

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

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S.C. SUPREME COURT

Opinion No. 5490 (S.C. Ct. App. Withdrawn, Substituted, and Refiled August 16, 2017)

Anderson County.....Petitioner,

v.

Joey Preston and the South Carolina Retirement System.....Respondents.

**APPENDIX TO ANDERSON COUNTY'S
PETITION FOR WRIT OF CERTIORARI
VOLUME IV**

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Roger L. Couch, Circuit Court Judge

Case No. 2013-002499

Anderson County Appellant,

v.

Joey Preston and The South Carolina Retirement System Respondents.

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1 A. Not long before.

2 Q. Long before an October 2008 conference?

3 A. Just a few probably, you know, maybe a year or so.

4 Maybe not even that nine months or so. But they were all

5 right there close together.

6 Q. I think you will have to agree with me,

7 Mr. Preston, that Mr. McAbee's travel in October of 2008 had

8 zero to do with the CSX rail line that you just talked about

9 that happened some nine months before that travel, correct?

10 Do you agree with that?

11 A. No, I don't agree with that. I don't think so.

12 Q. So, a trip long after the event occurs somehow

13 impacted the event?

14 Is that what you're saying?

15 A. Well, I mean he's the one that went on the

16 training. He's the one that decided he wanted to go, and

17 there was nothing I could do to stop him from going to that

18 training. The county council members certainly didn't

19 object to him going on that training. I mean they knew he

20 was going on training and economic development trips.

21 So, as far as the benefit, he already knew a lot about

22 rail and he was sharing it with the economic development

23 department and who's to say the guy doesn't come back and be

24 reappointed into Innovate Anderson or the Economic

25 Development Board. So, I can't answer that. I mean --.

1 County council, up until December 31st, can vote, can
2 vote, can influence, can pass policies, resolutions up
3 beyond or up to that point in time. He had the knowledge.
4 He learned from that experience. I believe, in that
5 deposition, if I remember him, I don't know who took it, but
6 I think he pretty much shared how important that meeting was
7 with your guys.

8 Q. Yeah, he told us he got no fish, that he got --
9 brought no benefit back. That's what he told us.

10 I'm asking you what evidence do you have that Mr.
11 McAbee brought some economic benefit back to Anderson County
12 as a result of the two trips he just talked about in October
13 of 2008?

14 A. The economic development officials in Anderson
15 County, including myself, often would go on trips in order
16 to try to find, to try to bring a fish to the community and
17 you didn't always land one. I think the important thing was
18 to continue to fish.

19 Q. So, is the answer you don't have any evidence that
20 these two particular trips brought back any benefit to the
21 county?

22 Is that the answer?

23 A. I don't have any personal knowledge of it.

24 Q. Let me show you what's marked as Exhibit No. 40.

25 Do you know who Heather Jones is?

1 A. I do.
2 Q. Who is she?
3 A. Former economic development director for the
4 county.
5 Q. Would you agree with me that you participated with
6 Heather Jones in backdating certain documents that went into
7 Heather Jones' personnel file?
8 A. No.
9 Q. No.
10 Did you ever have knowledge that documents in Heather
11 Jones' personnel file were backdated?
12 A. Yeah, let me back-up. I need to -- would you show
13 me the documents please?
14 Q. I'm just asking if you remember first.
15 A. Yes.
16 Q. I'll show you the documents in a minute.
17 what do you remember about backdating of documents in
18 Heather Jones' personnel file?
19 A. I remember towards some time the end of November
20 that she contacted me and asked me about the approval I had
21 given her when I had first hired her in order to be able to
22 drive a county vehicle home. There was something about some
23 training I believe, and I can't remember what the other one
24 was about. Maybe a trip or something.
25 Q. Did you work with Heather Jones in anyway to

1 backdate certain documents that ultimately ended up in her
2 personnel file?

3 A. I asked her to -- she asked me about her travel,
4 her vehicle, and I can't recall. I told her -- she asked me
5 if I -- this email that she had sent me when I first hired
6 her back in I believe it was 2006. She sent me a list of
7 her -- it was a memorandum of understanding, I believe, that
8 of what we were to provide her as the new, as the incoming
9 economic development director, and I signed off on that, and
10 I placed it with her P.A.F., and we sent it to personnel,
11 and I can't recall exactly how she asked me about that, if I
12 had a copy of it.

13 I think I may have told her that it should, should be
14 in her personal file. I believe she asked -- contacted
15 personnel and they couldn't, they couldn't locate it.

16 Q. And, so, ultimately a document was created that was
17 backdated and then put in her file?

18 Is that your understanding?

19 A. It was to memorialize what we had agreed on.

20 Q. Let me show you, let me show you Exhibit 41 first.
21 A little bit out of order.

22 But do you remember the various emails that are
23 contained within Exhibit 41?

24 A. There's an email where I told her a memo, right.
25 This is the vehicle. This is the memorandum and the

1 agreement that we had when we first hired her that she said
2 was not in her file.

3 Q. And what you're referencing is just, for the
4 record, Plaintiff's -- it's marked PLF774 correct?

5 A. Yes, right.

6 Q. The date on that document is what?

7 A. October the 16th.

8 Q. 2000---

9 A. Eight.

10 Q. These emails were being exchanged between you and
11 Heather Jones in November of 2008, correct?

12 A. Yeah, I don't know if we had -- we could have had
13 these in October too. I just don't know. It says here
14 that -- I have an email from her dated November 26th about
15 the October 16th email. She could have sent it to me in
16 October, but I know that---

17 Q. Well, look at Page -- it's, it's in -- within
18 Exhibit 41. If you look at the page on the bottom that's
19 marked PLF 773 and 774.

20 Do you agree that that is an email you received from
21 Heather Jones on Wednesday November 26th, 2008, with an
22 attached memo?

23 Q. Yes.

24 A. And it says -- she's saying to you, you told me to
25 draft a memo that you could put in my permanent file as well

1 as give me a copy of it that granted me use of a take home
2 vehicle. Here is a draft. Then she provided you a draft.
3 Correct?
4 A. why do you have two of these in here for?
5 It's October 16. That's the same email.
6 Q. well, the one she sent you by email is dated
7 October 16th, 2008, right?
8 A. Right, and that's the one that I signed.
9 Q. well, it's not the one you signed because the one
10 you signed is dated---
11 A. Right it's on down. I see it.
12 Q. Because the next one, if you look at the two pages
13 I showed you, which is Plaintiff's 773 and Plaintiff's 774,
14 what she first sent you was a draft document that had a date
15 of October 16th, 2008, on it, right?
16 A. Right.
17 Q. And then the next page that you see is another
18 email from Heather Jones to you on November 26th, 2008, with
19 a subject line, corrected dated on vehicle memo.
20 Do you see that?
21 You have to go back one page. It's PLF 769.
22 A. That one. Gotcha.
23 Q. Let me show it to you. Plaintiff 769 right here.
24 That's an email from Heather Jones to you on Wednesday,
25 November 26th, 2008, at 1:59PM, right?

1 A. Right.

2 Q. And it attaches a document, which if you look at
3 the next page, Plaintiff's 770, is the same memo we just
4 looked at, but this one has a date of October 16th, 2006,
5 right?

6 A. Well, that's when she started to work for the
7 county. That's right.

8 Q. And the very next page, Plaintiff's 776, is your
9 signature on that memo?

10 A. That's right.

11 Q. So, you signed that on November 26th, 2008, right?

12 A. I believe I did, yes, sir.

13 Q. And then -- even though it's dated October 16th,
14 2006, correct?

15 A. To memorialize what I had already signed earlier
16 that she couldn't find in her personnel file.

17 Q. And why, Mr. Preston, didn't you just put something
18 in her personnel file that indicated what you just told us?

19 A. You know, I don't know. There was just a lot going
20 on at the time. We were trying to tie up loose ends and
21 this was not high on my radar at the time.

22 And whatever I did, if I remember correctly, I believe
23 in most cases I would always let Michael know pretty much
24 what I was doing. No one had any objections to that or
25 anything. I mean the thing is we already agreed to it. The

1 personnel department -- that, that memorandum is probably
2 there in the personnel department today unless they've
3 cleaned their files and cleaned it out. But we had agreed
4 to this.

5 She was a highly professional individual. She gave,
6 gave me a list of what she wanted to go to work for at the
7 county, and I signed off on it including the vehicle. And
8 even after I left, if they wanted to take the vehicle away
9 from her, they could. But they didn't.

10 She continued to drive the vehicle home just like every
11 other economic development director the county had ever
12 hired to work for the county.

13 Q. What other option, in terms of trying to correct
14 her personnel file, other than backdating a document---

15 A. I could have just, you know, signed it that day I
16 guess. You know, it really didn't matter. I didn't see it
17 as being a big issue.

18 Q. But you're the one that told her to make sure she
19 put the right date on it, the October 16th, 2006, date?

20 A. My thoughts were if that's the time she went to
21 work for the county, that's when it should be. But I could,
22 I could have done it then or I did do it then. I thought
23 either put the date on there because that's the time I
24 originally did it or I could just like put whatever that
25 current date was. It just wasn't that big of an issue, and

1 the second thing was this was a---

2 Q. would you agree with me that Exhibit No. 40 is the
3 cover page of it is an email you received from Heather Jones
4 on December 1st, 2008?

5 A. Yes.

6 Q. By this time you are no longer acting as county
7 administrator, correct?

8 A. That's right.

9 Q. And she indicates she forgot something and would
10 like approval to attend a -- what she called mission trip to
11 Germany, right?

12 A. Yes.

13 Q. And the next page of the document shows your
14 response to her at the bottom of the page basically where
15 you say to her get me the letter to approve, date it early
16 last week.

17 That's what you told her, right?

18 A. Yes.

19 Q. And you told her that because, by dating it a week
20 earlier than the actual date, that would put it at the time
21 when you were acting as the county administrator?

22 A. If I'm not mistaken, my recollection was I
23 discussed this with Michael and he was okay with it.

24 Q. You didn't say that in this email, did you?

25 A. No, I didn't.

1 Q. What you had her do---

2 A. If I remember he -- I remember he and I talking
3 about it. I'm almost 90 percent sure we discussed this.

4 Q. Shouldn't Mr. Cunningham then have been the person
5 to sign off on this request?

6 A. He should have been.

7 Q. On December 1st, 2008?

8 A. Right.

9 Q. But instead, what you had Ms. Jones do was backdate
10 a document for you to approve effective November 17?

11 A. And I think my conversation with her about this is
12 it really didn't matter whatever I sent her because, if she
13 wanted to go on this training, she was -- number one, she
14 was going to have to, have to find the money in the budget
15 to do it, and she was gonna have to get Michael to approve
16 it again in the future. I don't know if she ever did this,
17 went on this trip.

18 Q. Were you at Cater's Lake in March of 2006 with
19 Kelly Nichols?

20 A. Yes.

21 Q. Why were you at Cater's Lake in March of 2006 with
22 Kelly Nichols?

23 A. Back up a little bit. There was an ongoing
24 investigation, that's pretty obvious, and there's lots in
25 the record for that.

1 That particular evening, that Friday night, I believe
2 it was a Friday night, I can't recall if it was exactly or
3 not, but they had been doing surveillance on people that had
4 been "following us around" harassing Ms. Nichols and other
5 county council members.

6 And that night a group of us were together over at
7 Sullivan's, and, at dinner, Ms. Nichols, who didn't think
8 too kindly of a lady named Gina Trammell, one of the people
9 at the table started mentioning and talking about what a
10 wonderful person this Gina Trammell was and Ms. Nichols
11 stood up and she got angry, said some things to the person
12 and then she stormed off.

13 And then probably, about ten minutes later, she called
14 me and told me that she was being followed by these, by
15 someone and that she wanted, you know, she wanted me to know
16 that, and she wanted me to follow her home I believe to
17 begin with, and then to let me know that they were doing
18 that.

19 So, prior to that, Tim Busha, who was the chief deputy,
20 was kind of leading that investigation, and along with
21 another detective, who I don't think is any longer at the
22 Sheriff's Office, and I asked her where she was and she was
23 riding a -- she was in the vicinity, vicinity of the
24 courthouse, and I got in my car and, and I followed her, and
25 I called Mr. Busha and let him know that she said she was

1 being followed, which I believe that could have actually
2 been happening because I actually witnessed it myself, and I
3 know the Sheriff's Office had, on a couple of different of
4 occasions, had identified an individual who, in fact, was
5 following Ms. Nichols around and myself.

6 Q. Are you saying you saw that she was being followed
7 that particular night or you're saying you saw that she was
8 being followed on other prior occasions?

9 A. I knew that we were.

10 Q. On other prior occasions?

11 A. Yes, that's right.

12 Q. This particular night---

13 A. She said she was.

14 Q. What happened after you -- after she called you and
15 told you she was in the vicinity of the courthouse?

16 What happened then?

17 A. I told her I would get in my car and I'd call Tim
18 and I did.

19 Q. And what did you talk to Mr. Busha about?

20 A. Well, he was -- I don't know where he was, but it
21 sounded like he was pretty busy. He had a lot going on that
22 night. I don't know if something had happened in the county
23 or wherever he was.

24 But I told him that Kelly Nichols said that she was
25 being followed and she was delirious. She said they'd been

1 following her around for a while and we were going down 81.

2 You have to understand that she was really emotional,
3 and she turned -- actually he told me, she said well, just
4 pull into a shopping center or just turn left at somewhere
5 down in the street and that's what I did. I told her. I
6 hung up and I told her and we pulled into the park there.
7 It was a public park and it was fairly well lit.

8 Q. And then what happened?

9 A. We sat there and I didn't know if Tim was gonna --
10 what he was gonna do. He said he'd call me back and he
11 didn't call me back that night.

12 Q. He didn't call you back at all that night?

13 A. No. So, we sat there and probably about five or
14 ten minutes, and then we got out of the car and walked down
15 towards the lake, and we stood there right there under the
16 light, and we were there. We were talking. She was
17 emotional, talking about her experience with Ms. Trammell,
18 and all the crap that was going on with her, and then, all
19 of a sudden, some blue lights came on and the police were
20 there and they're all through the park, and I tell her, you
21 know, let's go.

22 And we go back to the cars, and we get in, in the car,
23 and the policeman pulls up behind me, and I get out of the
24 car, and he waves me on past him.

25 Q. And this was -- the police officers you saw at

1 Cater's Lake that evening were all Anderson---

2 A. The city police.

3 Q. ---City Police, correct?

4 A. Yes, sir. Right.

5 Q. The undercover operation that you're talking about

6 with Mr. Busha, Detective -- he was a deputy sheriff, wasn't

7 he?

8 A. Uh-huh. (Affirmative).

9 Q. What was his position with the county?

10 A. A deputy.

11 Q. Deputy sheriff?

12 A. Chief deputy.

13 Q. Chief deputy. That's right.

14 The undercover operation you're talking about with

15 Mr. Busha was one run by the Anderson County Sheriff's

16 Department, correct?

17 A. It wasn't any particular undercover operation going

18 on that night. Where that crap came from was the radio

19 station. I think they labeled it that for the most part.

20 But I called him and he told me to turn left, and it

21 was right in the -- we turned left into the Cater's Lake and

22 pulled in there and parked, and then, sure enough, when the

23 police showed up, I didn't know who had called them or what

24 had happened.

25 I go home, and we leave and go home, and I get two

1 phone calls, two phone calls at my house from two people
2 that said hey, we just busted you at Cater's Lake and we're
3 gonna get you, that kind of thing, and I try to call Tim
4 again. I can't get him. I don't know what's happening with
5 it and I go to bed.

6 And the next morning I get up and all of a sudden
7 there's people calling Paul Brown and saying I've got caught
8 at Cater's Lake doing something bad.

9 Q. You told the county council, on March 21st, 2006,
10 at that county council meeting, among other things, you said
11 "a little over two weeks ago, as part of that investigation,
12 the Sheriff's Department directed my involvement in an
13 operation designed to more fully ascertain the identities of
14 those involved."

15 And you were talking about, when you said a little over
16 two weeks ago, you were talking about the---

17 A. The overall---

18 Q. ---night at Cater's Lake?

19 A. No, no, the overall operation. This thing had been
20 going on for weeks. It went on for weeks before that and
21 then even a little bit after that. And I think up, up --
22 when Cater's Lake came about, two of the individuals were
23 completely identified and they had already had another one,
24 and they were looking for one more. But they never did turn
25 up.

1 Q. And what you had -- what you said, and I'll read
2 you an extra sentence, you said first "thankfully, as I
3 mentioned earlier, law enforcement has been involved for
4 quite sometime and has made a great deal of progress in
5 ongoing investigation."

6 A. That's right.

7 Q. "A little over two weeks ago, as part of that
8 investigation, the Sheriff's Department directed my
9 involvement in an operation designed to more fully ascertain
10 the identities of those involved."

11 A. All right.

12 Q. So, what did the Sheriff's Department direct you to
13 do?

14 I mean how did they direct your involvement in an
15 operation a little over two weeks prior to March 21st,
16 2006?

17 A. To go sit down in Sullivan's and sit there while
18 these two guys were out there, one sitting in the restaurant
19 and another across the street, so they could see exactly
20 what was going on. Because we had seen this, you know,
21 these people would come in and, and taking pictures and all
22 kinds of things. And at that point in time we were getting
23 letters, threatening letters in the mail and I mean it was
24 nasty.

25 Q. So, the Sheriff's Department directing you to do

1 something was when they directed you to go to Sullivan's
2 that night, right?

3 A. Yes, sir, that and to do other things too. I mean
4 to be other places.

5 Q. Did they direct you to go to Cater's Lake?

6 A. Earlier on in the night. That wasn't part of the
7 plan. I mean we didn't know or when Kelly was part of
8 the -- she was a hot spot too and they were, they were
9 trying to find out if she and I were having an affair is
10 what I think at that particular time. So, they showed up
11 and they would continuously show up anytime we were together
12 to try to nail us doing something.

13 Q. Did you have an adulterous relationship with Kelly
14 Nichols at anytime?

15 A. Yes.

16 Q. What time frame?

17 A. Over eight years I guess.

18 Q. And you're the person who hired Kelly Nichols to
19 work for the county, right, when she first started?

20 A. John Lomax recommended hiring her.

21 Q. But you're the person who ultimately pulled the
22 trigger, so to speak, you had the authority to hire her,
23 correct?

24 A. Yeah, I signed off on the P.A.F., yes, sir.

25 Q. Would you agree that, as the county administrator,

1 if you were having a sexual affair with a subordinate county
2 employee that could cause problems for the county?

3 A. It could of, yes, sir.

4 Q. Do you think that would be grounds for your
5 termination under your employment agreement?

6 A. No.

7 Q. Did you ever have to talk to any investigators
8 about your credit card, county credit card, or the counties
9 credit card for a room at a Holiday Inn?

10 A. Yes.

11 Q. And that involved Kelly Nichols, did it not?

12 A. Yes.

13 Q. In fact, that day you had a tryst with Kelly
14 Nichols at the Holiday Inn, right?

15 A. No.

16 Q. You said to the investigators that the room was set
17 up for state representative, Mr. Scott?

18 A. Yes.

19 Q. Is that true?

20 A. Yes.

21 Q. Did you meet Kelly Nichols in that room that day?

22 A. No.

23 Q. Back in December 2007, you had this event where Mr.
24 Waldrep and Ms. Wilson came to the finance department
25 looking for financial records of the county.

1 Do you recall that we talked about that a little bit?

2 A. Yes.

3 Q. Who instructed the county employees, in the finance
4 department, to prevent Ms. Wilson and Mr. Waldrep from
5 reviewing those financial records?

6 A. I think it was Gina Humphries.

7 Q. And was that at, at your direction or did she do
8 that on her own?

9 A. She did it on her own. She told them they could
10 have whatever they wanted or see whatever they wanted to
11 see. But they needed to go through the proper procedures.

12 Q. The proper procedure would have been to go through
13 you or to go get approval from you?

14 A. Yes.

15 Q. And ultimately did they do that?

16 A. Ultimately, later on, yes. That's right.

17 Q. Did Gina Humphries, at some point, write up a
18 description of the encounter that occurred in December of
19 '07 where Ms. Wilson and Mr. Waldrep came to the finance
20 department?

21 A. I believe the entire finance department did.
22 Including her.

23 Q. Did you have any involvement in instructing them or
24 advising them to write up the encounter?

25 A. I instructed her to because Waldrep threatened her

1 and she took it on her own to get the statements from the
2 other employees I believe.

3 Q. Exhibit 41 is an email from Heather Jones to you
4 dated November 26th, 2008, correct?

5 A. Yes.

6 Q. What does the subject line say?

7 A. To do list.

8 Q. During the time period reflected by this email,
9 were you doing a bunch of clean-up?

10 A. Yes, sir, I was.

11 Q. Why were you doing a bunch of clean-up?

12 A. The council directed me to clean-up because of --
13 they wanted me to get the items that needed to get done
14 before Mr. Cunningham took office.

15 Q. Was the clean-up intended to help Mr. Cunningham's
16 transition be more seamless?

17 A. Yes, it was.

18 Q. When was Heather Jones hired by the county?

19 A. I believe in 2006 I believe.

20 Q. And when did Heather Jones first receive a vehicle
21 from the county?

22 A. In 2006 as soon as she was hired.

23 Q. When did Heather Jones leave the county?

24 Do you know?

25 A. I think probably about a year, a year and a half

1 after I left.

2 Q. And to your knowledge, was she still using a county
3 vehicle when she left the county?

4 A. Yes.

5 Q. Were educational reimbursements part of Heather
6 Jones terms of employment?

7 A. Yes.

8 Q. Were those the terms of employment that were
9 reached between you and Heather Jones back in 2006?

10 A. Yes.

11 Q. Was that October of 2006?

12 A. Yes.

13 Q. Had the educational reimbursements been a part of
14 Heather Jones terms of employment since October of 2006?

15 A. Yes.

16 Q. Did they remain part of her employment in 2006,
17 2007, 2008, and, to your knowledge, 2009?

18 A. Yes.

19 Q. Had you executed the memoranda before or after the
20 sticky note was affixed to this document?

21 A. Before.

22 Q. Had you signed the Jones memoranda before 12/1 of
23 '08?

24 A. Yes.

25 Q. Can you look at Exhibit 40 for me?

1 A. Yes.

2 Q. Is this an email from Heather Jones to you dated
3 December 1st of 2008?

4 A. Yes.

5 Q. Before December 1st, had you ever heard of the trip
6 to Germany that Upstate Alliance was promoting?

7 A. Yes.

8 Q. Had you ever, had you ever discussed Heather Jones
9 traveling to Germany before December 1st of 2008?

10 A. Yes.

11 Q. In the actual email from Ms Jones, she references
12 automotive OEM suppliers and existing industries.

13 Was this an area that Anderson County, at that time,
14 had been targeting?

15 A. Yes, and still is.

16 Q. Why were they targeting OEM suppliers and existing
17 industries and automotive in general?

18 A. BMW and Clemson ICAR.

19 Q. The very next sentence says, and I quote, "provided
20 I have travel money remaining."

21 Do you see that?

22 A. Yes.

23 Q. When you received this email from Heather Jones,
24 was it your understanding that she was asking if she could
25 travel to Germany if she, is she had budget remaining in her

1 existing budget?

2 A. Yes.

3 Q. Does Ms. Jones also reflect that she was going to

4 seek a grant from Innovate Anderson?

5 A. Yes.

6 Q. Did you talk to Michael Cunningham about Heather

7 Jones traveling to Germany?

8 A. Yes, sir.

9 Q. Did you talk to him about the other memoranda that

10 you had signed that we looked at previously?

11 A. I believe I did, yes, sir.

12 Q. Is there a difference in treatment between county

13 council member travel and employee travel?

14 A. Yes.

15 Q. What is that difference?

16 A. They can, can go wherever they want to go and do

17 what they want to do for the most part. I'm not responsible

18 for approving or not approving where, where they'd like to

19 travel.

20 Q. Was there a prior instance where county council

21 travel had become a concern of yours such that you inquired

22 and/or received advice about it?

23 A. Yes.

24 Q. What was that instance?

25 A. Cindy Wilson had turned in a request for travel and

1 it was a political function that she had attended, and I was
2 afraid to sign off on it because I didn't want to get into
3 any trouble by doing it. So, I discussed it with the county
4 attorney and he told me that I had to sign it, I didn't have
5 a choice, that it was a ministerial thing, and that's why I
6 signed off on it.

7 Q. Was it your understanding that when county council
8 members submitted travel reimbursement through you that you
9 had to sign off on them?

10 A. Yes.

11 Q. Was it your understanding that they should be
12 treated as a ministerial act?

13 A. Yes.

14 Q. Is that because they're your boss?

15 A. Yes.

16 Q. And it's not a situation where your underlings are
17 submitting for reimbursements, is it?

18 A. Yes. Correct.

19 Q. Did you ever ask any of the auditors whether you
20 had to sign off on county council, council's travel?

21 A. Yes.

22 Q. What did the auditors tell you?

23 A. Yes.

24 Q. What did they tell you specifically?

25 A. That I had to sign off on it.

1 Q. Can you look at Exhibit 37 for me?
2 A. Yes.
3 Q. Is this the Rail Trends registrations form from
4 2008?
5 A. Yes.
6 Q. Does it reflect Bill McAbee as attending?
7 A. Yes.
8 Q. Can you look at the very, very, very small print
9 that's next to number two right above Mr. McAbee's name?
10 A. Yes.
11 Q. Does it say mail your registration form with
12 payment to arrive by September 14?
13 A. Yes.
14 Q. What was the letter dated that Mr. Hoskins sent to
15 county council about your employment dispute?
16 Do you remember?
17 A. Can I find it here?
18 Q. Well, let me just ask this.
19 Do you recall if that letter was dated
20 September 25th of 2008?
21 A. Yes. Yes, it was.
22 Q. Had Mr. McAbee gone to the Rail Trends conference
23 in 2007 as well?
24 A. I believe he had, yes.
25 Q. What relationship existed between Mr. McAbee's

1 travel reimbursements and the vote on your severance
2 agreement?

3 A. None. No relationship.

4 Q. Did you have a prior conversation with Mr. McAbee
5 where he promised to vote in favor of your severance
6 agreement if you approved his travel expenses and any sort
7 of quid pro quo?

8 A. No. No, absolutely not.

9 Q. During this time period, did you have any
10 conversations with Mr. McAbee about your employment dispute?

11 A. No.

12 Q. Did you have any conversations with Mr. McAbee
13 about your severance agreement?

14 A. No.

15 Q. Did one have any bearing on the other?

16 A. No.

17 Q. Can you look back at Exhibit 36 for me?

18 A. Okay.

19 Q. Do you recall that Mr. McAbee received a commission
20 on a real estate transaction in April of 2008?

21 A. No.

22 Q. If Mr. McAbee had received a commission in April of
23 2008, would it have anything to do with an employment
24 dispute that didn't arise until September 2008?

25 A. No.

1 Q. Was Mr. McAbee, to your knowledge, benefited in
2 anyway by voting in favor of your severance agreement?
3 A. No.
4 Q. Was Mr. Wilson benefited in anyway by voting in
5 favor of your severance agreement?
6 A. No.
7 Q. Was Mr. Wilson benefited in anyway by the execution
8 of the amended contract with Allison Schaum?
9 A. No.
10 Q. Would having the 30 hour requirement in Paragraph
11 5.1 allow the county to budget for this contract in upcoming
12 months and years?
13 A. Yes.
14 Q. Does that contract allow the county to budget for
15 30 hours per week, but---
16 A. Yes.
17 Q. If Allison Schaum's or if the county needed the
18 monies budged to Allison Schaum---
19 A. Yes, sir.
20 Q. ---it could reduce those hours under this contract,
21 correct?
22 MR. TESSIER: Object to the form.
23 A. Yes, that's correct.
24 Q. Did you ever talk to Allison Schaum about your
25 employment dispute with Anderson County?

1 A. No.

2 Q. Did you ever talk to Allison Schaum about your
3 severance agreement?

4 A. No.

5 Q. Did you ever talk to Allison Schaum about her
6 father being on the personnel committee?

7 A. No.

8 Q. Did one thing have any bearing to the other?

9 A. No.

10 Q. At the time prior to executing the original
11 Palmetto Agricultural Consultants contract, did you ever
12 inquire whether another potential vendor existed in the
13 State of South Carolina?

14 A. Yes..

15 Q. Who did you make that inquiry of?

16 A. The Farmer's Market manager and the division heads
17 over that department, and the Department of Agriculture too
18 I believe.

19 Q. After inquiring, did you learn of any other
20 potential alternative vendor in the State of South Carolina?

21 A. No.

22 THE COURT: Let's stop it right there.

23 How much more?

24 UNIDENTIFIED PERSON: Very little.

25 THE COURT: All right. Let's get to that.

1 Q. During the questioning by Mr. Tessier, you
2 referenced a group that you put together to consider the
3 Palmetto Agricultural Consultant's contract.
4 Do you remember that?
5 A. Yes.
6 Q. Did that group favor the execution of this
7 contract?
8 A. Yes.
9 Q. What did they tell you?
10 A. They thought that the concept that she had
11 presented was something that Anderson County needed to
12 certainly get involved with, and they felt like we needed to
13 move forward with the program.
14 Q. What value would appraisal courses---
15 THE COURT: Let's stop it at that point before it goes,
16 goes on.
17 Q. ---have for a sitting county council member?
18 A. The county council---
19 THE COURT: All right. It's past five o'clock. We're
20 going to adjourn at this point in time. We'll reconvene at
21 nine o'clock in the morning.
22 Okay. Hope everyone has a good evening.
23 Court is adjourned.
24
25 (WHEREUPON, Court was adjourned for the evening.)

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1 Thursday, November 1st, 2012

2
3 THE COURT: Yes, Mr. Davis, you're up.

4 Is there something you'd like to address with the
5 Court?

6 MR. DAVIS: I would. I was just hoping to give you a
7 second to settle in. I didn't mean to preempt you like
8 that.

9 Your Honor, I hate to ask this question of you, but I
10 have some witness issues as far as asking them when to be
11 where at what time.

12 THE COURT: I understand.

13 MR. DAVIS: And as a consequence, I was just wondering
14 if you had a better insight about your availability for next
15 week or whether it's gonna have to---

16 THE COURT: I have been in contact, and by email, with
17 Mont Talley, the head of Court Administration. He's trying
18 to arrange for another judge to take my week in Cherokee
19 County next week in General Sessions. He and I are suppose
20 to talk about that during the lunch break today. I'll be
21 able to tell you more when I talk to him.

22 MR. DAVIS: Great. I appreciate that.

23 THE COURT: He believes -- his preliminary opinion is
24 he believes he had somebody to take that week for me and we
25 can stay here.

1 MR. DAVIS: Great.

2 THE COURT: But he's not made that commitment at this
3 point.

4 MR. DAVIS: Great. Thank you.

5 THE COURT: All right. Anything else before we resume
6 the deposition?

7 MR. TESSIER: Not from us, Your Honor. No, sir.

8 THE COURT: All right. You may proceed.

9 Q. What value would appraisal courses have for a
10 sitting county council member?

11 A. The county council is ultimately responsible for
12 the assessment process as it relates to reassessment and the
13 county council appoints the Board of Assessing Appeals.
14 Each council member appoints those members, including
15 Thompson, and, of course, county councils were actively
16 involved with the passage of the county budget, and often
17 the county council members do not understand the way
18 revenues are determined as it relates to property tax and
19 millage and vehicles versus homes.

20 And this would be -- I felt these classes would be good
21 for him in that regard when we talked about them. But he's
22 primarily -- it would be good for him as a council member.
23 But, in addition to that, my thoughts about putting him into
24 purchasing is that, replacing him, transferring him to
25 purchasing, is that the county is actively involved in

1 acquiring rights-of-ways for sewer construction, road
2 construction, or just buying property in general for the
3 county needs.

4 we had no one in the purchasing department that really
5 had experience there and often would have to rely on outside
6 sources such as, you know, private contractors to assist us
7 with perhaps estimating what something would be worth at
8 times, and we needed someone that could, you know,
9 experienced in that area, and I think a lot of that really
10 stemmed from the issue that we had to contend with
11 concerning the Beaver Dam Sewer Project and lots of others
12 too came along with that. So, this training would have been
13 helpful for him in the purchasing department.

14 Q. What is Adrian Hicks?

15 A. That's Adrian's married name. That's -- she was
16 the buyer that was promoted to the assistant purchasing
17 director.

18 Q. Was she in the Buyer II position?

19 A. I believe she was, yes.

20 Q. Was that the position that ultimately you intended
21 to transfer Michael Thompson into?

22 A. Yes.

23 Q. In August of 2008 did Michael Thompson inquire to
24 you about a purchasing manager job?

25 A. Yes.

1 Q. Did Adrian Hicks, now Williams, get promoted into
2 the purchasing manager job?

3 A. The assistant purchasing manager job, yes. Right.

4 Q. At the time when Mr. Thompson's appraisal courses
5 were preapproved, had you determined that he would be
6 transferring into the Buyer II position?

7 A. Yes.

8 Q. Was Michael Thompson's job transfer part of some
9 sort of quid pro quo deal that you had with him in exchange
10 for voting in favor of your severance agreement?

11 A. No.

12 Q. Does one thing have anything to do with the other?

13 A. No.

14 Q. Did you ever have a conversation with Michael
15 Thompson where you asked him to vote in favor of your
16 severance agreement?

17 A. No.

18 Q. That never happened, did it?

19 A. No.

20 Q. Will you look back at Exhibit 2 for me?

21 Was the lawsuit that you filed against Bob Waldrep and
22 Cindy Wilson primarily about how they were interfering with
23 your supervisory role of county employee?

24 A. Yes.

25 Q. Is that what the items that are listed in your

1 affidavit are intended to discuss?
2 A. Yes.
3 Q. Are these intended to be an exhaustive list of how
4 Robert Waldrep or Cindy Wilson interfered with your duties
5 as the county administrator?
6 A. Not an exhaustive list. There was other.
7 Q. Right.
8 Your lawsuit relates to how they interfered with your
9 supervisory employees, correct?
10 A. Yes. Right.
11 Q. Your affidavit supports that motion, right?
12 A. Correct. Yes.
13 Q. You were asked about a lawsuit involving an
14 individual named Stansell.
15 Do you remember that?
16 A. Yes.
17 Q. Was Cindy Wilson originally a defendant in that
18 lawsuit?
19 A. She became a defendant.
20 Q. When you say she became a defendant, what do you
21 mean?
22 A. After depositions were taken for Stansell and
23 Lovelace, then she became a defendant. She was named.
24 Q. What did Stansell and/or Lovelace say that prompted
25 you to add Cindy Wilson as a defendant?

1 A. well, that -- their information about the garbage
2 company, where they got the information with regards to the
3 purchase of my car from some of those meetings that they
4 were at having or she was having.

5 Q. Did you ever happen to learn additional information
6 about who ran the plates on your car in that lawsuit?

7 A. Yes.

8 Q. who ran them?

9 A. I believe the Town of Williamston ran them a few
10 times, a couple of times, several times. DNR, Department of
11 Natural Resources, and the Laurens County Sheriff's
12 Department I believe.

13 Q. During discovery, did you learn any additional
14 information about the facts and circumstances under which
15 the Town of Williamston ran your plates in that lawsuit?

16 A. Yes.

17 Q. what were those facts and circumstances?

18 A. I was in Washington, D.C. with my, at that time,
19 wife, called me and said that a lady had called our home and
20 wanted to speak to me because she had some information that
21 she wanted to share with me concerning this lawsuit, and she
22 wanted to talk to me. And, so, I, I just called my lawyer
23 and had my lawyer contact her.

24 That lady informed the attorney that she was Robert
25 Stansell's sister-in-law and she had witnesses meetings

1 where he participated and where he would, where he said that
2 he -- I'm almost embarrassed to say this, but where he had
3 paid for a prostitute in order to perform sexual favors on a
4 Williamston dispatcher or with a Williamston dispatcher so
5 that that Williamston dispatcher would run my tag for him
6 and get information concerning the ownership of my, of my
7 BMW.

8 Q. Was Cindy Wilson involved in those meetings?

9 A. I understand that she was.

10 Q. Turn your attention back real briefly to the
11 incidence where you testified that you asked for advice from
12 the county attorney about Cindy Wilson's travel
13 reimbursements on a specific occasion.

14 Do you remember that?

15 A. Yes.

16 Q. To your knowledge, was Cindy Wilson ever
17 reprimanded by the Ethics Commission in relation to that
18 travel?

19 A. Yes.

20 MR. TESSIER: That concludes the excerpts that we
21 wanted to play, Your Honor. At this point I would offer to
22 hand up the original transcript from which those excerpts
23 came.

24 THE COURT: Any objection to that being put in the
25 record with the objections that you've already noted and I

1 have not ruled on?

2 MR. DAVIS: Yes, Your Honor. No objection.

3 THE COURT: It will be preserved.

4 All right. It will be admitted with those objections
5 preserved.

6 THE COURT: The county may call its next witness.

7 MR. TESSIER: Your Honor, at this time the county is
8 gonna call Kelly Nichols, and I believe she should be in
9 the---

10 THE COURT: If you'll step out and ask her to step in.
11 Come forward, ma'am, to the center and be sworn please.

12 KELLY NICHOLS, being first duly
13 sworn, testified as follows:

14 THE CLERK: If you would, take the stand and state your
15 name and spell your last name for the record please.

16 THE WITNESS: Nichols. N-I-C-H-O-L-S.

17 THE COURT: You can be seated, ma'am.

18 Your witness, Mr. Tessier.

19 MR. TESSIER: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. TESSIER:

23 Q Good morning, Ms. Nichols. Thank you for being here.

24 Can you tell the Court where you currently live?

25 A I live in Anderson County.

Kelly Nichols - Direct examination
by Mr. Tessier

- 1 Q And were you born and raised in Anderson County?
- 2 A Yes, sir.
- 3 Q Did you spend anytime away from Anderson County?
- 4 A Yes, sir, I lived on St. Simons Island, Georgia from---
- 5 Q About what period of time?
- 6 A Around '97 to '99 to 2000.
- 7 Q And are you married?
- 8 A Yes, sir, I am.
- 9 Q How long have you been married?
- 10 A Sixteen years.
- 11 Q Do you have any children?
- 12 A Yes, sir, I do.
- 13 Q And what are their ages?
- 14 A Thirteen and ten.
- 15 Q Can you tell us, if you would, your educational
- 16 background?
- 17 A I have a year at Anderson University and I had two
- 18 years at Tri-County Tech.
- 19 Q And what did you study at those two schools?
- 20 A When I was in Anderson I studied art, and when I went
- 21 to Tri-County Tech I was in the nursing program.
- 22 Q And what did you do for work after you completed your
- 23 studies?
- 24 A I went into retail management, women's apparel.
- 25 Q And where were you working?

Kelly Nichols - Direct examination
by Mr. Tessier

1 In the Anderson area?

2 A Yes, sir.

3 Q Did you work for any particular company or stores?

4 A I worked for mostly The Limited Corporation stores like
5 Learner at the time and Express.

6 Q And when did you first meet Joey Preston?

7 A I met him around 2002/2003.

8 Q And do you recall what the circumstances were that led
9 you to meet Mr. Preston?

10 A Yes, sir, I was with a friend of mine. Her name was
11 Jenny Carrithers, who was the -- who is the
12 ex-daughter-in-law of Marshal Carrithers, and we walked into
13 Sullivan's one evening after her and I and some other
14 girlfriend had been out and we ran into him there.

15 Q At that point in time, did you know---

16 THE COURT: Mr. Davis, excuse me.

17 MR. DAVIS: Your Honor, this is for purposes of the
18 record. I know we've plowed this ground yesterday, but just
19 want to make sure that I have a reservation.

20 We, obviously, object for relevance purposes, 403
21 purposes, and for improper impeachment purposes. This
22 testimony has no impact or relationship to the severance
23 agreement.

24 THE COURT: I note your, your objection. However, I am
25 going to ask -- I assume you're objecting to any questions

Kelly Nichols - Direct examination
by Mr. Tessier

1 concerning her personal relationship with your client?

2 MR. DAVIS: Yes, sir.

3 THE COURT: Is that your objections?

4 I'll note that those objections are continuing to this
5 line of testimony, and, again, you're challenging that
6 evidence. It will be considered challenged and I will rule
7 on that later. So, that, that evidence will be presented in
8 the form of a proffer. I believe that I was told in our
9 discussions that perhaps there's other evidence this witness
10 may be offering.

11 So, if there's objections to that information, you need
12 to make those objections specifically.

13 MR. DAVIS: I will do that.

14 THE COURT: Okay.

15 MR. TESSIER: Thank you, Your Honor.

16 THE COURT: Do you understand where we are, Mr.
17 Tessier?

18 MR. TESSIER: Yes, sir.

19 THE COURT: Do you need any clarification on that
20 point?

21 MR. TESSIER: I think I'm okay with it.

22 THE COURT: Okay. You may proceed.

23 Q Ms. Nichols, at, at the time you first met Mr. Preston,
24 it sounds like it was -- you were at Sullivan's with some
25 friends.

Kelly Nichols - Direct examination
by Mr. Tessier

1 what happened that, that night?

2 A Jenny and I sat down at the bar and we were having a
3 drink, and Mr. Preston was standing with us, and we were
4 talking and Jenny brought up to him that I was looking for a
5 job cause, at the time, I had just had a baby, and I was
6 trying to get out of retail cause it was long hours, and, of
7 course, it kind of angered me that she did that because
8 that's not why I was there. I wasn't there to talk with
9 Mr. Preston about a job.

10 So, we, we continued to talk about that, and he
11 ultimately asked me to get him a resume, and, of course, I
12 didn't have one on hand. So, I made arrangements to get him
13 one at a later time.

14 Q And did you follow up with Mr. Preston in a resume?

15 A Yes, sir, I did.

16 Q And did, did ultimately Mr. Preston hire you to come
17 work for Anderson County?

18 A Yes, sir.

19 Q When you -- when was that approximately?

20 A That was around 2003.

21 Q And---

22 A Early or later of 2002. I'm -- my years are --.

23 Q Okay.

24 A They run close together, yeah.

25 Q So, it sounds like sometime in late 2002 or early 2003

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by Mr. Tessier

1 --

2 A Yes.

3 Q -- you were hired by, by Mr. Preston to work for
4 Anderson County?

5 A Yes.

6 Q In what job were you hired?

7 A I was originally hired. I was given an intern
8 position, which was part-time, working with Economic
9 Development under John Lullis.

10 Q Okay. And did you ever move into any other jobs within
11 Anderson County?

12 A Yes, sir, I did.

13 Q what -- tell us how that came about.

14 what was the next position you held within Anderson
15 County?

16 A I was economic development for a short period of time,
17 and I got a call from Mr. Preston, and he said he was taking
18 me out of economic development and putting me in Keep
19 America Beautiful where I was working under Michelle
20 Strange. So, I began working with Keep America Beautiful in
21 the Fall of 2002, late 2002.

22 Q And was that position with Keep America Beautiful also
23 a part-time position?

24 A Yes, it was.

25 Q At some point were you moved into a full-time job?

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by Mr. Tessier

1 A Yes, sir.

2 Q How did that come about?

3 A It, it came to me through Mr. Preston. He communicated
4 to me that there was a full-time position coming open in
5 building and codes. They were looking for a mobile home
6 inspector in that department. So, I applied and, you know,
7 other people applied as well, and I was ultimately chosen
8 for the job.

9 Q And do you know if Mr. Preston had involvement in your
10 hiring into the building and codes job?

11 A I don't know, you know, right offhand if he had
12 anything to do with it. I know Jeff Ricketson was the
13 director of planning who was over that department, and he
14 and Jeff Ricketson were really good friends.

15 Q And how did you find out about the full-time job that
16 was available in building and codes?

17 A Mr. Preston told me.

18 Q What experience or training did you have to prepare you
19 for a job in the building and codes department?

20 A None whatsoever until I got the job, and I got
21 on-the-job training for that position.

22 Q Did you know about how long you stayed in the job in
23 the building and codes department?

24 A I was there from March of 2003 till 2006.

25 Q And then what happened at that point in time?

Kelly Nichols - Direct examination
by Mr. Tessier

1 A In 2006 Mr. Preston notified me that there was a
2 position coming up in storm water because storm water was a
3 new program that was getting ready to start up in Anderson
4 County, and I applied, I applied for that --

5 Q Okay.

6 A -- and ultimately got that position.

7 Q Did you know who hired you into the storm water
8 department?

9 A It would have been Vic Carpenter at the time. He was
10 over that department.

11 Q But you learned about the job availability from
12 Mr. Preston?

13 A Yes, sir.

14 Q What were you suppose to do within the storm water
15 division?

16 A Well, when I first started it wasn't quite clear what I
17 was to do because the department had not really become a
18 department, become a department yet. So, they ultimately
19 just started me working with the waste water department,
20 which was already a developed department, because waste
21 water deals -- is close proximity to what I was gonna be
22 dealing with. So, they put me with them and I worked under
23 them under their guidelines until my department came up.

24 Q So, were you -- would it be fair to say you were the
25 only person that was working in storm water when you were

Kelly Nichols - Direct examination
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1 first hired?

2 A There was David Scott who was an engineer in that
3 department at the time, and he was in charge of storm water
4 as it was at that point. So, I wouldn't say I was the only
5 one. But I was the only one that had been hired
6 specifically for that.

7 Q And what was your title when you first started in the
8 storm water department?

9 A I was just a storm water inspector.

10 Q And were there any other storm water inspectors?

11 A No, sir.

12 Q What experience or training did you have to prepare you
13 to be a storm water inspector for Anderson County?

14 A Well, I had some compliance background working through
15 building and codes dealing with -- in working with land use.
16 So, I knew the proper way to install certain BMP's, which is
17 best management practices with storm water like the silt
18 fence that you see on construction sites. So, I had some
19 knowledge of how that was to be installed. So, that was
20 pretty much all I had at that time.

21 Q And once you got the job as a storm water inspector,
22 did you get any training or certification that would apply
23 to your, your work in the storm water department?

24 A Yes, sir, I did.

25 Q And what was that?

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by Mr. Tessier

- 1 A I went through the Clemson Extension and went to
2 classes and became certified.
- 3 Q And once you got your certification, did you get a pay
4 raise?
- 5 A I did.
- 6 Q And do you know who was responsible for your pay raise,
7 the decision to give you a pay raise?
- 8 A Vic Carpenter would have been the one to have to sign
9 off on the P.A.F.
- 10 Q Okay. And did your job classification or title change
11 in anyway once you got your certification?
- 12 A Yes, it did.
- 13 Q How so?
- 14 A I became lead storm water inspector.
- 15 Q And as lead storm water inspector, were you in charge
16 of supervising any other storm water inspectors?
- 17 A No, sir.
- 18 Q Were there any other storm water inspectors?
- 19 A No, sir.
- 20 Q Do you know who made the decision to change your title
21 to lead storm water inspector?
- 22 A To my knowledge, Mr. Preston was.
- 23 Q Was the, the job of building and codes and job in storm
24 water were both full-time jobs, is that right?
- 25 A Yes, sir.

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by Mr. Tessier

1 Q Was Mr. Super -- was Mr. Preston your supervisor within
2 the county at any point in time?

3 A No, sir.

4 Q Was he the boss of your supervisor?

5 A Yes, sir.

6 Q Was it that direct in terms of you had a boss and that
7 boss' boss was Mr. Preston?

8 A There was a chain of command, yes.

9 Q And Mr. Preston was one step removed from you in the
10 chain of command?

11 A I would say there was maybe -- at one time there was
12 only one person between him, and, and then it soon became
13 two people between him and I.

14 Q Were you assigned other jobs or responsibilities within
15 Anderson County where you did have to report directly to
16 Mr. Preston?

17 A Yes, I was in charge of certain, a certain department
18 when he -- we started the balloon festival, and because I
19 was involved in that I did have to communicate with him
20 directly.

21 Q And what responsibilities did you have in connection
22 with the Anderson balloon festival event?

23 A I was in charge of the V.I.P. area, which was an area
24 of service for the, the guests or the, the people that came
25 to perform at the balloon festivals.

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by Mr. Tessier

- 1 Q And did you report directly to Mr. Preston about that
2 assignment?
- 3 A At times, yes.
- 4 Q And what did you have to do as a part of that
5 assignment?
- 6 what did you actually do---
- 7 A I had---
- 8 Q ---with respect to the festival?
- 9 A I had to set up who was gonna do the catering of the
10 event, and I dealt with the entertainment. I was the one
11 that helped with them some.
- 12 Q And did you have to attend the event itself?
- 13 A Yes, sir.
- 14 Q And did Mr. Preston attend the event with you?
- 15 MR. DAVIS: Your Honor?
- 16 A He was always present.
- 17 THE COURT: Relevance.
- 18 I mean, at some point, are we gonna talk about the
19 severance agreement in this case?
- 20 THE COURT: Let's move on to something---
- 21 MR. TESSIER: Yes, sir.
- 22 THE COURT: ---that I would consider relevant. I have
23 yet to hear that. I'm gonna sustain that objection as to
24 the line of questioning---
- 25 Q How would you describe---

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by Mr. Tessier

- 1 THE COURT: ---on the balloon festival.
- 2 MR. TESSIER: I'm sorry, Your Honor.
- 3 Q How would you describe your relationship with Mr.
- 4 Preston when you first started working with Anderson County?
- 5 A We were, we were friends.
- 6 Q And did you socialize with him after work?
- 7 A Yes, sir.
- 8 Q Did you and Mr. Preston socialize with Mr. McAbee and
- 9 Amy Plummer at any point of time?
- 10 A Yes, sir.
- 11 Q At some point did you begin a romantic relationship
- 12 with Mr. Preston?
- 13 A Yes, sir.
- 14 Q About when did that start?
- 15 A Around 2004.
- 16 Q And it continued until when?
- 17 A Late May of 2012.
- 18 Q And was Mr. Preston married during that time?
- 19 A Yes, sir.
- 20 Q And so were you?
- 21 A I was too, yes, sir.
- 22 Q How close would you describe your relationship with
- 23 Mr. Preston during that time?
- 24 A Very close.
- 25 Q Did you, in your job in the storm water department, did

Kelly Nichols - Direct examination
by Mr. Tessier

1 you have reason to travel to seminars or conferences
2 relating to storm water matters?

3 A Yes, sir.

4 Q Aid did Mr. Preston ever travel to such conference with
5 you?

6 A Yes, sir.

7 Q And were the expenses paid by the county?

8 A Yes, sir.

9 Q And those happened after 2004?

10 A Yes, sir.

11 Q Had Mr. Preston expressed any interest in going to
12 storm water conferences before you took the storm water job?

13 A No, sir.

14 Q In the Fall of 2008, county council voted to give Mr.
15 Preston a severance package, and I was gonna ask you do
16 you -- did you have any conversations with Mr. Preston
17 leading up to the decision by county council to vote on his
18 severance package in November 2008?

19 A Yes, sir.

20 Q Do you recall what Mr. Preston told you about any
21 communications he might of had with council members prior to
22 that meeting?

23 A I remember one specific conversation.

24 MR. DAVIS: Hearsay, Your Honor. This is not only
25 hearsay, but it's double hearsay because she's about to

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1 communicate what apparently Mr. Preston told her that some
2 unidentified person told him.

3 MR. TESSIER: It's a statement of a party opponent,
4 Your Honor. What Mr. Preston said is a statement of a party
5 opponent.

6 MR. DAVIS: Unfortunately for Mr. Tessier, it falls
7 under Rule 805, not under a normal hearsay ruling, and it's
8 under 805. It's double hearsay requiring exceptions under
9 each level of hearsay. He's only identified one.

10 MR. TESSIER: That -- that's, that's not the right
11 application of the rule, Your Honor.

12 MR. DAVIS: That's absolutely the right application of
13 the rule.

14 MR. TESSIER: Mr. Preston is a party opponent. There's
15 no argument in that. So, whatever Mr. Preston---

16 THE COURT: well, slow down just a minute, gentlemen.
17 I'm, I'm not privy to what she's about to testify to. So,
18 I'm not sure exactly what she's going to say that he said,
19 that he said---

20 MR. TESSIER: Right.

21 THE COURT: ---and whether that quotes someone else or
22 someone else quoting someone else. So, I, I'm not sure I
23 understand what we're talking about at this point in time.

24 MR. TESSIER: Well, what I'll ask---

25 THE COURT: Can, can you tell me?

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1 MR. TESSIER: Yes, sir.

2 THE COURT: I assume you know the answer to the
3 question---

4 MR. TESSIER: Yes, sir.

5 THE COURT: ---or at least discussed it with her. So,
6 maybe you can share that with me, where we, where we might
7 be going.

8 MR. TESSIER: Right, sir. I was just gonna ask her if
9 she had conversations with Mr. Preston about any
10 communications he had with those who voted for the severance
11 package. She's gonna say yes, and then she's gonna relay
12 what he told her about his communications.

13 It's not offered to prove the truth of the matter
14 asserted, Your Honor. But it's offered to rebut Mr.
15 Preston's contention, under oath, that he never talked to
16 anyone, anyone about this severance package or Mr.
17 Cunningham vote on his deal before the meeting happened.

18 MR. DAVIS: So, the second exception to the double
19 layer of hearsay, which is what?

20 THE COURT: Well, I'm not sure -- is this quoting going
21 to be quoting from what someone told Mr. Preston?

22 MR. TESSIER: Not -- I don't even know if it's gonna be
23 direct quotes, Your Honor, as much as it's gonna relay --
24 she's gonna relay that he told her he had communications
25 with them, and knew what the votes were gonna be basically.

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1 So, I don't---

2 THE COURT: What we're gonna do is I'm gonna take a
3 short recess. I'm gonna ask counsel to come to, to come to
4 chambers, and be prepared to tell me what you expect the
5 testimony to be so that I can at least make a ruling based
6 on what might be about to happen.

7 MR. TESSIER: Yes, sir.

8 THE COURT: We're gonna take a short recess. We'll
9 discuss it in chambers.

10 Thank you very much.

11 Ma'am, I'm gonna caution you, you're in the process of
12 testifying. While you're already under an order of
13 sequestration, I will advise you you should not discuss your
14 testimony with anyone during the break.

15 Do you understand?

16 THE WITNESS: Yes, sir, I do.

17 THE COURT: All right. Thank you very much.

18 Court will be in recess briefly.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: Based on the responses as related to me in
21 chambers, I'm going to overrule the objection at this point
22 in time. However, you still have the right to object if
23 responses warrant objection on the point that you've raised.

24 You may proceed, Mr. Tessier.

25 MR. TESSIER: Thank you, Your Honor.

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. TESSIER:

3 Q Ms. Nichols, we were talking about the Fall of 2008 --
4 the November 2008 timeframe leading up to the county council
5 vote on Mr. Preston's severance package and I'll start my
6 question over again.

7 To your knowledge, was Mr. Preston having phone
8 conversations with county council members about his
9 severance agreement prior to the November 18th, 2008,
10 meeting?

11 A I don't know if it was phone conversations.

12 Q Do you know -- to your knowledge, was Mr. Preston
13 having conversations with county council members about his
14 severance agreement prior to the November 18th meeting?

15 A All I know is what he told me.

16 Q And what did he tell you?

17 A He said to me, in a conversation him and I were having
18 on the phone, he was a little agitated, and he said that,
19 that he didn't think he was gonna have all the votes that he
20 needed to, you know, get his severance package, that they
21 were having trouble with two council members buying into it
22 so to speak.

23 Q And that was in advance of the November 18th meeting?

24 A Yes, sir.

25 Q Did he ever relay to you any different assessment of

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by Mr. Tessier

1 whether he felt like he had enough votes?

2 A No.

3 Q Did he ever tell you he thought he had enough votes?

4 A No.

5 Q Okay. You -- oh, during -- at any point in time did
6 Mr. Preston ever ask you to donate money to county council
7 candidates?

8 A There was one particular candidate. She was running
9 against Ms. Wilson. Her name was Julia Barns. She worked
10 for Forest College, and I wrote her a check for a hundred
11 dollars and he reimbursed me for that.

12 Q Had he asked you to make that donation?

13 A Yes.

14 Q Did Mr. Preston assist any other council members or,
15 or folks who were running for council in their election
16 campaigns that you know of?

17 A No, sir.

18 Q Did you receive harassing letters about your
19 relationship with Mr. Preston?

20 A Yes, sir.

21 Q And Mr. Preston received some as well?

22 A Yes, sir.

23 Q And there was a SLED investigation about harassment
24 that included harassment of you and Mr. Preston.

25 Is that fair to say?

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- 1 A Yes, sir.
- 2 Q Did Mr. Preston ever ask you to lie about your
3 relationship with him?
- 4 A He said to me we need to get our stories straight.
- 5 Q Did he tell you anything about what might happen if you
6 were caught?
- 7 A Yes, he did.
- 8 Q what did he say?
- 9 A He said that he would be fired and that I would lose my
10 job too.
- 11 Q Were you -- you were at -- were you at Cater's Lake
12 with Mr. Preston on March 10th of 2006?
- 13 A Yes, sir, I was.
- 14 Q Did anyone tell you to go to Cater's Lake that night?
- 15 A I got a call cause I was on my way home and he told me
16 to go there.
- 17 Q And you mean a call from Mr. Preston?
- 18 A Yes.
- 19 Q To your knowledge, was your presence at Cater's Lake on
20 March 10th, 2006, with Mr. Preston part of any operation
21 by the Sheriff's Department, Department to find people who
22 were harassing you two?
- 23 A No.
- 24 Q what happened the next day after you were seen at
25 Cater's Lake with Mr. Preston?

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1 A I was at home. I got a phone call from my husband. He
2 was very upset. He had gotten a phone call from an
3 anonymous caller saying that, of course, his wife, me, had
4 been caught with Mr. Preston at Cater's Lake the night
5 before.

6 Q Did you talk to Mr. Preston about that?

7 A I sure did. I immediately hung up with my husband and
8 I called Mr. Preston.

9 Q What did he say?

10 A He said let me go, I need to call Tim Busha.

11 Q Did you talk to Mr. Preston at all after that
12 conversation?

13 A Yes.

14 Q And what did he tell you?

15 A He told me that he talked to Tim, and that yes, Kelly
16 it does appear that we were followed last night and Tim
17 Busha said, as far as he's concerned, it was just part of
18 the investigation.

19 Q Did Mr. Preston tell you anything you should do about
20 talking about the incident at Cater's Lake?

21 A Yes, I was told a particular story I was to tell.

22 Q By Mr. Preston?

23 A Yes.

24 Q And do you know if Mr. Preston and Chief Deputy Busha
25 appeared at a county council meeting later on to explain the

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1 Cater's Lake incident?

2 A Yes, sir, I am.

3 Q Do you know what they said?

4 A They pretty much said that it was an operation to
5 apprehend the people that were following and stalking us.

6 THE COURT: Objection?

7 MR. DAVIS: Yes, Your Honor. Just, for the record, I
8 don't want to keep interrupting, but I preserve my rights or
9 Mr. Preston's rights, and this whole line of questioning,
10 which she talked about yesterday, we don't believe this has
11 anything to do with the severance package, the whole Cater's
12 Lake incident.

13 THE COURT: Well, you've objected to the Cater's Lake
14 information, and I'm allowing it and will rule on that at a
15 later time. That's the objection we preserved at the
16 beginning of this testimony. I note that you've, again,
17 preserved the objection. I, again, reserve my ruling until
18 a later time. This is being offered in the form of a
19 proffer.

20 You may proceed.

21 MR. TESSIER: Yes, sir.

22 Q I'm gonna move on to another topic, Ms. Nichols.

23 Did you meet with Mr. Preston at the Holiday Inn
24 Express on Highway 81 in Anderson during business hours on
25 September 15th, 2005?

Kelly Nichols - Direct examination
by Mr. Tessier

1 A Yes, sir, I did.

2 Q Did you meet with him over a lunch break?

3 A Yes, sir.

4 Q After you left the hotel that day, did you talk with
5 Mr. Preston?

6 A Yes, I did.

7 MR. DAVIS: Your Honor?

8 MR. TESSIER: I'm sorry.

9 MR. DAVIS: Objection. Relevance. I mean---

10 THE COURT: Relevance?

11 MR. TESSIER: Your Honor, I thought this was part of
12 what we had discussed yesterday. We're happy to talk to you
13 in chambers, if you would like, about it. This goes to
14 something, again, that Mr. Preston said in his deposition
15 about what happened, and at that -- that this is part of a
16 credit card transaction that was investigated. Mr. McAbee
17 talked about it. Ms. Wilson -- he says Mr. Wilson gave this
18 personal credit card information of a transaction. This was
19 the transaction. An investigation happened relating to
20 that.

21 MR. DAVIS: The investigation, Your Honor, was into
22 whether there was an improper disclosure of confidential
23 credit card information by a county councilwoman. All this
24 stuff was not part of the investigation.

25 MR. TESSIER: And Mr. Preston -- we submit Mr. Preston

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1 had lied under oath at least two times, including in this
2 case, about what happened in that -- at that hotel on that
3 particular day, and we think that's relevant going to his
4 credibility. That's all, Your Honor.

5 MR. DAVIS: Your Honor, I mean at some point this case,
6 has to be about the actual severance agreement that they've
7 alleged in the complaint and we object on relevance. We
8 object on 403 grounds. We object on 404(b) grounds. We
9 object on improper impeachment grounds, and we object on
10 Bare Enterprises grounds.

11 They're essentially trying to challenge the arbitrary
12 and capriciousness of a vote by a Holiday Inn Express credit
13 card receipt transaction questioning. They're trying to
14 turn this case into Days of Our Lives.

15 THE COURT: I will ask you where, where has this been
16 mentioned by anyone involved in the decision making process
17 over the severance agreement?

18 I know earlier there was mentions in the notes by
19 Mr. Bright of this particular relationship, and -- but I
20 don't recall anything mentioned by any of the people
21 involved thus far concerning any credit card bills or those
22 charges --

23 MR. TESSIER: That was---

24 THE COURT: -- entering into the severance agreement
25 decision.

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1 MR. TESSIER: Yeah, I don't know that anyone tried to
2 tie the two together, Your Honor. I do know Mr. McAbee
3 mentioned---

4 THE COURT: Then I will sustain the objection.

5 MR. TESSIER: And, and---

6 THE COURT: Let's move on to something else. If you'd
7 like -- if you want to make a proffer?

8 MR. TESSIER: That's all I would ask to do, Your Honor.
9 I'll make it a very short one. Just ask a few questions---

10 THE COURT: Let's make it very short.

11 MR. TESSIER: ---on the proffer.

12 THE COURT: I will sustain the objection.

13 Q Did -- Ms. Nichols, did you set up the, the -- do you
14 know if the plan for using the Holiday Inn hotel room on
15 September 15th, 2005, originally involved any plan to
16 allow Representative John Scott to spend the night there
17 that evening?

18 A Originally no.

19 Q Okay. And did that plan change at some point?

20 A Yes.

21 Q Based on Mr. Preston's conversations with you?

22 A Yes.

23 Q And have you seen a deposition transcript given by
24 Mr. Preston in another case, back in 2005, where Mr. Preston
25 talked about the hotel room incident?

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- 1 MR. DAVIS: Your Honor?
- 2 MR. TESSIER: This is just a proffer, Your Honor.
- 3 I'm---
- 4 THE COURT: Well, is it---
- 5 MR. DAVIS: He's asking about a deposition transcript
- 6 from another case. That's like three layers of hearsay.
- 7 MR. TESSIER: Well, Your Honor, it -- it's a proffer of
- 8 his own deposition transcript that he gave to her.
- 9 THE COURT: Again, I'm gonna sustain the objection, and
- 10 if you want to make a proffer, you have the right to make a
- 11 proffer to preserve the record for appeal.
- 12 MR. TESSIER: And that's all I'll do, Your Honor.
- 13 THE COURT: All right.
- 14 Q Ms. Nichols?
- 15 THE COURT: Then I'll sustain the objection.
- 16 Q Ms. Nichols, did you get a copy of that deposition
- 17 transcript that I just mentioned?
- 18 A Yes, I did.
- 19 Q And where did you get it from?
- 20 A Mr. Preston.
- 21 Q And does he talk about the Holiday Inn incident?
- 22 A Yes, he does.
- 23 Q And did you bring it -- you have it with you?
- 24 I'll just mark that.
- 25 A Yes.

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1 MR. DAVIS: Your Honor, what, what case is this from by
2 the way?

3 MR. TESSIER: This is from the case involving Cindy
4 Wilson and Mr. Preston. So, the reason why Mr. Preston
5 would not want to tell the truth in that deposition is
6 because a sitting county council member, Cindy Wilson, would
7 then know what they had already suspected about his
8 relationship with a subordinate.

9 THE COURT: Have you been -- you've seen this
10 deposition?

11 MR. DAVIS: I haven't and I hadn't been---

12 THE COURT: Do you have the passage you want to share
13 with counsel so he can see what you're talking about?

14 MR. TESSIER: Yes, sir.

15 THE WITNESS: Mr. Tessier, it will be Page 12.

16 THE COURT: Ma'am, don't answer anything until I ruled
17 on their objections. Thank you, please.

18 MR. DAVIS: Your Honor, this hasn't been produced to us
19 in discovery, and to whip this stuff out at trial is just --
20 it's more of the same and we object. This should be struck
21 from the record. It should be disallowed from going into
22 any of this stuff. It's inadmissible under the rules. It's
23 unfair under the procedural rules. It's just improper.
24 It's unsporting altogether.

25 MR. TESSIER: Your Honor?

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1 THE COURT: All right. Yes, sir, Mr. Tessier.

2 Have you provided them with a copy of this?

3 MR. TESSIER: Your Honor, as Mr. Davis knows full well,
4 he made a decision not to take the deposition of Ms. Nichols
5 or to subpoena her for any documents.

6 THE COURT: Well, I understand that, but I would
7 suspect if there's discovery concerning documents to be used
8 at trial, I would expect that question to have been asked in
9 written discovery.

10 MR. TESSIER: Yeah, we did not have -- we did not see
11 this, Your Honor, until whatever night it was -- Wednesday
12 night perhaps, this week, when Ms. Nichols showed it to us.

13 THE COURT: Well, was it provided to him then?

14 MR. TESSIER: We didn't get a copy of it at that point
15 in time, Your Honor. She is represented by counsel.

16 THE COURT: When did you get a copy of it?

17 MR. TESSIER: I've never gotten a copy of it, Your
18 Honor.

19 THE COURT: Of that that you're holding in your hands?

20 MR. TESSIER: This is what she just brought today, Your
21 Honor.

22 MR. DAVIS: But he knew how to ask the questions about
23 it.

24 THE COURT: How did you know to ask questions about it
25 if you---

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1 MR. TESSIER: Because I---

2 THE COURT: Come on, Mr. Tessier. Be honest with the
3 Court, when, when you found this thing---

4 MR. TESSIER: Your Honor?

5 THE COURT: ---when you discovered it.

6 MR. TESSIER: Wednesday night -- I believe it was
7 Wednesday night. Wednesday -- when Mr. Byrholdt is here as
8 well. He's Ms. Nichols' attorney.

9 MR. GENTRY: I think it was Tuesday night.

10 THE COURT: Well, I don't, I don't like to see trials
11 by ambush.

12 MR. TESSIER: Well, again, Your Honor, in fairness,
13 Mr. Davis could have deposed this witness from long before.

14 THE COURT: I understand that.

15 MR. TESSIER: We talked to her Tuesday night I believe.

16 THE COURT: Okay. But you have a continuing obligation
17 to, under written discovery, that when you learn of
18 documents that are going to be used by you at trial, to
19 provide those to the other side. That's my understanding of
20 the way discovery works.

21 Do you have a different understanding?

22 MR. TESSIER: Well, Your Honor, I think, first, it
23 would have to be responsive to discovery, and something
24 that's in my possession, custody, or control, and I don't
25 control the witness. So, I can't force the witness to give

Kelly Nichols - Direct examination
by Mr. Tessier

1 me any documents.

2 She's cooperating, she's cooperating, but we did not
3 get a copy of it.

4 THE COURT: I've already ruled it inadmissible, and
5 I'll let you go into it solely for the purpose of the
6 proffer if you wish to make a proffer.

7 MR. TESSIER: Well, I'll just make it a Court Exhibit
8 if that's all right, Your Honor.

9 THE COURT: That will be fine.

10 (WHEREUPON, the transcript was marked as Court's
11 Exhibit No. 1 for identification purposes only at this
12 time.)

13 Q When is the last time you spoke with Mr. Preston?

14 A It would of been in May of 2012.

15 Q And is your relationship with him over?

16 A Yes, sir.

17 Q Would you agree with me that it'd be fair to say you're
18 angry with Mr. Preston?

19 A No, I'm not angry.

20 Q Are you upset with him in anyway?

21 A No, sir.

22 Q Are you on good terms with him now?

23 A I don't speak to Mr. Preston now.

24 Q Would you make up stories to try to hurt Mr. Preston
25 because of the past relationship you had with him?

Kelly Nichols - Cross-examination
by Mr. Davis

1 A No, I just want to tell the truth.

2 MR. TESSIER: That's all I have, Your Honor.

3 THE COURT: Your witness, Mr. Davis.

4 CROSS-EXAMINATION

5 BY MR. DAVIS:

6 Q Good morning, Ms. Nichols. We had the pleasure of just
7 meeting about five minutes ago, but my name is Lane Davis
8 for purposes of the record.

9 Before we go into the things that we might disagree
10 about, I was hoping maybe we could talk about some of the
11 things that we might agree about, and it's true, is it not,
12 that during the 2006/2007 timeframe, someone, we don't know
13 who necessarily, but someone was writing anonymous letters
14 and signing your name?

15 A There was one instance where that happened, yes, sir.

16 Q In fact, there was more than one instance, wasn't it?

17 A Well, yeah, but it was all linked to the same incident,
18 yeah.

19 Q There was a letter that was sent actually to the Office
20 of Disciplinary Council for the Supreme Court of South
21 Carolina?

22 A Yes.

23 Q And in that letter, this anonymous person made
24 accusations about a lawyer that you hadn't even met yet?

25 A No, I had not.

Kelly Nichols - Cross-examination
by Mr. Davis

1 Q And the allegations that they made about that lawyer
2 were false, right?

3 A Right.

4 Q And you didn't even know that the letter had gone off
5 to the South Carolina Office of Disciplinary Council until
6 they responded to you at your address?

7 A Correct.

8 Q And then there was another occasion, in that same time
9 period, that '06, '07 time period, and in that instance they
10 wrote a letter to Senator Billy Odell.

11 Do you remember that?

12 A Yes, sir.

13 Q And they wrote that letter anonymously in your name and
14 it contained false allegations too, didn't it?

15 A Yes, it did.

16 MR. TESSIER: Your Honor.

17 Q And---

18 MR. TESSIER: Just for the record, I'm gonna object as
19 to relevance, hearsay, and lack of foundation. There's
20 no -- nothing that's been established these letters that Ms.
21 Nichols actually sent to anyone. These are---

22 THE COURT: Well, he asked her if she didn't send them,
23 and she admitted knowledge that she didn't send them.

24 MR. TESSIER: Right. So then it goes to relevance.
25 We're talking about a letter she never sent.

Kelly Nichols - Cross-examination
by Mr. Davis

1 What's the relevance?

2 Just for the record---

3 THE COURT: Relevance, Mr. Davis?

4 MR. DAVIS: Well, we take the -- we take this
5 relationship issue, and we put it off to the side for a
6 second, Ms. Nichols is a very credible witness about a
7 pattern of harassment that both she and Mr. Preston were
8 experienced during this time period, and there's no doubt --
9 I don't -- I think that there's, there's a lot that this
10 witness and I can agree on, that this, this harassment that
11 occurred and it occurred systematically in different ways.
12 It was unfair. It was targeted at her. It was targeted --
13 it made her a target because of, of their suspicions for
14 relationship with Mr. Preston, and I think that it's gonna
15 link back to some of the council members if, if my
16 examination goes down.

17 THE COURT: Well, I'm gonna let you go forward. I'll
18 let you go into the atmosphere in which this decision was
19 made because of its relevance as to why people may of made
20 decisions since the question has been raised as to whether
21 or not the decision was arbitrary and capricious.

22 So, to the extent that this may be used to further
23 establish the atmosphere in which the decision might of been
24 made, I'll overrule the objection, allow you to go forward.

25 MR. DAVIS: Thank you, Your Honor.

Kelly Nichols - Cross-examination
by Mr. Davis

1 Q Ms. Nichols, there was an instance too where there was
2 a letter written to Senator Odell.

3 A Uh-huh. (Affirmative).

4 Q Is that a yes?

5 A Yes.

6 Q I'm sorry.

7 A I thought you were just rephrasing the original
8 question. I'm sorry.

9 Q And in -- like that other letter that we looked at,
10 that had false allegations in it too and they signed your
11 name on the bottom of it, right?

12 A Correct.

13 Q And can you, can you and I agree, Ms. Nichols, that
14 it -- in, in a civilized society, it's unacceptable to write
15 letters to third parties and sign someone else's name and
16 have those letters contain false allegations against yet
17 another party?

18 We can agree about that, right?

19 A Yes, we can.

20 Q There was yet another instance, all the way to the
21 Spring of 2007, do you remember, where there was a letter
22 written anonymously where they signed your name and it was
23 sent to the Department of Justice?

24 Do you remember that?

25 A Yes.

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 Q And that letter contained false allegations against
2 third parties.
3 You remember that?
4 A Yes.
5 Q And all of these letters were designed to try to cause
6 you problems, weren't they?
7 A It would appear that that would be the case, yes, sir.
8 Q And there were -- they were designed to cause you
9 problems, and they were designed to cause Mr. Preston
10 problems, right?
11 A Right.
12 Q Ms. Nichols, do you remember there was this -- there
13 was a woman, and I've never been clear on what her actual
14 name is, is it Gina or Jenna Trammell?
15 A Jenna Trammell.
16 Q Jenna Trammell.
17 And you remember Jenna Trammell, right?
18 A Oh, very much so, yes, sir.
19 Q And one of the things that Jenna Trammell did was she
20 stalked you, didn't she?
21 A Yes, she did.
22 Q You'd go and you'd buy groceries and you'd look out
23 your rearview mirror and Jenna Trammell would be following
24 you?
25 A No, that's not true.

Kelly Nichols - Cross-examination
by Mr. Davis

1 Q Well, I mean, as an instance, you, you'd be looking out
2 your rearview mirror and you'd see Jenna Trammell following
3 you around, right?

4 A On one instance, yes, I saw that.

5 Q Was there an instance where you went to a Chinese
6 restaurant?

7 A That is the instance I'm talking about.

8 Q And, on that occasion, do you remember that Deputy
9 Chief Tim Busha was actually following Jenna Trammell as
10 well?

11 A I wasn't aware that he was following her. I was aware
12 she was following me, and I called him to come verify that
13 she was sitting in the parking lot of the Chinese restaurant
14 watching me while I was inside.

15 Q And you saw Jenna Trammell, didn't you?

16 A Yes, I did.

17 Q And did you ever become aware of any relationship that
18 Jenna Trammell had with Cindy Wilson?

19 A Yes, I did.

20 Q What was that relationship?

21 A She lived in -- from what I could understand or what I
22 was told by Joey---

23 MR. TESSIER: Objection.

24 A ---that---

25 MR. TESSIER: This will be hearsay in connection with a

Kelly Nichols - Cross-examination
by Mr. Davis

1 relationship, if there's any, and/or speculation.

2 MR. DAVIS: Well, I'll link it up some other way, Your
3 Honor.

4 THE COURT: That will be fine. Rephrase the question.

5 Q On the occasion that you were at the Chinese
6 restaurant, and forgive me, but I can't remember the name of
7 that restaurant.

8 What was the name?

9 It's something wok, right?

10 A Masters Wok.

11 Q Masters Wok?

12 A Yes.

13 Q Where is that exactly?

14 A Well, it was in Pruett -- I think it was in Pruett
15 Shopping Center at the time, but it's now moved. It's next
16 to Bojangle's on Main Street.

17 Q Is the Pruett Shopping Center in downtown Anderson
18 somewhere?

19 A It's further up north just before you get to the mall.
20 It's up in that direction.

21 Q So, it's in the city limits?

22 A Uh-huh. (Affirmative).

23 Q You called Deputy Chief Tim Busha to, to say Jenna
24 Trammell's following me, right?

25 A Yes, I did.

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 Q And Tim Busha came out and he confirmed that, right?
- 2 A Yes, sir, he did.
- 3 Q In fact, when he came out, Deputy Chief Tim Busha had
- 4 Joey Preston in the car with him, didn't he?
- 5 A I don't recall seeing Joey in the car, but he may have
- 6 been.
- 7 Q Did you ever become aware of an instance where Jenna
- 8 Trammell was or had a judgment entered against her for
- 9 ten million-dollars for defamation?
- 10 A I just learned about that recently. I didn't until
- 11 then. I didn't keep up with her.
- 12 Q There were instances where Deputy Chief Tim Busha was
- 13 actively investigating Jenna Trammell, were there not?
- 14 A He was investigating her as part of the investigation
- 15 because she was heavily involved with the stalking and what
- 16 they suspected was the letter writing.
- 17 Q And there was an instance where Deputy Chief Busha was
- 18 attempting to get Jenna Trammell's fingerprints?
- 19 Do you remember that?
- 20 A Yes, sir.
- 21 Q And, and that was on a different night than the Chinese
- 22 wok restaurant night, right?
- 23 A I think so, yes, sir.
- 24 Q And, in that instance, Deputy Chief Tim Busha actually
- 25 met with Jenna Trammell, at some point, or someplace

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 downtown in an effort to try to get her fingerprints so she
2 can compare it to those harassing anonymous letters that you
3 were having sent out under your name, right?
- 4 A That's what I was told, yes, sir.
- 5 Q There was an instance when you were working for
6 Anderson County when you actually wrote a letter to the
7 Anderson County Council?
- 8 Do you remember that?
- 9 A Yes, I do remember that.
- 10 Q And did it complain about a specific council member?
- 11 A Ms. Wilson.
- 12 Q And, in your view, was that a warranted complaint?
- 13 A Yes.
- 14 Q Why was it warranted?
- 15 A Because she was saying things that were not true about
16 me.
- 17 Q And they were unfair, weren't they?
- 18 A They were.
- 19 Q And they were defamatory, weren't they?
- 20 A Yes, they were.
- 21 Q And you felt like you were being targeted?
- 22 A Yes, I did.
- 23 Q And the reason why you were being targeted was because
24 Ms. Wilson was out to try to harm Preston in some way,
25 right?

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 A That was my perception.
- 2 Q Ms. Wilson said things about you that were somewhat
- 3 unconscionable, right?
- 4 I mean she, she questioned your ability to do your job?
- 5 A That's correct.
- 6 Q And the truth is you took a lot of pride in your job,
- 7 didn't you?
- 8 A Yes, I did. I loved my job.
- 9 Q And you worked really hard?
- 10 A Yes, sir, I did.
- 11 Q And you were good at it?
- 12 A Yes, sir, I was.
- 13 Q And, for whatever reason, due to your relationship with
- 14 Mr. Preston or, at the time, the suspected relationship, Ms.
- 15 Wilson was targeting you and saying all sorts of things
- 16 about you, right?
- 17 A Yes, sir.
- 18 Q And she even went so far as to say those things about
- 19 you on WAIM Radio, didn't she?
- 20 A I didn't personally hear it. I just heard that she had
- 21 said those things.
- 22 Q There came a time, while this was happening though,
- 23 when you learned that she went on the radio and said these
- 24 things about you?
- 25 A Yes.

Kelly Nichols - Cross-examination
by Mr. Davis

1 Q Didn't she accuse you of, of wearing inappropriate
2 clothing to work?

3 A Yes.

4 Q County -- sitting county council members accusing
5 somebody who's working in the storm water division of
6 wearing inappropriate clothes to work, right?

7 MR. TESSIER: Objection, Your Honor.

8 A Correct.

9 MR. TESSIER: Mr. Davis has complained plenty about the
10 extent of the questioning, and I see no bearing whatsoever
11 on this particular line.

12 MR. DAVIS: Your Honor?

13 THE COURT: We're getting a little far afield, aren't
14 we?

15 MR. DAVIS: Yes, Your Honor. But remember one of the
16 things that the county had said in this case, which has been
17 interesting, was that Mr. Preston did have a claim for
18 liability from that period of time when he first asserted
19 his claim on September 25th of 2008 up until the severance
20 agreement vote, and that one of the things that we depend on
21 is we've shown that there was a lawsuit that was filed, and
22 it was filed against Bob Waldrep and Cindy Wilson, and that
23 one of Mr. Preston's primary job functions was to supervise
24 employees, and we've also shown that there was a situation
25 where the Anderson County Council subsequently ratified

Kelly Nichols - Cross-examination
by Mr. Davis

1 behavior of those two as official conduct, and we've also
2 shown that there was an order that was entered by the Court
3 that said that they did, in fact, interfere with that
4 conduct.

5 And now we have, for the first time, an employee of
6 Anderson County, at that time, who is talking about actual
7 specific instances that she's encountered wherein she had
8 her job duties interfered with by the sitting county
9 council, and, in fact, she was one of the people who's --
10 who was, who was referenced in that lawsuit.

11 So, it's just going to establish the concreteness of
12 those facts.

13 THE COURT: Yes, sir.

14 MR. TESSIER: He's gonna have to tie that in, Your
15 Honor, because a lot of what he's asking, you'll notice, are
16 questions about what did you hear so and so said. Did Ms.
17 Wilson---

18 THE COURT: Now, if you want to object on hearsay,
19 that's one thing. But you haven't -- you made an objection
20 on relevance.

21 MR. TESSIER: Yeah, and the other one would be lack of
22 foundation. So, if he wants to present evidence that she
23 actually knows of direct contact between Ms. Wilson and her
24 about complaining about her job, that'd be -- that's what
25 he's trying to get at it says. So, let's have it be that.

Kelly Nichols - Cross-examination
by Mr. Davis

1 But you can't do it this back-door way of saying did you
2 hear Ms. Wilson might be complaining about what she wore to
3 work.

4 MR. DAVIS: Your Honor, I came through the front door.
5 I asked her about the letter she wrote to the county council
6 wherein she complains specifically about Cindy Wilson.

7 THE COURT: Okay. I'm gonna overrule the objection.

8 Q Can I get you some water?

9 A No, I'm fine. Thank you.

10 THE COURT: Be careful. You might hurt yourself over
11 there.

12 MR. DAVIS: I'll need a recess over here.

13 Q Let's do this, Kelly.

14 MR. DAVIS: Your Honor, may I approach the witness?

15 THE COURT: You may.

16 MR. DAVIS: Your Honor, may I approach the bench?

17 THE COURT: Yes, sir, thank you.

18 Q Let's go at it a different way.

19 Kelly, do you remember writing this letter?

20 A Yes, I do.

21 Q Is that your signature, signature under sincerely?

22 A Yes.

23 Q In this letter, in the second sentence, you state, and
24 I quote, "I respectfully request that you take whatever
25 steps you can to stop one of your members, Ms. Cindy Wilson,

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 from continuing to make false and slanderous statements
2 about me."
3 Do you see that?
4 A Yes.
5 Q Was that statement true?
6 A Yes.
7 Q In the next paragraph, you state, and I quote, "Ms.
8 Wilson had made false and slanderous statements about me in
9 a letter to you and I personally heard it being read on the
10 WAIM morning radio show by Mr. Rick Driver, who is a known
11 supporter of Ms. Wilson."
12 Is that statement true?
13 A As I said before, I did not hear it.
14 Can I, can I say something?
15 Can I explain?
16 THE COURT: You have the right to explain any answer
17 you give, ma'am.
18 Q Absolutely.
19 A This letter was written for me and I had to retype it.
20 Q Okay.
21 A Okay.
22 Q Did you---
23 A I did not write this letter.
24 Q Did you put it in your own words?
25 A No, I did not. I made -- I, I retyped it word-for-word

Kelly Nichols - Cross-examination
by Mr. Davis

1 by what it was -- for what it was given to me.

2 Q was it false?

3 A I didn't hear it on WAIM. That, that part would be
4 false. I was given this letter to sign and to send.

5 Q Okay. Did you agree to send a false letter?

6 A No, I did not agree. I did this because I was told to
7 do this.

8 Q But, but it contains things that are false?

9 A The part about WAIM in this letter, I did not hear it.

10 Q Okay.

11 A But the -- everything else is true.

12 Q Everything else is true.

13 Okay.

14 A But I wrote this letter -- I signed this letter because
15 I was told to.

16 Q Okay. But the contents of the letter was true other
17 than---

18 A Except for the part where I heard it on WAIM.

19 Q And then down below there's parts about Ms. Wilson
20 having attacked your moral character by saying that the
21 Sheriff's Department is investigating you.

22 was that true?

23 A She did.

24 Q Down below it says Ms. Wilson's statements are
25 defamatory. She's intentionally trying to hurt me.

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 Was that true?
- 2 A Yes, that was true.
- 3 Q At some point, Kelly, you, you filed, filed a motion
- 4 for a restraining order against Gina Trammell, did you not?
- 5 A Yes, I did.
- 6 Q And in so doing, you submitted an affidavit with the
- 7 Court?
- 8 A Yes, I did.
- 9 Q And that affidavit outlined various facts about how Ms.
- 10 Trammell had systematically harassed you and followed you,
- 11 right?
- 12 A Yes.
- 13 Q There was another instance of harassment too, wasn't
- 14 there?
- 15 There's a guy named Turk Culbertson?
- 16 A Yes, that was the most recent one.
- 17 Q And that was all the way up --?
- 18 A From 2006.
- 19 Q Yeah.
- 20 And then, and then the restraining order you filed in
- 21 that case was -- it was in 2011, right?
- 22 A Uh-huh. (Affirmative).
- 23 Q And there were instances where you would see Turk
- 24 Culbertson literally just creep in front of your house in
- 25 his car?

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 A Yes, sir.
- 2 Q And, and while he was doing that, you would come out,
3 and he would stare at you in a weird way?
- 4 A Yes, sir.
- 5 Q And that happened with a fair amount of frequency,
6 didn't it?
- 7 A Yes, sir, it did.
- 8 Q And, at some point during that process, you filed a
9 report as, as you should have --
- 10 A Yes, sir.
- 11 Q -- with the Anderson County Sheriff's Department?
12 Do you remember that?
- 13 A Yes, I do.
- 14 Q And before you even got that report back as the victim,
15 the next morning you heard Rick Driver talking about it on
16 WAIM Radio, didn't you?
- 17 A I don't recall hearing it myself because I was usually
18 at work doing my job when they were on the air.
- 19 Q That's correct.
- 20 A But someone would ultimately call me and tell me that
21 that was the case, yes.
- 22 Q And, in fact, that very next day, after you filed that
23 police report, Mr. Culbertson went on, on the radio himself
24 and was talking about it as, as you understood it?
- 25 A That's what I was told, yes.

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 Q Now, I want to turn your attention to Cater's Lake and,
2 and I want to try to see, in the same kind of vein, what we
3 can agree about that night and maybe there may be stuff we
4 disagree about, but that's okay. I'll just see what we can
5 agree on.
- 6 That night occurred on March 10th of 2006?
- 7 A Yes.
- 8 THE COURT: I assume that the cross-examination is the
9 subject of your prior objections?
- 10 MR. DAVIS: Yes, Your Honor. Thank you.
- 11 THE COURT: I'll make that notation.
12 You may proceed.
- 13 Q That night, do you remember going to Sullivan's?
- 14 A Yes, sir.
- 15 Q When you were at Sullivan's, you were there and
16 Mr. Preston were there?
- 17 A Yes, sir.
- 18 Q And there, there was a lady named Marlene McClain.
19 Do you remember Marlene McClain?
- 20 A Yes.
- 21 Q And then Marlene McClain had a couple, a couple friends
22 with her too.
- 23 You remember that?
- 24 A Yes, sir.
- 25 Q And did you, at some point, become aware that Marlene

Kelly Nichols - Cross-examination
by Mr. Davis

1 McClain was actually the, the underling to Tim Busha.

2 Did you know that?

3 A No.

4 Q Did you, at some point that evening, learn that Tim
5 Busha was expected to come out to Sullivan's?

6 A No, Joey told me that he was gonna try to, but he
7 didn't know if he was gonna get there or not.

8 Q Well, you remember Joey telling you that Tim Busha was
9 gonna try to come out there that night?

10 A That's what I said, yes.

11 Q Right.

12 At some point while you were at Sullivan's with that,
13 that group, somebody mentioned Gina Trammell to you.

14 Do remember that?

15 A Uh-huh. (Affirmative).

16 Yes.

17 Q And understandably, the, the reference to Gina Trammell
18 and---

19 THE COURT: We okay?

20 UNIDENTIFIED PERSON: Just disconnecting.

21 THE COURT: Okay. Thank you.

22 Go ahead.

23 Q And, and the way this person was presenting it to you
24 was someone upset, right?

25 A Yes.

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 Q Because Gina Trammell was stalking you and---
- 2 A She was a bad person.
- 3 Q And then here's this, here's this person at Sullivan's
- 4 trying to tell you Gina Trammell's so great, dah, dah, and
- 5 you weren't gonna listen to that?
- 6 A No, I wasn't.
- 7 Q And, so, the consequence of that dialogue was that you
- 8 left -- you got up and left?
- 9 You were, you were mad?
- 10 You got up and left?
- 11 A I said my peace and I got up and left, yes.
- 12 Q And then, and then Joey stayed there for a short time
- 13 with Marlene McClain?
- 14 A Yes.
- 15 Q And after you had left for about ten or fifteen minutes
- 16 you phoned Joey.
- 17 Do you remember that?
- 18 A Yes.
- 19 Q And Joey then left himself?
- 20 A Oh, yes.
- 21 Q And he, he met up with you somewhere down and around
- 22 the courthouse area in Anderson, right?
- 23 A No.
- 24 Q Where did, where did he meet up with you?
- 25 A I didn't meet up with him at anytime once I left. I

Kelly Nichols - Cross-examination
by Mr. Davis

1 was in my car and was driving down Main Street. I turned
2 down right to go down Greenville Street and he called me.

3 Q And then did he come, at some point, and follow you?

4 A Yes, he was behind me somewhere.

5 Q And then, at some point, the decision was made to turn
6 left on 81 into Cater's Lake Park?

7 A He told me to go there. So I did.

8 Q Now, just let's, let's clear something up for purposes
9 of the record so that the, the radio crowd doesn't have a
10 field day with you.

11 Nothing sexual happened in the park that night, did it?

12 A No, sir.

13 Q We can agree about that?

14 A Very much so.

15 Q When you arrived at the park that night, you and
16 Mr. Preston were out of your vehicles, you went down to a
17 pretty well lit area.

18 Is that right?

19 A We sat in his car for a little while and listened to
20 James Bond music and laughed.

21 Q How, how romantic.

22 A Yes. And then we shortly got out of his vehicle and
23 walked down to the, the edge of the lake.

24 Q And then, after a short time, the Anderson City Police
25 showed up, right, with the blue lights flashing?

Kelly Nichols - Cross-examination
by Mr. Davis

1 A I don't recall seeing the blue lights. I just remember
2 seeing the spotlight on us.

3 Q And then you walked back to your vehicles and you both
4 exited out of Cater's Lake Park?

5 A Yes.

6 Q Now, it's true that, at a later point in time, you
7 learned why the Anderson City Police Department showed up
8 there that night, did you not?

9 A I had a feeling as soon as it happened what had
10 happened, yes.

11 Q And, and what had happened was that there were two, two
12 little kids who were following y'all around and they
13 reported a false police report against, that there was noise
14 in the park that night?

15 A I can assume they were following, but I don't know that
16 they were.

17 Q And did you later learn that, after you left Cater's
18 Lake and y'all went on your separate ways, did you later
19 learn that that -- the girl of that couple had phoned Mr.
20 Preston's home that night?

21 A I did not know that until much later that she had
22 phoned. To be honest with you, I actually didn't know that
23 she had phoned him until quite sometime after it had
24 happened because he did not tell me that she had called.

25 Q At some point afterwards you found that out, right?

Kelly Nichols - Cross-examination
by Mr. Davis

- 1 A Yes.
- 2 Q And she not only called once, she called twice, right?
- 3 A That's what the report says, yes.
- 4 Q And one of the things that was communicated to
- 5 Mr. Preston was that this whole Cater's Lake scandal was
- 6 gonna, was gonna be on the radio the next morning, right?
- 7 A Yes.
- 8 Q And, in fact, it was, was it not?
- 9 A Yes.
- 10 Q And the girl who---
- 11 A Well, it wasn't the next morning. That was on a Friday
- 12 night. They didn't broadcast on the weekends. So, it would
- 13 have been the following Monday.
- 14 Q And the next day, the next broadcast?
- 15 A Yes.
- 16 Q That's a, that's a fair distinction.
- 17 That girl turned out to be a, of the name Amanda
- 18 Felton?
- 19 A Correct.
- 20 Q And she had a husband named Michael Felton?
- 21 A Correct.
- 22 Q And Amanda Felton's father is a guy named Jerry George
- 23 Welch?
- 24 A Correct.
- 25 Q Jerry George Welch is a friend of Cindy Wilson's?

Kelly Nichols - Cross-examination
by Mr. Davis

1 MR. TESSIER: Objection, Your Honor. Lack of
2 foundation.

3 Q Do you know whether---

4 THE COURT: You can ask whether she knows that or not.

5 Q Do you know whether Jerry George Welch is a friend of
6 Cindy Wilson's?

7 A I know that they were acquaintances.

8 Q Now, this lawsuit, this lawsuit's been going on for
9 several years.

10 You were aware of that, right?

11 A Yes, sir.

12 Q And it's also true that, during the pendency of this
13 lawsuit, you hadn't spoken to the attorneys for the county
14 until September 19th of 2012, isn't that right?

15 A That's correct.

16 Q And that was the first time you voluntarily came
17 forward, right?

18 A Yes.

19 Q And it also turns out that September 19th of 2012 was
20 the very night before the special meeting that the county
21 council had called to vote on Mr. Preston's severance
22 agreement or settlement proposal?

23 MR. TESSIER: Objection, Your Honor. Relevance.

24 THE COURT: Relevance?

25 MR. DAVIS: It goes to potential motives. It goes

Kelly Nichols - Cross-examination
by Mr. Davis

1 to---

2 MR. TESSIER: Of who?

3 MR. DAVIS: ---timing.

4 MR. TESSIER: Potential motives of who?

5 MR. DAVIS: The witness.

6 MR. TESSIER: Her?

7 THE COURT: Address objections to me. Don't talk among
8 yourselves about them. Thank you.

9 Relevance?

10 MR. DAVIS: Your Honor, I'm just trying to establish
11 that there's a, a several year period of time and that none
12 of the information that she shared with us today was, was
13 voluntarily shared during that. The first time that it was
14 shared was on September 19th of 2012.

15 THE COURT: Okay. You got that into the record.

16 Anything else?

17 MR. DAVIS: Um.

18 THE COURT: You have the right to inquire because, on
19 direct, there was questions concerning her motivation to
20 testify and to whether or not, for purposes of her --
21 whether or not she's here because she was mad at somebody.
22 That's been raised in direct. You can go into those things.
23 But as to what the county council met and might of been
24 doing when she came forward, unless you can connect the two
25 somehow---

Kelly Nichols - Cross-examination
by Mr. Davis

1 MR. DAVIS: Well, what I wanted to ask her---

2 THE COURT: ---then I'll be glad to hear you, but I
3 haven't heard that yet. So, let's---

4 Q When you met---

5 THE COURT: You can go into her motives for testifying.
6 They brought that up.

7 Q When you---

8 THE COURT: Go ahead.

9 Q When you met with the attorneys for the county in
10 September 19th of 2012, you were aware, were you not, that
11 the settlement proposal of Mr. Preston was slated to be
12 voted on the following week?

13 A No, I was not aware of that.

14 Q Okay. Your relationship with Mr. Preston ended in June
15 of 2012---

16 A June 1st.

17 Q ---is that right?

18 Your employment with Anderson County ended in August?

19 A Yes, the end of July.

20 Q Now, at that point in time you had been in a
21 relationship with Mr. Preston for nearly eight years?

22 A Yes, I would say eight years.

23 Q There had -- there had to be -- there had to be some
24 reason why you stayed together for eight years, and when the
25 relationship ended, it was, it was emotional for you, wasn't

Kelly Nichols - Cross-examination
by Mr. Davis

1 it?

2 A Yeah, I'd say it was pretty emotional for both of us.

3 Q On direct examination you referenced a job, your first
4 job was as an intern, but then you went to work for Keep
5 America Beautiful?

6 A Yes, sir.

7 Q And then you went to the building and codes department
8 --

9 A Yes, sir.

10 Q -- right?

11 And it's true, is it not, that Jeff Ricketson would
12 have been the person who was responsible for your hiring?

13 A Yes, ultimately, yes.

14 Q And when you then proceeded to transfer to the storm
15 water department, similar to the building and codes
16 department, in that instance it was Vic Carpenter who hired
17 you?

18 A Yes.

19 Q On direct examination I thought you said that, that you
20 believed that there was only one and sometimes two people
21 between you and Mr. Preston on the chain of command?

22 A Yes.

23 Q But, but -- and I, and I suspect that there might be --
24 that there may be layers in there that you just forgot
25 about, but isn't it, isn't it that there was Mr. Preston,

Kelly Nichols - Cross-examination
by Mr. Davis

1 right?

2 A Uh-huh. (Affirmative).

3 Q And then there would of been Michael Cunningham beneath
4 him?

5 A Okay. Yeah.

6 Q And then there would of been Vic Carpenter, right?

7 A Yes.

8 Q And then there was some guy named John whose last name
9 I can't remember, but you probably do?

10 A Well, there was -- when I started with storm water
11 there was a David Scott. He later quit. So, there was
12 nobody between -- between -- Grace Smith was over the, the
13 department. So, between Joey and I would of been Michael
14 Cunningham and Vic Carpenter. But then it later became Greg
15 Smith because Vic Carpenter quit. So, there was about two
16 to three people between me and Mr. Preston.

17 Q And then did you work with an engineer on those
18 projects, projects too?

19 A With the storm water?

20 Q Uh-huh. (Affirmative).

21 A Yes, later on we did hire a plan reviewer who had an
22 engineering background and I worked with him.

23 Q Now, on direct examination, turning your attention to
24 the severance agreement stuff specifically, you testified
25 that Mr. Preston told you that he was having trouble with

Kelly Nichols - Cross-examination
by Mr. Davis

1 two council members?

2 A Yes.

3 Q Is that what he said?

4 A He said we're having -- he actually told me who they
5 were.

6 Q Did you---

7 A But can't get this person and this person to buy into
8 it.

9 Q And did he say, did he say he was having trouble with
10 them or just he said he didn't know whether he'd be able to
11 get their votes or he wasn't sure about them?

12 A He said we're having trouble getting them to buy into
13 it is what he said.

14 Q And what point in time was this?

15 A I would say it was right in the middle of all of the
16 negotiating that was going on at that time. I wasn't that
17 familiar with that process. So, I didn't know what all that
18 entailed. All I learned was from him.

19 Q And do -- do you know what he meant by that?

20 A I'm just---

21 Q You can tell me now.

22 A That they couldn't agree on it.

23 Q And you can't tell me, in the process, when this
24 occurred?

25 A No. Because there was a period of time between the

Kelly Nichols - Cross-examination
by Mr. Davis

1 time they started negotiating and talking about it and then
2 the, the end of when they actually voted on it. It was in
3 November.

4 Q And this, this lawsuit has been pending since 2009?

5 A Correct.

6 Q And the first time you came forward with this
7 information is in September 19th of 2012?

8 MR. TESSIER: Objection, Your Honor. Lack of
9 foundation. The witness wasn't there---

10 THE COURT: Overruled. He can ask that question.
11 Go ahead.

12 Q And the first time you came forward with this
13 information was on September 19th of 2012?

14 A Yeah. Because I was told to sit down and keep my mouth
15 shut and don't say a word.

16 Q And you came forward voluntarily, correct?

17 A Yes, I did.

18 Q And you met with the attorneys for the county, right?

19 A Yes, I did.

20 Q And you met with them in the Anderson County
21 Courthouse?

22 A With, with Mr. Tessier and Mr. Gentry, no, I did not
23 meet with them in the Anderson County Courthouse.

24 Q Well, where did you meet with them?

25 A I met with them in Greenville at their office.

Kelly Nichols - Cross-examination
by Mr. Davis

1 Q So, you voluntarily went all the way up to Greenville
2 to their office?

3 A Yes, I did. They asked me to because they were going
4 to depose me.

5 Q And previously they had had you under subpoena,
6 correct?

7 A They had served me last December and I had not heard
8 anything back, and I did contact them later to ask them what
9 was going on.

10 Q And they served you with a subpoena last December, and
11 you didn't have any contact with them until you voluntarily
12 came forward on September 19th of 2012, right?

13 A That's correct.

14 Q And your testimony is that you had no idea that the
15 following night there was gonna be a vote on Mr. Preston's
16 settlement proposal?

17 A I did not. I didn't keep up with that. I wasn't in
18 the know.

19 Q Ms. Nichols, I am sorry that you have found yourself in
20 such a position. I appreciate you being here today. Thank
21 you for your time.

22 THE COURT: Redirect.

23 MR. TESSIER: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

Kelly Nichols - Redirect examination
by Mr. Tessier

1 BY MS. TESSIER:

2 Q Ms. Nichols, Mr. Davis asked you a lot of questions
3 about why it took you so long to come forward voluntarily
4 and talk, and you said you were told to sit down, keep your
5 mouth shut, and not to say a word.

6 who told you that?

7 A I was told that quite often by Mr. Preston.

8 Q And we tried to take your deposition or served you a
9 notice and subpoena to take your deposition back in -- I
10 think was December of 2012?

11 A December the 2nd.

12 Q At that time were you represented by counsel with
13 respect to your deposition?

14 A At the time when it started, no. Later I was concerned
15 about it, and Joey decided to get his attorney, Candy, to
16 represent me if and when that deposition took place.

17 Q And did Ms. Candy Kern-Fuller, who's seated with Mr.
18 Preston here today as co-counsel, did she represent you with
19 respect to the deposition we were trying to take of you?

20 A If it was gonna happen, yes, she was gonna be the one
21 to sit with me.

22 Q And that representation continued through at least June
23 of 2012, right?

24 A Correct.

25 Q And so, Ms. Candy Kern-Fuller, co-counsel for Mr.

Kelly Nichols - Redirect examination
by Mr. Tessier

- 1 Preston, had full access to you as a witness that entire
2 time through June of 2012, right?
- 3 A Yes, sir.
- 4 Q Had full access to every single document that you have
5 with respect to Mr. Preston, correct?
- 6 A Yes, sir.
- 7 Q And, in fact, most of the documents you have with
8 respect to Mr. Preston came from Mr. Preston---
- 9 A Yes, sir.
- 10 Q ---right?
- 11 So, when counsel talks about not getting documents with
12 respect to you, they had full access to those documents,
13 didn't they?
- 14 A Yes, they did.
- 15 Q At the time of the Cater's Lake incident in March of
16 2006, your affair with Mr. Preston was ongoing?
- 17 Is that fair to say?
- 18 A Yes, it was.
- 19 Q And Mr. Preston was your ultimate boss at that time?
- 20 Fair to say?
- 21 A He was the one on the highest, the highest point, yes.
- 22 Q And would you agree that Mr. Preston's having an affair
23 with a subordinate county employee put the county at risk?
- 24 MR. DAVIS: Objection, Your Honor. Calls for a legal
25 conclusion and a lay witness is clearly inappropriate.

Kelly Nichols - Redirect examination
by Mr. Tessier

1 THE COURT: She can state what her belief might of been
2 at to those things. Overruled.

3 I'm not sure this is in response to anything that come
4 up, came up new on cross, however. This is redirect. We're
5 beating the same horse. Let's move on.

6 MR. TESSIER: Well, I do -- I just need to hit a couple
7 things that were covered by Mr. Davis.

8 THE COURT: I'd like for you to get to that.

9 MR. TESSIER: Okay. Well, he talked a lot, Your Honor,
10 about Cindy Wilson being interested in what Ms. Kelly
11 Nichols was up to and---

12 THE COURT: I'm gonna rule on that. The Cater's Lake
13 thing has been covered fairly thoroughly, and, and I don't
14 remember anything new that was brought up by his
15 cross-examination. If there is something, point it out and
16 let's move on. But other than that---

17 Q At Cater's Lake---

18 THE COURT: Let's, let's don't beat the same horse
19 again.

20 Q At Cater's Lake, Ms. Nichols, you talked about what you
21 did with Mr. Preston.

22 would you agree with me that you were upset at that
23 time because of what had happened at Sullivan's?

24 A Yeah, I was angry. I wasn't really upset. Just kind
25 of angry.

Kelly Nichols - Redirect examination
by Mr. Tessier

- 1 Q And would you agree that Mr. Preston put his arms
2 around you at the park?
3 A Yes.
4 Q And he kissed you?
5 A Yes, he did.
6 Q You think he would of kissed you if you were being
7 observed as part of an undercover investigation?
8 A No, I do not.
9 Q And Mr. Preston told you the story you were suppose to
10 use with respect to that incident, right?
11 A Yes, sir.
12 Q What was the story you were suppose to use?
13 A That we were under a sting operation and Mr. Busha was
14 somewhere sitting up in the parking lot at the church that
15 is directly behind Cater's Lake.
16 Q And did you have any knowledge as to whether or not
17 that was actually true?
18 A No, I did not.
19 Q You talked about Defendant's Exhibit 76, which you may
20 still have in front of you. It's a letter.
21 A Yes.
22 Q And you indicated that you did not write that letter
23 yourself.
24 Is that fair?
25 A That -- I did not write that letter.

Kelly Nichols - Redirect examination
by Mr. Tessier

1 Q Who wrote the letter for you?

2 A If I remember correctly, Mr. Preston said he had
3 Michael Cunningham write the letter for me. They sent the
4 letter to me. I retyped it and signed it.

5 Q And who told you to send the letter to the county
6 council that is Defendant's Exhibit 76?

7 A Mr. Preston.

8 Q Is that something you had thought to do on your own?

9 A No, sir.

10 Q Was Jenna Trammell a county employee at that point in
11 time that you know of?

12 A No, I do not believe she was.

13 Q That's all the questions I have. Thank you very much,
14 Ms. Nichols.

15 THE COURT: Recross. Recross.

16 MR. DAVIS: Just two things.

17 RE CROSS EXAMINATION

18 BY MR. DAVIS:

19 Q It's true, is it not, Kelly, that the reason why the
20 letter was drafted on your behalf to be submitted to the
21 county council was because you were being harassed and
22 defamed by County Councilwoman Wilson?

23 That's true, right?

24 A I was being harassed, yes.

25 Q You were being defamed?

Kelly Nichols - Recross examination
by Mr. Davis

1 A This is something that I wouldn't have done---

2 Q But it was---

3 A ---on my own.

4 Q But it was an effort to protect you, wasn't it?

5 A I guess, yeah.

6 Q Thank you.

7 THE COURT: You may step down.

8 MR. DAVIS: Oh, Your Honor, one thing.

9 THE COURT: Well, okay.

10 MR. DAVIS: May I move Exhibit 76 into the record?

11 I think I forgot to.

12 MR. TESSIER: We object, Your Honor, hearsay and
13 relevance.

14 MR. DAVIS: The letter was written by her. She signed
15 it.

16 THE COURT: She acknowledged her signature on it and
17 she sent it. It will come in.

18 (WHEREUPON, Defendant's Exhibit No. 76 was received
19 into evidence at this time.)

20 MR. TESSIER: And we're just asking that this witness
21 be excused from subpoena.

22 THE COURT: Any objection to her being excused?

23 MR. DAVIS: None, Your Honor.

24 THE COURT: Ma'am, you're free to go. I will remind
25 you that I have issued a sequestration order in this case.

Larry Greer - Direct examination
by Mr. Tessier

1 You are not to discuss your testimony with anyone until such
2 time as this case has been ended.

3 Thank you very much.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Court's gonna take about a five
6 minute break.

7 Court will be in recess. Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: State ready to call your next witness?

10 MR. TESSIER: Your Honor, Anderson County would call
11 Mr. Larry Greer.

12 THE COURT: I said State. I mean county. I promoted
13 you I guess. I don't know if it's a promotion or not.

14 Come forward, sir.

15 I'll let you decide whether that's a promotion or not.

16 LARRY GREER, being first duly
17 sworn, testified as follows:

18 CLERK: If you would, take the witness stand and state
19 your name for the record, and spell your last name for the
20 reporter please.

21 WITNESS: My name is Larry E. Greer. G-R-E-E-R.

22 DIRECT EXAMINATION

23 BY MR. TESSIER:

24 Q Good morning, Mr. Greer.

25 Can you tell the Court where you currently reside?

Larry Greer - Direct examination
by Mr. Tessier

1 A [REDACTED]

2 Q And you agree you went to college at Clemson?

3 A I do.

4 Q You have a Bachelor's and a Master's Degree in
5 Agricultural Education from Clemson?

6 A I do.

7 Q After you graduated from Clemson you worked as a
8 teacher for 30 years in the South Carolina School System, is
9 that right?

10 A That's correct.

11 Q And you retired from teaching in 1999?

12 A June of 1999.

13 Q You became an Anderson County Council member on
14 January 1st of 1999, is that right?

15 A That's correct.

16 Q During that time -- I'm sorry.

17 You served on the council from January 1 of 1999 until
18 December 31 2008, right?

19 A That's correct.

20 Q During that time you served on the Economic Development
21 Board for a period of time?

22 A Some time, yes, sir.

23 Q And when you served on that board, you agree with me
24 that you did not travel on behalf of Anderson County, did
25 you?

Larry Greer - Direct examination
by Mr. Tessier

- 1 A I didn't do any travel outside of the state let's say.
2 Q Okay. And you served as chair of county council for
3 two different periods of time, is that right?
4 A That's correct.
5 Q Michael Thompson was the chair of county council in
6 2008, is that right?
7 A That's correct.
8 Q Would you agree that you personally would not seek out
9 council employment while you were serving as a member of
10 council?
11 A I would not.
12 Q That would not fit in with your values, would it?
13 A I would not seek employment with Anderson County then
14 nor now.
15 Q At the council meeting on November 18th of 2008, you
16 agree that you voted in favor of Mr. Preston's 1.1
17 million-dollar severance package, is that right?
18 A I did.
19 Q And at the time you voted in favor of the severance
20 agreement, you did not know that Chairman Michael Thompson
21 was seeking employment with the county, did you?
22 A I did not.
23 Q You first learned that Mr. Preston was making a claim
24 against Anderson County concerning his employment back in
25 September of 2008?

Larry Greer - Direct examination
by Mr. Tessier

1 Is that fair?

2 A Somewhere along that time. I don't remember dates
3 specifically.

4 Q Would you agree with me that you first learned of it
5 when you got, when you and other members of council got a
6 letter from Mr. Preston's attorney, Rob Hoskins?

7 A I believe that's correct.

8 Q So, the date of that letter is the date that you first
9 learned of it?

10 Is that fair?

11 A I -- the date of the letter may not be the time I
12 received it, but that's, that's the approximate time.

13 Q Would you agree with me that that letter that Mr.
14 Hoskins sent on Mr. Preston's behalf talked about a claim
15 for anticipatory breach of his contract?

16 Is that fair?

17 A I would.

18 Q And let me show you, if I may, if I can find Exhibit
19 No. 3.

20 May I approach, Your Honor?

21 THE COURT: You may, yes, sir.

22 Q Mr. Greer, I'm just gonna hand you what's already been
23 admitted as Plaintiff's Exhibit 3 earlier in the case.

24 Is that the letter we're talking about from Mr. Hoskins
25 to the county council members?

Larry Greer - Direct examination
by Mr. Tessier

1 A I would say yes.

2 Q So, sometime on or after the date of that letter is
3 when you first learned that Mr. Preston was making a claim
4 for anticipatory breach against the county?

5 Is that fair?

6 A To the best of my knowledge, yes.

7 Q And you agree that you took from this letter that Mr.
8 Preston was complaining, through his lawyer, that he is
9 going to be prevented from carrying out his duties as
10 administrator, right?

11 A Would you ask your question again?

12 Q I'm sorry. Yeah.

13 You agree with me, do you not, Mr. Greer, that you took
14 from that letter that Mr. Preston was complaining that he
15 was going to be prevented from carrying out his duties as
16 county administrator at some point in the future?

17 A Are you asking me if I took it from this letter alone
18 or this was part of the---

19 Q Yeah.

20 A ---information and process that I used?

21 Q No, at this point I'm just asking, from that letter
22 alone, since this is the first time you've heard about a
23 claim.

24 A This is the first time I've heard of the anticipatory
25 breach claim.

Larry Greer - Direct examination
by Mr. Tessier

1 Q Okay. And, so, would it be fair to say that you took
2 from that letter that what Mr. Preston was complaining of
3 was an anticipatory breach of his contract concerning that
4 he might be prevented from carrying out his duties in the
5 future?

6 Fair to say?

7 A That's basically what the letter says I believe.

8 Q And by September of 2008, you would agree with me that
9 the general election had not yet occurred?

10 Fair to say?

11 A It had not.

12 Q And, at this point in time, September of 2008, there
13 were certain individuals, including Eddie Moore, Tom Allen,
14 and Tommy Dunn, who had won their primaries back in June,
15 but would not take office until January of 2009, correct?

16 A That's correct.

17 Q And those three folks would not officially be county
18 council members until after the -- I'm sorry.

19 Those three folks would not officially be county
20 council members-elect until after the general election
21 occurred in November?

22 Fair to say?

23 A Would you restate your question?

24 Q And I'm sorry. That wasn't the best, best question.
25 One -- when you win the primary in Anderson County,

Larry Greer - Direct examination
by Mr. Tessier

1 you're not elected to council, correct?

2 A Not officially until the November election.

3 Q Okay. So, at the point in September of 2008 when you
4 received this letter from Rob Hoskins, you knew that Eddie
5 Moore, Tommy Dunn, and Tom Allen were not going to be county
6 council members until at least January 1 of 2009?

7 Fair to say?

8 A They would not be sworn into office until January 2009.

9 Q Your presumption would be that they were going to win
10 the general election?

11 Is that fair to say?

12 A There was no doubt in my mind.

13 Q And that's primarily because there was no opposition?

14 A That's correct.

15 Q You agree that none of these three primary election
16 winners, Eddie Moore, Tom Allen, and Tommy Dunn, could act
17 in any official capacity for Anderson County before they
18 were sworn in?

19 Is that fair to say?

20 A They could not take official action until they're sworn
21 in.

22 Q Any newly elected council members from the 2008
23 election cycle, cycle would not have any authority to do
24 anything on behalf of Anderson County until they were sworn
25 in?

Larry Greer - Direct examination
by Mr. Tessier

- 1 Fair to say?
- 2 A That's correct.
- 3 Q After this letter came in from Mr. Hoskins on or about
- 4 September 25th, 2008, would you agree that the matter
- 5 concerning Mr. Preston's anticipatory breach claim was
- 6 referred to the personnel committee?
- 7 A I believe that's correct.
- 8 Q And, Mr. Greer, you were a member of that committee,
- 9 right?
- 10 A I was.
- 11 Q The other personnel committee members, back in 2008,
- 12 were Ron Wilson and Bill McAbee, correct?
- 13 A That's correct.
- 14 Q Mr. Wilson was the chair of the committee at that time?
- 15 A That's correct.
- 16 Q And the charge to the personnel committee back then was
- 17 to take up the matter of Mr. Preston's anticipatory breach
- 18 claim and provide a report back to council as a whole,
- 19 correct?
- 20 A To the best of my recollection, that's correct.
- 21 Q Would you agree with me that the committee never did
- 22 provide a report back to council?
- 23 A There was never an official report by the committee
- 24 back to council.
- 25 Q And I'll do what Mr. Davis almost did.

Larry Greer - Direct examination
by Mr. Tessier

- 1 And would you agree, Mr. Greer, that Mr. Preston was
2 asking for more than a million dollars from the county as
3 part of his claim?
- 4 A I would.
- 5 Q It's a lot of money, isn't it?
- 6 A Yes, it is.
- 7 Q This was a big deal for Anderson County, wouldn't you
8 agree?
- 9 A I would.
- 10 Q And it was important enough that county council hired
11 an employment lawyer, Tom Bright, for the sole purpose of
12 providing advice about the anticipatory breach claim?
- 13 would you agree with that?
- 14 A we had an attorney to advise us, yes.
- 15 Q And you agree that Mr. Bright was an employment lawyer?
- 16 A I do not---
- 17 Q Don't know?
- 18 A ---know that for sure.
- 19 Q would you agree that Mr. Bright was hired for the
20 specific purpose of advising the personnel committee about
21 the anticipatory breach claim of Mr. Preston?
- 22 A He was hired to advise the committee.
- 23 Q Advise the county?
- 24 A The committee.
- 25 Q Okay. I'm sorry. The committee.

Larry Greer - Direct examination
by Mr. Tessier

1 And he was advising the committee about the
2 anticipatory breach claim, correct?

3 A That's correct.

4 Q At the time Mr. Bright was hired you did not know that
5 he was an employment lawyer?

6 Is that fair to say?

7 A I'm not sure exactly what I knew about him. We had a
8 brief synopsis of him I think that someone obtained from the
9 Internet.

10 Q Would you agree that -- with me that Mr. Bright
11 interviewed you before the personnel committee met to
12 discuss Mr. Preston's anticipatory breach claim?

13 A He talked with me on the phone.

14 Q Okay.

15 A When it was I have no recollection.

16 Q Would you agree that it was before the personnel
17 committee first met about Mr. Preston's claim?

18 A I can't agree to that because I'm not sure.

19 Q Okay. You do know that he did call you on the phone
20 and what was he calling you about?

21 A He just wanted to get some input from me.

22 Q And I'm gonna show you if I may, and I'm not sure, Your
23 Honor, if this is just Plaintiff's Exhibit or if it's also a
24 Defense Exhibit, but it has been preadmitted as I understand
25 it. We marked it as Plaintiff's 19. I'm not sure if

Larry Greer - Direct examination
by Mr. Tessier

1 there's a corresponding defense exhibit.

2 MR. DAVIS: I don't know. Have at it.

3 THE COURT: Any objection to his referring to the
4 document?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: All right. You may proceed.

7 MR. DAVIS: It's actually Ms. Kern-Fuller's witness,
8 but I thought---

9 MS. KERN-FULLER: No, Your Honor.

10 THE COURT: All right. Thank you very much.

11 Q I'm gonna hand you what's been marked as Plaintiff's
12 Exhibit 19, and I'm not suggesting that you have seen this
13 document, Mr. Greer, because I suspect you have not. This
14 is a document that was explained to us as notes from
15 Mr. Bright of his conversation with you back in October of
16 2008, and in this it includes that Mr. Bright explained the
17 proposal that had come from Mr. Hoskins.

18 Do you recall Mr. Bright explaining to you that a
19 proposal had been made from Mr. Hoskins concerning Mr.
20 Preston's anticipatory breach claim?

21 A I don't recall it, no.

22 Q You remember that he was talking to you in general
23 terms about what background information about the claim or
24 about the county?

25 A To the best of my recollection at this time. It's been

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by Mr. Tessier

1 four years since this occurred.

2 Q Would you agree that one of the things you talked to
3 Mr. Bright about was the fact that there were accusations
4 out there that Mr. Preston was using credit cards for
5 improper purposes?

6 A I would say that would be a fair assumption, yes.

7 Q And one of the other concerns out there, and I'm not
8 saying this was a concern of yours, but one of the other
9 concerns that some county council members had was that
10 Mr. Preston might be involved in impermissible relationships
11 with county employees?

12 Is that fair to say?

13 A I had heard those rumors, yes.

14 Q And you were not aware, one way or the other, if there
15 was any truth to those rumors, were you?

16 A I had no proof.

17 Q The personnel committee met two times, is that right?

18 A That's correct.

19 Q And that was two times in the Fall of 2008 to talk
20 about Mr. Preston's anticipatory breach claim?

21 Fair to say?

22 A That's correct.

23 Q How long did the personnel committee meet the first
24 time it met?

25 A I have no idea.

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by Mr. Tessier

- 1 Q Do you recall it being like a day long meeting?
- 2 A Oh, no, no, it's nothing like that.
- 3 Q Half a day?
- 4 A It was probably an hour, hour, or something like that.
- 5 Q About an hour or so?
- 6 A That's a guess.
- 7 Q Okay. That's your best guess from memory?
- 8 A Well, I don't know how long it was. We met at the
- 9 Powdersville Library, and I don't, I don't know -- I don't
- 10 remember when we started and I don't remember when he ended.
- 11 So, I can't give you a timeframe.
- 12 Q Would you agree with me that it was a meeting that
- 13 occurred in the evening?
- 14 A Seemed like it was in the afternoon.
- 15 Q Okay. So, it was no more than half a day?
- 16 A No, it was no more than half a day.
- 17 Q Was it no more than a few hours?
- 18 A Possibly, yes.
- 19 Q About, about that timeframe maybe?
- 20 A Something like that.
- 21 Q What about---
- 22 THE COURT: He indicated he wasn't sure of the
- 23 timeframe. Let's move on to something else.
- 24 Q And the second time, do you recall how long that
- 25 meeting was?

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by Mr. Tessier

1 A No, not really. Probably 30 minutes to an hour,
2 something like that, maybe longer. I don't know. I didn't,
3 I didn't keep a time clock.

4 Q Would you agree that no one kept any minutes of the
5 personnel committee meetings either, did they?

6 A Are you finished?

7 Do you want me to answer it?

8 Q Yeah, I was finished.

9 A I'm aware that no minutes were kept if that's what
10 you're asking.

11 Q The first meeting of the personnel committee was in
12 Powdersville.

13 That what's you said, correct?

14 A That's correct.

15 Q And at that meeting the personnel committee members
16 were present along with Mr. Waldrep and Ms. Wilson, right?

17 A That's correct.

18 Q Would you agree that Mr. Wilson was not happy with
19 Mr. Waldrep and Ms. Wilson's attendance at that meeting?

20 MS. KERN-FULLER: Objection, Your Honor. That calls
21 for speculation.

22 MR. TESSIER: And I'll ask it a different way.

23 THE COURT: You can ask questions about what he
24 observed and what he saw, but not what might be in someone
25 else's mind.

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by Mr. Tessier

1 Q Did it appear to you, Mr -- I'm sorry.

2 Did it appear to you, Mr. Greer, that Mr. Wilson was
3 not too pleased with the fact that Mr. Waldrep and Ms.
4 Wilson were in attendance at that meeting?

5 MS. KERN-FULLER: Same objection, Your Honor. If, if
6 he's asking about body language or comments or something
7 like that---

8 THE COURT: He asked if he appeared. That, that would
9 be his observation. I'll allow that question.

10 MS. KERN-FULLER: Thank you, Your Honor.

11 A Are you talking about his, his attendance or their
12 attendance at the open, open part of the meeting or the
13 executive sessions?

14 Q At the executive sessions.

15 A At the executive session.

16 Mr. Wilson initially, I believe if my memory serves me
17 correct, was going to exclude them from the executive
18 session, and they debated the point that Mr. Waldrep and Ms.
19 Wilson did indeed attend the executive session.

20 Q Did you, did you have any opinion as to whether or not
21 Mr. Waldrep or Ms. Wilson should attend the executive
22 session portion of the meeting?

23 A Do I -- did I have an opinion?

24 Q Right.

25 A Yes, I did.

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by Mr. Tessier

1 Q What was your opinion?

2 A My opinion was that the executive session was only for
3 the members of the committee and the attorney and anyone
4 else could be excluded.

5 Q So, were you happy with the decision to allow Mr.
6 Waldrep and Ms. Wilson to attend the executive committees?

7 A I thought it was inappropriate.

8 Q What happened in the executive committee session of
9 that first meeting of the personnel committee?

10 A To the best of my recollection, Mr. Bright presented
11 information and Mr. Waldrep and Ms. Wilson basically
12 interacted with the meeting more than the members of the
13 committee.

14 Q And your view of it was that Mr. Waldrep and Ms. Wilson
15 engaged in too much conversation and discussion during the
16 meeting?

17 Is that fair?

18 A I would say that's fair.

19 Q And this meeting happened over the course of a few
20 hours?

21 Fair enough?

22 A I've already said I didn't know what the timeframe was.

23 Q It was -- okay. And after the meeting, a second
24 meeting was held later on, correct?

25 A That's correct.

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by Mr. Tessier

- 1 Q Would you agree with me that, in general terms,
2 Mr. Bright advised the committee that he did not think much
3 of the anticipatory breach claim brought by Mr. Preston?
4 A He made those comments -- a comment or several
5 comments, whatever, that he was -- something along that
6 line, yes.
7 Q And the second meeting that the personnel committee had
8 was held in a large conference room at the Anderson County
9 Courthouse?
10 A That's correct.
11 Q And at this meeting, would you agree, Mr. Waldrep and
12 Ms. Wilson were excluded from these executive committee
13 session?
14 A I would.
15 Q The executive sessions. I'm sorry.
16 Mr. Bright provided additional advice to the committee
17 at that meeting as well?
18 Fair enough?
19 A Yes.
20 Q And at that, that meeting, the advice of Mr. Bright
21 also included advice that Mr. Preston did not have an
22 anticipatory breach claim that was valid, correct?
23 A That was part of the overall advice.
24 Q And fair to say you disagreed with Mr. Bright on that
25 point, didn't you?

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by Mr. Tessier

- 1 A I did.
- 2 Q The sitting council, in 2008, the one that you were a
3 member of, was not going to fire Mr. Preston, was it?
- 4 A No action had been taken along those lines.
- 5 Q And you were aware of no intention on the part of the
6 sitting county council, in 2008, to fire Mr. Preston, were
7 you?
- 8 A I was not.
- 9 Q In fact, your county council, in 2008 county council of
10 which you were a part, was pleased with Mr. Preston's
11 performance as a whole, right?
- 12 A As a whole.
- 13 Q So, you would agree with me, would you not, Mr. Greer,
14 that Mr. Preston was not in any danger of a vote by the
15 sitting county council, in 2008, that would result in his
16 termination?
- 17 A By the sitting council, yes.
- 18 Q And the sitting council, as a whole, in 2008, never
19 discussed the possibility of terminating Mr. Preston before
20 he made his anticipatory breach claim, correct?
- 21 A Did you say the sitting council---
- 22 Q Yes.
- 23 A ---as a whole?
- 24 Q Yes.
- 25 A We had not.

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by Mr. Tessier

1 Q And even if two members of council, Mr. Waldrep and Ms.
2 Wilson in particular, even if those two members of council
3 wanted to terminate Mr. Preston, in 2008, you agree that
4 there was not a way they could do it because you had five
5 votes in favor of Mr. Preston, right?

6 A That's correct.

7 Q Now, we talk about Mr. Preston's employment contract a
8 little bit.

9 Do you agree with me that the claim for anticipatory
10 breach that was being made by Mr. Preston, in
11 September 2008, was a claim for anticipatory breach of his
12 employment contract with the county?

13 A That's correct.

14 Q And that's a contract you had reviewed several years
15 earlier when you first served as chair of council, right?

16 A That's correct.

17 Q You reviewed that contract because, as chair of
18 council, you had the responsibility to conduct an annual
19 evaluation of his job performance?

20 A I did.

21 Q In total, Mr. Greer, you agree that you read Mr.
22 Preston's contract two times before you served on the
23 personnel committee, right?

24 A At least two times.

25 Q Mr. Greer, you don't recall if you reviewed Mr.

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by Mr. Tessier

1 Preston's employment agreement in connection with your work
2 on the personnel committee in the Fall of 2008, do you?

3 A I do not.

4 Q You had a general working knowledge of the contract?
5 would you agree with that?

6 A I would.

7 Q Do you recall, one way or another, whether Mr.
8 Preston's employment contract with the county called for the
9 purchase by the county of any retirement service credit for
10 Mr. Preston under any circumstances?

11 A I don't recall that being in there.

12 Q In your view, Mr. Greer, in the Fall of 2008, you
13 thought that if Mr. Preston was gonna be unjustly terminated
14 from his job, then the county should buy him retirement
15 service credits?

16 would that be fair to say?

17 A I did.

18 Q And you held that view regardless of whether the
19 contract provided for such a purchase, correct?

20 A I did.

21 Q And for you, an unjust, an unjust termination was
22 simply a termination without cause?

23 Fair to say?

24 A Among other reasons, yes.

25 Q And it's your view, Mr. Greer, that you don't think any

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by Mr. Tessier

- 1 public employee should be at the whim of an elected body?
- 2 A I believe I said that.
- 3 Q And you stand by that statement today?
- 4 A I sure do.
- 5 Q Now, you knew, Mr. Greer, at the time that you served
- 6 on the personnel committee evaluating Mr. Preston's
- 7 anticipatory breach claim, that the county had the absolute
- 8 right to terminate him at anytime as long as they paid him
- 9 the severance called for under his contract, right?
- 10 A State your question again please.
- 11 Q Mr. Greer, you knew, at the time you served on the
- 12 personnel committee evaluating Mr. Preston's anticipatory
- 13 breach claim, at that point in time, you knew that the
- 14 county had the absolute right to terminate Mr. Preston at
- 15 anytime as long as they paid him the severance called for
- 16 under the contract, right?
- 17 A Basically, yes.
- 18 Q In other words, as long as the provisions of his
- 19 contract were met, Mr. Preston could be terminated at
- 20 anytime?
- 21 Fair to say?
- 22 A Could be terminated at anytime?
- 23 Q Right.
- 24 A Basically, yes.
- 25 Q Before the November 18th, 2008, vote on Mr. Preston's

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by Mr. Tessier

1 severance agreement, you agree that you talked with
2 Mr. Preston at least once or twice, correct?

3 A I believe that's correct.

4 Q But you can't recall if you talked with him more than
5 five times?

6 A I don't know.

7 Q At least once or twice, but you don't know?

8 A I think I said I know I talked to him at least once or
9 twice, but how many times I don't know.

10 Q These were telephone conversations, right?

11 A Pretty much, yes.

12 Q And during these telephone conversations, it was just
13 you and Mr. Preston on the phone, is that right?

14 A Yes, sir.

15 Q And during those telephone conversations, you talked
16 with Mr. Preston about where you were going with the numbers
17 on his severance package, correct?

18 A Probably, yes.

19 Q And where you were going meant where the personnel
20 committee was going?

21 Is that fair to say?

22 A Not necessarily.

23 Q Might of been just the way you personally were going,
24 is that, is that right?

25 A That's correct.

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by Mr. Tessier

- 1 Q So, during these telephone conversations with Mr.
2 Preston in advance of this November 18th, 2008, meeting,
3 you agree that you were discussing his anticipatory breach
4 claim against the county, correct?
- 5 A You're gonna have to state that again.
- 6 Q So, basically, you would agree then, that prior to the
7 November 18th, 2008, meeting with county council, you had
8 discussions with Mr. Preston about his anticipatory breach
9 claim against the county?
- 10 A I had discussions I think I said concerning maybe the
11 numbers.
- 12 Q And those numbers related to his severance agreement,
13 correct?
- 14 A Right.
- 15 Q And you thought it helped your decision making process
16 to have these conversations with Mr. Preston?
- 17 Fair to say?
- 18 A No, I wouldn't say it affected my decision making
19 process.
- 20 Q Would you say it helped your decision making process?
- 21 A It was just a bit of the information. I wouldn't say
22 it affected my decision yea or no.
- 23 MR. TESSIER: Your Honor, may I offer the witness his
24 deposition transcript to ask him about what he just said?
- 25 THE COURT: Sir?

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1 MR. TESSIER: May---

2 THE COURT: You wanted to hand that up to him?

3 MR. TESSIER: Yeah, I can hand him a copy if you want
4 the original.

5 THE COURT: Hand it to me first.

6 MR. TESSIER: Yes, sir.

7 THE COURT: Thank you.

8 The record will reflect that I have handed the
9 original, what appears to be the original of the deposition
10 of Larry G. Greer. It's dated October 8th of 2012. It is
11 a sealed document.

12 Does the defense have objection to my presenting this
13 to the witness?

14 MS. KERN-FULLER: Your Honor, he did not waive signing
15 of his deposition. He is still within the period of time to
16 sign his deposition. So, subject to that objection---

17 THE COURT: Well, do you want to ask him about that if
18 he wishes to read and sign before he's asked about it?

19 MR. TESSIER: Well, I think, in fairness, Your Honor,
20 if, if -- he certainly can look at the transcript. If he
21 has amendments he'd like to make he can take the time and
22 tell us what they are. I would suggest maybe the best --
23 the most efficient way would be to ask him about the
24 passages rather than trying to do them all.

25 THE COURT: Well, I'm gonna give the witness the

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1 opportunity to read whatever he's referred to.

2 MR. TESSIER: Yes, sir.

3 THE COURT: And if he wishes to make changes I will
4 allow him to do that. He has the right to do that within
5 the time of reading and signing.

6 My question is do you have an objection to my opening
7 this and presenting it to the witness?

8 MS. KERN-FULLER: No, Your Honor, I don't.

9 THE COURT: All right. The record will reflect that I
10 am breaking the seal on the document, and if you'll pass
11 that to the witness for me, Mr. Clerk. Thank you very much.

12 Mr. Greer, what you're going to be handed is the
13 original, what appears to be the original of your deposition
14 that was taken on the date that I indicated in October of
15 this year, and that's being offered to you so you can review
16 your testimony.

17 You may proceed, Mr. Tessier.

18 MR. TESSIER: Thank you, Your Honor.

19 Q Mr. Greer, what I'd like to do is just direct your
20 attention to Page 99 of the transcript that's in front of
21 you, and, in particular, I'd like for you to look at Lines 7
22 through 12 of that transcript. Just let me know when you
23 get there.

24 A Page -- excuse me. Page 99 where?

25 Q Lines 7 through 12. It's on the screen. I don't know

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1 if that helps you any. But if you want to read it from the
2 transcript there, that's also fine.

3 We appreciate, Mr. Greer, that you have not had the
4 opportunity to review the transcript to see if you want to
5 correct any errors in there, typographical errors, or other
6 errors---

7 THE COURT: Well, what I'm gonna ask you to do is refer
8 him to the area you intend to ask about---

9 MR. TESSIER: Yes, sir.

10 THE COURT: ---and then give him a chance to read it.

11 MR. TESSIER: Okay.

12 THE COURT: Then ask him if he wishes to make any
13 changes or corrections.

14 Q So, Mr. Greer, if you look at the Lines 7 through 12 of
15 your deposition transcript, my first question then would be,
16 once you have a chance to look at it, is there anything
17 about that testimony that you would like to change?

18 A I'm assuming you're asking me this question based on
19 the response to my -- to your last question?

20 Q Correct.

21 A And the answer I gave you to I guess your second
22 question there in Line 11 says "I think so because it helped
23 me in my decision making process." My answer to your
24 question in this courtroom today is in no way contradicts
25 that. I still -- even though I may have information or

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1 gather information, I still am a man of my own, and I make
2 my own decisions based on what I know and believe and not on
3 what someone else has told me.

4 So, as far as making any changes in this deposition, I
5 would say it may have helped me, but it didn't change my
6 mind one way or the other neither yea nor nay.

7 Q And I'll move on to some other questions, Mr. Greer,
8 and you may need to refer to that later. So, you can keep
9 it in front of you.

10 Mr. Wilson, at some point in time, Mr. Greer, would you
11 agree with Mr. Wilson asked you to locate funds within the
12 Anderson County budget to use for Mr. Preston's severance
13 payout?

14 A I would.

15 Q And when he asked you to do this, he told you to look
16 for approximately 1.14 million-dollars, is that right?

17 A I believe that's correct.

18 Q And once you were asked to do this, you went to Rita
19 Davis in the county finance department, is that correct?

20 A I think that's correct.

21 Q And you did this, made this request of the finance
22 department within a day or two of Mr. Wilson's request to
23 you?

24 Fair enough?

25 A I couldn't tell you.

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by Mr. Tessier

1 Q And I just may have to show you a document, and I'm
2 happy to do so, but do you remember that Mr. Davis had a
3 memo that I showed you that had a date of November 13th,
4 2008, on it?

5 A I remember you showing that to me during the deposition
6 I believe.

7 Q Does that refresh your recollection that you would of
8 been asking Ms. Davis about whether there was 1.14
9 million-dollars available in the budget around November 3rd,
10 2008?

11 A I think, when I spoke to Ms. Davis the first time, I
12 asked her to provide me with budgetary information that
13 would indicate the amounts left in various fund account,
14 fund accounts.

15 Q And the reason you were asking her for that information
16 was because you were looking to figure out if there was
17 1.14 million-dollars, give or take, that could support a
18 severance payout to Mr. Preston?

19 Fair enough?

20 A That's correct.

21 Q And that happened on or about November 3rd?

22 A According to that letter.

23 Q So, as early as November 3rd of 2008, you knew that
24 Mr. Wilson, as chair of the personnel committee, was looking
25 for approximately 1.14 million-dollars in the county budget

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by Mr. Tessier

1 that might be used for a severance payout to Mr. Preston?

2 A Evidently.

3 Q Before the November 18th meeting of county council,
4 you agree with me that Mr. Wilson provided you with a
5 working copy of Mr. Preston's proposed severance agreement,
6 right?

7 A He did.

8 Q You don't remember when exactly you got that, do you?

9 A No, I do not.

10 Q You agree with me that you never shared that working
11 copy of the severance agreement with either Mr. Waldrep or
12 Ms. Wilson?

13 A You're gonna have to state your question again.

14 Q You would agree with me that you never shared that
15 working copy of the severance agreement with Mr. Waldrep or
16 Ms. Wilson, don't you?

17 A I would agree with that.

18 Q And, in fact, you disposed of that working copy of Mr.
19 Preston's severance agreement before the
20 November 18th meeting, correct?

21 A I would say so.

22 Q Before the November 18th, 2008, council meeting, you
23 agree that you talked with each of the other four members of
24 county council who ended up voting with you in favor of the
25 agreement, correct?

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by Mr. Tessier

1 A You're saying before November the 18th did I talk
2 with each of the other four council members?

3 Q Right.

4 A I did.

5 Q And you talked with each of them more than one time
6 before the meeting occurred, correct?

7 A Probably.

8 Q You did not talk with Ms. Wilson about the severance
9 agreement in advance of the November 18th meeting, did
10 you?

11 A I did not.

12 Q And you did not talk to Mr. Waldrep about it either,
13 did you?

14 A I did not.

15 Q You were interested in knowing, in advance of the
16 November 18th meeting, whether or not you had sufficient
17 votes to approve the severance agreement for Mr. Preston,
18 correct?

19 A Yes.

20 Q And, in fact, before the meeting started on
21 November 18th, 2008, because you had talked with the other
22 four individuals who voted in favor of the agreement, you
23 thought you had enough votes to pass it, didn't you?

24 A I thought so, but was never sure.

25 Q Do you recall -- well, let me ask it this way.

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1 Before the November 18th, 2008, meeting, do you
2 recall that it was mentioned between you and one or two
3 other council members that you would be presenting the
4 financial side of the severance agreement at the meeting?

5 A That was part of one or more discussions.

6 Q And by you, it means Mr. Greer was gonna be the person
7 at the meeting that was gonna present the financial side,
8 correct?

9 A That's correct.

10 Q And that was determined in advance of the meeting?
11 Fair enough?

12 A It had to be.

13 Q Do you recall discussing having one of the county
14 members raise a motion to reconsider so that you could
15 prevent future reconsideration of the severance agreement?

16 A State your question again please.

17 Q Do you recall, prior to the November 18th meeting
18 happening, that one or more of the county council members
19 was going to -- knew that they were gonna raise the motion
20 to reconsider so that you would prevent future
21 reconsideration of the agreement?

22 A Do I recall it?

23 Q Right.

24 A No.

25 Q Before the meeting had, had occurred, before the

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by Mr. Tessier

1 November 18th meeting, you had discussed with Gracie Floyd
2 that she would be the person to present the proposed
3 contract to hire Mr. Cunningham to be the new county
4 administrator, right?

5 A To my recollection she had requested to present it.

6 Q And would you agree with me that before the
7 November 18th, 2008, meeting occurred, you had discussed
8 that very thing with Ms. Floyd?

9 A I don't know if it was a discussion. Just a comment
10 made that that's what she wanted to do and that was the end
11 of it.

12 Q You had no problem with Ms. Floyd being the person to
13 present that proposed contract, did you?

14 A No.

15 Q And that was something that was determined in advance
16 of the November 18th meeting, correct?

17 A I would say yes.

18 Q In fact, you were involved in two meetings before
19 November 18th to discuss hiring Mr. Cunningham, weren't
20 you?

21 A Yes.

22 Q One of the meetings was at O'Charley's in Greenwood?

23 A That's correct.

24 Q And at that meeting you, Mr. Wilson, Ms. Floyd, and
25 Mr. Cunningham were all present, correct?

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by Mr. Tessier

- 1 A Mr. Wilson, Ms. Floyd, Mr. Cunningham, and myself,
2 that's correct.
- 3 Q Did you -- at that meeting, would you agree that you
4 reached a consensus to hire Mr. Cunningham?
- 5 A I'm sorry?
- 6 Q I'm sorry. I didn't ask that very well.
7 would you agree with me that at that meeting at
8 O'Charley's in Greenwood, the folks in attendance pretty
9 much reached a consensus that Mr. Cunningham should be hired
10 as the next county administrator?
- 11 A I couldn't answer that.
- 12 Q Let me show you -- if I can refer you to Page 132 of
13 your transcript that's in front of you. Just let me know
14 when you get there.
- 15 A All right.
- 16 Q If you look between Lines 132 -- starting at Line 9.
17 Actually just start at the beginning of the page. Just give
18 you the opportunity to review that testimony. 132 and then
19 133 up to Line 12.
- 20 A Okay. We're on Page 132?
- 21 Q That's right. Starting at Line 1.
- 22 A Starting at Line 1.
23 Going through what line?
- 24 Q 133 Line 12.
- 25 A Okay. What's your question?

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by Mr. Tessier

1 Q well, the first question would be now that you've had a
2 chance to look at that portion of your deposition
3 transcript, is there anything about that portion of the
4 deposition transcript that you think is in error or should
5 be corrected?

6 A I think your question in the transcript was confusing.

7 Q Okay.

8 A Because you rolled what occurred in two meetings into
9 one.

10 Q Okay. And I think I know what you're saying, and let
11 me ask a different question -- a better question perhaps.

12 would you agree with me, Mr. Greer, that between the
13 first and second meetings that you mentioned where
14 Mr. Cunningham was discussed, between the two of those
15 meetings at some point in time, a consensus was reached by
16 the people at those meetings that Mr. Cunningham should be
17 hired as the next county administrator?

18 A At the conclusion of the second meeting --

19 Q Okay.

20 A -- which was held at Ruby Tuesday's in Greenwood where
21 Mr. Wilson, myself, and Mr. Cunningham were present. I
22 think a consensus was reached at that time, provided that
23 the contractual parts were hammered out, that we had reached
24 a consensus, yes.

25 Q And at, at -- and I don't know which one. So, you tell

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1 you.

2 But at one of those meetings, would you agree that
3 after the meeting was over that you provided or got
4 Mr. Cunningham a copy of Mr. Preston's existing employment
5 agreement?

6 A I may have had one to give him, but I think he already
7 had one. I'm not sure.

8 Q Okay. Would you agree that, at some point at or after
9 those two meetings that you had discussing Mr. Cunningham,
10 Mr. Cunningham came into possession of the agreement of
11 Mr. Preston?

12 A I would say he probably had one, yes. .

13 Q And the reason for that was that you were gonna use --
14 you felt like it would be a good idea to use Mr. Preston's
15 existing employment agreement as a model for the one to be
16 proposed to Mr. Cunningham?

17 Is that fair?

18 A That's fair.

19 Q Would you agree with me that the contract that was
20 ultimately offered to Mr. Cunningham at the November 18th
21 meeting was a contract that was drafted by Mr. Tom Martin,
22 who was the county attorney, at the direction of
23 Mr. Preston?

24 A To the best of my knowledge that's correct.

25 Q So, it would be fair to say then that Mr. Preston knew

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by Mr. Tessier

1 that the contract for Mr. Cunningham was being prepared in
2 advance of the November 18th meeting, correct?

3 A That's my---

4 MS. KERN-FULLER: Objection, Your Honor. It calls for
5 speculation.

6 THE COURT: I'll ask you to set a foundation for that,
7 that knowledge.

8 MR. TESSIER: He just, he just said, Your Honor, his
9 knowledge was that Mr. Martin prepared the contract at the
10 direction of Mr. Preston.

11 THE COURT: But you're asking him to state what was in
12 Mr. Preston's mind at that time, and I have not heard that
13 he discussed that process with Mr. Preston, and had some
14 knowledge of his -- what was in his mind at that time.

15 MR. TESSIER: Let me ask---

16 THE COURT: So, maybe you ought to rephrase the
17 question as to whether he had knowledge of what was in Mr.
18 Preston's mind. You know, you can, you can prove what
19 people intend to do or what their knowledge is by
20 circumstantial evidence.

21 MR. TESSIER: Yes, sir.

22 THE COURT: And then it's up to the finder of fact to
23 draw inferences from that, and generally I don't allow
24 witnesses to testify as to what's in someone else's mind.
25 They can testify about the facts and circumstances that

Larry Greer - Direct examination
by Mr. Tessier

1 existed at that time from which me, the finder of fact,
2 might be able to draw -- do you understand my ruling?

3 MR. TESSIER: Yes, sir. Yes, sir.

4 THE COURT: All right. You may proceed.

5 Q So, Mr. Greer, if I'm understanding you correctly, you
6 were aware that the contract for Mr. Cunningham, the one
7 that was going to be proposed to him on November 18th, was
8 being drafted by Mr. Martin at the direction of Mr. Preston?

9 MS. KERN-FULLER: That calls for hearsay, Your Honor.
10 The drafted by Mr. Martin, but unless this witness -- he's
11 asking this witness to testify about what Mr. Martin said
12 Mr. Preston told him to do.

13 THE COURT: I'm gonna allow you to ask the question of
14 what Mr. Martin may have told Mr. Preston. Let's see if he
15 was present---

16 MR. TESSIER: Yes, sir.

17 THE COURT: ---in some way and observed what went on.

18 MR. TESSIER: Let me try it a different way.

19 Mr. Greer, did you understand that a contract to hire
20 Mr. Cunningham was being drafted in advance of the
21 November 18th meeting?

22 A I was.

23 Q And who was drafting it?

24 A Mr. Martin.

25 Q And do you know how it was that Mr. Martin was asked to

Larry Greer - Direct examination
by Mr. Tessier

1 draft the contract?

2 A I think he was -- did I know how Mr. Martin -- ask your
3 question again.

4 Q Do you know how it came to be that Mr. Preston was
5 asked to draft a contract for Mr. Cunningham?

6 MS. KERN-FULLER: Objection, Your Honor. I don't
7 believe that those facts are in evidence---

8 THE COURT: You misstated it. You said the contract
9 was being drawn by Mr. Preston.

10 MR. TESSIER: Yes, I did misstate that.

11 THE COURT: You misstated that. So, I see -- and she
12 caught you. So, if you would, reask the question.

13 MR. TESSIER: There's a lot of names in my head.

14 Mr. Greer, let me ask this the right way and that is---

15 THE COURT: This is a tough process and we're gonna get
16 through it.

17 Go ahead.

18 Q Do you know how it came to be that Mr. Martin was
19 drafting the proposed contract for Mr. Cunningham for
20 Mr. Cunningham's employment?

21 A I'm assuming -- excuse me. I'm assuming he was asked
22 to draft it by Mr. Cunningham.

23 Q So, you don't know, one way or another, how it came to
24 be that Mr. Martin was drafting the contract?

25 Is that fair?

Larry Greer - Direct examination
by Mr. Tessier

1 A You're asking me to recall things that happened four
2 years ago.

3 Q Believe me, I'm not---

4 A And I am, I am doing my dead level best to answer you
5 truthfully.

6 Q Right.

7 A I do -- I will say this. Mr. Martin was a county
8 employee. Council members can not instruct a county
9 employee, under Home Rule, to do anything. An individual
10 council member can't. It must be by a majority of council
11 under Home Rule. So, no council member could instruct
12 Mr. Martin to do anything.

13 Q So, based on that response, would it be fair for me to
14 say that you knew no one on the personnel committee, none of
15 the county council members, instructing Mr. Martin to draft
16 the contract for Mr. Cunningham, correct?

17 MS. KERN-FULLER: Objection. Calls for speculation,
18 Your Honor.

19 A I only---

20 THE COURT: well, I would ask if he had knowledge of
21 that. I'll allow that question.

22 Go ahead.

23 A Do I have knowledge if anyone on the personnel
24 committee instructed Mr. Martin---

25 Q Right.

Larry Greer - Direct examination
by Mr. Tessier

1 A ---to do that?

2 Q Right.

3 A Not that I'm aware of or recall.

4 Q And at the time -- at that timeframe in November of
5 2008, in your view, who were the -- who were the people who
6 could instruct Mr. Martin to draft a contract?

7 If not county council members, then who could?

8 A The administrator.

9 Q Now, at some point in time did you become aware that a
10 contract for the proposed employment of Mr. Cunningham was
11 actually drafted?

12 A Yes.

13 Q How did you become aware of that?

14 A It was handed to me.

15 Q By whom?

16 A I believe it was Mr. Cunningham, but I can't say for
17 sure at this time.

18 Q Did you know when that was?

19 A The night of November 18th.

20 Q And what did you do with the contract -- this is a
21 proposed contract now for Mr. Cunningham.

22 what did you do with it when you received it?

23 A It was in a envelope sealed up, and I handed it to Ms.
24 Floyd.

25 Q And is that because you had already talked with Ms.

Larry Greer - Direct examination
by Mr. Tessier

- 1 Floyd about the fact that she was gonna be the person who
2 would present that proposed contract?
- 3 A She had requested it.
- 4 Q Mr. Greer, you would agree that every council member
5 has the right to put any matters they wish on the agenda in
6 advance of a county council meeting, correct?
- 7 A Subject to approval by the chairman.
- 8 Q Okay. So, would it be a better way to say it that
9 every county council member has the right to suggest matters
10 for the agenda to the chair?
- 11 A The chair can approve or reject and some were rejected
12 at times.
- 13 Q Okay. So, there's nothing to prevent you from asking
14 the chair to put a matter on the agenda?
- 15 Fair enough?
- 16 A That's correct.
- 17 Q You could have asked, you personally, could have asked
18 Mr. Thompson to add consideration of Mr. Preston's severance
19 agreement as an agenda item for a county council meeting,
20 couldn't you?
- 21 A I could.
- 22 Q And the restriction, if I understand it, tell me if I'm
23 wrong, but the county council agenda has to be in, the way
24 you guys did it was, the Friday before a Tuesday meeting?
- 25 Is that fair?

Larry Greer - Direct examination
by Mr. Tessier

1 A No, sir, that's incorrect.

2 Q How, how much before a meeting do you have to have the
3 agenda filed?

4 A The items have to be presented to the council clerk by
5 wednesday or did. I don't know how they operate now.

6 Q Okay.

7 A But, at that time, you had to have it to the council
8 clerk by wednesday so that she could prepare the agenda
9 packets and have them delivered by Friday.

10 Q Okay. Would you agree with me, Mr. Greer, that there
11 were upcoming county council meetings remaining on the
12 calendar year of 2008 where you could have asked to put on
13 the agenda, in advance, the fact that you were gonna try to
14 discuss Mr. Preston's severance agreement and Mr.
15 Cunningham's proposed employment contract?

16 A We could have.

17 Q In fact, there was a meeting to be held
18 November 18th, 2008?

19 That's the one at which it was considered, right?

20 A That's correct.

21 Q There was also a meeting coming up on December the 2nd?
22 Do you remember that?

23 A I don't remember the dates.

24 Q Well, let me show you---

25 A But they would of been -- it was possible to have two

Larry Greer - Direct examination
by Mr. Tessier

1 in December, whatever the dates were.

2 Q And, in fact, what I'm gonna do, if I showed you the,
3 the meeting, minutes for those meetings, would that refresh
4 your recollection as to how many meetings were left in 2008?

5 A I don't need to see the minutes. You had two -- we had
6 two per month. One on the first Tuesday and one on the
7 third Tuesday.

8 Q Well, if I show you the meeting minutes, you'll
9 actually see there were three left in December.

10 A Yeah, there was.

11 Q which is probably unusual.

12 A Three?

13 Q Let me show you. This might help you remember this.

14 May I, may I just approach, Your Honor, for refreshment
15 of the recollection purposes?

16 THE COURT: You may.

17 Q I think I've got them.

18 Mr. Greer, I'm just gonna show you just three cover
19 pages. I've not marked this as an exhibit. I'll represent
20 to you that those are the cover pages of meeting minutes for
21 county council meetings in December of 2008 to see if that
22 refreshes your memory as to how many county council meetings
23 were left in 2008.

24 A If you'll look at the third one, you evidently missed
25 something because---

Larry Greer - Direct examination
by Mr. Tessier

1 Q I may have.

2 A ---the third one says special called meeting. That's
3 not a regularly scheduled meeting. You don't have any
4 knowledge that that's going to occur until approximately the
5 time it occurs.

6 Q Okay. That's a fair point.

7 So, there were only---

8 A Two.

9 Q Based on looking at these documents, you would agree
10 there were only two remaining county council meetings that
11 were regularly scheduled?

12 A In December.

13 Q In December.

14 In addition, it turns out that there was a third
15 meeting that was actually called at the very end of the
16 month?

17 A That's what it says.

18 Q And would you agree with me that you could have made an
19 attempt to put the severance agreement of Mr. Preston and
20 the employment agreement of Mr. Cunningham on the agenda for
21 any one of those meetings, correct?

22 A Usually, when you have a special called meeting, you
23 have to indicate what that meeting is for, and you can't
24 deviate from it.

25 Q Okay.

Larry Greer - Direct examination
by Mr. Tessier

1 A So, unless I was privy, and I don't know that I was, to
2 the preparation of the agenda for that meeting, the answer
3 could be no.

4 Q So, at least for the two regularly called, the
5 regularly scheduled ones, you could have tried to put these
6 items on the agenda?

7 Fair enough?

8 A That was possible.

9 Q Did you ever suggest to anyone that the decision on Mr.
10 Preston's severance agreement and the decision on Mr.
11 Cunningham's employment be postponed until one of those
12 later meetings?

13 A No.

14 Q Would you agree that it was not necessary for county
15 council to hire Mr. Cunningham at the November 18th
16 meeting?

17 A No.

18 Q You don't agree?

19 A No.

20 Q You think it was necessary?

21 A Yes.

22 Q Do you agree that county council could have postponed
23 the decision to hire Mr. Cunningham from the November
24 18th meeting?

25 A Yes.

Larry Greer - Direct examination
by Mr. Tessier

1 Q If you would turn to Page 147 of your transcript?

2 A (Witness complies.)

3 Q This is a short section I would like to refer you to
4 once you get there. It's from Line 7 to Line 14.

5 A Line 7 to 14?

6 Q Right.

7 A Okay.

8 Q And once you've had a chance to look at it -- first
9 just let me ask you.

10 Is there anything about that testimony that you think
11 is incorrect or should be changed from what you said in your
12 deposition?

13 A Okay. In the deposition question, you asked was it
14 necessary from Anderson County's prospective, and I said
15 that it was not necessary, and you said right, and I said I
16 don't guess it was necessary, no.

17 Q Okay. And did you still standby that testimony today
18 that, from the county's prospective at least, it was not
19 necessary to hire Mr. Cunningham at that meeting?

20 A It was not necessary, but my prospective was that it
21 was necessary to insure some continuity in the government of
22 Anderson County. And, so, from my prospective, it was
23 necessary.

24 Q Would you agree with me, Mr. Greer, that you could
25 maintain continuity within the administration of Anderson

Larry Greer - Direct examination
by Mr. Tessier

1 County by simply hiring Mr. Cunningham as an interim
2 administrator?

3 A Like we have now?

4 Q Is that a yes?

5 A I guess we could have, but we've had an interim
6 administrator we've had for going on four years now.

7 Q Yeah.

8 But the point there I'm just making is, in terms of
9 continuity, you still get continuity if you'd of hired
10 Mr. Cunningham as an interim administrator rather than
11 hiring him permanently as administrator?

12 would you agree with that?

13 A Could have.

14 Q But you---

15 A I wouldn't have recommended it. I don't think
16 Mr. Cunningham would have accepted it.

17 Q And that's not the choice you made, correct?

18 A No.

19 Q We earlier, in the case, saw a video of what happened
20 at the county council meeting on November 18th.

21 would you agree with me, Mr. Greer, that you were not
22 concerned with whether the way in which Mr. Preston's
23 severance agreement was handled was fair to the two council
24 members who voted against it?

25 would you agree with that?

Larry Greer - Direct examination
by Mr. Tessier

1 A You're gonna have to state your question again.

2 Q All right.

3 A Take a little more time.

4 Q I'm sorry. I'm gonna ask it slower. I'm gonna ask you
5 if you agree with this statement.

6 Would you agree that you were not concerned with
7 whether the way in which Mr. Preston's severance agreement
8 was handled at the November 18th meeting was fair to the
9 two council members who voted against it?

10 A Let me ask of you this way. I believe that my actions
11 treated them just as fairly as I had been treated over the
12 years that I served on council with them.

13 Q And my, and my question -- and I appreciate that
14 response.

15 The question is you were not concerned with whether it
16 was fair to those two council members, were you?

17 A I think I was just as fair as them as they were to me.

18 Q Let me ask you to look at Page 127 of your transcript,
19 and if you look starting at Line 13 through Line 20.

20 A I see that.

21 Q Is anything about that testimony you gave that was
22 incorrectly reported by the court reporter?

23 A If I was gonna answer it again, after reflection, where
24 I gave the answer I think it was fair to them, my answer
25 would be the same as it was today. I was just as fair to

Larry Greer - Direct examination
by Mr. Tessier

1 them as they've been to me.

2 Q And your answer in your, in your deposition was, when I
3 asked you if you thought it was fair, you said, quite
4 honestly, I'm not concerned with whether it was fair to them
5 or not.

6 That was your answer, right?

7 A And I would add to that because they never were
8 concerned with how fair they were to me.

9 Q In November of 2008, would you agree with me that you
10 did not know that the chair of county council, Mr. Thompson,
11 had actually applied for a job with Anderson County?

12 A I don't -- state your question again.

13 Q In November of 2008, would you agree that you did not
14 know that Mr. Thompson, county council chair, had applied
15 for a job with Anderson County?

16 A I would say I was not aware of that, yes.

17 Q You agree that Mr. Thompson did not tell you that, did
18 he?

19 A To the best of my recollection, no.

20 Q And you did not know that Mr. Thompson was taking
21 appraisal courses in the Fall of 2008 at county expense,
22 correct?

23 A I don't think I did, no.

24 Q And you did not know that, within days after your
25 November 18th meeting, Mr. Thompson requested and received

Larry Greer - Direct examination
by Mr. Tessier

1 an advance from the county in the amount of \$2,749.80 to
2 continue taking appraisal courses into 2009, correct?

3 A State your question again.

4 Q It's a long question. I'm sorry.

5 You agree that you did not know that, within, within
6 days of the November 18th meeting, Mr. Thompson requested
7 and received a 2,700 plus dollar advance from the county to
8 take appraisal courses into 2009?

9 A At that time.

10 Q Right.

11 You didn't know it at that time, did you?

12 Is that correct?

13 A That's correct.

14 Q You know how---

15 THE COURT: Mr. Tessier?

16 MR. TESSIER: I'm sorry.

17 THE COURT: Refresh my memory.

18 What was the date of that advance?

19 MR. TESSIER: The advance?

20 THE COURT: That you just asked him about, what was the
21 date of that?

22 MR. TESSIER: Yes, sir, the date -- there's different
23 dates on it, Your Honor. But November 26th is a date
24 that's stamped on it. Mr. Preston signed it, but couldn't
25 say, as I recall, as to whether he signed it the day that it

Larry Greer - Direct examination
by Mr. Tessier

1 was stamped---

2 THE COURT: I just wanted to be sure that I was
3 thinking about the same one that you were asking him about.

4 MR. TESSIER: I can find it.

5 THE COURT: That just clarified it for me. You can go
6 ahead.

7 Q You know that Ms. Allison Schaum is the daughter of Ron
8 Wilson?

9 A Do I know that she is?

10 Q Right.

11 A I do now.

12 Q And did you know that back in November of 2008?

13 A I don't know that I did.

14 Q Did you know, back in November of 2008, that before you
15 voted on Mr. Preston's severance agreement that Ms. Schaum's
16 company had a consulting contract with Anderson County that
17 had been approved by Mr. Preston?

18 A I had no firsthand knowledge of that.

19 Q Mr. Preston helped you raise money for your political
20 campaigns in the past, didn't he?

21 A He may have mentioned some people that might need to
22 contribute, yes.

23 Q You're aware that, in fact, he did suggest to some
24 people that they contribute to your campaign, correct?

25 A I never heard him.

Larry Greer - Direct examination
by Mr. Tessier

1 Q Did he tell you he suggested to people they contribute
2 to your campaign?

3 A Not that I recall.

4 Q Did you know that he was suggesting to people that they
5 contribute to your campaign?

6 MS. KERN-FULLER: Objection, Your Honor. That calls
7 for speculation cause he's answered he didn't know, and then
8 he's asking about---

9 THE COURT: I think he's already -- hadn't that been
10 asked and answered?

11 He said he didn't know.

12 MR. TESSIER: Well---

13 THE COURT: Now, you -- if there's something -- a
14 change in your question, let --.

15 MR. TESSIER: Well, I was trying to get at the base of
16 knowledge first. I went at it backwards. I thought he
17 would answer differently based on his transcript. That's
18 all.

19 THE COURT: So, you---

20 MR. TESSIER: I'm backing up now to try to establish
21 did he know, yes or no, and then how did he know.

22 THE COURT: Well, let's try not asking the questions a
23 couple of times. This is taking long enough, but I want you
24 to fully present it, but once they ask a question, you know,
25 let's move on. Answer a question, move on.

Larry Greer - Direct examination
by Mr. Tessier

1 Go ahead. I'll let you ask that question.

2 Q I'll just ask it this way.

3 Do you agree with me that Mr. Preston suggested to some
4 people that they contribute to your political campaign at
5 any point in time?

6 A He possibly did, yes.

7 Q In March of 2006, you were the chair of county council,
8 correct?

9 A 2006?

10 Q Six.

11 A I don't remember the dates. I'd have to go back and
12 look them up.

13 Q You were aware -- let me ask it this way.

14 You were aware of this Cater's Lake incident that a lot
15 of people in Anderson County know about?

16 MS. KERN-FULLER: Your Honor, this is subject to our
17 previous objections. I don't know if this is gonna be a
18 proffer, but we have continuing objections to this line of
19 question.

20 THE COURT: Your objections will continue.

21 You may proceed subject to the objections.

22 Q would you agree that you presided over a county council
23 meeting in March of 2006 where the Cater's Lake incident was
24 discussed?

25 A I think I did, yes.

Larry Greer - Direct examination
by Mr. Tessier

1 Q And a presentation was made at that council meeting by
2 Deputy Chief Busha about the incident at Cater's Lake,
3 right?

4 A Sheriff Crenshaw and Deputy Busha.

5 Q And in addition, a statement was given to council by
6 Mr. Preston about what happened at Cater's Lake?

7 Is that fair?

8 A I think that's correct.

9 Q Did you have any firsthand knowledge of any kind of
10 undercover operation such as the one described by Mr. Busha
11 and Mr. Preston at that meeting?

12 A What do you mean by first hand knowledge?

13 Q All right. Did you personally know of any such
14 undercover operation?

15 A No.

16 Q In your mind, is it important that the county
17 administrator tell the truth to county council?

18 A I would say yes.

19 Q And if it were proven that a county administrator or if
20 it was proven that your county administrator had an improper
21 relationship with a county employee during your tenure,
22 tenure on county council, you would agree that would be
23 grounds for termination, correct?

24 A If it was termination based on the contract under which
25 he was employed.

Larry Greer - Direct examination
by Mr. Tessier

- 1 Q Do you recall -- if you look at Page 177 of your
2 transcript?
- 3 A (Witness complies.)
- 4 Q And I'm directing your attention to 177, Line 20,
5 through 178, Line 9.
- 6 A To line what now?
- 7 Q I'm sorry. 177 Line 20 through 178 Line 9.
- 8 A Okay. Now, what's your question?
- 9 Q Okay. Is there anything about the testimony as
10 transcribed in your deposition transcript that you think was
11 incorrectly transcribed or in error?
- 12 A It's not incorrectly transcribed, but after further
13 reflection and thinking back to the contract, I've said if
14 it could be proven, but I would have to also amend that
15 answer by stating if it could be proven that it was a
16 violation of his contract, and I think his contract says he
17 has to be convicted of moral -- what's, what's the word I'm
18 looking for?
- 19 Q Crime of moral turpitude.
- 20 A Moral turpitude.
- 21 Q Does the, does the contract also include a provision
22 that says the county administrator has to obey the
23 Constitution and laws of South Carolina as part of his
24 duties?
- 25 A I don't recall that.

Larry Greer - Direct examination
by Mr. Tessier

1 Q Let me just finish by asking -- Your Honor, I think
2 we've got an agreement which respect to Plaintiff's Exhibit
3 33, which is a transcript of a portion of the March 21st,
4 2006, county council meeting that we can offer these. It's
5 subject to the standing objections that they have. I don't
6 intend to ask any other questions about it. I just want to
7 offer it at this time if you---

8 THE COURT: It will be admitted subject to your
9 objections.

10 MS. KERN-FULLER: Thank you.

11 THE COURT: I'll put on the list of the challenged
12 evidence like other matters have been.

13 (WHEREUPON, Plaintiff's Exhibit No. 33 was marked for
14 identification purposes only at this time.)

15 Q And, Mr. Greer, I thank you for your time. Please
16 answer any other questions the attorneys for Mr. Preston may
17 have.

18 THE COURT: Mr. Davis, or excuse me, Ms. Kern-Fuller,
19 you may proceed.

20 MS. KERN-FULLER: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MS. KERN-FULLER:

24 Q Mr. Greer, I'm gonna ask you a first question while I'm
25 standing over here so that I can make sure that---

Larry Greer - Cross-examination
by Ms. Kern-Fuller

- 1 A would you excuse me just a moment please?
2 (Pause.)
3 A All right.
4 Q I'll apologize. Let me ask you a question first of
5 all. I have my deposition in front of me.
6 would you go back to Page 127 of your deposition, and
7 in the question that Mr. Tessier asked you about, and you
8 said that, had you thought about it with regard to the
9 fairness, you might have answered differently.
10 Can you read what your answer was when you asked -- you
11 answered Mr. Tessier's questions Line 22 through the next
12 page Line 2?
13 A 127 Line 22 through --?
14 Q The next page---
15 A -- the next page on Line 2?
16 Q On Line 2, yes, sir.
17 A Because they weren't concerned about being fair to me
18 and other council members as they pursued their course of
19 action when Mr. Waldrep stood in the meeting in Powdersville
20 and made the statement Boss Hog is dead, we're getting on
21 things I had, we're done.
22 Q And who is he talking about when he's talking about
23 Boss Hog?
24 A Me.
25 Q He referred to you as that?

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 A That was the implication of what he said, yes, ma'am.

2 Q Now, let's talk about a couple other things. You
3 talked about the way that you make decisions.

4 Can you tell me about your deliberative decision making
5 process?

6 A I -- my deliberative decision making process is that
7 I'm a, I'm a listener. I recall one of the first meetings
8 that I attended as a newly elected council member in '99 was
9 in our efforts to deal with Santee Copper, and, at that
10 meeting, Mr. Preston sat in on the meeting, and we were
11 meeting with two representatives from Santee Cooper.

12 And Mr. Preston, through facial expressions and body
13 language, seemed concerned that I wasn't saying much. But
14 my deliberative processes are that I'm a listener. I listen
15 carefully to what's being said, and then I form my opinions
16 and my actions based on what I've heard and my course of
17 actions.

18 Q Are you a person who rubber stamps things?

19 A No, ma'am.

20 Q And when Mr. Bright came to talk to the personnel
21 committee, let's talk a little bit about that.

22 When was that personnel committee appointed?

23 A I believe that personnel committee was appointed --
24 initially I think Mr. Waldrep appointed that personnel
25 committee the previous council year, and then I think, when

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 Mr. Thompson took office, he reappointed the committee.

2 Q And under your rules for council, when would that have
3 occurred?

4 A It should of been in January.

5 Q of 2008?

6 A of 2008.

7 Q Long before the primary registration in March of 2008?

8 A Yes, ma'am.

9 Q Long before the primary happened in June of 2008?

10 A Yes, ma'am.

11 Q And it's your testimony that Mr. Thompson just
12 continued the committee appointments of the prior chair, Bob
13 Waldrep?

14 A I'm not sure if it was the same make-up because I don't
15 recall what the make-up of the committee was the year
16 before. But that was the committee that was established
17 under Mr. Thompson.

18 Q In your ten years on county council, had a personnel
19 committee ever had to deal with a matter of the weight and
20 magnitude that this severance and anticipatory breach
21 contract claim and the tort claims alleged were?

22 A Not to my knowledge.

23 Q Now I want to talk to you a little bit about some of
24 the other issues in this case.

25 who else was on the personnel committee with you again?

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 A Mr. Wilson and Mr. McAbee.

2 Q Do you recall, in 2007, that one of the priorities of
3 the council that they set was to promote sustainable
4 agriculture in Anderson County?

5 A I think that was done in one of the workshops or
6 whatever that we had.

7 Q And that process, if I understand it correctly, was
8 that the council -- do you want some water?

9 A I'm fine.

10 Q That the council has a workshop and a working session
11 and you-all set what your goals are for the county to
12 instruct the county administrator how you want him to
13 prioritize his time and the county's resources over the next
14 year?

15 A That's correct.

16 Q And when you-all set that priority for sustainable
17 agriculture back in 2007, did you expect Mr. Preston to act
18 on those goals and priorities of the council?

19 A Sure we did.

20 Q And are you aware, in 2007, in an effort to act on
21 those priorities of the council, that Mr. Preston contracted
22 with a contractor to help consult with them about promoting
23 sustainable agriculture in Anderson County?

24 A I'm not aware that it occurred in that timeframe.

25 Q Were you present at a meeting where Ms. Wilson raised a

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 complaint about a contractor who is an agricultural
2 consultant?

3 A I vaguely remember her raising that issue at some point
4 in time.

5 Q And if the minutes reflected that, at the time she
6 complained about that, she stated on the record in the
7 minutes that Allison Schaum was Mr. Wilson's daughter, would
8 you have any reason to dispute that?

9 A Ask me that question again.

10 Q Sure. I'm sorry. It was a little bit long.

11 If the minutes reflected, at that time when Ms. Wilson
12 raised the concerns about this agricultural consulting, that
13 she brought up Allison's relationship to Mr. Wilson, would
14 you have any reason to dispute that?

15 A I would -- I'm gonna try to be as polite as I can.

16 Q Yes, sir.

17 A I questioned anything that Ms. Wilson tells me.

18 Q Okay. Fair enough.

19 And you don't listen to that radio program, do you?

20 A Absolutely not.

21 Q So, if it was on that radio program too that Ms. Schaum
22 is Mr. Wilson's daughter, you wouldn't of known that either?

23 A No.

24 Q Now, if you had known that Allison Schaum had gotten a
25 contract -- were you, were you aware of the sustainable

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by Ms. Kern-Fuller

1 agricultural conference that occurred at the end of October
2 in 2008?

3 A The one that was held at the Civic Center?

4 Q Yes, sir.

5 A Yes. In fact, I talked with Mr. Wilson concerning
6 sustainable agriculture and I thought that it was a, was a
7 good thing and was supportive of it.

8 Q And in your capacity as a council member, did you deem
9 that conference that occurred over the course of the last
10 weekend in October of 2008 a success?

11 A As far as I know it was, yes.

12 Q And if the contract for Ms. Schaum was executed the
13 very day after that contractor or that conference ended, do
14 you think that would be inappropriate?

15 A Not necessarily, no.

16 Q And had you known that that contract had been executed,
17 and had you known of this relationship between Ms. Schaum
18 and Mr. Wilson, would that have changed your vote on
19 November 18th?

20 A No.

21 Q Now, you, up until the time this severance endeavor,
22 you haven't had a business relationship with Mr. Preston,
23 have you?

24 A Other than selling him hay for his donkey.

25 Q How many times have you sold him hay for Cindy Lou?

Larry Greer - Cross-examination
by Ms. Kern-Fuller

- 1 A Probably two or three times.
- 2 Q How much do you charge for hay?
- 3 A I charge him what I charge everybody else.
- 4 Q Did he buy hay from you before November 18th of 2008?
- 5 A I think he did.
- 6 Q All right. And did his buying hay for Cindy Lou in
7 anyway affect your vote on November 18th of 2008?
- 8 A Absolutely not.
- 9 MR. TESSIER: Your Honor, we're willing to stipulate
10 that transaction, that a transaction occurred.
- 11 THE COURT: I appreciate your willingness---
- 12 MS. KERN-FULLER: Thank you, Your Honor.
- 13 THE COURT: ---to do so and I would accept the
14 stipulation.
- 15 You may proceed.
- 16 Q Did you receive any personal benefit in exchange for
17 your vote on Joey Preston's severance?
- 18 A No.
- 19 Q And, in fact, it's been quite the contrary, hasn't it?
- 20 A It's costing me somewhere between three and eight
21 thousand dollars to be here today.
- 22 Q what were you suppose to be doing?
- 23 A I should be in New York on a storm response at this
24 time.
- 25 Q And I apologize, sir.

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 With regard to November 18th of 2008, do you recall
2 if there was any items on the agenda already that dealt with
3 the employment of Mr. Preston?

4 A Yes, there was.

5 Q And I'm gonna show you what's been preadmitted and
6 marked as Plaintiff's Exhibit 4.

7 If I may approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q Can you tell me the item on the agenda that you believe
10 could cover or give the public notice of severance regarding
11 Mr. Preston?

12 A Item 16 on Page 2 of the agenda. It reads discussion
13 of the authority of county council to employ the
14 administrator was placed on the agenda by Mr. Bob Waldrep,
15 requested ten minutes, and he was allotted ten minutes.

16 Q And, as a council member, if you put something on the
17 agenda about what you have in mind that you want to pass,
18 did it always come out the way you wanted it to come out?

19 A No, it can be actually, and it has been at times, taken
20 over by another council member and proceed with it and run
21 with.

22 Q Now, when you were talking amongst the personnel
23 committee -- let's go back to one of the questions that Mr.
24 Tessier asked you. I believe he showed you the notes from
25 Mr. Bright, thank you, about your conversation with

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by Ms. Kern-Fuller

- 1 Mr. Bright on the 13th of October of 2008.
- 2 Do you have those?
- 3 A Yes, I do.
- 4 Q Now, Mr. Bright called you prior to the first personnel
5 committee meeting, is that correct?
- 6 A I'm not sure if he called me before then or after.
- 7 Q Okay. I'm gonna, I'm gonna give you something else
8 maybe that will help you.
- 9 A I, I don't have the dates fixed in my mind. So, if
10 you're asking me before or after, I can't answer truthfully.
- 11 Q I'm gonna show you what's been premarked Defendant's
12 Exhibit 70. These are two agendas for two personnel
13 committee meetings.
- 14 Does that help refresh your recollection, sir, about
15 the personnel committee meet dates?
- 16 A All right. The first one was on October the 27th. So,
17 if Mr. Bright's notes are correct, then he did call me
18 before the first meeting.
- 19 Q And were you made aware by him that he was calling
20 other members of council as well?
- 21 A I was.
- 22 Q Now, up until the time of this severance vote, what had
23 the votes on council been for things that were favored by
24 you and Mr. Wilson and Mr. Thompson?
- 25 A Mr. Waldrep and Ms. Wilson, if you probably checked the

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1 record, would historically oppose most of it.

2 Q And, so, how many votes would there normally be in
3 favor of things you wanted versus things that Ms. Wilson and
4 Mr. Waldrep wanted?

5 A Usually -- well, it takes four -- five actually to have
6 a successful vote. So, if it was successful, it was five
7 and if it wasn't it was four. But I do remember one item in
8 particular that I pushed very strongly, and I still feel
9 very strongly about it. I feel like Anderson County is
10 being unfair to its citizens and it should be changed, and
11 that is that -- in the ordinances, there is a section that
12 deals with changing road right of ways, and I pushed to have
13 that changed so that they didn't take citizen's property
14 without compensation. And where we went into the vote on
15 that, I had five votes. I had counted them. When we voted,
16 I only had four.

17 Q So, things changed?

18 A Things changed.

19 Q Going into the meeting on November 18th of 2008, did
20 you know for sure that all of your colleagues were gonna
21 vote in favor of this severance?

22 A You don't know for sure until they raise their hand.

23 Q And when things start being discussed in amongst
24 individual council members, is there anything illegal about
25 one council member going and lobbying another council

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by Ms. Kern-Fuller

- 1 member?
- 2 A No.
- 3 Q Is there anything illegal if that council member goes,
4 goes and lobbies a third council member?
- 5 A No.
- 6 Q And, in fact, it's only illegal when those parties are
7 together if there's either A, a quorum of the council, which
8 is four or more members, right?
- 9 Is that correct?
- 10 A That's correct.
- 11 Q Or B, if you're on a committee, all members of the
12 committee, right?
- 13 A The county code says that a minimum of three is
14 required for a quorum of a committee.
- 15 Q All right. So, if say you and Mr. Wilson were meeting
16 with Ms. Floyd to talk to Mr. Cunningham, that wouldn't be a
17 quorum of the personnel committee, would it, sir?
- 18 A No, ma'am, it would not.
- 19 Q And the consensus that you-all had about the fact of
20 Michael Cunningham could be hired as the county
21 administrator, subject to working out the details of his
22 contract, were also subject to the council approving Mr.
23 Preston's severance, right?
- 24 A It was all contingent upon that, yes.
- 25 Q And had the severance not been approved, then Mr.

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by Ms. Kern-Fuller

1 Cunningham's hiring would actually violate Mr. Preston's
2 contract, wouldn't it?

3 A It would.

4 Q Now, with regard to the incident, I'm gonna show you --
5 Mr. Tessier asked you about the termination of cause
6 provision. I'm gonna show you what's been marked as
7 Plaintiff's Exhibit 1, and ask you if you see anything in
8 here that says about a general compliance with the State
9 Constitution or is it subject to the duties as outlined in
10 Paragraph 1 of the contract, which are duties under Home
11 Rule?

12 A Okay. Now ask me your question again please.

13 Q Sure.

14 Mr. Tessier, I think, asked you didn't Mr. Preston also
15 have to comply with the general laws of the Constitution of
16 the State of South Carolina or that could be a breach.

17 But, in that provision, isn't that subject to the -- in
18 discussing the duties as set forth in Paragraph 1 of the
19 contract which are the duties, in essence, set up under Home
20 Rule?

21 A That's -- that would be my understanding and
22 interpretation. It says that compliance with the laws and
23 Constitution of the State of South Carolina and performance
24 of the duties set forth in Section 1 of this agreement.

25 Q Now, when you---

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by Ms. Kern-Fuller

- 1 A And---
- 2 Q I'm sorry. Go ahead.
- 3 A And it -- basically it's saying that he's got to comply
4 with the Code of Laws of South Carolina.
- 5 Q All right. Now, when you talked about -- let's talk
6 about what you knew on November 8th of 2008.
- 7 Y'all had personnel committee meetings leading up to
8 that, right?
- 9 A That's correct.
- 10 Q And Mr. Bright was coming -- he came to both of those
11 personnel committees that I gave you the agendas for, is
12 that correct?
- 13 A That's correct.
- 14 Q And y'all weren't trying to keep Mr. Wilson or
15 Ms. Wilson and Mr. Waldrep out by having this meeting up in
16 Powdersville, were you?
- 17 A No.
- 18 Q And, in fact, in the place of the government building
19 that's owned by Anderson County that was up in Powdersville,
20 isn't it a -- not even a half mile from Mr. Wilson's office?
- 21 A It's almost within walking distance.
- 22 Q And Mr. Bright's office is up in Greenville, is that
23 correct?
- 24 A It was closer for him.
- 25 Q Y'all paying Mr. Bright by the hour?

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 A I would assume so. Most of you work by the hour.

2 Q We're a dangerous lot with that.

3 And---

4 A At least my check where I paid you for the last time
5 showed it by the hour.

6 Q Thank you, sir.

7 With regard to the meeting y'all had up there, you and
8 Mr. McAbee traveled up there for that meeting, right?

9 A That's correct.

10 Q And then the next meeting y'all had was in the
11 courthouse across the street, right?

12 A That's correct.

13 Q Now, at these personnel committee meetings, were
14 you-all inquiring to Mr. Bright about the legitimacy of the
15 anticipatory breach claim and what the options were for the
16 county to resolve it?

17 A We discussed those options and the anticipatory breach,
18 yes.

19 Q Did you specifically question Mr. Bright with regard to
20 his analysis under the decision?

21 A We discussed it somewhat, and based on what I had read
22 in the South Carolina Code of Laws, and I did pull them up
23 sometime previous and, and read some of these, and what I
24 knew about the Powdersville's administrators thing, I felt
25 that Mr. Bright did not have, this is my opinion, that he

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 did not have a full and thorough understanding of the
2 differences between an administrator's contract and position
3 and that of a administrator of a public -- of a water
4 utility.

5 Q why, why did you believe there was a difference?

6 A There is a, in my opinion, there was a very big
7 difference. As Mr. Tessier said in, in my deposition, I'm
8 not an attorney, but I do read, and the Home Rule says that
9 an administrator can be employed by a contract for years
10 plural. It does not say one year, two years, or three
11 years. It just simply says plural.

12 The Powdersville administrator, to my knowledge, is not
13 covered in the Code of Laws through the contractual thing
14 and it's my understanding that the contract that the
15 Powdersville administrator had was a lengthy contract. I
16 believe that I've heard the term 20 years plus.

17 So, there was a big difference between that and what
18 would be a contract drawn administrator for a county
19 government.

20 Q And when Mr. Bright provided you advice as reflected in
21 a memorandum we've preadmitted, Defendant's Exhibit 8, I'll
22 let you review it, 28, I'm sorry, if you want to review
23 that.

24 But when Mr. Bright met with you-all, gave you-all
25 legal advice as reflected in that memoranda, did he give you

Larry Greer - Cross-examination
by MS. Kern-Fuller

1 one option or a number of options?

2 A This list that you, you provided, they're several
3 options.

4 Q And were there other options that he didn't provide?

5 A There was one option on there that was overlooked, yes,
6 ma'am.

7 Q And what option was that?

8 A If you'll go back and read Mr. Preston's contract,
9 there is a clause in there that states that if council votes
10 to not review his contract, that his contract is not renewed
11 and his contract would expire at the end of the non-renewed
12 term --

13 Q And, so---

14 A -- or something to that effect.

15 Q I'm gonna show you what's been marked as Plaintiff's
16 Exhibit 1 on Page 2 under term.

17 Is that the provision you're talking about, sir?

18 A The last paragraph, Paragraph D, yes, ma'am.

19 Q And did Mr. Bright give you-all that option or explain
20 that to you?

21 A He never mentioned it.

22 Q And did that weigh into how much weight you gave some
23 of his proposals versus the others?

24 A Yes, it did.

25 Q Did the fact that you felt he, he misunderstood the

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 Cowart exception, did that weigh into the weight that you
2 gave some of his recommendations versus others?

3 A It did.

4 Q And, ultimately, did you go through a deliberate
5 decision making process before you voted on November 18th?

6 A I most certainly did.

7 Q Did you go through a deliberative decision making
8 process when determining how much he felt in claims that
9 Mr. Preston was asserting and could assert before deciding
10 how much you thought the county should pay Mr. Preston to
11 divorce him?

12 A Okay. I'm -- I think I've got your question and I'm
13 gonna try to answer if I---

14 Q Sure.

15 A If I mixed it up a little bit, we can rehash it.

16 Q No problem.

17 A Based on the discussions that we had, it was my belief
18 that it was cheaper to buy-out Mr. Preston's contract in the
19 manner in which we did than it was to do nothing and let
20 the, the events flow as, as I perceived that they would.
21 It's my opinion then, and it's my opinion now, and that was
22 part of my decision making process, that what we did that
23 night and what we voted on saved the people of Anderson
24 County in excess of a million dollars. However, that has
25 long gone by the wayside.

Larry Greer - Cross-examination
by MS. Kern-Fuller

1 So, I hope that's the answer to your question.

2 Q Did you, at anytime when you voted November 18th of
3 2008, ever conceive that the county would of undertaken the
4 investigation at the cost it did?

5 A I knew -- at least I thought I knew that they would be
6 unhappy. I never dreamed that our elected leaders of
7 Anderson County would be so foolish as to squander away the
8 amount of taxpayer money that they have in pursuit of this.

9 Q Are you a Republican?

10 A I ran as a Republican.

11 MR. TESSIER: Objection, Your Honor. Relevance.

12 MS. KERN-FULLER: Next question. I'll, I'll skip that
13 one.

14 THE COURT: Okay.

15 Q Are you a fiscal conservative?

16 A Yes, ma'am.

17 Q And do you believe that what you did on
18 November 18th was being a good fiscal steward of Anderson
19 County's money?

20 A I do.

21 Q And do you still believe that today?

22 A I do.

23 Q Have you---

24 A And I've had citizens relate that belief to me as well.

25 Q And with regard to the negotiation that was occurring,

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 do you recall the first demand from Mr. Preston as
2 communicated to you through Mr. Bright?

3 A I'm not sure if it was through Mr. Bright or someone
4 else, but the first number I heard was 1.9 I believe it was.

5 Q Million-dollars?

6 A Million-dollars.

7 Q And you were aware that Mr. Preston had an ongoing
8 lawsuit going on with Ms. Wilson and Mr. Waldrep at that
9 time when the severance also was going on?

10 A I was.

11 Q And if you would -- if I may approach, Your Honor?

12 THE COURT: You may.

13 Q In Exhibit 1, which is the master employment agreement,
14 let me see that a second if I may. Now you said you've read
15 this a few times.

16 Are you aware that if -- the severance is Item E on
17 Page 4. Contemporaneously with the delivery of all
18 severance pay and entitlements herein said above, the
19 administrator agrees to execute and deliver to the county a
20 release releasing the county of all further claims that the
21 administrator may have against the county, and then that
22 paragraph ends after that.

23 Were you aware of that, sir?

24 A I was.

25 Q And are you aware that, in the severance agreement,

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by Ms. Kern-Fuller

1 that in exchange for the monies paid to Mr. Preston, that he
2 agreed also to relieve the council members individually of
3 any and all claims that he had against council members
4 individually including Mr. Waldrep and Ms. Wilson?

5. A I believe that's correct.

6 Q Now, did Mr. Preston have any claims against you on
7 November 18th of 2008?

8 A Not that I'm aware of.

9 Q He hadn't threatened to sue you for anything and wasn't
10 suing you for anything---

11 A No.

12 Q ---was he?

13 was he threatening to sue Mr. McAbee or was he suing
14 Mr. McAbee for anything?

15 A I don't know. I have no knowledge of that.

16 Q Did you have any knowledge if he was suing or
17 threatening to sue Mr. Wilson for anything?

18 A No.

19 Q Do you have any knowledge if he was suing or
20 threatening to sue Ms. Floyd for anything?

21 A No.

22 Q Do you have any knowledge if he had sued or was
23 threatening to sue Mr. Thompson for anything?

24 A No.

25 Q Now, you're aware that Mr. McAbee, when there was a fee

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by Ms. Kern-Fuller

1 in lieu voted on for Lincoln Energy and the Lewis Road
2 closure, that Mr. McAbee recused himself from those votes.

3 Do you recall that?

4 A I do.

5 Q And I'm gonna show you what's been marked as
6 Defendant's 58, and I want to talk to you a little bit about
7 that process.

8 When Mr. McAbee recused himself during those votes,
9 what did he do?

10 A He made the statement that he had -- now this is as
11 best I recall.

12 Q Yes, sir.

13 A But he made a statement, something to the effect, that
14 he was recusing himself and he had delivered a recusal to
15 the council clerk.

16 Q And at that point in time---

17 A And then he left the room.

18 Q Okay. Is that the procedure that was operated under
19 during your time on council?

20 A That's what's suppose to happen.

21 Q And on November 18th of 2008, despite the fact that
22 Mr. Waldrep and Ms. Wilson would be released by this
23 settlement agreement for their own tort claims, did they
24 file anything with the clerk?

25 A Not to my knowledge.

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 Q Did they say that they were gonna recuse themselves?

2 A Not to my -- no, they did not.

3 Q Did they leave the room or stay in the room?

4 A No, they did not leave the room.

5 Q And did they participate in the debate?

6 A Yes, they did.

7 Q And in your time on council, with regard to conflict of
8 interest, do you believe that that was correct for them to
9 do?

10 A Based on what I know, if they had a -- an involvement
11 in it, they should of recused themselves and left the room.

12 Q Now, Mr. Tessier asked you about the incoming council
13 members-elect and asked you about the election that was
14 coming up, and I believe your testimony was that you were
15 absolutely sure that those council members would win
16 election in November of 2008?

17 Do you recall that?

18 A I think I said something to the effect there was no
19 doubt in my mind.

20 Q Was there any doubt in your mind, when you voted on the
21 severance, that the new council would come in and do
22 everything that Mr. Waldrep stated at the audit committee
23 meeting in August of 2008?

24 MR. TESSIER: Objection. Total speculation, Your
25 Honor.

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by Ms. Kern-Fuller

1 MS. KERN-FULLER: I asked his perception.

2 MR. TESSIER: Of what someone else might do in the
3 future.

4 THE COURT: well, what his -- he can state what his
5 perception is, his understanding of the situation was. I'll
6 take it for what it's worth.

7 You may proceed.

8 A Okay. Ask me your question again please.

9 Q Yes, sir.

10 Did you have any doubt in your mind, that when the new
11 council, council took office in January of 2009, that they
12 would do anything but what Mr. Waldrep said they were gonna
13 do in August of 2008 at that audit committee meeting?

14 A I firmly believed that---

15 MR. TESSIER: Same objection.

16 A ---they would---

17 THE COURT: The objection is noted.

18 You may proceed.

19 You can answer the question, Mr. Greer.

20 A I firmly believed that they would do what Mr. Waldrep
21 had stated at that meeting at the -- I believe it was held
22 at the county museum, and that was confirmed by the letter
23 that was delivered where Mr. Waldrep and Ms. Wilson and the
24 three council members elected, working in unison, had asked
25 the administrator to freeze 25 positions. So, I think that

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by Ms. Kern-Fuller

1 confirmed my suspicions and my perceptions.

2 Q And that happened the day before the severance
3 agreement, didn't it?

4 A I think that letter was dated November 17th.

5 Q Now, I'm gonna ask you a couple of questions -- and,
6 Your Honor, this is subject to the proffer because the
7 proffer is out there.

8 THE COURT: All right. Subject to your prior
9 objections.

10 You may proceed.

11 Q And, Mr. Greer, you've had the opportunity, I think, to
12 review the minutes from the March 21st, 2006, county
13 council meeting where the sheriff and Mr. Busha appeared and
14 Mr. Preston made a statement---

15 A Yes.

16 Q ---at county council.

17 After reviewing those minutes, at anytime was
18 Mr. Preston asked if he was having a relationship with
19 Ms. Nichols at this meeting?

20 A No.

21 Q Do you---

22 A Not that I recall.

23 Q Rereading today -- and you actually went further, as I
24 understand in this meeting, and you actually contacted the
25 city chief of police in addition to taking information from

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by Ms. Kern-Fuller

1 the sheriff and Mr. Busha, right?

2 A I did.

3 Q And sitting here today, do you still have any knowledge
4 that what was told you on March 26th -- 21st of 2006 was
5 in anyway incorrect?

6 A I have nothing to say different.

7 Q And even if, sitting here today, you found out that
8 Mr. Preston, in fact, had a relationship with an employee,
9 that issue was never raised on March 21st of 2006 during
10 that meeting, was it?

11 A No.

12 Q Now, with regard to the severance agreement -- let me
13 ask one more question actually before we go there.

14 Prior to March 21st of 2006, were you, as a council
15 member, and other council members receiving written hateful
16 letters?

17 A Yes, ma'am.

18 Q And I'm gonna show you a document which is been
19 premarked as, I'm-gonna get to it, Defendant's Exhibit 133
20 and ask you if you recognize this document.

21 A Yes, I do.

22 Q Can you tell me what that document is, sir?

23 A would you state that again please?

24 Q Can you tell me what that document is?

25 A It's -- I'd call it a hate letter.

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by Ms. Kern-Fuller

1 Q And---

2 A It's a letter basically threatening/accusing that
3 immoral acts are gonna be performed on my person, that my
4 financial accounts were being examined, and it's very
5 threatening.

6 Q And what did you do with that letter?

7 A It ended up at the Sheriff's Office.

8 Q And why did it end up at the Sheriff's Office?

9 A Because I -- it, in my opinion, it was criminal in
10 nature and that's where it belonged and it should be pursued
11 and investigated.

12 MS. KERN-FULLER: Your Honor, I would move to admit
13 that into evidence at this time as Plaintiff's -- as
14 Defendant's Exhibit 138.

15 MR. TESSIER: Our same objection as before. Hearsay
16 and relevance.

17 THE COURT: Hearsay as to --?

18 MR. TESSIER: This is a letter from an anonymous person
19 signed The Investigator in March of 2006, and no one has
20 ever established who this person is.

21 MS. KERN-FULLER: And, Your Honor, we're not
22 admitting---

23 THE COURT: What is it being offered for?

24 MS. KERN-FULLER: It's being offered for -- to show
25 that he was receiving letters. Not that someone had

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by Ms. Kern-Fuller

1 actually bugged him or sodomize him in anyway.

2 THE COURT: All right. The objection's overruled on
3 that basis.

4 (WHEREUPON, Defendant's Exhibit No. 138 was received
5 into evidence at this time.)

6 THE COURT: Pass the exhibit up. I'd like to see it.
7 (Attorney complies.)

8 THE COURT: Thank you.

9 You may proceed.

10 Q And at the same timeframe as March of 2006, did that
11 continue through a period that lasted throughout the time
12 you were on council with you and other council members
13 receiving hateful letters, hateful phone calls, things like
14 that?

15 A We received those letters on more than one occasion.
16 It got to the point that I could recognize them before ever
17 opening the envelope, and I remember that I received one,
18 handled it very carefully, and asked for a meeting with
19 Sheriff Crenshaw. I think Deputy Busha was there, and I
20 believe Mr. Deese, who is no longer with us, was there when
21 we met with Sheriff Crenshaw and Deputy Busha, and I carried
22 the unopened letter to the Sheriff's Office and asked them
23 to open it and see if they could secure any type of
24 identification from the letter.

25 Q And, at that time, Mr. Deese was also a council member?

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by Ms. Kern-Fuller

1 A Yes, ma'am.

2 Q And in your capacity as a council member, on or about
3 February of 2008, did you receive a copy of that letter from
4 the chairman, Mr. Thompson, to the sheriff, Sheriff
5 Crenshaw?

6 MR. TESSIER: What number is that?

7 MS. KERN-FULLER: 138. That's the one I thought I
8 introduced yesterday with Mr. McAbee.

9 THE WITNESS: This is, this is 136.

10 MS. KERN-FULLER: I'm sorry. 136. I'm sorry.

11 A Did I receive it?

12 Q Yes, sir.

13 A I would say yes, I did.

14 Q And do you recall the substance of the complaints in
15 the letter that Mr. Thompson was talking about during the
16 council meetings?

17 A The one thing I remember is that he referred to the
18 fact that he was threatened to be sodomized, that he needed
19 to check his homeowner's insurance policy. I remember that
20 he was referring to the very threatening nature of those
21 letters that we received.

22 MS. KERN-FULLER: And, Your Honor, at this time I would
23 move to put Defendant's Exhibit 136 into evidence.

24 MR. TESSIER: Same objection.

25 THE COURT: Objection's noted.

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 I assume it's being offered for the same purpose?

2 MS. KERN-FULLER: Yes, Your Honor.

3 THE COURT: It's admitted.

4 MS. KERN-FULLER: And that one has been premarked.

5 THE COURT: Thank you. As marked.

6 (WHEREUPON, Defendant's Exhibit No. 136 was received
7 into evidence at this time.)

8 Q Now, on the backdrop of this harassment, these
9 harassing letters, did that weigh, in anyway, in your
10 decision to vote for the severance on November 18th of
11 2008?

12 A Did my having received those letters weigh into the
13 decision making process?

14 Q The culture that was created by the harassing letters,
15 the harassing nature, and the dispute that had gone on in
16 this county for five to ten years at that point.

17 A Let me see if I can answer you this way.

18 Q Sure.

19 A I felt like it was time to put an end to it. I felt
20 like it was time for Mr. Preston to move on, and I also felt
21 that he should be treated fairly and equitably and that
22 would not have been a -- those letters would not have been
23 a -- an item that would have caused me to sway one way or
24 the other. But it would of been something that would of
25 concerned me.

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 Q And was there any reason to prolong the agony of this
2 dispute further past November 18th despite the fact that
3 we had two more meetings coming up?

4 A No.

5 Q In your mind, did you do the right thing on
6 November 18th of 2008?

7 A Yes, ma'am.

8 Q I want to ask you just a couple more specific questions
9 and then I'll be done with you.

10 Now, you said that the county attorney worked for the
11 county over here and not directly with the council members.

12 Now, that included the deputy county administrator, is
13 that correct?

14 A Yes.

15 Q And did the deputy county administrator often directly
16 work with the county attorney on things?

17 A I'm assuming so.

18 Q You don't have any knowledge to the contrary?

19 A No, I don't.

20 Q And when you-all were in the personnel committee
21 meetings, and you-all were talking about the severance, were
22 you communicating with Mr. Bright about what your thoughts
23 were as far as what was an amount you could live with in a
24 severance?

25 A With Mr. Bright?

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 Q Well, with Mr. Bright, with your co-personnel committee
2 meetings, were y'all talking about the amount?

3 A The amount was just -- excuse me. The amount was
4 discussed at some point in time. Now, who, who I discussed
5 it with, I'm not sure. It could of been Mr. Wilson. It
6 could of been Mr. Bright or it could of been both. I know I
7 made it known very early that I was totally opposed to 1.9.
8 In fact, if you'll check the depositions or whatever, I've
9 answered something to the effect that I wanted it to be less
10 than a million.

11 Q And you don't know, sitting here today, if Mr. Bright
12 then communicated that with Mr. Preston's legal team to try
13 to negotiate the number down, do you?

14 A I don't know what he communicated to them.

15 Q You don't know if Mr. Bright was telling Mr. Preston's
16 legal team I'm having problems getting two council members
17 to give you the amount you want as a negotiating strategy,
18 do you?

19 A I don't know that he did or didn't.

20 Q Had you known that Mr. Thompson was seeking employment
21 with the county, would that have affected your vote on
22 November 18th of 2008?

23 A No.

24 Q Had you known that Mr. Thompson was receiving appraisal
25 courses at the cost of the county, would that have affected

Larry Greer - Cross-examination
by Ms. Kern-Fuller

1 your vote on November 18th of 2008?

2 A No.

3 Q Thank you, Mr. Greer. I'm sorry for the inconvenience
4 and that it cost you money and it cost you to be here.

5 Please answer any further questions that Mr. Tessier has or
6 the judge does.

7 THE COURT: Redirect. You may proceed.

8 MR. TESSIER: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. TESSIER:

11 Q Mr. Greer, what I heard you say is that you just wanted
12 to treat Mr. Preston fairly and equitably, is that right?

13 A That's correct.

14 Q It didn't matter to you whether or not you had any
15 legitimate anticipatory breach claim, did it?

16 A Yes, it did and I thought he did.

17 Q And you agree that you paid the severance amount that
18 you paid to Mr. Preston, you would agree was in excess of
19 any amount that he was entitled to under his employment
20 agreement, correct?

21 A No, it would not.

22 Q You think it was -- you think there's a provision to
23 his employment agreement to provide for him to receive---

24 A I think, I think my answer said that fairly and
25 equitably, and, to me, fairly and equitably, we had cost --

Larry Greer - Redirect examination
by Mr. Tessier

1 or not we. But this whole matter had cost him employment
2 possibilities, and I felt like the settlement that we had
3 finally settled on was a fair and equitable settlement.

4 Q Do you agree that the \$350,000 plus that the county
5 paid to Mr. Preston to purchase in retirement service
6 credits is not an amount that is called for under this
7 employment agreement?

8 A I understand that it's not what's called for, but if he
9 were to seek damages, then that would have been part of the
10 damages, and in an effort to avoid further litigation, I
11 thought that was an appropriate action to take.

12 Q And you -- you're not here to tell anyone that you
13 believe it was appropriate to pay Mr. Preston any sum of
14 money based on the political culture of Anderson County, are
15 you?

16 A I'm not sure I understand what you mean.

17 Q Well, you, you heard a lot of talk about how the
18 political culture in Anderson County was toxic and people
19 were being harassed, right?

20 A Right.

21 Q You're not suggesting that Mr. Preston should have
22 received any amount of money because there was harassment
23 going on in the county, are you?

24 A I think that's what led us to the point where we were
25 at.

Larry Greer - Redirect examination
by Mr. Tessier

1 Q And, so, you think it was justified to pay Mr. Preston
2 money for that?

3 A I didn't say that.

4 Q That's what I'm asking you.

5 Do you think it would be justified whether to pay him
6 any money based on the political culture of Anderson County?

7 MS. KERN-FULLER: Your Honor, I believe this has been
8 asked and answered twice.

9 THE COURT: Well, this will be the last time. It was
10 testified to.

11 A Okay. Ask me again.

12 Q Are you trying to tell us that it would be appropriate,
13 in your mind, to pay Mr. Preston any amount of money as part
14 of his severance agreement because you're considering the
15 fact that the political culture of Anderson County is toxic?

16 A The political culture in Anderson County is toxic, and
17 that's part of what led us to the point where we were at.

18 Q Well, wouldn't that same argument apply to anyone else
19 who was working under the same political environment at the
20 same time?

21 In other words, if, if you paid Mr. Cunningham based on
22 that as well or Ms. Wilson cause she was going back and
23 forth with Mr. Preston about the same type of things.

24 A There's a difference between the instigator and the
25 receiver.

Larry Greer - Redirect examination
by Mr. Tessier

1 Q So, you took Mr. Preston's side, in other words?

2 A No, sir, I took the right side.

3 Q Let me ask you about Cater's Lake real quick.

4 That incident involved Mr. Preston being seen at
5 Cater's Lake with Kelly Nichols, correct?

6 A I'm sorry?

7 Q The incident at Cater's Lake that was discussed at the
8 March 21st county council meeting involved Mr. Preston being
9 seen at Cater's Lake with Kelly Nichols, correct?

10 A I'm not sure that I ever had it confirmed that he was
11 there with Kelly Nichols. I couldn't answer yea or nay.

12 Q Did you know that he was seen there with a female
13 county employee, at least that much?

14 A I'm not sure that it was a female employee. I don't
15 know.

16 Q You, you asked a lot of questions of various law
17 enforcement officers about what happened at Cater's Lake,
18 correct?

19 A I did.

20 Q But you never determined what, what he was seen there
21 doing or with whom?

22 A No.

23 Q You talked about the fact that you believed Mr. Waldrep
24 and Ms. Wilson should of recused themselves from voting on
25 the severance agreement.

Larry Greer - Redirect examination
by Mr. Tessier

- 1 Is that what you believed?
- 2 A Yes, sir, I do.
- 3 Q Now, let me just make sure I understand this.
- 4 You had a working copy in advance of the
- 5 November 18th meeting of the severance agreement, correct?
- 6 A At some point in time.
- 7 Q So, you had time to figure out all the provisions of
- 8 that agreement, right?
- 9 A No.
- 10 Q You had the -- you had some amount of time, before the
- 11 meeting at least, to review the working copy, didn't you?
- 12 A I had time to review the working copy.
- 13 Q And you, you chose not to share the working copy with
- 14 Mr. Wilson or Mr. Waldrep, right?
- 15 A Ms. Wilson and Mr. Waldrep.
- 16 Q I'm sorry. Yes, sir, Ms. Wilson and Mr. Waldrep.
- 17 Did you share the working copy with Mr. Wilson?
- 18 Did you share the working copy with Mr. Wilson?
- 19 That's who you got it from, right?
- 20 A Yes.
- 21 Q And what about Mr. Thompson?
- 22 A No.
- 23 Q You destroyed the working copy that you had, correct?
- 24 A Yes.
- 25 Q And at the meeting, would you agree that that's the

Larry Greer - Redirect examination
by Mr. Tessier

1 first time that Ms. Wilson and Mr. Waldrep had any
2 opportunity to look at the provisions of the severance
3 agreement that they were going on?

4 A That's the first time they'd seen it to my knowledge.

5 Q And, so, they would have to decide, in the short time
6 that they had it, whether or not that provision affected
7 them personally, right?

8 A Yes.

9 Q And they asked for legal opinions about the severance
10 agreement, didn't they, at the meeting?

11 A I don't recall.

12 Q And, in the end, would you agree Mr. Waldrep and Ms.
13 Wilson voted against the severance agreement, right?

14 A Yes.

15 Q So, they voted against this provision that you're
16 talking about that was supposedly to protect them from tort
17 claims, right?

18 A Yes.

19 Q They voted against their interest?

20 A No, they voted against the severance agreement.

21 Q You voted in favor of the severance agreement, right?

22 A That's correct.

23 Q So, you voted in favor of a provision that would
24 release you from tort claims, correct?

25 A Yes.

Larry Greer - Redirect examination
by Mr. Tessier

1 Q The last thing to ask you is this.

2 You testified, and I think I heard you right, you can't
3 count votes in advance, right?

4 A You try, but you can't actually do it.

5 Q No way to tell what's gonna happen until they raise
6 their hand at the meeting, right?

7 A That's correct.

8 Q So, it's all up in the air until the vote happens?

9 A Yes.

10 Q Mr. Preston was making a claim of anticipatory breach,
11 right?

12 A Yes.

13 Q He was predicting what would happen to him in January
14 of 2009, correct?

15 A Ask me your question again.

16 Q Mr. Preston was predicting that something was gonna
17 happen to him in January of 2009, right?

18 A He was predicting something was gonna happen based on
19 actions that had taken place, yes.

20 Q Just like you do, you predict what a vote's gonna be
21 like when you try to count the votes in advance, right?

22 A Right.

23 Q And you don't know for sure though until it actually
24 happens?

25 A Right.

Larry Greer - Redirect examination
by Mr. Tessier

1 Q And based on that prediction of what might happen in
2 January of 2009, you voted in favor of paying over a million
3 dollars in Anderson County money to Mr. Preston, right?

4 A Yep.

5 Q That's all I have. Thank you, Mr. Greer.

6 THE COURT: Yes, ma'am.

7 MS. KERN-FULLER: Two recross, Your Honor. Real short.

8 THE COURT: Okay.

9 MS. KERN-FULLER: I'll stand right here.

10 Mr. Greer---

11 THE COURT: I'm gonna try to get through and go on this
12 witness before one o'clock. We got ten minutes.

13 MS. KERN-FULLER: Thank you, Your Honor.

14 THE COURT: Go ahead.

15 RECROSS EXAMINATION

16 BY MS. KERN-FULLER:

17 Q Mr. Greer, would you agree that Mr. Waldrep and
18 Ms. Wilson and the rest of the council knew that Mr. Preston
19 had claims against Mr. Waldrep and Ms. Wilson since they
20 were served with that lawsuit back in August?

21 MR. TESSIER: Objection. Asking what other people
22 knew.

23 Q Was it public knowledge---

24 THE COURT: Thank you.

25 Q ---that Mr. Preston had sued Mr. Waldrep and Ms. Wilson

Larry Greer - Recross examination
by Ms. Kern-Fuller

1 personally back in August of 2008?

2 A I would say yes because, just like I had to be here
3 today, because Mr. Davis' office and Mr. Tessier's office
4 served papers on me. So, I would assume that they were
5 aware of it.

6 Q You got a copy of those papers, as a council member,
7 from Mr. Preston, didn't you?

8 All council members did?

9 A I probably did, yes.

10 Q And the ordinance that talks about voting under a
11 conflict of interest, does it say voting in your benefit or
12 against your benefit or does it say vote period?

13 A It says something to the effect you shouldn't vote if
14 you have an interest in the matter.

15 Q It wouldn't matter if you were voting against your
16 interest or for your interest?

17 If your interest is at stake, it just says vote, right?

18 A That's correct.

19 Q Thank you. I have no further questions.

20 THE COURT: All right, sir. You may step down.

21 MR. TESSIER: Your Honor, we have no problems with
22 excusing the witness from his subpoena.

23 THE COURT: Any objection?

24 MS. KERN-FULLER: No objection, Your Honor.

25 THE COURT: Sir, I'm gonna release you from the

1 subpoena. You are no longer required to be present. I will
2 caution you, I've issued an order in this case requiring
3 that witnesses not discuss their testimony with anyone,
4 either before, during, or after their testimony. So, it
5 would be a violation of that order if you were to discuss
6 your testimony before the case is been ended.

7 You understand?

8 THE WITNESS: I do.

9 THE COURT: All right. You're free to go. Thank you
10 very much.

11 THE WITNESS: Thank you.

12 MS. KERN-FULLER: Mr. Greer, would you leave my
13 exhibits there please?

14 THE WITNESS: I'm not sure whose is whose.

15 MR. TESSIER: I'll, I'll---

16 MS. KERN-FULLER: Thank you.

17 THE COURT: Yeah, why don't you retrieve that for us,
18 Mr. Tessier.

19 THE COURT: All right.

20 MR. TESSIER: Can we ask an administrative question?

21 THE COURT: Yes, sir.

22 MR. TESSIER: There was a stipulation was reached in
23 this case, Your Honor, that I believe was sent to your
24 Spartanburg office at some point, and I don't know if you
25 happen to know whether or not that was actually filed here

1 with the clerk of court yet or not. We're just trying to
2 determine that.

3 THE COURT: We've mailed it to the Clerk's Office.

4 MR. TESSIER: Can we -- is it fair for us just to offer
5 it under the assumption that either it has been or will be
6 filed and just treat it like it has been filed?

7 THE COURT: You'll have to talk to the clerk about
8 that. I don't know whether he's filed it or not. We have
9 mailed that document back to the Clerk's Office.

10 MR. TESSIER: And we'll make a copy of it an exhibit,
11 but it may be a non---

12 THE COURT: I understand. I understand. But, again, I
13 don't know what the status of it is at this point in time.
14 Maybe check with the clerk.

15 All right. We're in recess for lunch. We'll resume at
16 two o'clock.

17 Court's in recess.

18 Thank you very much.

19 (WHEREUPON, Court was in recess for the lunch hour.)

20 (WHEREUPON, the deposition of Larry Greer was marked as
21 Court's Exhibit No. 1 for identification purposes only at
22 this time.)

23 THE COURT: All right. Come to order please.

24 Ready with your next witness?

25 MR. GENTRY: We are, Your Honor.

Charles Alford - Direct examination
by Mr. Gentry

1 Anderson County calls Doctor Charles Alford.

2 Doctor Alford is outside.

3 THE COURT: All right. Doctor Alford, if you'll come
4 down to the center and be sworn please.

5 Thank you, sir.

6 DOCTOR CHARLES ALFORD, being first
7 duly sworn, testified as follows:

8 CLERK: If you would, take the witness stand please,
9 sir, and state your name for the record and spell your last
10 name for the reporter please.

11 WITNESS: My name is Charles Alford. It's A-L-F-O-R-D.

12 THE COURT: Mr. Gentry, your witness.

13 MR. GENTRY: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. GENTRY:

17 Q Good afternoon, Doctor Alford.

18 A Hey, Mr. Gentry.

19 Q What do you, what do you do for a living?

20 A Well, I'm a retired professor at Furman. I was there
21 for 32 years. I've had a forensic economics practice for
22 about 40 years. I continued that after I retired.

23 Q What---

24 A Forensic economics is sort of a fifty cent term for
25 dealing with a lot of economics, financial issues related

Charles Alford - Direct examination
by Mr. Gentry

1 primarily to litigation.

2 Q Tell the Court, if you would, about your education.

3 A Bachelor of Arts, Wofford College, economics 1968.
4 Ph.D., Economics and Business Administration, University of
5 Alabama in 1971.

6 Q What did you teach while you were at Furman?

7 A I taught a variety of courses in economics and
8 business. Macroeconomics, microeconomics, urban economics,
9 personal finance, marketing, statistics. A lot of other
10 boring sounding things.

11 Q Does your forensic accounting practice entail a fair
12 amount of expert testimony?

13 A Yes, it does.

14 Q And what -- in what kinds and manners have you been
15 qualified as an expert?

16 A I've been qualified in issues regarding business
17 appraisal, regarding personal income, lost earnings, lost
18 fringe benefits. I do a fair amount of work in Family Court
19 with regard to the economics financial issues. I deal with
20 business litigation matters, unfair trade practices,
21 international property matters.

22 Q Have you, have you been qualified to testify, testify
23 as an expert in calculating present values?

24 A Yes, sir.

25 Q In the stream of income say?

Charles Alford - Direct examination
by Mr. Gentry

1 A Sure.

2 Q And, and valuing various assets and financial assets?

3 A Yes, I have.

4 MR. GENTRY: We would offer Doctor Alford as an expert
5 economist and as an expert in the, in the matter of
6 valuation and calculation of expected value, present value.

7 THE COURT: Any objections to his qualifications?

8 MR. DAVIS: None.

9 THE COURT: All right. He'll be qualified as such.
10 You may proceed.

11 MR. GENTRY: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 Q Doctor Alford, were you asked to perform certain
14 analyses in this case and render certain opinions?

15 A Yes, sir.

16 MR. GENTRY: Can I approach?

17 THE COURT: You may.

18 Q Doctor Alford, I'm gonna hand you three documents that
19 have been preadmitted as exhibits in this case. They are
20 Defendant's Exhibit 53, 54, and 55.

21 Are those the opinions that you rendered in response to
22 that request from Anderson County in this case?

23 A Yes, sir.

24 Q All right. Let's turn first to Exhibit 53, which is
25 the, the earliest dated report.

Charles Alford - Direct examination
by Mr. Gentry

1 Can you describe to the Court what you're asked to do
2 there?

3 A Yeah. You asked me to evaluate the, the master
4 employment agreement of Mr. Preston and to assess what I
5 would have, have computed his severance pay to be based on
6 the, the terms of severance identified in that master
7 employment agreement, and I compared that to a settlement
8 offer that was presented, I suppose, to Anderson County in,
9 I believe, November of 2008.

10 Q Are the materials that you considered in rendering that
11 forth, set forth in Exhibit 53?

12 A Yes, sir.

13 Q All right. What analysis did you perform or take us
14 through that analysis if you will?

15 A Okay. I'll try not to be long winded. Essentially I
16 identified some things that, that I would, would not have
17 taken any issue with and other things that I would have with
18 regard to that offer.

19 Q In comparison between the master employment agreement
20 provision and the demand from Mr. Preston?

21 A Yes, sir, that's right.

22 Q Okay.

23 A I saw no issues particularly with regard to three years
24 of salary, unused vacation, pay-out, sick leave, and comp
25 leave, 401-K contributions, the employer contribution to the

Charles Alford - Direct examination
by Mr. Gentry

1 South Carolina Retirement System, annual physical, and
2 insurance payments, health, life, dental, and disability for
3 up to six months.

4 For all of those items, I found that the, the value,
5 based on Mr. Preston's salary and a number of other issues,
6 those items totaled \$681,056. I thought clearly that that
7 was a measure of the severance based on the master
8 employment agreement.

9 Q So, was that, was that number then the, the minimum
10 value that you thought could appropriately be placed on the
11 severance provision of the master employment agreement?

12 A Yes, sir.

13 Q All right.

14 A There, there was one issue with regard to insurance
15 that, that I said in my report, and I will still say,
16 requires some interpretation I suppose by the Court in this
17 case. It, it references insurance, and I -- after
18 identifying a number of issues with regard to, to the
19 severance, it says further, in the event that the
20 administrator's terminated by the council, then in the
21 event -- in that event, all life, health, dental, disability
22 insurance, and all other county provided benefits shall
23 continue in full force and coverage for a period of six
24 months or until similar coverage, coverage is provided by a
25 subsequent employer.

Charles Alford - Direct examination
by Mr. Gentry

1 Honestly, I, I thought that could be interpreted two
2 ways. It might be that the, the meaning of this, this
3 phrase was that, in addition to these other severance items,
4 Mr. Preston would be provided insurance coverage for six
5 months, and I think it could be interpreted that, in
6 addition to the three year severance to which he was
7 entitled, there might be an additional six months of
8 insurance coverage, and honestly I, I did not opine as to
9 which one was correct. I presented it both ways.

10 Q So, did you perform an alternative calculation that,
11 that assumed more, the more generous payment to Mr. Preston?

12 A I did. If you, if you assume that the, the correct
13 interpretation of that was he would be provided with
14 insurance coverage for the full severance period of three
15 years, plus an additional six months, the number that I
16 computed increased to \$723,806. So, there was about a
17 forty-two, forty-three thousand dollar additional value
18 there if -- based on that interpretation.

19 Q And is the, is the difference then the question of
20 whether or not, under the terms of the master employment
21 agreement, he was entitled to an additional six months of
22 severance benefits?

23 A Yes.

24 Q All right. Let me call your attention to Item Number
25 24 in your, in this report, which is headed cost of

Charles Alford - Direct examination
by Mr. Gentry

1 purchasing additional S.C.R.S., South Carolina Retirement
2 System, service credit.

3 what was -- how did you treat that item?

4 A well, for purposes of this report, there was no
5 reference to that in the master employment agreement. So,
6 you know, what I said was I would not have included the, the
7 cost of purchasing additional retirement service credit as a
8 severance item if I were asked to compute the, the
9 severance.

10 Q Under the master employment agreement?

11 A Right.

12 Q All right, sir. Did -- does, does what you've
13 testified to adequately summarize, do you believe, that the
14 report we just talked about?

15 Have I missed anything?

16 A No, I don't think so. I mean I, I expressed some
17 differences between my interpretation and what the
18 settlement offer had been. The November settlement offer.
19 I don't really know if you need me to go into those or not.

20 Q But the result of those differences was that the number
21 that you calculated as the value of the severance provision
22 of the master employment agreement was lower than what was
23 set forth in those demands?

24 A Yeah, it would of been my view, either the 681,000 or
25 the 724,000.

Charles Alford - Direct examination
by Mr. Gentry

1 Q And, and your report sets forth the reasoning for those
2 figures?

3 A It does, yeah.

4 Q All right. Let me, let me turn your attention to the
5 second report that you rendered dated October 9th, 2012,
6 and I believe that's Exhibit 54, Defendant's Exhibit 54.

7 Can you describe for the Court what you were asked to
8 do with respect to this report?

9 A Yeah, I was asked to compute the present value of the
10 benefits that, that Mr. Preston will receive as a result of
11 the purchase of additional service credit as opposed to the
12 present value of the benefits that he had earned through the
13 end of 2008 without that additional purchase.

14 Q All right. And, again, your report sets forth the
15 matters that you've relied and assumed in forming those
16 calculations, is that correct?

17 A It does, yeah.

18 Q And among other things, did you rely on the affidavit
19 of Sharon Graham of the South Carolina Retirement System and
20 the exhibits thereto in performing this calculation?

21 A I did, yeah.

22 Q All right, sir. Take us through, if you would, the
23 calculation you performed and what conclusions you reached.

24 A Sure. The calculation of present value is just a, a
25 way of saying you're accounting for interest that can be

Charles Alford - Direct examination
by Mr. Gentry

1 earned on, on money if you're considering its value today.
2 Pension Benefit Guarantee Corporation provides us guidelines
3 with what those discount rates would be.

4 I knew the benefit that Mr., Mr. Preston began
5 receiving in January of 2009, and I knew the benefit that he
6 would have received reaching age 65 or reaching age 60 if he
7 had not had that additional service credit purchased.

8 what I did was to compute the present value of each one
9 of those. They account for cost of living adjustments
10 year-by-year, and I know precisely what those adjustments
11 were, and I know what they will be going forward because
12 they're gonna be limited in his case based certainly --
13 based on the current statute to \$500 a year. I computed the
14 benefits through the end of his, his statutory life
15 expectancy based on the South Carolina Code.

16 As of 12/31/2008, he was 45.7 years of age, and he had
17 a life expectancy of 32.78 years. That would go through
18 August 31 of 2041.

19 So, essentially, I developed a schedule of payments
20 from January 2009 through August of 2041, reduced those
21 payments to present value. When I did that, I computed the
22 present value of those, those payments that he, in fact,
23 will receive as a result of the buy-out and that was, in
24 present value dollars, that is \$1,184,542. In other words,
25 reducing the future benefits back to today's dollars. Say

Charles Alford - Direct examination
by Mr. Gentry

1 compare apples and apples.

2 Q And, Doctor Alford, you said today's dollars would --
3 your calculation was as of December 31st, 2008, is that
4 correct?

5 A Yes, that's, that's right, the date of the termination.

6 The, the total benefits he would -- he will receive are
7 some 3,211,000, but reduced present value, that's 1,184,542.

8 In fact, he had earned some retirement benefit. What
9 he had earned prior to that additional purchase would not
10 have commenced until age 60. Those payments, in present
11 value dollars, again as of 12/31/2008, were \$200,411.44.

12 So, the difference in those two numbers, the difference
13 between the 1-1-84 and the 200,400 is the present value of
14 the additional benefits which were purchased for Mr. Preston
15 by the county. That value -- the difference was \$984,131.

16 Q And, again, that's the present value of that difference
17 as of December 31st, 2008?

18 A Yes, that's how it would have been valued in terms of
19 the additional benefits he was to receive as of December 31
20 of 2008.

21 Q All right. And we've heard testimony in this case that
22 the amount that the county paid to purchase those additional
23 benefits was approximately 355 or \$356,000. So, the, the
24 present value, at the time of that purchase approximately,
25 was considerably greater than what was paid for that

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by Mr. Gentry

1 benefit.

2 Do you have any understanding of where that difference
3 arises or how that can come about?

4 A Sure. Yeah.

5 If, if the purchase of the additional service would
6 have simply entitled him to a higher benefit beginning at
7 age 60, then it would of probably been pretty much a wash,
8 you know. The -- pretty much what they paid for the
9 additional service would of been reflected in additional
10 benefits upon his retirement because the formula is
11 1.82 percent times years of service times ending average
12 earnings. What happened though was, with that purchase, he
13 received the right to begin receiving those benefits right
14 away.

15 From January 2009 until he reaches age 60, he will have
16 received \$1,333,000 of retirement benefits that wouldn't
17 have been available to him without that buy-out, and they
18 have a present value of about \$804,000.

19 After age 60, because his benefits started earlier at a
20 higher level, and there will have been cost of living
21 increases all throughout, after he reaches age 60, he will
22 receive \$883,000 in benefits more than he would have
23 received without that purchase, and the present value of
24 that is right at \$180,000.

25 So, most of that additional value, the, the

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1 overwhelming amount, came because it enabled him to begin
2 drawing benefits right away.

3 Q And then the, the second number you mentioned is, is
4 the result of increased benefits after age 60 --

5 A Yes.

6 Q -- over what he could have drawn based only on his
7 actual services?

8 A Yeah, yeah. I mean I won't -- I'll try not to be
9 too -- for example, when he reached age 60, if he hadn't had
10 that additional -- if that -- if the county had not
11 purchased that additional service for him, his initial
12 monthly pension would of been \$4,109. That's where it would
13 of started.

14 What's happened is that his initial pension, in January
15 of 2009, was, I forget, 7,000 some odd dollars. And by the
16 time he reaches 60, with cost of living adjustments, that
17 will be \$8,105. So, you know, when he gets to 60, he's
18 gonna have the benefit about twice what he would of had.

19 Q Doctor Alford, you compared the, the present value of
20 the stream of pension benefits that Mr. Preston, Preston is
21 currently receiving with the hypothetical stream that he
22 would have been entitled to receive, absent the purchase of
23 credits, as when he reached age 60.

24 It's, it's true, as I understand it, that Mr. Preston
25 could also have waited until age 65 to begin drawing a

Charles Alford - Direct examination
by Mr. Gentry

1 pension and drawing a larger pension, is that correct?

2 A He could of drawn a larger pension, but --.

3 Q Right.

4 And my question to you is which one of those would of
5 been more advantageous for Mr. Preston?

6 A Oh, age 60.

7 Q All right. So, you---

8 A So, although he could of drawn a larger pension at 65,
9 the present value would be smaller because he, you know, you
10 forego five years of benefits.

11 Q So, in, in performing the calculations and to calculate
12 the difference that you've described, you, you assumed, for,
13 for Mr. Preston, that he would take the option that would
14 give him the greater present value and started at age 60?

15 A Surely.

16 Q All right, sir. Let me ask you to turn your attention
17 now to the, to the third opinion that you were asked to
18 render in this case. I believe that's Exhibit 55.

19 A Yes.

20 Q And it's headed Palmetto Agricultural, Agricultural
21 Consultants.

22 Mr. Davis, I'll call it P.A.C.

23 what were you asked to do with respect to, to the
24 P.A.C. contract?

25 A You asked me to compare a contract that the county had

Charles Alford - Direct examination
by Mr. Gentry

1 with Palmetto Agricultural Consultants dated
2 September 4th, 2007, and a subsequent contract that it had
3 dated November 1st, 2008.

4 Q And, in particular, was the, the comparison of the --
5 under certain assumptions of the values of those two
6 contracts?

7 A Yes.

8 Q All right. And what, what analysis did you perform and
9 what conclusions did you reach?

10 A Well, I, I indicated to you that I thought the second
11 contract was, was clearly more, more valuable to Palmetto
12 Agricultural Consultants for three reasons.

13 First, the term of the first contract was
14 month-to-month. The term of the second contract was three
15 years, and you have to combine that with the fact that, if
16 the second contract was, was breached, then the county would
17 be liable for damages for breaking that, that second
18 contract.

19 So, with only the county being liable for breaking it,
20 and it being longer, that, that, you know, if I, if I were
21 negotiating with someone the, for a contract, I'd rather
22 have that second contract if I were Palmetto Agricultural
23 Consultants.

24 Second, the compensation, the hourly compensation in
25 the first contract was \$65. In the second contract it was

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by Mr. Gentry

1 75 increasing to 85 and increasing to 95 one, two, and three
2 years.

3 Q All right.

4 A However, of course, you have to recognize that the
5 second contract was a year after the first one. But that
6 increases, you know, way more than, than the inflation rate
7 was. I mean, in, in -- actually, in 2009, we had a negative
8 rate of inflation of about seven-tenths of a percent. So,
9 in terms of compensation, clearly the second contract was
10 better.

11 Q Did -- Doctor Alford, did you perform a calculation
12 assuming a certain number of hours per week to compare the,
13 the or to analyze the impact of the increased hourly
14 compensation rate under the contract?

15 A I did, yeah. There's a reference in the second
16 contract and it, it deals with the remedy for breach in case
17 the county broke the second contract. It, it is based on,
18 as if 30 hours per week had been invoiced. So, I used that
19 as a guideline.

20 If you do that, the, the second contract, over the
21 three year period, provided for payments of 397,000 --
22 \$397,800. The first contract, over the, over the same
23 period, would be \$304,200. So --.

24 Q So, for the same hours worked, the difference in the
25 rates makes that much difference?

Charles Alford - Direct examination
by Mr. Gentry

1 A A big difference, yeah.

2 Q All right. Did you also make a calculation of the, the
3 value of the liquidated damages clause that you referred to
4 that provided for remedy to P.A.C. in the event that
5 Anderson County terminated the contract?

6 A Yeah. If, if -- and, of course, that depended on when
7 they, when they, when they broke the contract if they did.
8 But the value---

9 Q Because, because the clause -- I'm sorry.

10 A The value -- the initial -- at the outset of the
11 contract, that values that same \$397,800. You know, if
12 Anderson County broke the contract, they would pay up to
13 that amount to Palmetto Agricultural Consultants.

14 Q So, that would, that would -- the \$397,800 would of
15 been the, the value, the liquidated damages value, if the
16 county had breached the contract in the first week?

17 A When it was signed, yes.

18 Q When it was signed.

19 And then, as time went on, because of the liquidated
20 damages provision was measured by the life of a contract,
21 that amount would decline?

22 A Exactly, yeah.

23 Q But it would not have declined in precisely linear
24 fashion because of the change in the hourly rate, is that
25 correct?

Charles Alford - Direct examination
by Mr. Gentry

1 A No, it would of, it would of -- based on the way I read
2 that, it would of declined linearly. It would still be
3 based on whatever the, the rate -- scheduled rate was for
4 the remaining period --

5 Q But the value---

6 A -- times three hours a week.

7 Q would you, would you agree with me that the value of
8 the third year of the contract would be greater than the
9 value of the second year of the contract --

10 A Of course.

11 Q -- because the hourly rate was great?

12 A Yes.

13 Q Doctor Alford, thank you very much. That was, that was
14 helpful. Please answer any questions Mr. Davis may have.

15 THE COURT: Mr. Davis, your witness.

16 MR. DAVIS: May I approach the bench, Your Honor?

17 THE COURT: Yes, you may. Thank you.

18 MR. DAVIS: May, may I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 CROSS-EXAMINATION

22 BY MR. DAVIS:

23 Q Afternoon, Doctor Alford. You and I have met before
24 and it seems like we just saw each other last week.

25 A That's about right, yeah.

Charles Alford - Cross-examination
by Mr. Davis

1 Q If you don't mind, I think that I'd like to go in
2 reverse order of what you just went in, and I'll, I'll go to
3 the report that you went through last, and then go to the
4 second report, and the second, and then what you went
5 through first third, and we'll just go backwards. So, in
6 the binder I've just handed you, that's actually -- your
7 third report would be Defense Exhibit 55.

8 Doctor Alford, can you identify where, in the second
9 P.A.C. contract, there is a minimum number of hours?

10 A No.

11 Q And, so, when you provided opinions on compensation,
12 you were using the number of hours that were prescribed
13 under the liquidated damage provision, were you not?

14 A Yes.

15 Q And that's not the number of hours that Anderson County
16 was required to use P.A.C. in any given month?

17 A No.

18 Q And, in fact, if Anderson County so choose, it could
19 reduce P.A.C. down to an hour a week, couldn't it?

20 A As far as I could see in the contract, yeah.

21 Q Because there's no minimum hours?

22 A No, there's not.

23 Q So, the scenario under which that you were operating
24 when you provided your opinions in the third report was that
25 the contract would of been terminated, correct?

Charles Alford - Cross-examination
by Mr. Davis

1 A No, I think I said if the contract were terminated. I
2 didn't assume that it would be.

3 Q If the contract were terminated, then your opinions
4 happened, right?

5 A well, I think that -- yeah, I mean that's what remedy
6 for breach addresses.

7 Q But if, on the other hand, Anderson County were to just
8 do the bare minimum amount of work with P.A.C., an hour a
9 week, for example, or an hour a week at \$75 an hour, how
10 many -- how much money would that be for a year number one,
11 doctor?

12 A Oh, you're asking me -- \$3,900 I think it is.

13 Q And if it went up by another \$10 in year number two,
14 how much would that be?

15 A Additional 520. 4,420.

16 Q So, we're at about 8,000.

17 And then if you did it in year number three and
18 increased by, by \$10 again, how much would that be?

19 A An additional 520. 4,940.

20 Q So, somewhere in the eleven, twelve thousand dollar
21 range total?

22 A If they did one hour a week, yes.

23 Q All right. So, under your report, for the, the number
24 that you identified, it's a big number, this \$397,800
25 number, they'd actually have to terminate for that, right?

Charles Alford - Cross-examination
by Mr. Davis

1 A They'd actually what?

2 Q They'd actually -- Anderson County would actually have
3 to terminate for the \$397,800 number to even apply in
4 anyway, right?

5 A That's what breach of -- that's a remedy for breach,
6 yeah, I think so.

7 Q But, but if Anderson County so elected and they didn't
8 terminate the contract in anyway, and they reduced it down
9 to one hour a week, it would of been \$13,000 all in, right?

10 A Yes.

11 Q Doctor Alford, can you turn back to the second report
12 for me?

13 Doctor Alford, can I get you some water?

14 A That would be great. Thanks.

15 MR. DAVIS: May I approach, Your Honor?

16 THE COURT: You may.

17 A Thank you.

18 Q Now, if I understood correctly, and I left the
19 stipulation over here and I went over to get it, you, you
20 based this report, Report Number 2, upon the calculations
21 provided by two individuals, Tammy Nichols and Sharon
22 Graham, is that right?

23 A Yes.

24 Q And during the compilation of your second report, what
25 did you do to ensure that the data that the two of those

Charles Alford - Cross-examination
by Mr. Davis

1 individuals used was actually accurate and true?

2 A I assumed that they were.

3 Q And can you tell me what the educational background of
4 Ms. Graham is?

5 A No.

6 Q And can you tell me what the educational background of
7 the other person who my tired mind has just left?

8 Tammy Nichols, what is Tammy Nichols -- where did she
9 go to school?

10 Do you know?

11 A Don't know.

12 Q And did you go through any of the data that they used
13 to ensure that there wasn't mistakes or errant numbers
14 included?

15 A No.

16 Q And, so, is it fair to also say that your second report
17 and its reliability hinges upon the accuracy of the data
18 upon which you calculated it?

19 A Sure.

20 Q And if that data is errant, then also your report would
21 be errant, correct?

22 A To that extent, yes.

23 Q And you haven't done anything to make sure that the
24 underlying data is, in fact, accurate?

25 A That's correct.

Charles Alford - Cross-examination
by Mr. Davis

1 Q Is it also true that you haven't done anything to
2 ensure that the persons who calculated that data or compiled
3 it in the first place actually had the qualifications to
4 compile it?

5 A That's correct.

6 Q Let's look at your first report, and before we do that,
7 let's, let's go back to Plaintiff's Exhibit 1, which should
8 be the very first tab.

9 As I understand what you did in relation to your first
10 report, you, in part, reviewed the master employment
11 agreement, which is under Plaintiff's Exhibit No. 1?

12 A Yes, sir.

13 Q And then you also looked at some settlement proposals
14 that were made during the course of negotiations?

15 A Yes, sir.

16 Q Is that right?

17 A That's correct.

18 Q And then what you did, you took those settlement
19 proposals and you put them into a, a nicer chart. I
20 appreciate you doing that.

21 But that -- you put that chart together and compared
22 them side-by-side, right?

23 A I did.

24 Q And did you become aware, at some point, that part of
25 the calculations that were done in relation to the buy-out

Charles Alford - Cross-examination
by Mr. Davis

1 amount underneath the master employment agreement were
2 actually performed by the finance director for Anderson
3 County?

4 Did you know that?

5 A No.

6 Q And during the time that you were compiling your first
7 report, did Anderson County make their finance department
8 person available to you so you could discuss how she
9 compiled those calculations?

10 A No.

11 Q And if that person were under and still employed with
12 Anderson County at all times, that would be someone you'd
13 actually like to talk to, wouldn't it?

14 A No.

15 Q It wouldn't be?

16 A No.

17 Q You wouldn't want to know how she calculated the
18 numbers?

19 A No.

20 Q Do you know -- you look down the lines and have
21 questions about why one calculation was used over another,
22 you wouldn't actually want to talk to the person who did it?

23 A No, it doesn't matter. You know, the, the -- they,
24 they made a purchase of additional service. If they made
25 that purchase, then they did. The computation of the

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by Mr. Davis

1 purchase doesn't affect my computations.

2 Q Doctor Alford, you realize, at this point, we're
3 talking about the first report that you issued, correct?

4 A The purchase of the additional service?

5 Q No, sir, that was your second report. Your---

6 A That's included in the first report.

7 Q And your, and your first report though is the report
8 about the calculations underneath the severance agreement.

9 Do you remember that?

10 A Oh, you're talking about more than just the severance,
11 yeah. Sure. Yeah, I took those from Mr. Preston's
12 attorney's chart.

13 Q And the question I was asking you is did you realize
14 that there was also a calculation compiled by the finance
15 department at -- in Anderson County?

16 A No, I'm sorry. I didn't realize that.

17 Q And all those -- remember all lines, I think it was 1
18 through 25, and you put up here on the chart and you had a
19 bunch of opinions?

20 Do you remember all that?

21 A Yes.

22 Q And she, she played an instrumental part in coming up
23 with the calculations in those 1 through 25 lines.

24 Did you know that?

25 A No.

Charles Alford - Cross-examination
by Mr. Davis

1 Q And did you talk to her when you were trying to
2 calculate your own calculations with respect to Categories 1
3 through 25?

4 A No.

5 Q Would she be someone that you would of liked to have
6 talked to when you were rendering your own report?

7 A No, not really. As, as you're aware, I accepted a
8 number of the calculations by Mr. Preston's attorney, and I
9 assumed those were accurate. If, if you're gonna say they
10 were not, then, you know, that's another issue. But I
11 accept them as being accurate.

12 Q I'm just asking you whether, if, if talking to the
13 person who calculated the numbers in the first place, would
14 of been useful or someone you'd like to talk to?

15 A No, it wouldn't of been.

16 Q Can you turn to Plaintiff's Exhibit No. 1 for me, and
17 that, that was the master employment agreement itself?

18 A Okay. I'm there, yeah.

19 Q The first question that I'd like to ask you relates to
20 the very last page of this reading. It's Page 9.

21 On Page 9, there's a section that's 17-D, and the
22 second sentence in that section states, and I quote, "it is
23 the intent of the parties to this agreement that the
24 agreement be applied, executed, and enforced to the maximum
25 extent possible at anytime consistent with State Law as then

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by Mr. Davis

1 in effect to the benefit of the administrator. The
2 administrator shall receive the maximum benefit of each and
3 every provision of this agreement as may be permitted by law
4 or the Constitution at any point in time."

5 Do you see that?

6 A Yes, sir.

7 Q And it's true, is it not, that when you were rendering
8 your opinions in your relation to your first report, you did
9 not take that provision into account?

10 A That's correct. You and I talked about that last week.
11 In fact, what I told you was that I, to me, that means that
12 any benefit to which he was entitled should be included in
13 the computation. I did not make a qualitative judgment as
14 to what the maximum benefit might be though.

15 Q But out of fairness to me, doctor, I also asked you
16 whether you were gonna have any legal opinions or legal
17 interpretations of the master employment agreement, did I
18 not?

19 A Yeah, but actually that followed my statement saying
20 that I could not make a legal interpretation.

21 Q So, with respect to your opinions as contained in
22 Report Number 1, you didn't take into account Paragraph 17-D
23 because you're not capable of making the legal opinions
24 about its interpretation?

25 A No, that's exactly right. Not with regard to what the,

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1 the State of South Carolina Constitutionally mandates.

2 That's not my bailiwick.

3 Q well, that's not exactly what it says, does it, doctor?

4 Doesn't it say, and I quote, "it is the intent of the
5 parties to this agreement that the agreement be applied,
6 executed, and enforced to the maximum extent possible at
7 anytime consistent with State Law as then in effect to the
8 benefit of the administrator," right?

9 That's what it says?

10 A It does and that's just what we just read. But it also
11 says every provision of this agreement, as may be permitted
12 by law or Constitution at any point in time. I'm -- all I'm
13 saying is that I'm not gonna pretend that I can interpret
14 the law of the State of South Carolina.

15 Q Fair enough. I just want to understand fully what your
16 opinions include and don't include.

17 If you turn back one page to Page 8 for me?

18 A (Witness complies.)

19 Q Can you look at the provision that's under Section 14?
20 It's entitled indemnification.

21 A I see it.

22 Q Underneath this provision, it states, and I quote, "the
23 county shall defend, safe harmless, and indemnify the
24 administrator against any tort, professional liability,
25 claim, or demand, or other legal action where the grounds or

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by Mr. Davis

1 otherwise arising out of an alleged act or omission
2 occurring," dot, dot, dot. I'll skip down to the next
3 sentence through that.

4 But the next sentence says, "said indemnification shall
5 extend beyond termination of employment in the otherwise
6 expiration of this agreement to provide full and complete
7 protection to the administrator by the county as described
8 herein for any actions undertaken or committed in his
9 capacity as administrator."

10 It's true, is it not, and we agree that Section 14, the
11 section entitled indemnification, has economic value?

12 A Yes.

13 Q And as written, Section 14 is intended to extend beyond
14 the termination of the master employment agreement?

15 A Yes.

16 Q Doctor, will you turn and look at Plaintiff's Exhibit 7
17 for me, which should be the -- oh, wait, before we go, let's
18 do one more.

19 On Page 4 of the master employment agreement, which is
20 still in Plaintiff's Exhibit No. 1, there's a subparagraph
21 all the way down at the bottom that's Lettered E.

22 Do you see it?

23 A Yes, I do.

24 Q And that provision states, and I quote,
25 "contemporaneously with the delivery of all severance paid

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by Mr. Davis

1 and entitlements herein and above set out, the administrator
2 agrees to execute and deliver to the county a release
3 releasing the county of all further claims that the
4 administrator may have against the county."

5 Did I read that correctly?

6 A Yes, you did.

7 Q Now, doctor, can we agree that the value, the economic
8 value of a release hinges upon its scope?

9 A Yes.

10 Q In other words, the bigger its scope is the more
11 valuable it is?

12 A Yes.

13 Q And the narrower it is, the less value it is?

14 A Sure.

15 Q Doctor, if you don't mind, can we turn to Plaintiff's
16 Exhibit 7 now, and specifically I'd like to turn your
17 attention, doctor, to Page 2 of Plaintiff's Exhibit 7, and
18 for record purpose, Plaintiff's Exhibit 7 is the severance
19 agreement, and turn our attention down to Paragraph 6 on
20 Page 2.

21 Paragraph -- and I, I'm gonna have to beg your apology
22 for reading this cause it's a little bit verbose, but I, I
23 have a reason to do it cause I need to follow-up with a
24 question. So, I'm sorry in advance.

25 But Paragraph 6 states, and I quote, "in consideration

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by Mr. Davis

1 of the county's agreement to provide employee with the
2 severance payments described in this agreement, employee,
3 for himself, his heirs, his legal representatives, and his
4 assigns, hereby covenants irrevocably never to make any
5 claim or demand or to commence, cause, or permit to be
6 instituted or prosecuted any suit, charge, proceeding, or
7 action at law, or in equity against the county," and I
8 believe that's a typo, "or any of its council members,
9 employees, managers, officers, board members, or any of its
10 affiliated parts, entities, or subsidiaries as well as
11 successors and assigns of those entities and persons by
12 reason of any claim, demand, or cause of action which
13 employee may now have my or may hereinafter acquire relating
14 to his employment and/or the termination of his employment
15 with the county expressly including, but not limited to, the
16 termination of and/or the conditions of his employment with
17 the county."

18 Doctor, previously we've read Subparagraph E in the
19 master employment agreement.

20 Do you remember that?

21 A Yes.

22 Q And then we just read Paragraph 6 in the severance
23 agreement, and my question to you is Paragraph 6 broader or
24 narrower than Paragraph E in the master employment
25 agreement?

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by Mr. Davis

1 A Broader.

2 Q And, therefore, Paragraph 6, as I understand your
3 testimony earlier, is more valuable, from an economic
4 standpoint, than Subparagraph E in the master employment
5 agreement?

6 A Yes.

7 Q Doctor, would it be fair to characterize the
8 calculation that you made, with respect to your first
9 report, as an endeavor at mechanically calculating the
10 buy-out amount prescribed by the master employment
11 agreement?

12 A Yes.

13 Q So, in other way -- in other words, to get rid of all
14 that verbiage, you took the master employment agreement and
15 you wanted to see how much, under the four corners, is the
16 buy-out, right?

17 A That's correct.

18 Q You didn't take into consideration anything that would
19 involve things outside the four corners of the master
20 employment agreement, did you?

21 A That's correct.

22 Q And at any point during your analysis, did anyone
23 inform you that Mr. Preston's attorney had asserted claims
24 beyond the four corners of that document?

25 A That was included in one of the letters and one of the

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by Mr. Davis

1 settlement letters, yes.

2 Q But you were asked not to calculate things beyond just
3 the four corners of the, the document, correct?

4 A No, that's not exactly right. I was not, I was not
5 asked not to do something. I was simply asked to evaluate
6 the buy-out identified in the master employment agreement.

7 Q That is a fair distinction. I appreciate that and I
8 didn't, I didn't mean that to come out the way I think I
9 did. I'm just getting a little tired at the end of the day.

10 You were asked to do something specific, specific,
11 right?

12 A Sure.

13 Q It was to calculate the buy-out under the master
14 employment agreement?

15 A That's right.

16 Q Right?

17 And the thing that you were asked to do that was very
18 specific wasn't including anything that exceeded the four
19 corners of that document, right?

20 A That's right.

21 Q And Mr. Preston's claim, as you further learned at a
22 later point, actually included things beyond the four
23 corners of that document, right?

24 A No, I didn't learn that at a later point. It was
25 included in -- at least a reference to possible claims was

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by Mr. Davis

1 included in the settlement letter that I reviewed. So, it
2 wasn't information that came to me later.

3 Q It was information you knew.

4 You just didn't calculate anything beyond the four
5 corners?

6 A It's information what?

7 I'm sorry.

8 Q It was information that you knew, but it wasn't -- you
9 just didn't calculate anything beyond the four corners,
10 right?

11 A That's correct.

12 Q With respect to potential tort claims, you didn't do
13 any work trying to evaluate an economic value of tort
14 claims, did you?

15 A I did not.

16 Q Doctor, if you don't mind, let's -- just ticking
17 through a couple things in your report, did you -- I think I
18 can try to finish up a little bit.

19 If you'll turn, I believe the first report is Defense
20 Exhibit 53.

21 On Page 2 of your report, doctor, there's a section at
22 the very top. It's not numbered, but it says duration of
23 severance pay period.

24 Do you see that?

25 A Yes.

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by Mr. Davis

1 Q And in that section, duration of the severance pay
2 period is identified as 36 months, correct?

3 A Yes.

4 Q So, the term or the unit of time that we'll be looking
5 at is a 36 month period with respect to calculating the
6 buy-out amount underneath the master employment agreement?

7 A If you're -- well, I want to be careful in answering
8 that cause you and I talked about this a week ago.

9 The, the duration of the severance pay period was three
10 years, 36 months. I did not consider that a term in the
11 sense of his compensation per term. I considered that to be
12 annual compensation.

13 Q Well, respectfully you jumped ahead of me a couple
14 questions.

15 All I wanted to know was does your report reflect that
16 the duration of this, of the period of time that's at issue
17 in the severance pay period, is that 36 months?

18 A Thirty-six months, that's correct.

19 Q So, the unit of time we're looking at is 36 months?

20 A Yes.

21 Q And then down below is the part where I think you
22 skipped ahead, which is okay, but -- and that's under number
23 one, and the question I have for you there is that what you
24 did, if I understand correctly, was you calculated the
25 salary provision underneath the buy-out amount at \$167,838

Charles Alford - Cross-examination
by Mr. Davis

1 because that was Mr. Preston's salary then in effect,
2 correct?

3 A The date of his termination, yes.

4 Q But another way you could of done it, doctor, in
5 calculating a rate of pay, was to look at the unit of time
6 as 36 months, correct?

7 A No, you and I talked about that. I could not have done
8 that. You could do that, and, and you apparently have
9 chosen to. When the phrase says at the rate of pay upon
10 termination, I interpreted that to mean the annual rate of
11 pay.

12 Q A rate is compensation over time, right?

13 A I considered it to be the annual rate of pay.

14 Q I understand that, doctor, but I'm just asking you a
15 more basic question.

16 A And it is?

17 Q A rate is the compensation over a period of time.

18 A Sure.

19 Q Might be an hourly rate.

20 Q And your opinion assumed that the unit of time should
21 be 12 months?

22 A For measuring his rate of pay, yes.

23 Q And up above, when we looked directly above where it
24 says duration of severance pay period, you concede there you
25 used the unit of time of 36 months?

Charles Alford - Cross-examination
by Mr. Davis

1 A Of course I did.

2 Q In relation to the master employment agreement, which
3 is under Tab 1, Plaintiff's Exhibit 1, Page 5, Section 4
4 includes section entitled salary, does it not?

5 A I'm sure it does, yeah.

6 Q And what Section 4 of Page 5 of Plaintiff's Exhibit 1
7 reflects that the administrator, at any given time, was
8 entitled to a pay step increase on an annual basis of two
9 percent, correct?

10 A That's correct.

11 Q And when the finance director for the county who
12 calculated the buy-out amount that really is at issue, she
13 increased the amount by two percent any year number two and
14 year number three, correct?

15 A She may have. I don't know. You -- we talked about
16 that earlier. I don't know who made that computation.

17 Q Your calculation assumed a flat amount in year one,
18 year two, and year three, right?

19 A That's correct.

20 Q And the other calculation didn't remain flat?

21 It increased by some in year two and increased in some
22 amount in year number three, right?

23 A The other calculation---

24 Q The calculation---

25 A ---that's in the settlement offer?

Charles Alford - Cross-examination
by Mr. Davis

1 Q Yes.

2 A Yes.

3 Q Now, doctor, if I understand your report correctly,
4 switching back to Defense Exhibit 53 -- I'm sorry to jump
5 around on you so much.

6 The second item was about Social Security and Medicare
7 taxes of the employer, and what I wanted to know about that
8 item was did you, at some point, become aware that that
9 specific item, that that specific amount, which I think was
10 about \$24,243, did, did you ever become aware -- did anyone
11 tell you that that amount was specifically discussed between
12 opposing counsel, one for the county, one for Mr. Preston,
13 during their negotiations of the severance agreement?

14 A Yes, I had a copy of the correspondence.

15 Q You had a copy of their correspondence?

16 A Yes.

17 Q Do -- you knew, you knew, by reviewing that
18 correspondence, that they didn't know what to do with that
19 number, correct?

20 A No, I didn't know that.

21 Q So, did you not have all of the correspondents?

22 A I saw an explanation from, from Mr. Preston's counsel,
23 Rob Hoskins, saying here's how I computed it. I don't know
24 what the parties ultimately agreed to.

25 My opinion was simply this. The demand -- the

Charles Alford - Cross-examination
by Mr. Davis

1 settlement letter asked for compensation before the end of
2 2008. My whole point was this. If that's when the
3 compensation was made, then the employer FICA would not
4 exceed the 1.45 percent Medicare payment because Mr.
5 Preston's total compensation would of already exceeded the
6 Social Security maximum.

7 Q I understand that.

8 what I was specifically -- what I was specifically
9 trying to ascertain, doctor, was whether your opinions, with
10 respect to the \$24,000 number, took into, took into account
11 or were informed by the core, pieces of correspondents, one
12 from Tom Bright to Mr. Hoskins and one from Mr. Hoskins to
13 Tom Bright, that specifically cite the exact number that
14 you've identified in your section, second section of your
15 report?

16 A No.

17 Q Did they---

18 A It did not. I mean I was asked to assess what I
19 thought the value would be and that's what I did.

20 Q And as to Items 3, 4, 5 and 6, as I understand it, you
21 didn't really have any, any issues with those items,
22 correct?

23 A That's right.

24 Q As I understand it, Item 13 is the same sort of
25 fishbone that's caught in our throat as relating to Section

Charles Alford - Cross-examination
by Mr. Davis

1 17-D of the master employment agreement, and that is to say
2 that the answer -- the issue you identify in Section 13 is
3 gonna require some sort of legal interpretation, is that
4 right?

5 A Are you talking about supplemental long term disability
6 insurance?

7 Q Yes, sir.

8 A That's Item 13?

9 Q The next, the next contested item in Section 13,
10 correct?

11 A In my report, Number 13 says supplemental long term
12 disability---

13 Q Correct.

14 A ---insurance.

15 Q And then if you turn the page to Page 4, doctor, the
16 first line of the next section -- oh, did I get those out of
17 order?

18 Is that the problem?

19 No, I got it.

20 The next section says, and I quote, "this wording is
21 subject to legal interpretation," does it not?

22 A Yeah, but that, but that -- that does not relate to
23 just Item 13. That---

24 Q Right.

25 A ---relates to what I talked about in my direct

Charles Alford - Cross-examination
by Mr. Davis

1 examination. All of that life, health, dental, and
2 disability insurance.

3 Q Basically all of the insurances, right?

4 A Sure.

5 Q And the issue there is a legal interpretation needs to
6 be made, and you're just not the guy who's gonna do that,
7 right?

8 A That's what I said. That's why I did it two ways.

9 Q Doctor, as always, I've enjoyed talking to you, and I
10 appreciate you, your willingness to come down and testify
11 today. Thank you for your time.

12 A Thank you.

13 THE COURT: Redirect, Mr. Gentry.

14 MR. GENTRY: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. GENTRY:

18 Q Doctor Alford, briefly. All lawyers commence their
19 exams that way.

20 But Mr. Davis asked you a couple of questions that
21 related to Items 1 and 2 in his, in the notebook that he
22 handed you, which are respectively the master employment
23 agreement and the severance agreement and release of claims.

24 Let me ask you, if you would, to look first at, at his
25 Tab 2, severance agreement and release of claims, Paragraph

Charles Alford - Redirect examination
by Mr. Gentry

1 6, the release that he talked to you about.

2 Is it your understanding that, that that is an actual
3 release provision that is designed to release claims?

4 Do you---

5 A I don't know. You know, he read it to me and I said it
6 looks like a broader release so -- then, then the other one.
7 But I don't have a whole lot of opinion about legal
8 releases.

9 Q Fair enough and I think I -- but let me, let me ask you
10 one more question and the answer may be the same.

11 If you'll look at, under Tab 1, at the master
12 employment agreement. On Page 4, Mr. Davis asked you about
13 the last item on that page, which is Subsection E.

14 Do you have an opinion about whether that is an
15 actual -- that is an actual release language as opposed to
16 being a promise to enter into some release in the future?

17 A No, no, I don't have any opinion about that.

18 Q Mr. Davis asked you about your knowledge of the
19 bona-fides of Sharon Graham and Tammy Nichols who provided
20 the affidavits under which you've relied for your second
21 report. Those affidavits are, are stipulated as testimony
22 in this case.

23 Do you recall whether those affidavits identified for
24 whom those two women worked?

25 A Yes.

Charles Alford - Redirect examination
by Mr. Gentry

1 Q Okay.

2 A Sharon Graham is program director customer claims,
3 South Carolina Public Employee Benefit Authority. I don't,
4 I don't recall the other lady.

5 Q All right. Your report says that you relied on the
6 Sharon Graham affidavit.

7 Do you---

8 A That's correct.

9 Q Is it possible that you did not rely on Tammy Nichols
10 affidavit?

11 A I never referenced her affidavit.

12 Q I'm gonna take this opportunity to hand up three
13 exhibits that have been preadmitted that are Plaintiff's
14 Exhibit 76, 76-A, and 77, which are the 2007 and 2008
15 Palmetto Agricultural Consultants agreement. Then the, the
16 draft that, that transmitted between Ms. Schaum and
17 Mr. Preston dated October 27th.

18 MR. DAVIS: One second.

19 THE COURT: Sure.

20 MR. DAVIS: I'm sorry. That's 76---

21 MR. GENTRY: 76, 76-A, and 77.

22 MR. DAVIS: No problem.

23 MR. GENTRY: All right. Your Honor, may I approach?

24 THE COURT: You may.

25 Q And I've identified these together, Doctor Alford.

Charles Alford - Redirect examination
by Mr. Gentry

1 My question for you is going to be only about 77,
2 which is the 2008 P.A.C. contract. Mr. Davis suggested to
3 you that a good way for the county to get out of its buy-out
4 obligation under this contract would be to pay Palmetto
5 Agricultural Consultants an hour a week.

6 MR. DAVIS: Your Honor, I object to the question. I,
7 at no point, actually said anything along those lines. I
8 just said they were reduced to a minimum. I didn't say
9 anything about trying to get out of the contract.

10 MR. GENTRY: I'll withdraw that.

11 THE COURT: Thank you.

12 Q Mr. Davis asked you questions about what the value of
13 this contract would be if the or the value to Palmetto
14 Agricultural Consultants of -- the total payments would be
15 if the county paid all, engaged her for only one hour a
16 week.

17 Do you recall those questions?

18 A I do.

19 Q And Mr. Davis also asked you if you were aware of any
20 provision in this Exhibit 77 that provided for a minimum
21 amount of hours.

22 A No.

23 Q All right. Let me just---

24 A Yes, he did ask me that.

25 Q And you said you were not aware of such a creature?

Charles Alford - Redirect examination
by Mr. Gentry

1 A That's right.

2 Q Let me direct your attention to the third page of this
3 contract, Exhibit 77.

4 Do you see the first -- Item 2 identifies services to
5 be provided, is that correct?

6 A That's correct.

7 Q And there are then five bolded areas of endeavor of
8 P.A.C., is that correct?

9 A That's correct.

10 Q And do you see down below that Paragraph 2.2?

11 A I do.

12 Q I'm gonna read 2.2 and you just identify what -- tell
13 us whether I've read it correctly.

14 2.2. Vital services. Anderson County recognizes that
15 the services under this agreement are vital to Palmetto
16 Agricultural Consultants, LLC, and must be continued without
17 interruption.

18 Did I read that correctly?

19 A Well, I think if -- I, I think that, if, if all those
20 services identified in those five items are to be done,
21 they're not gonna be done in one hour a week.

22 MR. DAVIS: Your Honor?

23 Your Honor, I -- it's getting late in the day. So, I
24 kind of appreciate why it's occurring, but this, this is his
25 witness. So, I understand that I get to lead the witness,

Charles Alford - Redirect examination
by Mr. Gentry

1 but I don't know -- aware that he can call an expert and
2 then rehabilitate by leading him into it. So, I have to
3 object.

4 MR. GENTRY: I---

5 THE COURT: Go ahead.

6 MR. GENTRY: I wasn't sure precisely how I led him. I
7 just read him a provision of the contract.

8 THE COURT: Well, leading is, in my definition, is when
9 you ask questions that suggests answers. I'll urge you not
10 to do that.

11 MR. GENTRY: All right, sir.

12 Q Do you have any understanding, Doctor Alford, about
13 whether the services to be provided under this agreement
14 could be accomplished in an hour a week?

15 A No.

16 Q No further questions.

17 THE COURT: Anything further?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: Sir, you may step down. I would assume
20 that you'd like to release this witness, is that correct?

21 MR. GENTRY: We would, Your Honor.

22 THE COURT: Any objection, Mr. Davis or---

23 MR. DAVIS: No, Your Honor.

24 THE COURT: All right. Doctor Alford, I do need to
25 make you aware, as I have all witnesses, there is a

1 sequestration order in effect for all witnesses and
2 witnesses are required not to discuss their testimony, even
3 after they've testified, with anyone until this case has
4 been concluded.

5 Do you understand that?

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you very much. You have a good
8 afternoon.

9 THE WITNESS: Yes.

10 THE COURT: All right. We're gonna take a short five
11 minute break.

12 The Court will be in recess.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: Sorry for my delay, but I was talking with
15 Court Administration, and it appears that I will be
16 reassigned here next week. So, we do intend just to
17 continue until the case is over. So, you can make plans
18 accordingly, and those will be firmed up hopefully tomorrow,
19 but it appear -- does appear that we will be able to spend
20 next week here.

21 All right. You may call your next witness.

22 MS. PARHAM: Anderson County calls Cindy Wilson.

23 THE COURT: All right. Come forward and be sworn
24 please in the center.

25 CINDY WILSON, being first duly

Cindy Wilson - Direct examination
by Ms. Parham

1 sworn, testified as follows:

2 THE CLERK: If you would take the witness stand please,
3 ma'am, and state your name for the record and spell your
4 last name for the court reporter.

5 THE WITNESS: My name is Mary Cindy Wilson. I go by
6 Cindy Wilson.

7 THE COURT: Your witness, counsel.

8 DIRECT EXAMINATION

9 BY MS. PARHAM:

10 Q Good afternoon, Ms. Wilson.

11 A Good afternoon.

12 Q Where do you currently reside?

13 A [REDACTED]

14 Q And what do you do for a living?

15 A Well, it's a little hard these days, but I'm a real
16 estate broker and a farmer.

17 Q And where did you go to school?

18 A I finished at Hanna High School here, and then I
19 finished at USC in Columbia.

20 Q Are you currently a member of Anderson County Council?

21 A I am.

22 Q How long have you been a member of the county council?

23 A I was sworn in January 2001.

24 Q And you've served ever since continuously?

25 A I have.

Cindy Wilson - Direct examination
by Ms. Parham

1 Q How would you describe the political environment in
2 Anderson County leading up to November of 2008?

3 A Do you need a, a long explanation?

4 It was a very challenging time.

5 Q And perhaps, in, in general terms, we'll get into
6 specifics later, but, in general terms, what made it so
7 difficult?

8 A There was a very difficult environment. From the
9 moment I came on in 2001, I had difficulty being provided
10 financial reports, particularly in a timely manner, getting
11 answers to questions that were necessary. There were, I
12 believe, morale issues among county employees. I believe
13 that there was a lack of leadership from the top, and
14 there's just great turmoil. Our citizens were quite angry
15 with us. They had had a major tax increase a few years
16 before, and they didn't think that we were spending their
17 money wisely.

18 Q Did you have concerns about the administrator?

19 A I did.

20 Q Can you describe those concerns?

21 A There -- well, first of all, I did write asking who was
22 minding the store because there were some -- there were lots
23 of transfers from one item to another that were showing up.
24 The general ledger reports indicated what, to me, appeared
25 to be wasteful questionable spending. There's just a, a

Cindy Wilson - Direct examination
by Ms. Parham

1 litany of concerns. I felt like there was some personnel
2 issues too.

3 Q You mentioned a financial -- financial issues.

4 How would you -- would you describe the, the
5 financial -- the finances of Anderson County as transparent?

6 A No.

7 Q Can you describe to me why you felt that it was not?

8 A Well, I had difficulty getting the forms. I would find
9 the credit card expenditures, and when I would -- when I
10 finally did get to see some of the credit card billing
11 statements, I had identified what appeared to be 23 separate
12 credit cards. I had been requesting to see those
13 statements, and it appeared that the funds were being spent
14 numerous times and meals and other questionable ways. It,
15 it didn't seem to match what our policies were. There would
16 be no back-up and no explanation. We couldn't get
17 explanations.

18 Q It appeared to you that the credit cards were being
19 used for improper reasons?

20 Is that what you're saying?

21 A Well, we had a per diem and credit card policy. It
22 wasn't met. Frequently, credit card usage exceeded per
23 diem, and we had massive amounts of money going to
24 consultants and legal. Some of the infrastructure costs
25 appeared to be over what would of seemed to be proper or

Cindy Wilson - Direct examination
by Ms. Parham

1 reasonable.

2 Q Are you referring to, to blanket invoices?

3 A That was one of the things that troubled me greatly
4 that we were using---

5 Q Can you describe---

6 A ---blanket invoices for engineering, and what caught my
7 attention most was the Michelin project. Of course, we had
8 to have a road to access a major industry, but it went all
9 over the place. The invoices would frequently say blanket
10 invoice, no specific project, and then I found -- one
11 invoice in particular that caught my eye was one that was --
12 I think it was about 252 -- 256,000 paid to B.P. Barber
13 Engineering Firm, and I took it to a local engineering
14 company, and showed it to one of the engineers. And I asked
15 him if that looked appropriate. It seems like it was for
16 staking out observing construction and certain linear
17 footage.

18 MR. DAVIS: Your Honor, narrative---

19 A It turned out that he was the subcontractor.

20 THE COURT: All right. I'm gonna allow -- I think
21 she's still answering the question.

22 MR. DAVIS: Okay.

23 THE COURT: Ma'am, try to keep your answers to the
24 question asked and let's not meander too much if at all
25 possible.

Cindy Wilson - Direct examination
by Ms. Parham

1 THE WITNESS: Yes, sir.

2 THE COURT: He's entitled to hear your attorney ask
3 specific questions on specific issues.

4 I'll let you continue to answer.

5 Go ahead.

6 A We had legal costs that were running, plus or minus, a
7 million dollars a year. We had a tremendous amount of bond
8 debt that was being dumped onto us, twenty-eight to
9 twenty-nine million-dollars in the last six, seven months of
10 the calendar year. There were projects that were
11 questionable. For example, there was a Broadway Lake
12 Pavilion that, to my mind and a lot of others, did not need
13 to be replaced. Cost of---

14 MR. DAVIS: Your Honor?

15 THE COURT: Yes, sir.

16 MR. DAVIS: Same narrative. I mean this is -- is this
17 the same first question that---

18 THE COURT: What was the question?

19 MS. PARHAM: I had asked her about -- I had asked her
20 about her concerns in how the finances were being managed in
21 Anderson County, and, and her concerns I believe are
22 numerous, and she has many things to testify about.

23 THE COURT: Okay.

24 MR. DAVIS: And that's the objection. It calls for a
25 narrative. That, that question called for a narrative, and

Cindy Wilson - Direct examination
by MS. Parham

1 we're getting a narrative.

2 THE COURT: why don't you---

3 MS. PARHAM: well, I can try to be more specific.

4 THE COURT: ---ask specific questions?

5 MS. PARHAM: I'll be more specific.

6 THE COURT: That gives him an opportunity, if he thinks
7 something is objectionable in what's coming up, to make an
8 objection.

9 MS. PARHAM: Certainly.

10 THE COURT: We can manage it better. Thank you, ma'am.

11 Q When you, when you mentioned blanket invoices for
12 projects, what do you mean -- what do you mean by a blanket
13 invoice?

14 what was your specific concern about that?

15 A I learned, from reviewing blanket invoices, typically
16 used for bulk purchases like paper, paper clips, pens, et
17 cetera, it would not seem to be an appropriate way to handle
18 a consulting or an engineering type expense.

19 Q Do you mean that it was a -- it indicated a purchase
20 for a large amount, but there was no line item
21 differentiation?

22 A Yes.

23 Q So, you couldn't really tell what the money was spent
24 on?

25 Is that your concern?

Cindy Wilson - Direct examination
by Ms. Parham

1 A That was a concern.

2 Q Okay. And you mentioned -- I think you mentioned
3 transfers of money between accounts as one of your financial
4 concerns.

5 Can you describe that a little bit more?

6 A There were lots of transfers. The fiscal year in
7 Anderson County would begin with a new budget, but from that
8 time, until books closed, there would be millions of dollars
9 in transfers. What particularly disturbed me would be the
10 transfers that would be made after the June 30th end of
11 the year.

12 Q Tell me about the procurement and disbursement
13 procedures.

14 Was anything -- anything about those that concerned
15 you?

16 A Many. There, there was no adherence, to my eye, of
17 following procurement code. Many very valuable assets, to
18 my way of thinking for the county, were sold very low
19 without benefit of public competitive bidding procedures.
20 There were other properties purchased that council wouldn't
21 even know about till months later, and---

22 MR. DAVIS: Your Honor, is this gonna be just a bunch
23 of narrative passages or are we gonna have an actual
24 questions and answer?

25 THE COURT: She's being responsive to that question.

Cindy Wilson - Direct examination
by Ms. Parham

1 Overruled. Go ahead.

2 Answer the question, ma'am.

3 Q You were -- sorry, Ms. Wilson. I believe you---

4 A There didn't seem to be -- in fact, I even asked of, at
5 one council meeting sometime early on, if we bid out
6 consultant and engineering costs and legal costs, and our
7 administrator, at that time, responded that he chose who he
8 thought was best.

9 Q You mentioned you had some concerns about property
10 transactions---

11 A Yes.

12 Q ---is that right?

13 And was there an appearance of who -- of any kind of
14 favoritism going on?

15 A Well, there, there were -- there was at least one
16 broker who seems to get a lot of business and a councilman
17 who was getting business.

18 Q And who were they -- who were they friends or
19 associates of?

20 MR. DAVIS: Your Honor, is this all relevant to the
21 severance agreement case or --.

22 THE COURT: Relevance on it?

23 MS. PARHAM: Yeah.

24 THE COURT: Well, I don't know -- I assume we're gonna
25 be talking about councilman being that -- I don't know

Cindy Wilson - Direct examination
by Ms. Parham

1 that's---

2 MS. PARHAM: Yes, I'll tell you exactly what I'm doing
3 here. I was just asking Ms. Wilson what her concerns
4 were---

5 THE COURT: Thank you.

6 MS. PARHAM: ---about the -- about the administrator
7 about the county. There's been a lot of testimony about
8 inquiries and investigations that she's gone on about, and I
9 just wanted her to be able to testify for the reasons for
10 her interests in investigating the finances of the county
11 and other matters. And, so, I think this is relevant to
12 explaining---

13 THE COURT: I'm gonna let her go into that.

14 MR. DAVIS: Your Honor, my, my only exception, for
15 purposes of the record, is this. Over the past 11 years
16 it's been a moving target. There's one thing after another,
17 uh, uh, uh. And, so, if we're gonna have -- and that was
18 part of the reason why I had a motion for, in limine about
19 stray allegations because what's gonna happen is we're gonna
20 have this big long narrative.

21 I don't have a chance to come out of nowhere and say
22 well, and he did this, this, this, this, this, this, this,
23 this, this, this, this. And, so, what's gonna happen is we
24 get this long litany of things and they're going in the
25 record that I'm gonna have to go back now, and it's not in

Cindy Wilson - Direct examination
by Ms. Parham

1 the pleadings, and I have to go find and ferret the proof to
2 respond to all this stuff in this proof.

3 And, so, that's my problem, and I -- it's particularly
4 troubling when it comes in in narrative form like where it's
5 just coming in as going on well, there were these like five
6 guys, you know, there's Bobbie, Billy, Johnny, Jimmy, and
7 Joe, and Johnny, and they all got commissions and items like
8 that.

9 well, I, you know, I -- there's no way I can defend a
10 case when you're just dumping stuff in the record. So, I,
11 I, I'm -- my objection is that there is a question and
12 answer form of interrogation, interrogation contemplated by
13 the Rules of Evidence, and they should have to adhere to it.

14 MS. PARHAM: Thank you, Your Honor.

15 We're not adding any claims to our complaint. We're
16 not, we're not adding any, any claims to this case. I am
17 merely giving Ms. Wilson the opportunity to explain what
18 concerns she had about the administrator that led to some
19 difficulties in 2008 that we've heard a lot of testimony
20 about.

21 THE COURT: I understand where you're going and I, and
22 I'm going to allow you to go there. I'm trying to keep this
23 case from mushrooming anymore than it is already mushroomed.

24 MS. PARHAM: Yes, Your Honor.

25 THE COURT: Do you know what I mean by saying that?

Cindy Wilson - Direct examination
by Ms. Parham

1 MS. PARHAM: Yes, Your Honor.

2 THE COURT: Thank you.

3 Q Ms. Wilson, were you aware of -- did you have any
4 concerns about expenses or unnecessary travel by individual
5 council members?

6 A I did.

7 Q Was there anyone in particular that stands out in your
8 mind?

9 A Mr. McAbee's travel.

10 Q Well, did his travel -- did reimbursements for his
11 travel remain within the per diem, per diem limits?

12 A No.

13 Q Do per diem limits apply to council members?

14 A I would of thought so. I had to adhere to one.

15 Q You believe that---

16 A Yes.

17 Q ---they applied to you?

18 Did Mr. McAbee travel alone?

19 A No, he had a business associate in, in several
20 instances. It appeared a business client.

21 Q Were there expenses reimbursed by the county as well?

22 A Yes.

23 Q Do you think that the travel he was doing with his
24 business partner and his, at times, client had any concrete
25 economic benefit to the county?

Cindy Wilson - Direct examination
by Ms. Parham

1 A I would question that. It certainly did -- it improved
2 his chances of a commission.

3 Q Have you ever submitted a request for reimbursement to
4 the administrator and had him deny it?

5 A Yes.

6 Q So, his approval of your reimbursement -- or
7 reimbursements of council members -- would you say that his,
8 his reimbursement is automatic or ministerial?

9 A No.

10 Shall I explain or do you want to continue?

11 Q That's fine. I think you---

12 A I, I did put in for a request to be reimbursed and it
13 was denied.

14 Q Did you -- were you concerned about any favoritism in
15 terms of contracting contracts that were made between the
16 county and other parties that appeared to be friends with
17 friends of the administrator who receives special attention?

18 A Well, certainly in the case of Mr. Wilson's daughter.

19 Q Ms. Allison -- Ms., Ms. Schaum?

20 A Correct.

21 Q Anyone else?

22 A Let me think.

23 Q Consulting contracts or --.

24 A Well, some of the -- what we learned was after the
25 fact. I think -- I'm not sure -- has the Daniel report been

Cindy Wilson - Direct examination
by Ms. Parham

1 entered into evidence for this trial?

2 Q Let's go back to November of 2008 and, and prior.

3 A Okay.

4 Q Was there -- were there any other consulting
5 contracts---

6 A Yes.

7 Q ---contracts of that nature about which you were
8 concerned?

9 A There was C&S Consulting---

10 Q And who---

11 A ---a minority business that appeared to have no
12 education or work experience in mass transit. Of course,
13 Ms. Wilson -- Mr. Wilson's daughter, who had no background
14 in farming or ag ed. We had Clemson University, Clemson
15 Extension Service right here. The head of sustained
16 agriculture who was very involved locally. That was low
17 cost or no cost at all to the county. No need on that one.

18 Q Who is the -- you mentioned C&S Consulting.

19 who is the, the -- who ran that company?

20 MR. DAVIS: Your Honor, relevance. What paragraph in
21 the amended complaint references C&S?

22 THE COURT: Who is C&S?

23 MS. PARHAM: C&S, the principal is Mr. John Scott, and
24 Ms. Wilson will testify that he was a friend of Mr.
25 Preston's, and he received a consulting contract that was

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1 favorable, in her, in her mind and others. It was of
2 concern.

3 THE COURT: Is there an allegation in the complaint
4 about that?

5 I don't recall C&S ever being mentioned in the
6 paperwork.

7 MS. PARHAM: And -- and we don't---

8 THE COURT: What was the name?

9 MS. PARHAM: And we don't intend to add one, Your
10 Honor.

11 MR. DAVIS: Then, then why is it relevant?

12 MS. PARHAM: It is an example of some of the concerns
13 that Ms. Wilson had with regards to the administrator, and
14 I'm, I'm near the end of the list in this case.

15 THE COURT: Now---

16 MR. DAVIS: Your Honor, it's just prejudicial. We've
17 gone off on all these rants.

18 THE COURT: Well, I will end up being the finder of
19 fact in this, and I'll decide what I give credence to and
20 what I don't give credence to once I've heard all the
21 evidence and start that process. So, I'm gonna allow her to
22 bring it in, but let's try to confine ourself to the issues.
23 I never heard of that entity before until right now. I'm
24 trying to listen to everything.

25 MS. PARHAM: Yes, Your Honor.

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1 THE COURT: I've never heard that yet.

2 Go ahead.

3 Q Ms. Wilson, in finishing up your list of concerns about
4 the administrator, was there an issue of -- how did you feel
5 about the tone at the top or the example that he set for
6 others or his, his, his conduct?

7 was that of concern to you and other members of
8 council?

9 A Well, his personal attitude and demeanor toward me was
10 certainly less than polite and professional. But the fact
11 that there were rumors swirling around about affairs, and
12 misuse of credit cards for dining and -- wining and dining
13 downtown. All of those things were of a very grave concern.

14 we had allegations of county employees with sexual
15 harassment issues going on too, and that was of concern to
16 me as well.

17 MR. DAVIS: Your Honor, relevance. I mean -- first of
18 all, I'd like to move to strike that from the record. It
19 has nothing to do with this case.

20 Second of all, I mean, at some point, this case is
21 gonna have to be about the severance agreement. We've had
22 one day of testimony about the severance agreement and then
23 we're on Day Number four. Three consecutive days about,
24 about other stuff, and it's, it's becoming Days Of our
25 Lives.

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1 THE COURT: Well, the, the question of the political
2 environment in the county has been brought in by your side,
3 Mr. Davis. But -- and that is relevant simply for the fact
4 of -- that there's an issue in the case as to whether or not
5 the actions by the council was arbitrary and capricious.

6 This is not a trial, as far as I know, about the
7 performance of the, the administrator in his job before that
8 occurred. Although except to the extent that it affected
9 the atmosphere and the environment in which the decision was
10 made. It's becoming apparent to me that it was a strained
11 environment. I think every witness is confirmed that.

12 Let's, let's try to get down to the points and move on.

13 MS. PARHAM: Yes, sir.

14 THE COURT: I understand that there's certain points
15 you'd like to make, and I'm gonna let you do it. And, so,
16 let's move on. Thank you.

17 MS. PARHAM: Yes, Your Honor.

18 THE COURT: Let's just try to get through this -- you
19 estimated a week long trial and I've set aside another week.
20 So, I'm here to get it done, and we've got plenty of time.

21 So, you may proceed.

22 Q Ms. Wilson, you testified about some sexual harassment
23 that occurred within the county.

24 was there any -- did the, did the administrator
25 discipline employees that were, that were engaging in

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1 inappropriate behavior?

2 A Didn't appear to. There was some sexual harassment
3 suit between -- the result of two employees, two county
4 employees having an inappropriate affair. They admitted it.
5 They both probably should of been fired. One was demoted.
6 One was promoted. That was fairly soon.

7 Then we -- during the time of I think around
8 '05/'06, there were anonymous letters that came to me and
9 apparently to other council members that indicated -- seemed
10 to be the product of an employee over in the communications
11 center to crying, deploring, begging us to look into
12 allegations of sexual harassment for one of the bosses over
13 there, and other issues that seemed to be unprofessional,
14 and that's one area when a county citizen calls 9-1-1, they
15 expect prompt, professional attention, and we were getting
16 complaints, and then having those letters from someone
17 anonymously, but it seemed to be the product of an employee.

18 Q Did you have---

19 A I did ask if we could make an inquiry and an
20 investigation, but that was turned over to an attorney, and
21 that was the end of that, and then we heard later that the
22 boss in question resigned, and that there was a sexual
23 harassment settlement paid out for him. Those type things
24 are very concerning. I mean there's, there's -- it, it
25 seemed to be like a Peyton Place.

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1 Q Did you have any concerns about the administrator's own
2 conduct?

3 A Well, certainly. If he's setting a poor example, that
4 leaves the door open for other employees to immoderate.

5 Q What were, specifically, were you concerned about his
6 conduct?

7 A I did write our former chairman and vice-chairman about
8 my concerns of rumors alleging an affair with the former
9 administrator and a subordinate female, and I asked what the
10 potential liabilities would be---

11 MR. DAVIS: Hearsay, Your Honor.

12 A ---if they proved true.

13 MR. DAVIS: She's talking about a letter that she wrote
14 about who---

15 THE COURT: Before you get into these kinds of
16 allegations, you're gonna have to lay some foundation as to
17 how she came about knowledge---

18 MS. PARHAM: Yes, Your Honor.

19 THE COURT: ---to determine whether or not what she's
20 testifying to is admissible evidence or not.

21 MS. PARHAM: Your Honor?

22 THE COURT: And I don't know how we do that unless I
23 get you to start asking specific questions about specific
24 events.

25 MS. PARHAM: Yes, Your Honor.

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1 THE COURT: And I'm gonna ask that you do that.

2 MS. PARHAM: Yes, Your Honor.

3 THE COURT: I don't know how else I can control the
4 situation.

5 MS. PARHAM: This is the specific topic that we're on
6 now, I believe you indicated that you had not heard
7 testimony on this specific issue, and that it was relevant
8 for your consideration of other evidence and whether or not
9 to---

10 THE COURT: The only, the only reason I've heard
11 anything about what, what was alleged at, at Cater's Lake
12 and/or for this particular employee is whether or not it has
13 to do with impeachment, whether or not that impeachment is
14 on a collateral matter or not, and I'd put it on the
15 challenged evidence list because I have questions about its
16 relevance to the case and/or whether or not it can properly
17 be used for impeachment purposes. It is on the edge is what
18 I've said. It remains on the edge.

19 Now, if this witness is gonna testify though about
20 certain allegations and things that she would like to
21 testify about, there's got to be some basis by which I can
22 measure whether or not her testimony is based -- is
23 admissible or not on that subject, and if she's allowed
24 simply to -- that's, that's the problem with this attorney's
25 having is that it's -- specific questions aren't being

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1 asked, and specific answers are not being given. It does
2 not afford him an opportunity to object to evidence that's
3 being introduced and for me to make a ruling on it.

4 So, I'm going to ask you to ask specific questions
5 about specific events from this point forward. I don't know
6 how---

7 MS. PARHAM: Yes, Your Honor.

8 THE COURT: ---else we're gonna manage this situation.

9 MS. PARHAM: Yes, sir.

10 THE COURT: We're gonna spend the whole time with us
11 arguing these points out, and I'm not gonna let this hearing
12 degenerate into that.

13 MS. PARHAM: Yes, Your Honor.

14 THE COURT: Thank you.

15 Specific questions on specific points. Thank you.

16 Q Ms. Wilson, did the administrator have a duty of
17 honesty to the council?

18 A It would certainly seem so.

19 Q Were you present at a meeting in which the
20 administrator gave a report to council about incidents that
21 occurred at Cater's Lake and the meeting at which also Busha
22 and Crenshaw gave reports?

23 It was in March of 2006.

24 Do you recall the meeting that I'm---

25 A I do.

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1 Q Okay. Do you believe that that -- do, do you recall
2 what Mr. Preston stated to you at that meeting, to the
3 council at that meeting?

4 A It seems like---

5 Q You don't have to tell me what it is, but do you recall
6 what, what he said?

7 A The main emphasis I recall was vulgar and salacious
8 letters, and that he was---

9 THE COURT: Ma'am, the question was were you present
10 and did you hear it.

11 THE WITNESS: Okay.

12 THE COURT: Respond to the questions---

13 THE WITNESS: I'm sorry.

14 THE COURT: ---and then I'm gonna let her ask another
15 question.

16 THE WITNESS: Okay.

17 Q Were you present at the meeting in which Deputy Chief
18 Busha gave a report, and after which Mr. Preston spoke and I
19 believe it was from prepared remarks, and he spoke to
20 council about the incidents, the incident that had been
21 reported in the media at Cater's Lake and a purported sting
22 operation?

23 Do you remember him giving that report to you and to
24 the other members of council?

25 A Yes.

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1 Q Do you believe that he was telling the truth to council
2 in his report?

3 A I don't know. But I do know that the so called vulgar
4 and solacious letters were intended to be and I kept hearing
5 they were trying to make it out that I had something to do
6 with them and that was very disturbing.

7 Q Ms. Wilson, do you have any independent -- any
8 firsthand knowledge that would -- that led you to be
9 concerned over whether or not the administrator was having
10 an extramarital affair with a subordinate employee?

11 A There was a lot of rumor, gossip. It seemed to be open
12 and notorious downtown. People noticing.

13 Q On November 18th, 2008, during the council meeting
14 you were given a copy of Mr. Preston's severance agreement.

15 Do you recall that?

16 A Yes.

17 Q Had you seen it before that moment that it was handed
18 out?

19 A No.

20 Q Did you read it?

21 A I didn't have time.

22 Q Did you know that the agreement had a provision
23 releasing you from claims by Mr. Preston?

24 A It may of been mentioned, but I was struggling trying
25 to figure out how much it was gonna cost. I was looking at

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1 the numbers.

2 Q At the time that you voted against the severance
3 agreement, did you know that there was a provision in the
4 agreement releasing you and other members of council from
5 any claims that Mr. Preston might have against you?

6 A No.

7 Q No further questions.

8 THE COURT: Your witness, counselor.

9 MR. DAVIS: You know, Your Honor, at this time we'd
10 like to keep the witness under subpoena and reserve the
11 right to recall during our case in chief.

12 THE COURT: Any objection?

13 MS. PARHAM: No objection, Your Honor.

14 THE COURT: Okay. Ma'am, you may step down at this
15 time. I'm going to caution you, ma'am, as I have every
16 witness, I have issued a sequestration order in this case.
17 It requires that witnesses can not or orders that witnesses
18 can not discuss their testimony with anyone until such time
19 as the case has ended.

20 So, you remain under that sequestration order. You can
21 not discuss your testimony with anyone until such time as
22 the case is ended.

23 Do you understand that?

24 THE WITNESS: Yes, sir.

25 THE COURT: Also, I will inform you that you are still

1 under subpoena in this case and are subject to recall.

2 Do you understand that as well?

3 THE WITNESS: One question.

4 Does that mean I should be here every day ready to be
5 called or would someone just simply let me know maybe an
6 hour or so just so---

7 THE COURT: How do you want to handle that?

8 MR. DAVIS: Ms. Wilson, that is an absolutely fair
9 request and I will do that. What I propose to do is
10 communicate it through the attorneys for the county---

11 THE WITNESS: Okay.

12 MR. DAVIS: ---and let them communicate it to you when,
13 and I will give you the best approximation I can as to when
14 I will be calling you.

15 THE COURT: Thank you, ma'am.

16 THE WITNESS: Thank you.

17 THE COURT: You may step down at this time.

18 The county may call its next witness.

19 MR. TESSIER: Your Honor, at this time the county is --
20 has concluded the presentation of evidence on its case in
21 chief, and subject only to -- we just want to confirm that
22 just the right exhibits are, are in. I think they all are.
23 I just want to make sure the physical copies are.

24 Some, some of the exhibits, exhibits have not yet been
25 placed up there. That's all we need to do and we rest our

1 case.

2 THE COURT: All right. Anything you'd like to take up
3 with me at this point in time?

4 MR. DAVIS: Yes, Your Honor. I was actually gonna
5 request maybe a short break in order to make sure that my
6 remarks are preserved for the record in the appropriate way.

7 THE COURT: I understand.

8 Okay. We'll take about a five to ten minute break.
9 I'll return at that time.

10 Court's in recess at this time.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: Yes, Mr. Davis.

13 MR. DAVIS: Your Honor, at this time, on behalf of our
14 client, Mr. Preston, I'd like to make a motion for directed
15 verdict in Mr. Preston's favor.

16 Your Honor, the first ground -- I believe it has gone
17 into the record, which would of been Mr. Preston's financial
18 statement -- sorry, Your Honor.

19 THE COURT: That's all right.

20 MR. DAVIS: In light of, in light of that development,
21 then we would move to my second ground. The second ground
22 is under the decision of Baird versus Charleston County.
23 333 SC 519, 1999.

24 Under the Baird decision, Your Honor, it's quite clear,
25 under South Carolina law, that what you do, even if any of

1 their allegations in this lawsuit actually have been proved
2 correct, which they have not, you do not discount the
3 entirety of the vote. What you do is you discount the
4 individual votes, and as Your Honor knows, when you've heard
5 testimony over the past four years days, the vote in this
6 case was decided by a decision ultimately of
7 five-to-one-to-one.

8 They've actually presented to you, during the course of
9 the last four days, no evidence that would support
10 discounting the McAbee vote or the Wilson vote in which case
11 both of those votes remain fully preserved. There's no
12 basis upon which to discount them.

13 By contrast, Your Honor, you have heard evidence over
14 the past two days or four days that would allow you, and the
15 Court should discount both the votes of Cindy Wilson and Bob
16 Waldrep. But in the record is the passage from the Anderson
17 County Code that dictates when members are and are not
18 allowed to vote, and what it says is that they have a
19 personal financial interest, they can not vote, and it
20 doesn't matter whether they want to vote in favor or against
21 the proposition that is before the constituted body.

22 Your Honor could imagine the circumstance, for example,
23 where a council member owned a piece of property, and the
24 purchase of that property is being presented for a vote.
25 That council member could vote against the purchase. But

1 they could vote against the purchase in order to jack the
2 price up so they could be enriched.

3 And, so, what happens is, underneath the code and
4 underneath the State Ethics Act, there's a flatline rule,
5 and what that flatline rule says is you can't vote. Both
6 Bob Waldrep and Cindy Wilson voted, and they knew, at the
7 time that they voted, that previously, on October 23rd of
8 2008, from the correspondents from Mr. Preston's attorney,
9 Rob Hoskins, they knew that Mr. Preston had been alleging
10 and was going to allege claims against them personally for
11 tortuous behaviors. They knew that potential risk and
12 liability was there, and they knew that it was part of this
13 potential claim.

14 what happened next was eventually that severance
15 agreement vote was put up for a vote. It was put up before
16 the constituted body. That severance agreement is four
17 pages long. It's about 20 paragraphs long. It doesn't take
18 all that long to read to be honest with you. But, most
19 importantly, at the top of that severance agreement is the
20 language settlement agreement and release.

21 So, they know, on the face of the document, that what
22 they're writing on is a release that's going to impact them
23 personally and in a financial matter. The consequence of
24 this is that underneath their, both of their votes, are
25 discounted. So, there are now zero votes against Mr.

1 Preston's severance agreement in all the votes.

2 Your Honor, even underneath their theory, and even if
3 you discount that vote, if you -- the vote counted and you
4 discounted and you assume what they said is true, and now
5 you've heard the evidence, and now you know they can't
6 support it, but assume that you take everything they say is
7 true, underneath the Baird decision, what you would do is
8 you would discount those votes down. The measure still
9 passes notwithstanding.

10 There's no basis upon which to invalidate this
11 legislative act. Previously, during the hearings and
12 summary judgment, there was an issue that related to whether
13 this particular body was acting in a legislative or
14 governmental way, and specifically there what the county
15 told you was well, it's not really acting in a legislative
16 or governmental way, and, therefore, its action, as a
17 constituted body, deserves less protection.

18 What we know now was that that wasn't true because, if
19 you take their own evidence, if you take the evidence of Tom
20 Bright, who testified two days ago on the stand, his
21 analysis was that this contract from the county
22 administrator was subject to the analysis from Cowart v.
23 Poore, and the bottom of Cowart v. Poore, and the reason why
24 you can't do stuff that would bind successive county
25 councils turns on when it involves your governmental

1 functions, and, in fact, at least only on perhaps that
2 point, Mr. Bright was correct in his analysis.

3 Even underneath the statute that prescribes when and
4 what the County Council can do, with respect to the county
5 administrator, by way of hiring and firing, it's put right
6 in the South Carolina Code. It's a Legislative delegated
7 power for the Anderson County Council. So, it's clearly a
8 governmental function, and it's clearly entitled to the
9 deference of this Court.

10 There's a consequence of that, Your Honor. The
11 consequence of that is that that action is, therefore,
12 entitled to the protections under the Bare Enterprise case.
13 I'll acknowledge that there is an exception to the Bare
14 Enterprise case.

15 The Bare Enterprise exception is what is set forth in
16 Baird, and what Baird says is well, in circumstances such as
17 a violation of the State Ethics Act, you would discount the
18 one outcome determinative vote. But otherwise, it receives
19 Bare Enterprise protection, the Enrolled Bill Doctrine
20 Protection, and, in this case, this body acted legislatively
21 in a governmental function, in a governmental way that is
22 prescribed by statute, in a manner that the county's own
23 witness, the county's own attorney that they called down
24 from Greenville to testify in his behalf, agree with on the
25 stand.

1 It's, in fact, what the decision says. It's what
2 Cowart v. Poore says. It's a consequence when the Bare
3 Enterprise decision is applied, and when the Enrolled Bill
4 Doctrine is applied to this case. The outcome becomes
5 sealed.

6 The Court can't go behind this legislative body the way
7 that they're asking you to. It can't go back and second
8 guess the individual motives, and, to the extent that there
9 is an exception, it doesn't apply. The Baird exception
10 doesn't apply, but if it did apply, it would only discount
11 the individual votes. In all those scenarios, Your Honor,
12 the outcome has become plain, and it is in favor of
13 Mr. Preston.

14 Your Honor, the next issue is about the nuclei, the
15 factual allegations in this case. The first one relates to
16 Heather Jones, and stemming out of the Heather Jones
17 allegation are issues of whether there was such a material
18 breach of the severance agreement from those allegations
19 that it must or otherwise warrants rescission.

20 The only evidence, the only evidence in the record is
21 as follows:

22 Heather Jones started work in October of 2006. In
23 October of 2006 she had come up from Beaufort. Mr. Preston
24 wanted her because she was a very accomplished economic
25 development person, and in order to get her to take the

1 position with Anderson County, he offered her what she had
2 down there, which was a vehicle. He also offered her, which
3 she had down there, which were educational reimbursements.

4 The unrefuted evidence in the record shows something
5 further, that when it was time for Mr. Preston to depart
6 from the county, Heather Jones approached him about a
7 laundry list of to do items.

8 These weren't the only two things on her laundry list.
9 There were six or seven of them. These two were in the dead
10 middle of it, and, specifically, she wanted to make sure
11 that her SUV had been memorialized, and that her educational
12 reimbursements had been memorialized. And Mr. Preston said
13 go ahead, and do that, I'll, I'll sign it and put it in your
14 personnel file for you.

15 For some reason, the one they had in there was no
16 longer in there. There's no dispute to this. This record
17 is plain on that evidence. There's no contrary evidence.
18 That, that evidence, what we're talking about now, is the
19 evidence that came in during the plaintiff's case in chief.
20 Mr. Preston said the same thing. Heather Jones said the
21 same thing.

22 As to those issues, there's nothing for the Court to
23 decide, but here's another issue about that.

24 Number one, Heather Jones testified she always had an
25 SUV and she always had one after this event occurred. She

1 testified that she never had educational reimbursements.
2 with respect to this German trip that they keep talking
3 about, she never went on it, and if she had of gone on it,
4 she was intending to use an existing budget.

5 All of this evidence is in the record with respect to
6 the Jones allegations is completely unrefuted, and I haven't
7 even gotten to my case in chief yet. It only goes downhill
8 from here. If they can't prove their case right now in this
9 snapshot in time, they're not gonna be able to prove their
10 case after I'm done. It's not gonna happen.

11 You've heard, uncharacteristically in most cases,
12 you've heard most of the direct material evidence that
13 you're gonna hear. I know that the Courts are loathed to
14 grant directed verdict. I understand. But this is an
15 atypical case, and perhaps may warrant atypical treatment.

16 If you think about the plaintiff's case in chief, who
17 have, have they called?

18 They've called all my witnesses or most of them.
19 Right?

20 You've heard the deposition designations from Jones.
21 You haven't heard from Schaum or Wilson, which is an
22 evidentiary deficit on their part, but you did hear from Mr.
23 Preston about the P.A.C. contract and an explanation for
24 that.

25 with respect to McAbee, what you heard was Mr. McAbee

1 himself. You've heard the most primary evidence in the case
2 already. It was the evidence I would put up in my defense.
3 You've heard it in their case in chief. They've fallen
4 short on almost every path.

5 with respect to McAbee, remember what the evidence says
6 there?

7 McAbee, they're trying to tell you that Mr. McAbee
8 shouldn't have cast his marble into the pale in favor of the
9 severance agreement. He had some sort of conflict. Today,
10 I'm standing here in front of you three years later, I still
11 don't know what they're talking about.

12 The first thing that they cited, Your Honor, is a check
13 from April of 2008. It's in the record.

14 Mr. Preston's employment dispute, the letter from Rob
15 Hoskins that was delivered to the county council members, at
16 the -- entered in their official capacity did not arrive
17 until September 25th of 2008.

18 They're trying to connect the dots, trying to create a
19 conflict between a check on a property transaction for which
20 McAbee received a commission in April of 2008?

21 And notably, Your Honor, with respect to that
22 transaction, that original contract for which the commission
23 was paid was first inked in 2006.

24 So, I still don't understand what they're talking
25 about, but I certainly understand that there is no conflict

1 with respect to a real estate commission check that they
2 have provided no nexus to Mr. Preston which occurred at a
3 temporally remote point in time before the employment
4 dispute ever occurred, let alone the severance agreement
5 vote, which occurred some two months later.

6 They talk about travel with respect to McAbee. Here's
7 the problem they have with their theory about travel.
8 They've provided you with no colorful refutation of both Mr.
9 McAbee and Mr. Preston's accounts with respect to the
10 approval of travel. Mr. Preston said it's ministerial. If
11 Your Honor thinks about it, that almost has to be the case.
12 Otherwise, what it would cause is it would cause
13 Mr. Preston, as the underling, to be the ethics referee of
14 the county council.

15 He'd have to be the guy who says look, you're running
16 afoul of the State Ethics Act, councilman. So, therefore,
17 I'm not going to process your travel expenses because of X,
18 Y, and Z reason or you're running afoul of the Anderson
19 County Code for X, Y, and Z reason.

20 Your Honor well knows that that duty doesn't rest with
21 Mr. Preston. He's not the gatekeeper of their conduct. He
22 can't be. They are.

23 The State Ethics Act imposes the duty on them. It
24 doesn't impose it on the underling to referee and be the
25 safeguard or the catch person for the county council

1 members, and if you apply the policy in that way, it makes
2 perfect sense.

3 Note that they haven't provided you, in their case in
4 chief, they've now rested, they haven't provided you with
5 the policy which limits the county council members travel to
6 the per diem that they keep talking about.

7 where is it?

8 The best they came was they asked Cindy Wilson, at the
9 very very end of their case right there, and they said well,
10 does the per diem apply to council members?

11 Yes.

12 well, where's that policy cause I haven't seen it?

13 Your Honor, they have fallen short on all -- almost
14 every front.

15 with respect to Thompson, Thompson's testimony and Mr.
16 Preston's testimony are on the same page. They both agreed
17 and they both testified separately, and you watched both of
18 their videos. we sat through two days of videos.

19 And, and those videos show that Mr. Preston talked to
20 him first when?

21 March of '08.

22 The guy had an M.B.A. He had a real estate background.
23 He had nine years of purchasing. He had experience at Bosch
24 managing a 54 million-dollar portfolio of commodities, and
25 when he came to Mr. Preston, it was a no brainer.

1 Yeah, you'll get a job with the county. At any given
2 time, there's probably 20 or 30 jobs open at the county. If
3 you're the county administrator and you look at somebody
4 who's overqualified, you can tell them pretty quickly,
5 you'll get a job, I've seen the applicant pool. It turns
6 out you're, you're at the top of it.

7 The county administrator could do that. That wasn't
8 inconsistent.

9 The other undisputed piece of the evidence that's in
10 the record was that it would be a transfer, right?

11 It's not a new hire. That's exactly what Mr. Preston
12 testified during his video deposition. This is a guy who's
13 already on county council. For purposes of the financial
14 reports, he's an employee. In this case, what they would do
15 is they can just transfer him.

16 That's important. That's important because, if you
17 look at the exhibits in the record, Your Honor, there are
18 two job ads that the plaintiffs have put into the record.
19 The first one is the Buyer I ad. The second one is the
20 Buyer II ad. And you'll notice, on the Buyer II ad, there's
21 only one name, Michael Thompson, and the reason why there's
22 only one name is because, when it's a transfer from one
23 employee position to another, you don't have to advertise
24 for it. You can transfer. If the person's qualified for
25 that position, you can transfer them without advertisement.

1 And if you look at their only exhibits, it accredits
2 the story. It proves the testimony.

3 What the testimony of both Mr. Thompson and Mr. Preston
4 has told you -- has been that, when Mr. Thompson
5 re-approached Mr. Preston in August for the purchasing
6 manager's job, there was a young lady in the position or the
7 position of the Buyer II position, and her name Adrian
8 Hicks, and Mr. Preston said you are not getting the
9 purchasing manager job. There's somebody who, who's
10 qualified for it, who's worked here, who's earned it, she's
11 getting the job, Adrian's getting the job, she's gonna get
12 promoted.

13 If you look at what happens next, Adrian gets promoted
14 from the Buyer II position to the purchasing manager
15 position and then you see the ad. You see, turn to Page 2,
16 you see one name, Michael Thompson. It accredits their
17 story. It accredits the fact that they had the
18 conversation, the decision was made back in August. It was
19 made back before the employment dispute ever occurred.

20 Now, you can get up or I guess perhaps say well,
21 there's some issue of fact where we had talked about, you
22 know, that's contrary, we can do this.

23 Here's the problem with that, Your Honor. The vast
24 majority of their causes of action in this case, as we noted
25 to you during the summary judgment phase, fall under the

1 clear and convincing standard. They're never going to meet
2 that standard in this case. They're never gonna meet the
3 preponderance standard. If you apply the preponderance
4 standard, we should still get the D.V. But under the clear
5 and convincing standard, I think it becomes stark. It
6 becomes absolutely clear that we should have the verdict
7 directed in favor of Mr. Preston.

8 They have claims for fraud. They have claims for
9 constructive trust. They have claims for constructive
10 fraud. All of those claims are subject to clear and
11 convincing standard.

12 They have a claim for negligent misrepresentation,
13 which would normally have a preponderance standard. But
14 when you try to rescind a contract, based upon negligence or
15 negligent misrepresentation, thereby connoting that the
16 contract was formed in the first instance by mistake, in
17 order to prove that, you have to prove it by clear and
18 convincing evidence. The citation for that is in our brief
19 for our summary judgment. Based upon that analysis, that
20 claim would have to meet the higher standard as well, and
21 they clearly haven't met that here either.

22 Your Honor, they have proven no violation of the State
23 Ethics Act. Remember, Ron Wilson cast a vote. They allege
24 that that was some sort of violation of the State Ethics Act
25 or violation of the Anderson County Code.

1 But Mr. Wilson cast a vote on Mr. Preston's severance
2 agreement. The object of that vote, in no way, personally
3 benefited him. The standard that you apply to this analysis
4 is not this enormous lense that they keep telling you about.

5 You've heard evidence about everything under the sun in
6 the last four days. What you needed to hear evidence about
7 was perhaps the size of a magnifying glass.

8 The standard is did he vote on something for which he
9 had a financial interest or for which somebody in his
10 household had a financial interest.

11 But you know what?

12 His adult emancipated daughter doesn't count. The fact
13 that his adult emancipated daughter got a contract, an
14 amended contract in some sort of temporally related point in
15 time, completely irrelevant. It didn't benefit Ron Wilson.
16 The vote on the favor of the severance agreement didn't
17 benefit Ron Wilson. There has been no evidence to tie the
18 two together.

19 It's not our burden to disprove. It was their burden
20 to prove. You've heard all of their evidence. It doesn't
21 exist.

22 Your Honor, they have failed to show or support the
23 breach of fiduciary duty claim that's been alleged in their
24 amended complaint. They haven't established what duty that
25 they've -- they contend Mr. Preston violated. Here's why.

1 Everything that they're saying that Mr. Preston had a
2 fiduciary duty to do, it's an interesting theory, but the
3 duty, if you think about it, was really not Mr. Preston's.

4 Right?

5 If there were this conflict of interest that they so
6 contend, that duty fell upon individual county council
7 members to disclose. Not Mr. Preston. Mr. Preston doesn't
8 have a duty to disclose that for them. And if you think
9 about that in practical effect, that has to be the
10 application of the rule. Mr. Preston wouldn't have to have
11 a duty to disclose that because he wouldn't ever necessarily
12 know what those conflicts were to disclose.

13 Their application of the rule would make no sense.
14 Those individual council members have the duty to disclose
15 if there is, in fact, some sort of conflict. It doesn't
16 flow through to their underling. There's no support and
17 you've been provided no support to support such an analysis.

18 Your Honor, during the summary judgment phase, you may
19 remember that they almost all but punted except for the
20 ground of arbitrary and capricious, and what they told you
21 was that this county council acted in a completely arbitrary
22 and capricious way, that what they did had no catalyst.

23 Well, you've heard, during their case in chief during
24 the past four days, that that wasn't true. What they tried
25 to say is well, the severance agreement amount is higher

1 than the buy-out that would be mechanically calculated under
2 the master employment agreement, but the evidence that you
3 heard was that the severance agreement encompassed financial
4 economic value that was greater than what was required by
5 the actual master employment agreement.

6 what you also heard was evidence and it's also
7 contained in the October 23rd, 2008, Hoskins letter to Tom
8 Bright wherein they cite their demand for the higher amount
9 that they're claiming exceeds the four corners of the
10 contract. So, their analysis, in the first instance, that
11 they should -- that they claim it's some sort of arbitrary
12 and capricious act because the amount exceeds the buy-out,
13 the amount in the master employment agreement, by their own
14 evidence in the record is squarely contradicted.

15 The Hoskins demand said, from our standpoint, we're
16 beyond the four corners, and then they come in here and try
17 to tell you that what the county council did was arbitrary
18 and capricious because it didn't square with the plain
19 language of the four corners of the document.

20 It also doesn't square with the fact that there were
21 tort claims in play. It also doesn't square with the fact
22 that the release that Mr. Preston gave them was broader in
23 scope than what was required under the master employment
24 agreement. It also doesn't square with the fact, that
25 underneath the indemnification provision, which was suppose

1 to survive the master employment agreement, but did not,
2 Mr. Preston gave that up, which by the by, Your Honor, in
3 Anderson County, an indemnification provision is pretty
4 valuable.

5 Right?

6 And he gave it up. He gave it up in the severance
7 agreement, and he didn't have to give it up underneath this
8 mechanical buy-out of the master employment agreement that
9 they talk about. They pretend as if Mr. Preston didn't give
10 up anything, and they gave up everything, and it's so
11 lopsided that it's arbitrary and capricious.

12 In reality, when you look at the actual provisions,
13 when you look at the actual evidence, he gave up more than
14 what was required by the master employment agreement too.
15 They had two lawyers on both sides, both accomplished, very
16 professional guys. They negotiated. There were multiple
17 drafts. The first draft was initiated from the county.

18 You heard testimony from Mr. Greer. You heard
19 testimony from Mr. McAbee. Both of those individuals told
20 you that they foresaw that what was coming was gonna cost
21 the county a whole lot more that if they were gonna pay
22 under the severance agreement.

23 And you know what?

24 It's really hard to come into Court and say that that
25 analysis was arbitrary and capricious and somehow wrong

1 when, in fact, that's exactly what is happened. They have
2 spent far more than the 1.1 that they had paid under the
3 severance agreement.

4 The facts that exist in this snapshot in time are hard
5 to escape. They're hard to run from and try to argue that
6 they're arbitrary and capricious when we know are absolutely
7 true. The arbitrary and capricious standard has to be
8 proved by such a high standard in this case. They can't
9 reach it. That claim needs to be dismissed along with the
10 other claims I've discussed so far. The nuclei of facts
11 need to be dismissed and all claims that are based upon
12 those nuclei of facts.

13 Two more, Your Honor.

14 THE COURT: Yes, sir.

15 MR. DAVIS: Constructive trusts has to be proven by
16 clear and convincing standard. They haven't done it. The
17 evidence in this case comes nowhere near that standard of
18 proof.

19 The last claim is unjust enrichment. It doesn't even
20 make sense. Unjust enrichment is what you have when there
21 is no contract, when there is no legal four corners of a
22 document that exists between the people that, that are in
23 dispute.

24 A contract is a legal version. That's the legal side
25 of the unjust enrichment. What they're trying to do is say

1 they're entitled to a rescission by virtue of unjust
2 enrichment. It doesn't even make sense. You, you wouldn't
3 have unjust enrichment if you had a contract. And, so, you
4 can't say unjust enrichment invokes -- to reverts or undue
5 the contract to claim rescission. Their theory doesn't make
6 sense and it doesn't state a claim, but they also haven't
7 proven it.

8 It's for those reasons, Your Honor, and the other
9 reasons that we had set forth previously in our motion for
10 summary judgment that we ask you to put the -- that this
11 case that has been going on for a long long time in this
12 county to an end.

13 THE COURT: Just one second, Mr. Davis. I was going
14 over the causes of action that I reviewed at the beginning
15 of the trial, and I was told that there was still an
16 allegation for the fact that Mr. Preston committed a fraud
17 of some kind, and also a cause action for constructive
18 fraud.

19 MR. DAVIS: Yes, sir.

20 THE COURT: I'm not sure you addressed that. Maybe you
21 did and I missed it. But I didn't hear what you said.

22 MR. DAVIS: I'll be glad to.

23 First of all, I don't know what they're talking about.
24 They have to have a material misrepresentation. They
25 haven't shown that to you.

1 what was it?

2 If that material misrepresentation or, I guess, perhaps
3 omission with respect to the constructive fraud has to
4 relate to the actual agreement, the severance agreement.
5 The analysis that I provided you before was that they
6 haven't given you any relationship between the two dots that
7 they've drawn in the air. The evidence doesn't connect them
8 in anyway.

9 So, in this instance, what you have is they're trying
10 to say well, this happened, this happened, this happened.
11 There was a severance agreement for both.

12 well, that's not what happened in this case. By clear
13 and convincing evidence, they have to show you that that
14 material misrepresentation somehow related to the decision
15 on his severance agreement. They haven't done that.

16 They haven't been able to show you that the five
17 majority votes considered those things material. They
18 haven't been able to show you that the people didn't know
19 about it for that matter. They haven't shown you -- they
20 haven't proved to you ignorance of the facts at issue.

21 There are -- have nine elements to these -- this fraud
22 and constructive fraud claim. They have to prove each and
23 every one of them by clear and convincing evidence. They
24 haven't even proved it by a preponderance.

25 Your Honor, I'll be glad to answer any other questions

1 about that, but it's unclear to me, at this point, what the
2 material misrepresentation they're saying Mr. Preston made
3 even was. They had an allegation in the complaint, for
4 example, that Mr. Preston violated some duty to correct
5 Michael Thompson's misstatement in a newspaper article from
6 June of 2008.

7 Guess what they forgot to prove?

8 He even knew about it.

9 Right?

10 They -- you hadn't heard any evidence that you -- first
11 of all, you didn't hear any evidence about the material
12 misrepresentation from June of 2008 even in a newspaper
13 article. The only evidence you did hear were council
14 members saying, you know, the county administrator doesn't
15 have the job of going behind the elephant with the shovel is
16 cleaning up misrepresentations county council members have
17 made. In fact, all the evidence you heard is he shouldn't
18 do that.

19 Right?

20 They haven't even told you what that misrepresentation
21 was and that he failed to correct it. They haven't shown
22 you that he knew about it to correct it.

23 I am having a hard time seeing how they've met any of
24 the elements of fraud or constructive fraud, but I can tell
25 you, Your Honor, that this case has exacted heavy tolls on

1 virtually everyone involved, and not the least of which has
2 been Anderson County, and there's really no reason, at this
3 point, to prolong the suffering.

4 we're asking you to direct a verdict in Mr. Preston's
5 favor, and we're asking you to let Mr. Preston go on his way
6 and be done with this lawsuit once and for all.

7 Thank you.

8 THE COURT: Mr. Gentry, Ms. Tessier.

9 Mr. Gentry.

10 MR. GENTRY: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. GENTRY: Mr. Davis is right about one thing. This
13 is an atypical case.

14 It is atypical to see a 1.1 million-dollar severance
15 benefit given to someone on the basis of a claim that could
16 not logically exist. It is atypical to see a severance
17 claim voted on by county council chaired by a man who is
18 actively courting the man getting the severance for a job.
19 It is atypical to see that severance agreement having been
20 negotiated and voted for by a man whose daughter, two weeks
21 prior, had been given the gift of a new contract that
22 greatly enhanced financial benefits to her.

23 On its face, the amount was improper. It's far more
24 than Mr. Preston could of claimed, and you've heard a lot
25 about the fact that Rob Hoskins threw tort claims into his

1 demand letter. we elicited that -- he never specified what
2 those tort claims were. There was nothing, nothing to
3 analyze. No way to value those tort claims.

4 The core of Mr. Preston's claim that Mr. Hoskins
5 stated, Mr. Preston admitted in his deposition, was
6 something bad is gonna happen to me in January of 2009, and
7 I want to be paid now and I want to get out and I want to be
8 able to retire for life before that comes.

9 It's not a legitimate use of county money to settle a
10 claim on that basis. Nothing had happened. There were
11 people who were talking, who were making plans, yes. But
12 there had -- nothing -- there had been no anticipatory
13 breach. You heard time and again, and I think it's probably
14 something that's judicially noticeable, the incoming members
15 of county council had no power. They were talking. They
16 were talking big in some cases.

17 But that's not an action. It's not action of the
18 county. It's not a basis for paying Mr. Preston
19 1.1 million-dollars. This is not a hard case. It's not a
20 close case.

21 Now, what might be a hard case, and the -- Your Honor,
22 you expressed at least a question about this in the summary
23 judgment hearing.

24 Could county council have said we need, we need an
25 amicable divorce, let's look at the contract, and buy it out

1 on some discounted basis, let's talk about that?

2 That might be a harder case for us, and that -- and I
3 might have some difficulty in saying they can't pay him
4 anything, but that's not what we have to prove because those
5 aren't the facts we're dealing with.

6 We are dealing with no tort. No specified tort. No
7 logically possible contract claim, and they paid him
8 \$356,000 more than the maximum amount in this contract.
9 That is not -- that is the definition of arbitrary. That is
10 not a rational divorce or buy-out.

11 Mr. Davis suggests that there was no problem with the
12 votes of Mr. Thompson and Mr. Wilson and Mr. McAbee. Again,
13 I would invoke the Court's own experience with conflicts of
14 interest and when, when recusal is appropriate. It is, it
15 is morally obtuse to suggest that a man asking Mr. Preston
16 for a job can chair the debate over his severance agreement.
17 It is morally obtuse to say that there is no appearance of
18 impropriety, and an appearance of impropriety is the
19 standard under the Anderson County Code.

20 For Ron Wilson to have voted with respect to
21 Mr. Preston's severance agreement with Mr. Preston, two
22 weeks before, had signed a new and dramatically better
23 contract for Mr. Wilson's daughter. Also, under the, the
24 Anderson County Code, the, the definition of the scope of
25 one's interest is immediate family and it says descendants.

1 The fact that she is an adult, the fact that she's
2 emancipated under the Anderson County Code is, is
3 irrelevant.

4 There was an appearance of impropriety there. You've
5 heard a suggestion that maybe that contact was not as
6 beneficial to her. Again, if you look at it on its face, it
7 was plainly better for her in every way, and that's enough
8 to create an appearance of impropriety.

9 Mr. Davis talks first about how many votes we have to,
10 to disqualify in order to prevail, and he invokes the Baird
11 case. We briefed that at summary judgment, argued it, at
12 least, briefly.

13 Our contention, Your Honor, is that one bad vote is
14 enough for a couple of reasons. One, because there was the
15 4-3 vote that we've talked about in the series of votes.
16 Also, because Baird, in this case, is not dispositive.
17 Baird presented a different set of facts. It involved an
18 ordinance. It did not involve that that -- that ordinance
19 had three readings. It was a law of general applicability.
20 It affected people in the county generally, and, and the
21 actual margin was only one vote. So, there was no -- Baird
22 did not address the one tainted vote is enough argument
23 simply because it was not presented and could not have been
24 presented.

25 What we briefed to the Court and---

1 THE COURT: But the Court didn't say anything on that
2 point.

3 MR. GENTRY: No, it didn't -- the question, the
4 question simply was not addressed. The cases that we have
5 cited say, in circumstances like this one where you're
6 talking about a benefit to an individual as opposed to the
7 law of general applicability, where you were talking about
8 something with less dignity with full Legislation, which,
9 again, this is not an ordinance, it did not receive three
10 readings, and as, as the Court has seen a couple of times in
11 the video, was brought up at the last minute without notice,
12 was quickly sealed so there was no possibility of political
13 redress, those kind of acts are not treated by, by the
14 Courts that have addressed it that we have cited as
15 legislative acts, and those Courts have said that, in those
16 kind of circumstances, and this, this case is that case in
17 spades, one bad vote is enough and, and we rely on those.

18 The Thompson vote, we plainly proved was, was tainted,
19 was improper. It's -- there was at least an appearance of
20 impropriety. The Wilson vote was tainted and was improper.
21 The McAbee vote, I will acknowledge, is, is a tougher, is a
22 tougher argument for us. But what we are saying is Mr.
23 McAbee and Amy Plummer, with whom he had a sufficient
24 connection to recuse himself, were receiving travel benefits
25 after it was plain that they were not beneficial to the

1 county. Mr. Preston approved with those.

2 There's, there's contradictory evidence about whether
3 that was a ministerial act or not with regard to Mr. McAbee.
4 No argument that it's ministerial as to Ms. Plummer, and
5 that's what we rely on.

6 We are, we are not suggesting that the commission
7 payment to Mr. McAbee was itself part of, part of the
8 conflict that is evidence to show the connection between the
9 two. So, Mr. Davis mistook our argument in that regard.

10 Mr. Preston -- we proved -- and I say generally, Your
11 Honor. I believe we proved every allegation in our
12 complaint and everything that we talked about at summary
13 judgment. Not only directly, but Mr. Preston admitted those
14 things in, in his deposition. If you, if you've listened to
15 his deposition, he acknowledged the things that we've said.
16 We proved the facts that we allege.

17 THE COURT: Before we go too much further, let me ask
18 you one question that's been -- for me to get your position.

19 It has come up as an allegation, I didn't remember this
20 being alleged or discussed during our pretrial motion
21 period, that the two votes I want to say that weren't in
22 favor because one time it was an abstention and one time it
23 was a vote against, should also not count because they had a
24 dog in the fight. I don't know whether that's pled. I
25 don't know if it's just wasn't argued. It's come up as an

1 argument now, and I, I went over the pleadings before we
2 started, and I started off with hearings going over those,
3 and I don't recall that being something that was pled, but
4 maybe it has been. I don't know.

5 So, I'm gonna ask you about that, and I'll give you a
6 chance to tell me about your side of it in just a minute,
7 Mr. Davis.

8 MR. GENTRY: I do, I do not believe that it has been
9 pled. It's conceivable that I've missed something in the
10 course of the three years and I didn't remember---

11 THE COURT: I wasn't looking for it the first time.

12 MR. GENTRY: I did not remember---

13 THE COURT: So, that's the reason I haven't had the
14 chance to go back and read it again. I was just --.

15 MR. GENTRY: So, so, in the course of the trial was the
16 first time that I had heard it and I was struck that it was
17 in the---

18 THE COURT: You were like me.

19 MR. GENTRY: I was and I thought it was inventive, but
20 wrong.

21 THE COURT: Well, I haven't really considered it. It's
22 just as somewhat of a surprise, and maybe I should consider
23 it, and maybe I shouldn't.

24 MR. GENTRY: I'm not, I'm not, I'm not sure that you
25 should, but if, if, if, without waiving it, I can say a word

1 or two about it I'd like to.

2 THE COURT: Well, let's say something about it, and
3 then I say -- Mr. Davis is already mentioned it in his
4 argument. I mean I meant to stop him when he finished and
5 ask him about it, but I didn't. But I'll give him a chance
6 to respond to it.

7 Go ahead.

8 MR. GENTRY: We also pointed out that, that these folks
9 voted against their interest, which I think -- as far as I
10 know Mr. Davis is correct. The law is not structured in a,
11 in a fashion that draws that distinction. But the, the
12 presumption -- the purpose planning is to keep you from
13 voting in favor of your own interest.

14 THE COURT: Well, you know, I worked in the Legislature
15 long years ago, and I, I've seen Legislators, not accusing
16 anybody of doing this in this case, but who would vote on
17 the prevailing side when they didn't feel that way just so
18 they could move to reconsider it, you know, and -- cause
19 they required -- had the vote on the prevailing side and a
20 motion to reconsider it.

21 And, so, I've seen people vote not their conscious, but
22 for strategic reasons before. I know that happens, happens
23 in bodies such as this. And, so -- but anyway, that's just
24 an aside.

25 MR. GENTRY: And the---

1 THE COURT: And that's the reason I think maybe the
2 rule doesn't talk about the vote in your favor or your
3 interest or against your interest. I don't know.

4 MR. GENTRY: Can't see a reason, a way here that on,
5 on, on Mr. Preston's theory---

6 MR. GENTRY: Oh, I didn't suggest that this was
7 strategic in any manner or fashion at all, but I said I have
8 seen that happen, and maybe that's the reason for the
9 ruling. Sometimes the vote one way can actually be, appear
10 to be a vote in one direction and it's actually consistent
11 with a position you're trying to take.

12 MR. GENTRY: The other thing that we pointed out in
13 the, in the course of, in the course of our case is that the
14 benefit was not -- it was not a release of Cindy Wilson and
15 Bob Waldrep. Now, the, the suggestion, at least -- and, of
16 course, I don't think Mr. Hoskins ever mentioned those---

17 THE COURT: Well, it also -- the opinion at that time
18 was against, against -- by -- was the county against them,
19 but not---

20 THE COURT: Well, that case, that case was plainly not
21 released by them.

22 THE COURT: That's what I'm saying. It wasn't, it
23 wasn't Mr. Preston's interest. It was the county against
24 them.

25 MR. GENTRY: Mr. Preston was the named plaintiff, and

1 I -- but it---

2 THE COURT: In his official capacity was the named
3 plaintiff?

4 MR. GENTRY: I assume so because Mr. Cunningham
5 eventually ended up---

6 THE COURT: I've only seen the order in that case, and
7 I don't know whether that prayer for relief in that case
8 included something other than injunctive relief or not. I
9 didn't -- I've only seen the order. That's all that's been
10 presented to me.

11 MR. GENTRY: I can't, I can't answer that, Your
12 Honor---

13 THE COURT: Okay. Go ahead.

14 MR. GENTRY: ---at this point either, but the, the, the
15 benefit of the release actually ran to everybody on county
16 council, and Mr. Davis wants to argue well, it was really
17 substantially more benefit to Wilson and Waldrep, but the
18 benefit was there for all of them as the release is worth
19 something specifically. And, so, they all voted on it.
20 They all got it and that would, that would apply across the
21 board.

22 The other problem with that argument, Your Honor---

23 THE COURT: You know, if you follow that logic, I'm
24 just talking now---

25 MR. GENTRY: I, I do. Precisely. It's a reductive---

1 THE COURT: There's no way---

2 MR. GENTRY: Go back for---

3 THE COURT: ---he could go back for a settlement on
4 county council or be part of the settlement. So --.

5 MR. GENTRY: No, and I see it -- I---

6 THE COURT: I don't know if that ought to be the law or
7 not. That's an interesting proposition, but go ahead.

8 MR. GENTRY: But the other, the other problem, Your
9 Honor, is we think we've, we've proven or provided evidence
10 that Mr. Preston certainly wanted this thing to happen, and
11 he was talking behind the scenes with others. And there was
12 a, there was a procedural plan in place to get in through
13 fast, and one of the impacts of that procedural plan was
14 that Ms. Wilson and Mr. Waldrep did not have time to read
15 this, and it was not primarily about them.

16 And, so, to the extent that they got caught, if you
17 will, by virtue of the fact that they were handed a document
18 and had to vote on it 15 minutes later, I don't think
19 Mr. Preston ought to be able to benefit by that.

20 That -- while I'm -- and forgive me if I hop around a
21 little bit, but I'm---

22 THE COURT: No, no, I brought that one up because it
23 was just somewhat surprising the issue came up. I hadn't
24 heard it. I thought I heard all the issues when we argued
25 the pretrial motions, but, you know, there's been a few

1 things that popped up that surprised me.

2 MR. GENTRY: The -- you had a question for Mr. Davis
3 about, about fraud and constructive fraud.

4 THE COURT: Yes, sir, those are two of the causes of
5 action you said you're still pursuing and---

6 MR. GENTRY: I -- we---

7 THE COURT: I just didn't hear him address that in his
8 argument.

9 MR. GENTRY: And Mr. Davis said he didn't know what we
10 were arguing, we were alleging at all, and, so, I'd like to
11 explain that.

12 THE COURT: Yes, sir.

13 MR. GENTRY: And that is that Mr. Preston was the
14 highest ranking employee of the county and he had a
15 fiduciary duty in that capacity, and we have shown, if it
16 needed to be shown, he was aware of Thompson's job search.
17 He was aware of the Palmetto Agricultural Consulting
18 contract. He knew those things. He knew of that conflict
19 of interest, that appearance of impropriety, and he knew
20 both of those things for at least two weeks, in the case of
21 Palmetto, and longer with regard to Mr. Thompson before the
22 vote on the severance package and he said nothing.

23 And we say he had a duty to say something. And that --
24 that is the -- that -- that it's the failure to speak in the
25 face of a duty to speak that we say supports his breach of,

1 breach of fiduciary duty claim, fraud, and constructive
2 fraud, negligent misrepresentation.

3 They all -- all of those claims arise out of the
4 proposition that Mr. Preston knew the problem with the
5 people voting for his contract. But he was more interested
6 in getting it passed than he was in having it done right,
7 and that's -- that, by the way, Your Honor, is the flip-side
8 of the continued theme that you've heard from the other side
9 that well, the, the ones who wanted to settle were right
10 because look at how, how much this has cost the county in a
11 sense.

12 Well, the flip-side of that coin, Your Honor, is if
13 this had been done right, if it had been debated properly,
14 had been announced, if the public had been allowed to come
15 and comment, if people who should not have voted had not
16 voted, had not indeed led the charge, then there's -- it's
17 equally possible that we wouldn't be here today if it had
18 been done right instead of the, the impropriety, the amount
19 paid, and, and the procedural irregularities.

20 So, I -- it is -- the, the prediction that the, the
21 Preston side can not look at what's happened since and say
22 that's all your fault when they're the ones who didn't do
23 the thing right in first place.

24 To, to come back and finish up on the Baird case,
25 Mr. Davis suggested that, that Mr. Bright's analysis under

1 Cowart had something do with this. There's a different
2 standard all together. Mr. Bright was saying this is a
3 government that, that employment, it's a governmental
4 function. We are talking about the decision to enter into
5 the severance agreement, and the distinction drawn by those
6 cases are not government versus non-government, but whether
7 the, the body's acting in its full legislative capacity such
8 that it is entitled to particular deference, and only if
9 there were enough bad votes to knock the thing, we can knock
10 it out.

11 In a situation like this when the Courts have likened
12 it more to a judicial type proceeding, they have said, just
13 as they would if, if one member of the three judge panel,
14 even if the panel were, were unanimous, had an undisclosed
15 interest, the whole procedure's out, these cases likened the
16 situation like this one to that. And, so, the Thompson vote
17 alone, the Wilson vote alone is enough to invalidate the
18 action in, in this particular circumstance, and, again,
19 we're not, we're not asking this Court to make very broad
20 law because I don't know if anything like this is gonna
21 happen again anytime soon.

22 It is the extraordinary confluence of particular
23 circumstances. And, so, there's not, there's not a
24 Pandora's Box fear here. This is, this is, this is a truly
25 extraordinary thing, and it's not a close case.

1 Mr. Davis invokes the Baird case. He ignores Moody.
2 He ignores Calvert and Self, which say you can look at the
3 reasonableness of the act, of an act. You can look at
4 public policy.

5 We are -- we did not set out to try motives. We, we
6 don't, we don't think that that's -- we think that the
7 reason that this is -- the Court can find this is arbitrary,
8 capricious, unreasonable is on the face of what happened.
9 There was no anticipatory breach claim.

10 Under the contract, Mr. Preston could be terminated at
11 anytime. He served at the will of the council. Now, he
12 could of terminated him in a way that then triggered the
13 obligation to pay severance, but we never got there. It was
14 simply logically impossible for there to be anticipatory
15 breach.

16 Could county council perhaps have, have arranged a
17 buy-out at some level that was reasonable?

18 That is possible, but that's not what they did. They
19 paid more. They paid \$350,000 more to allow him to retire
20 immediately, and that -- there's no, there's no basis for
21 that. There's no justification.

22 Now, Mr. Davis tried to say well, you know, there's --
23 this release is broader or he's given up some other bits and
24 pieces. But the -- what, what this case is about, it's
25 about the primary provision of money. It is not -- it's not

1 about the, those kind of scraps.

2 I'll address Heather Jones, the Heather Jones
3 allegation briefly. Again, we proved what we alleged.
4 we've proved what we've set out to prove.

5 What's significance about that is, again, not the
6 dollar amount that's at issue. It is the, it is the
7 surreptitious behavior. It is the, the willingness to
8 create a false government record, and to do it after he was
9 out of the office in at least one case.

10 It's part of, of a pattern that you can see of Mr.
11 Preston's desire to, in effect, exert dead-hand control
12 after he left. He was -- he -- fine. The people of
13 Anderson County have voted for people who don't support me.
14 That's great. I'm gonna arrange it so that when I leave, I
15 can retire at age 45 forever on government pension. Michael
16 Cunningham will be put in with a contract like Preston's.
17 It gives a similar buy-out. Palmetto will be -- Palmetto
18 Agricultural Consultants will be given a contract that makes
19 it very difficult to fire them.

20 And Heather Jones testified. She said the reason that,
21 that this was important was insulation against the political
22 change that was coming. The goal of those backdated
23 documents was to insulate, to keep the political change from
24 affecting a friend of Mr. Preston's, and that's not proper
25 use of funds.

1 THE COURT: Was there any evidence shown though that
2 that changed anything that wasn't already in effect?

3 MR. GENTRY: It did not change what was in, what was in
4 effect. The, the concern though, I suppose that, that led
5 them to hide it was that if Mr. Preston had been forthright
6 and said -- and put in the memo that said I agree to this, I
7 don't see it, now I'm gonna, I'm gonna memorialize it, I'm
8 gonna write 2008, say that I did it in 2006, was that that
9 might be subject to some political attacks, and he created a
10 false document. But no, Your Honor. There's -- she -- she
11 was -- she had -- the undisputed evidence she had will be---

12 THE COURT: Well, that -- isn't it the standard that
13 that breach, to be a breach of a contract justifying
14 rescission, it has to be so fundamental to defeat the purpose
15 of the contract?

16 MR. GENTRY: It is and we, we, we argue that the
17 fundamental purpose here is that, that Mr. Preston was
18 suppose to operate in aboveboard fashion and suppose to
19 leave office at the time that he was suppose to leave
20 office.

21 You heard Mr. Davis argue that, that Mr. Thompson was
22 qualified and was a good hire. That doesn't have anything
23 to do with whether or not he should of been voting, let
24 alone chairing the meeting.

25 The justification that they offer is, is a, is a

1 shifting combination of political toxicity generally, of, of
2 anonymous letters, and of things that were gonna happen in
3 the future, and, and none of those, Your Honor, justifies
4 spending county money to, to pay.

5 I can see that there's, there's ugliness here, in, in
6 what, in what we heard. The ugliness, we think, at a
7 minimum, ran both ways, but, again, I don't think that's the
8 point. I think the point is, is that the county has to, has
9 to spend its money in a nonarbitrary fashion, and things --
10 certainly there is no compensation due Mr. Preston things
11 that weren't done by the county cause the county can't pay
12 for anonymous letters from somebody else. So, those, those
13 things simply have to be off the table.

14 You then heard a lot about the, the laundry list of
15 items that Mr. Preston submitted in his suit against Ms.
16 Wilson and Mr. Waldrep, and it questioned, on direct, he
17 said yeah, that's everything I could think of. He then, he
18 then shifted a little bit, but I don't know if you heard
19 anything else.

20 The point there is Mr. Preston got a remedy. He
21 demonstrated, look, when I have these kinds of political
22 problems, I have a remedy and he went and he got that
23 remedy. And once that's done, I think those things are off
24 the table in terms of something that the county can
25 justifiably compensate him for.

1 It's admitted that the sitting county council did not
2 take any kind of action to breach his contract or to take,
3 or to make the kind of clear and irrevocable statement of
4 intent to breach that's required to -- and to establish
5 anticipatory breach. Anticipatory breach simply did not
6 exist as a legal matter.

7 What they were saying was, and when the new people get
8 in, it's going to be -- they're going to do something, and
9 they may have planned to do something. But even Mr. Greer
10 acknowledged until, until the hands go up on the vote,
11 nothing is happened. Political promises don't mean a whole
12 lot, and that's for better and worse on some occasions.
13 When you're actually sitting with county council, and you
14 have to make decisions, you may see things a little bit
15 differently.

16 Maybe it was, was not unreasonable for Mr. Preston to
17 say, you know, I've had enough of this. It's a storm
18 coming. I'm gonna leave. But the right thing to do in that
19 instance is to hand in your resignation. It is not to
20 engineer a severance agreement under, under a trumped up
21 baseless claim, have it presided over by people who are
22 beholding to you, and collect far more than you could
23 collect on your best day in court under your agreement, and
24 certainly far more than would, would have been negotiated in
25 any kind of an arm's length buy-out on the basis of the

1 proposition that, that there needs to be an amicable
2 divorce.

3 The amicable divorce argument will not support -- I
4 don't think it will support a payment at the maximum level
5 of the severance agreement, but it certainly won't support
6 the extra \$356,000, and we think, for that reason, we've
7 proven our case. We've proven all the elements that we
8 allege and the directed verdict motion should be denied.

9 THE COURT: Thank you.

10 I told you I'd give you a chance to talk on that one
11 point. I'll give you a chance to do that.

12 MR. DAVIS: I'll be glad to.

13 First of all, Your Honor, with respect to the issue of
14 whether it's pled, I'm not, I'm not really sure what you
15 mean exactly.

16 Did they issue of whether their vote---

17 THE COURT: What I mean -- what I was asking him was
18 that I just never had heard that theory or concept advanced
19 until we got into the trial, and I was little -- you know,
20 it was novel to me. Doesn't mean that it's wrong or right
21 or indifferent. It was just new to me, and I didn't know if
22 it was something to be kicked around, was in the pleadings
23 already, and you guys just decided not to argue, but I
24 can't -- you guys are both good lawyers. I'm sure you argue
25 everything you can argue.

1 MR. DAVIS: Well---

2 THE COURT: So, I'm a little surprised it came up at
3 this stage of the proceeding. Maybe it was a new idea and
4 maybe it was something that doesn't need to be pled. I
5 haven't, I haven't looked at the pleadings from that
6 prospective.

7 So, I'd like for you to comment on that.

8 MR. DAVIS: Whenever you prepare a case to go to trial,
9 you start, Your Honor remembers this, you start with your
10 hands on every piece of paper, and you start assimilating
11 evidence in a way that you perhaps haven't seen it before,
12 and that's what happened -- with, with respect to this case
13 because I've looked down and said, well, here's the
14 financial interest, tainting a vote of Ron Wilson because
15 his daughter got a contract or there's a financial interest
16 of McAbee for tainting his vote because you got a check nine
17 months before that, and then I started looking at it, and I
18 said, wait a minute.

19 October, 23rd, 2008. These two people, Cindy Wilson,
20 Bob Waldrep, both of them have admit -- admit that they knew
21 that the claims, the tort claims, were directed at them.
22 So, that's a little bit of a misnomer. These claims, when
23 he wrote there's two council members, there's no question in
24 this case, Mr. Bright knew it, Bob Waldrep knew it, Cindy
25 Wilson acknowledged it in a deposition, probably not on the

1 stand, but she will, it was her. It was Bob. And the
2 claims were directed at them. They were in the crosshairs.

3 Right?

4 And, so, then they executed or cast a vote in favor of
5 an agreement that provided them a release as to those
6 claims. Well, that, that was directly in their financial---

7 THE COURT: The vote was against it. Not in favor of
8 it. You just said in favor.

9 MR. DAVIS: Well, they voted, they voted on the
10 agreement is what I meant to say.

11 THE COURT: At one time was an abstention.

12 MR. DAVIS: And the distinction of voting for or
13 against something, Your Honor, I think your analysis on that
14 is absolutely correct. The problem is that if you have a
15 financial incentive, and the vote is well, you can
16 participate so long as you vote against the measure, Your
17 Honor can sit there and come up with unending numbers of
18 permutations where casting a vote negative to a proposed
19 project could actually enrich the voter in the long run even
20 more, which is the whole purpose behind the prohibition in
21 the first instance.

22 And with respect to whether it's, it's framed by my
23 pleadings, I would suggest to you that it is. I mean one of
24 my affirmative defenses is specifically under Baird, I mean
25 the Baird doctrine, and that is what I'm saying with respect

1 to this particular vote. That if you say okay, it's
2 five-to-one-to-one, and you discount Cindy Wilson and Bob
3 Waldrep's vote, there goes the one-to-one. So now you're
4 down to five to zero, and let's say you take out the two
5 votes that Mr. Gentry stood up and told you to take out. Go
6 down one. Go down two. It still passes three nothing.

7 That's the point, Your Honor. No matter which way you
8 frame this, no matter which way you turn it, the vote still
9 goes through. Mr. Gentry stood up and he wanted to say
10 that, that it might be morally obtuse, but it's not
11 factually blind, that's what it's not because it was very
12 clear that he made every effort he could to run from the
13 facts and actual evidence. And we look at the facts and the
14 testimony that you've heard from the last four days, what
15 you find is that you can call it whatever you want, you can
16 put some fancy label on it, however you'd like, but the
17 facts don't support the legal elements of the claims they've
18 alleged. They don't.

19 Even their arbitrary and capricious claim, which seems
20 to be their last final holdback, Your Honor, in our brief,
21 we've cited to you, in our brief in support of summary
22 judgment, we've cited to you the case law of the evidentiary
23 standard. That's a clear and convincing standard, and they
24 can't meet that.

25 That's one of their primary problems is the allegations

1 in their complaint, in order for them to float through, they
2 have to prove them by such a high standard, they can't ever
3 do it. That was what I was trying to impress upon the Court
4 during the summary judgment standard.

5 The evidence in this case is never going to pass
6 muster, and it's certainly not gonna pass muster after
7 today. You heard their best shot. They lined up -- they
8 lined up all their bullets and their bullets, by the by,
9 included McAbee, right?

10 So, their bullets are so few and far between -- their
11 bullets are McAbee, Jones, Thompson, and Preston in their
12 case in chief. That's -- those are their bullets. That's
13 the best case. From here it goes down.

14 So, if Your Honor is convinced that they haven't met
15 their threshold now, it's never going to be met after today,
16 and that's the reason why we're moving for directed verdict,
17 Your Honor.

18 THE COURT: Thank you very much.

19 I'll, I'll consider it and issue a ruling in the
20 morning.

21 We'll adjourn at this time. It's almost 5:30. That's
22 our normal time and we'll resume at nine o'clock in the
23 morning.

24 Thank you very much.

25 MR. GENTRY: Thank you, Your Honor.

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THE COURT: Court's adjourned at this time.

(WHEREUPON, Court was in recess for the evening.)

1 Friday, November 2nd, 2012

2
3 (WHEREUPON, Plaintiff's Exhibit Nos. 14 and 82 were
4 received into evidence at this time.)

5 THE COURT: All right. I've had an opportunity to
6 review the motions that were made yesterday afternoon. I
7 will comment that, of course, the main thrust of the case is
8 the question of the severance agreement, and whether or not
9 it should be -- the vote should be upheld.

10 I've reviewed the Baird case. I've also reviewed cases
11 that were submitted previously from other jurisdictions
12 that, that weigh on that particular issue.

13 I do find that there are certain questions of the law
14 in this state that were not exactly clear you've -- given
15 the facts in this case. We have a series of votes that were
16 taken here. Some of which were by a wide margin. One of
17 which was not by a wide margin. It was a single vote
18 margin. And whether or not that has some effect on this
19 case is a question of some novel import or novel discussion
20 in this state.

21 Also, as to what votes should be or shouldn't be
22 invalidated is also a question that's up for interpretation.
23 All of those are issues that I don't think should be decided
24 in some type of summary fashion. I believe that they should
25 be settled -- decided on a complete record so that all the

1 facts can be preserved for an Appellate Court later on when
2 I got a feeling this case will be decided by an Appellate
3 Court.

4 So, I want a full record developed before, before we --
5 before I make a ruling on any of the issues in the case.

6 So, for that reason I'm denying the motions for
7 directed verdict at this point in time, and we'll proceed
8 with the defense case.

9 Mr. Davis, you ready to call your first witness?

10 MR. DAVIS: Yes, Your Honor.

11 This morning, if it pleases the Court, we are gonna do
12 a series of designations.

13 THE COURT: Yes, sir.

14 MR. DAVIS: And I spoke with opposing counsel just a
15 minute ago, and they do have some objections to designations
16 and also with respect to exhibits from the depositions. But
17 we propose to handle it like we had handled the prior
18 deposition, which is go ahead, read everything that's
19 designated, provide you with a list of objections, and---

20 THE COURT: All right.

21 MR. DAVIS: ---work it that way.

22 THE COURT: Any objection to us proceeding in that
23 fashion?

24 MR. TESSIER: No, Your Honor. I think Mr. Davis just
25 needs to let us know about a couple of objections on one of

1 them. The first one, as I understand it, Your Honor, is Mr.
2 Allen, and his -- if I can hand them up. I'll just give you
3 ours.

4 THE COURT: Yes, sir, that will be fine. Thank you
5 very much.

6 Do I have your proposed designations on Allen?

7 MR. TESSIER: Yes, Your Honor. They're included in
8 that same copy.

9 THE COURT: I have, I have defendant's designations for
10 Cindy Wilson. I have the designations for Edwin Moore. I
11 don't know that I have---

12 MR. DAVIS: Sir?

13 THE COURT: Do I have yours?

14 MR. DAVIS: I have left them on the bench yesterday.
15 But I can get you a copy of them shortly, and I also have a
16 key for you.

17 May I approach?

18 THE COURT: Yeah, you can approach. Come on up.

19 MR. DAVIS: That is sort of the Rosetta Stone between
20 the deposition exhibit numbers and the trial exhibits
21 numbers. So, that will allow you to switch back and forth.

22 THE COURT: Okay.

23 MR. DAVIS: The, the -- I don't know.

24 Did opposing counsel hand you up the objections to the
25 depositions cause --?

1 MR. TESSIER: I will now.
2 THE COURT: Yes. Well, I now have Allen's.
3 MR. DAVIS: With respect---
4 THE COURT: I gave some things back to Mr. Shirley.
5 So, I'm looking for these here. This is plaintiff's
6 objection to Allen. I have that. And these are your
7 designations.
8 MR. DAVIS: Right.
9 THE COURT: I have those two documents for Allen.
10 MR. DAVIS: But what I was gonna say, Judge, that on
11 Allen, for example, the designations and objections and
12 counter-designations should all be within one table.
13 THE COURT: I see.
14 Okay. Thank you very much.
15 All right. Are you, are you -- are we ready to
16 proceed?
17 MR. DAVIS: We are, Your Honor.
18 THE COURT: All right. So, this is the deposition of
19 Tom Allen, is that correct?
20 MS. KERN-FULLER: Yes, sir.
21 THE COURT: You may proceed.
22 Q. Can you state your full name for the record?
23 A. It's Thomas Allen. Middle name is Fulton.
24 Q. Mr. Allen, where were you born?
25 A. Chillicothe, Ohio.

1 Q. And did you grow up in Ohio?
2 A. Yes.
3 Q. At what point did you move to South Carolina?
4 A. That was back in 1997.
5 Q. What brought you to South Carolina?
6 A. My wife.
7 Q. What's your wife's name?
8 A. Janice.
9 Q. Are you currently married?
10 A. Yes.
11 Q. How long have you been married to Janice?
12 A. Twenty years.
13 Q. Tell me a little, a little bit about yourself.
14 Where did you go to college?
15 A. Went to Ohio University for my Bachelor's Degree,
16 and went to East Tennessee State for my Master's Degree.
17 Served two years in the Air Force, '68 through '70, as an
18 English instructor in Vietnam. Got out of there and had a
19 five year gap in service.
20 That's when I went back and got my Master's Degree,
21 which was in environmental health and, at that time, that's
22 when the Clean Air, Clean Water Act, and all that stuff was
23 coming into being in the early and mid 70's.
24 So, as it turned out, an Army recruiter was coming
25 through the University because they needed people to

1 clean-up a lot of messes that the Army had managed to
2 generate over the years, and they're recruiting folks,
3 taking them in on direct conditions as officers. So, they
4 asked me if I wanted to do that and I said absolutely.

5 I joined the Air Force and had a great time. Spent
6 another 20 years in the Army. So, a total of about 22 and
7 half years altogether in the military

8 Q. What was your ultimate rank?

9 A. Lieutenant colonel.

10 Q. Earlier you testified that you received a
11 Bachelor's from Ohio University.

12 A. Ohio University.

13 Q. And what was your Bachelor's in?

14 A. Botany.

15 Q. Turning your attention to the lawsuit between
16 Anderson County and Mr. Preston, when did you first take
17 office in Anderson?

18 A. January '09.

19 Q. January '09.

20 And were you elected in the previous primary?

21 A. That's correct. In November of '08.

22 Q. November of '08.

23 Was that a contested -- that was the general election?

24 A. It was the general.

25 Q. Was it contested a general election?

1 A. No.
2 Q. And when was the primary?
3 A. The primary was the previous June.
4 Q. Who did you run against in the primary?
5 A. In that primary it was Bill McAbee.
6 Q. What district do you represent?
7 A. Four.
8 Q. And tell me, as a non-Anderson County person, what
9 does District 4 embrace?
10 A. District 4 is the northern part of the county. It
11 run, runs almost from the Georgia line across the northern
12 part of the lakes up against Oconee and Pickens County. And
13 if I'm the map here, we're gonna go from Georgia across the
14 northern part of the country and it makes a curve and come
15 down through Sandy Springs, Pendleton, Harper's Ridge, and
16 actually crossed over 81 and encompassed Hanna High School,
17 and just a little pie shaped piece out of Midway Road. So,
18 primarily the northern section around the lake.
19 Q. During the primary election in June of 2000, were
20 there any other new council members elected?
21 A. Yes
22 Q. Who else was elected?
23 A. We had Mr. Dunn in District 5 and Mr. Moore in
24 District 3.
25 Q. Was Mr. Dunn challenged in the general election?

1 A. Not in the general election.

2 Q. Was Mr. Moore challenged in the general election?

3 A. Not in the general.

4 Q. So, after the primary in 2000 -- in June of 2008,
5 yourself, Mr. Dunn, and Mr. Moore pretty much had secured
6 your seats on county council?

7 A. Right.

8 Q. When you ran for county council, do you recall
9 stating that you ran for the District 4 seat because you
10 wanted to see the council spending more time on county
11 business and less time fighting with each other?

12 A. I don't recall saying that. I don't recall that
13 specifically. I could have, but I don't recall.
14 would that have been back in 2008?

15 Q. Yes, sir.

16 A. It's possible I could have said that. I don't
17 recall it. If I'd said that in an interview or a debate or
18 I don't know.

19 Q. Was it true?

20 A. That would probably be part of the reason. There
21 was a lot of discord on council. Yeah, there was a lot of
22 discord.

23 Q. Did you ever post on the Anderson Talkzone under a
24 name other than your own?

25 A. I did.

1 Q. What other screen name did you use?
2 A. That was Kill Kenny.
3 Q. Do you ever recall posting on the Anderson Talkzone
4 that part of the reason why you were running for the
5 District 4 seat was because you wanted to end the bickering
6 and contentiousness that was associated with Anderson County
7 politics?
8 A. I may have said that. I may have and that would
9 tie in with this because, like I said, there was a lot of
10 contention.
11 Q. You believe that was true?
12 A. Yes.
13 Q. Was that part of the reason why you ran for the
14 District 4 seat?
15 A. Yes.
16 Q. Was your goal to limit the contentiousness?
17 A. Yes.
18 Q. Was Tommy Dunn successful in his run for the
19 District 5 seat?
20 A. Yes.
21 Q. Who did he beat?
22 A. There may of been only one, but I can't recall the
23 name of those folks.
24 Q. Was it Michael Thompson?
25 A. Yes, I think -- yeah, I think it was that.

1 Q. Do you recall when Anderson County Council voted to
2 pursue this lawsuit?

3 A. Yes.

4 Q. Did you cast a vote on whether the county should
5 bring this lawsuit?

6 A. Yes.

7 Q. What was your vote?

8 A. Against.

9 Q. Why did you vote against it?

10 A. Having looked at the lawsuit, it's just my personal
11 opinion the reason the suit was being brought, I believe, is
12 there was a lot of pressure from certain sources to get the
13 1.1 million back that they opted to Mr. Preston. In my
14 looking at the lawsuit, I just didn't feel that was going to
15 be objective.

16 Q. Were you concerned that the lawsuit would not be a
17 successful way to recover the 1.1 million-dollars?

18 A. Well, I don't know cause that really is going to
19 have to be up to the Court to determine whether it is or
20 not. Not being an attorney, in my humble opinion, you know,
21 It didn't look like it was going to achieve that goal.
22 However, I don't know what might be brought out or
23 discovered or followed, you know, once it got in the court
24 system. I don't know.

25 Q. You mentioned pressure from certain sources.

1 What sources are you referring to?

2 A. Well, there was a lot of individuals, certain
3 segments of the population, that just were really really
4 upset about the 1.1 million-dollar buy-out and felt like the
5 county just absolutely had to get the money back, were very
6 upset about it, and that came from various segments of the
7 population.

8 Q. Can you identify for me the individuals that you
9 recall as being the most upset?

10 A. Well, the most vocal of the whole operation came
11 out of a local radio station, which was WAIM Radio. I mean
12 that was a major topic of a call-in talk show. That was a
13 major topic for a long time and they seemed to be extremely
14 concerned about that and wanted to get their money back.

15 Q. Was there a particular radio personality that you
16 were referring to?

17 A. Well, the Rick -- it's the Rick Driver Show.
18 Everybody knows what that is. That's no secret. But it was
19 his callers, folks that would call in.

20 Q. Over the years, have you had contact with
21 Mr. Driver?

22 A. Yes.

23 Q. Have you ever called into the radio show yourself?

24 A. Yes.

25 Q. Do you know whether Mr. Moore frequently had

1 contact with Mr. Driver?

2 A. I believe that he did. I don't know how frequent
3 it was, but him being a talk show host, and county council
4 seemingly to be the -- his primary meat on the show, he's
5 talked to everybody on council.

6 Q. How about Ms. Wilson, does she regularly, regularly
7 talk to Mr. Driver?

8 A. I would imagine she does. I'm not certain how
9 often they might talk.

10 Q. How about Councilman or Councilwoman Floyd, does
11 she talk to Mr. Driver regularly?

12 A. I rather doubt that she does.

13 Q. How about former Councilman Ron Wilson, did he talk
14 to Mr. Driver regularly?

15 A. From the history I know there, that was kind of an
16 interesting relationship. I think they did initially and
17 then they had a falling out. So, how frequently they spoke
18 to one another I don't know. Initially, when Ron Wilson ran
19 for office, I presume they talked quite a bit. But after a
20 while the wheels fell off that relationship and I don't know
21 what their---

22 Q. What's your understanding was the reason why their
23 relationship deteriorated?

24 A. Just my opinion why it deteriorated?

25 I think Rick Driver and the show, that's a very

1 conservative group, and Ron Wilson wasn't right on that very
2 conservative pathway, and I think that's what's caused the
3 falling out. He was not conservative enough.

4 Q. Isn't Mr. Wilson pretty conservative?

5 A. He is.

6 Q. Just not conservative enough?

7 A. Not conservative enough.

8 Q. Are you conservative enough for the Rick Driver
9 crowd?

10 A. No.

11 Q. Did the county ever vote later, later as in after
12 the lawsuit was filed, concerning contributing additional
13 resources to this lawsuit?

14 A. There was several votes taken where monies would be
15 transferred from one department to another for legal fees,
16 yes.

17 Q. Did you ever vote against any of those transfers?

18 A. Yes.

19 Q. How many did you vote against?

20 A. Oh, I -- at least two.

21 Q. Why did you vote against them?

22 A. Well, I just couldn't see any end to it. It looked
23 like a never ending rat hole, so to speak, or just, you
24 know, money flowing out and we weren't seeing any results.
25 It's been two years now, over two years. Now we're still

1 paying bills.

2 Q. To date, how much has the Anderson County Council
3 paid in in relation to the investigation in this lawsuit?

4 A. I don't know the exact number. We keep seeing in
5 the newspaper somewhere between 1.5, 1.6 million. I think
6 it's more than that. I would have to get with the finance
7 department and get a current number. It's probably, I'd
8 say, closer to two.

9 Q. How much was the total amount paid out to
10 Mr. Preston in his severance?

11 A. How much was paid out?

12 Q. Yes, sir.

13 A. 1.1.

14 Q. Are you fiscally conservative?

15 A. Yes.

16 Q. Is it fiscally conservative to spend over
17 1.5 million chasing 1.1 million-dollars?

18 A. If I give you -- if you give me a \$10 bill, and I
19 guarantee you to get you five back, will that be a good
20 deal?

21 No, no, no.

22 Q. On the second page of Exhibit 1, in the last --
23 wait. In the second paragraph down it says, in the last
24 real sentence, "we've got to get the gulf healed before we
25 can move forward."

1 Do you see that?

2 A. Yes

3 Q. What gulf are you referring to?

4 A. I think -- let me read that again. Okay. This
5 was -- yeah, when -- yeah. This was when I was out doing
6 door-to-door campaigning. That was one of the biggest
7 complaints that I heard was a, was, again, going back to the
8 front page, the arguments, the disruption on council, the
9 discord on council. And that's what I meant by the gulf.
10 There was so much arguing. I mean it got pretty brutal
11 sometimes on council, and that's what I was hearing most of
12 when I'd go door-to-door.

13 Q. Was it your experience that the Anderson citizens
14 were informing you that they were upset about the discord on
15 the Anderson County Council?

16 A. Yes.

17 Q. Does this lawsuit further the healing of the gulf
18 in your opinion?

19 A. No.

20 Q. Is it your personal opinion that the county should
21 continue to spend money on this lawsuit?

22 A. Is my opinion the county should continue -- that
23 the county should continue money on this lawsuit?

24 No.

25 Q. Is this lawsuit good for the citizens of Anderson

1 County?

2 In your opinion, is this lawsuit good for the citizens
3 of Anderson County?

4 A. In my opinion, no.

5 Q. Is the economic development important for Anderson
6 County?

7 A. Very much so. That's one of my priorities.

8 Q. Is the money that the county expends on this
9 lawsuit money that it could otherwise spend on economic
10 development?

11 A. It might be. And I would, again -- and I say might
12 because I don't know what pot it's coming out of. From
13 time -- some things are locked in. As you probably know,
14 you can only use it for certain things, and it may be that
15 some of this money can only be used for legal activities.
16 There are other pots of money that yes, it conceivably can
17 be used to develop infrastructure, repave roads, and do some
18 things that would be beneficial to economic development.

19 Q. Do you recall stating, when you were running for
20 office, that economic development was one of the most
21 important issues for your district?

22 A. I probably did say that. I don't recall the
23 specific statement, but, yeah.

24 Q. Putting aside whether you specifically recall that,
25 is that true?

1 A. Yes.

2 Q. Is your email address thomas9976@charter.net?

3 A. Yes, it is.

4 Q. Did you ever meet with Mr. Hopkins prior to your
5 being sworn in in January of 2009?

6 A. I believe we did, yeah. The three of us new
7 council members visited a number of the various divisions
8 just so we could be familiar with them and, of course, roads
9 and bridges was one. So, yes

10 Q. Who attended that meeting?

11 Was it you, Mr. Moore, Mr. Dunn?

12 A. And that was it.

13 Q. And then whoever the department person was?

14 A. Mr. Hopkins, for instance, right.

15 Q. Did you meet with anyone other than Mr. Hopkins and
16 Mr. Jones?

17 A. I think we met with -- I'm trying to remember back
18 now. I think Mr. Carroll's office, purchasing, we stopped
19 in there. I'm trying to remember where else we might have
20 gone. That's the only one I can recall right now,
21 Mr. Hopkins, Mr. Carroll.

22 Q. And what was discussed during these meetings?

23 A. Oh, my goodness. Basically just how they operated
24 that their budgets, and I'll use Mr. Hopkins as an example
25 because I remember that one a little bit better. We went

1 down his office and we discussed how he was funded, the
2 types of -- the kind of money he had, how much he had for
3 paving and asphalt and grass cutting.

4 We walked outside the door and looked at some of the
5 equipment that they had parked out in the lot. We went over
6 to the vehicle maintenance facility so we could see how the
7 vehicles were maintained and cared for, and looked at some
8 of the costs involved over there. Just general things, how
9 the division ran basically.

10 Q. Down at the bottom of that paragraph, the second to
11 last sentence, Mr. Beckwith writes to you, and I quote,
12 "once you were sworn in, they apparently required to keep J.
13 Preston informed of any council interaction."

14 Do you see that?

15 A. Uh-huh. (Affirmative).

16 Q. Was the purpose of your meeting with Mr. Hopkins
17 and Mr. Jones, before you were sworn in, to avoid having to
18 disclose the meetings to the county administrator?

19 A. You know what?

20 That never would of occurred to me. So, I'll say no, I
21 would never even assume that. The obvious things for us to
22 do was obviously newly elected -- well, not in the general
23 election, but since there was nobody running against us, the
24 obvious thing to do was try to get up to snuff, get up to
25 speed on what's going on. It would never have occurred to

1 me that there were some kind of, you know, thing that there
2 would have to be reported to Mr. Preston after we were sworn
3 in versus not reporting before we were sworn in. That would
4 never have occurred to me.

5 Q. Do you recall ever informing Mr. Preston that you
6 were meeting with Mr. Hopkins?

7 A. No.

8 Q. Do you recall informing Mr. Preston that you were
9 meeting with Mr. Jones?

10 A. No.

11 Q. Did you meet with Mr. Jones?

12 A. I believe we did meet with Mr. Jones.

13 Q. Do you recall ever telling Mr. Preston that you met
14 with Mr. Jones?

15 A. No.

16 Q. And you referenced a Mr. Carroll before as well.
17 Do you remember Mr. Carroll?

18 A. Yeah.

19 Q. You met with Mr. Carroll?

20 A. Uh-huh. (Affirmative).

21 Q. Did you ever tell Mr. Preston that you met with
22 Mr. Carroll?

23 A. No.

24 Q. Do you have -- to your knowledge, did anyone tell
25 Mr. Preston about those meetings?

1 A. No, not to my knowledge.

2 Q. Were you aware of any policies in place that
3 Mr. Preston, as county administrator, had in relation to
4 meeting between county council members and employees of the
5 county?

6 A. No.

7 Q. Before being sworn in in January of 2009, did you
8 meet with Mr. Moore and Mr. Dunn about county council
9 business?

10 A. Prior to the swearing in?

11 Q. Yes, sir.

12 A. Yes.

13 Q. How many meetings took place?

14 A. I would guess maybe four or five, somewhere in that
15 neighborhood.

16 Q. Is it possible that you met more than five times?

17 A. It's possible. I don't recall exactly.

18 Q. But you recall meeting with a fair amount of
19 regularity?

20 A. Yes.

21 Q. Where did the meetings take place?

22 A. They took place over on Bob Waldrep's office.

23 Q. Did they only take place at Bob Waldrep's office?

24 A. Yes, that was the only place.

25 Q. Did you ever meet at Cindy Wilson's home?

1 A. There, there was a meeting at Cindy Wilson's house,
2 yes.

3 Q. Were there any other meetings?

4 A. You may be telling me because I can't recall if
5 there were. I know they were at Waldrep's office. There
6 was one at Cindy Wilson -- Cindy's house.

7 Q. Let's talk about the meetings at Bob Waldrep's
8 office.

9 When you say his office, do you mean his law office?

10 A. His law office, yeah.

11 Q. And where did you meet in his law office?

12 A. In his conference room

13 Q. Why did you meet at Mr. Waldrep's office?

14 A. Well, he asked us if we could -- if we'd like to
15 meet at his office and so we did. Me going over there was,
16 honestly, it was kind of a training thing because the three
17 of us were brand new coming into council. We didn't know
18 the inner-workings of how things worked or whatever.

19 So, here were some people that were willing to help us
20 get our feet wet, you know, find out how council works. So,
21 that's why we had our meeting.

22 Q. Prior to the primary in June of 2008, do you recall
23 writing that your intention was not to pick sides in the
24 Anderson County political divisiveness?

25 A. That I wrote that?

1 Q. Yes, sir.

2 A. It sounds like something I would say, but I don't,
3 I don't recall writing that.

4 Q. Was that, in fact, your intention?

5 A. Not to pick sides?

6 Yeah, yeah.

7 Q. Who attended these meetings at Mr. Waldrep's
8 office?

9 A. Was of course, me, Eddie Moore, Tommy Dunn, Bob
10 Waldrep, his daughter, Liz, his former wife, Nancy, would be
11 there sometimes. Liz and Nancy off and on. I mentioned
12 Cindy I think, Cindy Wilson, and they're a couple of other
13 people I'm trying to remember from time to time. Some
14 different people would show up, and I can't even remember
15 now who exactly did show up at those meetings.

16 Q. Did Tom Beckwith ever attend?

17 A. Tom, that, that's what I was thinking of. I think
18 Tom Beckwith might of been one, at one or two of the
19 meetings.

20 Q. Was Kirk Gibson there?

21 A. He did attend I think one of the meetings.

22 Q. Did you-all hire Mr. Gibson to provide legal
23 services to you during those meetings?

24 A. No.

25 Q. Was he just there as a citizen?

1 A. As a citizen?
2 To my knowledge, yes.
3 Q. Did Rusty Burns ever attend any of those meetings?
4 A. No.
5 Q. Did Robert Daniel ever attend any of these
6 meetings?
7 A. I don't recall if he was at any of those meetings
8 or not.
9 Q. In addition to those meetings, did you also talk
10 with Mr. Moore on the phone?
11 A. Yes.
12 Q. How frequently did you talk with him on the phone?
13 A. It was infrequent. Not that often at all.
14 Q. Weekly or monthly?
15 A. Maybe.
16 This was before the election?
17 Q. Before January of 2009?
18 A. Before January of '09, maybe a couple times a
19 month. Maybe.
20 Q. In fact, just for clarity of the record, until I
21 specifically tell you that we're going past January of '09,
22 let's just assume that I'm talking about that for that time
23 period.
24 A. Okay.
25 Q. Did Ron Wilson ever attend any of these meetings?

1 A. No.
2 Q. Was he ever invited?
3 A. No, not to my knowledge.
4 Q. Did you ever invite him?
5 A. No.
6 Q. Did Gracie Floyd ever attend?
7 A. No.
8 Q. Did you ever invite her?
9 A. I didn't, no
10 Q. To your knowledge, did anyone invite her?
11 A. No.
12 Q. Did you ever consult with Ron Wilson about county
13 politics prior to January of '09?
14 A. No.
15 Q. Did you ever talk to Gracie Floyd about county
16 business before January of '09?
17 A. No.
18 Q. Did you ever talk on the phone with Mr. Dunn during
19 this time period?
20 A. Yes.
21 Q. How frequently did you talk to Mr. Dunn?
22 A. Probably about the same as Mr. Moore. Maybe a
23 little more frequently. Like two or three times a month
24 possibly.
25 Q. Did you ever speak with Cindy Wilson during this

1 time period on the phone?

2 A. I'm sure I probably did, but that was even less
3 frequent.

4 Q. Did you speak with Mr. Waldrep on the phone during
5 this time period?

6 A. Yes.

7 Q. Before you took office in January of '09, did the
8 group discuss hiring Bob Daniel?

9 A. I don't recall. They could have. But I don't
10 really recall at that time if his name was discussed. It
11 could of been.

12 Q. Was not Mr. Daniel hired in the very first meeting
13 of the newly elected -- including the newly elected county
14 council members?

15 A. Very first meeting?

16 Q. Yes, sir.

17 A. I can't remember if it was the first meeting or
18 not.

19 Q. Did the group discuss forming and an ad hoc
20 investigative committee?

21 A. We probably did because there were some questions,
22 you know, as to what had happened regarding finances and so
23 on. So, there may well have been discussions of doing that.

24 Q. Was such an ad hoc investigative committee actually
25 formed?

1 A. Yes.

2 Q. Prior to '09, did the group discuss who would serve
3 as the investigative committee chairperson?

4 A. No.

5 Q. Who was the---

6 A. I was.

7 Q. ---committee chairman?

8 A. So -- I was.

9 Q. So, prior to January of '09, there was no
10 discussion of that you were going to be the chairman of that
11 committee?

12 A. No.

13 Q. Was Ms. Wilson also selected for the committee?

14 A. I believe -- yes, she was on that committee too.

15 Q. Did the group discuss changing legal representation
16 prior to January of 2009?

17 A. I don't recall that they did. Bob Waldrep handled
18 a lot of the legal side of that and I'm not certain. I
19 can't really answer that question.

20 Q. Do you have any specific recollection, recollection
21 one way or another about whether the group discussed the
22 county's legal representation prior to January of 2009?

23 A. I don't recall any specifics, but I would say it
24 probably was discussed. But, again, I don't recall any
25 specifics.

1 Q. Did the group talk about Mr. Preston?
2 A. Oh, yeah, sure. His name came up.
3 Q. Were the discussions about how to get rid of
4 Mr. Preston?
5 A. No.
6 Q. What were the discussions about?
7 A. The discussions primarily centered around a lot of
8 questions as to how were the credit cards being used, what
9 about all these trips that are being taken, who's doing,
10 who's checking up on the finances. There seemed to be a
11 number of questions about what expenditures were. Those
12 types of things came up, but there was nothing about getting
13 rid of Mr. Preston.
14 Q. Did you ever hear Cindy Wilson state that the
15 county should fire Mr. Preston?
16 A. No, I never recall her using those words.
17 Q. Did you ever hear anyone say that?
18 A. No.
19 Q. Did you discuss any other county employees during
20 these meetings?
21 A. Probably so. Again, I can't recall who the, who it
22 may have been. I'm sure something probably came up about
23 other employees.
24 Q. Do you have any recollection of another county
25 employee who was discussed?

1 A. To be fired you mean or just---

2 Q. Just discussed.

3 A. Just discussed in anyway?

4 Probably a number of county employees were discussed
5 simply because, if you're talking about roads and bridges
6 department, Holt Hopkins is going to come up. If you're
7 talking about economic development, Heather Jones name is
8 going to come up. Purchasing, Robert Carroll's name is
9 going to come up. So, yeah, I'm sure other names were
10 brought up and discussed.

11 Q. Were any of these names discussed in connection
12 with a potential termination?

13 A. There was some discussion, I think, with
14 dissatisfaction of the way jobs had been done, but there was
15 never any terms such as termination or firing used.

16 Q. What employees were the object of the groups
17 dissatisfaction?

18 A. I wouldn't even say it was the groups
19 dissatisfaction

20 Q. What employees were the object of some to be
21 determined later persons dissatisfaction?

22 A. There were some questions about the way economic
23 development was being run, which was Heather Jones. I think
24 Angel Stringer's name came up. Gina Humphries. At that
25 time -- let me think back.

1 I think Bill Strewing's name came up. He was over park
2 police at that time. Let me think. Taylor Jones names came
3 up. But, again, those were primarily -- and that was not --
4 I want to be clear on this. It was not the group.

5 Q. What individuals expressed that concern?

6 A. Well, it would be Cindy Wilson and Eddie Moore and
7 Bob Waldrep, to some extent, were primarily concerned about
8 the way those offices were being run.

9 Q. Was that the entire list of individuals that you
10 remember being discussed?

11 A. Yeah, I'm just sitting here trying to think if
12 there was anybody else. Of course, the -- let's see.
13 Trying to recall way back who was ever here, ever there at
14 the time. I think Tom Martin's name might have come up. He
15 was the county attorney. You may have a better list than I
16 do. I can't recall any other names that came up.

17 Q. Do you recall what law firm Tom Bright works for?

18 A. Yes, I do. McNair.

19 Q. Is McNair your current law firm?

20 A. No.

21 Q. When was McNair replaced?

22 A. Let's see. We took office in January 2009. You
23 may have the specific date because I can't remember. It was
24 somewhere during that first year, but it may of been four,
25 five months into the session. I can't recall. Into 2009.

1 Q. Was McNair replaced with the Nexsen Pruet Law Firm?

2 A. Yeah.

3 Q. Is Heather Jones still with the county?

4 A. No.

5 Q. Do you recall any dissatisfaction being expressed
6 with respect to the Anderson County Farmer's Market?

7 A. There was questions about the way the market was
8 being run, yes.

9 Q. Who was running the market at that time?

10 A. It was Brandon Grace.

11 Q. What were the questions related to The Farmer's
12 Market?

13 A. I think it was just basically the way it was being
14 run. There was also -- and I'm not even clear where all
15 this comes from. So, what I'm about to say is -- take it
16 with a grain of salt.

17 There was some supposition that he had run some sort of
18 a lottery thing and won a motorcycle trip to South Dakota or
19 something like that, and that it was rigged and he shouldn't
20 have. Anyway, a suit was filed on that and I don't know
21 what, how that -- I never heard how that finally came out,
22 but whether he won or it was well -- Ms. Wilson was the
23 other one involved with it. If she won or there was an
24 agreement, I don't know what came out of that. I never
25 heard.

1 Q. In relation to the items that the group discussed
2 in relation to this employee dissatisfaction, did you ever
3 learn of any of those items to be inaccurate?

4 A. You can give me something a little more specific
5 than that in regards to certain -- if you'll name an
6 individual and tell me what the -- I'm not trying to put you
7 on the spot. If you'll name the individual, and tell me
8 what it was, I can tell you if I found it to be inaccurate
9 or not. To make a blanket statement would be difficult to
10 do.

11 Q. During this time period, certain members of the
12 group were talking about Heather Jones and Angie Stringer
13 and Gina Humphries and Bill Strewing and Taylor Jones and
14 Brandon Grace at The Farmer's Market and Tom Martin, and
15 what I want to know was, in relation to the items of their
16 dissatisfaction, did you ever learn what they said the
17 reason for their concern not to be founded?

18 A. Yes.

19 Q. Can you explain that to me?

20 A. Well, I think -- take Angel Stringer's case. For
21 some reason there was some dissatisfaction with her. I
22 found Angie Stringer to do a super job. She's a hard
23 worker. She's done a great job.

24 As far as on the Heather Jones side of the house, I
25 don't know since I -- we didn't overlap that much. As far

1 as any allegations or statements made about her, I don't
2 know. I didn't see a whole lot of economic development,
3 but, again, I don't know what she might of had going on
4 because she was relieved sometime after by the
5 administrator. So, I don't know if any allegations about
6 her were founded or not.

7 Q. Was Mr. Gibson ever hired by Anderson County?

8 A. Yes, he was hired, you know. At this time there's
9 so many lawsuits flying around it's hard to keep all the
10 players in line. You know, one of the suits, yes, he was
11 defending the council, myself, and me, as an individual, and
12 I think Mr. Moore, and that was regarding some emails that
13 were supposedly sent back and forth. But I believe that was
14 the only one Kurt Gibson was involved in.

15 Q. You were the chairman of the ad hoc investigative
16 committee?

17 A. Uh-huh. (Affirmative).

18 Q. As the chairman -- are you still the chairman?

19 A. Yeah, that committee's pretty much defunct, but I
20 guess I'm still chairman since it's never been redone or
21 revamped.

22 Q. Why is the committee defunct?

23 A. Well, there's just nothing -- I mean nothing else
24 to go on. I mean everything is in Court now. Let's go
25 there.

1 Q. Is the investigation over?
2 A. As far as I'm concerned it is.
3 Q. And you're the chairman?
4 A. Yes. Now, might somebody come along at council and
5 demand that it be reinstituted and revamped because
6 something -- I suppose that could happen.
7 Q. Is that not always a possibility in Anderson
8 County?
9 A. It's always -- absolutely. Always a possibility.
10 People have long memories in Anderson County I found out.
11 Q. Talking about long memories, were you aware of
12 prior lawsuits between Mr. Preston and Ms. Wilson?
13 A. Yes.
14 Q. What, what's your opinion about those lawsuits?
15 A. Well, of the ones that I've seen, I think she --
16 the only thing I can say about it is she failed in most of
17 them. Most results that came back were opinions from the
18 Attorney General's Office were basically in Mr. Preston's
19 favor.
20 Q. Have you ever witnessed anything on the part of Ms.
21 Wilson that caused you to believe that she may be impartial,
22 or not impartial, prejudiced, in some way, against
23 Mr. Preston?
24 A. I think they're numerous things that she certainly
25 disagreed on with Mr. Preston. That's about as far as I

1 could go with it. I know they've had some severe
2 disagreements on various things.

3 Q. Has Ms. Wilson ever said anything that you
4 considered unprofessional in relation to Mr. Preston?

5 A. I would -- put it this way. Having attended
6 council meetings prior to being elected, even there would be
7 times on council when I felt she would address statements or
8 questions to Mr. Preston that were unprofessional, and, of
9 course, the council is -- I mean the administrator is the
10 employee of the council. But still, in a setting like that,
11 I thought sometimes the questions were somewhat brusque, rough
12 around the edges, Unprofessional maybe.

13 Q. Let me reference where it says -- I think it's
14 Exhibit 3.

15 Well, the first thing I wanted to ask you was where did
16 this idea that's reflected on Page 13 of Exhibit 3, the idea
17 being that there's an audit with an acting administrator so
18 on, who originated that idea?

19 Do you know?

20 A. I believe that was Bob Waldrep that came up with
21 that idea.

22 Q. And at the very top of the page, do you see where
23 Mr. Waldrep states, and I quote, "that I have been speaking
24 with some of the newly elected, with the newly elected
25 council people that will be coming on and they are certainly

1 the elephant in the room."

2 A. Uh-huh. (Affirmative)

3 Q. Were you a newly elected council person as of
4 August the 5th of 2008?

5 A. No.

6 Q. You weren't?

7 A. Not in 2008. Not, not in August 2008. We didn't
8 get elected until November.

9 Q. Your primary was in---

10 A. Primary was in June.

11 Q. You ran unopposed in the general election?

12 A. Uh-huh. (Affirmative).

13 Q. So, as of June of 2008, you were pretty much
14 elected though, weren't you?

15 A. Pretty much, yeah.

16 Q. So, when Mr. Waldrep is referring to the newly
17 elected people here, is he talking about you in part?

18 A. I would presume that's who, that's who he's talking
19 about. Sure

20 Q. Do you recall having discussions about this concept
21 that is reflected on Page 13 of Exhibit 3?

22 A. I'm trying to remember. I don't recall
23 specifically how this came out because what I'm reading
24 here -- this was Bob Waldrep's thing because he had
25 mentioned, you know, about -- I do recall something about

1 when banks get audited. A lot of money -- a lot of times
2 they'll move the bank presidents out or something, and this
3 came from him, and he was referring to, you know, in that
4 case, you know, move the administrator out while the audit's
5 been doing is where he was coming from.

6 We must -- we may just barely have touched on that, but
7 to tell you the truth, I was pretty much unfamiliar with
8 what this was entailing so to speak, and Bob was pretty much
9 the one that put this together.

10 Q. So, when Mr. Waldrep says in the next sentence, and
11 I quote, "so, I take it from the consensus of what they have
12 said that they would like very much the opportunity to pass
13 on this audit because they're going to be the ones that are
14 going to be responsible to that degree, and that will be
15 greatly appreciated" and goes on to outline several things
16 that he's attributing to you-all.

17 That's not correct?

18 A. I would say it was. It may have been corrected
19 from the standpoint that none of us objected to it, and,
20 again, I think a lot of that goes back to the simple
21 standpoint that we're the new guys to this thing. We're a
22 little bit lost here on what's going on. So, we didn't
23 raise cane and object to what he was doing.

24 But I can't say that he, from that standpoint, that he
25 was totally wrong. But, again, a lot of this is items that

1 he put together.

2 Q. Do you recall discussing the concept of an audit
3 with Mr. Waldrep?

4 A. I think we did, yeah, yeah. We did discuss an
5 audit because, again, a lot of it -- the questions that came
6 up about what had been going on and the county revolved
7 around finances and money. They're a lot of, I remember,
8 credit card statements were a big question. As to who had
9 credit cards, how they're being used, where, there were a
10 lot of trips being taken by certain people. There was a
11 question about why it was being done. So, a financial audit
12 was certainly a key item.

13 Q. Is it fair to say that an audit was being discussed
14 as early as July of 2008?

15 A. It would appear so, yes.

16 Q. Were you opposed to an audit?

17 A. No.

18 Q. Did you support one?

19 Q. I wasn't opposed to it. So, I guess I did support
20 it. As a matter of fact, I think going into any new
21 business I personally would want an audit done.

22 Q. In this transcript it states, and I quote about
23 halfway down, "an acting administrator would be hired to
24 fulfill the requirements of the South Carolina Home Rule Act
25 and the acting administrator would fulfill the direction of

1 the county council in its audit exercise as well as direct
2 the employees of the county."

3 Do you see that?

4 A. That was on Page 13?

5 Q. Yes, sir, it's about halfway down the page.

6 A. Okay. An acting administrator would be hired,
7 yeah.

8 Q. Okay. I'm sorry.

9 A. Okay

10 Q. Whose idea was that?

11 A. That was Bob Waldrep's.

12 Q. When Mr. Waldrep indicates that you had discussed
13 that, you, presumably Mr. Dunn and Mr. Moore, prior to
14 August 5th of 2008, do you agree with that?

15 A. We may have discussed that prior to that date. I'm
16 trying to remember back that far. The concept of an audit
17 was discussed. As far as the details that are in here, I
18 don't recall those details being discussed prior to this
19 time.

20 Q. Well, let's just read something here because I'm
21 confused and I'll start in the transcript, and I quote,
22 "and I think it would also add to the assurance and trust of
23 the people out there if these new council people had the
24 opportunity to do so."

25 So, let me tick off a few things here, and then it goes

1 down and Mr. Waldrep continues and he says, and I quote,
2 "since I've got an obligation to do that, and that is that
3 they would like to have a bid procedure be written into the
4 ordinance, they being the new council people, they would
5 like for the audit firm not to be connected to any Anderson
6 County employee and make sure there was a divorce between
7 that or any kind of special interest, that the administrator
8 and financial director would be placed on paid leave. They
9 would be readily available to answer any questions that
10 should" -- they, in that case, would be financial director.
11 "They would be readily available to answer any questions
12 that should become necessary and they would be prohibited
13 from having contact during this audit period." And then it
14 proceeds to talk about the acting administrator.

15 The question I have is do you deny that the acting
16 administrator concept was discussed prior to August 5th of
17 2008 as reflected by this transcript?

18 A. I can't deny that, but I can't recall it either.
19 If the verbiage may of been used at some point. Like I say,
20 this was the first time that I'd seen anything to this
21 detail, and if that verbiage had been used at some point
22 earlier, it could of been thrown out about an acting
23 administrator. But I can't recall specifically.

24 Q. Do you recall anyone disagreeing with any of Mr.
25 Waldrep's concepts about an audit and/or an acting

1 administrator?

2 A. No.

3 Q. Does that include Mr. Dunn?

4 A. I don't recall him

5 Q. Mr. Dunn never disagreed with him, did he?

6 A. No, not to my knowledge.

7 Q. Did Mr. Moore ever disagree with him?

8 A. No.

9 Q. Did Ms. Wilson ever disagree with him?

10 A. No.

11 Q. Did they all appear to agree with them about these

12 issues?

13 A. Yes. Like I say, yeah, nobody objected to it. So,

14 as I said, the three of us were the brand new folks coming

15 on there and here's a guy that knew what he was doing.

16 Q. Did anyone say we disagree with that, we won't

17 support that audit?

18 A. No, not to my knowledge.

19 Q. Did anyone say we disagree with that, we won't

20 support the appointment of an acting administrator?

21 A. No

22 Q. During that time period where the acting

23 administrator would be hired, what was your understanding

24 that Mr. Preston would be doing?

25 A. My understanding, and I think that he would

1 basically be kind of on paid vacation. In other words, not
2 be in the office.

3 Q. Would he be performing any of his duties as the
4 county administrator?

5 A. Not according to the way this was set up for this
6 audit.

7 Q. In that sense, was it your understanding that the
8 county council would simply direct Mr. Preston to go on some
9 sort of leave?

10 A. That was my understanding.

11 Q. Mr. Allen, did you attend a victory party for Bob
12 Waldrep in his election in 2008?

13 A. I did
14 Was that in July?

15 Q. Yes, sir.

16 A. 2008, I'm glad you're bringing this up. Yes, I
17 did.

18 Q. Where was it located?

19 A. That was at the Cobbs Glen Country Club.

20 Q. Who was there?

21 A. Bunches of people. I can't recall their names. A
22 bunch of the Republican party people were there.

23 Q. Was Tommy Dunn there?

24 A. He didn't go to some of those. I can't remember if
25 he was at that or not. I don't know. I can't remember if

1 Tommy was there or not.

2 Q. Was Brooks Brown there?

3 A. According to his notes he was.

4 Q. You don't recall him being there?

5 A. I don't recall him being there. But he -- yeah, he
6 probably was. I don't recall, but he probably was because
7 he gave his support to Bob Waldrep when he pulled out of the
8 election. He gave his support to Bob and he was, I'm pretty
9 sure, at the victory party.

10 Q. How long have you known Brooks Brown?

11 A. The first time I met him was, that I recall having
12 a conversation with him, was at the council meeting. Now
13 I've been going to council meetings two years before I got
14 elected. So, I knew who Brooks Brown was. I don't know
15 that I ever spoke to him though at any of those council
16 meetings, you know, prior to my election. So, yeah, I
17 don't -- I mean it's conceivable we could of said hi in the
18 aisle or something like that, you know, before I was elected
19 to the council. But I don't, I don't remember having any
20 conversations with him.

21 Q. Do you deny having told him that we have a way, and
22 I quote, "we have a way to get rid of Joey"?

23 A. Absolutely. That is an out and out lie, which I
24 will swear to on a stack of Bibles, his mother's grave, and
25 my mother's grave. And why he came up with a piece of

1 garbage like that is beyond me.

2 I would, one, never have said that. Number two, never
3 have said anything like that. Number three, it sounds like
4 a bad script out of a fifth grade comic book, and I was very
5 close to filing a libel suit when that came up. However, I
6 thought we've got enough lawsuits going on. It's going to
7 be my word against his. It will drag out for another two or
8 three years in Court for what. But if it ever comes up
9 again, I would likely have to change my attitude.

10 Q. Do you have any specific recollection of speaking
11 to Mr. Brown at any---

12 A. No, I don't. I don't.

13 Q. How did the group anticipate Mr. Preston would
14 respond when they proposed to put him on leave?

15 A. That was never -- that's never really discussed
16 with me anyway. I would assume, just, in my opinion, if I
17 was in Mr. Preston's shoes and somebody wanted to do that, I
18 would certainly -- I'd probably object to it, but it was
19 never discussed, not with me anyways, as to how he might
20 feel about it.

21 Q. That wasn't the order that he would not obey, was
22 it?

23 A. There was no such thing. There was no such thing.

24 Q. Let's mark the next exhibit as Exhibit 6.

25 Do you recall receiving this email as carbon copied by

1 Mr. Moore?

2 A. Let me take a look. Let me read this email. I
3 don't recall getting this email. Now I could have, but it
4 doesn't ring any bells.

5 Q. Well, first of all, let's start off.

6 When is the email that reflects that you were carbon
7 copy dated?

8 A. Yeah, that was 9/23/08.

9 Q. And down below, in the second sentence of the body
10 of this email, it's a Linda Gilstrap, and it says, and I
11 quote, "Tom Allen, Tommy Dunn, and myself would like a
12 detailed copy of the budget for this fiscal year period."

13 Do you see that?

14 A. Uh-huh. (Affirmative).

15 I see it.

16 Q. Did you express a desire for a detailed copy of the
17 budget for this fiscal year?

18 A. Not to my knowledge. I didn't discuss getting
19 anything like this, talking about hundreds of pages.

20 Q. Why is Mr. Moore attributing that to you?

21 A. Well, that's a very good question. The only thing
22 I can assume is he felt we were all the new guys coming in
23 in all one boat, and he would use the plural because I don't
24 recall getting this email. Now, I could have. But I don't
25 recall.

1 Q. Why does everyone keep attributing things to you?

2 A. I think everybody does that simply because we were
3 the new crew coming in. So, it's just easier to lump us
4 altogether.

5 Q. To your recollection, Mr. Moore did not discuss
6 with this -- oh, I'm sorry.

7 To your recollection, Mr. Moore did not discuss this
8 with you before asking for a copy of the budget on your
9 behalf?

10 A. There was talk about my, gosh, getting a budget,
11 but I don't recall any talks. I don't recall any talks of
12 anything this detailed broken out this way. Now, the
13 whole -- the second paragraph down there with Holt Hopkins,
14 I do know that we asked about vehicles, and I was on a
15 subcommittee to look at the vehicles and find out who really
16 needed to have vehicles to drive home and so on. So, I know
17 we discussed that. But I don't recall a budget of this
18 detail at Eddie's.

19 Q. Do you recall requesting a listing of all county
20 vehicles by department?

21 A. Yes, that was part. That came up. That was after
22 one of our -- after the vehicle subcommittee was formed
23 though to look at vehicles. We went through that.

24 Q. Is a September of 2008 timeframe for your meeting
25 with Holt Hopkins consistent with your recollection?

1 A. Yes.

2 Q. Do you know why Mr. Moore is asking for a detailed
3 copy of the budget for the fiscal year in September of 2008?

4 A. I don't know why he's asking for one in that
5 detail. Let me read something here again. It says here
6 needs to be complete and not purged. I'm assuming from this
7 that he is seen something that he felt was purged and he
8 wants some more detail, you know, line item listing and
9 that's -- I don't know.

10 Q. Is this in connection with mapping out the agenda
11 for the next upcoming year?

12 A. Well, as I said, the financial, the monetary part
13 of it, the fiscal policies was one of the key things that
14 was being questioned. So, yeah, this would fit in with
15 looking at the fiscal status of the county.

16 Q. I think your answer was yes, but I just wanted to
17 make sure.

18 A. Yes.

19 Q. Was this budget information, to your knowledge,
20 shared with Bob Daniel prior to January of 2009?

21 A. Not to my knowledge.

22 Q. Was this detailed budget information requested in
23 connection with the group's plan for an audit?

24 A. I would think that, yeah. Yes, that, that would
25 certainly fit into the puzzle. If you're going to do an

1 audit, it would be nice to have a detailed list of
2 everything.

3 Q. Was that audit that the group formerly planned to
4 take, undertake as of January 2009?

5 A. That's what I assumed this was going to be involved
6 in.

7 Q. What I want to ask you is, if you flip back to the
8 last exhibit for one second, and I think that was Exhibit 6.

9 A. Six?

10 Q. Up above, do you see where Eddie Moore appears to
11 forge your -- the email on which he carbon copied you below?

12 A. Forwarded by Eddie Moore, yes.

13 Q. Who does he forward it to?

14 A. Oh, WAIM Radio?

15 That's who it's to. I don't know.

16 Who, who are you looking at there?

17 Which one?

18 A. Down below it says, and I quote, "Rick, for your
19 eyes only! Do not share...!"

20 A. Yeah.

21 Q. Who's Rick?

22 A. Rick Driver, WAIM radio owner.

23 Q. What does he do for a living?

24 A. Talk radio. Owns a radio station.

25 Q. Were you aware that Mr. Moore was forwarding

1 certain information such as this to Mr. Driver?

2 A. No, I wasn't.

3 Q. Did he ask you whether that was okay with you
4 before he did it?

5 A. No.

6 Q. Was it okay for you -- with you that he would
7 forward information like this to a talk radio host?

8 A. No.

9 Q. Why do you think he's forwarding this information?

10 A. Why do I -- you want my opinion of why I think he's
11 forwarding this?

12 Q. Yes, sir.

13 A. He had a significant support base through the talk
14 radio station, and I think he felt that -- felt that was an
15 ally. Probably why he was forwarding it there.

16 Q. Let me show you the next email, Exhibit No. 8.

17 By the -- who's Linda Gilstrap?

18 A. Oh, she's the clerk of council. Linda Eddlemon.

19 Q. What I'd like to know is were you ever asked to
20 come sign the attached letter?

21 A. Yes, I recall that.

22 Q. Did you do so?

23 A. If he did, I know we had a discussion on this about
24 not signing it because we had no authority to sign it. As
25 far as, as far as it being authoritative in anyway. Now, we

1 may have gone ahead and signed it knowing that it really
2 carried no weight, but I know we talked about it because it
3 didn't seem like the thing to do. And if we did, then it
4 really didn't amount to anything. You know, McNair could
5 throw this in the wastebasket.

6 Q. Why did it not seem like the thing to do?

7 A. Because we had no authority. We hadn't actually
8 been elected yet. We had no authority to require the McNair
9 Law Firm to do anything.

10 Q. Did you end up signing this?

11 A. You know, I -- honest, I can not remember.
12 Do you have a copy of it?

13 Fine. Please show me cause I can't remember. But I
14 know we discussed this as to whether we should or shouldn't
15 or if it even had any authority and I'm tending to think we
16 didn't sign it, but I'm not positive.

17 Q. And the signature block reflects the place for you
18 to sign as the---

19 A. Elect.

20 Q. Councilman-elect for District 4, correct?

21 A. And if I could, we may have signed that and that
22 may be something that was added to this, council-elect. Let
23 them know that we really weren't on council and then we
24 might of signed it.

25 Q. But you don't, you don't deny having signed it?

1 You just don't remember?

2 A. I don't deny it, no. I just don't recall. I know
3 we discussed it though when it came up and had questions
4 about do we have any authority to do that, and, if so, does
5 it have any validity at all.

6 Q. If you could turn back to the front page of Exhibit
7 8.

8 The Ms. Wilson, that's Ms. Cindy Wilson?

9 A. Cindy Wilson, uh-huh.

10 Q. Is she on county council at this time?

11 A. Yes.

12 Q. And do you recall what she requested that you and
13 Mr. Dunn -- well, that's Mr. Moore and Mr. Dunn and yourself
14 come and sign the attached letter?

15 A. Yes.

16 Q. Do you recall that she requested that you sign the
17 attached letter in the capacity as councilman-elect for
18 District 4?

19 A. Yes.

20 Q. When is this proposal letter dated?

21 A. October 13th, 2008.

22 Q. And that's the same date on the cover email, is it
23 not?

24 A. Yes, it is.

25 Q. And Linda Gilstrap is the clerk for the county

1 council?

2 A. Yes.

3 Q. Exhibit 9.

4 Do you know what book is being referenced in this
5 email?

6 A. I don't unless I go back and make an assumption
7 that it's the financial breakdown that he was talking about.

8 Q. Did you ever receive one of those?

9 A. No.

10 Q. Did anyone ever receive one?

11 A. Not to my knowledge.

12 Q. Let's look at Exhibit 10.

13 Is this an email from Eddie Moore dated November 13th
14 of 2008?

15 A. Yes.

16 Q. Are you BCC'ed on this?

17 A. I am.

18 Q. Do you recall receiving this?

19 A. Let's see what it says here. I don't recall
20 receiving it, no.

21 Q. Who's Gail King?

22 A. She's over the computer information system program.

23 Q. And the question I have for you relates to the
24 second sentence, and I quote, "we new council members just
25 wanted to make sure no county documents are destroyed at all

1 before our auditors examine them."
2 Do you see that?
3 A. I do.
4 Q. What auditors is Mr. Moore referencing on behalf of
5 the three or the new council members?
6 A. Again, I would have to believe that it's whoever
7 this audit team was going to be. That's been discussed
8 before by him and Mr. Waldrep doing the audit, and whether
9 that's Bob Daniel or whoever else, I'm not exactly sure who
10 he's talking about.
11 Q. When you met at Mr. Waldrep's office, is there a
12 day of the week you normally met him?
13 A. Normally Sunday afternoon.
14 Q. Sunday afternoon?
15 A. Uh-huh. (Affirmative).
16 Q. Do you recall receiving this email from Eddie Moore
17 dated November 20th of 2008?
18 A. Let me see. I don't recall getting this email. It
19 certainly looks like I did. That's my address, but I can't
20 recall it, off the top of my head, receiving it.
21 Q. You don't recall receiving this email?
22 A. No.
23 Q. It is sort of an unusual email, don't you think?
24 A. It is. That's why I thought I would remember it.
25 Yes, it's a strange email.

1 Q. Do you know what Mr. Moore is referencing when he
2 says explain your comments?
3 A. No, I don't.
4 Q. What comments did Mr. Hopkins make?
5 A. I don't know.
6 Q. Down below the sentence says, and I quote, "he is
7 part of our big probably."
8 Can you tell me what that means?
9 A. Well, I presume there he meant to say problem. He
10 is part of our big problem.
11 He meant the word problem, right?
12 Q. Do you believe that may just be a problem with the
13 mastery of the English language?
14 A. I certainly think it was a typo at the very least
15 because it makes no sense as it is. He is part of our big
16 probably.
17 Q. And then next he says, and I quote, "that he's
18 Joeys's boy."
19 A. Uh-huh. (Affirmative).
20 Q. Is that accurate?
21 Is Hopkins Joey's boy?
22 A. In my experience with Holt, Holt is been up front
23 and fair with us, and I -- we've got a good relationship. I
24 don't -- I would not, at this point back then -- I don't
25 know. I didn't know Holt Hopkins really well. But having

1 worked with him for a while, I think Holt, Holt's been very
2 up front and good with us, and I have no reason to think
3 that he is part of any kind of, of any kind of conspiracy or
4 plot or Joey's boy.

5 Q. Has your experience with Mr. Hopkins been
6 consistent or inconsistent with Mr. Moore's characterization
7 of him as "Joey's boy"?

8 I would say inconsistent.

9 Q. Do you recall receiving Exhibit 12 from Mr. Moore
10 on November 25th of 2008?

11 A. Okay. Let's see what it says. Yeah. Okay.

12 Q. Do you continue to agree with the content of this
13 letter?

14 A. Can I go through it line-by-line?

15 Q. Line 21.

16 A. Okay. Yeah.

17 Q. I think Line 4.

18 A. Uh-huh. (Affirmative).

19 Q. Wait.

20 A. That's you.

21 Q. Oh, yes, sir. Sorry.

22 A. I think he's referring to November 18th, 2008,
23 isn't he, the buy-out?

24 Q. I believe so. I think he may have just had the
25 wrong date.

1 Q. So, that's a typo. It was evidence that collusion
2 and other things took place during that meeting that was
3 illegal. With this sentence, first of all, it's incorrect.
4 Secondly, we have no judgment whether it was illegal or not.
5 It didn't look good and I've said that several times in
6 statements. I felt like that it was a very strange meeting,
7 kind of a slap in the face of democracy the way all that
8 stuff went down, you know, 1.1 million showing up, new
9 contracts being pulled out of a purse, et cetera. It did
10 look strange.

11 But was it illegal?

12 I don't know.

13 That's why it's going through the court system. So,
14 with that sentence---

15 Q. You would disagree with that characterization that
16 it was evident that it was illegal?

17 A. That's correct.

18 Q. Would you disagree with the statement that it was
19 evident that collusion took place?

20 A. When you define collusion, it's really really going
21 to be difficult to define that.

22 If one council member picked up the phone and talked to
23 another council members, is that collusion?

24 It wasn't a quorum. It wasn't a meeting. And if that
25 one other council member contacted another council member,

1 well, that's not illegal. I don't know. I'd have to see --
2 I hate to be troublesome, but I'd like to see a definition
3 of collusion. I don't know that that fits it or not. I
4 don't know if it could be proven that it was collusion. I
5 don't know if there was anything in that meeting.

6 It looked awful, but collusion?

7 I don't know.

8 Q. If you look down below, Mr. Allen, this is a
9 document that was produced to us from Fluor Daniel as
10 reflected by the Bates number, and that would be a document
11 that was in Eddie Moore's email account from the Fluor
12 Daniel IP network.

13 What is this agenda?

14 A. That's what I'm wondering. This doesn't -- Cindy
15 nominates Eddie as chairman?

16 This is -- no, ma'am, this is not me. I don't care if
17 my name's on top of this, hu huh.

18 Q. You understand that this was produced to me by a
19 third party, right?

20 A. No, I don't. I don't know that.

21 What -- who -- may I ask who?

22 Q. Fluor Daniel.

23 A. Fluor Daniel produced it to you?

24 Okay. That's fine.

25 Q. And do you understand that, at the same time they

1 produced this to me -- well, actually prior to producing
2 this to me, they produced this to Mr. Moore's personal
3 attorney, and I presume the county's attorney?
4 A. Okay. And?
5 Q. Do you understand further that this is the same
6 exact document that your attorneys have received from Fluor
7 Daniel as I received?
8 A. Okay.
9 Q. I guess -- I mean do you deny having made this
10 agenda?
11 A. Absolutely yes.
12 Q. Is your---
13 A. Yes.
14 Q. Is your email account thomas9976@charter.net?
15 A. Yes, it is.
16 Q. Is it dated December 24th of 2008?
17 A. Yes, it is.
18 Q. Is this email to Tommy Dunn and Eddie Moore?
19 A. Yes, it is.
20 Q. Does it say, and I quote, "gentlemen, attached is
21 my draft version of the agenda. I know it will change, but
22 I tried to make the best out of my chicken scratch notes,
23 Tom"?
24 A. Yes, it does.
25 Q. Does this agenda reflect, on Page 2, reflect that

1 Cindy would nominate Eddie as the chairman?
2 A. Yes, it does.
3 Q. Did Cindy nominate Eddie as the chairman?
4 A. Of what?
5 Q. Of the county council.
6 A. See, I wasn't the chairman. I have -- I didn't
7 make up any agenda for county council.
8 Q. But that's not the question I'm asking you.
9 A. Yeah.
10 Q. Was Mr. Moore nominated---
11 A. Yes.
12 Q. ---chairman---
13 A. He was.
14 Q. ---of county council?
15 A. Yes, he was.
16 Q. And that same meeting, on January the 6th of 2009,
17 a vice-chair was also nominated, was it not?
18 A. Yes.
19 Q. Did the chairman, presumably Mr. Moore, make
20 comments condemning the previous council's actions during
21 the January 6th of 2009 meeting?
22 A. Was that the second meeting or first meeting in --
23 that was the first meeting of January, wasn't it?
24 Q. Yes, sir.
25 A. In 2009.

1 Okay. He may have. I don't recall what he said. It
2 would be easy enough to go back and look at the minutes.
3 Q. Were ad hoc committees named during that meeting?
4 A. Normally the committees are all named at the second
5 council meeting of the year. Not the first.
6 Q. But in that instance they were named in the first
7 meeting, weren't they?
8 A. They may have been. They may have been.
9 Q. Were audit and personnel issues and duties dictated
10 during that meeting?
11 A. May of been. I don't recall.
12 Q. And, in fact, wasn't the Nexsen Pruet Firm also
13 hired and Mr. Daniels during the January 6th, 2009,
14 meeting?
15 A. I think they probably were. They probably were.
16 Q. I'm not sure what some of these other items
17 actually mean. So, it makes it more difficult for me to ask
18 questions about them. I just want to make sure I
19 understand.
20 I mean your testimony is that this is a forged
21 document?
22 A. Yes.
23 Q. Why would a party forge this document and put it in
24 Mr. Moore's email account?
25 A. I don't know.

1 Let me ask you a question?

2 Q. Well?

3 A. If I may?

4 Q. It's up to your lawyer.

5 Okay. Before we took a break so you could consult with
6 your counsel about Exhibit 14, we were talking about this
7 email and attachment dated December 24th of 2008. I was
8 trying to understand.

9 I mean do you still believe that this was a forged
10 document?

11 A. Yes.

12 Q. Why would a forged document be in the email account
13 of Eddie Moore at Fluor Daniel?

14 A. I would like to know the answer to that question
15 too.

16 Could I explain how agendas are put together and what I
17 think of this or if you want to go ahead, if you've got some
18 additional questions, that's fine too?

19 Q. Well, what I'd like to know is do you still have
20 the email account thomas9976@charter.net?

21 A. I do.

22 Q. How do you know that the emails from December of
23 2008 don't exist at Charter?

24 A. Because my computer blew up and the hard drive was
25 actually taken out and sent to a special place in California

1 that can supposedly recover anything, and they couldn't
2 recover anything.

3 Q. First of all, the agendas are put together
4 primarily by -- oh, I'm sorry.

5 A. Oh. First of all, the agendas are put together
6 primarily by the previous chairman who signs off on --
7 finalizes it, but the way the agenda's put together is each
8 of the council members and the administrator calls the
9 clerks of counsel and says hey, I want to put this
10 resolution on here. I need five minutes. I want to put
11 this ordinance on here. I need 20 minutes and so on and so
12 on and so on. You get your agenda put together. They're
13 all standard items on the agenda.

14 At some point the chairman of council comes in and
15 approves that agenda. He doesn't -- the chairman doesn't
16 write the agenda. He looks to see what people want in there
17 and he signs off on it unless there's something way out, way
18 out of -- you know, if somebody asked for three hours to
19 talk about their cat or something, you know, they're going
20 to take it off. An agenda would never be put together like
21 this, first of all.

22 Secondly, down here, this Item 6, that's just no way.
23 why would I have written an agenda?

24 I was a nobody. I wasn't a previous chairman or the
25 chairman of anything else. There would be no reason for me

1 to write an agenda. I wouldn't have known how to write an
2 agenda and then I wouldn't know about this stuff down here
3 in Item 6.

4 Q. Is the document that is attached to the email from
5 you dated December 24th, 2008, a 100 percent forgery?

6 A. I would say it's a forgery, yes.

7 Q. Well, did you write it?

8 A. No.

9 Q. So, somebody else wrote it and attributed it to
10 you, correct?

11 A. That is my -- yes.

12 Q. It is a 100 percent forgery?

13 A. Yes.

14 Q. You're categorically denying having written this
15 agenda?

16 A. Yes.

17 Q. This is absolutely untrue and false?

18 A. Yes.

19 Q. Let's look at what we'll mark as the next exhibit.
20 Can you turn to Page 2 of Exhibit 15?

21 A. Yes.

22 Q. I refer your attention to Lines 25 and 26.

23 A. Okay.

24 Q. Do Lines 25 and 26 reflect that Cindy Wilson
25 stated, and I quote, "I would like to nominate Eddie Moore

1 as chairman"?

2 A. Yes.

3 Q. Can you look back at that prior exhibit?

4 A. Uh-huh. (Affirmative).

5 Q. Does Item Number 2 reflect that Cindy nominates
6 Eddie as chairman?

7 A. Yes, it does.

8 Q. Can you look down at Lines 45 to 47 on Page 2?

9 A. I'm sorry. Page --?

10 Q. Page 2.

11 A. 45 to 47, uh-huh. (Affirmative).

12 Q. Does this reflect that Bob Waldrep stated, and I
13 quote, "I'd like to be recognized for the purpose of
14 nominating Mr. Tom Allen as the vice-chairman for Anderson
15 County Council"?

16 A. Yes.

17 Q. Does Item Number 3 on the prior exhibit reflect
18 nomination of a vice-chair?

19 A. Yes, it does.

20 Q. And when I'm referring to Exhibit 15, we're talking
21 about the Anderson County Council meeting minutes from
22 January 6th of 2009, are we not?

23 A. Okay.

24 when you're doing what now?

25 Q. Exhibit 15.

1 A. Fifteen, yeah.

2 Q. Those are the minutes from January 6th of 2009,
3 correct?

4 A. That's correct.

5 Q. If you turn the page to Page 3?

6 A. Okay.

7 Q. And you look down to Lines 31 through 38, and this
8 is newly elected Chairman Moore, and he says, and I quote,
9 "with that, I would like to go to the special ad hoc
10 committees. I would like to now appoint two ad hoc
11 committees, which is done according to Section 2370 of the
12 Anderson County Codes. The first committee will be the
13 financial and investigative audit committee consisting of
14 Council Persons Tom Allen, Cindy Wilson, Eddie Moore, with
15 Mr. Allen serving as the chairman."

16 Do you see that?

17 A. Yes.

18 Q. Now, let's look back over at Item Number 4 on the
19 prior exhibit.

20 A. Uh-huh. (Affirmative).

21 Q. Does Item Number 4 include the naming of the ad hoc
22 committees?

23 A. Yes, it does.

24 Q. And that's, in fact, what you did on January the
25 6th of 2009 as reflected on Page 3, Lines 31 through 38, is

1 it not?

2 A. That's correct. On Page 4 of Exhibit 15, Lines 20
3 through 39. That excerpt states, and I quote, "it is hereby
4 resolved -- this will be Resolution 001. It is hereby
5 resolved by the Anderson County Council that the ad hoc
6 financial inquiries investigative committee and the
7 personnel in the contract, contracts increase and
8 investigative committees and each committee member or the
9 committee designees shall be fully authorized and empowered
10 to interview or question any county employee regarding any
11 and all county business. County business includes, but not
12 limited to review of personnel and financial records, credit
13 card statements, real estate transactions, contracts for
14 service, and any other county expenditures as deemed
15 appropriate by the committee. A member of the committee or
16 its designee. It is further resolved that the acting county
17 administrator, Michael Cunningham, is hereby directed to
18 inform all county employees to fully cooperate and provide
19 these committees and its members with all requested records
20 or information in a timely manner and without delay."

21 Do you see that?

22 Q. The January 6th, 2009, meeting was the first
23 meeting of 2009, was it not?

24 A. Yes.

25 Q. It was directly after the three new members were

1 sworn in, was it not?

2 A. Yes.

3 Q. What date were you sworn in on?

4 A. I think it was either the -- I can't remember if it
5 was the 4th. I think it might of been the 4th of January.
6 It may of been that same date and then we went right into a
7 meeting. I can't recall which one cause---

8 Q. Does this transcript not reflect that Resolution
9 001 had been previously decided upon before this meeting?

10 A. Yes, it would appear so.

11 Q. Can you turn the page to Page 5?

12 I'm going to direct your attention to Lines 11 through
13 13.

14 Do you see where it states, and it's quoting Eddie
15 Moore as saying, and I quote, "yes, ma'am, we will be doing
16 an audit of the county finances and we will be
17 investigating"?

18 Do you see that?

19 A. Yes.

20 Q. Does it appear that, prior to the January 6th of
21 2009 meeting, a decision had been made that they would be
22 doing an audit of the county finances?

23 A. Yes.

24 Q. And that they will be investigating?

25 A. Yes.

1 Q. Does it not appear that both of those decisions had
2 been made before January 6th of 2009?

3 A. These were things that, you know, when you looked
4 back in some of the other documents that were discussed
5 previously, was, you know, doing a financial audit. That
6 was discussed clear back in the previous summer.

7 Q. And look back at Exhibit 14, and Item 4, where it
8 talks about audit and personnel and stated the duties of
9 each.

10 A. That's Exhibit 14?

11 Q. Yes, sir, that's the one right over here.

12 A. Oh, I'm sorry. Okay. All right. Yeah.

13 Q. And that's, in fact, exactly what is occurring in
14 Exhibit 15, is it not?

15 A. Uh-huh. (Affirmative).

16 Yes.

17 Q. Look down at Line 28 through Line 50 on Page 5 and
18 continuing on from 1 through 30, and I'll just give you a
19 minute to read that cause that---

20 A. This is on what?

21 Q. Page 5 and 6.

22 A. Okay. Lines?

23 Q. Starting at 28 down to 50, and then on through 30.

24 A. Okay. What are we going through, line what on Page
25 6?

1 Q. Twenty-nine.

2 A. Down through 29. Okay.

3 Q. I'm going to direct your attention specifically to
4 Page 5, Line 29.

5 Does it state, and this is Mr. Moore speaking as the
6 chairman, and I quote, "is it resolved that I would like to
7 propose this resolution. We strongly disagree with the way
8 the last county council handled the termination of our last
9 administrator"?

10 Do you see that?

11 Does it say that?

12 A. Yes, uh-huh. (Affirmative).

13 Q. Now let's look over to Item 4 on Exhibit 14.

14 A. Okay.

15 Q. On the very bottom of Page 5 line starting with
16 Line 47, and it says, and I quote, "we were very
17 disappointed in the previous council when a contract was put
18 up before the November 18th meeting, a contract that was
19 surely secretively fabricated without any input from all
20 council members."

21 So, do you see that?

22 A. I do.

23 Q. Are you now aware that Mr. Bright, when he
24 represented the county, did, in fact, receive the input from
25 all county council members?

1 A. I'm not sure I understand your question.

2 Q. Did you have a copy of the written resolutions
3 prior to the January 6th of 2009 meeting?

4 A. No.

5 Q. They were distributed at the meeting?

6 A. At the meeting in our council book, yes.

7 Y'all happen to have a copy of the agenda for that
8 meeting, do you?

9 I'd like to see who signed off on it, but anyway.

10 Q. Down below on Page 6, from Lines 37 to 141, Council
11 Member Floyd states, and I quote, "when are we going to get
12 a copy of the resolution? There has been two resolutions on
13 the floor tonight, and we don't have any kind of backup. No
14 copies. We have not had a chance to read it or do anything
15 like that."

16 Do you know why she didn't have a copy of the
17 resolutions?

18 A. Well, I don't know why she didn't have them, and I
19 would actually -- that agenda packet -- normally resolutions
20 will be in the agenda packet that you pick up a day or two
21 before the meeting, and, again, I can't recall back that far
22 if those resolutions were actually in there or not. In
23 other words, did any of us have those resolutions. I can't
24 recall.

25 Q. Let's go to Page 7 starting with Lines 29 and

1 following, and this is Eddie Moore speaking, and he states,
2 and I quote, "we will now go to Resolution 003. Resolution
3 003 is hereby resolved as Anderson County is the client in
4 legal matters. This council desires that the pending
5 litigation against two of our sitting council members in
6 Case Number 08-CP-04-2726 captioned Michael Cunningham,
7 Anderson County Administrator, versus Robert L. Waldrep and
8 M. Cindy Wilson, in their individual capacities, be
9 dismissed."

10 If you look back on Exhibit 14, does Item 12 state, and
11 I quote, "motion to cease all legal actions pending reviewed
12 by council"?

13 A. Yes, it does.

14 Q. The Resolution 003 that we looked at, just looked
15 at, does that appear to have been drafted prior to the
16 January 6th of 2009 meeting?

17 A. Yes.

18 Q. On Page 8, Line 6 through 14, related to Resolution
19 004, and it states, and I'm starting on Line 6, and I quote,
20 "the Anderson County Council further resolves to instruct
21 the administrator to obtain a complete listing of each and
22 every pending lawsuit involving Anderson County or any of
23 its employees." It then goes on to list certain
24 information.

25 Does it appear that Resolution 004 was drafted prior to

1 the January 6th, 2009, meeting?

2 A. Yes, it would appear so.

3 Q. When were all of these resolutions drafted?

4 A. I'd like to know myself. I don't know.

5 Q. Were you---

6 A. I didn't draft them.

7 Q. Were you at this meeting?

8 A. I was at this meeting.

9 Q. Was it someone in the group that met at Mr.
10 Waldrep's office?

11 A. It could well have been, yes.

12 Q. Do you know when they drafted the resolutions?

13 A. I don't, no.

14 Q. Look down the Page 11, Line 17 through 50, and then
15 it spills over on the following page. I'll be glad to let
16 you read it, but I guess my question generally is does this
17 reflect that the Nexsen Pruet Law Firm was hired during the
18 January 6th, 2009, meeting?

19 A. Let me glance through this quickly here.

20 Yes.

21 Q. And then let's look over at Exhibit 14.

22 Do you see Item Number 6?

23 A. Uh-huh. (Affirmative).

24 Q. Does that state, and I quote, "motion to go to
25 executive session"?

1 A. Yes.

2 Q. And then it says; personnel matters, hire law firm?

3 A. Yes.

4 Q. And that's exactly what Page 11 and these lines

5 reflect, does it not?

6 A. That's correct.

7 Q. Down in Lines 32 through 35, and for that we

8 discussed, and I quote, "and for that we discussed the

9 employment of Robert T. Daniels as the county budget analyst

10 and chief financial investigator from the firm of Green &

11 Company."

12 Do you see that?

13 A. Yes.

14 Q. And then let's look back over at Exhibit 14, Item

15 Number 6. Hired Mr. Daniels.

16 Do you see that?

17 A. Yes.

18 Q. And that's, in fact, exactly what you did as

19 reflected on Page 11, isn't it?

20 A. Yes.

21 Q. On Page 18, Lines 15 through 27, that's actually

22 reflecting the actual vote to hire Robert C. Daniel, is it

23 not?

24 A. Let's see. Yes.

25 Q. And on Line 26, on Page 18, it says unanimous, does

1 it not?

2 A. Yes.

3 Q. That means that you voted in favor of it, does it
4 not?

5 A. Yes.

6 Q. On Page 41, Lines 9 through 19.

7 A. Uh-huh. (Affirmative).

8 Q. States from Tommy Dunn, and I quote, "I'd like to
9 make a motion that we freeze all contracts unsigned upon
10 review by council."

11 Do you see that?

12 A. Yes.

13 Q. And Line 19 reflects that Cindy Wilson seconded
14 that motion, does it not?

15 A. Nineteen, yes.

16 Q. On Exhibit 14, Item Number 10 states, and I quote,
17 "motion to freeze all current contracts prior pending review
18 by council," does it not?

19 A. Yes, that's correct.

20 Q. Turn to Page 43 for me, sir. Actually go back to
21 42. We'll start at the bottom of the page.

22 A. Yes, sir. Okay. Bottom of the page, yeah.

23 Q. Line 40, starting with Line 44, the record reflects
24 that this is you talking?

25 A. Yes.

1 Q. And I quote, "having been assigned to the finance
2 committee, I've been thinking about something and I know, at
3 one of the previous meetings, that there were --- originally
4 in the budget this year there were 25 new positions asked
5 for. Those positions were wiped out during the buy-out by
6 the previous administrator. So, I'm just a little bit
7 concerned about that particular activity, and what I'd like
8 to do is offer either a motion or a resolution to freeze
9 current positions until we know exactly where we stand."
10 Do you see that?
11 A. Yes.
12 Q. If you look back on Exhibit 14, Item Number 11, and
13 it says, and I quote, "motion to freeze all positions."
14 A. Yes, freeze.
15 Q. Sorry. "All positions."
16 Do you see that?
17 A. Yes.
18 Q. And that's exactly what you did?
19 A. Yes.
20 Q. And that was your motion?
21 A. Yes.
22 Q. Was that -- you don't contend that that was
23 something that you just thought of during that meeting, do
24 you?
25 A. On this particular motion?

1 This was something that had been discussed way back
2 when the buy-out was done because the 25 positions
3 disappeared. So, this was certainly something that I had
4 considered for sometime.

5 Q. That was something that was discussed by the group
6 at Mr. Waldrep's office, was it not?

7 A. Yeah.

8 Q. It was something that appears on Exhibit 14?

9 A. Yeah.

10 Q. Mr. Allen, can you understand why I'm confused
11 about your claim in the authenticity of Exhibit 14?

12 A. I can understand it, and I can explain it.

13 Q. Okay. Please.

14 A. First of all, this format is pretty much the
15 first -- one, two, three items are -- four, five actually,
16 clear down to five are standard items. That's in the
17 ordinance. That's the way an agenda's put together.

18 This Item Number 4, chairman makes comments condemning
19 that's -- I don't know where that came from. So, what I'm
20 getting at is anybody could of written this thing, but it
21 wasn't me, and, and I will stand by that. I didn't write
22 this thing because I didn't even -- down here, Item 6, this
23 makes no sense. I certainly didn't write any of the
24 resolutions.

25 We're getting down here to freeze on all positions.

1 That's something that'd been discussed because of all the
2 positions that disappeared, and we knew we were in a tight
3 fiscal situation. So, that was a -- I mean that's pretty
4 standard. There's no big secret about that particular
5 aspect.

6 But who put this agenda together, I don't know, and
7 that's why I'd like to see the original and see who signed
8 off on it. Gracie Floyd chaired the meeting. So, I'm going
9 to guess maybe she signed off on the agendas, the chairman
10 for that night. I kind of find it difficult that she would
11 of signed off on something like this.

12 Q. Do you understand this particular agenda is being
13 attributed to you?

14 A. Yes.

15 Q. Do you understand why, having received this
16 document from a third party, it might cause us to conclude
17 that what occurred at January 6th, 2009, meeting had been
18 predetermined chapter, line, and verse?

19 A. I, I can see where you would feel that way, but let
20 me ask you, how would you run a meeting if you had no
21 agenda?

22 Q. Well, what we're talking about here is the
23 authenticity of this agenda, and I just want to make sure
24 that you're saying that this was 100 percent a forged
25 document and that you did not make it.

1 A. I did not make this. It looks authentic compared
2 to the minutes, but anybody could have done this, and I
3 didn't do it.

4 Q. Do you deny sending this email?

5 A. Is this the one that's on---

6 Q. On Exhibit 14.

7 A. Yes.

8 Q. You did not send this email?

9 A. Hu huh. (Negative).

10 Q. Is that a no?

11 A. That's a no.

12 Q. I just want to make certain that the email that is
13 reflected in Exhibit 14, the one that says Tom Allen,
14 thomas9976@charter.net, it has the Bates number on the
15 bottom, FE100760, was not sent by you.

16 A. That's correct.

17 Q. Does anyone else have access to your email account?

18 A. No, and I don't know if there's a way to get access
19 to it or not. You mean every -- lots and lots of people
20 knew my email address because it was on all my campaign
21 cards and so on for people to get a hold of me. So,
22 possibly, if somebody was sharp enough and knew how to do
23 it, could get in there and make it look like it came from
24 me. I don't know. I'm not that computer savvy.

25 Q. But they would of had to have done this as of

1 December 24th of 2008, would they not?

2 A. Yes.

3 Q. Because this email is found in Eddie Moore's Fluor
4 Daniel email account, correct?

5 A. Yes.

6 Q. As a county council member, is it your view that
7 it's Mr. Burns' job to ensure your compliance with the State
8 Ethics Act?

9 A. Mr. Burns' job?

10 Q. Yes.

11 A. It's my job. He's our employee. I don't see where
12 he would have any reason or authority to coach me on ethics.

13 Q. Is it Mr. Burns' job to police your statements to
14 the media?

15 A. No, he, he never has. I don't see where that would
16 be his job.

17 Q. Does Mr. Burns work for the council?

18 A. Yes.

19 Q. It would be inappropriate for the underling to
20 police the media statements of his employer, would it not?

21 A. It would, yes.

22 Q. Bob Waldrep was -- was Bob Waldrep who introduced
23 Bob Daniel to y'all?

24 A. Yes.

25 Q. Mr. Daniel and Mr. Waldrep were friends, were they

1 not?

2 A. I believe so, yes.

3 MR. DAVIS: Your Honor, at this time I'd like to hand
4 up the original sealed transcript of the deposition of Tom
5 Allen.

6 THE COURT: Any objection to my receiving that?

7 MR. TESSIER: No, Your Honor.

8 THE COURT: All right. It will be received and made an
9 exhibit in the case.

10 MR. DAVIS: would it help you to have a mini-script?

11 THE COURT: Beg your pardon?

12 MR. DAVIS: would it you help you to have a
13 mini-script?

14 THE COURT: I'll take it. It would be of assistance to
15 me.

16 The exhibits that are referred to in the last
17 deposition were exhibit numbers what to that exhibit?

18 MR. DAVIS: Yes, Your Honor, and you remember at the --
19 a little earlier I gave you a schematic that matches the
20 deposition exhibit numbers to the trial exhibit numbers.

21 THE COURT: Just wanted to be sure cause I -- once --
22 we're in here trying to locate one of those and didn't see
23 it. So, I, I assumed that was the case. So, I'll locate
24 them. I just wanted to be sure I was right about that.

25 MR. DAVIS: May I approach, Your Honor?