

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY

JAN 28 2019

Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2018-000791

Case No. 2016-CP-08-0131

Jeffrey Lance Cruce,.....

Respondent,

v.

Berkeley County School District,.....

Appellant.

RECORD ON APPEAL - VOLUME I

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APPEAL FROM BERKELEY COUNTY
Kristi Lea Harrington, Circuit Court Judge

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Jeffrey Lance Cruce,

Plaintiff,

v.

Berkeley County School District,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-08-0131

ORDER

MARY P. GROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

18 MAR 29 AM 11:00

FILED

THIS MATTER COMES BEFORE THE COURT following a jury trial held from September 5, 2017, through September 7, 2017. Attorney for the Plaintiff, Nancy Bloodgood, and Attorneys for the Defendant, Grayson Lambert and Richard Morgan, appeared. On September 7, 2017, the jury returned a verdict in favor of the Plaintiff and awarded damages in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). The Defendants filed post-trial motions which were heard on March 7, 2018.

PROCEDURAL HISTORY

The Plaintiff was employed as a head coach, athletic director, and teacher for the Defendant School District. The Plaintiff was terminated from employment with the Defendant on December 16, 2015. The Plaintiff brought suit claiming wrongful termination and defamation. During the course of the trial, the Defendant made a motion for directed verdict. The Court granted the Defendant's Motion on the wrongful-termination claim and the defamation claim based on the Defendant's silence when it removed Cruce as the head football coach and athletic director at Berkeley High School and transferred him to a middle school in the District. The Court submitted the case to the jury on the sole issue of Defendant's claim for defamation arising out of an e-mail sent January 7, 2016.

The Defendant filed post-trial motions for Judgment Notwithstanding the Verdict (JNOV), SCRCF 50(b), or in the Alternative, for a New Trial, SCRCF 59(a), asserting:

- (1) The claim should not have been submitted to the jury because the Plaintiff had to prove actual malice, and any claim requiring proof of actual malice is barred by the Torts Claim Act.
 - a. The Plaintiff is a public official.
 - b. The Plaintiff is a limited public figure.
- (2) The Plaintiff did not prove each element of his defamation claim because:
 - a. The January 7th e-mail was not defamatory,
 - b. No evidence at trial suggested that the e-mail was written with common-law malice, and
 - c. No evidence was offered by Plaintiff to show that any damages proximately flowed from the e-mail.
- (3) The e-mail was not false.
- (4) It is unclear that the jury knew its role was to determine whether the qualified privilege was exceeded, which it was not, given that only coaches received an e-mail written in response to a specific inquiry about student-athlete eligibility.

STANDARD OF REVIEW

Pursuant to SCRCF 50(b), when ruling on a motion for judgment notwithstanding the verdict, the trial court is required to view all evidence and reasonable inferences in the light most favorable to the non-moving party, or in this case, the Plaintiff. *See Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320 (S.C. Ct. App. 2012). The motion must be denied where either the evidence yields more than one inference or its inference is in doubt. *Buff v. South Carolina Dept.*

of Transp., 332 S.C. 472, (S.C. Ct. App. 1998) *reh'g denied, cert. granted, rev'd on other grounds*. Pursuant to SCRCP 59(a), when ruling on a motion for new trial, the court "take[s] its own view of the evidence and grant[s] a new trial if it disagrees with the jury's verdict. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 334 (S.C. 2012). If the court determines a verdict rendered to be excessive, it may award a new trial to the defendant unless the plaintiff agrees to remit a portion of the verdict. *See Graham v. Whitaker*, 282 S.C. 393, 401 (S.C. 1984). An alternative motion for new trial that simply mirrors a motion for judgment notwithstanding the verdict is limited to the grounds stated in the motion for directed verdict. *Marsh v. South Carolina Dept. of Highways & Public Transp.*, 298 S.C. 420 (S.C. Ct. App. 1989).

LAW AND ANALYSIS

The Defendant makes the following arguments in support of its Motion:

- I. The claim should not have been submitted to the jury because the Plaintiff had to prove actual malice, and any claim requiring proof of actual malice is barred by the Torts Claim Act.**

As to the first ground, the Defendant claims Plaintiff's defamation claim on the January 7th e-mail required him to prove actual malice, and thus this claim should not have been submitted to the jury. Defendant's argument that Plaintiff was required to prove actual malice is based on the claim that Plaintiff, as the head football coach, is a public official or, in the alternative, a limited public figure.

A. The Plaintiff is a public official.

The Defendant makes excellent arguments in support of its position that Plaintiff should be classified as a public official. Defendant cites to other jurisdictions which have conclusively held that a plaintiff was a public official based on their roles as high school sports coaches and athletic directors. *See Johnson v. Sw. Newspaper Corp.*, 855 S.W.2d 182, 197 (Tex. App. 1993); *Johnston v. Corinthian TV Corp.*, 583 P.2d 1101, 1103 (Okla. 1978); *Standridge v. Ramey*, 733 A.2d 1197, 1201-02 (N.J. Super. Ct. App. Div. 1999). While these arguments are thought-provoking, they do not support the current law of the state of South Carolina. In order to become a public official, the Plaintiff must "achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Goodwin v. Kennedy*, 347 S.C. 30 (S.C. Ct. App. 2001) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)). There is no case law in our state that instructs the Court to classify the Plaintiff, as a head football coach and athletic director, as a public official.

B. The Plaintiff is a limited public figure.

Defendants also argue that even if the Plaintiff is not a public official, that he is a limited public figure and must prove actual malice. The South Carolina Supreme Court has delineated five factors to consider in determining whether a plaintiff is a limited public figure: (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. *See Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 473 (2006). While Defendant argues Plaintiff meets the standard under *Erickson*, the Plaintiff claims that he did not meet the elements to become

a limited public figure, as he did not seek to influence or resolve a public controversy. The Plaintiff states that his high school football team's defensive strategy was not a matter of public controversy as contemplated by *Erickson*. This Court agrees with the Plaintiff, and as previously articulated during the course of trial, finds the Plaintiff does not meet the elements of a "limited public figure."

II. The Plaintiff failed to prove each element of his defamation claim.

In order to prove a claim for defamation, the plaintiff must establish the following: (1) a statement with defamatory meaning was made; (2) the statement was published with actual or implied malice; (3) the statement was false; (4) the statement was published by the defendant; (5) the statement concerned the plaintiff; and (6) the statement resulted in presumed damages or in special damages to the plaintiff. *See Parker v. Evening Post Publ'g Co.*, 317 S.C. 236, 242-43 (S.C. Ct. App. 1994). The Defendant claims the Plaintiff failed to prove every element and meet its burden at trial.

A. The January 7th e-mail was not defamatory.

The Defendant argues the Plaintiff failed to prove the first element of his claim for defamation, stating the January 7th e-mail was not defamatory. A statement is defamatory if it has the tendency to harm the reputation of the subject as to lower his esteem among the community or to deter third parties from associating with the subject. *See McBride v. Sch. Dist. Of Greenville County*, 389 S.C. 546, 560 (S.C. Ct. App. 2010). The Defendant asserts that "no reasonable juror could have found the January 7 email defamatory," as the statement was conditional and could not be deemed defamatory on its face or with added context. Defendant's Motion, p. 11-13. The Plaintiff argues ample evidence was presented from which a jury could conclude sending an e-mail to 45 recipients who were employees of the district, volunteer coaches, and parents was

improper, and the Defendant's Principal admitted the same action was improper. A mere insinuation is actionable "if it is false and malicious and the meaning is plain." *See Fountain v. First Reliance Bank*, 398 S.C. 434 (S.C. 2012). As the Plaintiff states, the jury heard testimony from which it could conclude that the e-mail indicated Plaintiff "had been unfit to perform the job of athletic director" or find that "the review of student files and subsequent e-mail was an attempt after the fact to support the District's false reason for termination."

B. No evidence at trial suggested that the e-mail was written with common-law malice.

The Defendant also asserts the Plaintiff failed to present evidence of common-law malice at trial, and thus, the third element of the claim for defamation was not met. Both the Plaintiff and the Defendant agree that the jury was correctly charged with the standard of common-law malice, or "ill will...with the design to causelessly and wantonly injure the plaintiff; or the statements were published with such recklessness as to show a conscious indifference toward [the] plaintiff's reports." *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 530 (S.C. 1998). The January 7th e-mail was written by Chris Stevens, an athletic trainer employed by the Berkeley County School District. As the Plaintiff stated at oral arguments for the post-trial motions, there is evidence to support a claim that the e-mail was sent with "recklessness as to show conscious indifference to the Plaintiff." The Principal of Berkeley High School testified at trial that the e-mail should not have been sent out in the form and manner that was used by Stevens. Stevens had never been employed as the athletic director responsible for keeping the student files. The jury is also able to consider the credibility of the witnesses when weighing the testimony and evidence.

As there was more than one reasonable inference that could be made in regards to the evidence, the Court affirms its ruling at trial to submit the defamation claim to the jury.

C. No evidence was offered by Plaintiff to show that any damages proximately flowed from the e-mail.

The Defendant claims that even if the first four elements of the Plaintiff's defamation claim have been met, the Plaintiff still failed to introduce evidence of damages suffered as a proximate result of the January 7th e-mail. Specifically, the Defendant claims Plaintiff did not prove that any damages he suffered were a natural and probable consequence of the January 7th e-mail. The Plaintiff argues that he was forced to leave the State to find a job and was told he couldn't be hired for other jobs because he was "unfit." Moreover, the Plaintiff argues that while he had not previously had any problems finding employment, an e-mail was circulated to 45 people which inferred that he was unable to perform his job correctly. The Plaintiff submitted evidence of actual damages incurred, including lost salary, lost retirement, and costs of relocation for a new job. Evidence was submitted which would allow a jury to reasonably infer that the Plaintiff suffered damages as a proximate result of the January 7th e-mail.

III. The January 7th e-mail was not false.

Truth is an absolute defense to a claim for defamation which the defendant has the burden of proving, if asserted. *Parrish v. Allison*, 376 S.C. 308, 326 (S.C. Ct. App. 2007). The Defendant asserts that the January 7th e-mail regarding the condition of the files that Plaintiff was responsible for keeping was true, as proved by the testimony and evidence at trial. The Plaintiff contends that the statements in the January 7th e-mail were false and the sender of the e-mail had no experience working with the files, had never reviewed the files previously, and had no training or experience

to validate whether or not the files were incomplete or "out of order." The Plaintiff alleges the e-mail contained a list of alleged issues with the files that the Plaintiff refuted at trial. The Plaintiff also maintains the e-mail was false as it implied that the Plaintiff created a liability for the school based on his failure to maintain the files properly. The Court holds this issue was subject to more than one reasonable inference and as such, was properly submitted to the jury for consideration.

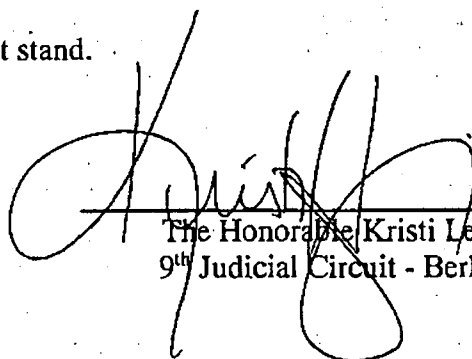
IV. It is unclear that the jury knew its role was to determine whether the qualified privilege was exceeded, which it was not, given that only coaches received an e-mail written in response to a specific inquiry about student-athlete eligibility.

The Defendant argues the jury verdict cannot stand in consideration of the defense of qualified privilege. A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Murray v. Holnam, Inc.*, 344 S.C. 129, 140-41 (S.C. Ct. App. 2001). Whether qualified privilege has been exceeded is a question for the jury. *Id.* at 141. The Defendant argues qualified privilege existed and was not exceeded because the e-mail was sent in good faith, with an interest to be upheld, limited to that interest, on a proper occasion, and published in a proper manner. The Plaintiff testified that the e-mail was sent to a total of 45 recipients, many of whom should not have received the e-mail. The Plaintiff testified that only head coaches are entitled to review the confidential information in each student athlete's eligibility file, and the e-mail was distributed to persons such as volunteer parent coaches. Testimony elicited at trial also stated that the e-mail should not have been sent in the form and manner that it was, according to the Principal of Berkeley County High School. The jury was instructed on the defense of qualified privilege and

returned a verdict for the Plaintiff, thus indicating that it did not find the Defendant met the burden of proving this defense by a preponderance of the evidence.

CONCLUSION

This case was tried over the course of three days and jury deliberations lasted for more than six hours. Both the Plaintiff and the Defendant were represented by competent and professional attorneys who skillfully argued their positions at each stage of the trial. The notes submitted to the Court during deliberations indicated that the delay in deciding the case was based on a dispute as to the amount of damages to be awarded. While counsel for the Defendant has made impressive arguments, this Court, viewing the evidence and the inferences that reasonably can be drawn in the light most favorable to the non-moving party, stands by the decisions made at the directed verdict stage at trial based on the current law of the state of South Carolina. This Court does not find the verdict rendered by the jury so excessive as to warrant a new trial or ruling for new trial *nisi remittitur*. Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Judgment Notwithstanding the Verdict, or in the Alternative, Motion for New Trial, is DENIED, and that the jury verdict stand.



The Honorable Kristi Lea Harrington
9th Judicial Circuit - Berkeley County

March 28 2018
Moncks Corner, South Carolina

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

Jeffrey Lance Cruce

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-08-0131

Berkeley County School District

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 37(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: On September 7, 2017, the jury returned a verdict for the Plaintiff in the amount of \$200,000.00.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jeffrey Lance Cruce	Berkeley County School District	\$200,000.00
		\$
		\$

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page. SCRPC Form 4C (12/2016)

Page 1 of 4

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
JEFFREY LANCE CRUCE,)
Plaintiff,)
v.)
THE BERKELEY COUNTY)
SCHOOL DISTRICT,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-08-0131

Verdict Form

FILED
SEP - 1 2016
CASE # 2016-CP-08-0131
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC

1. Do you find the Plaintiff has proven, by a preponderance of the evidence, that the Defendant Berkeley County School District made a false and defamatory statement about the Plaintiff Jeffrey Lance Cruce?

☒ YES – Go to Question 2.

☐ NO – Stop Deliberations.

2. Do you find the Plaintiff has proven, by a preponderance of the evidence, that the Defendant communicated this statement to a third party, knowing or reasonably expecting it to reach a third person?

☒ YES – Go to Question 3.

☐ NO – Stop Deliberations.

3. Do you find the Plaintiff has proven, by a preponderance of the evidence, that the Defendant made the statement with common law malice?

☒ YES – Go to Question 4.

☐ NO – Stop Deliberations.

4. Do you find the Plaintiff has proven, by a preponderance of the evidence, that the Plaintiff suffered injuries as a result of the Defendant's statement?

☒ YES – Go to Question 5.

☐ NO – Stop Deliberations.

5. Do you find that the Defendant has proven the defense of truth?

☐ YES – Stop Deliberations.

☒ NO – Go to Question 6.

6. Do you find that the Defendant has proven the defense of qualified privilege?

☐ YES – Stop Deliberations.

☒ NO – Go to Question 7.

7. Please state the amount of damages sustained by the Plaintiff, if any.

\$ 200,000.00 (Damages)

I certify that this is a unanimous decision of the Jury.



Ann Marie Kennedy Eager, Foreperson

September 7, 2017

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Jeffrey Lance Cruce,

Plaintiff,

vs.

The Berkeley County School District,

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-08- 131

COMPLAINT
(JURY TRIAL REQUESTED)

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2016 JAN 20 PM 3:52

FILED

This is a wrongful termination Complaint. Despite the State's and the public's concern about, and fear of, concussions among student athletes, Plaintiff Jeffrey Lance Cruce ("Coach Cruce") was wrongfully terminated as Head Football Coach and Athletic Director by the Principal of Berkeley High School for not making his student athletes "hit" more during football practices.

JURISDICTION AND VENUE

1. Coach Cruce is a citizen and resident of the County of Charleston, State of South Carolina and an employee of Defendant.
2. Defendant, the Berkeley County School District ("BCSD"), is the elected body charged with operating a public school system in Berkeley County pursuant to state law.
3. All actions pertinent to the allegations in this Complaint took place in Berkeley County.
4. Jurisdiction and venue is proper in this Court.

FACTS

5. Coach Cruce has twenty nine (29) years of experience in education and coaching.
6. Coach Cruce has been Defendant's Head Coach and Athlete Director since 1996

and an employee of Defendant's since 1991.

7. Coach Cruce has coached eleven (11) Region Championship teams in football in BCSD; one in 2014 at Berkeley High School and ten (10) in a row at Hanahan High School. He has served for fourteen (14) consecutive years as his region's coordinator for all sports; he established successful varsity and junior varsity programs in all sports as Athletic Director for Cane Bay High School during its startup; he was Athletic Director of the Year for Region VIII AAA in 2012 and 2014; he was Athletic Director of the Year for the region four times while Head Football Coach and Athletic Director at Hanahan High School. He has been VIII AAA Region Coordinator since 2010. He served as the AAA Football Coordinator for South Carolina (South Carolina High School League) from 2014-2015.

8. Coach Cruce was employed by Defendant as a teacher, Athletic Director and Head Football Coach at Berkeley High School from May 2011 until December 16, 2015.

9. These are three (3) separate and distinct job positions, and each has a different job description and separate compensation.

10. Coach Cruce had a continuing contract with Defendant for his teaching position; this contract was renewed year to year. There is no dispute that Coach Cruce's performance as a teacher was excellent and the Berkeley High School Principal Steven Steele certified that Coach Cruce met his goals each year and his teaching contract was renewed and has always been renewed each year.

11. Coach Cruce was an at-will employee in the other two (2) job positions he held at Berkeley High School - Athletic Director and Head Football Coach. He was paid additional annual compensation of \$13,460 for the Head Football Coach job position and \$18,900 for the Athletic Director job position.

12. As Athletic Director, Coach Cruce reported to the Principal and was paid an additional amount of salary to develop, maintain and provide a quality athletic program so every student has the opportunity to participate in extra-curricular activities "that will foster physical skills, sense of work and competence, knowledge and understanding of the sport and the principles of fair play."

13. When Coach Cruce was wrongfully terminated from this position on December 16, 2015, there was no indication by the Principal that Coach Cruce had ever had any job performance problems related to this position.

14. The position of Athletic Director was at-will. Coach Cruce signed no contract to be Athletic Director as he did for his teacher position; he never received any goals from the Principal regarding this job position; and he never received any performance evaluations from the Principal for this job position.

15. The third position Coach Cruce held at Berkeley High School for which he was also paid an additional amount of salary was the position of Head Coach for the football program.

16. The job position for Head Coach required Coach Cruce to maintain "a sports program that is educationally sound, athletically productive, and creates a positive learning experience for students." Coach Cruce's job description also stated he was specifically tasked with being "responsible for "the health and safety of student athletes."

17. Defendant's job description requires the Head Coach to report to the Athletic Director (who was Coach Cruce) and the Principal.

18. The position of Head Coach was also at-will. Coach Cruce signed no contract to be Head Coach as he did for his teacher position; he never received any goals from the Principal

regarding this job position; and he never received any performance evaluations from the Principal.

19. Coach Cruce was terminated from this position on December 16, 2015 because Principal Steele did not approve of Coach Cruce's coaching philosophy which included less hitting during practice.

20. Coach Cruce was recruited and hired as Athletic Director and Head Coach to rebuild the School's problem-plagued football program and provide support to all of the school's athletic programs.

21. Coach Cruce has provided exemplary leadership in his role as Athletic Director, supporting all sports programs and instilling a "character matters" culture within the athletic programs.

22. Coach Cruce made significant progress in rebuilding the football program, winning the region football championship for Berkeley High School last year and currently boasting the most successful junior varsity and B teams in Berkeley High School's school history. Coach Cruce was named Athletic Director of the Year in 2014 by his peers in Region VIII AAA.

23. As Athletic Director at Berkeley High School, and throughout his twenty-one (21) year career as an Athletic Director in Berkeley County, the South Carolina High School League has conducted more than fifty (50) audits of Coach Cruce's athletic records and has never found a single violation.

24. Coach Cruce's personnel file has no record of any discipline for job performance issues.

25. Although Coach Cruce's coaching career has been exceptional, the Principal of

Berkeley High School, Steven Steele, has threatened to fire him on multiple occasions over the past four (4) years, including the first conversation he had with Coach Cruce when Steele became Principal in 2012. Steele has also attempted to micromanage coaching the football team since becoming Principal of Defendant School in 2012 even though this is Coach Cruce's job, not Steele's.

26. The relationship between Steven Steele and Coach Cruce was strained from the start. Almost immediately after becoming Principal Steele said to Coach Cruce, "I really don't like you."

27. When Coach Cruce asked Mr. Steele why he did not like him, Steele complained about two minor incidents; one had occurred eleven (11) years earlier in 2001 when Steele had been an assistant coach and Steele blamed Coach Cruce for reporting him to the head coach because Steele had talked badly about the head coach behind his back. The second incident Steele told Coach Cruce he was still angry about had occurred seven (7) years earlier in 2005 when Coach Cruce questioned Steele's ability to run a quality track meet. Steele told Coach Cruce he had been very offended when Coach Cruce had questioned his ability to run the track meet.

28. After becoming Principal, Steele refused to talk to Coach Cruce after football games and there was very little communication during the week between them. Steele told Coach Cruce that he frequently talked with Coach Cruce's critics in the community and some people in the community did not like him.

29. Coach Cruce became so discouraged at Steele's obvious disdain for him that he finally filed a formal grievance against Steele in 2013.

30. An additional reason for Coach Cruce's grievance was Steele's constant public

criticism and repeated threats to fire Coach Cruce whenever Berkeley High School's football team lost a game. Coach Cruce also complained in the grievance that Steele falsely blamed him for a lack of support from parents in the Athletic Booster Club, which was not true as the parents of Berkeley High School were very supportive of the sports programs.

31. The day after Coach Cruce filed the grievance in 2013, Steele terminated Coach Cruce stating he "wanted to go in a different direction with the football program."

32. Coach Cruce's wrongful and retaliatory discharge by Steele was reversed by Superintendent Dr. Rodney Thompson within twenty-four (24) hours.

33. Coach Cruce agreed to withdraw his 2013 grievance after he was reinstated by Rodney Thompson. As a condition of Coach Cruce withdrawing the grievance, Steele was required by Dr. Thompson to demonstrate his public support for Coach Cruce and work on his personal relationship with Coach Cruce. Steele told Dr. Thompson he would have weekly meetings with Coach Cruce.

34. Dr. Thompson also told Steele to repair the perception problems he had created in the community about Coach Cruce and to begin to publically support Coach Cruce. Steele agreed to meet once a week with Coach Cruce to repair their personal relationship but after a few meetings Steele stopped communicating with Coach Cruce again and there were no meetings at all in 2015.

35. After this incident, Steele arranged for an article to be published in the local newspaper to show the community Steele supported Coach Cruce. The article was published and Steele was quoted as supporting Coach Cruce in that article but it is the only time in four (4) years that Steele has publically supported Coach Cruce and it was only because he was forced to do so by Dr. Thompson as a condition of Coach Cruce dropping his grievance.

36. On December 16, 2015, after Dr. Thompson had left employment with Defendant and Defendant had hired a new Superintendent, Steele terminated Coach Cruce as Athletic Director and Head Football Coach for the second time.

37. The reason Coach Cruce was terminated the second time was because Steele wanted to dictate the style of coaching for the football program, which meant requiring more hitting in practice, regardless of Coach Cruce's objections and stated goal of preventing practice-related injuries and fatigue in his football players.

38. Steele told the community Coach Cruce was fired for having a losing season in 2015 (despite the School winning the region championship the previous season.) Defendant's job descriptions for the positions of Athletic Director and Head Coach do not require that a winning record be maintained every year.

39. Winning games is exciting and commendable, but in a high school setting, high school coaches are supposed to teach student athletes responsibility, teamwork, persistence, integrity, and dedication, all while keeping the student athletes safe – all of which Coach Cruce did for the student athletes at Berkeley High School.

40. In an attempt to make the termination of Coach Cruce as Head Coach and Athletic Director appear legitimate, Steele provided three (3) reasons for Coach Cruce's termination at the termination meeting on December 16th. The first two (2) reasons are absolutely false and the third reason, which is the real reason, violates the public policy of the State.

41. The first stated reason was that Coach Cruce failed to perform evaluations on his coaches, but in fact the evaluations had been completed and were on Coach Cruce's desk, available at any time to be reviewed by Mr. Steele.

42. Steele asked Coach Cruce to complete evaluations on all coaches for the first time

in the spring of 2015 (for the 2015 -- 2016 school year.) Steele did not provide a template or suggest a format.

43. Coach Cruce obtained a sample evaluation form from an Athletic Director in Columbia whom he knew and reviewed it with Steele. Steele made minor changes and then approved the evaluation form. Coach Cruce completed the evaluations for all the coaches of fall sports by November 15th as he had been asked to do.

44. Steele never asked to see the evaluation forms before he terminated Coach Cruce for allegedly not completing the forms.

45. Several coaches told Coach Cruce before he was terminated that Charlie Harris, an Assistant Principal, was asking them if Coach Cruce had performed an evaluation on them. Prior to being terminated, Coach Cruce emailed Mr. Harris and told him he would be happy to answer any of his questions about the evaluations. Mr. Harris never responded to Coach Cruce's email.

46. As Coach Cruce did what was asked by completing the evaluation forms, this reason for termination is pretext; it was fabricated by Steele to justify Coach Cruce's termination.

47. Interestingly, Steele has never performed a single evaluation on Coach Cruce for the jobs or Head Coach or Athletic Director, nor has he ever set any performance goals for Coach Cruce regarding these two (2) jobs.

48. In a letter to Coach Cruce after he was terminated, Defendant's Superintendent informed Coach Cruce that his personnel file contained goals based performance evaluations for each of the years Coach Cruce has been at Berkeley High School. This is false. Steele never evaluated Coach Cruce's performance as Athletic Director or Head Coach; the only performance

evaluations in Coach Cruce's personnel file are for his teaching position.

49. Steele's second alleged reason for Coach Cruce's termination was that the Booster Club's membership had declined. Though the membership on paper declined, the Booster Club was thriving at the time of Coach Cruce's wrongful termination. Whereas in 2009 the Booster Club had \$12,000 in its treasury, in 2015 it had \$85,000.

50. Most importantly, parent membership in the Booster Club is not a listed responsibility in the job description of the Head Coach or the Athletic Director.

51. In short, the status of a volunteer, parent-driven organization, over which Coach Cruce has no authority and no responsibility is not a legitimate reason for his termination and is pretext. This reason was fabricated by Steele to justify his decision to fire Coach Cruce.

52. Steele's third stated reason is the real reason Mr. Steele terminated Coach Cruce – because Coach Cruce did not conduct more practices in which his football players engaged in full contact hitting.

53. Steele referred to this reason as “a philosophical difference” when he fired Coach Cruce on December 16, 2015. Deputy Superintendent Archie Franchini also stated this reason in Cruce's termination letter, describing it as a failure to meet a performance goal of “analytics.” There is no such thing as a performance goal of “analytics.”

54. In 2015, Coach Cruce implemented a new football varsity practice structure in which he limited full contact hitting to one (1) practice per week.

55. Coach Cruce's philosophy, which he mentioned to Steele during a five (5) minute, impromptu conversation on July 30th, included a much faster pace of practice, very limited hitting during practices, and running offensive plays on 4th downs. To support the faster pace of practice, full contact hitting is necessarily limited to prevent fatigue and injury and ensure

optimal condition of players for the games.

56. On July 30th, when Coach Cruce mentioned this change in practice and offensive strategy to Steele which necessarily required less hitting, Steele expressed his strong disapproval.

57. Berkeley had a 3 and 7 record for the 2015 season. Though his team had a losing season, Coach Cruce's new offensive strategy succeeded. His offense showed an increase of 50% in yards per game and there were 33% more offensive plays.

58. Also, due to limiting full contact hitting in varsity practices, in 2015 the practice-related injuries that prevented a player from playing a game were drastically reduced from the year before.

59. A necessary requirement of Coach Cruce's philosophy (or analytics as Steele and Franchini called it) required less hitting in practice.

60. After the July 30th conversation when Steele again threatened to fire Coach Cruce because he did not like the way he coached, Coach Cruce wanted to file a second grievance against Steele but he was advised not to by Director of Pupil Services Charlie Davis.

61. On November 18th, after the season was over, Coach Cruce and Steele met again and Steele told Cruce, "The community does not think you hit enough in practice and I agree."

62. Coach Cruce was stunned that Steele told him he agreed with critics in the community who thought there was not enough hitting during football practices.

63. When Coach Cruce left the meeting he told Coach Gary Christensen, "You are not going to believe what Steele just said to me." Steele's statement about wanting more hitting during football practices was particularly shocking given the current overwhelming public concern about player safety and concussions and the requirements of state law.

64. For the next month, Steele had no contact with Coach Cruce at all until he

terminated him. In fact, the last statement Steele made to Coach Cruce before calling Coach Cruce into his office to terminate him was, "The community does not think you hit enough in practice and I agree."

65. Steele called Coach Cruce to his office on December 16th, handed him a prepared termination letter and terminated him as Head Football Coach and Athletic Director.

66. Steele demoted Coach Cruce from a driver's education teacher to the position of guidance counselor at a middle school in the District. Defendant was aware at the time of this demotion that Coach Cruce had not been a guidance counsellor for twenty-five (25) years. The new position was not discussed with Coach Cruce in advance and no one gave him any opportunity to choose a different position.

67. This demotion is a set up for failure. In fact, the Superintendent admitted as much in her letter written to Coach Cruce on January 8, 2015 when she noted she would have to assign someone to "provide you with **extensive training** and support to bring you up to date..." so he could adequately perform the job of guidance counselor.

68. On January 6, 2016, Coach Cruce and undersigned counsel met with Defendant's Superintendent in an attempt to resolve this situation without litigation.

69. The day after this meeting Coach Cruce's former office was ransacked. Student athletes' files that contained private medical information were opened and perused by several different people, evidently looking for something "irregular" in the files.

70. Coach Gary Christensen, a known friend of Coach Cruce's, discovered on January 7th that all of his football files had been deleted from his computer and a thumb drive stolen out of his office. Christensen complained to Steele about these actions.

71. In an attempt to justify the office ransacking, on January 7, 2016 Chris Stevens,

Berkeley High School's athletic trainer, sent an email to many of Coach Cruce's former co-workers and subordinates implying Coach Cruce had not properly maintained student athlete files while Athletic Director, which is false and defamatory.

72. The defamatory email stated in part, "After spending some time looking through files it has come to my attention that there could be some documents that could be misplaced and others that are out of order."

73. The next day on January 8th, evidently unaware Coach Cruce's office had been ransacked, the Superintendent sent Coach Cruce a letter which contained even more inaccuracies.

74. In the letter, the Superintendent relied on irrelevant statements taken out of context from a Kansas City paper article dated September 2015 to justify Coach Cruce's termination based on "analytics."

75. The Superintendent's January 8th letter also repeated a false statement included in the termination letter sent to Coach Cruce by Archie Franchini that stated Steele had determined "Coach Cruce's ability to be effective as Athletic Director had been impaired." This was a new reason never mentioned by Steele or Franchini to Cruce when he was terminated.

76. In fact, Coach Cruce's performance as Athletic Director had never been criticized by Steele. One of the few good things Steele had ever said to Coach Cruce involved his actions as Athletic Director. In September of 2015, Steele told Coach Cruce he was one of the best Athletic Directors in South Carolina.

77. During the termination meeting with Steele and Franchini, neither Steele or Franchini made any reference to Coach Cruce's performance as Athletic Director, probably because Coach Cruce had been chosen as Athletic Director of the Year for Region VIII AAA

two (2) of the last four (4) years.

78. The Superintendent's January 8th letter also falsely stated Coach Cruce's reassignment to a guidance counselor position in a middle school was based on his "failure to meet goals agreed upon between Coach Cruce and Steele" at a meeting held on July 30, 2015. First, there was no such meeting and second, no such goals existed or were ever set by Steele.

79. Between July 28th and July 30th, Coach Cruce was in all day meetings with his football staff preparing for the season. The only time Coach Cruce saw Steele on July 30th was when Coach Cruce went to get his mail in the main office and Coach Cruce initiated a brief conversation by stopping by Steele's office. There was no scheduled meeting and Steele had not invited Coach Cruce to meet with him. The conversation lasted only a few minutes and there was no talk of "goals."

80. The Superintendent's January 8th letter also errs by attempting to justify Coach Cruce's termination based on the recent coaches' performance evaluation forms that Steele reviewed and approved before Coach Cruce used them. The Superintendent fails to mention in her letter that she was told at the January 6th meeting (as Steele had been told at the December 16th meeting) that the coaches' performance evaluations were complete. Steele and the Superintendent ignored this fact and fired Coach Cruce anyway on the false basis they were not complete. Steele never asked for these forms and clearly he had already decided to assume they were not completed so he would have a reason to terminate Coach Cruce.

81. Coach Cruce had not yet provided the Coaches' evaluations to Steele because Steele never asked for them.

82. The Superintendent also falsely stated in her January 8th letter that Coach Cruce had performed performance evaluations on Coach Cruce and set goals for him. She could easily

have learned this statement was false had she asked to see the Athletic Director or Head Football Coach performance evaluations- there are none.

83. Steele never provided any written or verbal goals to Coach Cruce; he just repeatedly threatened him with his job if he did not win enough games.

84. Coach Cruce was fired because Steele did not like his style of coaching which required less hitting for a faster paced, more offensively focused game.

85. Defendant's endorsement of Steele's desire for more hitting during practice is inexcusable.

86. Despite 19 high school football players' deaths this year and the wide-spread national attention given to head injuries and concussions among high school players, Steele has criticized the football team's weekday practices for not involving full pads and more hitting - a practice Coach Cruce and all responsible college and high school coaches concerned about player injuries have moved away from, and Defendant has allowed its agent Steele to terminate Coach Cruce as Head Coach and Athletic Director for this reason.

87. The NFHS (National Federation of State High School Associations) recommends in its *Report from the July 2014 NFHS Concussion Summit Task Force*, "full-contact should be limited during the regular season"; "full-contact be allowed in no more than 2-3 practices per week"; and "during pre-season twice-daily practices, only one session per day should include full contact."

88. Coach Cruce was fired for his progressive coaching approach to player safety which tried to protect student athletes from concussions by limiting hitting and he was retaliated against for abiding by the NFHS guidelines and state law.

FOR A FIRST CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)

89. Coach Cruce incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

90. Defendant improperly conditioned Coach Cruce's continued employment on Coach Cruce's agreement to require student athletes to "hit more" during weekly practices.

91. Defendant improperly conditioned Plaintiff's continued employment on his agreement to commit acts that violate the public policy of this State as set forth in the South Carolina Constitution, Article XII, Section 1. "The health, welfare, and safety of the lives and property of the people of this State... are matters of public concern." (*Id.*)

92. The health and safety of student athletes are a matter of public concern.

93. Defendant improperly conditioned Plaintiff's continued employment on his agreement to commit acts that violate the public policy of this State as set forth in the South Carolina Code of Laws, Title 59, Chapter 63 which require DHEC and the Department of Education to post on DHEC's website the nationally recognized guidelines and procedures regarding the identification and management of concussions and to post model policies that incorporate best practices guidelines for the management of concussions. S.C. Code § 59-63-75.

94. The purpose of this state law is to protect student athletes.

95. Violations this law can result in liability if athletic trainers act in a grossly negligent or willful manner.

96. As a result of Plaintiff's refusal to acquiesce to violations of South Carolina law, Defendant terminated Plaintiff's employment as Athletic Director and Head Coach.

97. Defendant's termination of Plaintiff's employment violates the public policy of the State of South Carolina.

98. Coach Cruce has suffered actual and consequential damages as a result of

Defendant's wrongful acts.

FOR A SECOND CAUSE OF ACTION
(Defamation *Per Se*)

99. Coach Cruce incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

100. Defendant's agents have made false and defamatory statements about Plaintiff's fitness for his profession to employees, students, volunteers, potential employers, and members of the community.

101. Defendant's agents, acting within the scope of their authority, have made these false statements about Coach Cruce with conscious indifference to and complete disregard of the truth of their statements and the effect that the false statements would have on Coach Cruce and his career.

102. Defendant's statements are plain in meaning and constitute defamation *per se* as they stated Coach Cruce was unfit for hi profession.

103. Defendant's statements were made with common law malice.

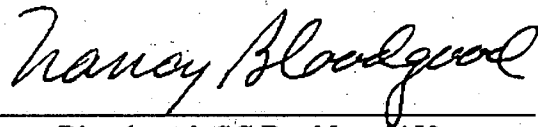
104. The defamatory statements and actions were not privileged due to the manner and circumstances surrounding their publication.

105. Defendant's statements have damaged Plaintiff's personal and professional reputation.

106. Coach Cruce has suffered damages in the form of severe psychological harm, emotional distress, anxiety, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, physical injuries, and injury to his personal and professional reputation and seeks actual and punitive damages, costs of this action and pre and post judgment interest from Defendant.

Wherefore, having fully stated his Complaint against Defendant, Plaintiff prays for all available relief, including an award of lost wages, benefits, and other earnings, as well as other actual, consequential, and compensatory damages, including front pay, resulting from Defendant's conduct complained of herein, attorney fees per S.C. Code § 15-77-300, and all other legal and equitable relief as the Court deems appropriate, including, but not limited, to the costs of this action and post-judgment interest.

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Attorneys for Plaintiff

Charleston, South Carolina

Date: 1/20/16

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JEFFREY LANCE CRUCE,

Plaintiff,

v.

THE BERKELEY COUNTY SCHOOL
DISTRICT,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2016-CP-08-131

ANSWER

FILED
2016 APR 25 PM 2:34
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY

Defendant The Berkeley County School District ("Defendant") hereby answers the Complaint of Plaintiff Jeffrey Lance Cruce ("Plaintiff"). All allegations not specifically admitted herein are denied.

PARTIES, JURISDICTION AND VENUE

1. Upon information and belief, the allegations of Paragraph 1 of the Complaint are admitted.
2. In response to Paragraph 2 of the Complaint, Defendant admits only that it is a political subdivision of the State of South Carolina. All other or contrary allegations of Paragraph 2 are denied.
3. Paragraphs 3 and 4 contain legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest jurisdiction or venue.

BACKGROUND/FACTS

4. In response to Paragraph 5 of the Complaint, Defendant admits only that Plaintiff has worked in the general fields of education and coaching for some time but lacks sufficient information to admit or deny Plaintiff's specific allegations and therefore denies the same. All other or contrary allegations of Paragraph 5 are denied.

5. In response to Paragraph 6, Defendant admits only that Plaintiff held various coaching and athletic positions with Defendant from 1996 to 2015, and has been employed as a teacher by Defendant since 1991. All other or contrary allegations of Paragraph 6 are denied.

6. In response to Paragraph 7, Defendant craves reference to the records of the various football teams Plaintiff has coached and the records of awards given to Plaintiff and positions held by Plaintiff, which speak for themselves, and Defendant denies any allegations inconsistent therewith. All other or contrary allegations of Paragraph 7 are denied.

7. The allegations of Paragraphs 8 and 9 of the Complaint are admitted.

8. In response to the allegations of Paragraph 10, Defendant admits only that, to date, Plaintiff's teaching contract has been renewed from year to year. All other or contrary allegations of Paragraph 10 are denied.

9. The allegations of Paragraph 11 are admitted.

10. In response to the allegations of Paragraph 12, Defendant admits only that, as Athletic Director, Plaintiff reported to the principal, that he was paid an additional salary for this at-will position, and that the quoted language formed a portion (but not the whole) of his duties. All other or contrary allegations of Paragraph 12 are denied.

11. The allegations of Paragraph 13 are denied.

12. In response to the allegations of Paragraph 14, Defendant admits only that the position of Athletic Director was "at will." All other or contrary allegations of Paragraph 14 are denied.

13. The allegations of Paragraph 15 are admitted.

14. In response to Paragraph 16 of the Complaint, Defendant admits only that the quoted language formed a portion (but not the whole) of Plaintiff's duties as head coach. All other or contrary allegations of Paragraph 16 are admitted.

15. In response to the allegations of Paragraph 17 of the Complaint, Defendant admits only that, in his position as head coach, Plaintiff reported to the principal. All other or contrary allegations of Paragraph 17 are denied.

16. In response to the allegations of Paragraph 18, Defendant admits only that the position of head coach was "at will." All other or contrary allegations of Paragraph 18 are denied.

17. The allegations of Paragraph 19 through 21 are denied.

18. In response to the allegations of Paragraph 22, Defendant craves reference to the records of the football teams coached by Plaintiff and the records of any awards he was given, which speak for themselves, and denies any allegations inconsistent therewith. All other or contrary allegations of Paragraph 22 are denied.

19. In response to the allegations of Paragraph 23, Defendant lacks information sufficient to form a belief as to the number of audits to which Plaintiff has been subjected in his career or the number of violations found in such audits, and therefore denies the same. All other or contrary allegations of Paragraph 23 are denied.

20. The allegations of Paragraph 24 are denied.

21. The allegations of Paragraphs 25 through 28 are denied.

22. In response to the allegations of Paragraphs 29 and 30, Defendant admits only that Plaintiff filed a grievance concerning Mr. Steele in or around 2013. Defendant craves reference to the grievance, which speaks for itself, and denies any allegations inconsistent therewith. All other or contrary allegations of Paragraphs 29 and 30 are denied.

23. In response to the allegations of Paragraph 31, Defendant admits only that Mr. Steele terminated Plaintiff's employment in or around 2013. All other or contrary allegations of Paragraph 31 are denied.

24. In response to the allegations of Paragraphs 32 through 35, Defendant admits only that Plaintiff was reinstated and withdrew his grievance on terms agreed to by Plaintiff and Defendant. All other or contrary allegations of Paragraphs 32 through 35 are denied.

25. In response to the allegations of Paragraph 36, Defendant admits only that Plaintiff's employment was terminated on or about December 16, 2015, and that Dr. Thompson was no longer the superintendent at that time. All other or contrary allegations of Paragraph 36 are denied.

26. The allegations of Paragraphs 37 through 39 are denied.

27. In response to the allegations of Paragraph 40, Defendant admits only that Plaintiff was given three reasons for his termination, all of which were legitimate and correct. All other or contrary allegations of Paragraph 40 are denied.

28. In response to the allegations of Paragraph 41, Defendant admits only that the failure to complete evaluation was one of the reasons given for the Plaintiff's termination. All other or contrary allegations of Paragraph 41 are denied.

29. The allegations of Paragraphs 42 through 44 are denied.

30. In response to the allegations of Paragraph 45 of the Complaint, Defendant lacks information sufficient to form a belief as to Plaintiff's purported conversations with "several coaches" and therefore denies the same. All other or contrary allegations of Paragraph 45 are denied.

31. The allegations of Paragraphs 46 and 47 are denied.

32. In response the allegations of Paragraph 48, Defendant craves reference to the letter cited by Plaintiff and denies any allegations inconsistent therewith. All other or contrary allegations of Paragraph 48 are denied.

33. In response to the allegations of Paragraph 49, Defendant admits only that one of the reasons for Plaintiff's termination was his abject failure to increase booster club membership. All other or contrary allegations of Paragraph 49 are denied.

34. The allegations of Paragraphs 50 through 52 are denied.

35. In response to the allegations of Paragraph 53, Defendant admits only that Plaintiff failed to meet a performance goal described as "analytics." All other or contrary allegations of Paragraph 53 are denied.

36. Defendant lacks information sufficient to form a belief as to the allegations of Paragraph 54 and therefore denies the same.

37. In response to the allegations of Paragraphs 55 and 56, Defendant admits only that Steele was skeptical that Plaintiff's plan to eschew punting on fourth down no matter the situation would be successful, which skepticism was borne out by the team's 2015 record. Defendant specifically denies that this skepticism had anything at all to do with the amount of hitting in practice. All other or contrary allegations of Paragraphs 55 and 56 are denied.

38. In response to the allegations of Paragraph 57, Defendant admits only that Berkeley High School had a 2015 record of 3-7. All other or contrary allegations of Paragraph 57 are denied.

39. The allegations of Paragraphs 58 through 62 are denied.

40. Defendant lacks information sufficient to form a belief as to the allegations of Paragraph 63 and therefore denies the same.

41. The allegations of Paragraph 64 are denied.

42. In response to the allegations of Paragraph 65, Defendant admits only that Plaintiff was terminated from the positions of athletic director and head football coach at Berkeley High School on or about December 16, 2015.

43. In response to the allegations of Paragraph 66, Defendant admits only that Plaintiff was transferred to a guidance counselor position consistent with his certification. All other or contrary allegations of Paragraph 66 are denied. Defendant specifically denies that this transfer was a "demotion."

44. In response to the allegations of Paragraph 67, Defendant craves reference to the letter quoted therein, which speaks for itself, and denies all allegations inconsistent therewith. All other or contrary allegations of Paragraph 67 are denied. Defendant specifically denies that Plaintiff has been set up for failure and indeed has undertaken great efforts to assist Plaintiff in being successful in his guidance counselor position.

45. The allegations of Paragraph 68 are admitted, except that Defendant denies that Plaintiff made a good faith effort to resolve the matter at this meeting.

46. The allegations of Paragraph 69 are denied.

47. In response to the allegations of Paragraph 70, Defendant admits only that Mr. Christensen reported that a thumb drive was missing. All other or contrary allegations of Paragraph 70 are denied.

48. In response to the allegations of Paragraphs 71 and 72, Defendant craves reference to the e-mail cited therein, which speaks for itself, and denies all allegations inconsistent therewith. All other or contrary allegations of Paragraphs 71 and 72 are denied.

49. In response to the allegations of Paragraphs 73 through 75, Defendant craves reference to the letter cited therein, which speaks for itself, and denies all allegations inconsistent therewith. All other or contrary allegations of Paragraphs 73 through 75 are denied.

50. The allegations of Paragraphs 76 through 86 are denied.

51. In response to the allegations of Paragraph 87, Defendant craves reference to the guidelines cited therein, which speak for themselves and are neither binding nor statements of South Carolina law, and denies any allegations inconsistent therewith. All other or contrary allegations of Paragraph 87 are denied.

52. The allegations of Paragraph 88 are denied.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)

53. In response to the allegations of Paragraph 89, Defendant incorporates all prior allegations and defenses as if fully restated herein.

54. The allegations of Paragraphs 90 and 91 are denied.

55. Paragraph 92 states conclusions of law to which no response is required; to the extent a response is required, the allegations are denied.

56. The allegations of Paragraph 93 are denied.

57. Paragraphs 94 and 95 state conclusions of law to which not response if required; to the extent a response is required, the allegations are denied.

58. The allegations of Paragraphs 96 through 98 are denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

(Defamation *Per Se*)

59. In response to the allegations of Paragraph 99, Defendant incorporates all prior allegations and defenses as if fully restated herein.

60. The allegations of Paragraphs 100 through 106 are denied.

61. In response to the unnumbered "Wherefore" clause, Defendant denies that Plaintiff is entitled to any of the relief requested.

FOR A SECOND DEFENSE

62. Plaintiff's Complaint fails to state claims upon which relief can be granted.

FOR A THIRD DEFENSE

63. Plaintiff's claims are barred, in whole or in part, by the after-acquired evidence doctrine.

FOR A FOURTH DEFENSE

64. Any and all actions taken with regard to Plaintiff were based solely on legitimate, business-related, non-discriminatory, non-retaliatory reasons and were neither unlawful nor in violation of the public policy of South Carolina.

FOR A FIFTH DEFENSE

65. Defendants are entitled to recover attorneys' fees and court costs incurred in this action provided by the South Carolina Frivolous Civil Proceedings Act, S.C. CODE ANN. § 5-36-10 through 50 (Law. Cop-op Supp. 2000).

FOR A SIXTH DEFENSE

66. The complaint fails to state a claim upon which punitive damages would be recoverable, and any award of punitive damages in this case would violate the Constitutions of the United States and South Carolina.

FOR A SEVENTH DEFENSE

67. Plaintiffs' claims for damages are barred by his failure to mitigate the consequences of the actions of which he complains.

FOR AN EIGHTH DEFENSE

68. In the event that any purported statement would otherwise be actionable or defamatory, which is denied, Defendant alleges that any such statement was made in good faith and without malice concerning matters which Defendant would have a legitimate interest, including business interest.

FOR A NINTH DEFENSE

69. Plaintiff's claims are barred to the extent Defendant would have taken the same action regardless of any impermissible motive.

FOR A TENTH DEFENSE

70. Plaintiff's claims are barred in whole or in part by the South Carolina Tort Claims Act.

FOR AN ELEVENTH DEFENSE

71. Plaintiff's claims are barred in whole or in part by the doctrines of absolute and/or qualified immunity.

FOR A TWELFTH DEFENSE

72. Plaintiff's claims are barred to the extent that he is a public official, limited purpose public official, and/or any complained-of speech was on a matter of public concern, and Plaintiff cannot show actual malice.

FOR A THIRTEENTH DEFENSE

73. Plaintiff's claims are barred in whole or in part for Plaintiff's failure to plead or prove special damages.

FOR A FOURTEENTH DEFENSE

74. Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

FOR A FIFTEENTH DEFENSE

75. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

FOR A SIXTEENTH DEFENSE

76. Plaintiff's claims are barred in whole or in part by the doctrines of unclean hands and/or *in pari delicto*.

FOR A SEVENTEENTH DEFENSE

77. Plaintiff's claims are barred in whole or in part by the doctrine of election of remedies.

FOR AN EIGHTEENTH DEFENSE

78. Plaintiff's claims are barred to the extent that any of the complained-of conduct was undertaken by Defendant's agents outside the scope of their duties.

FOR A NINETEENTH DEFENSE

79. Defendant reserves the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and reserves the right to amend its answer to assert any such defenses.

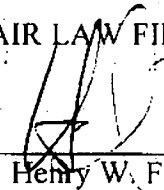
WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays that the Complaint be dismissed, with prejudice, and that the plaintiff recover nothing from Defendant, that Defendant be awarded its fees and costs, and for such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: April 21, 2016
Charleston, South Carolina

MCNAIR LAW FIRM, P.A.)

By


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) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2016-CP-08-131

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flowed from this email. *Fifth*, the email was not false. *Sixth*, the it is unclear that the jury knew its role was to determine whether the qualified privilege was exceeded (not whether the privilege existed in the first place)—which it was not, given that only coaches received an email written in response to a specific inquiry about student-athlete eligibility.

Legal Standard

A motion for judgment notwithstanding the verdict (“JNOV”) under Rule 50(b), SCRCP, is essentially the renewal of motion for a directed verdict. *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 88, 610 S.E.2d 852, 856 (Ct. App. 2005). In deciding a JNOV motion, a court must view the evidence in the light most favorable to the nonmoving party. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). A court should grant a JNOV motion whenever there is no evidence to support the jury’s verdict. *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 313, 743 S.E.2d 109, 112 (Ct. App. 2013).

Along with a JNOV motion, a party may also move for a new trial under Rule 59(a), SCRCP. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). In deciding whether to grant a new trial, a court functions as a “thirteenth juror” and “take[s] its own view of the evidence and grant[s] a new trial if it disagrees with the jury’s verdict.” *Id.* at 334, 732 S.E.2d at 172. Under this doctrine, a court “may grant a new trial absolute when [it] finds that the evidence does not justify the verdict.” *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990).

The court may also grant a new trial nisi remittitur, when the court determines that the verdict is excessive. *Burke v. AnMed Health*, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011). If a court believes the verdict is excessive, it “may give to the defendant the right to a

new trial unless the plaintiff agrees to remit a portion of the verdict.” *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984).¹

Argument

The jury’s \$200,000 award of damages to Cruce based solely on the January 7 email is untenable. For at least six distinct reasons, it cannot be upheld.²

I. Cruce’s Defamation Claim Required Him to Prove Actual Malice, so This Claim Should Not Have Gone to the Jury.

Cruce did not dispute during the arguments on the District’s directed-verdict motion that if had to prove actual malice, his defamation claim was barred.³ Indeed, he could not do so, as S.C. Code § 15-78-60(17) (which is part of the Tort Claims Act) does not waive immunity for “employee conduct . . . which constitutes . . . actual malice”—the exact hurdle that a public official or limited public figure must clear to prevail on a defamation claim. *Erickson v. Jones St. Publr., LLC*, 368 S.C. 444, 473, 629 S.E.2d 653, 668 (2006); *see also Gause v. Doe*, 317

¹ Although courts can be hesitant to set aside a jury verdict, juries are not infallible, and their verdicts are not sacrosanct. Indeed, our appellate courts have repeatedly upheld trial courts’ decisions to overturn a jury verdict. *See, e.g., Jones v. Builders Inv. Grp., LLC*, 415 S.C. 321, 331, 781 S.E.2d 737, 743 (Ct. App. 2015). In fact, our appellate courts have reversed trial courts for failing to overturn jury verdicts that are flawed. *See, e.g., Gastineau v. Murphy*, 331 S.C. 565, 573, 503 S.E.2d 712, 716 (1998). Therefore, merely defending the jury’s verdict here on the basis of “that is what the jury decided” is insufficient.

² The arguments on each of the District’s motions—for a JNOV, new trial, and remittitur—are the same, so rather than repeating these arguments, the District incorporates these arguments into each motion.

³ On multiple occasions during the argument on the District’s motion for a directed verdict, the fact was mentioned that whether a high school football coach is a public official or limited public figure is a novel question in South Carolina. This fact is irrelevant. Trial courts will necessarily be faced with novel legal questions (indeed, every legal question was at one time a novel one), and our supreme court has recognized that trial courts will necessarily be required to answer them. *See, e.g., Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 620 n.6, 602 S.E.2d 747, 750 n.6 (2004) (explaining that a novel legal issue may be decided on summary judgment); *Madison v. Am. Home Prods. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) (observing that a novel legal issue may even be decided on a motion to dismiss).

S.C. 39, 41–42, 451 S.E.2d 408, 409 (Ct. App. 1994) (holding that a defamation claim brought against a public entity by a public official was barred by the Tort Claims Act).

A. Cruce Is a Public Official.

All public officials must prove actual malice. *See Erickson*, 368 S.C. at 467, 629 S.E.2d at 665. As our supreme court has explained, there is no “all-encompassing definition of ‘public official,’” but courts have established a framework by which to analyze whether a public employee constitutes a public official for purposes of First Amendment law:

In general, a public official is a person who, among the hierarchy of government employees, has or appears to the public to have substantial responsibility for or control over the conduct of governmental affairs. In considering the question of whether one is a public official, the employee’s position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy. The status of a public official may be deemed sufficient to warrant application of the *New York Times* privilege, not because of the government employee’s place on the totem pole, but because of the public interest in a government employee’s activity in a particular context.

Id. at 469, 629 S.E.2d at 666.

There is no hard-and-fast rule about school officials under this test. Some courts have treated principals as public officials, while others have not. *See Goodwin v. Kennedy*, 347 S.C. 30, 43–45, 552 S.E.2d 319, 326–27 (Ct. App. 2001) (surveying cases from around the country on whether principals are public officials and holding that an assistant principal was not a public official). Similarly, courts are divided on whether teachers are public officials. *Compare Kelley v. Bonney*, 606 A.2d 693, 710 (Conn. 1992) (holding “that a public school teacher is a public official for defamation purposes”), with *True v. Ladner*, 513 A.2d 257, 264 (Me. 1986) (holding that a public school teacher was not a public official).

As for coaches, courts have reached a greater consensus. Although courts have not unanimously held that these individuals are public officials, *see O'Connor v. Burningham*, 165 P.3d 1214, 1216 (Utah 2007) (holding that a high school basketball coach was not a public official), the majority of courts have embraced the conclusion that coaches are public officials. For example, the Oklahoma Supreme Court held that a wrestling coach was a public official because his position "was of apparent importance in that public school's athletic program for the public to have an independent interest in [the coach's] performance" regarding his treatment of wrestlers, as evidenced by the fact that his actions resulted in parents withdrawing their students from his class. *Johnston v. Corinthian TV Corp.*, 583 P.2d 1101, 1103 (Okla. 1978).

A Texas court has likewise held that a plaintiff was a public official based on his role as a football coach and athletic director. *See Johnson v. Sw. Newspapers Corp.*, 855 S.W.2d 182, 187 (Tex. App. 1993). Explaining its rationale, the court wrote:

This dual position [as football coach and athletic director] was, so the record reveals, of such apparent importance that the public had an independent interest in the qualifications and performance of the person who occupied the positions, beyond the general public interest in the qualifications and performance of all government employees. . . .

Johnson's position of and activities as athletic director . . . show that he was vested with and exercised significant governmental responsibility on behalf of the school district in his sole operation of the athletic department. As head football coach, Johnson filled a position of such importance that the public not only had, but exhibited, an independent interest in his qualifications and performance, transcending any interest shown in other employees of the school system.

Id. at 186-87.

A New Jersey court has similarly reasoned that a public-school athletic director is a public official. In *Standridge v. Ramey*, 733 A.2d 1197, 1201-02 (N.J. Super. Ct. App. Div. 1999), that court explained:

As athletic director, plaintiff was responsible for managing and supervising all the athletic programs in the Roxbury school district, including twenty-four athletic teams. In performing these responsibilities, plaintiff administered a substantial budget and supervised approximately sixty coaches and other employees. He also spoke at booster club meetings and various other community functions. Moreover, we take note of the fact that the performance of high school athletic teams is often a matter of substantial public interest within a community. Therefore, we conclude that plaintiff was a "public official" and must show actual malice to establish his defamation claims

The reasoning in these cases applies with equal force to Cruce. Like those coaches and athletic directors, Cruce's position as coach and athletic director drew far more public attention than the average public employee's position. As a coach, his team's games were covered repeatedly by the local media, as were his efforts as the athletic director to create a hall of fame for Berkeley High School. This media attention reflected the public's interest in the Berkeley High School football team, which was as intense (according to Cruce's wife) as fans' interest in the Philadelphia Eagles. As an athletic director, Cruce oversaw all of the sports at the high school (which, as Cruce testified repeatedly, had every sport offered in South Carolina except lacrosse). Cruce also spoke at events in Moncks Corner, such as the Lions Club.

This all stands in stark contrast with the attention (or really, lack of attention) shown to other teachers at Berkeley High School. Indeed, as the Texas Court of Appeals observed in *Johnson*, the conclusion that the plaintiff is a public figure is not based on his role as a teacher; instead, it is based on his role as football coach and athletic director.

Put simply, the New Jersey court aptly recognized this reality when coaches and athletic directors file lawsuits: “the performance of high school athletic teams is often a matter of substantial public interest within a community.” *Id.* at 1202. The same is true here, and Cruce is therefore a public official under *Erickson* who must prove actual malice.

B. Cruce Is a Limited Public Figure.

Even if not a public official, Cruce still must prove actual malice because he is a limited public figure. A limited public figure “is an individual who ‘voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.’” *Erickson*, 368 S.C. at 472, 629 S.E.2d at 668 (quoting *Gertz v. Robert Welch*, 418 U.S. 323, 351 (1974)). The South Carolina Supreme Court has provided five factors to consider in determining whether a plaintiff is a limited public figure:

- (1) the plaintiff had access to channels of effective communication;
- (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy;
- (3) the plaintiff sought to influence the resolution or outcome of the controversy;
- (4) the controversy existed prior to the publication of the defamatory statement; and
- (5) the plaintiff retained public-figure status at the time of the alleged defamation.

Id. at 474, 629 S.E.2d at 669.

1. This Case Involves a Public Issue or Controversy.

Cruce insisted during arguments on the directed-verdict motion that this case did not involve a public controversy because sports were not a serious enough issue. He is wrong.

A public controversy is one that “has received public attention because its ramifications will be felt by persons who are not direct participants.” *Carr v. Forbes, Inc.*, 259 F.3d 273, 279 (4th Cir. 2001). Courts have repeatedly held that public controversies may arise from sports.

See, e.g., Curtis Pub. Co. v. Butts, 388 U.S. 130, 154 (1967) (holding that a university football coach was a limited public figure); *Vandenburg v. Newsweek, Inc.*, 507 F.2d 1024, 1025 n.1 (5th Cir. 1975) (holding that a college track coach was a limited public figure); *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1118 (N.D. Cal. 1984) (holding that a plaintiff's "voluntary decision to become head basketball coach is a sufficient 'thrust' within the meaning of *Gertz* to create limited public figure status, since the responsibilities of the position he accepted inevitably put him at the center of public attention regarding a continuing public controversy"); *Dodrill v. Ark. Democrat Co.*, 590 S.W.2d 840, 843 (Ark. 1979) ("The definition of 'public figure' is quite broad and, indeed, one may be held a public figure for limited purposes. Various courts have held included within the definition a football coach"); *McGarry v. Univ. of San Diego*, 64 Cal. Rptr. 3d 467, 477 (Cal. Ct. App. 2007) (holding that a plaintiff's "role as head coach of a local university's football team already made him a public figure, and his employment termination was already a topic of widespread public interest"); *Grayson v. Curtis Publ'g Co.*, 436 P.2d 756, 762 (Wash. 1967) (holding that a university basketball coach was a limited public figure).

And so one arises here. The impact of Jeff Cruce's tenure as the head coach and athletic director at Berkeley High School went far beyond Cruce and Chris Stevens. (Recall, the January 7 email was the only issue before the jury, and Stevens was the only direct participant in that email.) So much controversy arose over Cruce in the 2015 season that, as Principal Steele testified, a boycott was planned for a home game that season, which would have cost Berkeley High School significant revenue and would have left student-athletes playing in front of a virtually empty stadium. Cruce testified that the situation was so bad that Steele even arranged to provide police protection for Cruce. Moreover, Cruce's years at Berkeley saw a substantial

drop in memberships in the Booster Club. This meant less money for all of Berkeley's student-athletes. Thus, despite Cruce's protestations, the controversy arising from his time at Berkeley is a public controversy for purposes of First Amendment law.⁴

2. Cruce Is a Limited Public Figure under *Erickson*.

The evidence at trial established that Cruce is a limited public figure under the *Erickson* factors. *First*, Cruce had access to the media. He testified that he had a radio show, and as the 197 newspaper articles in Exhibit 27 demonstrate, Cruce had regular access to reporters. Reporters sought out Cruce to discuss the Berkeley High School football team's games; they did not seek out random fans in the stands or other members of the coaching staff. Cruce was thus in a unique position regarding access to the media when it came to the football team and Berkeley High School sports.

Second, Cruce voluntarily assumed a public role regarding the football team and Berkeley High School sports. He was not forced to be the coach, nor was he coerced into talking with reports. Indeed, he willingly broadcast his new strategy, including broadcasting it as far as an article in the *Kansas City Star*.

Third, Cruce sought to influence the outcome of this controversy. He repeatedly defended his new strategy during the 2015 season. On one occasion after a loss, he implored people (through the media) to "have patience" because his strategy would eventually work. Ex.

⁴ Further bolstering the conclusion that this is a public controversy is the fact that local media has reported on the jury's verdict. See, e.g., Kevin Bilodeau, *Former Berkeley Coach Jeff Cruce Awarded \$200,000 from BCSD*, Live 5 News, Sept. 8, 2017, <http://www.live5news.com/story/36322080/former-berkeley-coach-jeff-cruce-awarded-200k-from-bcsd>; Brenda Ridge, *Former Stags Coach Cruce Awarded \$200,000 in Suit Against Berkeley School District*, Post & Courier, Sept. 8, 2017, http://www.postandcourier.com/news/former-stags-coach-cruce-awarded-in-suit-against-berkeley-school/article_e12c9a02-94af-11e7-84de-035749503f55.html. Most jury verdicts do not get this type of attention.

27, Tab 160. To a different reporter, Cruce noted that he knew he would get criticized for not punting, but that “is not going to deter” him from sticking to his plan. Ex. 27, Tab 161. And after picking up a win against Timberland in 2015, Cruce defended his strategy by proclaiming that he had “done [his] homework” on it. Ex. 27, Tab 168.

Fourth, the controversy over Cruce’s tenure existed before the January 7 email (again, that email was the sole issue before the jury), which was written after Cruce was removed as the head coach and athletic director.

Fifth, Cruce was still in the public eye when the January 7 email was written. This email came less than a month after Cruce was removed from his roles as coach and athletic director, a move which was covered by the *Post & Courier*. See Ex. 27, Tabs 180, 181. And the email came shortly before there was more media coverage of the lawsuit that Cruce filed. See Ex. 27, Tabs 182, 183, 184.

* * *

There is nothing remarkable about the conclusion that Cruce, as a football coach and athletic director, has to prove actual malice. Although Cruce labored during arguments on the directed-verdict motion to distinguish himself from cases involving figures from college or professional sports, his failure to address cases involving high school coaches (cases about which he necessarily knew, given that they were in the District’s brief in support of its summary-judgment motion) is telling.

In at least six states, courts have required high school (and even middle school) coaches or athletic directors to prove actual malice to prevail on a defamation claim. See *Belser v. Milford Bd. of Educ.*, No. CV054002886S, 2005 Conn. Super. LEXIS 1932, at *3 (Conn. Super. Ct. June 23, 2005) (noting that a plaintiff conceded, “as he must,” that he was a public figure based on his

role as teacher and coach); *Brewer v. Rogers*, 439 S.E.2d 77, 81 (Ga. Ct. App. 1993) (holding that a high school football coach was a public figure); *Mahoney v. Adirondack Pub. Co.*, 517 N.E.2d 1365, 1366 (N.Y. 1987) (noting that the plaintiff conceded that he was a public figure as a high school football coach); *Standridge*, 733 A.2d at 1201–02; *Johnston*, 583 P.2d at 1103; *Johnson*, 855 S.W.2d at 187. This Court is therefore on solid ground in holding that Cruce would be required to show actual malice on his defamation claim.

II. Cruce Did Not Prove Each Element of His Defamation Claim.

Defamation, of course, requires a plaintiff to prove that a statement “(1) had a defamatory meaning; (2) was published with actual or implied malice; (3) was false; (4) was published by the defendant; (5) concerned the plaintiff; and (6) resulted in presumed damages or in special damages to the plaintiff.” *Parker v. Evening Post Publ’g Co.*, 317 S.C. 236, 242–43, 452 S.E.2d 640, 644 (Ct. App. 1994). Based on the evidence at trial, Cruce did not prove all of these elements.

A. The January 7 Email Is Not Defamatory.

As the jury was instructed, a statement is defamatory only “if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 530, 506 S.E.2d 497, 512 (1998).

Read as a whole, no reasonable juror could have found the January 7 email defamatory. *See Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 582, 556 S.E.2d 732, 738 (Ct. App. 2001) (explaining that an allegedly defamatory statement must be read in context). It begins by stating a fact: Chris Stevens went into Cruce’s old office with two other school officials. Those three people reviewed files regarding the paperwork documenting student-athletes’ eligibility. Then

Stevens noted that some documents “could” be missing: “After spending some time looking through files it has come to my attention that there *could* be some documents that *could* be misplaced and others that are out of order.” Ex. 13 (emphasis added). He next informed people that all required documents must be in a student-athlete’s file and that he would be in the office over the next few days to make sure every student-athlete’s file is proper. He asked coaches to stop and check the files for their teams, listing the documents that were required.

As an initial matter, the statement about documents that could be misplaced or out of order—which, based on his closing argument, was clearly why Cruce claimed the email was defamatory—cannot support a defamation claim. The use of “could” (twice, in fact) makes this sentence conditional. *See, e.g.,* William B. Strunk, Jr. and E.B. White, *The Elements of Style* 20 (4th ed. 2000) (discussing “could” as a conditional verb). Courts have held that conditional statements are generally not actionable as defamation. Our court of appeals has explained that a conditional statement can be the basis of a defamation claim only if the conditional statement “is known to be true.” *Warner v. Rudnick*, 280 S.C. 595, 598, 313 S.E.2d 359, 360 (Ct. App. 1984). In *Warner*, the court held that the trial court wrongly denied a motion to dismiss because the basis of the defamation claim was a conditional statement that “depends on a fact which has not and may never occur.” *Id.* Similarly here, Cruce’s defamation claim is based on a conditional statement about documents that “could” be misplaced or out of order. None of the people to whom the email was sent had any way of knowing whether that statement was true. Thus, the court’s reasoning in *Warner* controls this case and means that the January 7 email cannot support a defamation claim.

Even if Cruce could rely on this conditional statement, he still cannot show that the email is defamatory. First, on its face, this email cannot be defamatory. No reasonable person could

interpret this email as “expos[ing Cruce] to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.”

Scott v. McCain, 272 S.C. 198, 201, 250 S.E.2d 118, 120 (1978). The email says nothing more than some documents may be misplaced or out of order. It says and implies nothing more about Cruce as an athletic director.

Next, none of the context around this email can make it defamatory. It was sent only to coaches of Berkeley High School sports teams. Cruce offered no evidence whatsoever at trial that any of those coaches knew anything about the reasons that he was removed as the head football coach or athletic director. Indeed, no evidence was before the jury that anyone at Berkeley High School other than Principal Steele and District officials knew of the three reasons why Cruce was removed from his two athletic-related positions. In other words, these coaches who received the email knew nothing about Cruce’s alleged failure to complete the evaluations or increase membership in the Booster Club. All they would have known is that, as Cruce testified repeatedly, Cruce was the athletic director of the region during the prior school year. Thus, the coaches who received the January 7 email had no reason whatsoever to think, based on what amounts to a single sentence in the first paragraph of that email, that Cruce was an incompetent athletic director. The email therefore could not be defamatory.

B. The Jury Had No Evidence to Conclude that Stevens Wrote the January 7 Email with Common-Law Malice.

The Court accurately charged the jury that Cruce had to prove the January 7 email was written with common-law malice. This standard requires a plaintiff to prove that the speaker “was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious

indifference toward [the] plaintiff's reports." *Holtzscheiter*, 332 S.C. at 510 n.3, 506 S.E.2d at 501 n.3.

The January 7 email was authored by Chris Stevens, the athletic trainer from Berkeley High School. The record contains no evidence whatsoever from which a reasonable juror could conclude that Stevens wrote the January 7 email with any malice.⁵ He testified that he went into Cruce's old office with permission from the administration because a weightlifting coach had inquired whether a particular student had the necessary paperwork on file to be allowed to lift weights. Cruce limited his cross-examination of Stevens to the topic of whether Stevens knew what documents had to be in the eligibility files; Cruce never broached the subject of any motive Stevens had in writing the email. Moreover, other than the January 7 email, Stevens was not mentioned in any meaningful way during the trial, so the jury could not have imputed any ill will to Stevens from something else.

At bottom, there is no evidence from which the jury could have concluded that the January 7 email was written with common-law malice. Without such evidence, an essential element of Cruce's claim is missing, and the jury verdict cannot stand.

C. Cruce Offered No Evidence to Show that Any Damages Were Proximately Caused by the January 7 Email.

Even if Cruce did not have to prove actual malice and offered evidence from which the jury could have reasonably found for him on the other elements of his defamation claim, he still cannot overcome one final hurdle: the jury had no evidence before it to show that Cruce suffered any damages that were proximately caused by the January 7 email. As the Court charged the

⁵ Although a statement from Stevens may result in liability for the District, the statement itself was from Stevens. Thus, issue of whether common-law malice exists must focus on whether Stevens—the author of the statement—acted with the requisite culpability.

jury, Cruce was entitled to recover only damages proximately caused by a defamatory statement (and again, the January 7 email was the only statement that was before the jury). *See, e.g., Whitaker v. Sherbrook Distrib. Co.*, 189 S.C. 243, 246, 200 S.E. 848, 849 (1939).

Our supreme court long ago explained that “[t]he proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.” *Miller v. Atl. C. L. R. Co.*, 140 S.C. 123, 167, 138 S.E. 675, 689 (1926); *see also Hurd v. Williamsburg Cty.*, 353 S.C. 596, 612, 579 S.E.2d 136, 144 (Ct. App. 2003) (describing proximate cause as existing when “without [the wrongful act], the injury would not have occurred”). Cruce offered the jury no evidence to show a “natural and continuous” chain connects the January 7 email and any damages.

Cruce claimed an array of damages, from lost salary and retirement to his wife selling part of her retirement savings to moving costs associated with his relocation to Charlotte. What Cruce never did, however, was show how any of these damages were caused by the January 7 email. For instance, there was no evidence that anyone who received the January 7 email was a decisionmaker or had any bearing or influence on any decisionmaker who decided not to offer Cruce a coaching job, whether in or around Berkeley County or around Charlotte.

Furthermore, there is no evidence from anyone who received the January 7 email that they thought less of Cruce because of that email. As discussed in Part II.A., these coaches would have known only that Cruce had just been named athletic director of the year, so they would have no reason to doubt him in that role based on this short email. And Cruce offered no evidence that anyone other than the people to whom the email was addressed ever saw it, so the January 7 email could not have impacted what any other person thought of him.

Put another way, had the January 7 email never been sent, Cruce would still be in exactly the same place he is now. He would not have found a job in Berkeley County, he would be coaching at the same place in Charlotte where he is now, and he and his wife would have had to make the same decisions about her retirement savings. There is nothing to suggest that anyone in Berkeley County or anywhere else would think the slightest bit differently of Cruce if the email had never been sent. If Cruce would be in exactly the same place had the email never been sent, then the email cannot be the proximate cause of any damages. *See Hurd*, 353 S.C. at 612, 579 S.E.2d at 144.

Another problem for Cruce is that he *never* distinguished for the jury what damages were attributable to his wrongful-termination claim and what damages were attributable to his defamation claim. Indeed, he put a chart of his damages up at the beginning of his case (before the District's directed-verdict motion was granted in part), and he put up the same chart during his closing argument. He never provided any evidence of how those damages were caused by the alleged defamation, rather than his alleged wrongful-termination.

III. The January 7 Email Was Not False.

Truth is an "absolute defense" to a defamation claim. *Erickson*, 368 S.C. at 458 n.2, 629 S.E.2d at 661 n.2; *see also Beckham v. Sun News*, 289 S.C. 28, 30, 344 S.E.2d 603, 604 (1986) (noting that a defendant bears the burden of proving a statement was true in a case brought by a private figure).

Here, the District carried that burden, and the jury had no way to conclude that the email was false. Stevens testified that he went into Cruce's old office to check files, and nothing contradicted that testimony. Both Stevens and Cruce noted that required documents must be on file, or the school could face penalties from the South Carolina High School League. (This

requirement is why the High School League performs the audits that Cruce testified he had always passed.)

Stevens's statement that he would be in the office "during the next few days" and would provide an update to the other coaches next week are statements of future intent, and thus they cannot make support a defamation claim. *See, e.g., Caesars Entm't Operating Co., Inc. v. Appaloosa Inv. Ltd. P'ship I*, 18 N.Y.S.3d 577 (N.Y. Sup. Ct. 2015) (explaining that certain statements "cannot give rise to a defamation claim because they are expressions of future intent, not facts"); *cf. Coleman v. Stevens*, 124 S.C. 8, 15, 117 S.E. 305, 307 (1923) (observing that "fraud cannot be predicated upon an unfulfilled promise as to future events alone").

Stevens and Cruce disagreed about exactly what documents were required. But this disagreement is of no import here. That list is not a statement about Cruce, and Cruce never argued that the list was what made the January 7 email defamatory.

That leaves only a single sentence in the email, on which Cruce focused: "After spending some time looking through files it has come to my attention that there could be some documents that could be misplaced and others that are out of order." This statement is not false. Documents *could* have been misplaced or out of order—that is all Stevens said. (In fact, some documents were out of place, as a chart that Stevens created after his review showed. *See* Court's Ex. 1 (Cruce Dep. Ex. 17). That simple, conditional statement does not make the email false. The jury had no basis on which to conclude the email was false, and because it was not false, it cannot support Cruce's defamation claim.

IV. It Is Not Clear that the Jury Understood Its Role in Evaluating the Qualified Privilege, and in Any Event, the Evidence Does Not Support the Jury's Conclusion that the Privilege Was Exceeded.

A statement, even if defamatory, cannot support a verdict for the plaintiff if that statement is protected by a qualified privilege. This qualified privilege applies if a defendant shows "good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only." *Fountain v. First Reliance Bank*, 398 S.C. 434, 444, 730 S.E.2d 305, 310 (2012). Whether a privilege exists is a question of law. *See Murray v. Holnam, Inc.*, 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001). Whether that privilege is exceeded is a question of fact. *See id.* Here, it is unclear that the jury understood that the Court necessarily had already determined that the email was privileged, and it was up to the jury to decide whether the privilege was exceeded.

In any event, the jury's conclusion that the email was not protected by a qualified privilege is untenable. The email was sent in good faith (Stevens sent it after being asked a question about eligibility), with an interest to be upheld (whether student-athletes had the necessary paperwork on file), limited to that purpose (the email discussed only eligibility), on a proper occasion (Stevens was instructed to review the files after an inquiry was made), and was only published in a proper manner (the email was sent only to coaches). Based on this evidence, the jury's decision that the email was not privileged (or that the privilege was exceeded) cannot stand.

Conclusion

As a threshold matter, Cruce's defamation claim should not have been submitted to the jury because it required proof of actual malice and was therefore barred by the Tort Claims Act. Moreover, the jury's verdict is fatally flawed because the jury had no evidence before it to

conclude that the January 7 email was false, defamatory, written with common-law malice, harmful to Cruce, and not privileged. The Court should accordingly enter judgment for the District or, at the very least, grant a new trial or remittitur.

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COUNTY OF BERKELEY

Jeffery Lance Cruce,

Plaintiff,

vs.

The Berkeley County School District,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-08-131

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
JUDGMENT NOT WITHSTANDING THE
VERDICT, OR IN THE ALTERNATIVE,
A NW TRIAL ABSOLUTE OR A NEW
TRIAL NISI REMITTITUR**

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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I. INTRODUCTION

This matter was tried by a jury in Berkeley County from September 5 through September 7, 2017. The jury foreperson was an HR professional. The jury panel included a trauma surgeon, mental health technician, retired US Navy engineer, Quality Assurance Associate at Boeing and a respiratory therapist; it was an educated and thoughtful jury. The jury deliberated more than 6 hours and a good amount of that time, according to two (2) notes sent by the jury to Judge Harrington, the delay in reaching a verdict was only because the jury could not agree on the amount of damages to award. After an Allen Charge was read to the jury, it returned with a verdict of \$200,000 in favor of the Plaintiff Coach Cruce.

There was no flaw in the jury's deliberations. There was an initial question sent by the jury about the January 7th email, but Defendant agreed to the response Judge Harrington sent to the jury. Jury charges not objected to by Defendant and the charges included the instruction that the jury could consider the context of the alleged defamatory statement. In short, there was ample evidence from which the jury could conclude the January 7th email contained false statements which insinuated Coach Cruce was unfit for his profession and that the email harmed Coach Cruce's reputation, lowering him in the estimation of the community or deterring third

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parties from associating or dealing with him. Each of Defendant's arguments is addressed below.

I. Malice

There was sufficient evidence for the jury to find that the January 7th email insinuated Coach Cruce was unfit for his profession, which is defamation *per se*. When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice and actual malice need not be proved. *Castine v Castine*, 403 S.C. 259, 743 S.E.2d 93 (Ct. App. 2013) Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights. *McBride v. Sch. Dist. of Greenville County*, 389 S.C. 546, 560-561, 698 S.E.2d 845, 852 (Ct. App. 2010)

The fact that an employee of the District sent the defamatory email rather than the Board is irrelevant as it is the nature of the defamatory statement, not who sends it which is important. Further, the jury could have found the employee acted as an agent of Defendant. The term "agency" means that a person has placed another person in such a situation that someone else is justified in assuming that the agent is authorized to act on behalf of that person. *Swift & Co. v. Callaham*, 133 S.C. 353, 363, 131 S.E. 146, 150 (S.C. 1926).

A. Cruce is not a Public Official

A person can only become a public figure under two circumstances: by achieving such fame and notoriety that he becomes a public figure for all purposes and in all contexts, or by voluntarily injecting himself into a public controversy and thereby becoming a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974) (emphasis added). A public question involves the resolution of a serious social or governmental problem. *Time Inc. v.*

Johnston, 448 F. 2d 378 (4th Cir. 1971). The trial court properly denied Defendant's motion for a directed verdict when it ruled that a high school football coach's offensive strategy does not involve the resolution of serious social or governmental problems and was correct in not sending this issue to the jury.

B. Cruce is not a Limited Public Figure

The Court also properly ruled that Coach Cruce was not a limited public figure. Defendant admitted there are no cases in South Carolina that hold a high school coach is a limited public figure and, thus, no precedent to support Defendant's novel legal argument. Further, Coach Cruce does not meet all five (5) of the requirements for being a limited public figure. The five requirements for a limited purpose public figure: (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in a public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statements; and (5) the plaintiff retained public figure status at the time of the alleged defamation. *Fitzgerald v. Penthouse Int'l*, 691 F.2d 666, 668 (4th Cir. 1982).

Coach Cruce did not seek to influence the resolution or outcome of any serious social or governmental problem; he changed his football strategy. The fact that his football team was discussed in the local paper every week before and after a game does not mean Coach Cruce voluntarily assumed a role of special prominence in a public controversy. Additionally, the fact that Coach Cruce instituted a new type of offense for his high school football team does not mean he sought to influence the resolution or outcome of a serious social or governmental problem. Simply because a group of people in Moncks Corner are emotionally involved in how successful a high school football team is, does not turn a high school football game into a serious

social or governmental problem. If it did, under Defendant's analysis all high school football coaches would be limited public figures every time their team plays a game and the outcome of that game is reported on the media. That is not the limited exception carved out in *Fitzgerald, supra* and the Court was correct in ruling at the directed verdict stage of trial that Coach Cruce was not a limited public figure.

II. The January 7th Email is Defamatory

"Where words used are capable of different meanings, one of which is slanderous, the jury must ascertain [the] sense in which they were [communicated] and decide which meaning was, in fact, conveyed to [those who heard the words.]" Defamatory meaning can be inferred from evidence of the surrounding circumstances of Defendant's statements. Further, a mere insinuation is actionable "if it is false and malicious and the meaning is plain." *Timmons v. News & Press, Inc.*, 232 S.C. 639, 644-45, 103 S.E.2d 277, 280-81 (1958). Further, a defendant's belief in the truth of its statement does not justify its publication if the statement is published with an improper and unjustified manner or with improper and unjustified motives and the speaker must be careful to go no further than his interests or duties require. *Fulton v. Atlantic Coast Line R. Co.*, 220 S.C. 287, 296-97, 67 S.E.2d 425, 429 (1951). There was ample evidence from which a jury could conclude sending an email to 45 recipients who were employees of the district, volunteer coaches and parents was improper, especially since Defendant's Principal admitted as much.

Although the District Superintendent testified the District did not discuss personnel matters and was silent when asked why Coach Cruce was terminated as Head Football Coach and Athletic Director and transferred to a Middle School midyear, the jury also heard in testimony that on January 7th, three (3) District employees were sent by Principal Steele into

Coach Cruce's former office, *"to check on the status of student files left by our previous athletic director."* (emphasis added.) The jury reasonably concluded the email plainly communicates its purpose in the first sentence: to tell recipients Coach Cruce had not properly maintained the files of student athletes and, thus, had not performed his job as athletic director effectively. The first and second paragraphs clearly establish the email is about his failure to properly maintain student files and the effort required to correct his failure. Thus, the email is primarily about Coach Cruce's poor job performance – not about ensuring files were properly maintained.

The evidence was sufficient for the jury to conclude that the Principal's testimony about the purpose of the email was false and that the purpose of the email was to put the word out that Coach Cruce had been unfit to perform the job of athletic director. The Principal claimed this email was to ensure student athlete eligibility files were complete for spring sports. However, the jury reasonably concluded that if the Principal's statement were true, then disparagement of Coach Cruce's job performance in such an email would have been irrelevant and unnecessary.

Further, the jury heard evidence that termination letters from the District Superintendent and the Assistant Superintendent to Coach Cruce state plainly his failure to perform his job as athletic director was a reason for termination. The Principal and the former Superintendent later admitted that Coach Cruce's job performance as athletic director was not in question and that this reason was a false reason for his termination. However, when the January 7th defamatory email was sent, the District and the Principal were still claiming that Coach Cruce's failure to perform his job as athletic director effectively was a reason for his termination. The jury could have reasonably concluded the defamatory email was an attempt to "prop up" that argument and to "paper" Coach Cruce's file after the fact of his termination and provide support for the District's and the Principal's claim in the termination letter that Coach Cruce's poor job

performance as athletic director was a reason for his termination and there was ample evidence for the jury to reach this conclusion.

The jury heard the Principal testify he sent three (3) employees to go through all student athlete files on January 7th and provided them with a key to get in the office. The jury also heard testimony regarding the timing of this email. On January 6th, the day before the defamatory email was sent, Coach Cruce and his attorney met with the District Superintendent to discuss his termination and attempt to avoid litigation. The jury could draw the reasonable conclusion from this evidence that the review of student files and subsequent email was an attempt after the fact evidence to support the District's false reason for termination.

III. The Statements in the January 7th Email are False

Coach Cruce testified the statements in the January 7th email were false and that the employee who wrote the email did not know what documents had to be in student athletes' files. The employee (Chris Stevens) admitted before the jury that he had no experience working with student athlete eligibility files, had never reviewed these files previously, and had no training or experience or certification to qualify him to determine if the files were incomplete or "out of order" as he claimed. The fact that the list in the email of alleged problems with the files contained many falsehoods about the documents required and immediately followed a paragraph citing Coach Cruce's failure to maintain student files properly is evidence which the jury heard that supports Coach Cruce's argument that the purpose and content of the email were defamatory.

Coach Cruce testified the email included a list of documents required for student athlete eligibility that contained multiple false statements. Specifically, Coach Cruce testified:

- No social security card is required for student athlete eligibility.

- No form exists to document a "proper understanding of HIPPA or FERPA rights".
- Certified athletic directors are trained on these subjects and no one but the athletic director has responsibility for ensuring confidential medical information of students is protected.
- Not one of the three (3) people who reviewed the files on January 7 possessed this training.
- There is no such thing as "Emergency Insurance and Consent to Treat" form. The pre-sports physical form includes fields which cover this information. The email indicates it is a unique form and illustrates the lack of knowledge on this topic the writer of the email possessed.
- No separate doctor's note addressing special physical accommodations is required. There is only the physical form, which includes a field where a doctor can write these notes.
- Responsibility for knowledge of or to ensure necessary treatment for such accommodations is the responsibility of the athletic trainer alone. No coach should have knowledge of special physical accommodations which are confidential other than the athletic trainer and the athletic director. No coach is required to ensure this information is in the student files.
- Coach Cruce also testified the list of requirements for student athlete files in the email was false as it DID NOT include items that are in student athletes' files such as grades and he testified the athletic director alone has access to confidential grades information.

The email was also false and defamatory in its implication that Coach Cruce created a liability for the school due to his failure to maintain student athlete files properly. Coach Cruce testified that in his entire career in BCSD as an athletic director he has never failed an audit of student athlete files by the SC High School League, nor has he ever been cited with a violation regarding incomplete student athlete files. The email communicated a false message that Coach Cruce created a liability for the school in his failure to maintain student athlete records and in the implication he was not adequately safeguarding the athletes and maintaining proper care for them.

IV. The Evidence Supports the Jury's Finding that any Privilege associated with the January 7th Email was Exceeded

The defamatory email was sent to 45 recipients and Coach Cruce testified many of them should not have received this email and had no reason or need to know the information. Coach Cruce testified responsibility for athlete eligibility is assigned to head coaches alone; no communication about eligibility should have gone to anyone but head coaches. Coach Cruce testified as only head coaches of each sport are responsible for eligibility, only head coaches are privy to the confidential information in a student athlete's eligibility file, not every coach.

There was also no reason to publish the false statements in the January 7th email to persons Coach Cruce testified he did not know, including volunteer parent coaches. As stated earlier, Principal Steele testified he agreed the email should not have been sent to everyone that it was sent to. A jury could have found that the email was clearly not published in a proper manner and any privilege (if it existed) was exceeded.

CONCLUSION

For the above stated reasons, Plaintiff respectfully asks this Court deny Defendant's Motion for Judgment notwithstanding the Verdict, or in the alternative, a New Trial Absolute or a New Trial Nisi Remittitur.

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Date: October 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Jeffrey Lance Cruce,

Plaintiff,

v.

The Berkeley County School District,

Defendant.

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**DEFENDANT'S REPLY IN SUPPORT OF
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
OR IN THE ALTERNATIVE,
A NEW TRIAL ABSOLUTE
OR A NEW TRIAL NISI REMITTITUR**

The Berkeley County School District respectfully submits this reply in support of its motions for judgment notwithstanding the verdict, or in the alternative, for a new trial absolute or new trial nisi remittitur.

Introduction

Unsurprisingly, Cruce insists that the jury verdict—awarding him \$200,000 for a defamation claim based solely on the January 7 email—should stand. He is wrong. No argument in his opposition to the District's post-trial motions can correct the fatal flaws in the verdict. This Court should accordingly grant judgment for the District notwithstanding the verdict or, alternatively, grant a new trial or remittitur.¹

Argument

I. Cruce Had to Prove Actual Malice, so the Tort Claims Act Barred His Claim.

Cruce rightfully does not dispute that if he had to prove actual malice, his claims are barred by the Tort Claims Act. *See* S.C. Code § 15-78-60(17); *Gause v. Doe*, 317 S.C. 39, 41–42, 451

¹ The District incorporates by reference the arguments set forth in its post-trial motions as if set forth herein verbatim.

S.E.2d 408, 409 (Ct. App. 1994). Thus, the only question here is whether he is a public official or a limited public figure.

A. Cruce Is a Public Official.

Cruce's response to the District's public-official argument misses the mark, both on the law and the facts. First, as for the law, courts have discussed and applied the public-controversy requirement only to public *figures*. This analysis is irrelevant to public *officials*.² See, e.g., *Hatfill v. N.Y. Times Co.*, 532 F.3d 312, 317–19 (4th Cir. 2008); *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 469–76, 629 S.E.2d 653, 666–70 (2006). Therefore, for purposes of determining whether Cruce is a public official, the nature of the controversy is irrelevant. What matters is only whether Cruce meets the test for a public official established by our supreme court in *Erickson*:

In general, a public official is a person who, among the hierarchy of government employees, has or appears to the public to have substantial responsibility for or control over the conduct of governmental affairs. In considering the question of whether one is a public official, the employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy. The status of a public official may be deemed sufficient to warrant application of the *New York Times* privilege, not because of the government employee's place on the totem pole, but because of the public interest in a government employee's activity in a particular context.

² Cruce appears to confuse the concepts of public officials and public figures; despite a heading that Cruce is not a public official, that section actually discusses law about a public figure. See Cruce Resp. 2–3. Courts have recognized (1) public officials, (2) all-purpose or general public figures, and (3) limited public figures. See, e.g., *Erickson*, 368 S.C. 444, 469–76, 629 S.E.2d 653, 666–70. A public official is a government employee who has “substantially responsibility for or control over the conduct of governmental affairs.” *Id.* at 469, 629 S.E.2d at 666. A general public figure is someone who has “assumed [a] role[] of especial prominence in the affairs of society.” *Id.* at 472, 629 S.E.2d at 668. And a limited public figure is a person who has “voluntarily injects himself or is drawn into a particular public controversy.” *Id.*

368 S.C. at 469, 629 S.E.2d at 666.

Next, as to the facts, Cruce offers no argument whatsoever that Cruce is not a public official under this *Erickson* test. The evidence here made clear that Cruce's position as the football coach and athletic director attracted public interest. Unlike the average high school teacher, the football coach and athletic director received substantial attention from the media and the community. In fact, Cruce's wife testified that the intensity for sports was comparable to the intensity of the persecution of Christians in ancient Rome, when people would flock to the Coliseum to watch Christians be killed by lions.

That the public interest would be sufficient for a football coach and athletic director to be a public official is no surprise. In multiple other states that have addressed this issue, courts have reached this conclusion. See *Standridge v. Ramey*, 733 A.2d 1197, 1201–02 (N.J. Super. Ct. App. Div. 1999); *Johnston v. Corinthian TV Corp.*, 583 P.2d 1101, 1103 (Okla. 1978); *Johnson v. Sw. Newspapers Corp.*, 855 S.W.2d 182, 187 (Tex. App. 1993). The *Standridge* court in New Jersey succinctly summarized its analysis this way: “the performance of high school athletic teams is often a matter of substantial public interest within a community.” 733 A.2d at 1202. That is especially true of the community here. Cruce never even attempts to distinguish himself from these coaches and athletic directors who were held to be public officials. Indeed, he cannot—those courts' reasoning applies with equal force to him. Cruce is thus a public official whose defamation claim requires proof of actual malice.

B. Cruce Is a Limited Public Figure.

Cruce's defamation claim is similarly barred because he is a limited public figure. Although combined into a single paragraph, Cruce's argument to the contrary contains two threads, neither of which has merit.

Before turning to these two threads, an initial observation is warranted about Cruce's second sentence in Part I.B. of his brief. *See* Cruce Resp. 3. As he did during the arguments on directed verdict, Cruce seeks to hide behind the fact that the District's argument is "novel" and no South Carolina case holds that a high school coach is a limited public figure. The Court should give no weight to this observation, which is nothing more than an invitation for the Court to avoid engaging in the requisite legal analysis because an appellate court has not done so first. For one thing, at some point, every question was novel, and some court had to be the first to decide it. And for another, the idea of a limited public figure is far from novel.³ The fact that no court in this State has addressed this legal rule in this particular context does not make the issue itself novel.

Turning to Cruce's two arguments, he first contends that there is no public controversy. He does this not by engaging the appropriate legal standard or wrestling with the cases cited by the District, but rather by merely casting the issue as one of "football strategy" and conclusorily announcing that such an issue does not constitute a public controversy. But a public controversy for First Amendment law is simply one that "has received public attention because its ramifications will be felt by persons who are not direct participants." *Carr v. Forbes, Inc.*, 259 F.3d 273, 279 (4th Cir. 2001). And as the District pointed out in its post-trial motions, public controversies can certainly arise from sports. *See* District's Post-Trial Mots. 8 (collecting cases). Such a controversy arose here: The impact of Cruce's tenure as the head coach and athletic director at Berkeley High School went far beyond Cruce and Chris Stevens (who wrote the January 7 email) and impacted student-athletes across the school, from those football players who faced a

³ The concept has existed since at least *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), and courts have been using the exact language of "limited public figure" ever since, *see, e.g., Lawlor v. Gallagher Presidents' Report, Inc.*, 394 F. Supp. 721, 731 (S.D.N.Y. 1975).

potential boycott to all student-athletes who had less money for their sports because of the decline in Booster Club membership.

As for Cruce's second argument, he maintains that he does not meet the five *Erickson* factors for qualifying as a limited public figure. In fact, he does. The only factor Cruce directly takes on is whether he voluntarily assumed a role in the controversy. Cruce did assume such a role in this public controversy; not only did he willingly speak to local reporters and adamantly defend his team and his strategy, but he also spoke to a reporter from the *Kansas City Star* (about 1,000 miles away from Moncks Corner), going so far there as acknowledging that his new strategy could be career-ending. Holding that Cruce is a limited public figure would put this Court in the company of courts from around the country that have reached that same conclusion. See *Belser v. Milford Bd. of Educ.*, No. CV054002886S, 2005 Conn. Super. LEXIS 1932, at *3 (Conn. Super. Ct. June 23, 2005); *Brewer v. Rogers*, 439 S.E.2d 77, 81 (Ga. Ct. App. 1993); *Mahoney v. Adirondack Pub. Co.*, 517 N.E.2d 1365, 1366 (N.Y. 1987).

Despite his protestations, concluding that Cruce is a limited public figure does not mean that every high school football coach is a limited public figure simply because the team's score is reported in the newspaper. Whether a coach is a limited public figure turns on the facts of each case. In a town that cares less about football and at a school whose coach does not speak with reporters regularly (including vigorously defending his approach to coaching the way Cruce did), the coach may well not be a limited public figure. But here, Cruce is one, which means his defamation claim requires proof of actual malice.

II. Cruce Did Not Establish All Elements of His Defamation Claim.

A. Cruce Did Not Prove Common-Law Malice.

Cruce responds to the District's argument on common-law malice only indirectly. Although he does not say so explicitly, he contends that he did not have to prove common-law malice because the January 7 email was defamation *per se*. This argument fails. The Court specifically rejected Cruce's invitation to charge the jury on defamation *per se*. As charged, Cruce *had* to prove common-law malice. He makes no argument that he did.

Indeed, he has no argument even to make. The jury heard no evidence about whether Chris Stevens "was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 510 n.3, 506 S.E.2d 497, 501 n.3 (1998). Cruce never even bothered to cross-examine Stevens on this subject. Without any evidence of common-law malice, a critical piece of Cruce's claim is missing, and the verdict cannot stand.⁴

B. The January 7 Email Is Not Defamatory.

A statement is defamatory only "if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* at 530, 506 S.E.2d at 512. The January 7 email does not do so.

As a threshold matter, Cruce offers no response to the District's explanation why *Warner v. Rudnick*, 280 S.C. 595, 313 S.E.2d 359 (Ct. App. 1984), controls this case. As in *Warner*, the conditional language of the only potentially defamatory sentence in the January 7 email

⁴ Cruce's argument about Stevens being an agent of the District is irrelevant. See Cruce's Resp. 2. Regardless of whether Cruce was the District's agent when he wrote the January 7 email, the relevant question here is whether Stevens wrote that email with common-law malice.

precludes the email from supporting a defamation claim. For that reason alone, Cruce's defamation claim fails.

Yet even if *Warner* did not mandate that the jury verdict be set aside, Cruce still could not prevail. Cruce defends the jury's conclusion that the email is defamatory by characterizing the email as "primarily about Coach Cruce's poor job performance." Cruce Resp. 5. But that misreads the email. The email's primary focus is whether all of the necessary documents are present. Most of the email discusses why these documents must be kept, what documents must be kept, and a plan for ensuring all of the documents are kept. The *only* reference to Cruce is a passing reference in the first sentence to the "previous athletic director." After that first sentence, the email is only about the documents in student-athletes' files.

Further, Cruce's theory "that the purpose of the email was to put the word out that Coach Cruce had been unfit to perform the job of athletic director" is untenable. Cruce Resp. 5. Putting beside the fact that this theory was never argued to the jury, the evidence does not support it. There was no evidence that Steele directed Stevens to review the documents in Cruce's old office to "paper" any file or that anyone had any such motive. Based on the evidence at trial, such a nefarious theory rests on a foundation of sand that cannot support a reasonable jury verdict. In fact, the driving force behind Stevens even going into the office was a legitimate question about student safety and eligibility raised by the weightlifting coach concerning two students' eligibility to participate in the after-school weightlifting program.

Moreover, the jury heard no evidence that any of the recipients of the January 7 email (other than Principal Steele) knew anything about the reasons why Cruce was removed as athletic director. Hence, even if Principal Steele did have an ulterior motive other than checking the status of files, none of the email's recipients could have known about it. All they knew was that Cruce had just the

previous year been athletic director of the year. The email did not directly say that Cruce was unfit to be an athletic director, and from the information that was available to the recipients of the email, the email had no context from which anyone could infer that Cruce was unfit for his job.

C. Cruce Did Not Prove Any Damages Were Caused by the January 7 Email.

Cruce offers no argument at all in response to the District's argument that he did not prove any damages were caused by the January 7 email. Presumably Cruce is content to rest on the fact that defamation *per se* allows for presumed damages. But as explained in Part II.A., the Court did not charge defamation *per se*.

Thus, Cruce is left with nothing on this point. He has no explanation for how any lost salary, lost retirement, or reputational harm was caused by the January 7 email. In other words, Cruce can point to no evidence to show that he would be in any different position had everything that transpired in December 2015 and January 2016 occurred except this email being sent. Significantly, he offered no evidence that (1) anyone who received the January 7 email was a decisionmaker or had any influence on a decisionmaker for any job for which he applied or (2) anyone (such as a decisionmaker for one of those jobs) other than the recipients of the email ever read or even knew about that email. Without such evidence, he has no damages proximately caused by the January 7 email.

III. Nothing Potentially Defamatory in the Email Is False.

Cruce's contentions about what is false fall into two general categories, but neither category supports the conclusion that anything in the email that is false is relevant to his defamation claim.

First, Cruce spends a page of bullet points detailing what he claims is wrong with the list of documents that Stevens said were necessary to be in student-athletes' files. This list is irrelevant. Stevens and Cruce offered conflicting testimony on what documents were required, but this

disagreement does not go to any potentially defamatory language in the January 7 email. The list of documents—whether Cruce’s list or Stevens’s list—is not what Cruce ever argued made the email defamatory. Thus, whether the list in the email is accurate is irrelevant. It is as if the email said “we went into the office on Wednesday,” when actually it happened on a Thursday.

Second, Cruce claims the email is defamatory because it implies that Cruce created liability for the school. That misconstrues the email. The email actually says that nothing more than if all of the required files are not present, a school could face liability. That is a true statement. Cruce tries to make this true statement defamatory by connecting it to the previous sentence “that there could be some documents that could be misplaced and others that are out of order.” Notwithstanding the problems of relying on this conditional statement to state a defamation claim, this statement does not say that documents *are* missing, just that they *could* be.

Without anything that is potentially defamatory being untrue, the jury’s conclusion that the District did not establish this defense cannot stand.

Conclusion

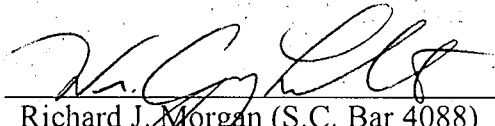
For myriad reasons, the jury’s verdict is fatally flawed. First, Cruce’s defamation claim required him to prove actual malice, but the Tort Claims Act bars a claim against a public entity requiring prove of actual malice. Moreover, the jury heard no evidence that the January 7 email was written with common-law malice. The jury similarly had no evidence before it that the email was defamatory, that Cruce suffered any damages from it, or that the email was false. The Court should accordingly enter judgment for the District notwithstanding the verdict.

Alternatively, the Court should grant a new trial absolute or new trial nisi remittitur.

Dated: October 3, 2017

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DISTRICT

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF BERKELEY) CASE NO. 2016-CP-08-0131

3 JEFFREY LANCE CRUCE,)
 4)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 BERKELEY COUNTY SCHOOL) Date: March 7, 2018
 8 DISTRICT,)
 9 Defendants.

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B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

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Ninth Judicial Circuit

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(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 March 7, 2018, Berkeley County Common Pleas Court,
3 11:00 a.m.)

4 THE COURT: Please state your name and
5 the party you represent.

6 MS. BLOODGOOD: Nancy Bloodgood, and I
7 represent Coach Cruce.

8 MR. LAMBERT: Grayson Lambert for the
9 school district.

10 MR. MORGAN: And Rick Morgan also for
11 the school district. Mr. Lambert will be doing the
12 oral argument. You know, the federal courts issued
13 a new rule, and I think it's a great rule, Judge.
14 They said that when we have younger lawyers, not us
15 old folks who typically get to do these and try the
16 cases --

17 THE COURT: Are you saying you as in
18 you and me?

19 MR. MORGAN: No, me. Just me. Just
20 me. Our federal courts are saying that we need to
21 let the younger folks who have done the hard work
22 argue the motions, and I think that's a great
23 thing. I agree with that, so Mr. Lambert is the
24 guy today.

25 THE COURT: All right. And we've had a

1 chambers conference -- I can't remember; it seems
2 like forever ago -- and there was quite a bit of
3 conversation due to my re-election, and I believe
4 all three of you were at my hearing. And you have
5 waived any perceived conflict of interest; is that
6 correct?

7 MS. BLOODGOOD: That's right, Your
8 Honor.

9 MR. MORGAN: That's correct, Your
10 Honor.

11 THE COURT: Okay. Thank you. And so
12 these are your motions?

13 MR. LAMBERT: Yes, Your Honor, they
14 are.

15 THE COURT: Any particular way you wish
16 to begin?

17 MR. LAMBERT: Your Honor, we'll dive
18 in. There are four different topics or reasons we
19 think the judgment cannot stand. If you want to do
20 it as we did with the directed verdict and take
21 those one at a time, rather than me filing through
22 four of them at once, we certainly can do it that
23 way.

24 THE COURT: All right. Why don't you
25 start and we will go that way.

1 MR. LAMBERT: Your Honor, this case
2 went to the jury on a single issue. That was the
3 January 7th e-mail from Chris Stevens, the school's
4 athletic trainer. The jury decided that e-mail was
5 defamatory to the tune of \$200,000, but the jury's
6 verdict cannot stand, as I mentioned, for four
7 reasons.

8 First, Coach Cruce has to prove actual
9 malice because he is either a public official or a
10 limited public figure, and actual malice claims are
11 barred by the Tort Claims Act.

12 Second, based on this Court's jury
13 instruction, he had to prove common law malice on
14 his defamation claim. And there is no evidence in
15 the record to support a finding of common law
16 malice.

17 Third, Your Honor, the e-mail's
18 critical sentence is conditional and, therefore,
19 cannot be the basis of a defamation claim. And,
20 alternatively, if it's not conditional and it's
21 true, then the truth defense would have to apply
22 here.

23 And, fourth, and finally, Mr. Cruce
24 showed no damages that were proximately caused by
25 this e-mail.

1 So we'll start with the first issue in
2 actual malice. Just so we're clear before we get
3 going, Your Honor, there are three relevant types
4 of plaintiffs in an actual malice issue. There's a
5 public official; there's a general public figure;
6 and there is a limited public figure. Those are
7 three different legal concepts, and there are
8 different rules that apply to each of them.

9 Coach Cruce is either a public official
10 or a limited public figure. Either way he has to
11 prove actual malice. Let's start with the public
12 official part. Our supreme court in the Erickson v
13 Jones Street Publishing case from 2006 said that a
14 public official is someone who has, or appears to
15 have to the public, substantial responsibility for
16 or control over the conduct of governmental
17 affairs.

18 It is someone who would invite public
19 scrutiny and discussions of the person holding it.
20 And it's determined not because of the government
21 employee's place on the totem pole, but because of
22 the public interest in a government employee's
23 activity in a particular context.

24 There are two critical things of this
25 definition. One, if the person has or appears to

1 have and, second, it's not about their title or
2 position in terms of a hierarchy. It's about what
3 do they do and what is the public's interest in
4 that.

5 Coach Cruce, as you remember well, was
6 the athletic director and the football coach at
7 Berkeley High School. Sports, and particularly
8 football, are a huge deal here in this community,
9 in this county, in this school district.

10 Principal Steel talked about the
11 importance of football, Coach Cruce certainly did,
12 as did his wife who compared the fans in the
13 community of Berkeley to the Eagles and to the
14 Romans who threw the Christians to the lions in the
15 coliseum. That's the intensity and the interest
16 the people take in this.

17 The fact that a court has never said in
18 this state that a football coach is a public
19 official is really, Your Honor, a red herring. We
20 have the legal framework, and there are courts in
21 at least three other states around the country that
22 have said high school, and even middle school
23 coaches, can qualify as a public official.

24 There was a middle school coach in
25 Oklahoma in the Johnson v. Corinthian TV case.

1 Issues arose over how he was treating his
2 wrestlers. They got so much public attention,
3 parents started pulling him out of his class --
4 pulling students out of his class. That was enough
5 attention to make him a public official.

6 There's the New Jersey case, Standridge
7 v. Ramey, that's in our brief. That was an
8 athletic director who the courts said had a
9 substantial budget and supervised approximately 60
10 coaches. Coach Cruce had a big budget and
11 supervised the coaches. They had every sport in
12 the state except for lacrosse he told us.

13 The AD there spoke at booster club
14 meetings and other community forums. Coach Cruce
15 dealt with the booster club and spoke at the Lion's
16 Club. That plaintiff, the athletic director,
17 managed and supervised all of the athletic programs
18 in 2014. That's like Coach Cruce.

19 That AD was a public official, and that
20 analysis could equally apply here in a case like
21 that one and like this one where we take note of
22 the fact that the performance of high school
23 athletic teams is often a matter of substantial
24 public interest within a community.

25 And, finally, Your Honor, there is the

1 Johnson v. Southwest Newspaper case from Texas.

2 This is a football coach and athletic director of a
3 high school. An article was written about his team
4 lacking sportsmanship and the coach condoning that
5 conduct that folks were criticizing.

6 The Court there called the school coach
7 a public official. Noted that he exercised
8 significant government responsibility on behalf of
9 the school district with regard to the athletic
10 department. As the football coach, he filled a
11 position of such importance that the public not
12 only had but exhibited an independent interest in
13 the qualifications and performance transcending any
14 interest shown of other employees in the school
15 system.

16 That could have been written about
17 Coach Cruce here. Folks have talked about the
18 football team, the media covers the football team
19 in a way that they don't care about the tennis team
20 or the marching band or even the academics program
21 specifically.

22 The Court in Texas wrote, high school
23 football is one of the major things that people
24 look forward to, being something in which they are
25 keenly interested and which is extremely important

1 to them.

2 That sounds like fans who have been
3 compared to Eagles fans and to the Romans in
4 Christian times.

5 Finally, the Court in Texas in going
6 through its analysis noted the coach there had
7 newspaper stories written about him and his team,
8 radio station broadcast his games, and his comments
9 were often quoted in the paper and pictures of him
10 would appear in the articles.

11 Well, in that Exhibit 27 we gave you of
12 197 articles, they were written about the football
13 team and Coach Cruce; his quotes were there in many
14 of them as was his picture. And he said he was, at
15 least for a season or so, interviewed on a radio
16 program about his football team.

17 The reasoning of these cases applies
18 with force here to Coach Cruce as if he put his
19 name in there for Coach Johnson in the Texas case.
20 That decision in terms of his profile in the
21 community could have been written about Coach
22 Cruce. He is a public official.

23 People in this community, at least he
24 appears to them to have -- and really from his
25 testimony he does -- has substantial responsibility

1 not only for the football team, but for the
2 athletic department as a whole at the Berkeley High
3 School and is a subject in which people are
4 extremely interested.

5 THE COURT: Has there been a case in
6 South Carolina where a football coach or any sports
7 official was found to be a public official?

8 MR. LAMBERT: Your Honor, there is not
9 a case finding they have been. We also are aware
10 of no case findings there has been held not to be a
11 public official. There's simply no case finding.

12 In full disclosure, Your Honor, we did
13 find one case from Utah where a high school coach
14 was not a public official.

15 THE COURT: And I think we talked about
16 that during the motion for director verdict.

17 MR. LAMBERT: We might have. That case
18 was called O'Connor. It was 2007. The cite I
19 believe was 165 P.3rd (1215). The reason that case
20 can't control here is because Utah law and who is a
21 public official is inapposite to South Carolina
22 law. South Carolina law, as we discussed, is
23 someone who has or appears to the public to have.

24 In Utah, the appearance to be apparent
25 in importance, to use the Court's language, is

1 irrelevant to the analysis. It's simply where are
2 you in the totem pole and where you fall in the
3 hierarchy. Their law on a public official is
4 different.

5 Our law is more like Texas. Who is
6 this person and what do they appear to have in the
7 public's interest in what they're doing? And
8 that's why the cases like Johnson from Texas and
9 Standridge from New Jersey are the persuasive ones
10 because they're applying a similar law of the law
11 that we have to apply here under Erickson.

12 THE COURT: Mr. Lambert, didn't we go
13 -- we fleshed this out, and this was a huge area
14 that the Court spent significant amount of time
15 because this is, in my opinion, the pivotal issue
16 and then from this all the law flows. So tell me
17 what -- what has changed or what did the Court not
18 consider so that I would change my ruling?

19 MR. LAMBERT: Certainly. We discussed
20 this at length, Your Honor, you're right. Our
21 discussion before touched on public officials, but
22 really focused before on the limited public figure.
23 And we can discuss that law; those were the five
24 factors about access to communication and
25 voluntarily being involved and remaining a public

1 figure throughout the course of the controversy.

2 That's also the part of First Amendment
3 law that involves public controversy. And we had
4 that long discussion, can sports be a public
5 controversy for purposes of the First Amendment?
6 And they certainly can be, but this is public
7 official. It's a different analysis. And while we
8 touched on this and public employees being public
9 officials, before we really were on the limited
10 public figure part of the argument. This is the
11 public official part. So it's a different legal
12 framework we have to be -- study.

13 THE COURT: All right.

14 MR. LAMBERT: I can go directly to the
15 limited public figure part next, Your Honor, if you
16 want to touch on that.

17 THE COURT: All right. Let's do that,
18 and then I will allow Ms. Bloodgood to --

19 MR. LAMBERT: Yes, Your Honor. So a
20 limited public figure, unlike a public official who
21 is a public official by nature of the position they
22 hold in public employment, a public figure, and a
23 limited one, is someone who voluntarily injects
24 himself into a particular public controversy and
25 thereby becomes a public figure on a specific range

1 of issues.

2 We talked about what is a public
3 controversy and what is not. Mr. Cruce repeatedly
4 took the position that this isn't a major issue of
5 public policy. This isn't healthcare or now we
6 could say Russian meddling. This is just football
7 strategy, but the fourth circuit in applying the
8 federal constitutional law said that a public
9 controversy is one that has received public
10 attention because its ramifications will be felt by
11 persons who were not direct participants.

12 Well, the direct participants here,
13 Your Honor, are Mr. Stevens, who wrote the e-mail;
14 and Coach Cruce; and even if you want to put in the
15 school district his employer, but it affects people
16 outside of that. It affects the student athletes.
17 The police officers who had to escort Coach Cruce
18 to some of the football games when the crowds got
19 rowdy. It affected a community that came to games
20 and then threatened to boycott.

21 THE COURT: Mr. Lambert, if I recall
22 correctly, we're talking with the impact of the
23 e-mail. That had to do more with his teaching and
24 administrative abilities than it did his coaching
25 and dealing with the public and the security. Am I

1 missing the point?

2 MR. LAMBERT: The e-mail went to his
3 role as the athletic director. I don't think his
4 role as a teacher had anything to do with the
5 e-mail -- with really any of this case in terms of
6 how it went to the jury.

7 THE COURT: So as an athletic director
8 do I apply a different analysis as athletic than
9 football coach?

10 MR. LAMBERT: I don't think so, Your
11 Honor. I think it's to -- particularly someone who
12 holds both roles, they are closely intertwined --

13 THE COURT: Because there are athletic
14 -- and, please, I have been teased unmercifully
15 about my ignorance of football as recently as
16 Monday by another judge. So please forgive my
17 ignorance. There can be athletic directors that
18 are not football coaches and football coaches who
19 are not athletic directors.

20 MR. LAMBERT: Absolutely.

21 THE COURT: And an athletic director
22 has more administrative -- these are questions. An
23 athletic director has more administrative duties
24 and responsibilities that are not necessarily as
25 public as a football coach on the field every

1 Friday night, correct?

2 MR. LAMBERT: That could certainly be
3 fair. I think it's also fair that there can be
4 athletic directors who are very high profile
5 depending on the way they run their departments and
6 the roles they had before. I think, as an example,
7 the current athletic director of South Carolina,
8 Ray Hanner. You know, he has a higher profile,
9 because he was formerly the baseball coach, than
10 his predecessor who was just the AD.

11 But Coach Cruce wasn't just the
12 athletic director. He was also the football coach.
13 So it's hard for him -- now, he's going to
14 sometimes wear the football coach hat and sometimes
15 wear the AD hat, but necessarily untwirling those
16 knots, undoing those knots, it isn't always
17 possible.

18 Now, the e-mails -- you're right, Your
19 Honor; it was about him as an athletic director,
20 but this entire case was tried about him as the
21 coach and the athletic director. And I don't know
22 that it's fair at this point to say, well, we're
23 only looking at you as an AD. Because even if you
24 look at the closings after we had done directed
25 verdict and we had done the jury instruction, this

1 was still about a football coach and an AD who got
2 sent back.

3 If he were such a -- just the AD hat on
4 an only analysis here, then the fact that he would
5 have been removed and reassigned presumably would
6 not have sent the terrible message to everyone who
7 said that he was so unqualified and had prompted
8 the type of damage that he's claiming here.

9 I think it's hard on the one hand to
10 say, well, I'm damaged \$800,000, but I'm really
11 just this small AD figure for purposes of what the
12 jury is doing.

13 THE COURT: All right. Thank you.

14 MR. LAMBERT: With this being a public
15 controversy, Your Honor, the five Erickson factors
16 of what makes a limited public figure, the first
17 was access to channels of effective communications.
18 We've had the radio broadcaster. He's in the 197
19 newspapers articles I've attained, many of which
20 quote him.

21 As you know, the newspapers can write
22 about anyone, but in many of these, particularly
23 the ones in the Berkeley Independent, the local
24 paper, he's quoted. He certainly doesn't have to
25 talk to the reporter, but he can, and the reporters

1 are interviewing him. They're not going to the
2 assistant coach, they're not going to the players;
3 they're talking to the head coach.

4 Second is whether he voluntarily
5 assumed the role of special promise; he did. He
6 accepted the job as the coach and the AD. He
7 voluntarily talks to the reporters. He even went
8 and voluntarily talked to the Kansas City Star
9 about it, which is a thousand miles away. And,
10 certainly, someone who is not thinking about
11 Berkeley High School football in a normal course.

12 Third is he sought the influence, the
13 resolution of the outcome of the controversy. He
14 is making comments not only in the Kansas City Star
15 that this could be a career-ending decision, but as
16 the season goes on he's imploring people to have
17 patience after a loss.

18 After another loss he says it's not
19 going to deter him. Finally, after a win talks
20 about he's done his homework and people should have
21 believed in him. So he is trying to shape the
22 public's view of this.

23 Fourth, the controversy actually exists
24 prior to the publication of this allegedly
25 defamatory statement. The controversy certainly

1 existed prior to January 7th, and then he actually
2 continued that public figure status through the
3 statement. Well, the newspaper covered the fact
4 that he was removed as the coach and AD in
5 December. They covered the fact that he filed this
6 lawsuit later. The e-mail falls in the middle of
7 that so he's continuing in that public figure
8 status to the time that the statement is made.

9 And, Your Honor, finally, the fact that
10 a coach can be a limited public figure, other
11 courts have held that. Courts from Connecticut,
12 Georgia, and New York, a pretty disparate array,
13 have all had cases in which coaches have been
14 limited public figures in defamation cases.

15 So it's not as if we're asking this
16 Court to do something novel in the law. We just
17 don't have a South Carolina case on it one way or
18 another. So whether he's a public official or a
19 limited public figure, Coach Cruce has to prove
20 actual malice, and under the tort claims act, Your
21 Honor, Section 15-78-60, that claim is barred so
22 the jury should not have been able to decide the
23 defamation claim.

24 That is what I have on the actual
25 malice unless you have any questions.

1 THE COURT: Ms. Bloodgood?

2 MS. BLOODGOOD: Thank you, Your Honor.

3 I'm not going to reargue my directed
4 verdict argument, and I would like to incorporate
5 the arguments that are in my filed response. I
6 think your decision as to determining that Coach
7 Cruce, a coach in a high school in Berkeley County,
8 South Carolina, was not a limited public official,
9 was well-reasoned and based on the factors that
10 have been identified in the courts.

11 One of the issues, as you recall, was
12 there certainly was no issue of public concern.
13 The fact that a football team wins or loses and a
14 coach talks to the newspaper about it after the
15 game does not turn someone into a limited public
16 official.

17 And of course what I'm hearing today is
18 that assuming he's not a limited public -- well, he
19 may not be a limited public official, but they want
20 to argue that he's a public official. A limited
21 public official is a subset of a public official.

22 If he's not a limited public official,
23 he's not a public official. And, certainly, a
24 football coach at a high school in 1 of 32 counties
25 in South Carolina is not -- does not raise him to

1 the level of public official.

2 So, you were correct that actual malice
3 does not have to be argued. And, as you recall, as
4 a matter there was discussion that defamation per
5 se presumes common law malice. And that's what the
6 jury found.

7 So it's an interesting argument. I'm
8 hearing it from the defense attorneys around the
9 state, but, to my knowledge, no one has yet decided
10 that any of these smaller players are limited
11 public officials which raises the standard of
12 defaming them.

13 And so he was not a limited public
14 official and we have briefed that. And that is
15 probably an issue, quite honestly, I agree, that is
16 novel and, therefore, should be decided by an
17 appellate court if they want to appeal and not at
18 the circuit court level.

19 MR. LAMBERT: Your Honor, a handful of
20 points in response. If an issue is novel, you're
21 deciding it one way or the other, so it's not as if
22 you can punt it to the court of appeals.

23 There is a couple of points on the law
24 that we need to get straight. There is public
25 official, there is general public figure, and there

1 is limited public figure. There is no such thing
2 as a limited public official. Coach Cruce can be a
3 limited public figure.

4 He could separately be a public
5 official. The public official analysis, as we
6 discussed earlier, is different than the limited
7 public figure analysis. The limited public figure
8 analysis --

9 THE COURT: Ms. Bloodgood, this may not
10 be the appropriate time to ask this, so this case,
11 this verdict made national news. It was -- there
12 were articles across the country. Should that
13 even --

14 MS. BLOODGOOD: I don't know about
15 that, Your Honor. I don't know why it did, but I
16 didn't read any of those. And, no, I think what's
17 important is that when you fire a football coach
18 who has been a football coach for this long, and
19 there are some underlying issues about you firing
20 him because you didn't like his defensive strategy,
21 that issue is probably something that gets people's
22 attention.

23 But this case with the defamation
24 certainly was not a noteworthy case. It's a
25 defamation claim. And I apologize for the record

1 if I said limited public official. I meant limited
2 public figure. That's the term.

3 THE COURT: And it's your position that
4 it's public official and then limited public figure
5 is encompassed under --

6 MS. BLOODGOOD: It is a subset because
7 what the courts have found is that there could be
8 circumstances, and if you look at the cases, where
9 a public official for a limited period of time was
10 important enough on a certain issue that he should
11 be awarded the same type of protection as a public
12 official.

13 And that's how this new term developed,
14 but it is not fleshed out very well at all and it
15 is an exception. It is an exception to when
16 somebody is a public official, but under no
17 circumstances could Coach Cruce be considered a
18 public official.

19 And I know that the legislature has
20 changed the ethics laws and loosened them, but at
21 one point we actually had -- and I think I pointed
22 this out -- one point we actually had a statute in
23 South Carolina that defined a public official; and
24 it had to be someone who was elected or appointed
25 by the public to -- like, a town counsel person --

1 and for some reason, they got rid of that
2 definition.

3 But in this state, we have a history of
4 defining public officials, public employees, and a
5 public official was a specific definition. And so
6 even though that definition does not exist in the
7 ethics act, there is plenty of history in this
8 state to limit the definition. And under no -- no
9 stretch of the imagination could a football coach
10 be a public official. He could be a public
11 employee.

12 MR. LAMBERT: Your Honor, a couple of
13 points on the public official. And I want to make
14 sure we touch on this per se issues. Public
15 officials for purposes of first amendment law is
16 defined by our courts and it's in the Erickson
17 Decision at 368 S.C. 444, I believe it's 2006.
18 That's that definition that talks about not the
19 place on the totem pole but the public interest in
20 a particular context. That's the definition of
21 public official that has to be applied in a First
22 Amendment context, and old ethics statute is simply
23 irrelevant, Your Honor.

24 Public officials are the public
25 employees who attract public interest in what their

1 job is. Public figures are a separate type of
2 First Amendment plaintiff. And I'm really bad at
3 pop culture and what's cool. So, like, Brad Pitt
4 would be a public figure. Mariah Carey would be a
5 public figure. People that are so well known that
6 everyone including me would know who they are and
7 their personal protection is lowered.

8 A limited public figure is someone who
9 isn't necessarily a public employee, but it's
10 someone who in a particular context has prominence
11 and is well known. For whatever that context is,
12 that limited area, they become a public figure for
13 purposes of First Amendment law.

14 So we have three separate buckets in
15 which a First Amendment plaintiff can be placed,
16 and our argument is that Coach Cruce could fit both
17 into the public official and into the limited
18 public figure bucket, and those are two separate
19 analyses that have to be done to see if the test is
20 met.

21 Now, on the per se issue, both in the
22 response -- the written response to our post-trial
23 motions and now here Ms. Bloodgood has said, well,
24 the jury could assume malice because it could find
25 the defamation per se. This Court specifically did

1 not charge defamation by per se. It was invited to
2 by the plaintiff, but it refused and said he had to
3 prove common law malice as part of the defamation
4 claim.

5 And Your Honor was exactly right in
6 that instruction. I've got the Holtzscheiter
7 versus Thomson Newspaper case from 1993. That's
8 332 S.C. 502. It explains what defamation per se
9 is and per quod and it gives examples. The example
10 of defamation per se is, A is a thief. That's
11 defamation per se. Everything that you need to
12 know about the defamation is there, A is a thief.
13 There is nothing else you need to know.

14 An example of defamation per quod is, A
15 had a baby where the extrinsic fact is that A is
16 unmarried. You have to know something outside of
17 the statement. Well, the e-mail here refers to the
18 old athletic director and then the files that could
19 be missing and here's what needs to be in there.
20 Coaches, please come check.

21 You have to know a fact that's not in
22 that e-mail. You have to know that Jeff Cruce was
23 the old athletic director. There's a fact not in
24 that e-mail that has to be known for the statement
25 to be defamatory. Therefore it is not and cannot

1 be defamatory per se. So she cannot have the jury
2 presume any sort of malice.

3 And, Your Honor, if you want to, this
4 does get us into our second argument on common law
5 malice. This Court charged the common law malice
6 had to be part of -- it was one of the elements
7 that had to be proven, and we have the jury
8 instructions and what we submitted last week along
9 with the objection to the charge conference as
10 well. Ms. Bloodgood objected to that.

11 Common law malice, Your Honor, is -- I
12 can find my little definition of it right here.
13 Common law malice is that the speaker, the author,
14 the defendant had to make the statement with some
15 sort of ill will towards plaintiff or with the
16 designs to causally and wantonly injure him.

17 The author of this statement or e-mail
18 was Chris Stevens. There is no evidence whatsoever
19 in this record that goes to his frame of mind in
20 writing this e-mail that would even allow the jury
21 to infer through a step, through a step, through a
22 step, that he acted with any common law malice.

23 His entire testimony, Your Honor, we
24 submitted last week. I believe it starts at page
25 348 of the transcript. He went into the office

1 because a weight lifting coach asked if someone was
2 eligible. He went in with the assistant principal
3 and one other coach. They looked at the files, he
4 sent the e-mail.

5 The entire cross-examination of
6 Mr. Stevens focused on, well, are you certified to
7 do eligibility and all these things have to be in
8 there, the Social Security card, which Coach Cruce
9 said did, and some other things.

10 He was never asked, do you have any
11 animus toward Coach Cruce? Did you like Coach
12 Cruce? Were you glad Coach Cruce got fired? Did
13 you talk to Mr. Stevens about a way to pay for the
14 file on Coach Cruce? Did you want to get him --
15 there was nothing like that.

16 Coach Cruce never said he had any
17 issues with Mr. Stevens in his brief testimony
18 about him.

19 THE COURT: Without anything in the
20 record that would go to Chris Stevens' frame of
21 mind when writing this e-mail, there is no basis
22 for this jury to find common law malice. And if
23 the jury can't find common law malice, one of the
24 critical elements that has to be proven on a
25 defamation claim wasn't proven and, therefore, the

1 jury verdict cannot stand.

2 THE COURT: Ms. Bloodgood?

3 MS. BLOODGOOD: Your Honor, common law
4 malice is presumed in a defamation per se claim.
5 It does not have to be proven. It's per se and I
6 think that's where our difference lies. And that's
7 what I argued in the directed verdict and earlier.

8 THE COURT: Did I charge that?

9 MS. BLOODGOOD: You did not. The part
10 -- you didn't use the words, per quod. You did not
11 charge that common law malice is presumed, as I
12 asked you to. But that is the law, so I didn't
13 really care if the jury knew that part of the law
14 because I think it is, as you can see, a little --
15 defamation's confusing with common law and actual
16 malice.

17 So I did object to you not doing that;
18 however, I think that there was enough there. It
19 didn't really matter whether the jury understood
20 that common law malice is presumed because they
21 also didn't need to know about the tort claims act
22 and actual malice. Those are things that are legal
23 arguments.

24 So in the charges what we try -- both
25 sides tried to do is to get instructions to the

1 jury that will let them make the decision without
2 confusing them as to the minor points of the law.

3 I did object for the record, but, Your
4 Honor, I did not have a problem with that issue
5 because it is presumed anyway with a defamation per
6 se.

7 MR. LAMBERT: Your Honor, if I may.
8 I'm looking at page 451 of the transcript. This is
9 your jury charge and I'm starting at line 17.

10 The plaintiff must prove that the
11 statement made was made with common law malice.
12 Common law malice means the defendant acted with
13 ill will towards the plaintiff or acted recklessly
14 or wantonly with conscious indifference to the
15 plaintiff's rights.

16 Now, I want to go back in the
17 transcript. This is page 429. This is after our
18 charge conference from I believe it was that
19 Thursday morning.

20 You said, we had a charge conference.
21 Anything we want to put on the record?

22 Ms. Bloodgood said, yes, Your Honor.
23 After reviewing the jury charges, I objected
24 because I would like you to have said that the
25 statement is actual per se. The defendant is

1 presumed to have acted with common law malice and
2 presumed to have suffered general damages. And
3 that's the Castine v. Castine case. And I believe
4 that should be in the jury charge.

5 We discussed this, Your Honor. You did
6 not charge defamation per se. This was part of the
7 latter discussion we had in your chambers.
8 Ms. Bloodgood asked you to charge per se so that
9 malice could be presumed. You declined that
10 invitation and then she objected for the purpose of
11 record.

12 Your instructions said the plaintiff
13 has to prove common law malice. Now, Ms. Bloodgood
14 said you didn't charge actual malice. Of course,
15 you didn't charge it. We argued actual malice and
16 you said at that time that he was not a limited
17 public figure, the tort claims act would not bar
18 the claim, so actual malice was a nonissue by the
19 time we got to the jury.

20 There was no reason to even think about
21 charging actual malice. If actual malice were
22 relevant, the case would have been dismissed before
23 it got to the jury.

24 Definite per se was not charged.
25 Malice cannot be presumed and interestingly malice

1 was not proven, and Ms. Bloodgood hasn't cited any
2 evidence from the record to suggest that it was
3 proven and it was something for the jury to hang
4 its hat on because Chris Stevens' testimony makes
5 clear there is nothing on this topic.

6 THE COURT: Ms. Bloodgood.

7 MS. BLOODGOOD: You did not charge per
8 quod or per se. And that's why when you don't do
9 per se, I don't really care about the per quod
10 because those are issues that I don't care if the
11 jury understands. I do have a problem with that.

12 In terms of the animosity, the malice,
13 there was evidence of recklessness because the
14 principal testified that that e-mail shouldn't have
15 been sent. And there was also -- the jury is
16 allowed -- and I know they don't like the jury
17 verdict, but the jury is allowed to look at the
18 credibility of the witnesses and weigh the
19 evidence, look at their -- look at their
20 expressions. Decide whether or not they're telling
21 the truth and they like them, and if there is
22 animosity.

23 And I don't have to establish animosity
24 to establish that your -- your charges on
25 defamation were general and were correct and were

1 totally understood by the jury, and the malice
2 would be presumed in a defamation per se.

3 So we're arguing about the charges
4 again, and I had objected to one. And it, as it
5 turns out, it didn't really make a big difference
6 because the jury listened to the witnesses and made
7 their own decisions. This was a seven-hour
8 verdict. The last two hours they were only
9 deciding how much to give to the plaintiff.

10 So this was a very thoughtful jury. I
11 don't think it's fair now to stand here and say
12 what they did and what they didn't and what they
13 considered, because that is the essence of a jury.

14 Our justice system is based on the fact
15 that people who don't know each other can weigh the
16 facts and come to a conclusion. And, in this case,
17 it was a thoughtful conclusion.

18 MR. LAMBERT: Your Honor, how long the
19 jury deliberates is fundamentally irrelevant to
20 whether or not there's evidence there to support
21 the verdict or whether they understood the law
22 right.

23 THE COURT: I think it is a factor. If
24 they had gone in and only been in two minutes -- I
25 have had juries come in and I wonder if they even

1 read the verdict form. So I think that was --

2 MR. LAMBERT: Yeah. Yeah. I think --
3 assuming that the jury is not doing something
4 that's just totally nutty --

5 THE COURT: So my charge was the fact,
6 you know, that you don't take pieces or words and
7 single those out, that they must be considered in
8 the context of everything that you know. And if I
9 recall from the testimony and reviewing the
10 transcript, that there was -- the individual that
11 sent the e-mail had never done that, had never held
12 that position before and --

13 MR. LAMBERT: He -- I believe the
14 testimony is he had done some eligibility, but he
15 had never been in charge of it. I think it's
16 important that the charge -- it's not reckless in
17 the sense of just negligence as a tort concept, but
18 the law is the statements were published to such --
19 as to a -- excuse me, as to show a conscious
20 indifference towards the plaintiff.

21 It's not just a recklessness of, oh,
22 I'm doing something I don't know. It's a
23 recklessness with this particular plaintiff in
24 mind. There is no evidence that Chris Stevens went
25 in there thinking about Jeff Cruce or wanting to

1 show him up in any form or fashion.

2 The only testimony from Chris Stevens
3 is that he was asked if someone was eligible for
4 weight lifting. He went to the administration and
5 they said, go look, take some people with you, and
6 you-all figure it out, and he sent an e-mail.

7 Now, Ms. Bloodgood referenced the
8 principal's testimony. I have Principal Steel's
9 testimony on Chris Stevens and that e-mail, Your
10 Honor, starting at page 303 and it goes through
11 307. If you would like me to hand you a copy, and
12 I also have a transcript, and you can look at it.

13 What Mr. Steel testified is that he
14 wouldn't have sent the e-mail in that form because
15 the e-mail wasn't listing particular students who
16 had a problem and addressed the particular coaches.

17 Something needed to be done to ensure
18 eligibility. The principal said, I wouldn't have
19 done it this way because I would have done it more
20 targeted, rather than just this broad e-mail that
21 went to these people.

22 But he's not saying I'm upset because
23 it was about Coach Cruce or we were trying to get
24 Coach Cruce, it's just I would have handled the
25 problem a different way.

1 MS. BLOODGOOD: The e-mail says in the
2 middle that Coach Cruce is a liability to the
3 school. That infers he is unfit to be a coach
4 after 30 years doing this. Chris Stevens was not
5 certified; he admitted to that. And that e-mail
6 was sent to 45 people, some of whom were parents.

7 The question that I asked the principal
8 was, yes, he backed off a little of his deposition
9 testimony, but he said, I would have done it
10 differently. But still the jury -- what the jury
11 saw was an e-mail where you have -- you're saying
12 that somebody is a liability after they're gone,
13 they're going through their files.

14 It's someone who doesn't know, he's not
15 certified to do what he's doing, and then you
16 publish it to a lot of people who don't know. And
17 in the context of what was going on, clearly, that
18 made them angry.

19 MR. LAMBERT: Your Honor, I think we
20 need to look at the e-mail closely. The paragraph
21 said: Today, January 7, 2016, myself, Coach Ward
22 and Mr. Gallon went into the athletic director's
23 office to check on the status of student files left
24 by our previous athletic director.

25 After spending some time looking

1 through the files, it has come to my attention that
2 there could be some documents that could be
3 misplaced and others that are out of order. From a
4 liability standpoint, with competing sports and
5 athletes, it's necessary that all of these files be
6 present to safeguard the athletes as well as to
7 maintain the proper care for those athletes if
8 something were to happen.

9 To say the e-mail says Coach Cruce is a
10 liability is not how this is framed. The only
11 thing that referenced Coach Cruce is the athletic
12 director's office and our previous athletic
13 director. So let's -- what the e-mail says
14 particularly in a defamation case is very
15 important.

16 The jury is, of course, Your Honor, got
17 to read the statement in its context and can draw
18 its conclusions based on all of the evidence and
19 its judge of the credibility of the witnesses.
20 It's black letter law. But there has to be
21 something on which the jury can hang its hat to
22 find common law malice.

23 Principal Steel didn't write the
24 e-mail. Superintendent Blackburn --

25 THE COURT: What do you think they were

1 doing back there for seven hours, Mr. Lambert?

2 MR. LAMBERT: Your Honor, I don't know.

3 None of us really know because none of us were in
4 the jury room. That's what makes that room so
5 sacred, but whatever they were doing back there for
6 seven hours, whether they were debating over this,
7 taking a leisurely lunch or, you know, talking
8 about their life story, I assume they were working
9 hard on this. The jury seemed fairly diligent
10 through most of this.

11 THE COURT: What do you think that they
12 had based their findings on and their award of
13 \$200,000?

14 MR. LAMBERT: Your Honor, I would --

15 THE COURT: Because Ms. Bloodgood, if I
16 ask her that question, the response is going to be
17 that e-mail and the events leading up to the e-mail
18 and what prompted the sending of that e-mail to
19 people who should not have been sent the e-mail; is
20 that correct?

21 MS. BLOODGOOD: Yes, Your Honor.

22 MR. LAMBERT: So the argument that --
23 that I think that goes to, Your Honor, that was in
24 the opposition to the post-trial motions, is this
25 idea that after they got rid of Coach Cruce because

1 they didn't like Coach Cruce, they went into his
2 office to justify why they got rid of him.

3 There is nothing that supports that
4 argument. There was no questions along that line.
5 There was no testimony along that line. To be able
6 to spin that argument now by just saying, well,
7 they didn't like him and they wanted to get rid of
8 him, that can't hold, Your Honor. There has to be
9 some sort of evidence.

10 THE COURT: Well, I think there was
11 testimony that he was not well liked. That's why
12 we had security guards escort him --

13 MR. LAMBERT: He was not well liked by
14 the community. That doesn't mean he wasn't well
15 liked by the school administration or the district
16 administration.

17 THE COURT: And that Principal Steel
18 says he would not have sent that e-mail in that
19 way.

20 MR. LAMBERT: But sending the e-mail in
21 that way, Your Honor, doesn't mean that the e-mail
22 is defamatory or sent with common law malice in the
23 way that it was. I mean, certainly you could say I
24 would do something differently without making the
25 way that somebody else did it a civil liability.

1 That's the common law malice.

2 If Your Honor has no more questions on
3 that topic, I will move to the next one which is
4 the conditional nature of the statement and it ties
5 into the truth defense. The critical line here,
6 Your Honor, was that one in the middle of the
7 paragraph: After spending some time looking
8 through files, it has come to my attention that
9 there could be some documents that could be
10 misplaced and others that are out of order.

11 Fundamentally, if that sentence is in
12 that e-mail, I don't think this e-mail is going to
13 be the basis of a defamation claim.

14 Certainly, the fact that they went into
15 the office isn't a problem. That he'll be there
16 for people to come by and check their files. There
17 was a disagreement between Mr. Stevens and Coach
18 Cruce on what had to be in the file, but who is
19 right or wrong on that isn't defamation. This is
20 the critical sentence. The sentence uses the word,
21 could, twice. Could is a conditional word.

22 The problem is a statement that is
23 conditional can't be the basis of a defamation
24 claim. This is the Warner v. Rudnik case from our
25 court of appeals that's in our posttrial briefs,

1 280 S.C. 595, 1984. You will see there that's the
2 case where the chairman of the Aiken County
3 Commission sued someone who said, well, if the
4 budget is not balanced then they're lying to us.

5 He moved to dismiss it, but circuit
6 court denied the motion. This was back in the days
7 when you could appeal the denial of a motion to
8 dismiss. The court of appeals reversed. It said
9 that statement is conditional, but if the budget is
10 not balanced -- or if the budget is not balanced,
11 it's conditional. So that can't be the basis
12 because it may never come true.

13 Well, Your Honor, if this -- this
14 statement, there could be things that could be
15 misplaced or out of order, that's a conditional
16 statement. If it's a conditional statement that's
17 not true and it turns out that everything was fine,
18 then it can't be defamation because everything
19 would be right.

20 On the other hand, if it turns out that
21 it is true, Your Honor, then the district's truth
22 defense the jury had no choice but to apply it and
23 return a verdict for the school district. That's
24 the problem with a conditional statement. If it's
25 true, then it can't be defamation.

1 If it's not true and it's just
2 conditional, then the condition never happened and
3 no one is defamed. Either way the statement can't
4 be defamatory.

5 THE COURT: So it's your position based
6 on that that the e-mail should not have -- that
7 really nothing should have gone to the jury. I
8 should have granted your directed verdict motion on
9 that e-mail; is that correct?

10 MR. LAMBERT: Yes, Your Honor.

11 THE COURT: Okay. Continue.

12 MR. LAMBERT: That's what I have on
13 this point, so I will let Ms. Bloodgood have the
14 floor.

15 MS. BLOODGOOD: Your Honor, we've
16 already argued this at directed verdict, but the
17 defamation can be inferred from statements in the
18 context of the statements, and also Coach Cruce
19 went through all the statements in the e-mail that
20 were false. And that's in my response and I'm not
21 going to repeat that.

22 THE COURT: Thank you.

23 MR. LAMBERT: Your Honor, just briefly
24 in response. The bullet point list there, what's
25 true in there and what's not, that's not the basis

1 of a defamation. I don't think that whether the
2 Social Security card has to be in there saying it
3 is and it doesn't have to be is defamatory in a way
4 that it lowers the reputation of someone within the
5 community.

6 The fourth and final argument I want to
7 raise this morning, Your Honor, is damages. As
8 with any tort claim, damages must be proximately
9 caused by the conduct of the defendant.

10 You will recall here when this trial
11 started, Ms. Bloodgood put up a demonstrative
12 exhibit listing out \$800,000 in damages that Coach
13 Cruce had suffered based on what she claimed
14 everything the district had done to him, from
15 removing him and firing him to the e-mail.

16 We got to closing and the same
17 demonstrative goes up, \$800,000. We've lost the
18 you were removed as coach and AD, you were sent to
19 a middle school, and we have the same damages.
20 There was testimony from coach Cruce about not
21 being able to find a job. The wife testified about
22 having to move to Charlotte and leaving her job at
23 Santee Cooper.

24 What we never heard, Your Honor, was
25 any evidence that connected this e-mail to any of

1 that. We didn't hear from anyone who got this
2 e-mail that they were a decision-maker on a job in
3 Charleston or Berkeley County so they wouldn't hire
4 Coach Cruce because they saw the e-mail. We didn't
5 hear from anyone who was a decision-maker about a
6 job in Charlotte because they saw this e-mail and
7 that's the reason they wouldn't hire Coach Cruce.

8 We didn't hear from anyone that got the
9 e-mail that said they thought less of Coach Cruce
10 because of the e-mail. In fact, the people who got
11 this e-mail wouldn't have known those three reasons
12 why he was removed. All they knew is Coach Cruce
13 told us repeatedly was that he had been the AD for
14 the year for the region before that.

15 There's nothing, Your Honor, at the end
16 of the day that shows if this e-mail had not been
17 sent how Coach Cruce could be in any different
18 position than he is today. In other words, if you
19 took this e-mail out of this trial and you tried
20 this case, other than not having some 14, 15 pages
21 of testimony about the e-mail, everything would
22 have been the same. Coach Cruce would have argued
23 for the exact same damages.

24 So if you can't tie anything into this
25 e-mail, he hasn't met the final element of his

1 claim which is damages and, therefore, the jury
2 verdict can't stand for that reason.

3 MS. BLOODGOOD: Thank you, Your Honor.
4 Defamation per se damages to the reputation are
5 presumed. It's hard for a jury to determine what
6 the damages to a reputation are, but they're not as
7 clear as -- they're are not actual damages which is
8 what I'm hearing is the purported standard of proof
9 for a defamation claim.

10 Clearly, this jury considered lots of
11 things over the two hours when it was deciding what
12 amount to give to Coach Cruce. And damages to
13 reputation are within the purview of the jury -- of
14 the jury.

15 And I don't think we can sit here and
16 second guess what numbers they used and what they
17 didn't use. There certainly was testimony that he
18 had to go to North Carolina to find a job and that
19 -- that he couldn't find a job quickly and had to
20 retire, take his retirement, and then leave the
21 state in order to find a job because of the damage
22 to his reputation. And he testified to that.

23 THE COURT: Ms. Bloodgood, wouldn't
24 there -- doesn't there have to be some -- there's
25 no precise calculation, and that's what I tell the

1 jury. There is no exact number they can -- but
2 they must use calm and reasonable judgment in
3 coming to a particular number, not swayed by any
4 prejudice or passion or any sympathy of that
5 nature.

6 What testimony -- and this is what I
7 believe Mr. Lambert's question was in a nutshell.
8 What damage was caused from the e-mail? What did
9 we hear -- from what could the jury piece that
10 number to that? And, again, I don't know that
11 200,000 is too much or not enough or anything, but
12 I think the question is, how would they have gotten
13 there?

14 And really to drill down on his point,
15 how did they not get there without considering all
16 of the testimony that had been heard, part of which
17 I granted a directed verdict for?

18 MS. BLOODGOOD: What they heard was
19 that after he was terminated, even though the
20 school district was going to great lengths to keep
21 quiet to avoid creating problems, somebody goes
22 into his office, rifles through the files and makes
23 up statements which are false, sends this e-mail
24 out.

25 And what you have is someone who had

1 been audited several months before by the state; he
2 testified he had never had a problem with a state
3 audit. I mean, this was a position he had held for
4 years. And you have 45 people being told that he's
5 incompetent and his files are wrong and he can't do
6 that.

7 Now nobody all -- those 45 people talk;
8 it's a small community. And when -- once that was
9 said, he was told -- he testified that he was told,
10 I can't hire you, you're not going to get a job
11 here. And it was because for a coach who has been
12 around this long and this qualified, and he can't
13 keep files and they're a mess, and they're a
14 liability to the school, yeah, that is a problem.
15 He is unfit.

16 He testified he had to retire. He
17 tried to get a job. He could not get a job. He
18 had to retire and he had to go somewhere else to
19 work.

20 So the e-mail itself says that somebody
21 who's been doing this forever evidently has been
22 doing it wrong for 30 years because those files are
23 a mess. And that e-mail was absolutely wrong and
24 it makes it look like he's just slid by and never
25 been competent to be in his position. And it was

1 embarrassing and it was -- and it was an indication
2 to those 45 people that he is not fit for his
3 profession and it's defamation per se.

4 One of the things that, you know, if
5 there are other -- if an e-mail holds someone in
6 disrepute and infers to other people who have no
7 right to know that he is incompetent in his job,
8 that is defamation per se.

9 MR. LAMBERT: Your Honor, we've been
10 over this. I think it's important to keep hitting
11 it. This is not a defamation per se case. You did
12 not charge it and in the law, we discussed that,
13 there is an extrinsic piece of knowledge you need
14 to know for this statement to be about Coach Cruce.
15 Mrs. Bloodgood cannot rely on defamation per se at
16 any point now given your ruling and given the law.

17 There is a lot there, Your Honor, to
18 touch on, and I think it's important to remember
19 the jury instruction here. Right after saying you
20 have to charge common law malice, this is the
21 bottom of 451 and the top of 452 you charge,
22 finally, the plaintiff must prove his reputation
23 damaged by the defamatory statement.

24 The plaintiff must prove damages
25 naturally and proximately resulted from the

1 defendant's statement. And that's what he hasn't
2 done, Your Honor.

3 We just heard this story where he
4 couldn't find a job and he's been a good coach and
5 he's been a good AD for 30 years. The piece of
6 evidence that's missing in that, the chain that's
7 not connected is that any decision-maker who didn't
8 hire him after he left Berkeley, had ever seen this
9 e-mail.

10 If there are 45 people on this e-mail,
11 and I haven't counted, Your Honor, not a single one
12 of them came in here on this stand to say, yes, I
13 saw this e-mail and because I had seen this e-mail,
14 I wouldn't hire Jeff Cruce. There is none of that
15 evidence.

16 Without that evidence there is no
17 proximate cause between this e-mail and him being
18 unable to get a job or anything else he's claiming
19 damages for here.

20 Finally, Your Honor, just a side note,
21 people talk and that's why he couldn't get a job.
22 Well, one, that assumes facts not in evidence that
23 people talked about this, but if people talked
24 about this, that goes to the fact that he's a
25 limited public figure and this is an issue of

1 public controversy and public attention in this
2 town.

3 So she can't have it both ways, that in
4 some instances he's not, but now people are talking
5 about it and all riled up about the fact that this
6 e-mail was sent.

7 So without anybody to connect the
8 e-mail to any decision-maker to any job, this can't
9 be the bases for his damages. Without someone
10 coming in and saying, yeah, we read the e-mail and
11 that's -- we can't do that. It doesn't say we
12 rifled through his files and he's incompetent.

13 It says we went in there and looked and
14 there could be something that is misplaced. There
15 is a stretching of -- of what this is really doing
16 to Coach Cruce here. And I get it that he doesn't
17 like the e-mail. I wouldn't like the e-mail if I
18 were him, but doesn't make the e-mail defamatory
19 and that doesn't -- there's not all caps here that
20 says Jeff Cruce is an incompetent AD, no one hire
21 him.

22 That's not what this e-mail is doing
23 and there is no one that we know that saw it that
24 read it that way. Without that piece of proof,
25 there is no way to connect damages to the e-mail

1 instead of to him being removed -- or, Your Honor,
2 quite frankly, perhaps the reason he couldn't get a
3 job is because he sued his former school district
4 within, you know, a couple of -- maybe two months
5 of having been removed as football coach?

6 Now, we didn't bring anyone in to
7 testify because it wasn't a part of our case, but
8 it makes a lot more sense than people who didn't
9 get the e-mail and were forwarded the e-mail and
10 then read the e-mail and then decided the e-mail
11 was a reason not to hire him.

12 THE COURT: So, Mr. Lambert, I also
13 charged that a defamatory statement does not have
14 to be a direct, open, or positive attack. It may
15 merely be a suggestion or a hint which is false and
16 malicious as long as the meaning is plain.

17 And I think that is what I focused on
18 in denying your motion for directed verdict as to
19 the e-mail. There was a suggestion or a hint from
20 that e-mail that he was incompetent and that as
21 long as the meaning was plain as to that -- for a
22 motion for a directed verdict there has to be some
23 existence, correct?

24 MR. LAMBERT: Correct, Your Honor.

25 THE COURT: Of the evidence? So talk

1 to me about that.

2 You know, it's easy for us to sit here
3 on a Wednesday and Monday morning quarterback what
4 the jury did. Right? Easy for us to piece it out
5 and try to figure out what happened.

6 So that, if I recall, was one of the
7 main reasons that I denied the motion for directed
8 verdict through the e-mail, that there was a hint
9 or suggestion based on the totality of the
10 evidence.

11 MR. LAMBERT: That was my recollection,
12 Your Honor, of our discussion of the directed
13 verdict as well. Just so we're clear, whether it's
14 defamatory or not is an anteceding question as to
15 whether they proved damages from it. So going back
16 to the earlier element, is this defamatory?

17 THE COURT: Remind me what -- he took a
18 loss, right? When he went to the middle school in
19 pay or lost --

20 MR. LAMBERT: No, sir. No, ma'am, Your
21 Honor. I'm sorry, I was thinking of Jeff.

22 MS. BLOODGOOD: He did in terms of not
23 being athletic director anymore. That was extra
24 pay.

25 THE COURT: How much extra pay was it?

1 MS. BLOODGOOD: I don't recall, Your
2 Honor, but it was much less --

3 THE COURT: A significant amount?

4 MS. BLOODGOOD: It was not
5 insignificant, but it was not a lot. I want to say
6 8- or \$9,000.

7 MR. LAMBERT: Your Honor, Coach Cruce
8 did not take a loss on his contract for the 2015/
9 2016 school year. When he was moved to the middle
10 school as a guidance counselor, he was paid
11 everything he was owed for that year, including his
12 compensation as coach and athletic director.

13 If he would come back the next year and
14 not have been a high school coach and athletic
15 director, he would not have gotten that
16 supplemental pay on top of his teacher salary.

17 Everything he was owed under the
18 contract he was paid. That was one of our
19 arguments on the wrongful termination. That he
20 couldn't prove damages because he was paid
21 everything he was owed under the contract and that
22 there was no new contract for the next school year
23 that was signed.

24 THE COURT: Okay. I recall that there
25 was compensation for him being athletic director,

1 and I was attempting perhaps to try to figure out
2 maybe that's what the jury -- how the jury got to
3 some sort of damages for the loss of that, going to
4 the middle school. Just trying --

5 MR. LAMBERT: Perhaps. They testified
6 that they had to take some money out of someone's
7 -- I think Mrs. Cruce's retirement account
8 involving the move and the new mortgage because of
9 a car loan. There wasn't, Your Honor, honestly a
10 lot of drilling down on what damages came from
11 what. There just wasn't any testimony on how this
12 e-mail was the cause of it.

13 I actually, if it's worth, Your Honor,
14 looking at it, I have Mr. Cruce's testimony about
15 Chris Stevens and his e-mail. It's pages 174
16 through 178. It's the only copy that -- or the
17 only time I could find -- I have another copy.

18 THE COURT: Do you have this,
19 Ms. Bloodgood?

20 MR. LAMBERT: I have an extra copy
21 right here.

22 THE COURT: Thank you, Mr. Lambert.

23 MR. LAMBERT: Your Honor, just so that
24 there is the full context. And I think now you
25 seeing Mr. Stevens' testimony and testimony from

1 Principal Steel and Coach Cruce's testimony, that's
2 all the testimony about the Chris Stevens' e-mail
3 that I could find going through the record. You
4 have it all in front of you.

5 Going back to your previous question,
6 which I have gotten somewhat off track from, I
7 apologize, as to whether this is defamatory and a
8 hint as to whether it can be inferred, certainly,
9 you can infer defamation. We covered that. We
10 don't disagree with that statement in the law.

11 But there is still that statement in
12 the law that a conditional statement can't be
13 defamatory. And I go back -- in Coach Cruce's
14 testimony most of it is about, well, no, you don't
15 have to have this, or you do have to have this.
16 It's about that bullet point at the bottom.

17 That bullet point list isn't what
18 possibly could make anyone think less of him in his
19 community or bring down his reputation.. The only
20 way that could happen is if his files are
21 misplaced. And that sentence not only uses the
22 conditional, it uses it twice.

23 So I go back to, if it's conditional
24 and it's not true, then it can't be defamatory
25 because there's nothing that's false that's been

1 said about him. And if it is true, this truth
2 defense that the district raised would apply here
3 and defeat his claim.

4 The reason I think it's an either a
5 heads-we-win or tails-you-loose kind of thing, it's
6 just not a particular defamatory e-mail, Your
7 Honor.

8 We discussed it at length and I know
9 you wrestled with it, but at one point I recall you
10 saying, Ms. Bloodgood, I'm just not sure I see it
11 here. And I think the reason that we were
12 struggling with this is because there's not a lot
13 in it that speaks ill of Coach Cruce.

14 Something could be wrong, and if it is,
15 then it needs to be fixed. If it's not, then Coach
16 Cruce is caused no liability and --

17 THE COURT: Mr. Lambert, 12 people
18 disagreed with me, correct? I mean, I struggled
19 with it. They evidently were back there doing
20 something for seven hours. So --

21 MR. LAMBERT: Your Honor, this is
22 where --

23 THE COURT: Isn't that the ultimate
24 question? They were the fact finders and whether
25 or not I believe it to be defamatory is not the

1 issue. I'm really the gatekeeper to make sure that
2 it should or should not go to the jury. I made the
3 decision and determination that there was enough
4 for it to go to the jury. Whether or not I
5 personally saw it is not the issue, is it, Mr.
6 Lambert?

7 MR. LAMBERT: In terms of the JNOV
8 motion, Your Honor, that's correct. In terms of
9 the motion for a new trial, I don't think so. This
10 is supreme court's decision from 2012, in deciding
11 whether to grant a new trial, a court functions as
12 a, quote, thirteenth juror, end quote. Takes its
13 own view of the evidence and grants a new trial if
14 it disagrees with the jury's verdict.

15 I think you were clear that you were
16 very skeptical as to whether this e-mail was
17 defamatory. And you could grant a new trial
18 because you disagree with the jury. That's your
19 providence as the thirteenth juror --

20 THE COURT: How often does that happen,
21 Mr. Lambert? How many cases did you find where the
22 Court acts as the thirteenth juror and actually
23 grants a new trial because this Court disagreed
24 with the evidence?

25 MR. LAMBERT: Your Honor, I did not run

1 the cases down to make a list, but if it would make
2 you more comfortable with it --

3 THE COURT: I just wondered if you
4 happened to know offhand.

5 MR. LAMBERT: I don't.

6 THE COURT: Statistically, it's not
7 going to influence me in --

8 MR. LAMBERT: Sure. I think the point
9 of this is simply this: If you have as many
10 questions and doubt about the e-mail as you clearly
11 seem to have had through these discussions, under
12 Rule 59 you can grant a new trial because you
13 disagree with the jury.

14 And that's the beauty of the way our
15 system works is that a judge who sits through a lot
16 of trials and sees a lot of evidence and is in a
17 particularly special position to gauge evidence and
18 witnesses can serve as sort of a -- as a first
19 check on a jury before it goes up to the court of
20 appeals. And that's, if you disagree with the
21 legal arguments, Your Honor, what we would ask you
22 to do here.

23 THE COURT: Okay. Ms. Bloodgood, final
24 recap?

25 MS. BLOODGOOD: No, Your Honor. You're

1 absolutely correct. The only time I know recently
2 of a judge acting as a thirteenth juror was in that
3 episcopal church case where Judge Goodstein acted
4 as a thirteenth juror and the supreme court has
5 just overturned that.

6 So it may be appropriate in a criminal
7 case when the evidence is clear and the jury has
8 made a mistake, but this is a defamation case and
9 it gives great leeway to a jury to decide the
10 facts, look at the context, look at the
11 suggestions, look at the hints.

12 And this is not the type of case where
13 I would think it would be prudent for anyone to
14 step in and overturn a jury verdict.

15 MR. LAMBERT: If I may. It is Rule 59
16 of the South Carolina Rules of Civil Procedure
17 where the thirteenth juror doctrine applies. It
18 can apply in a defamation case as a contract case
19 as any other. And this is an appropriate case for
20 you to apply it.

21 THE COURT: All right. I will take the
22 matter under advisement. It is chambers week so
23 I'm hoping to have this done sooner than later.
24 You've been waiting a long time.

25 Anything else I can do for you,

1 Mr. Lambert?

2 MR. LAMBERT: No, Your Honor. Thank
3 you for hearing us.

4 MS. BLOODGOOD: No, Your Honor. Thank
5 you.

6 THE COURT: We're off the record.

7 (These proceedings were concluded at
8 12:06 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 2nd day of July, 2018 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 February 27, 2028
23
24
25

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) CASE NO. 2016-CP-08-0131

3

4 JEFFREY LANCE CRUCE,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 THE BERKELEY COUNTY) Date: September 5, 2017
SCHOOL DISTRICT,) - September 7, 2017
8 Defendants.
9

10 * * * * *

11

12 B E F O R E:

13 The Honorable Kristi Harrington

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20 Denise J. Lauder, RPR

21 Ninth Judicial Circuit

22

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25

1 A P P E A R A N C E S

2

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7

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14

15 ALSO PRESENT: Wendy Cruce

16 Steven Steele, Principal,

17 Berkeley County High School

18 Josh Whitley, Esquire; General

19 Counsel to Berkeley County School

20 District

21

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1 MS. BLOODGOOD: Yes, Your Honor.

2 THE COURT: Defense ready to begin?

3 MR. MORGAN: We are, Your Honor. Thank
4 you.

5 THE COURT: Thank you.

6 Ladies and gentlemen, you were selected
7 as the jury to try this case. At this time, we
8 must administer an oath for you to try this case.

9 Madame Clerk.

10 THE CLERK: Yes, Your Honor.

11 Please stand and raise your right hand
12 to be sworn.

13 THE JURY,
14 being first duly sworn, testified as follows:

15 THE CLERK: Thank you. Please be
16 seated.

17 THE COURT: Thank you.

18 Was there any member of the jury who
19 could not take the oath? If so, please let me
20 know.

21 Thank you. All 14 jurors have
22 indicated that they took the oath.

23 Ladies and gentlemen, you already know
24 that the attorneys and the parties involved in this
25 case will remain standing until all of you are

1 seated, so please come in and take your seats
2 quickly.

3 The next time you're going to come in
4 from that door; the jury deliberation room is on
5 that side. At our first break, we will take you
6 there and show you that and get your personal
7 information and phone numbers and all of that
8 information, but we wanted to start this trial so
9 that we could get started. And so that's why we
10 moved you in from this way.

11 I have provided notepads; that means
12 jurors may take notes. Please remember, some of us
13 are much better note-takers than others. One
14 juror's notes are no more correct and accurate than
15 another juror's notes. Those are for your own use.

16 Please do not think you have to write
17 down word for word what is happening. If you need
18 any testimony played back to you, my court reporter
19 will simply play the audio testimony back to you at
20 the appropriate time.

21 Ladies and gentlemen, any exhibits that
22 have been made part of the record in this case will
23 go back with you during your deliberations. So,
24 again, if you don't have an opportunity to see and
25 view those things, don't be concerned. You will

1 have the opportunity to do that.

2 Madame Foreperson, you are the jury
3 spokesperson here in court. If at any time
4 somebody needs a break, you can't see or hear,
5 anything of that nature, please let the bailiffs
6 know and they will handle it if they can. If not,
7 they will let me know and we'll take their of that
8 matter as well.

9 Ladies and gentlemen, Exhibits 1
10 through 27 have been stipulated to.

11 Is that correct?

12 MS. BLOODGOOD: Yes, Your Honor. I
13 would move that they be put in evidence with our
14 mutual agreement.

15 MR. MORGAN: We do have an agreement on
16 27. Thank you, Your Honor.

17 (PLF. EXH. 1 - 27 in evidence.)

18 THE COURT: All right. So I just
19 wanted to let you know what we have been doing
20 already. And so what a stipulation in court is,
21 it's the parties have already agreed to that. So
22 they have agreed to Exhibits 1 through 27. Those
23 have already been made part of the record in this
24 case, and, again, you will hear more about those as
25 we actually begin the testimony.

1 finding of what the facts are.

2 Ladies and gentlemen, in determining
3 what the facts are in this case, you must decide
4 whether or not the testimony of the witness is
5 believable. It is my responsibility to rule as a
6 matter of law whether certain testimony is
7 admissible. Once it is admitted, whether or not
8 you believe it is only for you to determine.

9 In deciding whether to have -- whether
10 to believe a witness, you do have the right to
11 consider anything in the record that will help you
12 evaluate the testimony of the witnesses.

13 That means it is your duty to pay close
14 attention. Please do not let your thoughts wander,
15 so at the end of the trial, after you have heard
16 all of the testimony and closing arguments on
17 behalf of counsel, you will be in a position to
18 determine what the facts are, apply the law to
19 those facts, and render a verdict based upon those
20 things.

21 Please give your strict attention to
22 Ms. Bloodgood.

23 MS. BLOODGOOD: Thank you, Your Honor.

24 Good afternoon. My name is
25 Nancy Bloodgood and I appreciate your time. I

1 know -- I know you have other things to do, and we
2 will try to move this along as quickly as we can
3 and not waste your time.

4 The -- my client, as you met before, is
5 Jeff Cruce. He was the Berkeley High School
6 football coach. He actually had three jobs; he was
7 the head football coach; he was what's called an
8 athletic director; and he was a driver's ed teacher
9 for 28 years. And he will explain each of those
10 jobs to you.

11 Before we go too far, I would ask that
12 you put aside any bad feelings you have about
13 lawyers. I think that that's not atypical. I was
14 a schoolteacher before I was a lawyer, so maybe
15 that will help soften your feelings here, but until
16 we finish the trial, I would hope that you would be
17 open-minded about this.

18 You know, schools have rules, and this
19 case is about rules. This is about when there are
20 rules, you follow the rules, and especially in an
21 employment situation. If you have performance
22 evaluations and a teacher is being evaluated well,
23 then there is no reason halfway through the school
24 year to take that teacher out of his classroom and
25 move him to another school, especially in this

1 case.

2 When I tell you the story, you will
3 find that Coach Cruce not only was fired as head
4 coach, fired as athletic director, but was also at
5 the same time moved to a middle school into a
6 position he hadn't done for 24 years.

7 And so we have what's called a
8 defamation claim. When that happens to somebody,
9 when you are suddenly -- when you're a teacher and
10 you're suddenly taken out of your classroom and
11 nothing is said, there is an assumption that he did
12 something very wrong.

13 Then an e-mail -- you will hear about
14 an e-mail that was sent out that also was
15 defamatory in that it went to people that he didn't
16 know, and it said that he wasn't keeping student
17 athletes' files correctly.

18 So let me go through the rules first if
19 I could because these rules we will talk about
20 again and again during the trial. And they're
21 simple. They're nothing -- they're things that you
22 already -- that you already know.

23 The first one is that a school has to
24 put the safety of its students at risk and the
25 safety of students is the number one job of a

1 school. That's the rule. And if you don't follow
2 this rule, students are going to get hurt and
3 other -- families and parents.

4 The second rule is that a school
5 district is responsible for the actions of its
6 principal. They have to know what their principals
7 are doing, and they have to monitor them to make
8 sure that the principals act honestly, follow
9 evaluation procedures, and treat teachers fairly.

10 And the third rule is that a school
11 district has to require its principal to follow its
12 own rules about disciplining and demoting teachers;
13 and when a principal punishes a teacher for a wrong
14 reason, the school district is harmed, the teacher
15 is harmed, there are lots of people harmed by this.

16 So what happened? The way that these
17 rules are relevant to this case is, Coach Cruce
18 will tell you he's been in Berkeley County School
19 District coaching at various schools, Hanahan,
20 Cane Bay, and Berkeley High School most recently
21 for 26 years, 28 total in his teaching career.

22 He was a good coach. He was athletic
23 director of the region the year before he was
24 terminated, never disciplined for anything to do
25 with his teaching, but the principal of the school

1 did not like when he implemented a new philosophy
2 for the football team.

3 You will hear that there is a big
4 concern about students and concussions in high
5 school now. And what Coach Cruce decided to do was
6 to do more of an offense and a passing game, not
7 practice in that heavy equipment, full tackle, full
8 contact, or something that they call it, and not
9 get the kids as tired.

10 He tried to change the game, and as he
11 will tell you, it's because we're not going to have
12 high school football in this country if parents are
13 afraid that their children are going to get hurt,
14 and if we don't take care of them.

15 So he believed that the way that he was
16 switching the team and the philosophy would
17 decrease the concussions and the injuries in the
18 school. The principal didn't like it. He came to
19 him and he said, I want full -- full tackle on
20 practices. I want more tackling and hitting. I
21 want more blocking.

22 And you will hear Coach Cruce will say,
23 that's fine. That's your opinion, but I'm the
24 football coach and I'm in charge of the students.

25 On July 30th, what happened was

1 Coach Cruce went by the principal's office and
2 said, here's my template for coach evaluations,
3 because the principal had asked him to do some --
4 to prepare some evaluations. The coaches -- he was
5 in charge of all the coaches as athletic director
6 in the school.

7 So there had never been an evaluation.
8 So he called around, he made these evaluation
9 forms, he took them by to the principal. And the
10 principal said, initial the form, so this will be
11 our form that we'll use this year.

12 Coach Cruce initialed it and then the
13 principal said, no. No, sign your name under it.
14 So he signed his name on a blank template.

15 You will hear a few weeks later
16 Coach Cruce sent a revised version of the template
17 to the principal and said, I'm going to use this.
18 Is this okay? I'm going to change it a little bit.
19 You'll see that e-mail. No problem.

20 In November -- and they didn't see each
21 other much because the principal is busy and the
22 coach is outside, and so they didn't see each other
23 every day.

24 In November, there was another meeting
25 with the principal. And the principal doesn't

1 mention anything that you'll see in his termination
2 letter; no mention of any problems, except one. He
3 said, you're not hitting enough. The community is
4 mad. My job is at stake, you are not hitting
5 enough. And if you don't hit enough, you're going
6 to lose your job.

7 At the end of that meeting, they sort
8 of softened it over, and the principal told him --
9 he will testify the principal told him that, fine,
10 we'll see what we're going to do at the end of the
11 year.

12 Now, you can fire -- I'm not saying a
13 principal can't fire a football coach. A principal
14 can fire a football coach for any reason, not for a
15 false reason, but for any reason. But the problem
16 here is there was no reason to fire him as the
17 athletic director, totally different job, and he
18 had been great at doing it. No reason to transfer
19 him out of that school as a teacher. And it sent a
20 horrible message.

21 Plus, the other part of our lawsuit is
22 that in this state there are laws that try to
23 protect children in schools, and DHEC actually has
24 some rules about concussions and how they have to
25 be -- follow model policies and they -- you have to

1 report them and manage them.

2 So it's our position that you can't
3 terminate someone when he is following the law, and
4 if he failed to do that, he could actually be
5 liable -- criminally liable if he were grossly
6 negligent for not following that law.

7 So Coach Cruce goes on with the
8 coaching. In December -- in the middle of
9 December, he's called in with the principal and the
10 assistant superintendent and he is told, we are
11 terminating you as head coach. We are terminating
12 you as athletic director. You are not going to be
13 the driver's ed teacher. We are going to move you
14 over to a middle school. In the middle of the year
15 to a guidance counseling position that he hadn't
16 done -- he hadn't done guidance counseling for 24
17 years.

18 And then there's a letter. There was
19 no letter given to him at that meeting, but two
20 days later he gets a letter. And for the first
21 time -- in that meeting he had heard this and then
22 it was in the letter, the reason he was terminated
23 was that he didn't increase membership in the
24 booster club. Football coaches, ADs -- you'll see
25 his job description, that wasn't his job. And it's

1 unclear whether there was any decline in the
2 membership of the booster club.

3 You didn't do the coach evaluations.
4 Well, they were on his desk; they were done. No
5 one asked for them. In fact, you'll see an e-mail
6 that right before this meeting where he's
7 terminated, he said, you know, do you need the
8 coaches evaluations?

9 Nobody sends -- nobody says we need the
10 coach evaluations. You will see the coach
11 evaluations, that they were done.

12 The third reason for all of these three
13 actions at once was that he -- the principal didn't
14 like analytics, the goals of analytics. He was
15 never told this, so we don't really know what that
16 means, but based on the conversation that the
17 principal had said to him, you're not hitting
18 enough. You're not blocking and tackling enough,
19 you know, it was that he -- he did less punting, he
20 did more throwing. Maybe that's analytics; I don't
21 know.

22 So after he's fired, sending e-mails, a
23 bunch of people go in his office, go through the
24 files, send an e-mail to people he doesn't even
25 know saying he didn't keep the files.

1 He's been audited by the State for
2 26 years and had never had a problem. The person
3 who looked in those files was not certified to know
4 what should be in or out of the files.

5 He's a coach. He can't stay in a
6 middle school, he'll never be a football coach, and
7 that's what he has been his whole life.

8 So at the end -- when he was put into
9 the guidance counselor position, it was going to be
10 a significant decrease in salary. So at the end
11 of -- he went over and he finished the year. He
12 did the guidance counseling at Sedgefield Middle,
13 and then he had to find a coaching job in a high
14 school again, and he resigned.

15 Now, he had been looking all over. He
16 had gone through, like, 11 superintendents, nine
17 principals, never had a problem in Berkeley County,
18 but once he lost all three jobs on that same day in
19 the middle of the year and the defamatory e-mail,
20 nobody would touch him.

21 He had to actually -- he thought he
22 would get a job. He had had so many jobs; there
23 had never been a problem. Nobody would touch him.
24 They ended up having to sell their house, and he
25 had to retire because he needed money to come in

1 and pay the mortgage.

2 He's too young to stop working, so he
3 moved to North Carolina, because once you retire
4 from the school district in South Carolina, you
5 can't keep working. You have to -- and so they
6 moved to North Carolina. He thought, okay, that's
7 fine, now I'm fixed. He couldn't get a job in
8 North Carolina. Turns out that Berkeley County
9 School District has taken the position he was fired
10 for cause.

11 None of those -- those things were so
12 ridiculous. If only they had just said, we don't
13 like you as a football coach, but -- but you're a
14 good AD, athletic director, or you're a good
15 teacher. Or even if they had said, we're not
16 firing you because of your teacher or your athletic
17 director, but they were silent. And as a result,
18 people jumped to conclusions.

19 When you work with kids and you, all of
20 a sudden, get taken out of the classroom in the
21 middle of the year, there is going to be an
22 assumption that you did something wrong.

23 So the rules are important. He had --
24 his teacher evaluations were great. Principal
25 admitted no problems with him as an athletic

1 director. And that's the problem. Couldn't they
2 have said something? They couldn't say the reasons
3 in the letter because they were sort of silly, but
4 -- but you have to follow the rules.

5 In this case, this created incredible
6 damage to his family, but, also, he still has got
7 this thing over -- this black cloud on his
8 shoulder. And so the rules are really important.

9 Your job as the jury, you are the
10 guardians of the safety of our community. You
11 really are here to say this is right or this is
12 wrong and to correct things that are not right.
13 And so we're asking that you think about whether or
14 not a school should be made to follow the rules.
15 When they chose not to follow the rules, they cause
16 harm.

17 And I thank you for your service.

18 THE COURT: Mr. Morgan.

19 MR. MORGAN: Thank you, Your Honor.
20 May it please the Court.

21 We lawyers do work together. Ladies
22 and gentlemen, let me introduce myself again. I'm
23 Rick Morgan; I'm here and I represent the school
24 district. With me, again, are Grayson Lambert,
25 Steven Steele, and we have Josh Whitley with us as

1 well.

2 This is a case that deals with two
3 issues. First off, before we get there, I want to
4 thank you. I've had to serve on a jury before. I
5 know what time it is away from your families, from
6 your work, and we appreciate it.

7 The judge, as she has instructed, is
8 the giver of the law. And she will give you the
9 law a little bit when we get through all the
10 evidence in this case.

11 You're here to help us because we have
12 a dispute. There are two causes of action in this
13 case; one is defamation and one is what we call the
14 public policy exception to at-will employment.

15 How is all that going to play with the
16 information that we think you're going to hear
17 today and tomorrow, hopefully not into Thursday?
18 But let's take a look at what we believe the facts
19 will be in this case.

20 The facts will be that Mr. Cruce did
21 work for the school district for a long time. The
22 last five of those years at Berkeley as head
23 football coach, as the AD, and he was in the
24 driver's ed. We don't dispute that. That's what
25 he did.

1 He had been developing, and you will
2 hear this in the testimony, a philosophy of
3 basically speeding up an offense. You may hear
4 from him how he's gone to Oregon. You may hear
5 from him some of things that he's read about his
6 philosophical belief on how football should be
7 played, and he wanted to adapt that to his coaching
8 style at Berkeley High School.

9 And I would ask you to really focus in
10 on these last five years at the Berkeley High
11 School assignment that he had. I think it's
12 important. And you'll see a bunch of exhibits, and
13 one of the exhibits you'll see is an article from
14 the *Kansas City Star*. It's already been admitted
15 into evidence.

16 You will hear -- and when Coach Cruce's
17 deposition was taken, he said everything that was
18 in this article was true. He had no dispute about
19 what was in this article.

20 Essentially, what you're going to hear
21 are facts about a no-punt philosophy. I want to
22 run a number of plays. I want to get more yards.
23 I want to have an offense that is all sped up.
24 That's what he wanted to do.

25 If you look at what happened while he

1 was at Berkeley High School, as Ms. Bloodgood has
2 said, he did have some success in his fourth year.
3 Losing season year one, losing season year two,
4 losing season three, he had a winning season year
5 four, and he -- a losing season in year five. And
6 it was year five when he adopted in the main this
7 full no-punt, hurry-up offense that he lost. And
8 it was highly-published nationally that that was
9 what he was going to do.

10 And in that article you will see -- and
11 I can't testify, but you will see what he said
12 would likely happen to him if he wasn't successful.

13 He was let go as the head football
14 coach, as the athletic director, and they moved him
15 to a middle school. They did all of that. We
16 don't deny that. That happened in December 2015,
17 after four losing seasons in five years. That did
18 happen. We're not going to dispute that.

19 What we do dispute, and what Mr. Steele
20 will tell you is that that evaluation form that was
21 filled out on July 30th had the information on it.
22 Analytics, booster club, it had that, the
23 associate -- the coach's associate's evaluations,
24 it had those three things on it. That's going to
25 be something you're going to have to decide.

1 Mr. Cruce says one thing; Mr. Steele says something
2 else.

3 But I will ask you -- when you look at
4 all of this, I'm going to ask you to look at the
5 other evaluations and look at some dates. And
6 those dates I think are really very instructive as
7 to what the believability of the two sides will be
8 on that story.

9 The other thing is this public policy,
10 and the judge's going to instruct you on at-will
11 employment. Exhibit Number 1 that you will see is
12 a series of contracts, series of contracts
13 Mr. Cruce had. Contracts, for a year.

14 He was paid the full of the contracts
15 that he had with Berkeley High School in that 2015
16 season all the way through the end of the year. He
17 was paid his full coach's salary. He was paid his
18 AD salary. He was paid his teacher's salary, even
19 after he was removed as the head football coach and
20 athletic director to go to the guidance counselor
21 position at the middle school.

22 That's what you are going to hear
23 today. You are going to hear about a man who took
24 a philosophy that, frankly, didn't work at
25 Berkeley. It was published all over. We have 197

1 articles about Berkeley High School football,
2 during a term -- a time -- these are just local
3 when Mr. Cruce was head coach.

4 You'll see the *Kansas City Star*
5 article. I will leave it to you to make your own
6 judgment as to whether or not that seals the deal.

7 You will hear testimony -- and
8 Mr. Cruce is consistent with what he said in his
9 deposition. He will tell you that no one ever told
10 him, no one ever told him to violate the concussion
11 program.

12 Let me say that again. If he's
13 consistent with what he told us in his deposition,
14 he will tell you that no one ever told him to
15 violate that concussion program. And that's the
16 public policy that he says he's relying on that no
17 one said he should violate.

18 That will be the evidence that I think
19 you will hear as we go through these next couple of
20 days.

21 If I forget, and sometimes I do because
22 I get pretty focused, I want to thank you again for
23 your service. I will try to remember to do that
24 when we get up to close the case. If I don't, I
25 will apologize now, but I will do my best to thank

1 you. You've got a big job ahead of you.

2 Me, everyone in this courtroom, the
3 judge, the staff, Ms. Bloodgood and her client, and
4 our client are all relying upon you to listen very
5 intently to what is said and what these documents
6 say to help us decide this dispute. We thank you
7 for your service.

8 THE COURT: Madame Foreperson, would
9 you like to request a break at this time to get
10 situated in your jury room or are you ready to hear
11 testimony?

12 THE FOREPERSON: I think we will wait
13 for a break. We'll wait for a break.

14 THE COURT: All right.

15 Call your first witness.

16 MS. BLOODGOOD: Okay. Your Honor, I
17 call Coach Cruce.

18 JEFFREY CRUCE,
19 being first duly sworn, testified as follows:

20 THE CLERK: Please be seated. State
21 your full name for the record and please spell your
22 last name.

23 THE WITNESS: Jeff Cruce, C-r-u-c-e.

24 THE COURT: Ms. Bloodgood.

25 MS. BLOODGOOD: Yes, Your Honor. Thank

1 you.

2 DIRECT EXAMINATION

3 BY MS. BLOODGOOD:

4 Q. Coach Cruce, would you briefly tell the
5 jury your educational background?

6 A. I went to high school in Columbia High
7 School in Lake City, Florida. I left Lake City and
8 went to Clemson on a football scholarship and
9 played on a national championship team where I
10 earned a BS in physical education.

11 When I finished that, I -- I went to
12 Denver on a trade contract, came back and was a
13 graduate to Clemson and earned my master's degree
14 in guidance education, '85 through '87.

15 When I finished that, I got into
16 coaching, and during the process I started my
17 administrative degree for secondary education. I'm
18 15 hours short of my administrative degree in
19 education, secondary education administration.

20 But for me, my situation was, when I
21 got into this and I started playing sports that the
22 men, for me, that were the most influential in my
23 life were my coaches, my football coaches. My dad
24 was an alcoholic; I didn't have a relationship with
25 my dad. The void was filled by my football

1 coaches, and I've always known that through this
2 process that one day I was going to be a coach, and
3 that's what I've been for my entire career.

4 Q. Coach Cruce, how long were you a
5 teacher in South Carolina?

6 A. I was a teacher in South Carolina for
7 28 years.

8 Q. Okay. And what type -- what things did
9 you teach?

10 A. I was a guidance counselor for a short
11 period of time in the late '80s, I was a driver's
12 ed instructor, and I've also taught weight training
13 for most of my career.

14 Q. And there was some mention earlier that
15 you had a year-to-year contract, every year you
16 would sign a new contract. How does that work with
17 the school system?

18 A. I was considered a classified employee,
19 which I had a continuing contract, which I was part
20 of the State Department retirement system. And I
21 was evaluated through ADEPT process like all
22 classified employees are.

23 Q. Now, ADEPT, there are some initials.
24 What -- do you know what ADEPT is or can you spell
25 it? They may not be familiar with that.

1 A. I'm not sure what each letter means,
2 but it's an evaluation process that each teacher
3 each year has to be evaluated by the
4 administration, and each year you have a -- you
5 meet with an administrator and they go through a
6 process. You come up with goals for that year and
7 you're evaluated at each -- each and every year.

8 Q. Okay. I'm going to show you what we've
9 marked as Exhibit 1, Coach. And let me see if I
10 can do this. I hope the jury can read that.

11 Can you all read that? Do you need to
12 have it bigger?

13 THE COURT: Remember, ladies and
14 gentlemen, this document has been admitted into
15 evidence, so it will go back with you when you
16 retire to consider your deliberation.

17 So, Ms. Bloodgood, if you inquire of
18 the Court, the Court will inquire. Please do not
19 speak directly to the jury.

20 MS. BLOODGOOD: Okay.

21 THE COURT: Thank you.

22 BY MS. BLOODGOOD:

23 Q. And this is -- on the top you can see
24 it. What is this, Coach Cruce? Would you explain
25 what this is?

1 A. This is a contract that we sign each
2 year that -- it's a continuing contract for that
3 particular year. It goes July 1 through June 30 of
4 each year. Each year you have to sign a new
5 contract for employment as a classified employee.

6 Q. And this contract, there's five pages
7 to it, and I have on the top of each page -- what
8 is that?

9 A. It says who you're contract with, your
10 name, and what your rules are for the following
11 contract as far as being employed for that school
12 district.

13 Q. Okay. And I will just flip through
14 these pages. The last page, what year was that
15 contract for?

16 A. I can't see it, but I think it was
17 2015, I believe.

18 Q. Okay. All right. So is this the
19 contract, what's been marked as Exhibit 1, that you
20 would sign every year?

21 A. Yes, ma'am.

22 Q. To be your -- to be the teacher?

23 A. Yes, ma'am.

24 Q. Okay. And was most of your -- well,
25 you tell me. Your salary as a teacher,

1 approximately, what was that?

2 A. Well, my salary was based off of three
3 components: It was athletic director, head
4 football coach, and teacher. So Berkeley County
5 had a system that paid athletic directors and
6 football coaches a little bit different, but it was
7 a component of those three components. And so my
8 salary was based off of that.

9 Q. And were you also paid anything for
10 being a head football coach?

11 A. I was.

12 Q. And do you know, approximately, what
13 you were paid?

14 A. To be honest with you, I never -- I
15 never looked at it. I just -- I signed my contract
16 and I knew I had a contract as far as -- I never
17 really considered money, you know. I just -- I
18 know what my total salary was. I don't know what I
19 got individually.

20 Probably, for a head football coach it
21 was around \$10,000 because of my years of
22 experience. You're paid based off of your years of
23 experience, and I had 28 years as a head football
24 coach in South Carolina. So I was paid off of
25 that, that figure.

1 Q. Were you paid for being athletic
2 director also?

3 A. I was paid for being athletic director,
4 and it was probably somewhere around 17- to
5 \$18,000, and then the rest of my salary was based
6 off my teaching format that they had assigned to
7 that.

8 Q. In the 28 years that you were a
9 teacher, were you ever disciplined?

10 A. Never, no, ma'am.

11 Q. And would you tell the jury very
12 briefly where you worked in Berkeley County?

13 A. Well, I've been -- I've been in
14 Berkeley County since '91. I was at Berkeley High
15 School, '91 through '94, as an assistant coach. I
16 was a driver's ed instructor and I also did weight
17 training and I was employed as a coach also.

18 And then I left Berkeley and went to
19 Hanahan High School, where I was there for
20 13 years. I had the same position, other than I
21 was the head football coach, athletic director and
22 -- athletic director -- like I said, head football,
23 athletic director, and teacher.

24 And then I was at Cane Bay High School.
25 I was there for three years, left Cane Bay, and

1 then the past -- my final five years with Berkeley
2 County was at Berkeley High School --

3 Q. And --

4 A. -- in the same capacity.

5 Q. Coach Cruce, I'm going to show you what
6 we've marked as Plaintiff's Exhibit 2. Can you
7 identify this document?

8 A. Yes, ma'am. It was my résumé.

9 Q. Okay. And we're not going to go
10 through all of that now, but is the information in
11 the résumé accurate as in terms of your work
12 history?

13 A. Yes, ma'am.

14 Q. Okay. The -- what three different job
15 positions did you have at Berkeley High School?

16 A. I was a driver's ed instructor, I was
17 the head football coach, and I was the athletic
18 director.

19 Q. And can you briefly differentiate
20 between those three jobs and tell the jury how they
21 were different?

22 A. Well, one was -- they all three had
23 evaluations attached to them at some point. So I
24 taught driver's ed during the school day. And
25 then, obviously, I was in charge of all the

1 athletics, the programs and anything dealing with
2 athletics as the athletic director.

3 And then I was in charge of the
4 football program, which entailed three programs. I
5 was in charge of the B team, JV, and varsity, so
6 that they were all encompassed into one. And it
7 was my responsibility to oversee the safety and the
8 health and well-being of all those kids that were
9 involved in the program.

10 Q. When you were the head football coach,
11 in that capacity when you're wearing that hat, were
12 there certain rules that you had to follow?

13 A. Yes, ma'am.

14 Q. Where did you find the rules?

15 A. I had a coach's manual that I've had
16 for years that was passed down. Actually, it was
17 taken from the rules that we had in it for all of
18 -- the head coach, the assistant coaches, and the
19 athletic director was taken from Berkeley County
20 way back when.

21 And we revised it each year, depending
22 on whatever needed to be revised, but it was rules
23 stating what your responsibilities were, what each
24 coach was responsible for. It had everything in
25 there, but each year this manual was -- it had to

1 be approved by the principal.

2 So each year I would send the principal
3 a copy of the coach's manual and he would either
4 say, hey, I need you to take -- add this to it or
5 add that to it.

6 And you mentioned earlier one of the
7 things that was added was the coaches' evaluations.
8 We added that. We never had the coaches'
9 evaluations form that we had until the last year
10 that I was there.

11 Q. Okay. If you look behind you, I put
12 something up as an exhibit that we've marked as 3.
13 Can you identify what we marked as Exhibit 3?

14 A. It's tough when you're six-seven.

15 Yes, ma'am.

16 Q. Okay.

17 A. That's the handbook. That's the
18 coach's manual for all the coaches.

19 Q. Now, I'm going to flip to an Exhibit
20 that's B in this -- sorry. I don't want to get
21 everybody dizzy. What have I put on the screen
22 from Exhibit 3?

23 A. It's duties for all head coaches of all
24 sports, male, female, swimming, tennis, whatever.

25 This is what -- all the coaches received a copy of

1 this in the manual about their duties.

2 Q. And was there -- did you expect any
3 head coaches -- or was it your responsibility to
4 have anything to do with the booster club?

5 A. No, ma'am. In my career, I've always
6 been involved with the booster club as part of
7 my -- our booster club is a volunteer organization
8 that helps us raise money to supplement the gate
9 receipts and things that we do, but as far as
10 booster club and anything dealing with booster
11 club, I'm there to help in any way possible, but
12 not -- I don't have an official title as far as the
13 booster club concern, no, ma'am.

14 Q. In reviewing this list of duties and
15 responsibilities, generally, and the jury can read
16 it themselves when they go back in the room, but,
17 generally, how would you describe what's important
18 for a head coach to do?

19 A. Well, our job as head coach is to help
20 kids develop the responsibility of being part of
21 the team, help develop character building, help --
22 involved in helping these kids to understand about
23 work ethic, helping these kids understand about
24 fair play, you know, not -- unsportsmanship or
25 sportsmanship that they would or would not do.

1 So it's our job to make sure that we
2 teach these kids everything -- and the most
3 important thing we do is to teach fundamentals that
4 ensure the safety of each kid that we -- that we
5 work with.

6 Q. I'm putting up on the screen an exhibit
7 that we've marked as Exhibit 4, which is a job
8 description for the school athletic director. Do
9 you recognize that document?

10 A. Yes, ma'am, I do.

11 Q. Okay. And you don't need to read it,
12 but, generally, can you describe in your own words
13 what the important things are for an athletic
14 director versus a head football coach to do?

15 A. The difference -- with the athletic
16 director you're in charge of the entire program.
17 You're in charge of safety, maintenance, anything
18 dealing with the athletic department, and to --
19 like I said, anything dealing with the athletic
20 department is on the AD: Buses, transportation,
21 concussions, anything that we do as far as making
22 sure that our coaches are current, giving them
23 information to help them, encourage them to go to
24 camps, go to things that would improve our program,
25 but to oversee the entire athletic department.

1 Q. That's not just football?

2 A. No, ma'am, it's all sports.

3 Q. What were some of the other sports that
4 you were in charge of?

5 A. We had in Berkeley County -- when I was
6 there at Berkeley High School, we had more sports
7 than any other school in Berkeley County because we
8 had swimming and girls' golf. So we had tennis,
9 volleyball, football, cross country, cheerleading.
10 So we had it all, as far as -- the only thing we
11 did not offer was lacrosse. That's the only sport
12 we did not offer at the time.

13 Q. How many years were you the athletic
14 director in Berkeley County?

15 A. I was the athletic director for
16 21 years in Berkeley County.

17 Q. Had you ever before been told that
18 you're in charge of membership for the booster
19 club?

20 A. No, ma'am, never.

21 Q. Do you know other athletic directors in
22 the state?

23 A. No, ma'am, never.

24 Q. Do you know --

25 A. I know of none, no, ma'am. I know of

1 none that are in charge of the booster club.

2 Q. Okay. How was your relationship with
3 the booster club?

4 A. I had a great relationship with the
5 booster club. All of my booster clubs, Hanahan,
6 Cane Bay, and Berkeley, we made a lot of money,
7 raised a lot of money for kids for scholarships.
8 We did a lot of good things for a lot of kids
9 through our booster clubs.

10 And the booster clubs were involved in
11 the banquets and things like that, so they paid for
12 all that. So it was a good -- it was a good
13 win-win for all of us. We had a great
14 relationship.

15 Q. And I didn't ask you this previously,
16 but when you were a head coach, did you ever get a
17 formal evaluation as being head coach?

18 A. As far as the head coach?

19 Q. Yes.

20 A. I've been evaluated as an athletic
21 director. I've never had a formal evaluation as a
22 head football coach, no, ma'am.

23 Q. So you did get an evaluation as an
24 athletic director previously?

25 A. I did get an evaluation as athletic

1 director, yes, ma'am.

2 Q. Were you ever evaluated as athletic
3 director at the Berkeley High School under
4 Principal Steele?

5 A. Never, no, ma'am.

6 Q. I'm going to show you a document and
7 ask you if you can identify this document, which we
8 have not agreed is in evidence yet?

9 A. Yes, ma'am.

10 Q. This is Exhibit 28. Is this --

11 MR. MORGAN: Your Honor, I would like
12 to make an objection. I don't believe there's
13 been --

14 THE COURT: This is -- because it's not
15 in evidence, if there's going to be an objection to
16 it, let's do it the old-fashioned way before --
17 because once it's up there -- you know the rule.

18 MS. BLOODGOOD: All right.

19 Your Honor, I have an exhibit that we
20 have previously marked that I know there is an
21 objection to. I am not going to --

22 THE COURT: I don't like speaking
23 objections, and that's what you're doing. You may
24 approach.

25 (Bench conference.)

1 MS. BLOODGOOD: Okay. Your Honor, may
2 I approach the witness?

3 THE COURT: You may. And you have
4 continuing permission with this witness.

5 MS. BLOODGOOD: Okay.

6 BY MS. BLOODGOOD

7 Q. Coach Cruce, can you identify this
8 document that's been marked as 28?

9 A. It was an evaluation done -- it's a
10 Berkeley County evaluation that was done by a
11 former principal, Charlie Davis, when I was the
12 athletic director and head football coach at
13 Hanahan High School.

14 Q. Was this the only athletic director
15 evaluation you ever received?

16 A. This is the only one I've ever
17 received, yes, ma'am.

18 MR. MORGAN: I will object on
19 relevance. I believe the document --

20 THE COURT: Are you objecting to the
21 questions or are you objecting to her admission of
22 this into evidence?

23 MR. MORGAN: Submission of the
24 document.

25 THE COURT: Okay. She hasn't made that

1 motion yet, so at that time.

2 THE WITNESS: Yes, ma'am, this is an
3 evaluation done by a principal on my job as the
4 athletic director of Hanahan High School.

5 MS. BLOODGOOD: Okay. Your Honor, I
6 would move that this be entered into evidence.

7 MR. MORGAN: Objection; relevance.

8 THE COURT: I'll take that up outside
9 the presence of the jury. You may continue your
10 questions. Thank you.

11 MS. BLOODGOOD: Okay.

12 BY MS. BLOODGOOD:

13 Q. When did you start working at Berkeley
14 High School?

15 A. 2011, May of 2011.

16 Q. And who hired you?

17 A. Dr. Kim McLaren.

18 Q. Let me show you a document that we have
19 previously agreed will go into evidence. We've
20 marked this exhibit as Plaintiff's Exhibit 5. And
21 can you identify that document?

22 A. Yes, ma'am. It's a job description
23 from Berkeley County about being employed as a
24 teacher in Berkeley County School District.

25 Q. Okay. And as a teacher in Berkeley

1 County School District, did you receive performance
2 evaluations?

3 A. I had evaluations done with the ADEPT
4 process, yes, ma'am.

5 Q. I'll show you another exhibit that we
6 have agreed goes into evidence. It's Plaintiff's
7 Exhibit Number 6. Can you identify this document?

8 A. Yes, ma'am. It's an evaluation that
9 was for the 2014-2015, for my job as a driver's ed
10 instructor at Berkeley High School.

11 Q. Okay. And it says on top, ADEPT. Is
12 that the word that you were using before?

13 A. Yes, ma'am.

14 Q. And in the middle of the page it has
15 goals. What is your goal there that was stated for
16 you as a teacher?

17 A. To actively participate in Berkeley
18 High School's career academy implementation and
19 meetings.

20 Q. Okay. And if I turn to the second
21 page -- sorry, on the bottom, final GBE conference.
22 Did you meet that goal?

23 A. Yes.

24 Q. And on the third page, is your
25 signature on that page?

1 A. Yes, ma'am. My signature is at the
2 top.

3 Q. And did you receive these goal-based
4 evaluation forms from the school, Coach Cruce,
5 every year?

6 A. Yes, ma'am, I did.

7 Q. Do you know if all of the teachers at
8 Berkeley High School are evaluated using the ADEPT
9 program like you were?

10 A. I know that they're supposed to, yes,
11 ma'am.

12 Q. Okay. Did you ever get counseled by
13 any of your supervisors about anything to do with
14 your teaching as a driver's ed teacher?

15 A. No, ma'am.

16 Q. And you said you -- earlier you said
17 you know your total salary as a teacher, including
18 the head coach and the athletic director stipend.
19 What was that?

20 A. It was \$94,000 a year.

21 Q. Did you have a reputation as a coach
22 and teacher?

23 MR. MORGAN: Objection, Your Honor.
24 Calls for an opinion.

25 THE COURT: Sustained.

1 BY MS. BLOODGOOD:

2 Q. Let me ask you this: What were some of
3 the accolades that you received while you were
4 athletic director and head football coach in your
5 years?

6 A. I was very blessed to be in a district
7 like Berkeley County. I thoroughly enjoyed being
8 in Berkeley County. I think I had a reputation in
9 the district as any time a job became available
10 where a school needed to be rebuilt as far as in
11 the football program.

12 I left Berkeley in '94, and went to
13 Hanahan. I was there for 13 years, I took on a job
14 that they had won one game in four years. We won
15 ten regional championships. I was coach of the
16 year at Hanahan for eight years. I was athletic
17 director of the year for the region four years. I
18 was region coordinator for six years, which I'm
19 very proud of because that's voted on by your
20 peers.

21 So when you're the regional
22 coordinator, you're the coordinator for all of the
23 schools in your region, which could be, you know,
24 Beaufort, Hilton Head, whatever.

25 And then when I went to Cane Bay, I was

1 regional coordinator for three years that I was at
2 Cane Bay. Again, I was voted to do that because of
3 my experience at Hanahan.

4 And then at Berkeley, I was also the
5 regional coordinator for the four years, except for
6 the last year I was not the regional coordinator,
7 but I was athletic director two years of the five
8 years that I was there, Berkeley High School's
9 athletic director of the year in the region. I was
10 also coach of the year in football in 2014.

11 So I was also voted my last two years
12 in -- in South Carolina as the region football
13 coordinator for the entire state, which is -- it's
14 an even bigger deal because all of the schools in
15 the state, I got elected to do that position, so I
16 did that for two years.

17 So I'm very proud of my career there in
18 Berkeley County.

19 Q. What was your understanding of what the
20 job would be like when you accepted it at Berkeley
21 High School as head football coach?

22 A. When I took the job, I was directed by
23 Doc McLaren and her committee that hired me, that
24 they needed me to -- and this is the exact words
25 that were used --

1 MR. MORGAN: Objection; hearsay.

2 THE COURT: Is there an exception?

3 MS. BLOODGOOD: Yes, Your Honor. She
4 is a high-level superintendent. At that point, she
5 was in charge of all of the schools in the
6 district, and I think she is an agent and can bind
7 them as a representative of the Berkeley County
8 School District.

9 THE COURT: Sustained as to hearsay.

10 BY MS. BLOODGOOD:

11 Q. Okay. You can't say what somebody else
12 said.

13 A. Okay. I was -- I was directed to
14 change the culture of Berkeley High School. Like I
15 said, I've been very blessed. I was given the task
16 of rebuilding Hanahan. I was given the task of
17 opening Cane Bay High School, which was a brand-new
18 \$80 million high school. So during my tenure,
19 every time there was a job like that, I was
20 fortunate enough to get those jobs.

21 And when I took the job at Berkeley, I
22 was given the task of rebuilding the culture of the
23 Berkeley Athletic Department. I was told that
24 the --

25 MR. MORGAN: Objection; hearsay.

1 THE WITNESS: I didn't --

2 THE COURT: Hold on one second. I'm
3 going to make a ruling. I know it's hard, but let
4 me issue my ruling.

5 THE WITNESS: Okay.

6 THE COURT: It's -- it was premature
7 because he didn't say anything to -- rephrase the
8 question so that you do not elicit hearsay from
9 your witness. Thank you.

10 BY MS. BLOODGOOD:

11 Q. Coach Cruce, what was the culture at
12 Berkeley High School when you took over?

13 A. It was that football was more important
14 than other sports, that female sports were not as
15 important, that if you were a football player at
16 Berkeley High School that you could do things that
17 other sports couldn't do. Morale in the other
18 sports were low.

19 We -- I did my research before I took
20 the job. It was a rebuilding situation, very
21 young, it was similar to Cane Bay. When I took the
22 job at Cane Bay, we were one of two schools -- I
23 believe I'm correct in this -- that -- two schools
24 in the entire state that ever had a varsity program
25 where we played just ninth and tenth graders, and

1 that's how we started.

2 So it was kind of the same situation.

3 We started 14 sophomores, so it was a culture where
4 the kids -- you know, when you start a new program
5 like that and you're implementing new things,
6 you're going to have attrition.

7 They weren't used to some of the
8 disciplines that I did, so we had to discipline
9 some kids. We had to dismiss some kids to change
10 the culture and we instilled values for all of the
11 programs and not just football.

12 Q. How did your varsity and JV and B teams
13 do?

14 A. My philosophy has always been, every
15 job, every head job I've had, that we're not
16 building the season. We're building the program.
17 So I've said this many times, that I would gladly
18 lose a ball game to win a kid.

19 So we -- we focused on our young -- our
20 young programs. When I got there, the B team
21 hadn't been very successful in years past. So if
22 you look at my track record, we've always done --
23 put more coaches with the younger programs to
24 build, and that's what we did. We did the same
25 thing at Berkeley where we built the young programs

1 up.

2 And so I'm very proud of where they are
3 now and as far as when I left and, apparently,
4 they're continuing --

5 Q. And I can just hold this up. What is
6 this graph?

7 A. It's a graph of games played by our
8 B team, our JV, and our varsity. And like I said,
9 our B team programs were not very successful, so I
10 changed it and put more coaches down at the younger
11 levels.

12 And our games, obviously, drastically
13 increased and our -- proud to say my last four
14 years there, our JV team never lost a region game
15 in the region. And our varsity team, which some
16 people would call a disappointment, I called it a
17 success; because when you're building things, you
18 don't focus on wins.

19 You focus on the success of getting the
20 programs at the right level, and that's -- that's
21 where we were headed, so I was very proud of that.

22 Q. Did you know Principal Steven Steele
23 before you started working at Berkeley High School?

24 A. I didn't know him personally. I knew
25 that he was an assistant coach at Berkeley High

1 School. I don't -- I didn't remember meeting him,
2 but our first meeting he reminded me that we had
3 met at a track meet prior to that, but I didn't --
4 I don't know him personally other than to know he
5 was an assistant coach for Berkeley High School.

6 Q. Were you already working at Berkeley
7 High School when Principal Steele became principal?

8 A. I was hired in 2011. Mr. Steele became
9 principal July of 2012. So I was there a year.

10 Q. How would you describe your
11 relationship with Principal Steele?

12 A. Not very good at the beginning. Again,
13 he mentioned a meeting -- or he mentioned a couple
14 of meetings. When I first met him, the first thing
15 that he said, he said, you know, I really didn't
16 like you.

17 And I asked him why. And he told me
18 about two meetings that -- that we -- or two things
19 that had happened. One was at a track meet when I
20 was the athletic director at Hanahan. I went to a
21 Berkeley County track meet, and he reminded me of
22 this, and I didn't remember it until he told me,
23 that I questioned how he was running a track meet.

24 It was going very slow. I've been a
25 starter for the track team for 20 years, so I've

1 got a lot of experience in track meets.

2 And then he remind me of a situation
3 that happened where, apparently, he had said some
4 things about a coach and I told the coach that he
5 had said it. And that my -- my comment to him was,
6 I didn't take it personal. I just said, well, I
7 hope this doesn't hurt our relationship going
8 forward because you're talking about something that
9 happened a long time ago and I don't know what
10 you're talking about, but I hope it doesn't affect
11 our relationship going forward.

12 Q. And did you often see Principal Steele
13 from day-to-day?

14 A. I didn't see him a lot. You know, when
15 we were there, he -- you know, I did my job. I
16 tried to, you know, if -- he was a first-year
17 principal. I had been in the district a long time.
18 I had been through 11 different principals, I had
19 been through five superintendents, and he was a
20 first-year principal.

21 And I tried to, you know, at times
22 where he would ask me things, tried to help him or
23 give him information about it, but we didn't have a
24 lot of interaction. We didn't talk a lot.

25 And when we did see each other that

1 first year, he just kept reminding me that we had
2 to clean up the mess that was left before. The
3 previous principal had left, and what the previous
4 AD and football coach had left.

5 Q. In your capacity as head football
6 coach, was Principal Steele your supervisor?

7 A. He was my supervisor.

8 Q. And in your capacity as athletic
9 director, was he your supervisor?

10 A. He was my supervisor, yes, ma'am.

11 Q. And how about as driver's ed teacher?

12 A. He was. He was the principal of the
13 high school, yes, ma'am.

14 Q. And did Principal Steele do any ADEPT
15 evaluations on you as coach or athletic director?

16 A. No, ma'am, never.

17 Q. Did he do any performance evaluations
18 on you as head coach or athletic director?

19 A. No, ma'am, he never did.

20 Q. Did you and Principal Steele have any
21 discussions about your performance as athletic
22 director?

23 A. Yes, ma'am, a lot. He complimented me
24 all the time, told me that he felt that I was the
25 best athletic director in the district, you know,

1 because of my past history. But he did say -- the
2 few conversations we would have, if we had any
3 conversations about realignment or things like
4 that, he always praised me for my job.

5 Like I said, I was athletic director --
6 two of the four years that he was there, I was
7 athletic director. As a matter of fact, his first
8 year there, I was athletic director of the region
9 that year.

10 Q. Okay. And did you and Principal Steele
11 also have discussions about your performance as a
12 head coach?

13 A. We did. He did not agree with my
14 philosophy. He did not agree with things that we
15 did. He -- on several occasions when he first got
16 there, he threatened to fire me the first year.
17 And I asked him why.

18 And he told me that he had a
19 philosophical difference with the way that I
20 coached, and told me if I didn't like it, I could
21 go to the district.

22 And I told him, I said, look, we don't
23 need to do this. I'm the football coach. Let me
24 coach the team.

25 And so that happened several times

1 during that first year and thereafter.

2 Q. Specifically, what was it that -- was
3 the philosophical difference that the principal did
4 not like about your coaching?

5 A. I started changing my philosophy -- and
6 this has been brought up a lot about articles and
7 this and that and the other, but if you go back in
8 my career, we started this back when I was at
9 Hanahan.

10 And in 2006 and 2007, if you lived in
11 Hanahan, they can attest to this, that we started
12 this fast-paced offense there, but it evolved to
13 all the other stuff as far as the concussions, and
14 this is mandated by everybody.

15 Every year, as a coach, you have to
16 take a concussion course and you have to take a
17 heat illness course every year or you can't coach.
18 Every assistant coach, every head coach, you have
19 to take that course every single year.

20 And it's certified from the national
21 federation of high schools. So if you don't take
22 that course, and I -- being the athletic director,
23 I had to keep all those forms in my office, so I
24 knew who didn't have it. So if you go back and
25 look, I had to make sure we were on top of it.

1 But as my philosophy started evolving
2 to what it ended up in my last several years at
3 Berkeley, that it was more about the concussion
4 protocol and about keeping our kids safe, and I
5 just reduced the number of hitting practices that
6 we had.

7 And I would go -- where on a
8 traditional day you might hit, I wouldn't go out in
9 pads at all; I would go out in a helmet. And he
10 didn't like that. And he told me so on several
11 occasions, to the point where during that first
12 year, I had to go to the district at least three
13 times and ask for help from the district, not in
14 a -- not in a negative way because I never took
15 it -- I never took it personal.

16 My comment to the district was, I need
17 you to help me help this guy understand that he's
18 not the football coach. And that's what I said. I
19 never made it personal, but I needed somebody from
20 the district to talk to him about what he was
21 doing.

22 Q. For people like me who may not
23 understand the ins and outs of football, what about
24 your philosophy made it less likely that there
25 would be injuries or concussions?

1 A. Because of the pace that we were going
2 at and everybody -- and trying to run a number of
3 plays and trying to gain total yards and all this,
4 that it was proven from the places I've been -- and
5 you've got my résumé that you can look at, that the
6 places I went and all the studies that they did
7 was, that because of the pace that you had to go
8 through in practice, their performance in a game,
9 the teams that did that and tried to run a
10 fast-paced offense, their productivity went down.
11 And the teams that started hitting less, their
12 performance went up.

13 And the other thing that happened from
14 it was you had less injuries in practice and you
15 had less injuries in games. So it became more of a
16 safety issue, and it was a nationwide thing where
17 we were -- everybody was involved with the
18 concussion stuff with the NFL and all.

19 And all the bad press we were getting
20 about football, it was -- my thought was, we're
21 going to lose this game if we don't do something to
22 be proactive. We're going to lose the game that we
23 love to coach.

24 And so some of the things that I did a
25 lot of people didn't like, but I knew that I was

1 doing the right thing and I stayed the course, so
2 that was what it was about. It was about safety of
3 the kids.

4 Q. Are you aware of any state law that
5 requires -- put requirements on you as a coach to
6 avoid head injuries?

7 A. There are several. You've got -- DHEC
8 has a provision where -- concussion protocol; if we
9 know that a kid is -- and the State Department has
10 a protocol now -- that if we play a kid that has
11 any symptoms, headaches, vomiting, the lights
12 bother him, or whatever, and we know that they have
13 it and we play that particular individual, that
14 we're liable.

15 Now, we're all -- I've always said I'm
16 not a doctor, so I had a trainer that would always
17 say, hey, Coach, he's out. He's either out in
18 practice or he's out whatever, but during that time
19 when we started implementing this, our injuries
20 went down. so it was a positive move in the right
21 direction.

22 Q. Okay. Let's start at July 30th of
23 2015. Tell me what you recall happening on that
24 day.

25 A. Well, you've got -- on July 30th, we

1 were -- Mr. Steele and I met in -- I want to say it
2 was March or April before this, and he had given me
3 the directive to start a coach's evaluation.

4 So I called around the state to some
5 friends of mine that had started one. We didn't
6 have one in place. So I got a template of an
7 evaluation that we were going to do, and I changed
8 it to fit what we were doing at Berkeley.

9 So this particular day, on the 30th, I
10 was going to check my mail and I had the template
11 in my hand and I just -- brief five-minute meeting,
12 walked in his office and said, I've got the
13 template that you asked for, because he had said
14 something to the coaches in a different meeting
15 about coaches' evaluations. We hadn't finalized it
16 yet.

17 So I took him the template, showed him
18 the template. I said, is this fine? He said, yes.
19 So we both signed it at the very bottom of the
20 template. And that's what it was; it was a
21 template.

22 And so I go to sign the template, and
23 you can see on the template where I had started to
24 sign, and then -- but then I signed at the bottom.
25 And then I asked him during this, because it was

1 evaluation of coaches, and I said, are you going to
2 use this the template to evaluate me?

3 And he said, no, I'm not going to
4 evaluate you. I see you every day.

5 Q. Let me show you what we've marked
6 previously as Plaintiff's Exhibit 7. And it's
7 blank on the first page, and then on the second
8 page there's some writing. And is that your
9 signature on the bottom?

10 A. That's my signature on the bottom, and
11 you can see where I started to sign. And he
12 stopped me from signing it there, and told me to
13 sign at the bottom. And the reason he said, he
14 said, we'll just sign it to agree on the template.

15 Q. Okay. Coach Cruce, is this the
16 template that you handed to Principal Steele on
17 July 30th?

18 A. The template that I gave him was blank.
19 None of the stuff on the front that you just
20 showed -- it was a blank template. There was
21 nothing.

22 Q. Did it have your name on it?

23 A. It had nothing on it.

24 Q. It didn't have football --

25 A. It had nothing. It was blank.

1 Q. Okay. How about the second page, what
2 was on the second page?

3 A. Nothing. There was nothing on the
4 template except for a parent signature that I
5 started and then the two signatures. There wasn't
6 even a date on there. There was no dates.

7 Q. You didn't put the dates on it?

8 A. No.

9 Q. All you did was initial it?

10 A. All I did was sign it.

11 Q. Okay.

12 A. And then when -- and so his directive
13 was that this was the template. He said, sign at
14 the bottom that we agree on this template.

15 Q. Okay. And when you signed it, there
16 was no writing on it?

17 A. There was nothing on it. I didn't see
18 this -- I didn't see this template until discovery,
19 so I didn't even know it existed. I didn't know
20 that all this stuff was even on there.

21 Q. When you say discovery, what do you
22 mean?

23 A. When -- in January, when the district
24 had to produce information for us, that's the first
25 time I ever saw this template.

1 Q. Okay. So let's look at this template a
2 minute. The top says, analytics, spelled wrong,
3 analytics. Do you know what that means?

4 A. I have no clue what that -- there's no
5 such thing as a goal of analytics. I have no idea
6 what that is.

7 Q. The second thing says, evals for
8 athletic department?

9 A. I'm taking it that's the evaluations
10 that he wanted me to do on all the coaches.

11 Q. Okay. And did you do those
12 evaluations?

13 A. I did.

14 Q. And then the third was in -- can you
15 read that?

16 A. It looks like it says, increase parent
17 involvement in booster club.

18 Q. Now, and then down below there's,
19 essential needs to complete these goals. Can you
20 read that writing?

21 A. That through staff participation,
22 workout -- I don't know what the last word is --
23 coaches to increase professional knowledge, and it
24 says, membership.

25 Q. Prior to the time that you were

1 terminated as head coach, athletic director, and
2 moved over to a middle school halfway through the
3 year, had you ever had any discussions with the
4 principal about analytics, coach evaluations, or
5 parent involvement in the booster club?

6 A. I gave him in that same meeting on
7 July 30th, when I -- it was a brief five-minute --
8 I just told him in the meeting, I said, look, we
9 might not punt this year, I gave him a brief thing.
10 I said, we're going to use some data, analytic
11 data, and the data was total number of plays and
12 the total number of yards gained from going faster
13 and all that.

14 But as far as that -- and then he
15 wasn't real happy about that, and I just -- I
16 didn't -- I just blew it off and went. We had just
17 won the region the year before, so I wasn't focused
18 on anything negative, so I just left.

19 Q. When did you first learn that the
20 principal expected you to increase involvement in
21 the booster club?

22 A. On December the 16th, when I went in
23 his office and him and Mr. Franchini told me I was
24 fired.

25 Q. When did you first learn that there was

1 a problem with the coaches' evaluations you had
2 done?

3 A. Well, as far as that was concerned, on
4 that date I found out all about this, but I heard
5 that there was a problem, that he wanted -- they
6 thought I didn't do the evaluations.

7 I sent an e-mail to his assistant
8 principal, Charlie Harrison, saying, look, if
9 you've got to -- if there's something you need
10 about the coaches' evaluations, they're in my
11 office. You can see them anytime you want.

12 Q. Okay.

13 A. But other than that, nobody ever asked
14 to see them. Nobody ever talked about them. All
15 of this stuff up here, I didn't know about it until
16 December the 16th, when they fired me.

17 Q. And you never saw this form before your
18 employment ended?

19 A. Never. Never saw this. Never -- all
20 of this stuff that was on there -- the only thing
21 that was on there -- all of this stuff that was on
22 there, it was just the start of my signature and
23 the two signatures at the bottom, but there was no
24 other information. It was a blank template.

25 Q. Okay. And whose writing is that?

1 A. That's Steven Steele's and mine.

2 Q. Is there anything in your job
3 description as head coach, athletic director, or
4 driver's ed teacher that requires you to increase
5 parent involvement in the booster club?

6 A. No, ma'am.

7 Q. And in terms of the evaluations, you
8 already knew you were going to do that, correct?

9 A. Yes, ma'am.

10 Q. And did you do them?

11 A. Yes, we did. As far as anything -- my
12 job as athletic director is to also be involved
13 with the booster club as far as helping with
14 banquets or anything, but in the evaluation of the
15 coaches, they were sitting on my desk. Actually,
16 they were in my top right drawer of my desk.

17 Q. Okay. Do you know whether the
18 membership in the booster club actually declined in
19 2017?

20 A. We don't, because I was only there for
21 half a year, but the trend -- if you look at the
22 numbers, the trend was typical numbers.

23 Your booster club membership usually is
24 higher in the spring because you've got more
25 participants in the spring because you've got

1 softball, soccer, baseball. And so those numbers
2 typically go up in the spring because you have more
3 parents.

4 But we don't know -- if you look at the
5 numbers, the numbers would tend to go up, but we
6 don't know what they were because we were only
7 there half a year. I don't know what they ended up
8 being.

9 Q. There is an exhibit, Plaintiff's
10 Exhibit 8, and it's a set of documents. Can you
11 identify these documents?

12 A. This is the coaches' evaluations that
13 we did on all of my coaches, yes, ma'am. That's
14 Amy Whitaker, she was the volleyball coach.

15 Q. Did Principal Steele ever ask to see
16 these coaches' evaluations before he fired you?

17 A. Never. The only time that I ever heard
18 about anything -- because they were completed in
19 November, and they were in my drawer. And then I
20 got word that one of his assistant principals was
21 questioning whether I did them or not.

22 And I sent that assistant principal an
23 e-mail in November stating, that if you want to see
24 the coaches' evaluations, they're in my office any
25 time you want to look at them. If you've got

1 questions, I'd be glad to answer them.

2 Q. If you turn around, Plaintiff's
3 Exhibit 9, can you identify is this the e-mail you
4 were talking about?

5 A. That's the e-mail that I sent Steven
6 on -- about -- well, actually, Steven sent that to
7 me because I had changed -- if you go back to the
8 other template where he's got pre and post, or
9 whatever, I don't -- again, I don't know where that
10 came from, but in the evaluations that I did, I put
11 fall, winter, and spring.

12 Q. And let me turn to the last page of
13 this exhibit. Is --

14 A. Yes, that's the one.

15 Q. That's where you --

16 A. That's the template that we used for
17 all of the coaches.

18 Q. All right. Now, in November, did you
19 have a meeting with Principal Steele?

20 A. I did. It was on November the 18th.
21 My season ended on November 7th, and I was getting
22 prepared to do my fall order. The way it works is,
23 that for us in -- like, a football order, if you do
24 what's called an early season order, you get, like,
25 a 20 percent discount. So I have traditionally

1 always ordered my football stuff for the next year
2 by December so I can get this discount.

3 So I had called him and asked him -- I
4 was getting ready to order my stuff because my
5 season had been over for a couple of weeks. And so
6 I went in his office to talk to him.

7 And he -- in the meeting he told me
8 that he was thinking about firing me, told me that
9 the community didn't think I hit enough and he
10 agreed with them, that we didn't hit enough in
11 practice, and that -- that -- that he was going to
12 side with what they were doing.

13 And I told him, I said, Steven, we've
14 done this for four years. I said, that's been a
15 pattern for you and I for four years where you've
16 said the same thing every year. And I said, we
17 need to come to an agreement now of what we're
18 going to do.

19 And he had -- so we -- he hemmed and
20 hawed. And so at the end of the meeting, he said,
21 well, we'll stay together. And what we'll do is
22 we'll get back in a couple of weeks -- or he said
23 -- after Thanksgiving is what he said. He said,
24 we'll get back after Thanksgiving, and we'll go
25 over goals for next year for football.

1 And I said, that's fine. And so when I
2 left -- because he told me the reason that he was
3 going to fire me was because I didn't hit enough.
4 That was his exact words. He said, you don't hit
5 enough.

6 And so when I left, I was thinking, I
7 can't believe that just came out of his mouth.

8 Q. Did he mention anything about
9 increasing membership?

10 A. Never -- never showed -- none of this
11 was -- that's the whole thing about this, because
12 if that was -- if that's the reason -- supposedly,
13 in the letter that I got in my termination was all
14 of that, never was it ever mentioned anytime,
15 anywhere, anytime that I even knew.

16 The only time I knew about it was on
17 the December 16th meeting. I didn't know anything
18 about that template.

19 Q. Did he mention in the November meeting
20 anything about coaches' evaluations not being
21 complete?

22 A. Nothing. No, ma'am.

23 Q. Okay. And, of course, he could fire
24 you as football coach, right?

25 A. He could fire me anytime. He's the

1 principal. I mean, he has total authority over the
2 whole school, but he cannot fire me for a lie. He
3 cannot do what he did.

4 He ruined my reputation by taking a
5 document and using it the way he used it. And
6 after we did all this and I read his statement,
7 that he said it was for cause. So the cause was --
8 nobody knew anything about this. We didn't know
9 anything about all this stuff that he put in a
10 letter in December the 16th. We didn't know
11 anything about this form until discovery.

12 He can do whatever he wants to do, he's
13 the principal, but the real reason -- after we left
14 that meeting, the only thing he told me was, I'm
15 going to fire you because you don't hit enough.

16 He never said anything about a
17 template. He never said anything about evaluations
18 of coaches. He never said anything about
19 increasing membership. He never said anything
20 about analytics. That never came up in any
21 conversation or anything.

22 Q. Did he say that he was also going to
23 transfer you out of your driver's ed class over to
24 a middle school and have you teach a different
25 subject?

1 A. When I left the November meeting, we
2 had agreed that I was coming back. So I had no
3 clue that all of this was even transpiring during
4 this time.

5 Q. Okay. I showed you the athletic
6 coaches' evaluations that you said you had done.

7 A. Yes, ma'am.

8 Q. I'm going to show you what we've marked
9 as Plaintiff's Exhibit 11, and this is another
10 e-mail. What is this? Can you identify this?

11 A. This is the e-mail that I sent his
12 assistant principal about the coaches' evaluations,
13 if he had a question. So I was terminated on the
14 16th, and this was on the 11th.

15 Q. Okay. And between the 11th and the
16 16th, did anyone ask you to hand in the coaches'
17 evaluations?

18 A. Never. I never -- never had it. It
19 was sitting right there. They could have gotten
20 them anytime they wanted them.

21 Q. Now, what happened on December 16th?

22 A. December 16th, I was called to
23 Mr. Steele's office and we met in his conference
24 room. In the meeting was me, Steven Steele, and
25 Archie Franchini, who's a deputy superintendent.

1 In the meeting, Mr. Franchini did all the talking
2 and said that, Coach Cruce, that -- we're going to
3 terminate your position at Berkeley High School
4 based off the following three things. He named
5 those three things on that -- on that goal sheet.

6 And I looked at Steven, and I was
7 shocked because I didn't know anything about it.
8 We had never discussed any of the stuff. And so
9 when he got to the coaches' evaluation, I looked at
10 Steven and I said, Steven, the coaches' evaluations
11 are done. They're in my office. You could have
12 had them anytime you wanted them.

13 And he looked at me and said, oh, you
14 did them? I heard you didn't do them.

15 And so the meeting lasted all of about
16 four minutes. Franchini told me that they were
17 reassigning me to Sedgefield Middle as a guidance
18 counselor and that -- that my pay would remain the
19 same until the end of the year, and then it would
20 be up to the principal of the new school whether
21 they retained me or not.

22 Q. In this meeting on December 16th, did
23 they show you that form that was blank?

24 A. No, nothing. I didn't have a letter, I
25 didn't have -- he just spoke. He had no -- I got

1 nothing in writing. I got nothing. No goal sheet
2 was ever mentioned.

3 Q. After the meeting on December 18th, did
4 you get something in writing?

5 A. December 18th, I believe it was mailed
6 to our house, and that's the first time I got
7 anything in writing from this. But this is what I
8 truly believe in my heart, because we also found
9 out that, I think, in July of -- of -- of 2015, and
10 we didn't know this until his testimony, that --
11 that he was keeping a secret file. And he said
12 this; he's keeping a secret file.

13 So I think this was part of his secret
14 file. And he told us then that he took --
15 supposedly, took this evaluation form and stuck it
16 in his desk and just left it there, and so part of
17 this secret file that he was keeping on somebody.

18 So my question was, you know -- well, I
19 was shocked because I'm thinking, well, we just won
20 the region last year. We went to the third round
21 of playoffs last year. I was athletic director of
22 the year last year. This is in July. And I was
23 also coach of the year.

24 So why all of sudden now you started
25 this secret file that he starts -- I'm pretty sure

1 starts in July?

2 Q. Okay. Coach Cruce, if you'll look
3 behind you. This is the December 18th letter and
4 it has -- it's signed on the second page. Who is
5 that?

6 A. Archie Franchini.

7 Q. Okay. And is the substance of this
8 letter -- we'll let the jury look at it later, but
9 the substance of this letter, does it include these
10 three -- the things that you then found out later
11 were on this form, the blank form?

12 A. Yes, ma'am, it was on there.

13 Q. So it mentions the analytics, the
14 evaluations, and increasing parent involvement in
15 the athletic club. And had you ever seen those
16 three things in writing before December 18th?

17 A. No, never seen them. Never. And we
18 found out, obviously, that the day that he -- that
19 I got this was supposedly the day that he told
20 Franchini that he wanted to fire me, that same day.

21 Q. Coach Cruce, do you have any -- do you
22 have knowledge of a head coach being fired but
23 still being allowed to be athletic director or
24 teacher?

25 A. Yes, I do. It's a precedent set that

1 when I took over the athletic job -- or I took over
2 the football job at Hanahan High School,
3 Bill Stedman was the athletic director and head
4 football coach and he was also the baseball coach.
5 So when I took over the football job, Bill was
6 still the athletic director and head baseball
7 coach, and this was in 1995.

8 And in 1996, they named me athletic
9 director also with the football, and they kept --
10 Bill kept his job. He was also a driver's ed
11 teacher. So he never lost his teaching job, he
12 retained his same salary, and he also maintained
13 his position as a coach at the same school.

14 And Bill and I worked together for five
15 or six years after I was there and until he
16 retired, and it was a great experience.

17 Q. Did anyone at the Berkeley County
18 School District approach you and say, we don't want
19 you as head coach, but you can stay on as athletic
20 director and you can stay on as teacher?

21 A. No, ma'am.

22 Q. Does Berkeley High School now have a
23 different person as head coach and athletic
24 director?

25 A. Yes, ma'am. They have two separate

1 people, yes, ma'am.

2 Q. So that's a job two different people
3 could have done?

4 A. Yes, ma'am.

5 Q. Okay. How were you treated after
6 December when you find out you're not going back to
7 driver's ed, you're getting switched to a middle
8 school, you're not the AD, and you're not the
9 football coach?

10 A. I was shunned. I mean, it was
11 completely -- the narrative that the district put
12 out there in a press release and what he was saying
13 because I was fired for cause -- there's only two
14 things that happen -- if you have children, you
15 know this.

16 If you have children and you see that
17 somebody was removed in the middle of the year and
18 sent from where they were, where they've been in
19 the district for 25 years and, all of a sudden,
20 they ship you to a middle school -- which I've
21 never been in a middle school in my life. I've
22 never been in a middle school. And the middle
23 school that they sent me to didn't even have an
24 opening, they created an opening, but I was
25 shunned.

1 All of my coaches stopped talking to me
2 because they -- what I was going to say, one of two
3 things is implied: Either you stole money --

4 MR. MORGAN: Objection.

5 THE COURT: Basis?

6 MR. MORGAN: Speculation.

7 THE COURT: Sustained.

8 THE WITNESS: -- or you do things that
9 you're not supposed to do.

10 MS. BLOODGOOD: You can't --

11 THE COURT: You can't answer.

12 MS. BLOODGOOD: You can't answer that
13 question.

14 THE COURT: Ladies and gentlemen,
15 please strike that response from your notes.

16 BY MS. BLOODGOOD:

17 Q. When you were transferred over midyear
18 to Sedgefield Middle, your salary remained the same
19 for that year?

20 A. Yes, ma'am.

21 Q. What was your salary going to be the
22 next year?

23 A. To be honest with you, I don't really
24 know. It was going to be in the 50 range maybe, I
25 guess, because of my years experience. I mean, I

1 was at the top of the scale because I had been
2 teaching for so long.

3 Q. But what had you been making at
4 Berkeley High School?

5 A. Ninety-four.

6 Q. Were you concerned that you didn't have
7 the credentials to be a guidance counselor?

8 A. The last time I was a guidance
9 counselor, was in -- in 1990, I was a guidance
10 counselor for three years. And when I went to
11 Sedgefield, Mrs. Washington, who was a wonderful
12 person to be with, I told her, I said, I feel sorry
13 for you because -- I said, I will do the best job I
14 can do, but technology's changed in 25 years, and I
15 haven't been in the guidance office. I don't know
16 all the procedures. I don't know -- but I'll do
17 the very best that I can do for you to -- because
18 I -- you know, they put me here and we're going to
19 make the best of it. I promise you I'll be a good
20 employee for you, but I just -- I don't know all of
21 the new stuff that I need to know because I haven't
22 been a guidance counselor for 25 years.

23 Q. Okay. Shortly after you were told you
24 were going to be transferred, and I'm looking at
25 Plaintiff's Exhibit 13 behind you, an e-mail was

1 sent out by Chris Stevens. Who is Chris Stevens?

2 A. He is the athletic trainer at Berkeley
3 High School.

4 Q. And can you tell the jury what the
5 e-mail is about briefly? I know they can read it,
6 but tell them the gist of the e-mail.

7 A. Basically, they were telling the
8 coaches that they were going in my office --
9 because they took my keys when I was relieved of my
10 duties. They said it was immediately, so I sent
11 Mr. Franchini an e-mail and asked him could I wait
12 for the kids to leave to remove my stuff. And so I
13 didn't have any -- I didn't have any keys.

14 So, anyway, they went in my office and
15 sent all of this -- basically, telling these people
16 that apparently there was stuff missing or
17 misplaced or not where it needed to be.

18 Q. Do you have to be certified to keep
19 student athlete files?

20 A. You have to be certified to -- there
21 are certain files -- as an athletic director,
22 there's three things you've got to have on file.
23 You've got to have a current physical; you've got
24 to have a birth certificate; and you've got to have
25 their grades on file.

1 So me being -- since I've been in
2 Berkeley County as an AD, I'm one of the few people
3 at the school that had the ability to go on the
4 computer and pull kids' grades up to print them.
5 So they're not privy to all this information.

6 So it's information about people's kids
7 that you can't just go in there and go through
8 information.

9 And they didn't know the procedures.
10 None of these guys that went in there had ever been
11 an AD, have ever kept eligibility, so --

12 Q. Was Chris Stevens certified like you
13 were to deal with the files?

14 A. No, he was not. No, he was not.

15 Q. And if you look at the people that this
16 e-mail was sent to, have you personally met all of
17 those people? Do you know who they are?

18 A. Not all of them. Some of them are
19 volunteer coaches that work for different sports,
20 and so I have an e-mail list. So some, like tennis
21 or softball, would have some people that I don't
22 know.

23 Q. And, basically, they say that your
24 files could be a liability, right?

25 A. Correct. We get -- we get audited

1 every year from this process.

2 Q. And how many years have you been
3 audited for keeping student files?

4 A. Twenty-five, as long as I've been an
5 athletic director. The high school league comes --
6 they usually come three times a year. They'll come
7 in the fall, the winter, and the spring.

8 And what they'll do is they'll randomly
9 tell you, okay, I need these 15 guys out of
10 football, and you just pull them out and you'll
11 show them everything you've got. Or I need these
12 from basketball, whatever.

13 And so you've got to have your files
14 set up so when they come -- you don't know when
15 they're coming usually.

16 Q. And when was the last time you had been
17 audited before January 7th, when this e-mail was
18 sent?

19 A. Either late September or early
20 October 2015.

21 Q. So just a few months earlier?

22 A. Yes.

23 Q. And was it a clean audit?

24 A. Yes.

25 Q. Okay. Let me show you a letter we've

1 marked as Plaintiff's Exhibit 14, which is dated
2 January 8, 2016. And I'll switch to the last page
3 signed by Brenda Blackburn, the superintendent of
4 Berkeley County.

5 Can you tell the jury what this letter
6 is?

7 A. We met with -- at the district office
8 to try to rectify this problem with the firing with
9 the superintendent. There were several people in
10 the meeting; I want to say Ms. Blackburn,
11 Franchini, the school lawyer was there at the time.
12 There was several people.

13 But she was just basically reiterating
14 that we presented our case, what was there, and it
15 wasn't -- we weren't there very long. And just,
16 basically, stating that she was siding with the
17 principal's decision to do what they did.

18 Q. On page 2 on the bottom, it says that
19 she has made arrangements for you to get extensive
20 training. Do you see that right down here?

21 A. Yes.

22 Q. Did you ever get extensive training to
23 be a guidance counselor?

24 A. I did not. Ms. Weed, who is the
25 district supervisor for all the guidance, and she

1 did come by Sedgefield, and she was there for maybe
2 ten minutes, but it was -- it was just -- it was
3 just too much. It was overwhelming. She was very
4 nice and -- but she wasn't there very long.

5 So what -- the training that I needed
6 to replace 25 years of not being in guidance needed
7 to be more than ten minutes.

8 Q. Now, you finished out the year at
9 Sedgefield Middle, didn't you?

10 A. I did.

11 Q. Okay. And can you identify this letter
12 that we've marked as Plaintiff's Exhibit 15 that
13 you sent to Dr. Glenda Levine?

14 A. It was just -- I think it's -- just let
15 me read it. It's the one we were talking about.
16 Let's see here.

17 Could you move it up a little bit more?

18 Q. I'm sorry. Does it need to be bigger
19 or smaller?

20 A. That's good.

21 Q. Okay.

22 A. It's just basically telling them that
23 we're going to retire.

24 Q. Okay. Had you ever worked in a middle
25 school your entire career?

1 A. No, ma'am.

2 Q. Could you continue with your vocation
3 of being a high school coach from a middle school?

4 A. Not the way they've done it. They put
5 me in a position where they -- as soon as I got
6 there, of course, everybody was asking the same
7 question; what did you do wrong?

8 And it was humiliating. It was a
9 demotion. My career has been coaching. I've been
10 a leader of my schools for 25 years, and my record
11 proves that, and for this to be done is just wrong.

12 They took everything from me. They
13 took my name, they took my reputation, they took
14 everything from me based off of a lie. And it was
15 just -- and it was humiliating. And so we did what
16 we had to do.

17 Q. I just want to establish for the --
18 when you say you did what you had to do, what was
19 that?

20 A. We had to retire. We could not make
21 our mortgage payments. So I had to retire because
22 my salary ended at the end of the year, and I
23 couldn't get a job. We had tried in the tricounty
24 area. I had -- I know a lot of people, and every
25 time that I approached the people that I needed to

1 approach about what had happened and the black mark
2 being out there about me being -- it was always,
3 what did you do?

4 Q. Okay. Let me ask you another question.
5 Did you -- could you have worked in South Carolina
6 after you retired?

7 A. It would have been hard. It would have
8 been hard. I don't think anybody would have --
9 just based off of my job search and realizing how
10 bad it was -- because the implication was that I
11 had done something wrong. Because everybody I went
12 to always asked the same question; what did you do?

13 Q. Okay. And so did you have to sell your
14 house?

15 A. We sold our house, yes, ma'am.

16 Q. And where are you living now?

17 A. We live in Charlotte, North Carolina.

18 Q. Were you able to get a job in North
19 Carolina?

20 A. I was not.

21 Q. Why not?

22 A. For the same reasons, the implications
23 of -- this came up that I was, again, fired for
24 cause, that I -- so every school -- and I'd made it
25 to the finalist in, like, five jobs and never could

1 figure out what was going on. And we never
2 could -- I was even -- to tell you how bad it was,
3 I was sitting in a principal's office.

4 I was offered a job that was going to
5 pay me about 19 to \$20,000 a years is how desperate
6 I was to get a job because we had no job. And the
7 principal and the head coach had called me and
8 said, I want you. So I go to sign the contract.
9 I'm sitting in the lobby waiting to sign the
10 contract, and the principal refuses to come out.
11 He will not come out and let me sign my contract.
12 And I'm thinking, what is going on here?

13 So I get home and the head coach calls
14 me and said, Coach, I'm sorry.

15 MR. MORGAN: Objection --

16 MS. BLOODGOOD: You can't talk about --

17 MR. MORGAN: -- hearsay.

18 THE COURT: Ladies and gentlemen,
19 please strike that last statement. I've determined
20 it was not admissible.

21 BY MS. BLOODGOOD:

22 Q. Did your wife have a job in South
23 Carolina before you moved?

24 A. She did.

25 Q. And did she leave that job?

1 A. She did.

2 Q. Why?

3 A. Because we moved to -- my career has
4 always been what we've done, and we couldn't -- I
5 couldn't find a job. And so for me to work and be
6 employed, she had to -- we moved. And thank God I
7 have a wife that's been a coach's wife for all
8 these years. So that's what we did. We moved.

9 Q. I just want to establish, we have
10 Plaintiff's Exhibit 16 here, which is in the
11 record. And this is a -- looks like a Berkeley
12 County School District earnings statement; is that
13 correct?

14 A. Yes, ma'am, that is.

15 Q. And does this reflect the amount of
16 money that you were making?

17 A. Yes, ma'am, it does.

18 Q. For a pay period in June?

19 A. Yes.

20 Q. Was June 30, 2016, the last time you
21 worked for Berkeley County School District?

22 A. Well, it was the last time I received a
23 paycheck, yes, ma'am.

24 Q. Now, let's talk about damages for a
25 little bit. I'm going to get a chart, and I can

1 hold it up. Can you see this from here?

2 A. I can.

3 Q. Okay. What were you -- you were
4 making, approximately, how much at Berkeley County
5 School District --

6 A. My last year there --

7 Q. -- for the three positions?

8 A. Yes, my last year was 94,000 for the
9 three positions that I did. Yes, ma'am.

10 Q. In the 2015-2016 year after you were
11 terminated, how much did you make?

12 A. When we moved to Charlotte, I found a
13 part-time job making \$11,000 a year.

14 Q. The next year, did you make more in
15 North Carolina?

16 A. This particular year?

17 Q. Yes.

18 A. Yes, ma'am.

19 Q. Okay. Now, when you retired, how much
20 retirement income did you have?

21 A. My retirement was 43,000 a year.

22 Q. So, actually, your total income, if you
23 add the retirement and the 11,000, was 54,000?

24 A. Yes, ma'am.

25 Q. In 2015/16.

1 A. Yes, ma'am.

2 Q. And then if we --

3 MS. BLOODGOOD: Can you all see this,
4 too?

5 BY MS. BLOODGOOD:

6 Q. So back wages from the date that you
7 were terminated until today, are what?

8 A. \$53,000.

9 Q. That's what you made less than you
10 would have if you had stayed at Berkeley County --

11 A. Yes.

12 Q. Now, also, you're in a retirement --
13 well, let's do this: Also, if it -- how long do
14 you think it's going to take you to get back to
15 making 94,000 a year?

16 A. I don't know. I don't know. It's --
17 it just depends if I can -- I don't know.

18 Q. Assuming you continue to make the
19 \$54,000, you're losing about 13 -- it's about
20 \$13,000 less a year, even with your retirement,
21 correct?

22 A. Yes, ma'am.

23 Q. Okay. So assume five years forward, if
24 you could make -- if you could get back to where
25 you were, that's another \$65,000, if you're going

1 to be out 13,000 for the next five years?

2 A. The goal was -- when we sold our house,
3 we only had about eight years left to pay off our
4 house. And so our goal was to work for, you know,
5 approximately 12 more years and then, you know --
6 that's how close we were to retiring and doing what
7 we needed to do. So I'm still young, I still
8 wanted to do what I do and ...

9 Q. Were you penalized for having to retire
10 at the age of 56?

11 MR. MORGAN: Objection; calls for
12 speculation.

13 THE COURT: If he knows, he may answer.
14 You may answer.

15 THE WITNESS: I was penalized in the
16 amount of money that I could have made in
17 retirement, yes, ma'am.

18 BY MS. BLOODGOOD:

19 Q. Okay. And how do you know that?

20 A. Because we did the numbers. You can
21 pull the numbers up and see what you would have
22 made, what your retirement would have been. My
23 wife was also in the State retirement, and she had
24 people pull up the numbers to see what they were.
25 And that's pretty close to what it would be.

1 Q. The State retirement system -- did you
2 contact the State retirement system and find out
3 what you would have made if you worked more?

4 A. We did.

5 Q. Another 12 years?

6 A. We did.

7 Q. And is \$33,812 what you would have made
8 more than you're making now in retirement had you
9 stayed?

10 A. I would have, yes, ma'am.

11 Q. And, then, did your wife have to do
12 anything that hurt her monetarily when you moved?

13 A. Well, hurting her is hurting me, so,
14 yes, we had to --

15 MR. MORGAN: Objection.

16 THE COURT: Hold on one second.

17 What's the relevance as to the wife?

18 She's not a party to this action as I understand
19 it.

20 MS. BLOODGOOD: No, she's not, Your
21 Honor, but this is money that they had -- I can ask
22 it a different way.

23 THE COURT: All right. Finish your
24 question. You can rephrase it. Thank you.

25 Sustained.

1 BY MS. BLOODGOOD:

2 Q. The move to North Carolina and to sell
3 your house, what action did you have to take in
4 terms of what did you have to do financially?

5 A. Well, other than, obviously, selling
6 our house and living off what we sold our house to
7 make payments on where we were living, we had to go
8 into my wife's 401(k) and take money out of there
9 so we could live.

10 We just didn't have -- we couldn't pay
11 our bills. So we had to take an advance on that.

12 Q. And is 37,000 the amount that you had
13 to take out of her 401(k)?

14 A. Yes, ma'am.

15 Q. Did you have to do anything in order to
16 qualify for loans when you got to North Carolina?

17 A. We did. We didn't qualify because the
18 amount of money that I was making was only \$11,000
19 a year. And so, yes, we had to -- we had to add,
20 obviously, a lot more than we did to try to, you
21 know, find a place to live.

22 Q. So if you add up the lost income, the
23 amount of money you're going to be out for the next
24 five years that, hopefully, you can back to what
25 you were making before, your lost retirement every

1 year for the next 12 years that you were going to
2 retire -- you weren't going to retire until then --
3 the money you had to take out of the 401(k),
4 what -- what would you tell the jury that your
5 monetary damages are from your termination and
6 having to move to North Carolina?

7 A. Right now it would be \$831,000.24.

8 Q. That's a lot of money.

9 A. A lot of money that we could have --

10 MR. MORGAN: Objection.

11 THE COURT: What's the basis?

12 MR. MORGAN: It's an inappropriate
13 comment.

14 THE COURT: Okay. Sustained.

15 MS. BLOODGOOD: Okay.

16 THE COURT: Rephrase it as a question.

17 Thank you.

18 BY MS. BLOODGOOD:

19 Q. And you're working now?

20 A. Yes. Yes, ma'am.

21 Q. Okay. Are you teaching?

22 A. Yes, ma'am.

23 Q. Okay. And you're making a total of --
24 what is your salary as a teacher?

25 A. \$38,000 right now, yes, ma'am.

1 Q. Does that include coaching?

2 A. That includes coaching, yes, ma'am.

3 Q. Okay. Are you the head coach?

4 A. No, ma'am. I'm the offense
5 coordinator.

6 MS. BLOODGOOD: Okay. I don't have any
7 other questions.

8 THE COURT: All right. Stay right
9 there. I'm going to release the jury.

10 Ladies and gentlemen, we've reached the
11 appropriate time for us to break for the evening.
12 So a couple of admonitions.

13 Now you're going to go out and you're
14 probably going to go home and somebody is going to
15 ask you what you did today. And your response has
16 to be, I cannot talk about the case. I will tell
17 you at some point when you may begin talking about
18 the case, but it is not today.

19 Please remember, you may not discuss
20 this case with anyone. That does include your
21 fellow jurors, your friends, your family members
22 and anyone else, and it also includes face-to-face
23 discussions, any texting, posting on Facebook,
24 anything of that nature. So simply put, do not
25 discuss this case with anyone in any fashion until

1 I tell you otherwise.

2 Please do not do any independent
3 investigations. That may be even as simple as
4 looking at a calendar to determine what some of
5 these dates were. So please remember, everything
6 you know about this case must come from this
7 courtroom.

8 So I say, go home. Don't watch the
9 news. Don't do anything. Get some rest and be
10 back -- we'll start -- you will need to report at
11 9:00 a.m. Mr. Dan is going to take you, show you
12 your jury deliberation room, show you how to report
13 in the morning. And please be mindful, we can't
14 begin until all 14 of you are here.

15 Please take your notepads with you. We
16 will lock them up and then give those back to you.

17 Please rise for the jury. Stay seated.

18 (Jury out, 5:33 p.m.)

19 THE COURT: Please be seated. We've
20 reached an uncomfortable position for you, so I'm
21 going to give you the same admonition. You are on
22 the witness stand tomorrow first thing. You will
23 be subject to cross-examination, I'm assuming.

24 Correct? You will cross-examine him?

25 MR. MORGAN: Yes, Your Honor.

1 THE COURT: So what that means is you
2 can't discuss this case with anyone. Right. So
3 you can't talk to Ms. Bloodgood about your
4 testimony previously or what you may testify to.
5 Do you understand?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Okay. And your wife is
8 also here. You can't discuss the testimony with
9 her either. Do you understand?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay. So please be back at
12 9:00 a.m., promptly at 9:00 a.m. so that we may
13 begin. You may step down. Thank you.

14 And you are free to go. And,
15 Principal, you're free to go. All right. I'll see
16 you back at what time?

17 MR. STEELE: 9:00 a.m.

18 THE COURT: Promptly. Thank you.

19 Mr. and Mrs. Cruce, I have some matters
20 with just the attorneys. If you will just wait
21 outside. Thank you. They'll be out in just a few
22 moments. They're not in any trouble.

23 (These proceedings were recessed to be
24 continued 9/6/2017 at 9:45 a.m.)

25

1 (The following proceedings were had
2 9/6/2017, at 9:35 a.m., in re: Cruce v Berkeley
3 County School District, Berkeley County Common
4 Pleas Court.)

5 THE COURT: Anything before we bring in
6 the jury?

7 Mr. Cruce, please come have a seat. I
8 remind you that you are still under oath.

9 Good morning, sir. Did you comply with
10 my instructions over the evening hours?

11 THE WITNESS: I did, ma'am.

12 THE COURT: All right. Thank you.
13 Let's bring in the jury.

14 (Jury in, 9:29 a.m.)

15 THE COURT: Thank you. Please be
16 seated.

17 Good morning. If you complied with my
18 instructions over the evening hour, please raise
19 your right hand. If you did what I told you to do
20 over the evening hour, raise your right hand.

21 THE JURY: (Raised hands.)

22 THE COURT: Thank you. All 14 jurors
23 complied with the Court's instructions.

24 Your witness.

25 MR. MORGAN: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. MORGAN: Ladies and gentlemen.

3 CROSS-EXAMINATION

4 BY MR. MORGAN:

5 Q. Good morning, Mr. Cruce.

6 A. Good morning.

7 Q. I'd like you to just take a look at
8 Exhibit Number 1.

9 MR. MORGAN: Your Honor, may I
10 approach?

11 THE COURT: You may. And you have
12 continuing permission.

13 MR. MORGAN: Thank you very much, Your
14 Honor.

15 BY MR. MORGAN:

16 Q. Mr. Cruce, I'm going to give you that
17 so that you can see it, and we'll have it up on the
18 screen for the jury. I realize that that's a
19 little bit tough to read. If you could go to the
20 last page of this document that's been marked as
21 Exhibit Number 1. Is that your last contract that
22 you had at Berkeley High School?

23 A. Yes, sir.

24 Q. Okay. Let's go through a few things.
25 This was the contract for professional service,

1 correct?

2 A. Correct.

3 Q. Okay. And in that contract of
4 employment that you had with the school district,
5 you had a requirement to maintain your
6 qualifications as a teacher, correct?

7 A. Correct.

8 Q. All right. And I'm going to show you
9 another exhibit, and then I will come back to
10 Exhibit Number 1. Is that a copy of your
11 certification of educator license that certified
12 you for driver training and guidance?

13 A. Yes, sir.

14 Q. And that was in existence during the
15 time that you were employed the last year at
16 Berkeley High School, correct?

17 A. Yes, sir.

18 Q. Okay. So you had that certification to
19 be a guidance counselor?

20 A. Yes, sir.

21 Q. Let go back to Exhibit Number 1 if we
22 could, please. If you read down to what will be
23 paragraph 3, it says that you agree to the terms
24 for the 2015/16 year. Do you see that paragraph?

25 A. Yes, sir.

1 Q. Okay. And it then says, the
2 administration may assign reasonable
3 extracurricular activities to the employee.

4 Do you see that sentence?

5 A. Yes, sir.

6 Q. Okay. And some of those
7 extracurricular activities that you served in was
8 head football coach and athletic director, correct?

9 A. Yes.

10 Q. And that was part and parcel of that
11 employment contract that you had with the district,
12 correct?

13 A. Correct.

14 Q. And the agreement then said that the
15 school district would pay you a salary. The
16 schedule hadn't been available at the time, but
17 they were going to pay you a salary. And you did
18 receive a salary under that contract for the whole
19 contract term of that year, correct?

20 A. Correct.

21 Q. And that included -- even after you
22 were no longer the head coach and no longer the
23 athletic director, it included your base teacher
24 salary, correct?

25 A. Correct.

1 Q. And it also included your salary that
2 you received as the head coach?

3 A. Correct.

4 Q. And also the athletic director salary?

5 A. Correct.

6 Q. So throughout this entire year you
7 received your entire salary?

8 A. Correct.

9 Q. Okay. And if we go down to the bottom
10 of the page underneath the signature line -- see if
11 we can move that up a little bit -- it says there
12 that, the employer's assignment for 2015-16,
13 contract term is Berkeley High; however, it is
14 understood that this assignment is tentative and
15 may be changed by the administration upon notice
16 and consultation with the affected employee.

17 Did I read that correctly, sir?

18 A. You did, yes, sir.

19 Q. Okay. And in December after you met
20 with Mr. Franchini and Mr. Steele, they told you
21 that you were going to be re-assigned as a guidance
22 counselor at one of the middle schools, correct?

23 A. Yes, sir.

24 Q. And that was in a letter given to you?

25 A. Not that day, no, sir.

1 Q. Not on that day, but then Ms. Blackburn
2 sent you a letter dated January 8th, and in that
3 letter it told you where you were going to be
4 reassigned.

5 A. The reassignment came in a letter on
6 December 18th from Archie Franchini.

7 Q. Okay.

8 A. And then I received another letter in
9 January after the meeting with the superintendent.

10 Q. So you received two letters?

11 A. I received a letter on December 18th
12 from Archie Franchini first, yes, sir.

13 Q. And then you received an update after
14 you met with Superintendent Blackburn?

15 A. After we met with her, yes, sir. She
16 sent a follow-up letter for that meeting, yes, sir.

17 Q. Okay. I just want to be clear. You
18 received notice, which was required under this
19 agreement that you signed, of your reassignment?

20 A. Yes, sir, I did.

21 Q. Now, after you were reassigned, you
22 began to look for coaching positions in the area;
23 did you not?

24 A. I did.

25 Q. Talked with Jimmy Husky?

1 A. I did.

2 Q. And when you talked with Jimmy Husky,
3 where was he the head coach, sir?

4 A. Jimmy Husky is the principal.

5 Q. He's the principal --

6 A. He's the principal of Goose Creek High
7 School.

8 Q. Okay. And Goose Creek, obviously, is
9 in the lower part of the state, correct?

10 A. Correct.

11 Q. And he offered you a position, at least
12 the head coach did, e-mailed you several times
13 about a B team position at Goose Creek High School,
14 correct?

15 A. He did.

16 Q. And the amount that they offered you
17 for that position after you were let go as the AD
18 and head coach was for that position at \$2,000 a
19 year, correct?

20 A. Correct.

21 Q. And they also would have given you a
22 teacher's position in guidance or someplace else,
23 correct?

24 A. Said there was not one available, but
25 he felt like one might be opening. At the time

1 when I talked to him, he said there was not --
2 there was not a position open, but he felt like for
3 the next year there possibly would be one. It
4 wasn't a definite, no, sir.

5 Q. Okay. And you would have been paid
6 whatever the salary scale for that school district
7 was if you had accepted that position, correct?

8 A. I would think so, yes, sir.

9 Q. But you didn't pursue that any further,
10 did you?

11 A. It was an insult, sir.

12 Q. It was a coaching position in the
13 state, but you rejected it after you were let go?

14 A. It was an insult to what had already
15 been done to me. And me being head football coach
16 at a high school where I had never coached below
17 that level and, all of a sudden, to be offered that
18 position, it was an insult.

19 Q. You had put up with Ms. Bloodgood what
20 you claim to be your damages, but you were offered
21 a job in a school district in this state that has
22 the same level of benefits -- when I'm talking
23 about benefits, is the retirement system benefits,
24 which was a big part of that number that you put up
25 there yesterday.

1 You were offered a position as a coach
2 and a teacher and you didn't take it and you could
3 have continued to work in South Carolina, but you
4 rejected that position in January or February of
5 2016, correct, sir?

6 A. That's not correct, sir. As I said, he
7 did not offer me a job at that time. There was a
8 coaching position at the time. There was not a
9 teaching position. He felt like there might be
10 one. I was never offered a job. We talked about
11 the possibilities that there could be, but I was
12 never offered a job.

13 And, again, it was an insult to my
14 career and to my reputation. So, no, sir, that's
15 not correct.

16 MR. MORGAN: Your Honor, I have a copy
17 of the sealed transcript. May I give it to the
18 court reporter and have her open it so we can go
19 through --

20 THE COURT: You may.

21 MR. MORGAN: Thank you. May I
22 approach?

23 THE COURT: You may.

24 Ladies and gentlemen, testimony is now
25 going to be presented to you by a deposition. A

1 deposition is simply a document containing sworn
2 testimony given by a witness outside of court in
3 the presence of a lawyer for each party. That
4 lawyer may ask questions of the witness.

5 If any objections were made during this
6 deposition, I will rule on them as the deposition
7 is read.

8 This testimony is entitled to the same
9 consideration and is to be judged as to the
10 credibility and weighed by you in the same way as
11 if the witness gave the testimony about to be read
12 to you from the witness stand. It is then up to
13 you to determine the effect, value, and weight of
14 the testimony that was given in the deposition.

15 (COURT EXH. 1, Copy of transcript, was
16 marked for identification.)

17 MR. MORGAN: Thank you, Your Honor.

18 BY MR. MORGAN:

19 Q. Mr. Cruce, if you could turn to
20 page 290 of this deposition.

21 A. Yes, sir.

22 Q. Are you there?

23 A. Yes, sir.

24 Q. Thank you, sir.

25 You probably need to go back over to

1 289; the question starts there on the bottom of
2 289, line 25.

3 A. Yes, sir.

4 Q. And Mr. Frampton, who took this
5 deposition, asked you this question. He said,
6 Okay. What was the next thing you did with respect
7 to looking for a job?

8 And your answer was -- please read the
9 first paragraph.

10 A. Contacted -- well, I looked for head
11 jobs. I contacted Goose Creek about possibility.
12 The coach reached out about me coming to help them,
13 and he basically just offered me a B team job, a B
14 team assistant's job, which was a slap in the face.

15 They were going to put me in a
16 position -- they said that they had a guidance
17 position and I just, you know -- and then the same
18 thing with him.

19 Q. Okay. I wanted you to read that first
20 paragraph.

21 A. Okay.

22 Q. Then we go over to page 291. On line
23 3, the question that Mr. Frampton asked you was, so
24 you met with Jimmy Husky. Did he actually offer
25 you the B team position?

1 And your answer was?

2 A. He just told me what they had available
3 and then gave me the head coach's e-mail, and a
4 couple times gave me an amount of what they could
5 pay as far as a coach.

6 Q. Go ahead.

7 A. And it was -- it was an embarrassment.

8 Q. How much was it?

9 A. Do you want me to read?

10 Q. Yes, please. Please read your answer.

11 A. \$2,000.

12 Q. And then the question was, Okay. And
13 the idea was that you would also be a guidance
14 counselor there.

15 And your answer was?

16 A. Yeah.

17 Q. And then the next question that
18 Mr. Frampton asked you was, and presumably that
19 would have a normal teacher's salary associated
20 with it.

21 And your answer was?

22 A. Whatever it would be, yes.

23 Q. And the question then was, I mean, that
24 would be determined --

25 And you said?

1 A. According to the district's pay scale.

2 Q. Okay. And you said, yes. And then

3 Mr. Frampton said --

4 A. Yes. Yes. Right.

5 Q. And then on line 22, you said yes.

6 A. Yes.

7 Q. And then Mr. Frampton asked you, and
8 you didn't pursue that any further?

9 And your answer was?

10 A. It was an embarrassment.

11 Q. What's the difference between the
12 \$2,000 that you were offered as the assistant
13 B team coach and the head coaching job? I think
14 you said it was \$10,000 you got to be the head
15 coach at Berkeley High?

16 A. If that job would have come available,
17 it would have been about a \$36,000 pay cut total.

18 Q. That wasn't my question, sir. My
19 question was --

20 A. It would've been about -- I don't know
21 what my head football coaching job paid, but it was
22 somewhere around \$10,000 or -- it would be \$8,000
23 less.

24 Q. Okay. And, to your knowledge, Goose
25 Creek is -- would have allowed you to get the State

1 retirement benefits had you not declined that
2 opportunity?

3 A. At a lesser amount, yes, sir.

4 Q. Now, as the head football coach -- you
5 can put that exhibit aside -- at Berkeley High
6 School, you had a Friday night radio spot, didn't
7 you?

8 A. I think it was one year we had one,
9 yes, sir.

10 Q. Okay. And that's certainly a part of
11 the media. What year do you recall that to be?

12 A. It was early. It was, like, 2011, 2012
13 maybe. It was at the beginning of Berkeley, and
14 then they didn't do it anymore.

15 Q. And you had access to the press of --
16 football at Berkeley High School is a pretty big
17 deal, isn't it?

18 A. It's like any normal high school
19 football coach in the state. We're just coaches.
20 So if there's a game, there was -- it could be
21 basketball, it could be baseball, if it's football,
22 it's football, but, yes, we had access to media in
23 that particular sport.

24 Q. I'm going to show you an exhibit that's
25 been marked as Exhibit 27. Put that in front of

1 you.

2 A. Am I done with this, sir? Do you want
3 me to just set it aside?

4 Q. Let's take it out because we're going
5 to probably fill that up. Let's give it back to
6 the clerk.

7 Mr. Cruce, I will purport to tell you
8 that that is simply a compilation of articles in
9 the newspaper, *Post and Courier*, the local
10 newspaper during the time of your tenure as head
11 football coach at Berkeley High School. There are
12 probably about 197 articles in there about the
13 football teams and/or about you.

14 Is it fair for this jury to understand
15 that Berkeley High School football got really big
16 press coverage locally, including in the Charleston
17 market?

18 A. I wouldn't say that we got any more
19 than anybody else. Like I said, we're -- in Moncks
20 Corner, if you go to the *Berkeley Independent* --
21 Berkeley High School is the brother school of
22 Berkeley County, so you go to the *Berkeley*
23 *Independent*, but not in the *Post and Courier*. No,
24 sir, I wouldn't agree with that. We got as much as
25 anybody else.

1 Q. But you did get press coverage?

2 A. My teams got press coverage. I just
3 happened to be the head coach, but they wrote about
4 my team, not necessarily about me.

5 Q. And you had opportunity to converse and
6 give quotes to people; did you not?

7 A. I had opportunities to praise my kids
8 and give stats that would promote my program and my
9 kids, yes, sir, I did.

10 Q. Well, let me ask it this way: Have you
11 had a chance to talk to the press about your team?

12 A. Well, the old saying goes, the buck
13 stops here, and if they were going to talk to
14 anybody, they were going to talk to me. So they
15 didn't talk to an assistant coach because there was
16 no wins or losses by their names. It was always
17 the head coach. So, yes, sir, most interviews you
18 see in the paper will be from the head coach.

19 Q. And the wins and losses go to the head
20 coach, correct?

21 A. They go to the head coach, yes, sir.

22 Q. And, in fact, I think Ms. Bloodgood had
23 a chart that she had prepared where she showed
24 those wins and losses. And if I have this right,
25 the varsity wins were four, five, five, eight, and

1 three during your five-year tenure, correct?

2 MR. MORGAN: Excuse me, folks. I
3 didn't mean to put my back to you.

4 THE WITNESS: As I stated yesterday, I
5 was charged three times with rebuilding a program,
6 so those numbers are consistent with the process of
7 rebuilding a program. So you start slow and it
8 gets better as you go. So I'm pretty proud of
9 those numbers. So we were pretty consistent for a
10 rebuilding situation.

11 So, yes, sir, if you go back and look
12 at my other two rebuilding situations, the same can
13 hold true. We got better as we went.

14 BY MR. MORGAN:

15 Q. I show you an article. It's an exhibit
16 that's been marked as Exhibit Number 20. Do you
17 remember that article, sir?

18 A. Yes, sir, I do.

19 Q. And that's an article that was written
20 by Rustin Dodd of the *Kansas City Star*, correct?

21 A. Yes, sir, it was.

22 Q. And if you could for me publish -- what
23 I mean by publish is read the first three
24 paragraphs of that article for the jury.

25 A. On the day Jeff Cruce told his

1 principal about his grand plans for Berkeley High
2 School football, the conversation was met with
3 immediate --

4 THE COURT: Slow down just a little
5 bit. Thank you.

6 THE WITNESS: Ma'am?

7 THE COURT: Could you slow down when
8 you're reading --

9 THE WITNESS: Oh, I'm sorry.

10 THE COURT: -- just a little bit?

11 THE WITNESS: I'm sorry -- was met
12 with immediate skepticism. The plan was an
13 unorthodox one, to be sure, and Steven Steele, the
14 principal at Berkeley, wondered if his head coach
15 should reconsider.

16 The Berkeley High football program had
17 just finished eight in five in 2014, advancing to
18 the third round of state playoffs in South
19 Carolina. Why would Cruce want to mess with
20 success?

21 Cruce, a 53-year-old football man and a
22 former offensive lineman at Clemson, remained
23 undeterred. For three decades he had been coaching
24 in and around high school football, and after this
25 fourth season at Berkeley, he was ready to try

1 something drastic. I will never punt again, Cruce
2 says.

3 Do you want me to continue?

4 Q. No, that's good.

5 And so in the -- and that article is
6 dated September 21, 2015, correct?

7 A. Uh-huh. Yes, sir.

8 Q. Okay. Thank you.

9 Later on in that same article back on,
10 I think, page -- I have 7 of 10.

11 A. It's numbered 126, 127, and --

12 Q. Let me make sure that we're looking at
13 the same page.

14 Bottom of page Bates 128.

15 A. Yes, sir. What would you like me to
16 read?

17 Q. Could you read for the jury what it
18 says in the paragraph that begins with, it's like a
19 poker player?

20 A. It's like a poker player, Cruce says.
21 I have taken all my chips and I've placed them in
22 the middle of the table. And I've told my
23 assistant coaches this: This could be a
24 career-ending decision that I've made, but I feel
25 strongly about it and I know it's going to work.

1 Q. And you had -- those are accurate
2 quotes, correct?

3 A. Can I comment on them?

4 Q. Those are accurate quotes?

5 A. Correct, they are, yes, sir.

6 Q. Okay. And using that no-punt system
7 that you had implemented during the 2015 football
8 season, your record was three and --

9 A. Three and seven.

10 Q. Three and seven. You gave up how many
11 points to Summerville?

12 A. I believe 70, somewhere in that area.

13 Q. And how many points did you give up to
14 Cane Bay?

15 A. I would think somewhere around the same
16 number.

17 Q. And how many points did you give up to
18 Hilton Head?

19 A. Somewhere around the same number, I
20 think, yes, sir.

21 Q. Seventy-three, does that ring a bell?

22 A. Close.

23 Q. There were three games that season with
24 a no-punt philosophy. Your teams had given up in
25 at least three games 70 points; is that a fair

1 statement?

2 A. No, sir, it's not. The no-punt
3 philosophy, what you said -- the strategy of the
4 no-punt philosophy, that wasn't the strategy. The
5 guy in the paper in all -- everybody got enamored
6 with the no punt. It was a philosophy based on a
7 strategy with numbers involved and no punt was part
8 of it. The no punt -- we punted that season.

9 So when you assess a new philosophy,
10 which I've done through my whole career, this
11 philosophy worked. And everybody got enamored with
12 the word no punt. We punted during the season. So
13 as your philosophy takes shape, as a coach, you
14 monitor and adjust.

15 So there were times during the season
16 that we did punt. So the writer of this particular
17 article leaves out part of what was said in that,
18 and that being that the -- putting your chips all
19 in one spot was about the safety of the kids, about
20 not hitting as much in practice, about taking full
21 gear off on a Wednesday.

22 Q. Did you say that in this article?

23 A. I said it to the reporter and the
24 reporter took liberties of what he wrote. I
25 can't -- I can't make the reporter write everything

1 that we talked about.

2 Q. Did you issue any retraction or
3 explanation to this reporter at any point in time?

4 A. No, I did not.

5 Q. Yesterday you testified that the first
6 time that you had heard about booster club was in
7 the meeting that you had with Mr. Franchini and
8 Mr. Steele, correct? Is that what you testified to
9 yesterday?

10 A. The first time that I had heard about
11 booster membership was in that meeting, yes,
12 membership, that would be correct.

13 Q. I show you an exhibit that we've marked
14 as Exhibit 22. And that's the grievance that you
15 filed in December of 2015, correct?

16 A. Correct. Yes, sir.

17 Q. And attached to that grievance is a
18 December 10, 2013, letter written to Kim McLaren.

19 A. Correct, yes, sir.

20 Q. If we turn back over to the second page
21 of that letter, in that second full paragraph,
22 could you read for the jury what that says, please?

23 A. What page? I'm sorry, sir.

24 Q. It should be BCSD005.

25 A. Yes, sir.

1 Q. Later that season in 2012?

2 A. Later that season, 2012, we met and
3 discussed the concerns about the athletic booster
4 club. He asked Georgette O'Brian to be present at
5 this meeting. Georgette O'Brian was the assistant
6 principal -- just making sure everybody knows, she
7 was the assistant principal at Berkeley County High
8 School.

9 Q. But that's not in the letter.

10 A. That's not in the letter -- as a
11 witness. He told me that he -- excuse me.

12 He told me that he was told there was a
13 significant lack of parent support within the
14 booster club so that the club might not be --
15 unable to provide concession sales at games in the
16 future.

17 Do you want me to continue?

18 Q. No, I think that's fine.

19 So you knew at least in 2013, that
20 there was a concern about booster and booster club
21 participation?

22 A. This was in 2012, his first year there.
23 That was the -- that particular game was the third
24 game of the year that he was the principal.

25 Q. What's the date of that letter?

1 A. The date of this letter is 20 --

2 Q. '13?

3 A. 2013. This is the -- this is part of a
4 grievance that I filed, the first grievance that I
5 filed against Steven Steele.

6 Q. But you were aware as early as 2012,
7 when you were the athletic director and head
8 football coach, of a concern about booster club?

9 A. It was incorrect.

10 Q. That's not my question. You were
11 aware, sir --

12 A. I was aware that there was -- that he
13 created a narrative that we didn't have support of
14 the booster club, which was later confirmed that
15 that was not the case. So to answer your question,
16 I never knew of a concern, other than what he
17 presented, from the parents.

18 Q. If we take a look at the membership
19 numbers, would you agree with me that after the
20 2012 season, the total memberships showed a decline
21 from 57 to 46 to 32 to 26 to 15?

22 A. That's consistent with all booster
23 clubs, yes, sir. I would agree with what you said.

24 Q. At Berkeley High School, having been
25 told at least in 2012, filing a grievance in 2013,

1 about membership numbers, that during your tenure
2 as the head coach and athletic director, at least
3 from 2012 season, we saw a decline from 57 to 15
4 total memberships --

5 A. That's not correct.

6 Q. -- at Berkeley High School? Is that
7 what this document says?

8 A. No, sir, that's not what it shows. It
9 shows -- the 15 shows -- I wasn't there for the
10 spring. Typically, the numbers go up in the
11 spring, so we don't know what the numbers -- this
12 was for half a year in 2015-2016.

13 So, no, I can't sit there and say that
14 the numbers wouldn't have been more or less or
15 whatever, so that's not a correct statement.

16 In my first year, you notice that they
17 go up. And in that year, in 2015, that's when we
18 had the floods in Berkeley County. So we had a lot
19 of people misplaced and their focus wasn't on
20 supporting a booster club at that particular time
21 but to support their families.

22 So there's a lot of intangibles that go
23 with people that support different organizations.
24 We had a lot of support, but, at that particular
25 time, it was not on people's minds because we had

1 so much water flooding in the Berkeley County
2 areas.

3 Q. And you would agree with me, I think,
4 that in 2014/15, the number was 26.

5 A. I would agree, yes, sir.

6 Q. Okay. And that was a decline in
7 membership from a high-water mark in 2012, of 57 to
8 26 --

9 A. I'll tell you --

10 Q. -- cut in more than half of your
11 membership, correct?

12 A. I will say, being an athletic director,
13 as long as I've been one, it is consistent with the
14 numbers of parental support. Some years are up,
15 some years are down, but it's consistent with the
16 numbers. If you go to all the places that I've
17 been, it's pretty consistent with -- some years are
18 more, some years are less, so it just depends.

19 Q. Sir, I'm not trying to argue with
20 you --

21 A. Yes. I would agree that the numbers
22 are less than in 2014, 2015 than they were in 2011,
23 yes, sir.

24 Q. And it went from 57 to 46 to 32 to 26.

25 A. And, again, that is consistent with

1 numbers having been in my position as long as I've
2 been. I think if you pull the numbers, and you
3 want to get an accurate -- to see if this is
4 correct for everybody, pull all seven high schools
5 in Berkeley County and see what they are and see if
6 they go up or down. I think it would -- you'd get
7 an accurate number of the consistency of what
8 you're asking.

9 Q. Mr. Cruce, all I'm asking about is --

10 A. I agree --

11 Q. -- what happened under your tenure --

12 A. -- yes.

13 Q. -- at Berkeley High School. I'm not
14 asking what happened in any other high school in
15 this state or in the nation. I'm asking whether or
16 not during the time that you were in charge, the
17 athletic director and head football coach at
18 Berkeley High School, that those numbers went
19 down --

20 A. I'm not --

21 Q. -- and they went down by more than
22 half?

23 A. I'm not in charge -- as I stated
24 earlier too, I'm not in charge of the membership of
25 the booster club. So to answer your question, the

1 booster club membership went up and down,
2 fluctuating, but that was not part of my job.
3 description was to do booster club memberships.

4 So to answer your question, yes, the
5 people in charge of the booster club -- the numbers
6 fluctuated for those people in charge of
7 membership. I would agree with that, yes, sir.

8 Q. And after you were no longer the head
9 coach and athletic director, there was a press --
10 something in the press, in the *Post and Courier*,
11 about you no longer being the head coach, correct?

12 A. There was a release by the district,
13 yes, sir.

14 Q. Okay. And in that release -- and I'll
15 pull it out so that we can see it and the jury can
16 take a look at it.

17 This is not a great picture, but it
18 says, I will tell you, at the top, Cruce out as
19 coach, AD at Berkeley. And then it has some
20 explanation.

21 What does it say, sir, if we can go
22 through -- there's a paragraph in there from
23 Mr. Steele. It's probably the second full
24 paragraph that begins with the words, we
25 appreciate. Do you see that? It's kind of hard to

1 read. It's on the -- I'll come over and show you
2 where it is. Right here. (Indicating.)

3 A. Yes, sir.

4 Q. Could you read that paragraph for the
5 jury?

6 A. We appreciate the work Coach Cruce put
7 in with our students and wish him much success in
8 his future endeavors with Berkeley County School
9 District. Steven Steele, Principal, Berkeley High
10 School.

11 Q. And then the next paragraph says what,
12 sir? Please read that as well.

13 A. It says, Cruce has been in Berkeley for
14 the last five seasons, but has been a coach with
15 the district for 25, 20 as head coach. Cruce
16 posted a 25 and 32 record at Berkeley, got in the
17 2014 -- Stags to the Region 8, 3A championship with
18 an eight and five record. That was Berkeley's only
19 winning season under Cruce, and the Stags finished
20 three and seven this season.

21 Q. And that is all reported accurately in
22 the press as to what your record was, the fact that
23 you had some success in '14 and what your final
24 record was as head coach at Berkeley High School?

25 A. That's correct, yes, sir.

1 Q. Okay. You had indicated that you had a
2 meeting with Mr. Steele on the 30th of July?

3 A. I did.

4 Q. Okay. And I believe you testified that
5 it was a blank form that you left him with, with
6 your signature.

7 A. I think the term, meeting, is
8 incorrect. It was -- I was going to check my mail
9 and I stuck my head in his office. It wasn't a --
10 it wasn't a meeting that was called or anything.
11 It was just a -- I was going upstairs to check my
12 mail from my office, and I stopped by his office to
13 give him a copy of the template. I didn't know if
14 he was in there or not, but I wouldn't call it a
15 meeting.

16 Q. Okay. And what I understood from your
17 testimony yesterday, that you dropped that template
18 off and you put your signature on that document.

19 A. I showed him -- walked in, said, I've
20 got the template for the coaches' evaluations. He
21 looked at it briefly. He said, sign here.

22 I go to sign -- you can see where my
23 name -- I started to sign and he said, no, don't
24 sign there. I stopped. I put it down at the
25 bottom.

1 And then in that same conversation, we
2 briefly talked about what my plans were. He got
3 irritated, and I just left.

4 Q. And the plans that you told him about
5 was a no-punt philosophy?

6 A. I told him about the less-hitting
7 philosophy, yes, sir.

8 Q. Did you talk about no punt?

9 A. That was part of the philosophy, but I
10 wouldn't call it the no-punting philosophy. It was
11 not -- the no-punting philosophy has no bearing on
12 what the philosophy is. It's just part of a
13 philosophy. But that is not -- that is not the
14 philosophy.

15 Q. And that philosophy involved use of
16 statistics, number of plays that were run, yards
17 that were gained --

18 A. It was driven by offensive
19 productivity, yes, sir.

20 Q. Offensive productivity. Analytical
21 information on offense, correct?

22 A. To gather data that supported offense,
23 yes, sir.

24 Q. So you didn't have anything for
25 defense; did you, sir?

1 A. No, sir.

2 Q. And yet you gave up 70 points at least
3 three times during that last year.

4 A. Very unfortunate. We didn't play very
5 well defensively, but we did succeed in the
6 offensive plan. So -- you know, we didn't play
7 very good on defense, no, sir.

8 Q. Offense, as I understand most sports --
9 I'm not trying to be argumentative or smart with
10 you, sir, but I understand most sports that offense
11 means you score more points than the other team.
12 Defense tries to keep those points at a lower
13 amount so your offense allows you to win games,
14 correct?

15 A. There's three phases of a game:
16 Offense, defense, and kicking game. So all three
17 have to perform the same. Yes, sir, that would be
18 correct. They all have to perform the same.

19 Q. And at the end of the day, you have to
20 score more points than the other team to win,
21 whether it's football, basketball, or baseball,
22 correct?

23 A. Or stop them from scoring, yes, sir,
24 that would help.

25 Q. And you didn't do that, did you?

1 A. We didn't do it that particular year,
2 no, sir. We didn't do it very well.

3 Q. And your focus was on offense?

4 A. My focus was on Berkeley High football
5 team, so I'm responsible for it all.

6 Q. And you did not have a successful
7 season that last season with wins and losses, did
8 you, sir?

9 A. Unfortunately, no, sir, we did not.

10 Q. You had followed up, I believe, with
11 Mr. Steele on August 6th. Gave him a revised form?

12 A. Yes, sir, I did. I sent a revised form
13 that told him that I was going to -- from the
14 document -- the template that I gave him, that I
15 was going to include fall, winter, and spring. And
16 then he sent me a suggestion back that to -- I
17 think you should just make it preseason,
18 postseason.

19 Q. And did you accept that suggestion?

20 A. That's what it was, it was a
21 suggestion. And, no, sir, I did not take his
22 suggestion. I did what I thought was best and I
23 sent him a copy of it and he never replied back
24 that he wanted me to change it.

25 Q. Then we have Exhibit Number 8, and

1 these are the other coaches' evaluations that we've
2 had some discussion about.

3 A. Yes, sir.

4 Q. And I understand your testimony is that
5 you had completed those.

6 A. Yes, sir. Those are the signatures of
7 my coaches that had -- had completed the
8 evaluations.

9 Q. And you knew some time before you met
10 with Mr. Steele and Mr. Franchini that there was a
11 question about the evaluations. You sent an e-mail
12 to Mr. Harrison. Do you recall that?

13 A. I sent an e-mail to Mr. Harrison about
14 the evaluations in question because one of my
15 coaches came up to me and said, Coach, is there a
16 problem with our coaches' evaluations?

17 And I said, not that I know of. Why do
18 you ask? He said, Mr. Harrison is going around
19 asking all the coaches if I had completed -- if you
20 had completed the evaluations.

21 Q. That's Exhibit Number 11. What's the
22 date of that, sir?

23 A. That is December the 11th.

24 Q. And please publish, again, for the jury
25 what you wrote to Mr. Harrison on that date?

1 A. I said, do you have any questions
2 concerning the evaluations for the athletic
3 department? One of the coaches said you were
4 asking them about them -- or asking about them.

5 And so I sent him an e-mail saying, if
6 you had a question, come down to my office, here
7 they are. They've been completed. Some of them
8 are dated -- this one is dated 10/29. Some of them
9 are dated earlier. It just depended on when their
10 season ended.

11 Q. Knowing that someone was looking for
12 those evaluations and as a long-time athletic
13 director and head coach, did you take the
14 initiative of going and actually handing those
15 documents to Mr. Harrison or Mr. Steele?

16 A. I did not. Again, I gave them -- I
17 sent an e-mail and asked -- nobody had ever asked
18 for them. Nobody has -- since that meeting
19 July 30th, and the follow-up meeting that we had --
20 or not a meeting, but the e-mail that I sent him on
21 August 6, not one time had ever anybody asked about
22 the coaches' evaluations until this day on
23 December the 11th, when one of my coaches came to
24 me and asked me if there was a problem because
25 Mr. Harrison was going around asking if I had

1 completed the forms.

2 So I did what -- my due diligence, and
3 I sent him an e-mail and asked him if he needed to
4 see them or had a question about them. I have them
5 in my office; you're more than welcome to come see
6 them was what the e-mail implied.

7 Q. Okay. My question is this: Knowing on
8 December 11th, as you did, that there was someone
9 asking about the evaluations and you had those
10 evaluations in your possession, did you take any
11 initiative to go and hand those to your supervisor?

12 A. They were never asked for, sir.

13 Q. That's not my question.

14 A. No, I did not.

15 Q. Thank you.

16 Now, on December 18th, do you recall
17 getting a letter from Mr. Franchini?

18 A. I do, sir.

19 Q. And in that letter -- I believe we saw
20 that yesterday. This is the Court's copy. I don't
21 want to take the Court's copy. In that letter at
22 the bottom of the first paragraph, I will read
23 this, and you please correct me if I read anything
24 wrong, okay, sir?

25 A. Yes, sir.

1 Q. Okay. It says, the reasons for the
2 reassignment are failure to meet the goals agreed
3 upon by you and Mr. Steele on July 30th.

4 A. Where are you now, sir? I'm sorry.

5 Q. First paragraph.

6 A. You're going where this is a -- are you
7 down somewhere? Okay. The reason -- I see it, I'm
8 sorry.

9 Q. I'm just reading what Mr. Franchini
10 wrote.

11 A. I didn't know where you were. I'm
12 sorry. The reasons for the reassignment. Okay.
13 Yes, I see that.

14 Q. I apologize to you for starting in the
15 middle. Are you with me now, sir?

16 A. Yes, sir. That Clemson education
17 kicked in, I had to follow you. Go ahead, sir.

18 Q. Well, at least you weren't the
19 defensive coach who gave up 70 points to West
20 Virginia a couple of years ago and lost his job,
21 but that's another matter.

22 A. Yes, sir.

23 Q. It says, the reasons for the
24 reassignment are failure to meet the goals agreed
25 upon by you and Mr. Steele on July 30th.

1 And I'm not asking you to agree or
2 disagree with anything that's in here. I'm just
3 reading.

4 A. Yes, sir. Yes, sir.

5 Q. It says, specifically, these were
6 analytics, evaluations of the athletic department
7 coaches, and an increased parent involvement in the
8 athletic booster club.

9 And it says, Mr. Steele stated that you
10 had not met your goals and, therefore, he decided
11 he wanted to move in a different direction with the
12 football program and the athletic department.

13 Did I read that correctly, sir?

14 A. You did.

15 Q. So on the 18th of December, you were at
16 least in writing informed that one of the reasons
17 for your removal as the head coach and athletic
18 director were -- or was the evaluations of the
19 athletic department coaches.

20 Did you at that time take the
21 initiative to give those evaluations to any member
22 of management, to Mr. Harrison, to Mr. Steele, or
23 anybody in the administration?

24 A. The answer is --

25 Q. It's a yes or a no, sir.

1 A. The answer is no. And the reason I
2 didn't, because in the meeting on December the
3 16th, I was told in that meeting to give my keys
4 to -- I had until the end of the day to give up my
5 keys. And so I was shocked, but, no, there was no
6 reason for me to give anybody anything when they'd
7 already made a decision like this.

8 So, no, I did not. And they had been
9 done, so, no, I did not.

10 Q. And you went back to your office and
11 you took those home with you, didn't you?

12 A. I didn't do it that particular day,
13 but, yes, I did take them with me.

14 Q. So they were not in the office at some
15 point after you were informed that you were no
16 longer the head coach and athletic director?

17 A. They were not. They -- I took them
18 with me when I left. Yes, sir, I did.

19 Q. And you filed a grievance, and we've
20 shown you that grievance dated December 18th, where
21 you then met with -- had a meeting in early January
22 with Superintendent Blackburn?

23 A. I did.

24 Q. And in that meeting -- having
25 possession of those coaches' evaluations, did you

1 bring those to the meeting to show Superintendent
2 Blackburn that you had completed at least one of
3 the things that you had been told was a reason why
4 you were being let go as the athletic director and
5 head coach?

6 A. We had them with us, yes, sir. They
7 never asked for them.

8 Q. So you never turned them over?

9 A. We had them with us at the meeting. If
10 they had asked for them, we would have given them
11 to them, yes, sir. She never asked for them.

12 Q. But you had them and you chose not
13 to --

14 A. We had them in our possession and she
15 could have had them anytime she wanted, but, again,
16 nobody ever asked for them. Starting on July 30th,
17 through the time that we met with Dr. Blackburn,
18 nobody ever asked for them, but we had them in our
19 possession, yes, sir. They could have gotten them
20 anytime they wanted them.

21 Q. And you never took the initiative to
22 say after she -- you met with her and you were
23 appealing because you disagreed with the
24 evaluation. You never at that meeting said,
25 Superintendent Blackburn, here are the forms that I

1 have completed with regard to associate
2 evaluations. You never took the initiative to
3 provide her those documents; did you, sir?

4 A. No, sir, because they didn't provide me
5 with the same courtesy. So, no, sir, I did not.
6 So they were there. She could have had them. She
7 never asked for them. She was pretty direct in
8 what she did, and Franchini was too. So, no, sir,
9 I did not provide them.

10 Q. I show you an exhibit that's been
11 marked as Exhibit 13.

12 A. Yes, sir.

13 Q. Who is Chris Stevens?

14 A. He's the athletic trainer at Berkeley
15 High School.

16 Q. And he takes care of kids and their
17 injuries, and he's involved with the health and
18 safety of the young men and women at Berkeley High
19 School, correct?

20 A. His job is medical help for kids, yes,
21 sir, that is correct.

22 Q. And that goes under health and safety;
23 doesn't it, sir?

24 A. That sure does, yes, sir.

25 Q. Yes, sir, it sure does.

1 I think I heard you correct yesterday,
2 but I want to make sure. He sent an e-mail out and
3 this e-mail, you'll have it, is dated January 7th
4 of 2016, and it's sent to a number of folks.

5 I think I heard you say yesterday that
6 all of those were either coaches, volunteer
7 coaches, or someone involved with the athletic
8 department in some sort of capacity. Did I
9 understand you correctly?

10 A. You did, sir.

11 Q. Okay. So this e-mail that was sent
12 about making sure that there were appropriate and
13 proper documents in student files dealing with
14 their health and safety went to coaches who had a
15 need to know or to get the information and get that
16 young man, young woman -- and to get that
17 information complete?

18 A. Files are kept in my office. Nobody is
19 allowed in my office unless I bring the coaches in.
20 Eligibility was done in front of me with the coach
21 in front, and so all files are not privy to all of
22 these particular individuals because they are
23 assistant coaches also.

24 So some of these names -- a lot of
25 these names on here are not privy to eligibility

1 information, nor should they be because they're
2 assistant coaches. Head coaches are responsible,
3 as to with me, for all eligibility. That's why all
4 of the files are kept in my office.

5 Q. But you were no longer the AD and no
6 longer the head coach, correct, sir?

7 A. Not at this particular time, no.

8 Q. Okay. And if we go down to the middle,
9 there are a couple of what I'll call bullet points.

10 A. Yes, sir.

11 Q. I'm going to go ahead and read those.
12 It says, all students must have the following files
13 in order to participate in scholastic sports. It
14 says, risk acknowledgement and consent to
15 participate form.

16 A. It's attached to the physical itself.
17 The physicals that are provided to us from the high
18 school league, there is a consent form on the
19 physical form that gives the parent -- they have to
20 sign it to give their child permission to
21 participate in athletics in that particular sport
22 or that -- for athletics for that period of time,
23 yes, sir.

24 Q. I'm just listing --

25 A. I'm just telling you what they are.

1 Q. Okay. And then preparticipation
2 physical exam form signed by a doctor. All he's
3 doing is telling folks that everyone has to have
4 these in their file to participate in -- whether
5 it's cheerleading, whether it's football, whether
6 it's basketball. I think you said you had swimming
7 at Berkeley High School?

8 A. I had all sports except lacrosse.

9 Q. Except lacrosse.

10 A. Yes, sir, that's correct.

11 Q. All he's doing is telling the coaches
12 that this is an obligation that the school had to
13 have this information in the file.

14 The next bullet point was proper
15 understanding of HIPAA and FERPA rights?

16 A. That's not correct. That doesn't need
17 to be in the file.

18 Q. And then he said, emergency insurance
19 information and consent to treat form?

20 A. That is not correct. That does not
21 need to be in the eligibility form.

22 Q. And then it says, any special
23 accommodations, such as asthma, allergies, et
24 cetera, must have a written doctor's note filed and
25 must have necessary treatment, parens, inhaler,

1 Epipen, parens, present at all times.

2 A. That is through the -- on the physical
3 that they have, that information is provided on the
4 physical or we wouldn't know it.

5 Q. Okay. And then copies of birth
6 certificate and social security card?

7 A. Not a social security card, no, sir.
8 That's not correct.

9 Q. But all he did was just list that that
10 was information that, in his review -- and I'm not
11 asking you to testify for him -- that's all he sent
12 to all of these coaches and assistant coaches?

13 A. In my eyes, he sent wrong information
14 stating that there might be some improper
15 evaluations of how we kept eligibility, so I took
16 it as a fraudulent document that he sent out,
17 because there's people on here -- and information
18 he sent out was incorrect.

19 Q. Were all of these folks coaches who
20 were involved in the health and safety of young men
21 and women at some point in athletics at Berkeley
22 High School?

23 A. All of those people on that form were
24 not privy or needed to be --

25 Q. That's not my question, sir. My

1 question is --

2 A. To my knowledge, all the names on this
3 form are coaches -- I'll answer your question --
4 are coaches or assistant coaches or volunteer
5 coaches at Berkeley High School, but they do not
6 need to know this information. No, that's not
7 correct.

8 Q. Did anyone in administration,
9 Mr. Steele, Mr. Harrison, Superintendent Blackburn,
10 did anyone in administration ever tell you that you
11 were required to violate concussion protocol?

12 A. No, sir.

13 THE COURT: Do you need a break?

14 JURY FOREPERSON: Yes, ma'am.

15 THE COURT: Please remember all my
16 admonitions. Just let the bailiff know when you're
17 ready to come back in.

18 Please rise for the jury.

19 (Jury out, 10:42 a.m.)

20 THE COURT: Thank you. Please be
21 seated.

22 You may step down. Remember all my
23 admonitions.

24 Probably take them about ten minutes.

25 And, attorneys, let me just see you in chambers

1 just for scheduling.

2 (A recess transpired.)

3 THE COURT: Anything before we bring in
4 the jury? Mr. Morgan?

5 MR. MORGAN: I have nothing, but I do
6 have a couple of follow-up questions.

7 THE COURT: Okay. And, Ms. Bloodgood?

8 MS. BLOODGOOD: No, Your Honor.

9 THE COURT: Thank you. Let's bring in
10 the jury.

11 (Jury in, 10:53 a.m.)

12 THE COURT: Thank you. Be seated.

13 Mr. Morgan, you may continue.

14 MR. MORGAN: May it please the Court,
15 ladies and gentlemen.

16 BY MR. MORGAN:

17 Q. Mr. Cruce, I do have just a couple more
18 questions for you. I appreciate your patience with
19 me.

20 A. Yes, sir.

21 Q. During your deposition, there was some
22 discussion about some guidelines that the high
23 school association had issued with regard to
24 concussion protocol. Do you recall that discussion
25 in your deposition?

1 A. Yes, sir.

2 Q. And do you remember your testimony
3 where you said that those guidelines were merely
4 recommendations and did not have the force of law?
5 Do you remember that testimony?

6 A. I think I said that all coaches were
7 required to complete a concussion and heat illness
8 program from the High School League. The High
9 School League left it to each individual school
10 district to maintain a regiment of how they kept up
11 with their concussion protocols, but all concussion
12 protocols are through DHEC and State regulation
13 guidelines, that we're all liable for concussions
14 and that if we do not remove a player that has
15 concussion symptoms, that the liability falls on
16 the head coach.

17 Q. Do you have a copy of your deposition
18 transcript?

19 A. I do not.

20 Q. Let's go ahead, and I'll hand that up.
21 If you would turn, sir, again, to page
22 340.

23 A. Page 340?

24 Q. Three.

25 A. Page 343?

1 Q. Page 343.

2 A. Yes, sir. Yes, sir.

3 Q. At the bottom of the page -- and,
4 again, you were sworn to tell the truth that day.
5 You understood that and you understand that today,
6 correct?

7 A. Correct, sir. Yes, sir.

8 Q. Okay. And on line 24, your answer
9 was -- when we were talking, there was a whole
10 buildup to the guidelines. Your answer was,
11 beginning on page -- line 24 of page 343 of your
12 sworn deposition testimony, what was your answer?

13 A. On page 24 or --

14 Q. Page 343 --

15 A. These are recommended. They're not --
16 these are recommended guidelines.

17 Q. And the question was, these aren't --
18 these don't have the force of law, right?

19 And your answer was?

20 A. No. These are recommended guidelines
21 that are recommended that coaches go more to this.

22 This was not about concussions though.

23 Q. But that was --

24 A. This was about hitting and that was not
25 the -- you were asking about concussions.

1 Q. I was asking about protocols.

2 A. But your original question was about
3 concussions, that we had guidelines that we had to
4 follow about concussions. And that line of
5 questioning was not about concussions.

6 Q. And, again, I want to make certain. No
7 one ever told you to violate any guidelines dealing
8 with concussions or the State statute dealing with
9 the concussion protocol, correct?

10 A. Only that -- no, nobody ever -- nobody
11 ever said, I need you to violate DHEC or State
12 Department guidelines for the concussion protocol.
13 No, they did not.

14 Q. In fact, during your tenure, that was
15 never violated, was it, sir? To your knowledge?

16 A. Violated by who?

17 Q. By you.

18 A. By me, no.

19 Q. Okay. And anyone on your staff?

20 A. Not that -- the only one that would be
21 in violation is the trainer, if he knew of a
22 concussion and he put that player back in a game.
23 So he would have final say-so if -- so if we have a
24 player that had concussion symptoms, we had a
25 certified trainer that was hired for that and we

1 had a medical staff person on the sideline during
2 games.

3 But during practices, it would be on
4 the medical person that we've hired, which would be
5 the athletic trainer. So if he put somebody back
6 in practice, I would not know that.

7 Q. Okay. But during your tenure, to the
8 best of your knowledge, that never happened under
9 your leadership?

10 A. No, sir, it did not.

11 MR. MORGAN: Thank you. I have no
12 further questions, Your Honor.

13 THE COURT: All right. Any redirect?

14 MS. BLOODGOOD: No, Your Honor.

15 THE COURT: You may step down. Thank
16 you. Call your next witness.

17 MS. BLOODGOOD: Your Honor, I call
18 Ms. Blackburn.

19 MR. MORGAN: Your Honor, Mr. Lambert
20 will have this witness, so -- make sure we follow
21 your guidance and instructions.

22 THE COURT: Thank you.

23 MS. BLOODGOOD: I call Ms. Blackburn,
24 the former superintendent. I believe she is in the
25 hall.

1 THE COURT: Please come forward and be
2 sworn.

3 BRENDA BLACKBURN,
4 being first duly sworn, testified as follows:

5 THE CLERK: please state your full name
6 for the record and please spell your last name.

7 THE WITNESS: My name is Brenda
8 Blackburn, B-l-a-c-k-b-u-r-n.

9 THE COURT: Ms. Bloodgood.

10 DIRECT EXAMINATION

11 BY MS. BLOODGOOD:

12 Q. Ms. Blackburn, we've met previously;
13 I'm Nancy Bloodgood.

14 A. Yes, we have.

15 Q. And I represent Jeff Cruce.

16 You no longer work for the school
17 district, correct?

18 A. That is correct.

19 Q. And why not?

20 A. I resigned in March of 2017.

21 Q. Okay. Did the district pay you several
22 months severance?

23 A. Yes, they did.

24 Q. Did you sign a release agreeing to help
25 the district with ongoing litigation?

1 A. I don't remember signing a release of
2 that type.

3 Q. Okay. Did you ever sign a release with
4 the district?

5 A. No.

6 Q. Okay. Are you familiar with Berkeley
7 County School District's mission and vision
8 statements and their core values?

9 A. I am.

10 Q. And I'm not trying to trick you, and so
11 I'm going to show you a website just to refresh
12 your memory. I'm not intending to put this -- even
13 though it has a mark on it, I'm not going to put it
14 into evidence, but it may help you. I will ask you
15 some questions about Berkeley County.

16 MS. BLOODGOOD: May I approach, Your
17 Honor?

18 THE COURT: You may.

19 BY MS. BLOODGOOD:

20 Q. Would you agree that teachers and
21 coaches are part of the team of the school
22 district?

23 A. Yes.

24 Q. Would you agree with me that they
25 should be respected?

1 A. Yes.

2 Q. Would you agree that there should be
3 reliable data when the district is making decisions
4 about their employees?

5 A. Yes.

6 Q. Do you agree that Berkeley County
7 School District should provide a safe environment
8 for its students?

9 A. Yes, I do.

10 Q. Do you agree that when teachers are
11 fired, that there should be processes in place to
12 ensure that teachers are not fired or demoted or
13 transferred for the wrong reason?

14 A. I can't answer that question as you
15 stated it. I think there should be processes, but
16 I'm not sure why you added, for the wrong reasons.

17 Q. Okay. Before you took Coach Cruce out
18 of his teaching position and transferred him to a
19 middle school into a guidance counselor position,
20 you knew very little about his teaching career;
21 isn't that correct?

22 A. I did not know much about Coach Cruce.

23 Q. And he actually was transferred within
24 about six weeks of you becoming superintendent; is
25 that correct?

1 A. I started on November 1 of 2015, and
2 the issues with Mr. Cruce were dealt with during
3 the latter part of December and January.

4 Q. And you accepted Steven Steele's
5 recommendations regarding Coach Cruce, correct?

6 A. Yes, I did.

7 Q. You never met Coach Cruce before you
8 took him out of his teaching position mid year and
9 transferred him, correct?

10 A. I had no personal meeting with
11 Coach Cruce. I may have met him in passing at the
12 school.

13 Q. And before you transferred Coach Cruce
14 mid year, you did not know Steven Steele was
15 keeping a secret file on Jeff Cruce, did you?

16 MR. LAMBERT: Objection, Your Honor.

17 THE COURT: What's the basis?

18 MR. LAMBERT: Facts not in evidence.

19 THE COURT: Counsel approach.

20 (Bench conference.)

21 THE COURT: Sustained. Ms. Bloodgood,
22 please rephrase not to include -- I sustained it on
23 the basis of the terminology, secret file.

24 MS. BLOODGOOD: Okay.

25 BY MS. BLOODGOOD:

1 Q. Okay. Ms. Blackburn, before you
2 transferred Coach Cruce mid year and took him out
3 of his driver's ed position, were you aware that
4 Steven Steele was keeping a file on Coach Cruce?

5 A. I was not.

6 Q. And you never saw this -- any file that
7 Steven Steele was keeping, did you?

8 A. I didn't see a file that I remember.

9 Q. And Steven Steele told you that
10 Coach Cruce had failed to do coach evaluations as
11 Steven Steele had asked; is that correct?

12 A. Yes..

13 Q. And you didn't investigate or ask
14 whether or not Coach Cruce had actually done those
15 coach evaluations, did you?

16 A. I directed my question to
17 Principal Steele.

18 Q. Before you moved Coach Cruce as teacher
19 and he was fired as football coach and AD, you
20 didn't look at his employment file, did you?

21 A. I'm not sure if I looked at his
22 employment file. I did ask some questions about
23 items in his employment file, but I likely would
24 have asked those of the HR chief.

25 Q. You didn't review his job descriptions

1 as athletic director or driver's ed teacher?

2 A. No, I did not.

3 Q. And supervisors at Berkeley County
4 School District are supposed to evaluate the
5 performance of their employees fairly, correct?

6 A. Principals are charged with evaluating
7 their staff, as I was charged with evaluating my
8 staff.

9 Q. And as a teacher, coach, and athletic
10 director, Coach Cruce would have reported to
11 Principal Steele?

12 A. That's correct.

13 Q. So Principal Steele would have been his
14 supervisor?

15 A. Yes.

16 Q. And Steven Steele never evaluated
17 Coach Cruce formally as a coach or athletic
18 director, correct?

19 A. I would expect that Principal Steele
20 would have evaluated Coach Cruce. He had worked
21 for him for multiple years.

22 Q. Did you ever see any written
23 evaluations?

24 A. I did not look at his evaluations.

25 Q. So do you know whether or not he

1 evaluated him?

2 A. I believe that they were, yes.

3 Q. Why do you say that?

4 A. It was part of the letter that I wrote
5 to Mr. Cruce regarding his employment with Berkeley
6 County schools.

7 Q. And was that based on a form that you
8 saw, a coach's evaluation form that Steven Steele
9 handed you?

10 A. No. There are over 2,000 teachers in
11 Berkeley County. I would not have looked
12 personally at the evaluation. I would have asked
13 questions of Principal Steele and of the chief
14 officer for Human Resources.

15 Q. Okay. So is it your understanding that
16 a performance evaluation was done on Coach Cruce
17 because of what Steven Steele told you?

18 A. I don't remember if I asked
19 Steven Steele or if I asked the HR chief, but it is
20 my understanding that there were evaluations
21 completed for Mr. Cruce each of the years that he
22 worked under Steven Steele's direction.

23 Q. Okay. And are you talking about ADEPT
24 evaluations as a teacher?

25 A. Yes.

1 Q. Okay. Let me show you what we
2 previously marked as Exhibit 6, which is an
3 ADEPT -- I'm going to put it under the light. This
4 is Exhibit 6, and it's called ADEPT Goals-Based
5 Evaluation. I'm going to hand it to you so you can
6 look at it.

7 MS. BLOODGOOD: May I approach, Your
8 Honor?

9 THE COURT: You may.

10 BY MS. BLOODGOOD:

11 Q. Can you identify that as the evaluation
12 that's used on teachers?

13 A. Yes.

14 Q. And that's -- what year is that
15 evaluation for?

16 A. Current school year, 2014/15.

17 Q. And did Coach Cruce meet his goals in
18 that year?

19 A. It is marked that the employee meet the
20 above goal.

21 Q. Okay. And --

22 A. And one is, developed a new goal.

23 Q. Okay. The continuing contract that
24 teachers sign year to year goes -- and we've marked
25 it as Plaintiff's Exhibit 1 in this case. We put

1 several of them together. And it goes from --
2 the academic year spans two years usually, right?

3 A. Yes.

4 Q. So you start in June or July of one
5 year and you go into June of the next year; is that
6 correct?

7 A. Correct.

8 Q. I have a question for you, and I'm
9 going to hand you this document and you can look at
10 any page, but there is some writing on the very
11 bottom, or in here it -- let me ask you, you are
12 the --

13 MS. BLOODGOOD: May I approach, Your
14 Honor?

15 THE COURT: You may.

16 BY MS. BLOODGOOD:

17 Q. Do you agree that that contract also
18 covers Coach Cruce as a coach and athletic
19 director, as well as a teacher?

20 A. I will have to read the document.

21 Q. Sure. Go ahead.

22 (Brief pause.)

23 And, Ms. Blackburn, there are five sets
24 of the same contract. I don't want to confuse you.

25 A. I do not agree.

1 Q. You don't? So that contract is only a
2 contract for a teacher; is that correct?

3 A. It specifically speaks to the teacher
4 responsibilities.

5 Q. Okay. And that contract is not the
6 contract for the coach or the athletic director
7 position?

8 A. I would not view it as such after
9 having read it.

10 Q. All right. The ADEPT system that that
11 form is based on, it's a statewide system, correct?

12 A. Yes.

13 Q. It comes from the Department of
14 Education and all schools have to use it?

15 A. Yes, it does.

16 Q. Okay. And would it be fair to say that
17 when the goals are set for teachers, that usually
18 those goals are for the whole academic year?

19 A. Yes, they will be for the academic
20 year.

21 Q. Okay. So teachers are judged on
22 whether they meet their goals at the end of the
23 academic year, not in the middle of the academic
24 year, right?

25 A. They are assessed throughout the year.

1 Some might be completed in very quick, short time,
2 but, you know, they are assessed throughout the
3 school year to the point of their final evaluation.

4 Q. Is there anything in the State's ADEPT
5 system that would allow a teacher to be transferred
6 to another school or put in a different position
7 because of a difference in philosophy with the
8 principal?

9 A. I can't answer that from the
10 perspective of the ADEPT system. I don't know.

11 Q. Let me show you an exhibit we marked as
12 Number 7 earlier. Just to orient the jury, this is
13 an athletic annual review form, blank on the first
14 page. On the second page, there's some writing on
15 there.

16 Did you ever see this form prior to the
17 time that Coach Cruse was terminated? And I can
18 hand it to you if you'd like.

19 MS. BLOODGOOD: May I approach, Your
20 Honor?

21 THE COURT: You may.

22 THE WITNESS: I do not recall seeing
23 this specific form, although I am aware of the
24 contents.

25 BY MS. BLOODGOOD:

1 Q. And this is not a Berkeley County
2 School District approved performance evaluation
3 form, is it?

4 A. It says, Berkeley High School. It
5 doesn't say Berkeley County School District.

6 Q. Okay. So it's not approved by Berkeley
7 County School District, to your knowledge?

8 A. Not to my knowledge.

9 Q. Were you aware that the form that's
10 marked as Exhibit 7 that you just reviewed was kept
11 in Steven Steele's personal desk rather than going
12 to the HR office?

13 A. I don't recall having any knowledge of
14 that.

15 Q. Okay. Do you know of any Berkeley High
16 School principal or Berkeley County School District
17 teacher -- I'm sorry.

18 Do you know of any Berkeley High School
19 teacher or any Berkeley County School District
20 teacher while you were superintendent, other than
21 Coach Cruce, who was terminated halfway through the
22 school year for not meeting goals for the entire
23 academic year?

24 A. Would you restate that?

25 Q. Yes. Do you know of any teacher in

1 Berkeley County School District while you were
2 superintendent, who had goals for the whole
3 academic year, who was terminated halfway through
4 that academic year for not meeting the goals?

5 A. I'm not aware of that.

6 Q. Were you aware, when you transferred
7 Jeff Cruce, that his athletic eligibility files had
8 been audited and were fine for the last 20 years by
9 the high school -- South Carolina High School
10 League?

11 A. No, I was not.

12 Q. And you've been an administrator in
13 various school districts for a number of years; is
14 that correct?

15 A. Yes, it is.

16 Q. And during that time, have you ever
17 heard of a coach being terminated or a teacher
18 transferred mid year for not having enough parents
19 enrolled in the booster club?

20 A. At this point, I would say that that
21 was one part of the reason for the decision made
22 with Coach Cruce regarding performance at Berkeley
23 High School.

24 Q. My question was, have you ever heard of
25 a teacher or a coach -- a teacher being transferred

1 or a coach being terminated halfway through the
2 school year for not having enough membership in the
3 booster club?

4 MR. LAMBERT: Objection, Your Honor.

5 THE COURT: What's the basis.

6 MR. LAMBERT: Compound question.

7 THE COURT: Overruled. You may answer.

8 THE WITNESS: No.

9 BY MS. BLOODGOOD:

10 Q. After you accepted Steven Steele's
11 recommendation to fire Coach Cruce as head football
12 coach and as athletic director and you moved him
13 out of his teaching position to a middle school,
14 were you aware that a week earlier Coach Cruce had
15 e-mailed Charles Harrison to ask him if he had any
16 questions about the coaches' evaluations?

17 A. I don't recall that.

18 Q. And isn't it true that you did not know
19 Archie Franchini was going to take the actions he
20 did on December 16th against Coach Cruce on that
21 day?

22 A. That's not true.

23 Q. When did you find out that
24 Archie Franchini was firing Coach Cruce as head
25 coach, athletic director, and recommending

1 transfer?

2 A. Mr. Franchini was involved in a
3 conference with Steven Steele and Mr. Cruce at the
4 high school regarding the situation with the
5 football program and the athletic director.

6 Q. Yes.

7 A. I am copied on a letter from
8 Mr. Franchini. I've seen the letter and read the
9 letter and was aware of his position.

10 Q. Okay. And my question was, were you
11 aware of Mr. Franchini's position, either before
12 that meeting or before you received the letter?

13 A. No.

14 Q. Okay. And, in fact, I'm going to show
15 you Exhibit -- an exhibit that we've marked as 14
16 and I'll hand it to you. But this is a January 8,
17 2016, letter that you wrote to Coach Cruce. Your
18 signature is on the last page.

19 MS. BLOODGOOD: May I approach, Your
20 Honor?

21 THE COURT: You may.

22 BY MS. BLOODGOOD:

23 Q. If you turn to page 2, the second
24 paragraph in your letter, would you read the second
25 sentence in that second paragraph?

1 A. Your attorney indicated that you had
2 evaluations which essentially consisted of goal
3 sheets for the coaches and that they were available
4 on your desk.

5 Q. Okay. Thank you.

6 So you acknowledge in the letter that
7 you sent on January 8, 2016, that the district knew
8 the coach evaluations had been done. You were told
9 that, correct?

10 A. Based on what I just read here. You
11 advised that during the meeting that we held in
12 January.

13 Q. And did you reconsider your decision
14 after you knew that the coach evaluations had been
15 done?

16 A. Please restate that.

17 Q. Did you reconsider your decision to
18 transfer Coach Cruce to a middle school and put him
19 in a guidance counselor position after you knew the
20 coaches' evaluations were done?

21 A. No.

22 Q. Would you agree with me that a coach
23 has a prerogative to make decisions based on his
24 judgment for what's the best strategy to use in
25 football?

1 A. The principal hires the coach. The
2 coach does establish the guidelines for the
3 program, for the football program in this case.

4 Q. Okay. So you would agree with me that
5 it's the coach who has the prerogative to make
6 football decisions?

7 A. Within a realm of reason and also under
8 the direction of the school leadership. The
9 principal is the ultimate authority at the school
10 level.

11 Q. Is it your testimony that the principal
12 has authority to decide how the football games are
13 going to be run instead of the coach?

14 A. The principal has authority over the
15 coach. He does not decide the plays or, you know,
16 the actions of the team. The coach does that, but
17 the coach does work for the principal.

18 Q. Do you recall -- okay. Let me -- let
19 me just refresh your memory of your deposition.

20 MS. BLOODGOOD: Your Honor, can I hand
21 this to the Court Reporter?

22 THE COURT: You may.

23 THE COURT REPORTER: Court's
24 Exhibit 2.

25 (COURT EXH. 2, Deposition transcript,

1 was marked for identification.)

2 MS. BLOODGOOD: Thank you.

3 BY MS. BLOODGOOD:

4 Q. Dr. Blackburn, I'm handing you a copy
5 of your deposition I took several months ago. And
6 would you turn to page 54, please? And would you
7 read lines 19 to 21?

8 A. I think that the coach has the
9 prerogative to make decisions on what is the best
10 strategy to use in a game, considering all
11 strategies that are available.

12 Q. Thank you.

13 Do you know the difference between
14 being terminated for cause and being terminated for
15 no cause?

16 A. I do know the difference, yes.

17 Q. Okay. Could you explain what -- what
18 is the difference? What would be a termination for
19 cause?

20 A. The termination for cause would be a
21 failure to perform expectations related to your job
22 or to violate your contract in any other way.

23 Q. Okay. And, in your opinion, is
24 terminating a teacher halfway through the school
25 year for not meeting the annual goals termination

1 for cause?

2 A. I'm trying to in my mind -- are you
3 asking me specific to Coach Cruce? Because he was
4 not terminated as a teacher. He was transferred as
5 a teacher, so --

6 Q. I'm asking -- I am asking you specific
7 to him. And let me -- let me -- let me ask you
8 this: Do you know what the reason was for
9 Coach Cruce's transfer?

10 A. Yes, I do.

11 Q. What?

12 A. Coach Cruce was transferred because he
13 was no longer able to perform the duties of
14 athletic director and football coach in conjunction
15 with his assignment at that school. His presence
16 in the athletic program would have not allowed the
17 program to continue to move forward in a different
18 direction.

19 Q. And who told you that?

20 A. That is the conversation that I had
21 with Coach Steele -- with Principal Steele, rather.
22 And, also, that is my experience in having been in
23 other school systems where major changes in
24 athletic programs were deemed necessary.

25 Q. But why did you have to move him out of

1 the teacher position to a middle school?

2 A. Coach Cruce had brought influence
3 within the school. And for an athletic program to
4 begin anew, it would have been very difficult for
5 Coach Cruce to remain in that same setting.

6 Q. Did you ever have any conversations
7 with Coach Cruce asking him if he could stay on as
8 a teacher in that school?

9 A. I met with Coach Cruce and you, along
10 with Mr. Franchini and the attorney for the school
11 board, in my office in January. That was the only
12 meeting that I had directly with Coach Cruce. I
13 never really had an opportunity to speak with
14 Coach Cruce. He was not allowed to speak or answer
15 questions during the conversation that we had.

16 Q. And you never spoke to him prior to
17 December 16th or December 18th, when that letter by
18 Franchini was written, did you?

19 A. I have not spoken directly with
20 Coach Cruce. I spoke with his supervisor, with the
21 HR chief administrator, and with Mr. Franchini.

22 Q. And isn't it true that when you moved
23 Coach Cruce into a guidance counselor position in a
24 middle school, even though he got his salary the
25 first year, the second year and every year after he

1 would have made significantly less than he had been
2 making at Berkeley High School?

3 A. The movement during the year that -- of
4 the letter, for the remainder of the 2016/17 school
5 year was a hold harmless movement, in that the
6 salary, et cetera, would remain the same.

7 In the next years, there would be no
8 stipend for the additional activities of athletic
9 director and coach, unless he happened to assume
10 those responsibilities in another school.

11 Q. How is he going to be a high school
12 football coach when he's working in a middle
13 school?

14 A. We have middle school individuals who
15 coach high school athletics on a regular basis.

16 Q. He also would have received a lesser
17 salary as a guidance counselor than he would have
18 as a driver's ed teacher in the subsequent years
19 because of your transfer, correct?

20 A. Not to my knowledge. I'm not aware of
21 the difference in the days in the contract. Both
22 of those positions might have some supplemental
23 days, so I'm not -- I don't know that.

24 Q. You don't know. Okay.

25 And you were aware when you moved him

1 over to the middle school that he hadn't been a
2 guidance counselor for 24 years, right?

3 A. I was aware that he had not performed
4 in that capacity, but that he held full
5 certification by the State of South Carolina for
6 that job assignment.

7 Q. And in the letter that you have in
8 front of you, the January 8th letter, you promised
9 him that you would -- he would be provided
10 extensive training, didn't you?

11 I think it's on the bottom of the
12 second page.

13 A. I committed to have Patricia Reed, who
14 was the supervisor for the guidance counselors, to
15 provide him with extensive training. There are two
16 dates specified. I believe there was some conflict
17 with those two dates working out.

18 Q. Do you know --

19 A. To my knowledge, it was to be
20 rescheduled.

21 Q. Do you know if Coach Cruce ever got the
22 extensive training you mention in your letter?

23 A. I was not advised that he did not
24 receive it, so to my knowledge, I felt that he did
25 receive the training.

1 Q. Do you think it's okay, in your
2 capacity as a former superintendent, for a
3 principal to keep files on his teachers in his desk
4 that don't go to HR?

5 A. Depends on the files. You know, there
6 are some things that should be in an HR file. You
7 might have conference notes or other things like
8 that, but, in general, the actual personnel file
9 for teachers and others are maintained at the
10 central district office.

11 Q. Should nasty e-mails dated a year
12 earlier from a disgruntled parent be in that file?

13 A. It could be.

14 Q. What would the relevance of that be for
15 somebody?

16 A. I can't speak to that. I don't know
17 what e-mail you're talking about.

18 Q. Well, if there's a document in a file,
19 shouldn't it -- and it's significant, shouldn't it
20 go to the HR office?

21 A. Not necessarily an e-mail from a
22 disgruntled parent.

23 Q. So Berkeley County School District
24 keeps an HR personnel file and then allows its
25 principals to keep files in their desks that might

1 have nasty e-mails from parents in it?

2 A. I didn't say that specifically. I
3 said, there could be conference notes and there
4 could be e-mails that have been received. E-mail
5 makes everyone very open to the public. In fact,
6 teachers and parents routinely correspond via
7 e-mail.

8 Q. Wouldn't you agree with me that if the
9 e-mail was about a matter that was significant and
10 might affect the teacher's employment in the -- or
11 performance, that it should go into the HR file, it
12 shouldn't be in a principal's desk, right?

13 A. Not necessarily. It could have been
14 discarded if it were proven invalid; it could have
15 just remained as a piece of continuing evidence;
16 and it is a public information document. It could
17 be resurrected, regardless of whether it was thrown
18 away or placed in a personnel file or otherwise, so
19 it's there. It's a permanent record.

20 Q. If someone knows to say, besides giving
21 me your HR file, I would like any files that you're
22 keeping in your desk on my client, right?

23 A. (No response.)

24 Q. Okay. So about ADEPT now, do you think
25 it's okay, if somebody meets their goals on ADEPT,

1 to fire them anyway for not meeting their goals?

2 A. Are we speaking about the teacher
3 performance evaluation in relation to the coaching
4 responsibilities?

5 Q. Yes.

6 A. If you're talking about the case that
7 we're working on now, Mr. Cruce was not fired from
8 his teaching position. He was transferred to a
9 different location.

10 Q. And he was -- it was a demotion, wasn't
11 it?

12 A. No, not as a guidance -- from a driver
13 education teacher to a guidance counselor. They're
14 both teacher contracts; they're both equivalent
15 positions. I would rate them as comparable and of
16 the same value to the school system.

17 Q. You don't know if he was going to make
18 the same money -- you've testified you don't know
19 if he was going to make the same money.

20 A. I said he was going to make the same
21 money for the contract year that I dealt with.

22 Q. Right. Subsequent, you don't know what
23 he was going to make in those -- in those years
24 going forward, right?

25 A. I do not know because a contract had

1 not been issued for future years.

2 Q. And you're putting someone in a job
3 that he hasn't done for 24 years that you admit
4 needs extensive training. Now, that's a setup for
5 failure, isn't it?

6 A. I do not believe that I set Coach Cruce
7 up for failure.

8 Q. And you're taking someone whose career
9 is high school football and you're putting him in a
10 middle school. Why didn't you move him to a high
11 school?

12 A. At the time, I had an opportunity for
13 Coach Cruce to work with a school that needed
14 additional guidance counseling services, and I used
15 that opportunity to provide him with an appropriate
16 placement.

17 Q. There was no opening at Sedgefield when
18 you moved him --

19 A. There was no opening, but there was a
20 distinct need. And as superintendent, I determined
21 that it was the appropriate move for that school.

22 Q. Why didn't you ever direct anyone at
23 Berkeley County School District while you were
24 superintendent to say in conjunction with this
25 longtime football coach being fired as coach, fired

1 as athletic director, moved to a middle school to a
2 different job, taken out of his classroom, why
3 didn't you say, by the way, he's a good teacher?
4 He is not a bad teacher. We're not moving him for
5 that reason. And, by the way, he was athletic
6 director of the year last year. We're not moving
7 him for that direction.

8 Why was there no explanation by the
9 school district as to the actions taken against
10 him?

11 MR. LAMBERT: Objection, Your Honor;
12 argumentative.

13 THE COURT: Overruled. You may answer.

14 BY MS. BLOODGOOD:

15 Q. Why did Berkeley County School District
16 stay silent and not talk about Coach Cruce?

17 A. As a general rule, we would not make
18 statements about performance issues related to an
19 employee.

20 Q. But you would agree with me, that when
21 you take a teacher out of the classroom halfway
22 through the year, you move him somewhere else, you
23 fire him in two jobs he's had his whole career,
24 that there is an inference that he did something
25 wrong, isn't there?

1 A. People make their own assessments about
2 situations, yes.

3 Q. And you're not responsible for that?

4 A. I am not.

5 MS. BLOODGOOD: Okay. Thank you.

6 THE COURT: Mr. Lambert.

7 CROSS-EXAMINATION

8 BY MR. LAMBERT:

9 Q. Good morning, Ms. Blackburn. How are
10 you?

11 A. I'm good. Thank you.

12 Q. Good.

13 I don't think I'm going to take long,
14 but I wanted to clear up a couple of things. Do
15 you still have Exhibit 1 up there with you? It was
16 a contract for Mr. Cruce.

17 A. I do have them.

18 Q. Will you turn to the last page of that
19 exhibit please? It's his 2015/16 contract.

20 A. Yes.

21 Q. All right. You had been asked some
22 questions from Ms. Bloodgood about whether this is
23 just for teaching or it would also cover the
24 coaching, athletic director responsibilities.

25 I want to ask you about one line at the

1 end of paragraph 3. Do you see the last sentence
2 in that paragraph?

3 A. Yes.

4 Q. Would you please read that?

5 A. The administration may assign
6 reasonable extracurricular activities to the
7 employee.

8 Q. Coaching is an extracurricular
9 activity?

10 A. That is correct.

11 Q. What about being athletic director?

12 A. That would be -- it's an assigned
13 position, but it is not part of the regular
14 academic program, so it would be related to
15 extracurricular activities.

16 Q. Coach Cruce did not have a separate
17 contract with the district for coaching and being
18 the athletic director, did he?

19 A. Not to my knowledge, no.

20 Q. And looking at the bottom of that same
21 page, it is understood that this assignment is
22 tentative and may be changed by the administration
23 upon notice to and consultation with the affected
24 employee.

25 Did I read that correctly?

1 A. Yes, you did.

2 Q. Is that what happened to Coach Cruce
3 when he was reassigned to Sedgefield Middle School?

4 A. Yes.

5 Q. Is there anything in this contract that
6 requires him to remain head coach or athletic
7 director through the rest of the school year?

8 A. No, there is not.

9 Q. Ms. Bloodgood also asked you some
10 questions about whether the coach controlled the
11 football or the principal did. And your testimony
12 that you read from the deposition said it was the
13 coach's prerogative to choose the best strategy.
14 Do you recall that?

15 A. Yes, I do.

16 Q. All right. Among other things the
17 strategy should do, having your team win should be
18 one of the most important goals of the strategy,
19 right?

20 A. Yes, it is.

21 Q. Would you consider a successful season
22 for a school or school district to go three and
23 seven?

24 A. No.

25 Q. A little bit about football, you're not

1 from Moncks Corner originally, are you?

2 A. No, I'm not.

3 Q. Where are you from? What's your
4 background?

5 A. I'm from North Carolina. I've worked
6 in school systems in Florida, Virginia, and
7 North -- and South Carolina and North Carolina as a
8 classroom teacher, as a guidance counselor, as an
9 administrator, assistant principal, principal, area
10 superintendent, chief administrative officer for
11 curriculum and instruction. I've supervised a lot
12 of football games, but I'm not a football coach.

13 Q. What was your impression of what
14 football meant to Berkeley High School and to
15 Moncks Corner when you moved here?

16 A. Berkeley is very -- has been very
17 interested and has a long history in successful
18 athletic programs, as do most high schools, really.

19 Q. Is football a big deal in this town?

20 A. Yes, it is.

21 MR. LAMBERT: Those are all the
22 questions I have. Thank you very much.

23 THE COURT: Ms. Bloodgood, redirect?

24 MS. BLOODGOOD: No, Your Honor.

25 THE COURT: You may step down. Thank

1 you.

2 THE WITNESS: Thank you.

3 THE COURT: Call your next witness.

4 MS. BLOODGOOD: Principal Steele, Your
5 Honor.

6 MR. MORGAN: Ms. Blackburn is under a
7 subpoena. May she be released, Nancy?

8 THE COURT: You may be released. Thank
9 you.

10 THE WITNESS: Thank you.

11 THE COURT: You're free to stay with
12 us, however.

13 THE WITNESS: Thank you.

14 THE COURT: I meant to do that. Thank
15 you.

16 STEVEN STEELE,

17 being first duly sworn, testified as follows:

18 THE CLERK: State your full name for
19 the record and please spell your last name.

20 THE WITNESS: Steven Steele,
21 S-t-e-e-l-e.

22 DIRECT EXAMINATION

23 BY MS. BLOODGOOD:

24 Q. Mr. Steele, if you'll just wait one
25 second. I think it will be faster if I get these

1 exhibits together.

2 A. No problem at all.

3 Q. Make it move a little more smoothly.

4 All right. Mr. Steele, you're the
5 principal at Berkeley High School, correct?

6 A. Yes, ma'am.

7 Q. And while Coach Cruce was employed
8 there, he was the driver's ed teacher, correct?

9 A. Yes, ma'am.

10 Q. And you had no concerns at all with
11 Coach Cruce's performance as a driver's ed teacher,
12 correct?

13 A. None that I know of, no, ma'am.

14 Q. Okay. So no concerns at all about him
15 as a teacher?

16 A. In the classroom, no, ma'am.

17 Q. Okay. But you agree with me that when
18 teachers are fired in the middle of a school year
19 or transferred to another school to a different
20 position, that there's an inference that they've
21 done something wrong, correct?

22 A. Well, there's two different ways.
23 There's fired, which means they no longer work in
24 the district and --

25 Q. And let me rephrase that, because I

1 understand he was not fired. That's the wrong
2 word.

3 When a teacher is moved in the middle
4 of a school year to another school to a different
5 position, there is an inference that they've done
6 something wrong, correct?

7 A. People draw their own conclusions.

8 Q. Well, what was your conclusion when I
9 took your deposition? Didn't you agree with me
10 that that would create an inference of something
11 going wrong?

12 A. I'm saying it could, but I'm saying I
13 can't --

14 Q. Okay. And Coach Cruce's termination as
15 the football coach had nothing to do with his
16 performance as athletic director, did it?

17 Let me -- you did not fire Coach Cruce
18 as head football coach because you were
19 dissatisfied with his performance as athletic
20 director, correct?

21 A. Well, based upon the conversation
22 Coach Cruce and I had, something that I think we
23 talked about for his improvement, increasing the
24 booster club was one of the things we talked about
25 doing and just getting the coaches evaluations

1 done.

2 Q. You didn't terminate Coach Cruce based
3 on his performance as athletic director, correct?

4 A. Ma'am, there is a --

5 Q. Just let me ask you the question and
6 then you answer it.

7 A. Okay.

8 Q. You did not terminate Coach Cruce based
9 upon his performance as an athletic director,
10 correct?

11 A. Could you restate the question, ma'am?
12 I don't understand.

13 Q. You did not terminate Coach Cruce based
14 on his performance as athletic director?

15 A. Solely?

16 Q. That's my question.

17 A. No.

18 Q. Okay. In fact, the year you fired him
19 as athletic director, he had been named athletic
20 director of the region the year before, correct?

21 A. Yes, ma'am.

22 Q. Now, you could fire somebody as a
23 football coach because you're the principal, right?

24 A. Yes, ma'am.

25 Q. But when you fire someone as football

1 coach, there have been instances when you make a
2 change in the coaches, they don't necessarily lose
3 their teaching job, right?

4 A. True.

5 Q. In fact, it's typical for coaches to
6 stop being a coach but retain their teaching job,
7 correct?

8 A. Not -- at the same school?

9 Q. Yes, at the same school.

10 A. Usually, head coaches are not.

11 Q. Not a head coach, coaches.

12 A. Yes, ma'am, sometimes.

13 Q. Okay. And -- but there have been
14 examples of head coaches not being head coach and
15 still being athletic director and teachers, right?

16 A. Yes, ma'am.

17 Q. Okay. Now, when Jeff Cruce was the
18 football coach at Berkeley High School, you did not
19 think that the football practices included enough
20 hitting in the practice, did you?

21 A. The word, hitting, is used a lot, it's
22 been used a lot, but hitting, using that
23 terminology, does not mean physical contact in
24 football necessarily.

25 Q. Okay. Let me rephrase that.

1 When Coach Cruce was head football
2 coach at Berkeley High School, you did not believe
3 that he was doing enough blocking and tackling
4 during practices, did you?

5 A. No, ma'am.

6 Q. And up -- before 2015, none of the
7 coaches at Berkeley High School had ever been
8 evaluated; there were no evaluation forms, correct?

9 A. Correct.

10 Q. Okay. And you tasked Coach Cruce with
11 developing a form for coaches to be evaluated,
12 correct?

13 A. Yes, ma'am.

14 Q. Okay. Now, we've heard a lot of talk
15 about the booster club. That's a volunteer
16 organization, right?

17 A. Yes, ma'am.

18 Q. And it's run by the parents, right?

19 A. Yes, ma'am.

20 Q. And I understand that it's your
21 position that the athletic director -- the job
22 description says that the head -- or the athletic
23 director should work with parent organizations,
24 correct?

25 A. Yes, ma'am.

1 Q. It doesn't say they're supposed to run
2 them, does it?

3 A. No, ma'am.

4 Q. It doesn't say they're responsible for
5 the parent organizations, does it?

6 A. No, ma'am.

7 Q. Even assuming you could interpret that
8 job description as requiring the head football
9 coach to be responsible for the membership in a
10 booster club, you didn't fire him for any reason to
11 do with him being the athletic director, right?

12 A. That part -- can I -- I'm not sure how
13 to do this. The answer to your question is, the
14 athletic director works with the booster club. The
15 very reason why he works with the booster club --
16 in the booster club, the parents give their time,
17 their money and their effort to go ahead and
18 support the program more so than any other group of
19 people.

20 Some of them have kids at school. Some
21 of them do not have kids at school. So it's a
22 hodgepodge group of people that they have at
23 Berkeley High School. So, yes, I do believe the
24 athletic director should be working with them and
25 helping them in any way, again, because their main

1 purpose is to help our student athletes.

2 Q. I understand you're reading that into
3 the job description, that he should work with the
4 booster club. That's in there, that he should work
5 with them. It doesn't say anywhere in there that
6 he's responsible for their membership, does it?

7 A. No, ma'am.

8 Q. That's your interpretation?

9 A. Yes, ma'am.

10 Q. Okay. And so even if that job
11 description could be read to make him responsible
12 for membership in the booster club, you've already
13 testified that you didn't terminate him based on
14 his performance as athletic director, right?

15 A. As athletic director? No, ma'am.

16 Q. Okay. So even if it's in the job
17 description, it doesn't matter because that's not
18 why he was terminated. You said his performance as
19 athletic director was fine, right?

20 A. Except for two areas, yes, ma'am.

21 Q. What are the two areas?

22 A. The coaches' evaluations and working
23 with the booster club.

24 Q. The working -- working with the booster
25 club is in there?

1 A. Yes, ma'am.

2 Q. You fired him because he didn't
3 increase the membership in the booster club, right?

4 A. There were multiple reasons. That was
5 one of them.

6 Q. That was one of the reasons.

7 A. Yes, ma'am.

8 Q. Three reasons in the letters, right?

9 A. Yes, ma'am.

10 Q. One of them was the booster club
11 membership did not increase.

12 A. Correct.

13 Q. That's not in his athletic director job
14 description, right?

15 A. In the print, no, ma'am. In tradition
16 it is, though.

17 Q. What do you mean in tradition?

18 A. Most schools, the athletic director and
19 that present booster club -- the booster club work
20 hand in hand. They work to -- because they're all
21 working for student athletes.

22 Q. Can you name a school for me that would
23 require the athletic director to be in charge of
24 how many people are in the booster club?

25 A. No, ma'am, I can't.

1 Q. You can't?

2 A. No, ma'am.

3 Q. The second goal that you talk about on
4 this form that -- let's look at the form. It's
5 Plaintiff's Exhibit 7, and I can hand it to you.
6 Again, this is -- can you turn around and look at
7 it? And then I'll hand it to you. There is -- on
8 the top, is that your writing?

9 A. Yes, ma'am.

10 Q. On the second page, is that your
11 writing?

12 A. Except for Coach Cruce's signature,
13 yes, ma'am.

14 Q. You wrote all that in?

15 A. Yes, ma'am.

16 Q. Okay. So -- and I --

17 MS. BLOODGOOD: Can I approach, Your
18 Honor?

19 THE COURT: You may.

20 BY MS. BLOODGOOD:

21 Q. I'm going to hand you this so you have
22 it in front of you.

23 A. Thank you.

24 Q. The second goal on this form was
25 analytics, right?

1 A. Yes, ma'am.

2 Q. And that was spelled wrong, but that's
3 what you meant?

4 A. Yes, ma'am. I kind of wrote it quickly
5 when we were in the meeting.

6 Q. And to you, analytics means having a
7 winning season, doesn't it?

8 A. Well, if you're using analytics, it's
9 to give you an advantage over your opponent. So if
10 you're using analytics to give you an advantage
11 over your opponent, then that would equate into a
12 winning season.

13 Q. Okay. So you fired Jeff Cruce for not
14 having a winning season as a high school football
15 coach?

16 A. That's part of it also.

17 Q. Okay. It doesn't say anywhere on that
18 Exhibit 7 that one of the goals is to have a
19 winning season, does it?

20 A. No, ma'am. But why would you do
21 analytics otherwise?

22 Q. I'm asking you. I don't know what
23 analytics mean. I'm asking you. It doesn't say
24 anywhere on that form that if Coach Cruce doesn't
25 have a winning season, he's going to lose his job?

1 A. No, ma'am.

2 Q. Okay. Now, what does having a winning
3 football season have to do with a driver's ed
4 teacher?

5 A. I'm not -- I'm not really sure. Could
6 you restate it, please?

7 Q. Does having a losing football season
8 mean -- have anything to do with Jeff Cruce's
9 performance as a driver's ed teacher?

10 A. Oh, you mean his performance in the
11 classroom versus on the field?

12 Q. Correct.

13 A. No, ma'am.

14 Q. The third goal that you wrote on this
15 form that I just gave you -- it's Exhibit 7? Yes.
16 Okay -- was to do performance evaluations on the
17 coaches?

18 A. Yes, ma'am.

19 Q. And you -- one of the three reasons you
20 terminated him was because you said he didn't do
21 these performance evaluations, correct?

22 A. Yes.

23 Q. Did you see this e-mail that we have
24 marked as Plaintiff's Exhibit 11, which is the
25 e-mail from Jeff Cruce to Charles Harrison saying,

1 if you have any questions, you know, about the
2 evaluations let me know? Did you ever see that
3 before you fired Coach Cruce?

4 Do you want me to hand it to you?

5 A. No. I'm not sure if I did or not.

6 Q. Did you ever ask Coach Cruce for the
7 performance evaluations?

8 A. No.

9 Q. So you fired him without even asking
10 him for the coaches' evaluations?

11 A. Yes, ma'am.

12 Q. Let's talk about July 30th, when you --
13 when this form was initialed by Coach Cruce. At
14 that time, it was still a work in progress, wasn't
15 it?

16 A. That was -- we actually talked about
17 that meeting. July 30th, Coach Cruce came to my
18 office. He had this with him. He said, does this
19 look good to you? I said, yes, it does.

20 Q. And it was blank?

21 A. Yes, ma'am.

22 Q. Okay.

23 A. And I said, well, okay. Let's go ahead
24 and just -- since we've got to do this, let's go
25 ahead and do yours now.

1 Q. Do yours what?

2 A. His -- this form. And he said, okay.

3 So then we sat down and he said, I'm
4 going to be using analytics, because I -- there's
5 one gentleman in Little Rock who does the no
6 punting and does all this stuff, so I'm going to
7 use analytics this year.

8 And that's where he talked about
9 earlier about telling me about the no-kick rule.

10 When he said, no punting, it also meant
11 no kicking extra points, no punting under any
12 situation, 4th and 20 doesn't matter, and no
13 kickoffs. So all of our kickoffs were -- basically
14 were either muffs or short little kicks instead of
15 deep kicks.

16 And that's where that whole
17 conversation kind of went down with our analytics,
18 him explaining all of that. And that's why
19 analytics was number one.

20 Q. You understand that Coach Cruce denies
21 he ever saw this form filled in and had no
22 conversations with you on July 30th, right?

23 A. Yes, ma'am. I know that's what he
24 says.

25 Q. And according to the form, it says pre

1 and post near his signature, doesn't it?

2 A. Yes, ma'am, I wrote that in.

3 Q. You wrote that in?

4 A. Pre and post. When he started to sign
5 employee signature, I said, if we do it there, then
6 how do we know that this was agreed upon before the
7 season or after the season, or if it's just walk in
8 and sign off on something? That's why the form was
9 fixed, and he sent it to me, I think, he said,
10 August 6th, the updated one.

11 This should say preseason, before the
12 season starts, and then after the season starts.
13 So that's why when you see post, he started
14 signing, and I was like, wait a minute. We can't
15 do that because then there's no way to do the
16 evaluation after the season.

17 Q. So are you telling me he came back in
18 and he signed postseason?

19 A. No, ma'am. He did it both at the same
20 time.

21 Q. He signed pre and post before the
22 season began?

23 A. Ma'am, that's why we're saying is, that
24 when I wrote preseason, postseason, postseason
25 meaning it would be afterwards. That's why I

1 stopped him from signing this.

2 Q. You have two signatures, one preseason
3 and one post, right?

4 MS. BLOODGOOD: If I could approach,
5 Your Honor, I will put it under so the jury can see
6 it?

7 THE COURT: You may.

8 BY MS. BLOODGOOD:

9 Q. If -- can you turn around a little bit?
10 On the top where it says, pre, I guess that's
11 supposed to be preseason, that's Jeff Cruce's
12 initials or signature, right?

13 A. Well, that's him starting it.

14 Q. Okay. And then you told him to sign
15 below the line. And he signed again, correct?

16 A. Yes, ma'am.

17 Q. And on one you've got pre, and on one
18 you've got pre on the bottom and post on the top?

19 A. Yes, ma'am.

20 Q. But he did that the same day, right?

21 A. Yes, ma'am. But it wasn't supposed --
22 I stopped him for postseason. That's why his full
23 name -- if you look at his full name -- I'm sorry.

24 Q. No, I'll put it up for you.

25 A. Thank you.

1 That's why he stopped, because I told
2 him we can't do it like that. That's why I didn't
3 sign it either.

4 Q. But on the same day you put in pre and
5 post -- or later on sometime, you wrote in pre and
6 post?

7 A. It was -- he was right there with me.

8 Q. Why would you put on an evaluation
9 form -- if you want him to sign it before the
10 season and you want him to sign it after, why would
11 you have pre and post on the same day before the
12 season starts?

13 A. Because we were taking that form.

14 Q. It was not a final form, was it?

15 A. After we figured out it didn't have a
16 preseason and postseason, you're correct. Before
17 then, this was a final form.

18 Q. Well, Coach Cruce, on the forms that he
19 uses for all the -- for all the coaches he
20 evaluated, he didn't use pre and post, did he?

21 A. No, ma'am.

22 Q. He used whether it was a winter,
23 spring, or fall sport, right?

24 A. Yes, ma'am.

25 Q. Summer sport. Okay.

1 Now, after this form that we've been
2 talking about, 7 -- which is blank on the first
3 page, right?

4 A. Yes.

5 Q. After you say that this was filled out
6 on July 30th, you never talked to Coach Cruce about
7 this form again, did you?

8 A. No, ma'am.

9 Q. You didn't show it to him or talk to
10 him about it on November 18th, when you told him
11 that the community thought he wasn't hitting enough
12 and you agreed with them?

13 A. Did I show it to him on November 18th?

14 Q. Correct.

15 A. No, I did not show it to him on
16 November 18th.

17 Q. You didn't show it to him on
18 December 16th, when you and Franchini told him you
19 were going to fire him?

20 A. No, ma'am.

21 Q. It's not mentioned in the December 18th
22 letter, correct?

23 A. No, ma'am.

24 Q. You never gave it to HR?

25 A. No, ma'am.

1 Q. You stuck it in your desk?

2 A. Yes, ma'am.

3 Q. If this is something that you think is
4 so important that you're going to fire somebody
5 over it, somebody that's been a teacher for almost
6 30 years, don't you think it would be a good idea
7 to put it in the HR file, talk to him about it
8 before you fire him?

9 A. The HR department part, it wouldn't go
10 to HR because that's just with the athletic
11 director coaching, which is a stipend. It's not
12 part of the teaching evaluation, so it wouldn't go
13 into that normal form with -- for that.

14 Q. Don't you think it would be fair to
15 talk to him and say, I'm going to fire you because
16 you didn't do the coaches' evaluations? And say,
17 did you do the coaches' evaluations?

18 A. That would be fair.

19 Q. You didn't do that, did you?

20 A. No, ma'am.

21 Q. Don't you think it would be fair to
22 say, we better wait until the end of the school
23 year to see what the booster membership is because
24 it's only halfway through the year? So you don't
25 even know the booster club membership in December

1 of 2015, for that whole year, did you?

2 A. Based on the trends for the past five
3 years and based upon what the booster club was
4 telling me, no, ma'am, it was not increasing.

5 Q. You were just guessing.

6 A. I was going off of information that
7 people were giving me.

8 Q. But the parents for the tennis and the
9 baseball and all those spring and summer sports
10 hadn't signed up yet, had they?

11 A. They had not. They had only signed up
12 for -- the form you showed before, that was the end
13 of each year. That wasn't the -- like, this is the
14 fall, this is the winter, this is the spring
15 membership.

16 Q. You're talking about the booster club
17 chart that the jury will see?

18 A. Yes, ma'am.

19 Q. You realize that that last number, 15,
20 for that last year is only half a year because it's
21 December? They haven't signed up yet for the
22 spring. You know that, right?

23 A. Can you show me the form again, ma'am,
24 so I can make sure?

25 Q. Sure. Let me see. Where it is. 17,

1 okay. It's the last one here.

2 Okay. Here's 17. This is the booster
3 club -- now, let's look down at 2015 to 2016, the
4 last line.

5 A. Yes, ma'am.

6 Q. Do you see that?

7 A. Yes, ma'am, I saw it.

8 Q. And it's number 15.

9 A. Yes, ma'am.

10 Q. Now, Coach Cruce was fired in December
11 of 2015. That's halfway through the 2015/16 school
12 year, right?

13 A. Yes, ma'am.

14 Q. So that number 15 cannot be reflective
15 of the entire year for 2016, can it?

16 A. That is the total number for -- the
17 school year '15 and '16, that's the total number
18 for school year '15 and '16.

19 Q. So you think that the number 15 is the
20 total booster club number through June of 2016?

21 A. Yes, ma'am.

22 Q. You do? Okay.

23 All right. Now, by November of 2015,
24 you were keeping a file on Coach Cruce, because you
25 were told by the district that if you wanted to get

1 rid of him, you had to do that, right?

2 A. Yes.

3 Q. And what were you putting into that
4 file that wasn't in the HR file?

5 A. Well, the interim superintendent said
6 to take anything that people were saying, anything
7 that could be explained how the community felt
8 about Coach Cruce or anything that was going on
9 into the file. So I followed the instruction.

10 Q. Who told you that?

11 A. Dr. Mike Turner.

12 Q. So that's how Berkeley County School
13 District treats its teachers, huh? You had files
14 on them of things that people say about them?

15 A. Ma'am, the football coach is -- is a
16 different beast; it's not an algebra teacher or
17 English teacher or anything else. In most places,
18 the football coach is the most recognizable person
19 of the school.

20 It is the -- the old adage is, the most
21 three important people of the school are football
22 coach first, band director second, and principal
23 third, because that's the person who leads the
24 school. That's the face of the organization.
25 That's the one that's always in the newspaper.

1 That's the one that's always on the news, always in
2 the print.

3 Q. Principal Steele, I understand that,
4 but this is Berkeley County, South Carolina. This
5 is not professional football. This is not big
6 college football. This is Berkeley County, South
7 Carolina. Don't you think that principals, even
8 you, everybody in Berkeley County School District
9 who works here should know that they have a
10 professional HR department that is going to
11 evaluate their performance, and that it's not done
12 on files kept in people's desks about what
13 people -- what people in the community say?

14 MR. MORGAN: Objection; argumentative.

15 THE COURT: Sustained.

16 BY MS. BLOODGOOD:

17 Q. Do you believe it's fair for employees
18 to be judged, rather than on performance appraisals
19 and with good professional HR criteria and
20 protocol, based on files kept in people's desks?

21 A. I'll answer the question the best I
22 can. There is a lot of talk about ADEPT and all
23 that -- and all that. That's inside the classroom.
24 That is teaching with 30 students inside your
25 classroom and certain standards that all apply.

1 What you're talking about is a
2 situation where the head of the organization, the
3 person who is the most seen person in public and
4 all, how they act, how they behave, how they
5 perform.

6 So if it comes to a point where the
7 community can't handle the person anymore or there
8 is such animosity towards somebody anymore, that
9 does factor into certain situations whether -- it's
10 any job.

11 Q. So even if the community is the reason
12 that you decided, you listened to the community,
13 you didn't want to upset -- you do decide you're
14 going to terminate Coach Cruce as football coach,
15 there was no reason for you to terminate him as
16 athletic director, right?

17 A. He did not fulfill the part.

18 Q. You testified his performance as
19 athletic director was fine, except for the booster
20 club, right? The membership?

21 A. The booster club and the coaches'
22 evaluations.

23 Q. He did the coaches' evaluations. You
24 just didn't ask him for them, right?

25 MR. MORGAN: Objection; argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: Ma'am, by the time we
3 got -- one season should have been over. One
4 season should be there, should be starting, so --

5 BY MS. BLOODGOOD:

6 Q. No. My question was, you did not --
7 you fired him for not doing the coaches'
8 evaluation, but you didn't ask him for them?

9 A. No, ma'am.

10 Q. Okay. You have a meeting with
11 Franchini, Archie Franchini, who is the -- what was
12 his title?

13 A. I want to say deputy superintendent,
14 but I don't want to --

15 Q. He was a -- he was some type of deputy
16 superintendent on December 16th, and you have
17 nothing in your hands. You just called Coach Cruce
18 in and said, we're firing you as football coach,
19 we're firing you as athletic director, and you're
20 going to get transferred to a middle school into a
21 different position, right?

22 A. That was a conversation between
23 Mr. Franchini, myself, and Coach Cruce.

24 Q. Okay. And when did Franchini find out
25 this was all happening?

1 A. I think sometime in November the
2 discussions were going on.

3 Q. What discussions were going on?

4 A. Dr. Mike Turner, after the -- in
5 September, after we went one and two, and two games
6 went -- we gave up over 70 points, at that point,
7 from my understanding, Mr. Charlie Davis,
8 Mr. Archie Franchini, and Dr. Mike Turner, who was
9 acting superintendent at that time, basically at
10 that time point, they were saying, we have to see
11 what we're going to do and what we're going to need
12 to do it.

13 Q. You decided back in November you were
14 firing Coach Cruce then?

15 A. No, ma'am. I said that's where all the
16 information was being -- the first meeting to make
17 a determination.

18 Q. That's when you were told to start
19 keeping the file?

20 A. No, ma'am. The file was in September.

21 Q. You started the file in September?

22 A. Yes, ma'am.

23 Q. And in that file, you put in e-mails
24 that were dated a year earlier, didn't you?

25 A. Yes, ma'am.

1 Q. And you testified when I took your
2 deposition that Superintendent Blackburn wanted to
3 fire Cruce very quickly, right?

4 A. Yes, ma'am.

5 Q. And that you told her you had not done
6 those coach evaluations on Coach Cruce?

7 A. I don't recall that. I'm sorry.

8 Q. Okay. Let me show you what we --

9 THE COURT: Let's take a comfort break.

10 Ladies and gentlemen, please remember
11 all of my admonitions. Leave your notepads right
12 there or take them with you.

13 Please rise for the jury.

14 (Jury out, 12:10 p.m.)

15 THE COURT: Thank you. You may step
16 down. Please do not discuss this case with anyone.
17 Thank you.

18 Counsel, just approach for a moment.

19 (Bench conference.)

20 (A recess transpired.)

21 (Jury in, 12:25 p.m.)

22 THE COURT: Thank you. Please be
23 seated.

24 I know, ladies and gentlemen, these are
25 long days where you're having to sit and you

1 normally probably don't. So please just stay
2 focused. We will take our break at 2:00 and have a
3 nice, long lunch break at that time. So please
4 give your strict attention.

5 Ms. Bloodgood.

6 MS. BLOODGOOD: Thank you, Your Honor.

7 THE COURT: Thank you.

8 BY MS. BLOODGOOD:

9 Q. Mr. Steele, when we -- just before we
10 took the break, am I correct that you told me that
11 you talked to Archie Franchini about Jeff Cruce
12 prior to December 16th?

13 A. Yes, ma'am.

14 Q. Do you think it could have been some
15 other superintendent that you talked to?

16 A. It could have been Dr. Turner, but I
17 thought it was -- there were so many meetings in
18 that time period. It might have been Mr. -- it
19 might have been Dr. Turner.

20 Q. Okay. So it's possible you did not
21 talk to Archie Franchini about firing Jeff Cruce
22 until December 16th?

23 A. But he wouldn't have been the one that
24 made the decision.

25 Q. My question is, is it possible you did

1 not talk to Archie Franchini about firing
2 Jeff Cruce until December 16th?

3 A. It would had to have been before then,
4 and the reason I say that is because we had to
5 coordinate our times together to set the meeting
6 up.

7 Q. Okay. Well, you may have said, let's
8 have a meeting, but you didn't talk to him about
9 Jeff Cruce until December 16th?

10 A. No, nothing like -- nothing like
11 definite, no, ma'am.

12 Q. Okay. Thank you.

13 All right. I'm going to show you a
14 letter. I'll put it up so the jury can see it.
15 This is the -- it's actually an e-mail. It's
16 Plaintiff's Exhibit 13. It's an e-mail that
17 Chris Stevens sent to a bunch of people. In it he
18 says that Jeff Cruce's athletic director files were
19 a liability to the school. There were problems.
20 Are you familiar with this e-mail?

21 A. Yes, ma'am.

22 Q. And you agree that this e-mail should
23 not have been sent, don't you?

24 A. It needed -- we needed documentation to
25 go out to everybody. No, it didn't need -- well,

1 let me phrase this. Did it need to be sent out
2 exactly the way it was sent out? No. Did the
3 coaches need to know there might have been some
4 files missing? Yes.

5 Q. But the way it was done, that e-mail
6 was not appropriate, right?

7 A. The content of it was, but the way he
8 did it was not.

9 Q. It should not have been sent, right?

10 A. An e-mail or some kind of communication
11 should have went out saying that there were things
12 we were looking for. Should it have been sent out
13 like this -- I'm just trying to make sure I
14 understand.

15 It being sent out like this, I'm not
16 sure I agree that it should have been sent out like
17 this.

18 Q. Right. And why shouldn't it -- why
19 shouldn't it have been sent out like this?

20 A. Because my -- I did not review it
21 before it got sent out.

22 Q. And there were a lot of people on there
23 that are learning about -- that are being told that
24 Jeff Cruce was not competent to keep these files,
25 aren't there?

1 MR. MORGAN: That calls for a legal
2 conclusion.

3 THE COURT: Sustained. Rephrase your
4 question.

5 BY MS. BLOODGOOD:

6 Q. Do you agree with me that this e-mail
7 infers that Coach Cruce has been doing a bad job
8 keeping his files on the students? And I can hand
9 it to you.

10 A. Yeah, please, if you don't mind.

11 MS. BLOODGOOD: May I approach, Your
12 Honor?

13 THE COURT: You may.

14 THE WITNESS: Can you ask the question
15 one more time to make sure I answer correctly?

16 BY MS. BLOODGOOD:

17 Q. I think I asked you, that you agree the
18 e-mail should not been sent by Chris Stevens?

19 A. An e-mail -- this e-mail, the way it's
20 formatted up?

21 Q. Right.

22 A. I would not have sent it like this.

23 Q. Okay. And then I asked you, why not?

24 A. Well, the reason why I wouldn't send it
25 out like this is, quite frankly, when you look at

1 all the information here and everything else, it
2 doesn't mention these students' names. It doesn't
3 mention any sports names. It doesn't do anything
4 specific.

5 It's very broad based to where this --
6 instead of being broad based for all the coaches to
7 go back and check everything, so we had to do it
8 individual sports.

9 Q. And it also is talking about a former
10 employee, right?

11 A. Oh, yes, ma'am.

12 Q. And talking about problems that have
13 been found in his office, correct?

14 A. Yes, ma'am.

15 Q. And some of the people on that list are
16 not Berkeley County employees, right?

17 A. That's kind of always been a weird
18 thing in Berkeley County about the volunteer
19 coaches, because volunteer coaches have to be
20 cleared by Berkeley County. They have to go to
21 training by Berkeley County and all, so they're --
22 so that way if there's an issue with a volunteer
23 coach, they can be dealt with by Berkeley County.

24 Q. I understand a volunteer coach may be
25 on your workers' comp policy, but you don't pay

1 them, right?

2 A. No. Volunteer coaches, no, ma'am, but
3 they're kind of held to the same standard as
4 everybody else.

5 Q. You think they have a right to know
6 what a former employee's files are like in his
7 office?

8 A. They have a right to know that the
9 students -- there's stuff missing.

10 Q. But if that information is false,
11 should they have been told that?

12 A. If it was false.

13 Q. If it was false what?

14 A. They should have been told that it was
15 false.

16 Q. Thank you.

17 A. But there were files missing.

18 Q. Okay. After Coach Cruce was terminated
19 as head football coach, AD, and transferred to a
20 middle school, you spoke to the press, didn't you?

21 A. No, ma'am.

22 Q. Did you have any input into the press
23 release?

24 A. To the *Post and Courier*?

25 Q. Yes.

1 A. No, ma'am.

2 Q. Did anyone contact you from the press?

3 A. No, ma'am.

4 Q. Okay. Did you talk to anyone at the
5 school about what should be said to the press?

6 A. The district office, yes, ma'am.

7 Q. Okay. So you talked to the district
8 office, and what did you tell the district office?

9 A. They said that -- I talked to the --
10 let me think of her title -- communications
11 director -- or communications liaison, I guess, is
12 the best way to say it.

13 Q. They told you to talk to that person?

14 A. Who?

15 Q. The communications person?

16 A. No. The communications person is the
17 person I talked to. I never spoke to the press
18 about this.

19 Q. Okay. So you talked to the Berkeley
20 County School District communications person?

21 A. Right. And they talked to the press.

22 Q. Okay. And why did you not, when you
23 talked to that communications person, say, oh,
24 yeah, we're firing him as head coach, we're going
25 in -- you know, we don't like him as head coach,

1 but he was a great athletic director, athletic
2 director of the region last year, don't have a
3 problem with him as an athletic director. He's not
4 being fired because he's a teacher. We're not
5 taking him out of the classroom mid year because he
6 did something wrong? Why didn't you say that?

7 A. Ma'am, this is -- this was a press
8 release from the district.

9 Q. No. I'm asking you, why didn't you say
10 that to the communications director so that's what
11 she could tell the press?

12 A. Because, ma'am, that is about as bland
13 as you can be. It's not good; it's not bad.

14 Q. Yet you agree that an article in the
15 newspaper indicating that a coach has been suddenly
16 dismissed mid year is harmful, don't you?

17 A. If that coach -- that there's been no
18 known reason for that.

19 Q. Right. If you don't say way, it's
20 harmful, isn't it?

21 A. Well, everybody kind of knew why.

22 Q. Who's everybody?

23 A. Well, if you're three in seven, and you
24 get released as a head coach, people can kind of
25 put the dots together.

1 Q. What does that have to do with you
2 firing him as AD and taking him out of the
3 classroom mid year and moving him to another
4 school?

5 A. I didn't move him to another school.

6 Q. That -- you agree with me, that doing
7 all of those things at once and not saying anything
8 makes a statement in its own right that he did
9 something wrong, right?

10 MR. MORGAN: Objection; calls for a
11 legal conclusion.

12 THE COURT: Sustained.

13 BY MS. BLOODGOOD:

14 Q. Okay. Let me ask you another way. Do
15 you understand that an article in the newspaper
16 where a coach is suddenly dismissed mid year,
17 academic year, would be harmful to him? What would
18 your answer be to that?

19 A. Can you rephrase the question?

20 Q. Do you understand that an article in
21 the newspaper where a coach is suddenly dismissed
22 mid year, academic year, would be harmful to him?

23 A. To a coach?

24 Q. Yes.

25 A. Not necessarily.

1 MS. BLOODGOOD: Okay. Your Honor,
2 could I hand this to the court reporter so she can
3 open it?

4 THE COURT: You may.

5 THE COURT REPORTER: Court's Exhibit 3.

6 (COURT EXH. 3, Deposition transcript,
7 was marked for identification.)

8 BY MS. BLOODGOOD:

9 Q. This is a copy of your deposition. And
10 would you turn to page 111, please?

11 A. Okay.

12 Q. Would you please read to the jury
13 lines 3 to 6.

14 A. You understand that an article in the
15 newspaper where a coach is suddenly dismissed mid
16 year, academic year, could be hurtful to him,
17 harmful to him.

18 Oh, yes, ma'am.

19 Q. Oh, yes, ma'am. Thank you.

20 Now, Mr. Steele, you took some notes
21 that we have marked as Plaintiff's Exhibit 20 -- I
22 think that's 27.

23 THE COURT REPORTER: 21.

24 MS. BLOODGOOD: 21?

25 THE COURT REPORTER: Sorry.

1 MS. BLOODGOOD: Okay. 21.

2 BY MS. BLOODGOOD:

3 Q. It says, Coach Cruce meetings. And I
4 will hand it to you so you can look at it, but do
5 you recognize that document?

6 A. Oh, yes, ma'am.

7 Q. Okay.

8 A. Oh, sorry. Yes, ma'am.

9 MS. BLOODGOOD: Your Honor, may I
10 approach?

11 THE COURT: You may.

12 BY MS. BLOODGOOD:

13 Q. The first entry on those notes is
14 July 30th; is that correct?

15 A. Yes, ma'am.

16 Q. So you started taking notes on
17 Coach Cruce on July 30th, right?

18 A. No, ma'am.

19 Q. Do you have other notes that you took
20 on Coach Cruce?

21 A. No, ma'am. In September, Dr. Turner
22 kind of said to take notes from the meeting.

23 Q. So you went back -- in September, you
24 went back to July and started documenting meetings?

25 A. Yes, ma'am.

1 Q. On that July 30th meeting, which is the
2 first entry, you don't make any discussion of
3 discussing goals with Coach Cruce or giving him a
4 goal sheet or doing anything with goals, do you?

5 A. No, ma'am.

6 Q. Now, let me hand you two exhibits at
7 once, and I'm just -- one of them we've marked as
8 Plaintiff's 25, and it appears to be an e-mail to
9 you dated a year earlier, September 13, 2015. And
10 I'm going to -- I'll hand it to you, too. I know
11 the screen is bad.

12 And the other one is Plaintiff's 26,
13 which is another e-mail from a year earlier from a
14 person named Kim Collins to you about the varsity
15 coach.

16 Are these two examples --

17 MR. MORGAN: Objection, Your Honor. I
18 think that's a mischaracterization of the date,
19 2015 date. That was not the prior year. That was
20 the year in question.

21 MS. BLOODGOOD: Oh, I'm sorry.

22 THE COURT: Thank you.

23 MS. BLOODGOOD: Okay. 2015 is the same
24 year.

25 May I approach, Your Honor?

1 THE COURT: You may.

2 BY MS. BLOODGOOD:

3 Q. Are these two of the e-mails that you
4 were keeping in the file that you were -- for
5 Coach Cruce that the superintendent -- the deputy
6 superintendent told you to keep?

7 A. Yes, ma'am.

8 MS. BLOODGOOD: Okay. I don't have any
9 other questions. Thank you.

10 THE COURT: Mr. Morgan.

11 MR. MORGAN: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. MORGAN: Ladies and gentlemen.

14 CROSS-EXAMINATION

15 BY MR. MORGAN:

16 Q. Mr. Steele, let me see whether I can --
17 do you have Exhibit 7 up there? That's the
18 evaluation form.

19 A. I don't think -- no, sir.

20 Q. I have it. Thank you.

21 MR. MORGAN: May I approach, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. MORGAN:

25 Q. Mr. Steele, I will show you that

1 exhibit that's been marked as Exhibit 7.

2 A. Uh-huh.

3 Q. Back on page 2 --

4 A. Yes, sir.

5 Q. -- what information was on that form
6 when Mr. Cruce left your office on July 30th of
7 2015?

8 A. Everything that's on here.

9 Q. Okay. And the signatures are signed on
10 the pre box, correct?

11 A. Correct.

12 Q. And is it your understanding that a
13 normal evaluation that sets goals would then be
14 assessed at a later point in time at a
15 post-assessment period?

16 A. Yes, sir. That's why the form was not
17 right and he had to submit a new one.

18 Q. So on that form you had analytics,
19 coaches' evaluations, and booster membership?

20 A. Yes, sir.

21 Q. And it's your testimony that the
22 booster club membership information on the exhibit
23 that the jury has seen had the information for the
24 entire school year of 2015/16?

25 A. Yes.

1 Q. Coaches' evaluations, that's another
2 item on there, correct, sir?

3 A. Yes, sir.

4 Q. Okay. At any time after having a
5 discussion with Mr. Cruce in the spring of the year
6 about doing coaches' evaluations, your meeting on
7 July 30th, did he ever come back to you and show to
8 you the evaluations he said he conducted on the
9 assistant coaches?

10 A. No.

11 Q. When you met with Mr. Franchini and
12 Mr. Cruce in December and -- you told him that one
13 of the reasons why he was being released as head
14 coach and athletic director, one of those reasons
15 was the coaches' evaluations?

16 A. Correct.

17 Q. Did he offer to you at that point in
18 time that he had those evaluations done?

19 A. No.

20 Q. At any time, up through the meeting of
21 January 8th with Superintendent Blackburn, did he
22 ever come forward and present to you those
23 associate evaluations?

24 A. No.

25 Q. Or coaches' evaluations?

1 A. No.

2 Q. And the coaches' evaluations and the
3 booster club, I understand your testimony, that
4 went to the athletic directorship role that he held
5 at Berkeley County, correct?

6 A. Yes, sir.

7 Q. Tell me what you define as analytics.

8 A. Analytics, I mean, analytics is -- is a
9 buzzword in a lot of ways. Basically, analytics is
10 statistics. That's all it is. And they made a big
11 movie about it called "Moneyball" and, basically --

12 Q. Great movie, though, right?

13 A. Great movie. Great acting. But --
14 that was my opinion.

15 But my point being is, is that with
16 analytics -- you're supposed to be using analytics
17 to make your team better. You don't -- every coach
18 uses stats to make their team better.

19 If this team runs to the right so many
20 times and they get six yards with running to the
21 right, and if I get three yards running to the
22 left, looking at statistics, I run to the right
23 versus to the left. Analytics is just a fancy word
24 for statistics.

25 And then using the analytics, you're

1 supposed to look at what we were doing well and
2 what we're not doing well. So if I'm scoring X
3 amount of points and the other team is scoring more
4 points than me, then my analytics need to be looked
5 at again, and then I need to adjust after I look at
6 analytics.

7 Analytics is supposed to be an
8 adjustment, a constant look at numbers and a
9 constant adjustment.

10 Q. And based upon Mr. Cruce's use of
11 analytics during that 2015 football season, his
12 record was what? Three and seven?

13 A. Three and seven.

14 Q. Three and seven. That's not a very
15 successful use of analytics, is it, sir?

16 A. No.

17 Q. Let me pull up Exhibit 21. Do you
18 still have that up there, sir? That's the
19 Coach Cruce meeting?

20 A. Yes.

21 Q. At some point after the football team
22 went to a one and two record, I think you testified
23 that there was a lot of community discussion; is
24 that correct?

25 A. Oh, yes.

1 Q. And part of community discussion in
2 today's world is use of social media, isn't it?

3 A. Yes, sir.

4 Q. People use Facebook, correct?

5 A. Yes, sir.

6 Q. Are you on Facebook?

7 A. Yes, sir.

8 Q. Did you see anything on Facebook where
9 people in the community were concerned about the
10 trend in the football team and the 2015 season?

11 A. I had things sent to me, but not
12 personally, no.

13 Q. Okay. Did you hear out in the
14 community concerns about what was going on?

15 A. Yes, sir.

16 Q. And, in fact, at one point, Mr. Steele,
17 isn't it true that you had heard that there were
18 going to be protests at the Berkeley County
19 football game?

20 A. Oh, yes, sir. It was it was getting
21 ready to be interesting, but ...

22 Q. And you recorded that in your notes --

23 A. Yes, sir.

24 Q. -- that you took in the fall of 2015,
25 correct?

1 A. Yes, sir.

2 Q. Those are recorded on this document
3 that you kept?

4 A. Yes, sir.

5 Q. And it was so bad that you had to get
6 police protection for Mr. Cruce, didn't you?

7 A. Yes, sir.

8 Q. And, in fact, it was so bad in the
9 community that you even offered to have a police
10 officer sit by Mrs. Cruce at a football game,
11 correct?

12 A. Yes, sir.

13 Q. Is it fair for me to ask you this
14 question? I think it is. You cared about the
15 Cruce family and you were trying to protect them,
16 weren't you, sir?

17 A. Nobody deserved the things that he was
18 going through.

19 Q. And, in fact, you tried to protect he
20 and his family by making sure that they had police
21 protection?

22 A. Yes, sir. He'd also had threats also
23 that the police had investigated.

24 Q. And you were doing your job then to
25 take not only care of health and safety of Mr.

1 Cruce and his family, but of your students and your
2 student body?

3 A. Yes, sir.

4 Q. In fact, sir, that's foremost in what
5 you try to do is the health and safety and welfare
6 of your students at Berkeley High School, correct?

7 A. That's number one.

8 Q. Mr. Steele, at any time during
9 Mr. Cruce's tenure as athletic director and head
10 football coach at Berkeley High School, did you
11 ever tell him not to follow concussion guidelines
12 issued by the high school association?

13 A. No, sir.

14 Q. Did you ever tell him that he should
15 violate the concussion protocol statute?

16 A. Never.

17 MR. MORGAN: If I could have a moment,
18 Your Honor.

19 THE COURT: Take your time.

20 BY MR. MORGAN:

21 Q. Exhibit Number 1, I don't know whether
22 that is up there or not, those are the teacher
23 contracts?

24 A. Yes, sir.

25 Q. Are you familiar with the teacher

1 contracts?

2 A. Yes, sir.

3 Q. And in the teacher contracts, it allows
4 for not only the teaching but the assignment of
5 extracurricular activities, correct?

6 A. Correct.

7 Q. Is it your understanding that being a
8 head football coach is an extracurricular activity?

9 A. Yes, sir.

10 Q. And what about the athletic director?

11 A. That's a stipend position. That's not
12 part of the original contract. You can get extra
13 days added onto it.

14 Q. Did you have the right under that
15 agreement to reassign Mr. Cruce out of his head
16 coaching position?

17 A. Yes.

18 Q. Did you have the right under that
19 agreement to reassign him out of the athletic
20 director position?

21 A. Yes.

22 Q. To your knowledge, was he paid a full
23 amount of all pay, including stipends, for the
24 contract year that he signed for 2015/16.

25 A. That's what I heard in court several

1 times.

2 Q. And that is a contract that he had
3 signed for a year, correct?

4 A. Correct.

5 Q. And he was paid fully out under that
6 contract?

7 A. Yes.

8 Q. Just to make certain, you never told
9 him to violate any law of the State of South
10 Carolina, did you?

11 A. No.

12 MR. MORGAN: Thank you. No further
13 questions.

14 THE COURT: Ms. Bloodgood, anything
15 further?

16 MS. BLOODGOOD: No, Your Honor.

17 THE COURT: You may step down.

18 Thank you.

19 Call your next witness.

20 MS. BLOODGOOD: Wendy Cruce, Your
21 Honor.

22 WENDY CRUCE,

23 being first duly sworn, testified as follows:

24 THE CLERK: State your full name for
25 the record and please spell your last name.

1 THE WITNESS: My name is Wendy White
2 Cruce, and my last name is spelled C-r-u-c-e.

3 THE COURT: Ms. Bloodgood, your
4 witness.

5 MS. BLOODGOOD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. BLOODGOOD:

8 Q. Let me search for an exhibit. It will
9 go a little faster. I'm looking for 17.

10 MR. MORGAN: Your Honor, may I approach
11 and help?

12 THE COURT: You may.

13 BY MS. BLOODGOOD:

14 Q. Ms. Cruce, would you tell the jury very
15 briefly about your education background?

16 A. Yes. I grew up in Berkeley County in
17 Hanahan, and I'm -- graduated from Hanahan High
18 School. I attended Clemson and I have a bachelor's
19 degree in English, and I think that's it.

20 Q. Okay. And how about your professional
21 background?

22 A. I have worked for about 25 years in
23 human resource -- in the human resource field, yes.

24 Q. Okay. And do you have any professional
25 certifications?

1 A. I have a senior human resource
2 professional certification.

3 Q. How long have you been married to
4 Coach Cruce?

5 A. We just celebrated our 32nd
6 anniversary.

7 Q. And do you attend his football games?

8 A. I do.

9 Q. Did you attend the Berkeley High School
10 football games, most of them?

11 A. I did, yes.

12 Q. And how did Jeff's firing as coach and
13 as athletic director and his transfer to the middle
14 school affect you?

15 A. Well, it was -- it was devastating. It
16 was devastating to our whole family. I don't know
17 how to describe how hard it was. Jeff's career is
18 what our family does, you know. I've always
19 worked, but his -- his career as a head football
20 coach is -- you know, it's who he is. It's what
21 our family does.

22 We've relocated geographically four
23 times for his career and, I mean, it's just -- just
24 what our family does, our whole -- my whole family
25 does. It's not -- I mean, being a head football

1 coach is not an extracurricular activity. It's a
2 career path.

3 And all of us were very emotionally
4 involved in his career and, you know, my father
5 never missed a game until he became ill, so it was
6 rough.

7 Q. Did you -- did you ever think that your
8 husband was going to lose his job as the driver's
9 ed teacher?

10 A. No. I never thought he would lose his
11 job as a head football coach either.

12 Q. And did -- you said that you relocated.
13 Did you have to quit your job?

14 A. We -- yes. In this -- in this last
15 relocation, we moved to North Carolina, and I did.
16 I had a very good job. I worked at Santee Cooper
17 in the human resources group, and I -- I did leave
18 that job. And we sold our house so that we could
19 try to go someplace that Jeff could start over.

20 Q. Was it easier for him in North Carolina
21 once you got there?

22 A. We thought that it was going to be,
23 because once we made the decision that we needed to
24 retire and go look someplace else in another state,
25 we thought that it was going to be good because he

1 just had so much activity. He applied at, you
2 know, 36 different schools and he had tons of
3 interviews.

4 He ended up with, you know, being a
5 finalist in five positions and -- and that was all
6 very encouraging to us, but it -- it -- it did not
7 turn out the way that we thought. He was able to
8 get a job, but he wasn't able to get a comparable
9 job, and so...

10 Q. You say, he retired. Why did he have
11 to retire?

12 A. Well, because we -- you know, he was
13 fired in December, and we had -- we knew that he
14 would get paid through June. So for a few months
15 we -- we didn't consider retiring. We thought that
16 he would be able to find a job in the Charleston
17 area.

18 And once we realized that that just
19 wasn't going to happen, we -- we had to sell our
20 house really quickly because we could not afford
21 our mortgage with the reduction in pay that his
22 job would -- you know, it would become effective in
23 July. So we put our house on the market.

24 And when he retired, we said, we'll
25 retire and go look for another job so that he could

1 supplement his income -- his retirement income with
2 income from another coaching job, we hoped a head
3 coaching job.

4 Q. Did you also -- were there also changes
5 in your life in terms of this change in his job and
6 as a result of this termination as coach and
7 athletic director and transfer?

8 A. I mean, it changed everything about our
9 financial situation because we made the decision to
10 retire, and we left my job and we moved to North
11 Carolina, because if you retire in South Carolina,
12 there wasn't a way for him to work at a public
13 school in South Carolina again.

14 So, yeah, we -- we have one car. We --
15 we were able to buy a house, but with great
16 difficulty because we -- you know, we thought his
17 income was going to be higher because so many
18 schools were interested in him.

19 But, as it turns out, his new salary is
20 very low and so we were not able to qualify for a
21 mortgage. We finally -- we lived in an apartment
22 for about six months, and we were finally able to
23 qualify for the mortgage for a much -- you know,
24 much smaller house. And we just have a much
25 simpler, more streamlined life than we did before,

1 yes.

2 Q. And there's been some discussion about
3 this chart that I showed Mr. Steele that we've
4 marked as Plaintiff's Exhibit 17. This is the
5 booster club membership.

6 A. Uh-huh.

7 Q. What do you know about this chart?

8 A. Well, I know that that chart came from
9 Carolyn West, who was my colleague at Santee
10 Cooper. And at the time, she was the treasurer of
11 the athletic booster club.

12 Q. Did you actually create this chart?

13 A. That's actually a chart that Carolyn
14 created and e-mailed to me, but we produced it.

15 Q. Okay. And the last number on the
16 chart, 15, is that for the full 2015/16 year, or is
17 that for half the year?

18 A. No; it is for half the year. Those
19 numbers, she gave those to me in December when I
20 first found out that Jeff was fired for booster
21 club membership.

22 We didn't know -- we didn't know
23 anything about booster club membership. So I went
24 to Carolyn and I said, can you tell me what the
25 membership numbers have been?

1 Q. Okay. And you can't say anything that
2 she said to you.

3 A. Okay. I'm sorry, yes.

4 Anyway, I inquired about booster club
5 numbers and I was able to get the last five years
6 of history of booster club numbers.

7 Q. Okay. And did you also have to spend
8 any money in order to get up to North Carolina and
9 to get out of your situation?

10 A. Yes. We had to -- you know, we had to
11 sell our house. We had to pay a Realtor fee and
12 relocation.

13 Q. Let me show you what we've marked as
14 Plaintiff's Exhibit 18, and it's called South
15 Carolina Deferred Compensation 401(k). Are you
16 familiar with that document?

17 A. Yes, I am.

18 Q. It's behind you. What's the
19 significance of that document?

20 A. When we realized that we were not going
21 to be able to qualify for a mortgage with our new
22 income level, one of our options was to pay -- we
23 had one car loan, and if we paid that car loan off,
24 then we would be able to get a small mortgage.

25 And so I withdrew this money from my

1 own 401(k) in order to pay off the car loan.

2 Q. And is that the \$37,000 that's on this
3 chart?

4 A. Yes. That -- that's what I had to
5 withdraw, with penalties, to have the amount I
6 needed to pay off our car loan, yes.

7 Q. I know there's been damage to -- Jeff
8 has testified to that, but, personally, what -- how
9 has this experience damaged you?

10 MR. MORGAN: Objection; relevance, Your
11 Honor.

12 THE COURT: Approach.

13 (Bench conference.)

14 THE COURT: Sustained. Rephrase your
15 question, please.

16 BY MS. BLOODGOOD:

17 Q. Mrs. Cruce, I don't -- and without
18 saying what people are saying, what have you
19 observed about how this has affected your husband?

20 A. He's struggled to regain his footing, I
21 think, emotionally and, especially, in his career.
22 It's been hard for me to watch him with something
23 like that, that he's done all of his life.

24 Q. Okay.

25 A. So ...

1 MS. BLOODGOOD: Thank you. Thank you.
2 I don't have any other questions?

3 THE COURT: Mr. Lamber, your witness.

4 MR. LAMBERT: May it please the Court,
5 Your Honor.

6 CROSS-EXAMINATION

7 BY MR. LAMBERT:

8 Q. Good afternoon, Mrs. Cruce. Remind the
9 jury again, where did you work?

10 A. I worked at Santee Cooper.

11 Q. In HR, correct?

12 A. Yes.

13 Q. What was your salary when you left that
14 job?

15 A. I made \$110,000 a year.

16 Q. What was your mortgage payment on the
17 house you had to sell here in Charleston?

18 A. Our mortgage payment was roughly \$2800
19 a month.

20 Q. You left your job at Santee Cooper
21 voluntarily, correct?

22 A. Yes, I did.

23 Q. You said you had just celebrated your
24 32nd wedding anniversary?

25 A. Yes.

1 Q. Have you and your husband been married
2 essentially his entire career as a coach?

3 A. Yes.

4 Q. Where all, again, has your husband
5 coached high school football? What high schools in
6 what towns?

7 A. We lived in Florida for a year and
8 coached there for one year. We moved to Hampton,
9 South Carolina, where he coached for three years.
10 Then we moved here, where he's coached at three
11 different schools in this area. And now we live in
12 North Carolina where he is an assistant coach at a
13 school there.

14 Q. Okay. And the three schools here were
15 Hanahan, Cane Bay, and Berkeley?

16 A. Yes, that's right.

17 Q. In each of the towns you've lived in
18 and the schools where your husband has coached, was
19 football a big deal?

20 A. I guess so.

21 Q. Did people talk about the game that was
22 coming up that Friday night around town?

23 A. Yes, I guess so.

24 Q. Were games covered in the local papers?

25 A. Yes.

1 Q. Would you see your husband quoted in
2 those newspapers articles about his team?

3 A. I saw articles about the team that my
4 husband coached, along with articles about every
5 other team in this area.

6 Q. Would people from all over town come to
7 games when he was coaching at Berkeley?

8 Let me rephrase the question and see if
9 I can make that a little simpler.

10 Would folks come to Berkeley High
11 School football games who weren't just the parents
12 of the players?

13 A. I don't know. There were a lot of
14 people in the stands. I don't know how many of
15 them were parents and how many were fans.

16 Q. You would expect, given the number of
17 players on the team and the number of people in the
18 stands, that all of them couldn't have a child
19 playing for Berkeley High School?

20 A. At all of the schools that he has
21 coached at, I'm sure there was a combination of
22 parents and fans in the stands.

23 Q. Would people come at Berkeley High
24 School and watch the team practice?

25 A. Yes, they did.

1 Q. Was it your impression that people in
2 Moncks Corner understood football? Not just who
3 won and lost, but more of the nuances and the
4 subtleties of the game?

5 A. I don't think so.

6 Q. I mean, people knew enough about the
7 game to talk about, well, we're running an up-tempo
8 offense now instead of running the ball on every
9 play like we did years ago, right?

10 A. I don't agree with that. I don't agree
11 or disagree with that.

12 MR. LAMBERT: Your Honor, may I hand
13 this to the court reporter?

14 THE COURT: You may.

15 THE COURT REPORTER: Court's Exhibit 4.

16 (COURT EXH. 4, Deposition transcript,
17 was marked for identification.)

18 BY MR. LAMBERT:

19 Q. Mrs. Cruce, would you please turn to
20 page 57? I am looking on page 57, starting at
21 line 19. And after I read that question, if you'll
22 read the response you gave from your deposition.
23 It continues over onto page 58.

24 Okay. Did you -- kind of after that
25 was implemented -- talking about his new coaching

1 scheme -- or even at the beginning, did anyone come
2 up to you at work and comment on the new scheme?

3 A. Absolutely. Absolutely. And I think
4 that I did a pretty good job of explaining it to
5 some people at my work. And then throughout the
6 season -- do you want me to keep on reading?

7 Q. That's fine for now.

8 A. Okay.

9 Q. So --

10 A. But can I -- when you asked me to read
11 this particular remark, these are people that were
12 making remarks to me about the -- Jeff's new
13 scheme. And I was trying to explain it to them
14 that they weren't telling me about it.

15 Q. My only point is, don't people in
16 Moncks Corner understand more about football than
17 just who wins and losses, as in the type of
18 offensive scheme the team has changed to start
19 running?

20 A. I don't agree or disagree with that
21 statement. I think -- I've been around football
22 fans my whole life, or at least for the last
23 35 years. I think everyone thinks that they
24 understand the game of football.

25 Q. Everyone knows it better than the

1 coach?

2 A. There are a lot of, you know,
3 quarterbacks in the bleachers.

4 Q. There are.

5 Was coaching at Berkeley High School
6 different than coaching other places for your
7 husband?

8 A. I think that coaching at Berkeley High
9 School is a very tough -- it's a tough place to
10 coach. I think my husband said that in his
11 testimony, and I --

12 Q. Why is that? Sorry.

13 A. You know, I don't know why. I
14 really -- I can't tell you why. I know that when I
15 began working at Santee Cooper, I -- for about
16 eight years while the previous coach was there, who
17 was a good friend of our family, I thought it was
18 odd how very critical the people who lived there
19 were of him.

20 So I did a hear a lot of criticism of
21 that coach for many years while he was there. We
22 did not live in Moncks Corner, but I thought they
23 were very critical of the coach.

24 Q. Did all of this make you nervous for
25 your husband to take the job at Berkeley High

1 School?

2 A. I didn't think it was going to be a
3 very -- you know, part of me thought that it
4 wouldn't happen to him, you know, but, yes, I
5 certainly -- I certainly had a feeling that they
6 were just especially critical.

7 Q. Any thoughts as to why they're so
8 critical?

9 A. I don't know. No, I don't have any
10 thoughts. Sorry.

11 Q. That's all right. You said they're
12 critical and it's a tough job. Is that because
13 people in this town take football very, very
14 seriously?

15 A. I guess people in this town take
16 football very, very seriously, but there are seven
17 high schools in Berkeley County. I'm sure all of
18 those fans take football very, very seriously too.

19 Q. Did you get the same impression of what
20 the community was like at Hanahan and Cane Bay and
21 in Hampton that you got in Moncks Corner?

22 A. I'm trying to -- I'm trying to
23 understand what it is that you're wanting me to say
24 here.

25 Q. I just want you to answer the question.

1 Your impression of having lived in --

2 A. This last question that you just asked
3 me, could you rephrase it?

4 Q. Sure. You talked about how critical
5 and intense --

6 A. Right.

7 Q. -- people in Moncks Corner were --

8 A. Right.

9 Q. And I'm asking were the communities at
10 Hanahan, at Cane Bay, at Wade Hampton similarly
11 critical and intense, or was it especially so --
12 was it unique here in Berkeley?

13 A. Well, having coached at three Berkeley
14 County schools, I can say that I believe that it
15 was more -- the fans were more critical in Moncks
16 Corner than they were in Hanahan or at Cane Bay.

17 Q. Earlier, your husband's attorney,
18 Ms. Bloodgood, in a question said, Berkeley High
19 School football isn't major college football, it
20 isn't the NFL.

21 Do you agree that coaching at Berkeley
22 is actually somewhat similar to coaching an
23 intense -- with the fan base, is it as intense as
24 coaching some NFL teams?

25 A. Well, a few minutes ago the other

1 attorney referred to it as an extracurricular
2 activity. So, you know, I don't believe it's an
3 extra curricular activity. I think it's an
4 important responsibility.

5 And I think that when you're a coach,
6 you have to focus on what's best for the players
7 and team, and your customer is the student and the
8 student's family. And that's what's most
9 important.

10 So the fact that Berkeley had a very
11 outspoken fan base, I don't understand what
12 difference that makes.

13 Q. Well, I think the way people in a
14 community take football affects the way the coach
15 is viewed in the community. So I want you to, if
16 you would, please open your -- the copy of that
17 deposition in front of you to the bottom of
18 page 18.

19 I'll start at line 20. And if you and
20 I could just go back and forth on the question and
21 answers until we get to the end of line 12 on the
22 next page. So I'm starting at line 20 on page 18.

23 And your husband coached at Berkeley
24 twice. Once he was not the head coach.

25 A. That's correct.

1 Q. Do you remember any comments about his
2 team or players during that period?

3 A. Are you reading from this?

4 Q. I am. And I want you to read the
5 answers you gave in your deposition when you were
6 sworn to tell the truth, just like you are right
7 now.

8 THE COURT: Can you tell her what page
9 and line --

10 BY MR. LAMBERT:

11 Q. Yes. We're on page 18.

12 A. Okay.

13 Q. And I'm going to start back over at
14 line 20.

15 A. Okay.

16 Q. And I will read the question, if I can
17 get you to read the answer, we will go to the next
18 page on line 12.

19 And your husband coached at Berkeley
20 twice. Once he was not the head coach.

21 A. That's right.

22 Q. Do you remember any comments about the
23 team or players during that period?

24 A. Well, I remember that the community in
25 the stands were ugly about the head coaches -- it's

1 sort of part of the community personality -- both
2 of the head coaches he worked for there,
3 Dennis Weibert and also Jerry Brown.

4 Q. So the same kind of comments from fans?

5 A. Yes. It's a very rough -- I think it's
6 sort of like being a coach for the Philadelphia
7 Eagles or something like that. I heard that they
8 have a couple of judges that actually work under
9 the stadium to resolve fights and arrests that
10 happen there. I don't know if that's true, but
11 I've heard it.

12 And Mr. Frampton says, that's true.

13 Q. So you've actually compared coaching at
14 Berkeley High School to being as intense with the
15 way people take football as to coaching the
16 Philadelphia Eagles?

17 A. I said, the fans were very outspoken,
18 they were very harsh. The harshness was what I was
19 comparing to the Philadelphia Eagles' fans.

20 Q. And they take their football very
21 seriously in Philadelphia, don't they?

22 A. The -- this take their football
23 seriously, are you meaning that take their football
24 seriously means the same thing as they are very
25 harsh towards their head football coaches; is that

1 what you're saying?

2 Q. They're harsh to their football
3 coaches. They care a lot if their team wins or
4 loses.

5 A. I believe that the fans in Moncks
6 Corner care very much if their team wins or loses,
7 and I believe they're very harsh towards whoever is
8 the head football coach there.

9 Q. Continuing on this theme of how harsh
10 the fans are because of how intense they are about
11 football, I want to go to page 21 of your
12 deposition. And we will do the first question and
13 answer on that page, so down to line 11. I'll
14 start at line 1.

15 So, in your experience, just being in
16 Moncks Corner for work, are the fans unhappy unless
17 you're winning or --

18 A. I'm sorry. I said, they can be unhappy
19 even when you are winning.

20 I said, they are -- I really don't want
21 this to go on my deposition transcript, and this is
22 way before Jeff went to work there, but I thought
23 that if it was legal to put people in an arena and
24 let lions eat them that this would be a good thing,
25 because people there would go and watch that.

1 Q. I guess what I'm getting at in all of
2 this --

3 A. Yes, please. I'm trying to figure it
4 out.

5 Q. Football is a big deal in this town and
6 your husband was the head coach, right?

7 A. Yes.

8 Q. Okay. He was a recognized figure in
9 town, right? If he walked down the street in
10 Moncks Corner, people knew that was Coach Cruce.

11 A. I suppose. We did not live in Moncks
12 Corner, though.

13 Q. Did people in Moncks Corner ever come
14 up to you and recognize you as the coach's wife?

15 A. No. I worked at Santee Cooper, and so
16 the people that I worked with in Santee Cooper knew
17 who I was. I know when he first started coaching
18 there, I don't think anybody in the stadium
19 recognized me unless they worked with me at Santee
20 Cooper.

21 Q. By the end of his five years, did
22 people in the stands know that you were the coach's
23 wife?

24 A. Possibly. I mean, I -- are you saying,
25 did people --

1 Q. Would you wave to people when you
2 walked in and say, hello, and they would wave back?

3 A. No. I, actually, just kept my head
4 down when I walked in.

5 Q. Why is that?

6 A. No one was interested in speaking to me
7 at a football game in Moncks Corner. No one came
8 up and spoke to me or my family there.

9 MR. LAMBERT: I have no more questions,
10 Your Honor.

11 THE COURT: Redirect?

12 MS. BLOODGOOD: No, Your Honor.

13 THE COURT: You may step down. Thank
14 you.

15 Call your next witness.

16 MS. BLOODGOOD: That's my last witness,
17 Your Honor.

18 THE COURT: Reserving all motions and
19 matters, do you have any witnesses?

20 MR. MORGAN: We have one, Your Honor.

21 MR. LAMBERT: One, Your Honor.

22 THE COURT: Okay. Just for scheduling,
23 approach.

24 (Bench conference.)

25 THE COURT: All right. Ladies and

1 gentlemen, I told you we would go until 2:00.
2 We're waiting on one witness who is about five
3 minutes away, so I'm going to let you go take a
4 comfort break. And then that should be a short
5 witness; we'll stop about 2:00. And then we'll
6 have further information.

7 So please remember all of my
8 admonitions. Do not begin your deliberations; take
9 your notepads with you or leave them right in the
10 chair.

11 Please rise for the jury.

12 (Jury out, 1:22p.m.)

13 THE COURT: Thank you. Be seated.

14 All right. Just so it's clearly
15 articulated on the record, we have one witness.
16 I'm trying to get all of the testimony in so that I
17 can -- we can break at 2:00. And then after --
18 when I return from my appointment, we will be back
19 and then we'll argue all the motions that we need,
20 including your motions at the close of the
21 plaintiff's case.

22 MR. MORGAN: Thank you, Your Honor.

23 THE COURT: So the record should have
24 been clear when I said, reserving all motions and
25 matters, and I mean, once if we get started

1. arguing, then it's not going to make sense and then
2. just have the jury come back at 4:00 for what you
3. told me was a short one.

4. So I think it just makes sense to do it
5. procedurally this way. And then the jury -- I can
6. release the jury for the day. And, as I understand
7. it, then all that is remaining is to argue and
8. charge in the morning; is that correct?

9. MS. BLOODGOOD: Yes.

10. MR. MORGAN: That would be my
11. understanding, Your Honor, yes. And we appreciate
12. your courtesy.

13. THE COURT: All right. My clerk tried
14. to get the exhibits in order. I think this is a
15. good time for you to make sure everything is on the
16. table, everything that you think has been admitted.
17. If there's anything we need to address, we will
18. utilize this time as productively as we can.

19. MR. MORGAN: Thank you, Your Honor.

20. THE COURT: Thank you. So we're at
21. ease until your witness comes.

22. (A recess transpired.)

23. THE COURT: Anything before we bring in
24. the jury?

25. MS. BLOODGOOD: No, Your Honor.

1 THE COURT: All right.

2 (Jury in, 1:38 p.m.)

3 THE COURT: Thank you. Please be
4 seated.

5 Again, reserving all motions and
6 matters, call your first witness.

7 MR. LAMBERT: The defense calls
8 Chris Stevens, Your Honor.

9 THE COURT: All right. Sir, please
10 come forward and be sworn.

11 CHRIS STEVENS,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please be seated. State
14 your full name for the record and please spell your
15 last name.

16 THE WITNESS: My name is Chris Stevens.
17 Stevens is S-t-e-v-e-n-s.

18 THE COURT: Thank you.
19 Your witness.

20 MR. MORGAN: May it please the Court?

21 DIRECT EXAMINATION

22 BY MR. MORGAN:

23 Q. Mr. Stevens, good afternoon.

24 A. Good afternoon.

25 Q. What is your current job?

1 A. I'm the head athletic trainer for
2 Berkeley High School.

3 Q. What does that mean? What do you do?

4 A. I take care of all of the athletic
5 injuries, illnesses regarding all of their
6 after-school athletics programs.

7 Q. Does that include the football team?

8 A. It does.

9 Q. During Christmas break or the beginning
10 of the spring semester in the 2015/16 school year,
11 were you asked a question about the eligibility of
12 student athletes for winter sports?

13 A. I was asked about the physicals
14 regarding their eligibility, yes.

15 Q. Who asked you that question?

16 A. That would be our -- actually, still
17 current strength coach, Mike Ward.

18 Q. What did you do after you were asked
19 that question?

20 A. I went to administration to access the
21 athletic director's office to find the physical
22 forms. And me, Mike Ward, and one of the assistant
23 principals walked into the office to find them.

24 Q. What did you do after you were in the
25 office?

1 A. We went through the athletic file
2 cabinet to search for athletes that were weight
3 conditioning to make sure that they were medically
4 cleared to be in the weight room.

5 Q. In the process of doing that, did you
6 discover that there were some records that were
7 missing?

8 A. There were some inaccuracies to some of
9 the files.

10 Q. This is a document that's been
11 previously marked as Exhibit Number 13. It's an
12 e-mail that you sent. Do you recognize this
13 document?

14 A. Yes, sir.

15 MR. MORGAN: May I approach, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. MORGAN:

19 Q. I hand this to you just so it's a
20 little easier to read, Mr. Stevens. Did you write
21 that after you went into the office to review the
22 files?

23 A. I did.

24 Q. Everyone you sent that e-mail to, were
25 they coaches for a Berkeley High School athletic

1 team?

2 A. They were former coaches.

3 Q. At the time --

4 A. Some still are and then some were
5 former coaches.

6 Q. But at the time you sent this e-mail,
7 they were all then coaching at Berkeley High
8 School --

9 A. Yes, sir.

10 Q. Okay. Changing gears for a moment, you
11 had said you were also the trainer for the football
12 team, correct?

13 A. Yes, sir.

14 Q. When Coach Cruce went to less contact
15 in practice, did he ever discuss with you that that
16 was to prevent concussions?

17 A. We never sat down and discussed it
18 directly, no.

19 MR. MORGAN: Thank you very much.

20 I have no further questions, Your
21 Honor.

22 THE COURT: Ms. Bloodgood.

23 CROSS-EXAMINATION

24 BY MS. BLOODGOOD:

25 Q. Mr. Stevens, I'm Nancy Bloodgood. I

1 represent Jeff Cruce. Have you ever checked high
2 school eligibility for athletes?

3 A. I now assist in that process, yes,
4 ma'am.

5 Q. And when Coach Cruce was terminated,
6 when you were in his office looking through files,
7 at that point, had you ever checked high school
8 eligibility --

9 A. I had never done eligibility at
10 Berkeley High School, no, ma'am.

11 Q. And, at that time, did you know what
12 had to be in a file?

13 A. I did from previous experience.

14 Q. Eligibility files?

15 A. Yes, ma'am.

16 Q. How did you know that?

17 A. Well, I've been in athletic training
18 since 2010, so I'd had previous experience and
19 knowledge of records that need to be in place.

20 Q. You're not certified to do eligibility
21 files, right?

22 A. Not directly, no, ma'am.

23 Q. How were you -- you're not certified as
24 an athletic director --

25 A. No.

1 Q. -- to check eligibility?

2 MS. BLOODGOOD: Thank you. I don't
3 have any other questions.

4 THE COURT: Redirect?

5 MR. MORGAN: No, Your Honor.

6 THE COURT: You may step down. You are
7 free to leave. Feel free to stay with us.

8 MR. MORGAN: The defense rests, Your
9 Honor.

10 THE COURT: All right. And, again,
11 reserving all motions or matters, any rebuttal
12 witnesses?

13 MS. BLOODGOOD: No, Your Honor.

14 THE COURT: Ladies and gentlemen, we
15 have moved quickly, and so we are actually ahead of
16 schedule. My attorneys were right on time that we
17 would be able to stop at 2:00 p.m., but what
18 remains -- you have heard all the testimony. There
19 are some matters of law that I must take up outside
20 of your presence, and so we will adjourn for today.

21 You will come back tomorrow at
22 10:00 a.m., at 10:00 a.m., and we will have closing
23 arguments and I will instruct you on the law
24 applicable to this case.

25 Ladies and gentlemen, we have your

1 THE COURT: Correct.

2 All right. So what we will do, I
3 have -- please make sure -- do I have your cell
4 numbers? So when I get off the bench, please give
5 your cell numbers to my clerk. When I am 30
6 minutes away, she will call you and you will report
7 in 30 minutes. We're at least down for 90 minutes.

8 MS. BLOODGOOD: Okay.

9 THE COURT: Okay. But, otherwise, be
10 back at 4:00, and then we'll argue the motions and
11 matters. But if something -- if I'm able to get
12 back more quickly, she will call and let you know.
13 All right?

14 MR. MORGAN: Thank you, Your Honor.

15 THE COURT: So if you need any
16 anything, talk to the bailiff, but, otherwise, I
17 will see you back no later than 4:00 p.m.

18 (A recess transpired.)

19 MR. LAMBERT: The defendant would move
20 for a directed verdict, Your Honor, on both of the
21 claims, and there are legal reasons why judgment as
22 a matter of law should be granted. I will start
23 with the public policy claim first, and I have
24 three reasons why directed verdict is proper.

25 Number one, Mr. Cruce was not

1 terminated from his position. He was reassigned
2 and his extracurricular responsibilities were
3 removed, but he was not terminated as an employee
4 of the Berkeley County School District. He's not
5 terminated; he couldn't have been terminated in
6 violation of public policy. That's number one.

7 Number two, this gets into -- a little
8 more to some legal points. The public policy
9 exception is to South Carolina's at-will employment
10 doctrine. Mr. Cruce was not an at-will employee.
11 As he testified multiple times, he signed a
12 one-year contract each year with Berkeley County
13 School District to teach.

14 He taught out his 2015-2016 contract
15 and was paid everything he was owed under it;
16 therefore, he was not an at-will employee, so it's
17 not even possible that the public policy exceptions
18 could apply to him.

19 And third, the public policy exception
20 to an at-will employee, even if he could possibly
21 be categorized as one, requires that as a condition
22 of continued employment, he's required to break the
23 law or the termination itself is a violation of the
24 criminal law.

25 He testified himself that he was never

1 told or required to violate the concussion statute
2 and never told or required to violate the
3 guidelines, which don't even have the force of law
4 and can't be the basis for a public policy claim.

5 So for three separate reasons, the
6 public policy claim fails.

7 As to his defamation claim --

8 THE COURT: Let me hear from -- do one
9 at a time.

10 MR. LAMBERT: Yes, Your Honor.

11 MS. BLOODGOOD: Okay. Your Honor, it's
12 our position that he was constructively discharged
13 when he was moved into a position that he hadn't
14 had in 24 years to a middle school when he was a
15 high school teacher and that -- to a lower salary,
16 and he had no choice other than to resign that
17 employment. And constructive discharge is when you
18 are put in a position that is so intolerable you
19 have to leave that job.

20 And I think there's evidence before the
21 jury that they did ruin his career; they put him in
22 a position, promised him help, he never got it.
23 There was no way he could stay in that and continue
24 his career as a high school coach.

25 So we think there's evidence in the

1 record from which a jury could find that he was
2 constructively discharged. It would have been very
3 easy to move him to a high school, and there was no
4 consideration given to that at all.

5 The -- he is an at-will employee. The
6 personnel handbook will say he's an at-will
7 employee. All teachers in South Carolina are
8 at-will employees. They do have a -- usually, they
9 give them a contract for a year-to-year for --
10 especially, for a continuing -- and this is a
11 continuing contract because he had worked for a
12 long time, but teachers in South Carolina can be
13 terminated at any -- at any time. They have
14 grievance rights, but they are still at-will
15 employees.

16 Most of these contracts in school
17 districts actually say they are at will. I know
18 this one does not say it, but I think that there
19 are other documents that do say that he is an
20 at-will employment.

21 And, quite honestly, I can find this,
22 but as a matter of law, teachers in South Carolina
23 don't get contracts that they cannot be terminated
24 under -- under the term of that contract.

25 This contract says, in fact, that the

1 assignment's tentative and may be changed by the
2 administration upon notice to and consultation.
3 That is a not a contract for a definite term of
4 employment.

5 So it says, year to year, and it does
6 have a term on it, but it does say that, however,
7 it is understood that this assignment is tentative,
8 and that is at-will language. So he's an at-will
9 employee. I just think that's -- I've never heard
10 that argument before, but teachers are at will.

11 An employment contract will be
12 something like, you are hired for this position and
13 here is your term of employment and here's how we
14 can fire you and here's how we can't fire you. It
15 has terms in it. It has much more than, it's
16 tentative and can be changed upon notice. That's
17 at will.

18 THE COURT: But don't you have to show
19 that he was terminated in violation of a clear
20 mandate of public policy?

21 MS. BLOODGOOD: Yes, let me address
22 that, Your Honor. Under the public policy, the
23 statute says that -- well, if you are discharged in
24 violation of a public policy, if you're required to
25 violate the law as a condition of your employment,

1 that's Miller v. Fairfield Communities, Inc., 299
2 S.C. 23 Court of Appeals (1989).

3 The law is not that someone has to say
4 to you, break the law and if you don't, I'll fire
5 you. No. It's that a condition of his employment
6 was that he hit more.

7 The principal said, if you don't hit,
8 you're going to be fired. That's in evidence. He
9 was told he was fired for not hitting enough --

10 THE COURT: But your client testified,
11 no one instructed me to violate concussion
12 protocol. Principal Steele said, I never
13 instructed him to violate concussion guidelines,
14 the concussion protocol statute, and Coach Cruce
15 was not terminated solely on the basis of his
16 performance as an AD.

17 So tell me what public policy is
18 then --

19 MS. BLOODGOOD: The public policy is
20 the statute that I submitted earlier. There's a
21 DHEC statute that says that coaches have to have
22 model policies. DHEC is going to post them.
23 Coaches have to follow them. They have to report
24 injuries. There's another statute that says that
25 the principal has to put it in the files and report

1 it.

2 And, at the end of that statute, what
3 it says is, a coach can be liable if he's grossly
4 negligent. Now, there's limited liability under
5 that statute, but there is liability. If he were
6 grossly negligent in managing concussions, he would
7 be subject to liability, criminal liability under
8 this act.

9 THE COURT: Let me ask it this way,
10 maybe I didn't ask the question clearly enough.
11 Why don't you tell me what it is that you're
12 alleging that the defendant made him violate and
13 what public policy it is, because I haven't heard
14 testimony as such?

15 I hear what you're saying, I have the
16 statute in front of me, and what I heard your
17 client say to me was -- or to the jury, nobody ever
18 said I needed to violate DHEC and State concussion
19 protocol guidelines.

20 MS. BLOODGOOD: That's right, Your
21 Honor. No one did --

22 THE COURT: So is there some other
23 public policy exception that you would add?

24 MS. BLOODGOOD: No. It is that
25 statute.

1 THE COURT: All right.

2 MS. BLOODGOOD: However, no one said,
3 violate that statute. What they said to him is, if
4 you don't hit more, you are going to be fired. And
5 that is -- that didn't tie it into the statute, but
6 the statute creates the public policy that's
7 against concussions.

8 So when a principal says, if you don't
9 hit more and if you don't have more blocking and
10 tackling --

11 THE COURT: But can't you hit more
12 without violating the public policy?

13 MS. BLOODGOOD: Not without exposing
14 your students to more concussions and injuries.
15 And he testified --

16 THE COURT: So it's your position that
17 your client testified to that?

18 MS. BLOODGOOD: He testified that his
19 strategy was passing and fast pace and less -- just
20 a helmet on and less stuff on at practice so that
21 there would be more moving along and an offense
22 game. And what he said was, that reduced
23 concussions because you have less blocking and
24 tackling less on the ground.

25 So his philosophy, as he tried to --

1 THE COURT: But isn't that just exactly
2 what it was? It was a philosophy.
3 Principal Steele didn't say, violate this. You
4 must do this. I want more tackles. I want more
5 injuries.

6 MS. BLOODGOOD: He didn't say injuries,
7 but he said, I want more blocking and tackling, and
8 you're not hitting enough, and I'm going to fire
9 you because you're not hitting enough.

10 That is the same thing as saying, we
11 want you to hit. We want you to put the students
12 in danger. We don't want you to be careful about
13 concussions. We don't want --

14 THE COURT: But during the winning
15 season, was your client violating public policy?

16 MS. BLOODGOOD: He was violating public
17 policy when he fired him as the coach, athletic
18 director --

19 THE COURT: No. No, your client. Your
20 client.

21 MS. BLOODGOOD: Oh, I'm sorry.

22 THE COURT: In the way he was coaching
23 and playing football. And I apologize, I am
24 ignorant about football. I went to a high school
25 that did not have a football team until I was in

1 tenth grade, so I know nothing about football.

2 MS. BLOODGOOD: Right.

3 THE COURT: But I do know about public
4 policy.

5 MS. BLOODGOOD: Right. No, during the
6 school year he was trying not to violate the public
7 policy. He was trying to decrease and control
8 concussions through this new way of playing. The
9 principal didn't like it; they wanted hitting, they
10 wanted action.

11 So because my client refused to put his
12 students in a position where there would be more
13 concussions --

14 THE COURT: But wasn't that his choice
15 and his decision as a coach to do so? As he said,
16 he was putting all his chips on the table.

17 MS. BLOODGOOD: But it led -- it was
18 his choice, but it led to his termination. The
19 principal said, if you don't hit, I'm going to
20 terminate you.

21 THE COURT: We're here at the directed
22 verdict stage, so I just need -- your position is
23 that your client was forced to violate public
24 policy or refused to violate public policy, which
25 is the hitting, and, therefore he was terminated.

1 MS. BLOODGOOD: My position -- yes. My
2 position is that a condition of his employment was
3 that he ignore DHEC's law and he violate that --
4 not violate the law, but that he not do what he
5 thought was in the best interest to minimize
6 concussions. And --

7 THE COURT: But I thought former
8 Supervisor Blackburn testified that his activities
9 as an athletic director were not part of his
10 original contract, and so this was just
11 extracurricular fun stuff he was doing.

12 MS. BLOODGOOD: Right. So what they
13 said was -- it's unclear whether it's the coaching
14 or the -- I think the coaching, she said, was part
15 of the teacher contract. And the principal
16 terminated him in all -- well, in two of those as a
17 coach, part of the teaching contract.

18 So that is a termination, to answer
19 that -- that argument. But he was terminated as a
20 coach because he did not -- he would not change his
21 way of doing his job, and so that makes it a
22 condition of his employment. When he is required
23 as part of his job --

24 THE COURT: So your position, again, is
25 that he was hired as a coach, not as a teacher.

1 MS. BLOODGOOD: All three at the same
2 time, Your Honor. But there has been testimony
3 that the coaching is very, very important in the
4 scheme of things.

5 THE COURT: But I think that this is
6 something that needs to be parsed out in order for
7 us, first of all, to determine if he was
8 terminated, because we all agree there is no
9 controversy that he was transferred.

10 MS. BLOODGOOD: Right. My argument --

11 THE COURT: And so would you agree with
12 me that the contract was for teaching? His
13 employment was for teaching and that coaching and
14 athletic directing were a supplement to that
15 teaching contract, then we have no wrongful
16 termination; would you agree with me?

17 MS. BLOODGOOD: No. I would --

18 THE COURT: Why not?

19 MS. BLOODGOOD: Your Honor, that was a
20 constructive discharge and pushing -- taking him
21 out of his position, putting him in a middle school
22 at a different job that he had not done in
23 24 years, did not get the training, was forced to
24 get out of that job. That's a constructive
25 discharge for the teaching position.

1 The coaching position, the testimony
2 was that -- from Ms. Blackburn that the coaching
3 was part of the teaching and then the athletic
4 director was something else. That was separate.

5 So when the coaching -- it's clear he
6 was terminated from coaching, and then he was
7 transferred in the teaching. But my position is he
8 was terminated from coaching and constructively
9 discharged from his teaching position because of
10 the situation. Because --

11 THE COURT: And, again, the public
12 policy you feel is the violation of the DHEC
13 statute?

14 MS. BLOODGOOD: Yes. By making a
15 condition of employment that my client not be
16 cognizant of concussions and not do what was
17 necessary in model policies to protect the kids
18 like the statute says --

19 THE COURT: Well, how do I get over the
20 legal hurdle that all the testimony was -- and,
21 again, nobody told me to violate DHEC statute. I
22 never told him to violate concussion guidelines.
23 How do I get over that hurdle?

24 MS. BLOODGOOD: Your Honor, I think
25 those specific words, no doubt, were not -- nobody

1 said, here's the DHEC statute. We don't like it.
2 I don't think they knew about the DHEC statute,
3 quite honestly, but they said -- they pretty much
4 said the exact same thing.

5 The substance of what they said was, as
6 a condition of your employment, you are going to do
7 more blocking and tackling and more hitting, and
8 that -- and in the practices --

9 THE COURT: They said to him in those
10 words?

11 MS. BLOODGOOD: Yes. The principal --
12 there's testimony that the principal said to him,
13 I'm firing you because you're not hitting enough.
14 And he said in his deposition, you're not blocking
15 and tackling enough in the practices. There are
16 people watching. We want more tackling and
17 blocking.

18 There was testimony from Coach Cruce
19 that there were less injuries when he went to this
20 offensive -- you know, more throwing and less
21 blocking and tackling. So he did testify that it
22 was working and that there were less injuries and
23 less concussions.

24 It was part of the way -- by doing the
25 fast offense, you're going to have less injuries

1 with the blocking and the tackling, but it's not as
2 dramatic. It's not as much fun to watch.

3 And that's why he was told, if you want
4 to keep your job as a coach, you've got to do more
5 hitting. That's what the principal said, more
6 blocking and tackling. He differentiated between
7 the words, but he said, or I'm going to fire you.
8 That's a condition of your employment.

9 So he didn't use -- I don't think he
10 knew about the DHEC statute, but the DHEC
11 statute -- in the public policy realm, the DHEC
12 statute is the vehicle that the legislature uses to
13 say this is important.

14 THE COURT: Does it matter whether or
15 not Principal Steele knew about the DHEC statute?

16 MS. BLOODGOOD: I don't think it does,
17 Your Honor, because the public policy of the State,
18 whether he knows it or not, the seminal case is
19 when somebody is subpoenaed to go to court and the
20 employer says, you have to stay at work. You can't
21 follow that subpoena.

22 Now, they don't -- the employer doesn't
23 know that it's important to respond to a subpoena,
24 so it's not necessary that the employer know what
25 the public policy of the State is.

1 It's my job to say, here's the statute,
2 and it says the public policy of the State is we
3 want to limit concussions. We don't want to expose
4 students to danger, and that is enveloped in a
5 statute.

6 So, of course, he doesn't have to say,
7 don't violate the statute. He just has to say, I'm
8 going to fire you if you do something that is
9 against public policy.

10 What I'm saying, the public policy in
11 this State is to limit concussions, and Coach Cruce
12 was trying to do that with his offensive -- with
13 his philosophy.

14 THE COURT: Doesn't there also have to
15 be a retaliatory position on behalf of the employer
16 in response to the plaintiff's failure to follow
17 through with that public policy?

18 MS. BLOODGOOD: Well, Your Honor, so
19 say there -- on the -- say there's a -- no, there
20 doesn't have to be retaliation. The employer has
21 to do something that's against public policy and
22 say -- it's not retaliation, but condition is on
23 the employment. That's where you condition the
24 employment.

25 It's more that the -- that the employer

1 has to say, I'm going to fire you if you go to that
2 subpoena. I'm going to fire you if you don't start
3 hitting more.

4 THE COURT: And then fire that employee
5 because they went to court because --

6 MS. BLOODGOOD: Yes. Yes.

7 THE COURT: Because they went ahead
8 with the public policy.

9 MS. BLOODGOOD: That's right. And
10 that's what I'm saying, Your Honor. In this case,
11 he was fired as coach, and that's in the contract,
12 and then he was transferred.

13 THE COURT: Again, does your client
14 have to know that that's the public policy in
15 place?

16 MS. BLOODGOOD: No, Your Honor. I
17 don't think either of them had to know. I'm just
18 saying that it's an exception to the at-will
19 employment. You can fire anybody for any reason,
20 but not for a bad reason. And one of the bad
21 reasons is that if you're violating the public
22 policy -- if the public -- if the State says it is
23 our policy that concussions are bad for students,
24 it's our policy that it's the coach's
25 responsibility to take care of students.

1 And then if an employer says, I want
2 you to hit more, I want you to block and tackle,
3 and I don't like your philosophy of trying to avoid
4 -- he didn't -- it wasn't that blunt, but the end
5 result is, he is -- the end result of what they did
6 was to say, I don't like your policy of avoiding
7 blocking and tackling, of doing less hitting, and
8 I'm going to fire you if you don't -- and they
9 fired him as coach and transferred him off into the
10 boondocks, which I think there's plenty of evidence
11 that that's a constructive discharge.

12 THE COURT: I'm sure that the teachers
13 at Sedgefield would not like to be told they're in
14 the boondocks.

15 MS. BLOODGOOD: Yes. And I don't even
16 know where Sedgefield is. I'm thinking more high
17 school to middle school --

18 THE COURT: It's in Berkeley County.
19 It's in the heart of Berkeley County.

20 MS. BLOODGOOD: But high school to
21 middle school.

22 THE COURT: All right. So, let me hear
23 from you.

24 MR. LAMBERT: Yes, Your Honor. As to
25 the contract issue, we have a signed contract. It

1 doesn't matter what any other contracts could say
2 or might say. This is a contract to render
3 acceptable service for 190 days, or the given
4 school year. He may be assigned reasonable
5 extracurricular activities. That's what athletics
6 are.

7 And then he has an assignment each
8 year, where it's going to --

9 THE COURT: Where is his compensation
10 package? Where does it say that -- he gets paid as
11 a teacher and then he gets extra for his
12 extracurricular activities, correct?

13 MR. LAMBERT: Correct. There is not a
14 document I'm aware of in evidence that has a
15 breakdown of the numbers. Mr. Cruce's testimony
16 was, I got a base teacher salary and about \$10,000
17 for being a head coach and then some other amount
18 for being the athletic director on top of that.

19 But the point simply is that he had a
20 contract. It's for a specific period of time. And
21 related to that, there's no constructive discharge
22 because he served out his 2015-2016 contract and
23 then he chose to resign. But what he simply did
24 was, he didn't sign a contract for the next year.
25 He finished the contract he was on. He didn't

1 renew it.

2 Finally, as to the hitting more and
3 violating public policy, more blocking and tackling
4 does not mean he was required to violate the DHEC
5 statute, which puts no regulation or restriction on
6 the amounts of practice or any guidelines.

7 Exhibit 15 to Mr. Cruce's deposition,
8 which is now Court's Exhibit -- I'm not sure if
9 it's 2 or 3. It talks about -- it's from the
10 National Federation of State High School
11 Association, and its restriction or its guidelines
12 and recommendations is that they recommend full
13 contact be allowed in no more than two to three
14 practices per week, consideration should also be
15 given to limiting full contact on consecutive days
16 and limiting full contact time to no more 30
17 minutes per day and no more than 60 or 90 minutes
18 per week.

19 Coach Cruce's practices were nowhere
20 near the top of that recommendation. He could have
21 done plenty more blocking and tackling and not
22 violated any of those guidelines, which, as I
23 mentioned before, don't have the force of law.

24 And if his argument's right, that by
25 having to do more than he was doing in the 2015

1 year, presumably he in previous years was violating
2 the statute and a lot of other high school coaches
3 around the state are violating the statute, and I
4 don't think that's the case. The statute --

5 THE COURT: Do you think that's true,
6 Ms. Bloodgood?

7 MS. BLOODGOOD: Well, Your Honor, I
8 don't think guidelines establish public policy. I
9 think statutes establish public policy. So the
10 statute that establishes that the State of South
11 Carolina is DHEC statute which is in front of you.
12 The guidelines are in accordance with that statute,
13 but I don't -- the public policy is not specific as
14 to guidelines.

15 It is -- in this State, there will be
16 some policies. Each school will determine the best
17 way to handle concussions and head injuries. And
18 so a public policy is a general concept of -- our
19 State believes that it's good to avoid concussions,
20 and that's what that statute represents, and the
21 other DHEC statute which requires reporting of
22 them.

23 It's something much more broad than
24 guidelines. I don't think the guidelines are
25 really relevant.

1 MR. LAMBERT: Your Honor, if I may.

2 The statute is very precise in what it requires in
3 terms of protocol for training about concussions
4 and educating and for treating them when they're
5 suspected. It has nothing to do with the amount of
6 blocking or tackling in practice.

7 Violating this statute and this public
8 policy would be saying, all right. You look woozy.
9 Get back in there, though, because you've got to
10 get to be a better football player.

11 THE COURT: Do you have -- do you, as a
12 school district, have guidelines and procedures
13 based upon model guidelines referenced in
14 subsection A of the statute?

15 MR. LAMBERT: Your Honor, I do not know
16 the answer to that question.

17 THE COURT: Do you know, Ms. Bloodgood?

18 MS. BLOODGOOD: Well, I think it's the
19 coach who's in charge of policies. And it says
20 each school will develop -- I think that would be
21 the head coach who is in charge of deciding how do
22 we comply with the public policy of this State,
23 which is to have less concussions.

24 MR. LAMBERT: But, fundamentally, you
25 can comply with the statute and have more blocking

1 and tackling.

2 THE COURT: So what does DHEC say is a
3 model policy on its website? What is a model
4 policy?

5 MR. LAMBERT: Your Honor, we have not
6 pulled the model policy. The model policy --

7 THE COURT: What are the model
8 policies? If you're alleging that he's violating
9 this, what are the model policies, Ms. Bloodgood?

10 MS. BLOODGOOD: The model policy is the
11 policy he puts in place as the head coach, where he
12 says, we are going to have less hitting. We're
13 doing an offense. We're going to avoid blocking
14 and tackling. That's what he does at his school.

15 THE COURT: The statute says DHEC has
16 model policies on their website and then a local
17 school district shall develop guidelines and
18 procedures. So how am I supposed to determine what
19 the public policy is if you don't tell me what it
20 is?

21 Because I think Mr. Lambert is right.
22 Because if he's changed his policy -- your client
23 changed his policy in a particular school year
24 because he was concerned, then the previous school
25 years he was violating that same policy unless the

1 policy changed.

2 It's not up to your client to develop
3 public policy. He can develop his own guidelines
4 for his team, correct? But he can't develop public
5 policy and the statute is clear. He can't develop
6 public policy for the school district.

7 MS. BLOODGOOD: No, he cannot do that,
8 Your Honor, but I don't think that the public
9 policy is the guidelines. I think the public
10 policy is the statute itself which says, we don't
11 like concussions. So it's not that he --

12 THE COURT: Well, I don't think anybody
13 in this room likes concussions, but, I mean, that's
14 the issue. The problem is, the issue is that I
15 have to establish whether or not your client was
16 terminated in violation of the public -- because he
17 violated public policy.

18 You can't tell me what the public
19 policy is. Is it 90 minutes of contact? 30
20 minutes of contact? And at what point was he not
21 violating the public policy previously because he
22 realized that perhaps he was injuring the students
23 before?

24 MS. BLOODGOOD: And I understand that
25 argument, Your Honor. I just think that the public

1 policy is broader than that, and it's not that
2 specific as 90 minutes and 30 minutes.

3 The statute says, put some model
4 policies into effect, but the overall idea of the
5 statute is it is against the public policy of the
6 State of South Carolina to allow schools to put
7 children in a position where there's going to be
8 concussions or head injuries.

9 THE COURT: So Principal Steele then is
10 telling him to violate public policy.

11 MS. BLOODGOOD: Yes, by telling him
12 that he had to hit more --

13 THE COURT: So tell me how I can
14 determine -- I just need to see it in black and
15 white.

16 MS. BLOODGOOD: Yeah.

17 THE COURT: Okay? And maybe I'm
18 missing the point because I don't understand the
19 blocking. But it seems pretty simple to me. If
20 there's a policy -- a public policy that is defined
21 by the statute, I need to be able to look at it;
22 otherwise, it's just -- it's just a hole. It's
23 just something for us -- some guidelines, which is
24 not a public policy.

25 MS. BLOODGOOD: No. I don't think the

1 guideline would be the public policy. I think it
2 is when the legislature passes a law that says, we
3 are concerned about concussions. We want you to
4 develop procedures to avoid concussions and head
5 injuries. That is the general public policy.

6 I think it is much -- it is just a
7 general public policy. It's not specific.

8 THE COURT: How many children at
9 Berkeley had concussions?

10 MS. BLOODGOOD: There were a lot and
11 they had to be documented and they were documented
12 every year. There's another statute that requires
13 you to do that.

14 THE COURT: Which I think we may be
15 getting far afield of what we need to be looking
16 at; however, I think Mr. Lambert brought up a
17 really good point. Was your client violating
18 public policy prior to the 2015-2016?

19 MS. BLOODGOOD: No. He was always
20 trying to avoid concussions, but when he changed
21 the way that he was doing the offense on the
22 football, the intent was to even limit it further
23 because there were concussions. There are always
24 concussions when kids play football.

25 THE COURT: And is it your position now

1 that Berkeley -- that the new coach at Berkeley is
2 also violating public policy?

3 MS. BLOODGOOD: I don't know. I'm sure
4 he's trying to limit concussions, but when a
5 principal steps up and says to an employee, I'm
6 going to fire you unless you do something that the
7 coach knew would increase the concussions and make
8 him be in violation of a statute, that's the
9 problem.

10 THE COURT: Mr. Lambert.

11 MR. LAMBERT: Your Honor, I think we've
12 beaten this pretty well now. Simply put, he was
13 never told he had to violate the statute and he
14 admitted that. And even if you get past that he
15 was a contract employee, and even if you get past
16 he wasn't discharged, he still can't overcome that
17 hurdle, which is why we think we're entitled to a
18 directed verdict.

19 THE COURT: All right. Let me hear
20 from you on the defamation.

21 MR. LAMBERT: Yes, Your Honor. And I
22 will focus here on another legal issue, and this is
23 whether Mr. Cruce is a limited public figure. I'm
24 sure the Court is generally familiar, but just to
25 remind everyone, generally, defamation has six

1 elements in a private figure case, but certain
2 individuals have to prove more than the average
3 person, and that's someone who qualifies as a
4 public figure or official.

5 You know, public officials generally
6 are always required to prove actual malice under
7 New York Times v. Sullivan; public figures who are
8 widely known across the country always have to do
9 it; and then you get into the category of a limited
10 public figure, which is what Mr. Cruce is.

11 A limited public figure, according to
12 Erickson v. Jones Street Publishers, which is 368
13 S.C. 444 from 2006, the Supreme Court defines this,
14 quoting the US Supreme Court, is an individual who
15 voluntarily injects himself or is drawn into a
16 particular public controversy and thereby becomes a
17 public figure for a limited range of issues. In
18 either case, such persons assume special prominence
19 for the resolution of public question.

20 Our Supreme Court went on to give five
21 factors the Court should consider when determining
22 if someone is a limited public figure. I'm going
23 to walk through these briefly and tie it to the
24 evidence that you've heard.

25 The Plaintiff had access to channels of

1 effective communication. We heard that
2 Coach Cruce had a radio --

3 THE COURT: Let me stop you there.

4 Do you agree your client is a limited
5 public figure?

6 MS. BLOODGOOD: Absolutely not, Your
7 Honor.

8 THE COURT: All right.

9 MR. LAMBERT: Your Honor, the reason
10 she can't agree to that is because under Section
11 15-78-60, subsection 17, which is part of the Tort
12 Claims Act, it bars any claim against a public
13 entity requiring proof of actual malice.

14 If he's a limited public figure, this
15 case is barred, his claim is barred, and it must be
16 dismissed. So that's why this is going to be a
17 fight over this particular question.

18 So number one in these factors -- I'll
19 just call it the Erickson factors since that's the
20 case they're coming from -- the plaintiff had
21 access to channels of effective communication. He
22 had a radio show. He was frequently quoted in
23 newspaper articles about his team.

24 Exhibit 27, Your Honor, is 197 news
25 articles from the *Post and Courier*, the *Berkeley*

1 *Independent* and then the -- there was one more
2 Berkeley paper in there and I'm forgetting the name
3 of it at the moment. The ...

4 THE COURT: Mr. Lambert, just because
5 there is an article doesn't mean that he instigated
6 those articles.

7 MR. LAMBERT: Correct. But his --

8 THE COURT: We can write articles about
9 whatever, but it doesn't -- doesn't he have to have
10 instigated something or ...

11 MR. LAMBERT: Yes, Your Honor, and I'll
12 get to that, but I think with respect to these
13 articles, some of them he's not quoted, like the
14 *Post and Courier* summaries of this week and local
15 area football.

16 But in a lot of the *Berkeley*
17 *Independent* articles, he is giving quotes to the
18 reporter. If he didn't want to have any connection
19 with those articles, he didn't have to speak to the
20 reporter, but he did. He wanted to talk about his
21 team, and you'd expect a coach to do that.

22 THE COURT: In those articles, he spoke
23 to the reporters -- because I'm quoted a lot. I
24 don't speak to reporters, but somebody can sit in a
25 public courtroom and quote me as to what I say, but

1 it doesn't mean that I've spoken to the reporters.
2 They're just free to be in the public arena.

3 MR. LAMBERT: Correct, they are. And I
4 think we're getting a little far afield, but I
5 think someone who is a judge probably qualifies as
6 a public official under Supreme Court precedent.

7 And a football coach -- now, there are
8 cases, and there's not one in South Carolina that
9 does it, but there are cases around the country
10 that hold any public employee is a public official
11 who must prove actual malice.

12 So you could take --

13 THE COURT: And the reason why I say --
14 and I haven't had an opportunity to look through 27
15 to see, and so that's why I'm just asking you to
16 parse that out as to, are they articles about --
17 that Coach Cruce was -- I don't need to see them
18 all.

19 MR. LAMBERT: Certainly. But this is a
20 sampling of headlines. Cruce new coach at
21 Berkeley. Cruce era begins at Berkeley. Stags
22 keep winning. Stags making summer progress.
23 Berkeley has experience to win Region 8, 3A.

24 THE COURT: Those would be about him
25 without him being involved in the article, correct?

1 MR. LAMBERT: They could, but if you
2 look through these, in a large number --

3 THE COURT: But that's important to
4 make a distinction.

5 MR. LAMBERT: It is. It is, Your
6 Honor. And in many of these articles, particularly
7 the *Berkeley Independent* ones, he is quoted that --
8 most of them are written by a gentleman named Dan
9 Brown, who clearly had the sports beat for the
10 *Berkeley Independent* for these five years or so.

11 He's giving him quotes and, clearly,
12 speaking to him, or at least to reporters, because
13 if you read it, they're clearly the kind of quotes
14 a coach gives after a game: We're proud of our
15 team; we played well; it was a tough loss this
16 week; we turned the ball over too much.

17 Second, he's voluntarily assumed the
18 role of special prominence in the public
19 controversy. He voluntarily took the role as coach
20 of the Berkeley High School football team, which as
21 a lot of the testimony drew out, is a significant
22 role in this particular community.

23 He's not a limited public figure in
24 Columbia or in Greenville, Your Honor. We're
25 talking about in this community, in this region.

1 He also is voluntarily injecting
2 himself into this in speaking to a reporter from
3 the *Kansas City Star*. I mean, that's a state, you
4 know, over by the Mississippi River in a different
5 time zone where he's giving quotes about this; I'm
6 not going to punt. My chips are all in. This
7 could be a career-ending decision.

8 So he didn't have to return a call.
9 I'm assuming, and giving him the benefit, the
10 reporter called him rather than he's calling the
11 reporter, which would be a whole other level.

12 The third factor is he sought to
13 influence the resolution of the outcome of the
14 controversy. He was very outspoken on this new
15 philosophy and the use of data. There is an
16 article from the -- from the *Berkeley Independent*
17 talking about his analytics. There's a Kansas City
18 article talking about his analytics, where he's
19 pushing this new strategy, where he's trying --
20 saying, people aren't going to like it, but this is
21 where they are, where we're going, and they need to
22 get used to it.

23 Number four is the controversy existed
24 prior to the publication of the defamatory
25 statement. His tenure as the coach at Berkeley

1 and, particularly, the controversy of the 2015
2 season clearly predated any of the allegedly
3 defamatory statements.

4 And five is, he retained the public
5 figure status at the time of the alleged
6 defamation. The alleged defamation is coming at
7 the time, or within a month or less, of him being
8 removed as the football coach. That would say he's
9 still a limited public figure in the midst of this
10 controversy.

11 There are cases from around the country
12 that hold coaches as limited public figures,
13 including some cases that do that with high school
14 coaches. There is not one, as I acknowledged to
15 Judge Nicholson at the summary judgment hearing, a
16 case from South Carolina on this point, one way or
17 the other, but the factors are here and point to
18 him being a limited public figure.

19 And there are other cases from other
20 jurisdictions, including Georgia and Texas and even
21 New York and Connecticut. So we're covering wide
22 ranges here, where coaches in high school sports
23 are limited public figures. So you're on very
24 solid ground to reach that conclusion.

25 And I probably should have mentioned

1 this up top: This question of, is he a limited
2 public figure? It is a question of law, Your
3 Honor, for you. It's not one that can ultimately
4 go to the jury.

5 So that's why he's a limited public
6 figure. That requires him under New York Times v
7 Sullivan to prove actual malice. The Tort Claims
8 Act bars that. And there is, in fact, a court of
9 appeals case called Gause v Doe, 317 S.C. 39 Court
10 of Appeals for 1994.

11 It's a Myrtle Beach police officer who
12 filed a defamation claim after he was fired for
13 allegedly raping someone in the back of his patrol
14 car. That case was dismissed because he was a
15 public official, had to prove actual malice, and
16 his defamation claim was, therefore, barred.

17 That case is on all fours, if you
18 switch out police officer and what he allegedly did
19 with football coach and what allegedly happened
20 with Coach Cruce, and that case should control the
21 outcome of this one, Your Honor.

22 THE COURT: Ms. Bloodgood.

23 MS. BLOODGOOD: Thank you, Your Honor.

24 I think we need to back up a little bit. This is a
25 very novel argument, but as Mr. Lambert said, there

1 certainly is no law in South Carolina that would
2 find a football coach to be a limited public
3 official.

4 And that's because -- back up. Private
5 individuals are more vulnerable to injury than
6 State people, like a police officer. And,
7 therefore, their protection is greater. It is only
8 when you have a person who is a public figure who
9 has special prominence in the resolution of public
10 questions, and that's the key.

11 THE COURT: But if he's not a public
12 figure, what is he?

13 MS. BLOODGOOD: The issue, Your Honor,
14 is that it's not a matter of public question or
15 public issue here. It has to be connected with a
16 matter of public issue. Public issue is defined in
17 Time, Inc. v Johnston case, 448 F.2d 378 4th
18 Circuit (1971) as something that involves the
19 resolution of a serious social or governmental
20 problem.

21 The offensive strategy that the high
22 school coach at Berkeley High School takes is not a
23 serious social or governmental problem as a matter
24 of law; and, therefore, since it is not a public
25 issue, he cannot be a limited public figure

1 speaking on a public issue.

2 Football -- how a football coach
3 coaches his team is not a public issue. It is not
4 a serious social or governmental issue.

5 So they're ignoring that whole piece of
6 the puzzle and trying to say that, forget that it's
7 this tiny little issue that is of no consequence to
8 anyone, but we are going to say he's a limited
9 public official.

10 If that were the case, every single
11 football coach in this state on any single day when
12 they were playing a football game would be a
13 limited public official, which means that you could
14 defame them and that they would have to show malice
15 in order to prevail. And that's just not what the
16 cases say.

17 So the facts in this case are, besides
18 the most crucial point, is that offensive strategy
19 of Berkeley High School is not a serious social or
20 governmental issue that he was talking about. so
21 he -- so this whole thing fails.

22 But he says, he didn't get the press,
23 his team got the press. He said he talked to the
24 press because he's the coach. And he said the
25 people didn't know his wife when she walked through

1 the stands. He said the *Post and Courier* covers
2 all of the Berkeley County High School teams, and
3 there are seven of them.

4 And, Your Honor, there's no press here
5 today. There was no press here yesterday. This is
6 not a man who is a limited public figure. As he
7 said, he is a football coach. The cases in the
8 country that talk about limited public figure,
9 because that is a subset of public official.

10 So a limited public official, the cases
11 in sports are -- the one in Texas is Vanderberg v
12 Newsweek, Inc., 507 F.2d 1024. That was a college
13 track coach at the University of Texas. The case
14 that was cited, Time, Inc. v Johnston, is a
15 professional basketball player with the
16 Philadelphia Warriors.

17 These were people who were in either
18 professional or college athletics and then they
19 are -- they are in the newspapers a lot and talking
20 about a particular issue that affects their
21 profession.

22 The one in the Supreme Court, United
23 States is Curtis v -- Curtis Publishing Company v
24 Butts, 388 U.S. 130 (1967) talked about a
25 well-known college football coach at the University

1 of Georgia.

2 There is not a single case in South
3 Carolina that would extend itself to say that a
4 football coach in a high school, in a county where
5 there's seven high schools, is a limited public
6 figure because there is no public issue involved
7 that he is talking about.

8 The five requirements don't -- they
9 don't apply, even if -- assuming -- and really --
10 assuming that this was an issue of social and
11 governmental significance, then he -- of course,
12 before the game and after the game, he's going to
13 talk to the newspapers. He's talking about his
14 team. He -- there's no special prominence.

15 And the most important thing on the
16 second requirement, there's no public controversy.
17 It's -- winning or losing a football game, I'm
18 sorry, is not a matter of public controversy.
19 Whether Cane Bay wins or Berkeley High School wins,
20 to say that you're going to extend the definition
21 of public controversy so that it's one in Cane Bay
22 and it's a public controversy in Berkeley High
23 School, it doesn't make any sense.

24 That's not what the law is. The law is
25 that generally individuals cannot be defamed

1 easily, and the exception is if you're a public
2 official and you're talking about something that is
3 of social or governmental significance.

4 And then there's another exception that
5 if it is social and governmental significance, then
6 you could be a limited public official. But you
7 cannot ignore the requirement that this has to be
8 something that the public is so interested in, that
9 you put yourself in a position where you're
10 actually going to have to show actual malice.

11 So it's an interesting argument, but it
12 really is -- it's just not applicable to the facts
13 in this case. I don't -- the -- there have been
14 very, very few limited public officials ever found
15 anywhere in the country.

16 So I think that based on the Time, Inc.
17 v. Johnston case, since -- you could say that a
18 football team, whether they win or lose, is an
19 important issue in Berkeley County on any given
20 Friday night, but it is not -- as a matter of law,
21 it is not a serious social or governmental problem.

22 MR. LAMBERT: Your Honor, if I may.

23 THE COURT: Hold on one second.

24 MR. LAMBERT: Let's clear up one easy
25 thing first: If this is a novel issue in South

1 Carolina, it's an issue that has to be decided.
2 The fact that it's novel doesn't mean you can't
3 decide it and that you can't answer it for the
4 defendant. So that -- just to put that aside.

5 It has to be a matter of a public
6 controversy or public issue: Well, a couple of
7 responses.

8 One, Mr. Cruce says it can't be sports,
9 they're not big enough. Well, the U.S. Supreme
10 Court in the Curtis case she cited about the
11 Georgia coach clearly took sports in that context
12 to be something that can create a public
13 controversy, as do all the other cases that she
14 said are distinguishable. So they can be.

15 And what you heard here from witnesses
16 is that football in this community is a serious
17 public matter. I mean, Coach Cruce's wife referred
18 to it like coaching the Philadelphia Eagles, like
19 being an NFL team. It's a big deal here.

20 And a coach, and particularly in a
21 community of this size, has got far greater access
22 to the media than the beat cop did in Myrtle Beach
23 from the Gause case.

24 All football coaches are public
25 figures, they are limited public figures. It's an

1 argument that if you do this, every --

2 THE COURT: Do you?

3 MR. LAMBERT: No, Your Honor. It is
4 case specific, and it's dependent. I grew up in
5 Columbia. I went to A.C. Flora. We weren't very
6 good and no one really cared if we won or lost on
7 Friday night.

8 Our coach, a guy named Robin Bacon,
9 probably wasn't a limited public figure because
10 really no one cared. I mean, it was nice to win.
11 Don't get us wrong. But we didn't live and die by
12 wins the way you heard that this community does.

13 The coach up at -- Dorman's pretty
14 good. That coach, you might have evidence it is,
15 but a coach in a 1A school that typically goes one
16 and nine, they may not care enough to make him one.
17 Part of that is, what does the community do, and
18 then what is that person's role, the coach's role
19 in that?

20 THE COURT: The defamatory statements,
21 were they made as a result of his coaching or as a
22 result of his teaching, or does that even matter?

23 MR. LAMBERT: The result -- that
24 matters, Your Honor, because -- well. Okay. It
25 matters unless --

1 THE COURT: These cases that you've
2 provided, the cases I've researched says there's --
3 you could be a limited public figure from things.
4 So, an example, there was a case in Nevada that
5 said that high school football coaches could be
6 limited public official figures for their coaching.

7 MR. LAMBERT: Yes.

8 THE COURT: But it would not go to
9 their private life.

10 MR. LAMBERT: Exactly.

11 THE COURT: And so I think that -- so
12 my question was to flesh out if -- so even assuming
13 that's your argument, does the statement -- are the
14 statements that are made, are they related to the
15 coaching? Are they related to teaching? Or does
16 that even matter in this analysis?

17 MR. LAMBERT: Okay. I will answer it
18 in two parts; and the first one is that it does not
19 matter if you follow the line of cases that say
20 that every public employee is a public official.
21 Because, in that case, whether a teacher or as a
22 coach, he's a public employee, he's a public
23 official, and all public officials must prove
24 actual malice.

25 THE COURT: Do you agree with that

1 statement, Ms. Bloodgood?

2 MS. BLOODGOOD: No, Your Honor. Every
3 public --

4 THE COURT: Just asking?

5 MS. BLOODGOOD: Absolutely not.

6 MR. LAMBERT: Public official, public
7 figure, limited public figure.

8 THE COURT: I was trying to find some
9 common ground

10 MR. LAMBERT: So if he's not a public
11 official, all of whom must prove actual malice, and
12 he is going to be a limited public figure, it then
13 does matter because he is not going to -- the
14 driver's ed teacher at Berkeley High School is not
15 going to be a limited public figure. I don't think
16 the driver's ed class gets people really worked up
17 about anything.

18 The football team, on the other hand,
19 is a different story. Well, everything unless --
20 the football -- and his role as athletic director,
21 he was both. And while they're different, they
22 both go to sports.

23 And what you'll see in here are
24 articles where Coach Cruce, as the athletic
25 director, is doing things like creating the

1 Berkeley High School Hall of Fame. And that's
2 getting publicity in town and people are getting
3 inducted. So --

4 THE COURT: And because of that, then
5 he rises to a limited public official?

6 MR. LAMBERT: That alone is not. I
7 think, what it's hard to do in the context of
8 limited public figure is separate his coach hat and
9 his AD hat because they're so intertwined in what
10 he's doing and how people view him.

11 He's the head of the football team and
12 the athletics program, and that's the lens through
13 which you have to see him.

14 Clearly, the January 7th e-mail
15 relating to eligibility, the one from Chris Stevens
16 and what's in the files, deals with him and his
17 sports hat. And I don't see how the statement in
18 the *Post and Courier*, Cruce out as coach, AD at
19 Berkeley, doesn't also relate to that when the
20 headline of the article itself is, he's out as the
21 coach and the AD.

22 So the statements, I think, have to --
23 clearly, go to him and his sports hat as the coach
24 and as the AD. So we can put the teacher hat aside
25 and it's -- it's -- he is not -- excuse me, he is

1 someone who has access to the media in a way that
2 the average person doesn't.

3 The reason a private figure does not
4 have to prove actual malice is because they don't
5 have a way to speak for themselves and get their
6 side of the story out to the public the way someone
7 who is a public figure does.

8 Well, Coach Cruce had a way to get his
9 story out. He did it in the *Berkeley Independent*
10 and in the *Kansas City Star*. He's not like every
11 other person on the street or any other person in
12 the stands at that football game.

13 The last two points that I would make
14 is this: The issue here is the football coach in
15 Moncks Corner, but if Mr. Cruce is right and this
16 issue is about concussions, then it would seem that
17 that certainly does rise to the public controversy
18 and interest, given how important he has been
19 arguing it was.

20 And, lastly, there may not have been a
21 reporter sitting back there today, Your Honor, but
22 there was an article in the *Post and Courier*
23 Saturday morning that this case was going to trial,
24 and there are very few cases in common pleas that
25 make a major newspaper when they're getting ready

1 to go to trial.

2 So I think that is yet one more
3 example -- and you can, obviously, take judicial
4 notice that a newspaper article was published.

5 It's just one more example of the fact
6 that Coach Cruce is not like most plaintiffs and
7 has far more notoriety and access to media than a
8 typical defamation plaintiff.

9 THE COURT: All right. Ms. Bloodgood.

10 MS. BLOODGOOD: Your Honor, the
11 contention that a public -- that you should --

12 THE COURT: Tell me -- and so let's do
13 it this way --

14 MS. BLOODGOOD: Okay.

15 THE COURT: -- because I'm going -- I
16 pulled your Complaint and I'm looking at your
17 pretrial brief. What statements exactly are you
18 alleging are defamatory?

19 MS. BLOODGOOD: Two things that are
20 defamatory are their actions, their silence when
21 they terminated him from the coach, from the AD,
22 transferred him, and demoted him, and they never
23 said a reason why, which resulted in all sorts of
24 inferences that he was unfit for his job and that
25 he had done something very wrong.

1 He was working with children. He was a
2 coach. And, all of a sudden, 26 years, he is out
3 of work. He has -- he has been fired suddenly as a
4 coach at the same time as --

5 THE COURT: Let me ask you this: So
6 the lack of a statement you're alleging is
7 defamation?

8 MS. BLOODGOOD: Yes, Your Honor. The
9 way that it was handled, defamation -- it went by
10 innuendo. When you take an act which sends a
11 message that somebody has done something wrong and
12 that message is false, that is defamation.

13 When you fire somebody -- for instance,
14 Your Honor, if you fire somebody and you have the
15 police come in and escort them out, you have
16 defamed that person because the inference is that
17 that person has done something very wrong.

18 THE COURT: So how do I -- do you have
19 a case or some indication somewhere for me to --
20 that silence is a statement? Doesn't it have to be
21 a statement?

22 MS. BLOODGOOD: No, Your Honor.

23 THE COURT: It can be a nonverbal
24 assertion?

25 MS. BLOODGOOD: Defamation by innuendo;

1 yes, Your Honor.

2 THE COURT: Do you have a case on that?

3 MS. BLOODGOOD: I will get you a case
4 on defamation by innuendo, but it is a -- when --
5 there are cases when somebody is terminated and
6 somebody is -- for instance, police come in -- you
7 always tell somebody, don't bring the police.
8 Don't embarrass them. Don't -- because the
9 inference is that they've done something wrong and
10 that would be defamation.

11 So when you fire somebody as a coach,
12 but also -- here's the problem. Also, they fired
13 him as the athletic director the same day when he
14 hasn't done anything wrong as the athletic
15 director.

16 And then they fire him as -- or they
17 transfer him to a middle school, and they give him
18 a different teaching position. What he said was,
19 he was immediately shunned; his friends didn't talk
20 to him, the coaches; he couldn't get a job.

21 The inference out there by them
22 refusing to say, oh, by the way, he was a good
23 athletic director and there's nothing wrong with
24 his teaching, through their silence, they inferred
25 that he had done something wrong. That is one

1 basis of our defamation claim.

2 THE COURT: So you have to show fault.
3 What should they have done to absolve fault?

4 MS. BLOODGOOD: They should have --
5 well, there was no reason. The testimony was that
6 there were other coaches who had been fired as head
7 coach and still stayed as AD and still stayed as a
8 teacher.

9 THE COURT: But we're concerned about
10 your client.

11 MS. BLOODGOOD: Yes. They should
12 have -- there's two things they could have done.
13 They could have kept him in the position that he --
14 that there was no fault and that he was doing a
15 good job in.

16 There was no need to move him from
17 all -- if they had just said, we're getting rid of
18 a head coach, then there would have been no
19 defamation because he still would have been the AD.
20 He would have had his respect. He would have had a
21 half a year to look for a job.

22 Instead, they move him immediately out
23 of all three with silence and there's -- every --
24 all of a sudden people say, what's gone on? Why is
25 he being taken out of the class in this situation?

1 It's the way that they handled it.

2 THE COURT: Well, the former
3 superintendent said that she saw this as an
4 opportunity in a school that had a need.

5 MS. BLOODGOOD: And she said there was
6 no opening in that school also. The jury could
7 find that she pushed -- that she moved him -- he
8 had a good ADEPT score. She also testified he was
9 meeting goals as a teacher. There was no reason to
10 move him.

11 THE COURT: So the silence is the
12 defamation. You said there were two. What was the
13 other defamatory statement?

14 MS. BLOODGOOD: The other one is the
15 defamatory e-mail that Chris Stevens sent out right
16 after the coach left, and that e-mail was sent to a
17 lot of people who did not need to know. They were
18 not head coaches.

19 They had no right to the information in
20 the e-mail which inferred that there were things
21 missing in the files, that Coach Cruce had not
22 maintained the files, that he was incompetent in
23 his position as athletic director, and the
24 information in that e-mail was false.

25 Coach Cruce testified that, a, it

1 shouldn't have gone to all those people, some of
2 whom he didn't know, but, b, there were lots --
3 there was lots of information in that e-mail that
4 was just false. And it was accusing him of not
5 having information that didn't need to be in the
6 file anyway and it shouldn't have been in the file.

7 So that was -- after they fired him,
8 then they send another e-mail that makes him even
9 look worse by saying, here's what he did and he's a
10 liability to the school. The word, liability, is
11 in there.

12 So those are the -- those are the basis
13 for the defamation.

14 THE COURT: What exhibit number was
15 that, Ms. Bloodgood?

16 MS. BLOODGOOD: Excuse me?

17 THE COURT: What exhibit number was
18 that?

19 MS. BLOODGOOD: That is ...

20 MR. MORGAN: Number 13, Your Honor.

21 MR. LAMBERT: Number 13.

22 THE COURT: Could I see 13?

23 MR. MORGAN: Yes, Your Honor.

24 THE COURT: You may continue.

25 MS. BLOODGOOD: You had asked me

1 earlier what could they have done. Not only could
2 they have just kept him in his other two positions,
3 but if they were going to move him, they could have
4 made a statement and said, we're not moving you
5 because you're a bad teacher; or we're not moving
6 you because you're a bad athletic director; or you
7 haven't done anything that's egregious. But,
8 instead, there's testimony that the principal said
9 he was terminated for cause.

10 THE COURT: Anything further?

11 MS. BLOODGOOD: No, Your Honor.

12 MR. LAMBERT: May I?

13 THE COURT: Sure.

14 MR. LAMBERT: We keep hearing, it
15 implies he's done something wrong. Your Honor, he
16 was sent to a middle school to work with younger
17 children. If there was something he had done wrong
18 with students, he never would have been sent to
19 another school. He would have been kicked out of
20 the school district entirety, so there's no way
21 that can be the implication.

22 So to take these -- number one was the
23 silence. I am not aware of a case -- it doesn't
24 mean it doesn't exist, Your Honor, but I am not
25 aware of a case that says silence alone can be

1 defamatory and defamation by innuendo.

2 There is generally --

3 THE COURT: Ms. Bloodgood is going to
4 give us one.

5 MR. LAMBERT: I look forward to seeing
6 it because I don't know that, and my impression was
7 that you make a statement and something is missing
8 or there's an implication in the statement that is
9 an innuendo of something that's defamatory.

10 What they could have done differently,
11 they could have made a statement that you're a good
12 teacher, you're a good AD, but you're no longer the
13 head coach. There cannot be a judicially created
14 rule in defamation that says that employer has to
15 explain why someone is transferred or demoted or
16 fired.

17 Generally, companies and employers
18 don't walk to talk about it because they don't want
19 to have to say anything about it for fear of
20 creating more of a fuss that's there. If courts
21 start requiring an employer to say, well, you were
22 good about this, but we had to let you go, not only
23 does it pinpoint exactly what the flaw was, but now
24 we're going to have a lot of litigation over, well,
25 was the statement right? Did it say too much? Did

1 it not say enough?

2 I think Superintendent Blackburn
3 explained why the transfer was appropriate; to give
4 the athletic department a fresh start.

5 Second, as to the Chris Stevens e-mail,
6 which was Exhibit 13, you have -- Mr. Cruce
7 testified that everyone on there looked like a
8 coach. Now, he didn't know all of them because
9 some of them were volunteer coaches, which is
10 somewhat of a concern that the athletic director
11 doesn't know everyone who's working with his kids,
12 but Mr. Stevens testified that he went into the
13 office with two other people, they reviewed it and
14 that this is what they found.

15 Now, finally, we kept hearing that he
16 was terminated for cause. He wasn't terminated,
17 just so that we don't let that slip away.

18 And one final point, Your Honor, if
19 people really care why Mr. Cruce is being
20 transferred, that only goes back to the limited
21 public figure argument of the fact that people in
22 the community care about this individual more than
23 they care about others.

24 Generally, if a teacher gets
25 transferred, most folks aren't going to know about

1 it or aren't going to care unless they've got a
2 child affected by it. If people cared about the
3 fact that Mr. Cruce was transferred, that suggests
4 he's got a profile in this community that is far
5 more public than everyone else.

6 THE COURT: All right. My clerk is
7 printing off the South Carolina defamation by
8 innuendo case. So as soon as it's printed, we will
9 read it.

10 MS. BLOODGOOD: Your Honor.

11 THE COURT: Brief rebuttal?

12 MS. BLOODGOOD: Yes, I do. I'm not
13 saying an employer has to always explain their
14 actions, but when they act in a manner that infers
15 wrongdoing, that's defamation by innuendo.

16 And I know -- I said, silence, but
17 silence -- and I'll quote Samuel Clement on this,
18 among other common lies, we have the silent lie,
19 the deception which one conveys by simply keeping
20 still and concealing the truth.

21 Their actions, by keeping still, by not
22 saying --

23 THE COURT: I don't know that the law
24 imposes a duty to quell everybody's innuendo. What
25 other people assume from what happened is not the

1 employer's responsibility if they haven't said
2 anything.

3 MS. BLOODGOOD: If the actions or the
4 silence of the employer infer wrongdoing or infer a
5 false statement, if they say something that defames
6 the person, then it's actionable.

7 THE COURT: Okay. Tell me what it is
8 that you believe could -- that the school district
9 did that could have been inferred. Just because he
10 didn't like where he ended up, that he perceived it
11 to be a demotion, I don't think that's innuendo.

12 MS. BLOODGOOD: It's not where he ended
13 up. It's that he is simultaneously fired as head
14 coach, fired as athletic director, and moved from a
15 high school, where he's always been, to a middle
16 school which sends a signal, you cannot coach high
17 school football anymore.

18 And it did. As he testified, it
19 absolutely ruined his career. He was off bounds
20 because everyone inferred there is something wrong
21 here. He has done something wrong. Why would you
22 take somebody, take them out as a coach, take them
23 out as athletic director and get him out of the
24 high school where he's spent his whole life and
25 move him somewhere? There is something wrong with

1 what he is doing; that was the inference.

2 He didn't realize how serious -- he
3 testified he didn't realize how serious it was in
4 the beginning until he was -- nobody would talk to
5 him. He was just off -- off limits.

6 And so that's the defamation. A
7 jury -- I think a jury could find, based on the
8 shunning, the fact that there were different
9 reasons after the fact about why he was moved,
10 there were inconsistencies that -- and, in fact,
11 both Brenda Blackburn and Steven Steele said, yes,
12 people could infer that there was -- that something
13 was wrong by the way that he was, all of a sudden,
14 taken out of all of these positions.

15 That -- so that is the defamation. And
16 when I say, silence, I mean that the actions
17 coupled with no reason for them infer, just like an
18 action of taking -- escorting you out of the
19 workplace with a police officers.

20 THE COURT: So you're saying that there
21 were no statements, there was only action.

22 MS. BLOODGOOD: Correct. It was their
23 actions that -- that inferred the wrongdoing on his
24 part.

25 THE COURT: And, again, I'm just

1 reviewing this, but -- and it's a 4th Circuit
2 opinion. It says there has to be -- there has to
3 be some statement made in order for there to be
4 defamation by innuendo. There still has to be some
5 sort of statement made.

6 All right. So I will -- anything
7 further?

8 MR. LAMBERT: Your Honor, I'm just
9 looking at the case that was brought out. It's
10 Fountain v First Reliant Bank; it's either headnote
11 6 and 7, which is at pages 441 and 442 --

12 THE COURT: I have it.

13 MR. LAMBERT: You've got it? Perfect.

14 THE COURT: I gave it to you.

15 MR. LAMBERT: The -- your esteemed
16 deputy did. Do you have a copy?

17 THE COURT: Do you think that my
18 deputy -- I gave it to you and provided it next to
19 you, Mr. Lambert. That's where it came from. As
20 brilliant as my deputy is, I do not believe he has
21 a Westlaw account.)

22 MR. LAMBERT: That would be unique.
23 No, I appreciate the case. And if you have not
24 read it, I will then hold off and let you read it
25 for yourself.

1 THE COURT: All right. Anything
2 further? I'm going to take just a few minutes to
3 read it, because I will tell you, Ms. Bloodgood, I
4 always love to learn something new, and this is the
5 first time that I've heard that term.

6 And so I am going to review that and
7 all of the arguments and issue my ruling. Since
8 it's your burden, I will give you one last
9 statement.

10 MR. LAMBERT: Thank you for listening,
11 Your Honor. I think you've heard plenty from us.

12 THE COURT: All right. And,
13 Ms. Bloodgood, because I have hit you with lots of
14 questions, I'll give you the final statement to the
15 Court.

16 MS. BLOODGOOD: Well, Your Honor, the
17 defamation claim is based on the actions and the
18 lack of actions by the school district. It is --
19 it is a communication, one way or the other. You
20 cannot act in a manner that sends a false message
21 about someone.

22 I have a stack of defamation cases here
23 that I can --

24 THE COURT: Well, let me just ask you,
25 if they had sent him to a middle school and he

1 coached a JV football team, would that have
2 satisfied his defamation by innuendo argument?

3 MS. BLOODGOOD: If they had sent --
4 that's why I asked the principal -- if they had
5 sent him to a high school, it would have absolutely
6 helped his reputation.

7 THE COURT: A high school with no
8 coaching, you would think that would not be
9 defamation by innuendo?

10 MS. BLOODGOOD: I think that would be
11 less because it would be sending a message that
12 he's not -- it's not -- well, no, I think that
13 would still hurt his coaching if they're getting
14 him out of a coaching situation, yes.

15 THE COURT: It's probably not a
16 relevant legal analysis to try to figure out where
17 we are.

18 All right. I will be at ease probably
19 about 15 minutes.

20 (A recess transpired.)

21 THE COURT: We had an in-chambers
22 conference and I indicated to counsel that the
23 Court was inclined to grant the motion for directed
24 verdict as to the wrongful termination.

25 Ms. Bloodgood, I'm happy to hear any

1 further arguments or statements you wish to place
2 on the record regarding the Court's indication that
3 it would be granting that motion.

4 MS. BLOODGOOD: Your Honor, I would
5 just like to incorporate all of my prior arguments
6 and register my objection to the grant of directed
7 verdict as to that claim.

8 THE COURT: And, at this time, the
9 Court is granting the defendant's motion to --
10 motion for directed verdict as to the wrongful
11 termination claim. Most importantly, there was no
12 testimony indicating that he was terminated as a
13 result of any public policy issue.

14 Note your exception to my ruling.

15 And, once again, Ms. Bloodgood, just so
16 I'm abundantly clear as to the defamation, it is
17 your position that Plaintiff's 13, which is the
18 e-mail from Mr. Stevens to the other individuals,
19 is defamation; is that correct?

20 MS. BLOODGOOD: Yes, Your Honor.

21 THE COURT: And because -- explain to
22 me how that is defamation.

23 MS. BLOODGOOD: That e-mail is
24 defamatory because it was sent to people who were
25 assistant coaches with no need to know, indicating

1 that some people had gone into his office and had
2 gone through his files and found that there were
3 remiss or missing documents, and that the e-mails
4 -- that the documents and their files could be a
5 liability to the school, inferring that he was
6 unfit for his position and that he had been
7 incompetent in the job that he was supposed to do
8 as AD, athletic director.

9 THE COURT: Anything further on that
10 issue, Mr. Lambert?

11 MR. LAMBERT: Your Honor, the e-mail of
12 January 7th, Exhibit 13, plainly just states simple
13 facts. It says, there could be things that are
14 missing. He lists what needs to be in there.
15 There is nothing about this that is defaming
16 Mr. Cruce in any way. And for that reason we
17 believe the directed verdict motion should be
18 granted on that claim, too.

19 THE COURT: So, again, in chambers I
20 indicated that the Court was finding that Mr. Cruce
21 is not a limited public figure for the purposes of
22 the defamation claim, based upon my analysis of the
23 case law in South Carolina and reviewing the cases
24 that have been presented.

25 It is a matter of law and the Court

1 must focus on the nature and the extent of an
2 individual's participation in the particular
3 controversy giving rise to the defamation. Based
4 upon that, I do not find that Mr. Cruce is a
5 limited public figure.

6 Ms. Bloodgood, as to the second issue
7 that you believe is the defamation, and this is the
8 silent -- the lack of a statement?

9 MS. BLOODGOOD: It's the inference.
10 There is such a thing as defamation by innuendo,
11 and the fact that Coach Cruce was terminated as
12 head coach, athletic director, transferred to a
13 middle school, and taken out of his classroom as a
14 driver's ed teacher without any explanation, all on
15 the same day gave the inference that he had done
16 something wrong and was unfit for his profession as
17 a high school coach. And that's the basis for that
18 claim of defamation.

19 THE COURT: Mr. Lambert.

20 MR. LAMBERT: Yes, Your Honor. I'm
21 looking at the Fountain case you provided us
22 earlier, and this is pages 441 and 442, with
23 headnotes 6 and 7, and the printout on page 5 in
24 the right-hand column.

25 And this is the quote directly: To

1 render the defamatory statement actionable, it is
2 not necessary that the false charge be made in a
3 direct, open, and positive manner. A mere
4 insinuation is actionable as a positive assertion
5 if it is false and malicious and the meaning is
6 plain. Statements, therefore, may be either
7 defamatory on their face or defamatory by way of
8 innuendo.

9 The case talks about statements.
10 Silence is not a statement.

11 THE COURT: And so I have on the way
12 from my chambers to here -- what is the meaning of
13 statements? I think that's where we come down to.
14 And if we are to follow the Fountain, as
15 Ms. Bloodgood's assertion is, that there was no
16 statement, what is a statement if we are going to
17 follow defamation by innuendo?

18 MR. LAMBERT: Your Honor, defamation is
19 classically a -- either libel or slander, the
20 written or spoken word. There have to be words
21 that make a statement. I mean, the fact that I am
22 standing -- we use statement colloquially as, oh,
23 he made a real statement when, you know, he ran out
24 of the room when he heard a baby cry.

25 So that's not the -- that idea of

1 statement doesn't fit within this language.

2 Defamation classically falls into the
3 libel or the slander category, which both involve
4 words. Defamation by innuendo is allowing -- is
5 that your words, whether written or spoken, may
6 imply something that is insulting or attacking on
7 someone's character.

8 Defamation by innuendo doesn't change
9 to then allow any conduct to become defamation.
10 It's simply put, Your Honor, words.

11 THE COURT: So conduct can never be a
12 statement?

13 MR. LAMBERT: Defamation law, as I
14 understand it, involves words, written or spoken.
15 And defamation by innuendo is just saying that it
16 doesn't have to be a direct statement of what is
17 defamatory. You can imply it in your statement,
18 but it doesn't seem to go as far as to say, your
19 conduct is now defamatory. That would open up an
20 entirely new world and create an incredibly novel
21 area of law.

22 THE COURT: Ms. Bloodgood.

23 MS. BLOODGOOD: Your Honor, the
24 language is clear in Fountain. It says, to render
25 the defamatory statement actionable, it's not

1 necessary that the false charge be made in a
2 direct, open, or positive manner. A mere
3 insinuation is actionable. An insinuation is
4 not --

5 THE COURT: But we have to have a
6 statement first.

7 MS. BLOODGOOD: A mere insinuation is
8 actionable. An insinuation does not have to be --

9 THE COURT: An insinuation of what?

10 MS. BLOODGOOD: The sentence starts, a
11 mere insinuation is actionable as a positive
12 assertion if it is false and malicious.

13 So the insinuation itself is actionable
14 if it is false and malicious. When I take you out
15 with police, I am insinuating you did something
16 wrong. I can be absolutely silent in that conduct.
17 You do not need a statement. This case says, a
18 mere insinuation -- that's not a statement -- is
19 actionable.

20 And so that is defamation by innuendo.
21 I insinuate that you have done something wrong
22 because I have taken you out of three positions at
23 once. So I disagree that a statement is necessary.

24 MR. LAMBERT: Your Honor, if I may,
25 unless you have a question for Ms. Bloodgood.

1 THE COURT: I'm just letting it simmer
2 for just a moment, because what you're -- again,
3 this is where I'm struggling, and I told you this
4 is where I'm struggling, what you want the jury to
5 make a finding is the mere -- the fact that your
6 client was sent to a middle school is in itself
7 defamatory.

8 MS. BLOODGOOD: When he was taken out
9 of his job as a driver's ed teacher at a high
10 school and on the same day fired in two different
11 positions, moved to a middle school when his whole
12 career had been high school football, there's no
13 high school football there, and put in a different
14 position, to the people he left behind, it
15 absolutely insinuated that he had done something
16 wrong.

17 When you take a teacher out of a
18 classroom in the middle of the year and fire them
19 from two jobs and you don't say why, there is an
20 insinuation that -- it's a positive assertion. It
21 is -- it is action and it is somebody could infer
22 that he's unfit for that job as a driver's ed
23 teacher in the high school. He's unfit for AD.
24 He's unfit for the coach. All of those were false.

25 MR. LAMBERT: If I may, Your Honor.

1 THE COURT: I'm letting it simmer.

2 MR. LAMBERT: Yes, ma'am.

3 THE COURT: Because I want to get this
4 right.

5 MR. LAMBERT: As we want you to.

6 THE COURT: Or least make a really good
7 record.

8 MR. LAMBERT: We want that, too.

9 THE COURT: All right. Mr. Lambert.

10 MR. LAMBERT: Two points, Your Honor.

11 One, the sentence Ms. Bloodgood was reading, a mere
12 insinuation is actionable, you need to read that in
13 the context of the paragraph that precedes it, is
14 to render the defamatory statement actionable. So
15 it's talking about insinuation in the context of a
16 statement that's been made.

17 Second, as to this idea of you fired
18 him and transferred him and that insulted -- or
19 that defamed him, the logic of that is that every
20 time an employee is transferred, demoted, or fired,
21 the employer has defamed that person. That's the
22 rule that she's asking to you create. And that is
23 not the law. It has never been the law, and it
24 should not be the law.

25 THE COURT: All right. Last word,

1 Ms. Bloodgood.

2 MS. BLOODGOOD: I'm certainly not
3 saying that every termination that someone could
4 look at it and infer that somebody is unfit for
5 their profession, but employers have to be careful.
6 And when they -- when they take actions and don't
7 explain those actions and there is an insinuation
8 created that someone has done something wrong and
9 it hurts their reputation, that is defamation.

10 THE COURT: All right. So in Fountain,
11 the statement was made concerning the plaintiff's
12 ability to get a loan, and the statement was made
13 that the bank would not give the venture the loan
14 as long as Fountain was involved in the venture.

15 And so there was an actual statement
16 that -- short of defamation allows a plaintiff to
17 recover injury to a reputation as a result of the
18 defendant's communication to others, and it breaks
19 it down. Slander is spoken defamation and libel is
20 written defamation.

21 We do not have either a spoken
22 statement, which would be the statement, or a
23 written statement. And so, at this time, I do not
24 find that the silence -- had there been some
25 statement and then -- from which there would be

1 some insinuation, then the Court would allow.

2 But, at this time, the transfer of the
3 plaintiff to the middle school is not in itself an
4 actionable statement, and so that will not be going
5 to the jury.

6 So all that will be going to the jury
7 is the allegations of the statements that are made
8 in the e-mail, which is Exhibit 13. Note your
9 exception to my ruling as well. Thank you.

10 MR. LAMBERT: That includes our
11 exception, Your Honor?

12 THE COURT: To?

13 MR. LAMBERT: To the defamation claim
14 going forward on the e-mail.

15 THE COURT: On Exhibit 13, yes.

16 MR. LAMBERT: Thank you.

17 THE COURT: All right. So now, at the
18 close of the defense case, any motions or matters?

19 MR. LAMBERT: Your Honor, we would move
20 for a directed verdict, that Exhibit 13 constitutes
21 defamation because Coach Cruce was a limited public
22 figure and because the statement is not defamatory
23 itself.

24 THE COURT: Okay. And, again -- go
25 ahead.

1 MR. LAMBERT: And the third reason,
2 that the statement was privileged because everybody
3 who received it was a coach. Three bases for a
4 directed verdict on that claim.

5 THE COURT: Okay. And, Ms. Bloodgood,
6 we plowed this ground pretty deep today. So is
7 there anything else you want to tell me about
8 Plaintiff's 13?

9 MS. BLOODGOOD: No, Your Honor. The
10 only other new thing I heard that I didn't argue
11 earlier is that there was testimony that only head
12 coaches received that information, assistant
13 coaches don't. And there were assistant coaches on
14 that e-mail, which is the problem.

15 THE COURT: That has been addressed in
16 one of the previous arguments. I heard that
17 argument before.

18 MS. BLOODGOOD: Incorporate all my
19 previous arguments. Thank you, ma'am.

20 THE COURT: All right. So in ruling on
21 the motion for directed verdict, it's in the light
22 favorable to the nonmoving party. So based upon
23 that and the fact that I haven't heard anything new
24 since my previous ruling, the motion for directed
25 verdict is denied at this time.

1 MR. LAMBERT: We ask that you would
2 note our exception to that ruling.

3 THE COURT: I will.

4 MR. LAMBERT: Thank you very much.

5 THE COURT: All right. With that being
6 said, Ms. Bloodgood, do you have any additional
7 charges, jury charges?

8 MS. BLOODGOOD: No, Your Honor.

9 THE COURT: Okay. Do you have any
10 additional jury charges that you wish for the Court
11 to include?

12 MR. LAMBERT: Not at this point, Your
13 Honor.

14 THE COURT: All right. So we'll be
15 working -- we now have almost completed them. So
16 you want to be here about 9:15 in the morning just
17 to go over the verdict form and the charges. I'm
18 happy to do that. I don't typically give you a
19 copy of the charge, but I'm happy to go over with
20 counsel. All right?

21 Anything that I can do for you this
22 evening, Ms. Bloodgood?

23 MS. BLOODGOOD: No, Your Honor.

24 MR. LAMBERT: No, Your Honor.

25 THE COURT: Mr. Lambert, Mr. Morgan?

1 (The following proceedings were had
2 9/7/2017, 10:04 a.m., Berkeley County Common Pleas
3 Court in re: Cruce v. Berkeley County School
4 District.)

5 THE COURT: We had a charge conference.
6 Anything you want to put on the record about that?

7 MS. BLOODGOOD: No, Your Honor. I
8 think you made the changes. Oh, I'm sorry.

9 THE COURT: You did want --

10 MS. BLOODGOOD: There was one change.

11 THE COURT: There was one change
12 concerning the common law malice.

13 MS. BLOODGOOD: Yes, Your Honor. After
14 reviewing your jury charges, I objected because I
15 would like you to have said that when a statement
16 is actual per se, the defendant is presumed to have
17 acted with common law malice and presumed to have
18 suffered general damages, and that's the Castine v
19 Castine case, 403 S.C. 259 Court of Appeals (2013).
20 And I believe that should have been in the jury
21 charges.

22 THE COURT: Okay.

23 MS. BLOODGOOD: Thank you.

24 MR. MORGAN: Your Honor, we had no
25 objections to the charge that we went through back

1 in chambers.

2 THE COURT: And the verdict form, any
3 objection?

4 MR. MORGAN: No, Your Honor. We've
5 reviewed that and we are in concurrence that it is
6 accurate.

7 MS. BLOODGOOD: I have no objection to
8 the verdict form, Your Honor.

9 THE COURT: Thank you.

10 And with that we will bring in the
11 jury. Ms. Bloodgood, you are -- you will close
12 first.

13 MS. BLOODGOOD: Yes, Your Honor.

14 THE COURT: And then, Mr. Morgan, you
15 indicated you are doing the closing?

16 MR. MORGAN: That's correct, Your
17 Honor.

18 THE COURT: And then, Ms. Bloodgood,
19 you would have an opportunity for any rebuttal.

20 MS. BLOODGOOD: Thank you.

21 THE COURT: Bring in the jury.

22 (Jury in, 10:01 a.m.)

23 THE COURT: Thank you. Please be
24 seated.

25 Ladies and gentlemen, if you did not

1 comply with my instructions, if you didn't do what
2 I told you to do over the evening hours, please
3 stand.

4 THE JURY: (Standing)

5 THE COURT: Thank you. All 14 jurors
6 have indicated that they've followed the Court's
7 instructions over the evening hour.

8 Ladies and gentlemen, as I indicated to
9 you, we've reached the stage of the trial where you
10 will hear closing arguments on behalf of counsel.
11 In this case, Ms. Bloodgood will go first. She
12 will give her closing argument and then Mr. Morgan
13 will give his closing argument on behalf of his
14 client and then Ms. Bloodgood will have an
15 opportunity for a rebuttal closing argument.

16 Please remember, what the attorneys
17 tell you in their closing argument is not evidence
18 in this case. It is merely their contention as to
19 what the evidence has shown you.

20 After you have heard counsel's closing
21 arguments, I will instruct you on the law
22 applicable to this case. You will then retire to
23 consider your verdict, along with all of the
24 exhibits that have been made part of the record in
25 this case.

1 Please give your strict attention.

2 Ms. Bloodgood.

3 MS. BLOODGOOD: Thank you, Your Honor.

4 I will be brief.

5 In a little while you will go into the
6 jury room and you will make decisions about this
7 case. You have heard the testimony. You will have
8 all the exhibits with you, and I'm not going to go
9 over that with you again except that I do want to
10 leave you with a few thoughts.

11 It matters how an employer treats an
12 employee. When you terminate someone, evaluate
13 them, transfer them to another position, there are
14 rules and there are procedures.

15 Coach Cruce -- and there is a
16 resignation letter that you will read, and I think
17 he does a good job of explaining how this hurt him
18 and what it did to his career.

19 As an employment lawyer, I know how
20 important jobs are. I spend a lot of time at work.
21 You spend a lot of time at work. It becomes part
22 of your personality. And when things happen to you
23 at work, it's as if they happen to you in your
24 family. It's hard. So please read the resignation
25 letter.

1 You know, there is just no reason to
2 treat an employee badly, even if you want to move
3 them. It's fine to get rid of an employee. And as
4 Blackburn -- Superintendent Blackburn said, even if
5 you have a policy that you're not going to say
6 anything when you get rid of an employee, then
7 don't -- after the fact, do not break that policy
8 and then start sending e-mails or consider the
9 termination one for cause when there's nothing to
10 support that this was a for-cause termination.

11 In this case, if you think there is a
12 problem with the files in your coach's office --
13 it's not like he's in jail, you've moved him to
14 another school -- call him and ask him. Don't send
15 out an e-mail to parents and to assistant coaches,
16 which Coach Cruce testified they are not the people
17 who should know what are in those files.

18 Do not send it to a group of people and
19 put statements in it that are just wrong, saying he
20 should have done this and he should have done that
21 and he should have done that when he testified no.
22 And the person who sent the e-mail was not even
23 certified to know what was in those files and
24 supposed to be in them.

25 Those people should not have seen that

1 e-mail. And when they did, what they read was,
2 here's a man who's done this all his life and he
3 didn't even know how to do the files. The files
4 are wrong. They're a liability to the school.

5 Yes, that changes -- that was the nail
6 in the coffin. That changes the whole situation.
7 Even if the school now can say, well, we're excused
8 because we didn't really say anything. We just
9 fired and fired him and put him in a middle school.

10 And now they've changed -- they've
11 contacted all the coaches, all the assistant
12 coaches, and then parents saying -- with an e-mail
13 after he's already gone.

14 Also, you know, nobody wants to file a
15 suit. I can tell you a lawsuit is not a good thing
16 to do. It's aggravating; it's a lot of money; it's
17 a lot of anguish.

18 In this case, the day after we went to
19 the school -- and you'll see that in the
20 superintendent's letter where she mentions this
21 meeting, and we said, this is wrong; you have made
22 a mistake; please reconsider. That's the day they
23 go into his office and start going through the
24 files.

25 No. It's just -- you don't treat

1 employees like that; especially, you know, I really
2 believe that teachers and coaches should be treated
3 with more respect than other employees. I think
4 it's important.

5 You're sending a wrong message to
6 students when -- and to teachers when you treat
7 them this way when you know -- how hard would it --
8 I mean, they easily could have picked up the phone
9 and said, Coach, are your -- we're looking for
10 something in the file. Is it supposed to be here?

11 He could say, no, that doesn't need to
12 be in the file, but no.

13 Now, even after they sent that e-mail
14 and even after the principal has said -- he
15 testified, it shouldn't have been sent. It should
16 not have been sent. Did anyone go to the trouble
17 of saying, oh, let's send another e-mail? Ignore
18 the last e-mail. We were wrong. That information
19 doesn't need to be in the files. There's no
20 liability to the school. Was that done? No. How
21 hard would that have been? They knew exactly what
22 was going to happen when they sent that e-mail.

23 Taking no action to fix it, coupled
24 with the other actions where the principal is now
25 calling this a for-cause termination,

1 Coach Cruce -- you heard that people thought, you
2 know, he can't do his job. We wouldn't want to
3 hire him as an AD. We wouldn't want to hire him as
4 a head football coach. He's shunned. He can't get
5 a job in South Carolina.

6 When schools don't follow their own
7 rules, people get hurt, and it's really easy to
8 hurt your professional reputation. It's very easy
9 for a supervisor to say something or to send a
10 message that you really can't recover from.

11 And when an employer chooses to do
12 that, I believe -- and when you go to the employer
13 and say, please fix this mistake, this is wrong,
14 this is really hurting the reputation, my
15 professional reputation, when the employer refuses
16 to do that, that's why you're here.

17 You are the guardians of the rules.
18 You are the people who our justice system says if
19 something can't be resolved, you're the boss, you
20 decide. And we will respect your verdict, one way
21 or the other. We will respect it.

22 But in my mind, justice is about
23 accepting responsibility. And how do you value
24 what Coach Cruce has lost monetarily? We've shown
25 you that. We've shown you this damages exhibit. I

1 don't know if you can see it. I'll put it down
2 there. You can look at it again.

3 I can tell you without any hesitation
4 that this is real, actual monetary damages that he
5 has suffered as a result of their -- of the
6 school's refusal to fix the way they handled his
7 employment.

8 It's not going to fix everything
9 because he still has a horrible professional
10 reputation, his family has gone through all of
11 this, but it would send a message and help him get
12 a job again as a head coach. Anything you do would
13 help him get a job.

14 Your verdict will be a symbol, just
15 like a soldier's salute is a symbol. The Pledge of
16 Allegiance is a symbol. When you walk in -- you
17 know, we stand up when you walk in. These are
18 symbols, and the importance of a jury is that they
19 can send a symbol and say, this is what we think is
20 justice. This is what we think is fair.

21 It's -- you're sort of a beacon where
22 you can say, wait. Don't do this again. This was
23 wrong. Don't do it to someone else.

24 So I thank you for your service.

25 THE COURT: Mr. Morgan.

1 MR. MORGAN: May it please the Court.
2 Ms. Bloodgood, Mr. and Mrs. Cruce, ladies and
3 gentlemen.

4 First, I do want to thank you for your
5 service. It's important to both parties. We
6 appreciate the attention that you've given to this
7 case and we, too, are looking for you to exercise
8 your great good common sense as to the evidence
9 that you've heard over the last couple of days.

10 I will tell you, I'm reminded of a
11 story when I was young kid. I was with my
12 granddaddy and he and I were walking from his car
13 to the movie theater where he was a ticket taker.

14 And I said to him -- and I was seven
15 years old, I said, granddaddy, how come you're just
16 a ticket taker at a movie theater?

17 He leaned down to me and said, Rick,
18 son, I'm going to tell you something. There is no
19 man who is too good for any job and there is no job
20 that's beneath any man.

21 And I didn't understand that, what he
22 told me, when I was a seven-year-old kid until my
23 mother told me that, at one point in time, my
24 granddaddy had his own business and was a very
25 successful businessman and lost everything during

1 the Depression. But he was not so good that he
2 couldn't be a ticket taker at a movie theater, and
3 told his seven-year-old grandson.

4 You've heard Mr. Cruce say that he was
5 too good, too good to be a B coach. He could have
6 stayed here in this neck of the woods and taught,
7 stayed in the State retirement system and been a
8 coach. He was just too good to have that and
9 accept that job. My granddaddy had some great
10 wisdom and some great common sense.

11 We believe the real issue that you're
12 going to have to wrestle with when you go back to
13 that jury room is what was set forth in this e-mail
14 of January 7th. That's the one -- you heard
15 Mr. Stevens, who came here and testified. He's the
16 trainer. And what did you hear Mr. Stevens say?

17 He had done this before. He knew what
18 he was doing. He had been asked by one of the
19 weight coaches whether or not, for the health and
20 safety and protection of the young men and women,
21 whether someone had the right information in their
22 file. He went to the administration and he went in
23 then and looked at those files.

24 And what he found was there were some
25 things that he could not find. And I would urge

1 you, urge you to look very, very, very carefully at
2 the language that he chose to use. He did say --
3 the words are there, you're going to give them
4 common sense reading.

5 He said, we went into the former
6 athletic director's office and we found some files
7 that may have been misplaced -- could have been
8 misplaced and could have been out of order. Could
9 have been. Ordinary words. I went to the former
10 athletic director's office. He didn't say anything
11 was wrong. Could have been.

12 And we want to make sure that there's
13 no liability for anyone. The kids are from the
14 school. All of those are truthful statements. All
15 of those are very true. Nothing false at all.

16 And then he said, I'm going to go in
17 there the next couple days. Here's a list of
18 things I'm going to do. I'll get back to you.

19 You got to hear what he had to say.
20 Everybody who got up and testified said that those
21 folks that were on this were coaches, coaches who
22 are charged with the health and welfare of the
23 young people of Berkeley High School. They had a
24 need to know. It was a limited group of folks to
25 whom this went, very limited group.

1 So what Mr. Stevens does, in good
2 faith, he sends out this e-mail. Do we send
3 e-mails out in the business world today? I would
4 suggest that that's one means of proper
5 communication.

6 He sent it to people who had an
7 interest in oversight for the young men and women,
8 their health and safety, to make sure that there
9 were records and files. All accurate and truthful
10 statements.

11 And if there's something that was
12 incorrect or someone who felt that the words that
13 were in this document did something to harm
14 Mr. Cruce, I believe you should have heard it from
15 someone. There's a whole list of people on here.

16 That witness chair right now is empty.
17 And it was empty because there was no one who felt
18 that this e-mail, that this e-mail and what was in
19 here said or did anything wrong. There's no
20 evidence, nothing, zero, that has been shown that
21 tied anything in this e-mail that impacted
22 Mr. Cruce's ability to get a job in the future.

23 There has to be some causal connection.
24 That's your common sense. Does this here have any
25 connection at all to whether or not someone in

1 Goose Creek who offered Mr. Cruce a job, that he
2 was too good to take, impact his ability to earn a
3 living? No. Zero. Nothing.

4 I would ask you to consider this: No
5 one outside of Berkeley High School coaching staff
6 got this e-mail. It had a very, very important and
7 proper purpose because he was trying to deal with
8 it the best he could.

9 You saw Mr. Stevens. He didn't have
10 anything against the coach. He was just trying to
11 do his job; fine young man. You had a chance to
12 observe him.

13 There was also a chance to ask him some
14 questions. And I would suggest to you that there
15 is a reasonable inference that you can draw, that
16 one of the reasons that no questions were asked of
17 him on cross-examination is because everything in
18 here is the truth. The truth.

19 And there's no evidence at all, zero,
20 absolutely nothing that this document went outside
21 of that small, controlled group of people who were
22 in charge of the health and safety of our students
23 at Berkeley High School.

24 And so, ladies and gentlemen, on behalf
25 of my client, what I'm asking you is to return a

1 verdict for the defendant, and in that verdict, we
2 are asking, because there is no connectivity to
3 anything in that e-mail, nothing at all, that
4 there's no damages.

5 So we're asking for a complete verdict
6 for the defendant in this case and that you issue
7 no damages.

8 We thank you, we honor you for your
9 service. We appreciate you being here and we, too,
10 look forward to hear from you when you decide.
11 Thank you very much.

12 THE COURT: Ms. Bloodgood.

13 MS. BLOODGOOD: Thank you, Your Honor.

14 Very briefly because I just heard a few
15 things that I would like to remind you of.

16 The e-mail, there was testimony that it
17 was wrong. It was not correct. And, also, that
18 only head coaches were the ones that Coach Cruce
19 would ever talk to. They were the only ones who
20 were allowed to see a lot of that student
21 information, not the parent volunteers and not the
22 assistant coaches. And their names were all on
23 that e-mail.

24 So it didn't go to a limited group. It
25 went to everybody who could possibly know that