead and break for lunch. I'll see you afterwards.
20 Okay?

21 MR. HALIO: Thank you, your Honor.

22 THE COURT: Thank you.

23 MS. JOLLEY: Thank you.

24 OFF THE RECORD 1:25 P.M.

25 BACK ON THE RECORD 2:05 P.M.

1 CONTINUE MOTIONS FOR DIRECTED VERDICT.

2 BY THE COURT:

3 THE COURT: All right. Back to the conspiracy
4 against cause of action against ASPPPPO. Can you tell me
5 again what are the distinctions or the differences in the
6 roles between ASPPPPO and CSA?

7 MR. MATHISON: Yes, ma'am.

8 THE COURT: My understanding was ASPPPPO was the
9 covenant enforcement. Is that correct?

10 MR. MATHISON: That's correct. They have one --
11 they have one employee. They have a board of directors,
12 but the one employee is charged with, essentially, seeing
13 to it that covenants are abided by. There's also an
14 architectural review board, which actually makes the
15 decisions, based on the ASPPPPO employee appearing before
16 them much the way a prosecutor or an advocate would. And
17 the property owner appears in the form of, usually,
18 either recalcitrant or repentant at having done what they
19 accuse them of.

20 THE COURT: Provided in the covenants?

21 MR. MATHISON: That's correct.

22 THE COURT: Okay.

23 MR. MATHISON: That's what -- that's the only
24 function that I'm aware that they have, other than the
25 fact that they are a social organization and it's

1 voluntary, as was told to the Court before.

2 CSA, on the other hand, has maintenance, upkeep of
3 the roads, and security as its primary functions.

4 THE COURT: Okay.

5 MR. MATHISON: They don't overlap.

6 THE COURT: Let me ask you, was Kelley ever acting
7 in his role or capacity as, I think he's executive vice
8 president of ASPPPPO. Is that correct?

9 MR. MATHISON: He's executive vice president of
10 Community Service Associates. His capacity for ASPPPPO is
11 exactly what I put up there. He's the registered agent
12 for ASPPPPO. And with the possible exception of the
13 gentleman I described, who's the covenant enforcer, whose
14 job description, as I said, is attached to one of the
15 minutes of the meetings, I believe the -- it's the June
16 24th meeting, --

17 THE COURT: Um-hmm.

18 MR. MATHISON: -- that's the only employee I think
19 they have. They have two.

20 THE COURT: Okay.

21 MR. MATHISON: Kelley and the other employee.

22 THE COURT: I guess my question is, is that,
23 arguably, if you take all the facts as you bring them as
24 to what Kelley's participation was in this publication,
25 is any of it in his role and on behalf of ASPPPPO, other

1 than your argument to me that he is the registered agent
2 for ASPPPPO?

3 MR. MATHISON: Let's put it this way. I can't
4 isolate what portion of his conflicted multiple positions
5 is ASPPPPO and what portion of it is CSA. I simply can't
6 say that. He's also --

7 THE COURT: And ASPPPPO -

8 MR. MATHISON: He's also the administrator, and it
9 appears in the documents that came in about the
10 contribution that came in to the Forest Preserve and
11 Museum Fund. He's also an administrator for them.

12 THE COURT: I guess my question is, is that anything
13 that you could allege that was part of this defamation,
14 and it may be subsequent alleged, I guess in Judge
15 Coffey's terms, harassment upon her family; things like
16 the car being towed, Mrs. Coffey's, Ann Coffey's car
17 being towed, was that for a violation of covenants? Is
18 that something that would fall under the ASPPPPO head, or
19 is that still strictly CSA?

20 MR. MATHISON: I believe that the defendants'
21 position is that it was towed because it had been parked
22 there unlawfully, and a parking ticket was issued.

23 THE COURT: So it was a parking ticket that was the
24 issued.

25 MR. MATHISON: That's correct. And I think --

1 THE COURT: High security.

2 MR. MATHISON: I think that would come under the
3 enforcement provisions of Sea Pines Security, if that's
4 the true reason that it was towed.

5 THE COURT: And ASPPPO has its own board of
6 directors, I presume.

7 MR. MATHISON: The ASPPPO board is composed of some
8 -- yes, it has a separate board of directors, some of
9 whom also serve on the CSA board.

10 THE COURT: I guess my concern is, I'm having a hard
11 time seeing -- I understand your argument as to what Mr.
12 Kelley's role was with Mr. Breed. But I don't see it as
13 him doing these things with his hat on of being the
14 ASPPPO employee.

15 MR. MATHISON: I don't have any proof to offer on
16 that beyond -- excuse me one second, your Honor. I don't
17 have any evidence that he did anything directly as a
18 result of instruction direction of anybody affiliated
19 with ASPPPO, except to the extent that the ASPPPO board,
20 of course, did, in the plaintiff's view, ratify what had
21 been done by him and by Breed when they voted for it.
22 Sixteen of the 17 board --

23 THE COURT: That was the CSA board, I believed.

24 MR. MATHISON: I know, but there are ASPPPO members
25 of the board on the CSA board.

1 THE COURT: Okay. And that's how you were also
2 trying to link Sea Pines Resorts.

3 MR. MATHISON: Well, four of them.

4 THE COURT: Well, Sea Pines, as well.

5 MR. MATHISON: Four of them. That's correct.

6 THE COURT: Okay. Yes, Sea Pine Resorts,
7 Incorporated. Okay. So that would be the same argument,
8 other than you think that, by virtue of Cary Kelley being
9 the registered agent on the secretary of state's website,
10 that, in fact, would link him. Well, I -- not link him,
11 but that would be enough.

12 MR. MATHISON: I'm saying that that's enough to
13 prove that he was their general agent in all of the
14 activities in which he engaged, to the extent that he's
15 an individual representing an entity other than CSA, --

16 THE COURT: Um-hmm.

17 MR. MATHISON: -- he was representing ASPPPO, or he
18 was representing the Forest Preserve and Museum
19 Foundation. There are others that are listed on there,
20 your Honor, but quite frankly, I didn't know of any
21 others, other than the two that I just said.

22 THE COURT: So your argument is back to that there
23 are four members of ASPPPO on the CSA board, much as
24 you've alleged before.

25 MR. MATHISON: I'm saying that the -- my only

1 evidence is that three of those four board members, a
2 majority if you will, did, in fact, endorse what happened
3 by voting for it.

4 THE COURT: Which, again --

5 MR. MATHISON: So my assumption is that they didn't,
6 at any point during the dark period when there was
7 controversy and dis -- where there might have been
8 controversy and discussion, they didn't raise any
9 controversy or discussion.

10 THE COURT: Okay. And once again, the ASPPPPO board
11 is made of -- it's completely voluntary of homeowners, if
12 they choose to, or property owners.

13 MR. MATHISON: The association is voluntary. The
14 board is elected.

15 THE COURT: Of course.

16 MR. MATHISON: From among the volunteers. Unlike --

17 THE COURT: Just so I'm just convinced, because Sea
18 Pines appears to have a lot of things that are home
19 owners' associations. The actual homeowners association
20 is called what, that I would consider that's mandatory,
21 that you pay fees to?

22 MS. JOLLEY: Community Services Associates.

23 THE COURT: I want to make sure. That's what I am
24 under the assumption of, but I just want to make sure.
25 Okay. Okay. All right. Anything else as to that issue?

1 MR. MATHISON: No, your Honor.

2 THE COURT: I'm going to tell you, Mr. Mathison, I
3 don't think you survive directed verdict on the
4 Association of Sea Pines Plantation Property Owners and
5 their advisory board as to the civil conspiracy cause of
6 action. I would agree that there's evidence in the
7 record of Mr. Kelley's complicity with Mr. Breed in this
8 defamation to the extent that he saw it before it was
9 even sent or published, and that he did have a hand in
10 discussing it after, actually, it was already published
11 by Mr. Breed to Mr. DeLoach, both with members of the
12 Town. However, I don't see that you've put in any
13 evidence whatsoever that, in wearing his hat as an ASPPPPO
14 -- one or two employees was an ASPPPPO agent, that he
15 conspired with Mr. Breed or CSA to cause damage to Judge
16 Coffey. I just -- I think it's a stretch, and I just
17 don't see any evidence of it.

18 You know, you saying that he's just, you know, the
19 general agent just by virtue of the secretary of state
20 page, I don't think does it at all, or anything close to
21 it. Again, nothing you can point to in his actions --
22 and when I say *his*, Mr. Kelley's actions -- in
23 furtherance of any type of intent to harm Judge Coffey,
24 you can't point to anything, was wearing the hat of
25 ASPPPPO. Because it sounds to me like ASPPPPO is very

1 limited in what they're able to do.

2 MR. MATHISON: My understanding, your Honor, is just
3 what I told you. And I would be less than candid if I
4 said that I had evidence that, somehow, in the course of
5 some manner of covenant enforcement.

6 THE COURT: Um-hmm.

7 MR. MATHISON: -- any of this who struck John was
8 done. I don't have any --

9 THE COURT: Or they came out on ASPPPPO letterhead
10 versus something else, or it was, you know, put out there
11 under the ASPPPPO auspice.

12 MR. MATHISON: I don't -- I don't believe there was
13 a re-publication on ASPPPPO letterhead.

14 THE COURT: Okay. Okay.

15 MR. MATHISON: At least if there was, it's not been
16 produced.

17 THE COURT: Or anything that furthers it. You know,
18 for instance the, you know, them saying that, you know,
19 our work has been hampered by this, you know, because.

20 MR. MATHISON: Well, I think there is evidence of
21 that. And the evidence was that Mr. Kelley, in one of
22 his capacities, or maybe all of his capacities, appeared
23 not only at a Coffey with Kelley, that is admitted in the
24 answers to interrogatories, but also at the homeowners'
25 association for Calibogue Cay owners, where he made

1 statements to the effect that Otis Coffey's arrest was
2 imminent, --

3 THE COURT: Um-hmm.

4 MR. MATHISON: -- even though this was in January of
5 2009, and it wasn't. And that Ms. Coffey had interfered
6 with the effort to apprehend him. He made those
7 statements.

8 THE COURT: Okay. Now, that would be evidence.

9 MR. MATHISON: Now, I can't say -- I can't say that
10 he got up and said I want you to know, as a
11 representative of ASPPPPO, this is what I'm saying; as
12 opposed to saying, you know, I'm Cary Kelley, and you all
13 know who I am.

14 THE COURT: And just so we go back to, the ASPPPPO is
15 for covenants and covenant enforcement. Because the
16 Coffey with Cary or Coffey with Kelley, is in his role as
17 general manager, I am going to assume, of CSA. I mean,
18 that's what he does. That's what all general managers do
19 in these types of homeowners' associations and these type
20 of plantations.

21 MR. MATHISON: He was at the meeting at the
22 Calibogue Cay Owners' Association to update them on the
23 goings-on around the plantation.

24 THE COURT: Um-hmm.

25 MR. MATHISON: Their interest, and it's reflected in

1 the minutes of that meeting, was in dredging,
2 specifically, because at that time, as the Court may
3 know, they have a spoil site that other people would like
4 to use.

5 THE COURT: Um-hmm.

6 MR. MATHISON: So I think that the meeting was
7 driven more by that concern than -- nobody went to the
8 meeting specifically to heap abuse on my client or on
9 Otis Coffey. By the same token, it was discussed. And
10 in what role he was acting, he was acting as Cary Kelley.
11 And every time he comes in the room, basically, he's a
12 walking conflict of interest.

13 THE COURT: Okay. Okay. All right. I can tell
14 you, I don't know what you intend to put up as to any of
15 that, if you're going to put Mr. Kelley up or Mr. Breed
16 up. I'm just having a hard time with it, Mr. Mathison.
17 I -- I --

18 MR. MATHISON: I understand your problem, your
19 Honor.

20 THE COURT: I'm struggling with it. And
21 additionally, I'm trying to also look at it from the
22 aspect of, you know, if it gets charged, you get money.
23 Obviously, they could hang it on the defamation portion
24 of it. I'm just trying to figure out -- again, I go back
25 to that there's no evidence that he wore this hat as the

1 ASPPPO person. And obviously, we all know you have to
2 conspire with someone that's not within your company
3 organization. And his dual role holding, that is the
4 difficulty I have with conspiracy.

5 MR. MATHISON: Well, I don't know what kind of
6 showing the defendants are going to make, either. But I
7 presupposed that they're not going to put either Mr.
8 Breed or Mr. Kelley on the stand, which is why I read all
9 that deposition testimony.

10 THE COURT: I see.

11 MR. MATHISON: And consequently, the only way that
12 this issue will get clarified is if Mr. Kelley does, in
13 fact, return to the stand and testify. And beyond that,
14 I can't -- there is no evidence in his deposition in
15 which I can establish that he was acting for ASPPPO, as
16 opposed to for CSA, or one or the other.

17 THE COURT: Are there any different damages? Are
18 there any difference in the damages between the
19 defamation claim and the civil conspiracy claim?

20 MR. MATHISON: One of the special damages alleged
21 for conspiracy would have to slide down the answers to
22 interrogatories, which have been made a court exhibit at
23 the time those were prepared, which was in 2011.

24 THE COURT: Um-hmm.

25 MR. MATHISON: It was anticipated that, as a

1 consequence of having to recuse herself, and as a
2 consequence of their having to get other judges to hear
3 the Sea Pines cases during the once or twice a month when
4 they're heard, --

5 THE COURT: Um-hmm.

6 MR. MATHISON: -- that she would be assigned, for no
7 additional consideration, to do what amounts to remote
8 jail duty for bond casts in the morning, which would mean
9 that, essentially, Ms. Coffey would have to be at work,
10 at least on the Skype-type device, by 7:00 o'clock in the
11 morning.

12 THE COURT: Um-hmm.

13 MR. MATHISON: And that she would, in fact, have
14 additional babysitting charges, because she does not have
15 coverage that starts that early as of now. But to date,
16 that has not come to fruition. They have not put her in
17 that, and the damages have not materialized.

18 THE COURT: I didn't hear her testify to it, so.

19 MS. JOLLEY: She didn't.

20 MR. MATHISON: No. And the reason is --

21 THE COURT: It was news to me.

22 MR. MATHISON: And the reason is that they -- the
23 Town has not assign that task.

24 THE COURT: Do they actually have remote jail duty
25 capabilities as of right now?

1 MR. MATHISON: I don't think they do.

2 MS. JOLLEY: That's what they're exploring.

3 THE COURT: Right.

4 MR. MATHISON: And one of the --

5 THE COURT: I was just going to say, they're doing
6 better than the county is, then, because they've been
7 exploring that for years.

8 MR. MATHISON: Well, one of the -- one of the pre-
9 requisites for putting it in, as I understand it, is you
10 have to show that it's a cost-savings. Consequently,
11 they -- their suggestion to Ms. Coffey was that she --

12 THE COURT: As of right now, that's not in as a
13 damage.

14 MR. MATHISON: That's correct. And that's what is
15 in our answers to interrogatories. The reason we didn't
16 present any evidence on that is because there isn't any
17 evidence to present.

18 THE COURT: Okay. I see. Wanda, do you have the --
19 what was the evidence that you put in reference to the
20 Calibogue Cay meeting?

21 MR. MATHISON: It's the Calibogue Cay Owners'
22 Association. That's the one about which Mr. Sonberg
23 testified. He encountered Mr. Kelley.

24 THE COURT: No, my question is, was there any
25 written materials, other.

1 MR. MATHISON: There was. There was a --

2 THE COURT: That you entered into evidence? I think
3 you did enter something in.

4 MR. MATHISON: There are minutes of the meeting, but
5 I don't think I put those into evidence. I gave them to
6 Mr. --

7 THE COURT: Okay.

8 MR. MATHISON: -- Halio. I don't think either one
9 of us put them into evidence. But I don't have any
10 problem putting them in. I mean, it does not -- it does
11 not reflect that Mr. Kelley was there in any capacity,
12 that I can recall.

13 THE COURT: Okay.

14 MR. MATHISON: Except, he was Mr. Kelley and
15 everyone knew who he was.

16 THE COURT: Gotcha. So your answer to my question
17 of is there any different damages that are proved in
18 conspiracy, in the conspiracy claim versus strictly the
19 defamation claim, is none?

20 MR. MATHISON: At this point, it's no.

21 THE COURT: It's none.

22 MR. MATHISON: That's right.

23 THE COURT: Okay. Okay. That was the long way
24 around it, wasn't it? Okay. Okay. What I'm going to do
25 is this. Obviously, we're at the directed verdict stage.

1 You've just rested your case. I hate to say I'm going to
2 take it under advisement. I guess I'm denying it. I'm
3 going to go ahead and revisit it again, and seriously
4 revisit it again, because I have serious concerns about
5 that cause of action. I'm not so sure the evidence
6 supports it. And you might just need to give me a little
7 bit more time as I'm hearing some more testimony to think
8 through that.

9 I know that simply by Mr. Kelley being the
10 registered agent via the secretary of state's web page,
11 doesn't get him anywhere as far as where ASPPPPO is
12 concerned.

13 Again, I am concerned about his dual role-holding,
14 and again, we're back to, in civil conspiracy, obviously,
15 they can't, you know, the same person or the same company
16 cannot conspire together. And again, I'm having a hard
17 time finding anything that Mr. Kelley did wearing his hat
18 of ASPPPPO, because there wasn't any testimony whatsoever
19 put in as to that. So, that's where we're going to leave
20 it, as of right now.

21 All right. I think we have other issues to deal
22 with, as well. As far as your first witness --

23 MS. JONES: Our first witness, your Honor, is
24 Stephen Wright. He will be a very brief witness.

25 THE COURT: Okay. Hang on a second, Mr. Wright. We

1 just -- the jury's not here yet, and they probably want
2 to watch you walk.

3 MS. JONES: He has a medical thing tomorrow, and so
4 he's in hurrying.

5 THE COURT: Absolutely. We will get you out of
6 here, I assure you, sir. Okay. Is there any
7 controversy? I don't know what Mr. Wright's going to
8 testify to. I don't know who he is, but.

9 MS. JONES: Mr. Wright is the gentleman that Ms.
10 Coffey had the conversation with the morning of May the
11 23rd. He was the new officer that had just started
12 working.

13 THE COURT: Very good.

14 MS. JONES: It's a very brief --

15 THE COURT: Very good..

16 MS. JONES: He doesn't know anything about anything
17 else.

18 THE COURT: Very good. And then after that, who do
19 you intend on calling?

20 MR. HALIO: Howard. Judge Howard.

21 THE COURT: Okay. Okay. So and, of course, you're
22 going to renew your objection, your motion in limine, Mr.
23 Mathison, as to Bill Howard testifying. Is that correct?

24 MR. MATHISON: I am, your Honor.

25 THE COURT: Okay. So what we'll do is, we'll take

1 Mr. Wright; we'll take a break; because it sounds to me
2 like -- I have a couple questions to ask him. And then
3 we'll go ahead and make that determination and go
4 forward. What about after that, Ms. Jones?

5 MS. JONES: Then, after that, your Honor, if we can
6 get to it this afternoon, we would like to call Captain
7 McSwain from the Beaufort County Sheriff's Office.

8 THE COURT: Okay.

9 MS. JONES: And we have some deposition testimony
10 from Ms. Coffey.

11 THE COURT: Okay.

12 MS. JONES: We have Lieutenant Campbell from CSA,
13 and Cary Kelley.

14 THE COURT: Okay. Okay. Let's go ahead and bring
15 the jury in. Are you all ready? Are you all ready?
16 Okay.

17 BAILIFF: The jury is entering, your Honor.

18 THE COURT: Thank you.

19 JURORS ENTER COURTROOM 2:27 P.M.

20 BAILIFF: All right, your Honor.

21 THE COURT: Welcome back, ladies and gentlemen. I
22 trust you all had a nice lunch. At this time, the
23 Defense will call their first witness.

24 MS. JONES: Thank you, your Honor. May it please
25 the Court. We'd call Mr. Stephen N. Wright.

1 THE COURT: Come on up, Mr. Wright, and be sworn,
2 sir. Right over here, Mr. Wright. If you would, place
3 your left hand on the Bible and raise your right hand,
4 and Diane with administer the oath.

5 WITNESS SWORN.

6 STEPHEN N. WRIGHT

7 DIRECT EXAMINATION, MS. JONES:

8 Q Good afternoon, Mr. Wright. Could you state your
9 full name for the record, please.

10 A Stephen N. Wright.

11 Q And Mr. Wright, where were you born? Where are you
12 from?

13 A I'm from Marion, Indiana. I was raised and born
14 there.

15 Q And how long did you live in Indiana?

16 A I lived there all the way up to 2007. In December of
17 2007, I moved -- I worked in Indiana.

18 Q Okay. And what did you do in Indiana?

19 A Well, my first ten years, I was -- after I got out of
20 the service on an honorable discharge, I went to the
21 Grant County Sheriff's Department, and I worked there for
22 ten years as a deputy sheriff for Grant County. And then
23 25 years I was on Plainfield Police Department, and
24 worked 17 years on the road and seven years in detective
25 division, working financial crimes, break-ins, robberies,

1 a general trade of detective.

2 Q And did you spend three years on the U.S. Postal Task
3 Force?

4 A Yes, I did. I also worked for the U.S. Postal
5 Service as a special deputy U.S. marshall with the U.S.
6 -- in conjunction with the U.S. Postal Service in
7 Indianapolis, Indiana. And I worked a federal task force
8 there.

9 Q And are you a graduate, did you attend the police
10 academy in Indiana?

11 A I had attended the police academy in 1975. It's a
12 long time ago.

13 Q And then, I think you testified a minute ago that in
14 2008, you left your 25 years with the Plainfield
15 Sheriff's Department and came to Hilton Head. Is that
16 correct?

17 A Yeah. I left the Plainfield Police Department in
18 2007, at the end of 2007. In 2008, in March, I joined
19 Sea Pines Security.

20 Q And prior to joining Sea Pines Security -- are you
21 married?

22 A Yes, I am. I have one son.

23 Q And prior to coming down to join Sea Pines Security,
24 did, and while you were working in Indiana, did you and
25 your family come to Hilton Head?

1 A Yes. I have a time share in Shipyard. And that's
2 where I'm at right now.

3 Q Okay.

4 A I live on the island, but I'm in Shipyard.

5 Q And you had that time share about 14 years before
6 you --

7 A Yes, I've had it a --

8 Q -- actually moved down here in 2008.

9 A That is correct.

10 Q Okay. All right. And when you came down here and
11 started at Sea Pines, what did you -- what was your first
12 assignment?

13 A Well, for two months in March of 2008, I was at the
14 gates, working, learning the security of the gate, and
15 what can be admitted, and like, passes and the different
16 type of commercial passes and stuff like that. Then, two
17 months later, in May, I started training for the road.
18 Started working on the road.

19 Q So, in May 2008, you were just starting to be a
20 patrol --

21 A Be a patrol officer.

22 Q -- a security officer.

23 A That is correct, yes.

24 Q Okay. And let me ask you if you can identify -- I'd
25 like to have this marked as Defendants' Exhibit 14.

1 COURT REPORTER: This will be 14.

2 COPY OF DOCUMENT REFERRED TO AS

3 STATEMENT BY STEPHEN N. WRIGHT MARKED

4 DEFENDANTS' EXHIBIT NUMBER 14,

5 FOR IDENTIFICATION.

6 Q Let me hand you what's been marked as Defendants'
7 Exhibit 14, and ask you if you can identify that
8 document, Mr. Wright.

9 A Yes. That is a document that I prepared because I
10 had a -- had a run-in with Mrs. Coffey, and I wrote a
11 statement on it.

12 Q Okay. And when did you -- did you prepare that?

13 MR. MATHISON: Excuse me. Objection. This document
14 hasn't been produced to us. I have one from him, but
15 it's not the same as that.

16 THE COURT: Okay. Do we need to take this up?

17 MR. MATHISON: Yes, ma'am.

18 THE COURT: Okay. Ladies and gentlemen of the jury,
19 I'm going to send you back to your jury room briefly. Do
20 not discuss this case. Again, it wouldn't be
21 inappropriate to do so at this time. And we'll be right
22 back with you. Thank you.

23 JURORS LEAVE COURTROOM 2:33 P.M.

24 ON-THE-RECORD BENCH CONFERENCE.

25 PRESENT: MR. MATHISON, MS. JONES,

1 MR. HALIO, MS. JOLLEY.

2 BAILIFF: The jury is clear, your Honor.

3 MR. MATHISON: May it please the Court, your Honor.

4 THE COURT: I'm reading it. Have you seen the new
5 copy?

6 MR. MATHISON: I'm going to hand up what has been
7 produced to me and what I thought Celeste was putting in
8 the record.

9 MS. JONES: Well, I'm going to put both of them in
10 the record. That's the second one.

11 MR. MATHISON: There's only one that was in the
12 production that we received.

13 THE COURT: What's the difference in the two?

14 MR. MATHISON: Well, this one is a lot more
15 detailed, twice as long, and I would guess, probably more
16 favorable to the defendants.

17 I have my production in order, your Honor, just as I
18 took it off the disk. This document is not in that
19 material.

20 THE COURT: So how do you account for the new
21 document that's also dated on the same date, 5-23-2008,
22 Ms. Jones?

23 MS. JONES: I was going to get it -- I was going to
24 put both of them in, your Honor, and get him to explain
25 why he prepared two statements.

1 THE COURT: Well, why didn't you turn the second one
2 over to plaintiff's counsel?

3 MS. JONES: I thought we did.

4 THE COURT: Well, let's go ahead --

5 MS. JONES: You know, if they didn't get it, it was
6 just an inadvertent error. I mean, we produced what we
7 had.

8 MR. MATHISON: The next document in order, after the
9 document, is a statement of Corporal Frank Fryman, and
10 it's unsigned, as were all the other statements. The
11 only thing distinctive about Mr. Wright's was that Mr.
12 Wright was courteous enough to actually sign his. Stuck
13 out like a sore thumb. In a forest of documents with no
14 attribution and no signatures, his was signed. I notice
15 the one that's now been produced is also signed.

16 THE COURT: All right, Mr. Wright, why don't you
17 explain to me why there are two?

18 A Yes, ma'am. Okay. The first one I prepared, and the
19 one on the right I prepared. Then, when this lawsuit got
20 dismissed, I didn't think anything about it. So I forgot
21 all about it. And so, that's why I prepared the second
22 one, because, then, they was -- the new lawsuit had been
23 filed, so I wrote another one.

24 THE COURT: So you prepared the second one after the
25 lawsuit was dismissed?

1 A Yes, ma'am. That -- this one, the right one I
2 prepared first. And then, the second one, because it was
3 what, five years later. I mean I'm trying to, --

4 THE COURT: Okay. The problem, though, is they have
5 the first one, not the second one.

6 MR. MATHISON: That's correct, your Honor. And I
7 don't see how they can offer it in evidence without
8 producing it. I mean, relentlessly I've pursued the
9 angle that these people have not been forthcoming in
10 discovery, and I believe this is just further evidence of
11 it. And to lead off with a document that hasn't been
12 produced is, frankly, almost a new low in my experience.

13 MS. JONES: You know, your Honor --

14 THE COURT: Well, wait a minute. Wait a minute.
15 Wait a minute, Ms. Jones. I reading right now.

16 Okay. I don't see that there's any large
17 difference. And quite frankly, everything that is in
18 both of these statements has already been testified to
19 prior to this trial.

20 Additionally, before we start throwing things, I do
21 believe that there are witnesses that came up in the
22 plaintiff's case that had never been listed. Maybe had
23 been mentioned in a deposition, but never been listed,
24 and I allowed those people to testify.

25 We have had some discussions about trial by ambush,

1 but again, I think you can certainly cross-examine him on
2 the different notes.

3 I can tell what's the most disconcerting to me is
4 that they both have the same date on them, as the making
5 date. And that's a problem that I am going to presume,
6 Mr. Mathison, you are going to ask Mr. Wright about.

7 MR. MATHISON: I'm going to ask him if he knows why
8 he didn't have the one that you've got now produced. The
9 material change in it that I see, your Honor, --

10 THE COURT: Yes.

11 MR. MATHISON: -- is that, in the one that they're
12 now attempting to get into evidence, he says that the
13 female advised him that she wanted Sea Pines Security to
14 quit harassing him, meaning --

15 THE COURT: Um-hmm.

16 MR. MATHISON: -- the brother. Whereas, in the one
17 that he prepared, he doesn't say that.

18 THE COURT: It says, *quit harassing me*.

19 MR. MATHISON: Yes. I mean, it's a material
20 difference.

21 MS. JONES: For the record, your Honor, I don't
22 think there is any material difference. I think that Mr.
23 Mathison's personal comments are objectionable, and I do
24 object to them. The documents that we received were
25 produced when we received them. I cannot, you know,

1 assure you, as we stand here, although I'll figure it
2 out, exactly what date these two things were produced.

3 We had an original lawsuit with a -- with a
4 different lawyer. And now, we've got this lawsuit. And
5 you know, I'll have to go back and look at all that.

6 THE COURT: Um-hmm.

7 MS. JONES: But the witness can explain it. The
8 next one I was going to put in is the one that Mr.
9 Mathison says he's had all these years. The witness can
10 testify about what happened. I'm happy for him to be
11 questioned about it. There is no material difference
12 between them. In both of them he testifies and confirms
13 that he did not know the plaintiff; that she approached
14 him; that she accused them or him of some sort of
15 harassment; and stated that she was going to have her
16 brother move out; and that she was going to make the
17 statement -- well, I mean, they speak for themselves.

18 THE COURT: They do. You don't have to tell me what
19 they say. So.

20 MS. JONES: They state what they said. And there is
21 no material difference. And he can certainly tell the
22 jury that, five years later, you know, when there -- when
23 a subpoena came to him, he, you know, he had the other
24 one or he couldn't find the first one or whatever his
25 testimony is.

1 MR. MATHISON: Forgive me, your Honor, but, I mean,
2 there is evidence in the record that there was no
3 discovery requested or provided until after the first
4 portion of this lawsuit was over. The fact that this
5 gentleman believes that there was a lawsuit dismissed,
6 meaning ended, is just erroneous.

7 THE COURT: Well, they keep trying to --

8 MR. MATHISON: The jury has heard --

9 THE COURT: They keep trying to put that up there,
10 and we all know that.

11 MR. MATHISON: All right. But the fact of the
12 matter is, the only production that I'm aware of came to
13 me on a disk, without numbers. And the order of
14 production was this, followed by another --

15 THE COURT: All right. Well, Mr. Mathison, I
16 understand you say you haven't gotten it, and maybe the
17 Defense needs to go through and see if they can find out
18 where it's been produced, and I'm sure they'll do that.

19 MR. HALIO: I didn't see where I sent it, Judge.

20 THE COURT: You don't?

21 MR. HALIO: No, I don't. And it certainly was
22 nothing -- I don't know why, but I didn't send it.

23 THE COURT: Okay. Okay. All right. Well, I'm
24 going to let her use both of them, and you can cross-
25 examine them all day long about why there's two different

1 documents, why they have the same date on them, and why
2 they differ.

3 Wanda, is there someone -- can we go ahead and give
4 it to him.

5 MR. MATHISON: May I comment on the fact that one of
6 them wasn't produced?

7 THE COURT: I think you've already done that for the
8 last three minutes.

9 MR. MATHISON: I mean, to the jury, your Honor. May
10 I inquire --

11 THE COURT: You can certainly -- you can certainly
12 ask. And no, it's not for you to testify, to comment on,
13 but again, you can say, I've never received this; when
14 did you make this copy; you know, when did you do this?

15 All right. Let's bring the jury back in.

16 BAILIFF: Yes, ma'am.

17 THE COURT: Mr. Mathison, quite frankly, I think
18 this is a little bit of fair game, kind of based on how
19 the first half of the trial has gone. So I think on both
20 sides there's been things that haven't been turned over
21 and witnesses that haven't been disclosed and other. So
22 again, for a full vetting, we're going to go ahead and
23 allow it.

24 COPY OF DOCUMENT REFERRED TO AS

25 STATEMENT BY STEPHEN N. WRIGHT MARKED

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DEFENDANTS' EXHIBIT NUMBER 14 AND
ADMITTED AS EVIDENCE.

BAILIFF: The jurors are entering, your Honor.

THE COURT: Thank you.

JURORS ENTER COURTROOM 2:43 P.M.

THE COURT: Thank you. Ms. Jones, you may continue.

CONTINUE STEPHEN N. WRIGHT

DIRECT EXAMINATION, MS. JONES:

Q Corporal Wright, if you could, please identify
what's been marked as Defendants' Exhibit 14.

A Yes. This is a statement that I pre -- that I wrote
on an incident occurred on May 23rd.

Q All right. And I want you to get -- I want you to
explain to the jury a little bit how you prepared that
statement and when you prepared it.

A How it was prepared. Well, I was in routine patrol
at Sea Pines, down on Gadwall, Street, and I had my
window down. And I patrol 2:00 to 10:00. That's what I
do.

And I was rolling through Gadwall, and I seen a lady
out there, and I rode down, and I said, *Hi. How are you?*
I said, *How are you today?*

And then, all the -- the response I get back was,
Well, I wish you -- you guys quit harassing us.

I says, *Well, ma'am, how do I harass you if I don't*

1 even know you?

2 I've never met the judge. She said she's Judge
3 Coffey. And I says, Well, I've never met you before.

4 And so, I -- I left. And she said she's going to
5 have to get her brother out of town. Get her brother
6 out, that's what she said.

7 So I was kind of upset. I went down to -- I told my
8 lieutenant, Lieutenant Woods. And then, I told the Chief
9 just what happened. And then I wrote a statement. I
10 mean.

11 Q And is that the statement that you prepared?

12 A Yes, it is.

13 Q Okay. And when did you prepare that statement?

14 A It was only been -- on the 23rd of May. I mean, I
15 wrote a statement of what happened.

16 Q And did you put -- did you put the time on the
17 statement?

18 A Yes, I did.

19 Q And is that an accurate statement that you prepared
20 on that day?

21 A That is -- that is as accurate as I can remember five
22 years ago. Yes, it is.

23 MS. JONES: Okay. Your Honor, we would offer
24 Defendants' Exhibit 14.

25 THE COURT: All right.

1 MR. MATHISON: I renew my objection.

2 THE COURT: Noted for the record. I'm going to
3 allow it into evidence.

4 COPY OF DOCUMENT REFERRED TO AS

5 STATEMENT BY STEPHEN N. WRIGHT

6 MARKED DEFENDANTS' EXHIBIT

7 NUMBER 14, ADMITTED AS EVIDENCE.

8 CONTINUE STEPHEN N. WRIGHT

9 DIRECT EXAMINATION, MS. JONES:

10 Q And if you would, please, would you publish to the
11 jury your statement that you prepared.

12 A Read it out?

13 Q Read the entire thing, yes, sir.

14 A Okay. It says, On 5-23 of '08, at approximately 1722
15 hours, while on routine patrol on Gadwall, just off South
16 Sea Pines, I observed a female walking. I advised the
17 female, 'How are you doing, ma'am?' The female then
18 replied that we needed to quit harassing him. I advised,
19 'Ma'am, I don't know what -- who you are talking about.
20 I'm just checking the area.'

21 The female then advised that she was the judge for
22 the Town of Hilton Head. I advised that I hadn't ever
23 met her before. Which I hadn't. I do not know who she
24 is. I'm a new officer from Indiana. I was on -- I've
25 been on the force for Indiana for 25 years, and I started

1 working here three months ago.

2 The judge advised that she -- that she saw Officer
3 Hahn and another officer today. I advised her that I
4 didn't know anything about that.

5 The Judge advised that she would go see Chief Breed;
6 that she didn't have time. She was going to tell Chief
7 Breed I was harassing her, that's what she told me.

8 The Judge then advised that she did -- she doesn't
9 know if he is guilty or not. I advised the judge, 'I
10 don't know anything about that.'

11 The Judge then advised that she was just going to
12 have him move out.

13 And that's what she told me; she was going to have
14 him move out.

15 Her mother didn't need all of this. I then advised
16 the Judge that I would probably see her in court. I then
17 left the area and advised Lieutenant Woods of my meeting
18 with Judge Coffey. Because she said she was going to
19 charge -- call Chief Breed and tell him I was harassing
20 him. Harassing him. I don't harass nobody.

21 Q Now, subsequent to preparing that statement, let me
22 hand you what is being marked as Defendants' Exhibit 15.

23 COPY OF DOCUMENT REFERRED TO AS

24 SECOND STATEMENT BY STEPHEN N.

25 WRIGHT MARKED DEFENDANTS' EXHIBIT

1 NUMBER 15, FOR IDENTIFICATION.

2 Q Now let me hand you what's been marked as
3 Defendants' Exhibit 15, and ask you if you can identify
4 that statement.

5 A Yeah. This is another statement, because I had word
6 that -- when I first wrote this first statement that they
7 told me that the lawsuit was been dismissed. So then,
8 five years later, I can't find the original one.

9 MR. MATHISON: Objection. That's hearsay. *They had*
10 *told me.* I don't know who they are.

11 A I heard it.

12 THE COURT: Okay. You can go ahead and testify.

13 A Yes. I heard that the lawsuit was dismissed. So
14 then, I get it in what, 2009 or something, or later, that
15 they filed another lawsuit. So I couldn't find my
16 original statement, the one that I wrote. So I wrote
17 this one. That's what I did.

18 MS. JONES: Your Honor, we move the admission of
19 Defendants' 15, as well.

20 THE COURT: I'm assuming that is not subject to the
21 objection.

22 MR. MATHISON: That one, no, I don't object to that
23 one.

24 THE COURT: Okay. Put that in.

25 COPY OF DOCUMENT REFERRED TO AS

1 SECOND STATEMENT BY STEPHEN N. WRIGHT
2 MARKED DEFENDANTS' EXHIBIT NUMBER 15
3 AND ADMITTED AS EVIDENCE.

4 BY MS. JONES:

5 Q And could you please publish to the jury, read to
6 the jury, what is in the second statement that you
7 prepared when you couldn't find the first one.

8 A It says, *I, Corporal Wright, while on routine patrol*
9 *in the area of Gadwall, on May 23rd, 2080 [sic], I*
10 *noticed a white female by the side of the road. Having*
11 *my windows rolled down on my patrol car, I advised the*
12 *female, 'How are you today?'*

13 *The female then replied and said, 'I wish all you*
14 *would quit harassing me.'*

15 *The female then advised that her name was Judge*
16 *Coffey. And she advised her name was Judge Coffey.*

17 *I then advised the Judge that I'd never met her*
18 *before. Which I haven't. I'd never been there, because*
19 *I had just started three years ago -- three months ago.*

20 *The female then advised that she was going to have*
21 *her brother move out of -- move out of Sea Pines. And*
22 *that's -- and I got down here, move out or something to*
23 *that effect. She was going to call Chief Breed in*
24 *reference to the harassment.*

25 *She said she was going to tell Chief Breed that I*

1 was harassing them. I had not harassed nobody. I don't.

2 Q Corporal Wright, in the 25 years that you worked at
3 -- for the Plainfield Indiana Police Department, were you
4 ever accused of harassing anyone?

5 A No, I have never been accused of harassing anybody.
6 Especially somebody I don't know.

7 Q When this accusation occurred, what effect did it
8 have on you?

9 A Well, I was very upset, because, being new on the
10 department three months, I don't know want some judge
11 telling me that I'm harassing them, which I'm not
12 harassing. I was just on routine patrol.

13 So that's why I went down and immediately told
14 immediately told my supervisor, and I told the Chief,
15 Chief Breed.

16 MS. JONES: Thank you, your Honor. That's all the
17 questions we have.

18 THE COURT: Mr. Mathison.

19 STEPHEN N. WRIGHT

20 CROSS-EXAMINATION, MR. MATHISON:

21 Q You do recognize that you're under oath, don't you,
22 officer?

23 A Yes, sir.

24 Q And you recognize that you're not supposed to tell
25 anything but the truth. Isn't that right?

1 A That is correct, sir.

2 Q The documents that you have, been marked as

3 Defendants' Exhibit 15, do you know whether that one was

4 actually produced so that the plaintiff could look at it

5 in advance of the trial?

6 A I have no thing of whether what was given to you, the

7 attorneys or what. I have no idea. I just do this

8 statement. I did the statement.

9 Q Yes.

10 A Now, how they got it, who got them, I don't know.

11 Q Well, after you did that statement, who did you give

12 it to?

13 A Chief Breed would have it.

14 Q Okay. So Chief Breed had this one. Is that right?

15 A Well, he had -- he would have had both of them.

16 Q Okay. But I believe you said that Defendants'

17 Exhibit 15, that you did that one only in 2009. Isn't

18 that right?

19 A I did it 2008, 2009. I'm not positive of the date,

20 but I mean --

21 Q Well, you are you positive --

22 A -- the contents is the same.

23 Q Excuse me.

24 A The contents. I'm sorry.

25 Q Are you positive you didn't do it on the date that's

1 on it?

2 A No. No, I wouldn't have did it on the date.

3 Q What is the date that's on it?

4 A It's on -- I know, it's -- it's stating May 23rd, but
5 I'm referring to the incident of that date.

6 Q So which --

7 A Not when I signed it.

8 Q If I understand your testimony now, the one that you
9 -- that actually got to the plaintiff in a response to
10 the plaintiff's production request, you actually prepared
11 a year or two years after the fact. Is that what your
12 testimony is now?

13 A I couldn't find my -- the original one. You guys had
14 it or something. So I wrote another one. I couldn't
15 find that what I stated. So I wrote a --

16 Q Why did you put a false date on it?

17 A Huh?

18 Q Why did you --

19 A I'm referring to the incident date, not when I signed
20 the date.

21 Q Is that right?

22 A I -- that -- both of them, yes.

23 Q I see.

24 A I refer to the incident dates, not -- not the date I
25 signed them.

1 Q Okay. And in that particular one that you say that
2 you prepared on the wrong date, did you have anything
3 about Ms. Coffey telling you that she was the judge of
4 the municipal court?

5 A She told me she was the judge of town court.

6 Q Just look and see if those words appear in there.

7 A On this one?

8 Q Yes, sir.

9 A Okay.

10 Q Do they appear in there?

11 A No, sir, but they should have.

12 Q But she said, *Hi, I'm Judge Coffey*. Isn't that what
13 you've got in there?

14 A No, sir, not on this one.

15 Q Well, read it. What does it say?

16 A Okay. It says, *The female then replied, 'I wish you*
17 *would quit harassing.'* The female advised that her name
18 was Judge Coffey. She advised me what her name was Judge
19 Coffey.

20 Q Okay. But she didn't say that she was the town
21 judge, the municipal judge. She said, *Hi, I'm Judge*
22 *Coffey*. Is that right?

23 A No, sir. On the day that this incident occurred, she
24 said she was the town judge of Hilton Head.

25 Q Well, then, why doesn't that appear in there?

1 A I don't know, sir. You're talking several years
2 later that I wrote it.

3 Q Well, and you put the wrong date on it, if you're
4 correct.

5 A Well, the thing is, I did not put that in there, but
6 I should have.

7 Q I see.

8 A I mean, I'm telling you just what she's told me that
9 day. I was there.

10 Q But this one, this one, now, Defendants' Exhibit 14,
11 that one you think you did on the correct date. Isn't
12 that right?

13 A I did it on that one, yes, sir.

14 Q And that one does have in there that she identified
15 herself as the Town of Hilton Head judge; doesn't it?

16 A Yes, sir, but like I said --

17 Q Isn't that what it says?

18 A Yes, sir.

19 Q Okay.

20 A But like I said, she advised she was the town -- she
21 was the judge of Hilton Head.

22 Q Yes, ma'am.

23 A I'd met it that day.

24 Q Yes, sir, I understand. Do you know what Mr. Breed
25 said about this in his letter?

1 A He was not happy that -- that she told that to me.
2 And he knows that I don't harass nobody.
3 Q Yes, sir. Do you know whether, in Judge [sic]
4 Breed's letter, he said, that Judge Coffey, and this is
5 an exact statement: *She was the judge for the Town of*
6 *Hilton Head Island*?
7 A What he says, I don't know. I have not seen his
8 documents or anything else. I wasn't -- I couldn't
9 testify to what he said.
10 Q Well, I'm just asking you, is that what he said --
11 you don't know what's in his letter. Is that what you're
12 saying?
13 A That is correct, sir.
14 Q If I represent to you that he said she was the judge
15 of Hilton Head Island, can you find that language in this
16 letter right here?
17 A She told me out on the scene she was town -- town
18 judge.
19 Q Okay. And did he say, quote, *That you needed to quit*
20 *harassing him*?
21 A She said *us*.
22 Q *Us*.
23 A Right. That's what she said. Said *us*. Not him.
24 *Quit harassing us*. Then she told me she had to move
25 Judge Coffey out of town -- I mean, had to move Otis out

1 of town. That's what she said to me.

2 Q Mr. Wright, just -- just calm down.

3 A Okay. I know. I understand, but I'm just telling

4 you what she told me.

5 Q You're telling me now that she told you they had to

6 move Mr. Coffey out of town, and not just out of the --

7 A Mr. Otis. No, Mr. Otis out of town...

8 Q Okay.

9 A That's what she told me on the scene out there.

10 Q Well, I'm looking at Defendants' Exhibit 15, which

11 you claim is the one you did way, way after the fact, and

12 I'm asking you, doesn't Defendants' Exhibit 15 say, on

13 this subject: *The female then advised that she was going*

14 *to have her brother move out or something to that effect?*

15 A She said Otis Coffey. That's what she was -- she

16 told me Otis Coffey on the scene, sir.

17 Q Yes. And how does that have anything in it about out

18 of town?

19 A Moved him out of Sea Pines. She said -- she said

20 she's going to have to move him out of Sea Pines. That's

21 the exact words she said, *out of Sea Pines.*

22 Q Okay. And do you know whether he did move out of Sea

23 Pines?

24 A I have no idea on that, sir. Couldn't tell you.

25 Q Do you know where Janesta Street at Hilton Head

1 Island is?

2 A Janesta Street. No, sir.

3 Q So you wouldn't know whether it's ten minutes away

4 from Gadwall, by car.

5 A No, sir.

6 Q Well, then, what -- where did this gonna move him

7 out-of-state or move him out of the area, where did that

8 come from?

9 A That come from the judge.

10 Q She said --

11 A She said she was going to move him out.

12 Q Okay.

13 A Out of Sea Pines. That's what she told me.

14 Q Out of Sea Pines.

15 A Out of Sea Pines. That is correct.

16 Q Okay. So it wasn't out-of-state or it wasn't out of

17 the jurisdiction?

18 A No, sir. She said out of Sea Pines.

19 THE COURT: Gentlemen, don't talk over each other.

20 Mr. Mathison ask a question. Then, Mr. Wright, --

21 A Yes, ma'am.

22 THE COURT: -- you may answer, but do not talk over

23 the top of each other.

24 A Okay.

25 Q So it wasn't out of the state, right?

1 A Not that I'm aware of.

2 Q And it wasn't out of the jurisdiction. She didn't

3 say anything like that.

4 A No.

5 Q And as far as you know, he may have moved right

6 around the corner.

7 A Possibly, yes, sir.

8 Q Okay. Mr. Wright, was Judge Coffey pleasant to you?

9 A Well, she told me that quit harassing her. And I

10 said, you know, --

11 Q Well, now, let's stop for just a --

12 A Okay.

13 MS. JONES: Objection, your Honor. The witness can

14 finish his answer.

15 THE COURT: Okay. You can go ahead and finish if

16 you need to, sir.

17 A I mean, when I'm new and I just come on, and I've

18 been there only three months, and somebody accuses me of

19 harassing -- harassing them, and I've never met them

20 before, I was upset with it, yes, I was.

21 Q Well, let's look at the Defendants' Exhibit 15, the

22 one that actually was produced for the plaintiff. And

23 doesn't it actually say, *The female then replied and*

24 *said, 'I wish you all would quit harassing me.'*

25 A She said quit harassing, yeah, quit harassing us.

1 Q Where is --

2 A I don't know why she included me. That's what I
3 don't know.

4 Q Okay. So you all, you assumed, was you?

5 A That is correct.

6 Q Okay.

7 A She said, you all, and I'm driving the squad car.

8 Q And I think you were working for Mr. Woods, a
9 gentleman who's already testified in this case?

10 A Yes, sir. I was on that shift. Yes, sir.

11 Q How many times that day had you been to Gadwall?

12 A Two or three. I'm not for sure, sir.

13 Q Why would you --

14 A I'm always patrolling. I'm always in and out.

15 Q Why would you go to Gadwall two or three times
16 previously on that shift?

17 A Well, only reason I could think back going there is
18 on -- if we have trouble in a certain area, we're going
19 to saturate that area. If we have burglaries, if we have
20 peeping Toms, or whatever, any type of crime, we're going
21 to saturate that area, more than we would a normal area.

22 Q Right. Did anyone tell you before you went down
23 there who Otis Coffey was?

24 A No, I don't know Otis Coffey. I never met Otis
25 Coffey.

1 Q So you weren't saturating the area where his mother
2 lived because --
3 A No.
4 Q -- you thought he lived there.
5 A Not -- not her. I didn't even know her. I didn't
6 know Otis Coffey. And I wouldn't recognize him today.
7 Q Did Ms. Coffey ever go see Chief Breed, complain
8 about you, or anything else?
9 A I couldn't tell you on that, sir. I don't know what
10 she did.
11 Q Okay. And you've got two documents, both of which
12 purport to be dated on May 23, 2008. Is that right?
13 A Yes, sir. That was first the incident date.
14 Q And only one of them was done on May 23rd. Is that
15 right?
16 A That is correct.
17 Q And the one that you say was done on May 23rd is
18 Defendants' Exhibit 14, which wasn't produced to the
19 plaintiff in this case.
20 A I have no idea whether it was produced to you or not,
21 sir.
22 Q Officer, how often in the past have you prepared
23 statements about the same subject and put the same date
24 on them?
25 A I always refer to the dates. I mean, I don't --

1 nobody asked me about the date I signed it. I always
2 refer to the incident dates.

3 Q So you --

4 A But you know, reports going to Beaufort County, they
5 have the date I prepare them.

6 Q So you're in the habit, are you, of just going ahead
7 and allowing whatever you want to say to go next to a
8 date that's not the date you prepared it?

9 A Huh? No I just write it down. I write it down, what
10 it said.

11 Q Isn't it a fact, Officer, that what's in Defendants'
12 Exhibit 14 was prepared by you at the behest of someone
13 at Sea Pines Security, so that it would conform more
14 closely and align with what Mr. Breed put in his letter?

15 A I told exactly what happened on the day it happened,
16 on that 23rd of May, and that's what happened.

17 Q And then you told --

18 A I was never influenced by nobody.

19 Q And then you told what didn't happen on a subsequent
20 date, and said it was on May 23rd, when you needed to.

21 A No.

22 Q Is that right?

23 A No, sir. I left things out of there. I did not, you
24 know, on that -- on that second one that you said I
25 prepared, I left things out. I mean, it was five years

1 later.

2 Q But you didn't leave out the date; did you?

3 A No, it's because it's the date of the incident.

4 That's what I'm saying. I put the date of the incident
5 on it.

6 Q I see. Did you discuss what you were going to
7 testify about today before you came in here?

8 A I don't discuss anything with anybody. This is just
9 what I know.

10 Q And you don't know whether Mr. Coffey moved to
11 Janesta Street or not.

12 A I have no idea, sir. No, sir, I would not.

13 Q Did you ever encounter Mr. Coffey?

14 A No. No. I have never encountered Mr. Coffey.

15 Q Have you been in court with Judge Coffey?

16 A Have I been in court with Judge Coffey? Oh, not --
17 that was a civil case that I've been -- and Beaufort
18 County had that case. I was a victim.

19 Q And I ask you, have you been in court with Judge
20 Coffey?

21 A That is correct.

22 Q In a case that was actually being heard, or in what
23 connection?

24 A Beaufort County's case. I was a victim in a drunk
25 driving case.

1 Q All right. Did you form any opinion as to whether
2 Judge Coffey was fair and impartial in that case?

3 A Subject plead guilty. I don't know. I don't form no
4 opinions of anybody.

5 Q Thank you very much. Excuse me one second. Did you
6 turn both of these in to Mr. Breed?

7 A Yeah, he should have.

8 Q Okay. And did anybody ask you before I did about why
9 you would have two documents that had May 23rd on them?

10 A No, sir. No, sir. Nobody ever asked me.

11 Q I mean, for someone just come into the situation, two
12 statements about the same incident, with major
13 contradictions in them, presents something of a problem.

14 A Okay. There's not major contradiction. You look at
15 the contents of the let -- both of them are wrote, I
16 stated that the Judge -- I didn't know the Judge. I say
17 good afternoon; she said she was the judge. She said, I
18 wish you -- us -- quit harassing us. And she told me
19 that, and she said she was going to tell Chief Breed, and
20 that she's going to have to move Otis out of town. I
21 mean, both letters indicate that that -- that's what
22 occurred. And that's what did occur.

23 Q Well, you keep saying that, but I don't see where
24 either one of them indicates that she was going to move
25 Otis out of town. I thought we already went over that.

1 A Well, I mean, Otis out -- out of Sea Pines. Out of
2 Sea Pines.

3 Q Yeah. Well, there's a big difference.

4 A Okay. Okay, Otis out of Sea Pines.

5 Q Yes.

6 A Okay.

7 Q Do you consider Chief Breed to be knowledgeable about
8 what goes on at Sea Pines Security?

9 A I can't tell you what -- I imagine. I mean, he's in
10 charge of the security there at the apartment. I hope he
11 is.

12 Q So you're not willing to say that Chief Breed knows
13 what his officers are doing?

14 A I'm sure his lieutenants report to him, but I don't
15 know. That's something you have to ask the lieutenants
16 and stuff. I'm just a patrolman.

17 MR. MATHISON: Thank you, sir.

18 A Yes, sir.

19 THE COURT: Ms. Jones, anything further?

20 MS. JONES: Nothing, your Honor. Thank you.

21 THE COURT: All right. Mr. Wright, you may step
22 down. Anyone object to his being excused?

23 MS. JONES: No objection, your Honor.

24 THE COURT: You're excused, sir.

25 A All right. Thank you.

1 interrogatories, in Interrogatory 19, the defendants had
2 answered this interrogatory as follows: *Identified by*
3 *case name, case number, court and jurisdiction, each*
4 *case, in which the defendant contends that the plaintiff*
5 *contends that the plaintiff has acted with bias,*
6 *partiality, or prejudice?*

7 And the defendants answered: *None.*

8 Did you know that?

9 A I think you brought that up in the deposition, if I'm
10 not mistaken.

11 Q All right.

12 A My deposition.

13 Q Well, I guess my point would be, if there are no
14 cases in which the plaintiff's bench conduct is subject
15 to question, just exactly what do you propose to testify
16 about?

17 A Well, I propose to testify, as I indicated, about her
18 conduct, and how it -- it adversely impacts -- her extra-
19 judicial conduct, and how it adversely impacts upon her
20 ability to do her job, and how it provides the basis for
21 a reasonable mind to arrive at the perception that she is
22 not fair and impartial.

23 Q So you're talking about you believe that you're going
24 to be asked to and allowed to testify about encounters
25 that Judge Coffey had outside of court. Is that right?

1 A Well, I think that's, if I understand this case
2 correctly, that's sort of the lynchpin of this case.
3 Q And do you think that is covered by judicial
4 standards or judicial etiquette?
5 A It's is judicial standard, a cannon, Cannon 2.
6 Cannon 2(a), if you want to be specific. And it's in the
7 imperative, shall, which, in the preamble, says it's
8 required.
9 Q So, as far as you're concerned, any adjudication by
10 Judge Coffey is not something that you're here to talk
11 about. Is that right?
12 A By adjudication, you're talking about her --
13 Q Having --
14 A -- decisions in the courtroom and how she managed her
15 courtroom.
16 Q Yes.
17 A That's accurate.
18 Q What's accurate?
19 A The -- what you just said is accurate. I am not here
20 to opine about any in-court action of Judge Coffey that I
21 know of.
22 Q So, if they said that she was biased and prejudiced
23 and partial in cases that she'd adjudicated, in the past
24 tense, and that was not true, you have nothing to offer
25 on that subject. Is that right?

1 knowing whether or not Ms. Coffey interfered with or
2 obstructed what, for obvious reasons, Sea Pines has now
3 said as the Beaufort County Sheriff's Office
4 investigation.

5 There's evidence in the record, consistently, at
6 this juncture, from the Beaufort County Sheriff's Office
7 that there was no interference and an obstruction. So
8 basically, he's being asked to lend an opinion, lend
9 credence to an opinion by Mr. Breed that isn't shared by
10 anyone who actually had the authority to conduct the
11 investigation.

12 It's abundantly clear, because of the law stated in
13 the SLED memo prepared by Mr. Weir, Sea Pines Security
14 didn't have the authority to conduct an investigation.
15 My first contention is that this is not a subject that
16 requires the aid or assistance of the learned judge,
17 because there is no challenge to what my client did in
18 terms of her partiality or her bias or prejudice in
19 court. They say she wasn't biased; she wasn't
20 prejudiced. They just put that in the letter, evidently
21 gratuitously, to get somebody's attention.

22 So my first prong is that, from the standpoint of
23 needing expert testimony, this is a case that doesn't
24 require any. It doesn't take anybody other than the
25 average person, rank-and-file individual, can decide

1 an entire country, we looked to nine people to make that
2 decision, and we all abided by that. Whereas, in other
3 countries, that might not have happened. So I mean,
4 that's really the foundation for this.

5 Q Okay. Well, we don't want to get into hanging chads
6 any more.

7 A Well, I'm sorry. I didn't mean to go that far.

8 Q We heard enough about that a while back. Did you
9 finish up with -- which one are we on -- Cannon 2?

10 A Yes. And when you get into the commentary, or the
11 comments below Cannon 2, you understand that it also says
12 that, in order for that -- for a judge to meet these
13 obligations, the judge cannot do anything that gives the
14 appearance of impropriety.

15 And the appearance of impropriety is defined as
16 whether or not the conduct would create, in reasonable
17 minds, a perception that the judge's impartiality and
18 competence is impaired. Integrity, impartiality, and
19 competence is impaired. Would a reasonable mind come --
20 or have that perception, based upon what that judge does.
21 If so, then that would give rise to the appearance of
22 impropriety. Doing something which gives the appearance
23 of impropriety is itself a violation of the rules.

24 Example of what I'm talking about would be if --

25 MR. MATHISON: Your Honor, may it please the Court.

1 I don't mean to persist, but I don't need a lesson on
2 this. There ought to be some questions and answers,
3 instead of just ex cathedra pronouncements.

4 THE COURT: You can go ahead, Mr. Howard.

5 A Thank you, your Honor. An example of this that has
6 nothing to do with this case, but gives -- gives you sort
7 of an example --

8 MR. MATHISON: Objection, your Honor.

9 THE COURT: Okay. You can give an example. Go
10 ahead, sir.

11 A Would be if -- if -- if I, as a judge, were trying a
12 case, and I knew one of the -- one of the lawyers very
13 well, because our kids had gone to school together or
14 whatever it might be, and that I didn't know the other
15 lawyer; and time came for lunch and I said, ladies and
16 gentlemen of the jury, please don't discuss this case;
17 we're going to break for lunch; come back at 2:00
18 o'clock. And then the lawyer I knew said, gee judge, we
19 haven't talked to each other in a long time. Let's get
20 -- let's go have lunch. And we go to a restaurant, and
21 we're sitting there just talking about how our kids have
22 grown up and how bad our golf games are and everything
23 else, having nothing to do with the case, but the other
24 lawyer walks in with his or her client, and sees us over
25 there eating lunch together. I know, as the judge, I'm

1 not talking about the case, but that person walking in on
2 the other side of that case walks in, and the perception
3 of that is such that it undermines the integrity of the
4 judicial process, because they would quite naturally
5 think, oh my gosh, that judge is not going to be fair to
6 me because look at how he's over there with that other
7 person laughing and having a good time. So that's --
8 that's the kind of example -- an example of what's meant
9 by the appearance of impropriety.

10 And in that sense, judges live in a glass house.
11 There's articles written about how judges are isolated.
12 And the first six months on the bench is very difficult,
13 because, all of the sudden, their relations with their
14 lawyer friends and everybody else has changed. People
15 don't know what to call them, and start acting
16 differently around them. And it's a -- it's a difficult
17 process. And that all has to do with the appearance of
18 impropriety.

19 Then the next canon is the fourth canon, which
20 says, with regard to extra judicial activities of a
21 judge, that, *A judge shall conduct all of the judge's*
22 *extra judicial activities so that they do not cast*
23 *reasonable doubt on the judge's capacity to act*
24 *impartially -- impartially as a judge to demean the*
25 *judicial office, or (3) interfere with the proper*

1 *performance of judicial duties.*

2 So a judge has an obligation in their non-judicial
3 duties not to do something that's going to render them
4 unable to fulfill their judicial duties.

5 So those are the ones that I find most applicable,
6 based upon the -- what I've understood from Judge Coffey
7 as to what occurred, and how that -- how that impacts.

8 Q Well, why don't go ahead and tell us, based on your
9 having read Judge Coffey's sworn deposition testimony,
10 what you understand the facts to have been, as she
11 related them.

12 A Well, there are -- specifically dealing with just
13 the --

14 MR. MATHISON: Objection, your Honor. I think that,
15 you know, if he doesn't know what she testified to at the
16 trial, he doesn't know enough to offer an opinion as to
17 what the testimony is in this case.

18 THE COURT: Okay. Overruled. You can ask the
19 question.

20 BY MR. HALIO:

21 A Specifically with regard to the matters that were
22 identified in the letter, the June 2008 letter, from, I
23 believe, Mr. Breed, there were three things there that
24 were identified. One was a 2004 incident in which Otis
25 Coffey had backed into a driveway with a car. And I

1 think it was late -- late evening or early morning --
2 somewhere around 6:00 o'clock in the morning, if I recall
3 correctly. And Judge Coffey was called by her father,
4 and spoke with the police officer there on the telephone.

5 And then the second one is the 2008 incident in
6 which Mr., I think, Wright, just testified about. And
7 that was the incident on May 23rd, if I recall, of 2008,
8 in which Mrs. Coffey, Judge Coffey's mom, called her
9 because she felt that she was being followed and
10 harassed. And Judge Coffey went to their house.

11 And according to her testimony from the deposition,
12 she went to the house after her mom called. And based on
13 events of several days before, and what her mom said
14 about there being the -- what she thought was harassment,
15 she went there, and there was an officer that she said
16 was a new officer. According to her, she walked up to
17 the officer and she said: *Oh, you're new. You don't*
18 *know me. I'm the judge.* That's what she said in her
19 deposition.

20 She then went on to say, *You guys*, if I recall her
21 -- it's -- it correctly, *You guys have got to stop*
22 *harassing us.* Or, I think it was *us*, as opposed to my
23 family.

24 And then she said, *Tell Breed I'll get with him next*
25 *week, or words to that effect.*

1 So I looked at what she said occurred, in light of
2 the cannons --

3 Q Let me stop you there.

4 A Yes, sir.

5 Q I want you to also -- do you also recall reading of
6 an incident in which she met with someone from the
7 Beaufort County Sheriff's Office, in her office, and had
8 a conversation with them about her brother, who was under
9 investigation?

10 A Say that again, now. I'm sorry, I couldn't hear you.

11 Q Do you also recall a third incident when she met with
12 a Beaufort County Sheriff's officer --

13 A Yes.

14 Q -- in her office, and had a conversation with them at
15 that time?

16 A Yes, I do.

17 MR. MATHISON: I'm going to object at this juncture.
18 I don't disagree that that's in the deposition, but that
19 has nothing to do with the letter, because that's not an
20 assignment in the letter that Mr. Breed sent.

21 MR. HALIO: It is, your Honor.

22 THE COURT: Okay. You can go ahead and ask it.

23 MR. MATHISON: Pardon?

24 THE COURT: Subject to your objection. It's
25 overruled.

1 BY MR. HALIO:

2 Q Do you remember that, also?

3 A Yes, sir, I do. And in that incident, the sheriff's
4 deputy came to her office; told her that her brother was
5 under investigation for what is a serious, you know,
6 serious crime. Burglary is a very serious crime. And --
7 and said that they wanted him to take a polygraph, and
8 asked her to arrange it. And she says that she did. She
9 called her brother, asked him, and arranged for him to
10 take the polygraph.

11 And then, as I understood it, on the day he was
12 supposed to take it, the brother decided, because they
13 may find out or go into other things, that he did not
14 want to take it. Whereupon, she said that -- that he
15 just needed to leave the jurisdiction, because she didn't
16 want him to be in a jurisdiction that she was a judge in
17 and just go to Tybee, Georgia, and live there. And that
18 was my understanding of that incident.

19 Interestingly, on that occasion, she said that the
20 deputy told her that the sheriff was just a few miles
21 away, and if she wanted him to, he would come over to
22 talk with her about that.

23 Q All right. Based on having reviewed the plaintiff's
24 deposition, and based on the *Code of Judicial Conduct*, do
25 you have any opinions regarding the conduct of the

1 plaintiff in this case, with regard to the matters that
2 you just recited to us?

3 A Yes, sir, I do.

4 Q Do you have any opinions as to whether her conduct
5 violated any of the standards that you previously
6 mentioned?

7 A Yes, sir, I do.

8 Q And what is that opinion?

9 A It is my opinion that what she did in those
10 incidents, the 2008 incident, and with regard to
11 arranging for the polygraph, violated the Cannons 1, 2,
12 and 4 of the code of ethics.

13 Q Would you explain that to us, please.

14 A Yes, sir. With regard to the appearance of
15 impropriety, as I mentioned a minute ago, a judge must
16 make sure that they don't do something that gives the
17 appearance to other people that they may not be fair and
18 impartial.

19 The code of judicial responsibility does not allow a
20 judge to take action in matters that would be in their
21 courtroom. And it also speaks to whether or not a judge
22 can use their position to further their own purposes or
23 to gain an advantage for themselves or others. And
24 specifically says that you cannot do that.

25 So, as a judge, you have a responsibility, outside

1 of the courtroom, not to take action on behalf of your
2 family or others that would interfere with your ability
3 to act as a judicial officer, and also, that would be
4 using your position for your own gain or for the gain of
5 some other.

6 So, when a judge goes up and identifies themselves
7 as you don't know me, I'm the judge; and then says you've
8 got to quit harassing my family, that's crossing the
9 line. This is a security department whose job is to
10 maintain security. If they're doing it incorrectly,
11 there are protections that the law would afford to Otis
12 Coffey or to Mrs. Coffey, Judge Coffey's mother. But for
13 Judge Coffey to use her position to stop that, or to put
14 herself in a position, even if she's saying I didn't mean
15 it that way; I'm not trying to use my position; I was
16 just letting them know -- introducing myself. But when
17 you do that, and you say I'm the judge, and you've got to
18 stop harassing my family, you have to consider not just
19 whether she is, indeed, doing it to gain that advantage,
20 or whether or not, despite what she intended, those
21 actions give the appearance of impropriety.

22 And it's my opinion that, even if she didn't intend
23 to be using her position for that private purpose, that
24 improper purpose, it gives the appearance of that. And
25 that undermines the judicial process. It makes people

1 think, well, that judge, and therefore, the judicial
2 process, is not going to be fair.

3 And for the police officer who has that happen to
4 them, who's in that courtroom twice a month, I think is
5 what I've heard, presenting cases, well, their integrity
6 in the courtroom -- their credibility, rather, within the
7 courtroom, is very important, obviously. They might have
8 20 or 30 cases, or however many cases they have, and it's
9 a question of did that person run the red light or not,
10 or were they speeding or not, and that police officer
11 giving testimony. Well, if they feel that now that judge
12 has put themselves in an adversarial -- adversarial
13 position with the security department, then what does
14 that do to the idea of whether or not it's fair, or
15 whether or not that judge is going to be fair, when we,
16 as a security department, go there and try to do our
17 jobs?

18 So that's the problem that arises when the judge
19 gets personally involved in things of that nature. A
20 judge can give legal advice to family members, but that's
21 different from acting as the lawyer for the family member
22 in a matter that would properly come into their court in
23 one way or another. And that's why I think that that
24 crossed the line, and it was improper.

25 Q Okay.

1 A And it also made her -- I'm sorry. It also put her
2 adversarial -- in an adversarial position with the
3 security department, which then renders her unable to do
4 her job, which then gets into Cannon 4. Judge got to
5 make sure they don't do something that makes it to where
6 they can't do their job. And when you get yourselves in
7 an -- yourself in an adversarial position with a security
8 department, now all of the sudden, you've got to recuse
9 yourself in all their cases, or at least she felt she had
10 to. So she put herself in a position. They didn't do
11 it. She put herself in that position where she could not
12 do that job.

13 Q How about in regard to the incident that occurred in
14 either 2004 or 2005, when she met with an investigator at
15 her office, named Brian Baird, who came into her office
16 and laid out this whole scenario where he shows me that
17 Otis was living outside of Sea Pines at that time; and
18 and I think the burglaries on the north part of Sea
19 Pines; and tells him that they want to rule him out as a
20 suspect?

21 MR. MATHISON: Asked and answered, albeit in a
22 different guise. That's my first objection, because he
23 asks about an unidentified person first, and used the
24 same conversation. Now he's come back and used the same
25 conversation with Detective Baird. And quite frankly,

1 that's not what the letter says. The letter says that --

2 THE COURT: Okay. Mr. Mathison, you'll have an
3 opportunity to cross-examine if you'd like. Mr. Halio,
4 go ahead and ask your question.

5 BY MR. HALIO:

6 Q All right. And the end of that testimony she said,
7 And when it -- so when it came time, the day of, he
8 called me up and said he couldn't do it because he didn't
9 think they would only ask him those questions; that he
10 had done other stuff that he didn't want to go into,
11 which I assume had to do with pot, but I don't know. And
12 so, I said, All right. I said, Well, listen. It doesn't
13 look good if you're in my jurisdiction and you're a
14 suspect in a crime, so go work at the restaurant in
15 Tybee.

16 Do you have any opinions on whether or not violated
17 -- that violated any of the codes of conduct?

18 A Yes. I think for the -- I do have an opinion, and my
19 opinion is that it did. And it's based on a couple of
20 things. First of all, I don't -- when a police officer
21 comes to the judicial officer, to the judge, and says we
22 think your family member is committing burglaries and is
23 a suspect in this; and we'd like to run a polygraph test
24 on him; and we'd like you to arrange that for us. Well,
25 polygraph tests, as you know, are the -- a test that

1 somebody reads to -- reading reactions from everything
2 from blood pressure to you name it, where they then look
3 at this and -- and determine whether somebody's telling
4 the truth or not. And quite often, it can be used where
5 a prosecutor will say, okay, this person passed the
6 polygraph; we're not going to prosecute them.

7 Well, the problem with this is, this is a matter now
8 where it, in some ways, involves her court as a judicial
9 officer. If she arranges that, she's between the devil
10 and the deep blue sea, because, if her brother takes that
11 polygraph and passes it, and they don't prosecute him as
12 a result of that, what does John Q. Public think? Did
13 that judicial officer play with the judicial -- judicial
14 system here? You see?

15 So that's why a judge has to be so careful not to
16 get involved in something like that. Because, no matter
17 how it turns out, it looks like -- even though I don't
18 think she was trying to do -- she was just trying to --
19 try -- and I'm not, you know, suggesting that she was
20 trying to play with the system. I think that that was --
21 she was just trying to accommodate the sheriff's deputy.

22 But there again, that is something that a judicial
23 officer should not do. It's essentially acting as the
24 lawyer for -- for the brother. Then, obviously, if
25 somebody's in an investigation, and you have control,

1 through suggestion or whatever, to send them away to a
2 whole other jurisdiction, that -- that can be a problem
3 as well, based upon the appearance of impropriety.

4 Q Well, what's improper about that? About sending
5 someone who's involved in an investigation somewhere out
6 of state?

7 A Well, I think Judge Coffey said in her deposition
8 that they all know that, if they'd wanted to talk to him,
9 I would have gotten him back. Well, that's all fine.
10 That's in her head. She knows that, she says. Well,
11 what's the appearance of that? Again, I go back to the
12 appearance of impropriety in terms of whether or not that
13 appear -- gives that appearance of impropriety,
14 inhibiting the ability to do the investigation, or to act
15 upon it they've concluded that, indeed, he did commit the
16 crime, if he's not present and can't be found.

17 Q And then there was the third incident we talked about
18 when her brother was arrested for trespassing, and her
19 father called her, and she said, *All right, Dad, hand the*
20 *-- hand the phone to an officer.* And she spoke to
21 Officer Calendine about -- during the middle of the
22 arrest process. Do you have an opinion on whether that's
23 proper or not?

24 A I think that -- I think that incident ends up in the
25 letter because of what happens in 2008. And when you

1 what you can do as a municipal court judge practicing law
2 when you're not a municipal court -- you know, when
3 you're not in the courtroom.

4 Q Yes, sir. And you are aware, aren't you, that the
5 defendants have admitted in their answers to
6 interrogatories that they are aware of no case in which
7 she sat the bench, in which she was biased, prejudiced,
8 or partial? Not a single one. You are aware of that;
9 aren't you?

10 A Yes, sir, I'm aware of that.

11 Q But you think that some of the things, you say, could
12 have ultimately spilled over into the courtroom. Is that
13 right?

14 A No, sir. What I'm saying is that the extra judicial
15 actions of the judicial officer can adversely affect the
16 judicial system. And so, even though they're not in the
17 courtroom, they can undermine the judicial system, if
18 they give the appearance that that judicial officer is
19 not going to be fair and impartial. That's all I'm
20 saying.

21 Q And is it your testimony that Maureen Coffey is or is
22 not partial, prejudiced, and biased?

23 A Are you asking me if I have an opinion as to whether
24 she is partial, --

25 Q Prejudiced or biased.

1 A -- prejudiced, or biased?

2 Q Yes.

3 A Yes, I have an opinion about that.

4 Q What's that?

5 A My opinion would be, based upon what she said in
6 2008, on May 23rd, to that officer, that that showed that
7 she was prejudiced and partial against that security
8 department, and that it would affect her ability to be
9 fair and impartial in cases that involved them.

10 Q But isn't --

11 A It was intimidating to that officer.

12 Q Wasn't that no harm, no foul, sir?

13 A Absolutely not. Not in my mind.

14 Q Because do you know of any case in which Sea Pines
15 Security has appeared since then, in which she was the
16 judge?

17 A No. Because she rendered herself unable to handle
18 their cases. That's exactly what I'm saying is the
19 problem. She --

20 Q I see.

21 A She put herself in a position of adversarial to the
22 people that have to come into that courtroom. And that
23 was another violation.

24 Q So it's your testimony that she's basically the
25 author of her own undoing. Is that right?

1 A Yes, sir. If you look at Cannon 4, Cannon 4
2 specifically says: *A judge shall conduct all of the*
3 *judge's extra-judicial activities so that they do not*
4 *interfere with the proper performance of judicial duties,*
5 *or cast reasonable doubt on the judge's capacity to act*
6 *impartially as a judge.*

7 Q Well, do you know whether she continued to hear those
8 cases, at least once, before she got notice of Mr.
9 Breed's letter dated June 6, 2008?

10 A Well, the letter was in June. The activity was on
11 May 23rd. So I do not know, but it's certainly possible
12 that she had court several times between those two.

13 Q And don't you think that their statement that she
14 wasn't biased or prejudiced or impartial in any case they
15 could identify wouldn't speak to those, as well?

16 A Well, they -- they may have. I don't know.

17 Q So standing here -- or sitting here -- forgive me --
18 just to sum up, you don't know of any in-court conduct,
19 any more than the defendants, where my client was biased,
20 prejudiced, or partial; do you?

21 A No, sir, I don't know of any in-court conduct that is
22 implicated in this case.

23 Q Nothing from the bench, or something that you're a
24 recognized expert on, going on in any court case that she
25 did anything wrong in the courtroom. Isn't that right?

1 they'd appreciate it. So.

2 END DAY FIVE, MONDAY,

3 JUNE 4, 2012, 5:30 P.M.

4 BEGIN DAY SIX, TUESDAY,

5 JUNE 5, 2012, 9:50 A.M.

6 BY THE COURT:

7 THE COURT: Thank you all. Please be seated, and
8 good morning. Good morning, everyone. Good morning,
9 Wanda.

10 Is there anything that we need to put on the record
11 this morning? I know the jury's all here and ready to
12 go.

13 MR. MATHISON: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. MATHISON: There were an exhibit that should
16 have come in for identification in the Kelley deposition.

17 THE COURT: Okay. You did mark it for
18 identification or did not?

19 MR. MATHISON: It was -- I said that I was going to,
20 but it didn't get done yesterday. Specifically, it's the
21 bridge report, which you excluded. And it's the second
22 of the two bridge reports.

23 THE COURT: So it's just for I.D. purposes.

24 MR. MATHISON: That's correct.

25 THE COURT: Let him go ahead and mark it for I.D.

1 And then, Wanda, can I take a look at it.

2 MR. MATHISON: Plaintiff's Exhibit 37.

3 THE COURT: It's whatever Wanda says it is. Give it
4 to her.

5 COURT REPORTER: It is 37.

6 REPORTER'S NOTE: PLAINTIFF'S

7 EXHIBIT NUMBER 37 WAS MARKED

8 PREVIOUSLY.

9 MR. MATHISON: And I also would like to mark as
10 Plaintiff's Exhibit 38, the material having to do with
11 Mr. Kelley's registered agent status.

12 THE COURT: Gotcha. And I'm going to tell you, I
13 marked on what you gave me, too. Do you have a second
14 copy of it?

15 MR. MATHISON: I did, but I gave it to Counsel.

16 THE COURT: Okay. Will you all turn that one back
17 over to him so he can mark it?

18 MR. MATHISON: If you didn't --

19 THE COURT: There may be more than one copy. Let me
20 see.

21 MR. MATHISON: Actually, --

22 THE COURT: Let's see how many copies I wrote on. I
23 apologize, and if they're all the same. No, they are
24 for different years. I apologize. They're for different
25 years. I'll show you what I have. Here's what I have

1 MS. JONES: Thank you, your Honor. We call Captain
2 Toby McSwain.

3 THE COURT: Come on forward, Captain McSwain.

4 WITNESS SWORN.

5 Please be seated.

6 CAPTION TOBY MCSWAIN

7 DIRECT EXAMINATION, MS. JONES:

8 Q Captain McSwain, if you would, please, would you
9 introduce yourself to the jury and tell them where you're
10 employed and what your job is.

11 A My name is Toby McSwain. I'm employed as the
12 Southern District Commander for Southern Beaufort County,
13 for our uniform patrol. I've been with the Sheriff's
14 Office August will be 21 years.

15 Q And where are you from?

16 A I'm from right outside New Orleans, Louisiana.

17 Q And how long have you lived here in South Carolina?

18 A I was a former Marine. Came to the Sheriff's Office
19 in 1989. Kind of been here ever since.

20 Q What was your period of service, and what did you do
21 while you were in the Marine Corp, sir?

22 A I was in the legal field in the Marine Corp. I
23 served overseas. I spent four years. Got out on an
24 honorable discharge. Went to work for Sheriff McCutcheon
25 back when he was the sheriff here. And had a break in my

1 service with the sheriff's office. I took a position as
2 an investigator for the federal government in Okinawa,
3 Japan, for three years. So I took my family to Okinawa.
4 Came back. When Sheriff Tanner was re-elected, I was re-
5 appointed as the -- as a lieutenant for uniform patrol on
6 Hilton Head.

7 Q And you're married, sir, and you have a family.

8 A I do. I have a wife and three kids.

9 Q All right. Captain McSwain, if you could, please,
10 would you tell the jury, did you have an occasion to meet
11 with Judge Coffey in 2004?

12 A I did.

13 Q And could you tell the jury what the circumstances
14 were that led up to that meeting?

15 A My memory is a little sketchy on this, but it's -- it
16 was roughly some time in 2004. We had some cases that
17 were evolving out of Sea Pines of some peeping Toms, some
18 burglaries, and so forth.

19 At the time, I was a lieutenant on Hilton Head. I
20 was in charge of, in addition to uniform patrol, I also
21 have the investigators that was in my command.

22 The cases that developed in Sea Pines identified a
23 suspect of Otis Coffey, which is the brother of Judge
24 Coffey. When this came out, I had meetings with the
25 investigators. The investigators that work in the

1 southern part of the county have a lot of contact with
2 Judge Coffey. I mean, they're calling on her in the
3 middle of the night for search warrants, arrest warrants.
4 They're in her court a lot. So there was some
5 apprehension of getting assigned a case that is the
6 brother of -- of the Judge.

7 I had a conversation. After my deposition, the
8 sheriff and I discussed this a little further. I had a
9 opportunity to go down and meet with Judge Coffey to, as
10 a professional courtesy, to say, look, your brother's
11 been identified as a suspect in these cases in Sea Pines;
12 we're going to look into them; I just want to give you
13 the heads up that this is what's going to transpire.

14 She shared some thoughts that she felt that her
15 brother was being harassed from Sea Pines. Subsequent, I
16 had a phone -- I shared this information with the
17 sheriff. And I think you heard earlier testimony from
18 Detective Baird, that's when the sheriff sent Detective
19 Baird down to meet with Judge Coffey the second time.

20 Q And when you met with Ms. Coffey, did she make any
21 statement or representation to you about her moving Mr.
22 Otis Coffey away?

23 A She did.

24 Q What did she tell you?

25 A From what I can recall, that, because of -- of what

1 she felt was harassment towards her brother, that she
2 felt it was in his best interests to remove him from, I
3 guess, out of Sea Pines. And if my memory serves me
4 correctly, I thought she was going to -- he was going to
5 Columbia, South Carolina.

6 Q Captain McSwain, are you familiar with the arrest and
7 conviction of John Levy that's been discussed in this
8 trial?

9 A Yes.

10 Q And can you tell the jury what, if any, charges Mr.
11 Levy was convicted of that arose out of the Sea Pines
12 Plantation area?

13 A John Levy was -- was charged with multiple crimes of
14 peeping Toms, some burglary cases. If my memory serves
15 me correct, I want to say that Mr. Levy was arrested in
16 either October or November of 2004, for crimes that
17 occurred in -- one he plead guilty to that occurred in
18 Sea Pines, as well as, I believe it was, Hilton Head
19 Plantation.

20 But I think from his incarceration in October or
21 November of 2004, he remained in jail until he got
22 released. I believe it was in 2010, when he was
23 officially released. But I -- I mean, I'm just recalling
24 from memory. If I had a report, I could give you more
25 accurate dates.

1 Q If it would be helpful, I can hand to you -- and let
2 me ask you, were you served with a subpoena at the
3 Beaufort County Sheriff's Office for records, in regards
4 to Mr. Levy and the crimes in Sea Pines?

5 A I was.

6 Q Okay. And is that one of the documents that you
7 produced?

8 A Yes, it was. This -- I think there was almost a
9 little over 200 cases that we -- that we produced in this
10 case. Yes, this is John Levy. It shows that date of
11 conviction -- he was actually in pretrial for quite some
12 time. It shows date of convicted of January the 25th of
13 2006. And he was released December, 2010.

14 Q And are these the -- let me hand you this group of
15 documents, and ask you if you can identify these as the
16 arrest warrants. And just for, once again, the date he
17 was released from prison was when?

18 A December 1, 2010.

19 Q December 2010. Thank you, sir. So, in 2008, he was
20 in jail.

21 A Yes.

22 Q Okay. And those documents, can you identify those as
23 the arrest warrants for John Levy?

24 A Yes. They appear to be for numerous crimes for
25 burglary, lewd act on a child under 16, voyeurism. These

1 all are arrest warrants for John Levy.

2 Q And what were the dates of those warrants for Mr.
3 Levy's arrest in 2004?

4 A The first one is September of 2004, May of 2004,
5 September 2004, September 2004, October 2004, August
6 2004, August 2004, and that would be it.

7 Q And does it indicate when the warrant was issued by
8 the Judge?

9 A It does. Those were the months and the year that
10 they were -- they were sworn out by Investigator Vennes.

11 Q Other than the one case in Sea Pines that Mr. Levy
12 was convicted of, were the other cases that arose in the
13 Sea Pines area in 2004, was anybody ever charged and
14 convicted for all those other burglaries?

15 A Not that I'm aware of.

16 Q And in regards to those cases in 2004, those other
17 burglaries, and the records from the cases in 2008, on
18 the majority of those, was the suspect identified by the
19 victim of the crimes?

20 A From what I recall, there was some suspects that were
21 identified, both white and black males. There was many
22 cases that the suspect was unknown. So, yes, ma'am.

23 Q And since that time, have you had any subsequent
24 conversations with Judge Coffey concerning this action in
25 this case?

1 A No, ma'am. That was the only meeting with her I had
2 was back in 2004.

3 MS. JONES: Thank you, Captain McSwain. That's all
4 the questions I have, your Honor.

5 CAPTAIN TOBY MCSWAIN

6 CROSS-EXAMINATION, MR. MATHISON:

7 Q Captain, you're close friends, aren't you, with
8 George Breed, one of the defendants in this case?

9 A Yes, sir. I've known Chief Breed for probably as
10 long as he's been the chief of Sea Pines.

11 Q And you and he routinely communicate by email. Isn't
12 that correct?

13 A Email, as well as phone calls, yes, sir.

14 Q Would it surprise you to learn, Captain, that Mr.
15 Breed did not know who John Thomas Levy was?

16 A I would -- yeah, I would find that hard to believe.

17 Q Because in point of fact, Mr. Breed was almost
18 singularly responsible for the apprehension of Mr. Levy
19 for these crimes that you've been discussing. Isn't that
20 correct?

21 A Well, probably officers of the -- of Sea Pines
22 Security, because I think some evidence in the Levy case
23 was found, actually, in Sea Pines, from what I recall.

24 Q I'm handing you a document which is an incident
25 report, where it's marked with a red tab. This is one of

1 the 600 pages of documents that were served on me last
2 week in response to Ms. Jones' subpoena. And I'm going
3 to ask you to read for me -- first, tell me what that is.
4 Sir, tell me what it is.

5 A Where the red tab is?

6 Q Yes, sir.

7 A Appears to be a supplemental report to a report that
8 was done by Investigator Olds.

9 Q Read what it says -- it's -- Investigator Olds, I
10 believe, is also known as Angela Vennes. Is that
11 correct?

12 A That's correct.

13 Q And she's in the courtroom now; isn't she?

14 A She's sitting in -- in the room in the back, yes.

15 Q Okay. And that report was submitted to her. Isn't
16 that right?

17 A Submitted to her? Well, she authored this report,
18 because her name's at the bottom of it.

19 Q Right. And who's the complainant in that report?

20 A George Breed.

21 Q All right. Now, read what your deputy, Angela
22 Vennes, wrote about Mr. Breed's conversation.

23 A From the -- in the synopsis?

24 Q Yes, sir.

25 A Breed, who is the director of security at Sea Pines

1 Plantation, reported to me on 10-1, 2004, that a resident
2 of Sea Pines found a video camera outside her residence
3 on or about May 23, 2004. The camera was turned in as
4 found property to Sea Pines Security. The camera was
5 later found to contain an eight-millimeter video tape,
6 with voyeurism footage taken of the individuals while in
7 the privacy of their homes. The investigation led to the
8 search of John Thomas Levy's residence at 1011 The
9 Preserve, Indigo Run, Hilton Head, South Carolina.

10 Several other tapes were recovered that contained
11 similar incidents, also observed on the initial tape.
12 Several other victims and incident locations were
13 identified.

14 Q So, as a result of Mr. Breed himself turning in this
15 tape that had been recovered from lost and found, your
16 investigation was allowed to obtain a search warrant
17 where you found additional tapes that Mr. Levy had taken.
18 Isn't that right?

19 A Yes. This was -- this was a big discovery.

20 Q And isn't it a fact that those tapes -- do you recall
21 how many of them there were?

22 A I -- I don't recall.

23 Q More than a dozen, right?

24 A I don't -- I wasn't and investigator on the case. I
25 wouldn't know.

1 Q Don't they show locations, multiple locations, in
2 both Sea Pines Plantation and Hilton Head Plantation,
3 where this man was, basically, taking films, voyeuristic
4 films, of folks while they didn't know he was doing it?
5 A It's my understanding, yes.
6 Q And you didn't prosecute all of those cases; did you?
7 A I don't think Mr. Levy plead guilty to all the cases
8 that he was charged with, no.
9 Q Because some of the destinations were impossible to
10 figure out from, literally, you could see signs and
11 things like that, but you couldn't tell who it was
12 exactly that had done it. Isn't that right?
13 A From what I remember, the conversations with
14 investigator Olds, and then the other agents that were
15 working the case, that there were some -- some areas that
16 we were not able to identify, yes.
17 Q And some of the suspects who'd been videotaped, if
18 you will, without their consent, did not want to
19 prosecute the cases. Isn't that right?
20 A Suspects that were videotaped. I'm not following.
21 Q Not suspects. Some of the subjects who were
22 videotaped without their knowledge didn't want to
23 prosecute the cases.
24 A I have no knowledge of that.
25 Q So how many different convictions were obtained when

1 John Levy was, in fact, tried?

2 A I don't know how many cases he -- I know he plead
3 guilty and received a pretty lengthy sentence, but
4 exactly which cases he plead guilty to, I don't really
5 have any knowledge of that.

6 Q Was it seven or eight? Do you know how many?

7 A I don't know the -- the number.

8 Q Could you have tried him for multiple other cases in
9 Sea Pines and in Hilton Head Plantation if you had wanted
10 to?

11 A I guess that would be a decision for the circuit
12 solicitor to decide.

13 Q Didn't you, as a result of obtaining this conviction,
14 cease and desist investigating this type of breaking and
15 entering in both places, on the assumption that you had
16 actually arrested and convicted the man who was
17 responsible?

18 A Portions of that would, yes, would be true. If my
19 memory serves me correctly, right after Mr. Levy was
20 arrested, I want to say there was other evidence that was
21 found that was quite concerning that we had -- we had
22 thought we had arrested an individual that was
23 responsible for multiple crimes, and we later discovered
24 that we had a second person of interest that was doing
25 the same thing. But at the time, John Levy was already

1 jailed. So I think there was an additional case that
2 came forward, and I'm not sure how long after that, but I
3 believe there was an additional case.

4 Q Excuse me just a minute, Captain. The subpoena and
5 the production that you made in response to it, the
6 documents are signed as being released on May 7 and May
7 8, 2012. Do you know how that would occur when the
8 subpoena wasn't served until, at the earliest, May 14th?

9 A What -- what -- I'm not sure I'm following what
10 documents we were -- we're talking about.

11 Q I'm showing you a copy of the letter from McNair,
12 with which I think they transmitted the subpoena. Isn't
13 that correct?

14 A Oh, for this court date? Yes.

15 Q Yes, sir.

16 A Yes, sir. It was, like, done electronically to the
17 county attorney.

18 Q So, by using the date on the letter from Ms. Jones,
19 you all wouldn't have known about this until some time
20 around the 14th of May. Isn't that right?

21 A Known about what, sir?

22 Q That you were going to be subpoenaed for all the
23 documents, copies of which were sent to me.

24 A Yeah, that would be correct.

25 Q Do you know why the documents indicate that they were

1 released, that is, released from your document archive on
2 or about between May 6th and May 9th?

3 A I don't see where the documents -- where you show
4 that it's released May 6th to May 9th. I'm not following
5 that. I mean, we -- the subpoena came. It was accepted
6 by the county attorney on my behalf. The administration,
7 when subpoenas come in for officers at the sheriff's
8 office, the subpoenas are sent to our headquarters, which
9 is at the end of this parking lot, because they were
10 asking for multiple police reports. We don't keep those.
11 Our depository is here in Beaufort. So all those reports
12 were copied; subsequently sent to my office; and then
13 back to the county attorney's office. And I think that's
14 when they were delivered to -- I think Ms. Celeste Jones
15 sent one of her couriers to pick them up. So I don't see
16 the dates that you're talking about that they're
17 released. I don't -- I don't see that.

18 Q In the subpoena, did they ask for all the cases of
19 which John Thomas Levy was suspected, or just the cases
20 in which he was arrested?

21 A Under the Exhibit 1, Section 2: *All cases in which*
22 *John Thomas Levy was arrested, charged, prosecuted,*
23 *convicted, as well as records of his sentence and*
24 *deposition.*

25 Q And you know as well as I do that he was suspected in

1 at least five times as many cases as he was arrested for.
2 Isn't that right?

3 A I know that there was multiple cases involving John
4 Thomas Levy. And I know that he didn't -- it's my
5 understanding that he didn't plead guilty to all those
6 cases. But there was, right, there was multiple cases.

7 Q And they didn't want the cases in which he was
8 suspected, just the cases in which he pleaded. Is that
9 right?

10 A They -- what do you mean?

11 Q The subpoena. It just asked for you to produce --

12 A All arrests, charge, prosecuted, convicted, and
13 sentence and deposition.

14 Q And you said that you produced over 200 documents?

15 A I thought it was close to 200. I mean, all these
16 case numbers on the back appear to be police reports from
17 us. I'm -- I'm using 200, roughly. It was -- it was a
18 lot of reports.

19 Q But --

20 A But some of these, I think, are -- are actually
21 internal Sea Pine reports, and not necessarily a -- an
22 official report with us, a uniform crime report.

23 Q In other words, their in-house reports that somehow
24 were generated by Sea Pines that, ultimately, were
25 submitted to the Beaufort County Sheriff's Office. Is

1 that right?

2 A No. They would not submit in-house reports to us.

3 Q Okay. So how would you have them to produce?

4 A Well, if they generated a case that a deputy sheriff
5 was called to the scene, then we would produce a case.
6 Or Sea Pines has the authority to write police reports,
7 using our incident reporting number. And I guess, let me
8 explain that, because I know that sounds kind of
9 confusing.

10 Every law enforcement agency in South Carolina, from
11 SLED, is given what they call an ORI number. So, when a
12 report surfaces at SLED of the index crimes that we're
13 required to report, it has an identifier on the top of
14 it. They can look at the top of the report and see the
15 number that belongs to Beaufort County Sheriff's Office.
16 The sheriff has authorized several private plantation
17 securities to write reports, same ones that the deputies
18 produce. He allows them to write the reports under our
19 reporting number, which would be -- include the index
20 crimes, your murders, your rapes, your robberies, your
21 larcenies, thefts, that kind of stuff.

22 So they have the ability to generate the same report
23 that we do. It comes to our office, we review it for --
24 for correctness, and -- and then we submit it in.

25 Q So you're saying if it gets a case number from

1 Beaufort County Sheriff's Office, it could be the report
2 prepared by them.

3 A That's correct.

4 Q As opposed to prepared by you.

5 A That's correct.

6 Q But I guess my point is this, you were asked for
7 cases in which John Thomas Levy had been arrested, tried,
8 and convicted, basically, and you produced 200 different
9 reports.

10 A I used that number -- like I mentioned before, that
11 was a rough number. I mean, it was -- it was a stack of
12 reports. I didn't go through each of the reports. I
13 trusted that our administrative division that maintains
14 our reports copied of all what was required under the
15 subpoena. And it was checked by the county attorney, so
16 I'm assuming it was correct.

17 Q So would it be closer to say that the 200, or the
18 large number that you submitted, were intended to reflect
19 all of the cases that you thought Mr. Levy was a suspect,
20 as opposed to the cases in which he was arrested, tried,
21 and convicted?

22 A No, sir. I was required to produce the reports that
23 was listed under the subpoena. So it was not what I
24 chose to do; it was what -- what they asked of me.

25 Q I'm not trying to get you to say it was you or anyone

1 else. In supplying these reports, did you supply all of
2 the cases in which Mr. Levy was suspected?

3 A I would assume whatever is listed under the subpoena,
4 that our office would have produced those.

5 Q Okay.

6 A Yes, sir.

7 Q And if the number that you produced was 200 in round
8 numbers, wouldn't the incarceration of Mr. Levy some time
9 in October or November of 2004 get him off the street and
10 prevent him from doing anymore?

11 A We produced the cases that were required under the
12 subpoena.

13 Q So he was no longer at large, doing what it is that
14 he did.

15 A It was my understanding he went to jail either
16 October or November of 2004, during his arrest, and was
17 incarcerated.

18 Q And he stayed in jail through his conviction, and
19 until 2010. Isn't that right?

20 A It's my understanding, yes, sir.

21 Q So he wasn't preying on Sea Pines or Hilton Head
22 Plantation residents anymore; was he?

23 A Not after November of 2004, I don't think that would
24 be so, no, sir.

25 Q And in the course of the investigation, didn't you

1 find out that Mr. Levy had a gate pass that was suitable
2 for entry into Hilton Head Plantation?

3 A I'm not aware of that.

4 Q Do you know whether Hilton Head Plantation and Sea
5 Pines Plantation, by virtue of their having had a common
6 developer way back in the '70s, have reciprocal gate
7 privileges?

8 A That is my understanding, yes, sir.

9 Q And isn't it a fact that Mr. Levy was entering Sea
10 Pines on a reciprocal pass?

11 A I have no idea how Mr. Levy was entering Sea Pines.

12 Q But you have a lot of footage that he took in Sea
13 Pines of places that he was unlawfully photographing
14 people doing things that don't need to be mentioned.
15 Isn't that right?

16 A That's correct. That's my understanding, yes, sir.

17 Q Multiple tapes.

18 A I don't know the number of tapes. I just know that
19 we had footage.

20 Q Would it be logical to assume that, with the arrest
21 of Mr. Levy in the 200 cases that you had in your files,
22 that the breaking and enterings in Sea Pines and Hilton
23 Head Plantation, for that matter, would be reduced?

24 A One would think, yes, sir.

25 Q Were they, in fact, reduced?

1 A I actually think the cases continued. It's my
2 understanding that we -- even after his arrest, there
3 were still burglaries and peeping Tom cases being
4 reported.

5 Q Do you have the subpoena up there?

6 A Yes, sir.

7 Q And attached to it is a list of cases. This is a
8 subpoena not from us, but from the McNair firm. Is that
9 correct?

10 A Yes, sir.

11 Q That's the exhibit that says what you were supposed
12 to produce?

13 A Right.

14 Q And I'm showing you the cases attached as Exhibit A.
15 And I'm asking you, how many cases were before October of
16 2004, and how many were afterwards?

17 A Appears to be 23 before October of 2004. And 8 on
18 this Exhibit A.

19 Q Eight?

20 A Yes, sir.

21 Q And what they asked for is arrests and convictions.
22 They didn't ask for incident reports where nobody was
23 arrested and convicted. Is that right?

24 A Whatever the case number is that they identified,
25 that's what was -- I hadn't -- I didn't read each of the

1 reports that were duplicated for them.

2 Q Okay. But you can identify as being your document,
3 and one of the documents that was supplied in response to
4 this subpoena, this sheaf of documents that I'm holding
5 in my hand where Judge Breed put in process the
6 investigation by turning it -- excuse me -- Mr. Breed put
7 in process the investigation by turning over the film
8 that had been recovered from the lost and found. Isn't
9 that right? Can you identify that as your document?

10 A The one here on top that's marked *Original, Case*
11 *Number 2004-10-04224*, was, in fact -- is when the
12 supplement was done, showing that this was recovered, the
13 video tape.

14 Q And if you go through what I've just given you, each
15 successive supplemental report adds information to it;
16 does it not? It details the investigation, specifically,
17 what your officers, like Ms. Vennes, were doing to fully
18 flesh out everything that John Thomas Levy had done.

19 A Right. It appears with the execution of the search
20 warrants and so forth. That's correct.

21 Q And then after that, what they did in furtherance of
22 the evidence that they found, specifically, the
23 additional tapes?

24 A All right. They viewed the tapes and the cameras
25 that was found, that was discovered.

1 Q And the synopsis that appears on the front page,
2 where George Breed is the complainant and discusses what
3 he and his department found, recurs, does it not, as you
4 go through?

5 A Right, that they were the finders of the -- of the --
6 of the book bag, I believe it was, that contained the
7 video camera.

8 Q And do you have knowledge of whether, then Angela
9 Olds, now Angela Vennes, was, in fact, given an award by
10 the Rotary Club for her participation in bringing this
11 nefarious criminal --

12 A I do believe she was honored.

13 Q -- to justice?

14 A Yes, sir.

15 Q And isn't it a fact that an officer from Sea Pines
16 Security on Mr. Breed's recommendation, specifically,
17 McNeill, was also given an award as the security officer
18 of the year?

19 A I believe that they were awarded together that year.
20 That's correct.

21 Q Is there any possible way Mr. Breed could not have
22 known who John Thomas Levy was?

23 A I would find that hard to believe, yes.

24 Q Move the introduction of the incident reports as
25 Plaintiff's Exhibit 38 [sic].

1 MS. JONES: No objection, your Honor.

2 THE COURT: Without objection.

3 COURT REPORTER: That'll be 30 -- that's a different
4 one; isn't it?

5 MR. MATHISON: Yes. This would be 39, your Honor.

6 THE COURT: Okay. Thank you.

7 COPIES OF DOCUMENTS REFERRED TO AS
8 INCIDENT REPORTS MARKED PLAINTIFF'S
9 EXHIBIT NUMBER 39, ADMITTED AS EVIDENCE.

10 BY MR. MATHISON:

11 Q Mr. McSwain, your deposition was taken in this case;
12 wasn't it?

13 A Yes, sir.

14 Q And at your deposition, you were asked whether you
15 were aware of Maureen Coffey at any point in time having
16 acted with bias, prejudice, or partiality. Is that
17 correct?

18 A I do recall that, yes, sir.

19 Q And do you know of any incident or example where she
20 did?

21 A None involving myself, no, sir.

22 Q Do you know of any incident involving any of your
23 officers?

24 A None that I'm aware of.

25 Q Would you trust your department to try cases in front

1 of her tomorrow?

2 A Yes, sir, I -- I would.

3 Q In fact, you are trusting it.

4 A Got cases pending as we speak.

5 Q And as soon as she can leave this courtroom, she can
6 go hear your cases. Is that right?

7 A Yes, sir.

8 Q The ongoing investigation of the break-ins, peeping
9 Toms, and burglaries that took place in Sea Pines in
10 2004, was anyone identified as the prime suspect at that
11 time?

12 A I mean, you use the word *prime*. I mean, we -- we
13 don't -- the difference between a prime suspect or a
14 suspect. It's -- a suspect is a suspect.

15 Q Right.

16 A I mean, obviously, if -- if we had information that
17 -- if we had certain information, I guess, that would
18 lead us that this suspect may be a little hotter than
19 others, we would probably move that to the top of the
20 list, because it's a hot lead. But --

21 Q But you didn't have any hot leads in 2004, until,
22 essentially, Mr. Breed, or one of his officers, found the
23 film in lost and found, and looked and saw what was on
24 it. Isn't that right?

25 A I don't -- I don't think that would be the -- I don't

1 think that would be the case. I mean, I -- I think Mr.
2 Levy was -- was on the radar prior to the video being
3 found. It was a great deal of help for the case when
4 that was discovered and, actually, we could tie it back
5 to him, yes, sir.

6 Q What I'm asking you is, there were a number of
7 suspects in 2004; weren't there?

8 A In the peeping Tom cases?

9 Q Yes.

10 A I would -- I'm assuming that, yes, we did take
11 reports that we -- we had no -- they couldn't identify
12 the suspect.

13 Q And you took reports where people indicated it might
14 be a white man. You took reports for people indicating
15 it might be a black man. Isn't that right?

16 A Well, I'd have to review the reports, but I've --
17 from what I recall, it was kind of across the board.

18 Q In other words, universal. Identifying all kinds of
19 people, but not in such a way that you can see their
20 faces, correct?

21 A I don't -- I think there was one case that I can
22 recall where a young lady was in Sea Pines. I don't know
23 if she was in the process of taking a bath or whatever,
24 witnessed someone inside her house. And I believe she
25 described that individual as a black male. But I --

1 without looking at the reports, it would be a little hard
2 for me to --

3 Q You're sure that you're not referring to an incident
4 in 2008?

5 A It could be 2008. I just remember that there was a
6 case being reported by a young lady that saw someone
7 inside of her house.

8 Q Right. It's an inaccurate statement to say that Otis
9 Coffey was the prime suspect in 2004; isn't it?

10 A He was a suspect in cases in Sea Pines.

11 Q But not a prime suspect. He wasn't the suspect; was
12 he?

13 A He was a suspect, nonetheless.

14 Q And you never focused your investigation on him; did
15 you?

16 A The sheriff's office?

17 Q Yes.

18 A I believe that we did make a general --

19 Q How did you do that? How did you focus your
20 investigation on him?

21 A I mean, I guess that'd really be a question for the
22 investigator. I do believe that cases that Otis was
23 labeled in, I think they actually took a look at -- at
24 Mr. Coffey.

25 Q Uh-huh. Didn't you tell me, in your deposition, that

1 at no point since you became head of the Southern
2 Division at Beaufort County Sheriff's Office had an open
3 or outstanding warrant for Otis Coffey?
4 A You ask about arrest warrants.
5 Q Yes.
6 A Well, an arrest warrant and a case is two different
7 things.
8 Q Did you ever have a search warrant for Otis Coffey?
9 A None that I'm aware of.
10 Q Do you know anything about your officers'
11 participation in the arrest of Otis Coffey for
12 trespassing on December 10, 2004?
13 A Participating, I mean, I think the arrest was made by
14 Sea Pines Security. Any arrest made by Plantation
15 Security, they cannot transport a prisoner off their
16 property. So a deputy sheriff would have to arrive --
17 excuse me -- to transport that individual to the jail.
18 So I do believe we did have an officer respond and
19 transport Mr. Coffey.
20 Q And other than that, to which I believe Mr. Coffey
21 pleaded no contest, do you have any contact between the
22 Beaufort County Sheriff's Office in terms of either
23 arrests or search warrants from 2004 right through
24 today's date?
25 A None that I'm aware of.

1 Q In 2008, was there a recurrence of similar types of
2 events, that is to say, either peeping Toms or what I
3 would consider small-scale burglaries in Sea Pines?

4 A I don't think the cases necessarily -- I don't think
5 there was a, from what I can recall, that there was
6 necessarily an end date to the cases. I mean, there was
7 always seemed to be something going on. It could be a
8 minor theft, a small burglary with, you know,
9 miscellaneous items taken. But to me, I don't ever
10 recall the cases really --

11 Q Was there an --

12 A -- really ending.

13 Q Was there an annual ebb and flow to these cases? For
14 example, were they -- were there more of them in the
15 spring annually than there were, for example, in the
16 fall?

17 A Without breaking the cases out, I really wouldn't be
18 able to answer that correctly.

19 Q Are you aware of whether Mr. Coffey was the prime
20 suspect in the 2008 cases?

21 A I still think he would have been a suspect in the
22 2008 cases, because we -- to my knowledge, I don't think
23 those cases were ever cleared up.

24 Q Okay. But the prime suspect.

25 A Well, as I said before, it doesn't -- I mean, you can

1 -- prime suspect, it's all the same. A suspect is a
2 suspect.

3 Q Well, let's be sensible about this. Isn't it a fact
4 that, when you arrested Mr. Coffey, you took him to jail
5 during the trespassing arrest in 2004?

6 A I did not arrest Otis Coffey.

7 Q Your people transported him. Isn't that right?

8 A We would transport any individual that's under arrest
9 to the jail. That's correct.

10 Q And did you take him to the jail?

11 A The officer -- I'm assuming that's where we would
12 have taken him, yes, sir.

13 Q So you had an opportunity to obtain his fingerprints.
14 You had an opportunity to obtain a current photo. Isn't
15 that right?

16 A That's not a -- that's not a requirement of the
17 sheriff's office.

18 Q Well, I understand. But those were available. Did
19 you get a DNA specimen?

20 A I'm not for sure if Otis' DNA was taken or not. That
21 would be a detention center issue.

22 Q And you would -- you also impounded the car. Isn't
23 that right?

24 A I don't know anything about an impound of a car.

25 Q Did you search the car?

1 A Without looking at the report --

2 MS. JONES: Objection, your Honor. The witness just

3 testified he doesn't know anything about the car.

4 THE COURT: He can ask him the question.

5 BY MR. MATHISON:

6 Q Did you search the car?

7 A I'm not aware of -- of -- of any search.

8 Q You should have been able to develop evidence that

9 would create a profile, that would allow any forensic

10 expert down the road, in 2008, to test everything in a

11 crime scene for his fingerprints. Isn't that right?

12 A If, in fact, those were taken, yes, sir.

13 Q Well, you know they had to be taken for him to go

14 into the jailhouse.

15 A I'm not -- I don't know the protocol of every

16 individual that's brought into the jail, where we take

17 DNA or they take DNA samples from every individual. I --

18 I don't know that.

19 Q Well, how many folks, in your experience, end up

20 transported to jail for trespassing, Mr. McSwain?

21 A Without looking at the statistics, I couldn't give

22 you an accurate number, but people --

23 Q Not very many. Isn't that right?

24 A Well, it's not -- probably not something we do on a

25 daily basis, but people do go to jail for trespassing.

1 Q Okay. Is there a, you know, a particularly egregious
2 high level of trespassing, as opposed to --

3 A Trespassing is trespassing.

4 Q Okay. And most of those folks don't go to jail.

5 A If an individual is warned to stay off someone's
6 property after law enforcement advises them, and they
7 return, they go to jail.

8 Q Okay. In 2004, you all never even interviewed Otis
9 Coffey about anything until this trespassing arrest; did
10 you?

11 A I'm not aware of any interview that's ever taken
12 place with Otis.

13 Q Not in 2004, and not in 2008. Isn't that right?

14 A I don't recall of any interviews.

15 Q And if he were your prime suspect, you don't think
16 you would've interviewed him?

17 A I think if Mr. Coffey, which I'm sure he was listed
18 as a suspect in the case, we definitely wanted to
19 interview him, yes, sir.

20 Q Okay. Excuse me just one moment. Mr. McSwain, is it
21 true that in every single breaking and entering, peeping
22 Tom, prowler, and everything else case, there was not a
23 single item of forensic evidence that was developed that
24 could in any way be related to Otis Coffey?

25 A Without -- Mr. Mathison, without actually looking at

1 each individual report that was reported and what was
2 recovered, if anything was recovered from the scene, I
3 really couldn't -- couldn't answer that without looking
4 at the reports.

5 Q Did I ask you that question during your deposition?
6 Or do you recall?

7 A I don't -- I don't recall.

8 MR. MATHISON: Right here.

9 THE COURT: Give him the page and line.

10 MR. MATHISON: Oh, okay.

11 BY MR. MATHISON:

12 a Yes, sir, you did ask that question.

13 Q And you said that you didn't recall any. Isn't that
14 right?

15 A That's correct.

16 Q And you still don't recall any, because there wasn't
17 any. Isn't that right?

18 A Well, without reviewing each individual report that
19 would come through, I -- I, you know, I didn't respond to
20 every case that was taken. So I really would need to
21 review the report to see what -- if anything was
22 recovered from the scenes.

23 Q And then I asked you, *Not a shred of evidence.* And
24 you said, *None that I can recall.* Isn't that correct?

25 A Without reviewing the reports, no, sir.

1 Q And I asked you, *Isn't it true that he was never*
2 *arrested?*

3 A Otis?

4 Q Yes.

5 A None that I'm aware that Otis was arrested. For --

6 Q Never prosecuted?

7 A Not for burglary or peeping Tom or anything that I'm
8 aware of.

9 Q And you told me that they could have developed his
10 fingerprints and other forensic evidence. And I believe
11 the term is, *if he was arrested and processed at the*
12 *jail*. That's what you told me. Isn't that right?

13 A The normal -- what I would consider the normal
14 process at the jail when an individual comes in, they
15 would photograph them and fingerprint them. So if -- if
16 we had prints, his prints would be on file.

17 Q Okay. So all of these 2008 incidents, not a single
18 fingerprint was developed that matched Otis Coffey.
19 Isn't that right?

20 A None that I'm aware of.

21 Q I'm handing you what's been marked as Plaintiff's
22 Exhibit 18, which is a letter from your friend, George
23 Breed, to the Commission on Judicial Conduct. Ask if
24 you've ever seen that letter before.

25 A Yes, sir.

1 Q When did you see that letter?
2 A During my deposition.
3 Q You never saw it before then; did you?
4 A No, sir.
5 Q And you testified that way at your deposition. Is
6 that right?
7 A That's correct.
8 Q So, at no time around the date of June 6, 2008, did
9 you see this letter?
10 A No, sir -- the first time I saw it was when you
11 produced it during my deposition.
12 Q And did Mr. Breed discuss this letter with you in any
13 way, shape, or form, prior to June 6, 2008?
14 A The only thing I remember us discussing was the --
15 the remarks that he referred to me in -- in that letter.
16 There was other things that I read there during my
17 deposition that I was not aware of. So we -- we did not
18 discuss that.
19 Q Well, you're the lower division leader, if you will,
20 that is, south of the Broad. Is that correct?
21 A Yes, sir.
22 Q Do you believe that Maureen Coffey has interfered
23 with the investigation of your officers in the 2008
24 investigation?
25 A I'm not aware of any --

1 MS. JONES: Your Honor, I object to the question.
2 There is no statement in the letter about interference.
3 THE COURT: Go ahead and ask the question, Mr..
4 Mathison.
5 BY MR. MATHISON:
6 Q Do you believe that she interfered in any of your
7 investigation in 2008?
8 A None that I'm aware of with the sheriff's office, no,
9 sir.
10 Q And that's consistent with your deposition testimony.
11 Isn't that correct?
12 A That's correct.
13 Q Do you believe that Maureen Coffey interfered in your
14 investigation of Otis Coffey in 2004?
15 A No, sir.
16 Q And I believe that you're on the record as saying you
17 think she's not biased, prejudiced, or partial.
18 A None that I'm aware of, no, sir.
19 Q Is there any outstanding warrant for Otis Coffey now?
20 A None that I'm aware of, no, sir.
21 Q And there never has been.
22 A None that I'm aware of.
23 Q Did Mr. Breed talk to you before you came here to
24 testify today?
25 A We've had general conversations.

1 Q Have you discussed what's going on in this case?
2 A No, sir. With Mr. Breed or with --
3 Q With Mr. Breed.
4 A No, sir. The last we talked about this case was
5 prior to my deposition.
6 Q Did you discuss what you were going to say and what
7 he was going to say with Detective Baird before he took
8 the stand, specifically, out in the hall, Wednesday
9 afternoon, last Wednesday?
10 A No, sir.
11 Q Do you know whether Maureen Coffey was an associate
12 judge or the full-time judge in 2004, when you said you
13 went to visit her?
14 A I believe she was full-time then.
15 Q Do you know when she became a full-time judge?
16 A No, sir.
17 Q Did you make an appointment to go and see her?
18 A Not that I'm -- not that I can recall, no, sir.
19 Q Where did you visit with her?
20 A At her office.
21 Q And the Town has been, essentially, in the same place
22 since 2000, if not before. Isn't that correct?
23 A I would think so, yes, sir.
24 Q And what office are you referring to where you
25 visited with Judge Coffey?

1 A What -- what office?

2 Q Yes, sir.

3 A It was down the hallway on -- on the right-hand side,
4 if I recall correctly.

5 Q All the way down in the back?

6 A I don't know how far it was down. To be honest with
7 you, I think that might have been my first time --

8 Q Ever back there?

9 A -- in a judge's chambers. Yes, sir.

10 Q And if I recall correctly, there's a large office
11 that's got windows with glass where people can pay
12 tickets.

13 A Yes, sir.

14 Q Is that correct?

15 A Um--hmm.

16 Q And there's a locked door. You have to have a
17 password to get in the door that's by the side?

18 A Because of the -- the court's being remodeled, I -- I
19 don't appear in her court. Well, I think since she's
20 been there, I think I may have been in her courtroom
21 twice.

22 Q And this is not the courtroom we're describing
23 though; is it? We're describing where her office is.

24 A Right.

25 Q And you have to get past the locks. Do you remember

1 whether the keypunch was on that door in 2004 when you
2 went to see her?

3 A I have no idea.

4 Q But you went all the way down the hall, past the
5 little room on your right, to the judge's office, which
6 is at the back right on that corridor?

7 A If my memory serves me correctly, I think it was an
8 office on the right-hand side down the -- down the
9 hallway.

10 Q Do you know whether or not you had to walk right past
11 the desk of Sherry Hamilton in order to see the Judge?

12 A I'm not sure -- I'm not sure I know where Sherry
13 actually sits at.

14 Q But you're quite certain you were in the Judge's
15 office. And when asked --

16 A We were in -- we were in an office in the courtroom.
17 I mean, I -- I could only assume that it would -- would
18 have been her office.

19 Q Okay. And could it have been 2005 when you had this
20 conversation with her, instead of 2004?

21 A Mr. Mathison, it's -- it's -- it's entirely possible.
22 I mean, we're -- we're talking seven years ago.

23 Q So you're not sure that it's 2004? Is that right?

24 A I would -- I'm -- I'm assuming that it was --
25 conversation took place in 2004.

1 Q And without telling me anything you don't know of
2 your own knowledge, why would it be necessary, if you
3 went to see Ms. Coffey, for another officer,
4 specifically, Detective Baird, to go see her?
5 A I'm not sure I'm following you.
6 Q I'm asking you why two of you went to see her,
7 apparently, on the same goal, mission.
8 A My meeting with her was in regards to concerns from
9 the investigators that were going to be assigned the
10 cases from Sea Pines that Otis was a suspect in.
11 Q Okay.
12 A That was --
13 Q And as a result of talking to her, did you reach --
14 MS. JONES: Objection, your Honor. The witness can
15 finish his answer.
16 THE COURT: If you need to go ahead and finish, you
17 may, sir.
18 BY MR. MATHISON:
19 A As a result of -- of -- that was my intentions of
20 going down to meet with Judge Coffey, IS because the
21 investigators were concerned that they had to deal with
22 her, regardless of how this -- this turned out. That was
23 my initial meeting of going down.
24 Q Did she resolve any concerns that you had?
25 A I didn't -- I mean, it was a -- from what I recall, I

1 wasn't there very long. It was polite. I mean, she had
2 concerns of issues with -- with Otis and Sea Pines. And
3 as a result of that, that's the information that I shared
4 with the sheriff, who ultimately sent Brian Baird down to
5 meet with -- with Judge Coffey. And to be quite honest
6 with you, I didn't recall Brian Baird actually going down
7 until after I've -- my deposition. I actually had this
8 conversation with the sheriff, who said, *Well, after you*
9 *and I talked, I'm the one that sent Brian Baird down.* So
10 I didn't, at no time, direct Brian Baird to go down.
11 Q And you didn't know he'd gone down. Is that what
12 you're saying?
13 A I didn't recall. To be quite honest with you, I
14 didn't.
15 Q Captain, are you quite certain that you actually went
16 to see Maureen Coffey?
17 A Yes, sir.
18 Q And you're certain that she was a full-time judge
19 when you did that?
20 A She was a presiding judge over our cases at the time.
21 Whether she was full-time, I'm -- I wouldn't have known
22 what her contract issue would have been then, but she was
23 the judge that we dealt with.
24 Q Excuse me just a minute. Did anything that you heard
25 from Judge Coffey when you talked to her cause you to

1 believe she would hinder or obstruct your ability to
2 apprehend her brother?

3 A I don't think it -- I thought it was strange that --
4 that -- that she would move him or assist him to move. I
5 mean, it was -- but as far as hindering the
6 investigation, I don't think she would actively -- to do
7 anything to hinder the investigation.

8 Q Do you know where Mr. Coffey moved?

9 A I -- I have no idea.

10 Q But insofar as you know, the complaints that were
11 going on in Sea Pines continued, despite the fact that
12 Mr. Coffey moved?

13 A If, in fact, he actually moved, I have no knowledge
14 of that, whether he really moved or not.

15 Q Okay.

16 A I mean, he could remain in the location wherever he
17 was at; I -- I would not have known.

18 Q Do you know whether, in 2008, Mr. Coffey moved out of
19 Sea Pines?

20 A I don't know. I would not know that.

21 Q So you don't know whether he moved just down the
22 street to Janesta Street. Do you know where Janesta
23 Street is?

24 A It's off Palmetto Bay Road, if I'm not mistaken.

25 Q Not very far from Sea Pines.

1 A No, sir. Right outside of the Sea Pines Forest
2 Reserve Entrance, I believe.

3 MR. MATHISON: Thank you, sir.

4 THE COURT: Anything further?

5 MS. JONES: Briefly, your Honor.

6 CAPTAIN TOBY MCSWAIN

7 RE-DIRECT EXAMINATION, MS. JONES:

8 Q Captain McSwain, in order to interview Otis Coffey,
9 he would have to consent to the interview; wouldn't he?

10 A Yes, ma'am.

11 Q Okay. And would you be surprised if what Mr. Breed
12 actually testified to in his deposition was that he did
13 not know whether John Levy -- which particular crimes
14 John Levy was convicted of?

15 A I don't know that.

16 Q Yeah.

17 A I mean, without looking at the reports, I mean, it
18 would be a guess.

19 Q And likewise, would it not be normal for you to
20 expect Mr. Breed to have testified that he could not
21 testify to as to which events were cleared by the arrest
22 and conviction of John Levy?

23 A That wouldn't surprise me.

24 Q He wouldn't know that; would he?

25 A No, ma'am.

1 MS. JONES: I'd like to mark these as exhibits, your
2 Honor.

3 COURT REPORTER: What's this called?

4 MS. JONES: Can you tell me what you call this sheet
5 that's been marked as Defendants' Exhibit 16?

6 A This appears to be a print-off from the sex offender
7 watch program that's listed underneath our website.

8 Q And is that an official document that's maintained by
9 the State or Beaufort County?

10 A The state maintains the sexual offender registry.

11 Q And that's for John Levy.

12 A That's correct.

13 MS. JONES: Your Honor, we would move to admit
14 Defendants' Exhibit 16.

15 THE COURT: Any objection?

16 MR. MATHISON: I haven't seen it, your Honor, so I
17 can't --

18 THE COURT: Show it to Mr. Mathison.

19 MR. MATHISON: I have objection to the highlighting
20 on it. I don't object to the document.

21 THE COURT: Okay. Well, let's get a clean copy of
22 it that's not highlighted.

23 MS. JONES: Okay.

24 THE COURT: Okay.

25 MS. JONES: No problem.

1 COPY OF DOCUMENT REFERRED TO AS
2 PRINT-OFF FROM SEX OFFENDER WATCH
3 PROGRAM MARKED DEFENDANTS' EXHIBIT
4 NUMBER 16, ADMITTED AS EVIDENCE.

5 BY MS. JONES:

6 Q And can you -- and you've already identified this,
7 but what we've now marked as Defendants' Exhibit 17, are
8 those the arrest warrants that you testified to
9 previously for Mr. Levy?

10 A Yes, ma'am.

11 Q And the latest one there was it October of 2004?

12 A Yes, ma'am, October 1, 2004.

13 MS. JONES: And your Honor, we'd move to admit
14 what's been marked as Defendants' Exhibit 17, which are
15 this group of arrest warrants on John Levy.

16 MR. MATHISON: Without objection.

17 THE COURT: Okay.

18 COPIES OF DOCUMENTS REFERRED TO AS
19 ARREST WARRANTS ON JOHN LEVY MARKED
20 DEFENDANTS' EXHIBIT NUMBER 17, AND
21 ADMITTED AS EVIDENCE.

22 BY MS. JONES:

23 Q And the last document I just handed to you, Captain
24 McSwain, is that a copy of the subpoena that was served
25 on you for the records in the trial on this case?

1 A Yes, ma'am.

2 Q Okay. And if you would please, what information was
3 requested in that subpoena in regards to Mr. Levy, first?
4 If you would review that again for the jury.

5 A Of Exhibit 1, Number 1: *All incident reports,*
6 *supplemental incident reports, related to the matters set*
7 *forth in Attachment A hereto, and Attachment B.*
8 *Attachment A and B are subsets of Attachment C.*

9 Number 2: *All cases in which John Thomas Levy was*
10 *arrested, charged, prosecuted, and convicted, as well as*
11 *records of his sentence and deposition.*

12 Q Okay. And if you could, please, what is listed on
13 Exhibit A and B, the documents that are requested -- that
14 were requested?

15 A Exhibits A is --

16 Q How many pages is it?

17 A Exhibit A is one.

18 Q Okay.

19 A It shows a list of dates. I'm assuming that these
20 are probably incident locations. It says location. And
21 the type of case, burglary, petty larceny, burglary,
22 prowler, B and E vehicle, is exhibit A.

23 Q And are those for 2004?

24 A They all appear to be for 2004, yes, ma'am.

25 Q And the next page is for what year? What time

1 period?

2 A Small items and/or cash, from January 1, '08 to May

3 20th of '08. And it lists the days, the date, month --

4 or the day of the month, location, and whether or not it

5 was cash, wallet, jewelry, Rolex.

6 Q And there are a couple of pages of those?

7 A Appears -- well, looks like B -- looks like three,

8 four pages.

9 Q And we know that, in 2008, Mr. Levy was in jail,

10 correct?

11 A Yes, ma'am.

12 Q And these arrest warrants state that Mr. Levy, the

13 latest one here was October the 19th, 2004.

14 A Right.

15 Q And on that exhibit, there are how many petty larceny

16 crimes after October of 2004?

17 A And this is Exhibit B that you're referring to?

18 Q Yes, sir. The two thousand and -- the list of the

19 2004 incidences.

20 A Oh, okay. So it would be A, then.

21 Q Exhibit A.

22 A Okay. How many cases after?

23 Q After the arrest of Mr. Levy indicated as being --

24 where? I just -- October 19, 2004.

25 A Five.

1 Q And what type of crimes was John Levy arrested and
2 convicted for?

3 A Without looking at the documents, I thought it was --
4 I'm strictly recalling from memory at this point of what
5 he was convicted of. I mean, I know this was what he
6 was --

7 Q What was he arrested for, then? What type of crime
8 was it?

9 A Voyeurism.

10 Q Voyeurism?

11 A Burglary, first degree.

12 Q Burglary first.

13 A Burglary, first degree.

14 Q Burglary first.

15 A Lewd act on a child under the age of 16.

16 Q Lewd act. All right. Were any of those arrests for
17 petty larceny?

18 A No, ma'am. They do not appear to be listed in the
19 narrative, the warrant.

20 Q Okay. And after his arrest, there were five
21 additional incidences that are reflected on the subpoena,
22 correct?

23 A Yes, ma'am.

24 MS. JONES: Thank you. That's all the questions I
25 have.

1 THE COURT: Mr. Mathison, anything?
2 MR. MATHISON: Yes, ma'am.
3 CAPTAIN TOBY MCSWAIN
4 RE-CROSS-EXAMINATION, MR. MATHISON:
5 Q Let me see the items.
6 If you look at what's been marked as Defendants'
7 Exhibit 7, isn't it a fact that some of these warrants
8 were actually issued by Maureen Coffey?
9 A It appears all of them were.
10 Q Okay. And if you'd been fixing to get one for Otis
11 Coffey, you wouldn't have gone to Maureen Coffey to get
12 it issued; would you?
13 A No, sir.
14 Q Why would George Breed suggest otherwise in his email
15 to you of May 20th?
16 MS. JONES: Objection, scope, your Honor. And I
17 think I entered that Defendants' Exhibit 17. If I did
18 not, I meant to.
19 MR. MATHISON: It's got a sticker on, your Honor.
20 THE COURT: Is it in, Wanda?
21 COURT REPORTER: Yes. I'm sorry. It is.
22 THE COURT: It's in.
23 MS. JONES: All right.
24 MR. MATHISON: It's right here, your Honor.
25 THE COURT: Thank you. It's in.

1 MS. JONES: Good. All right. Mr. Mathison just
2 said for identification, and I thought maybe I'd forgot
3 to do it.

4 BY MR. MATHISON:

5 A Okay. What was your question again?

6 Q My question was, why did Mr. Breed indicate that, if
7 you got a warrant for Otis Coffey, you shouldn't go to
8 his sister, Maureen Coffey, to get one?

9 MS. JONES: Objection, your Honor. Speculation.

10 THE COURT: Sustained.

11 BY MR. MATHISON:

12 Q Read me what he said about the -- read me what's in
13 the second paragraph of that memo that he sent to you,
14 please.

15 MS. JONES: Objection. Scope.

16 THE COURT: Go ahead.

17 BY MR. MATHISON:

18 A You guys have been called to assist and went to the
19 house with my officers. Ms. Coffey came to the door and
20 said no one was home. Your officer told them that Sea
21 Pines officer saw Otis enter that house minutes prior.
22 She said Sea Pines Security is always trying to pin
23 things on him, then blew them off.

24 Q All right. And what's the next sentence say?

25 A We almost got his little butt. I want his little

1 *butt. And I don't want it to -- I don't want it to get*
2 *back to you-know-who.*

3 Q Do you know who you-know-who was?

4 A I can only assume.

5 Q Can you assume who?

6 A I'm assuming it would be Ms. Coffey.

7 Q Okay. Keep going, please.

8 A *He thinks he can get away with this crap because he*
9 *has cover.*

10 Q Do you know who the cover is?

11 A Well, I -- I would assume it would be Ms. Coffey.

12 Q Okay. Keep going.

13 A *Do you think we have enough to secure a search*
14 *warrant?*

15 Q Did you?

16 A Well, I wasn't at the scene. I would have thought if
17 there was enough for a search warrant, the officers at
18 the -- at the scene would have --

19 Q Gotten one.

20 A -- secured a search warrant, yes, sir.

21 Q And they didn't; did they?

22 A None that I'm aware of, no, sir.

23 Q Continue with what he said.

24 A *His house is smack in the center of the B and E's.*
25 *He matches the description of our B and E suspect and the*

1 *peeper, and he is on a bike at midnight, right in the*
2 *middle of our stakeout. Takes off and runs into a house,*
3 *cuts off the lights, then has Mommy lie for him.*

4 Q All right. Continue, please.

5 A And for heaven sakes, you know not where to go get
6 the S.W. [sic].

7 Q S.W. is search warrant.

8 A I would assume, since we referred to it earlier, I'm
9 assuming that's what it would mean.

10 Q Was Mr. Breed telling you that he didn't want you to
11 go to Maureen Coffey to get a search warrant for her
12 brother? Is that what he was telling you?

13 A I'm assuming that's what he -- what he meant.

14 Q Okay. That's pretty obvious to you, isn't it, Mr.
15 McSwain? You would never do that; would you?

16 A No, sir.

17 Q As a result of what you have in your hand, did
18 anybody make an effort to interview Otis Coffey?

19 A From what I recall, I think there was several
20 attempts made to interview Otis.

21 Q What do you need in order to have an interview with a
22 suspect?

23 A A date and a time and a location.

24 Q If they decline to consent, do you have any way to
25 require them to do it?

1 A No, sir.

2 Q If you have evidence that a crime was committed that
3 points to a suspect, do you interview them regardless of
4 whether they consent?

5 A If we had evidence to prove that they were a suspect
6 in a crime, I think we would go directly to a judge and
7 obtain a search warrant or an arrest warrant. And then
8 we would -- we would arrest them. And then --

9 Q You'd arrest them, and then start asking the
10 questions.

11 A That's correct.

12 Q Okay. And of course, that never happened; did it?

13 A Not with Otis, no, sir.

14 Q Because you all never had any evidence that would
15 lead you to do that. Isn't that right?

16 A I don't -- without looking at the reports, I don't
17 know if any -- any matter was brought before a judge to
18 make a determination of whether or not we had probable
19 cause for his arrest.

20 Q In any of those 200 reports, any of the ones that
21 were subpoenaed by my colleagues, was Otis --

22 A Without looking at them I don't -- I don't know if
23 any -- any of them were brought before a judge.

24 Q Was Otis Coffey mentioned in any of them?

25 A In --

1 Q In any of the reports that you produced. Any of
2 them.
3 A I'd have to look at the stack of reports to --
4 Q Are you aware of one right off the top of your head?
5 A Just the one that really kind of set things in motion
6 was the night that -- that they supposedly chased Otis
7 back to his residence.
8 Q And that's the one that you're looking at right
9 there.
10 A The email that I got from Mr. Breed, yes, sir.
11 Q Okay. And that led to no arrest, no search warrant,
12 nothing.
13 A Yes, sir.
14 Q And was it your investigation, the Beaufort County
15 Sheriff's Office, to conduct?
16 A Say that again, sir.
17 Q Was it your investigation to conduct?
18 A The agency, yes, sir.
19 Q I don't mean yours personally.
20 A Yes, sir. Yes, sir.
21 Q Was the BCSO in charge?
22 A Yes, sir.
23 Q Do you know whether a private security firm, like Sea
24 Pines Security, could have --
25 MS. JONES: Objection, your Honor. It's already

1 been ruled on. It's outside the scope.

2 THE COURT: You need to come talk to me?

3 OFF-THE-RECORD BENCH CONFERENCE,

4 OUT OF HEARING OF JURORS. PRESENT:

5 MR. MATHISON, MR. MICHAEL MATHISON,

6 MS. JONES, MR. HALIO, JOLLEY.

7 BY MR. MATHISON:

8 Q In investigating this sort of crime, peeping Tom,
9 burglary, and that sort of thing, is that solely within
10 the purview of the Beaufort County Sheriff's Office, in
11 this particular context?

12 A If, in fact, a victim was to call and report a crime
13 such as a peeping Tom or a burglary, Sea Pines or any
14 other plantation would be the first responders to respond
15 to the location. Once they determine, okay, we have --
16 it's a felony case, then, at that point, they would
17 contact the sheriff's office to assume the case.

18 Q And essentially, you would conduct it thereafter?

19 A Yes, sir.

20 Q So the investigation of these peeping Toms and
21 burglaries was, in fact, yours to conduct, meaning the
22 Beaufort County Sheriff's Office, instead of Sea Pines
23 Securities?

24 A Any --

25 MS. JONES: Same objection, your Honor.

1 THE COURT: Okay. You can answer the question.

2 BY MR. MATHISON:

3 A Yes, sir. We -- we would work, and we work in
4 conjunction with the private security. I mean, there is
5 cases where we provide a lot of extra patrol inside of
6 plantations, but they would -- they would have the
7 insight. Their officers are on the street, so we would
8 do it in coordination with them. But as far as any
9 interviews, obtaining arrest warrants, search warrants,
10 whatever the case may be, that would be an action that we
11 would take.

12 Q Can you give me an explanation, Captain, of why Mr.
13 Breed would be complaining about my client somehow
14 impeding an investigation that was being conducted by
15 your office?

16 MS. JONES: Objection. Calls for speculation.

17 THE COURT: Sustained.

18 BY MR. MATHISON:

19 Q Do you know why he complained?

20 A No, I --

21 Q Did he ask you if you thought it was a good idea?

22 A To make a complaint?

23 Q Yes.

24 A I don't ever recall us discussing that.

25 Q Did he ask you, before he made his complaint, whether

1 you felt that the Judge was biased and prejudiced and
2 partial?

3 A I don't recall us having that conversation, no, sir.

4 Q Did he ask you about any of the events set forth in
5 his letter? The May 20th event, for example, that you
6 just testified to as a consequence of having received
7 this email, --

8 A We talked --

9 Q -- did he ask you about that?

10 A Yes, sir. We talked about his email. We shared --
11 we talked about the email in great detail and what we
12 thought was transpiring inside of Sea Pines.
13 Additionally, we also discussed my meeting with Judge
14 Coffey.

15 Q Four years earlier?

16 A We -- well, we were -- this is a 2008 case, but we
17 had, in addition, talked about that, as well, and along
18 with the other cases that were going on. Because during
19 the time frame that the cases were transpiring in Sea
20 Pines, we -- we talked quite a bit.

21 Q But you didn't feel the need to complain to anyone
22 about Judge Coffey; did you?

23 A No, sir.

24 Q And that was true then, in 2008, and that's still
25 true. Is that not correct?

1 A I mean, if Otis elected not to conduct an interview
2 or sit for an interview at the sheriff's office, that's
3 really -- he's an adult. That would be his decision.
4 That would not be anything involving her.

5 MR. MATHISON: Thank you very much.

6 MS. JONES: I made a note. Got another copy of
7 Defendants' Exhibit 16 without the highlighting on it.

8 THE COURT: Okay. Anything further?

9 MS. JONES: No. No. Thank you, Captain.

10 THE COURT: Any objection to Captain McSwain being
11 excused? You are excused, sir.

12 MR. MATHISON: None.

13 THE COURT: You are excused.

14 A Thank you so much.

15 BY THE COURT:

16 THE COURT: Should we take a short break or do you
17 have a short witness? Why don't we go ahead and take a
18 quick break, ladies and gentlemen of the jury. Again, do
19 not discuss this case. It wouldn't be appropriate to do
20 so. Go get a coffee. We'll be right back with you.
21 Thank you.

22 JURORS LEAVE COURTROOM 11:17 A.M.

23 BAILIFF: The jury is clear and the door is closed,
24 your Honor.

25 THE COURT: Thank you. Who's your next witness