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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-2373

Matthew S. McAlhaney, ... Respondent,

v.

Richard K. McElveen a/k/a Richard
K. McElveen, Sr., Individually and
d/b/a Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, ... Defendants,

of whom Richard K. McElveen, Sr., is the Appellant.

**RECORD ON APPEAL
VOLUME I**

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McAlhaney v. McElveen et al

C/A #: 2007-CP-07-2373

VERDICT FORM

As to Plaintiff McAlhaney's libel cause of action against Defendant Richard McElveen, Sr., we find:

X for the Plaintiff McAlhaney in the amount of:

\$1000.00 actual damages

3.25M punitive damages

(or)

_____ for the Defendant Richard McElveen, Sr.

As to Plaintiff McAlhaney's slander cause of action against Defendant Linda McElveen, we find:

X for the Plaintiff McAlhaney in the amount of:

\$2000.00 actual damages

0 punitive damages

(or)

_____ for the Defendant Linda McElveen

As to Plaintiff McAlhaney's slander cause of action against Defendant Richard McElveen, Jr., we find:

X for the Plaintiff McAlhaney in the amount of:

\$500.00 actual damages

0 punitive damages

(or)

_____ for the Defendant Richard McElveen, Jr.

As to Plaintiff McAlhaney's slander cause of action against Defendant Richard McElveen, Sr., we find:

X for the Plaintiff McAlhaney in the amount of:

\$61,000.00 actual damages

3.25M punitive damages

(or)

_____ for the Defendant Richard McElveen, Sr.

As to Plaintiff McAlhaney's abuse of process cause of action against Defendant Linda McElveen, we find:

 X for the Plaintiff McAlhaney in the amount of:
 \$1500.00 actual damages
 0 punitive damages
 (or)
_____ for the Defendant Linda McElveen

As to Plaintiff McAlhaney's abuse of process cause of action against Defendant Richard McElveen, Sr. we find:

 X for the Plaintiff McAlhaney in the amount of:
 \$25,000.00 actual damages
 0 punitive damages
 (or)
_____ for the Defendant Richard McElveen, Sr.

As to Plaintiff McAlhaney's civil conspiracy cause of action against Defendant Richard McElveen, Jr. we find:

 X for the Plaintiff McAlhaney in the amount of:
 \$665.00 actual damages
 \$5000.00 punitive damages
 (or)
_____ for the Defendant Richard McElveen, Jr.

As to Plaintiff McAlhaney's civil conspiracy cause of action against Defendant Billy Jo Byrd, we find:

_____ for the Plaintiff McAlhaney in the amount of:
 _____ actual damages
 _____ punitive damages
 (or)
 X for the Defendant Billy Jo Byrd

As to Defendant Richard McElveen, Sr.'s slander cause of action against Plaintiff McAlhaney, we find:

_____ for the Defendant Richard McElveen, Sr. in the amount of:

_____ actual damages

_____ punitive damages

(or)

X for the Plaintiff McAlhaney

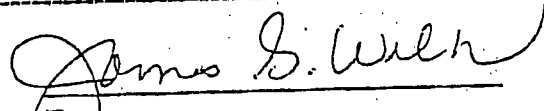
As to Defendant Richard McElveen, Sr.'s libel cause of action against Additional Party McEachern, we find:

_____ for the Defendant Richard McElveen, Sr. in the amount of:

_____ actual damages

(or)

X for the Additional Party McEachern


Foreperson

Beaufort, South Carolina

This 15 day of January, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

10 JUL -2 PM 12:33

FOURTEENTH JUDICIAL CIRCUIT

MATTHEW S. MCALHANEY,)

JERRI ANN ROSENEAU

BEAUFORT COUNTY, S.C.

CLERK OF COURT

Civil Action Number: 2007-CP-07-2373

Plaintiff,)

vs.)

RICHARD K. MCELVEEN a/k/a)

RICHARD K. MCELVEEN, SR.,)

Individually and d/b/a BATTERY)

CREEK MARINA, THE GREAT)

PUMPKIN, LLC, LINDA)

MCELVEEN, RICHARD K.)

MCELVEEN, JR., and BILLY JOE)

BYRD,)

Defendants.)

ORDER

RICHARD K. MCELVEEN, SR.,)

Defendant,)

vs.)

MICHAEL J. MCEACHERN,)

Additional Party on the
Counterclaims,)

This matter came before the Court on several post-trial motions on January 21, 2010 following a trial before a jury commencing on January 11, 2010 with a verdict returned on January 15, 2010. Defendants Richard K. McElveen, Sr., Linda McElveen, and Richard McElveen, Jr. moved for a judgment notwithstanding the verdict (JNOV), a new trial absolute and a new trial *nisi remittitur*. Following oral arguments from counsel for the parties, I denied the motions (a) for a

new trial absolute and JNOV as to Defendants Richard McElveen, Sr., Linda McElveen, and Richard McElveen, Jr. as to all of Plaintiff's causes of action, and as to McElveen, Sr.'s slander counterclaim and libel claim, and (b) for a new trial *nisi remittitur* as to Defendants Linda McElveen and Richard McElveen, Jr.

After a review of the parties' oral arguments and submitted briefs, applicable case law including *Mitchell v. Fortis Insurance, Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), *Gamble v. Stevenson*, 304 S.C. 104, 406 S.E.2d 350 (1991), and *BMW of North America v. Gore*, 517 U.S. 559 (1996), and the day after hearing post-trial motions, attending Professor Hubbard's presentation "Punitive Damages Verdicts: Keeping or Attacking Punitive Damages Awards" at the South Carolina Bar Association's annual conference, the court grants Defendant Richard McElveen, Sr.'s Motion for New Trial *nisi Remittitur* by reducing the total punitive damages award against Richard McElveen, Sr. to \$375,000.00.

As to the Defendant in this present matter, the jury found for the Plaintiff against the Defendant for libel with \$1,000.00 actual damages and \$3,250,000.00 punitive damages and against the Defendant for slander with \$61,000.00 actual damages and \$3,250,000.00 punitive damages.

In determining whether an award of \$3,250,000.00 with respect to the libel and slander causes of action comports with due process, and, if not, the amount of punitive damages that should be awarded, the court first considers the eight factors set forth in *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354. The *Gamble* factors are:

- (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from the conduct; (6) whether the award is reasonably related to the harm likely to result from such

conduct; (7) defendant's ability to pay; and finally, (8) ...other factors deemed appropriate. *Id.*

Further, the Supreme Court of the United States set forth three guideposts for conducting a due process analysis in *BMW of North America v. Gore*, 517 U.S. 559 (1996). The guideposts are: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the plaintiff's harm or potential harm and the punitive damages awarded; and (3) the difference between the punitive damages and the civil penalties available in similar cases. *Id.* at 575.

In the interest of judicial economy the Supreme Court of South Carolina established a less burdensome analysis for the trial court's review of punitive damages in order to avoid having to consider both the *Gamble* factors and the *Gore* factors separately. Recently, in *Mitchell*, 385 S.C. 570 (2009), the court held "that *Gamble* remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts." 385 S.C. at 587, 686 S.E.2d at 185.

In the present case, the court first examines the reprehensibility of McElveen, Sr.'s conduct in accordance with the *Gore* guideposts with the aid of the *Gamble* factors. No evidence suggests the Plaintiff was financially vulnerable and although a physical altercation with McElveen, Jr. did occur, the Plaintiff's harm was primarily economic. However, the jury could have easily found the harm was the result of intentional malice and trickery and that the Defendant sought to discredit the Plaintiff in order to prevail in a contentious custody dispute. Additionally, evidence was thus presented that the conduct was not an isolated incident, but rather involved repeated occasions ranging from a letter to the governor to defaming the Plaintiff as a child molester to a furniture salesperson. Evidence was presented from which the jury could and did find that McElveen, Sr.'s conduct was intentional, deliberate and malicious and was thus reprehensible.

Next, the court considers the difference between the actual and potential harm suffered by the plaintiff and the punitive damages award. Although the Supreme Court of the United States "has consistently declined to adopt a bright-line ratio or simple mathematical test, 'in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.'" *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185; quoting *State Farm v. Campbell*, 538 U.S. 408, 425 (2003).

The jury awarded \$3,250,000.00 in punitive damages on the slander cause of action, an amount more than 53 times the jury's assessment of \$61,000.00 of actual damages. For the libel cause of action, the jury awarded \$3,250,000.00 in punitive damages, which is more than 3,250 times the \$1,000.00 in actual damages. With either causes of action, such a multiplier for punitive versus actual damages is impermissibly excessive and grossly exceeds the single digit multiplier sanctioned by case law. Further, McElveen, Sr.'s stated net worth is only \$2 million. Considering the *Gamble* factor regarding the defendant's ability to pay, at 57 years and retired, McElveen Sr.'s future earning capacity is limited at best. As a private individual with no applicable insurance coverage the Defendant clearly would not be able to pay the amounts awarded.

The final *Gore* guidepost examines the difference between the jury's punitive damages award and civil penalties imposed in comparable cases. See *Mitchell*, 385 S.C. at 585, 686 S.E. at 184.

The law applicable to punitive awards has been addressed in numerous recent decisions, federal and state, and has also been the subject of various legal articles in the past year which has made calculating a sustainable award difficult and which factors contributed to the delay in receiving proposed orders from the litigants' attorneys which well thought out orders suggested

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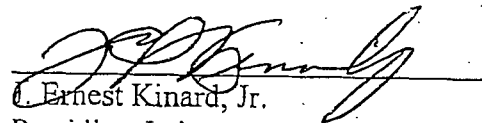
punitive award to \$600,000.00 by the Plaintiff's attorney and to \$186,000.00 by the Defendant's attorney; however my reduction is based upon my analysis using the factors aforesaid.

Accordingly, for the reasons set forth above, the punitive verdicts against Defendant McElveen, Sr. on the libel and slander causes of action, when examined under the *Gore* and *Mitchell* factors discussed above, clearly indicate that they are so inflated as to necessitate them being stricken as violative of principles of fundamental fairness and due process. I find that the punitive awards are not so grossly excessive that they clearly mandate the granting of a new trial absolute, and do not cross the threshold between an unduly liberal verdict versus a grossly excessive verdict. Instead, I find that the punitive awards should be reduced from \$6,500,000.00 to \$375,000.00.

Accordingly, a new trial *nisi remititur* is ordered on the libel and slander causes of action with regard to Defendant McElveen, Sr., and the total amount of punitive damages is reduced to \$375,000.00. Plaintiff is entitled to accept the remitted amount of punitive damages as his verdict, or opt for a new trial. I deny the motions for a new trial absolute and JNOV as to Defendants Richard McElveen, Sr., Linda McElveen, and Richard McElveen, Jr. as to all of the Plaintiff's causes of action and as to McElveen, Sr.'s slander counterclaim and libel claim, deny the Motion for New Trial *Nisi Remittitur* as to Defendants Linda McElveen and Richard McElveen, Jr., and deny Richard McElveen, Jr.'s Motion for New Trial *Nisi Remittitur*. The remaining grounds asserted by McElveen, Sr. do not warrant a new trial absolute, nor do the grounds raised by Defendants Linda McElveen and Richard McElveen, Jr.



IT IS SO ORDERED.



Ernest Kinard, Jr.
Presiding Judge
Fourteenth Judicial Circuit
Court of Common Pleas

Beaufort, South Carolina

July 1, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CASE NO. 2005-CP-07- 1430
JURY ROSTER

MATTHEW S. McALHANEY,

Plaintiff,

vs.

COMPLAINT

RICHARD K. McELVEEN, a/k/a
RICHARD K. McELVEEN, SR., Individually
and d/b/a BATTERY CREEK MARINA, THE
GREAT PUMPKIN, LLC, LINDA McELVEEN,
RICHARD K. McELVEEN, JR., and BILLY
JOE BIRD,

Defendants.

The Plaintiff, Matthew S. McAlhaney, complaining of the Defendants,
respectfully alleges the following:

PROLOGUE

001. The Plaintiff, Matthew S. McAlhaney (herein below "the Plaintiff"), is a citizen and resident of Beaufort County, South Carolina.

002. The Defendant, Richard Keith McElveen, also known as Richard Keith McElveen, Sr. (herein below "the Defendant" or "McElveen Senior"), is a citizen and resident of Beaufort County, South Carolina.

003. Upon information and belief, McElveen, Sr. owns and operates an enterprise which is doing business as Battery Creek Marina (herein below "BCM"), and which maintains its principal office and maintains a general agent in Beaufort County, South Carolina.

004. The Defendant, The Great Pumpkin, LLC (herein below "TCP") is a limited liability company organized and existing under the laws of the state of South Carolina, which maintains its principal place of business and maintains a general agent in Beaufort County, South Carolina, and which, upon information and belief,

is doing business as Battery Creek Marina (herein below "BCM").

005. Upon information and belief, McElveen Senior is a managing member, member, director, officer, general agent and/or employee of and for TGP, who, at all relevant times, was acting within the scope of his authority from, and in the course of his employment by TGP.

006. The Defendant, Linda McElveen, is a citizen and resident of Beaufort County, South Carolina, and is the current wife of McElveen Senior.

007. The Defendant, Richard Keith McElveen, Jr. (herein below "McElveen Junior"), is a citizen and resident of Beaufort County, South Carolina, who is the son of McElveen Senior, but not of Linda McElveen.

008. The Defendant, Billy Joe Byrd (herein below "Byrd"), is a citizen and resident of Beaufort County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Libel - - Actionable Per Se)

101. The allegations of Paragraphs 001, 002, 003, 004 and 005 are hereby adopted and by express reference made a part of this First Cause of Action.

102. On or about September 29, 2003, McElveen Senior, acting for himself, for TGP and for BCM, in Beaufort County, South Carolina, caused to be typed a vicious letter in which, posing as a representative of a different business entity, McElveen, Senior stated that a local realtor, who was then involved in a relationship with McElveen Junior's former wife, Molly McCullers McElveen, had "some severe problems including a drug addiction and [he] has been abusive to the children".

103. The "local realtor" described was known to be the Plaintiff, and the "children" were those of Molly McCullers McElveen and McElveen Junior, that is, the grandchildren of McElveen Senior, namely, Richard K. McElveen, III, and Jackson McElveen.

104. Once the letter was typed, McElveen Senior, acting for himself, for TGP and for BCM, caused its publication (a) by mailing it to the governor of South Carolina, Mark Sanford; and (b) upon information and belief, by exhibiting its content to individuals in and around Beaufort County, South Carolina.

105. The statements described in Paragraph 102 were utterly false.

106. The statements described in Paragraph 102 were defamatory on their face, and, because they were written, printed or typed, they constitute libel.

107. The statements described in Paragraph 102, upon information and belief, were actionable per se because they degrade the Plaintiff, that is, they reduce his character or reputation in the estimation of his friends or acquaintances, or the public, and/or they disgrace the Plaintiff, and/or they render him odious or contemptible.

108. Because the statements are actionable per se, at common law actual malice by the Defendants McElveen Senior and BCM is presumed, as are general damages to the Plaintiff.

109. As the direct and proximate result of the libel of the Defendants McElveen Senior, TGP and BCM, the Plaintiff has sustained and is entitled to recover actual damages in the amount of Five Million (\$5,000,000.00) Dollars, including, without limitation, injury to the Plaintiff's reputation, his shock, distress, anguish and mental suffering.

110. The conduct of the Defendants, McElveen Senior, TGP and BCM, was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

FOR A SECOND CAUSE OF ACTION
(Slander -- Actionable Per Se)

201. The allegations of Paragraphs 001, 002, 003, 004, 005, 006 and 007 are hereby adopted and by express reference made a part of this Second Cause of Action.

202. The Defendants McElveen Senior, individually, and doing business as BCM, and as the agent and/or employee of and for TGP, which may be doing business as BCM, Linda McElveen and McElveen Junior have each made one or more of the following statements:

- (a) The Plaintiff is a child abuser;
- (b) The Plaintiff is a child molester;
- (c) The Plaintiff has kissed a child's rear end;

- (d) The Plaintiff has kissed a child's privates (meaning his penis);
- (e) A child has kissed the Plaintiff's penis;
- (f) The Plaintiff is a deviate or "deviant";
- (g) The Plaintiff has committed assault and battery of a high and aggravated nature;
- (h) The Plaintiff pinched, pulled and twisted a child's penis;
- (i) The Plaintiff has committed criminal sexual conduct with a minor in the first degree; and
- (j) The Plaintiff has caused his finger to penetrate the anus of a child.

203. The Defendants caused the publication of the statements described in Paragraph 202 by repeating them to numerous friends and acquaintances of the Plaintiff, as well as to numerous members of the general public.

204. That the statements described in Paragraph 202 received further publication when they were repeated and embellished by others.

205. The statements described in Paragraph 202 were utterly false.

206. The statements described in Paragraph 202 were defamatory on their face, and, because they were spoken in person and over the telephone, they constitute slander.

207. The statements described in Paragraph 202, upon information and belief, are actionable per se because they (a) charge the commission of a crime involving moral turpitude, and (b) charge unchastity.

208. Because the statements are actionable per se, at common law actual malice by the Defendants McElveen Senior, individually and doing business as BCM, TGP, Linda McElveen and McElveen Junior is presumed, as are general damages to the Plaintiff.

209. As the direct and proximate result of the slander of the Defendants McElveen Senior, BCM, TGP, Linda McElveen and McElveen Junior, the Plaintiff has sustained and is entitled to recover actual damages in the amount of Five Million (\$5,000,000.00) Dollars, including, without limitation, injury to the Plaintiff's

reputation, his shock, distress and mental suffering.

210. The conduct of the Defendants McElveen Senior, BCM, TGP, Linda McElveen and McElveen Junior was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who, therefore, is entitled to recover punitive damages.

FOR A THIRD CAUSE OF ACTION
(Libel -- Constitutional Claim)

301. As an alternative to the First Cause of Action, if the Plaintiff were deemed a public official or a public figure -- an averment that is expressly denied -- the following allegations are applicable.

302. The allegations of Paragraphs 001, 002, 003, 004, 005, 102, 103 and 104 are hereby adopted and by express reference made a part of this Third Cause of Action.

303. Each of the statements made by the Defendants McElveen Senior, individually and doing business as BCM, and individually and as the agent or employee of and for TGP, as set forth in Paragraph 102, was made with actual malice, that is, either with knowledge that each such statement was false or with reckless disregard for whether it was true or false.

304. Each of the statements made by the Defendants, as set forth in Paragraph 102, if not made with actual malice, nevertheless, caused actual injury to the Plaintiff in the form of special damages of \$1,000.00, which were incurred by the Plaintiff to vindicate himself and to establish the falsity of the statements.

305. The statements described in Paragraph 102 were utterly false.

306. The statements described in Paragraph 102 were defamatory on their face, and, because they were written, printed or typed, they constitute libel.

307. As the direct and proximate result of the libel of the Defendants McElveen Senior, BCM and TGP, the Plaintiff has sustained and is entitled to recover Five Million (\$5,000,000.00) Dollars, including, without limitation, injury to the Plaintiff's reputation, his shock, distress, anguish and mental suffering, as well as the special damages described in Paragraph 304.

308. Because the Defendants, statements were made with actual malice, as

described in Paragraph 303 above, the Plaintiff is entitled to recover punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Slander -- Constitutional Claim)

401. As an alternative to the Second Cause of Action, if the Plaintiff were deemed a public official or a public figure -- an averment that is expressly denied -- the following allegations are applicable.

402. The allegations of Paragraphs 001, 002, 003, 004, 005, 006, 007, 202, 203 and 204 are hereby adopted and by express reference made a part of this Fourth Cause of Action.

403. Each of the statements made by the Defendants McElveen Senior, individually and doing business as BCM, and individually and as the agent or employee of and for TGP, Linda McElveen and McElveen Junior, as set forth in Paragraph 202, was made with actual malice, that is, either with knowledge that such statement was false or with reckless disregard as whether it was true or false.

404. Each of the statements made by the Defendants, as set forth in Paragraph 202, if not made with actual malice, nevertheless, caused actual injury to the Plaintiff in the form of special damages of \$25,000.00, which were incurred by the Plaintiff to vindicate himself and to establish the falsity of the statements.

405. The statements described in Paragraph 202 were utterly false.

406. The statements described in Paragraph 202 were defamatory on their face, and, because they were spoken in person or over the telephone, they constitute slander.

407. As the direct and proximate result of the slander of the Defendants McElveen Senior, BCM, TGP, Linda McElveen and McElveen Junior, the Plaintiff has sustained and is entitled to recover actual damages in the amount of Five Million (\$5,000,000.00) Dollars, including, without limitation, injury to the Plaintiff's reputation, his shock, distress, anguish and mental suffering, as well as the special damages described in Paragraph 404.

408. Because the Defendants' statements were made with actual malice, as described in Paragraph 403 above, the Plaintiff is entitled to recover punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Abuse of Process)

501. The allegations of Paragraphs 001, 002, 003, 004, 005 and 006 are hereby adopted and by express reference made a part of this Fifth Cause of Action.

502. On or about February 27, 2005, Linda McElveen, who was aided and abetted by McElveen Senior, reported to the Beaufort County Sheriff's Office that the Plaintiff had engaged in certain sexually perverted behavior with one of McElveen Senior's grand children, including, without limitation, the child abuse and molestation described in Paragraph 202 above.

503. As the result of the reports aforementioned, on or about March 1, 2004, the Plaintiff was arrested on charges of assault and battery of a high and aggravated nature and criminal sexual conduct with a minor in the first degree (herein "the criminal charges").

504. The Plaintiff was taken into custody; he was booked; he endured having "mug shots" and fingerprints taken; and he was held in jail pending a bond hearing.

505. For nearly a year, the Plaintiff was vilified by the Defendants and by others in the community before the Solicitor's office formally dropped the criminal charges against him.

506. Prior to the arrest of the Plaintiff, McElveen Senior had been embroiled in Family Court litigation with his daughter-in-law, Molly McCullers McElveen (herein below "Molly"), including, without limitation, Richard Keith McElveen, Sr. v. Richard Keith McElveen, Jr. and Molly McCullers McElveen (Case No. 2003-DR-07-1245), (herein "the Family Court case"), wherein McElveen Senior sought to take custody of his two grandsons from their mother, Molly, by proving that she was unfit.

507. The Plaintiff, who began dating Molly in May of 2003, was attempting to support her in her efforts to retain custody of her children.

508. The Defendants Linda McElveen and McElveen Senior had the Plaintiff arrested for the following ulterior, improper and unlawful purposes:

- (a) To discredit the Plaintiff and thereby to show that Molly was unfit to have custody as the result of keeping company with a person of such low character.
- (b) To rely on their allegations of child abuse and/or child molestation to supply a rationale that would allow McElveen

Senior to obtain custody of his grand children.

- (c) To separate the Plaintiff from Molly, thereby leaving her vulnerable and without local support.
- (d) To remove the Plaintiff from Molly's life, thereby leaving her available for an approach by McElveen Senior, who was romantically attracted to her.

509. The criminal charges were instituted and prosecuted for one or more of the ulterior purposes and motives set forth in Paragraph 508.

510. The institution and prosecution of criminal charges were definite, willful acts not proper in the regular conduct of the Family Court case.

511. As the direct and proximate result of the abuse of process by the Defendants Linda McElveen and McElveen Senior, the Plaintiff has sustained and is entitled to recover actual damages in the amount of Five Million (\$5,000,000.00) Dollars, including, without limitation, (a) mental pain, anguish and suffering, worry, fright, nervousness, humiliation and embarrassment; (b) injury to his good name and reputation; and (c) special damages in the form of attorney's fees (\$1,500.00) and other costs incurred in securing his release from jail and/or defending himself against the criminal charges.

512. The conduct of the Defendants was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Conspiracy)

601. The allegations of Paragraphs 001, 002, 003, 004, 005, 006, 007 and 008 are hereby adopted and by express reference made a part of this Sixth Cause of Action.

602. After McElveen Senior and/or Linda McElveen learned that the Solicitor's Office planned to drop the criminal charges against the Plaintiff, McElveen Senior, individually, and doing business as BCM, and individually and as the agent and/or employee of TGP, Linda McElveen, McElveen Junior and Byrd all combined and conspired with each other, as well as with third parties, in Beaufort County, South Carolina, for the purpose of causing injury to the Plaintiff by orchestrating and implementing an assault and battery upon the Plaintiff and his friends.

603. The assault and battery occurred on the early morning of Christmas Eve, December 24, 2004, in the parking lot behind a restaurant known as Breakwater at Beaufort in Beaufort County, South Carolina.

604. The conspiracy of and by the Defendants caused the Plaintiff special damages, namely, the physical injuries that he sustained, as well as the cost that he incurred in order to obtain treatment for those injuries.

605. As the direct and proximate result of the conspiracy by the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount of Three Million (\$3,000,000.00) Dollars, including, without limitation, the special damages described in Paragraph 604.

606. The conduct of the Defendants was willful, wanton, reckless and malicious, amounting to conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

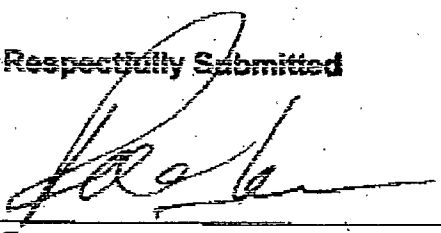
PRAYER

WHEREFORE, the Plaintiff, Matthew S. McAlhaney, prays that the Court inquire into the facts and matters alleged herein; and

- (a) Enter judgment, with respect to the First or Third Cause of Action, in favor of the Plaintiff and against the Defendants McElveen Senior, BCM and TGP in the amount of Five Million (\$5,000,000.00) Dollars, together with such punitive damages as may be awarded.
- (b) Enter judgment, with respect to the Second or Fourth Cause of Action, in favor of the Plaintiff and against the Defendants McElveen Senior, BCM, TGP, Linda McElveen and McElveen Junior in the amount of Five Million (\$5,000,000.00) Dollars, together with such punitive damages as may be awarded.
- (c) Enter judgment, with respect to the Fifth Cause of Action, in favor of the Plaintiff and against the Defendants McElveen Senior and Linda McElveen in the amount of Five Million (\$5,000,000.00) Dollars, together with such punitive damages as may be awarded.
- (d) Enter judgment, with respect to the Sixth Cause of Action, in favor of the Plaintiff and against the Defendants McElveen Senior, BCM, TGP, Linda McElveen, McElveen Junior and Byrd in the amount of Three

Million (\$3,000,000.00) Dollars, together with such punitive damages as
may be awarded.

Respectfully Submitted

By: 

Robert V. Mathison, Jr.
Special Counsel

J. THOMAS MIKELL, PC
Post Office Box 1727
Beaufort, South Carolina 29901
Telephone: (843) 524-2110
ATTORNEYS FOR PLAINTIFF

July _____, 2005

Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MATTHEW S. McALHANEY,)

Plaintiff,)

vs.)

RICHARD K. McELVEEN aka)

RICHARD K. McELVEEN, SR.,)

Individually and dba Battery Creek)

Marina, THE GREAT PUMPKIN, LLC,)

LINDA McELVEEN, RICHARD K.)

McELVEEN, JR., and BILLY JOE)

BIRD,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 05-CP-07-1430

SECOND AMENDED ANSWER

and COUNTERCLAIMS

of RICHARD K. McELVEEN, SR.

Defendant Richard K. McElveen, Sr., answering the Complaint of the Plaintiff Matthew S. McAlhaney, states as follows:

1. Defendant Richard K. McElveen (hereinafter McElveen, Sr.) denies each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified or explained.

2. Defendant McElveen, Sr. admits the allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint.

3. Defendant McElveen, Sr. admits so much of Paragraph 5 of the Complaint which states that he is a managing member, member, director, officer, general agent and/or employee of and for The Great Pumpkin, LLC (hereinafter "TGP"); however, Defendant expressly denies the remaining allegations of Paragraph 5 of the Complaint.

4. Defendant McElveen, Sr. admits the allegations contained in Paragraphs 6 and 7 of the Complaint.

5. Upon Defendant McElveen, Sr.'s information and belief the allegations of Paragraph 8 of the Complaint are true.

FOR A FIRST CAUSE OF ACTION

(Libel – Actionable Per Se)

6. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 5 as fully as if repeated herein.

7. Paragraph 101 of the Complaint requires no response.

8. In response to Paragraph 102 of the Complaint, Defendant McElveen, Sr. denies so much of the allegations which state that he was acting **“for TCP and for BCM”**, that said letter was **“vicious”** and that he was **“posing as a representative of a different business entity.”**

9. In response to Paragraph 103 of the Complaint, Defendant McElveen, Sr. lacks sufficient information to form a belief as to the veracity of so much of the allegation which states that **“ ‘the local realtor’ described was known to be the plaintiff,”** with regard to the word “known.” Defendant McElveen, Sr. admits the remaining allegations of Paragraph 103 of the Complaint.

11. In response to Paragraph 104 of the Complaint, Defendant McElveen, Sr. denies so much of the allegations which state that he was acting **“for TCP and for BCM”**, and that he caused the letter’s publication **“by exhibiting its content to individuals in and around Beaufort County, South Carolina.”**

12. Defendant McElveen, Sr. denies the allegations of Paragraphs 105, 106, 107, 108, 109 and 110 of the Complaint.

FOR A SECOND CAUSE OF ACTION

(Slander – Actionable Per Se)

13. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 12 as fully as if repeated herein.

14. Paragraph 201 of the Complaint requires no response.

15. Defendant McElveen, Sr. denies the allegations of Paragraph 202, 203, 204, 205, 206, 207, 208, 209 and 210 of the Complaint.

FOR A THIRD CAUSE OF ACTION
(Libel – Constitutional Claim)

16. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 15 as fully as if repeated herein.

17. Defendant McElveen, Sr., denies the allegation contained in Paragraph 301 of the Complaint in that it calls for a legal conclusion.

18. Paragraph 302 of the Complaint requires no response.

19. Defendant McElveen, Sr. denies the allegations contained in Paragraphs 303, 304, 305, 306, 307, and 308 of the Complaint.

FOR A FOURTH CAUSE OF ACTION
(Slander – Constitutional Claim)

20. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 19 as fully as if repeated herein.

21. Defendant McElveen, Sr., denies the allegation contained in Paragraph 401 of the Complaint in that it calls for a legal conclusion.

22. Paragraph 402 of the Complaint requires no response.

23. Defendant McElveen, Sr. denies the allegations contained in Paragraphs 403, 404, 405, 406, 407, and 408 of the Complaint.

FOR A FIFTH CAUSE OF ACTION
(Abuse of Process)

24. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 23 as fully as if repeated herein.

25. Paragraph 501 of the Complaint requires no response.

26. In response to Paragraph 502 of the Complaint, Defendant McElveen, Sr. admits that Linda McElveen reported the child's statements to the Beaufort County Sheriff's Office. The remaining allegations are denied, and accordingly strict proof thereof is demanded.

27. In response to Paragraph 503 of the Complaint, Defendant McElveen, Sr. denies so much of the allegations which states that "[a]s a result of the reports aforementioned..." plaintiff was arrested and Defendant denies the arrest was based solely on the reports mentioned in Paragraph 502 of plaintiff's Complaint.

28. In response to Paragraph 504 of the Complaint, Defendant McElveen, Sr. denies so much of the allegations which states that plaintiff "endured" having mug shots and fingerprints taken. Defendant admits the remaining allegations contained in Paragraph 504 of plaintiff's Complaint.

29. Defendant McElveen, Sr. denies the allegations of Paragraph 505 of the Complaint.

30. Defendant McElveen, Sr. admits so much of Paragraph 506 of the Complaint which states that he sought to obtain custody of his two grandsons. As to the remaining allegations of said paragraph, Defendant admits that one of the bases under which he sought custody was unfitness.

31. Defendant McElveen, Sr. lacks information sufficient to admit or deny the allegations of Paragraph 507 and accordingly demands strict proof thereof.

32. Defendant McElveen, Sr. denies the allegations of Paragraph 508, 509, 510, 511 and 512 of the Complaint.

**FOR A SIXTH CAUSE OF ACTION
(Conspiracy)**

33. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 32 as fully as if repeated herein.

34. Paragraph 601 of the Complaint requires no response.

35. Defendant McElveen, Sr. denies the allegations contained in Paragraphs 602 and 603 of the Complaint.

36. Defendant McElveen, Sr. denies the allegations contained in Paragraph 604 and further responds that said paragraph calls for a legal conclusion.

37. Defendant McElveen, Sr. denies the allegations contained in Paragraphs 605 and 606 of the Complaint.

**FOR A FIRST DEFENSE
(Truth)**

38. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 37 as fully as if repeated herein.

39. Further answering the Complaint and as a First Defense, Defendant alleges that any alleged libelous or slanderous statements were true or substantially true in all relevant respects.

**FOR A SECOND DEFENSE
(Failure to State a Claim)**

40. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 39 as fully as if repeated herein.

41. Further answering the Complaint and as a Second Defense, Defendant submits that the allegations of the Complaint do not state facts sufficient to constitute a cause of action against this Defendant. Accordingly, this Court should dismiss the Complaint against this Defendant.

**FOR A THIRD DEFENSE
(Punitive Damages)**

42. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 41 as fully as if repeated herein.

43. Further answering the Complaint and as a Third Defense, Defendant alleges that any award of punitive damages to plaintiff would violate the constitutional safeguards provided Defendant

by the due process clause of the Fourteenth Amendment of the United States Constitution and under the due process clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded to plaintiff.

**FOR A FOURTH DEFENSE
(Conditional or Qualified Privilege)**

44. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 43 as fully as if repeated herein.

45. Further answering the Complaint and as a Fourth Defense, Defendant alleges that any alleged libelous or slanderous statements were protected as either a conditional or qualified privilege. Therefore plaintiff is not entitled to any relief from Defendant.

**FOR A FIFTH DEFENSE
(Self-Publication)**

46. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 1 through 45 as fully as if repeated herein.

47. Further answering the Complaint and as a Fifth Defense, Defendant alleges plaintiff and/or others on behalf of plaintiff, published any alleged slanderous or libelous statements to third parties. Therefore the claims are barred under the doctrine of self-publication.

**COUNTERCLAIMS
(General)**

48. Plaintiff McAlhaney is, and at all times relevant herein, was a resident of Beaufort County, South Carolina.

49. Defendant and Third Party Plaintiff McElveen, Sr., is, and at all times relevant herein, was a resident of Beaufort County, South Carolina.

50. Michael J. McEachern ("McEachern") is the uncle of Plaintiff and a resident of Beaufort County, South Carolina.

51. The parties hereto and the subject matter herein are within the jurisdiction of this Court.

52. On or about June 6, 2004, McEachern, as an agent and/or servant, express and/or implied, of Plaintiff and acting within the scope of his authority from Plaintiff, caused to be typed and published without Defendant and Third Party Plaintiff McElveen, Sr.'s knowledge or consent, an eighteen (18) page letter addressed and sent to Hope Cottage of the Lowcountry, which included twenty-five (25) exhibits (hereinafter the "McEachern booklet").

53. The McEachern booklet, in addition to being published to Hope Cottage and its employees, was also published as indicated by the "cc" at the end of the letter to the following individuals and organizations, to-wit:

- a. Dianne [sic] Dewitt
- b. Scott Lee
- c. Riann Mihiylov
- d. SLED
- e. Sam Svalina, Jr.
- f. Elaine McElveen
- g. Dale McCullers
- h. P.J. Tanner
- i. Tom Williams
- j. Matt McAlhaney
- k. Prevent Child Abuse America
- l. South Carolina Court Administration
- m. Office of the Solicitor
- n. 60 Minutes
- o. South Carolina Bar Association
- p. Beaufort Bar Association
- q. James Galyean, Legislative Assistant to Senator Lindsay Graham
- r. Layth Elhassani, Legislative Assistant to Senator Ernst Hollings
- s. Catherine Ceips
- t. JoAnne Gilham
- u. William G. Herbkeresman
- v. Clementa C. Pinckney
- w. Scott H. Richardson

- x. Citizens Opposed to Domestic Abuse
- y. Child Abuse Prevention Association
- z. American Civil Liberties Union
- aa. Southern Poverty Law Center
- ab. Governor Mark Sanford

54. The McEachern booklet was further distributed and published by McEachern and Plaintiff to numerous and untold others in Beaufort County and elsewhere, including, but not limited to:

- a. Beaufort County Family Court during the course of Defendant and Third Party Plaintiff McElveen, Sr.'s custody case, in an attempt to harm Plaintiff's case and to assist Defendant and Third Party Plaintiff McElveen, Sr.'s former daughter-in-law's case;
- b. Beaufort County Sheriff's Office in an attempt to discredit Defendant and Third Party Plaintiff McElveen, Sr. and to gain advantage in McAlhaney's pending criminal cases and to harm Defendant and Third Party Plaintiff McElveen, Sr.'s Family Court case;
- c. Fourteenth Circuit Solicitor's Office in an attempt to discredit Defendant and Third Party Plaintiff McElveen, Sr., to gain advantage in McAlhaney's pending criminal cases, and to harm Defendant and Third Party Plaintiff McElveen, Sr.'s Family Court case;
- d. Port Royal Police Department;
- e. Captain Roger Karr;
- f. Beaufort Police Department;
- g. Chief Jeff Dowling; and
- h. Tam Wilson.

FOR A FIRST COUNTERCLAIM (Libel)

55. Defendant McElveen, Sr., realleges the allegations set forth in Paragraphs 48 through 54 as fully as if repeated herein.

56. The McEachern booklet was further distributed and published by Plaintiff McAlhaney and McEachern as a servant or agent, actual or apparent, of Plaintiff, to numerous and untold others in Beaufort County and elsewhere, as set forth in Paragraphs 53 and 54 above.

57. The McEachern booklet contained numerous false statements which are false and libelous per se regarding Defendant McElveen, Sr. including that Defendant McElveen, Sr. is a "pathological liar" and that Defendant McElveen, Sr. is a "liar when it comes to business dealings."

58. The McEachern booklet also contained numerous insinuations which are false and libelous per se, including the following:

- a. That Defendant McElveen, Sr. coached his grandson Jackson into disclosing that Plaintiff McAlhaney sexually abused him (Jackson);
- b. That Defendant McElveen, Sr. conspired with his wife to falsely report a crime;
- c. That Defendant McElveen, Sr. was "working the children relentlessly" to falsely report the sexual abuse committed by Plaintiff McAlhaney and thereby committing the crime of intimidation of a witness;
- d. That Defendant McElveen, Sr. was "working witnesses" "to get them to provide false sworn affidavits to the Family Court, and thereby committing the crimes of intimidation of a witness and suborning perjury;
- e. That Defendant McElveen, Sr. conspired with his wife to commit the crimes mentioned in (c) and (d) above;
- f. That Defendant McElveen, Sr. "coerced" a witness to provide false testimony in the form of a letter to the Family Court, and thereby committing the crime of intimidation of a witness;
- g. That Defendant McElveen, Sr. has induced a known disorder known as Parental Alienation Syndrome (PAS) in his grandchildren, and has indoctrinated them to falsely report abuse. By labeling Defendant McElveen, Sr. in this way, Plaintiff and McEachern have asserted the following actionable libelous statements about Defendant McElveen, Sr.
 1. That Defendant McElveen, Sr. is a child abuser;
 2. That Defendant McElveen, Sr. has emotionally abused and intimidated the children;
 3. That Defendant McElveen, Sr. has used "deceitful maneuvers" to denigrate the children's mother;
 4. That Defendant McElveen, Sr. has used "conscious fabrications" to inculcate PAS in the children;
 5. That Defendant McElveen, Sr. has deliberately programmed the children to profess denigratory complaints about their mother and Plaintiff which Defendant McElveen, Sr. fully knew was false;
 6. That Defendant McElveen, Sr. is "psychopathic" and suffers from paranoia.
- h. That Defendant McElveen, Sr. destroyed, impeded or attempted to obstruct or impede the administration of justice in a court of law.

59. The statements and insinuations described in Paragraphs 57 and 58 were utterly false and without merit.

60. The statements described in Paragraphs 57 and 58 were defamatory on their face, and because they were written or typed, they constitute libel.

61. The statements described in Paragraph 57 are actionable per se because they impugn and impeach the honesty, integrity and/or reputation of Defendant McElveen, Sr. in his business affairs, thereby exposing him to public hatred, ridicule and contempt, causing him to be shunned and avoided and to injure him in his business and occupation, in the estimation of his community, friends, and acquaintances.

62. The statements described in Paragraph 58 are actionable per se because they involve the allegations of crimes of moral turpitude and impugn and impeach the honesty, integrity and/or reputation of Defendant McElveen, Sr. thereby exposing him to public hatred, ridicule and contempt, cause him to be shunned and avoided and injure him in his business and occupation, in the estimation of his community, friends, and acquaintances.

63. Because the statements described in Paragraphs 57 and 58 are libelous per se, damages to Defendant McElveen, Sr. and malice by Plaintiff are presumed as a matter of law.

64. As the direct and proximate result of Plaintiff McAlhaney's conduct, Defendant McElveen, Sr. has been injured and damaged in the following ways, to-wit:

- a. Damage to personal and professional reputation;
- b. Embarrassment;
- c. Loss of business profits; and
- d. Mental distress and suffering
- e. Permanent damage to Defendant McElveen, Sr.'s business

65. As the direct and proximate result of Plaintiff McAlhaney's conduct, Defendant McElveen, Sr. is entitled to recover actual damages for the injuries described in Paragraph 64, in an amount to be determined by the trier of fact.

66. Plaintiff McAlhaney's conduct described above amounts to intentional, willful, wanton, malicious and reckless disregard for Defendant McElveen, Sr.'s rights and therefore entitles Defendant McElveen, Sr. to recover punitive damages in an amount to be determined by the trier of fact.

**FOR A SECOND COUNTERCLAIM
(Invasion of Privacy)**

67. The allegations contained in Paragraphs 48 through 54 are realleged as if repeated verbatim herein.

68. The aforementioned McEachern booklet further contained certain information which unnecessarily exposed to the public Defendant McElveen, Sr. private matters and affairs, including the following:

- a. That Defendant McElveen, Sr. was arrested for criminal domestic violence and describing same as "an extremely violent occasion...with Rick throwing his wife to the floor and kicking her, turning over furniture and breaking glass and terrifying his own daughter..."
- b. That during Defendant McElveen, Sr.'s previous marriage, there were "[r]outine beatings, threats with loaded weapons" by Defendant McElveen, Sr. against his former wife;
- c. That according to Defendant McElveen, Sr.'s former employee, Defendant McElveen, Sr. "frequently bragged about his wife's living in terror of him";
- d. That Defendant and Third Party Plaintiff McElveen, Sr. failed to pay court ordered child support, which led to his former wife's eviction from her home;
- e. That Defendant McElveen, Sr. alleged that his former daughter-in-law had carried on an affair with another man;
- f. That Defendant McElveen, Sr. wrote a letter to Governor Mark Sanford expressing concern that Sanford's sister-in-law had written a letter in support of Defendant McElveen, Sr.'s former daughter-in-law, which was utilized by her lawyer in court to suggest that she was endorsed by someone associated with the Governor, thereby implying that said endorsement carried the weight of the Governor's office; and
- g. Numerous documents pertaining to Defendant McElveen, Sr.'s personal life and affairs.

69. That the disclosures of private facts contained in Paragraph 67 above unreasonably and seriously interfered with Defendant McElveen, Sr.'s interest in not having his affairs known to others.

70. That the aforementioned disclosures related to matters not of public interest or legitimate public concern, and were publicized and published by Plaintiff and others to an untold number of people, entities and organizations described in Paragraphs 53 and 54 above, and to persons unknown in the general public.

71. That the aforementioned disclosures were further published and publicized to the Beaufort County Family Court during the course of Defendant McElveen, Sr.'s custody action, in an attempt to harm Defendant McElveen, Sr. case and to assist Defendant McElveen, Sr.'s former daughter-in-law's case.

72. That the aforementioned disclosures were further published and publicized to the Beaufort County Sheriff's Office and the 14th Circuit Solicitor's Office in an attempt to discredit Defendant McElveen, Sr. and to gain advantage in Plaintiff pending criminal cases.

73. That Plaintiff's disclosures were offensive to Defendant McElveen, Sr. and would be offensive to a reasonable person.

74. That as a direct and proximate result of Plaintiff's disclosures described above, Defendant McElveen, Sr. has become the subject of public curiosity, ridicule and gossip in the community, his business and personal affairs have been adversely affected, and Defendant McElveen, Sr. has sustained injuries and damages, including:

- a. Injury to his reputation, personal and professional;
- b. Mental shock, distress and suffering
- c. Additional attorney's fees in litigating the child custody case
- d. Loss of business profits
- e. Permanent damage to Defendant McElveen, Sr.'s business

75. That as a direct and proximate result of the actual injuries and damages described in Paragraph 73 above, Defendant McElveen, Sr. is entitled to recover damages in an amount to be determined by the trier of fact.

76. That because the aforementioned conduct of Plaintiff was willful, wanton, malicious and reckless, and constitutes a conscious disregard for the Defendant McElveen, Sr.'s rights, Defendant McElveen, Sr. is entitled to an award of punitive damages, in an amount to be determined by the trier of fact.

**FOR A THIRD COUNTERCLAIM
(Slander)**

77. Defendant McElveen, Sr. realleges the allegations set forth in Paragraphs 48 through 51 as fully as if repeated herein.

78. Plaintiff has made the following statements regarding Defendant McElveen, Sr.:

- a. The Defendant McElveen, Sr. is a child abuser;
- b. The Defendant McElveen, Sr. is a liar with regard to his business dealings;
- c. The Defendant McElveen, Sr. fabricated his grandson's disclosure of physical and sexual abuse by Plaintiff and falsely reported same to law enforcement;
- d. That Defendant McElveen, Sr. intimidated witnesses in the Family Court custody case;
- e. That Defendant McElveen, Sr. destroyed, impeded and/or attempted to obstruct or impede the administration of justice in a court of law; and
- f. That Defendant McElveen, Sr. committed adultery with his former daughter-in-law.

79. Plaintiff caused the publication of said statements by uttering them to numerous members of the public, including some of Defendant McElveen, Sr. friends, acquaintances and business associates.

80. The statements outlined in Paragraph 77 were false and defamatory on their face.

81. The statements outlined in Paragraph 77 are slanderous *per se* because they:

- a. Charge the commission of crimes involving moral turpitude; and
- b. Allege dishonesty with Defendant McElveen, Sr. conduct of his trade and business.

82. The statements contained in Paragraph 77, because they were spoken in person and/or over the telephone, constitute slander.

83. Because the statements outlined in Paragraph 77 are slanderous *per se*, general damages to Defendant McElveen, Sr. and malice by the Plaintiff are presumed as a matter of law.

84. As a direct and proximate cause of Plaintiff's conduct, Defendant McElveen, Sr. has been injured and damaged in the following ways, to-wit:

- a. Damage to personal and professional reputation;
- b. Embarrassment;
- c. Loss of business profits;
- d. Mental distress and suffering; and
- e. Permanent damages to Defendant and Third Party Plaintiff McElveen, Sr.'s business

85. As the direct and proximate result of Plaintiff's conduct, Defendant McElveen, Sr. is entitled to recover actual damages for the injuries described in Paragraph 83, in an amount to be determined by the trier of fact.

86. Plaintiff's conduct described above amounts to intentional, willful, wanton, malicious and reckless disregard for Defendant McElveen, Sr.'s rights and therefore entitles Defendant McElveen, Sr. to recover punitive damages in an amount to be determined by the trier of fact.

Wherefore, having fully answered the Complaint of the Plaintiff, Defendant Richard K. McElveen, Sr., respectfully requests that this Court dismiss said action. Defendant McElveen, Sr. further requests that the Court inquire into the facts and matters contained in Defendant's Counterclaims and:

- A. Award Defendant McElveen, Sr. general damages in an amount to be determined by the trier of fact;
- B. Award Defendant McElveen, Sr. special damages in an amount to be determined by the trier of fact;

- C. Award Defendant McElveen, Sr. punitive damages in an amount to be determined by the trier of fact;
- D. Award Defendant McElveen, Sr. the costs and attorneys' fees associated with this action in an amount to be determined by the trier of fact;
- E. Award Defendant McElveen, Sr. such other relief as the Court determines is reasonable and necessary under the circumstances of this case.

Scott W. Lee
Attorney for Defendant Richard McElveen, Sr.
P.O. Box 2124
Beaufort, SC 29901
(843) 986-9030

Beaufort, South Carolina

_____, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	
MATTHEW S. MCALHANEY,	)	C/A No.: 2007-CP-07-2373
Plaintiff,	)	
	)	
-versus-	)	DEFENDANTS RICHARD K. MCELVEEN, SR., LINDA
	)	MCELVEEN AND RICHARD K. MCELVEEN, JR., S
	)	MOTIONS FOR JNOV, NEW TRIAL ABSOLUTE
	)	AND NEW TRIAL NISI REMITTITUR
RICHARD K. MCELVEEN a/k/a	)	
RICHARD K. MCELVEEN, SR.,	)	
Individually and d/b/a BATTERY	)	
CREEK MARINA, THE GREAT	)	
PUMPKIN, LLC, LINDA	)	
MCELVEEN, RICHARD K.	)	
MCELVEEN, JR., and BILLY JOE	)	
BYRD,	)	
Defendants.	)	
RICHARD K. MCELVEEN, SR.,	)	
Defendant	)	
	)	
-versus-	)	
	)	
MICHAEL J. MCEACHERN,	)	
Additional Party on the	)	
Counterclaims,	)	
	)	

Defendants Richard K. McElveen, Sr., Linda McElveen and Richard K. McElveen, Jr., individually and collectively, hereby move the Court pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and the applicable state law, for a New Trial JNOV, New Trial Absolute and New Trial Nisi Remittitur on the following grounds:

AS TO PLAINTIFF'S CAUSES OF ACTION:

1. For a new trial on the grounds that the trial judge erred in failing to remedy his instruction to the jury that the statutory immunity for a person reporting suspected child abuse does not apply if the statement is fabricated. Defendants are informed and believe that such an instruction improperly suggested that if the child's disclosure was determined to later be untrue, even if the child made the disclosure,

that a jury could interpret a good faith reporting to law enforcement as outside the scope of the immunity and assess liability to the reporter(s).

2. For a new trial on the grounds that the trial judge improperly charged the jury that a person's conduct is willful, wanton or reckless, for the purposes of assessing punitive damages, if an ordinary, reasonable person would have checked further before reporting a child's disclosure.
3. For a new trial on the grounds that the trial judge failed to adequately remedy Plaintiff's counsel eliciting testimony regarding defendants' counsel's statements and actions, after repeated admonishments to refrain from doing so. Defendants are informed and believe that they were unable to refute the scurrilous accusations because their lawyer was unable to act as a witness and an advocate in the trial, and that they were irreparably prejudiced thereby.
4. For a new trial on the grounds that the trial judge failed to adequately remedy Plaintiff's counsel for repeatedly "attacking" the judicial system, including in his closing argument, after the trial judge had previously admonished him from same, and specifically instructed all counsel at a sidebar that he would not allow any such argument from that point forward.
5. For a new trial on the grounds that the trial judge failed to direct a verdict in defendants' favor at the close of Plaintiff's case and at subsequent times the motion was renewed.
6. For a new trial on Plaintiff's civil conspiracy claim against McElveen, Jr. on the grounds that (1) the jury failed to offset the uncontroverted amount of \$300 paid to Plaintiff as criminal restitution, (2) included \$500 in damage to Plaintiff's car as damages under a civil conspiracy to commit assault and battery cause of action against Plaintiff, and (3) found against Defendant McElveen, Jr. and in favor of his alleged co-conspirator, Defendant Byrd.
7. For a new trial on the grounds that the verdicts were so excessive that the Court, sitting as the "thirteenth juror", should set aside the verdicts.
8. For a new trial on the grounds that the evidence does not justify the verdict and that the Court, sitting as the "thirteenth juror", should set aside the verdicts because justice was not served by the verdict, and the evidence did not justify the result. See

Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007), citing Trivelas v. S.C. Dep't. of Transp., 357 S.C. 545, 593 S.E.2d 504 (2004).

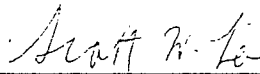
9. For a new trial absolute on the grounds that the verdicts were so excessive, so as to shock the conscience of the court and clearly indicate that the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, See Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007), and to the extent the awards are grossly excessive, they further no legitimate purpose and constitute an arbitrary deprivation of property. See Mitchell v. Fortis Insurance Company, 686 S.E.2d 176 (2009).
10. For a new trial *nisi remittitur* on the grounds that the verdicts were unduly excessive.
11. For a new trial *nisi remittitur* on the grounds that the verdicts were so excessive that they were attenuated by passion, caprice or prejudice.

AS TO DEFENDANT MCELVEEN, SR.'S CAUSES OF ACTION:

1. For a new trial as to Defendant McElveen, Sr.'s slander cause of action against Plaintiff on the grounds that the evidence does not justify the verdict and that the Court, sitting as the "thirteenth juror", should set aside the verdict because justice was not served by the verdict, and the evidence did not justify the result. See Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007), citing Trivelas v. S.C. Dep't. of Transp., 357 S.C. 545, 593 S.E.2d 504 (2004).
2. For a new trial as to Defendant McElveen, Sr.'s slander cause of action against Plaintiff on the grounds set forth above with regard to Plaintiff's causes of action, under the equitable theory that the extremely excessive verdicts shock the conscience of the Court to such an extent so as to taint the legitimacy and fairness of the verdict under the "fruit of the poisonous tree" doctrine.
3. For a new trial as to Defendant McElveen, Sr.'s libel cause of action against Additional party McEachern on the grounds that the evidence does not justify the verdict and that the Court, sitting as the "thirteenth juror", should set aside the verdict because justice

was not served by the verdict, and the evidence did not justify the result. See Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007), citing Trivelas v. S.C. Dep't. of Transp., 357 S.C. 545, 593 S.E.2d 504 (2004).

4. For a new trial as to Defendant McElveen, Sr.'s libel cause of action against Additional Party McEachern on the grounds set forth above with regard to Plaintiff's causes of action, under the equitable theory that the extremely excessive verdicts shock the conscience of the Court to such an extent so as to taint the legitimacy and fairness of the verdict under the "fruit of the poisonous tree" doctrine.



Scott W. Lee
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Beaufort, South Carolina

January 21, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-2373

Matthew S. McAlhaney, ... Respondent,

v.

Richard K. McElveen a/k/a Richard
K. McElveen, Sr., Individually and
d/b/a Battery Creek Marina, The Great
Pumpkin, LLC, Linda McElveen, Richard
K. McElveen, Jr., and Billy Joe Byrd, ... Defendants,

of whom Richard K. McElveen, Sr., is the Appellant.

MOTION TO REMAND AND
RECONSTRUCT THE RECORD

This motion is filed pursuant to Rule 240 (motions and petitions generally) of the South Carolina Appellate Court Rules.

This is an appeal in a civil action for money damages. Richard K. McElveen, Sr., is the appellant and was a defendant at trial. The case was tried to a jury in Beaufort County in January of 2010. The trial began Monday, January 11th and concluded Friday, January 15th. The jury found against Mr. McElveen on causes of action for libel, slander, and abuse

of process, and the jury awarded substantial damages. On July 1, 2010—about six months after the verdict—the trial court issued a written order denying Mr. McElveen’s motion for a new trial absolute and granting Mr. McElveen’s motion for a new trial *nisi remittitur*. Mr. McElveen served notice of this appeal on July 29, 2010.

This motion arises out of the fact that the parties to this appeal have been unable to secure a complete transcript of the trial proceedings.

Mr. McElveen is in possession of two partial transcripts. The first is a complete transcript from the first day of trial (January 11). The second transcript begins the morning of the second day (January 12) and ends during the proceedings on fourth day (January 14). By way of a letter to the Clerk of this Court dated October 20, 2011, Court Administration advised that these partial transcripts are all that can be produced. See **Attachment 1**.

In the interest of completeness, the Court should also be aware of the fact that the transcript from the second, third, and part of the fourth days of trial is incomplete. There are approximately 150 notations in this transcript indicating that the court reporter’s notes were too poor to allow a transcription of something from trial. For example, **Attachment 2** contains the arguments and rulings on motions made after the close of the plaintiff’s case. As those excerpts illustrate, there are substantial gaps in this transcript.

The appellate court’s authority to remand a case for reconstructing the missing portions of a trial record has been recognized in several cases including this Court’s decision in *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) and the Supreme Court’s decisions in *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) and *China v. Parrott*, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968).

As this motion describes, the transcript that has been provided does not contain a complete record of—to take one example—the arguments and rulings on the directed verdict motions at the close of the plaintiff's case. Also, there is no record at all for the remainder of the proceedings from the fourth day of trial, or any of the proceedings on the fifth and final day of trial. Among other things, these days included the parties' closing arguments, closing motions, and the judge's charges to the jury.

Although reconstructing a detailed record may be impossible—this case was tried nearly two years ago—the cases cited on the previous page of this motion instruct that a remand for a hearing is the appropriate vehicle for exploring this issue. In considering this request, the Court may wish to note that it will likely take some time to coordinate the schedules of the trial judge and the trial lawyers for a remand hearing, and that it might also be helpful to allow a sufficient amount of time for these participants to re-familiarize themselves with this case in advance of the hearing.

April 23, 2012

Respectfully submitted,



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John S. Nichols, SC Bar # 4216

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Attorneys for Appellant

ATTACHMENT 1



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
PHONE: (803) 734-1800
FAX: (803) 734-0269

October 20, 2011

The Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

In re: McAlhane v. McElveen

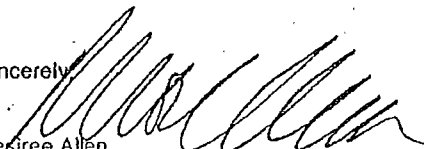
Dear Ms. Gee:

I am writing in response to a copy of a letter to Court Administration dated September 9, 2011 authored by Mr. Blake A. Hewitt.

Mr. Hewitt's letter correctly advises that Court Administration was investigating the issue regarding the transcript from the trial of this case. The court reporter responsible for recording the proceedings and production of the transcript, Priscilla Nay, is no longer employed by the Judicial Department and was required to deliver her records to this office. The records received from Ms. Nay did not include any additional materials to produce a trial transcript. Therefore, the transcripts that were provided by Ms. Jordan and Ms. Sigwald are all that can be produced.

We have exhausted all avenues and resources available to us to locate and secure any additional material to produce any remaining portions of this trial transcript. We regret the inconvenience to all parties.

Sincerely,


Desiree Allen
Court Reporter Manager

The Honorable J. Ernest Klnard, Jr.
Rosalyn Frierson, Director
Motte Talley, Assistant Director
Blake A. Hewitt, Esq. ✓
Robert V. Mathison, Jr., Esq.

ATTACHMENT 2

1 at ease for a little bit.

2 (WHEREUPON a short recess was observed.)

3 MR. LEE: Judge, you want to hear directed
4 verdict motions now or after we take a break.

5 THE COURT: I was ready now. Lord knows I
6 assumed you forfeited them all, but make your motions.

7 MR. LEE: Judge, the first directed verdict
8 motion that we would make is for a directed verdict as to
9 the cause of actions at Battery Creek Marina and Greg
10 Pimpkin LLC.

11 THE COURT: Granted. There was no evidence
12 about it, so there you go.

13 MR. LEE: The next directed verdict motion we
14 would make, Your Honor, is as to Linda and Rick McElveen,
15 Sr. Well, really as to all four defendants, Junior,
16 Senior, Billy Joe Byrd and Linda McElveen on the civil
17 conspiracy cause of action. There has been no question
18 (unable to transcribe due to quality of reporter's notes)
19 testimony.

20 THE COURT: It is pretty weak. I can't grant
21 it. His whole theory is he's -- doctor (unable to
22 transcribe due to quality of reporter's notes) or
23 somebody of course (unable to transcribe due to quality
24 of reporter's notes) is whole thing and mother talks to
25 him, you know, to get a -- get a chance to hammer him,

1 not what she said, but that's his theory and that's
2 circumstantial -- unless you just wanted to drop it.

3 MR. MATHISON: No, sir, I don't want to drop
4 it.

5 THE COURT: He doesn't want to drop it so he
6 goes forward. Circumstantial and pretty weak, that's
7 neither here nor there.

8 MR. LEE: Your Honor, the next directed
9 verdict motion would be based upon the statutory immunity
10 that we need as to reports of alleged abuse. They do
11 have --

12 THE COURT: They do have and unfortunately I
13 can't grant it. His -- his theories -- and he even said
14 that the plaintiff --

15 MR. LEE: (Unable to transcribe due to
16 quality of reporter's notes) of good faith --

17 THE COURT: Questions of (that was questions
18 of good faith up there.) Good faith.

19 MR. LEE: Yes, sir.

20 THE COURT: You know, taking her testimony as
21 such normal case, we'd just throw it out against her
22 anyway, but we can't do it now. But to be absolutely
23 clear, the jury will be instructed that if she was -- if
24 a child reported to her, she was duty-bound to report it
25 even though she -- they may have -- I'm not going on even

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

2007-CP-07-2373

Matthew S. McAlhaney,)

Plaintiff,)

v.)

Richard K. McElveen, Sr., et al)

Defendant.)

Transcript of Record

VOLUME I

January 11, 2010
Beaufort, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge and a jury

A P P E A R A N C E S:

Robert V. Mathison, Jr., Esquire
Thomas J. Mikell, Esquire
Attorneys for the Plaintiff

Scott Lee, Esquire
Morgan Templeton, Esquire
Trey Watkins, Esquire
Attorneys for the Defendants

Hilda M. Jordan, CVR
Circuit Court Reporter

I N D E XWITNESS/DESCRIPTION PAGE NO.

TESTIMONY IN ORDER OF APPEARANCE:

Kurt Ellenberger Direct..... 93

Kurt Ellenberger Cross..... 106

Kurt Ellenberger Cross..... 107

Kurt Ellenberger Redirect..... 108

Jan Szelewa Direct..... 109

Jan Szelewa Cross..... 117

Jan Szelewa Cross..... 123

Julia Sanford Direct..... 126

Julia Sanford Cross..... 137

EXHIBITS:

Court's Exhibit No. 1 106

Plaintiff's Exhibit No. 1 133

Plaintiff's Exhibit No. 2 142

Certificate of Court Reporter 145

1 THE COURT: Madam Clerk, how many jurors do we have
2 left?

3 THE CLERK: Fifty-one, Your Honor.

4 THE COURT: All right. Okay, attorneys, do you want to
5 go with the jurors that are out here or do you want to wait
6 for the rejects from the jury down the hall?

7 That's up to y'all.

8 MR. MATHISON: Your Honor, I think the plaintiff would
9 prefer a full panel.

10 THE COURT: All right. You'll have to wait until they
11 get through picking. All right. I don't know how long
12 that might be. I have no idea.

13 (Pause.)

14 THE COURT: Attorneys, are any of the witnesses
15 present?

16 MR. LEE: Yes, sir.

17 MR. MATHISON: Yes, sir.

18 THE COURT: They're all present?

19 MR. MATHISON: Not all of them. A couple of mine are
20 on the way, Your Honor.

21 THE COURT: All right.

22 (Pause.)

23 THE COURT: All right. Attorneys, everybody is not
24 here, but here's what we're going to do. I let y'all make
25 a choice at one time, which was not a good choice. We

1 should have gone ahead, but that's fine. Y'all don't get
2 any more choices.

3 Here's the deal. We're going to pick -- print out, as
4 soon as they all get in here, a list of 40, because of the
5 multiple parties and everything, of course, you have 12
6 strikes and then we have -- we're getting one alternate.
7 Okay. We will take a unanimous decision of the survivors.
8 You aren't getting two or three alternates. You aren't
9 tying up everybody on this case. If y'all don't like that,
10 if they fall away, you want to take a unanimous decision,
11 we can just have a mistrial and try it again. I'm not
12 wasting any more time selecting jurors. It's going to take
13 a long time to pick this jury.

14 MR. TEMPLETON: We're ready to go, Your Honor.

15 THE COURT: Well, we're waiting for the rejects.

16 But on the 40, if somebody disqualifies, y'all will
17 just -- we'll just all strike through that name, and we'll
18 go on down. Initial 12 will be from the first 20 who are
19 not removed. All the way down.

20 I'm going to ask some questions that aren't on y'all
21 strike list that might result in people being disqualified,
22 but we'll deal with it.

23 MR. TEMPLETON: Judge, I'm not sure whether I handed up
24 my voir dire or not.

25 THE COURT: Okay. That's all.

1 (Pause.)

2 MR. LEE: May I please the Court.

3 THE COURT: Okay.

4 MR. LEE: Joining with Mr. Templeton's voir dire. Just
5 adding additional witnesses to those he had.

6 THE COURT: All right..

7 THE COURT: Okay, Jurors, everybody's now here. We're
8 going to select a jury on the trial of a civil case. As
9 I'm speaking the computer is shuffling your names up, and
10 we're going to come out with a list of 40 and start from
11 there.

12 What happens is that each side gets so many strikes.
13 Bottom line is they have 12 strikes plus three for one
14 alternate. It takes a lot of names on the list to start
15 with. Like if your juror number is 17, you might be three
16 on the list, might not even be on the list. So when they
17 strike they'll strike by the list that Mike is generating
18 right now, not your juror number.

19 Now, this is not a case that we're going to finish
20 today, tomorrow. We think we'll finish it this week. Talk
21 to the attorneys about it. We just have lots of witnesses.

22 It's going to take a while to get y'all qualified
23 because of the issues involved, and you're going to have to
24 answer some questions.

25 Bottom line, this litigation goes back a while. We've

1 had a couple governors, presidents since it started. It
2 started years ago. If you get on the jury it will be
3 explained to you.

4 Bottom line, this is an action brought by Matthew
5 McAlhaney. He's called the plaintiff. He brings it
6 against Richard K. McElveen, also know as Richard K.
7 McElveen, Senior, individually and doing business as
8 Battery Creek Marina, The Great Pumpkin, LLC, Linda
9 McElveen, Richard K. McElveen, and someone named Billy Joe
10 Byrd, who is not a M-c name. All right.

11 Now, I'm not getting into any of the facts at this
12 point. I can just tell you that the action started as a
13 result of a custody dispute between a Molly McCullers
14 McElveen, who is not a party to this litigation, and
15 Richard McElveen, Senior, over custody of some
16 grandchildren and other individuals got involved. There's
17 also a third-party claim where Mr. McElveen brings a suit
18 against someone named Michael McEachern. All right.

19 As a result of many things, if you get on the jury it
20 will be explained to you. Various causes of action, which
21 are legal theories brought against the parties,
22 counter-claims are brought, actions against third-parties.
23 They involved actions for defamations, that's liable and
24 slander. That's where someone says something orally or
25 written that hurts someone's reputation, among other

1 things. Actions brought for abuse of process because
2 individuals were arrested and so forth, some of them during
3 the course of all this, and an action is brought for
4 conspiracy, conspiracy to cause assault to be committed,
5 and so forth. That's what the actions will be about.

6 It all goes back to starting with a custody dispute
7 and individuals getting involved. It doesn't have anything
8 to do with what happened in family court, although I
9 shouldn't say that because I don't know. It's been
10 on-going for a long time.

11 All right. These are the parties. Anybody who is
12 related to anybody that I mentioned, from a party
13 standpoint or subsequently a witness standpoint, and there
14 are lots witnesses, I'm going to need for you to stand, and
15 if you don't mind telling us how you are involved or know
16 the individual whose name is mentioned, if you would just
17 tell us that.

18 So if the parties whose names I call, or any witness
19 whose names I call are present, I would just ask for them
20 to stand.

21 Matthew McAlhaney.

22 MR. MCALHANEY: Yes, Your Honor.

23 THE COURT: Just stand.

24 Jurors, does he look familiar, anybody kin to him,
25 anybody worked with him, know him at all? If so, please

1 just stand.

2 (Jurors stand.)

3 THE COURT: You can have a seat.

4 If you can tell me --

5 JUROR NO. 177: Charles Sexton, Juror No. 177. I know
6 Matt from a business relationship.

7 THE COURT: Can you be fair and impartial is the bottom
8 line?

9 JUROR NO. 177: Yes, sir.

10 THE COURT: Thanks.

11 JUROR NO. 150: Lynn Patterson, Juror No. 150. I know
12 him on a social basis.

13 THE COURT: Each time you've given us information if
14 you can be fair and impartial, just have a seat, otherwise
15 just say no, I can't be fair and impartial and we won't put
16 you on the jury.

17 Okay. You can have a seat.

18 Mr. McAlhaney, you can have a seat.

19 All right. Richard McElveen, Senior. Same thing
20 jurors. Long lost cousin, anything?

21 (Jurors stand.)

22 THE COURT: Yes, ma'am.

23 JUROR NO. 136: Same thing. Yes, sir, I can be fair
24 and impartial.

25 THE COURT: You need to always tell us your name?

1 JUROR NO. 136: Sharon Moore, Juror No. 136.

2 THE COURT: Thanks. All right, you can have a seat.

3 All right. Anybody else?

4 Richard McElveen, Junior. Over there. Think deep

5 now. Third cousin, twice removed. Anything, any

6 connection.

7 All right, you can have a seat.

8 (No one stands.)

9 THE COURT: Linda McElveen.

10 (No one stands.)

11 THE COURT: Michael McEachern. You can have a seat.

12 (No one stands.)

13 THE COURT: Billy Joe Byrd.

14 (Juror stands.)

15 JUROR NO. 44: If it's the

16 Billy Joe Byrd I'm thinking about. I think it's probably

17 only one. He's been a friend of the family forever. A

18 close friend to my son. I love him dearly.

19 THE COURT: And your name is?

20 JUROR NO. 44: My name is -- I'm number 44. My name's

21 Linda Dupriest.

22 THE COURT: So you would rather not serve?

23 JUROR NO. 44: No, I just -- I really do like Billy

24 Joe. I mean, what can I -- I'm being honest. He's a

25 friend. He's a friend of my son's and I kind of look at

1 him as, maybe, you know, if he ever needed me like a
2 surrogate mother, I'd want to be there for him.

3 THE COURT: All right. Attorneys, do y'all want me to
4 strike her for cause or shoot her at sunrise?

5 MR. MATHISON: No, Your Honor, just leave her on.

6 THE COURT: Okay. Leave her on.

7 MR. MATHISON: Yes.

8 THE COURT: We're going to leave you on.

9 JUROR NO. 44: Good.

10 THE COURT: Thanks for telling us.

11 Jurors, do any of y'all have any connection with
12 Battery Creek Marina, ever visited there, ever done any
13 business with them, please stand.

14 (Juror stands.)

15 JUROR NO. 44: We used to have our boat there.

16 THE COURT: Okay.

17 JUROR NO. 44: Number 44, Linda Dupriest.

18 THE COURT: Okay, thanks.

19 Anybody have any connection with the Great Pumpkin,
20 LLC, and that's not the one that comes with Charlie Brown.

21 (No one stands.)

22 THE COURT: Now, I think that's all the parties. So
23 I'm going -- if you get on this case it's going to take a
24 while to know who the parties are, and who the attorneys
25 are. So we'll start with the plaintiff, plaintiff's

1 attorneys, if they will identify themselves?

2 MR. MATHISON: My name's Robert Mathison. I'm from
3 Hilton Head Island. I'm trying this case in association
4 with J. Thomas Mikell, P.C. This is Mr. Mikell, Tom
5 Mikell, here. We're the plaintiff's lawyers.

6 THE COURT: Jurors, any of the plaintiff's attorneys,
7 plaintiff being Matthew McAlhaney, ever represented you on
8 any legal matter or been on the other side of a controversy
9 in which you were involved, or do you have any
10 relationship, direct or indirect with either of those
11 attorneys?

12 (Jurors stand.)

13 JUROR NO. 47: Yes, sir, Juror No. 47, Berry Edwards.
14 Mr. Mathison and Mr. Mikell are representing a mutual
15 client. They have also threatened me with litigation,
16 therefore I believe I would have a difficult time being
17 impartial in their case.

18 THE COURT: Okay, that will get you off the case.

19 JUROR NO. 47: May I go, sir?

20 THE COURT: No, no. The rest of us can't go. You
21 have to wait.

22 JUROR NO. 47: That's fine.

23 JUROR NO. 177: Charles Sexton, 177. Mr. Mikell did
24 the closing on my house.

25 THE COURT: All right. Has it already been closed?

1 JUROR NO. 177: Yes, sir.

2 THE COURT: He does not represent you on any legal
3 thing?

4 JUROR NO. 177: No.

5 THE COURT: Okay. Thanks.

6 JUROR NO. 213: Larry Weidner. Mr. Mikell is my law
7 partner.

8 THE COURT: Let's put him on one of those capitol
9 cases.

10 MR. MIKELL: I didn't even know he was here today.
11 We've been looking for him back at the office.

12 THE COURT: We won't put you on the case. Conflicted
13 out.

14 JUROR NO. 16: Roy Bibbins, Juror No. 16. Mr. Mikell
15 has handled a number of probate type cases for us.

16 THE COURT: Here is the rule, not -- you know, if he
17 currently is handling something for you, you can't serve,
18 even though you can be fair and impartial. If what he has
19 done for you on an estate basis has been concluded --

20 JUROR NO. 16: Yes, sir.

21 THE COURT: -- then it's your call whether you can be
22 fair and impartial or not.

23 JUROR NO. 16: Yes, sir. I have no problem with that.
24 I just wanted to answer your question.

25 THE COURT: All right. Thank you. Okay, moving down

1 the line.

2 THE CLERK: Who was the gentleman who was excused?

3 COURT REPORTER: No. 47, I think.

4 THE COURT: Sir, do you know your number?

5 JUROR NO. 47: Yes, sir. No. 47.

6 THE COURT: Okay. Thank you.

7 THE CLERK: Thank you very much.

8 THE COURT: Okay, Mr. Lee?

9 MR. LEE: Hey. My name is Scott Lee. I'm a sole
10 practitioner here in Beaufort. I represent all the
11 defendants.

12 THE COURT: Same thing. Has Mr. Lee ever represented
13 you, been on the other side of a controversy in which you
14 were involved, or do you have any connection with him?
15 (Juror stands.)

16 THE COURT: All right. You're already off the case.
17 Moving on down the line.

18 MR. TEMPLETON: Good afternoon. My name is Morgan
19 Templeton. Trey Watkins is in my office, as well. I
20 practice in Charleston with a firm called Elmore and Wall.
21 The lawyers who are in that office are Mark Wall, Graham
22 Powell, Taylor Stair, Brown McLeod, Neil Haldrup.

23 THE COURT: Jurors, Mr. Templeton, any member of Elmore
24 and Wall ever represented you or have any connection with
25 any member of that firm, or if they've been on the other

1 side of a controversy in which you were involved?

2 (No one stands.)

3 THE COURT: All right. Jurors, we have a lengthy
4 witness list. I'm just going over the bare name at this
5 point. If you recognize the name or you know someone with
6 the same name or similar name, if you would stand up. The
7 attorneys can give you the background information.

8 Bobby Cooler.

9 JUROR NO. 136: Is that Bobby, Senior or Bobby Junior?

10 THE COURT: I don't know.

11 MR. MATHISON: Senior.

12 THE COURT: Senior. You know him?

13 JUROR NO. 136: I do know him.

14 THE COURT: Then you need to tell us your name and
15 number again?

16 JUROR NO. 136: Sharon Moore, No. 136.

17 THE COURT: I have no idea what he'll testify to, but
18 can you properly and fairly evaluate his testimony?

19 JUROR NO. 136: Yes, sir. I believe so.

20 THE COURT: Thank you.

21 JUROR NO. 5: Paul Bailey, Jr. Number 5. I used to
22 work for Mr. Cooler.

23 THE COURT: Thank you.

24 Christian --

25 THE CLERK: Wait --

1 COURT REPORTER: Wait Judge.

2 THE COURT: Yes, ma'am?

3 JUROR NO. 208: Jean Von Harten, No. 208. My husband
4 has dealt with Mr. Cooler over the years with boating
5 repairs.

6 THE COURT: Okay. Thank you.

7 Emmett Decker. Jan somebody. How you pronounce it?

8 MR. MATHISON: It's pronounced Szelewa or Szelewa.

9 THE COURT: Jan Szelewa.

10 Brian Biard, B-i-a-r-d, (sic) who is an officer
11 somewhere.

12 Matt Averill. Is that how you pronounce it?

13 MR. MATHISON: I believe it's Averill.

14 THE COURT: Averill. I'm just reading handwriting.
15 Hard for me to do.

16 Diane Dewitt.

17 JUROR NO. 136: Sharon Moore, 136. I do know Ms.
18 Dewitt.

19 THE COURT: Kendra McIlivee-Twitty. McIlivee-Twitty.
20 Esther Washington.

21 MR. MATHISON: Your Honor, as odd as it sounds, I
22 believe the actual name is Eather, E-a-t-h-e-r.

23 THE COURT: Okay. Angela McCall Tanner.

24 JUROR NO. 23: I know her from -- I'm sorry, No. 23,
25 Lori Butler. My husband and I are friends with Sheriff

1 Tanner.

2 THE COURT: Okay. Thank you.

3 Now, jurors, hopefully, everybody's names I'm reading
4 out won't testify, but you know, it's just particular
5 witnesses.

6 Donna Lang. Kurt Ellenberger, M.D. Dale McCullers.
7 Joel Bailey. David Hortman. D. Vincent Rhodes, M.D. Don
8 Chastain, Jr., M.D.

9 JUROR NO. 182: Juror No. 182, Charles Shissias. I
10 practice with Dr. Rhodes.

11 THE COURT: Thank you.

12 JUROR NO. 59: Tim Garvin, No. 59. Dr. Rhodes is my
13 primary care physician.

14 THE COURT: Okay.

15 JUROR NO. 124: He's my primary physician, too.

16 THE COURT: We need your number, ma'am?

17 JUROR NO. 124: Oh, I'm sorry. No. 124.

18 THE COURT: Thank you.

19 JUROR NO. 118: No. 118, Belton McCarty. Dr. Rhodes
20 is my physician.

21 THE COURT: Don Chastain, Jr., M.D. Amber Dodd.
22 Milton Kelly, Beth Shaw, Det. Jeff Vortish.

23 JUROR NO. 219: Juror No 219, Theresa Williams, I know
24 Mr. Vortish.

25 THE COURT: Julia Peters. Julia Sanford. Nell

1 McCullers, Ryan Miholov, Jack Garren, Jr., Jack Garren,
2 III.,

3 JUROR NO. 136: Juror No. 136, Sharon Moore. I know
4 Jack Garren, Sr., I believe it is.

5 THE COURT: Have you considered running for office?
6 Cheryl Ann Shan Wilson. Jeff Dowling, Chief.

7 JUROR NO. 136: No. 136, Sharon Moore. I know Cheryl.

8 THE COURT: Tom Davis. Judge Darlene Smith.

9 Attorneys, I was going over three lists now. Did I
10 catch everybody; is there anybody that I missed. They have
11 different names on different lists.

12 MR. LEE: Your Honor, I think you started to say
13 Christian Sherbert. I think you go --

14 THE COURT: Christian Sherbert.

15 JUROR NO. 124: I think Christian Sherbert was my
16 neighbor at one point.

17 THE COURT: And your number again, name and number?

18 JUROR NO. 124: Oh, I'm sorry. 124 Clara Menuhin
19 Hauser.

20 THE COURT: Okay. Jurors, have any of y'all heard
21 anything about this case. From what I just told y'all,
22 which is not much, doesn't count. Anybody ever had any
23 business dealings with Town and County Real Estate or the
24 Roof Doctor?

25 JUROR NO. 125: Sir, I have. Quite a while ago.

1 THE COURT: And your name and number?

2 JUROR NO. 125: Theresa Merchant, No. 125.

3 THE COURT: Thanks.

4 Jurors, if you currently or in the past have been a
5 member of the Beaufort Yatch Club?

6 If you or an immediate family member have ever,
7 jurors, been employed as a realtor or in the office of a
8 realtor or a mortgage broker?

9 JUROR NO. 59: No. 59, Timothy Garvin. I'm a licensed
10 real estate agent. Inactive status.

11 JUROR NO. 140: No. 140, Julia Musselman. I was
12 employed as a realtor ages ago.

13 THE COURT: All right.

14 JUROR NO. 208: Jean Van Harten, No. 208. I used to
15 sell real estate, but it's been quite a while ago.

16 THE COURT: Okay.

17 All right, jurors, on the next series of questions,
18 this is why it's going to take a while or maybe not. If
19 any of these questions, don't stand immediately, just wait
20 so nobody don't know what you're coming up here about. If
21 one of the questions I'm about to ask applies to you, I
22 need for you to come up one at a time, right over there.
23 The attorneys will be there, and you can just tell us about
24 it.

25 So the first question is if you have ever been

1 involved in child custody litigation, as a party or as a
2 witness. Hold it until I finish all the question so nobody
3 will know why you're coming up.

4 Jurors, if you have ever been involved in any dispute
5 -- that's just not like fussing, you know, just a real
6 bonafide dispute, as you would understand the term, and
7 some person not involved in the dispute intervened and you
8 didn't like it, the attorneys would like to know. It could
9 be civil litigation, it could just be a boundary dispute.
10 It could be anything, but if somebody who was not a party
11 to the dispute you and whoever it was intervened in a
12 manner, the attorneys would like to know. If you or to
13 your knowledge, any immediate family member has ever been
14 accused, that does not mean convicted, of child abuse in
15 any form, attorneys would like to know, and if, for any
16 reason you feel you couldn't be fair and impartial you can
17 come up and tell us.

18 Now, y'all can come up one at a time.

19 Attorneys, y'all can also come up. We'll do it over
20 here.

21 I need for y'all to turn the microphones off. No need
22 to bring them up if the microphone is on.

23 (On the record bench conference with counsel, the Court,
24 and the following jury panel members.)

25 THE CLERK: Yes, sir.

1 THE COURT: Okay.

2 THE CLERK: Your Honor, Juror No. 15, Mr. Beverly.

3 THE COURT: All right.

4 JUROR NO. 15: I didn't realize until after you called
5 everybody up, but I'm pretty good friends with McAlhaney
6 and his wife, they're sitting over there in the corner. I
7 didn't realize it until --

8 THE COURT: All right.

9 JUROR NO. 15: It wouldn't cause no problem, I don't
10 think.

11 THE COURT: You're pretty good friends with them you
12 don't need to be sitting over there.

13 MR. LEE: Which one?

14 JUROR NO. 15: Way over there in the striped shirt.

15 MR. LEE: Yeah.

16 THE COURT: What do y'all want to do? Suits me to let
17 him go.

18 MR. MATHISON: Fine with me.

19 THE COURT: Well, don't go home.

20 JUROR NO. 15: No, I'm going to sit down right back
21 out there.

22 THE COURT: You're a good sport.

23 THE CLERK: Your Honor, Juror No. 150, Ms. Patterson.

24 THE COURT: Okay.

25 JUROR NO. 150: I was a school administrator, and I

1 was accused of slapping a child. It was unfounded. And --
2 It was only investigated.

3 THE COURT: Okay. Thank you. May have similar
4 allegations here. Can you be fair and impartial about it?

5 JUROR NO. 150: Yes.

6 THE COURT: Okay. Now, attorneys, did y'all want to
7 ask her anything else?

8 THE CLERK: Your Honor, Juror No. 44, Ms. DuPriest.

9 JUROR NO. 44: My daughter -- was going through -- in
10 Nevada, and it was not a good case, and I don't have a lot
11 of faith in lawyers. I'm just being honest. I might have
12 a problem. Other than that, any other case --

13 MR. MATHISON: I'll excuse her.

14 MR. LEE: Excuse her.

15 THE COURT: Well, I offered to shoot her, but --

16 JUROR NO. 44: Oh, I know you want to shoot me.

17 THE COURT: Well, we won't put you on it, okay.

18 THE CLERK: Juror No. 59, Mr. Garvin, Your Honor.

19 JUROR NO. 59: I have a brother-in-law who was just
20 recently accused of sexually abusing one of my nephews.
21 He's an adult now. It happened when he was a kid.

22 THE COURT: Sure. Can you be fair and impartial?

23 JUROR NO. 59: Yes.

24 MR. MATHISON: What is the status of the case?

25 JUROR NO. 59: It's not a case. He's just accused by

1 a nephew. It's not going to court. He's not been
2 arrested.

3 MR. MATHISON: How old was the nephew?

4 JUROR 59: When it happened?

5 MR. MATHISON: Yes, sir.

6 JUROR NO. 59: About 11 or 12, maybe. He's probably
7 about 26 now. He's a drug addict, and all this has just
8 come out during rehab.

9 MR. LEE: Your brother's a drug addict?

10 JUROR NO. 59: No, no. The nephew is a drug addict.
11 It's my brother-in-law who was accused of it.

12 MR. LEE: Oh, okay.

13 MR. MATHISON: So your nephew accused your
14 brother-in-law?

15 JUROR NO. 59: Correct.

16 THE CLERK: Juror No. 184, Ms. Simmons, Your Honor.

17 JUROR NO. 184: About five or six years ago, I had one
18 kid -- and the DSS came to my -- and questioned me --
19 several weeks later it became unfounded, but I never heard
20 anything from the kid.

21 THE COURT: I won't ask you anything else?

22 MR. MATHISON: You had a report made against you?

23 JUROR NO. 184: Yes, sir.

24 MR. LEE: The fact that there was a report of abuse,
25 would that keep you from being fair and impartial in this

1 case?

2 JUROR NO. 184: No, sir.

3 THE CLERK: Juror No. 166, Mr. Rozek, Your Honor.

4 JUROR NO. 166: Well, four years ago, my sister's
5 daughter had a child removed by social services for 18
6 months. I was not directly involved in it. There were a
7 couple of cases that have gone on. I never had to testify
8 or be a part of it. The courts tried to drag us involved
9 in it.

10 MR. MATHISON: Was that the Sheppard case?

11 JUROR NO. 166: No. No.

12 THE COURT: Okay.

13 MR. MATHISON: From many years ago, the teacher?

14 JUROR NO. 166: No, no.

15 MR. MATHISON: Okay. Well, could you tell us again
16 what you said initially, the first --

17 JUROR NO. 166: My sister, four years ago, had a child
18 removed from the house for 18 months by social services.

19 MR. MATHISON: For abuse claims?

20 JUROR NO. 166: I am not aware of all the facts.

21 MR. MATHISON: Do you know whether it was founded or
22 whether it was --

23 JUROR NO. 166: Oh, well, the child was removed for 18
24 months. So something had to have happened. I know of
25 nothing.

1 MR. MATHISON: Okay.

2 JUROR NO. 166: My sister didn't tell me anything.

3 MR. MATHISON: Gotcha.

4 JUROR NO. 166: But for 18 months the child was -- two
5 years old, so for 18 months social services must have found
6 out something.

7 MR. MATHISON: Right.

8 JUROR NO. 166: My wife worked with social services in
9 her job, so obviously something --

10 MR. MATHISON: Gotcha.

11 JUROR NO. 166: -- had to have happened.

12 THE COURT: Okay. Thanks.

13 THE CLERK: Your Honor, Juror No. 198, Ms. Smith.

14 THE COURT: You're not on this jury so you can just
15 have a seat. I know you wanted to tell all, but that's all
16 right.

17 JUROR NO. 198: Just when I was younger my parents went
18 through a divorce and custody. It wasn't a court case. It
19 was decided out of court for me to stay with my mother.

20 MR. LEE: Will that keep you from being fair and
21 impartial?

22 JUROR NO. 198: I can do that.

23 THE COURT: Thanks.

24 THE CLERK: Juror No. 82, Mr. Inniss, Your Honor.

25 JUROR NO. 82: I have a very important appointment on

1 Thursday at 1:00 o'clock, and I would like to be excused on
2 that day.

3 THE COURT: Well, I don't know.

4 MR. LEE: I don't have any objection to that. We have
5 enough people out there.

6 MR. MATHISON: Just --

7 THE COURT: Don't put him on there. Just have a seat
8 back there.

9 (End of on the record bench conference with counsel, the
10 Court and jurors.)

11 All right, do y'all need anything else. Anything we
12 need to ask?

13 THE COURT: Do we have the strike list with the names
14 taken off?

15 THE CLERK: We have the strike list. Those three,
16 right, gentlemen?

17 There were three that y'all just excused, correct?

18 THE COURT: Yeah.

19 THE CLERK: Here's the three. They were excused.

20 THE COURT: Okay.

21 MR. MATHISON: You're going to give us a few minutes
22 to look at those?

23 THE COURT: Yeah.

24 Jurors, computer is going to whip out your names in
25 just a second, but then the attorneys want to look to see

1 who's in the first 30, so just be at ease for 15 minutes.

2 Y'all don't have to stay in there, but it will take them
3 that long to go over it. If you'd like to walk out you can
4 walk out.

5 (Court at recess for short break at 12:35 p.m.)

6 (Court in session after short break at 12:54 p.m.)

7 THE COURT: I checked with Judge Mullen, and with a
8 heavy heart, I have to tell y'all that if you don't get on
9 this jury you are through for the week.

10 If you don't get selected, and you need a statement
11 saying you were here -- and trust me, once the attorneys
12 come in we're only talking less than 10 minutes to get
13 everybody seated, which is why we aren't breaking for
14 lunch, making y'all come back that aren't going to get
15 picked.

16 If you need a statement saying you've been here today,
17 stop by the clerk's office, right down the hall and they
18 will give that to you. Your friendly clerk says she will
19 mail the checks, probably Friday. Checks will come out
20 about Friday, so they won't give you a check down there,
21 but they will say you were here, if you need it.

22 Normally, you have to call back in, but the civil
23 docket is not in bad shape. My name is Ernest Kinard. I
24 assume Judge Mullen told you I would be here. I'm from
25 Camden. I'm the longest serving circuit judge by five or

1 six years, been in all 46 counties. They send you around.
2 I've been chief here a couple of times over the years. I
3 was chief judge over civil here in 2000, and civil and
4 criminal in 2000. I was over the civil cases in 2007, at
5 which point, Beaufort County ranked dead last in age and
6 disposition in 46 out of 46 counties. I was just here six
7 months. When I left they were 10th place. A lot of it was
8 construction litigation and the attorneys would walk in,
9 and honestly have 25 lawyers. Condominium projects over on
10 Hilton Head. They'd say it's going to take three weeks to
11 try, Judge, and so forth and so forth. I just said, well,
12 tee it up, you know. I'm here anyway. And we knocked them
13 all out. So they brought me back last six months, July
14 1st, and I was over the civil cases again, and we knocked
15 out about everything. Some cases have to be tried, you
16 just can't resolve them.

17 I relinquished that civil duty, which is not just
18 Beaufort, it's five counties, you know, it's a lot of work,
19 but I'm still here because I'm over the criminal cases
20 which is much easier from a judge's standpoint. So -- you
21 don't have all those motions and things in criminal cases.
22 They just plead guilty or you give them a trial.

23 All right, Mr. Mathison, are you ready?

24 MR. MATHISON: Yes, sir.

25 THE COURT: And I represent I did not say anything

1 about the attorneys while you were out.

2 MR. MATHISON: Thank Your Honor.

3 THE COURT: Mr. Lee.

4 MR. LEE: Yes, sir.

5 THE COURT: Mr. Templeton, are you ready?

6 MR. TEMPLETON: Yes, sir.

7 THE COURT: And does it suit y'all to get one alternate
8 and go with the unanimous verdict of the survivors?

9 MR. LEE: Yes, sir.

10 MR. MATHISON: Yes, sir, it does.

11 MR. TEMPLETON: Yes, sir.

12 THE COURT: All right. We'll seat 13, and just out of
13 an abundance of caution since I didn't qualify you jurors,
14 it's difficult to try a case -- y'all heard the witness
15 list. You can plan, and things don't go on schedule. We
16 will finish the trial this week, but it may well be Friday.
17 Here's what happens, plaintiff's attorney or Mr. Lee lines
18 up five witnesses before lunch, and one of the witnesses is
19 coming from Ladys Island and, you know, a bridge is out and
20 they get stuck there 45 minutes, and we don't know. They
21 don't have a cell phone. We just have to send y'all back
22 and then a witness that you think is going to take 10
23 minutes ends up taking 45 minutes. So it's hard to run.

24 I don't get overtime like y'all don't. So we will try
25 to get out of here 5:30 to 6:00 every day. But I can't

1 promise any more than that, but I don't need a note coming
2 up saying I've got to pick up a child from daycare at 4:30
3 or we will be into next week.

4 Anybody in that situation, you should have told Judge
5 Mullen. She should have asked you about it. I don't know.
6 Once you get on this jury, you're with us, and we will try
7 to get you out of here as quick as we can, but we can't
8 stop a witness in mid-sentence, either.

9 All that being said, plaintiff is ready to strike.

10 MR. MATHISON: Yes, sir, Your Honor.

11 THE COURT: All right.

12 MR. MATHISON: Plaintiff strikes Juror No. 12.

13 MR. LEE: Defendant will strike No. 6, Your Honor.

14 MR. TEMPLETON: Defendant strikes No. 20.

15 MR. MATHISON: Plaintiff strikes No. 11.

16 MR. LEE: Defendant strikes No. 16.

17 MR. TEMPLETON: Defendant strikes 32.

18 THE COURT: Hold, hold. You're only striking one
19 through 20.

20 MR. TEMPLETON: Oh, I apologize, Judge. No. 18.

21 MR. MATHISON: Plaintiff strikes No. 4.

22 MR. LEE: We get two each, right?

23 THE COURT: You have four strikes.

24 MR. LEE: Defendant strikes No. 23.

25 THE COURT: You're striking from one through 20 to

1 start with. I'm going to put some lawyers in jail in a
2 second.

3 MR. LEE: The numbers aren't going to add up correctly,
4 Your Honor.

5 THE COURT: Yeah, they will. You strike --

6 MR. LEE: Four, four, and four is going to be --

7 THE COURT: You're right. You've got to go down
8 through 24.

9 MR. LEE: Yes, sir. We strike No. 23.

10 THE COURT: You can do it. You can put the judge in
11 jail.

12 THE CLERK: No. 23, Mr. Lee?

13 MR. LEE: Yes, sir.

14 MR. TEMPLETON: Strike No. 3.

15 MR. MATHISON: Plaintiff strikes No. 24.

16 MR. LEE: Defendant strikes No. 1.

17 MR. TEMPLETON: Defendant strikes 17.

18 THE COURT: Okay, striking off numbers 25 through 28.
19 Plaintiff first.

20 MR. MATHISON: You did say 25 through 28; is that
21 correct?

22 THE COURT: 25 through 28.

23 MR. MATHISON: Plaintiff strikes 26.

24 MR. LEE: Defense strikes 27.

25 MR. TEMPLETON: 25.

1 THE COURT: Okay, let's review the strikes.

2 THE CLERK: Plaintiff strikes No. 4, No. 11, No. 12,
3 No. 24; is that correct?

4 MR. MATHISON: (Nods head affirmatively.)

5 COURT REPORTER: Is that yes or no?

6 MR. MATHISON: Yes, that's correct.

7 THE CLERK: Defense, Mr. Lee, strikes No. 1, No. 6, No.
8 16, and No. 23; is that correct?

9 MR. LEE: That's correct.

10 THE CLERK: The defense, Mr. Templeton, strikes No. 3,
11 No. 17, No. 18, and No. 20; is that correct.

12 MR. TEMPLETON: Yes, sir.

13 THE CLERK: Thank you, gentlemen.

14 THE COURT: Now, review the alternates.

15 THE CLERK: Yes, sir. The alternates. Plaintiff
16 strikes No. 26; is that correct?

17 MR. MATHISON: Yes.

18 THE CLERK: Defense, Mr. Lee, strikes No. 27; is that
19 correct?

20 MR. LEE: That's correct.

21 THE CLERK: And Mr. Templeton strikes No. 25; is that
22 correct?

23 MR. TEMPLETON: Yes.

24 THE COURT: Attorneys, do y'all need to take up
25 anything concerning the strikes before we call them up?

1 MR. LEE: Nothing from the defendant, Your Honor.

2 MR. MATHISON: May I please the Court. We just had 40
3 people on our list.

4 THE COURT: Well, I understand that.

5 MR. MATHISON: Okay. Forgive me. We evaluated people
6 we didn't have to.

7 THE COURT: Right. Here was what you didn't hear, you
8 know. We said we were going to put 40 on there in case we
9 struck --

10 MR. MATHISON: I understand.

11 THE COURT: -- some off, and we would just strike
12 normally through the 20, since you had four more strikes,
13 we added four more, and we go straight down the list.

14 MR. TEMPLETON: Nothing for me, Judge.

15 THE COURT: All right, let's call them up.

16 THE CLERK: Yes, sir.

17 When we call your name, come up and please have a seat
18 in the jury box.

19 No. 126, Ronald Meyers. Juror No. 132, Irene Mirenda.
20 Juror No. 178, Thomas Sferlazzo. Juror No. 108, Rosemary
21 Lurey. Juror No. 130, Heather Mills. Juror No. 162,
22 Elaine Rivers. Juror No. 109, Dorothy Mack. Juror No.
23 206, Harold Voit. Juror No. 46, Russell Eddy. Juror No.
24 180, Steven Sheppard. Juror No. 214, James Welch. Juror
25 No. 118, Belton Mccarty. And Juror No. 96, Charles Knight.

1 THE COURT: Okay. Jurors not selected, if y'all cannot
2 shout and clap and everything, y'all are through. See you
3 later.

4 (Jury panel exits courtroom at 1:14 p.m.)

5 THE CLERK: They're clear, Your Honor.

6 THE COURT: Good.

7 Okay, parties, you know if these jurors are like all
8 the rest they're probably going to want to eat lunch, you
9 know. Y'all said you had motions. I need to know how long
10 they will take?

11 MR. MATHISON: I'd say 15 minutes for each, Your Honor.

12 THE COURT: 15 minutes for each. What's the total
13 time, is all the I'm -- the jury is interested in?

14 MR. MATHISON: 30 minutes.

15 THE COURT: 30 minutes. Everybody in accord with that?

16 MR. LEE: I don't have the current list --

17 THE COURT: Well, I mean, you know what the motions are
18 and I don't.

19 MR. LEE: Fifteen, 20 minutes is probably right.

20 THE COURT: All right.

21 Jurors, y'all don't know anything about the case, so
22 don't talk about it.

23 Here is what happens. They file various motions that
24 have yet to be heard. Some of them in here have been
25 heard. I don't know what they are, but it won't take me

1 long to rule on it, once they state their positions, but
2 it's already ten after 1:00. We need an hour. Let's --
3 opening statements are going to take a while, aren't they?
4 Y'all have a witness you can put up and get them out of
5 here by 6:00?

6 MR. MATHISON: I have one that we have agreed to take
7 out of order, Your Honor. So yes, we have witnesses --
8 the plaintiff will take longer than that.

9 THE COURT: Here's what I'm inquiring about because
10 we're getting a late start, y'all understand that.

11 The attorneys are going to make opening statements and
12 the opening statements are not going to be that brief
13 because they've got to tell you who is who and what's what
14 and so forth. It's going to take a while. Hopefully, we
15 can get the opening statements in and take a break, but it
16 looks like we may just be able to have time left over for
17 one witness today, because in fairness, I'd just say --
18 y'all be back at 20 minutes to 3:00, see. That will just
19 give you an hour, but I've got to listen to motions and
20 things, and they're probably going to want to eat lunch
21 before we do that, too. So don't talk about the case.

22 When you come back, elect somebody the foreperson. It
23 can be anybody except the last person that was called up.
24 Don't get your hopes up. Foreperson is not going to get
25 paid any more than anybody else, all right. We need you

1 back, now, we can't start until you get back.

2 THE CLERK: This way, please. Be careful of the steps.

3 (Jury out for lunch at 1:15 p.m.)

4 THE CLERK: The jury is clear, Your Honor.

5 THE COURT: All right. It's 1:15, let's take a break.

6 Y'all be back at what -- 2:10. Will that give you enough
7 time to argue your motions?

8 MR. MATHISON: Certainly, Your Honor.

9 THE COURT: All right. See y'all then.

10 MR. MATHISON: Would you like for me to hand up the
11 motions? They're referenced in the trial brief.

12 THE COURT: You can hand them up.

13 (Documents passed to the Court.)

14 MR. MATHISON: I think you said 10 after 2:00?

15 THE COURT: I did say 10 after 2:00.

16 (Court at recess for lunch at 1:18 p.m.)

17 (Court in session after lunch at 2:42 p.m.)

18 MR. MATHISON: May it please the Court. If you recall
19 in this case, on the date of trial, the defendant showed up
20 and sought to amend in order to add one defense and then
21 filed another motion to amend to add another defense, which
22 resulted in two defenses being added to the answer and
23 counter-claim of Richard McElveen, Senior, and two defenses
24 entered into the answer of Linda McElveen. One of the
25 defenses was statutory immunity, and the other was absolute

1 privilege.

2 That was done over the plaintiff's objection, and
3 subsequently the defendants served those documents on the
4 plaintiff and the plaintiff replied to the documents.

5 The first basis for the motion to strike is that the
6 defendants included in their fourth amended answer and
7 counter-claim with respect to McElveen, their four amended
8 answer, allegations alleging that the plaintiff and Mr.
9 McEachern were acting jointly, and/or they were acting in
10 concert with one another and/or they were acting as a,
11 quote, joint enterprise.

12 Those specific allegations had already been struck in
13 response to a previous motion to strike filed by the
14 plaintiff, argued, heard and decided by Ellis B. Drew,
15 Junior, by his order dated May 29, 2007, and I've handed
16 that order up to you. That order was not appealed and
17 consequently it's the law of the case.

18 It's our position that in serving a new document, as
19 opposed to the old one where you could just strike through
20 them, he should have eliminated the allegations that had
21 already been struck, and you should now eliminate them
22 because the defendants did not.

23 Thank Your Honor.

24 MR. LEE: Judge, we sued them both for what they both
25 did. I don't have any problem striking that language. I

1 don't think it's relevant.

2 THE COURT: We'll strike that language.

3 MR. LEE: All right.

4 THE COURT: What else you want to tell me?

5 MR. MATHISON: Second grounds for motion to strike,
6 Your Honor, had to do with the applicability of the
7 statutory immunity that was pleaded by Mr. McElveen,
8 Senior. He's asked to be protected by a statute that
9 applies to the reporting of child abuse, and there is no
10 evidence in this case, in any way, shape or form, including
11 his own evidence and that of his wife, that would indicate
12 that he reported the abuse about which this case is based.
13 The person who reported the abuse was Linda McElveen, both
14 of them testified to that effect. The evidence is so clear
15 that they went to the point of saying that Mr. McElveen,
16 Senior, did not even know about it until such time as Linda
17 McElveen had already told the Beaufort County Sheriff's
18 Office, and that's when he heard it. So he did not report
19 the abuse, he should not have the benefit of any immunity.

20 THE COURT: All right.

21 MR. LEE: The first thing I want to do is direct you to
22 plaintiff's complaint, paragraph 502, which says on or
23 about February 27, 2005 -- should say 2004 -- Linda
24 McElveen, who is aided and abetted by McElveen, Senior,
25 reported to the Beaufort County Sheriff's Office the

1 plaintiff was engaged in certain behavior.

2 It conflicts with -- that argument completely
3 conflicts with the pleadings in the case, which he has not
4 amended. Number one. Number two, the relevant statute --
5 it's been amended in the meantime, but the relevant statute
6 they were talking about for immunity is 20-7-540. It says
7 any person require or permitted, and that would be
8 permitted rather than mandatory, to report pursuant to this
9 article or who participates in judicial proceedings
10 resulting therefrom acting in good faith shall be immune
11 from civil or criminal liability.

12 I certainly think their whole theory of this case is
13 that Rick McElveen, through lots of people, lost his
14 campaign of denigration against Mr. McAlhaney, that he was
15 forcing people to do things, that he had control over all
16 these people, and I certainly don't think at this point
17 it's proper to strike a defense, plus, I think the second
18 part of it, a person who participates in judicial
19 proceedings resulting therefrom -- here we are.

20 THE COURT: It might protect -- I'm not going to strike
21 it at this point, but inherent in the statute is that --
22 good faith participates --

23 MR. LEE: Right.

24 THE COURT: -- it's to protect the schoolteacher when
25 some kid --

1 MR. LEE: Well, if he wants to -- Judge, I would just
2 point out this --

3 THE COURT: That depends on the facts in the case. I'm
4 not --

5 MR. LEE: Understand. If he wants to strike this cause
6 of action for abuse of process against Mr. McElveen, we
7 would certainly agree, because he's saying that it was
8 reported by both of them --

9 THE COURT: He doesn't --

10 MR. LEE: -- and then they had him arrested.

11 THE COURT: -- he doesn't want to do that.

12 MR. LEE: Sir?

13 THE COURT: He doesn't want to do that.

14 MR. LEE: Okay.

15 THE COURT: You can imply -- Rob, you don't want to do
16 that, do you?

17 MR. MATHISON: No, sir. I don't.

18 THE COURT: Oh, shucks, he doesn't want to do that.
19 There we go.

20 All right. How can we speed up the trial; here is the
21 inherent problem we have in the trial, and I usually don't
22 repeat words, especially something like inherent. I said
23 it twice.

24 This has been going on a long time. So everybody has
25 to tell me what to get to where we are today. I just

1 encourage y'all to keep it as short as you can. I'm not --
2 you know, if you think you're aggrieved, tell everybody.
3 If you think you were aggrieved, tell everybody. But --
4 they're probably not interested in hearing everything
5 that's ever happened. If you can, try to keep to what's
6 pertinent, but you know, what you think is pertinent, the
7 lawyers might not think is pertinent. I'm going to let you
8 testify, chances are. I'm not going to let anybody repeat
9 stuff.

10 How else can I help you?

11 MR. MATHISON: I have motions in limine, Your Honor.

12 THE COURT: All right.

13 MR. MATHISON: And I handed those up before we took the
14 break.

15 The first motion asks for an instruction to counseling
16 the witnesses not to repeat out of court declarations by
17 the child in this case.

18 THE COURT: I don't know enough about the case to
19 handle it. They aren't going to be able to say what he
20 said, but they can say that a report was made and action
21 was taken based on that without getting into who, what,
22 when or where. Otherwise, she wouldn't have filed a
23 complaint.

24 MR. MATHISON: And I'm not seeking to preclude that,
25 if she says, you know, based on what she understood she

1 filed a complaint..

2 THE COURT: That's right. You can say that, but you
3 can't say what the -- with specificity, what was said.

4 MR. MATHISON: Well, may it please the Court. For the
5 record, and so that I make my record, I don't think that
6 anybody can put words in the mouth of the child that is
7 four years old without demonstrating that he's competent
8 first, and there's been no competency demonstration.

9 We're not in a family court context, we're not in --

10 THE COURT: We're not.

11 MR. MATHISON: I've --

12 THE COURT: I don't know how it's coming -- I've always
13 said what I've said and within those parameters they can do
14 it. It's like a four year old said -- say they came
15 walking in and the kid's throat was cut and the kid said,
16 Uncle Jack cut my throat with that butcher knife. It's
17 coming in. I don't care what you say. But I'm not letting
18 them do that. I'm only letting them say, report was made
19 and action taken, without the specificity of the report.
20 At this point.

21 Y'all have lived with this case six or seven years.
22 I've just been in it 10 minutes.

23 MR. LEE: I would just like some clarification that if
24 we're not permitted to talk about specifics and what the
25 child said, then the same thing applies to him, because the

1 big thing all along from their point of view was, well, the
2 kid said this, and then he said this, then he said this,
3 then he said this. For example, if this includes --

4 THE COURT: He can't have it both ways.

5 MR. LEE: All right. I just wanted to make that
6 abundantly clear.

7 THE COURT: He can't have it that way, either.

8 MR. MATHISON: Well, then, for clarification, you're
9 going to allow them to say that he indicated that he was
10 abused?

11 THE COURT: I don't know what happened. He can say
12 that and then it was retracted and nolle prossed, as I read
13 y'all's briefs.

14 MR. MATHISON: Well, at every juncture where he was
15 interviewed in an objective setting, he denied that he'd
16 been abused.

17 THE COURT: Then that's relevant, isn't it? I was not
18 the magistrate that issued it. I had nothing to do with
19 it. All I'm dealing with is where y'all are today. And
20 without a great history of it, I'm handicapped on ruling.
21 So I don't even know what your theory is, so I'm not going
22 to even tell the jury what anybody's theory is. I'm going
23 to let y'all tell the jury and then I might instruct them
24 further. I might take a break and tell y'all what
25 parameters.

1 MR. MATHISON: Well, I can't open without knowing what
2 the breadth of the evidence that's coming in is going to be.

3 THE COURT: Well, bottom line. People live with what I
4 said, at this point, without getting specific. If you get
5 into specifics, they have the right to rebut with specifics.

6 MR. MATHISON: Well, I don't believe that identifying
7 the child as the source of the information solves the
8 hearsay problem because it's still hearsay, but even if it
9 did solve the hearsay problem it doesn't solve the
10 competence problem.

11 THE COURT: All right, here we are -- they're suing
12 because he was he was allegedly prosecuted because of malice
13 and so forth. I think in this case everything just comes in
14 except those little parameters. Here's the exact words the
15 child said is not going to be admissible. I think that's
16 all the safe ground I can take.

17 MR. MATHISON: All right.

18 MR. LEE: Any statement the child made, such as to the
19 other grandfather, this didn't happen, is also not
20 admissible?

21 THE COURT: He's going to be able to say the child made
22 conflicting statements without saying what they were, or he
23 wouldn't have been charged. I mean, if he maintains his
24 suit for abuse of process, he's got to say why it was and
25 you're entitled to answer that he was justified in taking

1 the action you did without getting into specifics. Both of
2 you.

3 MR. LEE: Well, I'm just not clear as to --

4 THE COURT: I can't clear it for you, either. I'm
5 sorry. I lack the ability. Wig and Robe in law school,
6 speed reader. Read something one time and more or less
7 repeat it back to you. This case is beyond me, because
8 y'all have been dealing with it for years. I don't know
9 where you want to go. I read your briefs. Y'all just
10 recited a bunch of law in there; blah, blah, blah. Blah,
11 blah, blah. I'm don't know what's happened here.

12 MR. LEE: How can he testify there were conflicting
13 statements by a child?

14 THE COURT: Well, at one point --

15 MR. LEE: -- necessarily --

16 THE COURT: Well, I don't know how he's going to say
17 anything.

18 MR. LEE: Okay.

19 THE COURT: I don't know what he's planning on saying,
20 but as I read y'all's brief, he's going to say that somebody
21 was arrested, and that they shouldn't have been arrested,
22 process was abused, and it was -- process was issued because
23 of alleged reports that were unfounded and taken back and
24 forth, and so forth, and the case was eventually nolle
25 prossed, as I understand it.

1 If he doesn't withdraw his abuse of process suit he's
2 entitled to go into it a little bit. Once we get -- why
3 it's going on and I hear a few witnesses, I might know how
4 to rule, but I don't now right now, because I don't know
5 where he wants to go or why he even wants to fool with it
6 other than, anytime you get arrested and accused of child
7 abuse you get bent out of shape. I don't care who you are.

8 MR. LEE: Yes, sir.

9 THE COURT: So he wants to air that claim, I guess.

10 MR. LEE: I just want to make sure I don't forego the
11 opportunity to get evidence out of witnesses that you later
12 on --

13 THE COURT: You can rebut. We'll have time --

14 MR. LEE: Okay.

15 THE COURT: -- to break, if it's going somewhere you
16 think it shouldn't go. Then we can talk.

17 MR. LEE: All right.

18 THE COURT: We can send the jury out and we can make,
19 maybe, informed decision about where you're going and what
20 you're planning on asking, and I can give you some rules. I
21 don't believe in blind-siding anybody.

22 MR. LEE: Yes, sir.

23 THE COURT: But, I also, can't rule in the abstract.
24 There you go.

25 MR. MATHISON: May it please the Court. Second grounds

1 for the motion are that Mr. Lee has subpoenaed a witness
2 whose only role in this is as a polygraph examiner.

3 THE COURT: That can't come in.

4 MR. MATHISON: That's my position, Your Honor.

5 THE COURT: Right.

6 MR. MATHISON: I don't want anybody blurting out the
7 fact that a polygraph has been taken, poly --

8 THE COURT: That won't happen.

9 MR. MATHISON: Thank Your Honor.

10 MR. LEE: Judge, only thing I would add to that is I
11 think -- we respectfully reserve the right -- they've made a
12 big deal out of why was the plaintiff arrested and not the
13 mother of the children, when the child allegedly said --

14 THE COURT: Can't come in, anyway.

15 MR. LEE: Well, if the reason the mother was not
16 arrested, as well, is because she passed a polygraph, I
17 think they've opened the door, and I want to put them on
18 notice before that that we will at least take that position
19 if they say --

20 THE COURT: Good. That's the position you take, you
21 lose.

22 MR. LEE: Okay.

23 THE COURT: All right.

24 MR. MATHISON: And he'll lose because he won't be able
25 to get it in the record?

1 THE COURT: That's right. What else?

2 MR. MATHISON: That is all the motions for the
3 plaintiff, Your Honor.

4 THE COURT: Now, Mr. Lee, we hit this all the time, and
5 it's the same general arguments in every case, you know?

6 MR. LEE: Yes, sir.

7 THE COURT: If he hadn't -- if he passed -- whatever it
8 is, lie detector, he wouldn't have been charged.

9 MR. MATHISON: Well, actually, you've reached the wrong
10 conclusion. He did pass the lie detector test.

11 MR. LEE: If he wants to open the door to polygraphs,
12 we're ready.

13 THE COURT: If the door is open, that's another matter.

14 MR. LEE: Yes, sir.

15 THE COURT: But I -- y'all are asking me to rule in the
16 abstract, and the abstract can't approach it. Your
17 witnesses can't talk about it and you don't ask any
18 questions that suggest that answer.

19 MR. LEE: Another thing that I was -- trying to save
20 some time down the road, is this -- there is a booklet that
21 we've sued on that has a lot -- almost all inadmissible
22 evidence as attachments, one of which is the second
23 polygraph that the plaintiff took. And I don't think that
24 it's right to do now, but I'm just telling you that before
25 that book is introduced, if they attempt to introduce it, I

1 think we would need to have a hearing on that, as well.

2 THE COURT: Okay. We can do that.

3 MR. LEE: Okay. Thank you. That's all we would have,
4 Your Honor.

5 THE COURT: All right. Do y'all have any evidence,
6 uncontested, that anybody's going to put in. We could mark
7 it.

8 Oh, Mr. Templeton.

9 MR. TEMPLETON: Don't forget about me.

10 Judge, I have one bit of housekeeping that I believe
11 Mr. Lee and I agreed in chambers --

12 THE COURT: Right.

13 MR. TEMPLETON: -- they were going to voluntary non-
14 suit the invasion of privacy cause of action. I'd like to
15 put that on the record.

16 THE COURT: They are not proceeding with the invasion of
17 privacy.

18 MR. LEE: That's correct, Your Honor.

19 MR. MATHISON: Plaintiff has agreed to that, Your Honor.

20 THE COURT: All right.

21 Now, normally, I tell everybody what everybody is
22 claiming in the causes of action. I'm not going to do that.
23 I'm only going to tell them what the causes of action are,
24 and I'm going to let y'all tell them how you think you
25 should prevail or not prevail on the various causes of

1 action, because there are so many -- and don't think I'm
2 being light about it, there are too many Mcs in the case. I
3 get them confused reading this. Try to keep them straight.
4 Attorneys know who all y'all are. After, say, about
5 tomorrow, I'll have everybody pegged and placed, but I don't
6 right now. I hate to tell the jury that McElveen is
7 claiming something when it's McAlhaney claiming something.

8 MR. LEE: The only other request we had is my client is
9 coaching a kids basketball league. The game starts at 6:00
10 o'clock, and I told him I would ask the Court if we could
11 attempt to get him there for that game?

12 THE COURT: As long as y'all get all the evidence in by
13 Thursday, I don't care what time.

14 MR. MATHISON: We don't have any objection to that, Your
15 Honor, but we've agreed to take a witness up out of order, a
16 physician, who is going to be out of town today through the
17 rest of the week.

18 THE COURT: All right.

19 MR. MATHISON: After I put him up, I can do one of two
20 things. I can put the plaintiff up, but I don't think I can
21 finish him this afternoon.

22 THE COURT: Couldn't finish him this afternoon?

23 MR. MATHISON: Pardon?

24 THE COURT: You could not finish him this afternoon in
25 fairness to the --

1 MR. MATHISON: Yes, sir, but I have other witnesses I
2 can put up, but I'd just as soon not put them up out of
3 order.

4 THE COURT: I'll anticipate his testimony takes two and
5 a-half, three hours; I don't know.

6 MR. MATHISON: You would be just about right.

7 THE COURT: That's right. So there you go. We can't
8 put him up this afternoon.

9 MR. MATHISON: So do you want to put up one witness or
10 do you want me to bring another witnesses in to fill up the
11 time until 5:30?

12 THE COURT: I really think it's going to take y'all a
13 while to make your opening statements.

14 MR. MATHISON: Okay.

15 THE COURT: I don't know, looks like to me it's a lot of
16 ground, and I need for y'all to be very particular when you
17 make it so that the jury can understand what you're claiming
18 and who everybody is, and so forth. And we will proceed
19 through the trial, one, two, three. One, two, three.

20 Now, if something like clear hearsay comes in, is
21 offered by Mr. Mathison, and Mr. Lee is thinking about what
22 he's going to have for supper tonight and does not object,
23 you can object out of turn, but first give him a chance.

24 MR. TEMPLETON: I won't go first, but I won't sit like a
25 pot plant either. How about that?

1 THE COURT: You be alert, but you can't rely on him to
2 go. I'm not telling you what you don't know.

3 And then when all the evidence is presented from the
4 plaintiff, Mr. Lee, Mr. Templeton, and back the same way.

5 Okay. I need a clerk for the jury. If they're ready,
6 bring them in.

7 THE CLERK: Yes, sir, Judge.

8 (Pause.)

9 THE CLERK: Jurors entering, Your Honor.

10 Be careful of the steps, please, folks.

11 (Jury in at 2:47 p.m.)

12 THE CLERK: Your Honor, the jury is seated.

13 THE COURT: Okay. Let's swear the jury in. We have a
14 foreperson. Call the foreperson's name, make sure we have
15 the right one sitting where they're supposed to be.

16 THE CLERK: Yes, sir.

17 I'm sorry, first initial -- last name is Welch. I
18 don't know if it's Mister or Miss. He is seated correctly.

19 THE COURT: Okay.

20 THE CLERK: Do we all agree that's the foreperson? All
21 right.

22 Would you please stand and raise your right hands.

23 (Jury is sworn at 2:47 p.m.)

24 THE COURT: Okay. All right, jurors, we're going to get
25 right into the trial.

1 This dispute has been on-going for some time. It's not
2 going to be a case that we can just put up and finish today.
3 It's going to take a long time for the attorneys --
4 relatively speaking -- normally, you know, a wreck case, I
5 let the plaintiff's attorney, plaintiff being the person
6 that brings the lawsuit, you know, say, my client was going
7 down 278 and the other vehicle didn't stop at a traffic
8 control light, hit my car and we've got \$10,000 in medical
9 expenses, had to pay for the car. We'll put up evidence to
10 prove that. Thank you. Three minutes, right.

11 Not so here. What I'm holding up is a copy of a
12 document in the filing. It just has a list of the parties
13 here. And I'm just going to go over the names of the
14 parties and then I'm going to rely on the attorneys to
15 outline their relative positions because -- you know, I
16 don't intend this for a pun or anything, there are a lot of
17 M-c names here, and I need to make sure that each one
18 explains who is who and what they're claiming against
19 somebody else rather than me try to outline exactly what
20 each person is claiming the other did.

21 Initially, the individual entity who starts a lawsuit
22 is called the plaintiff. That's just legal designation of
23 the entity who commences a lawsuit. If it was a wreck case,
24 and both parties claimed they had the traffic control light,
25 both parties suffered damage, they sued each other, the

1 first person to the courthouse would be called the
2 plaintiff. The defendant counter-sued and might even win,
3 but they are called the defendant. So an individual against
4 whom a lawsuit has been filed is referred to as defendant.

5 Now, this is a civil case. This is not a criminal
6 case. I recognize the individual charged with the
7 commission of a crime is referred to as the defendant, but
8 that's not so.

9 All right. The whole case started years ago, and it
10 involved an action taken as a result of a family court
11 custody dispute involving a party who is not named as a
12 litigant in this case, Molly McCullers McElveen. Richard
13 McElveen, Senior. She was his daughter-in-law, and they had
14 a custody dispute as to who was going to get custody of his
15 grandchildren. Her children. Ms. McCullers McElveen was
16 married to Richard K. McElveen, Junior, at one point in
17 time. That will be explained to you.

18 That started it and other people got involved. So Mr.
19 Matthew McAlhaney brings suit. He is the plaintiff. He was
20 at one point in time a boy-friend of Molly McCullers
21 McElveen. He alleges that an action taken by the defendants
22 caused him damage, and he was damaged under several legal
23 theories that I will run over in a second, specifically, he
24 was defamed, that the process was abused, that there was a
25 civil conspiracy that caused him damage. That basically is

1 his allegations and I haven't defined any of those terms,
2 but that's what he's alleging.

3 He brings the suit against Richard K. McElveen, who is
4 also known as Richard K. McElveen, Senior. He brings a suit
5 against him individually and against Mr. McElveen doing
6 business as Battery Creek Marina. He also brings suit
7 against the Great Pumpkin, LLC. I don't know what all the
8 connections are. The attorneys are going to outline that
9 for you.

10 Linda McElveen, who is the wife of Richard McElveen,
11 Senior, Richard K. McElveen, Junior, and Billy Joe Byrd,
12 who've had some unrelated to those defamation and abuse of
13 process claims involvement in the case will be explained to
14 you in a little bit.

15 Now, Mr. McElveen, who is a defendant, also sues
16 Michael J. McEachern, and that will be explained to you.
17 Anyway, the causes of action are all around what I have
18 said.

19 Now, it's going to take a unanimous decision of you 12
20 jurors to decide who prevails or maybe only one party
21 prevails. There are counter-suits back and forth
22 throughout.

23 Listen carefully as the attorneys outline their
24 relative positions.

25 Now, you jurors are going to pass upon the credibility

1 of the witnesses who testify, the believability of what they
2 say, pass upon the totality of all the admitted evidence.
3 Don't look at me for guidance. Hard for me to keep up with
4 it; as you can gather. At this point, I have had the
5 benefit of looking at the file, which is pretty large. We
6 won't go into it, but, for instance, I just looked at some
7 document which is the fourth amended complaint and answer in
8 the case. You know, adding allegations to leading
9 allegations and so forth.

10 Once all that is done, we are where we are, where
11 everybody knows what everybody is claiming and everybody
12 knows the defenses that the other sides have to the claims
13 and so forth and so forth.

14 So abuse of process is simply defined as employment of
15 legal process of some purpose other than what it was
16 intended. In other words, legal process is issued to obtain
17 some ulterior motive. Not something as a result of a
18 process itself.

19 At the end of the trial I'll go into that in a little
20 more detail, but that's basically it.

21 Civil conspiracy consists of three elements. That's
22 where two or more people -- it takes at least two people --
23 agree or combine to enjoin efforts to injure another party,
24 specifically the plaintiff, and then they have to cause
25 specific damage to the plaintiff. Conspiracy, of course, is

1 something that can be inferred from the nature of the acts,
2 since conspiracies are usually not published. Like two
3 people don't get together and say, we're going to conspire
4 and hurt so and so.

5 All right. Defamation, Jurors, in its broadest sense is
6 just where statements are issued either oral, written or
7 through gestures, that tend to damage a person's reputation
8 in the eyes of the community. Defamation consists of
9 publishing or stating a false statement about a plaintiff
10 and it -- on and on. Liable is where defamation occurs
11 through written words, generally. Could be through video,
12 but anyway. Slander is where somebody defames somebody
13 through saying something.

14 You can sit at home and say all you want about
15 somebody, you know. So and so is a thief in the night and
16 what have you. If nobody hears you, you haven't defamed
17 anybody.

18 I could be sued forever when these people cut in front
19 of me when I'm driving down 95 out there, but there's nobody
20 in the car but me. So if you say it to somebody else, you
21 know. That thief in the dark cut in front of me. Call
22 somebody a criminal, somebody else hears it and on and on.
23 So it has to be a false statement made, and it has to be
24 communicated through word, gestures, or whatever to another
25 person.

1 Now, Mr. Foreman, once deliberations start you serve as
2 spokesperson for the jury. Your vote counts no more than
3 anybody's. Somebody has to preside over the deliberations.
4 If any questions occur, you write them down with some
5 specificity and I will address them.

6 We're just trying to move it on as quick as we can.

7 Play close attention to the statements that are about
8 to be made by the attorneys. They're going to outline their
9 positions.

10 Now, you do understand that the attorneys are not
11 testifying. They're just going to outline what they think
12 will be presented. It may turn out that it's not as they
13 represented or will be presented. And then they will
14 suggest, perhaps, conclusions you should draw from the
15 evidence as presented. You're not bound by any of that.
16 They're representing their respective clients. I think
17 y'all understand that.

18 So all three sets of attorneys through one spokesman is
19 going to outline their relative positions. Now, you need to
20 pay close attention because they have been dealing with this
21 case a long time, and they, believe it or not, have narrowed
22 it down. If they hadn't narrowed it down, we'd be running
23 into next week, but they assure us we'll get through it this
24 week with no struggle. But we're going to stay right at it,
25 and put it up.

1 Just reading the documents, Jurors, it's taken a good
2 many years to get here. All right. Often times I can speed
3 up a trial. I don't know what happened in this case, and
4 the litigants are going to have to tell what happened. It's
5 going to take a while, because it's not like he or she ran
6 the red light. They're going to have to talk about things
7 that y'all might think are irrelevant and what have you, but
8 that's beside the point. You have to listen carefully
9 because they're each a party to this and entitled to valid
10 consideration by all of you jurors on the positions that
11 they maintain. It's very important to them or we wouldn't
12 be here. Important to us because we are here. So don't try
13 to guess how I think about the case. That's not my point.

14 I have basically gone over with the attorneys some
15 ground rules. We shouldn't have too many objections, but we
16 may have some objections. Historically, I don't send juries
17 out, I just rule, because I've been doing it so long, but I
18 don't know where they're going with some of this or
19 everything that happened. So sometimes they might object
20 and I might have to send y'all out, which I don't like to
21 do, but there's no real way I can discuss it in here if they
22 object. But they're not going to do that all the time.
23 It's just if they get to a critical -- in the attorneys view
24 a critical stage, something's being offered that shouldn't
25 come in, it's too late after it comes in, if somebody

1 objects. And I won't know how to rule because I don't know
2 where they're going with it, so I have to find out.

3 It's like -- the simplest form is the hearsay. You
4 can't testify as to what somebody who is not a party
5 testified in court said out of court. That's not exactly
6 true. There are 24 exceptions to it. So -- well, they can
7 object to hearsay, it may be hearsay, but it maybe
8 admissible under one of those exceptions. I'd just rule on
9 that, but in this case I might not be able to do that
10 without finding out who said what to who, when. I might
11 have to take a break.

12 So don't think the attorneys are trying to drag this
13 out by keeping witnesses up a long time. They've been
14 instructed to keep it as short as they can, but they can't
15 really shorten this testimony down as much as you normally
16 can. That's all.

17 So pay attention to the opening statements. At the end
18 of the trial I'm going to instruct you on the law in a lot
19 more detail, but there's no need to go into it at this
20 point, okay.

21 So right now, fire away.

22 MR. MATHISON: Ladies and gentlemen of the jury, my
23 name's Robert Mathison. I am one of two attorneys for the
24 plaintiff. And this is the plaintiff here, Matthew S.
25 McAlhaney. He's also known as Matt McAlhaney. You'll hear

1 him referred to as Matt throughout the course of the case.

2 People at the next table are Mr. and Mrs. McElveen.

3 Rick and Linda McElveen. Mr. McElveen, from time to time
4 will be referred to as Mr. McElveen, Senior, or McElveen
5 Senior to differentiate him from his son, who is sitting
6 behind Mr. Lee in the stripped sweater.

7 Further on down with Mr. Templeton and Mr. Watkins, who
8 are the attorneys, is Mr. McEachern. Mr. McEachern is the
9 uncle of my client Mr. McAlhaney, and he's been named in
10 this case on a counter-claim that's been brought by Mr.
11 McElveen, himself, against Mr. McAlhaney and Mr. McEachern.

12 So we're not necessarily arrayed in the order that we
13 would be joined if the interest of the parties were
14 consulted.

15 So that you understand, the plaintiff is bringing
16 claims that the Judge described to you, and his definitions
17 will do for now. Defamation is basically saying something
18 about somebody else or printing something about something
19 else, somebody else that isn't true. That's the first
20 claim.

21 Second claim has to do with abuse of process. That's
22 using legal proceeding for a purpose other than that for
23 which they were designed.

24 Third is conspiracy. Combination of two or more
25 persons for the purpose of doing injury to a third.

1 We've alleged all of those things.

2 Your role, as the Judge indicated, is to find the
3 facts. The Judge will give you the law at the end of the
4 case. He will tell you what the law in this case is and the
5 lawyers are entitled to tell you what their view of the law
6 is, but you have to take the law from the Judge.

7 On the other hand, the facts are exactly what you come
8 to understand them as being. You need to listen to the
9 evidence, and you -- it's entirely your province to make up
10 your mind about what facts did, in fact, occur. What facts
11 did not, in fact, occur. What facts are the facts in this
12 case. That's what you're here for. The finder of fact, and
13 in many of decisions and quotations that will come from the
14 bench, the finder of fact is referred to, you're the finder
15 of fact.

16 You'll hear other terminology, and this case depends on
17 some of it. The term circumstantial evidence. There may
18 not be direct evidence of a fact. No one will have said it
19 or no one will have seen the event occur. But there will be
20 circumstances from which a reasonable person would conclude
21 or infer that an event took place or that a statement was
22 made or that something happened or that it didn't.

23 Circumstantial evidence is very important in this case,
24 and the Judge will charge you on that evidence, what it
25 means, at the end of the case.

1 Another term that you will hear is burden of proof.
2 Anybody who brings an affirmative claim, such as the
3 plaintiff, has got the burden of proof, which means that we
4 have to establish by preponderance of the evidence that
5 something occurred. Defendant doesn't have to show more, he
6 just has to resist. The plaintiff has to show more. So
7 standing here now, I'm telling you that there has to be a --
8 a slight tilting in favor of the plaintiff for us to recover
9 on our claims against the defendants.

10 By the same token the defendant has counter-claims and
11 those claims are treated the same way as the plaintiff's
12 claims. For him to recover on those claims he has to have a
13 little bit more evidence, a preponderance, as the Judge will
14 tell you, in order to recover. His defenses don't need
15 that, but his counter-claims do.

16 With those ground rules in mind, I'm going to give you
17 a fact summary of what happened here.

18 Mr. McAlhaney, having been previously married, divorced
19 several years beforehand, began dating a woman named Molly
20 McCullers McElveen. She was the former wife of Mr.
21 McElveen, Junior, the gentleman in the stripped sweater.
22 They had, at that time, two children. One named Jackson,
23 who is three going on four, and an older child who was seven
24 going on eight, named Ricky.

25 After they had been dating for several months -- they

1 started dating in May of 2003 -- Mr. McElveen, Senior
2 decided that he would file an action in family court with
3 the objective of obtaining sole custody of his daughter-in-
4 laws children. In the course of filing that action he took
5 the position that she was an unfit mother. Mr. McElveen,
6 Senior, had done this once before, as the evidence will
7 reveal. That was with respect to the older child, Ricky,
8 and that had happened in 1997. And he had enjoyed some
9 measure of success because as a result of his having taken
10 in that measure in 1997, he ended up with joint custody of
11 the older child, Ricky. Mr. McElveen, Junior, the actual
12 father, did not have any custody and visitation. The
13 younger child, Jackson, was born out of wedlock after the
14 first domestic action, which was, in fact, a divorce between
15 McElveen, Junior and Molly McCullers.

16 So my client comes into this by virtue of having dated
17 a woman who had two children.

18 Mr. McElveen wanted -- Mr. McElveen, Senior, wanted to
19 obtain custody of those children. He scheduled a hearing to
20 take place on September 15, 2003. He served Ms. McCullers
21 and her former husband, McElveen, Junior, on September 11th,
22 four days beforehand, and had obtained, at the time, a
23 number of affidavits from individuals tending to show that
24 Ms. McCullers was not a person fit to be the mother of these
25 children.

1 By an unfortunate circumstance the hearing got
2 postponed and it wasn't held for another week, until
3 September 22nd. Ms. McCullers went to the same lawyer that
4 she'd had in 1997. That lawyer went out and gathered enough
5 affidavits to make it a competitive match in terms of the
6 weight of the affidavits on one side and the weight of the
7 affidavits on the other. So in the course of 10 or eleven
8 days between the 11th and the 22nd, Ms. McCullers got her
9 affidavits.

10 One of the persons who supplied an affidavit for Ms.
11 McCullers was a lady named Sanford, who as fate would have
12 it, turned out to be the sister-in-law of Governor Mark
13 Sanford. And she provided a very benign affidavit, which
14 said absolutely nothing sinister or nasty about Mr. McElveen
15 or about his wife Linda or about their son. It simply said
16 that she knew Ms. McCullers from having been at some of the
17 same events at Beaufort Academy, and she thought she was a
18 good mother. That's the substance of the affidavit.

19 The hearing was held on the 22nd of September. No
20 outcome was announced from the bench, as is often the case.
21 Everybody sits around waiting and on the 29th, seven days
22 later, the judge calls the parties lawyers and tells them
23 that the custody, temporary custody, is going to remain with
24 Ms. McCullers.

25 Sometime before the sun went down on that day, Mr.

1 McElveen wrote a letter to Governor Sanford complaining
2 about his sister-in-law's participation in the family court
3 hearing, saying that he didn't wish to sensor her, but he
4 didn't think that she should be participating in a way, such
5 as to imply that his office was somehow endorsing this. The
6 focus of the letter and the animus, the animosity in it was
7 Ms. Sanford, Julia Sanford, however, in a paragraph devoted
8 to Mr. McAlhaney, Mr. McElveen, Senior, said that Mr.
9 McAlhaney was a drug addict and a child abuser. And he sent
10 that off without bothering to send a copy of it to Molly
11 McCullers' lawyer, to the Court, to Mr. McAlhaney. To
12 anyone. He sent a letter to the Governor calling my client
13 a drug addict and a child abuser.

14 He subsequently -- that is, Mr. McAlhaney, found out
15 about it within the ensuing two or three weeks because the
16 Governor, upon getting this letter contacted his sister-in-
17 law and sent her a letter, as well as a transmittal of the
18 letter and sent it to all of his relatives. That's how my
19 client found out.

20 After that event, my client wrote a letter and said,
21 you've got to stop this, Mr. McElveen. You've got to
22 terminate defaming me, and if you don't, I'll sue you.

23 Subsequently, Mr. McAlhaney's uncle, Mr. McEachern,
24 wrote Mr. McElveen a letter in which he said, can't we get
25 together and ameliorate the circumstances here. Can't we

1 talk about this. And the product of that talk, as you will
2 hear, is Mr. McElveen saying no, we can't. He said Mr.
3 McAlhaney had to get out of the way and stop supporting
4 Molly in her effort to keep his grandchildren, and if he
5 didn't get out of the way, Mr. McElveen would, quote, give
6 Mr. McAlhaney all the attention he needs.

7 Evidence will reveal that after that date, which took
8 place in November, there was only one subsequent contact
9 between my client and Mr. McElveen, and that took place, of
10 all places, on a baseball field here in Beaufort. When the
11 older child was trying out for baseball they had an
12 argument. Mr. McElveen jerked the bat out of my client's
13 hands, and they had words.

14 One week later, less than a week, actually, Mr.
15 McElveen -- excuse me -- Ms. McElveen, Linda McElveen, his
16 wife, reported to the Beaufort County Sheriff's Office that
17 my client had sexually abused Jackson McElveen. That was
18 done on the 27th of February, 2004.

19 An investigation was undertaken on that day, which was
20 Friday, which resulted in the following events. On Monday,
21 the next business day, my client was arrested and charged
22 with criminal sexual conduct with a minor and assault and
23 battery of a high and aggravated nature. In addition the
24 children of Molly McCullers were taken away from her. Mr.
25 McElveen's lawyer, Mr. Lee, used the arrest of Mr. McAlhaney

1 as a basis for going into family court ex parte, which means
2 without telling the other side. It means tip-toeing into
3 court to get a judge to do something without telling the
4 other side. He went to court on Monday morning and he got
5 an order that said that Mr. McElveen and his wife, Linda,
6 the same Linda who reported the child abuse, could keep
7 those children. And the children have never been back with
8 Molly McCullers since then.

9 My client didn't get out of jail until March 2nd.
10 There was no bond required. He was allowed out on his own
11 recognizance.

12 And from the time that he was incarcerated, for pretty
13 close to 10 months, Mr. and Mrs. McElveen conducted a series
14 of conversations in the community designed to sully my
15 client's reputation. Saying things like, he was a deviant.
16 Meaning deviant. That he was gay. That he was, quote,
17 capable of anything. Told people that they'd never met
18 before that my client was a child molester. It was as
19 though they beamed this out like a radio wave so that it
20 would come back and influence the on-going investigation.

21 Well, the result was that after weeks, or months, it
22 became clear that there wasn't any evidence to back this up.
23 There was no medical evidence that any abuse had taken
24 place, and there was no real evidence that could be
25 submitted to a jury like you that would allow anyone to draw

1 the conclusion that had been drawn. It was simply a shot in
2 the dark in an effort to accomplish a purpose which was not
3 authorized in the course of the family court proceedings.

4 My client's arrest and suspicion for these heinous
5 acts, were, in fact, used to wrest custody away from Molly
6 McCullers of her children, and that's never gone back.

7 Molly effectively had a nervous breakdown. She
8 ultimately agreed to give up her children. My client, for
9 pretty close to a year had this Sword of Damocles held over
10 his head, and finally the state decided there wasn't any
11 evidence, and they weren't going to prosecute the case and
12 they nolle prossed it. They dismissed it.

13 Everybody found out that was going to happen in
14 December, 2004. Within two weeks of the determination being
15 made that my client was not going to be prosecuted, Mr.
16 McElveen, Junior, and six or seven of his friends accosted
17 my client in a local establishment or just outside of a
18 local establishment called Breakwater. And it was aptly
19 named in these circumstances, because they were in the
20 process of attempting to kill him, and if it hadn't been for
21 the intervention of a person named Milton Kelly they may
22 have succeeded.

23 So by sending out these radio waves of venom into the
24 community, by beaming out that my client was a child
25 molester, they got back what they wanted. A community

1 filled with people so hostile to my client that they can be
2 gathered the day before Christmas Eve for the purpose of
3 doing bodily injury to my client. And they did it. And
4 they did it at 2:00 o'clock in the morning on December 24th,
5 in a parking lot and at 3:00 o'clock, one hour after it
6 started, Mr. McElveen, Junior, then a 28 year old man, felt
7 it was necessary for him to call his mother and his father
8 at 3:00 o'clock on Christmas Eve after he's just beaten up
9 this person who theoretically has molested the child.

10 We believe that Mr. McElveen, Senior, is the one that
11 orchestrated this. This is his way of saying, you're not
12 going to get off that easy.

13 You'll be hearing evidence that he threatened that at
14 the bond hearing, and he finally made it pay off after what
15 he wanted to come true didn't.

16 To be as succinct as possible, the letter sent to
17 Governor Sanford is libelous. It is a written document in
18 which something that's defamation per se has been stated.
19 Being a drug addict implies that you're incapable of
20 performing your trade or business. Being a child abuser
21 without a doubt states that you're a criminal. That's the
22 libel claim.

23 The slander is the repeated statements to people who
24 had no reason to know or to care that my client was a child
25 abuser, a sexual abuser, a child molester, a deviant. You

1 pick the word, it's been used.

2 Abuse of process is, as the Judge told you, the use of
3 proceedings, in this case, civil proceedings for a purpose
4 that isn't authorized. It requires an ulterior motive.

5 The ulterior motive here is two-fold. First, my
6 client, after being defamed to the Governor, wrote a letter
7 saying, I'm going to have to sue you if you don't take this
8 back. First thing they were trying to do was create a
9 justification for what he'd already said. He was already on
10 the record saying my client was a child abuser, and now, as
11 if by magic, all of a sudden there's some evidence of abuse,
12 but the evidence originated with his wife, Linda McElveen.

13 The other ulterior purpose is by eliminating Molly's
14 support system, driving a wedge between them with this
15 criminal prosecution, he could and did get custody of the
16 children.

17 Now, there are defenses. Mr. McElveen has said that
18 everything he said was true. He said that he's privileged,
19 which means -- and the Judge -- take the Judge's charge on
20 this, don't take what I'm saying, but privileged means that
21 you're acting within something, the scope of something the
22 law deems reasonable. All right? For example, in a
23 litigation context like this you're privileged to say what
24 it is that you say in court. All right? But you can't take
25 what you say in court and go outside of court and start

1 telling everybody, every Tom, Dick and Harry that you meet,
2 which is effectively what happened here.

3 All right. Other privileges that you'll hear about are
4 who published it. Whether it was published by -- whether
5 the liable was published by the defendants or whether it was
6 published by the plaintiff, whether it was published by
7 third-parties. Those are all considerations that you need
8 to ponder.

9 With respect to the abuse of process, you need to focus
10 on what happened here and what was reasonable and whether
11 the arrest and 10 month prosecution of somebody for
12 something that didn't happen is a sensible way to adjudicate
13 child custody matters. I submit to you that it isn't.

14 Finally, with respect to the conspiracy, you will need
15 to look at the circumstances and see whether the
16 circumstances, that telephone call, for example, as soon as
17 the fight ended from McElveen, Junior, to his parents house.
18 If those circumstances don't indicate that people were
19 implicated beyond the folks that actually did the assault.

20 The attack we're talking about happened. Mr. McElveen,
21 Junior, pleaded guilty to two counts of assault and battery,
22 high and aggravated. One for my client and one for the man
23 that intervened, Milton Kelly. His cohort, who was then his
24 employee, Billy Joe Byrd is not with us here today, but Mr.
25 Byrd also was convicted. He was convicted by a jury of a

1 reduced charge of simple assault.

2 We know that the event happened. We know that the
3 event was actuated by animosity towards someone that these
4 people believed was a child molester, and we know that they
5 believed it because those people told them that he was.

6 What we don't know is how broad this conspiracy was.
7 You'll be asked to decide, based on the evidence you've
8 heard from the circumstances whether you believe Linda
9 McElveen acted alone when she went to the Sheriff's Office
10 or whether Junior, McElveen, Junior, acted alone when he
11 gathered a posse of seven people and chased after my client.

12 From the time he wrote the letter to the Governor, Mr.
13 McElveen, Senior, has been very careful to use proxies and
14 to delegate the tasks to other people. We submit that you
15 will find his fingerprints and footprints all over what
16 happened here.

17 Last, all of this gave rise to damages. The principle
18 damage is for defamation. When somebody says something
19 about you that's not true. There's damage to your
20 reputation and if it's -- what's said about you is bad
21 enough, basically, egregious enough, you don't have to show
22 actual damages. Reputation and the damage is presumed. But
23 in this case you'll see evidence of damage. My client will
24 demonstrate that he had a loss of income in 2004. That's
25 the year in which he was arrested, of over \$61,000. We'll

1 show you that he had special damages to get out of the
2 prosecution that took place at the hands of the Solicitor's
3 Office of \$25,000. We'll show you that he had \$1,000 in
4 attorneys fees just in responding to the letter that Mr.
5 McElveen wrote to the Governor. And he'll show you, last,
6 that as a result of the attack that was made on him on
7 December 24th, at 2:00 o'clock in the morning when seven
8 people waited outside a restaurant for two hours for the
9 purpose of beating him up, that he has approximately \$550,
10 mostly for fixing a broken nose and fixing damage they did
11 to his vehicle. And you need to figure out what amount of
12 damage would be warranted for saying that someone is a child
13 abuser and a child molester to anyone who would listen.

14 Thank you very much.

15 MR. LEE: Please the Court, Your Honor.

16 THE COURT: Sure.

17 MR. LEE: Couple of things I've got to tell you. They
18 have this grand conspiracy claim that you're going to hear
19 about that involves half of Beaufort County, the likes of
20 which have never been seen around here. You need to ask
21 yourself when there's a conspiracy -- when somebody says
22 there's a conspiracy, it indicates some type of paranoia or
23 shifting the blame. So let me tell you a few things that he
24 conveniently left out about this horrible case.

25 He conveniently left out, and through the plaintiff's

1 own testimony at deposition that when the letter to Governor
2 Sanford said he has a drug addiction, he conveniently left
3 out that he and probably minimizing it, admits in his
4 deposition, and I'll ask him on the stand, that he used
5 cocaine an average of three times a month for four years.
6 But it -- he said it was recreational. That's at least what
7 he admitted to.

8 I guess his argument is, oh, you said I had an
9 addiction, that's not an addiction. I'm recreational. It
10 has no effect. I'm a successful businessman. So since I'm
11 not -- and you'll hear his definition, Mr. McAlhaney's
12 definition of what an addict is. Suffice it to say
13 something about you have to be downtrodden and in an opium
14 den to be an addict. Well, yeah, if that's your definition,
15 sure.

16 But isn't it convenient, these inconvenient truths that
17 they will leave out. That's all you're going to be hearing
18 about. And that's why I get to respond. I mean, if nobody
19 had ever done drugs in their life and somebody said, hey,
20 this person is a drug addict, that's one thing. Three times
21 a month for four years that we know of. Oh, and by the way,
22 this is all during the time that all this family court stuff
23 that Mr. McAlhaney inserted himself into. It was already
24 going on. He put himself in there.

25 And then I'm sure they'll make a big deal about it, but

1 you need to keep it in context, when we had a hearing in
2 court the first time they alleged drug use by McAlhaney and
3 McCullers, they both go get a drug test down at the hospital
4 which says negative for cocaine. Were they negative for
5 cocaine. I don't know. Does it stay in your system a
6 couple of days. Did they go down to GNC and get a masking
7 agent. Did they know somebody at the hospital. I don't
8 know. But doesn't that tell you, when you submit that to a
9 court, I'm negative for drugs. Isn't that suggesting to the
10 court, I don't do drugs? Sure it does. And that's what
11 they presented to the court. That's one of the things they
12 presented to the court that that -- that didn't give Rick,
13 Senior, custody that day. Gave it to Molly, because they
14 passed drug tests, and in his deposition he admits they were
15 using drugs together, cocaine. Twenty to twenty-five times
16 during the less than a year they were together. During the
17 time of that hearing. During the time he was charged, and
18 then he wants to sue my clients for calling him a drug
19 addict, having a drug addiction. What's a layman's version
20 of that? I don't know. But three times a month for four
21 years that we know of? See, he didn't tell you that.

22 And you're going to hear evidence -- is it truth, is it
23 defamation. You're going to hear evidence about abusiveness
24 to the children. That's in the letter. You can call
25 anybody anything, if it's true, and there's no legal

1 recovery for it. So on occasion to see somebody who's doing
2 drugs a lot, is abusive to the children, who wants you to
3 say his reputation has been damaged. He also didn't tell
4 you this, you know what he wants, he asked for in his
5 complaint? \$18,000,000 plus punitive damages. This guy
6 wants you to write him a check for that, or have us write
7 him a check for that. He forgot to tell you that.

8 \$18,000,000 plus punitive -- what another \$18,000,000.
9 Come on.

10 And then they make a big deal about this abuse of
11 process that Rick and Linda used the process to get an
12 advantage in family court. Well, you're going to hear the
13 process is a disclosure was made to Linda. It was reported
14 to law enforcement. Reported to law enforcement. Isn't
15 that what you do? And what did law enforcement do? Well,
16 they sent the kid to something called Hope Cottage who has
17 child forensic interviewers to be interviewed, because one
18 of us or people who aren't trained can't interview a small
19 child. There's ways you have to talk to them, and, you
20 know, kids will be suggestive, they can be very suggestible
21 and that sort of thing. So there's Hope Cottage, and then
22 it goes to Dr. Ellenberger, who I think is going to testify
23 today, who found some anal trauma.

24 I hate talking about these things. I don't know y'all
25 and I don't feel comfortable. I wish we were old friends

1 and we could sit down and talk about something more
2 comfortable, but circumstances have put us together. And
3 really, the filing of this lawsuit, him suing my client is
4 what brings us together, so I apologize in advance for
5 anything we may have to talk about that is uncomfortable.
6 We don't know each other. I wish we did.

7 But those things are important, those are the
8 inconvenient truths that they want to overlook, they want
9 you to ignore. Then we going to have some speculation, some
10 innuendo, and that sort of thing.

11 Oh, and the other thing they didn't tell you about the
12 letter to the Governor, it did not have Mr. McAlhaney's name
13 in it. It said my ex-daughter-in-law has been dating a
14 local realtor. Doesn't say McAlhaney, doesn't say MM, it
15 doesn't say anything like that, but they claim that his
16 intent in that was to gain this big advantage.

17 If you're going to do that don't you put his name in
18 capital letters, in bold, and send it to everybody, and that
19 letter was not sent to anybody except for Governor Sanford,
20 who, you'll hear, was a personal friend of my client's.
21 Granted, he was upset because Molly McCullers lawyer said
22 this was the Governor's sister-in-law, this affidavit. What
23 does that tell you. Give it some more weight. Not that the
24 Governor's office endorsed it, but that's certainly is
25 suggesting that, yes, and that upset Mr. McElveen, as I

1 think it would most of us. So they didn't tell you that.

2 But getting back to the disclosure. For their
3 conspiracy theory to work, for them to tie everything
4 together to get you to award them \$18,000,000 plus punitives
5 to the damage to the reputation you have to believe that a
6 conspiracy, again, like we've never seen before existed and
7 that Mr. McElveen controlled all these people. That he
8 controlled the Sheriff's Office, Investigator Baird. He's
9 going to testify. Did you hear about him. That he
10 controlled and enforced Hope Cottage as a non-profit who
11 counsels and interviews alleged abuse victims. That he
12 controls, enforces a family court judge, two magistrates,
13 and the Beaufort County Grand Jury to do what he wants. And
14 you know and I know deep down there ain't no way that that
15 guy or anybody else can do that. They don't tell you that.

16 They want to try to pile all these loose leaf things
17 out there and say, yeah, got his fingerprints and his
18 footprints all over it.

19 The other thing that is interesting to point out is
20 that letter as far as Rick McElveen was concerned was never
21 sent to anybody but Governor Sanford. It wasn't CC'd to
22 anybody, wasn't mailed to anybody, but low and behold, it
23 get's back to Beaufort, I believe through the Governor's
24 sister-in-law, who's out sitting in the audience, and then
25 gets it to McAlhaney, and then he was like, everybody's got

1 it, and the main reason they have it was because McAlhaney
2 and his uncle, who is Mr. McEachern, had this book, kept
3 this book, they had a lot of stuff in it... One of the things
4 it had in it was the letter. You'll hear about where it was
5 distributed, all over town, police agencies, 60 Minutes,
6 ACLU. One of the things in that book was the letter that
7 Rick McElveen had given to no one else, and that's called
8 self-publication.

9 Not that it terribly matters, because the -- what was
10 in there was true, but you can't create your own damages.
11 You can't say, well, somebody said something really bad
12 about me, and I want everybody to hear about it, and then
13 say all the people that heard about it, think less of you,
14 that your reputation is damaged. That's called self-
15 publication. That's an absolute defense.

16 The other things you're going to hear about, and again,
17 the Judge can tell you what the law is. I'm not going to go
18 through the thing about the law with Mr. McAlhaney.

19 Remember this when you're handed this case, the law in
20 this area is complex and pretty complicated. Y'all don't
21 have any notes to write, yet. I assume you don't have any
22 legal experience. Just remember this, the law is a
23 reflection of society. It attempts to differentiate between
24 right and wrong. It prohibits some conduct and it
25 encourages some conduct. What the law does is try to give

1 us a road map, and that's what you need to know about the
2 law, it tries to tell you what the right thing is. So it
3 talks about things like privilege. All these statements are
4 allegedly made to Hope Cottage and to Brian Baird and to
5 their lawyer are privileged. You can't sue people for
6 playing a part in the investigation of a crime, but most
7 importantly with regard to the report of the abuse, is there
8 is some statutory immunity or there is statutory immunity
9 for someone who, in good faith, reports to law enforcement,
10 abuse.

11 That's exactly what happened. Linda McElveen reported
12 it to law enforcement, and then they had no control over it.
13 And they, meaning the plaintiff, wants to blame them and
14 second guess the way they did things. What else were they
15 supposed to do. Not only did they have a legal duty to do
16 exactly what they did, they have a moral and an ethical duty
17 to do what they did.

18 If you're the caretaker of a child, and the child makes
19 an allegation of abuse and you don't report it, guess what's
20 happening next -- knock on the door; DSS. You can get in
21 trouble for not reporting something. What do they do. They
22 hear this, Linda hears -- and freaks out. Who wouldn't?
23 And reports it, and it gets investigated. And they do what
24 they always do. They go to Hope Cottage, and they go to Dr.
25 Ellenberger. They go to a magistrate, who finds probable

1 cause. They have a preliminary hearing where they get asked
2 a bunch of questions that -- the magistrate again finds
3 probable cause. They go before a grand jury who finds
4 probable cause and indicts the case.

5 Ultimately, the solicitor's office dismisses it. And
6 you'll hear about what a nolle pross means. It doesn't mean
7 it's over automatically. It means for whatever reason
8 they're not prosecuted. They're the victims.

9 So I wanted to speak to you to put some of this stuff
10 in context and remind you that this conspiracy, this
11 campaign of terror that they're alleging that Rick McElveen,
12 Senior, and company, did is ridiculous. It's pathetic.

13 Why would someone who at the time was 50, 51 years old,
14 who's already raised kids of his own. His kids were grown.
15 Has already been through diapers, adolescence, first dates,
16 everything else, want to do it again. He's here in the
17 golden years with his wife. He should be thinking about
18 fishing, slowing down, enjoying the good times. But because
19 his ex-daughter-in-law, you'll hear about, had so many
20 problems, including drugs and everything else he had to step
21 in. He did what he had to do to help the children, and
22 that's been his motivation throughout.

23 Instead of slowing down and enjoying the golden years,
24 he's making peanut butter and jelly sandwiches and going to
25 PTA meetings, and coaching his grandson's baseball team.

1 It's important to stop and ask the question; why? Why
2 would he do that? He'd never met McAlhaney before. He did
3 it for the kids. And he'll continue to do it for the kid,
4 and they're convinced that he had ulterior motives.

5 Nobody is out to get the plaintiff. I don't know if
6 it's an issue of ego, of denial, of not liking the persona
7 he presents. I don't know. I can't get in his mind. But
8 suffice it to say, their theory of this case that you just
9 heard is so far out there and it's not supported by the
10 evidence, and it has so many problems with it, that it will
11 never hold water, and you will hear about that.

12 Now, we have, also, after they sued Mr. McElveen and
13 company, we have also brought a counter-claim, and it's
14 really based on a few things that were said, but that book.
15 The one that they published and then turned around and said,
16 hey, you've ruined McAlhaney's reputation.

17 There's a lot of people that got that book. I don't
18 know if people read it. I don't know people looked at it,
19 and quite frankly, I think when my client gets up there and
20 talks to you, I think he will be able to say that I know
21 that this person thinks less of me. It was embarrassing, it
22 was unfortunate, it was disturbing. But he's not motivated
23 by the same thing the plaintiff is. He's not going to ask
24 you for \$18,000,000. All Rick and them want to do is get
25 this thing over with and move on. And y'all have the

1 opportunity to make that happen.

2 I know it's called jury duty, but it will be jury
3 opportunity. You have the opportunity to finally lay to
4 rest something that's been going on a long time. And you're
5 going to hear all kinds of fireworks and circumstantial
6 evidence and this matches up and this matches up, but the
7 bottom line is they did, in their heart, what was right, and
8 that's not against the law, and we should have more people
9 that do the right thing.

10 So we hope, when we're all done, that you understand
11 how we got here, what we've been through, and the best way
12 to get out of here, and that's for everybody to go home.
13 Rick McElveen to go home and hug his grandkids.

14 So at the end of evidence we would ask you to bring
15 back a verdict for the defendants on all the causes of
16 action. I didn't talk about the civil conspiracy. You'll
17 hear about that tomorrow, but as to all this stuff, the
18 family court stuff, bring back a verdict for the defendants,
19 we ask you. It's the proper thing to do, it's the right
20 thing to do.

21 Thank you for hearing us out.

22 MR. TEMPLETON: May it please the Court.

23 THE COURT: Okay, Mr. Templeton.

24 MR. TEMPLETON: Good afternoon. I'm Morgan Templeton.
25 My partner Trey Watkins is down there, and we have the

1 pleasure of representing Mike. I'm going to refer to him as
2 Mike, because there are far too many Mcs in the courtroom.
3 That's the only way that I can keep them straight. So I'm
4 going to refer to him as Mike, down there.

5 Mike, as you heard, is the uncle to Matt McAlhaney.
6 He's more than just an uncle, though, in the traditional
7 sense. He is somewhat of a father-like figure to him
8 because Matt's father passed away at a young age, so Mike
9 felt an obligation to become involved in Matt's life, and
10 has done that over the course of the years. And so it's a
11 special relationship there, and that's important, because as
12 you've heard, the last 45 minutes, some pretty horrible
13 allegations that have been said by, about, people in the
14 courtroom and out of the courtroom.

15 And when Mike heard those things about his nephew, he
16 did as most would do, he wanted to help him. He wanted to
17 help put it to bed, put it to rest and allow everybody to go
18 on. Give that opportunity to go on with their life, and as
19 you heard Mr. Mathison explain that was not acceptable at
20 the time. And Mike, through a letter to the Hope Cottage,
21 took it upon himself to explain Matt's side of the story.
22 Not for Matt. Not for anybody other than Mike wanting to
23 help with the situation so that everybody could move on,
24 because he couldn't believe that the allegations were true,
25 and he was not prosecuted for it, so it seems like that

1 would tend to be accurate.

2 So a few things I want to make clear. Mike's not sued
3 anybody in this case. He's not asserted any claims. He's
4 not asking for any damages. He, too, wants to go home, and
5 at the end of the case I'm going to ask you for a defense
6 verdict on his behalf, but we'll get to that later.

7 The only person in the courtroom that has asserted any
8 claims against Mike is Mr. McElveen, Senior, who I will
9 probably refer to as Senior, because, again, that's the only
10 way I can keep it straight. He has sued Mike for liable and
11 slander, defamation and that arises out of this book. For
12 the book, for the letter that contains statements, and we'll
13 hear throughout the course of the trial what statements that
14 are contained within that document or that had been said by
15 Mike, which they contend caused some damage.

16 What I will submit to you the evidence will show
17 there's not been any damage caused by any of the statements
18 contained in that letter, contained in that book, contained
19 in that publication; whatever you want to call it. There's
20 been no damage that's been caused to Senior. And that's
21 pretty well simple -- from my end of the courtroom.

22 So I know all the lawyers echo this, we appreciate
23 y'all being here, listening to it all, taking it all in. At
24 the end of the day, at the end of this trial, on behalf of
25 Mike I'm going to ask you for a defense verdict. The case

1 is not about Mike. The case is about Matt and what happened
2 to Matt. That's what this case is about. I don't want to
3 minimize that by talking about Mike.

4 THE COURT: Okay, Jurors, now y'all understand the
5 parameters.

6 We're going to take a break. Before we do, just a
7 couple of things. The law is pretty complex on these
8 issues. I just gave you the briefest of an overview, okay.
9 And it depends -- when I instruct y'all on the law at the
10 end, even though it will be kind of lengthy, I'm giving you
11 the law in the abstract, okay. Slander, liable, you know,
12 defamation. Just words and statements that damage a
13 person's reputation. There are lots of other things I have
14 to tell you, but just to simplify a couple of things, right
15 off. The law says if you call somebody a thief or that they
16 have committed a crime, that's defamation. You don't have
17 to worry about that. Whether it was published or not is an
18 issue, even though I might tell you lots of other things,
19 simplified, if you accuse someone orally or in writing and
20 it's published to someone else that does constitute
21 defamation.

22 Now, there are defenses, of course. Truth is an
23 absolute defense, okay. You can take all the evidence
24 that's admitted and see if it sounds like, and I'm not
25 ruling, of course, statements made constitute defamation,

1 but there could be a valid defense to it. Don't know.

2 Truth is a valid defense. Amplify that and go on.

3 Now, any time anybody claims they should collect money
4 from another party -- a legal theory -- you know, the legal
5 theory, it's defamation, liable and slander, abuse of
6 process, conspiracy, back and forth and so forth, the party
7 who seeks to be compensated has the burden of proof. The
8 burden of proof is simply evidence that convinces you that
9 what the party who seeks to be compensated offers to prove
10 is it more likely so than not. If you could physically
11 weigh evidence, the burden of proof is going to be by more
12 than 50 percent. You can't physically weigh evidence, but
13 mentally you can evaluate it, and the party with the burden
14 of proof has to basically convince you that what they seek
15 to prove is more likely so than not, after you have taken
16 the totality of the testimony.

17 And evidence does consist of two types. Direct and
18 circumstantial. Direct is where someone testifies to
19 something he or she has observed through the senses. Might
20 not be true, but it's direct evidence. Just like if
21 somebody came in and said it's raining outside. We wouldn't
22 know whether that's true or not, but if we believe them it
23 would be. Now, if they came in and said it was cold, I
24 wouldn't ask any further, you know. I'd believe them right
25 now, today, but rain, we don't know. We're inside the

1 building. If somebody came in and didn't say a word, but
2 took off -- let down an umbrella and shook it out, we could
3 infer that it's possibly raining outside. Might not be, but
4 that would be a reasonable, you know. Direct evidence and
5 circumstantial evidence stand on the same footing in the
6 law, and you can, from proven facts, infer the existence of
7 other facts. It has to be a reasonable basis for it, has to
8 be connected up. But direct evidence, indirect evidence,
9 circumstantial evidence, all part of the case. Party can
10 rely on direct evidence or indirect evidence in convincing
11 you, and that goes for everybody involved.

12 As I mentioned, again, I give you the law in the
13 abstract, as I will at the end, okay. And when I -- the law
14 applies to everybody, and whether something was said, it
15 might be conceded whether there is a defense to it, might
16 not be. Those are the facts y'all are going to have to take
17 and make a determination based upon the totality of the
18 evidence presented.

19 Again, not knowing anything about the case, abuse of
20 process is using process to obtain a motive not envisioned
21 in the process. Generally, somebody sues somebody -- that's
22 not what's alleged here. They allege reports were made as a
23 result of that, a person was indicted and so forth. But,
24 bottom line, it's usually used, not for the purpose of the
25 process, but to obtain a collateral advantage, an outside

1 advantage like you sue somebody to get a better division of
2 property in an estate dispute, you know, or you sue somebody
3 to obtain property that might legally belong to somebody
4 else, and you sue them for some other reason. Any
5 collateral advantage that you can take, and there are
6 defenses to that. The fact, as I understand them from the
7 opening statements, and I don't know any more than you, but
8 it sounded like the abuse of process is that reports were
9 made alleging on abuse of process saying that the child was
10 molested and they were later dismissed, all right.

11 You are obligated to report abuse if you are the
12 primary care giver. Just like a teacher. If a child comes
13 in and say, Uncle Henry abused me. If the teacher doesn't
14 report it, then they get indicted for all that. But that's,
15 again, the law in the abstract.

16 Whether something happened or didn't happen is what
17 y'all have to say. If the child reports something a person
18 -- that they've been abused, the primary care giver is
19 entitled to make a report and let the process play out.
20 They can't fabricate a report or make it up.

21 All those will be issues in the case, and just
22 simplifying to the extent that I can. I don't know what
23 happened. That's why y'all are going to be here.

24 But, we're going to take a short break. I don't think
25 that we're going to have but one witness today, so y'all

1 will be out, simply because we didn't know how long it would
2 take, and the first witness is going to be the plaintiff and
3 he's going to take two to three hours, probably, by the time
4 everybody questions him about everything.

5 So don't talk about the case during this or any breaks.
6 Just be at east for 14 minutes.

7 (Jury out for short break at 3:58 p.m.)

8 THE CLERK: Your Honor, the jury is clear.

9 THE COURT: Good for them.

10 Y'all need anything or y'all want to just be at ease
11 for a few minutes.

12 MR. MATHISON: Please the Court. You said just in
13 discussing the matter with the jury before they left, I
14 think, as a hypothetical, if a child reports something,
15 somebody has to do something. I was very careful not to say
16 that in my opening. I notice that Mr. Lee did not say that
17 either. My understanding is that we weren't supposed to say
18 that.

19 THE COURT: Well, that's -- Mr. Lee did say what I said.
20 In fact, he said if you don't report it DSS comes knocking.

21 MR. MATHISON: He was talking about an immunity, which
22 is entirely --

23 THE COURT: I understand that. I'm not getting into
24 that. I'm just trying to simplify it for them, as much as I
25 can. Not hurting the case. I'm not telling them anything

1 else about it until I instruct them.

2 One and two, I have all kind of things in these
3 documents y'all handed up about massive, nicely indexed and
4 tabbed instructions on the law and so forth. I lack any
5 such documents. If y'all have them, you need to hand them
6 up. You shouldn't allude to them unless you have them.

7 MR. LEE: You want the charges --

8 THE COURT: Anything you say you're going to use.

9 MR. MATHISON: These aren't jury charges, Your Honor,
10 but this is the law relied upon by the plaintiff.

11 THE COURT: All right.

12 MR. MATHISON: We will submit jury charges.

13 THE COURT: All right. See what y'all have and then
14 I'll know where you're going.

15 (Court in recess for short break.)

16 (Court in session after short break.)

17 MR. LEE: Your Honor, you had asked before the break if
18 we had any charges, and I've prepared some charges.

19 THE COURT: That's all right.

20 MR. LEE: They're sort of the vanilla variety.

21 THE COURT: I may or may not use them.

22 MR. LEE: Yeah, may or may not -- gave the other lawyers
23 a set. I wanted to get you a set.

24 THE COURT: Thank you.

25 Okay. Let's see -- Mr. Mathison, are you ready?

1 MR. MATHISON: Yes, sir. May it please the Court. I
2 have a couple of witnesses who've expressed a desire to
3 testify out of turn, if we could work them in.

4 THE COURT: It depends on the length. Long as we get
5 out of here by basketball time -- baseball or whatever it
6 is.

7 MR. MATHISON: Well, my assumption is that we can.

8 THE COURT: Okay.

9 MR. MATHISON: I'd like to call Ms. Szelewa and Ms.
10 Sanford after the doctor, assuming that we have adequate
11 opportunity.

12 THE COURT: Surely, we'll roll right along. Let's bring
13 the jury in.

14 We need to get as many out -- not that they aren't all
15 important, we need to get as many out of the way as we can
16 today.

17 THE CLERK: Jurors entering, Your Honor.

18 (Jury in at 4:19 p.m.)

19 THE CLERK: Jury is seated, Your Honor.

20 THE COURT: You may proceed.

21 MR. MATHISON: May it please the Court. Your Honor, as
22 you know, we're going to call Dr. Ellenberger. We're going
23 to call him out of turn because he has to be out of town
24 tomorrow.

25 THE COURT: Okay.

1 MR. MATHISON: Come around, Dr. Ellenberger.

2 THE CLERK: If you would, sir, please put your left hand
3 on the Bible, raise your right hand.

4 (Whereupon, Dr. Kurt Richard
5 Ellenberger, was sworn.)

6 THE CLERK: Please be seated.

7 DR. ELLENBERGER - DIRECT EXAMINATION
8 BY MR. MATHISON:

9 Q State your name for the record, please?

10 A Kurt Richard Ellenberger, M.D.

11 Q Dr. Ellenberger, where do you reside?

12 A Physical address?

13 Q Yes, sir. Physical address?

14 A 3 Burckmyer Drive, Beaufort, South Carolina.

15 Q How old are you?

16 A I'm 39.

17 Q Are you married?

18 A Yes, sir.

19 Q To whom?

20 A Sheila Bergman Ellenberger.

21 Q Do you have any children?

22 A Two children.

23 Q What are their names and ages?

24 A Sawyer, who is four. Merrick is two.

25 Q And your profession is that of a physician; is that

1 correct?

2 A That's correct.

3 Q By whom are you employed, Doctor?

4 A I'm a partner with Beaufort Pediatrics.

5 Q Where did you earn your undergraduate degree?

6 A Wittenberg University in Springfield, Ohio.

7 Q And when did you get that degree?

8 A In 1998 -- 1992, sorry.

9 Q In 1992?

10 A Yes.

11 Q And where did you get your medical degree?

12 A University of Cincinnati.

13 Q When was that?

14 A In 1996.

15 Q Are you board certified?

16 A Yes, sir.

17 Q And what is your certification?

18 A I'm a Fellow in the American Academy of Pediatrics,
19 board certified in pediatrics.

20 Q In 2004, did your employer, Beaufort Pediatrics, have a
21 contract with Beaufort County to perform examinations on
22 persons about whom sexual or child abuse had been alleged?

23 A Our office had a contract to use the space in our
24 office. Myself and the nurse practitioner in our office had
25 volunteered our time to perform these exams for them.

1 Q So this was being done on a voluntary basis; it wasn't
2 a matter of being remunerated?

3 A Well, there was some -- the remuneration came from the
4 state. It didn't come from Hope Cottage or our practice.

5 Q In the fulfilment of this relationship, did you get a
6 referral of Jackson McElveen?

7 A Yes.

8 Q And from whom did the referral come?

9 A It came from Hope Cottage.

10 Q Do you know who at Hope Cottage actually made the
11 referral?

12 A I don't know, specifically. They had a couple of
13 social workers that worked for them. I don't believe that
14 the present director was the director at the time.

15 Q Okay. Do you know whether Jackson or his brother,
16 Ricky, had been patients of Beaufort Pediatrics before you
17 undertook to do this examination?

18 A Jackson had been. I assume Ricky probably, too. I
19 don't know for sure.

20 Q Did you perform an examination on Jackson?

21 A Yes, I did.

22 Q What was the purpose of it?

23 A The purpose of the examination was to document any
24 physical findings consistent with abuse or negative
25 findings.

1 Q I'm handing you that document and asking if you can
2 identify it for me, please?

3 A This is a copy of the standard form that we use -- it's
4 a state form that we use for doing these exams.

5 Q And I think you said that the purpose of this
6 examination was to determine whether you could make any
7 findings that were quote, consistent with abuse; is that
8 correct?

9 A Our purpose was to document any physical findings.

10 Q And is it a fact that on the 12th page of that report
11 your finding is set forth in the discussion section?

12 A That is correct.

13 Q And am I correct in stating that your report says, and
14 I quote, the exam neither confirms or denies any
15 maltreatment?

16 A That is correct.

17 Q Were you present when Mr. Lee made reference during
18 oral argument to, and I'm quoting now, anal trauma. That's
19 the terminology he used. Did you hear him say that?

20 A Yes, sir.

21 Q In point of fact, Doctor, there wasn't any, quote, anal
22 trauma in this examination, was there?

23 A Not that you could -- not that you could definitively
24 describe as anal trauma. There was a small fissure, but
25 there could be multiple causes of that finding.

1 Q You described it, I believe, did you not, Doctor, as a
2 quote, healing anal fissure; is that correct?

3 A That is correct.

4 Q And is one of the causes of having such a healing anal
5 fissure the fact that a child would have constipation?

6 A It can be.

7 Q What other causes could give one a healing anal
8 fissure?

9 A Trauma to the area. Passage of some sort of foreign
10 body. Something rough or hard that would either stretch the
11 area or tear the area on passing.

12 Q You never called anything here an injury or trauma in
13 your report, did you?

14 A The finding is not specific. There is nothing there
15 that I can definitively --

16 Q And you did not find that healing anal fissure was
17 consistent with any form of sexual abuse, did you?

18 A I can't -- could not make that sort of determination on
19 my findings on the exam.

20 Q When you interviewed the child, was anyone present
21 other than Jackson McElveen?

22 A The paternal grandmother was present.

23 Q And who told you that she was the paternal grandmother?

24 A The social worker from Hope Cottage.

25 Q Do you know whether she is, in fact, actually the

1 grandmother of the child that you examined?

2 A I have no documentation one way or the other.

3 Q Would it surprise you to learn that she is the wife of
4 the grandfather?

5 A Well, one would assume she was the wife of the
6 grandfather, if she's the grandmother.

7 Q But not being biologically related?

8 A Sure.

9 Q Who supplied the history or the information that you
10 wrote down during the interview before you examined Jackson
11 McElveen?

12 A Prior to examining the child, there was brief details
13 given by the social worker from Hope Cottage, as well as an
14 interview with the paternal grandmother or step-grandmother,
15 as the case may be.

16 Q Did the grandmother or step-grandmother, to use your
17 term, remain during the entire interview?

18 A Yes. She was both -- well, there was an interview with
19 her without the child present and then during the brief
20 interview with the child, she was present, as well.

21 Q Was she present during the time that you examined the
22 child?

23 A Yes. I believe the whole time. Occasionally, we have
24 the family step out when we're doing the more sensitive
25 areas.

1 Q In point of fact, she's the only person that's
2 reflected in your report as being present, at all, other
3 than you and Jackson McElveen; isn't that true?

4 A Also my nurse was there.

5 Q She wasn't there for the interview, though, she was
6 there for the --

7 A Examination.

8 Q -- examination.

9 A That's correct.

10 Q And what's the name of your nurse?

11 A Cynthia Logan (sp) I believe was the nurse on that
12 occasion.

13 Q Does she still work for Beaufort Pediatrics?

14 A She does.

15 Q Doctor, do you know how long after the disclosure of
16 potential child abuse this examination took place?

17 A Not specifically.. It would have been greater than 72
18 hours. Our role was to do what was considered chronic
19 cases, which would have been anything that happened 72 hours
20 or later in the past.

21 Q Would it surprise you to learn that it took place a
22 week or more after the disclosure?

23 A No, it wouldn't surprise me.

24 Q Is there a date indicated on the second page of your
25 report as to when Jackson may have last had contact with the

1 plaintiff, Matt McAlhaney?

2 A One week ago, is what was listed on the history.

3 Q And that information about the mother's boyfriend
4 didn't come from Jackson, did it?

5 A No, sir.

6 Q Who did it come from?

7 A It would have either come from the social worker or the
8 paternal grandmother.

9 Q And you knew, as a result of the same sources, that the
10 person you're describing as the paternal grandmother, Linda
11 McElveen, is the person who made the report?

12 A I don't know if I was aware at that time or not.
13 Generally, we were informed that there was a case coming in
14 and general details so we would know what to look for.

15 Q On the following page, page three, there's an
16 indication of a medical history; is that correct?

17 A That's correct.

18 Q And looking down the second line in the report, does
19 that indicate allergies?

20 A That's correct.

21 Q And what box is checked?

22 A No.

23 Q And the person being described there is your patient,
24 isn't it; wasn't that Jackson McElveen?

25 A That's correct.

1 Q And I'm looking down three boxes below that and I note
2 that there is substance abuse?

3 A Correct.

4 Q And that box is checked?

5 A That's correct.

6 Q And then there's stated, not during pregnancy?

7 A Correct.

8 Q Are you still describing your patient, Jackson
9 McElveen, or are you describing someone else?

10 A That section is birth history. That's related to the
11 pregnancy and the birth of the patient.

12 Q So that's describing Jackson's mother; is that right?

13 A That's correct.

14 Q And who supplied that history?

15 A The same.

16 Q That is to say either Linda McElveen or some social
17 worker who talked to Linda McElveen?

18 A That's correct, although, in that section, actually my
19 notes do -- that Ricky McElveen, Junior, was also part --
20 imparting some of the history for that portion.

21 Q What does the term ETOH mean, Doctor?

22 A Alcohol.

23 Q So substance abuse for the mother means that she was
24 drinking alcohol, but not during her pregnancy?

25 MR. LEE: I'm going to object to the relevancy to this

1 testimony. I have no idea what the relevance to this case
2 is?

3 THE COURT: All right, a couple more questions and move
4 on.

5 BY MR. MATHISON:

6 Q The bottom of the page, the historian, that's what you
7 call the person who gives you this history; is that correct?

8 A That's correct.

9 Q Indicated that some other people had substance abuse,
10 ETOH use. Who are they?

11 A The mother, maternal grandfather and maternal uncle.

12 Q In other words, that would be Molly McCullers, Molly
13 McCullers father, Dale McCullers, and Molly McCullers
14 brother; is that right?

15 A I don't know their names specifically, but yes, those
16 are the names.

17 THE COURT: All right. I sustain his objection from
18 this point forward.

19 BY MR. MATHISON:

20 Q Doctor, if this report had been done a week beforehand,
21 do you know who had sole custody of the child who you were
22 evaluating?

23 A No, sir.

24 Q One page four, Doctor, you indicate the result of your
25 interview with Jackson; is that correct?

1 A That's correct.

2 Q And was his grandmother, paternal grandmother, to use
3 your terminology, Linda McElveen, present during that?

4 A That's correct.

5 Q And did you ask Jackson questions to which he responded
6 initially?

7 A Yes, generally we start the interview, you know, with
8 general questions about the family. Try to establish a
9 pattern of truthfulness, etcetera.

10 Q And what was the first question that you asked him --

11 MR. LEE: I'm going to object. He filed the motion --

12 THE COURT: I don't even understand why you're doing
13 this after the pre-trial stuff that y'all brought up. I
14 think the doctor can just step down. He's going to ask him
15 two questions and him two, unless you've got something else?

16 MR. MATHISON: Well, I'm trying to --

17 THE COURT: Well what you have in evidence is that he
18 can neither confirm nor deny. That's all the jury needs to
19 know at that point. Anything the child told him would be --
20 what do you call it, hearsay.

21 MR. LEE: Yes, sir.

22 THE COURT: So I sustain that objection.

23 MR. MATHISON: I wasn't asking for him to answer that
24 way, Your Honor --

25 THE COURT: You asked him specifically what about your

1 first question to him X, at which point I sustained his
2 previous objection.

3 MR. MATHISON: Right. And I'll ask another question.

4 BY MR. MATHISON:

5 Q At the time of your questioning, did Jackson McElveen
6 indicate a response by --

7 MR. LEE: Objection.

8 THE COURT: You two need to come up. I don't know where
9 you're going with the case. We had a pre-trial.

10 (Off the record bench conference with counsel and the
11 Court.)

12 BY MR. MATHISON:

13 Q Doctor, was there an trauma or scarring or other
14 evidence of injury to Jackson McElveen?

15 A Outside of the previously mentioned anal fissure?

16 Q But I thought you didn't consider that to be trauma or
17 injury?

18 A Well, there was no other finding consistent with trauma
19 or injury.

20 Q No scarring?

21 A As far as anywhere on the body?

22 Q In the area of his genitals?

23 A No. His genital exam was otherwise normal.

24 Q And on page seven did you describe the child's
25 demeanor?

1 A Yes.

2 Q What was it?

3 A He was anxious towards the exam.

4 MR. LEE: Your Honor, I object to anything about this --
5 that comes close to saying what the child said, because he
6 made the motion to exclude that.

7 THE COURT: You made the motion, not me, to exclude
8 anything the child said, and I granted your motion, so why
9 are you now trying to do it. You're beginning to irritate
10 me.

11 MR. MATHISON: May I please the Court. I'm trying to
12 get into --

13 THE COURT: I know, which I can't do. You can't do
14 after having made your motion and I having granted it.
15 Let's just -- let him go. We've got two other witnesses to
16 go through today.

17 MR. MATHISON: Move the introduction of the report, Your
18 Honor. It will have to be redacted to coincide with your
19 ruling.

20 THE COURT: We can put it in if you want to. Just the
21 one sentence, though. I think that's all you need.

22 MR. MATHISON: Well, I'm offering the entire report as
23 redacted.

24 THE COURT: The entire report cannot come in. We can
25 put in the report as redacted, which is going to be down to

1 about three sentences, later. Just mark it right now as a
2 Court's Exhibit.

3 It has not been -- redacted means you take out
4 irrelevant portions, jurors.

5 (Court's Exhibit No. 1, medical
6 report of Dr. Ellenberger, was marked.)

7 COURT REPORTER: Court's one, Judge.

8 BY MR. MATHISON:

9 Q Doctor, as a result of your examination of Jackson
10 McElveen, was there any medical evidence to confirm that
11 sexual abuse had occurred?

12 A No, sir.

13 Q Thank you.

14 DR. ELLENBERGER - CROSS-EXAMINATION

15 BY MR. LEE:

16 Q As a result of your medical examination of Jackson
17 McElveen was there any medical evidence to deny that there
18 had been a sexual -- sexual abuse of Jackson McElveen?

19 A No, sir.

20 Q And you found a small anal fissure; correct?

21 A That is correct.

22 Q And, again, being a layman, as I misuse trauma, we
23 don't know what caused it, do we?

24 A No.

25 Q Thank you.

1 MR. MATHISON: On redirect.

2 DR. ELLENBERGER - REDIRECT EXAMINATION

3 BY MR. MATHISON:

4 Q Did you --

5 THE COURT: Whoa. Hold on just a minute.

6 MR. MATHISON: Excuse me. Forgive me.

7 THE COURT: Patience is the most priceless of all
8 virtues.

9 Mr. Templeton has one question.

10 DR. ELLENBERGER - CROSS-EXAMINATION

11 BY MR. TEMPLETON:

12 Q Doctor, the opinion that you rendered a few moments
13 ago, that you did not believe that there was any evidence of
14 sexual trauma to Jackson. Do you hold that opinion to a
15 reasonable degree of medical certainty as being most
16 probably true?

17 A Well, the findings were that there's neither a
18 confirmation or denial of the charges. Non-specific
19 findings.

20 Q And do you hold that opinion to a reasonable degree of
21 medical certainty as being most probably true in your
22 profession?

23 A Yes.

24 Q Thank you.

25 THE COURT: All right. Any questions?

DR. ELLENBERGER - REDIRECT EXAMINATION

BY MR. MATHISON:

Q The report of the healing fissure, did you tell anybody verbally about that?

A That was five years ago, so I can't recall specifically, but there's probably a likelihood that I told the social worker, as well as any family present, just in case they A)notice it or B)if it needs any attention.

Q Did you have a conversation subsequently with the Beaufort County Sheriff's Officer about it?

A Again, five years ago. I mean, in general there can be conversations between law enforcement and ourselves, but I don't remember specifically the content of any conversation that occurred.

Q Do you have any recollection, Doctor, at any point, of having changed your findings or conclusions with respect to their being no confirmation of sexual abuse?

A No, sir.

Q Thank you, Doctor.

MR. MATHISON: I don't have any further questions.

THE COURT: Doctor, you can almost go. However, the jury and me, we might not know what the word fissure means. How about tell us?

DR. ELLENBERGER: An anal fissure is just a small tear in the lining of the anus, the very last portion of the

1 rectum before the feces leaves the body. It's a very
2 elastic area, but it's a very thin layer, so it can be torn
3 or injured easily, but it also heals very rapidly.

4 THE COURT: Okay. You're free to go.

5 They are going to put up two more witnesses. They are
6 short, but remember as many as we can knock out, fewer we
7 have to go.

8 MR. MATHISON: Please the Court. Plaintiff would call
9 Jan Szelewa to the stand, please.

10 THE COURT: Okay.

11 THE CLERK: Ma'am, step forward. Put your left hand on
12 the Bible and raise your right hand.

13 (Whereupon, Jan Szelewa was sworn
14 to tell the truth.)

15 THE CLERK: Please be seated. State your full name.

16 JAN SZELEWA - DIRECT EXAMINATION

17 BY MR. MATHISON:

18 Q Please state your name for the record?

19 A Jan Szelewa.

20 Q Ms. Szelewa, where do you live?

21 A 11 Lucy Creek Drive, Lady's Island.

22 Q And are you married?

23 A Yes, sir, I am.

24 Q What's your husband's name?

25 A Bruce Szelewa.

1 Q Do you have any children?

2 A No, sir, we don't.

3 Q In 2003, were you and Mr. and Mrs. Rick McElveen,
4 Senior, neighbors?

5 A Yes, we were.

6 Q Where was your house located in comparison to their
7 house?

8 A They were on a corner, and I was on the other corner.
9 They were number 33, and I was number 11.

10 Q What about Rick McElveen, Junior, and his former wife,
11 Molly McCullers; did they also live in your neighborhood?

12 A Yes. They lived right next door in number 13 Lucy
13 Creek.

14 Q And by that, you mean right next door to you?

15 A Right next door to me.

16 Q Were they still living there in 2003 or had they moved
17 out; Rick, Junior, and Molly McCullers?

18 A They were still there, I believe.

19 Q Were you friends with Molly McCullers?

20 A Yes, I was.

21 Q At the time of your friendship, had she already
22 divorced Rick, Junior?

23 A Yes, she had.

24 Q As a result of your friendship with Molly, did you know
25 that she had been dating another man?

1 A Yes, I did.

2 Q What, if anything, did Rick, Junior, do to obtain
3 evidence about Molly seeing another man?

4 A Either he or his father tapped the home telephone line
5 to listen to conversations and that's how they found out
6 about him.

7 Q Did Rick, senior, Mr. McElveen, Senior, conduct any
8 other form of surveillance in your neighborhood while you
9 lived there?

10 A Yes, sir. Since the phone was tapped, there was a
11 friend of both Molly and I that called her and said that she
12 was coming over. They in turn knew why she was coming over,
13 so he said to me after the fact that he had video tapped us,
14 all three of us outside in the driveway.

15 Q How do you know that he did that?

16 A He told me.

17 Q Mr. McElveen, Senior, told you?

18 A Yes, sir, he did.

19 Q During the late summer of 2003, did Mr. McElveen or his
20 wife Linda ask you to do something for them?

21 A Yes. They wanted a deposition on Molly for their
22 upcoming case to try and obtain the custody of the children.

23 Q Well, you said a deposition. What was it that they
24 wanted you to do?

25 A They wanted me to -- to, you know, talk about her being

1 -- as Rick, many times said, she -- she -- he thought she
2 was bipolar and had since seen a doctor who said she was
3 bipolar, and he was thrilled that I did put that in the
4 deposition.

5 Q Did you know that from your own knowledge?

6 A No, I'm no doctor.

7 Q Did you know it because Molly had told you that?

8 A No.

9 Q Who told you to put that in there?

10 A No one really told me to put it in there, and there
11 were other things I put in there, because I really didn't
12 want to get involved in this. But I went ahead through it.

13 Q Well, let me ask you this, was it true or do you know?

14 A Which one?

15 Q The bipolar?

16 A Oh, I have no idea. I know that she must have some
17 kind of chemical imbalance, because Valium is made to calm
18 you down and when Molly would take Valium it would pep her
19 up. So there is some kind of imbalance within Molly
20 McCullers.

21 Q How many times did the McElveen's approach you in order
22 to get you to give this affidavit or deposition?

23 A Oh, many, many times. Their phone calls would come in
24 and I wouldn't receive them. Finally, they found me in my
25 driveway, which most anyone can.

1 Q Did Mr. McElveen threaten you with disclosing your
2 marijuana use if you didn't cooperate?

3 A I -- in a sense, yes. It wasn't in an ugly way, but,
4 yes, it was thrown out there in its own way. It was
5 mentioned.

6 Q And as a consequence did you prepare an affidavit dated
7 September 1, 2003, for Mr. and Mrs. McElveen?

8 A Yes, I did.

9 Q Did you do it yourself or did they do it for you?

10 A I did it, and I regret it.

11 Q Did you go to the temporary hearing in family court
12 where the custody of Mr. McElveen's grandchildren was to be
13 decided?

14 A No, sir.

15 Q Did you find out the results of that hearing?

16 A Yes. I think he lost that hearing.

17 Q Did you have any contact or communication with him
18 after the hearing took place?

19 A No. I think we lost touch due to disagreements about
20 their animals.

21 Q You mean their pets?

22 A Their pets.

23 Q When was the next time you had occasion to talk to Mr.
24 or Mrs. McElveen, Senior?

25 A Well, my husband and I were riding bikes by their

1 house, and he hailed me down. The children were playing in
2 the background and my husband and I stopped, and he said
3 that Matt McAlhaney was a child molester and he had been
4 arrested that day. And my first response was how -- you
5 know, what child, and he said, Jackson. And I said, well,
6 how is Jackson. You know, I could see him playing in the
7 background. He seemed perfectly fine.

8 Q What was Mr. McElveen's demeanor when he told you that
9 his son or his grandson had been a victim of child
10 molesting?

11 A It wasn't so much about the child in the demeanor he
12 had. He seemed very thrilled, almost beaming about the fact
13 that Matt McAlhaney had been arrested.

14 Q Do you know what day Mr. McAlhaney was arrested?

15 A No, I don't recall.

16 Q At the time he told you about Mr. McAlhaney, did you
17 know Mr. McAlhaney at all?

18 A No, I'd never met him.

19 Q At the time he told you that Mr. McAlhaney was a child
20 molester, did you believe Mr. McElveen or not?

21 A I -- I didn't know what to believe. That's why I took
22 it upon myself to meet Matt for myself. I'm a very good
23 judge of character.

24 Q And when did that take place, Ms. Szelewa?

25 A Shortly after. I don't recall the date.

1 Q Did he arrange a meeting with you or did you go to see
2 him?

3 A I dropped in on him in his office.

4 Q And what was his --

5 A It was eating me alive. I had to see for myself what
6 kind of person would do something like that.

7 Q And did Mr. McAlhaney talk with you?

8 A Yes, he did.

9 Q And as a consequence of his having talked to you did
10 you come away believing that he was a child molester?

11 MR. LEE: I object to that question. She has no basis
12 for forming that opinion. She's not an expert.

13 THE COURT: No.

14 MR. LEE: No, he can't ask it?

15 THE COURT: Right.

16 MR. LEE: Okay.

17 BY MR. MATHISON:

18 Q What was your purpose in going to see Mr. McAlhaney
19 other than simply observing him?

20 A Well, he and Molly were still seeing each other at the
21 time, and I felt very guilty, and I had felt guilty about my
22 deposition from the time that I was sitting by the pool and
23 it was being notarized by Linda McElveen, and visions of a
24 child that I buried at four years old was my best friends
25 child that I saw born. I -- I think I regretted it from

1 that moment on. It was just -- you know you realize when
2 you've done something and it's just that much too late.

3 Q Since you didn't know anything about Mr. McAlhaney when
4 you did your affidavit, is he mentioned in your affidavit?

5 A No.

6 Q Well, why did you go to him to apologize instead of
7 Molly?

8 A I didn't feel like Molly would ever want to see me or
9 hear from me again. As I wouldn't probably either, but I
10 did feel really bad. The girl may have made some bad
11 choices, but she was still a nice girl.

12 Q And in order to convince you to sign this affidavit
13 against her what event did Mr. and Mrs. McElveen play on?

14 A They played on the fact that on May 30, 2003, a little
15 boy that I saw born drowned in a neighbor's pool. And I was
16 very child conscientious of how quickly a child can be taken
17 off this earth, and I'll be like that until the day I die.

18 Q And did they suggest that that could happen if the
19 grandchildren were left in Molly's custody?

20 A Well, the statement was made by Rick McElveen, I
21 remember it very clearly. He said now you -- so you realize
22 how I would feel if I had to bury one of my grandchildren.
23 And I guess that's when I finally decided, you know, he's
24 right. If there's a chance in the world that there is some
25 truth to her being unfit, then I must do this, but I

1 regretted it immediately.

2 Q Are you afraid of Mr. Rick McElveen, Senior?

3 A Yes, sir, I am.

4 Q Why is that?

5 A Well, he made a statement to me one time, he said he
6 would sell anything that he had to get custody of those
7 children, and that's pretty -- pretty strong statement.

8 Q Please answer any questions counsel may have.

9 JAN SZELEWA - CROSS-EXAMINATION

10 BY MR. LEE:

11 Q Ms. Szelewa, this letter that you wrote to the family
12 court, was it true?

13 A (No response.)

14 Q You didn't lie to the court, did you?

15 A No.

16 Q Okay. It was just kind of a painful truth, right?

17 A Yes.

18 Q Painful for you, and I don't think any of us -- you
19 didn't want to get involved in the custody dispute did you?

20 A No.

21 Q And you felt like you having to take sides and you
22 didn't want to?

23 A Right.

24 Q And the comment that Rick, Senior, said to you about I
25 don't want to bury one of my grandchildren, you said, he's

1 right. I mean, you agree with that, correct?

2 A He didn't say he wanted to bury one.

3 Q No, he said he didn't want to. Yeah.

4 A He said, I -- being -- having buried Trey Harmon --

5 Q Right.

6 A -- who wasn't even my own child, not even my blood.

7 Q Right.

8 A He stated that I could then understand how he would
9 feel if he had to bury one of his grandchildren.

10 Q Right. You remember in your letter you talked about
11 you had witnessed Molly run over a mail box in the
12 neighborhood, on Christine Place; do you remember that?

13 A I heard about that one.

14 Q Okay. And you said, it very easily could have been a
15 child she ran over instead of a mere mail box?

16 A That is true.

17 Q Okay. And then --

18 A Christine Place has a lot of children.

19 Q Right, and that's right around the corner from y'all's
20 house, right?

21 A Uh-huh. (Affirmative response.)

22 Q Okay. And Molly comes across as a sweet, beautiful,
23 young lady on the outside, but on the inside she is a --
24 which is underlined and bold -- troubled young girl?

25 A Uh-huh. (Affirmative response.)

1 Q Is that right?

2 A Yes.

3 Q Okay.

4 A I have been that girl.

5 Q And is it safe to say that as far as you know, that's
6 the allegation that Rick McElveen argued or position he took
7 in family court about his grandchildren staying with a very
8 troubled young woman; do you agree with that?

9 A Perhaps.

10 Q Okay, and did you -- let me back up. Did you know that
11 during the time this litigation was going on that Molly
12 McCullers McElveen was using drugs; right?

13 A (No response.)

14 Q That she was using drugs?

15 A Marijuana.

16 Q Right.

17 A And taking a Valium or two.

18 Q Okay. And she was having custody of the kids quite a
19 bit, too, right?

20 A Yes.

21 Q Do you remember anything about her ever leaving the
22 kids at home, forgetting that they were there? Do you
23 remember anything about that?

24 A Excuse me. Say that again, please?

25 Q I'm talking too fast. Do you remember anything about

1 her leaving any of the children at home when she went
2 somewhere?

3 A Yes.

4 Q Okay. So you regret giving the letter just because you
5 had to get involved rather than actually the substance of
6 the letter, which was true; correct?

7 A It was more of hurting someone. I can imagine if
8 someone had written that kind of stuff about me. I think we
9 all have a past.

10 Q Sure.

11 A We all have our faults.

12 Q Well, isn't it hard to fault somebody for writing
13 something that's true?

14 A Yes.

15 Q I mean, sometimes the truth hurts, right.

16 A Truth does hurt, sometimes.

17 Q I know you're not -- you don't have any medical
18 training do you?

19 A No.

20 Q And I know sometimes laymen will use words bipolar.
21 Does that mean to you somebody that kind of goes up and down
22 and is all over the place emotionally and mentally?

23 A Well, I've learned a little more about bipolar than I
24 did back then.

25 Q Uh-huh. (Affirmative response.)

1 A Bipolar is a little more serious than a chemical
2 imbalance --

3 Q Right.

4 A -- which I have a chemical imbalance.

5 Q Okay.

6 A And it's handled in different ways. There's different
7 severities.

8 Q Okay. But Molly exhibits characteristics of somebody
9 that has a chemical imbalance and/or bipolar; would you
10 agree with that?

11 A Well, I don't -- I don't know. I've never had bipolar.
12 No one in my family has bipolar.

13 Q Right.

14 A I know about chemical imbalances, and chemical
15 imbalances could very well be all it is with Molly. I don't
16 know.

17 Q Did you believe --

18 A A chemical imbalance is easy to fix, you know, a lot
19 easier than bipolar.

20 Q Would you agree that at the time in question when you
21 wrote that affidavit that there potentially was a danger
22 with the kids being with Molly?

23 MR. TEMPLETON: Objection. Calls for speculation.

24 THE COURT: Well, she did all this -- he just has a few
25 more questions.

1 BY MR. LEE:

2 Q Were you concerned for the children's safety when they
3 were with Molly, knowing what you know about Molly?

4 A No.

5 Q Were you concerned --

6 A But I was made to be concerned.

7 Q Were you concerned that, indeed, as you say, that you
8 wouldn't want Rick to have to bury one of his grandchildren?

9 A I wouldn't want Rick to have to bury one of his
10 grandchildren.

11 Q Right. The surveillance that you talked about, was
12 Rick attempting to video tape Molly smoking marijuana?

13 A Yes.

14 Q Is that the video tape thing?

15 A Yes.

16 Q Okay. Last thing. You said that one time Rick
17 McElveen said that he would sell anything he had to get
18 custody of the kids?

19 A Uh-huh. (Affirmative response.) Yes.

20 Q Was that because he wanted them to be safe and happy;
21 do you know?

22 A I can't answer that honestly.

23 Q Do you believe in your heart of hearts that Rick
24 McElveen wanted to look out for the safety and well-being of
25 those kids?

1 A In my heart of hearts, partly. In the other part, I
2 look at the child that he did raise who doesn't even want
3 custody of his own children, which kind of scares me for the
4 likelihood that this will happen to these two boys.

5 Q Oh, you're talking about Ricky, Junior, Rick's son --

6 A Yes.

7 Q -- has not played an active part in the children's
8 lives?

9 THE COURT: Okay. Let's stop there.

10 MR. LEE: Okay.

11 THE COURT: She's no professional social worker.

12 MR. LEE: I understand.

13 THE COURT: Believe it or not, she has opinions on
14 anything you ask her.

15 MR. LEE: And I'm through.

16 THE COURT: All right.

17 JAN SZELEWA - CROSS-EXAMINATION

18 BY MR. TEMPLETON:

19 Q Ms. Szelewa, if I understand you correctly, you gave an
20 affidavit in the family court; is that right?

21 A Yes.

22 Q And the McElveen's contacted you to give that
23 affidavit; is that right?

24 A Constantly, to give it.

25 Q Okay. And when you say constantly, what do you mean by

1 constantly; what did they do to contact you?

2 A They called me constantly wanting it. You know, people
3 don't want to get involved. And all else failed they came
4 to my home.

5 Q Okay. What did they do to contact you?

6 A And they caught me at a very vulnerable time.

7 Q Right. Did they contact you via the telephone?

8 A Tried to.

9 Q And how many times did they contact you on the phone?

10 A Ten to 12 times.

11 Q Okay.

12 A Maybe 15.

13 Q And after those phone calls that you wouldn't -- that
14 you didn't answer, did they then contact you and trap you in
15 the driveway one day?

16 A Uh-huh. (Affirmative response.) They just drove up in
17 the driveway.

18 Q Okay. And is that when Mr. McElveen mentioned about
19 not wanting to watch a grandchild be buried?

20 A Yes. We talked about my recent loss.

21 Q And that's your recent loss of a young boy by the name
22 of Trey Harmon?

23 A Yes, sir.

24 Q Who had drowned in a pool?

25 A Yes, sir. Same age as Jackson.

1 Q Would you agree with me that it's true that the
2 McElveen's were working you for -- to provide your
3 affidavit?

4 A Yeah, they worked pretty hard to get it.

5 Q Okay.

6 A I didn't give it up easily.

7 Q Thank you, ma'am.

8 MR. MATHISON: No further questions, Your Honor.

9 THE COURT: You're free to go.

10 MR. TEMPLETON: Judge, we had this witness under
11 subpoena, as well. She's released from our subpoena.

12 THE COURT: You don't have to come back for anybody
13 else. You're free to go.

14 MS. SZELEWA: Excuse me?

15 MR. MATHISON: You're free to go.

16 THE COURT: He had you under subpoena. You are released
17 from that. You can go. Or you can hang around.

18 MR. MATHISON: Your Honor, plaintiff would call Julia
19 Sanford to the stand, please.

20 THE COURT: All right.

21 THE CLERK: Come forward, put your left hand on the
22 Bible and raise your right hand.

23 (Whereupon, Julia Sanford was sworn
24 to tell the truth.)

25 THE CLERK: If you would, please be seated, state your

1 full name.

2 MS. SANFORD: Julia Umbright (sp) Sanford.

3 JULIA SANFORD - DIRECT EXAMINATION

4 BY MR. MATHISON:

5 Q Ms. Sanford, forgive me for just one second. I need to
6 find a document, and we'll be ready to go.

7 MR. MATHISON: Forgive me, Your Honor. I'm looking for
8 a particular document.

9 THE COURT: No problem. Inefficiency just won't be
10 tolerated.

11 MR. MATHISON: If it's not the one I was looking for I
12 would have it.

13 BY MR. MATHISON:

14 Q Forgive me, Ms. Sanford. When we spoke earlier I told
15 you I thought I had the original of the document that you
16 gave my client.

17 A Uh-huh. (Affirmative response.)

18 Q And that's what I was looking for.

19 A Okay.

20 Q Your name is Julia Sanford; is that correct?

21 A That's correct.

22 Q And where do you reside, Ms. Sanford?

23 A 507 North Street in Beaufort.

24 Q And to whom are you married?

25 A John Sanford.

1 Q And is he related to Governor Mark Sanford?

2 A He is his brother.

3 Q And when did you and your husband marry?

4 A 2003.

5 Q So in the year that these events began brewing?

6 A Exactly.

7 Q A big year for you --

8 A Yeah.

9 Q -- because you got married?

10 A Uh-huh. (Affirmative response.)

11 Q What do you do for a living, ma'am?

12 A I am a school teacher.

13 Q Do you have children?

14 A I have four kids.

15 Q Did either Molly McCullers or Matt McAlhaney to supply
16 an affidavit in support of Molly McCullers having --
17 continuing to have custody of her children?

18 A Yes.

19 Q Do you recall when that was?

20 A No. Exactly, no.

21 Q I'm going to hand you this document dated, September
22 15, 2003 and ask if you can identify it?

23 A Yes. I wrote this.

24 Q And is that, in fact, a copy of your affidavit?

25 A Yes.

1 Q Would you read that affidavit to the jury?

2 A (Reading.)

3 To whom it may concern. For two years Molly McElveen's
4 oldest son and my oldest son have been in the same class at
5 Beaufort Academy. I have seen and spoken with Molly at many
6 of the school plays, programs, and at many of the classroom
7 holiday parties. I was amazed she can attend a lot of these
8 functions because like myself she was a single working
9 mother.

10 This is before I was married, obviously.

11 (Reading.)

12 Recently, Molly and her son have been spending time
13 across the street from my house. Frequently, Ricky, Molly's
14 oldest and my oldest have been playing together after
15 school. My son has gone across the street to play and Ricky
16 has come over to my house.

17 That's not a good sentence.

18 (Reading.)

19 Molly is always present and the kids are very well
20 supervised. Having been exposed to Molly and how she
21 interacts with her children I feel very comfortable sending
22 my kids to play with Molly's children. I have no doubt that
23 she is a very responsible parent with extremely, well
24 adjusted, and well cared for children.

25 (End reading.)

1 Q Now, is there anything in that affidavit that you don't
2 believe is true?

3 A From my empirical data, no.

4 Q And you're exposure to Molly in your neighborhood came
5 when she was over at your neighbors house. That is Matt
6 McAlhaney?

7 A Yes.

8 Q And you and she both had children going to the same
9 school, namely, her child, Ricky was going to Beaufort
10 Academy; is that right?

11 A And he was in my son's class.

12 Q So you had an adequate opportunity to interact with
13 Molly McCullers and her children.

14 A Yes.

15 Q Did you say anything, at all, negative about Mr.
16 McElveen, Mrs. McElveen, his wife, Linda, or the father of
17 those children, Rick McElveen, Junior?

18 A No, I didn't even know them.

19 Q From the time of that affidavit to today's date have
20 you ever said anything negative about those people?

21 A No.

22 Q Subsequently, did you find out that Mr. McElveen,
23 Senior, Rick McElveen, had said something very negative
24 about you?

25 A I -- yes.

1 Q I'm handing you this document, which is a letter dated
2 September 29, 2003 on Battery Creek, Marina Village
3 stationary, address to Governor Mark Sanford and signed by
4 Rick McElveen. I'll ask if you can identify that for me,
5 please?

6 A Yes. I saw this letter.

7 Q Did you get a copy of that letter when it was sent to
8 the Governor?

9 A Yes. Mark sent all of us a copy. He sent John and I a
10 copy. He sent Billy and Christie, which are Mark's other
11 brother, a copy. He sent Peg, my mother-in-law, and her
12 husband a copy, and he sent Sarah and Bill Rowell a copy
13 with a memo attached saying please watch what you say and do
14 in the community because it might have a negative effect on
15 me. Ironical today. And it caused -- and I shot off a letter
16 back.

17 Q What I actually meant was, at the time that Mr.
18 McElveen sent this to your brother-in-law, on or about
19 September 29th, you didn't get a complimentary copy of it,
20 did you?

21 A From Mr. McElveen?

22 Q Yes.

23 A No, no. Mark's office sent it to me.

24 Q So he didn't send one to you --

25 A No.

1 Q -- he just sent one to the office?

2 A No, no.

3 Q And how long after -- well, let me strike that, let me
4 back up.

5 On the upper right-hand corner of the letter, when does
6 it indicate that it was received in the Governor's office.

7 A 10/8/03; is that right? Oh, no. October 2, 2003.

8 There you go. Sorry. Sorry.

9 Q And then what's the next statement on that that letter;
10 what does it say? Referred to whom?

11 A Referred to -- I don't remember who the staff -- I
12 don't remember who that person was. There was a lot of
13 turn-over.

14 Q The person as indicated on the letter as being D-e-n;
15 is that correct?

16 A Den. Yeah.

17 Q Okay. And then it says answered. What does it
18 indicate after answered?

19 A Mark Sanford called.

20 Q And then underneath that it indicates the date on which
21 he called, doesn't it?

22 A Yes.

23 Q And the date is -- what's the date on there?

24 A 10/8/03.

25 Q Now, does that refer to his having called you or does

1 that refer to his having called Mr. McElveen?

2 A He called McElveen, is what I understand. I was not
3 present when he called. This is what I understand from
4 Mark's office.

5 Q Okay. Well, how long after he got the letter and he
6 called Mr. McElveen, did your brother-in-law send you a copy
7 of the letter?

8 A I -- I got it pretty quickly, but I can't remember
9 exactly.

10 Q Okay. And is the one that I handed you, the one that's
11 got the wrinkled seam in it, is that, in fact, the copy of
12 the letter that you received and gave to my client, Matt
13 McAlhaney?

14 A Yes, it's exactly the letter.

15 MR. MATHISON: Move the introduction of that letter,
16 Your Honor, as Plaintiff's Exhibit No. 2.

17 COURT REPORTER: No. One.

18 MR. MATHISON: Court's one is the report. Understand.

19 MR. LEE: Can I look at it?

20 THE COURT: Y'all should have seen that letter for five
21 years.

22 MR. LEE: I've seen it Judge, but it has stuff that's
23 underlined that wasn't --

24 THE COURT: Then take it out. It can't come in if
25 there's something underlined that's not part of the original

1 thing without redacting it.

2 MR. LEE: I don't know who underlined it, that's why I
3 wanted to look at it.

4 MR. MATHISON: It's the same underlining that's always
5 been in it, Your Honor.

6 A They underlined the parts that had the word Sanford in
7 it. That's what they have to do when it comes into his
8 office.

9 BY MR. MATHISON:

10 Q Well, let's go into that.

11 MR. LEE: I have no objection to that.

12 BY MR. MATHISON:

13 Q The document, as we see it here, with the underlines in
14 it, is that the form in which you received it?

15 A Yes.

16 MR. MATHISON: Offered, Your Honor.

17 THE COURT: All right.

18 (Plaintiff's Exhibit No. 1, letter,
19 was marked and entered.)

20 COURT REPORTER: Plaintiff's one, Judge.

21 BY MR. MATHISON:

22 Q So the underlining that was placed in there and the
23 stars were done by somebody in Mr. Sanford's office; is that
24 right?

25 A Yes.

1 Q And what specifically was Mr. McElveen accusing you of
2 having done here?

3 A He accused me of having used Mark's name to support a
4 -- what did he say, drug addict, something, something. I
5 forgot what -- of supporting a derelict character, but using
6 his name to do it.

7 Q Well, do you know whether that was done?

8 A What?

9 Q Did you do anything other than furnish the pleasant
10 affidavit that you just read into the record?

11 A No. This is all I did.

12 Q And you gave that to Molly McCullers lawyer; is that
13 right?

14 A Yes.

15 Q And who was that?

16 A Marvin Dukes.

17 Q And Mr. Dukes gave it to the Court; is that right?

18 A Yes.

19 Q And Mr. McElveen felt that you doing that was
20 inappropriate; is that right?

21 A Apparently so.

22 Q In the course of criticizing you without, of course,
23 asking his friend, Mark Sanford, to sensor you, did he also
24 say something about Mr. McAlhaney?

25 MR. LEE: I object to that question, Your Honor.

1 THE COURT: All right. Well, whatever it says it says.
2 It's in evidence.

3 MR. MATHISON: I understand.

4 BY MR. MATHISON:

5 Q I believe you indicated that Governor Sanford sent Mr.
6 McElveen's letter, not only to you, but to a number of his
7 other relatives. Who were they again?

8 A His immediate family, and his mother, and his mother's
9 husband.

10 Q What's his mother's husband's name; Charlie Payton?

11 A Charlie Payton.

12 Q Who else?

13 A Bill and Sarah Rowell, Billy and Christie Sanford, and
14 us.

15 Q In this letter, Mr. McAlhaney (sic) refers to a local
16 realtor; is that correct?

17 A Yes.

18 Q Do you know who that realtor was?

19 A Yes.

20 Q And who was it?

21 A Matt.

22 Q Did you know when you got the letter from your brother-
23 in-law, who the realtor was?

24 A Yes.

25 Q Did the people you discuss this matter with in the

1 Governor's office know who the realtor was?

2 A Yes.

3 Q Was there any doubt about who the realtor was, in your
4 mind?

5 A No.

6 Q Do you know whether your family, specifically, Mr. and
7 Mrs. Payton, Governor Sanford's other brothers; do you know
8 whether they knew who the realtor was?

9 A Yes. They did.

10 Q So everybody he sent the letter to knew that Matt
11 McAlhaney is the person being described; is that right?

12 A Yeah. I thought his name was in there.

13 Q And did Mr. McElveen describe Matt McAlhaney as having
14 a drug addiction and being abusive to the children?

15 A Yes.

16 Q When you read that, Ms. Sanford, did you believe it?

17 A That Matt had done those things?

18 Q Yes.

19 A No.

20 Q Do you know whether your relatives believed it?

21 MR. LEE: Calls for speculation, Your Honor.

22 THE COURT: Yeah. She doesn't know that.

23 A No.

24 THE COURT: She can say what she knows.

25 BY MR. MATHISON:

1 Q As a result of this letter --

2 A I lived right across the street from Matt for a long
3 time, so --

4 Q You were pretty comfortable about his character; is
5 that what you're saying?

6 A Very comfortable. I had, at the time, when my first
7 husband died, I had two small children and -- I mean, I
8 would trust him with my kids. He showed no interest and
9 they're very cute kids.

10 Q Thank you very much, Ms. Sanford.

11 JULIA SANFORD - CROSS EXAMINATION

12 BY MR. LEE:

13 Q You didn't go to the hearing where this was introduced
14 did you, Julia?

15 A No.

16 Q Okay.

17 A What was introduced, this letter?

18 Q The letter. You didn't go to that hearing did you?

19 A No.

20 Q Okay. But Marvin Dukes, who was Molly's lawyer was the
21 one that handed it up, right?

22 A Yes.

23 Q From your understanding?

24 A Yes.

25 Q And at that time, he pointed out to the court, who was

1 making the decision, who it was from and your relationship
2 to the Governor; right?

3 A Yes.

4 Q All right. Any reason to do that that you know of;
5 does it make it more credible?

6 A I don't know.

7 Q Okay.

8 A At this juncture?

9 Q Maybe it did then, maybe it doesn't now?

10 A Right. I guess it depends.

11 Q But I know that you -- you're not a mind reader, but
12 wouldn't you agree that Mr. McElveen's gripe -- you might
13 disagree with what he said, but wasn't his gripe to Mark
14 Sanford, saying, hey, your sister-in-law is sticking her
15 nose in somewhere she might shouldn't; did you get that to
16 be the tenor of the letter? Saying hey, Mark, heads up.
17 Julia did this affidavit and I don't like it because it was
18 presented by Molly's lawyer to say -- sister-in-law of the
19 Governor?

20 A Well, Mr. Lee, he's very clear in the letter what he
21 says.

22 Q Uh-huh. (Affirmative response.)

23 A He tells me -- I mean, it's very clear.

24 Q Okay. Well, the jury will have a copy of this letter.

25 A Okay. Good.

1 Q Are you aware that Mr. McElveen also tried to get in
2 touch with your husband, John, prior to writing this letter?

3 A I think he tried to get in touch with him after we
4 received the letter from Mark, and after Mark called him.

5 Q Okay. Where it starred, would you agree it says, I
6 should also point out that an effort was made to communicate
7 with your brother in this matter; however I have received no
8 return call... Do you have it up there?

9 A I do. I have that.

10 Q That's the next to the last sentence?

11 A Yes.

12 Q So it at least indicates he had tried to contact John,
13 right?

14 A He did try to contact John. It was after we already
15 had possession of this letter, and John really didn't feel
16 like talking to him about it.

17 Q Now, does Mark Sanford, at the time, did he know who
18 Rick McElveen's ex-daughter-in-law was dating; did he have
19 independent knowledge of that?

20 A Mark?

21 Q Mark Sanford, yeah?

22 A Have independent knowledge about who Matt was dating?

23 Q Yeah.

24 A No.

25 Q Okay. Well, how did he get that -- how did you plug in

1 the local realtor to mean Matt McAlhaney; you?

2 A No.

3 Q Who plugged it in?

4 A One of -- when I called -- after getting this letter I
5 called the office. I sent a memo to Mark, and I called to
6 tell -- to actually talk to Jenny to tell her and to tell
7 the office, because I knew a lot of people in his office, to
8 say, listen, here's what's happening and here's this memo
9 that's going to come, and it's not very nice. So --

10 Q That was a memo from Mark?

11 A That was a memo that I was -- No. Mark had already
12 sent me the memo and I was writing back saying, let me tell
13 you -- these are Marvin Dukes' words, not mine. And --

14 Q And at this point did he hear about Matt McAlhaney?

15 A -- and -- no. No, no, no. I never said Matt
16 McAlhaney. I -- I thought this letter said McAlhaney.

17 Q You agree that it doesn't.

18 A It does not say it. You are right. I've since read
19 it, and that's been pointed out to me.

20 Q How did Mark Sanford --

21 A When I called the office, I said, here comes my memo,
22 and the guy that I talked to there was -- I think at the
23 point, Chris Allen. He said, oh, does this have to do with
24 Matt McAlhaney, and I said, yes.

25 Q Somebody at the Governor's office said that?

1 A Yes. They found out. Mark found out.

2 Q Okay.

3 A I mean, he's pretty resourceful.

4 Q Okay. You said something about you're totally fine
5 with Matt McAlhaney's character?

6 A Yes.

7 Q Okay. Are you aware that he has admitted in the
8 deposition to using cocaine three times a month for four
9 years during this time; does that change your opinion of his
10 character, since you opened the door?

11 A You know, I lived across the street from him for a long
12 time.

13 Q Uh-huh. (Affirmative response.)

14 A I've spoken to him daily.

15 Q Uh-huh. (Affirmative response.)

16 A I've used him as a realtor and in no way -- I've never
17 seen him do drugs. I've never seen him exhibit any kind of
18 weird behavior, and our houses were very close.

19 Q My question was if you knew that, which he's admitted
20 in a deposition that he's had that much cocaine for that
21 long, would that change your opinion about his character?

22 A But it wouldn't change the empirical data that I
23 already had. So what -- do you want me to pass judgment on
24 him?

25 THE COURT: All right, that's enough.

1 MR. MATHISON: Your Honor, may it please the Court, it's
2 getting --

3 MR. LEE: Your Honor, they opened the door to his
4 character.

5 THE COURT: I don't care. Quit. Move on to something
6 else.

7 MR. LEE: Okay. That's all I have, Your Honor.

8 THE COURT: Good.

9 MR. TEMPLETON: No questions, Your Honor.

10 MR. MATHISON: One question on redirect, Your Honor. I
11 need to put that into evidence; the letter.

12 THE COURT: All right.

13 MR. MATHISON: I'd ask that it be marked as Plaintiff's
14 Exhibit No. 2.

15 THE COURT: Sure.

16 MR. MATHISON: Excuse me. The letter's in. It's the
17 affidavit that I need to put in. You don't have any
18 objection to the affidavit, do you?

19 MR. LEE: No, sir.

20 MR. TEMPLETON: No objection.

21 THE COURT: Sure.

22 (Plaintiff's Exhibit No. 2,
23 affidavit, was marked and entered.)

24 COURT REPORTER: The affidavit is Plaintiff's No. 2.

25 MR. MATHISON: Thank you.

1 THE COURT: Jurors, as you all observed, I'm not trying
2 to control the case. I hammer all of them. I try to be
3 fair about it. That's all. I'm not picking on him.

4 Ms. Sanford, you can step down. You're free to go.

5 MR. MATHISON: May it please the Court. Those are the
6 two witnesses that I asked your indulgence for.

7 THE COURT: Yeah, no problem.

8 MR. MATHISON: It's now 5:25.

9 THE COURT: Okay. And how much do we have tomorrow,
10 just so the jury will know. Time-wise. They don't care
11 about the number of witnesses?

12 MR. MATHISON: We should finish before the end of the
13 day with the plaintiff's case.

14 THE COURT: All right. That's good.

15 But to do that Jurors, I need you here at 9:20. Twenty
16 minutes after 9:00.

17 Now, listen, don't talk about the case. Y'all might
18 find this interesting, you might want to share information
19 with other people, you know. The Governor's sister-in-law
20 testifies. Forget about it. Don't talk about the case.

21 I told the clerk to tell you you could take notes if
22 you wanted to, but if you take notes, and nobody is right
23 now, but you can take them all the way through, but once you
24 start deliberating you have to leave them in here. You can
25 review them before you start to deliberate. You can play it

1 back if you have a question as to what somebody said, but I
2 have it written right here.

3 So have a good night. 9:20. We can't get started
4 until everybody is here, but we'll be here and ready to go.
5 (Jury out for the evening at 5:27 p.m.)

6 THE CLERK: The jury is clear, Your Honor.

7 THE COURT: Anything I can help y'all with?

8 MR. LEE: What time you want us back?

9 THE COURT: We're starting at 9:20 in the morning. Need
10 everybody here at 9:20. I'm here at 8:15 in case y'all need
11 something, but I can't imagine needing anything else
12 tonight.

13 Have a good night.

14 MR. LEE: You, too.

15 MR. MATHISON: Thank you, Judge.

16 THE COURT: All right.

17 (Court in recess for the evening at 5:33 p.m.)
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT)

IN THE COURT
OF GENERAL SESSIONS

3 DOCKET NO. 2007-CP-07-2373
4

5
6 Matthew S. McAlhaney,)
Plaintiff)

7
8 vs.)

TRANSCRIPT OF RECORD

9
10 Richard K. McElveen, Sr.)
Defendant)

11
12 January 13-14, 2010
13 Beaufort, South Carolina
14

15 B E F O R E:

16 THE HONORABLE J. ERNEST KINARD, JR., JUDGE AND A JURY.

17
18 A P P E A R A N C E S:

19 Robert V. Mathison, Jr., Esquire
Attorney for the Plaintiff

20 Scott W. Lee, Esquire
Attorney for the Defendant

21 Morgan Templeton, Esquire
22

23
24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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1 THE COURT: Okay. Jurors. I appreciate
2 y'all getting here on time; like we explained, this had
3 happened -- something happened with the other court
4 reporter. They had to send Priscilla Nay here who had to
5 drive from Columbia, and she actually is coming out of
6 bed with the flu and said her kids had the flu, so that's
7 as close as I'm getting to her. We don't have a lot of
8 court reporters.

9 Okay. You may proceed. She is here now and
10 won't be late again.

11 MR. MATHISON: May I approach the Court?

12 The plaintiff would call Matt McAlhaney to
13 the stand.

14 Thereupon,

15 MATTHEW MCALHANEY,

16 After being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Mathison:

19 Q Mr. McAlhaney, how old are you?

20 A 41.

21 Q Where do you reside?

22 A 502 Grayson Street in Beaufort.

23 Q How long have you lived in Beaufort?

24 A 35 years.

25 Q You married?

1 A I am.

2 Q To whom?

3 A Laura Pastern McAlhaney.

4 Q Do you have any children?

5 A I do have a three year-old son named Cape and a
6 three-year-old daughter named CeeCee.

7 Q By whom are you employed?

8 A I work for Cora Bett Thomas Reality.

9 Q What exactly do you do for a living?

10 A I'm in real estate and brokerage and sales.

11 Q You are the plaintiff in this lawsuit?

12 A I am.

13 Q Why did you bring this lawsuit?

14 A Because I was maliciously -- I was defamed. I got a
15 party to a -- I was a collateral damage in someone's
16 pursuit to be in custody of their grandchildren. I
17 was defamed along the way, arrested and here today to
18 try to regain part of my reputation that I have
19 worked hard for over the years.

20 Q Prior to your current marriage, were you married
21 before?

22 A Yes, I was.

23 Q Who were you married to then?

24 A Jacqueline Graco.

25 Q Did that marriage end in divorce?

1 A Yes, sir, it did.

2 Q When was the divorce?

3 A In 2001. (Unable to transcribe due to quality of
4 reporter's notes) the actual divorce decrees?

5 Q Are you on good terms with your former wife,
6 Ms. Adams?

7 A Yes, I do see her socially fairly regularly, at least
8 a couple times a month.

9 Q She is remarried; is that correct?

10 A She is married to a Dr. John Adams here in Beaufort.

11 Q In 2003, were you single or married?

12 A I was single.

13 Q Who were you dating, commencing in May of 2003?

14 A Molly McCullers, formerly McElveen.

15 Q Was she single or married?

16 A She was single.

17 Q Where was she living when you began dating her?

18 A In Port Royal, South Carolina.

19 Q Who was the children's father?

20 A Richard McElveen, Jr.

21 Q The gentleman over here in the rust colored sweater?

22 A Yes, that's correct.

23 Q Do you know who had custody of the older children?

24 A Yes, I do. That was joint custody with Rick
25 McElveen, Sr. and Molly McCullers.

1 Q Do you know who had custody of the younger child of
2 Molly McCullers, that is Jackson?

3 A I do. Molly McCullers had sole custody.

4 Q Why was that?

5 A That was because the child was born out of wedlock
6 and she was the mother.

7 Q Do you know how this unorthodox custody relationship
8 came into being?

9 A Yes, I do. In 1997, actually Richard McElveen, Jr.
10 filed a case that I now recognize was very similar to
11 what happened in 2003, one in which a number of
12 negative affidavits all piled up on a case beginning
13 essentially on a Friday and this hearing is supposed
14 to be on a Monday; and very similar to what I later
15 witnessed in 2003. But the net result was not while
16 Richard McElveen Jr. filed the case.

17 The net result was he was moved aside when he
18 granted the -- the Court granted his father Richard
19 McElveen, Sr. shared custody with Molly McCullers.

20 Q That was Ricky McElveen, the only --

21 A That's correct, the older of the two, yes.

22 Q That was because Jackson hadn't been born at that
23 time?

24 A That's correct.

25 Q Were Mr. Richard McElveen, Jr. And Molly McCullers

1 McElveen divorced in that same action in '97.

2 A I think it took place simultaneously.

3 Q In 2003, did you have occasion to be around
4 Ms. McCullers' children Ricky and Jackson?

5 A I did.

6 Q Describe your relationship with the children?

7 A It was a healthy relationship. It was one that
8 involved things like baseball, boating, they came to
9 my mother's home, cookouts, family events. There was
10 nothing unorthodox about it. I was a person dating
11 their mother and they were part of her life, which in
12 turn made them part of my life.

13 Q What happened to upset this situation?

14 A On September 11, 2003, Mr. McElveen filed -- that is
15 Rick, Sr. -- filed a case very similar, almost a
16 carbon copy template of what took place in 1997. He
17 went out for weeks ahead of time and he piled up a
18 number of negative affidavits regarding Molly
19 McCullers and submitted one that included remarks
20 about me; and he did it on September 11, 2003, a
21 Thursday with a hearing to be held on a Monday --
22 over the weekend and it is very similar, a sort of a
23 Shanghai Surprise and ambush, if you will. And the
24 hearing was to take place on September 15, on a
25 Monday.

1 Q I'm handing you these documents which are summons and
2 complaint, related documents in case number
3 2003-DR-07-1245 to ask whether you can identify it.

4 A Yes, I can identify it. It is the case filed
5 September 11, 2003. It is a summons for -- in which
6 Richard McElveen, Sr., the named plaintiff and
7 Richard McElveen, Jr. and Molly McCullers McElveen
8 are the defendants in the case.

9 Q In this lawsuit that he filed, what was his
10 objective? If you understand what's in it.

11 A His objective is to obtain sole custody of both
12 grandchildren.

13 MR. MATHISON: Move the introduction of the
14 Summons, Complaint and represented materials as
15 Plaintiff's Exhibit 3.

16 MR. LEE: No objection.

17 MR. TEMPLETON: No objection.

18 (Plaintiff's Exhibit 3 marked into evidence.)

19 THE COURT: Before we started, I told y'all
20 to go over the evidence. Y'all have been going over this
21 five years. Every little delay like that cost us some
22 time so during the break, y'all hand over what you're
23 going to present and we don't want to break every five
24 minutes (unable to transcribe due to quality of
25 reporter's notes) this is an important case.

1 MR. MATHISON: Forgive me, Your Honor. These
2 are deposition exhibits.

3 (Whereupon the attorneys are conferring.)

4 THE COURT: That will work.

5 MR. LEE: Your Honor, I would object. It is
6 kind of hard to listen and read a pile of documents at
7 the same time.

8 THE COURT: I understand that, but y'all have
9 been involved in this case for years. Certainly you have
10 seen whatever he's handing there and if you have an
11 objection to any of that stuff, we'll send the jury out
12 and we'll deal with it, but --

13 MR. LEE: I understand.

14 THE COURT: We don't need to stop every time
15 a document that y'all have looked at and studied and know
16 like a summons and complaint. That's court record. Why
17 would you possibly want to stop to look at that. He is
18 an officer of the court representing that it is a filed
19 court document. Unless you have an objection to it --

20 MR. LEE: I want to make sure that was the
21 right document. I apologize.

22 THE COURT: I understand that. An officer of
23 the court -- if he handed up something and represents it
24 is a filed court document and it's not personally, I will
25 turn him in to the Grievance Commission.

1 MR. LEE: Yes, sir.

2 THE COURT: Have a nice day. Go ahead.

3 Like I say, jurors, I'm not trying to control
4 it. I'm just setting the guidelines. I'm trying to
5 speed it up. Y'all understand. I'll do the same thing
6 to him later. No problem. I'm not picking on him.

7 After saying that, Mr. TEMPLETON don't have
8 any objection, so --

9 ATTORNEY LEE: I will take the hit on that,
10 Your Honor.

11 THE COURT: I know.

12 By Mr. Mathison:

13 Q Upon learning that Ms. McCullers McElveen had been
14 served in the case, what did you and she do to
15 disprove one of the allegations, which is that y'all
16 were drug addicts?

17 A Immediately, the day that that was filed, both she
18 and I went down to Beaufort Memorial Hospital and
19 took, within hours, less than two hours, drug tests
20 which showed us clear, drug free, except for I had a
21 prescription for an inner ear infection, that kind of
22 showed up.

23 Q Were those tests subsequently filed with the court?

24 A They were filed with the court at a hearing that
25 actually took place on September 22, yes, sir.

1 Q I'm handing up the two drug screens, one for you and
2 one for Molly McCullers, asking if you can identify
3 those for me.

4 A Yes, I can.

5 Q And are those the drug screens that Mr. Lee made
6 reference to yesterday when he discussed them in his
7 opening argument?

8 A Yeah, these are the same ones.

9 Q Mr. McAlhaney, is it your position that you have
10 never used drugs in your life?

11 A That would not be my position. I have, in fact, used
12 drugs.

13 Q And is it your position that Molly McCullers has
14 never used drugs in her life?

15 A She has used drugs.

16 Q However, on the date in this -- the lawsuit was filed
17 accusing you of being a drug addict, you did not test
18 positive for drugs; is that correct?

19 A I did not. I think if I were a drug addict, it would
20 be a hard thing for me to pull off.

21 Q And is there something in your drug screen that makes
22 it clear that the person who was tested was not
23 someone other than yourself or someone who had
24 obtained a substitute from a GNC store?

25 A I heard those statements. That is -- zero true to

1 that, and my name is Matt McAlhaney. This says
2 Matthew Steven McAlhaney. I was there. I took this
3 test.

4 Q And was there a confirmation for a prescription drug
5 that you were taking at the time?

6 A In fact, there is a confirmation which is consistent
7 with the prescription that I had which would further
8 reveal that I'm the person that took the test.

9 Q And what was the prescription that you'd been taking?

10 A I believe it was some codeine -- was for an inner ear
11 infection. I can't recall what -- what it was,
12 something that was prescribed to me by Dr. Vincent
13 Rhodes.

14 Q When was the hearing supposed to take place with
15 respect to temporary custody until this case that was
16 filed by Mr. McElveen, Sr.?

17 A Well, like I said, it was filed on a Thursday and it
18 was supposed to take place on a Monday, the 15th and
19 Mr. McElveen was well prepared and by the good graces
20 of the recusal of Judge Jane fender on the 15th,
21 actually a hearing wasn't held. The hearing got
22 postponed to the 22nd which allowed both Molly
23 McCullers and myself to provide affidavits that would
24 otherwise reflect who, in fact, we really were, not
25 who Mr. McElveen was painting us out to be.

Q Is it a fact that some of the affidavits that were submitted by Mr. McElveen in his lawsuit that was filed on September 11th had been gathered, signed and notarized up to two weeks beforehand?

A Yes, sir, that's the case.

Q Ms. Shelava's affidavit, for example, the one that testified yesterday, was it dated September 1, 2003?

A Yes, it was.

Q So by virtue of the continuation or continuance of the hearing that had been scheduled by Mr. McElveen, Sr., you received an opportunity to help Ms. McCullers get affidavits of her own; is that right?

A That's correct.

Q And was one of the affidavits that was obtained, that which has been marked as Plaintiffs Exhibit No. 2?

A If I could see Plaintiffs Exhibit No. 2, I could confirm that. Yes, sir, that's the case.

Q And who's affidavit is that?

A That would be the affidavit of Julia Sanford.

Q And in that affidavit, Ms. Sanford is very careful not to say anything derogatory about Mr. McElveen, Sr., his wife or his son; isn't that right?

A That's correct.

Q Did you actually attend the temporary hearing that

1 was held before Judge Smoak on September 22, 2003?

2 A I did.

3 Q No decision was reached at the hearing; is that
4 correct?

5 A That is correct.

6 Q Subsequently, did Judge Smoak rule?

7 A He did. He actually ruled on the 29th of September.

8 Q I'm handing you this document, which is an order
9 dated October 8, 2003, and filed on October 15, 2003,
10 and ask if you can identify that for me, please.

11 A This is the order, which is the result of the matter
12 that came before the judge on September 22nd, that's
13 where Mr. McElveen, Sr. is attempting to get granted
14 temporary custody of both the grandchildren.

15 Q Does that order deny him the grant of temporary
16 custody?

17 A It denies him. He does not win at that order.
18 He's -- the children are to remain with their mother.

19 Q And on the first page of the order, does Judge Smoak
20 reflect when this decision reflected in the order was
21 announced to the parties?

22 A Yes, it does. It says, I the Court (unable to
23 transcribe due to quality of reporter's notes) took
24 the issues under advisement and held a conference
25 call with the attorneys on Monday, September 29, 2003

1 at 2:30 p.m., so I'm assuming that's when they found
2 out about it, at 2:30 p.m. that the children were, in
3 fact, to remain with Molly.

4 MR. TEMPLETON: May it please the Court. I
5 move to introduce (unable to transcribe due to quality of
6 reporter's notes) of the order as Plaintiff's Exhibit 4.

7 MR. LEE: No objection.

8 THE COURT: All right.

9 THE WITNESS: May I stand up and take my
10 jacket off, Your Honor?

11 THE COURT: If you can do it without falling
12 down, sure.

13 THE WITNESS: I think I can.

14 (Plaintiff's Exhibit No. 4 marked into
15 evidence.)

16 By Mr. Mathison:

17 Q Have you seen Plaintiff's Exhibit 1 before, which is
18 a letter dated September 29, 2003 from Mr. McElveen
19 to Governor Sanford?

20 A Oh, yes, sir, I have.

21 Q On the date that Mr. McElveen wrote and sent that
22 letter, did he send a copy to you?

23 A No, he did not send a copy to me.

24 Q Did he send a copy to another person described in
25 there, Julia Sanford?

1 A Oh, no, he did not.

2 Q How did you find out about the letter?

3 A My neighbor Julia Sanford read me the letter that
4 came to her. This is the very letter.

5 Q In that letter, what did Mr. McElveen say about you?

6 A He -- in that letter, he calls me a drug addict and
7 he says I've been abusive to the children; that's
8 what he says.

9 Q When you found out about the letter, what did
10 Ms. Sanford tell you about his -- its contents.

11 MR. LEE: Object to that question. That
12 calls for hearsay.

13 THE COURT: All right. Sustained.

14 MR. LEE: Thank you.

15 MR. TEMPLETON: May it please the Court,
16 she's already testified.

17 THE COURT: I know. She has. Fine. Moving
18 on. The jury heard what she said.

19 By Mr. Mathison:

20 Q Do you know, Mr. McAlhaney, whether people could
21 identify you as the realtor described in that letter?

22 MR. LEE: Object to that question, Your
23 Honor, that people could speculate as to --

24 THE COURT: Well, obviously everybody knew
25 who he was, so why are you objecting to that?

Go ahead.

MR. TEMPLETON: Thank you, Your Honor.

THE WITNESS: Yes, I know, in fact, that people knew as the jurors heard that they knew exactly who it was, that it was Matt McAlhaney; that would be me.

By Mr. Mathison:

Q Do you know Mr. And Ms. Paton, the governor's mother and stepfather?

A I do.

Q Do you know the governor's brothers?

A I do know them.

Q Do you know people in the governor's office?

A I do know some.

Q Did you have occasion to contact and discuss this letter with one or more of the people in the governor's office?

A I did.

Q Who is the person that you contacted?

A Tom Davis.

Q Where did you meet with Mr. Davis about this?

A In my neighborhood. He lives in my neighborhood and he and I ran into each other at a park in the neighborhood.

Q Was he aware of the letter having been written?

A Yes, sir, he was.

1 Q Was he aware of who the realtor was?

2 A Yes, sir, he was.

3 Q When Mr. McElveen filed this case, I believe he
4 accused you in the case in an affidavit of being a
5 drug addict; is that right?

6 A Yes, sir, that's correct.

7 Q Until this, was there any mention of child abuse? By
8 this, I mean the letter which is Plaintiff's Exhibit
9 1?

10 A No. He filed a letter or his affidavit on the 22nd
11 of September and does not mention anything about
12 child abuse and then when he -- on the 29th of
13 September, he finds out that he loses and magically
14 I'm a child abuser at that point. He sent the letter
15 off. Doesn't send it to me. Doesn't send it to the
16 Court. He sent it to Governor Mark Sanford.

17 Q Do you know whether Governor Sanford had the power or
18 the authority to do anything about Mr. McElveen's
19 custody situation?

20 A He would not.

21 Q Was Mr. McElveen satisfied with the outcome of the
22 temporary hearing?

23 ATTORNEY LEE: I want to that question, Your
24 Honor. He has no way of knowing.

25 THE COURT: Sustained.

MR. LEE: Thank you.

By Mr. Mathison:

Q Did Mr. McElveen take action to continue to contest the temporary custody of the children?

A Yes, sir, he did.

Q Specifically, did he file a motion?

A Excuse me. He did file a motion.

Q What was the motion intended to accomplish?

A He wanted to -- he wanted Molly McCullers to submit to a psychiatric evaluation.

Q And what was the outcome of that motion?

A The motion said, fine, she could be submitted to one, but you're going to have to be submitted to one as well.

Q Do you know whether they, either one of them, did go and have the psychiatric evaluation?

A I think they did. I'm not positive that either one of them, but I think they did. I would imagine if the Court ordered it, they did, but I never saw anything.

Q The order that you hold in your hand, is that the document that says that both of them had to submit?

A That's the document.

Q What is the date on that order?

A November 4, 2003, it's a little difficult to read.

1 MR. TEMPLETON: Move the introduction of that
2 order as Plaintiff's Exhibit 5.

3 ATTORNEY WATKINS: No objection.

4 (Plaintiff's Exhibit 5 was marked into
5 evidence.)

6 By Mr. Mathison:

7 Q Had you discussed the letter that Mr. McElveen had
8 sent to your (unable to transcribe due to quality of
9 reporter's notes) with the letter to Mr. McEachern
10 after you learned about it?

11 A I did.

12 Q Did you ask Mr. McEachern at that juncture to take
13 any action on your behalf?

14 A No, I did not. I was made to believe or not made to
15 believe, I was -- essentially under the impression
16 that you don't intervene in matters, and certainly I
17 was trying to support Molly, but I didn't want any
18 more problems coming my way, so I did not ask them to
19 do that.

20 Q Did your uncle nevertheless do something without your
21 knowledge, namely write a letter to Mr. McElveen?

22 MR. LEE: I'm going to object to the
23 admission of this and I think I would like to be heard on
24 it.

25 THE COURT: Can he be heard on it? Isn't he

1 going to testify --

2 MR. LEE: Yes, sir, it is a letter that --

3 THE COURT: Then we can put it up through him
4 without trouble with --

5 ATTORNEY LEE: I object to that letter.

6 MR. MATHISON: I just want him to comment on
7 some of the things that are in it, Your Honor.

8 THE COURT: I know. He says it is not the
9 same time and place. Has to be done through him.

10 MR. MATHISON: Let's mark it for --

11 THE COURT: Y'all could smooth this out, but
12 if somebody makes a legitimate objection, I have to
13 sustain it. That letter can be brought in through him
14 when he testifies. He -- he's aware of it. That's all.

15 By Mr. Mathison:

16 Q Did you subsequently find out that your uncle had
17 written a letter to Mr. McElveen?

18 A I found out that he had written a letter which
19 essentially tried to ameliorate the situation; which,
20 in fact, told him I was not, in fact, the person he
21 was describing in his letter to Governor Sanford.

22 Q What did he do in an effort to promote a
23 reconciliation?

24 A Well, I -- I learned later that he actually -- I
25 guess after writing this, he went and he -- he saw

1 McElveen, talked to him.

2 Q Do you know what the outcome of that meeting was as
3 reported to you by Mr. McEachern?

4 A I do.

5 Q What was it?

6 A Essentially my uncle told me that he -- he met with
7 Mr. McElveen, Sr. and it was basically a situation in
8 which Mr. McElveen said that --

9 MR. LEE: I object to this as hearsay.

10 THE COURT: That's right. He's going to
11 object. I have to sustain it. He was not present when
12 they talked; that's all. If he didn't object, I don't
13 sustain it. If he objects, I sustain it.

14 ATTORNEY LEE: Judge, I have no choice but to
15 object because he's presenting it the wrong way.

16 THE COURT: I understand, that's why I
17 sustained it.

18 MR. LEE: Thank you.

19 By Mr. Mathison:

20 Q Failing to get an amicable resolution of the matter,
21 did you subsequently ask a lawyer to write a letter
22 on your behalf to Mr. McElveen about the letter that
23 he had written to the governor?

24 A Yes, I did.

25 Q Handing you this document, which is a letter dated

1 November the 1st, 2003 from Corey Flemming to Richard
2 McElveen Jr. and ask if you can identify it for me,
3 please. Excuse me. Forgive me.

4 A I can identify it.

5 Q What exactly does that letter say?

6 A It says --

7 MR. MATHISON: Excuse me one second.

8 ATTORNEY LEE: Judge, may we approach the
9 bench?

10 THE COURT: Yes.

11 MR. LEE: Thank you, Your Honor.

12 (Whereupon there was a bench conference out
13 of the hearing of the court reporter.)

14 THE COURT: We're not going to put it in now.
15 Mark it as a Court's and we'll read that.

16 Something is in the letter that is not
17 admissible. They're going to strike it out. Eventually,
18 you'll get to see it. When you start deliberations
19 (unable to transcribe due to quality of reporter's notes)
20 send back and say what was stricken out. You have to
21 decide the case based on what's presented as evidence.

22 (Court's Exhibit 2 was marked into evidence.)

23 By Mr. Mathison:

24 Q In the letter by Mr. Flemming, Mr. McElveen, if he
25 did not stop his accusations said you would have to

1 sue him if he did not quit accusing you of being a
2 drug abuser and child abuser, correct?

3 A Very clear, that's what we were telling him to stop
4 doing.

5 Q Do you know how many people or to whom Mr. McElveen
6 showed that letter dated September 29 that he sent to
7 the governor?

8 A I would have no idea how many people he could have --
9 he could have shown it to a number of people.

10 Q Do you know how many people the governor showed it
11 to?

12 A I don't have any idea.

13 Q Do you know if he showed it to everyone in his
14 family?

15 A I'm aware of that.

16 Q Including his sister-in-law?

17 A Including his sister-in-law. In fact, both his --
18 well, his sister-in-law and his sister, both of them
19 lived right across the street from me at the time.

20 Q Did you show it to anybody?

21 A I showed it to my attorney and I did show it to my
22 uncle at some point. We talked about it.

23 Q That's it?

24 A That's it.

25 Q Anybody ever called you a child abuser before?

1 A No, sir. Never. Never --

2 Q Other than Mr. McElveen, in the context of starting
3 his lawsuit having been written by Mr. McElveen and
4 you had a lawyer write him a letter on November 21st,
5 challenging him for having done that, when was the
6 next time that you and Mr. McElveen were together at
7 the same place?

8 A It was at a baseball field. Is this working?
9 Because if it's not, then I'll just get it out of my
10 way now.

11 Q I don't believe it is working.

12 A Is it working? It's more troublesome. Okay.

13 THE COURT: See that's what happens when we
14 stand up, take your coat off and --

15 THE WITNESS: I'm sorry, I don't think it was
16 working before, but I'm sorry, Your Honor, if you --

17 THE COURT: No, you didn't do it.

18 MR. MATHISON: They've got it.

19 THE WITNESS: I'm okay. If they can hear me.
20 I just don't want it in my face if it's not of use if
21 that's all right. Okay.

22 THE COURT: Jurors, if you can't hear
23 something just raise your hand and we'll get them to
24 repeat. Apparently the microphones are malfunctioning.

25 THE WITNESS: Mr. Mathison, I think you asked

1 me the next occasion on which I had any contacts with.

2 By Mr. Mathison:

3 Q Yes, sir, I did.

4 A That took place at a baseball tryout for Ricky
5 McElveen, III in late -- the third week -- I'm
6 sorry -- February of 2004.

7 Q And who brought the children to the tryouts?

8 A Molly McCullers and myself drove the children to the
9 tryout. When we arrived -- I recall we had to arrive
10 early because it was the custom that Rick McElveen
11 senior kept all the equipment so you'd have to drive
12 early to -- we had to get him dressed and get him
13 there early, so we did arrive early and that was the
14 occasion on which I saw him.

15 Q When you got there, was there an incident that led to
16 an argument between you and Mr. McElveen, Sr.?

17 A Yes, sir, there was.

18 Q Describe for the jury what happened.

19 A I had been -- at the tryouts, all the boys go out on
20 the field and they -- various positions they try out
21 for and I had been made aware Ricky McElveen, III
22 wanted to pitch and there came a time in which all
23 the boys were not desirous of pitching were asked to
24 leave the field. And at that point Ricky McElveen,
25 III started to leave the field and I recalled his

1 desire to pitch and as he left the field, he was
2 carrying his bat and his glove and I stopped him to
3 remind him that he had a desire to pitch and that he
4 needed to return to the field. And at that point he
5 handed me his bat and I took the bat and I began
6 leaning on it, kind of like you'd lean on a driver or
7 something like this (motioning).

8 And I was standing -- home plate was here and
9 first base was over here and I was standing about
10 halfway in between, leaning on the bat when I almost
11 fell down because the bat had been jerked from
12 behind, me and I looked behind me just like I'm
13 looking now and it was Richard McElveen, Sr. that
14 jerked that bat from me. I almost fell down.

15 I watched him and he walked off and he walked
16 toward his car and the window was down and he took
17 the baseball bat and he threw it into the window and
18 he walked back and he stood in line with me about
19 like Mr. Mathison is, a little further down, maybe
20 closer to first base, and he stood there like -- like
21 this (motioning) and I stood here.

22 I was disturbed by what had happened and I --
23 I turned to him and I said, "Rick McElveen don't you
24 ever jerk a bat from me, don't -- don't do that."

25 And he said, "What did you say?"

1 And I said, "Don't you ever jerk a bat from
2 me, don't do that." And he made his way to me and he
3 got near me and he said, "Why do you want to do that
4 with all these kids around here?"

5 I said, "I don't want to do anything, I just
6 told you not to do that to me."

7 And he said, "You want to take it on down the
8 road, you want to settle this matter? You want to
9 take it on down the road?"

10 I said, "I'm an adult. I don't want to take
11 anything down the road. I just told you not to do
12 that."

13 And then Mr. McElveen Jr. came walking up and
14 he said, "Is there a problem?"

15 And I said, "There are no problems. I just
16 told your dad not to jerk a bat from me." And I
17 walked away.

18 Q Did you consider yourself threatened as a result of
19 what happened?

20 A Yeah, I certainly was made uncomfortable by the whole
21 incident. I'd already had this man malign me. Now,
22 he was willing to come up and nearly make me fall
23 down and was expressing serious anger and -- yeah, I
24 did.

25 Q Were you aware that a threat had been communicated

1 through your uncle with respect to you when your
2 uncle had met with Mr. McElveen?

3 A Yes, I was. I was essentially made aware that the --
4 the case with Molly McCullers was about Molly
5 McCullers, but if McAlhaney wanted to participate --
6 I was emotional and financial support for a single
7 mom is what I was; and basically it was to the effect
8 this isn't about him, but if he needs some attention,
9 I'll need some attention. I'll give him all the
10 attention he needs; that's what I was made aware
11 of -- I'd been getting some attention.

12 Q To be clear about a couple of things, during this
13 period from and after the 22nd or actually the 29th
14 of September, 2003, who had custody of the children?

15 A Molly McCullers had them the whole time.

16 Q And with respect to Jackson she had sole custody;
17 isn't that correct.

18 A That is correct, yes, sir.

19 Q Mr. McElveen, have you ever abused a child?

20 A Mr. McAlhaney.

21 Q Excuse me. Mr. McAlhaney. Now, we're falling into
22 the "mac" trap. Matt, have you ever abused a child?

23 A No, I have not. Not ever.

24 Q What do you consider to be child abuse?

25 A Verbal abuse, physical abuse. It's a crime is what

1 it is, and I'm not capable of that. I'm incapable of
2 that type of behavior.

3 Q What about drugs? You're not denying that you've
4 used them. Do you consider yourself to be a drug
5 addict as alleged?

6 A No. I'm not denying that I've used drugs, but I am
7 not a drug addict, not by any shape, way or form.

8 Q What does drug addiction, that term, mean to you,
9 sir?

10 A I know Mr. Lee mentioned that it's someone
11 downtrodden -- it can be someone in a mansion, a
12 mobile home, someone that's drug dependent. I've
13 never been drug dependent or in rehab or in jail
14 because of it. I've practiced my business and --
15 since I'm 25 years old and I have had as many as five
16 people and -- a reputation, people who wanted to do
17 work with me that could say I was not a drug addict,
18 testify to that, and so much so that 30 days, I get a
19 letter -- a letter come up through the court that
20 Mr. McElveen is calling me a drug addict.

21 I had gone to see Mr. Lee and in his own
22 office he indicated to me about the matter that he
23 knew I was involved in a number of businesses and he
24 and his father like to invest and he would like to --

25 MR. LEE: Judge, I'm not sure why this is.

1 relevant, the conversation he had in my office.

2 THE WITNESS: Sorry. The point is, is I
3 didn't enjoy the reputation of a drug addict because I
4 wasn't.

5 By Mr. Mathison:

6 Q Within a week of the --

7 THE COURT: Here is one little small thing.
8 This has been going on since -- what -- 1997?

9 MR. LEE: Yes, sir.

10 THE COURT: Started.

11 MR. LEE: Yes, sir.

12 THE COURT: Everybody wants closure. They do
13 not want to try this case and have to retry it again,
14 okay?

15 Anything about Mr. Lee, if that comes out --
16 anything about Mr. Lee, if that comes out, then he's got
17 to take a stand and he's disqualified as a lawyer and we
18 have to start the trial again, so we're just stopping
19 that right now, irrespective of whether it was relevant
20 or not.

21 MR. LEE: I would ask that be struck from the
22 record because it's --

23 THE COURT: To be stricken from the record.

24 MR. LEE: -- taken out of the record.

25 THE WITNESS: I apologize.

1 THE COURT: You're not a professional
2 witness, but I'm just saying to the jurors, don't try to
3 figure out whether it's admissible and what's not, if
4 they put in letters that are objected to, I'll let them
5 come in and if they want to, they have the right to
6 object because I don't know the trial -- strike that
7 (unable to transcribe due to quality of reporter's notes)
8 of everything, so some hearsay will come in with no
9 objection and some will be kept out.

10 If it comes in, you can consider it. If it's
11 kept out, you can't; that's all. All right.

12 Mr. Mathison, go ahead.

13 By Mr. Mathison:

14 Q Thank you, Your Honor.

15 Within a week of the argument that took place
16 at the baseball field when Mr. McElveen asked if you
17 wanted today go down the road to fight with him, what
18 happened to change your life situation?

19 A When I left the ball field, we left with the
20 children, we being Molly and myself. It was very
21 apparent to me Mr. McElveen was extremely upset and
22 we went on. Nothing happened except for that week
23 Molly and the children --- all during the week -- to
24 go to school we were told or -- Molly was. I had no
25 dealings with the McElveens, nor did I have any

1 control over the children, but basically that --

2 MR. LEE: I'm going to object to anything
3 that was told to Molly. It's double hearsay.

4 THE COURT: Got it.

5 THE WITNESS: Okay. I was made aware --

6 MR. LEE: Same objection.

7 THE WITNESS: I was aware.

8 THE COURT: Can't -- over an objection, which
9 if they object, I rule. You can't say what she said
10 since she's not a party.

11 THE WITNESS: I know that the McElveens took
12 the grandchildren, Ricky and Jackson McElveen on
13 Thursday, February 26, for the purpose of a trip that was
14 to take place to Greenwood, South Carolina, on Friday,
15 February 27th, where they have a lake house, which was
16 all odd to me because the government was shutting down
17 offices due to a massive storm, the very week that
18 they're supposedly headed up there. That --

19 By Mr. Mathison:

20 Q Excuse me. Did Mr. And Ms. McElveen actually take
21 the children to a lake in Greenwood County?

22 A No, they did not.

23 Q Did you know that?

24 A No, I did not.

25 Q Instead, what did Mr. and Ms. McElveen do?

1 A Ms. McElveen recorded the disclosure to the Beaufort
2 County Sheriff's Office of child molestation.

3 Q Reported who? You?

4 A Yes, reported me.

5 Q As a result of that report, which was made on
6 February 27th, what happened?

7 A I was arrested on Monday without anyone investigating
8 me, talking to me, and that took place on Monday
9 March 1, around 4 p.m.

10 Q At the time you were arrested, how did you find out
11 about it?

12 A I was made aware by Molly McCullers.

13 Q What did you do about it?

14 A I was made aware of it by Molly McCullers.

15 Q What did you do when you learned you were going to be
16 arrested for child support?

17 A I hired an attorney and the attorney -- understanding
18 was the sheriff's department was coming out to arrest
19 me, coming to my office and I hired an attorney to
20 avoid the embarrassment of the situation of them
21 coming to my office to arrest me. I've never been
22 arrested for anything in my life.

23 I hired an attorney and said I'd turn myself
24 in despite the fact that I certainly wasn't and never
25 have been guilty of any sort of charges like this,

1 but I had no choice.

2 Q And what were the -- what was the impact of finding
3 out that someone actually believed that you were a
4 child molester and that you were going to be
5 arrested?

6 A It was shocking to say the least, the single worst
7 day of my life. I'm not -- I'm incapable of this
8 type of behavior. That's why I'm here today. It
9 was -- it knocked me off my feet, literally on -- on
10 to the ground. I sat on the ground because this is
11 not true. It was a moment in time I'll never forget.

12 Q So the children were supposed to go off to Lake
13 Greenwood, which is why Mr. And Ms. McElveen had
14 them. They never went to Lake Greenwood, did they?

15 A No, they didn't. They spent the weekend here working
16 up custody transfers and disclosures.

17 Q And in point of fact, you now know that it would have
18 been kind of an unusual time to go to the lake
19 because the weather conditions; isn't that right?

20 A I'm very clear on that.

21 Q What were the weather conditions in Greenwood during
22 this period between the 25th and the 27th?

23 A Essentially the entire week is very stormy and there
24 are orders from the government to everyone shut those
25 offices down in Greenwood and Greenville County on

1 the very same days that they are purportedly headed
2 up that way.

3 Q So Mr. and Ms. McElveen had these children
4 essentially under false pretenses suggesting they
5 were going to the lake and instead, what they did
6 while they had them is Ms. McElveen reported you for
7 child molesting; is that right?

8 A That's correct.

9 Q And you were arrested as a result of that report;
10 isn't that right?

11 A That is correct.

12 Q What were you charged with?

13 A Criminal sexual conduct with a minor and assault and
14 battery of a high and aggravated nature.

15 Q I'm handing you this document which is the criminal
16 sexual conduct warrant and ask if you can identify
17 that as the warrant that was served on you.

18 A Yes, sir, I can identify it.

19 Q The date of service or the date that it is prepared?

20 A It is prepared on March 1, 2004.

21 MR. MATHISON: Move the introduction of this
22 document as Plaintiff's Exhibit 6.

23 MR. LEE: Both of them?

24 MR. MATHISON: Just one.

25 MR. TEMPLETON: No objection.

1 MR. LEE: No objection.

2 By Mr. Mathison:

3 Q The other is assault and battery high and aggravated
4 nature; is that correct?

5 A Yes, sir, that's correct.

6 MR. LEE: No objection.

7 MR. TEMPLETON: No objection.

8 (Plaintiff's Exhibit No. 6 and Plaintiff's
9 Exhibit No. 7 were marked into evidence.)

10 By Mr. Mathison:

11 Q Please describe to the jury what happened when you
12 presented yourself to Beaufort County Sheriff's
13 Office to be arrested.

14 A I walked up to the front door, basically to the
15 entrance with my mother and Molly McCullers, my step
16 father, Cecil (unable to transcribe due to reporter's
17 notes), and I was greeted by Officer Brian Baird,
18 another gentleman whose name I cannot recall, and my
19 attorney, Bruce Marshall; and I was handcuffed and my
20 family left and as I turned around to watch my family
21 leave, I witnessed the drive-by of Mr. Lee who was
22 (unable to transcribe due to quality of reporter's
23 notes) to see me going into the jail.

24 MR. LEE: Judge, I will object to that
25 besides that's not being true. That has nothing to do

1 with this.

2 THE COURT: That's right.

3 MR. LEE: Part of his conspiracy, but I still
4 object.

5 THE WITNESS: That is true.

6 MR. LEE: Okay.

7 THE WITNESS: That is true.

8 By Mr. Mathison:

9 Q What happened after you were turned over to Baird and
10 the other people at the Beaufort County Sheriff's
11 Office?

12 A I was questioned, processed, if you will, was
13 transferred basically. I got into the back of a
14 vehicle. Officer Baird -- well, he drove and I got
15 into the back, handcuffed and drove over to the
16 detention facility.

17 Q When you say you were processed, what did they do at
18 the -- excuse me -- what did they actually do at the
19 Sheriff's Office? Did they take fingerprints or not?

20 A Yes, they took fingerprints and they identified marks
21 on my body and they drove me over to the jail itself,
22 and I had a conversation with officer Baird. I
23 was -- I never spent a night in jail in my life,
24 never been arrested in my life.

25 I'm charged with a crime that I believe to be

1 the most heinous crime you could possibly be charged
2 with. Everything you've ever read or seen on TV says
3 if you're in jail and they find out about this, what
4 you're charged with in the matter, whether guilty or
5 innocent, I'm concerned about harm being done to me
6 that night and Officer Baird says that, you know,
7 only people that know other than the officers are the
8 people that you tell.

9 Q When you got to the Beaufort County Detention Center,
10 what did they do to you there?

11 A They strip searched me and they put me in an orange
12 suit and they gave me a blanket to --

13 Q And what happened shortly after you got there?

14 A They put you in kind of a -- I don't know -- for lack
15 of a better term, it looks like a lobby and people
16 kind of sit around there, waiting to go through
17 further processing, and you have to wait your turn.

18 An alarm went off and all of a sudden
19 everybody got up and started running towards a cell
20 door that was open, and I didn't know what -- what
21 that meant, so I ran toward the cell too because I
22 appeared to be the only one left. And what had
23 happened was they then -- they'd then locked the cell
24 behind us and what had happened is there was an
25 altercation of some sort going on inside of the

1 facility and that was a lockdown is what was going on
2 there.

3 Q When you were actually locked up, where did they put
4 you? Where did you spend the night?

5 A I spent the night in -- it's kind of like a gymnasium
6 of sorts. You pull a cot when you go many there and
7 you -- you spend it with a number of other people,
8 men, that were in there in an open -- have to spend
9 the night. When you -- when you come in -- I learn
10 when you're -- if I would have been arrested earlier
11 in the day I perhaps could have gotten out because
12 the judge comes in the late afternoon, but because of
13 the time in which they were --

14 THE COURT: All right. Mr. Mathison, you're
15 in no trouble. One of the jurors needs to take a break.
16 About five minutes ago. I was trying to get to a point,
17 but I don't know what the point will be so we might as
18 well just stop before they start throwing things at us.

19 MR. MATHISON: Yes, sir.

20 THE COURT: Jurors, don't talk about the
21 case, but any time we take a break, it takes 15 minutes
22 one minute each plus one minute to get there and one
23 minute back, so...

24 (WHEREUPON the jury left the courtroom.)

25 THE BAILIFF: The jury has cleared, Your

1 Honor.

2 THE COURT: You can step down.

3 MR. LEE: Judge, can we address something
4 real quickly.

5 THE COURT: Sure.

6 MR. LEE: Anything I said or did is still --
7 and he talked about --

8 THE COURT: It's on his mind and he hadn't
9 been prepped on --

10 MR. LEE: I'm not a witness, Judge.

11 THE COURT: I'm trying to keep you from being
12 a witness.

13 MR. LEE: I can't defend myself from these
14 specious allegations once it's on the stand, and
15 understand it's said, it looks like I have a dog in the
16 fight.

17 MR. MATHISON: May it please the Court, he is
18 a dog in the fight, and it's what happened in the family
19 court and it's not whether, you know, you can get around.

20 THE COURT: He's not a party and if you want
21 to make him a witness, we're going to mis-try it right
22 now because they're going to have to get another
23 attorney, right.

24 MR. LEE: Right.

25 THE COURT: If you think he's part of the

1 conspiracy, and you're going to bring up something like
2 that, you might as well tell us now, because he's got no
3 way of defending it.

4 MR. LEE: And they have no way of --

5 THE COURT: He's got no way to defend it.

6 MR. LEE: I would ask you prohibit any
7 testimony about anything I might have said or done or
8 allegedly done.

9 THE COURT: I can't really do that because I
10 don't know what's happening, but be cautioned about it,
11 is all I can say.

12 MR. MATHISON: Your Honor, my client
13 understands what you've said and he's gong to abide by
14 it.

15 THE COURT: He's not going to say anything
16 further?

17 MR. LEE: Nobody wants to mis-try it, Your
18 Honor.

19 THE COURT: But not that you don't know but
20 on cross-exam, be careful to not open the door. That's
21 all. Else I can't help y'all with it. I still owe
22 Templeton and Watkins a couple of slaps.

23 How much longer do you anticipate Mr.
24 McAlhaney will take? Not that it matters, just curious.

25 MR. MATHISON: Two hours.

1 THE COURT: Is that direct and cross.

2 MR. MATHISON: No, that's direct.

3 THE COURT: That's fine. Okay. Try to do it
4 in an hour and 45 because that's all the jury is good
5 for. They can't go too long.

6 (WHEREUPON a short recess was observed.)

7 THE COURT: Come back up to the stand.

8 (Mr. McAlhaney returned to the stand.)

9 THE COURT: Anything else.

10 MR. LEE: Judge? An effort to save time
11 before we get started, there are some more documents
12 Mr. Mathison handed me earlier that I think are
13 objectionable, some of the content in them, particularly
14 things that the boys may have said to people. I think
15 that's been previously --

16 THE COURT: All right.

17 MR. LEE: -- kept out.

18 THE COURT: He knows the ground rules.

19 MR. MATHISON: I don't know what document
20 he's --

21 THE COURT: What you handed him.

22 MR. LEE: (Unable to transcribe due to
23 quality of reporter's notes) the 004 references.

24 MR. MATHISON: I'm not going to put that in.
25 I'm going to ask him to comment on it, but --

1 MR. LEE: You're going to ask him to comment
2 on a hearsay document that --

3 MR. MATHISON: I'm going to ask him to
4 comment on whether he's aware that these statements were
5 made, yes.

6 MR. LEE: What statements?

7 MR. MATHISON: The statements set forth in
8 the March 1 letter.

9 MR. LEE: Regarding what?

10 MR. MATHISON: No, Jackson didn't call my
11 client. He did. He didn't call my client a homosexual.
12 Mr. McElveen did. I'm not going to offer the document.
13 I agree with you there's an awful lot of stuff that would
14 violate the rule.

15 THE COURT: See, I don't know anything about
16 the case or the document, so I can't help you.

17 MR. LEE: I'm just trying to have to avoid to
18 keep standing up in front of the jury and --

19 THE COURT: And I --

20 MR. LEE: Okay. My understanding is he's not
21 going to present any evidence that --

22 THE COURT: He's not.

23 MR. LEE: -- previously ruled --

24 THE COURT: He's not going to put it in and I
25 don't know what it is, but if we have to send the jury

1 out. We have to send them out.

2 Bring them in.

3 THE BAILIFF: Jurors entering, Your Honor.

4 (WHEREUPON the jury entered the courtroom.)

5 THE BAILIFF: Jury is seated, Your Honor.

6 THE COURT: Jurors, the attorney represents
7 he has about two hours on this witness and that's just on
8 direct, and I told him an hour and 45. You know, it's
9 hard to guess when you're talking about stuff that
10 happens five or six years ago through -- 1997 to --
11 everything that's happened in between, so don't hold it
12 against anybody -- because they have to put their entire
13 case in, and don't hold it against them. Same holds true
14 for them.

15 Go ahead an -- but anybody needs a break
16 again, just notify the bailiff, because we try to take
17 breaks every hour and-a-half to hour and 45 minutes. I
18 know you're not good for two hours unless you're a super
19 human juror, so -- but we'll keep an eye on you.

20 Go ahead.

21 By Mr. Mathison:

22 Q Mr. McAlhaney, I believe you expressed some
23 reservations about spending the night in jail?

24 A That's correct.

25 Q How did you spend the night in jail?

1 A On a cot in a gymnasium with a number of other
2 people. I spent the night. I didn't sleep.

3 Q All night?

4 A All night until the next morning there was an
5 arraignment, I believe, is what they call it.

6 Q At what time was your arraignment hearing?

7 A Sometime mid-morning the following day, March 2.

8 Q In the interim during the period that you were in
9 jail on March 1, what had happened to Molly McCullers
10 children?

11 A They had been transferred to the custody of Rick
12 McElveen, Sr.

13 Q I'm handing you a notice of hearing and a restraining
14 order which actually, physically ordered the transfer
15 to Mr. And Ms. McElveen of those children. Orders
16 (unable to transcribe due to quality of reporter's
17 notes) of those children in an affidavit, and ask if
18 you can identify those for me, please.

19 A Yes, I can identify them. One is called a notice of
20 motion for emergency hearing and to modify a
21 temporary order and then the other document is called
22 an ex parte restraining order.

23 Q Are these documents pursuant to the transfer of the
24 children from the custody of Molly McCullers to
25 Mr. McElveen Sr. took place?

1 A Yes, they are (unable to transcribe due to quality of
2 reporter's notes).

3 MR. MATHISON: Move the introduction of that
4 document, Your Honor, or these documents.

5 MR. LEE: No objection. Judge, yours -- does
6 what you're submitting is the affidavit of the guardian
7 in it?

8 MR. MATHISON: It does.

9 MR. LEE: No objection.

10 (Plaintiff's Exhibit No. 8 was marked into
11 evidence.)

12 By Mr. Mathison:

13 Q If I understand correctly over a single weekend from
14 Friday to Monday, you were arrested and the
15 children's custody was switched all in one fell
16 swoop; is that right?

17 A That's correct.

18 Q Do you know with that weekend was? The weekend of a
19 leap year?

20 A Yes, I do. In fact, it was.

21 Q 27th was a Friday, the 28th was Friday, 28th was
22 Saturday, 29th was Sunday and the first was a Monday,
23 March 1; is that right?

24 A That is correct.

25 Q I believe you testified that sole custody of Jackson,

1 the child against whom this abuse was allegedly
2 perpetrated, was with Molly McCullers; is that right?

3 A That's correct.

4 Q Did anybody contact Ms. McCullers and tell her, her
5 child had been abused or molested?

6 A No one to my knowledge did.

7 Q If I understand your testimony correctly, the
8 grandparents had the children staying with them on
9 Thursday the 26th and through the weekend because
10 they were taking some trip to the upstate; is that
11 right?

12 A That's my understanding.

13 Q Did anything unusual happen on Sunday with respect to
14 the trip that Mr. and Ms. McElveen were supposedly
15 taking?

16 A There were -- there was a series of calls from Ricky
17 McElveen Jr. to Molly McCullers in which he is
18 telling Molly that Rick, Sr. and Linda have
19 telephoned him by way of his cell to let him know to
20 let Molly know that they were experiencing car
21 trouble on the way back from Greenwood and will not
22 be able to -- potentially not return the children on
23 -- I believe they had to be back at six o'clock on a
24 Sunday evening.

25 Q Did you know whether that was true or false at the

1 time those statements were made?

2 A I didn't know.

3 Q And I believe you testified that you had learned that
4 during the week of this trip to the lake that there
5 was a winter weather snow event; is that correct?

6 A That is correct.

7 Q When did you learn that the winter weather snow event
8 had occurred when Mr. And Ms. McElveen were
9 theoretically taking these children to the lake?

10 A I learned it about a week ago.

11 Q And how did you learn it?

12 A I looked it up on the internet to see what the
13 weather condition might have been like. I understood
14 them to frequent that lake house for the purpose of
15 boating trips, seemed odd. It was in February and as
16 it turns out there was a severe winter storm.

17 Q I'm handing you this document, which is the South
18 Carolina State climatology office report for a winter
19 weather event dated February 25th through the 27th,
20 2004, and ask if you can identify it for me, please.

21 A Yes, I can. It is the exact document you described.

22 Q And is it the document from which you learned there
23 would have been no good reason to go to the lake in
24 the middle of the snowstorm?

25 MR. LEE: Judge, I object to that. We will

1 stipulate that it snowed. Who cares.

2 THE COURT: Move on Mr. Mathison.

3 MR. MATHISON: Move the introduction of that
4 document, Your Honor.

5 THE COURT: All right.

6 (Plaintiff's Exhibit No. 9 was marked into
7 evidence.)

8 By Mr. Mathison:

9 Q Was the snow, according to that report, in Greenwood
10 County?

11 A Yes.

12 Q Was there a state news release announcing that all --

13 THE COURT: Let --

14 MR. MATHISON: All state offices in --

15 THE COURT: Think they've already stipulated
16 to that. You've got enough in that already. Just move
17 on.

18 By Mr. Mathison:

19 Q But it didn't really matter, did it, because they'd
20 never taken those children to Greenwood, did they?

21 A No, they never did.

22 Q When the call came in giving an excuse for why the
23 children weren't coming back, it didn't say because
24 it -- there was snow, did it?

25 A No, it didn't. It said because this was a computer

1 problem in the car that made it difficult or unlikely
2 that they could make it back home.

3 Q And the children were supposed to come back Sunday,
4 February 9th, February 27th. When did they come back
5 Mr. McElveen (sic)?

6 A They never come back to their mother since that day.

7 Q From March 1, when that order was obtained,
8 Plaintiff's Exhibit 8, they've never been back in the
9 custody of their mother; isn't that correct?

10 A That is correct.

11 Q And what was the basis set forth in that order for
12 switching the custody from Mr. And Ms. -- the
13 interest of Molly McCullers to Mr. McElveen Sr. of
14 those children?

15 A It was the basis of my --

16 MR. LEE: Your Honor, the order has been
17 introduced. I think if he's going to introduce it the
18 jury can figure things out.

19 THE COURT: He can just lead them on that and
20 move on.

21 THE WITNESS: It was the basis of my -- was
22 prepared on a Monday saying that I had been arrested and
23 I was arrested at four o'clock; and that was the basis
24 for the transfer. I don't know if it was prepared before
25 or after I was arrested, but they knew I was going to be

1 arrested.

2 Q Who appeared at your bond hearing in addition to you?

3 A My attorney, Bruce Marshall, my mother, my step
4 father, who's deceased, my sister, and my uncle, and
5 Linda and Rick McElveen were there, I believe.

6 (Unable to transcribe due to quality of reporter's
7 notes) might have been there. I'm not sure.

8 Q Who was the magistrate?

9 A Darlene Smith.

10 Q Were you released on a recognizance bond?

11 A Yes, I was.

12 Q What does that mean, exactly?

13 A It means that I didn't have to make bail, that it was
14 a personal recognizance bond. I understand it to
15 mean that --

16 Q Were there conditions attached to your release?

17 A Yes, there were.

18 Q What were those?

19 A No contact with the children, the McElveen family,
20 things like no firearms, that sort of thing.

21 Q Do you know whether Molly had any rights to visit
22 with the children under the order which is
23 Plaintiff's Exhibit 8?

24 A She had visitation rights that were to have to
25 include her parents as supervisors.

Q Did your inability to have any contact with the children or with the McElveens interfere with your ability to have a relationship with Ms. McCullers?

A Oh, yeah. It essentially drove a wedge between us. It moved me away if I -- if Molly was to get her children, I certainly couldn't be around anymore. I had to get out of this mess, but I had been made a party too, so I'd moved away from Molly, couldn't provide emotional, financial support that I had.

Q Before your bond hearing was over, did Mr. McElveen make an exclamation or statement?

A He did.

Q What exactly did Mr. McElveen say?

A He stood up and he said if somebody didn't handle this thing, something -- if they didn't handle it, the law didn't handle it, he'd chuck the law and he'd handle it himself; is what he said.

Q He said chuck the law and handle it himself?

A That's correct.

Q Was that said -- what was the manner in which that was said?

A It was a threatening manner. It wasn't one -- when you say something like that, I assume you mean business.

Q When you went to jail, did you have to surrender your

1 cell phone?

2 A Yeah, I did.

3 Q When you got out of jail, did you have calls on your
4 phone?

5 A Yeah, I did, my phone was full of calls.

6 Q Got out on March 2?

7 A That's correct.

8 Q Did those calls -- phone calls reflect people knew
9 that you had been arrested?

10 A They were calling, offering support, saying they knew
11 I had been arrested, yes.

12 Q Did the Beaufort Gazette run an article about your
13 arrest?

14 A They did. They ran it the following day after I was
15 released.

16 Q That is March 3?

17 A Yes, sir.

18 Q Did that inaccurately report that you were a family
19 friend?

20 A Yeah, that's what it said; however, I certainly
21 wasn't a friend to those people.

22 Q Do you know how the Beaufort Gazette came to be
23 present at your bond hearing?

24 A I was told there was a call placed saying --

25 THE COURT: Don't ask him hearsay and make

1 him object.

2 THE WITNESS: Okay.

3 By Mr. Mathison:

4 Q The publicity that you received as a result of having
5 been arrested and having the Beaufort Gazette cover
6 your release, what happened to that publicity?

7 A Basically one of the things that -- they named the
8 foundation on which I sat on a board. I was on his
9 Historic Beaufort Foundation, and I had years
10 prior -- years prior I had ended a term on what's
11 called the Tours of Management and Advisory
12 Commission and the paper listed those were things I
13 had served on, in fact, I was currently serving on
14 Historic Beaufort Foundation and I was in the process
15 of being made a chair of the committee on Historic
16 Beaufort Foundation and I was told in light of the
17 circumstances I would be moved along.

18 MR. LEE: I won't the anything, Judge, what
19 people tell him because they aren't here and it is
20 hearsay.

21 THE COURT: I --

22 MR. LEE: I'm sorry I keep having to object.

23 THE COURT: I sustain.

24 By Mr. Mathison:

25 Q What happened to the report? Was it archived on the

1 internet?

2 A Yes, you could -- you could draw it up.

3 Q When was the last time you drew it up?

4 A Maybe about a year and-a-half ago.

5 Q So this is something that's not going away? It's out
6 there; is that right?

7 A It's out there. It's buried a couple pages deep now.
8 I ain't assuming, but it's -- once they -- they tell
9 me once it's on the internet, it's out there and no
10 way to get a hold of it.

11 Q After you were arrested, which led to the transfer of
12 custody of the children, did Mr. McElveen and his
13 family continue their attack on their charge?

14 A They did.

15 Q Are you aware of whether they had successive reports
16 to the Beaufort County Sheriff's Office about
17 casework deficiencies that they believe that you had?

18 A I am aware.

19 Q Do you know how many of these reports were made to
20 the Beaufort County Sheriff's Office?

21 A There were numerous.

22 Q Just during the month of March of 2004 do you -- are
23 you aware of how many reports they submitted?

24 A I think it was five, maybe six e-mails, if you will,
25 I think.

Q Do you know whether many one of these reports
Mr. McElveen said -- and I'm quoting -- "I hit a
wall. I hit wall after wall. Numerous folks have
lots to say except when asked to come forward. They
all say Matt is gay, a deviant or capable of
anything"?

A I'm fully aware that's what he said.

Q And how did you get access to these reports?

A Came to me by way of the sheriff's department report.
My attorney came and --

Q Did anyone ever surface who actually said that you
were gay, a deviant or capable of anything other than
a member of the McElveen family?

A No one whatsoever.

Q Do you know whether Mr. McElveen reported your child
molesting thing to other people that were in the
community that were not in any way affiliated with
the sheriff's office?

A I do.

Q Was one of those people Ms. Shelava who testified
yesterday?

A That is correct.

Q Was another person a woman by the name of Julia
Peters?

A That's correct.

1 Q Is she scheduled to testify here?

2 A She is.

3 Q What did Mr. McElveen tell her about --

4 MR. LEE: Judge, she's going to testify. I
5 mean, I don't understand why he keeps --

6 THE COURT: Don't force him to object all the
7 time. You know what hearsay is and if people are going
8 to testify, let them testify.

9 MR. MATHISON: Forgive me, Your Honor, but my
10 understanding is, if they're going to come in and
11 testify, I can get the same evidence through him so long
12 as --

13 THE COURT: Can if you want to spend several
14 more hours on it. I'm not reprimanding you. I'm only
15 trying to speed it up. I mean, the jury understands the
16 positions right now, and we don't need to go over the
17 same things two and three times. Just move it on.

18 By Mr. Mathison:

19 Q How did you come to learn that Ms. Peters had, in
20 fact, been told negative things about you?

21 A She had contacted me.

22 Q Did you have any prior relationship with Ms. Peters
23 before she contacted you?

24 A I've never met her, never heard -- I'd heard of her,
25 but I had never met her, never talked to her.

Q It is the same as Ms. Shelava?

A I don't even know that I'd ever heard of Ms. Shelava, but I had heard of Ms. Peters, but not which I had ever talked to.

Q You didn't go out and look for these people to find people he talked to. They came to you; is that right?

A That's absolutely correct.

Q How long did the two charges, criminal sexual conduct with a minor and assault and battery of a high and aggravated nature remain pending against you?

A About one year. Almost one year.

Q In December of 2004, did you learn what disposition was going to be made of those charges?

A I did.

Q What disposition was that?

A That I was to be -- the charges were to be dismissed.

Q Do you know approximately when you learned that the charges were going to be dismissed?

A Around mid-December.

Q During that period had there been court proceedings after this transfer of custody to Ms. -- from Ms. McCullers to Mr. McElveen with respect to the grandchildren?

A Yes, there had.

1 Q Specifically as required by the order, there was a
2 hearing held on March 3, 2004; is that correct?

3 A That is correct.

4 Q And did that hearing confirm that the children were
5 to remain with Mr. McElveen instead of Molly
6 McCullers?

7 A Yes, it did.

8 MR. MATHISON: Move the introduction of that
9 order --

10 THE COURT: All right.

11 MR. MATHISON -- filed on March 24, as
12 Plaintiff's Exhibit 10.

13 THE COURT: All right.

14 MR. LEE: No objection...

15 (Plaintiff's Exhibit No. 10 entered into
16 evidence.)

17 By Mr. Mathison:

18 Q What happened to Ms. McCullers in the ensuing months
19 after your arrest and the children were taken away
20 from her?

21 A She had a nervous breakdown.

22 Q And were you personally aware of what happened?

23 A I was.

24 Q Do you know whether she's even recovered from it?

25 A I don't know. I don't think she's ever recovered

1 from it. I don't know that for certain. I wouldn't
2 think she would.

3 Q Did she ultimately agree to render custody of these
4 children to Mr. McElveen, specifically at a hearing
5 held on or about November 29, 2004?

6 A Yes, it says, "The plaintiff, Richard Keith McElveen,
7 Sr. shall have custody of the two minor children."
8 And it names them.

9 Q And at that point you were still under arrest; isn't
10 that correct? And those charges were still pending
11 against you; is that right?

12 A That's correct.

13 Q Move the introduction of the order that was filed on
14 January 12th.

15 THE COURT: If they don't object put it right
16 in.

17 MR. LEE: No objection.

18 MR. MATHISON: Plaintiff's Exhibit 11.

19 (Plaintiff's Exhibit No. 11 was marked into
20 evidence.)

21 (Unable to transcribe due to quality of
22 reporter's notes).

23 By Mr. Mathison:

24 Q Do you know if that was the final disposition or
25 final custody order that was placed from the record

1 with respect to the his Honor, Plaintiff's Exhibit
2 10?

3 A I think it is the final thing.

4 Q After that, you found out the charges against you
5 were going to be dismissed; is that right?

6 A That's correct.

7 Q Throughout this period from March 1 until December
8 15, had your character been attacked and assailed?

9 A Yes, it had.

10 Q Are you aware of anybody with the exception of
11 Mr. And Ms. McElveen who attacked or assailed your
12 character as a child molester, child abuser, deviant,
13 a person of homosexual persuasion, any of those?

14 A That they told?

15 Q No. Anybody who spontaneously came forth and
16 delivered this information they thought they could
17 find in the community?

18 A I'm sorry. You'll have to ask the question again. I
19 don't think I understood it.

20 Q Did anyone come forward, as had been represented by
21 Mr. And Ms. McElveen, to move that you were what they
22 said you were, which was a deviant, gay, et cetera?

23 A No one ever came forward to prove that. That's not
24 true.

25 Q By virtue of dating Molly McCullers, what did you

1 open yourself up for at the hand of the McElveens?

2 MR. LEE: Object to the question, Judge.

3 THE COURT: He just wants you to rephrase it.

4 Ask him what were the --

5 MR. LEE: It is argumentative too --

6 THE COURT: All right.

7 MR. MATHISON: This is my client, Your Honor.

8 THE COURT: I understand. What he's
9 objecting to and -- he's let you go a good bit in making
10 argumentative statements to them. He wants to hold you
11 to ask him what happened and why and so forth.

12 MR. MATHISON: What --

13 THE COURT: -- without saying things like
14 fraudulent activity, undertaken by his clients and so
15 forth. He can let that go, but now he's not going to let
16 it go anymore, so don't ask him that way.

17 By Mr. Mathison:

18 Q What were the complications of your having been
19 involved in a dating relationship with Molly
20 McCullers?

21 A I -- from the moment that Mr. McElveen filed his
22 lawsuit on September 11th, I witnessed a progress of
23 tearing down a representation that I had enjoyed
24 otherwise in Beaufort that was by all accounts a good
25 one. I watched in less than one year someone call

1 me -- started out I was a drug addict and a gambling
2 addict at a September 2nd hearing; go to September
3 29th, a letter goes out; a drug addict and I'm a
4 child abuser, on March 1 of 2004. I'm now a child
5 molester, after I'm arrested. I'm now deemed someone
6 who is gay, a deviant and capable of anything. So I
7 suffered about as much as anybody.

8 I don't know anything else you could call
9 anyone that's more egregious than all the things that
10 I've been called.

11 Q But there was one more act left in this play, wasn't
12 there?

13 A Yes, there was.

14 Q After you learned that the charges against you were
15 going to be dismissed were you attacked by people led
16 by Rick McElveen, Jr.

17 A Yes, I was.

18 Q Would you tell the jury the date that this occurred?

19 A It occurred on February -- I'm sorry -- December
20 24th, 2003, early in the morning.

21 Q Where had you gone on December 23rd?

22 A I had gone to a restaurant called Breakwater.

23 Q Did you go there initially?

24 A I -- initially I had gone there for a moment; but I
25 had also made my way to walk through a restaurant

1 called Plums.

2 Q And what time did you arrive at Breakwater?

3 A Somewhere about 8:30, quarter to nine, I walked over
4 through Plums around nine o'clock, I believe.

5 Q And when you got back to Breakwater, did you notice
6 anything unusual among the folks who were there?

7 A Yeah, I had frequented Breakwater. I was a regular
8 customer, and there appeared to be a number of
9 younger people that I had never seen before that were
10 gathering or glaring, if you will, at me.

11 Q Can you describe the conduct of a gentleman who came
12 or seemed to be coming up to you?

13 A Yes, I can. One of them from that party stood
14 somewhere where that microphone might be and began
15 looking at me, pointing to me and mouthing "you F'd
16 up," "you F'd up."

17 Q Did you know who the person was at the time that this
18 was going on?

19 A I'd never seen him before.

20 Q Did you subsequently identify the person from a
21 police photo lineup?

22 A I did.

23 Q And who was the person who was pointing the finger
24 and indicating that "you F-d up"?

25 A Billy Joe Byrd.

1 Q And Mr. Byrd is not here today; is that right?

2 A He's not.

3 Q Not here yesterday, either; is that right?

4 A Not by my recollection.

5 Q Were there other people in the room who either
6 gestured or talked to you during the period that
7 Mr. Byrd was pointing his finger in a threatening
8 manner?

9 A Yes, there were.

10 Q Who were they?

11 A Included among some that I can't identify, a Jessica
12 Tudor, a Dean Coward, a Stacy Walker, Randy Martin,
13 people who's names I learned subsequent to the event.

14 Q So you didn't know who these people were?

15 A I had not seen them before.

16 Q Do you know whether Mr. McElveen Jr. was one of the
17 people who was in Breakwater doing this?

18 A I didn't know it at the time, but I do know it now.

19 Q As a result of the tension that had been introduced
20 into the room by the threatening conduct, what, if
21 anything, did the ownership of Breakwater do?

22 A They asked them to leave on a couple of occasions, or
23 calm down, and think I think the first one was "Stop,
24 what you're doing," and then asked to leave.

25 Q Do you recall whether they left or not?

1 A They did leave.

2 Q And do you recall what time they left the restaurant?

3 A Somewhere, 11:30, midnight, something around there.

4 Q When they left, did you believe that they had
5 departed from the area?

6 A I kid.

7 Q How long did you stay at the restaurant after this
8 group of people left the restaurant?

9 A An hour and-a-half, two hours.

10 Q So approximately 2 p.m. you left?

11 A 2 a.m.

12 Q Who was there when you left?

13 A The owner's daughter and Amber Doo, the owner, Donna
14 Lang, the bartender, Terry, I cannot recall her last
15 name. Her boyfriend Milton Kelly, a friend. We were
16 all sort of friends of the owners and a fellow named
17 Warren Florence and a young lady named Jennifer
18 Carnes, who's also a waitress.

19 Q And when you left, where was your car parked -- your
20 car parked in relation to the front of the
21 restaurant?

22 A It was across the parking lot, no way I can show you
23 if -- terrible drawing, but I'll do the best
24 (marking.)

25 Okay. When I -- I actually -- here is an

1 exit here. Breakwater, that's the restaurant. This
2 is West Street. This is Port Republic. This is a
3 parking lot. Essentially this area. My vehicle was
4 parked right here.

5 Q All right. When you exited the restaurant, which
6 exit did you use?

7 A A rear exit, here. The rear exit.

8 Q And who left with you?

9 A Amber Doo, Jennifer Carnes, Beth Shaw, and that was
10 it.

11 Q And did other people leave from the other door?

12 A Essentially simultaneously, Milton Kelly, Terry --
13 Dean I believe is her name, the bartender and Warren
14 Florence exited what would be considered a primary
15 entrance.

16 Q And had y'all closed up the restaurant; is that what
17 you were doing?

18 A That's correct. I was a regular and was helping them
19 sweep up and talking.

20 Q Where were you going after you closed up the
21 restaurant?

22 A To I-Hop and Waffle House, what is it by the
23 Applebees.

24 Q When you walked across the parking lot, show the path
25 that you walked.

1 A (Marking on diagram.)

2 Q As you got to your vehicle, what happened?

3 A When I got in my vehicle, I shut the door and on this
4 side simultaneously, Amber Doo shut the door and then
5 there was a rush, and several people yanked my door
6 open, and began trying to pull me out, attacking me,
7 punching me, trying to pull me out of the car.

8 Q A rush of individuals, is that what you're saying?

9 A That's what I'm saying.

10 Q And how long did this attack go on?

11 A I would say less than five minutes, maybe about five
12 minutes, somewhere in there.

13 Q How many people are actively trying to get into your
14 car?

15 A Probably about five or six. There were several on
16 this side and then there were others that came to the
17 passenger's side and tried to drag Amber Doo out of
18 the car to get me.

19 Q Could you identify any of the people who were
20 attacking you when you were in your car?

21 A Ricky McElveen Jr. got this close to me, and I
22 realized who he was (motioning). Other than that I
23 didn't know any of them.

24 Q Had you known who he was up until then?

25 A I knew of him; and I'd seen him before, but I did not

1 recognize him when he was in Breakwater, but I did
2 when he got right in my face.

3 Q Did you identify anybody else?

4 A I did. Billy Joe Byrd, at a subsequent date. At
5 that time, I didn't know.

6 Q Did Byrd say or do anything that was memorable during
7 the attack on you in the parking lot?

8 A Yes, he did. He got the best shot in. He popped me
9 on my nose and he was -- it was the "last shot
10 around," he said -- walked around, across the street
11 and he said, "Remember the face. Remember the face"
12 (motioning).

13 Q That's Mr. Byrd, the man who's not here?

14 A That's correct.

15 Q What was the result of your getting hit in the face?

16 A I had a broken nose.

17 Q I hand you this document and ask if you can identify
18 it for me, please (handing photo).

19 A That's the photograph of my black eye and broken
20 nose.

21 Q When was that taken?

22 A The day after.

23 MR. MATHISON: Move the introduction of the
24 photograph as Plaintiff's 12.

25 MR. LEE: No objection.

1 MS. WATKINS: No objection.

2 (Plaintiff's Exhibit No. 12 was marked into
3 evidence.)

4 By Mr. Mathison:

5 Q Do you know which of the assailants actually caused
6 that broken nose?

7 A It was Billy Joe Byrd. He told me to remember the
8 face and I remembered it.

9 Q Did these people actually succeed in getting you out
10 of the vehicle?

11 A No, they didn't. By the grace of God, they did not
12 ever get me out of that vehicle.

13 Q Was there someone who intervened to help you?

14 A Yes, there was. Milton Kelly and a 50 some-odd
15 year-old man came running from this side, basically.
16 He created a diversion, basically to not allow all of
17 them to get me so they could get me out. If they got
18 me out, I don't know what --

19 Q What happened as a result of Mr. Kelly showing up as
20 a good samaritan?

21 A He had a number of bruises. He has a bad hip.
22 He'd -- he got slammed to the ground and has since
23 had a replaced hip and he had some -- pretty good
24 damage to his body.

25 Q During the period that this attack was going on, were

1 the exits to that parking lot blocked?

2 A They were.

3 Q Where are you exits?

4 A Right here and right here (motioning).

5 Q And do you know how they were blocked?

6 A They were blocked with vehicles.

7 Q Did you know that contemporaneously or learn it
8 afterwards?

9 A I learned it at -- I kind of saw it, you know, as I'm
10 leaning back, I'm walking out, there were cars there
11 and they never moved, is what happened, is
12 basically -- I assumed I was walking out, they were
13 exiting, but as it turns out they never moved the
14 whole time. They just waited on the people that got
15 in the cars and left after the whole thing was over.

16 Q Did anyone during this melee indicate to you why it
17 was that they were doing this to you?

18 A No, they didn't tell me what it was about, but I knew
19 what it was about.

20 Q What was it about?

21 A About the false allegations that had been made
22 against me that I was a child molester.

23 Q Please have a seat again for me, if you would. Did
24 you report this attack to the authorities?

25 A I did.

1 Q Specifically to whom did you report it?

2 A The City of Beaufort Police Department.

3 Q Was there a particular individual at the police
4 department who undertook an investigation?

5 A Jeff Vortisch. Detective Jeff Vortisch.

6 Q If I understand correctly, this incident took place
7 on or about -- between two and three o'clock on the
8 24th of December; is that right?

9 A That's correct.

10 Q How long did it take Detective Vortisch to
11 investigate the incident and make an arrest?

12 A Seemed like to me it was maybe a couple of months,
13 thirty, sixty days, somewhere in between there which
14 was kind of odd. I witnessed a real investigation
15 instead of the shanghai that got done to me on the --
16 the allegations that were brought against me. It
17 took a long time for him to talk to people and gather
18 evidence and figure out how to pursue it.

19 Q Do you know whether they interviewed the people who
20 were being accused before they arrested them?

21 A They interviewed them all, yes.

22 Q Notwithstanding those interviews, they went ahead and
23 arrested them anyway; is that right?

24 A They arrested them after having been interviewed
25 and --

1 Q Who specifically was arrested for attacking you?

2 A Richard McElveen, Jr. and Billy Joe Byrd.

3 Q What were the charges against them?

4 A Lynching charges, and I believe assault and battery
5 of a high and aggravated nature.

6 Q Do you know what happened to the charges against
7 Mr. McElveen Jr.?

8 A I think the lynching charge was dropped and there was
9 not a lynching and an assault and battery of a high
10 and aggravated nature. The lynching was dropped and
11 it was either reduced to that or that was the charge
12 that remained; and he pled guilty to a charge of
13 assault and battery of a high and aggravated nature.

14 Q Were you present when he did so?

15 A I was.

16 Q What about Mr. Byrd? What happened to the charges
17 against him?

18 A A trial was held. His charges were reduced to simple
19 assault, and a trial was held and he was convicted.

20 Q Were you present at that trial?

21 A I was.

22 Q Did you testify?

23 A I did.

24 Q During the proceedings, including discovery in this
25 case, have you learned who the other people who were

1 present at the time.

2 A I have.

3 Q Who are they?

4 A Stacy Walker, (unable to transcribe due to quality of
5 reporter's notes) Dean Cowart, Scott Bell, Randy
6 Martin, Jessica Tudor, Billy Joe Byrd, Ricky McElveen
7 Jr.

8 Q Did you learn what they were told in order to induce
9 them to want to beat you up?

10 A They were told --

11 MR. LEE: Your Honor, again, I think this
12 calls for hearsay --

13 THE COURT: It does.

14 MR. LEE: What people were saying about
15 someone --

16 THE COURT: I sustain it.

17 By Mr. Mathison:

18 Q The broken nose you suffered as a result of the
19 attack, did you have expense in getting that treated?

20 A Yes, I did.

21 Q Who did you see first?

22 A Dr. Vincent Rhodes.

23 Q Did Dr. Rhodes indicate what your problem was?

24 A That I had a broken nose.

25 Q Did he charge you anything for his consultation?

1 A No, he did not.

2 Q What did he do?

3 A He referred me to an ear, nose, throat specialist,

4 Dr. D. J. Christian.

5 Q And did Dr. Christian recommend a course of
6 treatment?

7 A He recommended you could do one of two things. You
8 could -- he said we have to do it in the first two
9 weeks, but we can go in with surgery and reset your
10 nose or you can just live with it. So I just lived
11 with it.

12 Q Did he charge you for his consultation?

13 A Yes, he did.

14 Q How much?

15 A 160 some-odd dollars.

16 Q Did you have any other injury as a result of the
17 attack?

18 A I did. Well, physically I -- I had a black eye,
19 black neck area, scratches, bruises, also -- it was
20 tough on me mentally.

21 Q Before we get to the mentally part, did you have any
22 property damage as a result of the attack.

23 A I did. They keyed my car.

24 Q How much did that cost to repair?

25 A About \$500.

1 Q You indicated that you had some emotional problems as
2 a result of the attack?

3 A I did.

4 Q What exactly was your problem?

5 A I'd lived in Beaufort all my life and I hadn't been
6 in a fight or an altercation since I was in junior
7 high school. I lived downtown. I walked frequently
8 to all the places downtown and I was safe, sound,
9 felt good about my life; and after that, I -- I
10 didn't quite feel the same.

11 I often would go to the movies by myself. I
12 didn't want to sit anywhere by myself after that. I
13 didn't move about as freely. I didn't feel very
14 comfortable. I didn't know what might happen to me.
15 It was just a new feeling. It was -- I'd never had
16 that feeling and it just kind of put me at home, in a
17 good bit.

18 Q Did you have to change your daily routine as a result
19 of the attack at Breakwater?

20 A Yeah, I just didn't -- again, I -- I would frequently
21 walk places at night, visit restaurants and do
22 things, talk to friends. I had friends that live all
23 throughout the Historic District and across town, and
24 I just wasn't going to do it. I wasn't going to risk
25 that -- they had shown me that they meant business,

1 and I just needed to protect myself.

2 Q Are you concerned to this day about your well being
3 in view of what happened?

4 A Sure, I am. Yes, I am concerned about my well being.
5 I'm concerned about being here. I don't know what's
6 going to happen after this, no matter what takes
7 place.

8 Q You're not necessarily concerned about your nose, are
9 you?

10 A I'm cool with it. It's okay. It's out of whack a
11 little bit, but it's all right.

12 Q Did you incur any special cost or damage as a result
13 of the letter that Mr. McElveen wrote to the
14 governor? That is Plaintiff's Exhibit No. 1?

15 A I did.

16 Q What exactly was the damage or cost that you
17 incurred?

18 A It cost me \$1,000 to meet with him a couple of
19 occasions, to write a letter to have Corey Flemming
20 up to speed on what was happening and to send
21 Mr. McElveen a letter asking him to cease and desist
22 about the defamatory remarks he was making about me?

23 Q And that's the letter that Mr. Flemming sent on
24 November 21, 2003?

25 A That's correct.

1 MR. MATHISON: Forgive me just a second. I'm
2 looking for a letter.

3 By Mr. Mathison:

4 Q I'm handing you this document, which is the Court's
5 Exhibit. Is that the letter that you paid him to
6 write you?

7 A That is the letter.

8 Q That dealt specifically with Mr. McElveen having
9 written to the governor; is that right?

10 A That's correct.

11 Q Did you incur any special damage or cost in
12 vindicating yourself from the charges of criminal
13 sexual conduct with a minor and assault and battery
14 of a high and aggravated nature?

15 A I did.

16 Q And how much was that, that you incurred?

17 A Cost me \$25,000 to hire an attorney to --

18 Q And during this period --

19 A And also \$1,500 for the first attorney and bond
20 hearing, advice thereof.

21 Q Who was the first attorney?

22 A Bruise Marshall.

23 Q And who was the person who represented you until the
24 end of the case when it was nol prosequi?

25 A Corey Flemming.

1 Q Corey Flemming?

2 A Yes, sir.

3 Q And although you learned about the dismissal in,
4 December, it is true that the case wasn't actually
5 dismissed until the following February; is that
6 correct?

7 A That's correct.

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

10 A It is the nol pros document that's dated February 16,
11 2005. It is stating that they will be dismissing the
12 indictment.

13 Q Can you tell me who signed it and for whom?

14 A That would be, I'm assuming, Alex Sanders -- it says,
15 "SMT per RN." (Unable to transcribe due to quality of
16 reporter's notes)

17 Q Do you know --

18 A That is Angie McCall Tanner for Randy Murdaugh, III.

19 MR. MATHISON: Move the introduction of the
20 nol pros document as Plaintiff's Exhibit 13.

21 MR. LEE: No objection.

22 (Plaintiff's Exhibit No. 13 was marked into
23 evidence.)

24 By Mr. Mathison:

25 Q Did you have any special injury or cost in defending

1 against the allegations of your being a child
2 molester, a sex offender, sex abuser, a deviant, gay,
3 et cetera?

4 A I had costs associated, yes. That was part of the
5 \$25,000 and the \$1,500 of criminal sexual conduct.

6 Q Do you know whether as a result of this defamatory
7 material, getting out there, you have had damage to
8 your reputation?

9 A Yes, I -- I certainly have had damage to my
10 reputation.

11 Q How have you felt the impact of this damage?

12 A In 2003, it was a loss of income, basically, an
13 indirect loss of income. I can't pinpoint exactly
14 what I made the year before and the year after I got
15 off, charges dismissed.

16 Q Do you know what your income was in 2002?

17 A 125,000.

18 Q Do you know what your income was in 2003?

19 A 64,000.

20 Q Excuse me.

21 A No, in 2003, it was 125,000, I'm sorry.

22 Q That's adjusted gross income; is that correct?

23 A That's correct.

24 Q That was during the (unable to transcribe due to
25 quality of reporter's notes) days before anybody was

1 either accusing you of being a child molester or
2 having you arrested for doing it; is that right?

3 MR. LEE: Judge, is that a question or a
4 final argument?

5 THE COURT: He's going to object every time
6 you do that.

7 MR. LEE: Judge, it is improper.

8 THE COURT: It is --

9 THE WITNESS: In the year 2003, prior to my
10 arrest, I enjoyed a healthy customer base in business and
11 in the year 2000 and that year I had a gross income of
12 125,000. After my arrest on March 1 of 2004, my customer
13 base seemed to corrode. I don't know if it was because I
14 was having to deal with the situation or people wouldn't
15 work with me, but my income dropped to 64,000. The
16 following year, February, mid-February, the charges were
17 dropped and my income rose to 171,000, so I have to
18 assume this was a direct cause.

19 By Mr. Mathison:

20 Q So if I understand correctly, you had a drop in
21 income of your adjusted gross income in 2003 of
22 \$61,000; is that correct?

23 A Yes, sir.

24 Q Do you know how much damage was done to your
25 reputation over all?

1 A I may never know how much damage was done to my
2 reputation, but I enjoyed a -- the McAlhaney name
3 enjoyed a good reputation. My grandfather came to
4 St. Hilda Island about 100 years ago, almost 100
5 years ago and my father died when I was a little boy,
6 about six years old and he left me with a good name;
7 and he left me with my education paid for and my
8 father was the first to go to college in his family.

9 He planted tomato fields to do so and to make
10 sure that I would have a head start and I know of
11 nothing like this that happened to my name in my
12 family, so there's -- this is a cloud that hangs over
13 that's in posterity forever for this whole thing that
14 I didn't do.

15 Q Are you asking the jury to award you punitive
16 damages?

17 A I am.

18 Q What is the basis for that?

19 A For my mental suffering. This has been -- this
20 was -- this was malicious from day one, what's
21 happened to me from the moment that these letters or
22 affidavits were headed calling me a drug addict to
23 the moment when -- the September 22nd hearing and
24 September 29th comes around Mr. McElveen didn't get
25 what he wants and he decides that he's going to vamp

1 it up on me a little bit and now calls me a drug
2 addict and a child abuser.

3 Then he still doesn't get what he wants. On
4 March 1, I get arrested for the most heinous crime
5 any individual could ever imagine and I have to fight
6 my way out to get that taken off of me because it's
7 simply not true because it is -- I'm incapable of
8 that. I fight hard to do that. I try to bring the
9 truth out. That's why I'm here today.

10 In the process of doing so, when the truth
11 finally reveals itself, Mr. McElveen and his crew
12 decide they're going to gather a gang and attack me
13 for the very same lies that they've created and put
14 me in jail for and so I'm -- I'm tired. Mr. Lee's
15 talking about going home. I'm ready to go home.

16 Q What makes you believe that Mr. McElveen Sr. is
17 implicated in the attack on you that took place in
18 the Breakwater parking lot?

19 A Mr. McElveen Sr. seems to have his hand in
20 everything. There's a particular way that he -- that
21 I have learned his patterns if you will. Again, he
22 piles up -- in 1997, he was -- by proxy his son filed
23 a case against his daughter-in-law, which actively
24 brings him custody, files the case on a Friday, very
25 similar to the one that he does in 2003, when you

1 don't have time to respond, you can't do anything and
2 he gets somebody else to do his dirty work.

3 Then he moves on to 2003, September 11th, he
4 files a case on a Thursday to be heard on a Monday,
5 gets postponed, thank God. This time Molly has time
6 to recover. She has affidavits. The children are
7 transferred. He learns of that on the 19th. He
8 doesn't like that, so he doesn't use a court of law.
9 He goes ahead and shoots a letter to Governor
10 Sanford. He's already called me a drug addict. He's
11 already called me -- he's called me a drug addict.

12 Now, he's called me a drug addict and a child
13 abuser. Then I watch it go all the way to March 1,
14 where I get arrested and conveniently, his hands,
15 he's not the one that did it but somebody else, Linda
16 McElveen, his wife, she does it.

17 Then, when they find out that I'm going to
18 get the charges dropped, then they have the children
19 secure and I'm out of the way and they done what they
20 needed to do, stripped Molly McCullers of the
21 emotional and financial support that she had. Then
22 Junior and his gang of thugs wait for me outside of a
23 restaurant and they try to basically dismantle me and
24 then as if it's in the movies, I subsequently learn
25 shortly after they do this, on this very same night

1 at 3 a.m., a man, 28-year-old man, who by the
2 admission of the entire family, has no close
3 relationship with his father, calls. He has (unable
4 to transcribe due to quality of reporter's notes) as
5 if to say, "that the eagle has landed, the job is
6 done, Dad. I did it." And then all of a sudden he's
7 back in the good graces.

8 I understand Mr. McElveen supports him in a
9 business that he has, puts him up in a business, so I
10 see it all -- it's all -- his hand is indelibly
11 marked all over this.

12 Q Do you believe that anything's been done in bad faith
13 in this case?

14 A Clearly, there has been a lot of things done in bad
15 faith. They -- they being Rick, Sr. and Linda -- the
16 baseball incident, I'm sorry, is another clear-cut
17 situation, where the timing is to -- the arrest is
18 less than a week after he's furious with me as he
19 watches me drive off with his family and he
20 maliciously designs a program that reports an
21 incident, again, gradually on a weekend and in less
22 than 72 hours with zero of investigation of me,
23 nobody talks to me.

24 I'm a guy that hasn't been arrested, never
25 been to jail in my life and I get arrested for

1 something I didn't do. So it's malicious the whole
2 way through and through. These were things that were
3 long-planned, the release when Mr. McElveen stands up
4 in the courtroom and he says somebody doesn't do
5 something about them, "I'm going to chuck the law and
6 I'm going the handle it myself. I'm going to do
7 something" -- I'm sorry -- "I'm going to do something
8 about this. I'm going to do something."

9 Q Did Mr. McElveen reported the incident, specifically
10 between you and him at the baseball park to the
11 Beaufort County Sheriff's Office?

12 A It showed up in a report where he said I threatened
13 him with a baseball bat.

14 Q That was his take on what happened?

15 A That's his take. I threatened him with a baseball
16 bat is what I told you was the way things went down.
17 He subsequently -- well, it is malicious because
18 after I'm arrested, after I am arrested he's done the
19 most heinous thing to me. He continues to make
20 allegations in e-mails. It is not enough for him
21 that I'm a drug addict and a child abuser and a child
22 molester, but just to kind of keep me in the box,
23 making sure that he's going to hold me at bay until
24 he does what he needs to do and that's get custody.

25 He calls me gay and deviant and the final

1 thing he springs down on me is I'm capable of
2 anything. I'm a guy that's lived my entire life
3 here, not arrested, not living in any situation, at
4 peace with everybody I know; but I meet this man and
5 in less than one year, all this has happened to me so
6 it's clearly malicious.

7 Q In addition to losing the position as a chairman with
8 the Historic Beaufort Foundation, has anyone that you
9 thought of declined to visit with you or do business
10 with you?

11 A I have had this occasion because of these
12 allegations, it's -- it's caused me pain in trying to
13 get some business done, if you will. I sold my
14 business to a Savannah realtor and they had concerns
15 that these allegations clouded the business that they
16 were going to buy.

17 Q Do you anticipate --

18 MR. LEE: Your Honor, I would object to that
19 last testimony as hearsay. It should be stricken.
20 There's no proof of that. They can bring it in and prove
21 it the right way. That should be struck.

22 THE COURT: That's his impression. That's
23 all it is.

24 MR. MATHISON: Thank you, Mr. McAlhaney.
25 Please answer any questions Counsel may have.

1 MR. LEE: You want to take a break for lunch,
2 Your Honor, or you want me to -- I mean, obviously, it's
3 going to take a while.

4 THE COURT: I know. I'm just going to
5 reprimand Mr. Mathison. I gave him an hour and 45
6 minutes. He finished in an hour and ten.

7 MR. MATHISON: Your Honor, every now and
8 then, you get it right.

9 THE COURT: I didn't mean to hammer him, but
10 he did streamline it, okay. Because of that we're going
11 to break for lunch because he's -- Mr. Lee and
12 Mr. Templeton are not going to be ten minutes on
13 cross-examination, so don't talk about the case.

14 Let's -- let's don't take too long for lunch.
15 Y'all can make it back at 1:30, can't you? That's about
16 an hour and fifteen. We'll all be here. Have a good
17 one.

18 (WHEREUPON the jury left the courtroom.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: Okay. Mr. McAlhaney --

21 THE WITNESS: Yes, sir.

22 THE COURT: You can step down. Here is the
23 rule. You can't talk to your attorney about potential
24 cross-examination at this point.

25 THE WITNESS: I don't like him any way so --

1 I'm just kidding.

2 THE COURT: You can talk to him, but he can't
3 brief you about what to prepare for and so forth since --

4 MR. MATHISON: He was told the rule, Your
5 Honor, when he came down.

6 THE COURT: I understand, but I have to put
7 it on the record so that if Mr. Lee walks by and hears
8 you whispering something to him, I can reprimand him, but
9 have a good lunch.

10 THE WITNESS: Thank you.

11 (WHEREUPON a recess for lunch was observed.)

12 (WHEREUPON the jury entered the courtroom.)

13 THE COURT: You may proceed, Mr. Lee.

14 MR. LEE: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 By Mr. Lee:

17 Q Mr. McAlhaney, you've gone to great lengths to tell
18 this jury about your character that's been damaged
19 you believe, correct?

20 A That's fair to say.

21 Q You would agree, would you not, in all fairness that
22 questions about your character are relevant to this
23 case?

24 A I think that's a fair statement.

25 Q You would agree the jury needs to have the full

1 picture about your character to determine what it was
2 maybe at one time and what it would be now. Would
3 you agree with that?

4 A Of course.

5 Q Let's start with the family court hearing
6 Mr. Mathison talked about on September 22, 2003. You
7 attended that hearing, correct?

8 A Yes.

9 Q And you submitted an affidavit for the Court to
10 consider as well, correct?

11 A That's correct.

12 Q Part of your affidavit talked about Molly McCullers?

13 A That's correct.

14 Q And that that's who you were dating at the time,
15 correct?

16 A Yes.

17 Q And you had been dating her exclusively since May; is
18 that correct?

19 A Late April, I recall May, somewhere around there.

20 Q And you knew her pretty well, I think it would be
21 safe to say?

22 A I think so.

23 Q So you submitted an affidavit in Molly's benefit and
24 you wrote what a wonderful person and mother she was
25 to the Court, correct?

1 A She was.

2 Q You also wrote she provided a safe, healthy, and
3 nurturing environment for the boys too?

4 A No question about that.

5 Q You felt she had been unfairly attacked with regard
6 to her care of the children, correct?

7 A Absolutely.

8 Q You thought she had been unfairly attacked about her
9 alleged use of drugs?

10 A As it related to the children.

11 Q And you and her went down to the hospital and got
12 this drug test, correct?

13 A That's correct.

14 Q And you submitted both drug tests to the Court,
15 correct?

16 A Correct.

17 Q To refute the allegations of drug use?

18 A Incorrect.

19 Q Incorrect?

20 A Yeah. That we were not currently using drugs. I've
21 never said I didn't. At that point, I wasn't any
22 longer.

23 Q But you didn't tell the judge in your affidavit that
24 you do use drugs, but you just hadn't had to in the
25 last couple of days, so it wouldn't show up on a

1 test. You didn't tell him that, did you?

2 A No, I didn't tell him that, but I had. In the last
3 couple of days, that's incorrect.

4 Q Well, would you think it's reasonable for a judge who
5 gets an affidavit, a drug test, showing negative for
6 drugs, is it unreasonable for a judge to assume the
7 person does not use drugs?

8 MR. MATHISON: Objection, Your Honor.

9 THE WITNESS: I don't know what the judge may
10 think.

11 MR. MATHISON: He can't testify as to who a
12 reasonable person --

13 THE COURT: I'm going to allow him to go a
14 little further. I know -- but we've already been over
15 this.

16 By Mr. Lee:

17 Q What purpose did you and Molly have in submitting a
18 drug test to show you were negative for drugs?

19 A To show, in my opinion, we are not the drug addicts
20 he was out to paint us to be. I've never said I was
21 a saint, But I've never used drugs in front of those
22 children in any way, never seen anybody under the
23 influence in any way. That's what I was trying to
24 get across.

25 Q You didn't qualify that in your affidavit saying we

1 occasionally use drugs, but we aren't right now; is
2 that correct?

3 A No. That's a fair statement.

4 Q Okay. Now, you, in the affidavit, as well, you
5 didn't include in your affidavit how many times you
6 and Molly had used drugs previously, had you?

7 A No, I did not.

8 Q And in the year or so that y'all dated, how many
9 times did you and Molly use cocaine together?

10 A Maybe twenty times.

11 Q I believe in your deposition you said you and Molly,
12 twenty to twenty-five times, used cocaine?

13 A That's -- yeah. I don't know it was twenty-five.
14 Probably more like twenty or less.

15 Q And that's just you and her?

16 A That's all that --

17 Q Using it together?

18 A That's all that Matt ever (unable to transcribe due
19 to quality of reporter's notes) in my opinion. That's
20 all the use that I really had was with her. I didn't
21 go out to --

22 Q You didn't include that in your affidavit, did you?
23 That y'all had used drugs twenty to twenty-five
24 times?

25 A No.

1 Q Okay.

2 A No, I did not.

3 Q You didn't include in your affidavit that one of the
4 children had walked in on you and Molly naked and
5 having sex, did you?

6 A No, that's the kind of thing Rick McElveen puts in
7 there. I certainly didn't. We were in the privacy
8 of her bedroom.

9 Q Is that a true statement? Didn't Ricky walk in when
10 you were in the throes of sex with Molly?

11 A Yes, he did in the very early morning. It's
12 unfortunate, but you know, it's happened with my son
13 at this point. I'm sorry that's the case, but we
14 were adults and weren't doing anything that --

15 Q Did the child seem upset?

16 A No. The child didn't seem completely devastated. He
17 was shocked as were we.

18 Q Did he run out of the room?

19 A Yeah, he turned around and left the room. Yes, he
20 did.

21 Q You took it upon yourself as his mother's boyfriend
22 at some point to eventually talk to him about the
23 birds and the bees, didn't you?

24 A Molly and I discussed it. I didn't take it upon
25 myself. I wanted him to know I was not doing his

1 mother harm, so I told him that's what adults do and
2 I love his mother and I was sorry he saw that.

3 Q You didn't put in your affidavit about an incident
4 that took place at a (unable to transcribe due to
5 quality of reporter's notes) where you spanked
6 Jackson?

7 A I swatted him one time. I didn't put it in the
8 affidavit because it's irrelevant (Mr. Lee said
9 spanked.)

10 Q You swatted him one time, didn't you?

11 A That's correct. On his behind.

12 Q Did you testify on the deposition that he appeared
13 startled after you disciplined him?

14 A Yes, I think I did.

15 Q Now, your cocaine use predates Molly, doesn't it?

16 A It did.

17 Q And it predates it to let's say the Spring of 2000;
18 that sound right?

19 A I'd say that's fair.

20 Q Before that or did you start doing it in the Spring
21 of 2000?

22 A I had done it, I would say less than maybe four, five
23 times in my life prior to that one time in college
24 and then subsequent.

25 Q And then -- well, let's get to this thing about

1 Governor Sanford, the lawyer, your lawyer put up
2 there. That letter wasn't cc'd to anybody else, was
3 it? At the bottom where it said cc'd, Rick didn't
4 send anybody else that letter, did he?

5 A No.

6 Q And he never referred to you by name? You have to
7 agree with that?

8 A Sure.

9 Q You're not aware of anybody else who received that
10 letter from Rick McElveen Sr., are you?

11 A People that I know that got it. I don't know that he
12 did it. You know, I --

13 Q Do you have any evidence or any testimony to say
14 under oath that you know of one person other than
15 Mark Sanford who got that letter from Rick McElveen
16 Sr.?

17 A That is a fair statement. I do not.

18 Q Okay. But you got a copy of it, right?

19 A Yes, I did.

20 Q From Julia Sanford?

21 A That's correct.

22 Q And you showed it to some people?

23 A I did.

24 Q And --

25 A Showed it to one person.

1 Q And I know you and your uncle compiled this book
2 we're going to talk about --

3 A We didn't compile a (unable to transcribe due to
4 quality of reporter's notes) a book.

5 Q What?

6 A We didn't compile a book.

7 Q We'll talk about that, but that letter was from June
8 of '04, is that --

9 A That's correct.

10 Q And are you aware of the number of people that book
11 went to?

12 A A lot.

13 Q A lot?

14 A A lot.

15 Q Lot of people around here?

16 A Yeah.

17 Q That booklet contains this letter to the governor,
18 right?

19 A Along with an explanation of why he might do this;
20 yes, it did.

21 Q It's safe to say a whole lot of people got that
22 letter as part of that book?

23 A That's safe to say.

24 Q Okay. And I think your language before was that you
25 embraced that book; would you agree with that?

1 A It tells the truth and that's why I -- I was trying
2 to tell the truth, I guess, from his perspective.

3 Q Let's get back to the letter. You claim there's two
4 things in there that aren't true, right?

5 A Yes, I -- I'm claiming that there is -- he called me
6 a drug addict, which is not true and I think he also
7 threw in there gambling addict.

8 Q In the letter?

9 A In the letter?

10 Q To the governor.

11 A May I see it? I can tell you what he put into the
12 letter to the governor. I don't know I --

13 Q Sure. You can refresh your recollection with that,
14 if you need to.

15 A No, I'm sorry. He called me a drug -- let's see.

16 "He has some severe problems, including a drug
17 addiction and has been abusive to the children,"
18 plural.

19 Q Okay. Drug addiction. So drug addiction and abusive
20 were the two things you had a problem with; is that
21 safe to say?

22 A Yeah, that's real safe to say.

23 Q As to that letter; is that safe to say?

24 A Absolutely.

25 Q You testified earlier nobody has ever called you a

1 drug addict before, right?

2 A Nobody has ever called me a drug addict.

3 Q Are you sure? Nobody has accused you before of

4 having a drug addiction?

5 A I'm not aware of anybody that's accused me of having
6 a drug addiction.

7 Q And I know that word is important to you and we'll
8 get to that in a minute. Okay?

9 A Sure.

10 Q Do you remember signing a property settlement and
11 domestic agreement on September 7, 2001 with your
12 first wife?

13 A I do.

14 Q I'm handing you a document, which I will not -- I
15 will -- introduce and you may want to flip to the
16 back to see if you recognize your signature?

17 A I do.

18 Q That was an agreement you made with your first wife
19 regarding temporary settlement of property and that
20 sort of thing, correct?

21 A That's correct.

22 Q All right. I want to direct your attention and it's
23 kind of outlined on page 10. Will you read the first
24 sentence in that paragraph, please?

25 A (Reading.)

1 Q Out loud, so the jury can hear.

2 A "Additionally, the wife acknowledges during the
3 course of this litigation, she has accused the
4 husband of theft, gambling and drug addiction."

5 Q That's a document that was your settlement agreement
6 that you signed and it says drug addiction, correct?

7 A That's what it says.

8 Q So your wife, the first go round, accused you of drug
9 addiction, right?

10 A That's what she says.

11 Q And you signed it?

12 A Did I sign off on her agreeing that I'm a drug
13 addict? No. She got it in the hands of her attorney
14 and that's what she came up with.

15 Q Is that --

16 A She's sorry for what she did.

17 Q Now, I'll ask you the question again. Has anybody
18 else, other than your ex-wife, and this letter to the
19 governor has anybody else accused you of being a drug
20 addict or having a drug addiction?

21 A A drug addict or a drug addiction?

22 Q Yes, sir.

23 A My ex-wife there.

24 Q Anybody else?

25 A I'm trying to think if Mr. McElveen had a cooked up

1 affidavit. I'm sure somebody threw one my way, so
2 maybe they did --

3 Q You said -- now, (unable to transcribe due to
4 reporter's notes)and nobody has ever accused you of
5 this and how horrible it is. Who else has accused
6 you, if anybody?

7 A If you could show me the affidavits that he
8 submitted, I'm sure he's got someone in there
9 accusing me of -- somebody doing something like that,
10 not until this --

11 Q Do you know who Shan Wilson is?

12 A I do.

13 Q Who is Shan Wilson?

14 A She was a jilted, former girlfriend of mine.

15 Q Shan Wilson was an 18 year old secretary who was
16 working at your office when you were still married to
17 your wife, correct?

18 A That's true.

19 Q You began a relationship with Shan Wilson while she
20 was working in your office, correct?

21 A I don't think she was working still when I began a
22 relationship with her, but she was in my office;
23 that's true.

24 Q Okay. She was in your office, but not working there?

25 A At one point, she was. But I don't believe there

1 was --

2 Q And you and Ms. Wilson, who was 18 at the time,
3 started a relationship, which led to the disillusion
4 of your first marriage, correct.

5 A No, that is incorrect.

6 Q Okay. Isn't it true that the grounds for divorce for
7 your first marriage was on adultery on your part?

8 A That is true, but we were separated prior to the
9 relationship with Shan Wilson. The marriage, the
10 disillusion, wasn't because of that. It was problems
11 prior to that.

12 Q The grounds for divorce were adultery with Shan
13 Wilson and that's what the judge signed the order
14 off -- I'll get the order, but do you agree with
15 that?

16 A Certainly.

17 Q Okay. And how long did you have a relationship with
18 Shan Wilson?

19 A I think about two years.

20 Q Two years?

21 A Two years, maybe a little bit more. Two years.

22 Q And --

23 A Almost two years.

24 Q -- you say that she was jilted?

25 A Oh, yeah.

1 Q Oh, yeah?

2 A Yes.

3 Q And is that your -- I don't want to put words in your
4 mouth. I'm handing you another document dated
5 September 8, 2003. Can you identify that, please?

6 MR. MATHISON: I'm going to object at this
7 juncture. He's trying to put in evidence from somebody
8 that's not here. He's testifying to the affidavit.

9 MR. LEE: Cross-examination, Judge. He said
10 he hadn't ever been accused of it.

11 THE COURT: Go ahead.

12 By Mr. Lee:

13 Q Recognize that document?

14 A I do. This is part of Mr. McElveen's negative
15 affidavits that he drummed up.

16 Q Who signed it?

17 A Shan Wilson signed it.

18 Q Okay. Will you read the second paragraph, please?

19 MR. MATHISON: Renewing my objection.

20 THE COURT: I sustain that, but that she made
21 accusations can come in. The letter can't come in.

22 By Mr. Lee:

23 Q Isn't it true that she made the accusation that you
24 began your relationship when she was 18 and you were
25 32?

1 A That's correct.

2 Q And isn't it true that she made the allegation that
3 you introduced her to cocaine two months after y'all
4 became close?

5 A That's the allegation, but I subsequently learned
6 that's incorrect.

7 Q And it said, "We continued to do the drugs together
8 as well as drink heavily until I decided last fall in
9 2002..."

10 THE COURT: All right. That she accused him
11 is fine. I said it can't come in so if it can't come in,
12 you can't read it verbatim.

13 By Mr. Lee:

14 Q One last thing. She claims you were addicted to
15 drugs in the last sentence, right?

16 MR. MATHISON: Objection.

17 THE COURT: He said he didn't know anybody
18 had ever accused him. Ask him if she did.

19 THE WITNESS: That's not true --

20 THE COURT: Whether it's true or not,
21 whether -- anybody else accused him is -- can come in.

22 THE WITNESS: There is a statement that says
23 something like that, yes.

24 By Mr. Lee:

25 Q In that in April 2003, you're still addicted, right?

1 A That's what she says.

2 THE COURT: Strike his comment. He didn't
3 want him to editorialize. He can't either.

4 THE WITNESS: Yeah, that's what she says.

5 By Mr. Lee:

6 Q And you say that she was a jilted lover and that all
7 that is incorrect?

8 A Yeah, that's absolutely incorrect.

9 Q Do you remember going to see Debra Marcet in Mt.
10 Pleasant who is a licensed psychologist?

11 A Yes, I do.

12 Q And do you remember going to see her because of the
13 break up with Shan?

14 A No. Actually, it was -- I had broken up with her and
15 then believed I had done something wrong in that, and
16 I really loved her or cared for her; and then she
17 would not have me back. And then I went as trying to
18 kind of piece my life in terms of -- of the woman in
19 my life and what did I want to do about that, did I
20 want to continue to pursue it or go on. So I --

21 Q So --

22 A I broke up with her. That's -- that's a fact and
23 then I tried to rekindle the relationship and was
24 unsuccessful in doing so.

25 Q And from that point on, I think you said at one point

1 y'all were on good terms?

2 A Yeah, which is what's surprising. Next time I heard
3 from her, you know, it was kind of, "I love you, you
4 love me. Sorry we can't" -- and then she lives next
5 door to Rick McElveen and produced this letter,
6 regrettably, but not here to say so.

7 Q And you and Shan Wilson did drugs, I believe you said
8 two or three times a month during the time you were
9 with her, correct?

10 A I think that's fair.

11 Q You think that's fair that you said it previously or
12 you think it's fair that it's true?

13 A I think both are fair.

14 Q And so you're -- however your problem or your hang up
15 is -- is the use of the word addiction, correct?

16 A If I drank two or three times a week or month, you
17 wouldn't call me an alcoholic. You've just got a
18 sensationalized drug that you're trying to put it
19 down my throat. Sorry, I did it, but that's not a
20 drug addiction.

21 Q So you believe cocaine is the same as beer?

22 A I believe addictions are the same. You either have
23 them or you don't; and I didn't have an addiction.

24 Q You define your drug use as recreational over those
25 last three or four years, correct?

1 A I do.

2 Q And you gave a previous definition of a drug addict.

3 Do you remember doing that in your deposition?

4 A I do. You reminded me.

5 Q Okay. Can I hand you your deposition to refresh your
6 recollection of what your definition was.

7 A I can -- you refreshed it the other day, but I will
8 be glad to reread it.

9 Q You can open that. It is just sealed for the Court?

10 A Holy sugar. The whole thing fell apart on me.

11 Q Did it?

12 A Yeah.

13 Q I'm sorry. It was sealed, so I hadn't --

14 A Okay.

15 Q I've got another one that --

16 A I can just flip it over.

17 Q I'm sorry, Matt. Thank you for not dropping it.

18 A Yeah.

19 Q Do you mind if we use another copy, Rob?

20 MR. MATHISON: That will be fine.

21 By Mr. Lee:

22 Q Sorry about that. It's been sitting around for
23 years. That will be the same thing. Go to page 51
24 for me. Again, this is the deposition you gave
25 Wednesday, August 23, 2006; is that right? Says it

1 on the front. I may not remember the date, but --

2 A I believe that's correct.

3 Q Okay. Starting on line 3, question was asked: "How
4 do you define a drug addict?" Do you see that?

5 A I do.

6 Q What was your answer?

7 A "A person, I'm assuming who requires drugs in his
8 life on a regular basis -- "

9 Q Can you slow down a little bit, please.

10 A "A person, I'm assuming a person who requires drugs
11 in his life on a regular basis, a daily basis,
12 someone who would not be something like the way you
13 would find on alcoholic, someone who's downtrodden,
14 down and out, in an..." (unable to transcribe due to
15 quality of reporter's notes) "...who had foregone all
16 other things than the pursuit of drugs. I have
17 recreationally used drugs, but I am in no way, shape
18 or form, no more so than the President of the United
19 States, a drug addict. I have used it
20 recreationally."

21 Q Okay.

22 A I stand behind that.

23 Q I guess the President we're talking about at that
24 time was Bush?

25 A It could have been any one of them. They've all used

1 drugs.

2 Q Do you know how long cocaine stays in your blood
3 system?

4 A I think that it doesn't last -- I don't know
5 medically, but I believe -- when people have applied
6 for jobs for me, they are always concerned about
7 marijuana staying thirty days or something like that,
8 so -- but I don't know the answer specifically to
9 that, but I don't think it's like a week or --

10 Q Cocaine is like twelve to seventy-two hours. Have
11 you ever heard --

12 A I have never heard seventy-two hours, no, not have
13 heard anything like that.

14 Q Less than marijuana, right?

15 A Yeah, less than thirty days.

16 Q You've also heard there are all kind of tests people
17 can do for drug detection?

18 A I'm not aware of different kinds of tests.

19 Q Blood, which you had, correct?

20 A Yeah, that's one.

21 MR. LEE: Your Honor --

22 By Mr. Lee:

23 Q Go get a drug test, urine test?

24 A Sure.

25 Q Hair test?

1 A If you say so.

2 Q You're aware when you have hair test that it shows
3 drug use over a longer period back? Does that make
4 sense?

5 A Sure. It does. Do you want some of my hair.

6 Q No. I could use some, but thank you for your help.

7 A I've kept all mine, but it's going on me.

8 Q But you didn't go get a hair test?

9 A No, I didn't go get a hair test because I didn't know
10 that's what you do or not do.

11 Q Let's talk a little bit -- you've already talked
12 about the (unable to transcribe due to quality of
13 reporter's notes) nobody else.

14 MR. LEE: Beg the Court's indulgence.

15 By Mr. Lee:

16 Q You also testified on direct that nobody else around
17 here has ever attacked or assailed, I think was the
18 word Mr. Mathison, nobody has ever attacked or
19 assailed your character before. Do you remember
20 saying that?

21 A No, I do remember that and --

22 Q Is it true?

23 A I suppose you're going to tell he it's not true, but
24 it certainly -- not to the level that's happened
25 here, but.

1 Q I'm asking the questions you're giving the answers.

2 I'm asking is it true? Has anybody ever attacked or
3 assailed this character that you're worried about?

4 A Apparently it's true in the two things you've said.

5 Q And then you said something in passing about -- you
6 said it on cross and direct, something about some
7 gambling allegation Mr. McElveen had made against
8 you?

9 A I don't know if I said it in direct or passing about
10 Mr. McElveen making it against me. I'm unaware of
11 where it might have come from but --

12 Q Didn't you say earlier something about you thought
13 the letter to Sanford said something about a gambling
14 problem or addiction?

15 A If I did, I did wouldn't have --

16 Q Didn't you testify that Mr. McElveen said you had a
17 gambling problem at one time?

18 A I didn't testify to that. I said I thought it was
19 this the letter, but it's not in the letter.

20 Q Is it your position that Mr. McElveen has ever
21 accused you of having a gambling problem?

22 A Is it my position that Mr. McElveen has ever --

23 Q Accused you of having a gambling problem?

24 A I think that he has. I mean, it wouldn't -- listen,
25 he's called me everything. I mean, I'm sure he

1 just -- whatever.

2 Q And the affidavit you submitted to the Court at
3 Family Court, if you look at the last sentence, you
4 state --

5 A I believe my business success and net worth would be
6 highly inconsistent than a gambling, drug addict --

7 Q Where did the gambling accusation come from?

8 A Must have come from something Mr. McElveen said about
9 me.

10 Q You're saying that's not true, the gambling part?

11 A Yeah. Again, yes. I'm not a gambling addict. I'm
12 saying it's not true.

13 Q Has anybody ever accused you of having a gambling
14 addiction.

15 A I'm saying it's not true.

16 Q Has anybody ever accused you of having a gambling
17 problem other than Mr. McElveen?

18 A This all comes out of one nasty divorce. That's
19 untrue. Again, my wife cried to me about the things
20 (unable to transcribe due to quality of reporter's
21 notes) said so if you're jamming that down my throat,
22 I'll take it.

23 Q I'm not trying to jam anything down your throat, sir?

24 A You're doing a good job of it?

25 Q Would you admit that your wife, during the course of

1 litigation, accused you of theft, drug addiction and
2 gambling addiction?

3 A I would admit that she said that. Yes, I would admit
4 she said that.

5 Q She claimed you had \$78,000 in gambling dealings and
6 you were using some partnership property to pay those
7 debts, right?

8 A She erroneously claimed that, yes, she did. Yes. It
9 is completely untrue.

10 Q You say it was a nasty divorce with your first wife?

11 A It certainly was unpleasant. Yes. It was
12 unpleasant. I don't know of any that aren't
13 unpleasant these days.

14 Q Me either. And this -- this Family Court stuff,
15 that's down filed in Family Court, right?

16 A Yeah, I never heard from my wife about any of this
17 stuff until she was getting a divorce from me.
18 Never. Not in one thing you've mentioned, but it is
19 down there in the records, once she got an attorney,
20 this is what happened.

21 Q Did you ever make any threats against your wife
22 during the nasty divorce proceeding?

23 A No, I did not. I tried to contact her to remedy the
24 lies she had known she had done, but I never had any
25 threats to her, a threatening person.

1 Q Did she allege that you made some threats?

2 A Not that I'm aware of.

3 Q This affidavit of your wife from the Family Court
4 case, will you read paragraph 12, please.

5 MR. MATHISON: Objection, Your Honor. Here
6 we go again.

7 THE COURT: Same thing. He said he wasn't
8 aware of it.

9 MR. LEE: I'm refreshing his recollection
10 with a filed document.

11 THE COURT: Can't use it to impeach if he --

12 MR. LEE: It is a filed document in his
13 divorce, and I'm using it to refresh his recollection.

14 THE COURT: I'm not rehashing that whole --

15 MR. LEE: Could I ask him more specific
16 questions to see if he remembers it?

17 THE COURT: I think I'm going to send the
18 jury out because I don't have all day for this prior
19 divorce and what his wife said. He has admitted she said
20 X, Y, and Z.

21 You can ask him if he said A, B, and C, and
22 if he denies it, you can show it to him and we can move
23 on with life. We're not putting that in and --

24 MR. LEE: Can I ask him a specific question
25 and let him say yes or no and if he said he didn't

1 know --

2 THE COURT: Said he could.

3 By Mr. Lee:

4 Q Did your wife threaten to leave a note on your car
5 exposing things of your past if you didn't to things
6 the way you wanted in the --

7 A I don't recall that.

8 Q You don't recall that?

9 A I'm telling you under oath, I don't recall that.

10 Q All right. I want to -- I want to ask you about the
11 abuse of process claim you brought next, okay?

12 A Sure.

13 Q In your complaint, you allege that Linda McElveen,
14 who was aided and abetted by her husband reported
15 that their grandson had made a disclosure of sexual
16 abuse against you; is that correct?

17 MR. MATHISON: Objection.

18 MR. LEE: It's his complaint.

19 THE COURT: I said you could do it. Listen.
20 You just relax.

21 MR. LEE: I'm trying, Your Honor.

22 THE COURT: Don't get defensive. If somebody
23 objects, I rule. There's nothing personal one way or
24 another as I rule.

25 Mr. Mathison probably feels like I hammered

1 him every time he opened his mouth, but I wasn't trying
2 to, not trying to do that to you. You ask the question,
3 but when somebody objects, rule and whether you like it
4 or not, you're stuck with it. Move on.

5 MR. LEE: I know, Your Honor.

6 By Mr. Lee:

7 Q You remember the question or you want me to repeat
8 it?

9 A You can ask me again, Scott.

10 Q Paragraph 502 of your complaint, do you allege in
11 your complaint that Linda McElveen, who was aided and
12 abetted by her husband, reported their grandson had
13 made a disclosure of sexual abuse against you?

14 A He has already said you -- you read something wrong
15 that he was going to do something -- (unable to
16 transcribe due to quality of reporter's notes) --
17 ain't something, so I'm assuming you're telling me
18 the truth, sure.

19 Q And then it goes on to say essentially that you claim
20 they had you arrested for (unable to transcribe due
21 to quality of reporter's notes) improper and unlawful
22 purposes. That's the basis of the -- of the abuse of
23 process, right?

24 A Yes.

25 Q I'm not trying to trick you, I promise.

1 A Far be it for you to do that.

2 Q I'm sorry?

3 A I said far be it for you to do that, an attorney,
4 trying to trick someone. It is just a joke. My
5 apologies if you think it was offensive.

6 Q If you think I'm being improper and trying to trick
7 anybody or -- tell me and I'll clear it up. I'm not
8 trying to trick --

9 A Thank you for that. I appreciate your comment.

10 Q Is it your position that part of that -- that the
11 whole thing involving your arrest was a set up?

12 A Oh, yes, I believe fundamentally so.

13 Q I'm sorry?

14 A I believe fundamentally so. It was a set up, yes.

15 Q You said so in your deposition, page 143, line 16, is
16 a set up you want to refer to that?

17 A I don't need to go there. If the judge is
18 interested, if you say it happened that way and my
19 attorney wants to say otherwise, I'm fine with it.

20 Q We may want to get to some of these questions.

21 A Okay. 143? Is that what you would like me to do?

22 Q Right. 143, line 16.

23 MR. MATHISON: May it please the Court? My
24 understanding of the way the procedure is supposed to
25 work is he asks him a question and if he doesn't like the

1 answer, he can then impeach him with his deposition
2 testimony, in which case he refers him to the book and
3 has him read it. He doesn't just have him read his
4 deposition testimony; and therefore, I'm objecting and
5 that's basically what he's having him do.

6 THE COURT: Which I sustain.

7 MR. MATHISON: Thank you.

8 THE COURT: And, jurors, don't get your hopes
9 up. The deposition is not coming back when you start
10 deliberating. Anything you hear from the deposition you
11 can consider.

12 By Mr. Lee:

13 Q So as part of this -- you figure there was a set up
14 or some type of conspiracy; right?

15 A I think that they sought to gain custody of their
16 grandchildren and validate his claims that I had been
17 abusive by having me arrested for child molestation;
18 that's what I think.

19 Q And part of the process which -- and correct me if
20 I'm wrong -- that you think was done improperly
21 started all the way with some ex parte communication
22 with the guardian ad litem, right?

23 A I found highly inconsistent claims by the guardian ad
24 litem that were provided, my understanding, by
25 private investigators that Rick McElveen had. I live

1 in my body. I know what happened and I can only
2 imagine she's getting them from him.

3 Q So you think the guardian ad litem is part of this --

4 A Oh, I think she's been used as a tool. I think a
5 bunch of unfortunate folks have been used as a tool.

6 Q You think the private investigator has also been used
7 as a tool?

8 A Sure. He's been used as a tool, but if there's
9 something he's got, bring it because I'm totally
10 against the statements that have come out of some
11 private investigators that she says that he said, but
12 I never saw anything like that. It is interesting.
13 These are private investigators Mr. McElveen hired.

14 Q Is it your belief that Mr. McElveen or somebody on
15 his behalf somehow got the arrest warrants for you
16 into the hand of a Jasper County magistrate, that he,
17 meaning Mr. McElveen believed looked, you know,
18 favorably upon what he was doing? Do you --

19 A It was my belief that had the normal magistrates,
20 i.e. Ned Tupper or Mary Short had been here they
21 would have looked at this far more circumspect and I
22 don't think it's by accident that you got it in front
23 of those people or they got it in front of whomever
24 it is that got it in front of a woman who had no idea
25 who it is that got an investigation about me. If it

1 got in front of a magistrate that knew my name, it
2 would have stopped and a proper investigation would
3 have happened.

4 Q Because you're friends with Ned Tupper, right?

5 A I'm friends with Ned Tupper.

6 Q And good friends with his son?

7 A I'm friends with his son, but I didn't say any
8 impropriety would happen; I just said a proper
9 investigation, and that's all I asked for, and that
10 wasn't done.

11 Q But you took the position that somehow it got to a
12 Jasper County magistrate that would look more
13 favorably upon it other than a judge that you knew,
14 right?

15 A No, just that it would be someone -- I thought
16 actually it was -- it was a Jasper County magistrate,
17 but it turns out she was here, not there, but yeah, I
18 believed fundamentally that if it went before someone
19 that wouldn't recognize my name, I believe that to
20 this day.

21 Q The judge that signed the warrant was Judge Darlene
22 Smith, correct?

23 A That is correct.

24 Q Who is the Beaufort County magistrate?

25 A That is correct, and I stand corrected.

1 Q This case was investigated by the Beaufort County
2 Sheriff's Office, correct?

3 A That is correct.

4 Q And the allegation did not -- I use allegation --
5 allegation did not happen within the city limits of
6 Beaufort, did it? It happened in the county which is
7 why the county investigated, correct?

8 A I don't know how that works. You'll have to talk to
9 me about jurisdiction.

10 Q Are you --

11 A I understand that the allegations were supposedly
12 erroneous -- they -- they took place at a time --
13 just several forms, but while the boy was living with
14 his mother with the boy, living in Port Royal, no
15 Port Royal policeman got on it, but I guess with
16 Linda and Rick living in the county, you know, I'm
17 living in the city, the mother's living in Port
18 Royal, the incident supposedly took place in Port
19 Royal, they're living in the county, so I -- you
20 know, I don't know what to say. Who gets
21 jurisdiction, but it's -- it's the way (unable to
22 transcribe due to quality of reporter's notes) --

23 Q The sheriff's office has county-wide jurisdiction, do
24 you agree with that?

25 A I don't know that Scott. If you're telling me that,

1 I'll have to agree with --

2 MR. MATHISON: Your Honor, if it please the
3 court, he's asking for a conclusion of law that --

4 THE COURT: He said he didn't know. He
5 backed off.

6 By Mr. Lee:

7 Q Are you aware or are you not that the sheriff's
8 office investigated cases go to the magistrate and
9 not the municipal judge?

10 A Oh, I wasn't aware of that.

11 Q So going through the people that you believe were
12 involved in all of this (unable to transcribe due to
13 quality of reporter's notes) Rick (unable to
14 transcribe due to quality of reporter's notes) and
15 his wife as part of this arrest process?

16 A Yes.

17 Q (Unable to transcribe due to quality of reporter's
18 notes) Brian Baird, the investigator?

19 A I think that the evidence is going to reveal he
20 certainly did a shotty job. He was part of a process
21 that was broken.

22 Q And your theory on that is that he knew Rick McElveen
23 from way back?

24 A I don't know necessarily that that's not -- maybe he
25 owed you a favor. I'm not sure what the -- how that

1 works, but maybe he did know him, so maybe that is
2 the theory.

3 Q Are you taking that position before that he knew Rick
4 McElveen are way back?

5 A That's a possibility that I did. It certainly is --
6 that seems quite odd. Zero investigation of me. No
7 talking to me, just incredible.

8 Q With Brian Baird -- did you know Brian Baird before
9 all this?

10 A No, I never did.

11 Q Have you ever laid eyes on him?

12 A Oh, I've seen him.

13 Q Before this?

14 A No, not that I'm aware of.

15 Q Are you aware of any ax he has to grind with you?

16 A I'm not aware of any ax he -- yeah, I think he had an
17 ax to grind with me. I think he didn't like who you
18 all portrayed me to be. Of course, he would have an
19 ax to grind with me.

20 Q Have you ever done anything to him that would cause
21 him to do that?

22 A No.

23 Q And you think Diane Dewitt did some funny things for
24 lack of a better term?

25 A I don't think she -- I think she's a little bit more

1 innocent. She was just kind of a victim like myself
2 in many ways.

3 Q Diane Dewitt was the guardian ad litem?

4 A Correct.

5 Q Do you understand that to mean that's the lawyer
6 who's supposed to look out for the kid's interests in
7 a divorce or custody or whatever?

8 A I'm clear on that, yes.

9 Q And she was the guardian ad litem?

10 A Yes.

11 Q And then people at Hope Cottage, were they in on it?

12 A They conducted a shotty investigation, I believe
13 that -- in many ways were kind of intimidated by the
14 Sheriff's Department. They substantiated and rubber
15 stamped what the sheriff's department tells them.
16 They create and rubber stamp a report along with --
17 is in my --

18 Q Did you ever know anybody at Hope Cottage prior to
19 that?

20 A No, I --

21 Q Would anybody at Hope Cottage have any reason to harm
22 you?

23 A No.

24 Q How about Darlene Smith, the lady who signed the
25 arrest warrant that your lawyer introduced earlier?

1 Is she out to get you?

2 A No, I don't think she's out to get me.

3 Q Have you met her before you were arrested?

4 A No, not to my knowledge.

5 Q Okay. How about Judge Smoak, who is the Family Court
6 judge at the emergency hearing? Had you ever met him
7 before?

8 A No.

9 Q Okay. And he's the one who -- who temporarily at the
10 time gave -- said the kids can stay with Rick and
11 Linda, correct?

12 A On the basis of false allegations, generated by Rick
13 and Linda, yes. You're absolutely correct.

14 Q Do you -- did you know Judge McDomick was the
15 magistrate who held the preliminary hearing?

16 A I know of him, yes.

17 Q Did you know him before that?

18 A I knew of him.

19 Q Did he have any ax to grind with you or did you have
20 any problems with him previous to that?

21 A No, I believed him to be a fair person.

22 Q And at the preliminary hearing, your lawyer was given
23 the opportunity to cross-examine Brian Baird,
24 correct?

25 A And that he did and did well. Found holes through

1 his entire case?

2 Q And despite how well or -- he did or not, the case
3 was bound over at the preliminary hearing by Judge
4 McDomick, correct?

5 A That's my understanding, yes.

6 Q Okay. Meaning it was sent to the grand jury to
7 consider an indictment, correct?

8 A Correct.

9 Q And Judge McDomick doesn't have as far as you know
10 any reason to pick on you or do anything against you,
11 right?

12 A No, he's just got information that other people have
13 compiled where he -- specifically giving
14 information -- remember it is all plugged in by Rick
15 and Linda.

16 Q And the indictment was true-billed later that month,
17 correct? By the grand jury?

18 A Grand jury, I understand true bills essentially
19 everything so it was along with --

20 Q Did you know any of the 18 people that were on the
21 grand jury at that time?

22 A How would I know any of those people.

23 Q Well --

24 A There's no list that's ever been provided to me.

25 Q Any of those people that you know of have anything

1 against you?

2 A How would I know? I told you they keep that private,
3 I'm assuming. I don't know if anybody would.

4 Q Anybody else who's part of this process, who you
5 believe have had it in for you or played a part in
6 it? For your arrest?

7 A No, I think you've covered the bases.

8 Q Okay. Shan Wilson, you think is part of --

9 A I think she is a tool. She lived right next door to
10 Mr. McElveen and just like Ms. Shelava was part of
11 that.

12 Q You also believe that Mr. McElveen was instrumental
13 in running the article that got you arrested?

14 A I can't figure out why it is that a person who has
15 served on a committee -- Tourism Management and
16 Advisory Commission Committee that ended two years
17 earlier, why it is that Beaufort Gazette would have
18 interest in publishing me. I never found it in the
19 newspaper for that all prior to that subsequent
20 arrest, never. Not one thing. I don't think you can
21 go, to this day, and find me mentioned as a part of
22 that committee yet. Who told them that? How did
23 they know that if I'm not in their paper.

24 Q I'm asking you, do you have any proof that --

25 A Oh, I don't have any proof, just a lot of

1 circumstantial evidence. No, I --

2 Q Speculation on your part?

3 A I'm, you know, just -- just brief. I'm --

4 Q Okay.

5 A Brief.

6 Q At the time your sister was working at the Beaufort
7 Gazette, right?

8 A That's correct.

9 Q Did you ask her to investigate to see if
10 Mr. McAlhaney and his people -- I'm sorry, McElveen
11 and his people were behind having an article
12 published in the paper?

13 A I asked her to keep her ears open for anything
14 suspicious.

15 Q Anything ever come of that?

16 A No, nothing ever came of it.

17 Q The one thing that you did say is there was a phone
18 call and somebody maintained they were calling from
19 the county; is that right?

20 A I think that's correct.

21 Q Okay. You think that that was anybody else?

22 A I think that must have been the hand of these folks,
23 you know, that lie and are -- I've never been in the
24 paper as a figure, if you will, of interest for the
25 committee on which I served. Back then, they didn't

1 publish the arrest. It was unusual to have somebody
2 have a title and a headline, with, you know, public
3 figure and you know, they -- they sensationalized it
4 for the purpose of reading it. Nobody knew -- I
5 could have appeared as a normal citizen, I'm
6 assuming, but there was too much information about me
7 in a very short period of time. It read -- read like
8 an affidavit, Mr. Lee, that I submitted it, says what
9 committee I served on, how I have been on the Tourism
10 Management Commission and Advisory Committee that
11 reads like that. He's down there.

12 Q You mean read your affidavit?

13 A Yeah, my affidavit has those -- my having said to the
14 Court's, you know, those are committees I served on
15 and I, in fact, not this (unable to transcribe due to
16 quality of reporter's notes) of that these people --

17 Q The affidavit you're speaking of was filed in Family
18 Court?

19 A Yes.

20 Q As far as you know, anybody can go down to Family
21 Court, pull the file, and look at what's in the
22 record?

23 A I'm absolutely sure they could.

24 Q When you went and saw Debra Marcette, who's the
25 psychologist down in Charleston --

1 A Uh-huh.

2 Q -- that was in 2003, right, when you and Shan had
3 broken up, right?

4 A That's correct.

5 Q I think it was April of 2003?

6 A Excuse me, yes.

7 Q Did you or did you not in April of 2003 tell her you
8 were having cash-flow problems?

9 A I very well could have said cash-flow problems. I'm
10 in real estate. Cash flow comes and goes.

11 Q Right. Yeah, we all know that. Speaking of your
12 income, you are involved in several partnerships and
13 LLC's -- correct me if I'm wrong -- with some local
14 friends, correct?

15 A That's right.

16 Q It's primarily really estate investing?

17 A That's correct.

18 Q Is it safe to say that part of your income is from
19 the realtor and brokerage business which was Town and
20 Country, and then part of it is some individual
21 investing you do yourself?

22 A That's a fair statement.

23 Q So you may sell a property with some of your friends
24 and that may affect your income, right?

25 A Yes, that's correct.

1 Q Hopefully for the better.

2 A Doesn't always work that way, but that's the idea.

3 Q Tell me about it.

4 Unfortunately, you're in one of the most
5 cynical businesses that -- other than selling
6 Christmas trees, you are probably up there?

7 A Can be good and can be bad.

8 Q Bear with me.

9 A I'm fine. I'd like to get a glass of water.

10 Q I would too.

11 When people called you after you were
12 arrested, did you respond to them?

13 A Not all of them. I would run into some of them.

14 Some of them were very good friends. I called them
15 back.

16 Q Did you ever say that it's all a big set up, and Rick
17 McElveen falsely accused you of it?

18 A I am quite certain I would have said that.

19 Q That --

20 A That's --

21 Q From what I've heard, that would probably be a likely
22 response?

23 A It is a likely response.

24 Q And do you know how many people you might have told
25 that to?

1 A No, I wouldn't know how many people, but I'm certain
2 (unable to transcribe due to quality of reporter's
3 notes) the number of people -- I certainly didn't
4 talk to people as if this were true because it was
5 not true and never has been and never will be true.
6 This will never happen to me again. Never happened
7 to me before.

8 Q And (unable to transcribe due to quality of
9 reporter's notes) after this thing came out in the
10 paper, your mom put something in the paper as well,
11 didn't she?

12 A A beautiful mother sitting right behind you did.
13 (Pointing.)

14 MR. MATHISON: Object.

15 THE COURT: I don't know what that has to do
16 with anything.

17 MR. LEE: It has to do with --

18 MR. MATHISON: May we approach, Your Honor.

19 THE COURT: I don't know. Is he going to
20 pursue that?

21 MR. LEE: It just shows he publicized the
22 arrest.

23 MR. MATHISON: It doesn't show anything he
24 did -- anything, Your Honor.

25 THE COURT: The mother is going to come to

1 the defense of her son anyway aren't you? Only takes one
2 publication, you know, a grudge of reputations. Let it
3 go. Y'all can argue all that for the jury.

4 MR. LEE: I understand, Your Honor.

5 By Mr. Lee:

6 Q Let's switch over to the incident at Breakwater.

7 A Okay.

8 Q Ricky McElveen Jr. went to court and pled on that,
9 didn't he? Pled guilty to --

10 A Yes, he did.

11 Q And part of his punishment was that he was ordered to
12 pay you restitution, right?

13 A That's part of it, yes.

14 Q And he did that?

15 A He did.

16 Q Mr. McAlhaney, when was the last time you did
17 cocaine?

18 A Summer of 2003. I erroneously stated in that
19 document, 2004, and I'm telling you it's 2003. I
20 stopped. Haven't and will not. I reread that. I
21 was -- I think I said 2004, Summer of -- I was
22 arrested, I was scared to death, wasn't doing
23 anything like that. It was the Summer of 2003 and
24 I'd just misstated it. I apologize. That's the
25 fact. That's the truth.

1 Q Summer of 2003?

2 A That's correct.

3 Q Okay. That isn't the reason -- that isn't the time
4 period you gave in your deposition, was it?

5 A No I -- it wasn't. I was just wrong.

6 Q Forgive --

7 A There's a lot of numbers here and I just got that one
8 wrong, but I assure you, I shut that program down.

9 Q So -- define Summer of 2003?

10 A Probably in August, somewhere thereabouts, I'm
11 imagining.

12 Q Okay. You and Molly started dating in May?

13 A Again, I think looking back, it was more like in
14 April, I think. It was more like April really, but
15 anyway, I think it was closer to the beginning of
16 April, but.

17 Q So any way we're looking at a three- to four-month
18 span?

19 A Probably four -- four months from the time -- from
20 the time we met until the time I stopped in that
21 summer; four months.

22 Q And you testified earlier you and Molly did cocaine
23 twenty to twenty-five times together, right?

24 A Yes, I guess about four or five times a month, four
25 or five months.

1 Q Four or five times a month? Okay.

2 A I mean, if that's what the math adds up to.

3 Q Can you go to page 64, line 17, please.

4 Let me see if I can speed up. Do you agree
5 you said in your deposition Spring, Spring '04 is
6 when you stopped using cocaine?

7 A I agree I did say that. I did.

8 Q Can you tell the jury why you stopped using cocaine?

9 A Because I believe that's when I started to hear what
10 Rick McElveen -- at that time that I went to see
11 Mr. Lee, I realized that there was a problem coming
12 down Molly McCullers' way, and I was going to be able
13 to ameliorate, needed a piece coming around. She
14 needed to be free of any cloud of drug use and I
15 needed to be free of any cloud of drug use,
16 regardless of the level.

17 It needed to be done and out of our lives and
18 that's what I did do that day, from that moment. You
19 can take a hair follicle if you'd like.

20 Q So the reason that you stopped using cocaine after
21 three or four years is because of this guy right
22 here?

23 A I -- I guess if you're trying to make him out to be
24 my savior, he's not. No, I believed that it was the
25 best program that would allow Molly to move forward

1 and deal with whatever problems that may arise out of
2 Family Court. That's what I believed.

3 Q And you say you -- that that was this August of 2003,
4 according to you?

5 A Yeah, that's correct.

6 Q And the first hearing where any of this stuff came
7 out was -- was in September?

8 A Uh-huh.

9 Q And that was the first time you had any dealings with
10 Mr. McElveen, isn't it?

11 A No, I had already heard some of the things that he
12 was saying and I had already gone to see you about
13 the case itself that was coming that way, so, no,
14 that's not the answer.

15 Q Whether it was for Molly's benefit, your benefit,
16 society's benefit, bottom line is legal cause of
17 things that you were hearing from Rick McElveen, that
18 is why you stopped using cocaine?

19 A That's a fair -- sure. That's a fair statement.

20 Q And you were assuming, Mr. McElveen, one of these
21 things is because he called you a drug addict.

22 A He just said I'd used drugs. That wouldn't be part
23 of what I'm suing for, but he said drug addict, but
24 I'm not and never have been. If he had just said I
25 used drugs that would be part of what I'm suing him

1 for, but he said drug addict and I'm not and never
2 have been.

3 MR. LEE: That's all I have, Your Honor.

4 **CROSS-EXAMINATION**

5 By Mr. Templeton:

6 Q Good afternoon, Matt.

7 A Good afternoon.

8 Q A few questions for you. Can you please describe
9 your relationship with Mike McEachern?

10 A He is essentially my father. My father was killed in
11 a mid-air collision when I was six-years-old and he
12 moved us back to Beaufort and took the role of my
13 father.

14 Q To the best of your knowledge, has he ever done
15 anything that was not in your best interest?

16 A Never in my life has he done anything that I didn't
17 feel was in my best interest.

18 Q Earlier this morning, you were recounting for the
19 jury, I believe, a situation where the kids were
20 going to the Greenwood (unable to transcribe due to
21 quality of reporter's notes) --

22 A Correct.

23 Q And that ultimately didn't actually happen, correct?

24 A No, I don't think anybody argues that that didn't
25 happen.

1 Q And who was it that told you that they were going to
2 go to Greenwood?

3 A I would imagine Molly McCullers told me that they
4 were going to go to Greenwood. It may have been in
5 Linda McElveen's deposition, by I'm not sure of the
6 first time I heard of it, Mr. Templeton.

7 Q Fair enough.

8 A But I knew they were going somewhere. They were not
9 in her possession, which they normally were and at
10 some point, I knew that that was happening, that they
11 were supposed to go to Greenwood.

12 Q And that was ultimately not true?

13 A That was ultimately not true, but in the deposition,
14 I believe they said they were going to Greenwood, but
15 it didn't happen that way.

16 Q And in terms of the time line, just so I have it
17 straight in my mind, you were arrested in March of
18 2004, and those charges were ultimately dismissed in
19 December of 2004; is that right?

20 A They weren't all dismissed. I was told they were
21 going to be dismissed in December of 2003, about
22 mid-December, and they subsequently were dismissed on
23 the 16th of February of 2004.

24 Q Okay. Thank you.

25 MR. MATHISON: Redirect, Your Honor?

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 By Mr. Mathison:

4 Q To clarify, the last matter first, you were told they
5 were going to be dismissed in December of 2004,
6 correct?

7 A I apologize. It was 2004 if --

8 Q When was it actually dismissed?

9 A 2005.

10 Q What was the exact date on there?

11 A February 16, 2005.

12 Q Bear with me, Mr. McAlhaney, there are several
13 matters that I need to go over with you.

14 You indicated I think in response to
15 Mr. Lee's question that on one occasion you swatted
16 Jackson McElveen on the rear end; is that right.

17 A That's correct.

18 Q Do you know when that was?

19 A July 28, 2003.

20 Q How did you (unable to transcribe due to quality of
21 reporter's notes) how and when that event occurred?

22 A I asked my attorney, Michael Mann in Columbia, South
23 Carolina. I recall having gone up there with Ricky.

24 I could not remember the date at all. It was

25 troubling to me and I asked Michael Mann who is a

(1 (unable to transcribe due to quality of reporter's
2 notes) attorney that I deal with in Columbia, South
3 Carolina, to recall a date and visit because I
4 remember going with Molly and the children to
5 Columbia. It was in a business day so it was clearly
6 the summer. So I asked him to look back in 2003 and
7 he told me that, in fact, it was July 28, 2003.

8 Q And this swat on the rear end, where did it take
9 place?

10 A It took place inside of a mall in Columbia.

11 Q Was it in a store or outside the store?

12 A No, it was in a Radio Shack.

(13 Q And you indicated in response that the child was
14 startled?

15 A Yes. Essentially, I'd gone in to the Radio Shack and
16 I had purchased he and his brother one or two small
17 items, and I bought that for them and then there was
18 a -- Jackson wanted more of something and something
19 bigger and Ricky said something to the effect that --
20 he thought --

21 Q Don't --

22 A I'm sorry.

23 Q Don't say that.

(24 A My apologies. Bottom line is he was upset that I did
25 not purchase something and he began to bolt out of

1 the Radio Shack. He ran down the hallway of the
2 mall. I picked him up and I swatted him on his
3 behind one time in the mall. One time in the mall.
4 He came up and he was -- he was startled a little
5 bit.

6 Q All right. Did you ever engage in corporal
7 punishment with either of the two children other than
8 on that particular date?

9 A No, I did not. That's it.

10 Q Do you consider having disciplined him in that
11 manner -- fashion to be child abuse?

12 A No, I would not consider it to be child abuse.

13 Q Did Mr. McElveen Jr. call you about that incident?

14 A He did.

15 Q And what, if anything, did he say?

16 A He told me in no uncertain terms that he believed
17 that the only person that should discipline his
18 children were himself and their mother and I told him
19 I agreed fundamentally, I was wrong. I was sorry I
20 did it and that he didn't need to lose a night's
21 sleep thinking that that would happen again; that's
22 what I told him.

23 Q Did you adhere to his request?

24 A I certainly did.

25 Q Mr. Lee asked you if it's true that anybody can go

1 down to the Family Court and quote, pull a file; is
2 that right?

3 A I didn't know that, But I've been educated and you
4 can do it.

5 Q Exactly who was it that pulled the file in so far as
6 you're concerned? That is your previous domestic
7 situation?

8 A Rick McElveen Sr. pulled the file.

9 Q Is that what he described as his, quote, research in
10 your past?

11 A I would have to say that that was his research.

12 Q After you were arrested, Mr. McElveen --

13 A McAlhaney.

14 Q Excuse me. McAlhaney. Forgive me. That's two for
15 me. I'm now ahead of the judge and I'm ahead of
16 Mr. Lee. So -- after you were arrested, (unable to
17 transcribe due to quality of reporter's notes) did
18 your former wife, Jacqueline Adams, write a letter to
19 you expressing her support?

20 A She did.

21 Q And was that letter sent to --

22 MR. LEE: Judge, if he's going to object to
23 the stuff, I'm going to object to the stuff.

24 THE COURT: He objects, can't come in.

25 ///

1 By Mr. Mathison:

2 Q Did your domestic action with Ms. Adams reflect the
3 exaggerations that are frequently found in the
4 records of Family Court proceedings?

5 MR. LEE: I don't think he can testify as to
6 the --

7 THE COURT: He doesn't know. He's not a
8 professional (unable to transcribe due to quality of
9 reporter's notes) for the family court and he has
10 opinions on that. This is all he gets.

11 By Mr. Mathison:

12 Q Do you have any knowledge yourself as to where any of
13 the allegations took place, the allegations that led
14 to your arrest?

15 A No.

16 Q Do you have any knowledge as to when any of the
17 allegations took place?

18 A No, I -- I don't have any.

19 Q Have you ever seen a document or documents which
20 indicate that they -- they took place sometime
21 between October 1 and the day of your arrest?

22 A Oh, yes. There's something out there that basically
23 gives us (unable to transcribe due to quality of
24 reporter's notes) of -- from saying -- I think
25 actually I did see it. There is a document that

1 says, "We believe these allegations to have taken
2 place X" -- "over a period of X time," is what it
3 says.

4 Q Sometime during a period of over three months?

5 A Correct.

6 Q In some place?

7 A Correct.

8 Q And you don't know who would be the proper authority
9 to investigate that, do you?

10 A I like -- I said I don't know who would investigate
11 such an allegation.

12 Q Just to make it clear, you're not making a claim
13 against Mr. McElveen and his family for what they
14 said about you in the context of Family Court, are
15 you?

16 A No, if it would have stayed in the context of Family
17 Court, I -- even if I wanted to, I couldn't.

18 Q Because that's your understanding of the law, is it
19 not?

20 A The little bit I've learned, that's my understanding.

21 Q And your understanding is that some form of -- of
22 casework assassination would be tolerated inside the
23 walls of a courthouse, correct?

24 A Tolerated fairly liberally in a family matter,
25 appears.

1 Q Who do you blame for putting in process the malignant
2 information about you that ultimately got you
3 arrested?

4 MR. LEE: Object to that question, Your
5 Honor.

6 THE COURT: Right. And everybody knows who
7 he claims, he's already told us 50 times.

8 THE WITNESS: I agree with you, Judge.

9 THE COURT: Not suggesting he did it, just
10 said it.

11 By Mr. Mathison:

12 Q Were you a drug addict at any time in your life, sir?

13 A No, I'm not a drug addict, and I've never been a drug
14 addict, never been to rehab; never had problems with
15 the law with drugs. I have used drugs and that's
16 unfortunate, but I've never been a drug addict.

17 Q Have you ever done anything that any reasonable
18 person could characterize as abusing a child?

19 MR. LEE: Objection. A reasonable person?

20 THE COURT: His answer is no, as he's already
21 testified to, so...

22 MR. MATHISON: Thank you, Your Honor.

23 THE COURT: Let's just let him step down
24 unless somebody wants to ask him something else.

25 MR. LEE: Couple of follow ups.

1 THE COURT: I don't know.

2 MR. LEE: Please?

3 THE COURT: He didn't breach anything else.

4 You can't ask him anything else about being a drug addict
5 or using drugs.

6 MR. LEE: And if I do, I know you'll stop me.

7 THE COURT: Right.

8 **RECROSS EXAMINATION**

9 By Mr. Lee:

10 Q You blame the McElveens for setting this process in
11 place, right?

12 A That's a fair statement.

13 Q And Linda McElveen is the one who reported the
14 disclosure?

15 A That's my understanding.

16 Q Tell the jury what they should have done other than
17 reporting that to law enforcement?

18 A If it were true and they hadn't cooked it up, then
19 they should report it, but I think there's enough
20 evidence that says they cooked it up and they brought
21 it then.

22 Q And what evidence is there that they cooked it up?

23 A There's a history of pursuing children through court
24 and abusing the process of lying about people and I'm
25 a victim and that's why I'm here today.

1 Q How long did you date Shan Wilson?

2 A Mr. Lee --

3 MR. MATHISON: Objection, Your Honor.

4 THE WITNESS: I can't recall that.

5 MR. MATHISON: Didn't you just say he can't
6 go into what I didn't go in to?

7 THE COURT: I did. He can step Down. He's
8 been up there long enough.

9 MR. LEE: All right.

10 MR. MATHISON: May it please the Court, it's
11 been an hour and 15 minutes. Could we take a break
12 before I call my next witness?

13 THE COURT: How long is your next witness.

14 MR. MATHISON: I would say 20 minutes, 30
15 minutes, maybe.

16 THE COURT: The jury's been good. We'll take
17 a break. Everybody needs to inhale. Don't talk about
18 the case. Take 15 minutes.

19 (WHEREUPON the jury left the courtroom.)

20 THE COURT: What is next?

21 MR. MATHISON: Your Honor, the plaintiff is
22 going to call in order three witnesses. The first will
23 be Ms. Julia Peters, who's name has been mentioned. The
24 second will be the assistant solicitor Angela Tanner and
25 the third will be Mr. McEachern.

1 THE COURT: All right.

2 MR. MATHISON: We're going to use that order
3 because McEachern may take longer than the other two
4 and --

5 THE COURT: They have other places to be.

6 MR. MATHISON: Yes, sir.

7 THE COURT: Y'all ready?

8 MR. LEE: Judge, two things, please. In
9 response to interrogatories, they've got (unable to
10 transcribe due to quality of reporter's notes) as to
11 Ms. Peters, the last sentence says the grandchild had
12 told his teacher about it. Again, I think that in the
13 spirit of his motion that he filed with no hearsay about
14 what a child says, I'm just cautioning --

15 MR. MATHISON: I don't know what he's making
16 reference to, Your Honor.

17 THE COURT: He's showing you right now.

18 MR. LEE: That's your summary of what your
19 witness is going to testify to.

20 MR. MATHISON: The teacher part is not going
21 to be said.

22 MR. LEE: Thank you. The other thing, Your
23 Honor, while the jury is out, it would be our position
24 that -- I don't know whether he's going to attempt to do
25 it or not, but again, to save time, if Mr. Mathison is

1 going to attempt to elicit some opinion testimony from
2 the assistant solicitor, I believe that's improper.

3 THE COURT: I'm just speaking -- all he's
4 going to do is ask what a nol pros is.

5 MR. MATHISON: I'm going to ask her why she
6 nol prosed it.

7 MR. LEE: Doesn't that open the door to
8 everybody? Aren't we arguing the merits of the case?

9 THE COURT: Can prove information she had up
10 to that point. That's all she's going to say. That
11 doesn't open up anything, does it?

12 MR. MATHISON: Not to my way of thinking. My
13 understanding of your ruling is a conclusion can be
14 stated, you just can't put words in the children's
15 mouths. I'm not going to ask her to say what Jackson
16 McElveen told her. I'm going to ask her whether she
17 interviewed him --

18 MR. LEE: No --

19 MR. MATHISON: That's -- whether she
20 interviewed him and whether after interviewing him, she
21 and the solicitor made a decision as to what to do with
22 the case. That's all I'm going to do.

23 MR. LEE: That's indirectly doing what he
24 can't do directly.

25 MR. MATHISON: I believe that's within the

1 spirit of your ruling, you know.

2 THE COURT: We're going to get it reversed
3 anyway because it looks like it can be your client --
4 your client has to say the child told the (unable to
5 transcribe due to quality of reporter's notes).

6 MR. LEE: Said that all along.

7 THE COURT: Huh?

8 MR. LEE: Exactly.

9 THE COURT: Has to say that whether it was a
10 motion or -- whatever -- that's all not what, where, or
11 when, just that it happened by so and so, and she
12 reported --

13 MR. LEE: Yes, sir.

14 THE COURT: -- and then she can say,
15 Ms. Tanner, she interviewed him and decided not to pursue
16 it without elaborating. Sometimes -- and y'all have been
17 there -- I have settled cases when I was in private
18 practice because my client didn't testify properly on the
19 stand, couldn't even get from the house to the wreck
20 scene. That doesn't mean it's true or not true, but she
21 can't go into that. Y'all can say she interviewed him
22 and after that she decided not to pursue it, period,
23 without saying anything else.

24 That's what he says he wants to do. That's
25 what she said she can say what I said she could say.

1 Then we'll take it from there.

2 MR. LEE: I intend to ask her what a nol pros
3 is, what it means.

4 THE COURT: That's right. Could be
5 re-indicted. You can ask her anything else. She would
6 be under oath.

7 MR. LEE: Sir?

8 THE COURT: Can ask her anything else.
9 She'll be under oath. Sheriff gave me a list if --

10 MR. LEE: I told her I might have some
11 interesting questions for her, not having to do with this
12 case but --

13 THE COURT: Y'all ready?

14 MR. MATHISON: May I speak to Ms. Tanner
15 before --

16 THE COURT: Sure.

17 MR. MATHISON: Thank you, Your Honor.

18 THE COURT: Okay.

19 THE BAILIFF: Jurors entering, Your Honor.

20 (WHEREUPON the jury entered the courtroom.)

21 THE COURT: You may proceed.

22 MR. MATHISON: May it please the Court?

23 The plaintiff calls Ms. Julia Peters to the
24 stand, please.

25 THE COURT: All right.

1 THEREUPON,

2 JULIA PETERS,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Mathison:

6 Q State your name for the record.

7 A My name is Julia Peters.

8 Q Ms.. Peters, where do you reside?

9 A At 9239th Street, Port Royal.

10 Q Are you married or single?

11 A Single.

12 Q And how old are you?

13 A 69.

14 Q Sorry. Are you presently employed?

15 A Just part-time.

16 Q For whom do you work?

17 A A doctor's office.

18 Q Were you employed in 2004?

19 A Yes.

20 Q What were you doing at that time?

21 A I was in interior design and salesperson person for a
22 furniture warehouse design gallery in Beaufort.

23 Q Would you mind speaking up just a little bit?

24 THE COURT: Maybe closer...

25 ///

1 By Mr. Mathison:

2 Q That's great. I don't know whether the jury can hear
3 you, but my old ears are having a problem.

4 Did you encounter Mr. Rick McElveen Sr. in
5 the course of your working at Furniture Warehouse?

6 A Yes, I did.

7 Q Do you recall approximately when that was?

8 A It was early Spring of 19 -- I mean of 2004.

9 Q And when Mr. McElveen came to the store, did he have
10 children with him?

11 A Yes, he had his two grandsons.

12 Q What was Mr. McElveen in the store to get?

13 A He said he needed two -- he needed some bunk beds or
14 two beds for his grandchildren for immediate
15 delivery. I thought they were -- I thought they were
16 going to -- maybe just for weekend visits, but he
17 later told me it was for -- to live with him.

18 Q Okay. Had you ever met Mr. McElveen before?

19 A Never.

20 Q Ever seen the children before?

21 A Never.

22 Q Ever seen or known of the McElveen family before?

23 A No.

24 Q How long, at the time, had you lived in Beaufort
25 County?

1 A Maybe three years, but most of the time I was going
2 back and forth to Atlanta, so I wasn't there much.

3 Q At that time, had you ever met Mr. McAlhaney?

4 A No. I just knew his car from visiting his mother.

5 Q Where did his mother live in relation to where you
6 lived?

7 A Sort of across the street.

8 Q You knew he visited with his mother, but that's all
9 you knew?

10 A That's all I knew.

11 Q You never met him?

12 A No.

13 Q Talked to him at that juncture?

14 A Never.

15 Q Did Mr. McElveen buy some furniture on the day that
16 he came to visit with you?

17 A Yes.

18 Q Was there anything unusual about the sale of this
19 furniture to Mr. McElveen?

20 A Well, the boys came in. They were quiet and were
21 playing around, and he and I looked at beds, and
22 there weren't but two sets because he wanted
23 immediate deliver; so that didn't take but a minute.
24 But he was very excited and seemed to want to talk
25 about why he was in possession of these children and

1 he went into detail, which I was not very happy about
2 his ex-daughter-in-law, that she was a drug addict;
3 and I got the feeling that she was -- she was totally
4 incapable of taking care of the children and she was
5 supplied these drugs by her boyfriend. And he went
6 into elaborate detail and told me that the boyfriend
7 had sexually abused one of the boys or both of the
8 boys.

9 I can't remember -- and that Mr. -- and that
10 the man was a deviant soul. I was not comfortable
11 with the entire conversation. I was there to sell
12 him two beds and get it written up and them out of
13 there; and I was just not at all happy. He seemed --
14 he seemed very strangely victorious for some reason
15 about the fact that these boys had been sexually
16 abused. I didn't understand why he seemed to be
17 excited about that.

18 Q Did he inquire as to the health and good condition of
19 the children?

20 A The children were playing and seemed to be very
21 happy. As he talked, he continued to talk about it,
22 and at some point, I realized, because my neighbor
23 had told me about a situation, that he was talking
24 about Matt McAlhaney.

25 Q He didn't use Matt's name?

1 A No.

2 Q How long did this conversation go on?

3 A It seemed like hours. It was late in the afternoon,
4 and we needed to get it written up; so I'm assuming
5 it went on probably 30 minutes. We walked through
6 the store which is about 8,000 square feet.

7 Q He didn't discuss sexual abuse for 30 minutes, did
8 he?

9 A No... He just reiterated over and over about the
10 daughter-in-law and how bad she was, and the fact
11 that -- that Matt was supplying her with drugs. He
12 just continued to repeat it, and I was really very
13 unhappy about it.

14 Q Did he indicate to you whether or not Matt had been
15 arrested?

16 A No.

17 Q Did he discuss these matters in front of the
18 children?

19 A Not particularly. They were playing, you know, it
20 was a big store, so they were really playing on their
21 own, which is not encouraged by the way of anybody
22 that brings a child in a furniture store.

23 Q Did you do anything to curtail or stop his discussion
24 of this subject that you found uncomfortable?

25 A I just finally told him how sorry I was, and then

1 walked over -- had him follow me to go over and
2 write-up the order.

3 Q Did you know whether to believe what Mr. McElveen was
4 telling you about Matt and Ms. McCullers?

5 A I had no reason to believe or disbelieve it. I just
6 took it as information that I didn't want.

7 Q After Mr. McElveen departed, did you discuss what he
8 had to say to you with anybody else?

9 A The next morning, I mentioned it to the owner who
10 said he was sorry I was put in that position, and
11 then because my neighbor, Kit Bruce had told me
12 briefly about the situation because I don't -- wasn't
13 taking the paper, and it still didn't occur to me
14 that that's who he was talking about; and so I called
15 Kit and told her about it -- Kit Bruce -- and she
16 suggested that I call Matt's mother and -- and tell
17 her and (unable to transcribe due to quality of
18 reporter's notes). Matt called me about it.

19 Q First of all, do you know who Mr. McElveen may have
20 told about it?

21 A He's very closed-mouthed, so I have no idea.

22 Q Do you know who Ms. Bruce may have told about it?

23 A Probably a few people.

24 Q If I understand correctly on her recommendation, you
25 called Matt's mom; is that correct?

1 A Correct.

2 Q At that juncture, had you talked to Matt at all?

3 A No, I'd never met him.

4 Q Did he subsequently contact you?

5 A Yes, the next day he called me.

6 Q Did he ask you what was said?

7 A Yes.

8 Q Did he ask you to come and testify for him if and

9 when he needed you to?

10 A I told him I was reluctant, you know, because I was a
11 salesperson and I didn't want it to reflect on the
12 store, but if he subpoenaed me, of course, I would
13 come in and testify about it, and in this case I did
14 it of my own free will.

15 Q In describing the sexual abuse, did Mr. McElveen use
16 any particular words?

17 A Just that he was a deviant and sexually abused him.

18 Q But you don't know which child do you?

19 A No.

20 Q Or maybe both?

21 A I have no idea.

22 Q Did it strike you as unusual that a grandfather would
23 be out there telling people this?

24 A Very unusual.

25 MR. MATHISON: Thank you, Ms. Peters. Please

1 answer any questions Mr. Lee may have.

2 **CROSS-EXAMINATION**

3 By Mr. Lee:

4 Q Beside being very unusual for a grandfather to say
5 this in front of his kids, would you find it very
6 unusual that nobody else in -- was approached by Rick
7 McElveen and said the things you say he said to you?

8 A I'm sorry. I don't understand.

9 Q That was a bad question. Sorry.

10 A Let's try again.

11 Q I'm sorry. That was horrible. I can't wait to read
12 the transcript. You had never seen Rick McElveen
13 before?

14 A Never before.

15 Q Never seen Jackson or Little Ricky before?

16 A No.

17 Q Only person you knew was the plaintiff's mom who
18 lived across the street, right?

19 A And just slightly. To this -- I mean, she has lived
20 there, but I still don't know her last name.

21 Q And you had seen Matt McAlhaney going to her house
22 periodically, correct?

23 A I just generally saw the car because I work.

24 Q And you said you consider it very unusual for a
25 grandfather to go up to a stranger and say something,

1 correct?

2 A Yes, in that nature.

3 Q Would it be very -- even very unusual if you were the
4 only person in town who this allegedly was said to?

5 A Well, the fact that he said it to me, I would think
6 there's a possibility he would say it to a lot of
7 people.

8 Q Because you have no reason to be told any of this, do
9 you?

10 A It was just that it was like he wanted to announce --
11 just spread the word, and I was not happy with that.

12 Q How many people were at Furniture Warehouse?

13 A Probably ten, twelve.

14 Q How many people did he announce it to that day beside
15 you?

16 A No one.

17 Q How many people did he spread the words with,
18 customers in there, was he telling other customers?

19 A No.

20 Q And you can't think of any reason why Mr. McElveen
21 would confide anything in you, do you?

22 A No, I cannot figure why he would do such a thing to
23 me. I mean, I had no -- no understanding of what was
24 happening.

25 Q Were you concerned about your job at all based upon

1 any of this?

2 A No.

3 Q Were you concerned what Mr. Mark might think of a
4 conversation like that in the -- on the showroom
5 floor.

6 A No, I think he realized I was mature enough to deal
7 with the situation.

8 Q But, you did go and tell Mr. Mark, right?

9 A Yes.

10 Q Right away?

11 A No. I waited until the next morning.

12 Q Are you aware if Mr. Mark knows Mr. McElveen?

13 A I have no idea.

14 MR. LEE: That's all I have, Your Honor.

15 THE COURT: Ms. Waters?

16 MS. WATERS: No questions, Your Honor.

17 THE COURT: You can step down.

18 MR. MATHISON: I just have a couple.

19 THE COURT: How can you have a couple?

20 Didn't ask anything. Limit it to what he brought out
21 that you didn't and that's it.

22 **REDIRECT EXAMINATION**

23 By Mr. Mathison:

24 Q Two questions. Why did you wait until the next day
25 to tell Mr. Mark what Mr. McElveen had said?

1 A Because he wasn't there that night.

2 Q And was there anybody else there at the time that you
3 were showing Mr. McElveen the furniture?

4 A There were probably maybe two salespeople and someone
5 in the back in the warehouse.

6 Q Were they close enough to hear the conversation that
7 Mr. McElveen was having with you?

8 A Probably not.

9 Q Did you tell them about the conversation afterwards?

10 A Yes.

11 MR. MATHISON: Thank you.

12 THE COURT: You can step down.

13 MR. MATHISON: May it please the Court, the
14 plaintiff would call Angela Tanner to the stand.

15 THEREUPON,

16 ANGELA MCCALL-TANNER,

17 after being duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 By Mr. Mathison:

20 Q Ms. Tanner, there are certainly some defense lawyers
21 who would like to have you in the same position
22 right now, right?

23 A Yes, sir.

24 Q Just to clear up the record, what is your occupation?

25 A I am the deputy solicitor in the 14th Judicial

1 Circuit. I am the supervising prosecutor for
2 Beaufort County.

3 Q And how old are you?

4 A 36.

5 Q Where do you reside?

6 A I live in Bluffton.

7 Q How long have you worked for the solicitor's office?

8 A Just over 10 years. I started in August of 1999.

9 Q Where did you graduate from college?

10 A I went to the College of Charleston.

11 Q And when did you graduate?

12 A In '95.

13 Q And where did you go to law school?

14 A The University of South Carolina.

15 Q And when did you graduate from law school?

16 A In '98.

17 Q Did you become a member of the bar that year?

18 A I did.

19 Q And prior to going to work for the solicitor's
20 office, did you have significant experience in some
21 other work-related job?

22 A Following law school, I worked in a civil firm for a
23 few months up in Spartanburg before taking the job
24 here in Beaufort County.

25 Q And upon taking the job here, did you acquire

1 experience in dealing with child abuse victims?

2 A Yes, I did.

3 Q How many cases of child abuse have you served as the
4 prosecuting attorney?

5 A Over the years, I would say there's -- there have
6 been hundreds.

7 Q After the case was brought by the Beaufort County
8 Sheriff's Office, did you have occasion to interview
9 the child, Jackson McElveen?

10 A Yes, I did.

11 Q When you interviewed Mr. McElveen was either his
12 grandfather or his grandfather's wife, Linda
13 McElveen, present?

14 A They were not in the room at the time I conducted the
15 interview, but they brought the child to the
16 interview and waited in the adjoining room.

17 Q Did you interview the child by yourself or did you
18 interview the child with Randolph Murdaugh, III?

19 A Solicitor Murdaugh was my boss at the time. He was
20 present for the interview as well.

21 Q At the conclusion of the interview, did you tell
22 Mr. And Ms. McElveen what was the probable
23 disposition of the case?

24 A Yes, I did.

25 Q What exactly did you tell them?

1 A I told them that it was very unlikely that this case
2 would be taken any further for prosecution.

3 Q Did this conversation take place in December of 2004?

4 A I don't recall exactly, but I believe it was around
5 December of 2004.

6 Q When you told Mr. McElveen that the case was unlikely
7 to be taken any further, what was his reaction to
8 that decision by the solicitor's office?

9 A He was very unhappy about that.

10 Q Did he say anything that you can recall?

11 A Specifically, no. I do not know that he did have a
12 bad reaction. He was very disappointed, very
13 unhappy. I don't recall specific comments though,
14 no, sir.

15 Q Did he ask you to look into other matters or
16 forestall your decision-making until you had had an
17 opportunity to explore other facts?

18 A Yes, sir, he did bring up a couple more allegations
19 that he wanted us to look into. I told him I would
20 do that. I did do that. The official dismissal was
21 approximately two months after that meeting so that
22 there was some further follow-up on my part to make
23 sure we had covered everything.

24 Q I'm handing you this document, which has been marked
25 as Plaintiff's Exhibit 13, and I'm asking whether

1 that's what you had just referred to as the official
2 dismissal?

3 A Yes, sir, this is referred to as a nol pros document,
4 and this is the official paperwork by which we file
5 the dismissal of a criminal case.

6 Q And this says AMT per RM?

7 A Yes, sir, AMT, that would be by initials and per RM
8 would be Randolph Murdaugh, III, my boss, who asked
9 me to file that paperwork.

10 Q And he is the solicitor; is that correct?

11 A He was at the time. He has since retired.

12 Q When you prepared to file that dismissal on or
13 about -- strike that. Subsequent to your
14 conversation where Mr. and Ms. McElveen after the
15 interview with Jackson, did you have occasion to call
16 Mr. McElveen about the standing of the case?

17 A Yes, sir. Once the paperwork was done, I did make a
18 curtesy call to let him know that it was officially
19 over and we had -- and we had dismissed the charges.
20 I received -- I think when I called the first time I
21 got voicemail and I did leave the message to that
22 effect, and then he returned my phone call.

23 Q When he returned your call, did he leave you a voice
24 message or did you have an active conversation?

25 A I believe I actually spoke with him.

1 Q What was the tenor of the conversation like?

2 A It was very unpleasant.

3 Q Why was it unpleasant, ma'am?

4 A He was irate. He was extremely unhappy. I had to --

5 I explained everything again. I had to explain

6 everything then that had been explained to him

7 before, and there was no -- there was no arguing with

8 him. He wanted to (unable to transcribe due to

9 quality of reporter's notes) and I let him do that

10 and he was very unhappy about it.

11 Q The case was nol prosed. What does that mean?

12 A That means it is dismissed and the defendant knew his

13 charge -- no longer has pending charges.

14 MR. MATHISON: Thank you. Please answer any

15 questions Mr. Lee may have.

16 **CROSS-EXAMINATION**

17 By Mr. Lee:

18 Q We're usually on the other side.

19 A I know.

20 Q Nol pros?

21 A Yes, sir.

22 Q That's a criminal term. That means that nothing is
23 pending at this time, right?

24 A That's correct.

25 Q And it's also usually done with leave to restore,

1 correct?

2 A That is correct.

3 Q Which means that later on should you change your
4 mind, should other evidence develop, the case can be
5 restored?

6 A Yes, sir. Generally if new evidence is presented, we
7 can restore those charges.

8 Q Okay. And how certain are you, Ms. Tanner, about
9 the -- when the meeting -- when the meeting was?

10 A I'm not certain. I would say it's in -- it was
11 within a month or two of the official paperwork and
12 the paperwork is in February --

13 Q February 16th.

14 A Yes, sir.

15 Q Would it be unusual for two months to go by before
16 paperwork being done? I mean that's a long time,
17 isn't it?

18 A No, sir.

19 Q Before decision (unable to transcribe due to quality
20 of reporter's notes) and then to nol pros it?

21 A No, sir, especially considering I had promised
22 Mr. McElveen I would follow-up on a couple more
23 things he asked me to follow-up on so that would be
24 about right.

25 Q So you think sometime if it's two months to one

1 month, somewhere between December 16 and January 16

2 is when that meeting was?

3 A I believe so, yes, sir.

4 Q Okay. And is it safe to say that you -- cases are
5 not prosed all the time?

6 A Yes, sir.

7 MR. LEE: That's all I have, Your Honor.

8 MS. WATERS: No questions, Judge.

9 THE COURT: Okay. Ms. Tanner. You can step
10 down and be excused.

11 MR. MATHISON: Yes, sir. May it please the
12 Court, the plaintiff would call Mr. Mike McEachern to the
13 stand.

14 THE COURT: Okay.

15 THEREUPON,

16 MICHAEL JOSEPH MCEACHERN,
17 after being duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 By Mr. Mathison:

20 Q Mr. McEachern, where do you reside?

21 A Beaufort on 6th Street.

22 Q How old are you?

23 A 63.

24 Q Are you married?

25 A I am.

1 Q To whom are you married to?

2 A Marilyn Smith.

3 Q Do you have any children?

4 A I have three, a boy and two girls, actually a young
5 man and two young women.

6 Q Kind of creeps up on all of us, doesn't it?

7 A It's not creeping any more.

8 Q What relation are you to the plaintiff?

9 A I am his maternal uncle, but really he's more like my
10 son.

11 Q How did you learn that Mr. McElveen, Sr. and his
12 family had initially attacked Matt's character?

13 A I think the first I heard of it was shortly after the
14 filing of an action in the Family Court by
15 Mr. McElveen to secure custody of his two grandsons.

16 Q And where did you learn of the pendency of that
17 action?

18 A I'm sure that my nephew told me about it. Exactly
19 where we were when he told me, I don't know.

20 Q Subsequently, did you find out that Mr. McElveen had
21 sent a letter to Governor Sanford?

22 A I did.

23 Q Did you find out the context of that letter?

24 A Matthew showed it to me.

25 Q And that letter has been marked as Plaintiff's

1 Exhibit 1. You need to see it?

2 A No.

3 Q As a result of the seeming escalation of the
4 unpleasantness between Mr. McElveen and Matt, did you
5 take it upon yourself to write a letter to
6 Mr. McElveen?

7 A I did.

8 Q I'm going to hand you this document, which is your
9 letter, dated November 10, 2003, and ask if you can
10 identify it for me, please. Don't comment on it.
11 Just identify it at this juncture.

12 A Yeah, that's the letter.

13 MR. MATHISON: Forgive me one second, sir.

14 May we approach, Your Honor?

15 THE COURT: All right.

16 (WHEREUPON there was a bench conference out
17 of the hearing of the court reporter.)

18 By Mr. Mathison:

19 Q Mr. McEachern, what were you attempting to accomplish
20 by writing a letter to Mr. McElveen on November 10?

21 A I was hoping to put an end to the unpleasantness that
22 had arisen between them, specifically Mr. McElveen's
23 allegations that my nephew was a drug addict and had
24 a gambling addict and then, of course, wrote a letter
25 to the governor; a child abuser as well and I figured

1 that maybe if he knew Matt's character, he would be
2 reassured and we could, you know, get past it.

3 Q So your letter was an endorsement, if you will?

4 A Of my nephew, yes.

5 Q Did you make some suggestion as to how they could
6 work this matter out?

7 A Well, I did. I didn't know that it would be very
8 workable because I thought it had gone too far
9 already. But I felt that if he were to talk with
10 Matt, then that would be a beginning, and if he came
11 to you said what Matt's nature was, then I thought he
12 would see that he owed him an apology and that, you
13 know, then we might be able to get on past this.

14 Q Did you hold out the possibility of litigation by
15 Matt against Mr. McElveen in the event that matters
16 couldn't be worked out.

17 A I did. I did. I thought that it was almost
18 inevitable really, but my hope was that particularly
19 because my sister had just been diagnosed with cancer
20 that we would be able to shortcut this and, you know,
21 get through it without any kind of court action; and
22 this was just too much burden on her.

23 Q Did Matt know you were writing this letter at the
24 time you wrote it?

25 A No. No, he did not know. I had been cautioned to

1 kind of keep back because Matt's attorney
2 understandably wanted to have full control of things,
3 and so I did not mention it to Matt.

4 Q Did you subsequently have a conversation about the
5 letter with Mr. McElveen, himself?

6 A I did. I went to his marina. I guess it was --
7 let's see this is dated November 10. I guess it was
8 a week or maybe as much as two weeks, probably a week
9 or ten days after this when I got no response, I went
10 to his business and spoke to him there.

11 Q What was the conversation about at Mr. McElveen's
12 place of business?

13 A Well, it turned out that Mr. McElveen had not seen
14 the letter. I had left -- I had left this letter
15 with Diane Dewitt, the guardian ad litem of the
16 children rather than mailing it, and I think one of
17 the reasons -- there was -- I kind of wanted a buffer
18 because again, I knew Matt didn't want me interfering
19 with things and I felt like the law probably wouldn't
20 want me interfering with things anyway; so I felt
21 like if I went this route, you know, it would be sort
22 of a defense of my nosing into the thing.

23 Anyway, he said he hadn't seen it, so I went
24 over the contents of it with him and he was not very
25 receptive.

Q Well, you anticipated my next question and that is whether Mr. McElveen seemed interested in a resolution or reconciliation with Matt and you're saying he wasn't?

A He wasn't. He told me bluntly that this wasn't about Matt, it was about his grandchildren; and that if Matt insisted on interfering or -- I don't know that that was his -- his words that he would -- these words were (unable to transcribe due to quality of reporter's notes) that he got all the attention he needed.

Q When did he tell you he would see that Matt got all the attention he needed?

A That was during the conversation at the end.

Q So sometime after November 10?

A Probably somewhere in the 17th through the 20th.

Q Of November?

A Correct.

Q What did you understand as a result of this conversation with Mr. McElveen?

A Only that it wasn't going to be any amicable conclusion or any -- you know, any civil conclusion, that -- I didn't take that threat too seriously or -- you know that he's going to give him all the attention that he needs. I took that as more

1 bravado, but certainly we weren't going to go
2 anywhere with this method.

3 Q It certainly proved not to be just bravado, did it?

4 A No.

5 Q Did you subsequently tell Matt about having written a
6 letter to Mr. McElveen?

7 A After I met with him, I did tell him.

8 Q Did you tell him about Mr. McElveen promising to give
9 him all the attention he needs?

10 A I did.

11 Q Did you recall those words, when you found out that
12 Matt had been arrested for child abuse?

13 A I did. I definitely did.

14 Q Shortly after that arrest took place, did you send a
15 letter to Diane Dewitt dated March 2, 2004?

16 A Yes, I remember this letter.

17 Q And that was written after your nephew had been
18 arrested; is that right?

19 A Yeah, the 2nd. That would be the day after.

20 Q Okay. Let's take your November 10th letter and let's
21 mark it as a Court's Exhibit because there's an item
22 in there that needs to be redacted; but this will
23 become Plaintiff's Exhibit 14.

24 THE COURT: Court's 3.

25 MR. MATHISON: I move the introduction of

1 March 2, 2004 letter as Plaintiff's Exhibit 14.

2 (Plaintiff's Exhibit No. 14 was marked into
3 evidence.)

4 By Mr. Mathison:

5 Q What did you (unable to transcribe due to quality of
6 reporter's notes) misgivings about with respect to
7 the children of Molly McCullers in this letter to the
8 guardian ad litem?

9 A Excuse me. I wanted to see that Ms. Dewitt placed
10 those children with her maternal grandparents who
11 were not involved in this custody action. I frankly
12 didn't think there would be much chance that she
13 would place them with Rick and Linda because of the
14 obvious conflict that was underway, but I just wanted
15 to be sure that she knew there was an alternative
16 available.

17 Q Did you realize, Mr. McEachern, that by the time you
18 wrote that letter to the guardian ad litem that the
19 children had already been placed with Mr. McElveen
20 pursuant to a restraining order which was obtained,
21 dated and entered on March 1, the same day that your
22 nephew was arrested?

23 A I just learned that, I think, yes.

24 Q So your request was an exercise in futility wasn't
25 it?

1 A It was.

2 Q Were you present on March 2, the date of the
3 arraignment and bond hearing (unable to transcribe
4 due to quality of reporter's notes).

5 A Yes, I was.

6 Q Who else was present at the time?

7 A My sister, my brother-in-law, who's dead now. I
8 think Melissa was there, Matt's sister. When I say
9 sister, I mean Matt's mother.

10 Q Is Matt's father there?

11 A Yes, and I think that's all I remember.

12 Q Was anybody there from the McElveen family?

13 A Oh, yes. Rick McElveen and his wife.

14 Q During the --

15 A Rick, Sr.

16 Q Excuse me. Go ahead.

17 A Rick, Sr.

18 Q Was junior there?

19 A I didn't -- I don't remember if he was.

20 Q During the proceedings, did Mr. McElveen have
21 occasion to interrupt or exclaim something?

22 A He did. He got practically in the magistrate's face
23 and said that if this thing wasn't settled
24 satisfactorily or handled satisfactorily, he was
25 going to chuck the law and I was fairly amazed that

1 the magistrate tolerated that sort of -- that sort of
2 demeanor.

3 Q Chuck the law -- is that a term that you understand?

4 A Well, it was pretty clear from -- you know, just from
5 context that he -- he was going to take it into his
6 own hands.

7 Q Did those words come back to you when you found out
8 at Christmas time in 2004 that your nephew had been
9 attacked?

10 MR. LEE: Judge, he's leading this witness?

11 THE COURT: He is.

12 MR. LEE: -- incredibly and it's gotten too
13 much.

14 THE COURT: But he can ask that.

15 MR. LEE: All right.

16 By Mr. Mathison:

17 Q Did those words come back to you, chucking the law
18 and taking it in to his own hands when you found out
19 that your nephew had been attacked in December of
20 2004?

21 A I don't know that they did. You know I'm sure they
22 did at some time. I don't think that was the first
23 thing that came to my mind. I was just kind of
24 dumbfounded.

25 MR. MATHISON: Please answer any questions

1 that Mr. Lee may have.

2 CROSS-EXAMINATION

3 By Mr. Lee:

4 Q This letter that we're talking about that
5 Mr. McElveen wrote, he never received it?

6 A That's right.

7 Q And essentially, what you wanted him to do was
8 publish a written retraction and an apology to your
9 nephew, right?

10 A I was afraid it would take that as far as it had
11 gone, yeah.

12 Q And he didn't want to do that?

13 A He didn't want to do that.

14 Q And so, you took the letter to Diane Dewitt, who is
15 the guardian ad litem, correct?

16 A Prior to meeting with him, yes.

17 Q And the guardian ad litem is the one that's supposed
18 to look out for the best interest of the children; is
19 that your understanding?

20 A That's my understanding.

21 Q And you said that at some point in the conversation
22 with Mr. McElveen, he told you it wasn't -- this
23 isn't about Matt. It's about the kids.

24 A Right.

25 Q Is that right? And you were not a party to the

1 Family Court litigation, were you?

2 A No.

3 Q And neither was your nephew?

4 A Right.

5 Q Never a named party?

6 A No.

7 Q But you had an opinion that you thought that the kids
8 would be best-served by going to the -- to Molly's
9 parents to live?

10 A Definitely.

11 Q Okay. Were your feelings in general, Mr. McEachern
12 affected by your devotions to your nephew?

13 A Of course.

14 Q I mean, I think everybody would --

15 A Sure.

16 Q Right. Now, you in the past -- and I don't want to
17 mischaracterize it, but you've kind of held yourself
18 out as an advocate for certain people, right?

19 MS. WATERS: Objection. Relevance.

20 THE COURT: I mean, I don't know.

21 THE WITNESS: I have, yeah.

22 By Mr. Lee:

23 Q And you're part of something called "Court Watching,"
24 right? Or you were?

25 A I was.

1 Q Can you tell us briefly what "Court Watch" does?

2 A "Court Watch" was a non-profit that I founded some
3 years ago after a bad experience in the family courts
4 and it (unable to transcribe due to quality of
5 reporter's notes) to the extent we had any resources
6 at all -- it was mainly just me, but I had probably a
7 dozen people that worked with me from time-to-time to
8 look into situations that cried out for looking into,
9 most of it was -- involved the Family Court and --
10 and people who had lost their children or had -- felt
11 like they had been done wrong.

12 There were other things. I wrote a report on
13 a Family Court Judge Election, sent out
14 questionnaires, compiled the answers, wrote a little
15 booklet, sent it to the legislature and things like
16 that.

17 Q But essentially, what you were doing is inserting
18 yourself into a case that you were not a named party
19 in, correct?

20 A Meddling, just go ahead and say it.

21 Q I don't know. So you were meddling?

22 A Yeah.

23 Q And you said you had an unpleasant past experience in
24 Family Court over the years; is that right?

25 A Terribly.

Q And that involved a custody dispute with your daughter?

A Right.

Q So, I guess it would be safe to say that you are not a big fan of the Family Court system?

A That is safe to say.

Q Y'all are not sending each other Christmas cards?

A No.

Q Now, you -- I hate to use the word meddle, but you eventually meddled into this case didn't you.

A I did.

Q And the meddling that you did was compiling a -- we always used the word, "booklet," but a (unable to transcribe due to quality of reporter's notes) of letters, documents, that sort of thing that you published to certain people. Would you agree with that?

A I would.

MS. WATERS: Objection. Your Honor, can we approach.

THE COURT: Can do it.

(WHEREUPON there was a bench conference out of the hearing of the jury and the court reporter.)

By Mr. Lee:

Q I am not sure exactly where we were, but I think I

1 was getting ready to ask you about this book.

2 THE COURT: All right. The jurors, just --
3 for point of edification -- y'all all being pseudo
4 lawyers and having watched a lot of TV, generally, he
5 could -- Scott Lee could only ask this gentleman about
6 what he covered, right? Y'all rely on that. However,
7 remember there are suits and counter suits, so rather
8 than just ask him about what he testified to on that,
9 he's going to ask him everything that he would have asked
10 him if it had just been his client versus his client
11 (unable to transcribe due to quality of reporter's notes)
12 is going to take a little longer and you'll say, well, he
13 didn't go into that.

14 You know, y'all have to figure that out.
15 He's going beyond, well, he's going to go beyond. That's
16 all. I don't know how far beyond, but his client is
17 suing one of the -- one of his clients is suing this one.

18 By Mr. Lee:

19 Q As we all know, the judge is trying to speed things
20 up, so I'm going to -- you at some point -- looks
21 like June 6, 2004, you sent a letter to Hope Cottage
22 of the Low Country; is that right?

23 A Right.

24 Q And Hope Cottage is the group that I think as we
25 heard before -- does forensic interviews for

1 children?

2 A Correct.

3 Q Or alleged victims; is that correct?

4 A Correct.

5 Q Or alleged victims; is that correct?

6 A Yes.

7 Q And again, in an effort to speed it up, suffice it to
8 say you were not happy with their performance?

9 A I was not.

10 Q So you decided you were going to meddle a little bit
11 and you wrote the book which I'm going to try to
12 highlight briefly, but you --

13 THE COURT: Hold it just one second. I don't
14 know what's in the book, but from the sidebar, this's a
15 lot of hearsay, a lot of stuff that's not coming in, so I
16 just told him to only ask relevant, pertinent questions,
17 which he might think it is, they might not, so if they
18 object -- but the whole book is not coming in. This
19 gentleman attacked many things to that document that he
20 apparently sent to Hope Cottage, if you will.

21 By Mr. Lee:

22 Q And what I'm getting at, Mr. McEachern, and might be
23 quicker, I'm going to ask you, did you send this book
24 to -- and I think it would be helpful to hand it to
25 you. Who did you send that book to? Just read them

1 one by one to the jury.

2 A Diane Dewitt, Scott lee, (unable to transcribe due to
3 quality of reporter's notes) I guess it is. SLED,
4 (unable to transcribe due to quality of reporter's
5 notes) Elaine McElveen, Dale McCullers, the solicitor
6 Angela Tanner, Tom Williams, Matt McAlhaney, Prevent
7 Child Abuse America, South Carolina Court
8 Administration, Office of the Solicitor, 60 Minutes,
9 South Carolina Bar Association, Beaufort Bar
10 Association, James Galavan, Legislative Assistant to
11 Senator Lindsey Graham, (unable to transcribe due to
12 quality of reporter's notes) Legislative Assistant
13 For Ernest Hollings, (unable to transcribe due to
14 quality of reporter's notes) John Angel, William
15 (unable to transcribe due to quality of reporter's
16 notes) C. Pinkney, Scott A. Peterson, Citizens
17 Against Domestic Abuse, Child abuse and Prevention
18 Association, (unable to transcribe due to quality of
19 reporter's notes) Governor Mark Sanford?

20 Q Did you give it to anybody else that wasn't on the
21 list?

22 A I don't think so. I think that pretty well (unable
23 to transcribe due to quality of reporter's notes)
24 it.

25 Q Okay. When you prepared that book, isn't it true

1 that your nephew assisted you in accumulating
2 documents that comprised that book?

3 A I would ask if he had this, that, or the other. If
4 he could get it, he would bring it to me.

5 Q So your name is signed there (unable to transcribe
6 due to quality of reporter's notes) certain things
7 you needed to get from him (unable to transcribe due
8 to quality of reporter's notes).

9 A Yes.

10 Q One of the things that you got from him and that's in
11 there, is that letter to Governor Sanford that we
12 spoke about earlier, right?

13 A Correct.

14 Q So everybody that got that book saw the letter?

15 A If they looked at the book.

16 Q Right, if they read it.

17 Now, would you agree that that book (unable
18 to transcribe due to quality of reporter's notes)
19 that Rick McElveen, Sr. is a liar when it comes to
20 his business dealings?

21 A (Unable to transcribe due to quality of reporter's
22 notes) that people I interviewed made that statement.

23 Q That (unable to transcribe due to quality of
24 reporter's notes) the book saying that?

25 A Yeah.

1 Q Because you never had any business dealings with Rick
2 McElveen, right?

3 A No business dealings other than buying a (unable to
4 transcribe due to quality of reporter's notes) or
5 something.

6 Q Would you agree that that book suggests that Rick
7 McElveen, Sr. and/or his wife fabricated a disclosure
8 by their grandson regarding their nephew?

9 A I would not -- I'm not trying to trick you. I'm
10 trying to --

11 Q I understand.

12 A I would not use that description. I think it would
13 be more -- I don't really know to what extent it was
14 fabricated. I think it was (unable to transcribe due
15 to quality of reporter's notes) the and (unable to
16 transcribe due to quality of reporter's notes) the
17 probably using the methodology that's described in
18 Exhibit No. 1, which is the Parental Alienation
19 Syndrome that that's basically the thrust of it.

20 Q The thrust of it is that whether you say, suggested
21 or (unable to transcribe due to quality of reporter's
22 notes) that it came from over there?

23 A Right.

24 Q Would you also agree that the book suggests that Rick
25 McElveen, Sr. engaged in some type of abuse by

1 inducing that to a child?

2 A I think it clearly is a form of child abuse.

3 Q I don't know that Mathison asked you about your
4 education, but do you have any training or education
5 in the area of child abuse?

6 A No.

7 Q Would you agree that at times, people we care about
8 need our help?

9 A Sure.

10 Q And sometimes we need to do things to help people we
11 care about?

12 A Absolutely.

13 Q And many times, that might be shrouded by our
14 devotions towards someone, our love for someone?

15 A Sometimes.

16 Q You along with Matt -- I won't say -- you wrote this
17 letter you collected the evidence, got what you
18 needed from him; you did this in an effort to help
19 him, right?

20 A Right.

21 Q Help Matt.

22 A Right.

23 Q You have never had individually problems with --
24 issues or problems with Rick McElveen? Said you
25 didn't know him, right?

1 A Right.

2 Q And you had an opportunity to speak with Diane Dewitt
3 about your feelings about the custody case?

4 A I don't know that I spoke with her.

5 Q You gave her one of those books, right?

6 A I did give her one of the books, yes.

7 Q You don't have anyway of knowing what she --

8 A Read --

9 Q You gave her the opportunity to.

10 Okay. In that book, also is it your position
11 that Brian Baird committed perjury?

12 A Yes.

13 Q Does it also say something about you believe that you
14 got a death threat from Brian Baird?

15 A That was my speculation. I think so. Of course, I
16 told Sheriff Tanner and he dismissed it and, of
17 course, there's no way of telling.

18 Q So after you released this book -- actually, you gave
19 Brian Baird a copy of it, right? The investigator?

20 A Right.

21 Q And you specifically didn't give one to McElveen,
22 right?

23 A Not that day, no.

24 Q Right. Because you thought -- I guess -- well, I
25 don't want to put words in your mouth, before Rick

1 McElveen got a book or anybody gave it to him you
2 received what you considered a threat, correct?

3 A The next morning after I gave it to Mr. Baird.

4 Q I think you testified before it couldn't have been
5 Rick because he didn't have the book. Baird had the
6 book, right?

7 A Well, that was what I supposed, yes.

8 Q And you kind of designed it to delay giving the book
9 to McElveen, Sr., right?

10 A Right.

11 Q For whatever reason?

12 A Isolate the response.

13 Q Okay. So you believed that Brian Baird, the
14 investigator had received the book and then made a
15 death threat towards you?

16 A Well, death threat is the term that I did use, but it
17 was really --

18 MR. MATHISON: Your Honor, may it please the
19 Court? I don't see what this has to do with allegations
20 either in my client's cause of action or his cause of
21 action.

22 THE COURT: Go ahead.

23 By Mr. Lee:

24 Q You were saying?

25 A I haven't read the whole book. What it was, was an

1 excerpt from a book on tape. It was read by -- it
2 was a professionally prepared book on tape and it
3 went on for about 20 minutes on my recorder and the
4 truth of the segment was an officer of the law
5 torturing someone who was not cooperating and it
6 could have been a coincidence, but it was a heck of a
7 coincidence if it was.

8 MR. LEE: That's all I have, Your Honor.

9 ATTORNEY WATKINS: May I have a moment,
10 Judge?

11 THE COURT: Sure.

12 ATTORNEY WATKINS: Thank you.

13 THE COURT: If you're going to be lengthy
14 with him, we're going to take a break.

15 ATTORNEY WATKINS: It will not be long,
16 Judge.

17 THE COURT: Then, we'll just be at ease.

18 **CROSS-EXAMINATION**

19 By Attorney Watkins:

20 Q Mr. McEachern, Matt McAlhaney, sitting here is your
21 nephew, correct?

22 A Correct.

23 Q And tell us how you feel about him in terms of
24 family?

25 A Well, I love him as a son. He's -- you know, he's

1 been, since the death of his father, been my son.

2 Q And have you been involved in his life since the
3 death of his father?

4 A Constantly.

5 Q And in that role as a father, you'd do anything you
6 could to help protect Matt, wouldn't you?

7 A Absolutely.

8 Q How did you first find out that Matt was arrested?

9 A I think my sister probably called me the night of the
10 arrest.

11 Q And did you do anything immediately following that
12 arrest?

13 A Well, of course, we all congregated over at his
14 sister's house and talked about how outrageous it was
15 and how transparent it was and tried to figure what
16 might be done.

17 Q Okay. Did you do anything or contact any authorities
18 or do anything in that matter? Did you leave it in
19 their hands at first?

20 A I did. I went down to see Sargent Baird to try to
21 describe Matt in a realistic light, but, no, I left
22 it in the hands of the authorities.

23 Q And then you started your own investigation into
24 develop this book that we -- that Mr. Lee was talking
25 about; is that right?

1 A That's right.

2 Q And what did you do to put together that book?

3 A I examined the court records. I knew, for example,
4 that Mr. McElveen had had an (unable to transcribe
5 due to quality of reporter's notes) divorce some
6 years back, '78 maybe, so I took that as a good place
7 to start; and it did have a lot of things in it that
8 were revealing; that divorce was on the basis of
9 physical --

10 MR. LEE: Your Honor, I think we need to --

11 THE COURT: Well, you certainly went into it
12 with everybody else. Fair is fair. Go ahead.

13 THE WITNESS: So I --

14 By Attorney Watkins:

15 Q Mr. McEachern, what did you do to investigate this
16 book? You've gone down to the courthouse and
17 investigated some records, what else did you do?

18 A Even interviewed people whose names I drew mostly
19 from the record, took the interview, sometimes they
20 would write their own affidavit. At other times, I
21 would write it from the notes and then ask them to
22 read and edit it and maybe go back and revise it in
23 accordance with editing, and then have them sign it
24 as an affidavit.

25 Q So you researched court records, you interviewed

1 folks, you obtained affidavits from folks and then
2 you put those facts together into this letter; is
3 that a fair statement?

4 A Right.

5 Q And when you put that together, how many exhibits
6 documenting -- backing up the statements in that
7 letter were attached to the letter you wrote
8 to (unable to transcribe due to quality of reporter's
9 notes)?

10 A Twenty-five.

11 Q And how long did it take you to put together to do
12 this research and this process? How long did it take
13 for you to research it and write it?

14 A Several hundred hours I would say. I had thought
15 that all the work was done in about a three-week
16 period, but looking back over it just last night, I
17 realized that I had actually begun doing this work
18 shortly affidavit the arrest, probably just figuring
19 that if things didn't go well, it would take a lot of
20 time as indeed it did; and so I didn't do anything
21 for a number of months in the way of compiling it and
22 writing the thing; but I had started some months
23 before. I imagine I had every bit of 300 hours in
24 it.

25 Q Okay. And in writing that book, nowhere in the -- in

1 the actual letter itself to Hope Cottage does it say
2 that Mr. McElveen abuses children, does it?

3 A No.

4 Q And the final outcome of that letter what -- what do
5 you believe that letter accomplished?

6 A I'd like to think it had a part -- significant part
7 in my nephew's eventually being dismissed, the
8 charges against him being dismissed.

9 ATTORNEY WATKINS: One moment, Your Honor.

10 THE COURT: Okay.

11 ATTORNEY WATKINS: That's all the questions I
12 have.

13 THE COURT: That's not fair. I promised that
14 I was going to jump on him, but he quit too quick.

15 THE WITNESS: He's just too sweet. You can't
16 do it.

17 THE COURT: That's right. Anything else?

18 MR. MATHISON: May it please the Court, I'm
19 going to have a number of questions at this juncture.

20 THE COURT: Can't have too many because they
21 didn't go that long. You can have a few.

22 **REDIRECT EXAMINATION**

23 By Mr. Mathison:

24 Q Mr. McEachern, did you eventually adopt a tactic of
25 Mr. McElveen and go to the Family Court and get court

1 records?

2 A I guess you could put it that way.

3 Q One of the documents you put in your book was his
4 divorce decree; is that right?

5 A That's right.

6 Q And what was the basis for his divorce from his first
7 wife?

8 MR. LEE: Judge, I've already objected to
9 this. I don't understand the relevance of it.

10 THE COURT: He didn't open it that far. We
11 aren't going into his divorce. I let him go into it a
12 little bit and that's all we're going to do at this
13 point. If he takes the stand, if it's relevant, you can
14 question him about it, which he will.

15 MR. MATHISON: May it please the Court, he's
16 put in eventually what he wants in out of a book that he
17 has pleaded is in it's entirety a call (unable to
18 transcribe due to quality of reporter's notes) I think
19 I'm entitled to put in what he overlooked.

20 THE COURT: Not that divorce decree at this
21 point in time. When he testifies, if you think it is
22 relevant you can go into it.

23 By Mr. Mathison:

24 Q Mr. McEachern, as a result of your review of the
25 Family Court records, did you reach any conclusion as

1 to whether Mr. McElveen was a complete hypocrite?

2 MR. LEE: Your Honor, that calls for an
3 opinion and I -- where are we going with this?

4 THE COURT: I don't know. Y'all need to --

5 MR. MATHISON: I will make an offer of proof
6 then. How is that?

7 THE COURT: Can't make no offer of proof in
8 front of the jury.

9 MR. MATHISON: I realize that.

10 THE COURT: You're putting it in --

11 MR. MATHISON: What I'm trying to do is get a
12 bathroom break.

13 THE COURT: We're going to do that since I
14 don't know where y'all are going, and what have you, is
15 we're going to take a break and then we'll discuss
16 whatever they want to discuss.

17 Don't talk about the case quite yet.

18 (WHEREUPON the jury left the courtroom.)

19 THE COURT: I don't know what's in the book
20 or who wants to do what with the book which makes an
21 exceedingly difficult for me to rule on so what do you
22 want me to do?

23 MR. MATHISON: The way this works, Your
24 Honor, is all of this is about character. As part of my
25 case in chief what he just put in from this book is not

1 relevant, not material, but if you're going to let him
2 put it in on cross-examination of my case in chief, I
3 ought to be able to --

4 THE COURT: Hold it. Hold it. Hold it right
5 there. What you -- what he put in is his case in chief.
6 You got to understand the difference. We can't have a
7 sidebar on that and I told him complete everything he
8 wanted to ask him; that's why he went beyond and that's
9 why I told the jury that. Now --

10 MR. MATHISON: Okay.

11 THE COURT: We're still on the same page, so
12 once he puts his case in chief in you have the right to
13 put in your total reply to that.

14 MR. MATHISON: Very well. Some of my reply
15 is in the book.

16 THE COURT: All right. I don't know what you
17 want to put in and why, which is why I sent the jury out.
18 I'm not prohibiting you in the abstract from putting it
19 in. You just need to tell me what and why because he's
20 going to make objections and then I am not knowing what
21 y'all are talking about or why you want it in. So tell
22 me.

23 MR. MATHISON: We have a Family Court history
24 where Mr. McElveen engaged in abuse of his first wife,
25 got a divorce on the basis of physical cruelty, brought a

1 custody action before the ink was dry on the initial
2 divorce decree. An appeal was taken after some judge
3 changed custody to Mr. McElveen. Before the appeal could
4 be executed, we have an order from the Supreme Court
5 saying that you can't do that and we ultimately have a
6 final order that says that all of what Mr. McElveen did
7 was made up and (unable to transcribe due to quality of
8 reporter's notes); that's what we have.

9 THE COURT: All right. You can ask him about
10 all that when he testifies. I don't want it done twice.

11 MR. MATHISON: Ask McElveen about it.

12 THE COURT: Right. And he got a copy of
13 that, didn't he?

14 MR. MATHISON: He has one now, yes.

15 THE COURT: Well, that's right. You can ask
16 him about it.

17 MR. MATHISON: There is material --

18 THE COURT: Can ask this gentleman, you know,
19 didn't he put documents to be -- gotten from the Family
20 Court file in there. That's -- then we can ask him about
21 it if you want to. Think it's important.

22 MR. MATHISON: Let's start from this
23 standpoint. Some of what's already in the record in this
24 book; that is not object.

25 THE COURT: Got it.

1 MR. MATHISON: Some of what I have objected
2 to is in this book and I don't want it in, so I agree
3 with the other people on that. Specifically, there's a
4 polygraph examination.

5 THE COURT: I know. We (unable to transcribe
6 due to quality of reporter's notes) that out (unable to
7 transcribe due to quality of reporter's notes).

8 MR. MATHISON: There are some affidavits
9 which are from people who are not in such a circumstance
10 that they could -- they're hearsay -- could come in.
11 There is no exception for it and they would have to stay
12 out --

13 THE COURT: Has not been brought up at this
14 point, but --

15 MR. MATHISON: But with respect to
16 Mr. McElveen's claim that he has been liable or
17 slandered, everything having to do with his character
18 would be pertinent.

19 THE COURT: Can certainly question him about
20 it.

21 MR. MATHISON: And that's what the question
22 about his hypocrisy was meant to --

23 THE COURT: No, he doesn't have any opinion.
24 He can't give opinions on that. It lets it look like
25 does he think Mr. McElveen is a good guy? Let me guess.

1 Not in my position, but what he would say.

2 MR. MATHISON: In other words, what you're
3 ruling is that I should not ask Mr. McEachern whether he
4 put them in the book, I should instead take the original
5 documents and ask Mr. McElveen whether he did all these
6 things.

7 THE COURT: No. Not to tell you how to
8 practice, but you can just ask him weren't there other
9 attachments that were sent to Cottage Homes or whatever
10 it -- whoever it is -- and also sent to him.

11 ATTORNEY WATKINS: That's already come out.

12 MR. LEE: It's in the record.

13 THE COURT: I understand that, but they're
14 just hearing it up and without going into them you can
15 then question him about it when he takes the stand which
16 he's going to take the stand.

17 MR. MATHISON: He, being Mr. McElveen?

18 THE COURT: He's looking forward to it, I'm
19 sure.

20 MR. MATHISON: Okay.

21 THE COURT: Y'all are all pretty good sports.
22 I've got to be real nice because this violates reports on
23 judges. I'm not up for any more reelections so it
24 doesn't matter. I'm just kidding. We're going to have
25 to -- once we send the jury out, it always takes five

1 minutes.

2 Y'all can just come to order first thing in
3 the morning.

4 MR. LEE: We were dying to talk about maybe
5 stipulating Ms. Lang's testimony.

6 THE COURT: Everybody ready?

7 MR. MATHISON: Yes, sir, Your Honor, I'm
8 ready. I've got a few more questions and I'm going to
9 put up another gentleman after this witness.

10 THE COURT: Can stop any time you want. I'm
11 going to tell the jury looks like we won't finish until
12 Friday. That's fair.

13 MR. MATHISON: I don't know how much Scott
14 has.

15 THE COURT: He has a lot.

16 (WHEREUPON the jury entered the courtroom.)

17 THE BAILIFF: Jury is seated.

18 THE COURT: You may proceed.

19 By Mr. Mathison:

20 Q Continuing with my thought, Mr. McEachern, did you go
21 to Family Court here in Beaufort and assemble a
22 number of documents that were related to
23 Mr. McElveen's first marriage to a woman named Elaine
24 Brennan McElveen?

25 A Yes, I did.

1 Q And did you put them in this book as (unable to
2 transcribe due to quality of reporter's notes) to
3 demonstrate what it is that you said about
4 Mr. McElveen?

5 A Yes, I did.

6 Q And in addition, did you go to the Beaufort County
7 Sheriff's Office and get an incident report
8 involving --

9 MR. LEE: I'm going to object to that, Your
10 Honor. I don't know there's any way to introduce the --

11 THE COURT: Y'all covered that, so --

12 MR. LEE: I thought he wasn't going to do it.

13 MR. MATHISON: I thought you indicated I
14 should find out what he collected and put in the book and
15 then ask the other gentleman about.

16 THE COURT: I got it. All right. This is
17 what I told them they could do. They could ask what he
18 got and put it in the book without going into it because
19 when this gentleman testifies, they can ask him about it.
20 We don't want to double up. Here is how we're going to
21 take (unable to transcribe due to quality of reporter's
22 notes) from the attorneys.

23 The best case scenario is we finish Friday
24 morning. That's it. Get it to the jury Friday morning.
25 That looks like the best case unless some witnesses just

1 take a few minutes that they think might take an hour. I
2 went over the list with you so he can testify about
3 everything he put in the book and then we're going to ask
4 another person about it and then just duplicate, so he
5 can ask him anything he put in the book, where he got it
6 from, without going into what it was somebody else will
7 testify to. Okay.

8 By Mr. Mathison:

9 Q In addition to the Family Court, did you get
10 information relating Mr. McElveen's previous domestic
11 litigation with Molly McCullers McElveen and with his
12 son Richard McElveen, Jr.?

13 A Yes.

14 Q So the material from the 1997 case which I believe is
15 Case No. 2000 -- excuse me, Case Number 1997.

16 DR- 07-0807 is also included in here; is that
17 correct?

18 A Excuse me one second. Let me look back and make sure
19 that --

20 THE COURT: Just represent to him that it is
21 in there.

22 By Mr. Mathison:

23 Q It is in there, trust me.

24 A Oh, okay. It is in there.

25 Q Did you develop affidavits from people who were

1 involved in various arguments that you could see as a
2 result of having reviewed the record?

3 A I did.

4 Q Those are affidavits that you solicited; is that
5 correct?

6 A Correct.

7 Q Affidavits from people like Emmet Fletcher for
8 example?

9 A Yes, they were also, I think a couple that were
10 brought to me unsolicited.

11 Q An affidavit from Tamara Richardson?

12 MR. LEE: Your Honor, he's trying to get
13 inadmissible evidence in the back door, the wrong way. I
14 don't understand it.

15 THE COURT: He gathered various affidavits
16 that were attached to that which may or may not be
17 admissible. We don't know what they say and I think
18 we're through with this witness and let's move on with
19 the next witness so we can finish.

20 MR. MATHISON: Thank you, very much,
21 Mr. McEachern.

22 THE COURT: Can step down.

23 MR. MATHISON: Your Honor, may it please the
24 Court, the plaintiff would call Donald Lang to the stand.

25 ///

1 THEREUPON,

2 DONALD LANG,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Mathison:

6 Q Mr. Lang, where do you reside?

7 A Beaufort, South Carolina.

8 Q How old are you?

9 A 47.

10 Q Do you have children?

11 A I do.

12 Q What are their names?

13 A Amber Dodd Gable.

14 Q And Amber was the person that was in the automobile
15 on the night that Mr. McAlhaney was assaulted; isn't
16 that right?

17 A That is correct.

18 Q Had you been at the restaurant Breakwater earlier
19 that night before the assault took place?

20 A I was.

21 Q And the reason that you were there is because you own
22 it; is that --

23 A That is correct.

24 Q Do you recall a group of people that were there who
25 were on the verge of making trouble?

1 A I do.

2 Q Do you recall what was done to discharge their making
3 trouble?

4 A I asked them to stop and then to finally leave.

5 Q Did they initially stop?

6 A They did not, I think initially -- no. They did not.

7 Q Consequently how long was it before you decided to
8 make them leave?

9 A I'm going to guess probably about 15 to 20 minutes,
10 maybe 30 minutes. We had -- there was a lot of
11 people in there, so obviously, you don't want fights
12 or anything like that in the restaurant.

13 Q When you decided that they should leave, did you tell
14 them to leave?

15 A I did.

16 Q How long did it take before they left?

17 A Probably 5 to 10 minutes.

18 Q Do you know whether despite leaving your premises
19 these people stayed outside, waiting for in excess of
20 two hours?

21 A I did not know that at the time.

22 Q How did you come to know that there was an assault in
23 the parking lot behind your restaurant?

24 A My -- I had gone home and my daughter called me to
25 come get her, that there had been an altercation in

1 the parking lot and that the police had been called.

2 Q Do you recall what time it was that your daughter
3 called you?

4 A I don't. It was late. It was at least an hour
5 and-a-half or so after I had gone home. I was in bed
6 asleep, so --

7 Q What time would that be? Two o'clock? Three
8 o'clock?

9 A I'm guessing it had to be that late. The restaurant
10 usually stayed open until 12, one o'clock sometimes.

11 Q You left when it closed?

12 A I actually think I left a little before it closed.
13 They were closing up shortly after I left and locked
14 the door and closed the blinds and did their work to
15 be done.

16 Q You learned about this event sometime between two and
17 three o'clock on Christmas Eve, December 24th, that
18 is two and three o'clock in the morning?

19 A Correct.

20 Q Was your daughter injured in the assault?

21 A She was shaken up.

22 Q Thank you. Please answer any questions Mr. Lee may
23 have.

24 ///

25 ///

CROSS-EXAMINATION

By Mr. Lee:

Q Who did you get the information from that this group was causing trouble? Mr. McAlhaney?

A No, I was there.

Q Okay.

A There was words being -- you know, kind of exchanged and --

Q To who?

A To be honest with you, I don't even remember.

Q Okay.

A All I remember is that there was some altercations -- not altercations. There were just some words being exchanged and some uncomfortableness in the building.

Q Was -- I didn't mean to -- was Mr. McAlhaney any having any cross word with any of these guys?

A You know, I honestly don't remember. I don't remember that -- Matt was actually involved in that at the time. I mean my daughter was there and I was kind of busy with work, but --

Q Okay.

A The bartender had told me that there was some stuff going on and --

Q Okay. So it's safe to say you didn't see what precipitated it?

1 A I did --

2 Q Everything? And you didn't see what happened in the
3 parking lot?

4 A I did not see what happened in the parking lot, in
5 the restaurant, you know --

6 MR. LEE: That's all I have, Judge.

7 MR. TEMPLETON: No questions.

8 MR. MATHISON: No further questions, Your
9 Honor.

10 THE COURT: You can step down.

11 MR. MATHISON: Excuse me, Your Honor.

12 THE COURT: All right.

13 MR. MATHISON: Your Honor, the plaintiff
14 would call Mr. Hartman to the stand.

15 THE COURT: All right.

16 THEREUPON,

17 DAVID HARTMAN,
18 after being duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 By Mr. Mathison:

21 Q Mr. Hartman, where do you reside?

22 A Lady's Island, South Carolina.

23 Q How old are you?

24 A 62.

25 Q You married?

1 A Yes, sir.

2 Q Single?

3 A Married.

4 Q Do you have children?

5 A One.

6 Q What do you do for a living?

7 A I work with Palmetto Electric Security Division.

8 Q Have you had previous dealings with Mr. McElveen?

9 A Yes, sir.

10 Q In the course of those dealings were you constrained
11 to file a suit against Mr. McElveen?

12 A Yes, sir.

13 Q What was the nature of your grievance about
14 Mr. McElveen and the way he treated you in business?

15 A It was in relation to a trailer. I had bought a --
16 purchased a boat and did a dry storage at his
17 facility and he offered to store the trailer and the
18 (unable to transcribe due to quality of reporter's
19 notes) -- I needed the trailer. My stepson needed to
20 take the (unable to transcribe due to quality of
21 reporter's notes) boat or we were going to let him
22 take the boat up to Clemson for a while. He was in
23 school at the time. Things just progressed to where
24 the trailer never was produced.

25 Q Where was it supposed to be in your opinion?

1 A At his place of business.

2 Q Did you ever get the trailer back?

3 A I don't know that I got my trailer back. I got a
4 trailer.

5 Q What did you have to do to get the trailer that you
6 got back?

7 A I filed a suit in magistrate's court.

8 Q Only after filing a suit did you get a trailer in
9 substitute for your trailer?

10 A Correct.

11 Q And what became of your trailer, if you know?

12 A Don't know.

13 Q You have an opinion of Mr. McElveen's honesty in
14 business?

15 A I would classify it -- in my experience, the would be
16 dishonest.

17 MR. MATHISON: Thank you. Please answer any
18 questions Mr. Lee may ask.

19 CROSS-EXAMINATION

20 By Mr. Lee:

21 Q When did you first take your trailer over there --
22 and your boat to be stored? Do you remember what
23 year?

24 A I never moved my boat.

25 Q Okay. Well --

1 A Once I purchased it, he --

2 Q When did you purchase it? In 1999?

3 A I couldn't tell you.

4 Q All right.

5 A I don't recall.

6 Q Well, who did you deal with when you dry-stored it
7 over at -- over there? Do you remember?

8 A Could you say the question again?

9 Q Let me repeat it. When was your son going to
10 college?

11 A I don't know that either.

12 Q You don't remember the year your son went to college
13 and --

14 A It was a stepson, so --

15 Q Stepson. Sorry. You don't remember when you wanted
16 him to take the boat to college?

17 A No, sir.

18 Q Do you remember how long the boat had been in storage
19 when you asked for the trailer?

20 A I don't recall.

21 Q Do you remember whether you took the trailer over
22 there prior to 2001?

23 A I never had position of the trailer.

24 Q Who did you buy the boat from?

25 A McElveen.

1 Q And you don't know what year you bought it?

2 A No, sir.

3 Q Did you buy it from him at Boat Busters?

4 A Yes, sir.

5 Q Okay. And then you stored it at --

6 A Battery Creek Marina.

7 Q Okay. And are you aware that Mr. McElveen sold Boat
8 Busters and part of the trade was he went to Battery
9 Creek when he got Battery Creek Marina. Are you
10 aware of that?

11 A No, sir.

12 Q That was part of the exchange, I believe, when he
13 sold Boat Busters to Butler Marine, which it is now.
14 Are you familiar with that?

15 A I have no knowledge of that.

16 Q Are you aware that prior to 2001, Mr. McElveen had
17 nothing to do with Battery Creek?

18 A I'm not familiar with dates at all.

19 Q Okay. I'm not either. Okay. All right. But the
20 bottom line is y'all disagreed and you -- you went
21 and filed some other magistrate's court, right?

22 A We disagreed --

23 Q You and Mr. McElveen disagreed about the trailer?

24 A Yes.

25 Q Okay. You said he ought to have it, he said he

1 shouldn't, but y'all ended upset (unable to
2 transcribe due to quality of reporter's notes) the
3 case, right?

4 A Well, I never had the trailer in my possession. When
5 I bought the boat, he delivered it to the water, he
6 took possession of the trailer --

7 Q Okay.

8 A He volunteered to keep it. Since I was going to dry
9 storage, I never saw the trailer, never hooked up to
10 the trailer, but when the time I wanted it, it wasn't
11 there.

12 Q Okay.

13 A Wasn't available.

14 Q And y'all settled the case by you getting a
15 trailer -- either a replacement or the same one, we
16 don't know?

17 A Right.

18 Q Okay.

19 A We definitely know it wasn't the same one.

20 Q Had you ever even seen the trailer?

21 A On the boat initially.

22 Q Any other dealings you've ever had with Mr. McElveen?

23 A No, sir.

24 Q Do you have any interest in -- in this case as far as
25 the custody dispute that happened many years ago?

1 A I have no knowledge of what this is all about.

2 That's why I stayed outside.

3 Q Might be a bad choice. How did you get here today?

4 A Subpoena.

5 Q From Mr. Mathison?

6 A Yes, sir.

7 Q That's all I have. Thank you for coming.

8 A Yes, sir.

9 MR. TEMPLETON: No questions.

10 THE COURT: You can step down.

11 MR. MATHISON: No questions, Your Honor.

12 We're prepared, Your Honor, to start with the
13 reading of the deposition of Billy Joe Byrd.

14 THE COURT: All right.

15 MR. LEE: Your Honor, the problem is, I
16 haven't been provided notice that he intended to do that,
17 and I'm entitled to one day's notice under the rule.

18 THE COURT: Well, if you wanted to hold him
19 until tomorrow, I mean, you've read that deposition for
20 Lord's sake. If you're a competent attorney, which you
21 are, that is a technical thing to delay the case
22 another --

23 MR. LEE: No, it's not --

24 THE COURT: -- four hours. He's going to
25 read the deposition. You've known all along --

1 MR. LEE: He knows the rules, Judge, that --

2 THE COURT: I understand that. He should
3 have given him notice and if you want to -- just stand
4 this if you want to say he can't read it until after one
5 day's notice. You can't read it until after one day's
6 notice?

7 MR. LEE: I don't want to be blamed for
8 delaying this case. I'm ready to go.

9 THE COURT: There you go.
10 He should have given him notice, but he
11 didn't, but here we are wherein you make a technical
12 objection all that he does is delay his case and --

13 MR. LEE: He has other people here he has
14 subpoenaed and he is the one who sets who gets called.

15 MR. MATHISON: Your Honor, may it please the
16 Court, I'm not going to sit out here and argue about
17 this. Forgive me. I expedited the plaintiff's testimony
18 consequently. We don't have another live witness at this
19 point. We will have another live witness tomorrow. If
20 it suits the court, it would suit me fine to overcome the
21 objection and we started early and we could leave a
22 little bit early and that would be fine with me.

23 THE COURT: As long as you're going to finish
24 your case by lunchtime tomorrow.

25 MR. MATHISON: I don't believe that will be a

1 problem. It depends on how fast I can read.

2 MR. LEE: Your Honor, the other thing, I am
3 hoping that tomorrow and Thursday, Mr. Byrd is going to
4 be here and if he is, I think it would definitely shorten
5 things, so he could ask direct questions and be
6 cross-examined.

7 THE COURT: Mr. Byrd is a minor player in
8 this.

9 MR. LEE: I agree. I will defer to the
10 Court's wishes, Your Honor.

11 THE COURT: We will break for the day,
12 jurors. Y'all see how it is. Have a nice night. Don't
13 talk about with case -- simply starting early we will
14 start at eight -- no 9:20. The court reporter will be
15 here at nine.

16 Mr. Mathison, what is the game plan?

17 (WHEREUPON court was in recess.)

18 MR. MATHISON: I'm going to change my game
19 plan, Your Honor. Mr. Byrd is here and I will put him on
20 the stand and ask him (unable to transcribe due to
21 quality of reporter's notes) since he's a live witness
22 and then we will go from there in terms of deposition
23 testimony. The amount of material that we (unable to
24 transcribe due to quality of reporter's notes) we're
25 going to either reduce or we're going to ask the

1 questions directly of the witnesses to expedite matters.

2 THE COURT: Somebody handed up a bunch of
3 objections to various depositions. Have y'all worked
4 that out?

5 MR. LEE: Judge, those were my objections to
6 the (unable to transcribe due to quality of reporter's
7 notes) served pages and pages and pages of me for four
8 depositions yesterday. Obviously, I couldn't to it
9 yesterday and Mr. Mathison hadn't been here, so we
10 haven't discussed them, but those are my responses. I
11 have included them to them as well as the other side is.

12 MR. MATHISON: Judge, as far as my
13 designations go, I would not intend to use any of my
14 designations until the end of my case in chief if we get
15 that far.

16 MR. LEE: And I don't object to any of
17 their's. I'm not exactly sure why they're intended to
18 present deposition testimony of witnesses that are here
19 quite (unable to transcribe due to quality of reporter's
20 notes).

21 THE COURT: It is a trial strategy; isn't it.

22 MR. MATHISON: Yes, sir. It keeps people
23 from recanting what they've already said. With respect
24 to Mr. Byrd, since they're here, I'm going to put him on
25 the stand and let him ask the questions.

1 THE COURT: Might be better to let them
2 testify and ask if they do recant.

3 MR. LEE: Judge, impeach them if they can.
4 The one thing I would say about Mr. Byrd's testimony,
5 there was a part of the deposition testimony involving
6 affidavit that Mr. Byrd filed that Mr. Mathison procured.
7 After I had followed an answer from Mr. Byrd, done some
8 things he approached my client after a discussion
9 Mr. Byrd had with his client and essentially the
10 deposition says that he doesn't know whether I'm
11 representing him or not, (unable to transcribe due to
12 quality of reporter's notes) really talked to me and I
13 think that's totally irrelevant to this case, but in an
14 abundance of caution before he gets up there and
15 testifies and we have to object and discuss it, I don't
16 think that is relevant in this case at all and --

17 THE COURT: It is the whole thing. I cannot
18 tell him what to do, but if he brings it up, then we just
19 mis-try the case because you disqualified it.

20 MR. LEE: That's what I'm trying to avoid,
21 Your Honor.

22 THE COURT: I understand that. I'm just
23 putting it on the record. I can't tell him not to do it.
24 He may want a mistrial or want this to go on for
25 generations. Probably not.

1 MR. MATHISON: May it please the Court, I'd
2 like to be heard on that.

3 THE COURT: Yes.

4 MR. MATHISON: The theory of my client's case
5 is that Mr. McElveen, Sr. is a manipulator, that he
6 manipulated the system. He's been involved in 60
7 lawsuits. That's one of the things that will come out.
8 We believe that he secured the services of Mr. Lee --

9 THE COURT: Then you should have sued
10 Mr. Lee.

11 MR. MATHISON: I don't believe Mr. Lee has
12 done anything that's actionable, Your Honor. I think
13 that he has done the work of Mr. --

14 THE COURT: Listen. You can bring that out
15 if he is represented. That's no problem, but anything
16 that causes Mr. Lee to have to testify ends up in a
17 mistrial. You've been around long enough to understand
18 that. I'm not telling you how to present your case. All
19 I'm saying is somebody comes up and says Mr. Lee said
20 such and such and Mr. Lee said such and such. That's the
21 end of this case this week.

22 MR. MATHISON: I'm sorry, Your Honor, but
23 that's not what the testimony is going to be.

24 THE COURT: I don't know what it is. All I'm
25 saying is he said that so that's how I'm ruling.

1 MR. MATHISON: I understand, but that's --
2 what he said is not accurate.

3 THE COURT: All right.

4 MR. MATHISON: What Mr. Byrd is going to
5 testify to is that he did not know about his
6 representation by Mr. Lee, that if it was furnished it
7 was furnished by someone other than him because he didn't
8 pay for it; had no interaction with Mr. Lee at all. It's
9 not a question of what Mr. Lee said. It is a question
10 of --

11 THE COURT: Lee filed an answer for him and
12 that's going to make you testify isn't it? I don't know.

13 MR. LEE: Yes, sir. I mean, I don't know how
14 you get around that.

15 MR. MATHISON: Why would he have to testify
16 as to -- (unable to transcribe due to quality of
17 reporter's notes).

18 THE COURT: Because his position is, he was
19 hired by the guy.

20 MR. MATHISON: Is that your position, that
21 you were hired by Mr. Byrd?

22 MR. LEE: I didn't say.

23 THE COURT: That's his position.

24 MR. LEE: And I think quite frankly it is
25 improper for him to approach a represented client. We

1 haven't dealt with that. He --

2 MR. MATHISON: I haven't approached a
3 represented client.

4 THE COURT: Okay. That's the parameter. If
5 it comes out that you -- if he says he didn't ever
6 represent him, then he has to testify because his
7 credibility representing him is shot at that point and
8 he's been described as a party or put on the witness list
9 and the McElveens will have to (unable to transcribe due
10 to quality of reporter's notes) that's all.

11 I'm not trying to declare a mistrial. I'm
12 only saying how it's going to come down and you can just
13 think about it.

14 MR. MATHISON: I need to talk to my client
15 about this, Your Honor, if you don't mind.

16 THE COURT: Sure.

17 (WHEREUPON, the plaintiff and his attorney
18 were conferring.)

19 MR. MATHISON: May it please the Court, we're
20 going to put Mr. Byrd on the stand. He is, obviously, a
21 defendant, so he is an adverse party and I would ask for
22 permission to cross-examine him.

23 THE COURT: You can cross-examine --

24 MR. MATHISON: I would ask for your
25 instruction that he not mention the fact that Mr. Lee

1 appeared for him and submitted an answer and discovery
2 without his knowing anything about it. You instructed
3 him not to say that and at the close of my --

4 THE COURT: I really can't tell anybody how
5 not to testify. I can tell him he cannot volunteer --

6 MR. MATHISON: Thank you. At the close of my
7 examination of him, I'm going to make a proffer off the
8 record with respect to what it is. I think he should be
9 allowed to say, but it will be out of the presence of the
10 jury.

11 THE COURT: He can certainly say what you
12 want to do, but it's going to end up in a mistrial, which
13 is why I'm not -- I mean, you can proffer something.

14 MR. MATHISON: I understand. That's what I
15 just said.

16 THE COURT: I know. I'm just repeating it.
17 Bring the jury in. They are already bent out
18 of shape because they've been here (unable to transcribe
19 due to quality of reporter's notes) have time to tell
20 what's his name.

21 I will tell Mr. Byrd since the jury is
22 already on the way in to only answer the question. He's
23 been sitting in here. I didn't know who he was. I
24 thought he was a carrier from Publisher's Clearing House
25 ready to give me my 4 million.

1 (WHEREUPON the jury entered the courtroom.)

2 THE BAILIFF: Jury is seated, Your Honor.

3 THE COURT: Jurors, if I (unable to
4 transcribe due to quality of reporter's notes) going to
5 take that long, I would tell you to come in at quarter
6 till. I think we have shortened it a little bit by not
7 putting up a bunch of depositions where people are going
8 to testify.

9 MR. MATHISON: May it please the Court, Your
10 Honor, the plaintiff would call one of the defendants,
11 Billy Joe Byrd to the stand.

12 THEREUPON,

13 BILLY JOE BYRD,
14 after being duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 By Mr. Mathison:

17 Q Mr. Byrd, where do you reside?

18 A Beaufort County.

19 Q Where in Beaufort County?

20 A 4002 Landon Street.

21 Q When you had your deposition taken in this case, sir,
22 where did you reside?

23 A Where -- were you referring to the one that was on
24 Lady's Island?

25 Q Yes, sir?

1 A Marion County, but I traveled doing work at the time,
2 so I'm not really stationed there.

3 Q And your deposition was taken in this case on
4 February 11, 2009; is that right?

5 A If I can recall, that's the one from Lady's Island;
6 when we were at the office.

7 Q Mr. Byrd, in 2004, were you working for the
8 co-defendant, Rick McElveen, Jr.?

9 A If I can recall, I'm -- I mean, that's the last going
10 on since -- I believe I was. I don't remember.

11 Q You're saying you don't know whether you were working
12 for them or not?

13 A Yeah.

14 Q Do you know whether you and he from time-to-time
15 worked --

16 A Yes, sir.

17 Q -- on Mr. McElveen, Sr.'s premises at Battery Creek
18 Marina?

19 A Yes, sir. When I did work with them it was. It
20 might have been -- I think it was 2004 or 05 with --

21 Q In the course of working with Mr. McElveen, Jr., did
22 Mr. McElveen, Jr. tell you that my client, Matt
23 McAlhaney was a child abuser?

24 A I never heard words like that.

25 Q Did he tell you that he was a child molester?

1 A I don't remember any of that. Like I said, a lot's
2 gone on since then and this is the last thing on my
3 mind.

4 Q Yes, sir. I'm going to hand up your deposition, page
5 52.

6 A Okay.

7 Q I'm going to ask you to read for me with the first
8 question, starting at line 1. Would you read line 1.

9 A Line 1 or line where you're at.

10 Q Line 1 says Mathison, Byrd, Direct Examination; is
11 that correct?

12 A What now?

13 Q Does it say Mathison-Byrd, direct examination?

14 A Yes, yes, yes.

15 Q And under that line 2, says child abuser, with a
16 question mark; is that correct?

17 A Yes.

18 Q And you said what?

19 A I mean, I guess runs hand-in-hand with him talking
20 about the case.

21 Q Talking about the case?

22 A Talking about the case.

23 Q And then what did you say?

24 A A child molester.

25 Q I said a child molester and didn't you acknowledge

1 that he said -- didn't you say, yeah, child molester?

2 A Yeah.

3 Q Okay. Does that refresh your memory? Did he tell
4 you he was a child molester?

5 A I heard him talk about the case.

6 Q And did he call my client a child molester?

7 A Talk like --

8 Q Did he call my client a child molester?

9 A If that's what I said in there.

10 Q Yes, sir.

11 A I never heard him directly call it.

12 Q And then I asked you, and I'm quoting now, "Did Rick,
13 Jr. ever call Mr. McAlhaney a child abuser?"

14 And what was your answer -- and again, I'm
15 quoting, of course. "With everything that is going
16 on, that is what they made it -- that is how they
17 made it seem with accusations and everything"?

18 MR. LEE: Judge, I'm not sure how he's
19 supposed to respond when he doesn't have a copy of the
20 deposition.

21 THE WITNESS: Yeah.

22 THE COURT: Show it to him.

23 MR. LEE: I mean, that's the way it's done.

24 THE WITNESS: I just don't remember ever
25 wording it like that.

1 MR. MATHISON: Opening the seal, Your Honor.

2 THE COURT: All right.

3 By Mr. Mathison:

4 Q Does that say original on the front, sir? Does it
5 say original on the front of the deposition?

6 A Yeah.

7 Q Please speak up.

8 A Yeah.

9 THE COURT: Jurors, in case you wondered, the
10 rules permit somebody to call an adverse party. When you
11 call an adverse party, you can cross-examine. You can
12 try to trick them, not that he is, can ask questions or
13 whatever. This gentleman that testified was not being
14 sued by him. He was being sued by them so as far as they
15 go he couldn't ask him leading questions when he was up
16 there, but he can't ask him.

17 MR. MATHISON: Now --

18 THE COURT: And he, of course, is a
19 defendant.

20 THE WITNESS: Yes, sir.

21 THE COURT: And does not want to be here as
22 y'all gathered, but that's beside the point. Here he is.
23 He is sworn to tell the truth. Go ahead.

24 By Mr. Mathison:

25 Q The specific question is, "Did Rick McElveen, Jr."

1 call Mr. McAlhaney a child molester.

2 A I don't remember him calling him exactly that. I
3 said I heard pieces of the case because I worked
4 there. I couldn't help but overhear things.

5 Q Yes, sir.

6 A I don't directly remember hearing somebody call
7 somebody that.

8 Q Would you look at line 16?

9 A And even then --

10 Q Is it true --

11 A And even then, when you talked to me, you talked very
12 careless to me, disrespectful to me, and down to me,
13 like you're talking to me now.

14 Q Sir.

15 A You confused me. I don't know anything about this
16 court stuff, law stuff. It's so over my head.

17 Q Sir.

18 A I have no clue what's going on.

19 Q Sir, would you look at line 16. Is that the same
20 question I just asked you --

21 A Line 16, what page?

22 Q Page 52?

23 A All right.

24 Q Does line 16 say, and I quote, "Did he refer to Rick,
25 Jr., call him, referring to Mr. McAlhaney is a child

1 molester?

2 A It says "Yes", but this -- I didn't take it as that.

3 I said I've overheard. I mean, if you had a tape
4 recorder, I'd like to hear myself because I know this
5 has been so overwhelming for me and over my head. I
6 don't -- you know, this is just a blur to me.

7 Q Are you saying that the court reporter took it down
8 wrong?

9 A No, I'm just saying everything has been a blur to me.
10 Everything has been so over my head.

11 Q Yes, sir. I asked you whether he called him a
12 deviant and you said he didn't.

13 A A what.

14 Q A deviant, line 18. Isn't that right?

15 A Yes, that's right.

16 Q I asked you whether he called him a queer, on line
17 20, and you said he didn't; isn't that right?

18 A Yes.

19 Q You understood those words, didn't you?

20 A I guess I did, didn't I.

21 Q So you said he did call him a child molester, just
22 didn't call him a deviant and a queer; isn't this
23 right?

24 A I guess so.

25 Q And the conversation you were trying to tell me about

1 is that you heard Mr. McElveen, Sr. and
2 Mr. McElveen, Jr. discussing my client; isn't that
3 correct?

4 A What line is that?

5 Q Did you hear him discussing my client?

6 A Yes, at times, yeah.

7 Q Okay. Were they discussing the fact that they
8 believed my client had molested one of the
9 grandchildren?

10 A Yeah, that was -- I believe that was after there was
11 already arrests and everything like that, wasn't
12 there.

13 Q Did you believe what they said, Mr. Byrd?

14 A I mean, how could I believe anything if I don't know
15 facts.

16 Q Well, did you believe it enough so that on or about
17 December 24th --

18 A Nope.

19 Q You didn't believe it?

20 A Not enough to fight somebody.

21 Q Okay. Were you there on December 24th when a throng,
22 a crowd assembled with the objective of beating up
23 Mr. McAlhaney?

24 A Rephrase your question one more time. Let me hear
25 that again.

1 Q Were you there on December 24th when a group of
2 people assembled, when a group of people went to beat
3 up Mr. McAlhaney --

4 MR. LEE: Objection. That's a theory not
5 based on facts in evidence.

6 MR. MATHISON: Forgive me, but my client has
7 testified what happened based on --

8 THE COURT: I understand, but you're assuming
9 they assembled to do that.

10 MR. MATHISON: I understand.

11 THE COURT: You've got to rephrase it and --

12 By Mr. Mathison:

13 Q Were you at Plums on December 23, 2004?

14 A I was a few places down there that night. I'm
15 assuming I was probably down there too.

16 Q And did you, with Rick McElveen, Jr., go from Plums
17 to a restaurant called Breakwater?

18 A Yep.

19 Q And when you were in Breakwater, were you with other
20 people that you could identify? People you knew?

21 A One or two.

22 Q Was one of them Dean Coward?

23 A No.

24 Q Was one of them Scott Bell?

25 A Scott Bell was not there at the time, no.

1 Q Was one of them Jessica Tudor?

2 A Jessica Tudor was there.

3 Q Was one of them Forrest Hatch?

4 A No.

5 Q Well, who were they then?

6 A I remember Jessica being there, a girl, Brandy Martin
7 and Ricky and I.

8 Q Was there anyone else there?

9 A Not that I can recall.

10 Q Inside the establishment, the restaurant, did you
11 approach Mr. McAlhaney and say something to him so
12 that he could understand what you were saying?

13 A Yes, I did and I regret it.

14 Q And what was it that you did? What was it you said?

15 A "Matter of time before it catches up to you to get
16 you," something like that.

17 Q Matter of time before it catches up to you?

18 A Yeah.

19 Q And what was it that was going to catch up to him?

20 A I guess karma.

21 Q Karma?

22 A Karma at the time.

23 Q And what was the bad karma that was going to come his
24 way, Mr. Byrd?

25 A You know, you do wrong, it comes back around, nothing

1 more than that.

2 Q And what was the wrong that you believed he'd done?

3 A That at the time he was accused of.

4 Q That he molested one of Mr. McElveen's grandchildren;
5 is that what you're saying?

6 A Yes, sir, and at the time that is what I thought.
7 That was what was in my head from somebody being
8 arrested on it.

9 Now, I don't know if it's the truth. I don't
10 know because I don't know the facts. I don't know
11 none of that. I was going on -- on being with a
12 friend that I felt bad for that something bad
13 happened to his kids.

14 Q And you knew that the friend that you felt bad for
15 was going to attempt to attack Mr. McAlhaney, didn't
16 you?

17 A No, not at the time, no.

18 Q Didn't you testify specifically you knew a fight was
19 going down and --

20 A Yeah, and I left.

21 Q And --

22 A And I left.

23 Q Okay. So what do you know would happen after that?

24 A I don't know.

25 Q At what point did you know a fight was going to

1 happen, Mr. Byrd?

2 A Nothing. I had a gut feeling one of those gut
3 feelings that tells you you're somewhere you don't
4 need to be. You need to get out of here.

5 Q How close were you to my client in the restaurant
6 when you were saying that something bad was going to
7 happen to him?

8 A A bar. A bar between us.

9 Q A bar?

10 A A bar. I could -- I mean this happened so long ago.
11 I'm 29 and this happened what, six, seven, five years
12 ago. These (unable to transcribe due to quality of
13 reporter's notes) I just hold onto for memories.

14 Q After the attack, were you arrested?

15 A Unfortunately, yes.

16 Q Were you charged with assault and battery of high and
17 aggravated nature?

18 A Yes, sir. On -- two people were saying I was there
19 and six people saying I wasn't there.

20 Q Yes.

21 A And --

22 Q That's --

23 A The justice system failed me that day.

24 Q Yes, sir, and were you charged with lynching?

25 A Yes. It broke my heart.

1 Q Was the lynching charge based on the fact that there
2 was several people involved in the attack?

3 A No, they said two people. Two people jumped on two
4 other people, which I had nothing to do with.

5 Q Okay.

6 A Wasn't there.

7 Q And the other person that was charged was Rick
8 McElveen, Jr.; isn't that right?

9 A Yes, sir.

10 Q And were you ultimately convicted of a reduced
11 charge, Mr. Byrd?

12 A Yes, sir, unfortunately, yes.

13 Q You were convicted of what? Assault?

14 A Simple assault, assault and battery. You know, I've
15 tried to forget about this whole thing because I had
16 nothing to do with it.

17 Q So is it your position that you didn't commit the
18 assault or participate in it?

19 A Yes, sir, and that I swear on my mother's grave I was
20 not there. I was so disappointed on the justice
21 system on that day.

22 Q How many people that were in the group that assembled
23 before the attack on Mr. McAlhaney --

24 A I can definitely recall Brandy Martin, Ricky
25 McElveen, and I, and Jessica Tudor.

1 Q You can definitely recall them?

2 A Yes, because -- yes.

3 Q And did -- did they all believe that Mr. McAlhaney
4 was a child abuser, or child molester like you did?

5 A I can't --

6 MR. LEE: Your Honor, that calls for
7 speculation. He has --

8 THE COURT: Let him --

9 THE WITNESS: I can't --

10 THE COURT: Hold it. Just don't answer.

11 THE WITNESS: Yes, sir. Sorry, Your Honor.

12 THE COURT: Unless you're a mind reader.

13 By Mr. Mathison:

14 Q Did you discuss with these other people, you
15 specifically, that Mr. McAlhaney was a child abuser
16 or child molester?

17 A No, sir -- I don't recall.

18 Q Did you discuss or -- excuse me. Did Rick McElveen,
19 Jr. discuss with them what he was going to do to
20 Mr. McAlhaney?

21 A I don't remember any of that.

22 Q You don't? Well, he'd discussed it with you, hadn't
23 he?

24 A Yes.

25 Q How many times?

1 A I can't remember that either. I know he considered I
2 was a friend, of course, he's going to, you know,
3 talk to me and grieve, you know. He was going
4 through some pain over it. Regardless of what the
5 truth was or not, the truth, you know, he was at the
6 time -- what was brought -- the accusations, of
7 course.

8 Q All right. And --

9 A Being a friend.

10 Q Since you weren't in theory at the attack, how did
11 you learn what happened at the attack?

12 A When I got Ricky's vehicle, went to come back by,
13 there was cops everywhere. I said, "See, I was
14 right." We went onto a friend's house, Scott Bell's
15 house, and he lived with a girl at the time, got
16 there.

17 Next thing you know, Ricky, Scott Bell,
18 everybody showed up. Ricky had said he got in a
19 fight with Milton, Scott Bell remembers he remembers
20 particularly Matt McAlhaney any's nose breaking on
21 his hand. There was blood on his shoe and that's how
22 I knew particularly, Scott Bell was the one, and
23 that's the first I heard of the incident that night.

24 Q That Scott Bell was the one that hit Mr. McAlhaney;
25 is that right?

1 A Yes, sir.

2 Q When you had your trial, since Scott Bell was your
3 alibi, did you subpoena Scott Bell to come in and
4 testify for you?

5 A I had a public defender.

6 Q That's not answering my question, sir.

7 A Let me tell you, I had a public defender which did
8 nothing for me. I had six people testifying, saying
9 I was not there, which two people said I was there
10 and still lost. How does that happen?

11 Q But the person you knew who --

12 A I'm not friends with him. I -- I don't know -- I
13 don't know anything about law. That should have been
14 my lawyer's job. I told him. I do construction, not
15 law. And I'm sorry to be so angry, y'all, I just --
16 this is beside me. I don't wanted to be a part of
17 this.

18 Q On page 41 of your deposition, I asked you -- and I'm
19 quoting, now -- "why was it necessary" -- excuse me.
20 Go ahead. Page 41, line 7.

21 A Yes, sir.

22 Q I asked you at the top about this incident. "What
23 did you think was going to happen?" What was your
24 answer?

25 A You said line 7, on page 41?

1 Q Excuse me. Line 4. Do you see where I said, "What
2 did you think was going to happen"?

3 A Yep. Yeah, I --

4 Q And line 5, what was your answer?

5 A "Two grown men were going to go at it."

6 Q And the two grown men you were talking about is Rick,
7 Jr. and McAlhaney?

8 A Yes, sir.

9 Q You know, Rick, Jr. Was going to fight with Mc --

10 A Didn't know. I knew I had a bad feeling.

11 Q And then my next question on line 7, if you'd look at
12 it --

13 MR. LEE: I would ask he be able to finish
14 reading his response that he didn't finish reading --

15 THE WITNESS: Okay.

16 MR. LEE: On line 6.

17 THE COURT: He can finish --

18 THE WITNESS: Going to line 6, "I knew he was
19 upset." After I said, "Two grown men were going to go at
20 it. I knew he was upset."

21 By Mr. Mathison:

22 Q He, being Rick --

23 A Ricky McElveen, Jr.

24 Q And line 7 says, and I'm quoting, "Why was it
25 necessary to have Brandy Martin --"

1 A Brandy Martin.

2 Q Brandy Martin whether he will -- she's got brandy
3 here, Jessica Tudor, Dean Cowart, Scott Bell, and
4 Stacy Walker with you, and what was your answer?

5 THE COURT: Which line?

6 MR. MATHISON: Line 10, sir.

7 THE WITNESS: I supposedly -- I said, it
8 probably wasn't, but I am saying -- you know how friends
9 are.

10 By Mr. Mathison:

11 Q Go ahead and complete it, sir.

12 A You are just gathered and one person starts talking,
13 and it will get blown out of proportion and that is
14 what happened. Exactly.

15 Q Keep talking.

16 A If it was just Ricky and Ricky had to do what he had
17 to do and off with them -- nobody around -- the two
18 of them together, then it would have been one thing.
19 That is what made me want to get away. To this
20 point, it was not the right time.

21 Q So all of those people were there, weren't they?

22 A No. They weren't there. Not -- Scott Bell was
23 not -- they were there after -- after the fact I was
24 there. When I left, it was Brandy Martin, Jessica
25 Tudor, Ricky, and then me, and I -- I -- I left.

Q Yes, sir. Despite the fact that you named those other individuals.

A Yeah, because they -- I knew they were there because after the fight, they gathered at Scott's house and said they were all there.

Q And then my next question on line 20, Mr. Byrd is, "But all of those people felt that they were essentially attacking a child molester" ?

A Unfortunately, yes.

Q And that's what you said; is that right?

A (Witness nodded head.)

Q Unfortunately is not the quote; is that right?

A Not saying they attacked him, but unfortunately, they all felt the same way.

Q How could they attack him if they knew he was a child molester?

A They just knew he was arrested at the time (unable to transcribe due to quality of reporter's notes).

Q You didn't tell anybody he was a child molester?

A That wasn't my place to tell.

Q Who's place was it?

A It's easy information, access, anybody can get online and see. Look at the crime blotter now.

Q Why did you go along on this enterprise?

A I didn't go along on any enterprise. I was out

1 having a good drink -- nighttime drinking with my
2 friend, out with friends that night. This was not
3 the plan to -- to go do or jump or whatever I was
4 accused of. It was to have a good time that night.

5 Q Despite the fact that on this good time when you were
6 out having a drink, you personally made threats to my
7 client --

8 A And I was wrong for that --

9 Q -- in Breakwater.

10 A And I was wrong for that.

11 Q You were trying to threaten him with --

12 A Not threatening him at all, meant I didn't say no
13 threat. I didn't say what I would do, anything like
14 that. I said it's a matter of time before it catches
15 up to you, and that you could mean a wide range of
16 things, never once did I threaten him, but I do truly
17 believe in karma and if you did do something wrong,
18 even if nobody knows, it will come back to you.

19 Q Sir, prior to that night, how many times had you been
20 in Breakwater Restaurant?

21 A If you ask me now, I can't recall. I'm not trying to
22 be run around with you. I really don't remember. I
23 don't --

24 Q The answer is never, isn't it?

25 A I can't say that either.

1 Q Well, had you been there or not other than that
2 night?

3 A I don't know. That's what I'm telling you. I don't
4 remember.

5 Q And did the establishment management ask --

6 A I mean, there's several bars downtown that people --
7 we float back and forth between if you're down there
8 drinking. If there's a band playing, you float back
9 and forth.

10 Q Yes, sir, but I'm asking you, have you ever been in
11 Breakwater other than this occasion.

12 A I don't remember, truthfully.

13 Q And were you asked to leave by the management because
14 of the suggestions and threats that you and other
15 people were making towards McAlhaney?

16 A I don't recall. This was how many years ago?

17 Q Did you, in fact, leave --

18 A This was how many years ago.

19 Q Did you in fact leave --

20 A Five, six years ago?

21 Q Sir, please answer my question. Did you, in fact,
22 leave when management asked you to?

23 A If they asked me to leave, I'm sure I would have
24 left.

25 Q Yes, sir. Did you and your party, and by your party,

1 I mean these people that you identified, including
2 Rick McElveen, Jr., remain outside the premises for a
3 period of two hours --

4 A No.

5 Q -- probably --

6 A No.

7 Q -- midnight to two o'clock?

8 A No. No, two hours.

9 Q How long were you out there, sir?

10 A Thirty minutes, forty minutes, if that.

11 Q What were you doing?

12 A Hanging out in the parking lot. We were okay.

13 Jessica met us down there. See, I don't even think I
14 was down there that long. By the time I left, the
15 cops were back there. By the time I walked down Bay
16 Street and got back to Ricky's car, the cops were
17 there, so it couldn't have been no two hours.

18 Q Why were you remaining on the premises in the parking
19 lot? Same reason you hang in the back of Plums?

20 A The back of (unable to transcribe due to quality of
21 reporter's notes), to hang out, figuring out where
22 you're going to go next, if you're going to go to. I
23 hope, if you're going to go to Waffle House and get
24 something to eat. Of course, things were said you
25 know, Ricky was upset.

Q You were waiting for Mr. McAlhaney to come out; isn't that right?

A No, not me.

Q That's because you left; is that right?

A Exactly.

Q According to testimony, you felt something bad was going to happen?

A Exactly.

Q What bad was going to happen?

A I don't know. Anybody ever had that feeling? You just know something's not right and you don't need to be there? That was my feeling.

Q And you left; is that right?

A Yes, sir, exactly.

Q What time was it you caught up with this group Scott Bell and the boys and found out --

A How long after or what time? It's five years ago. I don't recall. I can tell you --

Q What time -- what time was it?

A I don't know.

Q And how long after you left was it?

A How long after I left?

Q Yes, sir.

A Within minutes, five, ten minutes.

Q You reunited with Scott Bell?

1 A No. Five, ten minutes when I rode back by. I had to
2 walk from there down by the playground, got there,
3 cranked the vehicle up, started riding down Bay
4 Street and saw the cop cars.

5 So I just kept right on Bay Street and
6 without, I don't know exactly the time frame, but
7 I -- he lived by the old Beaufort High, so however it
8 took me from getting down Bay Street to the old
9 Beaufort High and people started pulling back up at
10 Scott's house, and you know, Scott's over there,
11 bragging about it, you know, talking about it and
12 saying what he did and blood on his shoes, talking
13 about how he watched -- he felt his nose break
14 against his hand, not me.

15 Q Were you there when Ricky McElveen, Jr. called home
16 and tried to talk to his --

17 A I --

18 Q -- dad or his home?

19 A No, sir, and if I was and I don't remember, and I'm
20 trying to remember. I just -- this was five years
21 ago. It was a night of drinking and -- and I
22 don't -- this isn't something I just put in my --
23 Judge -- and I don't think I can remember. This is
24 just something I want to get past me, behind me.

25 Q Excuse me just a moment.

1 A All right.

2 I apologize, Your Honor, for being rude. I'm
3 just --

4 THE COURT: You're not a professional
5 witness. No problem.

6 THE WITNESS: Okay. Yeah, exactly. I don't
7 want you to think this is just who I am. This is
8 definitely not, just -- scared. I'm going to get fired
9 for missing a day from work. Your job is definitely up
10 in the air nowadays.

11 MR. MATHISON: Thank you, Mr. Byrd. Please
12 answer any questions that Mr. Lee may ask of you.

13 THE WITNESS: Yes, sir, yes, sir.

14 **CROSS-EXAMINATION**

15 By Mr. Lee:

16 Q Just a couple. I want to get one thing straight.
17 Scott Bell, not Scott Lee, is who you're talking
18 about, right?

19 A Yes, sir.

20 Q I just wanted to make absolutely sure. Where do you
21 work Billy Joe?

22 A I work with my brother-in-law's family, Tony (unable
23 to transcribe due to quality of reporter's notes)
24 Construction.

25 Q Have you just started working there?

1 A Yeah. I've sort of gone back and forth between jobs
2 lately because one job I get, you know, they run out
3 of work, next job I get they run out of work, so I'm
4 working at night and during days now to make bills
5 paid.

6 Q And where have you been working the last two days?

7 A Work.

8 Q And didn't you have a doctor's appointment to --

9 A Yes, yes. And I worked half a day and shot out there
10 and called to see if I could --

11 Q You're not trying to duck out on any --

12 A No, sir, by far not. I live in Beaufort.

13 Q Are you concerned with the status of your job?

14 A Yes, very much so because there is a next guy to
15 replace me just because you miss a day nowadays.

16 Q Now, Rick or Linda weren't downtown --

17 A No, sir.

18 Q -- that night were they?

19 A No, sir.

20 Q Was there any conversation or anything between them
21 and -- and Ricky, Jr. and -- or you that -- you go
22 down and go after Matt McAlhaney?

23 A No, sir. Not at all. From the bottom of my heart, I
24 swear to y'all, no.

25 Q They've alleged a conspiracy between Rick, Sr.,

1 Linda, you and Ricky that y'all had this common plan
2 or scheme or design that you talked about it and that
3 you -- all of y'all planned this thing and
4 participated and planned this attack on
5 Mr. McAlhaney; is that true?

6 A No, sir, that's never been in my character.

7 Q Everything said today been true?

8 A Yes, sir.

9 MR. LEE: No more questions.

10 **CROSS-EXAMINATION**

11 By Mr. Templeton:

12 Q Good morning, Mr. Byrd. My name is Morgan Templeton.

13 I represent Mike McEachern down there.

14 A Okay.

15 Q Do you know Mike?

16 A I've heard that name before. I just don't
17 remember --

18 Q Have you ever speak spoken with that man down there?

19 A No, sir.

20 Q Fair for me to say that you've never heard anything
21 come out of that man's mouth about Mr. McElveen? Is
22 that fair to say?

23 A Yes, sir.

24 Q Okay.

25 A And I'm not very good with dates, so I'm just going

1 to give you (unable to transcribe due to quality of
2 reporter's notes) date --

3 Q Okay. Me neither, so --

4 A June 2004, okay? About six years ago.

5 Q Okay. Since then, have you heard anybody in the
6 community saying anything bad about Mr. McElveen.

7 A No.

8 Q Does he enjoy a good reputation?

9 A As far as I know.

10 Q Okay. Last question. Your conviction for simple
11 assault?

12 A Yes, sir.

13 Q Did you appeal that conviction?

14 A I'm so -- I'm so ignorant to law, I -- no.

15 Q Thank you.

16 THE COURT: Anything else.

17 MR. MATHISON: A couple of follow-ups, Your
18 Honor.

19 **REDIRECT EXAMINATION**

20 By Mr. Mathison:

21 Q You say you don't know anything about a conspiracy;
22 is that right?

23 A No, sir.

24 Q Do you know who told Rick, Jr. that his children had
25 been molested by Matt McAlhaney?

1 A I do not recall. I remember coming home from work
2 that day and him being upset, in tears and I
3 basically had to pry it out of him to find out what
4 happened. I think he was just embarrassed.

5 Q Did Rick, Jr. tell you that his mother is the one --
6 actually his stepmother -- that told him that Matt
7 had molested the children?

8 A Sir, I really don't recall.

9 Q What is the difference between your memory today,
10 Mr. Byrd, your memory on February 11, 2009?

11 A I don't know. Refresh my memory.

12 Q Well, here's the question.

13 A A big difference. I've lost my mom. I've had these
14 things going on. I've had a lot of heartaches. I'm
15 worried about a job. I've been laid off. These are
16 the last things that are on my mind right now --

17 Q Yes, sir.

18 A -- or yet care about.

19 Q And my question to you on February 11, 2009, was --
20 and I'm quoting, "Did Rick, Jr. --

21 MR. LEE: Page and line, please.

22 MR. TEMPLETON: 56, please.

23 THE WITNESS: Hold on. Let me catch up to
24 you.

25 ///

1 By Mr. Templeton:

2 Q Line 17.

3 A Line what?

4 Q 17.

5 A Got you.

6 Q And the question was, "Did Rick, Jr. tell you that
7 his mother is the one or his stepmother is the one
8 that told him that Matt had molested his children?"
9 And what was your answer to that?

10 A "I think so, yes. Yes, sir."

11 Q Isn't that what triggered the events that we're
12 talking about here?

13 A What do you mean?

14 Q The attack on my client that took place --

15 A No. No. No. No. No.

16 Q December 23.

17 A No. No. No. No. I remember Ricky specifically
18 being upset and happening to (unable to transcribe
19 due to quality of reporter's notes) into -- you know
20 seeing Matt McAlhaney downtown and just being upset
21 about it, you know, of course -- I mean, not saying
22 any of it is true at all -- at all or what -- what
23 the story is. I don't know any of this facts, but
24 you know, you're downtown. You hear this thing.

25 Somebody is arrested on it. Your emotions as a

1 father are running wild, you know, I'm not excusing
2 any of it, but --

3 Q Thank you, sir. I don't have any further questions.

4 A Thank you.

5 THE COURT: Mr. Byrd?

6 THE WITNESS: Yes, sir, Yes, Your Honor.

7 THE COURT: You can hang around. You're a
8 party to the lawsuit. Or you can be on your way.

9 THE WITNESS: Yeah, because I'm scared I'm
10 going to lose my job. I'll get back.

11 MR. MATHISON: May it please the Court, I
12 don't have him under subpoena, so if he wants to leave,
13 that's fine.

14 THE WITNESS: Thank you, Your Honor. Sorry
15 for being like that. Who do I return this to? (Holding
16 up the deposition.)

17 MR. MATHISON: Me. Thank you.

18 Excuse me, Your Honor. I need to consult
19 with my son for one second.

20 THE COURT: All right.

21 MR. MATHISON: May it please the Court. The
22 plaintiff would call Linda McElveen to the stand.

23 ///

24 ///

25 ///

1 THEREUPON,

2 LINDA MCELVEEN,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Mathison:

6 Q Where do you reside, Ms. McElveen?

7 A Lady's Island.

8 Q What is the address?

9 A 95 Walling Grove Road.

10 Q You are a defendant in this case?

11 A Yes.

12 Q Ms. McElveen, is that when you learned that your
13 grand -- excuse me, your husband's grandchild had
14 been abused, the first person you called was not a
15 doctor, but was your husband's Family Court lawyer,
16 Scott?

17 MR. LEE: Judge, we keep going into this and
18 I guess he wants a mistrial.

19 THE COURT: I guess.

20 MR. LEE: Because I have no way to defend
21 that.

22 THE COURT: But this is just a question at
23 this point. The answer is, yes, she would have called
24 you for advice, but if it gets into what you said and
25 you're a witness, that's fine, we're out of here. But I

1 don't think that's what he wants.

2 Proceed.

3 By Mr. Mathison:

4 Q Is it true?

5 A No.

6 Q Who is the first person you called?

7 A My sister.

8 Q And that woman's name is Joan Ludwig?

9 A That's correct.

10 Q Did you discuss allegations of --

11 THE COURT: Hold it just one second because
12 the jury needs to understand this.

13 Mr. Lee represents all the defendants. They
14 could have sued Mr. Lee, not that he's done anything
15 wrong, if they wanted to and made him a party. They
16 could have taken his deposition. He would have been able
17 to have various attorney-client privileges and so forth,
18 but if it becomes necessary for him to become a witness,
19 then he can't represent them because he can't be a
20 witness and also be an advocate.

21 So that's all that we are doing, cautioning
22 them that if he says I called Mr. Lee and he said such
23 and such and such and such and he didn't say that, then
24 he's out of the case and got to testify, so we don't want
25 to try the case again. But if it comes out that the

1 statements are made that he's going to have to rebut or
2 it damages his position, representing him, then the case
3 is over again and we'll have to do it again later and
4 that's why we're just being very cautious about this and
5 if Mr. Mathison brings it out, it's unintentional, you
6 know. It would be -- he's not purposefully doing that
7 because we've been over all this, but it does not matter.

8 If inadvertently it's brought out, anything
9 that Mr. Lee being an attorney feels like he's got to
10 take the stand and rebut, or say that's not say then at
11 that point he -- this case is over because they have to
12 get other counsel, all the defendants.

13 All right.

14 By Mr. Mathison:

15 Q You called your sister; is that correct?

16 A Yes, I did.

17 Q And her name is Joan Ludwig; is that right?

18 A Yes.

19 Q Did you call anyone else before you called Mr. Lee?

20 A I called a school teacher.

21 Q And wasn't the school teacher for Jackson was it?

22 A No, it was not.

23 Q Her name was Erin Booth?

24 A That's correct.

25 Q That was the school teacher for Ricky; is that right?

1 A That's correct.

2 Q And did you tell Ms. Booth about the child
3 molestation allegations?

4 A I -- no. I told her I needed help, but I didn't tell
5 her what was -- what he said.

6 Q Then did you call Mr. Lee?

7 A After I talked with my sister and she told me that I
8 should call.

9 She said, "Does Rick have an attorney?"

10 I said, "Yeah."

11 She said, "Well, then, maybe you should call
12 him and ask him what you should do."

13 Q But the attorney was Rick's attorney right?
14 Mr. McElveen your husband? Was? Your attorney? --
15 your attorney --

16 A Well, we were both trying to get the kids so --

17 Q Yes, ma'am, but you were not a party in the action,
18 were you? You were just the wife of Richard Keith
19 McElveen, Sr., who's the only party plaintiff; isn't
20 that right?

21 A That's correct.

22 Q So the lawyer, Mr. Lee, was the lawyer for your
23 husband, right?

24 A Yes.

25 Q And did you contact ultimately, the Beaufort County

1 Sheriff's Office?

2 A Yes, I did.

3 Q After you talked to these three other individuals; is
4 that right?

5 A Yes.

6 Q Who else did you tell about Mr. McAlhaney being a
7 child abuser?

8 A I don't recall telling anybody else. We talked
9 within our family about it. My children had to know,
10 but other than that, I don't recall telling anyone.
11 I was embarrassed to death.

12 Q Well, you ultimately told your son, Rick, Jr., didn't
13 you?

14 A I don't know if I told him or who told him. We had a
15 family meeting. The children had to be told what was
16 going on.

17 Q Yes, ma'am.

18 A It was already out on the streets. They had already
19 been passing affidavits around showing paperwork and
20 so --

21 Q Did you have your deposition taken in this case,
22 ma'am?

23 A Yes, I did.

24 MR. MATHISON: May it please the Court. I'm
25 going to open the seal on this.

1 THE COURT: Can do it.

2 By Mr. Mathison:

3 Q I'm handing you this document and ask whether it says
4 original on the face of it.

5 A It does.

6 Q I'm asking you to turn to page 56, please.

7 A Okay.

8 Q I'm directing your attention to line 18. Question
9 is, "Did you discuss with Richard, Jr. the
10 allegations that you had made that -- that you --
11 that you made about Matt McAlhaney?

12 A And it says, "I'm sure I did."

13 Q Okay. When was it that you discussed it with him?

14 A I think we discussed --

15 MR. LEE: Your Honor, may we approach on this
16 matter?

17 THE COURT: Sure, you can.

18 (WHEREUPON, there was a bench conference out
19 of the hearing of the jury and the court reporter.)

20 By Mr. Mathison:

21 Q Ma'am, the full content of that question on line 18
22 was, "Did you discuss with Richard, Jr. the
23 allegations that you made that you said came from the
24 children?" Is that what it says?

25 A That's what it said.

1 Q And what was your answer?

2 A "I'm sure I did."

3 Q And then, what else did you say? My next question
4 was, "That would have been --"

5 And then you interjected and said what at
6 line 23?

7 A Says, "As a matter of fact, he called him up and told
8 him to keep his hand off of him."

9 Q And who was it that called him up?

10 A That was with the -- when he spanked him. He didn't
11 call him up after he was a -- accused him of -- of --

12 Q Well, did you tell him about the sexual abuse as
13 well?

14 A We had a family meeting. We told all our children.

15 Q Okay. Did you see the letter that your husband wrote
16 to Governor Sanford?

17 A I've seen it.

18 Q Did you see it at or about the time that he wrote it,
19 that is September 9, 2003?

20 A I don't know if I did or not for sure. I don't -- I
21 don't know if I saw it before or after. I've seen
22 it.

23 THE COURT: Hold it just one minute. Not to
24 do with this case.

25 Jurors, on this day, various people that are

1 accused of crimes come in to make reports as to various
2 things when their case is going to be called for trial,
3 when they were to have a trial, whether they're going to
4 plead guilty, whether the case is going to be dismissed.
5 Bottom line, we have two or more individuals of accused
6 of crimes -- I'm not saying they're all guilty, but some
7 of them are, so there all in the courthouse and when you
8 hear things like in the hall that deputies taking control
9 of somebody who does not like to be here who might have
10 been an armed robber, accused of murder or something, who
11 knows, anyway if you hear those noises. It's not the
12 press running in trying to get in here to film what's
13 going on. It's because of security detail that's trying
14 to keep order on the one hand, on the other hand not
15 saying any of these people committed any crimes, but
16 y'all be careful today. They're all around.

17 Okay. Go ahead.

18 By Mr. Mathison:

19 Q Referring to page 60, line 4, question is, "I'm just
20 asking you if you wanted to discharge the governor
21 from having this individual testify at proceedings.
22 Was it necessary to call Mr. McAlhaney, a drug
23 abuser, a drug addict, or a child abuser?"

24 And what was your answer?

25 A "Yes, I think so."

1 Q You thought it was necessary to discharge Julia
2 Sanford from participating in that domestic
3 proceeding to call my client, all those names; is
4 that right?

5 A I was -- you were talking about the letter that was
6 written.

7 Q Yes, ma'am?

8 A Uh-huh.

9 Q You felt that was appropriate?

10 A I didn't write the letter.

11 Q Did you have occasion, with your husband,
12 Mr. McElveen, Sr. to take Jackson to be interviewed
13 by Randolph Murdaugh, III and Angela McCall-Tanner,
14 the solicitor -- solicitor and assistant solicitor
15 respectfully?

16 A Yes, they sent for us to come down.

17 Q And did that take place in December of 2004?

18 A I can't remember exactly when it took place. I know
19 it was either in December or January, I don't
20 remember the exact time or date.

21 Q And when you got there did they interview Jackson out
22 of your presence in the presence of Mr. McElveen,
23 Sr.?

24 A Yes, they did which I found out since then was not
25 the proper procedure.

1 Q Pardon me?

2 A It's not the proper procedure, that the child should
3 have somebody in there like his guardian ad litem or
4 someone else.

5 Q You didn't know that at the time your deposition was
6 taken, did you?

7 A I don't know if I did. My deposition was taken two
8 years ago. I don't -- I don't know.

9 Q And specifically with reference to this conversation
10 on page 141, I asked you some questions about it at
11 line 14. Do you see the dialogue that begins --

12 A Where you -- where you asked me --

13 Q I -- at page 141, and I asked you specifically at
14 line 14, "Did the conversation take place before
15 Christmas in 2004?"

16 Do you recall that?

17 A I don't recall you asking me that, but it's in here.

18 Q Yes, ma'am. If you'll turn over to page 144, line
19 16 -- excuse me -- line 14. I -- now, look at line 9
20 and I asked you at line 9, "which of either" --
21 meaning Mr. Murdaugh or Ms. Tanner, "told you" --
22 excuse me. Forgive me. Strike that, if you would.
23 I'm in the wrong place.

24 If you'd look at page 142, line 12. And I
25 asked you who --

1 MR. LEE: I'm going to object to any hearsay
2 testimony that the solicitor said to her.

3 THE COURT: The solicitor has already
4 testified.

5 MR. LEE: No, this is the head solicitor, who
6 is not here.

7 THE COURT: He objects to it. She can
8 testify as to anything Ms. Tanner told him.

9 MR. MATHISON: Well, they were together, Your
10 Honor.

11 THE COURT: I understand that. Bottom line
12 is, you've got rules and if nobody objects, I don't rule.
13 If anybody objects, I try to call it like the rules say.

14 MR. LEE: I'll withdraw the objection.

15 By Mr. Mathison:

16 Q At line 11, I asked you, "Who told you that the case
17 was not going to be prosecuted?"

18 And at line 12, did you answer -- tell me
19 what your answer was.

20 A My answer here says, "The solicitor told us that
21 Jackson was too young to testify."

22 Q And at line 16, I said, "When did Randy Murdaugh tell
23 you that?"

24 And you said what?

25 A "Sometime after the meeting."

1 Q And line 19, in response to my question sometime,
2 what did you say?

3 A I said, "I think he might have told us that --"

4 Q That day?

5 A Are you going to let me answer?

6 Q Yes, ma'am.

7 A I said, "I think he might have told us that day of
8 the meeting. He said he thought Jackson would be too
9 young to testify."

10 Not a quote, but they never told us that it
11 was not prosed. They said they would --

12 Q Excuse me. Go ahead?

13 A They said that they were going to look into it
14 further.

15 Q Uh-huh. And then if you'd look at line 144 -- excuse
16 me -- page 144, did I ask you whether you told Junior
17 after that meeting that Mr. McAlhaney was not going
18 to be prosecuted?

19 A I'm sorry, what line?

20 Q Line 9. "Specifically, which, if either of you, told
21 your stepson Rick, Jr.?" That was the question.

22 A And I don't know which of us.

23 Q But one of you did, didn't you?

24 A Told him what?

25 MR. LEE: Your Honor, get him to read her the

1 question. (Unable to transcribe due to quality of
2 reporter's notes) Mr. McElveen there's no --

3 THE COURT: Hold it. Here is -- you can
4 either ask her a question or you can go down the
5 deposition, but if you're going down the deposition, give
6 her a line and so forth and then let her read her
7 response. Don't hybrid it on her because it -- Mr. Lee,
8 Mr. Templeton can't follow where you're going.

9 By Mr. Mathison:

10 Q Did one of you, Mr. McElveen or you, tell Rick, Jr.
11 that his -- that the alleged child molester was not
12 going to be prosecuted?

13 A I really don't know if we did or not. It was like
14 six years ago. I don't know who told who what. It
15 was like way after that. I don't know.

16 Q But you knew it?

17 A I knew what? That he wasn't going to be prosecuted?

18 Well, we got a message on our answering
19 machine in February telling us.

20 Q You knew it when the solicitor told you after the
21 interview with Jackson, didn't you?

22 A He didn't tell us. He told us that he thought the
23 child was too young. I was worried about the child
24 being too young. He was only four.

25 Q Ma'am, on Christmas Eve at 3 o'clock in the

1 morning --

2 A Yeah.

3 Q -- December of 2004, did you receive a call at your
4 house from your stepson, Rick McElveen, Jr.?

5 A I did.

6 Q And did he tell you all about the attack on my client
7 that had just taken place?

8 A No, he didn't.

9 Q What did he tell you, ma'am?

10 A He was drinking, and he told me that him and Matt had
11 just got into it and that I was -- I was very upset.

12 Q How old was your son at the time he made that
13 telephone call to you?

14 A Well, he's 33 now, so --

15 Q 28 years old?

16 A Yeah.

17 Q And he wasn't living at home was he?

18 A I think he was living at the back of our apartment.
19 We had an apartment.

20 Q Wasn't he living on Lady's Island with a gentleman by
21 the name of Forrest Hatch?

22 A I don't know Forrest Hatch. I don't know.

23 Q What was the purpose of the call?

24 A Because he thought he might be going to jail and he
25 wanted to let us know.

1 MR. MATHISON: Thank you, ma'am. Please
2 answer any questions Mr. Lee may have.

3 CROSS-EXAMINATION

4 By Mr. Lee:

5 Q You seem a little bit nervous; is that right, Linda?

6 A Yes, sir, I am.

7 Q Are there other things you'd rather be doing?

8 A Yeah.

9 Q I'm sorry.

10 A I'm sorry. Yes.

11 Q Is it painful for you to have to come back to court
12 however many years later and live through all this?

13 A Yes.

14 Q Are the boys staying with you and Rick, Sr. now?

15 A Yes.

16 Q Are you okay? Do you need a break?

17 A No.

18 Q Are they doing well?

19 A Yeah.

20 Q And they don't know about any of the stuff going on
21 here, do they?

22 A No.

23 Q How about Molly, their mom? Are you in contact with
24 her?

25 A Not really, no.

1 Q Do you know what's going on with her, how she's --
2 where she is, what she's been doing?

3 A Well, her father called me Monday. They --

4 MR. MATHISON: Objection.

5 By Mr. Lee:

6 Q You can't talk about --

7 A Oh, I'm sorry.

8 Q That's all right.

9 A Don't think she's doing good.

10 Q When all this stuff was going on out -- can you tell
11 us a little bit about her, what you thought about
12 her?

13 A Well, she was a beautiful girl. She had a lot of
14 problems. She didn't take very good care of the
15 children. She made a lot of bad decisions. She did
16 a good bit of drugs. We tried our best to keep the
17 family together. They split up. They moved back
18 into our home and had Jackson.

19 We took them in and we tried to get them a
20 house and got them a house a few doors down from us
21 and watched them, took care of them, had to oversee
22 her and --

23 Q When you say them, you're talking about Molly, Ricky
24 Jr. and the boys?

25 A Yeah.

Q And did a lot of the responsibilities of parenting
kind of fall into y'all's lap?

A Yes, they did.

Q Were you or your husband looking to re-raise kids?

A No.

Q Okay. Because y'all had already raised Ricky, Jr.
and then you've got two -- two daughters, right?

A Well Ricky, Jr., two daughters and we have nine
grandchildren.

Q Right. Okay.

A No. I mean, I had preferred that the parents raise
the children so we could do what we would like to do.

THE COURT: Yes, sir.

MR. MATHISON: May we approach, Your Honor?

THE COURT: You can.

It's either this, jurors or send y'all out.
To send you out would take 15 minutes. This will only
take two.

(WHEREUPON there was a bench conference out
of the hearing of the jury and the court reporter.)

By Mr. Lee:

Q Linda, did you in any way instruct your son to go
downtown and assemble a bunch of people to fight
Mr. McAlhaney?

A No, I didn't. That is just so unbelievable that we

1 would even do that. Who does that? Who sends their
2 son down to fight somebody that's been charged for
3 molesting their child? It's more (unable to
4 transcribe due to quality of reporter's notes) that
5 he was going to get in trouble when he ran into him.
6 No. I did not do that.

7 Q Did you -- you or Rick ever instruct Ricky, Jr. or
8 suggest to Ricky, Jr. that maybe you shouldn't hang
9 out downtown --

10 A Yes.

11 Q -- since that's where Mr. McAlhaney hung out?

12 A Yes, I knew he hung out downtown. I knew from a lot
13 of talk that he was down there every night, all night
14 and I asked him, please whatever you do, stay away
15 from downtown, stay away from him. My husband and I
16 to this day have not even went down to have dinner in
17 a restaurant.

18 Q And your concerns for the wellbeing of the children
19 started much earlier than any association you ever
20 had with Matt McAlhaney; isn't that true?

21 A Yes.

22 MR. MATHISON: He is leading, Your Honor.

23 THE COURT: So? He's moving it along.

24 By Mr. Lee:

25 Q And really -- and you had no prior dealings or

1 information --

2 A I didn't know who he was, huh-huh.

3 Q And the only reason that -- I guess that circumstance
4 brought y'all together because of the -- of the
5 pending Family Court stuff when he was dating Molly,
6 right?

7 A Yes.

8 Q You didn't have anything against him?

9 A No. I didn't know him. I thought maybe, you know,
10 she was going to do good this time. I didn't know --

11 Q Were you hoping she was going to do good?

12 A Yeah, I really did. I hoped that she -- and I still
13 hope to this day, that she can get it together and do
14 good.

15 MR. LEE: That's all I have, Your Honor.

16 Thank you, Linda.

17 THE COURT: Mr. Templeton?

18 MR. TEMPLETON: Yes, sir, we've got a few
19 questions.

20 By Mr. Templeton:

21 Q Hey, Ms. McElveen.

22 A Hi.

23 Q You doing all right?

24 A Yeah.

25 Q Just a few questions for you. You haven't sued

1 Mr. McEachern in this action, have you?

2 A No.

3 Q Is that a no?

4 A I'm sorry, no.

5 Q And you're not claiming any damages in this lawsuit,
6 are you?

7 A As far as McEachern goes?

8 Q That's right.

9 A I don't know of any claim other than --

10 Q I just want to confirm a couple of things about your
11 husband. You're not aware of anyone by name that
12 does business with your husband, Mr. McElveen, prior
13 to Mr. McEachern's letter being with him that no
14 longer does business with him today, are you?

15 A I don't know a lot of people that he did business
16 with, but I knew he has told me that there was some
17 that quit doing business with him because of --

18 Q All right.

19 A He had a lot of questions.

20 Q Do you recall giving a deposition in this case?

21 A Yes, I do.

22 Q And do you remember giving that deposition in this
23 case?

24 A Yes, I do.

25 Q And do you remember giving that deposition in

1 Beaufort on November 4, 2008?

2 A Yes.

3 Q And before you answered any of those questions, you
4 raised your hand, swore or affirmed to tell the
5 truth, didn't you?

6 A Yes.

7 Q And you told the truth in that deposition, didn't
8 you?

9 A Yes, I did.

10 Q Do you have your deposition there in front of you?

11 MR. MATHISON: She does.

12 THE WITNESS: I do.

13 By Mr. Templeton:

14 Q If I can get you to turn to page 193. This was my
15 question to you and if you'd follow along, I'm
16 starting on page 18, on page (unable to transcribe
17 due to quality of reporter's notes), "And you know
18 the reason I ask is because I need to know because
19 when this case goes to trial, you will have an
20 opportunity to tell the jury about this and I wanted
21 to know today, is there anybody that you're going to
22 tell the jury about that either did business with
23 Mr. McElveen, socialized with Mr. McElveen, had any
24 interactions with him at all, prior to this booklet
25 being written that's been identified as Plaintiff's

1 Exhibit 17, and then no longer does business with
2 him, socializes with him, or he has adversely
3 affected by it?"

4 And your answer is -- follow along and make
5 sure I read this correctly, "I know that he told me
6 so and so, this and so and so that, but I don't
7 remember who they were."

8 My question then, so you cannot tell me
9 anybody by name; is that correct?"

10 And your answer is, "That is right."

11 A That's correct.

12 Q Okay. So you're not aware of anyone by name that has
13 socialized with Mr. McElveen prior to that letter
14 being written that no longer socializes with him
15 today, correct?

16 A Not socializes. We don't have a big social life.

17 Q Okay. Ms. McElveen, you love your husband, don't
18 you?

19 A Yes, I do, very much.

20 Q Thank you so much?

21 THE WITNESS: Thank you.

22 MR. MATHISON: No redirect, Your Honor.

23 THE COURT: You can step down.

24 MR. MATHISON: Your Honor, may it please the
25 Court, plaintiff would call Joel Bailey to the stand.

THE COURT: All right.

THEREUPON,

JOEL BAILEY,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Mathison:

Q Where do you reside, Mr. Bailey?

A I reside at -- in Beaufort.

Q How old are you?

A 63 this year.

Q And what is your occupation?

A I'm an attorney.

Q Did you at one juncture own more than one boat?

A Yes.

Q Did you at one juncture own a boat?

A I have owned more than one boat, yes.

Q Did you have business dealings with respect to Mr. McElveen having to do with a boat and a boat trailer?

A I did.

Q And did you have a problem with respect to the trailer that you delivered to him?

A The trailer ended up missing at some point.

Q And how did you learn that the trailer was missing?

A As I recall, this was, is, somewhere around 1997, so

1 the details are a little fuzzy, but as I recall, I
2 needed to have some mechanical work done on the boat.
3 It was actually my wife's boat and trailer, and I
4 needed to transport it to a facility away from
5 Mr. McElveen's facility and they couldn't locate the
6 trailer.

7 Q Was there any doubt in your mind as to who owned the
8 trailer?

9 A No. My wife owned the trailer.

10 Q And what was done to rectify the situation when
11 Mr. McElveen couldn't produce your trailer for you?

12 A Mr. McElveen and I worked out an arrangement
13 wherefore I believe it was somewhat of a reduced
14 linear footage charge, my wife's boat was to get free
15 storage at the marina for a year, I think.

16 Q This was in lieu of his providing the trailer to you?

17 A Yes.

18 Q Do you believe that Mr. McElveen misappropriated your
19 trailer?

20 A I don't know. I just know the trailer was missing,
21 that we delivered it to Mr. McElveen, and the trailer
22 ended up missing.

23 Q Do you believe that Mr. McElveen is honest or
24 dishonest in his dealings?

25 A To be honest with you, Mr. Mathison, I can't really

1 address that. That's the only -- the only episode
2 that I've had with Mr. McElveen as far as I'm
3 concerned was that one instance. I can't say
4 whether -- I can say that we worked it out. That's
5 all I can tell you.

6 Q You resolved it? Is that correct?

7 A We did.

8 Q Did you have to threaten to file a lawsuit to get him
9 to work it out?

10 A We did threaten to file a lawsuit.

11 Q Is that what convinced him that he needed to make
12 some concessions?

13 A I don't know what convinced him, but it got resolved
14 after that.

15 Q You didn't actually have to file a lawsuit; is that
16 correct?

17 A No, we did not.

18 MR. MATHISON: Thank you, very much. Please
19 answer any questions Mr. Lee may have.

20 **CROSS-EXAMINATION**

21 By Mr. Lee:

22 Q We've probably all threatened to sue people every
23 once in a while, don't we?

24 A I'm sorry, I --

25 Q You're a lawyer, you've probably threatened to sue

1 people before, haven't you?

2 A Isn't that what we do. I don't know if you can use
3 the word threat into sue, it may be --

4 Q Nevertheless, there was some issue about the trailer
5 and y'all worked it out, right?

6 A That's true.

7 Q And he gave you a year's free rent in lieu of
8 replacing the trailer?

9 A That's true.

10 Q And you're happy with that, and you feel like that
11 worked out?

12 A We were fine with that.

13 MR. LEE: That's all.

14 MR. TEMPLETON: I have no questions of
15 Mr. Bailey other than to say hello.

16 THE COURT: That's fine, you can be excused
17 if you like.

18 THE WITNESS: Thank you, Judge.

19 MR. MATHISON: Your Honor, may it please the
20 Court, may we have a short recess.

21 THE COURT: We will have a short recess. 15
22 minutes, but we'll take it. Don't talk about the case,
23 jurors. Relax.

24 (WHEREUPON the jury left the courtroom.)

25 MR. LEE: I was going to try to find out what

1 Mr. Mathison's plan of action is because I have some
2 witnesses and --

3 THE COURT: I know. We need to find that out
4 because the week is moving on.

5 MR. LEE: And I have some witnesses I need to
6 get here.

7 THE COURT: Mathison?

8 MR. MATHISON: Yes, sir.

9 THE COURT: Just one second. We need to do
10 scheduling because he needs to know about getting his
11 witnesses here and so forth.

12 That's all.

13 MR. MATHISON: I'm going to put in
14 Ms. McCuller's deposition. I'm trying to make up my mind
15 whether to call the defendant McElveen, Jr. or to put in
16 a limited number of excerpts from his deposition. At
17 that juncture, the plaintiff's going to rest his case.

18 THE COURT: All right.

19 MR. LEE: You're not going to call Baird or
20 McElveen?

21 MR. MATHISON: No.

22 THE COURT: Is that enough information?

23 MR. LEE: That's enough information.

24 THE COURT: Thanks.

25 MR. TEMPLETON: I need the same curtesy,

1 Judge, to know kind of what Scott's doing so I can deal
2 with the witnesses. I've got (unable to transcribe due
3 to quality of reporter's notes) subpoena as well, whether
4 I need to have them on standby this afternoon or this
5 morning.

6 THE COURT: We're going to not finish this
7 afternoon and --

8 MR. LEE: I don't think I'm going to finish
9 anything this afternoon because I've got to do, Rick,
10 Ricky, (unable to transcribe due to quality of reporter's
11 notes), Baird and --

12 MR. TEMPLETON: For my purposes, I'll tell my
13 witnesses to the extent they're not (unable to transcribe
14 due to quality of reporter's notes) tomorrow if that's
15 agreeable with the Court.

16 THE COURT: Fine. If, by chance we finish
17 all the McElveens, we'll be in good shape. Testifying.
18 I don't think we can, but --

19 MR. TEMPLETON: Okay.

20 MR. LEE: Maybe I should tell my people to be
21 here at nine o'clock in the morning.

22 THE COURT: I don't know. You know, your the
23 lawyer, but seems to me like Mr. McElveen, he's going to
24 question him anyhow.

25 (WHEREUPON a short recess was observed.)