

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2018-002128

Lower Court Case Nos. 2017-GS-47-35, 2017-GS-47-36,
2017-GS-47-37, and 2018-GS-47-49

The State Respondent,

v.

James H. Harrison Appellant.

RECORD ON APPEAL
Volume 3 of 5

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Adam Piper - Direct examination
By Solicitor Pascoe

1 ADAM PIPER, being first duly
2 sworn, testified as follows:

3 THE CLERK: Please state your full name.

4 THE WITNESS: Adam Piper.

5 THE CLERK: Thank you. Please have a seat.

6 DIRECT EXAMINATION

7 BY SOLICITOR PASCOE:

8 Q Good morning, Mr. Piper.

9 A Good morning, Solicitor.

10 Q All right. Do you need any water or anything?

11 A I'm fine, sir.

12 Q I appreciate you coming.

13 You've actually been here since yesterday, correct?

14 A Yes, sir.

15 Q All right. How old are you, Mr. Piper?

16 A 34.

17 Q Are you married?

18 A Yes, sir.

19 Q And how many children do you have?

20 A One.

21 Q What area are you living in now?

22 A Raleigh, North Carolina.

23 Q Okay. Where are you currently working?

24 A I work in Washington, D.C.

25 Q How long have you been working up in Washington, D.C.?

Adam Piper - Direct examination
By Solicitor Pascoe

1 A About a year and a half.

2 Q In fact, you're going back and forth from Raleigh to
3 D.C.?

4 You're leaving here today to go to D.C.?

5 A Correct. I have a flight to catch in Charlotte.

6 Q Okay. I'm gonna jump right ahead just for a minute.

7 What year -- you worked at Richard Quinn & Associates
8 at one time?

9 A Right.

10 Q And what years did you work at Richard Quinn &
11 Associates?

12 A From March of 2008 through December of 2010.

13 Q If my math is right, that would be a little over two
14 years, two and a half years?

15 A Correct.

16 Q Okay. In those years you worked at Richard Quinn &
17 Associates, in what capacity did you know the Defendant, Jim
18 Harrison?

19 A I knew him as Chairman of the House and client of the
20 firm.

21 Q So, Chairman of the House, and a client of the firm?

22 A Yes, sir.

23 Q You say client, running his campaigns?

24 A I -- yes, I remember asking the county party chair in
25 Richland County have, having filed or not at one point.

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q So, while you worked at Richard Quinn & Associates
2 between March of 2018 and late December, 2010, were you ever
3 aware that the Defendant, Jim Harrison, was an employee
4 there?

5 A I was not.

6 Q Okay. Did the Defendant ever work on any campaigns
7 with you, other than his own as a client, while you worked
8 at Richard Quinn & Associates?

9 A He did not.

10 Q Did the Defendant ever give you any instructions about
11 other Richard Quinn & Associates campaigns or business---

12 A He did---

13 Q ---while you worked there?

14 A He did not.

15 Q Now I want to circle back with some questions.
16 How long you been in politics all together, Adam?

17 A Since I was in high school.

18 Q Okay. And in what capacity have you been involved in
19 politics?

20 A Everything from a volunteer, putting up signs, and like
21 stuffing mailboxes like Representative Rutherford to a
22 campaign manager, to consulting, and everything in-between.

23 Q And what, very briefly, does a political consultant for
24 a campaign do?

25 A Depending upon a client's needs with everything from

Adam Piper - Direct examination
By Solicitor Pascoe

1 the mail budget to campaign operations to TV to just making
2 sure the campaign's getting out the voting and is
3 successful.

4 Q What kind of hours do you have to work when you're a
5 political consultant?

6 A Pretty long.

7 Q Give us just an idea.

8 A When, when it's rushing season, like right now, 60, 70,
9 80 hours a week or longer.

10 Q When and where did you graduate college?

11 A The University of South Carolina in 2006.

12 Q Okay. And briefly, what campaigns did you work on and
13 political work did you do between 2006 when you graduated,
14 and 2008 before you got to Richard Quinn & Associates?

15 A Between 2006 and 2008, Mike Huckabee for President
16 mainly. When I was still in college as a senior, I was
17 running Mike Campbell's Lieutenant Governor's race while I
18 was still being a senior in college.

19 Q How and when did you get a job at Richard Quinn &
20 Associates in 2008?

21 A Following the Huckabee campaign, I was trying to strike
22 out on my own. Was running into some brick walls trying to
23 get clients, and had waited a couple. Knew Mr. Quinn from
24 the Beasley campaign where I was a volunteer and an intern
25 and eventually a staffer in 2004.

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q And when you say Mr. Quinn, is that Richard Quinn,
2 Senior --

3 A Yes, sir.

4 Q -- or Rick Quinn?

5 A Senior.

6 Q Okay. Go ahead.

7 A And so I had a client that I was trying to land in
8 Aiken named Scott Singer.

9 Q Uh-huh. (Affirmative).

10 A And he was also being pitched by the, by the Quinns as
11 a result of him being the county chair for the McCain
12 campaign.

13 Q Okay.

14 A And he said hey, do you have any problem, you know,
15 splitting this with, you know, with RQ&A, and working with
16 Richard Quinn on it.

17 Q Okay. And what was Mr. Singer -- is that his name?

18 A Correct.

19 Q What was he running for at the time?

20 A The State House.

21 Q Okay. And that's when you went to Richard Quinn &
22 Associates?

23 A Correct. So, I sat down. We, we had -- I was of
24 counsel. I was not even employed my first year, and, you
25 know, we shared mutual interests in terms of various

Adam Piper - Direct examination
By Solicitor Pascoe

1 campaigns.

2 Q And so did you have a salary position in 2008?

3 A No, sir.

4 Q So, it was a contract, contract position?

5 A Yes, sir.

6 Q And approximately how many hours a week would you work
7 at Richard Quinn & Associates back in 2008?

8 A Fifty, sixty.

9 Q Okay. And how much money were you being paid by
10 Richard Quinn & Associates for 50 to 60 hours a week back
11 then?

12 A Not a whole lot.

13 Q Ball park figure.

14 A Less than 40,000 a year.

15 Q And as -- to be safe, could it have been even a lot
16 less than 40?

17 A It could of been.

18 Q Okay. Other than Scott Singer's campaigns or campaign,
19 who other -- what other campaigns did you help run at
20 Richard Quinn & Associates, and I'm talking specifically
21 about 2008?

22 A Gloria Haskins for the State House, Cameron Ruyan who's
23 running for City Council here in Columbia. Helped with some
24 mail concepts for the McCain Presidential campaign.

25 Q Did you do any work for Congressman Joe Wilson?

Adam Piper - Direct examination
By Solicitor Pascoe

- 1 A I did.
- 2 Q Okay. In 2008?
- 3 A Yes, I did.
- 4 Q Okay. And how much did the Defendant, Jim Harrison,
5 assist you with any political consulting work for those
6 campaigns?
- 7 A He did not.
- 8 Q And, in 2008, there was no Governor's race, AG's race,
9 or anything like that?
- 10 A No, sir.
- 11 Q Okay. You, you mentioned this briefly.
12 who did -- you backed Huckabee back in two---
- 13 A Yes, sir.
- 14 Q Who was Richard Quinn & Associates backing in 2008?
- 15 A John McCain.
- 16 Q Okay. And that race in South Carolina with McCain, the
17 primary, and Huckabee, that would of been over in March of
18 '08---
- 19 A Yes, sir.
- 20 Q ---and that's when you went to Richard Quinn &
21 Associates?
- 22 Did you know much about the inner workings of the
23 McCain campaign when you went to RQ&A?
- 24 A I did not.
- 25 Q Cause you'd been with Huckabee?

Adam Piper - Direct examination
By Solicitor Pascoe

1 A Yes, sir.

2 Q Who would know the inner workings of the McCain
3 campaign?

4 A Trey Walker.

5 Q Okay. And back in 2008, again, just that year for now,
6 who at Richard Quinn & Associates did you work with, and get
7 guidance from get ideas from, and report to with regards to
8 the campaigns you were working on?

9 A Various Quinn family members.

10 Q Such as who?

11 A Richard Quinn, Senior, Rick Quinn, Rebecca Quinn,
12 Raegan, Rebecca Mustian, Raegan Quinn.

13 Q Okay. Who was Tripp Steiner?

14 A Tripp was the -- kind of made sure the mail was getting
15 out on time, on time or mail marketing strategies. Been
16 there a long time.

17 Q And, and mail marketing strategies, is that -- that's
18 the---

19 A That's the copy shop. It's the -- it does the direct
20 mail for the various campaigns, and related business to
21 Richard Quinn & Associates.

22 Q And it's right next door to Richard Quinn & Associates,
23 correct?

24 A Correct.

25 Q Who did you most often deal with at Richard Quinn &

Adam Piper - Direct examination
By Solicitor Pascoe

1 Associates in 2008?

2 A Richard Quinn, Richard Quinn, Senior and Rick Quinn.

3 Q who did the books at Richard Quinn & Associates?

4 A Rebecca Mustian.

5 Q who was in charge of all the pay at Richard Quinn &
6 Associates?

7 A Rebecca Mustian.

8 Q Now, how did -- tell the jury how your employment
9 changed in 2009, in January of 2009?

10 A The campaign season was over. Economic times were not
11 great as a nation, as I think everyone understands, and was,
12 frankly, you know, eating what you kill. It wasn't
13 necessarily a really good recipe for financial success in
14 2009.

15 Q Okay. So, what did you end up doing?

16 A I end up taking a salary, and leaving being of counsel
17 to be an account rep at RQ&A.

18 Q And who did you have to talk to to get that salary?

19 A Rick Quinn.

20 Q Okay. And approximately how many hours a week would
21 you work when you were a salaried employee at Richard Quinn
22 & Associates?

23 A About the same as when I was of counsel. Fifty, sixty,
24 you know, seventy hours sometimes.

25 Q And tell the jury how much you were paid as a salary

Adam Piper - Direct examination
By Solicitor Pascoe

- 1 employee at Richard Quinn & Associates in 2009?
- 2 A Less than \$40,000.
- 3 Q How much less do you think?
- 4 A Less than 35,000 I believe.
- 5 Q Okay.
- 6 A You would have the records, Solicitor.
- 7 Q Okay. So, it could be 31 and 32,000?
- 8 A It could be.
- 9 Q Certainly not \$80,000 a year for working 60 hours a
- 10 week?
- 11 You weren't even making that kind of money?
- 12 A No, sir.
- 13 Q Did you ever come close to making \$80,000 a year?
- 14 A No, sir.
- 15 Q In fact, why couldn't you make more than that 31 to
- 16 \$35,000 a year?
- 17 A There was another account representative that they did
- 18 not -- they wanted both.
- 19 Q So, you were told that you couldn't get paid more than
- 20 who?
- 21 A Adam Fogle.
- 22 Q And he was an employee at RQA?
- 23 A Yes, sir.
- 24 Q And tell the jury, to the best of your recollection,
- 25 what employees were at Richard Quinn & Associates back in

Adam Piper - Direct examination
By Solicitor Pascoe

1 2008, 2009, 2010 that you worked with?

2 who were the employees there?

3 A well, you'd have the various members of the Quinn
4 family.

5 Q That you've already named?

6 A Yeah, I already named. You would have Adam Fogle. You
7 would have me. You would have various receptionists who,
8 who, you know, transitioned from time to time. You know,
9 Tripp Steiner was over there at the copy shop along with
10 David Stringer and others at the copy shop.

11 Q Did Jim Harrison ever work at Richard Quinn &
12 Associates, to your knowledge, in 2008, and 2009, and 2010?

13 A No, sir.

14 Q And I've been calling the company Richard Quinn &
15 Associates.

16 what is the actual company that parents it?

17 A First Impressions.

18 Q So, technically, where were your paychecks coming from?

19 A If I remember correctly, and I think you'd probably
20 have copies of their checks in, in the records, but probably
21 First Impressions, Inc. d/b/a Richard Quinn & Associates.

22 Q You got a good memory.

23 And who, at Richard Quinn & Associates, would you go to
24 if you had any questions with regards to your check,
25 billing, anything like that?

Adam Piper - Direct examination
By Solicitor Pascoe

1 A Rebecca Mustian.

2 Q And who, at Richard Quinn & Associates, in your
3 opinion, do you think worked the most hours back in
4 2009/2010?

5 A I mean everyone was putting in long hours then. I
6 probably -- I was probably a front runner for that.

7 Q Okay. You didn't want to be -- trying not to be too
8 humble, but you're a front runner for working the most hours
9 back then, right?

10 A Yeah, I mean 2010, I remember a couple all-nighters
11 that I pulled.

12 Q Yeah. And we'll get to that. We'll talk about that.
13 where was Richard Quinn & Associates physically located
14 by -- well, first of all, in, in 2009, beginning of 2009?

15 A The 1600 block of Gervais Street.

16 Q Okay. Not far from here on Gervais Street?

17 A Yes, sir.

18 Q And the copy shop, MMS, was there too?

19 A Correct.

20 Q Okay. When did they move?

21 A Somewhere before football season in 2009.

22 Q And where did they move to?

23 A 1300 12th Street in Cayce.

24 Q Okay. And how often would you see the Defendant,
25 Chairman Jim Harrison, at the Cayce office?

Adam Piper - Direct examination
By Solicitor Pascoe

1 A I don't remember seeing him. My office was also
2 downstairs, as I mentioned to you, and their offices were
3 upstairs.

4 Q Uh-huh. (Affirmative).

5 would there ever be times that you and other Richard
6 Quinn & Associates employees would get together to discuss
7 all the campaigns y'all had?

8 A Yes, sir.

9 Q To discuss strategy?

10 A Yes.

11 Q And where would those meetings take place?

12 A In the conference rooms at the office.

13 Q And who were the strategist that you would meet with
14 during those meetings to talk about the campaign?

15 A It was typically Raegan, Rebecca, Rick sometimes. Keep
16 in mind Richard had serious health issues in '09. Adam
17 Fogle, myself. At some point in time Bill LuJone was in the
18 picture.

19 Q And how often did the Defendant, Jim Harrison, come to
20 those meetings and talk about those campaigns?

21 A I don't remember him being there.

22 Q And specifically what are some of the 2010 campaigns
23 that Richard Quinn & Associates ran such that in -- I'm
24 especially talking about the statewide offices?

25 A Henry McMaster for Governor, Alan Wilson for Attorney

Adam Piper - Direct examination
By Solicitor Pascoe

1 General, Curtis Loftis for State Treasurer. Those are
2 statewide ones.

3 Q And who was in charge of the Alan Wilson for Attorney
4 General campaign?

5 A I had the account at the firm.

6 Q And you won both the June primary and the November
7 general election, correct?

8 A And the June runoff.

9 Q And there was a runoff. I'd forgotten.

10 A Right.

11 Q A June runoff.

12 Is that one of the races you pulled some allnighters
13 for?

14 A Yes, the primary night in particular I remember. I
15 remember Raegan Quinn telling me that 5-hour ENERGY Shots
16 were not necessarily great for my health. There's, there's
17 no science to back that up for the record.

18 Q Okay. Okay. How much independence did you have in
19 running Mr. Wilson's campaign?

20 A I had a lot at first. He wasn't well funded.

21 Q What type of work did you do for that campaign briefly,
22 and how many hours did you -- a week do you think you worked
23 on that campaign?

24 A Yeah, everything from helping to design the, design the
25 yard signs, to collateral, to campaign plans, to going out

Adam Piper - Direct examination
By Solicitor Pascoe

1 on the road to figure out who was putting up yard signs to,
2 you know, ultimately figure out a strategy that, that worked
3 hours, you know, a lot, a lot of weekends.

4 Q Got you.

5 And how much did the Defendant, Jim Harrison, help you
6 in putting together that strategy or doing any campaign work
7 on Mr. Wilson's Attorney General campaign?

8 A I don't remember exactly.

9 Q Did you also assist with the Curtis Loftis campaign?

10 A I did.

11 Q For treasurer?

12 A Yes, sir.

13 Q And he was successful as well --

14 A Correct.

15 Q -- in 2010?

16 How much work did the Defendant, Jim Harrison---

17 A I don't remember him doing any.

18 Q When did you leave Richard Quinn & Associates?

19 A December, 2010, early January, 2011.

20 Q And where did you go?

21 A The Attorney General's office.

22 Q And what position did you have at the Attorney
23 General's office?

24 A Public affairs director, human relations director,
25 various other titles, deputy chief of staff, et cetera.

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q Okay. And did you ever take leave from the Attorney
2 General's Office?

3 A I did.

4 Q And why did you take leave?

5 A I left the leave -- I took leave to chase windmills on
6 the John Huntsman presidential campaign.

7 Q Did you -- what was that?

8 A To chase windmills.

9 Q Okay.

10 A It's a Don Quixote reference.

11 Q Little Don Quixote, yeah.

12 So, I assume then that was not a very successful race,
13 the John Huntsman for President campaign?

14 A I believe I've called it a campaign purgatory.

15 Q Okay. All right. So, for, in 2012, that's when, I
16 guess, 2011 into 2012, that's when the Republicans were
17 trying to nominate a presidential candidate?

18 A Correct.

19 Q Okay. And you went with John Huntsman.

20 Did Richard Quinn & Associates go with---

21 A Yes.

22 Q ---John Huntsman too?

23 Okay. Did Mr. Huntsman have a lot of support here in
24 South Carolina?

25 A He had a decent number of endorsements.

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q And to refresh the jury's memory, who was running
2 against John Huntsman for that Republican nomination back
3 then?

4 A Mitt Romney, Newt Gingrich, Rick Santorum, Rick Perry,
5 Herman Cain, Michelle Bachmann. They're a bunch of others.

6 Q It's a crowded field?

7 A It's a crowded field.

8 Q Yeah, and---

9 A Not, not as crowded as 2016, but it's crowded.

10 Q It's pretty crowded.

11 And Newt Gingrich, I think, won South Carolina?

12 A He did.

13 Q Yeah.

14 A He had a good debate in Myrtle Beach.

15 Q But -- and but -- did Mitt Romney win the national
16 nomination?

17 A Yes.

18 Q When did Mr. Huntsman fold his campaign in South
19 Carolina?

20 A Somewhere prior to the Myrtle Beach debate, and prior
21 to winning -- the South Carolina Primary.

22 Q Okay. And what was your -- and when was that about?

23 A I -- if someone -- if someone has Google up on one of
24 these laptops, or phones in here they can probably Google it
25 quickly, but probably January of --?

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q 2012?

2 A 2012.

3 Q Okay. And what was your job with the John Huntsman
4 campaign?

5 A I was the Carolina regional and political director. I
6 think I had both titles.

7 Q Political---

8 A It, it would of ended in January because it was prior
9 to the start of -- it was right at the first week of the
10 legislative session.

11 Q So, you were the political director for that campaign
12 until he --

13 A Correct.

14 Q -- he folded the campaign in January?

15 A I pulled the director for the -- South and North
16 Carolina.

17 Q Got you.

18 And how much work did the Defendant, Jim Harrison,
19 do---

20 A I don't---

21 Q ---for you on the Huntsman campaign?

22 A I don't remember him being involved.

23 Q Well -- and where did you go after the Huntsman
24 campaign?

25 A I went back to the AG's office.

Adam Piper - Direct examination
By Solicitor Pascoe

1 Q Okay. When you worked at Richard Quinn & Associates
2 between 2008 and 2010, were you aware of retainer money that
3 Richard Quinn & Associates was receiving from lobbyist's
4 principal?

5 A In 2008, 2009, and 2010 I wasn't.

6 Q You didn't know about SCANA, AT&T, Palmetto-Health, any
7 of those lobbyist's principals?

8 A That was not part of my campaign.

9 Q Cause you were on the political end of RQ&A, correct?

10 A Correct.

11 SOLICITOR PASCOE: Beg the Court's indulgence one
12 moment.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q Can you tell this jury one act of political consulting
16 at Richard Quinn & Associates that the Defendant, Jim
17 Harrison, ever assisted you on in any campaigns you worked?

18 A I don't recall any.

19 Q Okay. Thank you. Answer any questions the defense has
20 for you, Mr. Piper. Thank you.

21 A Yes, sir.

22 MR. LIMBAUGH: Can I have just --?

23 THE COURT: Certainly.

24 (Pause.)

25 MR. LIMBAUGH: No questions.

Greg Phillips - Direct examination
By Mr. Griffin

1 THE COURT: All right. Any objection to Mr. Piper
2 being excused to make his flight?

3 SOLICITOR PASCOE: None. Thank you, Your Honor.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: You're excused. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: State will call the next witness.

8 MR. GRIFFIN: Yes, Your Honor.

9 We call Greg Phillips.

10 THE CLERK: Mr. Phillips, please step forward to be
11 sworn in.

12 (WHEREUPON, the witness complies.)

13 THE CLERK: If you would, place your left-hand on the
14 Bible, and raise your right-hand.

15 GREG PHILLIPS, being first duly
16 sworn, testified as follows:

17 THE CLERK: Please state your full name.

18 THE WITNESS: Greg Phillips.

19 THE CLERK: Please have a seat.

20 MR. GRIFFIN: Beg the Court's indulgence. I need to
21 mark a few exhibits.

22 THE COURT: Absolutely.

23 while he's marking the exhibits, if anyone would like
24 to stand and take a stretch, you are more than welcome to.

25 (WHEREUPON, State's Exhibit Nos. 16 through 21 were

Greg Phillips - Direct examination
By Mr. Griffin

1 marked for identification purposes only at this time.)

2 THE COURT: Whenever you're ready, sir.

3 MR. GRIFFIN: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. GRIFFIN:

6 Q Please tell the jury your name.

7 A Gregory Phillips.

8 Q Mr. Phillips, where do you live?

9 A Vienna, Virginia.

10 Q In Virginia?

11 A Yes.

12 Q And what do you do?

13 A I'm custodian of records for Oath.

14 Q And what is -- how do you spell it?

15 A O-A-T-H like---

16 Q Oath?

17 A Oath.

18 Q And you're custodian of records of Oath, Inc.?

19 A Yes.

20 Q And what is, what is Oath, Inc.?

21 A It's a -- let me back up a little bit. So, I, I
22 originally worked for AOL. AOL was bought by Verizon about
23 three years ago. Last year Verizon bough Yahoo and merged
24 AOL and Yahoo together, and the resulting company is called
25 Oath, Inc.

Greg Phillips - Direct examination
By Mr. Griffin

1 Q And did -- and you were previously at AOL.

2 Were you custodian of records there as well?

3 A Yes.

4 Q And did AOL receive a search warrant from the, the
5 State in connection with this matter?

6 A Yes.

7 Q And, and did the search warrant request emails from an
8 account, and let me -- account of -- with the account name
9 rquinn9218@aol.com?

10 A Yes.

11 Q And did AOL respond to that search warrant---

12 A We did.

13 Q ---request?

14 And, and did AOL produce the emails from that account?

15 A We did.

16 Q Okay. Now, before we talk about the emails, we'll talk
17 about the specific emails.

18 How are emails maintained on AOL computers for, for an
19 individual's account like this one?

20 A On a database.

21 Q So, walk through that a little, a little bit more. I,
22 I open an account on AOL. I get an AOL email address.

23 A Yes.

24 Q And I want to send an email.

25 That email, is it stored where?

Greg Phillips - Direct examination
By Mr. Griffin

1 A In -- well, that's a good question. It's actually
2 stored on our servers in Virginia.

3 Q Okay. And then someone responds to it.
4 Where, where is that stored?

5 A Same place. Our servers in Virginia.

6 Q And the -- and is that a service that AOL provides for
7 its customers?

8 A Yes.

9 Q And does it maintain -- well, let me ask you this.
10 If I don't delete any of the sent or received emails
11 from my AOL account, how long will they stay up?

12 A Indefinitely.

13 Q And if, if I delete the emails from my AOL account, are
14 they retrievable, retrievable by AOL?

15 A They are not.

16 Q Okay. So, does AOL maintain customer emails as part of
17 this ordinary course of business?

18 A Yes.

19 Q And are those emails that are being maintained, are
20 they, are they maintained instantaneously at the time
21 they're generated?

22 A Yes.

23 Q And in response to this subpoena, subpoena, did you --
24 did AOL conduct a search of the email account of rquinn that
25 I described earlier?

Greg Phillips - Direct examination
By Mr. Griffin

1 A Yes.

2 Q And did you produce all the emails from that account in
3 response to a search warrant?

4 A Yes.

5 Q And in what format did you produce those emails?

6 A It was USB thumb drive.

7 Q Okay. And, and then were you able to recently inspect
8 that USB thumb drive?

9 A I was.

10 Q And when was that?

11 A Monday night. Monday evening.

12 Q Monday night?

13 A Monday, yes.

14 Q Okay. Here in Columbia?

15 A Here in Columbia.

16 Q And were you able to confirm that, that thumb drive had
17 not been manipulated in any way, modified, the emails that
18 were produced by AOL?

19 A It was a -- yes.

20 Q And how, how do you confirm that there are no
21 modifications to that thumb drive?

22 A So, when we produce the records and send the thumb
23 drive out, we take a -- what's called a hash value of the
24 data that we're sending out, and it generates a signature
25 of -- which is basically a string of letters and numbers,

Greg Phillips - Direct examination
By Mr. Griffin

1 digits, if you will. And I compared that with what we had
2 sent out, and the values matched. So, that indicates that
3 the date had not been altered from the time it left our
4 office, and the time you showed it to me here in Columbia.

5 Q Okay. And it did match?

6 A Yes.

7 Q Okay. And then did, did, did we request that you
8 retrieve certain emails from that thumb drive and bring to
9 Court today?

10 A Yes.

11 Q And did you do that?

12 A I did.

13 Q Okay. And I just want you to -- I'm gonna show you
14 what, what I grouped as Exhibit 16, 17, 18, 19, 20, 21, and
15 what we will soon identify as 22 documents that are exhibit
16 number, and I want to ask you if those are the documents
17 that you brought to Court today?

18 A Yes.

19 Q Thank you.

20 (WHEREUPON, State's Exhibit No. 22 was marked for
21 identification purposes only at this time.)

22 MR. GRIFFIN: Your Honor, I'd like to move in evidence
23 Exhibits 16 through 22.

24 MR. LLOYD: Just for marking purposes, do you move---

25 MR. GRIFFIN: Well, I offered them up into evidence.

Greg Phillips - Direct examination
By Mr. Griffin

1 MR. LLOYD: Our, our objection we discussed earlier.
2 We, we have no problem with him ID'ing them at this point,
3 but we object to their admission at this point.

4 THE COURT: Okay. So, we need to go ahead -- we're
5 gonna have to lay a foundation for them---

6 MR. LLOYD: That's exactly---

7 THE COURT: ---through another witness.

8 Okay.. All right.. But he has authenticated them.
9 Thank you.

10 MR. GRIFFIN: Okay. Thank you, Your Honor.

11 (Pause.)

12 MR. GRIFFIN: That's all the questions I have for this
13 witness.

14 CROSS-EXAMINATION

15 BY MR. LIMBAUGH:

16 Q Good morning.

17 A Good morning.

18 Q Just a couple I promise. Promised everyone just a
19 couple of very quick questions.

20 It's -- it is the case, is it not, that I think you
21 said this, that if the generator, account holder, had
22 deleted emails, they would effectively also have been
23 deleted from your servers.

24 Isn't that correct?

25 A Yes.

Greg Phillips - Cross-examination
By Mr. Limbaugh

1 Q Okay. So, if someone were, for whatever reason,
2 inclined to not have their emails available to be looked at
3 by anybody for any reason in the future, as far as the AOL
4 system worked, if they deleted them off their computer,
5 there were, at the same time, deleting them off your
6 servers, correct?

7 A Yes.

8 Q Okay. And they're -- it would also be the case, would
9 it not, that you would have no way of knowing whether there
10 might be additional emails that had been generated in a
11 chain of emails if the generator of one of those emails in
12 that chain had deleted it?

13 A Can you say that again?

14 I'm not sure that I follow that.

15 Q Yeah.

16 If, if, if Bill emails Fred, and Fred responds to Bill,
17 and then Bill emails back to Fred, but then subsequently
18 deletes that email to Fred, that email's no longer on your
19 server, correct?

20 A The -- yes, that's correct.

21 MR. LIMBAUGH: That's all I have. Thank you.

22 THE COURT: Anything?

23 MR. GRIFFIN: No, Your Honor.

24 THE COURT: Thank you. You may be excused, sir. Thank
25 you.

1 THE WITNESS: Thank you.

2 MR. GRIFFIN: Your Honor, the next witness is Rebecca
3 Mustian.

4 THE COURT: Okay. Do you-all need to take a break?
5 Does anyone need a break this morning?
6 (No response.)

7 THE COURT: All right. You're ready. Let's go.

8 MR. GRIFFIN: I think the jury -- they need a break.

9 THE COURT: Okay. You need a break. Yes.
10 All right. Do not discuss this case. Wouldn't be
11 appropriate to do so. We'll be right back with you.
12 Okay. Y'all can go.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. We'll take a ten minute break.
16 Okay. Thank you.

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

18 (WHEREUPON, State's Exhibit Nos. 23 through 39 were
19 marked for identification purposes only at this time.)

20 MR. GRIFFIN: Your Honor?

21 THE COURT: Yes, sir.

22 MR. GRIFFIN: Before we bring the jury in, I, I just
23 want to advise the Court that we've reached two
24 stipulations. One you know about, about the, the documents
25 from the server that they're -- that they were authentic,

1 and they were not altered. I want to put that stipulation
2 on the record in, in front of the jury, in front of Ms.
3 Mustian so she knows that the parties have reached that
4 stipulation.

5 THE COURT: Okay.

6 MR. GRIFFIN: And then, right when we broke, our First
7 Citizens Bank custodian witness showed up. We've reached an
8 agreement on introducing -- we have canceled checks, and
9 there's an agreement that he doesn't have to testify. We
10 can introduce them into evidence, and that's -- I just want
11 to take care of that formality before we --.

12 THE COURT: Very good. Okay.

13 MR. GRIFFIN: -- before we start the testimony, but in
14 the presence of the jury.

15 THE COURT: Okay. Absolutely.

16 MR. GRIFFIN: Thank you.

17 THE COURT: You're welcome.

18 You'll just go ahead and publish that yourself?

19 That's fine.

20 MR. GRIFFIN: Yes, if you don't mind.

21 THE COURT: Yes.

22 MR. GRIFFIN: Thank you.

23 THE COURT: Absolutely.

24 Okay. Let's bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE BAILIFF: The jury is all present, Your Honor.

3 THE COURT: Thank you.

4 MR. GRIFFIN: Thank you, Your Honor.

5 Before we call our next witness, what I'd like to do is
6 put a stipulation on -- two stipulations on the record. One
7 is we had subpoenaed the First Citizens Bank records of
8 RQ&A, and specifically checked deposits into, to that
9 account for -- and the -- as far back as the records would
10 go. That would be 2006, and then we ended them until 2012.
11 We've shared those with the defense, and, and we have First
12 Citizens custodian of records witness here today, Mr. Coney
13 Arnette, but the defense has agreed to stipulate to the
14 authentication of these documents, and their admissibility.

15 And so, at this time, and we -- and I've marked all
16 cumulative as Exhibit 39, and we'd move those into evidence
17 per agreement.

18 THE COURT: Thank you.

19 MR. LIMBAUGH: Without objection.

20 THE COURT: Thank you.

21 (WHEREUPON, State's Exhibit No. 39 was received into
22 evidence at this time.)

23 MR. GRIFFIN: Thank you, Your Honor.

24 And just for the record, they're checks from South
25 Carolinians for Responsible Government, BlueCross

1 BlueShield, SCANA, South Carolina Trial Lawyers, University
2 of South Carolina, AT&T, Palmetto-Health, and Americans for
3 Limited Government Foundation. And, again, these are checks
4 from those entities that were deposited in RQ&A account.

5 THE COURT: Thank you.

6 MR. LLOYD: I'm sorry.

7 What was the exhibit member?

8 MR. GRIFFIN: 39.

9 And the other, other stipulation, Your Honor, that
10 allows us not to call three witnesses are the stipulations
11 that computer records obtained from a search of RQ&A's hard
12 drive are, are authenticate copies and they have not been
13 modified in any form or fashion. We'll be taking these up
14 during the testimony of, of the next witness, and perhaps
15 witnesses to come.

16 But I just want to put on the record the authentication
17 agreement. It's not an agreement to admit the documents
18 into evidence. Only that they are authentic, and haven't
19 been modified or changed in anyway.

20 And, just for the record, these are Exhibits 16, 17,
21 18, 19, 20, 21, and 22.

22 MR. LLOYD: That's correct.

23 MR. LIMBAUGH: That's correct.

24 THE COURT: Okay. Thank you.

25 MR. GRIFFIN: And with that, we would call Rebecca

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Mustian.

2 THE COURT: Okay.

3 THE CLERK: Please step forward to be sworn in.

4 (WHEREUPON, the witness complies.)

5 THE CLERK: If you would, place your left-hand on the
6 Bible, and raise your right-hand.

7 REBECCA MUSTIAN, being first duly
8 sworn, testified as follows:

9 THE CLERK: Please state your full name.

10 THE WITNESS: Rebecca Quinn Mustian.

11 THE CLERK: Okay. Please have a seat.

12 THE BAILIFF: Watch your step.

13 DIRECT EXAMINATION

14 BY MR. GRIFFIN:

15 Q Good morning, Ms. Mustian.

16 A Morning.

17 Q So, I, I can tell already we're gonna have to ask you
18 to speak up so that the jurors can hear, if you don't mind,
19 and get as close to the mic as you would like. It's
20 important that everyone---

21 A Is that better?

22 Q Much better. Thank you.

23 Ms. Mustian, where do you live?

24 A High Hill Court in Columbia.

25 Q Here in Columbia.

Rebecca Mustian - Direct examination
By Mr. Griffin

- 1 All right. Have you lived here all your entire life?
- 2 A Yes, sir.
- 3 Q Who's your father?
- 4 A Richard Quinn.
- 5 Q Who's your brother?
- 6 A Rick Quinn.
- 7 Q And do you have a sister?
- 8 A I do. Raegan Quinn Smith.
- 9 Q Okay. You're gonna have to speak -- I'm gonna back up
- 10 so you can talk back here.
- 11 Okay?
- 12 A Okay.
- 13 Q The -- and, and do you currently have a business?
- 14 A Yes, I do.
- 15 Q And what's the name of the business?
- 16 A Springs Strategies.
- 17 Q And, and what business -- what does Springs Strategies
- 18 do?
- 19 A Public relations, advertising, and fundraising.
- 20 Q Okay. And, and who's in Springs Strategies with you?
- 21 A My sister, Raegan Quinn Smith.
- 22 Q Okay. Where did you work before you started Springs
- 23 Strategies?
- 24 A Richard Quinn & Associates for my father.
- 25 Q And did -- and who owned, who owned or owns Richard

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Quinn & Associates?

2 A Richard Quinn & Associates is a d/b/a of First
3 Impressions, which is owned by my father and my mother.

4 Q Okay. Is it the other way around?

5 Is First Impressions doing business as Richard Quinn &
6 Associates?

7 A Richard Quinn & -- no. Yes, I'm sorry. First
8 Impressions doing business. Yes, that's right. Sorry.

9 Q And your mother and father own --

10 A First Impressions together.

11 Q -- doing business as?

12 A Right.

13 Q Okay. When did you first go to work for Richard Quinn
14 & Associates?

15 A Full-time, sometime in 2000, but, you know, I worked on
16 and off all my life that it had been opened.

17 Q Okay. When you first started working full-time in
18 2000, where, where were the offices of Richard Quinn &
19 Associates?

20 A 1620 Gervais Street.

21 Q And how long were the offices there at 1620 Gervais
22 Street before you moved or did you ever move?

23 A We did. I can't remember -- I think we went from 1620
24 to 1600 Gervais Street, and then we moved again to rental
25 space in Cayce.

Rebecca Mustian - Direct examination
By Mr. Griffin

- 1 Q Do you recall roughly when you moved to Cayce?
- 2 A I'm sorry. I don't.
- 3 Q Okay.
- 4 A I'm sure you have a date there.
- 5 Q Sure.
- 6 What, what would be your position at Richard Quinn &
- 7 Associates when you started in 2000?
- 8 A CFO and book, bookkeeper.
- 9 Q You said CFO?
- 10 A Yes.
- 11 Q I know I told you to get real close to that microphone,
- 12 but I, I think we're getting some---
- 13 A Am I getting too close?
- 14 Q ---static, yes.
- 15 A Sorry.
- 16 Q And I, I, I apologize.
- 17 A I'm sorry.
- 18 Q We'll, we'll get it.
- 19 You were bookkeeper and CFO?
- 20 A Uh-huh. (Affirmative).
- 21 Q And you said that you worked there before.
- 22 In what capacity did you work at -- I'm gonna call it
- 23 RQA.
- 24 Is that right?
- 25 A Sure.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Q In what capacity did you work in at RQA before you
2 started full-time in 2000?

3 A Part-time, while I was in school, you know, just go and
4 do whatever, whatever help was needed, extra help in
5 mailings, and filing and just --.

6 Q And when you became full-time as CFO and bookkeeper,
7 basically what were your job duties?

8 A Well, when I started it, you know, I, I was given
9 duties gradually, and my first job was with an audit. There
10 was some, some receivables that had not been collected, and
11 I did an audit of the books, and determined what companies
12 owed Richard Quinn & Associates money. We had some vendors
13 that needed to be paid, and that was my first duty. And
14 then it, it became I took over all of the bookkeeping, and
15 any kind of financial function.

16 Q Did you also maintain records of -- for, I guess, for
17 lack of a better term, human resources, HR, like the
18 employee files?

19 A Yes, some of them. Yes.

20 Q And did you, did you prepare payroll?

21 How was payroll handled?

22 A Payroll, when I started taking -- when I took over
23 payroll, I had used a Quick Books service to, to use our
24 payroll function. Before that, and before I was in charge
25 of payroll, it was checks were written, and then handled by

Rebecca Mustian - Direct examination
By Mr. Griffin

1 the tax deposits, and, and filing -- filings of forms were
2 handled by our accountant.

3 Q Did -- when did you start doing the payroll on Quick
4 Books?

5 A Pretty soon after I started. Like I don't have a date,
6 but, you know, late 2000, 2001. I'm not quite certain, but
7 that's a guess.

8 Q Did -- where did you go to determine how much each
9 employee was to be paid when you first took over the
10 payroll?

11 A My father determined the salaries of all the employees.

12 Q Did you look at any records to see what they had
13 previously been paid?

14 A I may have. I may have. I had -- I was, I was trained
15 a bit on, on how to do payroll by the employee who was there
16 before me, and I, you know, talked to dad frequently about,
17 you know, when -- and I started taking that over. So, I
18 was -- I was, I was confident in, in what I was -- that,
19 that the salary I was paying was what was agreed to by my
20 father.

21 Q When -- I know we're talking a long time ago, in 2000,
22 but roughly how many employees did RQA have in 2000 when you
23 start working there?

24 A Maybe four or five. There, there could of been a lot
25 more I mean.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Q Sure.

2 A If you have -- do you have an employment record, and I
3 can -- that would be a better way for me to remember.

4 Q Well, now I don't have -- well, we have Mr. Harrison
5 here.

6 was he employed --

7 A Yes.

8 Q -- when you first started?

9 A Yes, he was.

10 Q And what was his position when you first started?

11 A You know, I guess -- I listened to testimony from Trey
12 Walker yesterday, and he called him a partner. I don't know
13 that he was a partner, but he was an employee of Richard
14 Quinn & Associates.

15 Q In 2000, what were his duties?

16 Do you, do you know?

17 A I -- no, that -- again, I have found out that he
18 predated me some, but whatever his duties were were agreed
19 to through him and my father.

20 Q Okay. In 2000, what did you do?

21 Did you see him in the office in 2000?

22 A I did.

23 Q And did he have an office there in 2000?

24 A Yes, he did.

25 Q Could you tell what kind of work he was performing when

Rebecca Mustian - Direct examination
By Mr. Griffin

1 he was in the office in 2000?

2 A No, his office was, you know, kind of around the corner
3 from mine. I certainly talked to him, but my, my role there
4 was, you know, making sure I was keeping track of, of our
5 clients, and that we were being paid. And, if they were
6 projects happening, that I was aware of what projects were
7 so I could bill the clients, and, and make sure they were
8 getting paid, getting paid.

9 Q And in, in two, 2000, and I apologize, it's not a
10 backhanded way to find out how old you are, but, in 2000,
11 how old were you then?

12 A I am 45 now. I was -- in 2000, I was like 24 or 25.

13 Q Okay. And you were just starting out?

14 A Yes, I just finished school.

15 Q The -- did -- how, how was your father's health in --
16 when you were 24?

17 A You know, it was, it was not good. He had a -- he had
18 a throat diverticulum that he didn't want people to know
19 about, and he was fearful of surgery, and it just got bigger
20 and bigger, and his health got worse and worse. I don't
21 remember when he finally did have surgery, but it became
22 life threatening, and he had surgery, and it's better, it's
23 much better now. But it was causing him to be malnourished.

24 Q And, and do you remember when he had the surgery?
25 Was it --?

Rebecca Mustian - Direct examination
By Mr. Griffin

1 A I'm sorry.

2 Q -- within the last ten years, five years?

3 A No, I think it was in the last ten years.

4 Q Okay. Was, to your knowledge, was he slowing down in,
5 in, in 1999 and 2000 or was he working just as hard as
6 always?

7 A I mean I think he -- I feel like he was always a hard
8 worker. I, I don't remember when the throat issue became,
9 became of such a -- of concern for my family, but it was
10 certainly a concern of my mom's at that time.

11 Q And, in 2000, did Mr. Harrison, as best you can recall
12 here today, come to the office daily during the weekdays?

13 A I mean I don't have a reason to dispute that. I recall
14 seeing him frequently.

15 Q And, in 2001, was he at the office frequently?

16 A I, I think so. You know, it's hard to remember back
17 that far, but, but yes, I saw him like while we were at 1600
18 when he had an office there.

19 Q Was there a period of -- did there become a period of
20 time when you didn't see him very frequently at the office?

21 A Well, when we moved from 1620 he didn't have an office
22 at 1600. But I, you know, I'm sure I still saw him coming
23 out, and I've always had a -- you know, I don't remember it.
24 I don't remember specifics.

25 Q So we understand, you're still talking about the

Rebecca Mustian - Direct examination
By Mr. Griffin

1 location on Gervais Street, 1600 and 1620?

2 A Yeah, at 1620 he had an office. I don't recall that,
3 that he had an office at 1600, but he may have. I just
4 don't recall it.

5 Q Okay. And, and then did, at some point in time, RQ&A
6 vacate 1600 and move to Cayce?

7 A Yes.

8 Q And when was that?

9 A 2009 maybe, 2010. I'm not, I'm not sure.

10 Q And did he have an office in Cayce?

11 A No, he did not have an office in Cayce.

12 Q So, when you started, and he was at -- you were in
13 1620, there was an office for Mr. Harrison?

14 A That's right.

15 Q At some point in time you think it was when -- can you
16 give a ball park, two years, three years?

17 A That we moved to 1600?

18 Q Yes, ma'am.

19 A Maybe three -- maybe three or four years. That's---

20 Q So, three or four years, once you moved, Mr. Harrison
21 didn't have an office dedicated for him to come to at RQ&A.

22 Is that correct?

23 A Not that I recall. I mean he may have, but I don't --
24 I mean I don't remember him having one.

25 Q Well, let me ask you.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Do you recall whether you ever learned what his duties
2 were at RQ&A from the time he started working there until
3 the time he stopped?

4 During that period of time, did you know what he was
5 doing?

6 A You know, it's not something I asked my father. It was
7 not really anything I was concerned with. I just wanted to
8 make sure, you know, there was a history of, of people, you
9 know, starting projects and they would get bills from the
10 vendor, and didn't know where it came from. So, my -- that
11 happened a, a fair amount, and one of my main duties were
12 just to try to make sure that, that I had -- could account
13 for any projects that were coming in.

14 Q Did you go to work daily?

15 A Not after I had children. So, in 2003, I became a --
16 part-time, and I worked from home a lot, and come into the
17 office two or three days a week.

18 Q Were you still the person who was -- whose duties were
19 to take care of the books even after you had children?

20 A Yes. Yes.

21 Q Do you recall what Mr. Harrison's salary was when, when
22 you started in 2000?

23 A I, I won't dispute the records you have. I don't know
24 it off the top of my head.

25 Q Okay. And we'll, we'll get to the records, but---

Rebecca Mustian - Direct examination
By Mr. Griffin

- 1 A Okay.
- 2 Q So, can you give us a ball park?
- 3 was it was more than \$70,000?
- 4 A I think y'all said 80,000 yesterday.
- 5 Q So -- but, but you have business records that can show
- 6 that?
- 7 A Yes. Yes, they're certainly business records, but --.
- 8 Q And were those -- you had business records that were
- 9 maintained on the server at RQ&A?
- 10 A QuickBooks. In the QuickBooks files would of been
- 11 backed up to that.
- 12 Q The -- do you recall how long Mr. Harrison had a
- 13 financial relationship with RQA---
- 14 A You mean---
- 15 Q ---or when did it end?
- 16 A I, I would have to -- I would be totally guessing, you
- 17 know, 2011, '12. I mean y'all've got -- I don't dispute
- 18 whatever records you have for that.
- 19 Q Sure. Sure.
- 20 well, let's, let's do that then. I'm, I'm gonna show
- 21 you a stack of records that, that you heard a minute ago
- 22 that the parties in this case have stipulated to that they
- 23 came off the server at RQA --
- 24 A Uh-huh. (Affirmative).
- 25 Q -- and they've not been modified.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 And, for the records, they're Exhibits 23, 24, 25, 26,
2 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, and what
3 I want to ask you, and I know you were kind enough to meet
4 with me I think last week, and we went over some of these
5 records, but so -- but I don't want to shortchange you at
6 all. Give you a chance to look at these, and, and, and, and
7 when you look through them, what I want you to ask --
8 ultimately answer the question is were these records records
9 of Richard Quinn & Associates prepared by someone, may not
10 necessarily been you, but someone there maintained there,
11 and that they were maintained in the ordinary course of
12 business at Richard Quinn & Associates.

13 So, those are the questions I'm gonna ask you. If
14 there's any, any documents in this stack that don't meet
15 that test, you just pull them out, and we'll talk about
16 them.

17 Okay?

18 A Say that they were made, made by somebody there and
19 created---

20 Q Either you or someone there, and, and that they were,
21 that they were the records of the business. It was
22 customary for the business to maintain those records, and,
23 and they were maintained in the ordinary course of business.

24 A Right. These are all the ones that we went over?

25 There's nothing---

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Q Well, I want you to look at all of them.

2 A Okay.

3 (Pause.)

4 A Yeah, everything -- I think we looked at everything
5 Thursday. I mean I would say the same. There's one -- I
6 don't -- let me find it. It might not make a difference,
7 but I don't remember seeing it Thursday, and I, again, don't
8 dispute that it came from our office. I just don't -- I
9 don't recall the terminology used.

10 I'm sorry. I should of pulled it off. I -- there was
11 a chart of employees, and then, on the next page, it said
12 something like sole proprietors or something to that, to
13 that effect. I don't know.

14 Q So, the, the documents that you have before you---

15 A That was all I saw.

16 Q ---the question is are all those documents which came
17 off the computers at RQ&A?

18 A Uh-huh. (Affirmative).

19 Q Were those documents that were kept in the ordinary
20 course of business at RQA?

21 A Sure. I don't dispute that.

22 Q Okay. And then -- and was it routine to keep those
23 type business records during the course of business?

24 A You know, honestly, we didn't keep records -- like
25 records sometimes, but, the server, certainly anything that

Rebecca Mustian - Direct examination
By Mr. Griffin

1 was saved on there would of been there. We have some paper
2 files, but not a lot.

3 Q And that those documents, as you looked at them, they
4 maybe looked like --

5 A They looked like --

6 Q -- the information that, that you would need for
7 processing payroll, and salaries, and things, and that would
8 of been prepared by you or someone else --

9 A Someone else.

10 Q -- at the time?

11 A That's correct.

12 MR. GRIFFIN: Your Honor, I forgot the exhibit numbers,
13 but I'd like to move those into evidence at this time.

14 MR. LLOYD: Could I beg the Court's indulgence?

15 MR. GRIFFIN: You need to look at them?

16 THE COURT: Of course.

17 Yeah, this is 23 through 38?

18 MR. GRIFFIN: Yes, ma'am.

19 THE COURT: Okay.

20 MR. LLOYD: No objection, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. GRIFFIN: So, they're in evidence. Thank you.

23 THE COURT: They're in evidence.

24 (WHEREUPON, State's Exhibit Nos. 23 through 38 were
25 received into evidence at this time.)

Rebecca Mustian - Direct examination
By Mr. Griffin

1 MR. GRIFFIN: So, I'd like to -- Phil. We gave Phil
2 the day off yesterday.

3 THE COURT: You have to move the podium as well.

4 MR. GRIFFIN: Yes, we will. I'm -- I think I can
5 handle that.

6 MR. LIMBAUGH: Your Honor, may we --?

7 THE COURT: Yes. Please.

8 Q I don't know if you're gonna be able to see that,
9 Ms. Mustian.

10 Can you see from that far?

11 A Sort of.

12 MR. GRIFFIN: Your Honor, may she step down?

13 THE COURT: Absolutely.

14 MR. GRIFFIN: Thank you.

15 Now we're really gonna have to talk loud for the court
16 reporter.

17 THE COURT: Exactly.

18 MR. GRIFFIN: We don't have the benefit of the
19 microphone.

20 THE WITNESS: Okay.

21 MR. LLOYD: Jim, can I, can I approach?

22 THE COURT: Sure. Sure.

23 (Pause.)

24 MR. LLOYD: Sorry, Your Honor.

25 Q No, I'm starting with 24.

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1 A Okay.

2 Q So, this is Exhibit 24, and it's in evidence. It
3 says -- can you describe this document?

4 A It looks like a payroll chart with---

5 THE COURT REPORTER: She's got to speak up. I'm sorry.
6 I can't hear.

7 THE COURT: Yeah, I can't hear you either.

8 THE WITNESS: I'm sorry.

9 Q So, you can -- you're gonna have to go sit back down.
10 Well, I'll, I'll give you a copy of it.

11 A Okay.

12 Q We'll work through this. I apologize.

13 So, in -- and that's Exhibit 24, and, and is it -- you
14 said it's a -- shows Mr. Harrison's payroll?

15 A It looks like it, yeah, looks like a chart that
16 somebody prepared for payroll records that would have his
17 gross pay, and, and what was withheld for social security,
18 Medicaid, Federal, Federal, and State.

19 Q And looking on the far left-hand column, can you tell
20 what time period that covers?

21 A It started in January, 2001. This looks like 2001.
22 There's another, there's another page where the date didn't
23 format. So, I don't know if it's the same year or a
24 different year.

25 Q Okay.

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- 1 A But the date didn't format.
- 2 Q And, and what was his annual salary in 2001 according
- 3 to those, those payroll records?
- 4 A Yearly document here says 82,125.
- 5 Q Okay. And how much was he getting bi-weekly?
- 6 A 3,285.
- 7 Q I'm -- every two weeks?
- 8 I'm sorry. How much?
- 9 A 3,285.
- 10 Q Okay. I'll show you another, another document, Exhibit
- 11 23, that's in evidence, and you tell me what that document
- 12 is.
- 13 A It shows clients of Richard Quinn & Associates, and the
- 14 flat rate percent of agency fee, and fee, and then it's got
- 15 another column with amounts that say to Jim.
- 16 Q And, and the -- and what does the column to Jim, what
- 17 does it add up to?
- 18 A Oh, I assume 6,570. I don't have a calculator, and I'm
- 19 not adding it. And then, and then, if divided, that, it
- 20 would be 3,205, which was what---
- 21 Q Okay.
- 22 A Yeah.
- 23 Q I'm gonna put this -- so, Exhibit 23, it's not -- no.
- 24 So, it says SCANA flat rate, 2,000, correct?
- 25 A Yes, that's what it says.

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- 1 Q And it says to Jim, 2,000?
- 2 A Yes, that's what it says.
- 3 Q And then it says BellSouth, flat rate, 2,000.
- 4 Is that right -- correct?
- 5 A Yes.
- 6 Q And it says to Jim, 2,000.
- 7 Is that correct?
- 8 A Yes..
- 9 Q And then it goes Unisys, percentage agency fee, 50
- 10 percent. Says 4,700, and then it's got \$2,350.
- 11 Correct?
- 12 A Correct.
- 13 Q And then there's a Burroughs & Chapin for \$720, and
- 14 it's calculated 6,570. That says per check. \$3,285.
- 15 Correct?
- 16 A Yes, that's what it says.
- 17 Q Now, was SCANA a client of Richard Quinn & Associates
- 18 in 2001?
- 19 A I believe they were, yes.
- 20 Q And was BellSouth a client of Richard Quinn &
- 21 Associates in 2001?
- 22 A I believe so, yes.
- 23 Q And was Unisys a client of Richard Quinn & Associates
- 24 in 2001?
- 25 A I believe so, yes.

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1 Q And was Burroughs & Chapin a client of Richard Quinn &
2 Associates in 2001?

3 A I believe so, yes.

4 Q I'm gonna show you Exhibit 30, and can you explain to
5 the jury what Exhibit 30 is?

6 A This looks also like payroll charts that may have gone
7 to the accountant for purposes of filing an employee tax
8 form.

9 Q And, and does that -- does that have a payroll for
10 multiple employees of Richard Quinn & Associates?

11 A Yes, it does.

12 Q And can you tell from that document who, for that
13 period of time, and I'm not sure---

14 A Uh-huh. (Affirmative).

15 Q ---if you -- it shows it, but who the highest paid
16 employee of Richard Quinn & Associates was from that
17 document?

18 A Outside of Richard Quinn?

19 Q Yes, ma'am.

20 A Jim Harrison.

21 Q And let me show you another, Exhibit 31. This is a
22 cleaner version I believe.

23 Can you tell the jury what Exhibit 31 is?

24 A It is a income and expense chart for Richard Quinn &
25 Associates, and some other business -- the copy shop, which

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By Mr. Griffin

1 is part of First Impressions, and then some other businesses
2 that dad has ownership on.

3 Q And, on that document, does it list, under expenses,
4 the salary of various employees?

5 A It does, yes.

6 Q Okay. And, again, who's the highest paid employee?

7 A Dad had -- I think dad was obviously the highest paid.
8 My brother's listed here, and then, and then Jim.

9 Q Okay.

10 A You want me to keep going down?

11 Q No, I'm, I'm gonna put it on the --.

12 A Okay.

13 Q -- the projector over here.

14 Can you see that, the name -- just blow this up here.
15 So, let's, let's go through there.

16 who, who was Derek Schumpert?

17 A He was one of the managers of mail marketing.

18 Q Okay. And it says he received a salary of 43,000 and
19 something.

20 A Okay.

21 Q Did, did you see him there at the office every day?

22 A Yes, on the days I was there. Yes, I think this might
23 of been when I was part-time at the office.

24 Q Right.

25 But, but when, when you would show up, you would see

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1 Mr. Schumpert?

2 A Yes, I, I frequently saw him.

3 Q It says Laurie Steiner.

4 who is she?

5 A She was a copy shop employee.

6 Q And she worked regular hours?

7 A She worked regular hours, yes.

8 Q It's going down, Jonathan Stringer, Tripp Steiner,
9 Cathy Novinger.

10 where do those folks work?

11 A Kathy, I don't know why it would be under payroll, but
12 she was a contract, a contractor at some period. So,
13 whatever that period was.

14 Q Okay. The other two, Tripp Steiner and Jonathan
15 Stringer, were they copy shop folks?

16 A Jonathan was copy shop I believe. Tripp was in
17 marketing.

18 Q And then, and then you got Mr. Harrison at \$84,871.
19 Is that right?

20 A Yes.

21 Q And then, if you go to -- on down, it says Raegan,
22 64,590.

23 who's Raegan?

24 A She's my sister.

25 Q And what did she do there?

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1 A At the time, mostly anything to do with writing I
2 think. She helped dad write press releases, and letters,
3 and --.

4 Q Was she working full-time?

5 A Yes.

6 Q And when you'd go to the office, would you see her
7 there?

8 A Yes..

9 Q Yes?

10 A Yes. Yes.

11 Q And Rebecca, that's you, at \$67,818?

12 A Yes.

13 Q And then there's a Tracy Edge at 24,000.

14 Do you see that?

15 A I do.

16 Q And who is Mr. Edge?

17 A He was also a contractor for that period.

18 Q Okay. Do you know whether he's in the State House
19 during this period of time?

20 A I'm not certain. I thought he might of been probably.

21 Q That says Richard.

22 Is that your father?

23 A Yes.

24 Q And then Rick.

25 So, Richard, it says \$180,852, and then Rick, it says

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1 123,797.

2 Is that correct?

3 A Correct.

4 Q So, aside from Richard and Rick, Mr. Harrison was
5 the -- he was the third highest paid during this period of
6 time at RQ&A?

7 A Yeah, that's right.

8 Q I'm gonna ask you about Exhibit 35 please.

9 Can you tell the jury generally what that document is?

10 A Generally it is a chart. It looks like retainer
11 payments from political clients and corporate clients with
12 the, you know, has consultant next to it. So, you know, it
13 looks like that consultant was part of that client, and it's
14 all totaled at the bottom percentage for the political
15 consultants, percentage to corporate consultants, and then
16 percentage to consultants political and corporate.

17 Q Okay. Now, the documents says retainer payments,
18 correct?

19 A Yes, that's what it says.

20 Q And, and what did you understand, when you were the CFO
21 and bookkeeper of RQ&A, what the relationship was for those
22 retainer payments?

23 I mean was it by the job?

24 You get paid monthly?

25 A Right. We -- it was a retainer payment. It was a

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1 monthly fee, and it covered anything that happened in that
2 month. So, you know, it didn't matter how many hours we
3 worked on it. If it was, you know, like sometimes not quite
4 as much, and sometimes, you know, a lot more. The only
5 thing that would have been billed by the retainer payment is
6 if there needed to be a survey done. We had to pay an
7 outside vendor for that already, mail job, or, you know,
8 something that would require a -- an outside, you know,
9 expense that we would need to pay.

10 Q Did -- when, when you were the CFO of RQ&A, did you
11 keep track of any like hours of work per client to see if
12 you were making money or losing money on retainers?

13 A No, not that I recall.

14 Q Okay. So, I want to put that on the board.

15 A I do believe there, there may have been, you know, not
16 in that category, but there may have been clients that
17 didn't pay retainer, and they wanted to pay by the hour.

18 Q I see.

19 A I feel like that happened a few times, but I wouldn't
20 be able to remember what company that was.

21 Q Okay. So, this Exhibit 35 is broken, broken up between
22 political clients and corporate clients.

23 what's the difference between a political client and a
24 corporate client at RQ&A?

25 A Political -- a political client is a campaign we were

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1 running at that time.

2 Q And here it says Allison.

3 was that Rita Allison?

4 A Rita Allison. She was running statewide for something.

5 I, I don't recall what office.

6 Q And, according to this document, was that campaign
7 paying \$8,000 a month?

8 A That's what that document suggests, yes.

9 Q And it says consultant Wright.

10 who is Wright?

11 A We had a consultant, David Wright, that was a
12 contractor that we contracted with from time to time.

13 Q And was he allocated \$5,000 of Ms. Allison's campaign?

14 A That's what that chart suggests.

15 Q Okay. And then it says Condon, and then blank, and it
16 says Merrill.

17 whose Condon?

18 A Charlie Condon.

19 Q He ran for Attorney General and Governor?

20 A Yes, he ran. That's right. He ran.

21 Q Do you know whether this is the gubernatorial race or
22 the Attorney General's race?

23 A If you have the date, but no.

24 Q And then Graham.

25 who is that?

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- 1 A Lindsey Graham.
- 2 Q Senator Lindsey Graham?
- 3 A Correct.
- 4 Q And this document suggests that he's paying 10,000 --
- 5 his campaign's paying 10,000 to RQ&A a month?
- 6 A That is correct.
- 7 Q And there's a name Trey beside that.
- 8 who is Trey?
- 9 A Trey Walker.
- 10 Q Is that who the jury heard from yesterday?
- 11 A Yes, it is.
- 12 Q And, again, it looks like Trey is out -- being
- 13 allocated \$2,000 from the Graham campaign, correct?
- 14 A That's what the documents suggests, yes.
- 15 Q And Hawkins, \$8,000 a month.
- 16 who's Hawkins?
- 17 A John Hawkins I think was his first name.
- 18 Q And did he run for Attorney General or --?
- 19 A He did. He ran for Attorney General. So, Charlie must
- 20 of been running for Governor on this chart.
- 21 Q Right.
- 22 And, again, shows Trey receiving \$1,600 of that, right?
- 23 A That's what it suggests, yes.
- 24 Q And Klauber.
- 25 who's Klauber?

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1 A James Kauber or John Klauber.

2 Q Okay.

3 A I think he ran for Congress. I don't, I don't know his
4 first name.

5 Q And, again, Trey is being allocated a thousand dollars
6 for that retainer.

7 Is that right?

8 A That's what it suggests, yes.

9 Q Now, then the corporate clients down here, these are
10 entities, and they're all -- corporations.

11 Right?

12 A Correct.

13 Q And these corporations, are they -- I mean they're not
14 running for any political office obviously. You have to be
15 a person to run for office.

16 A That's right.

17 Q And, and here it says BellSouth we've seen before. It
18 says retainer, \$5,000.

19 Is that a monthly retainer, 5,000 a month?

20 A That's what it would be, yes.

21 Q According to this document, 2,000 of that \$5,000
22 retainer is being allocated to Mr. Harrison?

23 A That's what that chart suggests.

24 Q Again, we've seen this Burroughs & Chapin. Says \$7,500
25 and it's allocated at 220 to Mr. Harrison.

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1 A Right.

2 Q And says Friends of the Hunley, Kellen.

3 who's Kellen?

4 A Kellen Correia. She would of -- she now works for
5 Friends of the Hunley, but she was, she was an employee of
6 ours for some time.

7 Q All right. And does she work full-time?

8 A She was in Charleston, but she, she had, you know,
9 worked from home and worked from the lab at Friends of the
10 Hunley.

11 Q And it says property rights, 556, to Mr. Merrill.

12 what's property rights?

13 Do you know?

14 A I don't remember. I know we talked about this the
15 other day. I don't remember what they did. I'm sorry.

16 Q Okay. And it says SCANA, \$9,750, and then that -- this
17 document suggests that Mr. Harrison is being allocated 2,000
18 by RQA on the SCANA retainer.

19 Is that right?

20 A Right.

21 Q And then we see Unisys again, \$4,700, and
22 Mr. Harrison's receiving or being allocated \$2,350.

23 Right?

24 A That's what it suggests, yes.

25 Q I'm gonna show you two more documents. They're

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1 Exhibits 5 and 6. The -- and I want to ask, first, you --
2 if you can identify Exhibit 6.

3 A Yes, we talked about this Thursday. This document is
4 my handwriting, and I know that it was in a file in my
5 office.

6 Q Okay. And I'm gonna show you Exhibit 5, and ask if
7 you, if you recognize Exhibit 5.

8 A I do recognize this document. I believe it was -- I
9 believe this was a hard copy in my office files.

10 Q Okay. And was that, and was that kept in the ordinary
11 course of business?

12 So, you---

13 A No, I, I believe this came from my file. I know it
14 says 1999. So, that predates me, but I, I feel like I have
15 seen this in my filing cabinet in my office before it was
16 seized.

17 Q And, and you have your handwritten notes---

18 A That is---

19 Q ---with that document?

20 A That is my handwriting, yes.

21 Q All right. So, let me show it to Mr. Lloyd.

22 I will move Exhibit 5 and 6 into evidence at this time.

23 MR. LLOYD: Your Honor, we don't have any objection.

24 THE COURT: Okay. Thank you.

25 MR. GRIFFIN: So, five and six are in evidence.

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By Mr. Griffin

1 (WHEREUPON, State's Exhibit Nos. 5 and 6 were received
2 into evidence at this time.)

3 Q Did there come a point in time when Mr. Harrison's
4 compensation with RQ -- RQ&A was reduced?

5 A Yes, there was.

6 Q And can you tell the jury why it was reduced?

7 A Yes, the -- he -- the time he was spending at Richard
8 Quinn & Associates was decreasing, and we switched him from,
9 at some point, payroll to contract work, and reduced his,
10 his pay at that time.

11 Q Now, you -- you're saying the time he spent was
12 decreasing?

13 A Again, that was something that, that, you know, he and
14 dad discussed. I remember reading the document that dad
15 wrote of I believe I sent it to, to Jim. So, it's -- y'all
16 probably have that in evidence somewhere.

17 Q Not yet, but we're getting to it.

18 The, the -- but, but from your observation, did, did
19 you notice any -- I mean you said the time he spent was
20 decreasing.

21 A Uh-huh. (Affirmative).

22 Q But I guess, from your personal experience, could you
23 tell---

24 A I wouldn't---

25 Q ---a difference from any other---

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1 A I, I really wouldn't know that because dad had
2 relationships with, you know, with a lot of the people on
3 those charts that I'm, I'm just not aware of.

4 Q And, and did you conduct a, I guess, analysis to
5 determine whether RQ&A was bringing up enough money on
6 retainer to cover its operating costs as -- around that time
7 to see --?

8 A Oh, if I was asked to, I did it. I don't specifically
9 recall doing that, but any time I was asked to provide
10 analysis of what was coming in, I, I complied.

11 Q Okay. Is your father's email address
12 rquinn9218@aol.com?

13 A Yes.

14 Q And I'm gonna show you what we've marked as State's
15 Exhibit 16, which frankly these are a group of emails, but I
16 want to ask you, the first one---

17 A Uh-huh. (Affirmative).

18 Q ---do you recognize State's Exhibit 16?

19 And, like all emails, you have to start at the back,
20 and work your way through.

21 A Oh, okay. Sorry. So, it looks like, in 2010---

22 Q Well, don't -- well, don't, don't read the email yet,
23 but---

24 A Oh, I'm sorry.

25 Q Do, do you recognize that -- those emails?

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By Mr. Griffin

1 A Yeah, they're my -- they're my email and email address
2 cause I -- if I read them, I might remember doing it, but,
3 but yes, this is emails started from me to Rick and dad.

4 Q To your dad and, and your brother?

5 A Right.

6 Q And it involved payroll expenses?

7 A Well, there's enough -- this back sheet, I don't know
8 if it came from the email.

9 Did it?

10 Q I think it did, but --.

11 A I'm having a hard time. I mean it looks like -- it
12 does look like payroll.

13 Q Right.

14 A It's very small, and I can't read it, but I guess it
15 would because it's the -- attached to the email.

16 Q But --

17 A Yeah, I see, I see names of employees and---

18 Q Right.

19 A Exactly.

20 MR. GRIFFIN: Your Honor, I'd like to move -- probably
21 should mark these separately unless there's no objection to
22 all of these, but that, that would be -- do you have any
23 objection to, to these Jimmy and Jim emails regarding change
24 in compensation?

25 MR. LLOYD: Your Honor, I think he can go ahead and

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1 mark them. I think we have a foundation issue still with
2 those. If he wants to try to at least get her to identify
3 them, and take a look at all of them at once.

4 Q well -- so, let's go to 16 right in front of you.

5 A Okay.

6 Q Is there an email -- is that an email thread that,
7 that -- initiated by you about --

8 A Yes.

9 Q -- payroll at RQ&A?

10 A Yes.

11 Q And their responses back about --

12 A Yes.

13 Q -- payroll at RQA.

14 Is that correct?

15 A Yes.

16 MR. GRIFFIN: Your Honor, we, we'd move Exhibit 16 into
17 evidence.

18 MR. LLOYD: Jim, can I see it?

19 Can I see it?

20 MR. GRIFFIN: Yeah. Sure.

21 MR. LLOYD: Your Honor, can we approach?

22 THE COURT: Sure.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 MR. GRIFFIN: Thank you.

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1 THE COURT: Go ahead.

2 Q It is -- I'm gonna give you that document back, and ask
3 does that -- at the beginning, is that an email from you
4 from your email address?

5 The first email on that thread.

6 A Yes, it is.

7 Q And it's to your dad and brother, right?

8 A That's correct.

9 Q And then the responses, as you go through the email
10 thread --

11 A Uh-huh. (Affirmative).

12 Q -- are you included in all the responses on that, on
13 that document?

14 A Yes, I mean it's -- it ends here, but don't know
15 what---

16 Q Correct.

17 A ---junk is.

18 Q Yeah, that other stuff is AOL stuff.

19 A Okay. Yes, I'm on all of them.

20 MR. GRIFFIN: So, I think we'll move 16 into evidence
21 again.

22 MR. LLOYD: Without objection.

23 THE COURT: Thank you.

24 (WHEREUPON, State's Exhibit No. 16 was received into
25 evidence at this time.)

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By Mr. Griffin

1 Q So, 16 in, in -- and I -- Madam Court Reporter, I'll
2 clean this up later, but I'm gonna -- I'm gonna B -- I'll
3 put A on this document and then keep going. So, we'll mark
4 them separately, and put a sticker over it later if that's
5 all right?

6 THE COURT: Is that okay, Pam?

7 THE COURT REPORTER: That's fine.

8 Q Okay. 16-A is an email from you?

9 A Yes.

10 Q And who's it to?

11 A It's to Rick.

12 Q That's your brother?

13 A Yes.

14 Q And what's it about?

15 A He's asking what we paid Harrison, Merrill, and Edge a
16 month.

17 MR. GRIFFIN: Okay. Your Honor, I'd, I'd move 16-A
18 into evidence at this time.

19 THE COURT: Okay.

20 MR. GRIFFIN: Any objection?

21 MR. LLOYD: Is one we just---

22 MR. GRIFFIN: No, it's another one.

23 MR. LLOYD: Without objection.

24 MR. GRIFFIN: So, Your Honor, he has no objection to
25 16-A.

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1 MR. LLOYD: I'm sorry. Without objection.

2 THE COURT: Thank you.

3 (WHEREUPON, State's Exhibit 16-A was received into
4 evidence at this time.)

5 Q Then -- let's see. So, we got 16-A. So, 16-B.

6 Let me show you this one, and ask if, if that's an
7 email from you to whomever, and tell us who it's to, and,
8 and if you're in all the communications.

9 A Starting on the back?

10 Q Starting at the back.

11 A Sorry. I'm not finding the back yet. I think the back
12 are attachments.

13 Is that right?

14 Q Yeah. Yeah.

15 A So, yeah, the first email is from dad to Rick, me, and
16 Raegan, and the response is from me to dad, Rick, and
17 Raegan, and then from Dad to Raegan, and me, and Rick.

18 Q And, again, is the topic of that email regarding
19 Harrison's -- Mr. Harrison's compensation and other people?

20 A Yes.

21 Q Okay.

22 A Yes, it is.

23 MR. GRIFFIN: Your Honor, let me show it to Mr. Lloyd.
24 Yeah, the first one is 16, and then 16-A and 16-B.

25 MR. LLOYD: No objection, Your Honor.

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1 THE COURT: Okay. Thank you.

2 (WHEREUPON, State's Exhibit 16-B was received into
3 evidence at this time.)

4 Q So, I'm gonna put up 16-B on the -- well, come out a
5 little bit more. So, come on out a little bit more.

6 So, Ms. Mustian, 16-B says that, that -- the message is
7 9/8/2010, 11:49AM, and it's got rebecca@rqasc.com, and it
8 says totals Merrill, \$300,251.47, Harrison, \$811,309.87.

9 Can you tell the jury what those numbers represent?

10 A And I looked at, I looked at this I think Thursday in
11 my office.

12 Q Yeah.

13 A And I believe it was, you know, how much had they been
14 paid over ten years I think or when it started when, when
15 they had --.

16 Q And, and, and before you sent this email to your dad,
17 did you check the records to be sure it was accurate?

18 A I would have.

19 Q Okay. And as of September the 8th, 2010---

20 A That was---

21 Q ---you believed, based on the records, that Mr.
22 Harrison was paid \$811,309.87?

23 A Based on that email, I would believe that he was paid
24 that over ten years.

25 Q Okay. And then---

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By Mr. Griffin

- 1 A You said 2010, right?
- 2 Q It was---
- 3 A Ten or eleven---
- 4 Q I'm sorry. I didn't mean to interrupt.
- 5 A No, it's okay. So, you said 2010, right?
- 6 That's when the---
- 7 Q That's 2010.
- 8 A Yes. So, ten or eleven years.
- 9 Q And then your father responds yikes, that's well over a
- 10 million bucks.
- 11 Do you see that?
- 12 A Yes.
- 13 Q And what was Mr. Merrill's position at RQ&A?
- 14 A He, he also worked on projects with dad.
- 15 Q Was he also a member of the Legislature?
- 16 A Yes, he was.
- 17 Q I'm gonna show you what, what we're gonna mark as 16-C,
- 18 and ask you the same questions if, if that's an email from
- 19 you or you're a recipient of it, and, and you're on all the
- 20 communications. 16-C.
- 21 A Yes, it's just the -- it's just one email I think.
- 22 Q Right.
- 23 A I don't see, I don't see the other---
- 24 Q Was that an email from you?
- 25 A No, looks like it's from dad.

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1 Q Is it to you as one---

2 A Yes.

3 Q ---of the recipients?

4 A Yes. Yes, I'm one of the recipients.

5 Q And it's about the same topic we been talking about,
6 the compensation?

7 A Yes. Yes.

8 MR. GRIFFIN: Okay. I'd like to move 16-C into
9 evidence.

10 MR. LLOYD: Thank you.

11 without objection.

12 (WHEREUPON, State's Exhibit 16-C was received into
13 evidence at this time.)

14 Q Okay. And 16-C is in evidence.

15 Can, can you tell the jury what's in the, in the body
16 of, of that email?

17 A Is the one that you just showed me?

18 Q Yes, ma'am.

19 A It would -- it, it -- I think it's the letter that dad
20 wrote to Jim and Jimmy, I'd have to read it again, but
21 reducing their compensation.

22 Q Right.

23 well, do you mind reading it to the jury, just the
24 letter to Jim?

25 A Harrison?

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Q Yes, this -- and, and did you send that letter?

2 I think you mentioned earlier you sent Mr. Harrison the
3 letter.

4 A If dad asked me to do it. Yeah, I think I did -- yeah,
5 I think I -- yes. Yes, I think I did mail it.

6 Q And will, will you read the letter please?

7 A Dear Jim, ordinarily I would rather call you on the
8 telephone and meet you personally to talk about business,
9 but Ruthie's knee replacement surgery two weeks ago has
10 temporarily turned our lives upside down. I only have time
11 to think about other things when she's asleep, and it's too
12 late to call like now when it's almost midnight. So,
13 writing is my best option.

14 In a phrase, things have not been going great lately.
15 I suppose because of the state of the economy, several,
16 several of our biggest corporate client retainers have cut
17 back on our monthly fee more than once. Plus, as you know,
18 we don't have a Governor's campaign this election cycle to
19 cover the losses.

20 Cockily, we put a bunch of eggs in the McMaster basket
21 and turned down other campaigns to avoid being spread too
22 thinly. On hindsight, an obvious mistake.

23 Jim, you are member of our family. You know how much I
24 value your friendship and your skills as our operational
25 specialist, specialist. Your experience and organizational

Rebecca Mustian - Direct examination
By Mr. Griffin

1 skills are valuable assets, and you always give us solid
2 insight and support.

3 Over time, RQA has paid over 851,000 for your counsel,
4 and even though we do not communicate as often as I would
5 like, I, nevertheless, regard you as a valued member of our
6 team.

7 The bottom line is we are in a financial pickle right
8 now, and I have no option but to cut costs. I devoutly hope
9 it will be temporary, but for now we have to cut your
10 monthly retainer fee, monthly -- your monthly fee to 2,000
11 and reclassify the fee as a contract consulting agreement
12 instead of salary, which is really more appropriate now that
13 you no longer have an office in our new space. I won't bore
14 you with all the sad details, but, trust me, these austerity
15 measures are touching us all.

16 Looking ahead, please think about business development.
17 If we can add just a couple new clients, I could justify
18 restoring, restoring the consulting fee to past levels or
19 even higher. We just have to get our heads together and
20 think of ways we can add new business for the firm. In the
21 mean time, we will have to make the reduction effective in
22 October.

23 I cannot tell you how much your friendship means to me,
24 and to Rick, and to all the Quinns, or how much I hope this
25 adjustment in compensation will prove to be very temporary.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 within a week or so after Ruthie is up and about following
2 her knee surgery, I hope to be back at the office for a more
3 normal schedule. Let's talk then about marketing RQA as we
4 approach a new year. Sincerely, Richard.

5 Q Thank you.

6 A Uh-huh. (Affirmative).

7 Q The, the letter refers to Mr. Harrison as it says Jim,
8 you are a member of our family.

9 A (Witness nods affirmatively.)

10 Q Do you know what that's referring to?

11 A Yeah, Jim's been a close personal friend of our
12 families for a long time.

13 Q It says you know how much I value your friendship and
14 your skills as an operational specialist.

15 Do you know what's that being referred to?

16 A No.

17 Q It says your experience and organizational skills are
18 valuable assets.

19 Do you know what that's being referred to?

20 A No, I don't.

21 Q Are you aware of any organizational skills that he
22 applied to RQ&A that, that you observed?

23 A As I said, dad and Jim were, you know, they worked on
24 their accounts together. I don't -- I was not involved in
25 his professional relationship with dad.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 Q Okay. It says, over time, RQ&A has paid over 851,000
2 for your counsel, and even though we do not communicate as
3 often as I would like, I nevertheless regard you as a
4 valued, valued member of our team.

5 That 851,000, that's the number that you -- I mean the
6 actual number's a little higher than that.

7 A Right, it's the one up there.

8 Q Ms. Mustian, do you know what SCCAA is or was?

9 A South Carolina Conservative Action Alliance.

10 Q And, and what was that?

11 A It's a -- I can't remember if it's designated 501(c)(3)
12 or (c)(4).

13 MR. LLOYD: Your Honor, could we take up a matter?

14 THE COURT: Sure.

15 (WHEREUPON, a bench conference was held out of the
16 hearing of the jury at this time.)

17 THE COURT: All right. Ladies and gentlemen, we were
18 just talking scheduling. We are gonna go ahead and break
19 for lunch right now. We just think this is a good time and
20 a good place to do that.

21 Correct?

22 MR. LLOYD: Yes, Your Honor.

23 THE COURT: Is that okay with everybody?

24 MR. LLOYD: I didn't want to cross in front of you.

25 THE COURT: That's all right. You are fine, sir.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 So, ladies and gentlemen, do not discuss this case. It
2 wouldn't be appropriate to do so. If you would, just give
3 your pads to the bailiff. It's twelve o'clock, ladies and
4 gentlemen. If y'all are okay, be back by 1:15. We'll keep
5 going.

6 All right. I also want to tell you that we are very
7 much on schedule, and doing very well as far as timing is
8 concerned. So, I just want you-all to know that. So, we're
9 gonna be done this week. No question.

10 Okay. Thank you.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. Ms. Mustian, you are more than
14 welcome to step down. You just can't talk about your
15 testimony over the lunch hour.

16 Okay. Because you're still on the stand.

17 THE WITNESS: Oh, okay.

18 THE COURT: All right. Thank you.

19 And, Jim, can I take a look at 16-B and 16-C that you
20 just put in?

21 MR. GRIFFIN: 16-B and---

22 THE COURT: I think they were B and C. Thank you.

23 SOLICITOR PASCOE: Madam Court Reporter, I'm gonna
24 keep, they're only marked for ID, 14 and 15.

25 THE COURT REPORTER: Okay.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 SOLICITOR PASCOE: They're already in evidence as
2 different numbers now.

3 THE COURT REPORTER: Okay.

4 SOLICITOR PASCOE: So, I'm just gonna keep these.

5 THE COURT REPORTER: All right.

6 MR. LLOYD: Your Honor, can we just address one quick
7 matter?

8 THE COURT: Sure.

9 MR. LLOYD: Ms. Mustian has been advised not to discuss
10 her testimony with anybody during the break. Her attorney
11 is Mr. Peavey, and her husband is also here. He's an
12 attorney as well.

13 We just wanted to make sure that she understands, we
14 don't want any problems with her testimony as we go through
15 the afternoon, that she shouldn't discuss her testimony
16 during the lunch break.

17 THE COURT: Thank you.

18 MR. LLOYD: Even with her husband.

19 THE WITNESS: What if Mr. Peavey has a question, the
20 attorney?

21 THE COURT: You can't discuss your testimony with him.
22 He's right here.

23 THE WITNESS: All right.

24 THE COURT: You can't discuss your testimony.

25 THE WITNESS: All right.

Rebecca Mustian - Direct examination
By Mr. Griffin

1 THE COURT: Okay. Just go grab a bite.

2 MR. LLOYD: We just knew that she was gonna be seen
3 with her husband, and he is an attorney.

4 THE COURT: I understand.

5 Okay. Okay.

6 THE WITNESS: We won't discuss it.

7 MR. LIMBAUGH: Are we excused or are we waiting for
8 something?

9 THE COURT: You're excused. I was just -- yeah.

10 MR. LIMBAUGH: Okay.

11 THE COURT: Yeah, you're excused.

12 MR. LIMBAUGH: I just wanted to make sure.

13 THE COURT: I'm sorry. I'm just reading it, and I
14 think Jim's just waiting on me to give him back his two
15 documents.

16 MR. LIMBAUGH: Okay. I just wanted to make sure.

17 THE COURT: Pam, if you can wait a second.

18 Yeah, you're excused, y'all.

19 (Pause.)

20 THE COURT: Okay. There we go. Thank you.

21 THE CLERK: Thank you.

22 (WHEREUPON, Court was in recess for the lunch hour.)

23 THE COURT: All right. So, Jackie?

24 THE CLERK: Yes, Your Honor.

25 THE COURT: What's going on with one of our jurors?

Rebecca Mustian - Direct examination
By Mr. Griffin

1 THE CLERK: From what I understand, I got a call from
2 our jury coordinator, and she said that one of the jurors
3 told her that he had an emergency. He needed to go pick up
4 his child. So --.

5 THE COURT: So, do we know if he's coming back?

6 THE CLERK: Well, he also asked her if he could just
7 wait and come back in the morning.

8 THE COURT: And is this the first alternate?

9 THE CLERK: It is.

10 THE COURT: Am I correct on that?

11 Well, is there any objection from anyone just excusing
12 him and obviously---

13 MR. LLOYD: No, Your Honor.

14 THE COURT: Any objection from the State?

15 SOLICITOR PASCOE: No, Your Honor.

16 THE COURT: All right. Call him back. Tell him I hope
17 his child is okay, and he's excused from the trial of this
18 case, and not to talk to any jurors.

19 THE CLERK: Okay. Okay.

20 THE COURT: Okay.

21 THE BAILIFF: Ma'am, be seated.

22 THE WITNESS: Yes, sir.

23 (WHEREUPON, the witness returns to the stand.)

24 THE COURT: Are you bringing the jury?

25 (WHEREUPON, the following takes place within the

Rebecca Mustian - Direct examination
By Mr. Griffin

1 presence of the jury.)

2 THE BAILIFF: The jurors are all present, Your Honor.

3 THE COURT: Thank you.

4 welcome back, ladies and gentlemen. I trust y'all had
5 a good lunch. We obviously had a problem with one of our
6 alternates. So, I've gone ahead and excused him as a juror
7 in the trial of this case so we can keep moving forward.

8 All right. So, with that said, go ahead and we'll
9 continue.

10 Ms. Mustian, I think you were finished up, Mr.
11 Griffin---

12 MR. GRIFFIN: Thank you, Your Honor.

13 THE COURT: ---or getting close.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. GRIFFIN:

16 Q Just a few more questions, Ms. Mustian.

17 When we, we broke, I was asking you about SCCAA, and,
18 and what, what is that again?

19 A South Carolina Conservative Action Alliance.

20 Q Okay. And was that group a client of RQ&A?

21 A I don't know that I would say client. We, we helped --
22 we helped with SCCAA, and I don't know what we would -- how
23 you would technically term the relationship, but we did --
24 certainly we did work for them.

25 Q well, did SCAA (sic) pay money to---

Rebecca Mustian - Direct examination
By Mr. Griffin

1 MR. LLOYD: Your Honor, I object. I thought we dealt
2 with this prior to the break.

3 THE COURT: Is that -- we're talking about relevance?

4 MR. LLOYD: Right.

5 THE COURT: Is that what the issue was?

6 MR. LLOYD: Right.

7 MR. GRIFFIN: Well---

8 THE COURT: I think -- just bring it around. I'm
9 assuming you're gonna.

10 MR. GRIFFIN: Sure. Sure.

11 So, the question -- was Mr. Harrison a treasurer or
12 president of SCAA (sic)?

13 A He was the -- I think he was the treasurer.

14 Q Okay. And do you recall whether he authorized payments
15 to RQ&A as a treasurer?

16 A Yes, I recall that he did.

17 (WHEREUPON, State's Exhibit No. 40 was marked for
18 identification purposes only at this time.)

19 Q Okay. And one last document, which is Exhibit 40 that
20 came off the server of RQ&A that I failed to present to you
21 earlier today. I just want to show it to you, and, and ask
22 you the same set of questions.

23 Does that look -- appear to be a document that was a
24 record of Richard Quinn & Associates?

25 A It does. I, I don't remember seeing it ever, but I --

Rebecca Mustian - Direct examination
By Mr. Griffin

1 it looks like something that would have, you know, that
2 somebody there would of produced, and, if you got it off the
3 server, then I believe that.

4 Q And is the -- it's a -- I guess a marketing type
5 document?

6 Is that the kind of work product that Richard Quinn &
7 Associates---

8 A Yes, it looks like a, a plan he designed for or one of
9 his associates designed for SCRG.

10 Q Okay. And when you say him, are you referring to your
11 father?

12 A Yes.

13 Q Okay.

14 A Don't know that he did that. Maybe someone else did
15 it, but --.

16 Q And that's the type of work RQ&A did?

17 A Correct.

18 MR. GRIFFIN: Your Honor?

19 A without reading the, you know---

20 Q Sure.

21 A ---what all is here.

22 MR. GRIFFIN: I can move the exhibit into evidence
23 please.

24 MR. LLOYD: which number?

25 MR. GRIFFIN: It is---

Rebecca Mustian - Direct examination
By Mr. Griffin

1 MR. LIMBAUGH: Forty?

2 MR. LLOYD: Your Honor, we just have a foundational
3 objection under the business records exception.

4 THE COURT: Okay.

5 MR. GRIFFIN: Well, certainly I can ask a few more
6 questions.

7 I mean you -- Ms. Mustian, you didn't prepare this
8 document, did you?

9 A No, I did not.

10 Q But was it prepared by someone employed at RQ&A?

11 A I, I would not dispute that.

12 Q Okay. Well, it came off of---

13 A Well---

14 Q ---RQ&A's server?

15 A If it came off of our server, then I, I believe that,
16 that someone under Richard Quinn & Associates employment. I
17 don't recall documents. So, I can't speak---

18 Q Understand.

19 A ---with certainty on it.

20 Q The -- and was Richard Quinn & Associates in the
21 business of preparing these type documents?

22 A Sure. They would -- Richard Quinn & Associates would
23 make plans for --.

24 Q Okay. And would Richard Quinn & Associates, Associates
25 keep these type documents in its business records as a

Rebecca Mustian - Direct examination
By Mr. Griffin

1 normal practice?

2 A It would be -- it would be saved on someone's computer,
3 and then automatically backed up to the server.

4 MR. GRIFFIN: Your Honor, I'd move to introduce it in
5 evidence at this time.

6 THE COURT: Okay. It's in evidence.

7 MR. LLOYD: I just -- no objection.

8 THE COURT: Go ahead.

9 MR. LLOYD: What number is that?

10 MR. GRIFFIN: Forty.

11 THE COURT: Forty.

12 (WHEREUPON, State's Exhibit No. 40 was received into
13 evidence at this time.)

14 Q And, and when you tell the jury, now that we can
15 publish the contents of it, what, what that document is?

16 A Says it's a marketing and new, and new branding plan
17 for SCRG.

18 Q And what is SCRG?

19 A I believe that was South Carolina, South Carolinians
20 for Responsible Government maybe.

21 Q And was, and was that one of the clients of RQ&A?

22 A Yes, they were clients.

23 Q And the -- and was that -- we've heard about school
24 choice.

25 was that a --?

Rebecca Mustian - Direct examination
By Mr. Griffin

1 A That was an issue they worked on, yes.

2 Q Okay. And if you'll turn the page on that document.

3 There's -- looks like a proposal for a, a leadership team.

4 Do you see that?

5 I can't remember if it's the second or third page. You

6 may of gone past it. I think the second page.

7 A Oh, sorry.

8 Q So, it -- is there a proposal for a leadership team?

9 A Yes.

10 Do you want me to read it?

11 Q Well, so, who's the chairman?

12 A Bill Wilson.

13 Q Do you know who Mr. Wilson is?

14 A Yes, I know who he is.

15 Q Who, who, who is Mr. Wilson?

16 A He -- I don't know what his position was at the time.

17 I think that he -- I think he was the person -- well, I

18 don't remember a hundred percent, but I think he was who

19 brought us involved with SCRG. He and dad had a

20 relationship.

21 Q Okay. And is Mr. Harrison's name on there?

22 A Yes, it is.

23 Q And what -- and is there a position associated for Mr.

24 Harrison?

25 A It says legislative strategy adviser.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q Legislative strategy adviser?

2 A Adviser.

3 Q Thank you.

4 A Uh-huh. (Affirmative).

5 MR. GRIFFIN: Beg the Court's indulgence please.

6 (Pause.)

7 MR. GRIFFIN: Thank you, Your Honor. That's, that's
8 all the questions I have.

9 THE COURT: Okay.

10 Q Thank you.

11 THE COURT: Mr. Lloyd.

12 MR. LLOYD: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. LLOYD:

16 Q Ms. Mustian, I just have a few questions. I'm gonna
17 try to get you out of here. I'm bringing my water.

18 Do you want some water?

19 A Yes. Please.

20 THE BAILIFF: I'll get it for her.

21 Q Ms. Mustian, if I ask you a question and you don't
22 understand it, just ask me to rephrase it.

23 A Okay.

24 Q We heard a little bit earlier before lunch about your
25 family background. You mentioned, obviously, your dad,

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Richard Quinn, and the jury's heard about Rick, your
2 brother.

3 A Uh-huh. (Affirmative).

4 Q Rick served in the House of Representatives.

5 Is that right?

6 A Yes.

7 Q Your sister, Raegan, is she the older sister or younger
8 sister?

9 A She's the younger sister.

10 Q You picked on her when you were growing up?

11 A Yes, I think so.

12 Q And we heard that you have children.

13 How many children do you have?

14 A I have three.

15 Q Three.

16 How old are they?

17 A Fifteen, thirteen, and ten.

18 Q And at certain part -- I think you said, in 2003, you
19 sort of went part-time to take care of those three children?

20 A Correct. Yes.

21 Q And you're married?

22 A Yes.

23 Q And is your husband here?

24 A Yes.

25 Q And is that him sitting out there with the beard?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A Yes.

2 Q And they call your husband Big Rabbit?

3 A I don't know about that, but someone might.

4 Q And obviously we heard a little bit of testimony about

5 your mother. She's still living. She had some health

6 problems at some point during the years---

7 A Right. Right.

8 Q ---that we've been talking about.

9 Is that right?

10 A Yes.

11 Q Now, Ms. Mustian, I'm gonna ask you, first, to go over
12 some of the things that Mr. Griffin went over with you.

13 Ordinarily, when your dad -- and, and sometimes I'm gonna
14 say your dad. I mean RQA.

15 When, when your dad would enter into agreements to run
16 campaigns -- well, first let's back up just to educate the
17 jury a little bit.

18 How long has your dad been in business running
19 campaigns?

20 A I believe he started Richard Quinn & Associates or I
21 think it may of only been called First Impressions at the
22 time. Either in 1973 or '70 -- or '75, you know, right
23 around the time I was born, but, before he started his own
24 business, he ran some campaigns, you know, sort of on the
25 side from his -- he worked at the State, and just got

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 involved in politics, and then did, did a few in-between,
2 and then started First Impressions. So, you know, 40 plus
3 years, 45 plus years.

4 Q And is it safe to say that your dad's firm was probably
5 the preeminent Republican consulting firm in this State?

6 A It depends on who you ask.

7 Q You can brag on it.

8 A I felt like it was, but it -- certainly there were
9 times when, when we were called names in the paper. So --.

10 Q And -- but he didn't just work. I mean RQA had
11 Democratic clients sometimes.

12 Is that right?

13 A Yes.

14 Q Mayor Benjamin, I think he used RQA.

15 Is that right?

16 A Yes. Yes.

17 Q And, very often, there were Democrat candidates or
18 Democratic office holders that were also friends with your
19 brother?

20 A Yes.

21 Q And they would come to RQA for political consulting
22 services?

23 A Yes, I would say that.

24 Q And, over time, your dad, we've heard about some of the
25 campaigns he's run.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Most of the presidential election years your dad had a
2 candidate or candidates that he was advising?

3 A Yes.

4 Q And he's advised numerous candidates for Governor in
5 this State?

6 A Yes.

7 Q U.S. Senate in this State?

8 A Yes..

9 Q Congressional seats?

10 A Yes.

11 Q Other statewide offices?

12 A Yes.

13 Q Your dad also provides a lot of consulting services,
14 political consulting services, to candidates or elected
15 officials in the South Carolina General Assembly?

16 A Yes.

17 Q And just so that everybody understands, when we talk
18 about political consulting, sometimes that goes beyond
19 campaigns.

20 Is that right?

21 A Yes.

22 Q And even after a person is elected to office, they will
23 still employ a political consultant.

24 Is that right?

25 A Often times, yes.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q And what are some of the things that an elected
2 official might use a political consultant for?

3 A You mean during, during a time when they're not---

4 Q When they---

5 A ---involved in campaigns?

6 Q That's exactly.

7 A You know, writing newsletters that they might need to
8 go to districts. You know, if there's a, you know, it,
9 it -- you know, dad was always good at giving advice if
10 they, you know, have advice on how they needed to handle
11 something or news, news releases, writing news releases,
12 things like that.

13 Q And is it safe to say that, for example, let's just
14 take no particular governor, but a gubernatorial elected
15 official.

16 A Uh-huh. (Affirmative).

17 Q A real hot button or touchy issue comes up with that
18 official, might they consult your dad as to how to deal with
19 that with the public?

20 A Yes.

21 Q Would your dad do polling for elected officials?

22 A Yes.

23 Q Obviously, he would do it for candidates as well?

24 A Right, but he would -- he did a lot of polling for
25 different candidates, and businesses, corporate clients.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q And just so that everybody understands, what, what does
2 polling entail from an RQA or a consulting standpoint?

3 A Well, it, it -- a lot of different things. From, first
4 of all, you can draw a sample, decide who's the, you know,
5 the best alternate. So, whether general election voters,
6 Republican primary voters, all those. So, you draw the
7 sample. You develop a questionnaire.

8 We would pay a vendor to, you know, call, make live
9 interviews, you know, 500 to, you know, 800 interviews,
10 sample size sometime. And then we would take all the data,
11 process it, and we provide a -- cross tabulations to, you
12 know, kind of get a gauge of what the, what the public felt
13 about certain issues.

14 Q We often hear the term---

15 A Whatever that public was that we were targeting.

16 Q All right. We hear the term drop a poll. It's not a
17 simple effort when you drop a poll.

18 A No, no. I mean, in our, in our office, it was a very
19 lengthy process.

20 Q And when your dad had a political client come through
21 the door, how would RQA bill that client?

22 For example, we've heard a lot about John McCain---

23 A Uh-huh. (Affirmative).

24 Q ---on a national campaign.

25 A Uh-huh. (Affirmative).

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q How would John McCain not only pay RQA, but how would
2 y'all set the rates, so to speak, for, for John McCain?

3 A I don't know. Dad was, you know, dad would negotiate
4 that with each, each particular client.

5 Q And when your dad is negotiating that, is he
6 negotiating a flat fee for those -- for whatever services?

7 A Yes.

8 Q And I know your -- testified earlier that, if there
9 were outside costs, outside vendors, or sometimes I think
10 you said polling where you hire the people to actually---

11 A Right.

12 Q ---pick up the phone and do the calling---

13 A Uh-huh. (Affirmative).

14 Q ---that might be extra, but, as far as RQA's fee that
15 it was earning for whatever consulting RQA did, that was set
16 by your dad?

17 A Correct.

18 Q And if they called him ten times in a week, or
19 nothing -- no times in that week, the fee was the same?

20 A That's right.

21 Q And if, you know, there was a heavy user in some
22 months, and light user in some, some months, you didn't bill
23 extra for the heavy months, did you?

24 A No.

25 Q And your dad -- we've heard testimony that your dad has

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 some -- another side of the business where he does
2 consulting or PR work for private businesses.

3 Is that right?

4 A Right.

5 Q And some of the clients are SCANA, over the years,
6 SCANA, USC, BlueCross Blueshield, companies like that.

7 Is that right?

8 A That's right.

9 Q And would your dad set the fee pretty much the same way
10 he would with political candidates?

11 A Yes.

12 Q And so whatever fee was set, it would come through the
13 door to pay the expenses for RQA.

14 Is that right?

15 A Right.

16 Q Now, we'll come back to that in a little bit to talk
17 about that a little bit more. I want to talk about first
18 how you got involved in this case.

19 Do you recall the first time anybody from law
20 enforcement or the prosecutor's office ever contacted you
21 about this?

22 And I won't try to stump you on dates.

23 A No, I remember that---

24 Q Would it have been around 2016?

25 A It's been -- these years have been a blur. I think it,

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 you know, I was subpoenaed to the Grand Jury. I can't
2 remember -- was it March of --?

3 Q would that be 2017?

4 A I believe it's March -- I think so. Yes, I think
5 that's right.

6 Q And I just want to establish sort of a timeline. You,
7 you first testified to the Grand Jury in, in March of 2017.

8 Is that right?

9 A I think, I think that's right.

10 Q And did you meet with law enforcement or the
11 prosecutors after that?

12 A I don't, I don't think I did.

13 Q Did you meet with them right before the John Courson
14 plea?

15 A Yes. Yes, I met with Mr. Griffin.

16 Q And just to back up for a second, did you meet with
17 Mr. Griffin or anybody else from the State before your Grand
18 Jury testimony?

19 A I've met with Mr. Pascoe before one of my testimonies
20 at the, at the Grand Jury's office. Not at his office.

21 Q And then you indicated, I believe in your earlier
22 testimony, that you met with Mr. Griffin last Thursday?

23 A I think that's -- yes.

24 Q Or it's some time last week?

25 A Right. Some time last week.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q At that point, is the documents that Mr. Griffin was
2 showing you, is that the first time he showed those
3 documents to you?

4 A Thursday?

5 Q Yeah.

6 A I think so, yes.

7 Q Had anybody from the State shown you those documents
8 prior to your Grand Jury testimony?

9 A Not outside of the Grand Jury room. I don't think that
10 I saw them in the Grand Jury room, no.

11 Q Did -- when you met, right before the Courson plea, did
12 they show you those documents?

13 A Not those documents, no.

14 Q Okay. Now, earlier you testified to Mr. Griffin that
15 your dad set the salaries for employees at RQA.

16 Is that correct?

17 A Yes.

18 Q Let's talk about hiring at RQA.

19 who, who did the hiring at RQA?

20 A officially, officially, it would of been dad.

21 Q Did you ever hire anybody at RQA?

22 A Not to my recollection.

23 Q You said officially.

24 was your brother sometimes involved in hiring --

25 A Sure.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

- 1 Q -- people at R, RQA?
- 2 A He would, he would -- yeah, he would recommend
3 somebody, but, ultimately, it was dad's decision, and his --
4 it would be dad's decision.
- 5 Q And a lot of times your brother, Rick, might bring
6 somebody in, and say dad we need to hire this person?
- 7 A That may of been how that happened.
- 8 Q And, ultimately though, whatever salary got set for
9 that individual, that was your dad's decision?
- 10 A That's right.
- 11 Q Did you have any involvement in setting any salaries?
- 12 A No.
- 13 Q Did you have any involvement in assigning work to any
14 employees at RQA?
- 15 A No, if I -- if dad asked me to present him charts or,
16 you know, expense amounts, I was doing that. It was part of
17 his decision, but I would not be involved in, in the
18 decision.
- 19 Q Now, in talking about Mr. Harrison specifically, you
20 said, at some point, he had an office at, at the original
21 location for RQA?
- 22 A Right.
- 23 Q And, at some point, he no longer had an office at RQA?
- 24 A Right.
- 25 Q Mr. Griffin asked you about seeing Mr. Harrison in the

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 office. I'm wanting to ask you just briefly. You were
2 part-time during much of the time Mr. Harrison worked at
3 RQA.

4 Is that right?

5 A Correct.

6 Q And let's, let's take the jury inside RQA for a moment.

7 What were your dad's work habits?

8 Was he a 9:00 to 5:00 guy, an 8:00 to 6:30 guy, work at
9 night?

10 What kind of work habits did he have?

11 A He, he probably came in very early, and he even stayed
12 late. He was not --.

13 Q If we, if we described your dad as a night owl, would
14 that be fair?

15 A Yes.

16 Q And when we say he's a night owl, he's up doing work.

17 Is that right?

18 A That's right.

19 Q And let's just talk about the nature of what your dad
20 did.

21 A lot of his work was over the phone?

22 A Over the phone.

23 Q Or meeting with people in person?

24 A Right.

25 Q Cause, essentially, RQA is about your dad's brain at

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 the end of the day.

2 Isn't that right?

3 A That's right.

4 Q Was he the only one at RQA who had those sort of work
5 habits of coming and going during the workday?

6 A No.

7 Q For example, your brother, Rick, if you came into the
8 office, was he likely to be there?

9 A Not all the, not all the time, no.

10 Q And I'm not trying to get you in trouble with your
11 brother.

12 A No, no, no. No, it's -- you're right. I mean there
13 was, there was a lot of, you know, offsite work, and comings
14 and goings, and working at night. So, it was not a regular
15 9:00 to 5:00 occupation.

16 Q And I don't want to -- don't take this the wrong way,
17 but sort of the folks like your dad, and Rick, Mr. Harrison,
18 and other consultants that worked at RQA, they weren't
19 sitting at a desk from 9:00 to 5:00, were they?

20 A Right. That's right.

21 Q You heard about some other employees who, if you showed
22 up at 8:30 in the morning, they would be there. For
23 example, they worked at the copy shop.

24 A Right.

25 Q And they worked---

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A It's more production based.

2 Q ---at mail marketing, and, as you said, that, that's
3 production based.

4 Right?

5 A Right.

6 Q You had to get copies made or, or printed or materials
7 printed and out the door.

8 Is that right?

9 A Right.

10 Q Now, you were asked about Mr. Harrison's duties when he
11 was at RQA.

12 Were you ever involved in knowing what Mr. Harrison did
13 for your dad?

14 A Not that I recall specifically, no.

15 Q Was that unusual as to Mr. Harrison or did that apply
16 to most of the consultants or all of the other consultants?

17 A I would say it applied to most -- most or all.

18 Q That wasn't in your wheelhouse so to speak.

19 Is that right?

20 A That's right.

21 Q How much they interacted with your dad is not something
22 you would necessarily have been privy to?

23 A That's right.

24 Q Now, we've heard enough during this trial about certain
25 clients of RQA such as BlueCross Blueshield. They were a

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 client at some point with RQA.

2 Is that right?

3 A Yes, they were.

4 Q And SCANA was a client at some point?

5 A Yes, they were.

6 Q And we talked about AT&T was a client?

7 A Right.

8 Q Most or all of those folks that you've heard mentioned
9 during the course of this trial, were they longtime clients
10 of RQA?

11 A Yes, they -- well, well, I don't know that all of them
12 were, but a lot of what you said were.

13 Q But most of them were?

14 A Right.

15 Q SCANA was a client long before -- for a long time with
16 RQA?

17 A They were a client long before I started and long
18 after.

19 Q And they were clients of RQA before Mr. Harrison.
20 Is that right?

21 A Yes, I believe so.

22 Q And we've heard about some other consultants who were
23 in the Legislature, Jimmy Merrill, Tracy Edge.

24 I believe Terry Haskins was a consultant at some point?

25 A Yes, he was.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q And Terry Haskins was who just so the jury knows?

2 A Oh, who is Terry Haskins?

3 Q Right.

4 A He was a, he was a House member from Greenville I
5 believe. He, you know, he predated me professionally, but
6 he was another family friend, and he was a -- did consulting
7 work for Richard Quinn & Associates, but I -- that was -- he
8 got sick before I, before I started.

9 Q And, unfortunately, Terry passed away?

10 A Yes.

11 Q Some time ago.

12 Is that right?

13 A Yes.

14 Q Those clients predated Jim Harrison at RQA --

15 A (Witness nods affirmatively.)

16 Q -- that we just talked about?

17 A I don't remember which ones they did, but they're
18 certainly -- I believe -- I can -- I think they're -- you
19 know, I think SCANA did, and I think BellSouth did. You
20 know, there were a lot of clients, when we did the audit,
21 that I told Mr. Griffin about that I had to go back, and
22 they were, they weren't being billed. It was, you know, it
23 was just a, a business audit, and I know those two -- at
24 least those two were.

25 Q And some of them were clients during the time

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Mr. Harrison was at RQA.

2 Is that correct?

3 A That's right.

4 Q Do you recall any clients leaving RQA after
5 Mr. Harrison left RQA?

6 A No, I don't recall that.

7 Q Do you recall Mr. Harrison ever bringing in a client to
8 RQA and saying hey, let's sign this company up?

9 A I don't recall that. That may of then -- that would of
10 been, again, with dad.

11 Q There was a lot of reference to Mr. Harrison's pay at
12 RQA.

13 Who set that pay?

14 A That -- it would of been negotiated between he and dad.

15 Q Now, I think we covered this already, but there's -- I
16 know Mr. Griffin's questions to you he used the term
17 retainer, and, in some of your documents, you use the term
18 retainer.

19 Do you recall that?

20 A Yes, I do.

21 Q And I think you've explained this, but let's help the
22 jury understand a little bit about the way RQA billed for
23 services.

24 You said your dad would just set a flat rate for
25 whatever work he was gonna do for a client?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A That's right.

2 Q And that flat rate would represent what was gonna be
3 done for that year?

4 A Right. Billed monthly.

5 Q And I'm, and I'm getting to that very point.

6 For example, if USC was a client and they came in and
7 talked to your dad about services that they wanted to
8 contract with him with---

9 A Uh-huh. (Affirmative).

10 Q ---they would talk about everything that they could
11 possibly agree that RQA would do for them.

12 Is that right?

13 A Right.

14 Q And then your dad would set a fee. It might be
15 \$100,000 a year.

16 Is that right?

17 A Whatever they negotiated.

18 Q Right. And I'm just using that as an example.

19 A That's correct.

20 Q And then that fee would be broken down over a monthly
21 period throughout the year.

22 Is that right?

23 A That's right.

24 Q So, every fee that was paid to RQA or every retainer,
25 as we've used that word, was for services being rendered by

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 RQA.

2 Is that right?

3 A Right, and staff. And I say monthly, but I, you know,
4 I feel like maybe somebody would of been, you know, there
5 might be an instance where someone was billed quarterly
6 instead. I do feel like there were a number of clients
7 wanting to be charged hourly. So, if that, if that's in
8 evidence somewhere. I don't mean to---

9 Q Sure.

10 A But it's, it's happened -- that's happened a few times.

11 Q And that's understandable. It's been a long time---

12 A Right.

13 Q ---back that we've been asking you questions about.

14 A Right.

15 Q And if you -- if your dad set a fee for a client, again
16 unless they were outside costs to RQA or outside vendors
17 involved, your dad wouldn't say you called me ten times this
18 month, I'm gonna charge you extra?

19 A Right. No, that wouldn't happen. If they wanted a
20 project, they would negotiate the price of that project.
21 Whether it was a poll or a client would -- anything above
22 the retainer would of had to have been agreed to before we
23 get started. Meaning a project. Not, not staff time.

24 MR. LLOYD: Beg the Court's indulgence. I'm just
25 looking for one exhibit.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Ms. Mustian, I'm gonna show you what was marked and
4 admitted as State's 5 and 6.

5 A Okay.

6 Q Do you remember those documents?

7 A Yes.

8 Q And, in both of those documents, Mr. Griffin asked you
9 about numbers that are allocated or payments from certain
10 clients that are allocated to different employees of RQA.

11 Is that right?

12 A Yes.

13 Is that this one?

14 Q Now, I know this has been a long time ago, but did --
15 first of all, when, when do you remember, if at all, as to
16 when that was created?

17 A This document?

18 Q Yes, both five and six.

19 A Well, the date here says '99, and I do not know.

20 This -- both of these documents are very old. Document 6 is
21 definitely in my handwriting. I mean I've told everybody
22 that, but I just don't remember -- I don't remember writing
23 it or why I wrote it or, you know, obviously, I must of been
24 talking to dad, and, you know, maybe writing notes or
25 something.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q But the allocation of monies to specific employees, did
2 that represent, as far as you remember, the work that they
3 did on those -- for those clients?

4 A Dad -- that's, that's not this document, but, you know,
5 dad would of -- would have been the person who would accept
6 that.

7 Q And if -- obviously, we're talking almost 18 years ago,
8 almost 19 years ago.

9 A Right.

10 Q The amount of money that clients paid RQA changed over
11 time sometimes, didn't it?

12 A Yeah. Sure. Sometimes. A lot of them stayed the same
13 long term, but we certainly had reductions in, in a couple,
14 and SCANA and BellSouth I think were two that were, that
15 were reduced a couple of times. But, for the most part, it
16 stayed pretty standard.

17 Q And campaign clients changed over time, didn't they?

18 A They did, yes.

19 Q And the amounts that were coming in from campaigns
20 changed over time.

21 Isn't that correct?

22 A Yes, they did.

23 Q And the number of employees changed over that time
24 period, didn't it?

25 A Well, we had a lot more work during campaign season.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q Okay. Did you ever create anything like that after
2 1999?

3 A This memo?

4 Q Not the memo. The, the---

5 A Yeah, I think they're, they're---

6 Q Not the -- the charts.

7 A Yeah, I don't, I don't recall doing it. I'm not, I'm
8 not---

9 Q I guess my question is the State sees -- at some point,
10 the State showed up with a search warrant at RQA?

11 A Uh-huh. (Affirmative).

12 Q And they took computers.

13 Is that right?

14 A They did, yes.

15 Q And they took hard copies from files at RQA?

16 A Yes. Yes, they did.

17 Q They pretty much cleaned you-all out?

18 A Right. Yeah.

19 Q Even before your Grand Jury testimony, during your
20 Grand Jury testimony, after your Grand Jury testimony,
21 including through last week and today, has the State ever
22 shown you a similar document to that after 1999?

23 A I don't believe so, and I'm not, I'm not sure we're
24 talking about the same document. This is like -- is this
25 what you mean?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

- 1 Q Right. We're talking about the---
- 2 A Yeah.
- 3 Q ---the hands---
- 4 A Oh, that---
- 5 Q The allocations.
- 6 A Yes. Yes. Yes.
- 7 Q Where you're allocating certain monies to---
- 8 A Right.
- 9 Q ---employees.
- 10 A No. No, this is the only one that I recall seeing.
- 11 Q And thank you for clarifying that. At some point --
- 12 and I'll take those back from you.
- 13 I'm sorry. May I approach, Your Honor?
- 14 THE COURT: Of course.
- 15 MR. LLOYD: I'm sorry. I shouldn't of just been
- 16 walking up.
- 17 At some point in time, and Mr. Griffin went over with
- 18 you before lunch, there was a discussion internally within
- 19 RQA between yourself, your brother, and your dad about, for
- 20 lack of a better description, financial difficulties at RQA.
- 21 Is that right?
- 22 A Right.
- 23 Q And just so we're all on the same page, some years and
- 24 at some periods of time times were good---
- 25 A Right.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q ---business wise, right?

2 A Correct. That's right.

3 Q Round 2010, was that the case?

4 A I don't remember that it was. I don't, I don't think
5 it would of been.

6 Q Around 2010 though is when you-all are discussing
7 cutting---

8 A Oh, is that---

9 Q ---peoples' pay.

10 A Right. Right.

11 Q Okay.

12 A So, it would of been then.

13 Q And make sure I find the right exhibit for you.

14 Now, Ms. Mustian, I want to show you what's previously
15 been marked and admitted as State's 16-B, and I believe
16 Mr. Griffin asked you about this email chain earlier.

17 May I approach, Your Honor?

18 THE COURT: You may.

19 A Okay.

20 Q And is that the email chain where you're explaining to
21 your dad the amount of money that's being paid to varying
22 individuals and your dad says yikes?

23 A Right.

24 Q I'm sorry?

25 A Oh.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

- 1 Q Is that the email chain where your dad---
- 2 A Oh, I'm sorry. I thought I said yes.
- 3 Q Oh, I'm sorry.
- 4 A I'm sorry.
- 5 Q I thought you were reading the document.
- 6 A No. Sorry.
- 7 Q That's my, my apologies.
- 8 Can you explain to the jury sort of typically how
- 9 familiar was your dad with the amounts of money coming in
- 10 and the amounts of money going out the door?
- 11 A He didn't, he didn't focus on it unless someone pressed
- 12 him to. He -- I mean if everything was plugging along fine,
- 13 then he didn't -- he was never really focused on it too
- 14 much.
- 15 Q And your dad is a -- an unbelievable political
- 16 consultant.
- 17 Is that fair?
- 18 A Oh, I would say so, yes.
- 19 Q Fantastic dad?
- 20 A I think so.
- 21 Q Great husband?
- 22 A Uh-huh. (Affirmative).
- 23 Q And no daughter will ever say anything bad about their
- 24 dad, but, as a businessman, how would you describe your dad?
- 25 A I would, I would say he's not a good businessman.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Q And, for a long time for RQA, there was just a lot of
2 money coming in from campaigns, and other activity, and plus
3 they're other businesses.

4 Is that right?

5 A Right.

6 Q Associated with your dad?

7 A Right.

8 Q And money really and expenses really wasn't a big worry
9 for RQA, was it?

10 A No, he didn't, you know, he didn't focus on, you know,
11 his future. So, like I said, if the, if the trains were
12 running fine, he didn't --.

13 Q And you described it as he didn't concentrate on his
14 future.

15 Did this become an issue within the family?

16 A Yes, it did.

17 Q And, in particular, was it an issue for you and your
18 sister?

19 A More so my sister, yes, and, and she would talk to me
20 about it and, and my mother.

21 Q Was it an issue for you, your sister, and your sister
22 in terms of the amount of people that were hired at RQA?

23 A Yeah, they -- Reagan wanted him to focus more on, on
24 money going out, and try to plug some of the holes.

25 Q Was your dad good at letting people go from RQA?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A No, he was not.

2 Q And was it just legislators he was not good at letting
3 go from RQA?

4 A No.

5 Q Can you---

6 A It was anybody at RQA.

7 Q Can you describe for the jury your dad's history at RQA
8 regarding retaining too many employees?

9 A I'm sorry. I don't understand the question.

10 Q In other words, your, your -- can you just explain to
11 the jury, there would be a lot of people hired at RQA.

12 Is that fair?

13 A That is fair.

14 Q And sometimes they weren't all contributing to the
15 bottom line.

16 Is that fair to say?

17 A That's fair.

18 Q How was your dad at laying, laying off people when
19 times weren't as good as other times?

20 A He did not do that.

21 Q And that was something you and your sister struggled to
22 get him to do?

23 A Right. The only times he could find, you know, staffed
24 up for campaigns, some of those people would go to -- go on
25 to, you know, work for the candidates, and that, that made

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 it easy. But other times not.

2 Q Is it fair to say your dad is sort of confrontation
3 adverse?

4 A Yes.

5 Q Very smart man?

6 A Right.

7 Q Very good political consultant?

8 A Right..

9 Q But in terms of minding the nickels and dimes, not as
10 good?

11 A That's right.

12 Q And most of the people or a lot of the people that came
13 to work at RQA were either -- family members.

14 Is that right?

15 A Or family, you know, friends for a while.

16 Q Friends of your dad's?

17 A And my mom.

18 Q And your mom.

19 And your brother?

20 A Right. I'm sure -- and they're others, but, yes, that
21 would be---

22 Q Right?

23 A ---correct.

24 Q And were there times when there wasn't enough income
25 coming through the door that your dad would make

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 arrangements to use other income from other business sources
2 to pay people at RQA?

3 A Yes. Yes, that -- there were times when that happened.

4 Q I'm sorry?

5 A Yes. Yes.

6 MR. LLOYD: May I approach Your Honor?

7 Just get this back from you.

8 And was that a constant issue with your sister and you?

9 A Yes, she, she was often trying to get him to, you know
10 --.

11 Q And, essentially, you-all wanted your dad to really
12 start to think about how much money's going out the door?

13 A well, and monies over the top or just slow down.

14 Q And I know we touched on this very early in your direct
15 examination before lunch with Mr. Griffin.

16 Around 1999, your dad was having some health problems?

17 A I don't remember, you know, when the exact date
18 started, but, yes, that seems right.

19 Q And those health problems or the complications from
20 those health problems continued through really this case.

21 Isn't that fair to say?

22 A Yeah. I mean sure.

23 Q At some point around when you came to work, there --
24 were there discussions within the family of your dad cutting
25 back at work because of his health?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A You mean back in 2000?

2 Q Right.

3 A Right. Well, there were discussions for, you know, he
4 needed to have surgery on his throat. At the time, it was a
5 much more difficult surgery then it ended up being, I don't
6 know, years later. But -- and there was a concern that he
7 would be out of commission for a while. And so, we needed
8 everybody else to take over what he could not do. But he
9 never, never had the surgery.

10 Q And your dad kept putting off having that surgery?

11 A Yes.

12 Q And even while he's having those health side affects
13 from putting off the surgery, your dad continued to
14 essentially carry the load at RQA?

15 A Right. I would say so.

16 Q Now, did your dad ever instruct you, the entire time
17 you worked there, to contact Mr. Harrison, for example,
18 about any kind of legislation that was pending at the
19 General Assembly?

20 A No.

21 Q Did you ever discuss with Mr. Harrison whether -- what
22 he needed to file on his Statement of Economic Interest?

23 A No.

24 Q Did you ever discuss with him whether he filed or
25 disclosed anything in particular on his Statement of

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 Economic Interest?

2 A No.

3 Q Did you care about his Statement of Economic Interest?

4 A Honestly, I'm not sure I knew what it was at the time.

5 Q We heard about SCRG, and the -- they were a group
6 pushing school choice in South Carolina.

7 Do you recall that?

8 A Yeah, I think that's what they did.

9 Q And do you recall the -- well, first of all, was SCRG
10 constantly a client from 1999 till 2012?

11 A I feel -- I, I have -- I remember the name a lot. I
12 think they, you know, they probably came on and off, but I
13 would have to look at, at bank records to be certain.

14 Q To see exactly when they were a client---

15 A Right.

16 Q ---and when they weren't?

17 A Right.

18 Q And when we say they were concerned about school
19 choice, that doesn't mean solely they were concerned about
20 legislation.

21 Is that correct?

22 A Sure.

23 Q They were also concerned about the general public's
24 attitude about school choice issues.

25 Is that right?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A Sure. Yes.

2 Q Ms. Mustian, I'm gonna -- I want to talk to you really
3 briefly, and I'm sorry to bring this up, about this case,
4 and the impact on your family.

5 MR. GRIFFIN: Objection, Your Honor. It's not
6 relevant.

7 MR. LLOYD: Your Honor, may we approach?

8 THE COURT: Pardon?

9 You may approach.

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 MR. LLOYD: Beg the Court's indulgence.

13 (Pause.)

14 Q Ms. Mustian, I was asking you about this case, and its
15 impact on your dad's business, former business, RQA, as well
16 as your family.

17 How long has this case been going on for you and your
18 family?

19 A Y'a'll would remember better than I would, but whenever
20 the SLED report was leaked to the media. I don't remember
21 the day. I think it was -- it's my son's 13th birthday,
22 and he's, you know, 15 and a half. So, two and a half years
23 ago I believe is -- no, it was actually before that.
24 Whenever the, whenever the SLED report got leaked to the
25 media, and it started to become, you know, you know, you

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 know, people believed that, that Rick and dad were at the
2 center of the SLED report or clients of theirs or something.
3 I can't remember how, how it started, but that would of been
4 at least three years ago, maybe longer.

5 Q And your, your dad, as well as your family, was the
6 subject of a lot of newspaper headlines?

7 A Yes, they were the subject to a lot of newspaper
8 headlines that, you know --.

9 Q And intense media scrutiny of this?

10 A Intense, unfair media scrutiny I would say, yes.

11 Q And describe for the jury first what impact that this
12 had on your dad's business, RQA.

13 A Lost all his clients. Every month we would get a new
14 letter about that they didn't want to retain our services
15 anymore.

16 Q And it's, it's difficult for clients that you use to
17 service to be associated with scandals so to speak.

18 Is that correct?

19 A It is. I mean it's -- I understand why they had to do
20 it, but --.

21 Q Can you describe for the jury what impact this case had
22 on your family personally?

23 A Well, it has -- as the -- when Rick got indicted, you
24 know, it was, it was very hard on dad. You know, it's --
25 you know, he's a very emotional guy, you know, and, and it's

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 hard to see his son go through that. And, you know, he's
2 got some breathing issues, and, you know, he -- it
3 definitely has taken a toll on his health for sure.

4 Q Did your family have an opinion about the motivation of
5 this prosecution and, and investigation?

6 MR. GRIFFIN: Objection, Your Honor. Relevance, 403.

7 MR. LLOYD: I'll move on, Your Honor.

8 THE COURT: Okay. Move on.

9 Q Did the State make threats of prosecuting you?

10 A Yes.

11 Q And they were coming after your brother?

12 A Yes.

13 Q And they were threatening to prosecute your dad?

14 A Well, I mean he was indicted, but they dropped the
15 charges.

16 Q And describe for the jury the sort of family dynamic.
17 Obviously, clients are leaving the business.

18 What was the family dynamic during the course of those
19 pending indictments?

20 A You know, Rick was, you know, trying really hard to, to
21 gather documents to prove his innocence. He, you know,
22 spent a lot of time trying to do that. Dad, you know, he --
23 I think he was trying to be helpful, but it, you know, just
24 I think, emotionally, was not able to be helpful in the
25 process of helping Rick gather documents. And, you know, my

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 mother, it was very hard on her too.

2 It was hard for your parents to see your son going
3 through something like that, that they, you know, that,
4 again, they think is not fair. So -- and, as you mentioned
5 papers, you know, a lot of headlines, you know, were you,
6 you know, basically saying that they were criminals even,
7 you know, they know -- you know, there's never really
8 good -- they were not prosecuted as criminals, but if you
9 read the newspapers, we were and it had an impact.

10 Q And had your family ever been through anything like
11 this before?

12 A No, not like this. You know, there were certainly
13 controversies that came up with Rick.

14 Q Did---

15 A He's in the---

16 Q Your family's been -- I'm sorry.

17 A I'm just saying he's a legislator. He's definitely
18 had -- and, and I think my dad has had, you know, they have
19 had media scrutiny before, but not, not in the instance of,
20 you know, you know, the chart in The State, the bubble
21 chart, you know, the, the, you know, the -- it -- the, The
22 State Newspaper, you know, made it look like he was a
23 criminal, and, you know, he can't -- couldn't turn on the
24 day without, you know, him being the worst criminal in 30
25 years.

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 My mother-in-law had somebody at the church mention his
2 name to her, and she didn't know that we -- that that was my
3 father-in-law. So, you know, it's just hard.

4 Q Did it take a financial toll on the family?

5 A Yes, it's my dad's business is -- he doesn't have any
6 more clients. So, he has no business.

7 Q At some point your dad entered, on behalf of First
8 Impressions, a plea.

9 Is that correct?

10 A Yes, that's correct.

11 Q And as a part of that plea agreement, your brother, I
12 believe, in the -- association with that, your brother
13 agreed to plead to one count of statutory misconduct?

14 A I don't know if that's the, if that's the legal term.
15 I'm not disputing it.

16 Q And your dad entered a plea on behalf of First
17 Impressions to a charge.

18 Is that correct?

19 A Yes. Yes.

20 Q And---

21 A Not personally, but, yes.

22 Q Right.

23 He personally didn't plead, but he did what's called a
24 corporate plea.

25 Is that right?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A Right. The charges against him were dropped, and he,
2 he had a corporate plea of, you know.

3 Q And eventually all other charges were dropped against
4 your brother except the one he pled to.

5 Is that right?

6 A That's right.

7 Q And as a result of that plea agreement with your dad,
8 there was an agreement with this -- the Government and your
9 dad that you wouldn't be charged in this case.

10 Is that correct?

11 A I believe so, yes.

12 Q And at some point you were given immunity by The State.

13 Is that right?

14 A Right, for my Grand Jury testimony.

15 Q And you can't be prosecuted for anything related to
16 RQA's business because of that agreement?

17 A Any, any past.

18 Q Right.

19 A Right.

20 Q So, you -- when you show up here today, you're telling
21 the jury the whole truth about what went on at RQA?

22 A Yes.

23 Q And there's no threat of prosecution to you so long as
24 you're truthful.

25 Is that correct?

Rebecca Mustian - Cross-examination
By Mr. Lloyd

1 A That's correct.

2 MR. LLOYD: Beg the Court's indulgence.

3 (Pause.)

4 MR. LLOYD: Nothing further, Your Honor.

5 THE COURT: All right. Any redirect?

6 MR. GRIFFIN: Very briefly, Your Honor.

7 May I approach the witness?

8 I need to grab some documents.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. GRIFFIN:

12 Q Ms. Mustian, I'm handing you Exhibit 35, which is in
13 evidence.

14 A Right.

15 Q Before I ask you about that document, let's go back.
16 You, you were asked some questions by Mr. Lloyd about
17 whether retainer income was allocated to Mr. Harrison after
18 that initial memo of 1999, which was Exhibit 5, and your,
19 your notes of Exhibit 6.

20 I'm gonna ask you first, is there corporate income
21 being allocated to Mr. Harrison in Exhibit 35?

22 A This, this is the one we were looking at where it
23 says -- it suggests that some -- it's written out---

24 Q Yes.

25 A BellSouth, and, yeah, Burroughs & Chapin, and, and

Rebecca Mustian - Redirect examination
By Mr. Griffin

- 1 SCANA, and---
- 2 Q Okay. You may need to pull that mic up to you a little
3 bit.
- 4 A Oh, I'm sorry.
- 5 Q That's all right.
- 6 A Yeah, it was the chart that you had up there --
- 7 Q Right.
- 8 A -- that we, we discussed.
- 9 Q Now, Exhibit 35 doesn't appear to have a date on it,
10 does it?
- 11 A I don't -- I don't know when this would of been -- no.
- 12 Q And so I'm gonna try to work with you on that.
- 13 A Okay.
- 14 Q And if you look at the top half of that document,
15 that's -- the top half has the political, political campaign
16 clients, does it not?
- 17 A Uh-huh. (Affirmative).
- 18 Q And, and if you go down the list, you don't see any
19 presidential candidates on that list, do you?
- 20 A No, I don't.
- 21 Q And -- but you see a Mr. Condon, Charlie Condon. You
22 see a Mr. Hawkins that you mentioned earlier that was
23 running for Attorney General, correct?
- 24 A Yes, he was running I think for Attorney General.
- 25 Q And, and so if you don't see any -- well, we know, from

Rebecca Mustian - Redirect examination
By Mr. Griffin

1 a lot of discussion in this courtroom that, in the Year
2 2000, RQA represented Senator John McCain in his
3 presidential bid in the primary, correct?

4 A Yes, I believe that the work would of started before
5 2008.

6 Q Sure.

7 But the election would of been November -- well, it's
8 been---

9 A No, it would of been the primary.

10 Q June of 2008.

11 A No, the presidential primary is -- were over then.

12 Q All right. That's right.

13 And -- but in 20 -- in 2000, would it not, March?

14 A Right.

15 Q Okay. And then the statewide elected offices would of
16 been held two years later in South Carolina, correct?

17 A Yeah, that's -- I think that's right.

18 Q well, let's work backwards.

19 A Okay.

20 Q We're in 2018, and we're two weeks away from electing a
21 Governor.

22 A Right.

23 Q Is that correct?

24 A Uh-huh. (Affirmative).

25 Q And then the last time we would of done that would of

Rebecca Mustian - Redirect examination
By Mr. Griffin

1 been 2014?

2 A Right.

3 Q Before that, it would of been 2010?

4 A Uh-huh. (Affirmative).

5 Q Before that, it would of been 2006?

6 A Okay.

7 Q Add before that, it would of been 2002?

8 A Okay.

9 Q Correct.

10 And so would it appear that that document allocating
11 income to Mr. Harrison was at least 2002?

12 A Yeah, I mean if we -- it could of been if Hawkins
13 was---

14 Q Right.

15 A ---you know.

16 Q Okay. Thank you.

17 A Uh-huh. (Affirmative).

18 MR. GRIFFIN: That's all the questions I have, Your
19 Honor.

20 THE COURT: Anything further?

21 MR. LLOYD: Your Honor, just very briefly.

22 RECROSS-EXAMINATION

23 BY MR. LLOYD:

24 Q Ms. Mustian, no employee at RQA was paid directly from
25 any particular client.

1 Is that true?

2 A I think -- I mean I think that's true. I -- there
3 were -- I hate, hate to give blanket statements, but I think
4 that Trey Walker, who testified yesterday, I think his, his
5 compensation was a little different because he was -- I
6 think he, I think he got percentages also with political
7 campaigns. I'm, I'm pretty sure he -- it was a while ago.

8 Q All right.

9 A But I don't remember anybody else having that
10 relationship.

11 Q Would it be fair -- sometimes "consultants" they get a
12 little percentage of the action to speak, TV buys, that sort
13 of thing.

14 A Right.

15 Q Is that right?

16 A Yes.

17 Q And so Trey may of been in that category.

18 Is that right?

19 A If I recall correctly, Trey actually got a percentage
20 of the political retainers because he was, he was very, you
21 know, very just political. You know, he -- his passions was
22 political campaigns, and he, I believe, he got -- I think he
23 had some kind of base pay, and then I believe he got a
24 percentage of the, of the political accounts that he brought
25 in.

Rebecca Mustian - Recross examination
By Mr. Lloyd

1 Q And -- but he would of been the only employee at RQA
2 with that deal?

3 A That's the only one I remember.

4 Q And, otherwise, political campaign income and corporate
5 client income essentially went into the same bank account.

6 Is that correct?

7 A Correct.

8 Q And salaries were paid out of that?

9 A Right.

10 Q The electricity bill was paid out of that.

11 Is that correct?

12 A Correct.

13 Q The copy room bills were paid out of that.

14 Is that right?

15 A Yes, sir.

16 Q For paper---

17 A Yes.

18 Q ---pencils, that kind of thing?

19 A Right. Right.

20 Q Now, is it possible that this document that you were
21 just shown, State's Exhibit 35, is it possible that all this
22 is, is an accounting exercise to show you that there's
23 enough income to cover the expenses salary wise?

24 A Yeah, I mean it's possible that that was never actually
25 income we got it on because I don't, I don't remember

Rebecca Mustian - Recross examination
By Mr. Lloyd

1 Hawkins campaign ever taking off.

2 Q So, it's possible that this is sort of a projection of
3 things?

4 A Right, that -- yes, it's possible.

5 Q May not actually be an actual --?

6 A I, I -- it looks, you know, again, I'm not disputing
7 that it came from RQA. I just don't -- I don't recall the
8 source of it, but it could be a projection, yes.

9 Q It might not represent the actual salaries that were
10 being paid at the time at RQA.

11 Is that correct?

12 A Are there salaries on that?

13 I thought it was just --?

14 Q well, yeah, let me rephrase.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 Q If you look at the charts where it says -- let's take
18 the one at the top. You said Hawkins, and there's a
19 retainer of \$8,000.

20 Do you see that?

21 A I do.

22 Q And there's a consulting pay---

23 A Oh, right. Right.

24 Q ---of \$1,600 to Trey.

25 A Yes. Yes.

Rebecca Mustian - Recross examination
By Mr. Lloyd

- 1 Q Is that right?
- 2 A Okay. Yes.
- 3 Q That may not have actually ever took -- taken place.
- 4 Is that right?
- 5 A Right. It may have, but it might not have.
- 6 Q If, if there were a year where a campaign wasn't being
- 7 run, and I'll just, again, use an example of one of these
- 8 candidates, let's say the Rita Allison campaign, I believe
- 9 she ran for Secretary of Education.
- 10 Is that right?
- 11 A I think that's right, yes.
- 12 Q If Rita didn't have a campaign the next year, David
- 13 Wright's salary wouldn't disappear, would it?
- 14 A Well, he's a bad example. I guess he wasn't -- he was,
- 15 you know, he kind of came in and out.
- 16 Q Right, but I guess my point is---
- 17 A Other people---
- 18 Q ---if campaigns came and went or corporate clients came
- 19 and went, the employee still got paid, right?
- 20 A Right.
- 21 Q It's just had to -- you still had to end up with enough
- 22 money to pay the bills, so to speak, at the end of the day,
- 23 right?
- 24 A Right. Right.
- 25 Q Thank you, Ms. Mustian.

1 THE COURT: Anything else?
2 MR. GRIFFIN: No, Your Honor.
3 May she be excused?
4 THE COURT: You may step down please.
5 We need a break?
6 (WHEREUPON, the foreman nods affirmatively.)
7 THE COURT: All right. Ladies and gentlemen, do not
8 discuss this case. It wouldn't be appropriate to do so. Go
9 refresh yourselves. Come on back.
10 All right. Thank you.
11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)
13 THE COURT: All right. Ten minutes.
14 Do we need to put anything on the record before we
15 break?
16 Anyone?
17 (No response.)
18 THE COURT: Ten minutes.
19 MR. GRIFFIN: Oh, no.
20 THE COURT: See y'all---
21 MR. LLOYD: No, Your Honor.
22 THE COURT: See y'all back in ten minutes.
23 Okay?
24 MR. LLOYD: Thank you, Your Honor.
25 THE COURT: Thank you.

1 (WHEREUPON, a short recess was taken at this time.)
2 (WHEREUPON, State's Exhibit Nos. 41 and 42 were marked
3 for identification purposes only at this time.)
4 MR. GRIFFIN: Your Honor, for scheduling purposes --
5 THE COURT: Yes.
6 MR. GRIFFIN: -- we have four witnesses for the rest of
7 the day.
8 THE COURT: Okay.
9 MR. GRIFFIN: I think they'll all be short, 15, 20
10 minutes, and then we will probably finish the witnesses we
11 have for today --
12 THE COURT: Okay.
13 MR. GRIFFIN: -- I suspect before five o'clock today.
14 THE COURT: Okay.
15 MR. GRIFFIN: And then they'll be two short witnesses
16 in the morning.
17 THE COURT: All right. What time are you expecting
18 your witnesses in the morning?
19 SOLICITOR PASCOE: 10:00. One of them can't be here
20 till then.
21 MR. GRIFFIN: Yeah. Yeah, one has a health issue.
22 Can't be here until 10:00.
23 THE COURT: Okay.
24 MR. GRIFFIN: The, the other one can --.
25 SOLICITOR PASCOE: Well, one of them can't be here till

1 about 11:00. So, if we could start at 10:00 with the first
2 witness, we should be --

3 THE COURT: Okay.

4 SOLICITOR PASCOE: -- good to go.

5 THE COURT: All right.

6 MR. LIMBAUGH: I'm not sure the foreman's gonna allow
7 that.

8 THE COURT: I was gonna say I want to know who's gonna
9 pull the straw to break it to our foreperson --

10 SOLICITOR PASCOE: That right there.

11 THE COURT: -- who is a three star general.

12 MR. LIMBAUGH: Oh, is that right?

13 THE COURT: Yes.

14 MR. LIMBAUGH: And just for whatever it's worth, I
15 think I know who your witness -- I know who at least two of
16 your witnesses are. Lackey and Mr. McFadden?

17 MR. GRIFFIN: Mr. McFadden and Mr. Beaman and---

18 SOLICITOR PASCOE: D'Alessio.

19 MR. GRIFFIN: Mr. D'Alessio.

20 MR. LIMBAUGH: All the lobbyist's principal folks.

21 MR. GRIFFIN: Yeah.

22 MR. LIMBAUGH: Yeah, I don't think our cross for any of
23 those is likely to be -- certainly not likely to be longer
24 than the direct.

25 THE COURT: Okay.

1 MR. LIMBAUGH: So, it should be --.

2 THE COURT: Sounds good enough. Should be able to

3 finish by roughly 5:00.

4 MR. LIMBAUGH: I would think.

5 THE COURT: Okay. And then just two in the morning,

6 and we said somebody is ill.

7 Is that Representative Mike Pitts?

8 Is that---

9 MR. GRIFFIN: Yeah. Yeah.

10 THE COURT: Then who's the other person?

11 MR. GRIFFIN: Mr. Hayden. Herb Hayden.

12 THE COURT: Okay.

13 MR. GRIFFIN: Okay.

14 THE COURT: Okay. I trust we need to wait for Mr.

15 Lloyd?

16 MR. LIMBAUGH: No, we actually don't.

17 THE COURT: Okay. Perfect.

18 MR. LLOYD: I believe I'm gonna do the -- so, I think

19 we can go ahead.

20 THE COURT: All right. Let's bring the jury in, sir.

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: Thank you.

23 (WHEREUPON, the following takes place within the

24 presence of the jury.)

25 THE BAILIFF: The jury is all present, Your Honor.

Charles McFadden - Direct examination
By Mr. Griffin

1 THE COURT: Thank you, sir.

2 If the State will call their next witness?

3 MR. GRIFFIN: Your Honor, the State calls Charles
4 McFadden.

5 THE CLERK: Please step forward to be sworn in, sir.

6 (WHEREUPON, the witness complies.)

7 THE CLERK: If you would, place your left-hand on the
8 Bible, and raise your right-hand.

9 CHARLES MCFADDEN, being first duly
10 sworn, testified as follows:

11 THE CLERK: Thank you. Please state your full name.

12 THE WITNESS: Charles McFadden.

13 THE CLERK: Please have a seat.

14 (Witness complies.)

15 DIRECT EXAMINATION

16 BY MR. GRIFFIN:

17 Q Good afternoon, Mr. McFadden.

18 A Good afternoon.

19 Q All right. Please tell the jury a little bit about
20 your professional career.

21 I know -- are you -- you're currently retired, correct?

22 A Yes.

23 Q Where did retire from?

24 A SCANA Corporation. I retired September 30th, 2014.

25 Q And how long, how long were you with SCANA Corporation?

Charles McFadden - Direct examination
By Mr. Griffin

1 A Forty-five years.

2 Q And what, and what capacity?

3 what, what was your job when you retired?

4 A I was senior vice-president of governmental affairs and
5 economic development.

6 Q And how long did you hold that position?

7 A Sixteen years roughly.

8 Q So, if you retired in 2014, sixteen years '98?

9 A End of '97.

10 Q Okay. And what, and what did that job entail?

11 what, what do you do in that position?

12 A Was several different things. One is I was responsible
13 for federal and state government. That would be your State
14 House, Federal in Washington. I had that -- lobbyists that
15 worked under me.

16 The other thing that -- I did economic development,
17 which was recruiting industry in our service territory, and
18 I guess the other piece of the governmental affairs part was
19 I was responsible for the municipalities, and the counties.
20 So, it was the counties or the towns, the counties, state,
21 and federal. We had, I think, about 124 municipalities that
22 we did business in, and I think roughly 30 counties.

23 Q And I guess, at the risk of me sounding really stupid,
24 but the question, just want to be sure everyone understands,
25 SCANA is the holding company for SCE&G?

Charles McFadden - Direct examination
By Mr. Griffin

1 A That's correct.

2 Q And that's our power company here in the Midlands?

3 A That's correct.

4 Q And where else does SCANA do business in South
5 Carolina?

6 A We do business in the central part of South Carolina
7 from roughly Columbia, over to Aiken, down to, down the
8 border to Charleston, Beaufort, that area. That's the
9 electric and gas part. We also serve the Pee Dee, but
10 that's gas only.

11 Q Okay. And the -- and let me ask you.

12 Do you know Richard Quinn?

13 A Yes.

14 Q How do you know Mr. Quinn?

15 A We retained Richard Quinn & Associates.

16 Q And, and roughly do you recall when that relationship
17 started?

18 A I think I read it was around mid-1995.

19 Q Okay. Before you took over the VP of governmental
20 affairs?

21 A Yes, sir.

22 Q And when you took over the VP of governmental affairs,
23 who did you take that position -- who was in that position
24 before you?

25 A I'm not sure there was anybody there in that, in that

Charles McFadden - Direct examination
By Mr. Griffin

1 particular position. I worked for a lady named Cathy
2 Novinger. She was senior vice-president over administrative
3 services, and I think she brought me in because she planned
4 to retire in several years --

5 Q But---

6 A -- which she did.

7 Q And so was a contract or the relationship in place when
8 you became vice-president of governmental affairs with a
9 relationship between SCANA---

10 A Yes.

11 Q ---and RQ&A?

12 A Yes.

13 Q And, and you say that was late '97, '98?

14 A When I got there.

15 Q And, and would -- what did RQ&A do for SCANA when you
16 got there?

17 What, what was the -- what was their job, if you will?

18 A They were doing a lot of PR work. They did studies.
19 They did polling, surveying. They would do things as needed
20 like maybe write op ed pieces, help with relationships, and
21 provide information on elections coming up, and things like
22 that.

23 Q And in 2014 when you left SCANA, was, was there still a
24 relationship between RQ&A and SCANA?

25 A Yes.

Charles McFadden - Direct examination
By Mr. Griffin

1 Q Okay. So, it continued your full tenure?

2 A Yes.

3 Q Okay. And I want to -- I want to ask, ask you, I
4 guess, the early years, when you would meet with Richard
5 Quinn, would you sit down and talk about legislative
6 affairs?

7 A In the early years, I'd say '98, '99, 2000, maybe even
8 2001, I would call Richard up, and say we need to get
9 together. A big issue back then was deregulation. When I
10 came into this job in, in I would say '98, there was a big
11 push to deregulate the electric industry in South Carolina,
12 and it was probably as much of a PR campaign as anything
13 else.

14 So, Richard was doing an awful lot of -- a lot of PR
15 work for us. There were television ads, newspapers ads. He
16 was doing a lot of internal communications for us, and
17 things like that.

18 So, I would meet usually once a year, and we'd talk
19 about our, our -- the deregulation issue and anything
20 elections that might be coming down the pipe that we thought
21 might affect SCANA.

22 Q Okay. Would Mr. Quinn bring others to the meeting that
23 you're referring to?

24 A I have vague recollection of or a couple of other
25 people being there.

Charles McFadden - Direct examination
By Mr. Griffin

1 Q And who are those other people?

2 A Rick Quinn was there, and Jim Harrison. And I think
3 maybe, maybe one time Jim Merrill, but I don't think it's
4 more than once.

5 Q Okay. And the -- and what was the agreement, the
6 financial agreement, the overall structure of the
7 relationship?

8 would you get a bill after you'd meet for the purpose
9 of the meeting?

10 A We just got a monthly invoice.

11 Q And, and what -- was it a set amount?

12 Did it fluctuate?

13 A It's a set amount.

14 Q Did the -- were you charged by the job or was it the
15 annual -- was it, was it set annually?

16 A Monthly.

17 Q Okay.

18 A Monthly amount.

19 Q And in the early years, do you know what the monthly
20 amount was?

21 A 9,750.

22 Q Every month?

23 A Yes, sir.

24 Q And I, and I think we've got in evidence copies of
25 checks from SCANA. I'm gonna show what's in evidence as

Charles McFadden - Direct examination
By Mr. Griffin

1 Exhibit 39.

2 A Yeah.

3 Q And just for your -- if you have to refresh your
4 recollection, but, and, and, frankly, Mr. McFadden, those
5 only go back to 2006. That's all the bank records so long
6 as they keep them.

7 But did it -- did the monthly amount go down at any
8 point in time?

9 A Yeah, it did.

10 Q You remember, you remember what year?

11 A I know what it is, but I want to check it anyway.

12 Q Sure.

13 A Okay. In January, 2008.

14 Q So, January, 2008, it, it --?

15 A Went to 6,000.

16 Q From 9,750?

17 A Yes.

18 Q Okay. And, and what -- what was the reason for the
19 reduction?

20 A There were several. One is when we're doing all the
21 work on deregulation, we upped his retainer because of all
22 the work he was doing. We got through all that. So, that
23 was no longer something that, that we needed to pay for.

24 Plus, I just -- I, I -- there, there wasn't a whole lot
25 of activity. I think, at the end of 2007, looking back at

Charles McFadden - Direct examination
By Mr. Griffin

1 it, it had been about a year or so before since I had any,
2 any contact with Richard, and I, quite frankly, I needed
3 budget money, budgets like everybody else, to, to do other
4 things with, and so just try to --.

5 Q And the -- so, were, were there months that would go by
6 where RQ&A did no services for SCANA, but yet received their
7 monthly payments?

8 A Yes.

9 Q And you'd mentioned 2007, you know.

10 In your recollection, was it roughly an entire year
11 where really no services were rendered?

12 A Well, I don't remember having much contact with him
13 during 2007. That's why I told -- said, you know, we just
14 need to do something different.

15 Q I show you another, another document that it's been in
16 evidence, Exhibit 35, and, and that's not a SCANA document,
17 but that's in evidence as an RQ&A document.

18 Do you see the name of your company on that document?

19 A I do.

20 Q And, and does it have a monthly payment amount?

21 A Yes.

22 Q And what's that?

23 A 2,000 -- well --.

24 Q The---

25 A It's got the retainer line --

Charles McFadden - Direct examination
By Mr. Griffin

1 Q Yes.

2 A -- which is 9,750.

3 Q And, and that's the amount that you talked about
4 paying?

5 A Exactly.

6 Q And---

7 A And the \$2,000.

8 Q All right. And the, the \$2,000 is to---

9 A Mr. Harrison.

10 Q Going to Mr. Harrison.

11 Did, did you know that Mr. Harrison was receiving,
12 receiving any money from RQ&A during the time when you
13 were -- your company was making retainer payments of \$9,750?

14 A No.

15 Q Did you know, in 1999 through 2012, that Mr. Harrison
16 was Chairman of the House Judiciary Committee?

17 A Yes.

18 Q If you had known he was receiving compensation from
19 Richard Quinn & Associates at the time SCANA was paying
20 monthly retainer, what would you have done about it?

21 A We would of voided the agreement.

22 MR. GRIFFIN: Okay. I have no further questions, Your
23 Honor.

24 THE COURT: Cross.

25 MR. GRIFFIN: I'm, I'm sorry, Your Honor. I, I do have

Charles McFadden - Direct examination
By Mr. Griffin

1 one more line of inquiry as I look through.

2 THE COURT: Okay.

3 Q Mr. McFadden, I want to show you State's Exhibit 19,
4 which is not in evidence, but, you know, for the record, it
5 is, it is one of the emails that's identified by the AOL
6 custodian earlier today.

7 A Yep.

8 Q Can you look at that document and tell us if that is an
9 email that you received from Mr. Quinn?

10 A Yes.

11 Q Okay. And does it reference Mr. Harrison?

12 A Yes.

13 MR. GRIFFIN: Your Honor, I'd like to move Exhibit 19
14 into evidence.

15 THE COURT: Have you seen it?

16 MR. LIMBAUGH: No objection.

17 MR. LLOYD: I'm sorry.

18 MR. GRIFFIN: Do you want to see it?

19 MR. LLOYD: Just wanted to make sure --.

20 MR. LIMBAUGH: I think it's---

21 MR. LLOYD: We don't know which one he's talking about.

22 MR. GRIFFIN: I'm sorry.

23 MR. LIMBAUGH: Is the email that said---

24 THE COURT: I'm sorry?

25 MR. LIMBAUGH: ---something that Jim didn't attend.

Charles McFadden - Direct examination
By Mr. Griffin

1 MR. GRIFFIN: Yeah. Yeah.

2 MR. LIMBAUGH: Okay. That's fine.

3 MR. GRIFFIN: Okay.

4 THE COURT: All right. It's in evidence.

5 (WHEREUPON, State's Exhibit No. 19 was received into
6 evidence at this time.)

7 Q And, and if you'll -- if you don't mind reading -- so,
8 the emails, you start at the end, and, and the first email
9 is -- it's from you to Mr. Quinn.

10 Is that correct?

11 A Yes.

12 Q And what, and what do you -- what's the email state?

13 A It says are -- Richard, are you fellows available to
14 meet -- available Friday morning around 9:30 to meet.

15 Q And then that is Mr. Quinn's response?

16 A He says Kenny, Rick, and I look forward to seeing you
17 Friday morning at 9:30.

18 Q And who do you understand Kenny to be?

19 A Kenny Bingham.

20 Q And was he in the State House?

21 A Yes.

22 Q Okay. And then what's the next entry on the email
23 thread?

24 A Just says I got it on my calendar.

25 Q Okay. And then, and then what's the next entry?

Charles McFadden - Cross-examination
By Mr. Limbaugh

1 A It says Jim Harrison will be out of town Friday, but
2 asked we brief him on our discussion.

3 MR. GRIFFIN: Okay. Now that is all the questions I
4 have, Your Honor. Thank you.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION

7 BY MR. LIMBAUGH:

8 Q Good afternoon, Mr. McFadden.

9 How are you?

10 A Good afternoon. Fine.

11 Q I just -- I have a few questions. Not, not very many
12 actually. Wanted to be sure I understood that your
13 testimony was that SCANA had engaged RQ&A some time in 1995
14 or earlier.

15 Is that where or was it actually '95?

16 A I think it's about mid-1995. I think I read that
17 somewhere.

18 Q Okay. So, it's your, your belief that the initial
19 engagement would of been some time in 1995.

20 Is that---

21 A Yes.

22 Q ---fair?

23 Okay. And the relationship between SCANA and RQ&A
24 continued until when?

25 I actually missed your answer. I think you did, but---

Charles McFadden - Cross-examination
By Mr. Limbaugh

1 A It was there when I left.

2 Q In 2014?

3 A Yes.

4 Q Okay. So, it -- is -- if Mr. Harrison was employed,
5 we'll get into it in a minute about what that may or may not
6 mean, but if Mr. Harrison was employed at Richard Quinn &
7 Associates from the end of 1999 until the end of 2012, it's
8 accurate to say that SCANA engaged Richard Quinn before he
9 even started working there and after he left?

10 A Yes.

11 Q Okay. Do you recall -- I, I don't remember the exhibit
12 number, and it's not important, but the email chain that you
13 just looked at for Mr. Griffin, there's reference through a
14 meeting --

15 A Yeah.

16 Q -- that Mr. Harrison apparently didn't attend.

17 A Yes.

18 Q Aside from that meeting which he didn't attend, how
19 many times would you say, in the years that you were doing
20 this work and were sort of the liaison to Richard Quinn &
21 Associates, did you meet with Mr. Harrison or attend
22 meetings in which Mr. Harrison was also in attendance at RQA
23 or with RQ&A people?

24 A As I mentioned, there were, there were a few meetings
25 late '99, early 2000. I think though I -- maybe beginning

Charles McFadden - Cross-examination
By Mr. Limbaugh

1 2002, we, we didn't have those anymore.

2 Q Okay.

3 A But I don't remember. I, I, I would see Mr. Harrison
4 from time to time. I don't recall ever meeting with him at
5 RQ&A.

6 Q Okay. Then I'm -- I mean it's certainly accurate to
7 say then that, that you nor anybody else from SCANA, as far
8 as you know, ever asked Richard Quinn or anybody at RQ&A to
9 approach Mr. Harrison about a, a vote on a matter?

10 A No.

11 Q All right. You did answer a question from Mr. Griffin
12 about what you would have done had you known Mr. Harrison
13 was an employee of RQ&A during the pendency of your
14 association with RQ&A. I think you said you would of voided
15 the agreement.

16 A (Witness nods affirmatively.)

17 Q Are your -- you're -- you are not a lawyer, are you?

18 A No.

19 Q Okay. So, if I were to tell you that there would of
20 been no legal reason for you to have to had done that, you
21 wouldn't be in a position to dispute that?

22 A Sitting here today, no.

23 Q All right. That's all I have. Thank you.

24 THE COURT: Mr. Griffin, anything further?

25 MR. GRIFFIN: No, Your Honor.

James D'Alessio - Direct examination
By Solicitor Pascoe

1 THE COURT: All right. May this witness be excused?

2 Anyone object?

3 (No response.)

4 THE COURT: You are excused, sir.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 THE BAILIFF: Watch your step down, sir.

8 THE COURT: Call your next witness please.

9 SOLICITOR PASCOE: James D'Alessio, Your Honor.

10 MR. GRIFFIN: Thank you, Mr. McFadden.

11 THE CLERK: Please step forward to be sworn in.

12 (WHEREUPON, the witness complies.)

13 THE CLERK: If you would, place your left-hand on the
14 Bible.

15 JAMES D'ALESSIO, being first duly
16 sworn, testified as follows:

17 THE CLERK: Please state your full name.

18 THE WITNESS: James D'Alessio.

19 DIRECT EXAMINATION

20 BY SOLICITOR PASCOE:

21 Q Good afternoon, Mr. D'Alessio.

22 A Good afternoon.

23 Q Where do you work, sir?

24 A I work at BlueCross BlueShield of South Carolina.

25 Q And how many years have you worked at BlueCross?

James D'Alessio - Direct examination
By Solicitor Pascoe

1 A I just concluded my 18th year.

2 Q Okay. And what jobs have you held at BlueCross during
3 that 18 years?

4 A Began as an associate general counsel, which I held for
5 some time. Then I held a position of director of state
6 affairs, and I'm currently the vice-president of government
7 affairs.

8 Q Okay. And what is BlueCross?

9 A BlueCross is a health insurance company. We also have
10 a number of subsidiaries that are involved in other
11 services. Particularly IT for health type companies.

12 Q And just how big a company is BlueCross BlueShield?

13 A Last number we're at almost 12,000 employees, and about
14 ten to eleven of those here in South Carolina.

15 Q And where is your main office located in South
16 Carolina?

17 A Off Alpine Road and I-20---

18 Q Okay.

19 A ---here in Columbia.

20 Q Okay. Is BlueCross BlueShield a lobbyist principal?

21 A Yes, we are.

22 Q Been one since at least 1991?

23 A Prior to my coming here, yes, sir.

24 Q Okay. And you hire lobbyists to push issues for you at
25 the State House?

James D'Alessio - Direct examination
By Solicitor Pascoe

1 A Yes, sir, we do.

2 Q Okay. Over the years, in just general terms, how many
3 lobbyists does BlueCross usually have any given year?

4 A On average, I'd say four to five. It's been three some
5 years, five years. Four's a good average.

6 Q And what are some of the general things that BlueCross
7 lobbies the Legislature for every year?

8 A We generally lobby in the healthcare space given our
9 core business.

10 Q Okay. Do you also hire political consultants
11 sometimes?

12 A We do.

13 Q And what are the consultants you hire suppose to do?

14 A They generally help with other matters like polling,
15 message development, grassroots activities, things. Anything
16 other than direct communication with the General Assembly.

17 Q Are they allowed to lobby the Legislature?

18 A No, they are not.

19 Q And why is that?

20 A That would be illegal.

21 Q Okay. So, if BlueCross Blueshield became aware that a
22 consultant was lobbying the Legislature, what would
23 BlueCross do?

24 A We would fire them.

25 Q Did BlueCross ever hire First Impressions, which did

1 business as Richard Quinn & Associates?

2 A Yes, we did.

3 Q And in what capacity did you hire them?

4 A As political consultants.

5 Q Okay. I just asked you that.

6 A That's all right.

7 Q Did BlueCross provide documents to SLED pertaining,
8 pertaining to your hiring of Richard Quinn & Associates
9 between 1999 and 2012?

10 A Yes, sir, we did.

11 Q And in -- in actuality, about how far was BlueCross
12 able to go with those documents?

13 A I believe it was back to 2004.

14 Q Okay. So, we -- you were able to obtain documents from
15 2004 to 2012?

16 A That's correct.

17 Q Okay. So, I'm gonna show you what's been marked as
18 State's Exhibit 42.

19 would you look through those real fast, and you've had
20 an opportunity to see those?

21 A Yes, sir.

22 Q This week, right?

23 A Yes, sir.

24 Q Okay. And you recognize those documents?

25 A I do.

James D'Alessio - Direct examination
By Solicitor Pascoe

1 Q Are those BlueCross records that deal with BlueCross's
2 dealings with Richard Quinn & Associates from 2004 until
3 2012?

4 A Yes, sir, I believe these go through 2008.

5 Q 2008?

6 A Yes, sir.

7 Q Or 2009 maybe if you look at the, the one up on the
8 top.

9 A Oh, that's correct. 2009.

10 Q And you would of dealt things -- so, you didn't deal
11 with Richard Quinn & Associates from 2009 through 2012 or
12 you would have documents?

13 A I think that's right. I thought there was maybe one
14 polling project not run out of the government affairs shop
15 that was ACA related.

16 Q And those documents that discuss the business with RQA
17 and BlueCross between 2004, 2009, they're kept in the
18 ordinary course of business?

19 A Yes, sir, they are.

20 Q Can I see those one second?

21 A (Witness complies.)

22 Q Thank you, sir.

23 SOLICITOR PASCOE: I'd ask that State's Exhibit 42 be
24 admitted into evidence.

25 And I'll let you keep that.

1 I'd ask that State's Exhibit 42 be admitted into
2 evidence without objection.

3 MR. LIMBAUGH: Without objection.

4 THE COURT: It's in evidence.

5 (WHEREUPON, State's Exhibit No. 42 was received into
6 evidence at this time.)

7 Q Keep those. Thank you.

8 And, Mr. D'Alessio, what is a retainer?

9 A A retainer is an amount paid for the availability to
10 perform services.

11 Q Okay. And was Richard Quinn & Associates on retainer
12 with BlueCross BlueShield back in 2004 and 2005?

13 A Yes, he was.

14 Q Okay. Approximately how much a month did Richard Quinn
15 & Associates make in 2004 and 2005?

16 A It's \$5,000 a month.

17 Q Were you aware back or was BlueCross aware, in 2004 and
18 2005, that Jim Harrison was an employee of Richard Quinn &
19 Associates?

20 A I was not, and as far as I'm aware, no one at BlueCross
21 was.

22 Q If BlueCross had been aware that he was an employee of
23 Richard Quinn & Associates, would BlueCross have put Richard
24 Quinn & Associates on a retainer?

25 A Absolutely not.

1 Q Okay. And why is that?

2 A I think that would be illegal.

3 Q Educate the jury a little bit for me about, or for them
4 actually, a little bit about the tobacco tax.

5 What was BlueCross's position on trying to get a
6 tobacco tax in South Carolina?

7 A BlueCross was supportive of the idea of increasing the
8 taxes on tobacco in order to expand the State's Medicaid
9 program.

10 Q Okay. Did you have any luck getting that tobacco tax
11 between 1999 and 2008?

12 A My recollection is no.

13 Q Okay. And that was a yearly thing that you tried to
14 get passed at BlueCross?

15 A It was, I think, a long term effort.

16 Q After the failure of the tobacco tax bill to become law
17 in 2008, who did BlueCross hire as a consultant on that?

18 A The, the company did retain RQ&A in that year, and,
19 from the -- looking at the documents, I think related to the
20 tobacco tax.

21 Q And was that approximately October 24th, 2008, that
22 BlueCross hired Richard Quinn & Associates?

23 A I believe that's correct. That's the date on one of
24 these invoices. I had a notice about it being past due.
25 So, I don't believe that date, but that would of been around

1 that timeframe.

2 Q And what is the stated purpose for hiring Richard Quinn
3 & Associates?

4 A The invoice has on there services, tobacco tax
5 advocacy.

6 Q Okay. And nothing more than tobacco tax advocacy?

7 A That's what's listed on the invoice.

8 Q And how much money did BlueCross give Richard Quinn &
9 Associates for tobacco tax advocacy to try to get that bill
10 passed?

11 A It looks like there were two -- well, it looks like two
12 charges. One again was past due. So, it's 15,000 in total,
13 and \$5,000 increments. It appears to be or there's one for
14 ten, which mentions, mentions past due. So, it's not clear.

15 Q Do you know what, if any, work Richard Quinn &
16 Associates did as part of that tobacco tax advocacy?

17 A I do not know.

18 Q But the good news is, in that year, did the -- in 2009,
19 did the tobacco tax pass and become law?

20 A I believe it did.

21 Q Was BlueCross aware, in 2008 when it hired Richard
22 Quinn & Associates for tobacco tax advocacy, that Chairman
23 Jim Harrison was an employee at Richard Quinn & Associates
24 making \$84,000 a year?

25 A I was not aware, and I'm not aware of anyone at

James D'Alessio - Cross-examination
By Mr. Limbaugh

1 BlueCross that was.

2 SOLICITOR PASCOE: Okay. Beg the Court's indulgence.

3 (Pause.)

4 Q Please answer any questions Mr. Limbaugh has for you.

5 I appreciate you coming, Mr. D'Alessio.

6 A Thank you.

7 CROSS-EXAMINATION

8 BY MR. LIMBAUGH:

9 Q Good afternoon, Mr. D'Alessio.

10 A Good afternoon.

11 Q I just want to be sure I'm, I'm clear on this.

12 How long have you been with BlueCross Blueshield?

13 A Since 2000.

14 Q Okay. And during that course of time, were you always
15 responsible for the government relations, public relations
16 shop?

17 A No, I, I started as an associate general counsel in the
18 law department.

19 Q Okay. And at what point in your career with BlueCross
20 did you become kind of the boss of those issues?

21 A My promotion to VP was in 2009.

22 Q Okay.

23 A I had the -- I, I got the position of state director of
24 affairs in November of 2008.

25 Q All right. So, would you have been in that position

1 when these -- this relationship with Richard Quinn &
2 Associates was begun?

3 A No, it would of been prior to my being in that
4 position.

5 Q Okay. Would -- is BlueCross and BlueShield in the
6 habit of paying consultants for no work?

7 A No.

8 Q All right. So, when you say that a retainer is being
9 paid to be available, are you saying that, after that
10 retainer is paid to make them available, that you then pay
11 an additional amount of money for work that's actually done?

12 A No, it's in lieu of an hourly rate.

13 Q Okay. So, in fact, whether we call it a retainer or
14 something else, it is payment for the services that are
15 being provided by the vendor, whether it's Richard Quinn &
16 Associates or anybody else.

17 Isn't that right?

18 A Correct.

19 Q Okay. So, you're not paying them for nothing?

20 You're paying them for the work they do?

21 A Correct.

22 Q Okay. And are you aware that, under the statutes of
23 South Carolina, that as long as you are, as a lobbyist
24 principal, paying for actual services being performed, that
25 there's nothing that prevents that vendor, RQA or anybody

James D'Alessio - Cross-examination
By Mr. Limbaugh

1 else, from employing a legislator?

2 A My understanding---

3 Q I'm not asking whether you'd be comfortable with it.

4 I'm just talking about---

5 A Sure.

6 Q ---whether you're aware that there's nothing that
7 prohibits that legally.

8 A I certainly would not be comfortable. My understanding
9 is there's a prohibition of hiring a legislator on a
10 retainer basis in the code. I can't cite it as I sit here.

11 Q Okay.

12 A But that's always been my understanding.

13 Q All right. Okay. Was BlueCross BlueShield, to the
14 best of your recollection, I know you said that you, you
15 actually didn't become the, the boss of this shop until
16 afterwards, but, to the extent that you know, was BlueCross
17 & BlueShield part of a coalition that was working on the
18 tobacco tax issue?

19 A We were.

20 Q Okay. And do you know whether others that were
21 involved in that coalition were also -- had agreements with
22 Richard Quinn & Associates to do work on that issue?

23 A I, I don't know.

24 Q Okay. Did you -- did you ever attend any meetings at
25 Richard Quinn & Associates in, in connection with the

James D'Alessio - Cross-examination
By Mr. Limbaugh

1 tobacco tax issue or any other issue?

2 A No.

3 Q Okay. Did you or did anybody at BlueCross, as far as
4 you know, ever ask anyone at Richard Quinn & Associates to
5 get the vote of Mr. Harrison on this issue or any other?

6 A Not that I'm aware of.

7 MR. LIMBAUGH: That's all I have. Thank you, Your
8 Honor.

9 SOLICITOR PASCOE: No, ma'am.

10 THE COURT: All right.

11 SOLICITOR PASCOE: Thank you, Mr. D'Alessio.

12 THE WITNESS: Thank you.

13 THE COURT: Sir, you may be excused.

14 Call your next witness.

15 MR. GRIFFIN: Yes, Your Honor.

16 Pamela Lackey.

17 THE COURT: All right.

18 THE CLERK: Ms. Lackey, if you would, please step
19 forward and be sworn in.

20 (WHEREUPON, the witness complies.)

21 THE CLERK: Place your left-hand on the Bible. Raise
22 your right-hand.

23 PAMELA LACKEY, being first duly
24 sworn, testified as follows:

25 THE CLERK: Please state your full name.

Pamela Lackey - Direct examination
By Mr. Griffin

1 THE WITNESS: Pamela Lackey.

2 THE CLERK: Thank you, ma'am. Please have a seat.

3 THE BAILIFF: Watch your step up, ma'am.

4 DIRECT EXAMINATION

5 BY MR. GRIFFIN:

6 Q Good afternoon, Ms. Lackey.

7 A Good afternoon.

8 Q Are you, are you currently retired?

9 A I am.

10 Q Congratulations.

11 A Happily.

12 Q Where did you retire from?

13 A I'm retired from AT&T.

14 Q How long were you with AT&T?

15 A I was with AT&T since 1997 until July 1st of this
16 year.

17 Q Okay. And what -- and what -- in what capacity were
18 you employed at AT&T at the time of your retirement?

19 A At the time of my retirement, I was president of AT&T
20 for AT&T South Carolina.

21 Q Before the -- before you became president of AT&T South
22 Carolina, what position did you hold?

23 A I was, from 2001 until 2000 and the -- 2007, I was the
24 director of government relations for AT&T and BellSouth.

25 Q And I was gonna ask you a little bit about that.

Pamela Lackey - Direct examination
By Mr. Griffin

1 Did you -- were you, at one point in time, just
2 employed by BellSouth?

3 A I was. I was hired by BellSouth in 1997.

4 Q And then BellSouth --

5 A We merged---

6 Q ---came back to AT&T?

7 A That's, that's the way you put it, yes. But what
8 happened was SBC and BellSouth merged and re-branded
9 themselves as AT&T in 2000 and -- by the end of 2006.

10 Q And, and so from '01 to '06, you were, you were --
11 well, maybe I'm confused.

12 '01 to '06 you were BellSouth?

13 A That's correct.

14 Q Okay. And you started at BellSouth in '97?

15 A '97.

16 Q You were vice-president of government, government
17 affairs from '01 to '06 at BellSouth, and '06 to '07 at
18 AT&T?

19 A That's correct. Director of government relations was
20 the position.

21 Q Director of government relations.

22 In what capacity did -- were you employed at BellSouth
23 from '99 to 2001?

24 A Actually '97 to 2001, I was the account manager for the
25 education, market, and the sales group.

Pamela Lackey - Direct examination
By Mr. Griffin

1 Q Starting in 2001 when you became director of
2 governmental affairs, I just want to ask you, did, did
3 BellSouth, and then what later transitioned into AT&T, was
4 it a lobbyist principal?

5 A Yes, it was.

6 Q And what does that mean as you understand it?

7 A It means that we advocate for various policies at the
8 state level, and, and lobbyist's principal is a state level
9 term, and, therefore, we are required to register with the
10 State Ethics Commission, and -- to that fact that we are a
11 lobbyist principal, and do employ lobbyists.

12 Q And did you, in fact, employ lobbyists from 2001 up
13 until your retirement?

14 A Yes, we did.

15 Q Did, did BellSouth have a relation, a financial
16 business relationship with RQ&A when, when you took over as
17 director of governmental affairs?

18 A Yes, there was already one in place.

19 Q And, and who did you take over from as director of
20 governmental affairs?

21 A Immediately preceding me was a young man named Pat
22 Patton, and, prior to that, I believe Greg Morton held that
23 position. I, I may be missing someone in-between because
24 people were moving into different positions during that
25 time.

Pamela Lackey - Direct examination
By Mr. Griffin

1 Q And, and once you became in, in the position of
2 director of governmental affairs, what, what did RQ&A do for
3 BellSouth and then AT&T?

4 A Okay. Our -- we had -- like one of the other
5 witnesses, we employed them as First Impressions obviously
6 doing business as RQA. They did political consulting, and
7 we talked to them on a regular basis about messaging on
8 issues that we were thinking about pursuing, and, and
9 sometimes it would -- I think, in the early years, it wasn't
10 something I was involved with, but also on other issues that
11 affected our customers, how that might be viewed by the
12 public, and how, you know, how we ought to present it or not
13 present it.

14 Q And what, and what was the financial terms and
15 relationship between BellSouth, and then AT&T, and RQ&A?

16 A It was a monthly set amount for a year at the time.

17 Q Okay. And, and did -- was payment billed, and well, it
18 was invoice submitted, and payment made whether RQ&A
19 performed services in a particular month or not?

20 A It was a retainer. So yes.

21 Q Okay. And were there months where no services were
22 performed as far as you knew?

23 A There were -- I mean there were months when we didn't
24 talk to them or have anything we needed to ask them about
25 from a messaging standpoint or a political environment

Pamela Lackey - Direct examination
By Mr. Griffin

1 standpoint, yes.

2 Q Okay.

3 A Met with them about once a year.

4 Q Did, did you know that James Harrison was a, some
5 period of time, a salaried employee at RQ&A?

6 A I did not know he was a salaried employee. I had heard
7 he did work for the Quinns or RQA. I assumed it was legal
8 work since he was a lawyer.

9 Q Okay. Would it of made a difference to you, in your
10 position as director of governmental affairs, then later as
11 president of AT&T South Carolina had you known he was a
12 salary employee at the time that AT&T or BellSouth had RQA
13 on retainer?

14 A Yes, we don't typically hire any firm that has
15 legislators as part of their employee base. So yes.

16 Q The, the -- what, what were the issues that AT&T and
17 BellSouth were advocating in the Legislature of South
18 Carolina?

19 Just, just give me a laundry list---

20 A Okay.

21 Q ---so the jury will understand.

22 A A variety over the years. At -- obviously we were a,
23 early on during that time, we were a monopoly, and then our
24 market became very competitive in 2000 -- starting in 2000.
25 And so we were quite frequently trying to make sure that the

Pamela Lackey - Direct examination
By Mr. Griffin

1 laws that applied to all competitors in our particular
2 industry were treated the same, and that was not the case
3 always.

4 So, there, there could of been a variety of things
5 on -- there could of been tax issues, the rules that
6 apply -- excuse me.

7 Can I have some water please?

8 Q Oh sure.

9 A The rules that applied to one particular set of people
10 who were providing telecommunication services might be
11 different than they were for us. And so we were always
12 trying to make sure those were the same.

13 Q Sure.

14 Did Mr. Harrison ever cosponsor any bills that AT&T
15 were interested in getting made into law?

16 A I'm sure he cosponsored them. He was never a major
17 sponsor of any bills because most of our bills went through
18 Labor, Commerce, and Insurance Committee.

19 Q Okay. Do you recall having any meetings with Mr.
20 Harrison and Mr. Quinn or anyone else at RQ&A?

21 A At RQ&A?

22 Q Or anywhere else.

23 A On a regular basis, I always met with Mr. Harrison and
24 as a lobbyist and our team did because he -- we met with all
25 legislators when we had a piece of legislation that we

Pamela Lackey - Direct examination
By Mr. Griffin

1 wanted to talk about.

2 Q Sure.

3 A At RQ&A, I can recall maybe, maybe twice at the most.
4 I don't -- I can't say for sure, but only a couple times
5 that he stuck his head in the room when we were meeting with
6 Richard Quinn, and said what are y'all working on this year,
7 and we explained what -- if there was a piece of
8 legislation. We took the opportunity to say yes, this is
9 what we're trying to accomplish this year.

10 Q All right.

11 A But then usually left at that point.

12 Q Thank you. That's all the questions I have.

13 CROSS-EXAMINATION

14 BY MR. LIMBAUGH:

15 Q Good afternoon, Ms. Lackey.

16 A Good afternoon, counselor.

17 Q How are you?

18 A Good.

19 Q I'm -- I've wanted to get you under oath just to ask
20 you how long it took you to get use to saying that you
21 worked for AT&T --

22 A That's an inside joke.

23 Q -- instead of BellSouth?

24 That's a subject for another day.

25 You, you just said, I think towards the end of the

Pamela Lackey - Cross-examination
By Mr. Limbaugh

1 questioning from, from Mr. Griffin, that your, your meeting,
2 of course, AT&T, BellSouth's legislation typically would go
3 to LCI, Labor, Commerce, and Industry?

4 A Uh-huh. (Affirmative).

5 Q Okay. Is that -- that's correct?

6 A That's correct. I don't recall -- maybe a tax bill
7 might of gone to Ways and Means, but I don't remember any---

8 Q Do you recall any bills of which AT&T, BellSouth, I'll
9 just -- I'm gonna call it AT&T --

10 A Okay.

11 Q -- just because it makes me happy to, would generally
12 would have, you know, significant -- in, in which they would
13 have significant interests ever going to the Judiciary
14 Committee?

15 A I don't recall any of our bills being assigned to the
16 House Judiciary Committee.

17 Q Yeah, Senate's a little---

18 A Yes.

19 Q ---different --

20 A They go there to the Judiciary.

21 Q -- in a lot of ways.

22 A Uh-huh. (Affirmative).

23 Q And I think you did say that, that AT&T had had a, a
24 relationship with RQ&A before you --

25 A Yes.

Pamela Lackey - Cross-examination
By Mr. Limbaugh

1 Q -- started there, and continued after your retirement,
2 did it not?

3 A No, actually that contract was, was eliminated in
4 two -- I want to say June of 2017 or the end of May, 2017.

5 Q Okay. But in any event, it, it -- the relationship
6 with RQ&A preexisted the end of 1999, and it continued
7 beyond the end of 2012?

8 A It certainly preexisted 2001. I'm not sure when it
9 actually started, but yes.

10 Q Oh, okay. Okay. I'm sorry. I thought you had said
11 that it was already in place when you started doing
12 government relations.

13 A That was 2001. 2001 is when I became the director of
14 government relations.

15 Q Okay. I'm sorry.

16 A I was in sales from '97 to 2001.

17 Q Okay. I beg your pardon.

18 And, again, AT&T's not in the habit of paying
19 consultants to not do work, are they?

20 A Correct.

21 Q Okay. So, if you had an agreement with Richard Quinn &
22 Associates, a contract with Richard Quinn & Associates -- in
23 fact, let me ask it -- ask it this way.

24 My recollection is that the contract was, in fact, an
25 annual contract payable monthly?

Pamela Lackey - Cross-examination
By Mr. Limbaugh

- 1 A That is correct.
- 2 Q Okay.
- 3 A It was, it was renegotiated every year.
- 4 Q Okay. So, there was a -- at whatever point in time in
5 the year when the contract's renewed, I don't know when they
6 are. I don't have it in front of me. Don't care.
- 7 But an amount was agreed to between AT&T and Richard
8 Quinn & Associates for the work they would do for AT&T for
9 that whole year, correct?
- 10 A The amount agreed to was a monthly amount, but it was
11 for a year at a time.
- 12 Q Okay. I don't think that there, that there
13 functionally would be a different, difference I guess. If
14 it's an annual contract, then it's---
- 15 A Right.
- 16 Q And you---
- 17 A But I'm only saying that because the amount of money
18 listed said monthly, was a monthly amount. Not the total
19 amount for the year.
- 20 Q I got you.
- 21 Okay. All right. But pursuant to whatever terms might
22 of existed in the contract with regard to termination, I'm
23 just---
- 24 A Uh-huh. (Affirmative).
- 25 Q ---I'm assuming there was probably some notice

Pamela Lackey - Cross-examination
By Mr. Limbaugh

1 provision for something like that?

2 A Oh, yes. Yes.

3 Q It was a year contract?

4 A But that could be terminated under notice, yes.

5 Q Correct. Yes.

6 All right. Did you, in -- either in your capacity as,
7 as the boss of the government relations work at AT&T or
8 subsequently as president for South Carolina, did you ever
9 ask anybody at Richard Quinn & Associates to communicate
10 with Mr. Harrison about how he thought to vote on a
11 particular matter?

12 A No.

13 Q No?

14 A No.

15 Q Do you feel confident in, in, in saying that nobody
16 else at AT&T who was a, a subordinate of yours did that
17 either?

18 A I'm confident -- I feel very confident with that, but,
19 to my knowledge, no.

20 MR. LIMBAUGH: Okay. Can I have one second?

21 THE COURT: Sure.

22 Q Excuse me.

23 (Pause.)

24 MR. LIMBAUGH: I have, I have no further questions.

25 Thank you, Ms. Lackey.

Pamela Lackey - Redirect examination
By Mr. Griffin

1 A Okay. Thank you.

2 THE COURT: Mr. Griffin.

3 MR. GRIFFIN: Just one.

4 REDIRECT EXAMINATION

5 BY MR. GRIFFIN:

6 Q Ms., Ms. Lackey, I think you said earlier, but
7 lobbyists that were employed by AT&T did approach
8 Mr. Harrison?

9 A Yes. Oh, absolutely, yes. Yes, you're right. You're
10 right.

11 Q Okay. That's all---

12 A But I thought his question---

13 Q ---I have.

14 A His questions was about RQA I thought.

15 Q That's right. That's right. I just wanted to be sure
16 that I didn't misunderstand you.

17 MR. LIMBAUGH: Okay. Now she just actually clarified
18 it for me. Thank you.

19 THE WITNESS: Okay.

20 THE COURT: Thank you.

21 Any objection to Ms. Lackey being excused?

22 MR. GRIFFIN: No.

23 MR. LIMBAUGH: No, ma'am.

24 THE COURT: There is none. You are excused. Thank
25 you.

Charles Beaman - Direct examination
By Mr. Griffin

1 THE WITNESS: Thank you.

2 THE COURT: Is the jury okay?

3 Do y'all need a break or you okay?

4 THE FOREMAN: Fine.

5 THE COURT: Very good.

6 All right. Call your next witness.

7 MR. GRIFFIN: Charles Chuck Beaman.

8 THE CLERK: Mr. Beaman, please step forward and be
9 sworn in.

10 (WHEREUPON, the witness complies.)

11 THE CLERK: If you would, place your left-hand on the
12 Bible, and raise your right-hand.

13 CHARLES BEAMAN, being first duly
14 sworn, testified as follows:

15 THE CLERK: Please state your full name.

16 THE WITNESS: Charles B. Beaman, Jr.

17 THE CLERK: Thank you, sir.

18 THE BAILIFF: Watch your step up.

19 (WHEREUPON, State's Exhibit No. 43 was marked for
20 identification purposes only at this time.)

21 DIRECT EXAMINATION

22 BY MR. GRIFFIN:

23 Q Good afternoon, Mr. Beaman.

24 A Good afternoon.

25 Q Appreciate you coming down today.

Charles Beaman - Direct examination
By Mr. Griffin

1 where do you live?

2 A I live at 5135 Lakeshore Drive, Columbia.

3 Q Oh, here in Columbia?

4 A Yeah.

5 Q Where do you work?

6 A I work for Prisma Health. Starting in November of
7 this -- of '17 through now. Prior to that time I was the
8 chief executive officer of Palmetto-Health from 2007 until
9 November.

10 Q I think folks are gonna learn a lot about something
11 they didn't know before today.

12 So, what's Prisma Health?

13 A Prisma Health is the -- is a new company that has been
14 formed, and it -- it's composed of Palmetto-Health, and all
15 of the hospitals in our system, and the Greenville Health
16 System up in Greenville, South Carolina. So, on a combined
17 basis, we just, just named the new company, and we will
18 become Prisma Health starting in January. The corporate
19 name is already Prisma Health.

20 Q And so will we expect to hear in January that
21 Palmetto-Health will be Prisma Health?

22 A Yes, that's correct. And Greenville Health System will
23 become Prisma Health Upstate, and here it will be Prisma
24 Health Midlands.

25 Q And what's your position with Prisma Health?

Charles Beaman - Direct examination
By Mr. Griffin

1 A I'm the co-CEO. I'm director responsible for all
2 strategy and operations of the, of the company.

3 Q Congratulations.

4 A Well, thank you.

5 Q The -- what did you do before being elevated to co-CEO
6 of Prisma Health, Palmetto-Health?

7 A Yes, I, in 1998, when Palmetto-Health was formed and
8 created, I was the president of Palmetto-Health until 2007,
9 and then, in 2007, I became the chief executive officer of
10 Palmetto-Health, and been in that role until November.

11 Q Okay.

12 A Prior to that, I was the chief executive officer of
13 Baptist Healthcare System, which was the entity before we
14 created Palmetto-Health. Bringing together Richland
15 Memorial and Baptist Healthcare System, we created
16 Palmetto-Health, and I was the CEO of Baptist.

17 Q And, in 1998, when you, you were president of
18 Palmetto-Health---

19 A Uh-huh. (Affirmative).

20 Q ---did that -- did Palmetto-Health have a business
21 relationship with---

22 A Yes.

23 Q ---Richard Quinn & Associates?

24 A Yes.

25 Q Okay.

Charles Beaman - Direct examination
By Mr. Griffin

1 A The relationship actually started prior to the official
2 sanctioning of Palmetto-Health. It started as early as
3 1996. We became official in 1998.

4 Q And so that -- so, explain to the jury what, what
5 you're talking about Palmetto-Health came together?

6 What, what two hospitals?

7 A It was the Baptist Healthcare System. Most people know
8 it was Baptist Hospital, and then Richland Memorial came
9 together and formed a company called Palmetto-Health. And
10 we combined all of the operations, and all of, all of the
11 companies under one name, Palmetto-Health.

12 Q And, and you mentioned that Richard Quinn & Associates
13 were retained during that period of time.

14 What, what role, as you understood it, did they play
15 during, during that period of time?

16 A Well, prior to the official approval of
17 Palmetto-Health, Richard Quinn & Associates was, was helpful
18 in getting the two entities together, and advised the
19 parties in various matters to assist us in gaining support,
20 and gaining approval for, for Palmetto-Health.

21 Q And, and then would -- you became president in '98, and
22 going forward until you were elevated to CEO.

23 Did Palmetto-Health continuously have a business
24 relationship---

25 A Yes.

Charles Beaman - Direct examination
By Mr. Griffin

1 Q ---with RQ&A?

2 A That's correct.

3 Q And what were -- what was RQA doing for Palmetto-Health
4 during that period of time?

5 A RQA was, was contracted to provide certain services for
6 Palmetto-Health. They advised us on political matters.
7 They were available for marketing, communications, research,
8 polling if you needed polling. But that, that was primarily
9 the functions they were to perform for us.

10 Q And did -- was RQA, did they bill you by the, the task
11 or, or did you pay them monthly for---

12 A No, we made a monthly fee.

13 Q Okay. And did the amount of fee fluctuate based upon
14 how much work they did each month?

15 A It did not. It was consistent. It was constant.

16 Q It was a flat fee?

17 A Yeah.

18 Q Okay. Let me show you -- Mr. Beaman, I'm gonna show
19 you what we marked as State's Exhibit 43.

20 And, Your Honor, the defense has no objection to its
21 admission.

22 THE COURT: Okay.

23 Q But if you'll just tell us for the record what 43 is
24 please.

25 A This is a copy of the Letter of Agreement between

Charles Beaman - Direct examination
By Mr. Griffin

1 Palmetto-Health and Richard Quinn & Associates dated
2 January 1 of 2009.

3 MR. GRIFFIN: Okay. And, Your Honor, we'd move
4 formally to admit Exhibit 43 in evidence.

5 MR. LLOYD: No objection, Your Honor.

6 THE COURT: It's in evidence.

7 (WHEREUPON, State's Exhibit No. 43 was received into
8 evidence at this time.)

9 Q And what's the monthly payment amount under that
10 agreement?

11 A Monthly payment was \$13,200.

12 Q And, and do you recall whether that amount ever went
13 up?

14 Was it adjusted by you?

15 A To my knowledge, it was not adjusted.

16 Q Okay. The -- did you know, during the period of time
17 that RQ&A was under contract with Palmetto-Health, that
18 Mr. Harrison was on the payroll of RQ&A?

19 A I did not know that.

20 Q If you had known that, would it of made any difference
21 within your financial relationship with RQ&A?

22 A I think it would of, yes.

23 Q In what way?

24 A I think it's just an inherent conflict.

25 Q Okay. And would -- had you known that, would you have

Charles Beaman - Direct examination
By Mr. Griffin

1 authorized---

2 A No.

3 Q ---continued monthly payments?

4 A I would not.

5 MR. GRIFFIN: Okay. That all the questions I have,

6 Your Honor.

7 MR. LLOYD: Just a few, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. LLOYD:

11 Q Mr. Beaman, my name's Reggie Lloyd. I represent

12 Mr. Harrison. Good to see you this afternoon.

13 A Good to see you.

14 Q I think we're gonna be able to get out of here in short
15 order.

16 A Good.

17 Q Appreciate you being here.

18 Now, Mr. Beaman, you just said a moment ago that you
19 think it's an inherent contract to employ a firm that
20 employs legislators.

21 Do you recall that testimony?

22 A I say it's a -- I think I said it's a conflict.

23 Q Right.

24 A Yeah.

25 Q You said, in your opinion, it was an inherent---

Charles Beaman - Cross-examination
By Mr. Lloyd

- 1 A Yes, in my opinion, I think it would be a conflict.
2 Q And that's -- is that based on a legal definition that
3 you're aware of?
4 A It is not.
5 Q Now, I want to ask you, I believe it's -- you've sat
6 through some of the testimony of Pam Lackey and --
7 A I have.
8 Q -- Mr. D'Alessio.
9 A Uh-huh. (Affirmative).
10 Q Did you ever pay RQA not to do any work for you?
11 A Did we ever pay them to not do work for us?
12 Q Right.
13 A No, they -- we had a contract to pay them monthly --
14 Q You expect---
15 A -- whether they provided services or not.
16 Q Services under that contract?
17 A Under the contract, yes.
18 Q And I'm not sure you covered this.
19 Are you, are you an attorney?
20 A No, I am not.
21 Q Are you familiar with the code sections that deal with
22 lobbyists and lobbying?
23 A Only from a distance.
24 Q You might be a wise man, but you don't know what the
25 definition of a retainer is under that code -- those code

Charles Beaman - Cross-examination
By Mr. Lloyd

1 sections, do you?

2 A I do not.

3 Q Just to be clear, during the entire time you were with
4 Palmetto-Health, and there was a relationship between
5 Palmetto-Health and RQA, you -- did you ever go to Richard
6 Quinn or anyone else at RQA and say we need you to deliver
7 Jim Harrison's vote on anything?

8 A No.

9 Q And are you familiar with -- legislation that was of
10 most particular interest to Palmetto-Health or the health,
11 healthcare industry, would that generally go through Mr.
12 Harrison's committee?

13 A It would depend on the legislation itself.

14 Q Well, matters that generally regulated the healthcare
15 profession, would that go through Judiciary or LCI or
16 Medical Affairs Committee?

17 A We dealt mainly with the Medical Affairs Committee.

18 Q And Palmetto-Health, like most entities, are largely
19 gonna be affected by tax laws.

20 Is that right?

21 A (Witness nods affirmatively.)

22 Q Just for the court reporter, you have to answer.

23 A And it---

24 Q You need me to rephrase the question?

25 A Yeah.

Charles Beaman - Cross-examination
By Mr. Lloyd

1 Q Okay. Like most businesses in South Carolina, you're
2 gonna be -- Palmetto-Health is gonna be affected by the tax
3 laws that are passed by the General Assembly.

4 Is that right?

5 A Well, we're a nonprofit corporation. So, we may or may
6 not.

7 Q Right.

8 A So, I don't -- it, it would depend.

9 Q Are there matters of interest to Palmetto-Health that,
10 that would go through the Ways and Means Committee?

11 A Well, the funding of, you know, Medicaid, the things
12 that help support hospitals in South Carolina would be
13 extreme importance to Palmetto-Health.

14 Q And I was gonna come to that. I'm glad you raised it.
15 Medicaid funding, those types of programs, those are
16 extremely important to the healthcare organizations like---

17 A Extremely.

18 Q ---Palmetto-Health?

19 A Yes.

20 Q Those again go through Ways and Means.

21 Is that right?

22 A That's my understanding.

23 Q The entire time you were at Palmetto-Health, do you
24 know of anybody at Palmetto-Health that went to RQA to get
25 Mr. Harrison to do any official legislative act?

Charles Beaman - Cross-examination
By Mr. Lloyd

1 A No.

2 Q Now, I want to be clear about something. You-all
3 weren't overjoyed that Palmetto-Health was, in any way,
4 attached to this case, and the scandal that led us here
5 today.

6 Is that right?

7 A That's correct.

8 Q And let me ask you. We've been dancing around this all
9 week in this case. The State has strongly insinuated that
10 Mr. Harrison was getting paid \$80,000 a year to influence
11 legislation on behalf of RQA clients such as yourself.

12 Would it make much sense to you to pay somebody \$80,000
13 a year that wasn't a member of subcommittees that regularly
14 dealt with your legislation?

15 A No.

16 Q Would it make much sense to pay somebody \$80,000 a year
17 that did -- if they weren't on a committee like 3M or Ways
18 and Means that didn't regularly deal with your legislation?

19 A Yeah, I don't see any scenario where Palmetto-Health
20 could directly compensate any member of the Legislature.

21 Q And I'm just asking you, from the standpoint of the
22 State's argument or at least the insinuation that you were
23 part of, whether it was willingly or unwittingly, of a
24 scheme to pay Mr. Harrison to do official acts on your
25 behalf.

Charles Beaman - Cross-examination
By Mr. Lloyd

1 oaky. wouldn't make much sense for you to pay \$80,000
2 a year for just one out of 124 votes on the Floor of the
3 House, would it?

4 A No.

5 Q You would think, if you were paying that kind of money
6 for a vote on the Floor of the House, that vote would of
7 been a critical deciding vote on at least one piece of
8 legislation important to you, don't you think?

9 A Yes.

10 Q The State has never asked you about any particular
11 piece of legislation where Mr. Harrison was the deciding
12 vote either in a committee vote or on the Floor of the House
13 as it related to Palmetto-Health, have they?

14 A No.

15 Q Mr. Beaman, thank you.

16 THE COURT: Anything further?

17 MR. GRIFFIN: No, Your Honor.

18 THE COURT: All right. Mr. Beaman, you may be excused,
19 sir. Thank you.

20 THE WITNESS: Thank you.

21 THE BAILIFF: Watch your step.

22 THE COURT: Want a side bar?

23 MR. GRIFFIN: Yes.

24 THE COURT: Okay. Come on up, Mr. Lloyd.

25 MR. LLOYD: I'm sorry.

1 THE COURT: Someone come see me. Just someone from
2 each side.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 THE COURT: All right. Thank you.

6 All right. Ladies and gentlemen of the jury, as y'all
7 just take a quick seat. We were just talking about
8 scheduling, and how things were unfolding.

9 It's my understanding this is all the witnesses we have
10 today for the State's case. I'm told that maybe we have one
11 or two more witnesses for the morning, and then there are
12 some matters of law I'm gonna need to take up with the
13 lawyers. Based on the witnesses and their travel schedules,
14 and how things are unfolding, I'm gonna ask you-all to be
15 here at 10:00AM tomorrow morning. I don't want you-all
16 waiting on them cause I understand that our witnesses won't
17 be here before that. The lawyers, of course, well be here
18 earlier than that, and we'll take care of other matters.
19 But we're gonna begin tomorrow morning at 10:00AM.

20 As I told you before, we are completely according to
21 schedule in this case. So, at the latest, we will be done
22 on Friday. So, as it's going right now, we're doing very
23 well. So, I just want to make sure you-all know that so
24 you're not concerned about your weekend plans.

25 Ladies and gentlemen, again, I have to remind you,

1 don't discuss this case with anyone. Don't do any
2 independent research. Go home. Get a goodnight's sleep.
3 Look forward to seeing you back in your jury room at 10:00AM
4 tomorrow morning.

5 All right. Thank you.

6 Leave your notes. Thank you.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: I made everyone but our foreperson happy by
10 the early finish today, and the late start tomorrow morning.
11 So, I think we're in good shape.

12 Just really quickly, anything else we need to put on
13 the record?

14 I know we had a little discussion with the attorneys
15 about a witness tomorrow who claims to be an expert in
16 something, but wasn't named as an expert.

17 Is that something we can hash out now or are you
18 confident we can take care of it tomorrow?

19 MR. GRIFFIN: I mean I think we can take care of it in
20 the morning. The issue about naming an expert---

21 THE COURT: Okay.

22 MR. GRIFFIN: ---Your Honor, there's no rule that you
23 have to name an expert in a criminal case.

24 THE COURT: Who, who is it and what does this person
25 claim to be an expert in or what are you --?

1 MR. GRIFFIN: Well, so, it's Herb Hayden, and he is --
2 he's the former director of the State Ethics Commission.

3 THE COURT: Okay.

4 MR. GRIFFIN: And, and it's more of, you know, guidance
5 and practice type testimony. And I mean he will certainly
6 not do any more and much less than what was asked of Agent
7 Smith on the stand, and that's the reason we're having to
8 call Mr. Hayden. We had not planned to until, I think,
9 Lieutenant Smith was quizzed---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. GRIFFIN: ---extensively about the Ethics Act. And
12 so I mean there's certain things that need to be cleared up
13 there. I mean he's not giving an opinion on what the law
14 is.

15 THE COURT: Right.

16 MR. GRIFFIN: I mean -- but, you know, there's some
17 things we need to clear up.

18 THE COURT: Right.

19 MR. GRIFFIN: I'm gonna meet with him tonight, go over
20 some things, and, and be prepared to give the Court a
21 proffer or we could do it outside the presence of the
22 jury---

23 THE COURT: Okay.

24 MR. GRIFFIN: ---a dry run if you'd like. I'm happy to
25 do that.

1 THE COURT: Okay. Is he a lawyer?
2 MR. GRIFFIN: No.
3 THE COURT: No. Okay.
4 MR. LLOYD: Your Honor, just to be---
5 THE COURT: Yes, sir.
6 MR. LLOYD: ---clear, we did, in our motion for
7 discovery, ask if they had identified or were gonna identify
8 any expert. That was obviously a continuing motion, and for
9 a summary of any of what they anticipated their opinion --
10 expert opinion would relate to. They indicated, as of --
11 I'm losing track of my days.
12 MR. GRIFFIN: Friday.
13 MR. LLOYD: Last Friday they were no experts.
14 THE COURT: All right.
15 MR. GRIFFIN: Your Honor, we identified Mr. Hayden in
16 our trial brief that we submitted to the Court on Friday I
17 believe it was.
18 THE COURT: Not as a---
19 SOLICITOR ALLEN: I think it was Sunday.
20 MR. GRIFFIN: Sunday. That's right.
21 MR. LLOYD: Yeah, we didn't get that until Sunday.
22 THE COURT: Yeah.
23 But not as an expert witness though?
24 SOLICITOR PASCOE: Yes, we did. We had a little
25 section on there that said we don't anticipate calling an

1 expert, but we may have to, and, if we do, it's gonna be---
2 MR. GRIFFIN: Mr. Hayden.
3 SOLICITOR PASCOE: ---as many as four people. Maybe
4 Mr. Hayden.
5 THE COURT: Okay.
6 MR. LLOYD: We got that Sunday night, Your Honor.
7 MR. GRIFFIN: Well, that's true.
8 SOLICITOR PASCOE: That's true.
9 MR. GRIFFIN: But, again, there's no -- so, so, Rule 5
10 says you have to produce expert reports. There's no report.
11 THE COURT: Okay.
12 MR. GRIFFIN: It's not the type of case where
13 there's---
14 THE COURT: You even have a report generated.
15 MR. GRIFFIN: Right.
16 MR. LLOYD: Our motion---
17 THE COURT: And this isn't Federal Court. So --.
18 MR. LLOYD: Our motion for discovery though, which has
19 been almost a year in this case, has been out there asking
20 about experts and expert opinions, and nothing has been
21 responded to on that issue.
22 THE COURT: Uh-huh. (Affirmative).
23 MR. LIMBAUGH: Until Sunday.
24 MR. LLOYD: Well, until they said, Sunday evening, that
25 they might call him.

1 THE COURT: Well --.

2 MR. LLOYD: Just -- on the issue of Jeremy Smith, Your
3 Honor, we made it clear that we were getting into -- he,
4 he -- from the -- he testified he familiarized himself with
5 the Ethics Act --

6 THE COURT: Yes.

7 MR. LLOYD: -- in order to figure out what he was
8 suppose to be investigating, and where to go with his
9 investigation, and, and we specifically told him, in front
10 of the jury, I'm not asking for your legal opinion.

11 THE COURT: Right.

12 MR. LLOYD: I'm not asking for an opinion. I only want
13 to know, as far as you understood the act, what did you do
14 based on that.

15 THE COURT: Right.

16 Okay. Well, if we need to, we can put a proffer up,
17 and we just see what his testimony is, and see if he steps
18 over it. You can object to it, and we'll just go from
19 there.

20 okay?

21 MR. LLOYD: Thank you.

22 THE COURT: I mean I don't see why he can't testify,
23 not be an expert. I mean --.

24 MR. LLOYD: Just as a lay opinion?

25 THE COURT: Pardon?

1 MR. LLOYD: His lay opinion?
2 MR. LIMBAUGH: I mean it's hard to know without knowing
3 what he says.
4 THE COURT: Right. Exactly.
5 MR. LIMBAUGH: So, I mean---
6 THE COURT: So, let's just do a proffer, and we'll see
7 and we'll figure it out.
8 What time can he be here tomorrow?
9 MR. GRIFFIN: 9:30.
10 MR. LIMBAUGH: No, that's fine.
11 THE COURT: That's fine.
12 Were you gonna put him up first?
13 MR. GRIFFIN: Yes.
14 THE COURT: Were you gonna put him up first tomorrow
15 morning?
16 MR. GRIFFIN: Yes.
17 THE COURT: All right. Well, if you can do that, let's
18 have him here at 9:30, and we'll do a quick proffer, and
19 we'll go from there and see how it goes.
20 Okay.
21 MR. GRIFFIN: Great.
22 THE COURT: All right. Do I need to talk to anyone
23 more than Baker and who, who -- jury charges we were talking
24 about just---
25 MR. LLOYD: Yes, I understand -- I haven't looked at

1 them yet. I understand those were emailed.

2 THE COURT: Those are just the bench book --

3 MR. LLOYD: Right.

4 THE COURT: -- which is the innocuous it doesn't
5 matter. The only thing, like I said, that we need to talk
6 about, that we're concerned about, is the actual four
7 separate offenses, and what definitions or terms are
8 referenced to each offense or used to interpret whatever it
9 is, the words in it, and then, secondly, what Ethics Act
10 sections apply to statutory and common law misconduct.

11 So, I mean I -- I'm comfortable and fine. I think the
12 conspiracy is separate and defined. The perjury's separate
13 and defined. But I think we need to be very careful as far
14 as the definitions are concerned and what is referring to
15 which separate charge.

16 The other thing we talked about was a, you know,
17 special interrogatories on the verdict form just because I
18 think there are some specific questions that need to be
19 asked to make sure that, if you get a verdict, you hang on
20 to it, and the jury knows what they're finding.

21 MR. LLOYD: Well, Your Honor, I---

22 THE COURT: Yeah.

23 MR. LLOYD: ---I'd like to try to work on that tonight.

24 THE COURT: Okay.

25 MR. LLOYD: Probably with Baker.

1 THE COURT: Okay.

2 MR. LLOYD: But I think we might need to discuss that
3 issue to some degree for us to figure out what the special
4 interrogatories will be.

5 THE COURT: Right. Well, they're whatever you want
6 them to be that makes sure that it's based, and we
7 understand that they're basing whatever they believe is the
8 violation of the law to the right statute.

9 MR. LLOYD: Right.

10 THE COURT: If that makes sense.

11 MR. LLOYD: And, Your Honor, I'm not quite sure I
12 understand that right now as to what their position is.

13 THE COURT: Yeah, I don't either which is why I am
14 inviting the two of you to help me. I'd like for you --
15 this is what I want you to do. I'd like for you to stab,
16 take a stab to get together, and do a proposed verdict form
17 together, if possible. If you can't agree, and you just
18 want to fight, you both can give me a separate one.

19 MR. LLOYD: I've never fought with Baker.

20 THE COURT: Ah, okay.

21 SOLICITOR ALLEN: Yeah, I will, I will give it the
22 college try to see if we can come up with something.

23 THE COURT: And then we also talked about the
24 negligence issue on the one charge. So, that's the other
25 thing that we -- you need to---

1 MR. LLOYD: It's potential double jeopardy issues.

2 THE COURT: Yes. So, we need to, we need to make sure
3 to address that by special interrogatories.

4 Okay. Does that make sense?

5 MR. LLOYD: Yes, ma'am.

6 THE COURT: And I'm not even sure what it looks like
7 right now. Usually I have a pretty good idea of what I
8 think needs to be in there, but, right now, I'm not
9 comfortable.

10 MR. LLOYD: I'm not either, Your Honor.

11 THE COURT: Okay. Well, I'm in good company then. So,
12 y'all work on that, correct?

13 MR. LLOYD: We, we will do that, Your Honor.

14 THE COURT: Okay. I just think we need to have
15 something, and maybe there is a possibility we could argue
16 and charge tomorrow. You know, this jury, as you can tell,
17 is itching to get going. I do follow probably the pretty
18 common rule thought that we don't like to argue and charge a
19 jury much after 3:30 because I do think there's a lot of
20 evidence for them to go through. I think, you know,
21 obviously, we'll have spent four days trying the case.
22 There's no reason to rush them in any way. But also I don't
23 want them to feel like we're gonna waste their time by
24 finishing it, you know, noon and not coming back till
25 Friday.

1 So, we're just gonna have to play that by ear. So, I'm
2 just saying, be ready if, if you have to -- I understand,
3 Mr. Pascoe, you're doing the closing?

4 Is that correct?

5 SOLICITOR PASCOE: Yes, Your Honor.

6 MR. GRIFFIN: Yes.

7 THE COURT: And for you-all?

8 MR. LLOYD: Mr. Limbaugh.

9 THE COURT: Okay. Okay. So, at least I know who's
10 doing it. So, just, I'm giving you the heads-up of there's
11 a potential we could.

12 Okay.

13 SOLICITOR PASCOE: Is the defense gonna call any
14 witnesses tomorrow as of now?

15 I mean I know you can change your mind tomorrow.

16 MR. LLOYD: We, we need to talk about it.

17 MR. LIMBAUGH: One hundred percent, but we're not sure
18 yet.

19 THE COURT: Okay. Anything else y'all need?

20 And if you need anything or you have any questions or
21 if you come up with something, I'd appreciate y'all emailing
22 it to Julia and myself, and that way I can start looking
23 through it as well.

24 SOLICITOR ALLEN: I've kind of started tinkering with
25 something, and I---

1 THE COURT: Perfect.
2 SOLICITOR ALLEN: ---will be able to start working now
3 if, if we can -- if we can agree on some stuff and start
4 working on it---
5 THE COURT: Great.
6 SOLICITOR ALLEN: ---and start hashing it out.
7 THE COURT: Sounds good.
8 MR. LLOYD: One of the easiest people in the world to
9 work with is Baker Allen.
10 THE COURT: Yes, sir.
11 MR. LLOYD: We'll get it together.
12 THE COURT: Thank you, y'all.
13 MR. LIMBAUGH: Thank you.
14 THE COURT: Good night.
15
16 (WHEREUPON, Court was in recess for the evening.)
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24
25

1 Thursday, October 25th, 2018

2

3 (WHEREUPON, the following is an in chambers discussion
4 with all attorneys present.)

5 THE COURT: So, you want to give me any kind of update,
6 and, obviously Pam is gonna put on the record, and then tell
7 me who we're gonna talk to.

8 MR. LLOYD: Okay. I -- after we got off the phone, I
9 talked to both Susan and Jim.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. LLOYD: Jim is much stronger.

12 THE COURT: Okay.

13 MR. LLOYD: They're, they're gonna discharge him this
14 morning. Susan would like to take him home.

15 THE COURT: So, he hasn't been discharged yet even?

16 MR. LLOYD: No, they're still waiting on that process.

17 THE COURT: What?

18 MR. LLOYD: They're still waiting on that process.

19 THE COURT: Okay.

20 MR. GRIFFIN: And take him home, let him get some rest,
21 some sleep.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: Get his meds and all.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. LLOYD: He's been up all night, and Doctor Leigh

1 Hawn is the doctor. She's expecting our call.
2 THE COURT: Okay.
3 MR. LLOYD: Jim obviously says he was -- he's fine with
4 us proceeding this -- today --
5 THE COURT: Okay.
6 MR. LLOYD: -- even without his presence based on what
7 we're talking about and contemplated---
8 THE COURT: Uh-huh. (Affirmative).
9 MR. LLOYD: ---schedule of him being back tomorrow.
10 THE COURT: Okay.
11 MR. LLOYD: And the doctor says yeah, he's fine. He
12 can make that decision.
13 THE COURT: Okay.
14 MR. LLOYD: And she can verify. She'll be waiting on
15 our call.
16 THE COURT: Okay. What kind of doctor is Doctor Hawn?
17 MR. GRIFFIN: She's an intensivist at the hospital.
18 THE COURT: Okay.
19 MR. GRIFFIN: She's actually -- it's been very
20 uncomfortable trial for me because Jim Harrison and Susan
21 use to live three doors down from me for like five years.
22 THE COURT: I didn't know that.
23 MR. GRIFFIN: They -- since they moved.
24 THE COURT: Really.
25 MR. GRIFFIN: And Doctor Hawn and her husband, who's a

1 doctor, live three doors down the other way. And so -- and
2 if Leigh Hawn says that he's competent, conscious,
3 cognitive---

4 THE COURT: You're fine.

5 MR. GRIFFIN: ---able, and that she says okay for him
6 to come to Court, I mean she wouldn't do anything to risk
7 it.

8 THE COURT: Okay.

9 MR. LLOYD: And, and, Judge, I, I---

10 THE COURT: I think we all feel the same about him.

11 MR. LLOYD: I know I said it in the email, but I've got
12 to put on the record I cannot thank Jim Griffin enough for
13 last night and this morning dealing with all of this.

14 MR. GRIFFIN: Actually, my wife texted Leigh Hawn last
15 night when she heard that he was in the hospital. Said
16 please go check on him. So --.

17 THE COURT: Yeah. Good.

18 MR. LLOYD: Really appreciate it.

19 THE COURT: Okay.

20 MR. LLOYD: Judge, while we're on the record---

21 THE COURT: Yeah.

22 MR. LLOYD: ---too I need to put something else on the
23 record. Jim Parks -- we got so many Jims in this thing.

24 One of the conditions of Jim Harrison's bond was
25 obviously turning in his passport.

1 THE COURT: Uh-huh. (Affirmative).
2 MR. LLOYD: It was my fault. I totally forget to get
3 that from Jim.
4 THE COURT: Okay.
5 MR. LLOYD: It's in the safe in Charleston. I'm
6 reminding Susan, while they're there, to, to get it --
7 THE COURT: Okay.
8 MR. LLOYD: -- when she goes down there today, and he
9 will bring it, and---
10 THE COURT: It's in a safe in Charleston?
11 MR. LLOYD: It's in a safe, some safe. I -- when, when
12 he did the arraignment --
13 THE COURT: Oh.
14 MR. LLOYD: -- and all of here---
15 THE COURT: That's right. He has a house is Isle of
16 Palms.
17 MR. LLOYD: Yeah.
18 THE COURT: Sorry. Sorry. Okay.
19 MR. LLOYD: Yeah, they live there.
20 THE COURT: I was trying to figure out if you had an
21 office there too.
22 MR. LLOYD: Yeah.
23 THE COURT: But I was like okay.
24 So, they live in Isle of Palms permanently?
25 MR. LLOYD: Yeah.

1 THE COURT: Okay. Okay.

2 MR. LLOYD: And -- but they were, they were gonna go
3 back and get it. She was gonna go back and get it last
4 night.

5 THE COURT: Okay.

6 MR. LLOYD: Then all this happened, but, yeah, that
7 wasn't Jim's fault. That was my fault --

8 THE COURT: Okay.

9 MR. LLOYD: -- in not following up and getting it, but
10 I just wanted to put that on the record that---

11 THE COURT: Okay. Cause it was a part of his bond that
12 it had to be---

13 MR. LLOYD: Right.

14 THE COURT: ---turned in?

15 MR. LLOYD: Exactly.

16 THE COURT: Okay. Okay. Okay. All right.

17 Okay. So, let's go ahead and call Doctor Hawn. Just
18 put it on the record --

19 MR. LLOYD: Okay.

20 THE COURT: -- that---

21 MR. LLOYD: Let me spell her name for you.

22 THE COURT: Please.

23 MR. LLOYD: It's Doctor Leigh Hawn. L-E-I-G-H.
24 H-A-W-N.

25 THE COURT: Thank you.

1 MR. LLOYD: And her number is 803---
2 THE COURT: Who's gonna -- can we call?
3 MR. LLOYD: Oh, did you---
4 THE COURT: I don't even know how to use the phone.
5 MR. LLOYD: I didn't know if you wanted---
6 THE COURT: Do you mind?
7 Can we---
8 MR. LLOYD: I can put it on speaker phone.
9 THE COURT: Can we just call?
10 MR. GRIFFIN: We can do it on speaker phone.
11 MR. LLOYD: Yeah.
12 THE COURT: That'd be great. If you don't mind, Jim,
13 doing that, that would be great. That would be great. I
14 don't even know where the phone is in here.
15 MR. GRIFFIN: I'm not sure if I got her cell number.
16 MR. LLOYD: Oh, I can give it to you. 803.
17 MR. GRIFFIN: Okay.
18 MR. LLOYD: I'm sorry. 803-603-0688.
19 MR. GRIFFIN: I do not have her in my contacts. Thank
20 you.
21 (WHEREUPON, the following is a telephone call with
22 Doctor Hawn.)
23 DOCTOR HAWN: Hello.
24 THE COURT: Good morning, Doctor Hawn. This is Carmen
25 Mullen. I'm here with Reggie Lloyd and Jim Griffin, and we

1 just wanted to touch base with you about James Harrison if
2 we could.

3 DOCTOR HAWN: Hold, hold on for one second.

4 THE COURT: Sure.

5 DOCTOR HAWN: I'm sorry. I'm gonna step out of this
6 room.

7 THE COURT: No worries. Listen, I'm gonna Jim and
8 Reggie take over. I understand Jim knows you well, and I
9 just want to make sure that, number one, Ms. -- Mr. Harrison
10 is doing all right, and we are gonna go ahead and continue
11 with the trial of this case at his request. But I just need
12 to make sure from you knowing that he's fine, and that's
13 he's competent, and I know there's some really very large
14 generalizations, but if you can just tell me, really
15 quickly, I, I know -- did you actually treat him or did you
16 just visit him?

17 I, I understand that maybe you're a former neighbor.

18 DOCTOR HAWN: I treated him this morning.

19 THE COURT: Okay.

20 DOCTOR HAWN: And actually we are in the process of
21 discharging him through to a complete outpatient workup.

22 THE COURT: Okay.

23 DOCTOR HAWN: And he, essentially, suffered a mini
24 stroke of, of -- by definition, and he's had about four of
25 them this year, extensive workups.

1 THE COURT: Okay.

2 DOCTOR HAWN: He has basically your kind of urgent
3 evaluation here, and he's, he's returned to baseline quickly
4 after the event, and he's certainly competent. He's got
5 some plans with an outpatient cardiology follow-up, and he's
6 certainly competent to make all decisions, and he's actually
7 gonna be discharged today---

8 THE COURT: Okay.

9 DOCTOR HAWN: ---and see his cardiologist in follow-up,
10 but he, he's certainly of sound mind and---

11 THE COURT: Okay.

12 DOCTOR HAWN: ---at baseline---

13 THE COURT: Okay.

14 DOCTOR HAWN: ---essentially.

15 MR. LLOYD: Doctor Hawn, this is Reggie Lloyd. I think
16 Susan told you I represent Jim. If, if he -- obviously we
17 were thinking about him getting some rest, and not being
18 here today.

19 would he be fine, in your opinion, to continue tomorrow
20 and make all -- any kind of decisions tomorrow?

21 DOCTOR HAWN: I mean yes. Obviously, after these type
22 of events, we try to encourage people that are in stress, I
23 know this situation is a little bit limiting in that
24 ability, but, you know, I mean, again, he's certainly of, of
25 competency. I think probably 24 hours rest wouldn't hurt,

1 but, you know, in this case, this is what it is. He, he
2 just needs to try to get through this, and, long term, just
3 get through it so he maybe can reduce some of these
4 incidences, possibly. But yeah, I think he's fine to come
5 tomorrow. I think he's anxious to do so, and --.

6 THE COURT: Okay.

7 DOCTOR HAWN: I don't see a direct medical
8 contraindication of doing it.

9 THE COURT: Okay. Jim, is there anything else you want
10 to ask?

11 MR. GRIFFIN: No, I don't have anything.

12 THE COURT: Okay. Doctor Hawn, I really appreciate it.

13 DOCTOR HAWN: Sure. Sure. No problem.

14 MR. LLOYD: Thank you.

15 DOCTOR HAWN: And he's just being signed out by
16 neurology right now, and he's also being consulted with his
17 cardiologist. So --.

18 THE COURT: Okay.

19 DOCTOR HAWN: -- they're doing the, the primary care
20 for our end.

21 THE COURT: Sounds good.

22 MR. LLOYD: Doctor Hawn?

23 DOCTOR HAWN: All right.

24 MR. LLOYD: This is, this is Reggie Lloyd one more
25 time. Will you just verify what I told the Court is that

1 Jim did want to go forward with the trial today in his
2 absence?

3 DOCTOR HAWN: Yes, Jim was anxious to go ahead and have
4 the thing proceed today. He was aware that it was possible
5 for him not to be there, and he's certainly of competent
6 mind to make that decision. And he's certainly of, of good,
7 good enough health to attend tomorrow should he need to and
8 want to.

9 THE COURT: Okay.

10 DOCTOR HAWN: But, you know, I mean he, he could attend
11 today. It's just it might be just best interest to rest.

12 THE COURT: Okay.

13 MR. LLOYD: Doctor Hawn, thank you.

14 THE COURT: We appreciate it, doctor. Thank you.
15 Bye-bye.

16 DOCTOR HAWN: Bye-bye.

17 (WHEREUPON, the phone call was ended at this time.)

18 THE COURT: That makes it easier that you knew her,
19 and --.

20 MR. GRIFFIN: Yeah. Yeah.

21 THE COURT: -- you know how fabulous she is.
22 Okay.

23 MR. GRIFFIN: No, she is great.

24 THE COURT: Okay.

25 MR. LLOYD: Yeah, I told Susan last night, cause when

1 she called me, I was on the interstate, and I was in an area
2 where I wasn't getting good cell reception, and, when she
3 said the thing about her son, I took it as her son, and I
4 told her this morning what you and I were talking about.
5 But she meant a neighbor's son or a friend's son was gonna
6 meet her up there was a doctor cause we were both like who's
7 your, son, Doctor Doogie Howser?

8 I mean what, what -- she didn't look old enough to have
9 a doctor for a son.

10 MR. GRIFFIN: She's not.

11 THE COURT: Okay. Okay. All right. Well, then how
12 about we go out.

13 Are we ready to do the proffer from your Ethics
14 Commission---

15 MR. GRIFFIN: Sure.

16 THE COURT: ---gentlemen?

17 MR. GRIFFIN: Do you want to put him on the stand or do
18 you want me to just---

19 THE COURT: Do we need to do a proffer, Reggie?

20 I mean I'm not gonna let him give an opinion. I mean
21 what---

22 MR. LLOYD: So, if he's not---

23 THE COURT: So, you tell me what you're gonna do.

24 Tell -- just tell me what you're gonna do just generally.

25 MR. GRIFFIN: Yeah, I can tell you right now. So, Mr.

1 Hayden is the former executive director of the State Ethics
2 Commission. He held that position from 1999 till December
3 of 2016. So all during the relevant period.

4 He's gonna explain what the Ethics Commission is, and,
5 and that the Ethics Commission and this -- and statutory
6 duties are, are to create the forms.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. GRIFFIN: Just economic interest forms --

9 THE COURT: Okay.

10 MR. GRIFFIN: -- that are filed.

11 THE COURT: Right.

12 MR. GRIFFIN: There's -- there are -- there's a
13 regulation that says well, so the statute says the Ethics
14 Commission creates the forms.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. GRIFFIN: The regulation that says everybody's got
17 to fill out the forms that are created by the Ethics
18 Commission.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. GRIFFIN: Although there's the Ethics Commission
21 technically doesn't have jurisdiction over the House members
22 --

23 THE COURT: Over the House members, right.

24 MR. GRIFFIN: -- or Senate members.

25 THE COURT: Right.

1 MR. GRIFFIN: But they have jurisdiction over the form.

2 THE COURT: Okay.

3 MR. GRIFFIN: And, and, and then there was a -- in 2006
4 to 2008, there was a transition from paper filing to
5 electronic filing --

6 THE COURT: Right.

7 MR. GRIFFIN: -- in '06.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. GRIFFIN: And it was electronic filing for
10 constitutional officers. '08 it went to all filers had to
11 file electronically.

12 THE COURT: Right.

13 MR. GRIFFIN: He's gonna explain '08.

14 MR. LLOYD: Can I interrupt for just one second?

15 They -- I know that everything went electronically in
16 '06 I think. I don't -- I think there was still an option
17 to file paper or electronically.

18 MR. GRIFFIN: Up until '08.

19 MR. LLOYD: Right.

20 MR. GRIFFIN: So, '06 I think -- well, what he, he says
21 it -- the constitutional officers had to file electronically
22 in '06.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. GRIFFIN: Everyone else, it was optional. But by
25 '08, everybody had to file---

1 THE COURT: Uh-huh. (Affirmative).
2 MR. GRIFFIN: ---electronically.
3 THE COURT: Okay.
4 MR. GRIFFIN: And the way you file electronically, you
5 open an account. You go online. You, you enter information
6 that's prompted through this questionnaire.
7 THE COURT: Uh-huh. (Affirmative).
8 MR. GRIFFIN: There's a user guide on how to do that.
9 When you get to lobbyist's principal---
10 THE COURT: Uh-huh. (Affirmative).
11 MR. GRIFFIN: ---you click lobbyist's principal, then
12 there's other questions it asks.
13 THE COURT: Okay.
14 MR. GRIFFIN: One is the amount of money received by --
15 from the lobbyist's principals, and that if you---
16 THE COURT: Was that in there?
17 I guess the question was, was that there when --?
18 MR. GRIFFIN: It was -- it was there in '08.
19 THE COURT: When he filled it out in '08?
20 MR. GRIFFIN: It was in -- there in '08, and, and---
21 THE COURT: So, the one you have that he filled out,
22 do -- the ones that I have -- see, I haven't looked at them.
23 MR. GRIFFIN: Right.
24 THE COURT: Are they paper or are they --?
25 MR. LLOYD: It's paper.

1 MR. GRIFFIN: So, all of them---
2 THE COURT: Cause they're---
3 MR. GRIFFIN: ---are in evidence.
4 THE COURT: Right.
5 MR. GRIFFIN: But the one that he put the lobbyist's
6 principals information---
7 THE COURT: Was the very first one.
8 MR. GRIFFIN: Yeah.
9 THE COURT: Was in 2000.
10 MR. GRIFFIN: Yeah, that's paper and it's in hand --
11 that's handwriting.
12 THE COURT: Okay.
13 MR. GRIFFIN: But, in '08, electronically, if he
14 filled -- if he had checked a relationship with lobbyist's
15 principals---
16 THE COURT: It would of given you a drop down
17 something.
18 MR. GRIFFIN: And, and he would have to included the
19 amount -- the identity of the lobbyist's principals, the
20 amount.
21 THE COURT: Uh-huh. (Affirmative).
22 MR. GRIFFIN: And if he had skipped over the amount,
23 and went to the end, it wouldn't let him file. It, it
24 would -- you would try to submit it, and it would send you
25 right back to fill in that blank.

1 THE COURT: Okay.

2 MR. LLOYD: And, Judge, that's where the dispute is.
3 The, the form has always -- here's no dispute. I think we
4 both agree. At, at some point, either State Ethics or
5 somewhere in the form instructions says discloses the income
6 for lobbyist's principals.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LLOYD: The statute doesn't say that.

9 THE COURT: Right.

10 MR. LLOYD: The statute says you only disclose, under
11 1130, those names.

12 THE COURT: The names.

13 MR. LLOYD: And we get into this issue of---

14 THE COURT: Right.

15 MR. LLOYD: ---you know, if you don't file that, what
16 happens. I'll set that aside for a moment.

17 THE COURT: Okay.

18 MR. LLOYD: But our issue has always been---

19 THE COURT: The law doesn't require it.

20 MR. LLOYD: ---the statute -- right. The statute only
21 says the names, not the income, from there because --.

22 MR. LIMBAUGH: State Ethics Commission can't change the
23 statute---

24 MR. LLOYD: Yeah.

25 THE COURT: Right.

1 MR. LIMBAUGH: ---by changing the way they want you to
2 fill out a field in their online form when---

3 MR. LLOYD: Because income, in and of itself, what's,
4 what's required to be disclosed on the SEI is very clearly
5 delineated in the statute, which is why legislators don't
6 file all of their income. They only file it from
7 governmental services --

8 THE COURT: Right.

9 MR. LLOYD: -- or they directly receive money from a
10 lobbyist principal. And I, I -- bring up anybody's name in
11 particular, but if I had a contract directly with, as some
12 legislators do, they have a contract to provide goods or
13 services directly to a lobbyist principal.

14 THE COURT: Okay.

15 MR. LLOYD: They receive that income directly.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LLOYD: That's the issue in Jimmy Merrill's case.

18 THE COURT: Okay.

19 MR. LLOYD: Jimmy Merrill received that income directly
20 to him.

21 THE COURT: Okay.

22 MR. LLOYD: Not, not through an employment situation
23 with somebody -- some other company.

24 THE COURT: Okay.

25 MR. LLOYD: And that's been our issue with that whole,

1 you know, well the form wanted this information, and you
2 know --.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. GRIFFIN: So, he's -- he's not testifying to law.
5 He's testifying on what, what was required, what the
6 practices were, and he's a filer. That's from '08 to 2012.
7 I guess he was -- continued to be a filer afterwards, but
8 our purposes, from '08 to 2012, he's required to fill in the
9 blank, lobbyist's principal. They -- I don't think they
10 dispute that. Then the question becomes, you know -- and
11 he's also required to fill out the form.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. GRIFFIN: And if he didn't fill out the amount, it
14 wouldn't let him submit it.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. LIMBAUGH: Can I take one brief issue with that
17 though, Jim, and, and it may -- it's not just semantics.
18 He's not -- he's required to submit the information that the
19 statute says he's required to submit, and, as I just said,
20 if the State Ethics Commission, or whoever develops this
21 form, tries to make him submit information that the statute
22 doesn't, it's, it's ineffective. It's invalid. It
23 doesn't -- I mean they can't do that, and I'll -- that may,
24 that may mean there's a problem with the State Ethics
25 Commission, and how they have constructed and written the

1 software for their---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. LIMBAUGH: ---online SEI, but you, you can't --.

4 THE COURT: You don't think it's a violation of the law
5 or a failure to follow the statute for the---

6 MR. LLOYD: Well, there is---

7 THE COURT: Whether or not---

8 MR. LIMBAUGH: Your Honor, absolutely.

9 THE COURT: And I know that -- that's been the argument
10 the whole time.

11 MR. LIMBAUGH: Right.

12 MR. GRIFFIN: Well, I understand that's the argument,
13 but, but -- and you weren't in here, Hunter.

14 MR. LIMBAUGH: Uh-huh. (Affirmative).

15 MR. GRIFFIN: So, the, the law says, 8-13-320, says the
16 Ethics Commission prescribes the forms to be used by all
17 filers.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. GRIFFIN: And the forms include the Statement of
20 Economic Interest. The regulation, 52-204, says you're a
21 filer, you've got to complete the forms prescribed by the
22 Ethics Commission. And so we're going on what -- what's in
23 the form. Before it didn't, it didn't really address
24 lobbyist's principals.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. GRIFFIN: But, clearly, '08, it has lobbyist's
2 principal, and then it has fields you have to complete.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. GRIFFIN: Now, what their position is, because 1130
5 doesn't say that you have to add the income, I mean the
6 dollar amount.

7 THE COURT: I understand.

8 MR. GRIFFIN: Although it says minimum \$200, that then
9 the law says you don't have to. I mean that's not -- it
10 doesn't say you don't have to file that. And, and you lead
11 to regulations and implementation of laws to, to fill out
12 the breadth of it. And that's why you, you create an Ethics
13 Commission, and you give them authority to create the forms,
14 and you have regulations that say you've got to fill out the
15 form.

16 MR. LIMBAUGH: They have the authority to create the
17 form.

18 MR. LLOYD: Let me, let me just say this too.

19 The, the -- what the forms are asking for, as it
20 relates to lobbyists and lobbyist's principals, is anything
21 you're receiving from those individuals. Whether it's a
22 lobbyist or a -- lobbyist's principals in terms of income.
23 You, you -- it's not just 1130 that governs that.

24 MR. GRIFFIN: Oh, I understand---

25 MR. LLOYD: It's also the, the definition of what

1 income do you have to disclose. That definition of income
2 wasn't even broadened to include all of your income. At
3 some point, the Legislature said we're just gonna make you
4 report every dollar you ever received from anybody.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LLOYD: Lobbyist's principals, you know, you---

7 MR. LIMBAUGH: After 2012.

8 THE COURT: Right.

9 MR. LLOYD: You got a part-time job at Domino's,
10 whatever it is, after 2016.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. LLOYD: 2016 is when that definition of income gets
13 broadened. Prior to that, you didn't disclose all of your
14 income. You, you only disclosed, disclosed specific income,
15 money from a governmental entity, whether it's salary or
16 anything else, which is why Jim has to list his clients that
17 he represents before DOR.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. LLOYD: Specially mentioned in the, in the statute.
20 Beyond that, there was no requirement to list income. If,
21 if that's the requirement---

22 MR. GRIFFIN: Well, no, that's, that's not what we're
23 saying at all, and if, and if -- and we have a user guide
24 that was implemented in '08. It tells you how to fill out
25 the form.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. GRIFFIN: And it has a list of questions. It's got
3 screen shots and questions. And it says, you know, it talks
4 about receiving something more than \$200.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. GRIFFIN: I mean then you, you put the, the dollar
7 amount in the form.

8 THE COURT: Right. I've had to fill them out too.

9 MR. GRIFFIN: Right.

10 THE COURT: So --.

11 MR. GRIFFIN: So, that's where we are. I mean he's not
12 interpreting law. He's, he's telling the jury what, what
13 the form requires to fill out, and what the practice was.
14 And, and so had he -- but what he never did, he, he never,
15 after 2000, he never clicked the lobbyist's principal check.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. GRIFFIN: And that -- then that would of prompted
18 other questions. He never did that.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. GRIFFIN: So, we're not in a case where he refused
21 to put the dollar amount in. I mean he didn't put anything
22 in, and, and they're getting hung up on the dollar amount.

23 MR. LLOYD: No, no, no.

24 THE COURT: No.

25 MR. LLOYD: That's not what we're talking about.

1 MR. GRIFFIN: And it's not dollar amount in his pocket.
2 It's dollar amount in RQA.

3 MR. LLOYD: No, no.

4 THE COURT: Right.

5 MR. LLOYD: In, in no case -- the prior -- when he does
6 that in 2000, he's actually filling out -- he's disclosing
7 that lobbyist's principal stuff in the section that's for
8 lobbyists cause that's all the form asked for.

9 MR. GRIFFIN: And then---

10 MR. LLOYD: Obvious.

11 MR. GRIFFIN: Right. And the opinion says you got to
12 put in Line 18. I'm jumping forward to 2008 when there's --
13 clearly it says lobbyist's principals, and he had a
14 obligation, from '08 to '12, to put it in.

15 MR. LIMBAUGH: The problem -- let me, let me -- I'm
16 sorry. Go ahead.

17 I, I just -- I want to get back to this notion that
18 because the Legislature gave the Ethics Commission the
19 responsibility for creating the form and for publishing
20 regulations---

21 THE COURT: Uh-huh. (Affirmative).

22 MR. LIMBAUGH: -- in no way, shape, or form does that
23 give the Ethics Commission the authority -- I don't think --
24 I think it would be a violation of separation of powers even
25 if they had tried to do that. But in no way, shape, or form

1 did they give the Ethics Commission the authority to change
2 the content as determined by statute of the Statement of
3 Economic Interest.

4 The Ethics Commission can't do that. They couldn't
5 decide on their own that, even though the statute doesn't
6 require it, we're gonna require you to list the income, any
7 income of your grandparents, for instance, or any other
8 category of information that the statute doesn't require.
9 Their authority, under the statute, is to develop the form,
10 to capture the information that the statute requires.
11 That -- that's all.

12 MR. LLOYD: I would go a step further. The Legislature
13 did not delegate that authority to the Ethics Commission by
14 saying create the forms.

15 MR. GRIFFIN: Oh, it says---

16 MR. LLOYD: That, that would be a delegation of
17 authority to create new requirements outside of what's in
18 the statute. That's legislative power. Not, not
19 administrative or executive branch power.

20 MR. GRIFFIN: I mean they're -- so, their argument -- I
21 mean their, their objection is that the form requires you to
22 put a dollar amount in.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. GRIFFIN: And, and it does. But the, but the --
25 what 1130 requires you is to put the identity of the

1 lobbyist's principal, and the form requires that.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. GRIFFIN: It requires you to put the nature of
4 the -- what you received.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. GRIFFIN: The form does that, and then---

7 MR. LLOYD: 1130 doesn't.

8 MR. GRIFFIN: What's that?

9 MR. LLOYD: 1130 doesn't.

10 MR. LIMBAUGH: 1130 doesn't.

11 MR. GRIFFIN: It just says what?

12 MR. LIMBAUGH: It says you have to report the identity
13 of any lobbyist's principals who purchase goods and services
14 more than \$200 in a year from a business with which you're
15 associated.

16 MR. LLOYD: You or a business.

17 THE COURT: Right.

18 MR. LIMBAUGH: Well, right. I mean, in this case, they
19 didn't buy it from Jim obviously.

20 MR. LLOYD: Thank you.

21 MR. GRIFFIN: So, the -- and he didn't, he --.

22 THE COURT: He didn't disclose the names.

23 MR. GRIFFIN: He definitely didn't disclose the
24 names---

25 MR. LIMBAUGH: Right.

1 MR. GRIFFIN: ---or anything else required on the form.
2 But, but the form, in '08, clearly asked for the name.

3 THE COURT: I understand that, but I -- if it's not a
4 violation of the statute, I don't see how that is -- how you
5 could find him -- I would agree that they're not disclosing
6 the name potentially is, is a problem. But I don't know,
7 necessarily, the dollar amount. Again, you're creating more
8 duties.

9 MR. GRIFFIN: I mean we're not. The --.

10 THE COURT: You don't need it any way is the whole
11 point. I mean that's the last thing you want it to come back
12 on.

13 MR. GRIFFIN: No, but he didn't disclose on the form---

14 THE COURT: Even the names.

15 MR. GRIFFIN: ---the identity.

16 THE COURT: That's -- and that's what I'm saying.

17 MR. GRIFFIN: But, but here's the, the issue.

18 THE COURT: Yeah.

19 MR. GRIFFIN: In -- up until '08, it doesn't really
20 prompt you for a -- lobbyist's principals --

21 THE COURT: Uh-huh. (Affirmative).

22 MR. GRIFFIN: -- or '06 frankly.

23 THE COURT: Right.

24 MR. GRIFFIN: It just lobbyists on that paper form.

25 THE COURT: Okay.

1 MR. GRIFFIN: And so they're gonna argue, in closing
2 argument, that, you know, it's not calling for this. So,
3 it, it would be unreasonable for him to know that. Although
4 he did it once, we don't know why he did it, but they didn't
5 prove why he did it, but the other time it's not asking for
6 that. It asked for in it '06 and '08. Well, it asked for
7 it in '08 for sure.

8 THE COURT: I think, listen. I think what your guy can
9 testify to, the former director, can testify that listen,
10 when he filed this form, this is what the form was. This is
11 what the form asked you to fill out, and that's it. I, I --
12 what he can't give is an opinion of whether or not that's a
13 violation.

14 MR. GRIFFIN: Oh, he's not. No, no, no.

15 THE COURT: I mean all he can say is, is that, in 2006,
16 when he filled out his form or 2000 -- whenever it was,
17 whenever it stated he had to, this is what the form was. It
18 had these drop downs, whatever, that if you clicked it, to
19 put in that.

20 MR. GRIFFIN: That's all we're doing.

21 THE COURT: And then I think that leaves it to you-all
22 to just argue to say listen, this is the statute. This is,
23 you know, what the judge is gonna say. This, this is what
24 the law is. All it requires is X, Y, and Z. It doesn't
25 matter what they, you know, put on their forms. You know,

1 this is what the law requires, you know, and I think that's
2 how you argue it.

3 MR. LLOYD: And that sort of dovetails into another
4 issue --

5 THE COURT: Yeah.

6 MR. LLOYD: -- that's been---

7 MR. LIMBAUGH: They all do.

8 MR. LLOYD: Yeah, this thing is a nightmare. There is
9 no criminal violation within the Ethics Act itself for
10 failing to file that information under that.

11 THE COURT: I thought it was monetary. I thought there
12 was a monetary---

13 MR. LLOYD: No.

14 THE COURT: There isn't?

15 MR. LIMBAUGH: No.

16 MR. LLOYD: Well, what there is is if you fail to file
17 that form --

18 THE COURT: Right.

19 MR. LLOYD: -- then the House Ethics Committee says
20 hey, Jim, you didn't file this. First, under the statutes,
21 they have the ability to say we find it is not willful. No
22 harm. No foul.

23 THE COURT: Okay.

24 MR. LLOYD: Second, they have the ability to say we
25 don't -- we think you need to file it. We give you notice.

1 I think there's a second notice requirement. If you fail to
2 adhere -- obey House Ethics saying you need to file this,
3 that's what you can be prosecuted for --

4 THE COURT: Okay.

5 MR. LLOYD: -- under the Act. Not the failing to file,
6 but the failing -- failure to actually obey House Ethics
7 saying hey, you need to correct this.

8 MR. LIMBAUGH: That's the crime under the Ethics Act.

9 THE COURT: Okay.

10 MR. LIMBAUGH: We're gonna probably talk about that in
11 directed verdict anyway.

12 THE COURT: Okay.

13 MR. LIMBAUGH: But --.

14 MR. GRIFFIN: Yeah, that, that was arguing the motion
15 to dismiss. I'm sure they're gonna argue it again, but --.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LIMBAUGH: We're gonna argue it better this time.

18 THE COURT: Okay.

19 MR. GRIFFIN: But he's not gonna testify that
20 Mr. Harrison violated the law in any form or fashion.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. GRIFFIN: He's gonna testify to process, procedure,
23 this is what the forms -- what they were up until '06, '07.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. GRIFFIN: This is what they were afterwards.

1 MR. LIMBAUGH: My only fear though is, is what are you
2 telling the jury that for, that he didn't, he didn't comply
3 with a form. Not the statute. I mean that, that --.

4 MR. GRIFFIN: He didn't report -- he didn't report the
5 identity of the lobbyist's principals on the form.

6 MR. LLOYD: well, what's the jury suppose to do with
7 that?

8 MR. GRIFFIN: And it prompted you, in the question, to
9 identify lobbyist's principals.

10 MR. LLOYD: I understand. I'm not even arguing that
11 again.

12 THE COURT: Right.

13 MR. LLOYD: My only question is what's the jury suppose
14 to do with that?

15 Are they suppose to say well, he should of, you know,
16 that, that form --.

17 MR. GRIFFIN: well, that's your argument. That's
18 your---

19 MR. LLOYD: A prompt asked him to put that in there---

20 MR. GRIFFIN: That's your argument.

21 MR. LLOYD: ---and you convict him?

22 MR. GRIFFIN: But it would be a different story if he,
23 he was being charged for not putting the money on there. I
24 mean he's being charged for not disclosing anything.

25 THE COURT: The names, anything---

1 MR. GRIFFIN: Right.

2 THE COURT: ---is what you're saying.

3 MR. GRIFFIN: Right.

4 MR. LLOYD: And if, and if---

5 MR. GRIFFIN: I mean it's not like a tax protestor
6 where he says I'm not gonna fill that piece out, and I mean
7 that's not what -- and they order him. You got to put it
8 down. He goes no, I'm not because the statute doesn't say
9 that.

10 THE COURT: Okay. Well, this is the thing though. I
11 don't want this guy to say he was required. I just don't
12 want to hear the word required, and I don't want him to say
13 he violated anything. I want him just to testify that this
14 is what the form is, this is what it prompts them to, to
15 fill out.

16 MR. GRIFFIN: Okay.

17 THE COURT: This is what this line says. If you check
18 the lobbyist, then it gives a place for a name and a dollar
19 amount.

20 MR. LIMBAUGH: And then we can argue, presumably, I
21 mean on cross or argue---

22 THE COURT: Yeah.

23 MR. LIMBAUGH: ---that -- I mean if I were doing the
24 cross, for instance, I, I could ask it is -- it's true, is
25 it not, that whatever form you come up with has to comply

1 what, what the or you -- whatever form you come up with
2 can't expand the requirements that the statute imposes.

3 THE COURT: I think that asked for a legal opinion.

4 MR. GRIFFIN: And you're opening the door.

5 THE COURT: That asks for a legal opinion.

6 MR. LLOYD: And that's my only problem with that.

7 THE COURT: That asks for a legal opinion. I don't
8 think you can ask him that.

9 MR. LLOYD: Either I've got to do it on cross -- I'm
10 sorry.

11 THE COURT: Go ahead.

12 MR. GRIFFIN: He's not a lawyer.

13 MR. LLOYD: That I would be able to cross him on that
14 or argue that. Otherwise I don't know what it's doing in
15 front of -- to the jury. If the jury uses that in any way
16 as a basis of conviction, they are convicting him on
17 something that is not required by the law.

18 MR. GRIFFIN: He -- every time he filled out that form
19 after '08, he has to make an -- a decision when you get to
20 lobbyist's principals. Before then you didn't have to make
21 a decision because it just says lobbyists. But, in '08, he
22 has to make a decision do I check lobbyist's principals or
23 not.

24 THE COURT: So, '08 through '12?

25 MR. GRIFFIN: Yes.

1 THE COURT: He was required to.
2 MR. GRIFFIN: Do I check lobbyist's principal---
3 MR. LLOYD: No.
4 MR. GRIFFIN: ---or not.
5 MR. LLOYD: Not re -- well, what do you mean required,
6 Judge?
7 THE COURT: I think he has to put in the name.
8 MR. GRIFFIN: Right.
9 THE COURT: Even under the statute, it sounds like he
10 puts in -- he needs to put the name.
11 MR. GRIFFIN: There's no question about that.
12 MR. LIMBAUGH: Now, that is true.
13 THE COURT: That is true, right?
14 MR. LIMBAUGH: That is true. You do.
15 THE COURT: So, that's -- and that's all there is to
16 it. I mean the whole idea about transparency is to know
17 where your economic interests lie.
18 MR. LIMBAUGH: Right.
19 THE COURT: I mean that's the whole point.
20 MR. GRIFFIN: And before '08, the form doesn't prompt
21 you to make a decision about lobbyist's principal. It just
22 says lobbyists.
23 MR. LLOYD: But if we get into the---
24 THE COURT: See, that's why I'm concerned.
25 Go ahead.

1 MR. LLOYD: I'm sorry.

2 THE COURT: No. My concern is this. If we -- what you
3 want to ask on cross, then I think it's only fair for him to
4 say that it's required. Although I don't know if I want
5 your guy to say it's required because you're gonna get him
6 tripped up and make him look bad when Hunter asks him, you
7 know, the statute requires X, Y, and Z. I'm just thinking
8 we're just getting into like some really bad ground here
9 where he's certainly---

10 MR. LLOYD: Yeah, we're talking about just the names.
11 My, my fear, Judge, fundamentally is if he gets into this
12 prompt that required him to disclose income --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LLOYD: -- it's not the names --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. LLOYD: ---that, that bothers me. It's this issue
17 of income required by a form. Not the statute.

18 MR. GRIFFIN: And I, I do disagree. I think---

19 THE COURT: I know.

20 MR. GRIFFIN: ---the legal position is that the Ethics
21 Commission that delegated authority to create the form --.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. GRIFFIN: The House Ethics Commission has an
24 opinion that's issued before this that says you have to put
25 the value on there. Be that as it may, the Ethics

1 Commission creates the form---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. GRIFFIN: ---asking for the information. I think
4 the Ethics Commission can ask, on the form, more information
5 than, than required by the statute.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. GRIFFIN: It's form driven. Every filer has to
8 complete the Ethics Commission created form. The law
9 requires that. If there's a dispute about it, then, you
10 know, that's, that's really not in this case. But what's in
11 this case is he had to complete the form, and the form
12 prompts the question of, you know, of relationship with
13 lobbyist's principal. It talks about \$200.

14 THE COURT: why does---

15 MR. LIMBAUGH: So, if he hasn't completed a form that
16 misstates the law, misstates the requirements---

17 THE COURT: Right.

18 MR. LIMBAUGH: ---of the statute.

19 MR. GRIFFIN: It doesn't.

20 MR. LIMBAUGH: I mean that's a problem in and of
21 itself. I mean the form mis---

22 MR. GRIFFIN: I don't---

23 MR. LIMBAUGH: ---misses---

24 MR. GRIFFIN: Regulations every day require more than
25 what the statute requires.

1 MR. LLOYD: Here's, here's the bottom line.

2 MR. GRIFFIN: I mean I've practiced a ton in
3 healthcare. And if you just -- if you want to say only the,
4 the Medicaid Act, you know, says this, you can't do anything
5 more. I mean, I mean --.

6 MR. LLOYD: No, this is a different situation. The
7 bottom line is this. You could not charge him under the
8 Ethics Act for exactly what you're saying. You couldn't
9 charge him.

10 MR. GRIFFIN: He's not charged---

11 MR. LLOYD: No, that's my point. You -- you're trying
12 to bootstrap that into a criminal offense through statutory
13 common law misconduct.

14 MR. GRIFFIN: No, no, no, no.

15 MR. LLOYD: But we can all agree, there's nothing in
16 the Ethics Act that would allow you to charge Jim for
17 exactly what you just described.

18 MR. GRIFFIN: No, I disagree with that. What the,
19 what---

20 MR. LLOYD: It's not in the statute.

21 MR. GRIFFIN: What that -- that provision you're
22 relying upon is a failure to file the Statement of Economic
23 Interest. If you don't file the form, then you get a letter
24 from the commission saying or whomever said hey---

25 MR. LIMBAUGH: No, it says report. It says report or

1 --.

2 MR. GRIFFIN: Well, okay. Well, you didn't file a
3 report. You didn't file the report. Then file it, and they
4 say -- they refuse. Then you get a second strike.

5 Okay. We're gonna be fine now if you don't file it,
6 and a third strike. You continue to ignore filing the
7 report, then---

8 THE COURT: You think it's a whole different issue when
9 someone's untruthful on the report?

10 MR. GRIFFIN: Yes. Yes.

11 MR. LIMBAUGH: Now, Jim---

12 MR. LLOYD: Now, that little section---

13 MR. GRIFFIN: Cause how are you gonna get three
14 warnings if, if the form you filed is false, and how are
15 they gonna know that.

16 MR. LLOYD: No, no. But that---

17 MR. GRIFFIN: That's illogical.

18 MR. LLOYD: ---whole section that deals with that form,
19 1130, in the reporting this record, is separate and exempt
20 from the criminal provision under 1500, 1510 of the Ethics
21 Act. The, the way you prosecute that is, is, under the
22 provisions of 1130, I think it's 1120 and 1130, it's not
23 through 1510 or 1520, which is the general statute that
24 allows you -- that makes it a crime to violate the, the
25 Ethics Act.

1 MR. GRIFFIN: Well, that's---

2 MR. LLOYD: So, that's the only way you can prosecute
3 that failure to file, and that's my point. There is nothing
4 at all that you just described that would allow for a
5 charge.

6 MR. GRIFFIN: Well, that's a directed verdict issue I
7 mean.

8 MR. LIMBAUGH: Well, I want to just real quickly make
9 the distinction. I mean Jim does a lot of healthcare stuff.
10 My real -- in my real life, I do a lot of alcoholic beverage
11 stuff. So, I'm also familiar with the, you know, the
12 administrative world.

13 There is a, a distinct and material difference between
14 a statute that delegates to an administrative agency the
15 authority to promulgate regulations for the purpose of --.

16 THE COURT: Right.

17 MR. LIMBAUGH: -- you know, whatever of this -- of a
18 statute --

19 THE COURT: Right.

20 MR. LIMBAUGH: -- and what we have in this case, which
21 is simply a statute that authorizes the State Ethics
22 Commission to create---

23 THE COURT: A form.

24 MR. LIMBAUGH: ---the Statement of Economic Interest.
25 It does not go any further than that, and authorized them to

1 promulgate regulations to promote the, you know, and for
2 whatever, anything. It doesn't authorize anything other
3 than create the form.

4 MR. GRIFFIN: There's a, there's a long list of State
5 Ethics Commission regulations which have to be approved
6 through the---

7 MR. LIMBAUGH: No, I didn't say they didn't have
8 regulations. I'm just talking about---

9 MR. GRIFFIN: Well, then 52-204 says you got to fully
10 complete the form.

11 MR. LIMBAUGH: Okay.

12 THE COURT: Okay. So, it sounds like I understand kind
13 of the concern about his testimony. I think he can testify.
14 I think he can say the form to be filled out has X, Y, and
15 Z, and I'll let you cross him. Just be careful as far as --
16 I will say this though. If, if we're at the point where he
17 is giving even close to what I would consider to be an
18 opinion in some way, shape, or form, I'm gonna let him cross
19 him on the statute doesn't require that.

20 MR. GRIFFIN: No, I understand. I understand.

21 THE COURT: And, you know, I know we're in territory
22 then of him giving some kind of an opinion. But I think I'm
23 gonna give you all you need to --.

24 MR. LIMBAUGH: No, I appreciate that, and, and I mean I
25 don't want to open the door for them to go back and get

1 opinions.

2 THE COURT: Right.

3 MR. LIMBAUGH: And I don't want to -- I'm -- so, let me
4 just, let me just ask it. I know it's, it's kind of a --
5 asking for an advance ruling, but if I -- whoever does,
6 Reggie or I---

7 THE COURT: Yeah.

8 MR. LIMBAUGH: ---instead of asking what the impact
9 would be, would it be okay instead to just say Mr. Hayden,
10 it is true, is it not, that the contents of the, of a
11 Statement of Economic Interests are governed by the statute,
12 and not ask him what it says. Not ask him what it -- I mean
13 just isn't that the case, that --.

14 THE COURT: well, I think that's true.

15 MR. GRIFFIN: Which statute, right.

16 MR. LIMBAUGH: Huh?

17 THE COURT: I think that's true, but you just need to
18 say yeah, just --.

19 MR. GRIFFIN: Yeah.

20 THE COURT: Yeah, but he can---

21 MR. LIMBAUGH: I'm not asking for a legal opinion.

22 THE COURT: He can reference the statute.

23 MR. LIMBAUGH: I mean I'm just saying---

24 THE COURT: Right.

25 MR. LIMBAUGH: ---is, is that---

1 THE COURT: Right.

2 MR. LIMBAUGH: ---not accurate to say.

3 THE COURT: And if you want to, you can even quote the
4 statute, and hand it to him if you want to.

5 MR. LIMBAUGH: Okay.

6 THE COURT: And then you---

7 MR. LIMBAUGH: Yeah, I mean I was just getting a little
8 leary---

9 THE COURT: It's cross.

10 MR. LIMBAUGH: ---about doing that.

11 THE COURT: So, you can lead him all you want.

12 MR. LIMBAUGH: You're right, but I didn't want to
13 necessarily go down that road --

14 THE COURT: I understand.

15 MR. LIMBAUGH: -- you know, of what's an opinion and
16 not an opinion.

17 THE COURT: Yeah.

18 MR. LIMBAUGH: But I mean you, you---

19 MR. LLOYD: Yeah, I agree.

20 MR. GRIFFIN: I mean he'll be---

21 MR. LIMBAUGH: I think we can handle it. We can handle
22 it.

23 MR. GRIFFIN: Honestly he'll even say, yeah, 1130
24 doesn't say anything about money.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. GRIFFIN: I mean but the, but the form does. I
2 mean---

3 MR. LIMBAUGH: Okay.

4 THE COURT: Okay. But my form does.

5 MR. GRIFFIN: Exactly.

6 THE COURT: But my form does.

7 MR. GRIFFIN: The Commission's does.

8 THE COURT: Okay.

9 MR. LIMBAUGH: I think we can probably handle that
10 without calling---

11 THE COURT: I think we can too.

12 MR. GRIFFIN: And that's the truth. I mean that's---

13 MR. LIMBAUGH: We will be---

14 MR. GRIFFIN: ---the way it's written.

15 THE COURT: Okay. And was Mike Pitts getting here at
16 11:30?

17 MR. LIMBAUGH: He's here.

18 THE COURT: Oh, he's here.

19 MR. LIMBAUGH: He's here.

20 MR. GRIFFIN: Actually he was in town anyway.

21 THE COURT: Did he drive himself?

22 MR. GRIFFIN: Or he was -- I don't know.

23 MR. LIMBAUGH: He's -- I don't know who he's with, but
24 he's with a couple of, of women. So, I don't know if one of
25 them was his driver --

1 THE COURT: Okay.

2 MR. LIMBAUGH: -- or if he -- they're just friends. I
3 don't know.

4 THE COURT: Yeah.

5 Okay. Okay. So, let's go ahead. We're done -- I
6 think we've done enough on the record as far as Jim waiving
7 his presence this morning. I feel comfortable. Obviously,
8 I don't think I need to talk to him. I can obviously take
9 it through Reggie, and also Doctor Hawn saying he was
10 competent to make that decision.

11 So, do you want to tell the jury?

12 Do you want me to tell the jury or how do you want---

13 MR. LIMBAUGH: Well, we need to decide what---

14 THE COURT: How do you want to do this?

15 MR. LIMBAUGH: ---what---

16 THE COURT: How do you want to do that best --

17 MR. LIMBAUGH: I mean I would like---

18 THE COURT: -- of why he's not here?

19 You have to---

20 MR. LIMBAUGH: Tell the jury he's not here cause this,
21 this whole witch hunt has got him so upset he got sick. I
22 don't think that's gonna be proper. So --.

23 MR. GRIFFIN: Well, I think it should come from the
24 Court.

25 THE COURT: And I'm happy to say it.

1 MR. LIMBAUGH: Yeah.

2 THE COURT: I mean what are we gonna say, that he had

3 --?

4 MR. GRIFFIN: I think that -- I would just say that,

5 that he had a---

6 THE COURT: Medical emergency?

7 MR. GRIFFIN: Well, I don't know. I'd rather say, you

8 know, had a family issue.

9 MR. LIMBAUGH: That's not true.

10 THE COURT: No, I'm not gonna say that.

11 MR. GRIFFIN: Well, then, then---

12 MR. LLOYD: I don't think we have to delve into it, but

13 he had a medical issue, and --.

14 THE COURT: Yes.

15 MR. GRIFFIN: And that you've excused his presence?

16 THE COURT: Yes.

17 MR. LLOYD: And we anticipate he'll be back --

18 THE COURT: Yeah.

19 MR. LLOYD: -- at some point --

20 THE COURT: Okay.

21 MR. GRIFFIN: Medical issue or whatever.

22 MR. LLOYD: -- at some point tomorrow.

23 MR. LIMBAUGH: He is going home.

24 MR. LLOYD: Yeah.

25 MR. LIMBAUGH: So, he will be here tomorrow.

1 MR. LLOYD: Yeah.

2 THE COURT: Yeah, I, I really would feel better -- you
3 know, again, I don't know. I mean obviously I know you
4 don't want to string your hand---

5 MR. LLOYD: I just don't want them to think he
6 absconded.

7 THE COURT: Well, no, I agree with you.
8 Okay..

9 MR. GRIFFIN: No, we don't think that's --.

10 MR. LLOYD: They might of thought he won the lottery
11 and just decided he had enough of this.

12 MR. GRIFFIN: That was in Simpsonville.

13 THE COURT: It was in Simpsonville.

14 Okay. So, just really quickly, so I will go ahead and
15 tell the jury that, and then you're gonna call the ethics
16 guy, and then Mike Pitts.

17 Is that correct or the other way around?

18 However you do it.

19 You're gonna rest your case?

20 Yes?

21 MR. GRIFFIN: Yes.

22 THE COURT: Okay. Then we're obviously gonna hear
23 directed verdict motions.

24 Are we gonna do anything else with you-all today other
25 than -- I mean I'm just asking am I letting the jury go till

1 tomorrow morning?

2 MR. LIMBAUGH: I would imagine so. I don't know what
3 else we can do.

4 THE COURT: I think so. I mean I don't see any reason
5 to keep them around here---

6 MR. LLOYD: There's no---

7 THE COURT: ---during a directed verdict motion.

8 MR. LIMBAUGH: He is not going to make a decision about
9 Jim's testimony -- we're not gonna make -- I'm sorry. We're
10 not gonna make a decision about any other witnesses until we
11 make a decision about Jim's.

12 THE COURT: Okay.

13 MR. LIMBAUGH: So, obviously, we're not gonna choose to
14 not put up Jim---

15 MR. LLOYD: Oh, no.

16 MR. LIMBAUGH: ---and then call somebody else.

17 THE COURT: Okay.

18 MR. LLOYD: I would anticipate, no matter what, we'll
19 finish tomorrow.

20 THE COURT: Okay.

21 MR. LLOYD: Scheduling wise, I don't think that's a
22 problem.

23 THE COURT: So, I can tell the jury. So, we're still
24 probably okay unless he has another event tonight.

25 MR. LLOYD: And we would like to be well ahead of your

1 late afternoon---

2 THE COURT: Okay.

3 MR. LLOYD: ---argue and charge---

4 THE COURT: Okay.

5 MR. LLOYD: ---deadline.

6 THE COURT: Okay. Yeah, I think so too.

7 Okay. That sounds good then. Let's go out there and

8 deal with the jury, and get these two witnesses up and get

9 rid of them for the day.

10 MR. GRIFFIN: All right.

11 THE COURT: Okay.

12 MR. LLOYD: Thank you for your patience, Judge.

13 THE COURT: Okay.

14 (WHEREUPON, the following takes place back in the

15 courtroom.)

16 MR. LIMBAUGH: I don't know if you wanted to -- I need

17 to talk to Reggie about this, but I was just talking with

18 Mr. Lloyd and Mr. Pascoe about scheduling.

19 Understanding that the idea is to get through these two

20 witnesses --

21 THE COURT: Yes.

22 MR. LIMBAUGH: -- and then directed verdict motions.

23 THE COURT: Right.

24 MR. LIMBAUGH: We would, would certainly like, since

25 the jury's gonna be gone anyway after these two witnesses---

1 THE COURT: Right.

2 MR. LIMBAUGH: ---we would like -- certainly like to
3 have the opportunity, maybe an hour and a half break like
4 for lunch after we finish the witnesses before we jump into
5 it.

6 Is that okay --

7 THE COURT: Absolutely.

8 MR. LIMBAUGH: -- with the Court?

9 Okay.

10 THE COURT: Absolutely.

11 MR. LIMBAUGH: Thank you.

12 THE COURT: Okay. All right. You ready to bring -- go
13 ahead and have the jury brought in?

14 Everyone ready?

15 MR. LLOYD: Yes, Your Honor.

16 MR. LIMBAUGH: Yes.

17 THE COURT: All right. Let's go.

18 (WHEREUPON, the following takes place within the
19 presence of the jury panel.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you, sir.

22 Good morning, ladies and gentlemen. It is a pleasure
23 to see you-all, and thank you for bearing with us this
24 morning. We've had a few issues we've had to take up.

25 To begin with, you'll probably note that Mr. Harrison,

1 the Defendant, is not here this morning. He suffered a
2 medical issue over the evening. We expect him to be back
3 tomorrow morning, but, at this time, I just wanted to
4 explain to you why he was not here.

5 It's my understanding from the attorneys that we are
6 gonna -- the State is gonna put up a couple of witnesses
7 this morning.

8 Is that correct, Mr. Pascoe --

9 SOLICITOR PASCOE: Yes, Your Honor.

10 THE COURT: -- Mr. Griffin?

11 Then they're a number of legal matters I need to take
12 up with the attorneys. As it stands, we still anticipate
13 finishing this case tomorrow. So, I will tell you that
14 right now.

15 So, with that said, ladies and gentlemen, if you will
16 give your attention to the State to call their first witness
17 for this morning.

18 MR. GRIFFIN: Thank you, Your Honor.

19 Herb Hayden.

20 THE COURT: Thank you.

21 Come on forward, Mr. Hayden.

22 THE CLERK: Please step forward to be sworn in.

23 (WHEREUPON, the witness complies.)

24 THE CLERK: If you want to place your left-hand on the
25 Bible, and raise your right-hand.

Herb Hayden - Direct examination
By Mr. Griffin

1 Q And, and you were the executive director of the State
2 Ethics Commission.

3 Is that right?

4 A Yes, sir, that's correct.

5 Q Please tell the jury what the State Ethics Commission
6 is.

7 A State Ethics Commission is a, is a state agency that
8 was first created in 1975 by legislation, and then
9 reestablished in 1991 as a result of the Ethics Reform Act
10 of 1991. It---

11 Q What, what prompted the Ethics Reform Act in '91?

12 A The federal investigation known as Lost Trust into
13 bribery of members of the Legislature and some others.

14 Q Okay. And what, what was the purpose of the reform act
15 that -- in 1991 is your understanding?

16 A Primarily to -- it, it made some significant changes in
17 the law, but, primarily, to ensure the public's trust in, in
18 the government process.

19 Q Right.

20 The -- what's the scope of the jurisdiction of the
21 State Ethics Commission, if you will?

22 A The Ethics Commission has jurisdictions over
23 approximately 350,000 government employees in the State.
24 Everything -- everyone rather from the Governor, to
25 municipal employees. Every public official, every public

Herb Hayden - Direct examination
By Mr. Griffin

1 employee at the state, county, municipal level as well as
2 public service districts.

3 Q Now, we've heard, and during this trial, about the
4 House, House Ethics Committee.

5 What's the difference?

6 A Oh, the, the House Ethics Committee is a committee made
7 up of members of the House of Representatives with the
8 responsibility and jurisdiction over members of the House
9 and candidates for the House. There's a similar ethics,
10 legislative ethics committee in the Senate that has
11 responsibility over members and candidates for the, for the
12 Senate.

13 Q Well, what's a Statement of Economic Interest?

14 A That's a form that is, is filed annually by every
15 elected official in the state, and a number of other agency
16 heads, and government officials at, at various municipal
17 levels. It's, it's---

18 Q I'm sorry. Continue on. I'm sorry.

19 A I'm sorry. It's a form that is -- it's a public record
20 that is to provide the, the public with information about
21 their public officials to include things like government
22 income, sources of other income, ownership and property
23 where there might be some conflict with their position,
24 relationships with lobbyist and lobbyist's principals,
25 things of that nature.

Herb Hayden - Direct examination
By Mr. Griffin

1 Q Does the House Ethics Committee, and the Senate Ethics
2 Committee, and the State Ethics Commission, do they have
3 three separate forms for the Statement---

4 A No.

5 Q ---of Economic Interest?

6 A No, sir, it's the same form for everyone who files.

7 Q Okay. Now, how -- what, what entity creates the form?

8 Is it the House Ethics Committee, the State Ethics
9 Commission, or the Senate Ethics Committee?

10 A The, the State Ethics Commission is tasked with the
11 responsibility of providing -- creating and providing the,
12 the form for all filers.

13 Q And are -- what -- you started in the capacity of
14 executive director I think in 1999?

15 A '99, correct.

16 Q When, when you were executive director in '99, and, I
17 guess, let's say 2000 as well for this case, how were the
18 forms filled out where they were filed?

19 A The, the forms were, were paper at that time. The
20 State Ethics Commission had the forms printed, and then
21 provided those to the, the individual filers under the, the
22 Commission's jurisdiction, and then provided whatever number
23 was needed to, to respective House and Senate Ethics
24 Committees. They were filed with the Ethics Commission or
25 with the respective Ethics Committee depending on the

Herb Hayden - Direct examination
By Mr. Griffin

1 position.

2 The House members filed with the House Ethics
3 Committee, Senate with Senate Ethics Committee, and everyone
4 else with the State Ethics Commission.

5 Q Was there a change somewhere along the way in, in the,
6 the form and how it was filed?

7 A Yes, sir, in---

8 Q All right. Tell the jury about the change please.

9 A Okay. In 2006, Governor Sanford requested a, an
10 electronic filing system be established for the nine
11 constitutional offices. In 2008, that legislation was
12 passed requiring all elected officials, or everyone who
13 filed a Statement of Economic Interest, to file using an
14 electronic filing system.

15 Q Now, civics lesson, you say the nine constitutional
16 officers.

17 Who, who -- what positions are those?

18 A The Governor, Lieutenant Governor, Attorney General,
19 Adjutant General, Superintendent of Education, Commissioner
20 of Agriculture.

21 Q I don't want to -- is that enough?

22 A I'm sure I missed one or two on this.

23 Q I don't know if we got to nine. I couldn't get there
24 either.

25 But, but, in '06, was a member of the House of

Herb Hayden - Direct examination
By Mr. Griffin

1 Representatives obligated to file on, online or was it just
2 optional in '06?

3 A No, that -- there was no, there was no opportunity or
4 mechanism for anyone other than those nine constitutional
5 officers to file in 2006.

6 Q And you said then -- and was it '08 that it was
7 expanded to encompass everyone?

8 A Exactly. Yes, that's correct.

9 Q And, and I'm stating the obvious, but was a member of
10 the House of Representatives required to file a Statement of
11 Economic Interest electronically starting in '08?

12 A That's correct.

13 Q And, and where is that form filed?

14 I mean where is, is it filed?

15 Is it filed starting in '08 back at the House Ethics
16 Committee or is it maintained at the Ethics -- State Ethics
17 Commission?

18 A Well, it's, it's filed electronically. It can be filed
19 from any computer. Anyone -- any -- all you have to have is
20 online Internet access. It's maintained on a server that
21 is, that is located at the State's IT division on Broad
22 River Road in Columbia. So, there's no, there's no physical
23 paper copy maintained at, at any location.

24 Q And after -- from '08 forward, are those filings, those
25 Statement of Economic Interest by members of the House, and

Herb Hayden - Direct examination
By Mr. Griffin

1 Senate, and any other person who's required to file, are
2 they available to the public?

3 A Yes.

4 Q And how can the public view those?

5 A They can view those by going to the State Ethics
6 Commission's website. There is a link there for public
7 reporting, and you click on that link, and then type in
8 the -- you can search either by an individual's name or you
9 can search by candidates for a specific position.

10 Q Okay. And was that the case from '08 through 2012?

11 A Yes.

12 Q I want to show you -- may I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q I want to show you what's in evidence as Exhibit 9-A,
16 and this is a Statement of Economic Interest form dated
17 April 15th, 1999, that bears James Harrison's signature,
18 and, and ask you, first, is that the paper form that you
19 referred to earlier?

20 A Yes, it is.

21 Q okay. And did that paper form, to your knowledge,
22 change from 1999, 2000, up until the electronic filings
23 took -- were implemented in '08?

24 A No, sir.

25 Q The -- and---

Herb Hayden - Direct examination
By Mr. Griffin

1 A There, there may of been -- I think, at that time, we
2 were -- we were inserting a, a revision date, but that was I
3 think, you know, insignificant typo changes or nothing,
4 nothing substantial as far as the, the requirements of the
5 statute.

6 Q Okay. And the -- and, and if you'll go to Line 18?

7 A Yes, sir.

8 Q Will you tell the jury what, what the heading of Line
9 18 is on that form, and soon as I -- we warm up the
10 equipment, I'm gonna try to get it on the TV.

11 A Lobbyists.

12 Q And Mr. Harrison's completed form that -- what, what
13 information is included on Line 18?

14 A Nothing.

15 Q I'm -- all right. And then if you'll go to Exhibit
16 9-B. Well, look -- tell, tell the jury what period of time
17 9-A covers.

18 A Well, this was filed on April 15, 1999. It covers the
19 calendar year 1998.

20 Q So, Line, Line 18 here on the, on the form that covers,
21 I guess, it was 1998?

22 A Yes, sir, the 1998 calendar year.

23 Q So, it just says lobbyists, and is -- and it says check
24 if none, and there's a check for none, correct?

25 A That's correct.

Herb Hayden - Direct examination
By Mr. Griffin

1 Q Okay. And then if you'll go to Line 18 on, on Exhibit
2 9-B, which covered what period of time again?

3 A Under, under the Section A, name of lobbyists, there's,
4 there's no -- nothing entered there. Nothing under, under
5 relationship or association, but under Section B where it
6 says name of lobbyists, there are two entries. One with
7 BellSouth, and the other with SCANA indicating goods and
8 services purchased of public relations, corporate
9 communications, the amounts for BellSouth. It appears to be
10 \$20,000, and, for SCANA, 58,500 purchased from Richard Quinn
11 & Associates, and with the -- for both, and the relationship
12 for both is officer.

13 Q Okay. And I'm gonna pull that up.

14 Now, once again, the Line 18 just uses the term
15 lobbyists, correct?

16 A That's correct.

17 Q I want to show you another document in evidence as 9-J,
18 and it -- and, first, just tell the jury what date that
19 filing is.

20 A The filing date is April 12, 2008.

21 Q Okay. And, and is that a different form than what we
22 looked at earlier?

23 A This is a copy of the online form, but it's of -- still
24 it's a Statement of Economic Interest.

25 Q Okay. And, and is there a similar Line 18 on, on that

Herb Hayden - Direct examination
By Mr. Griffin

1 copy of the electronic form?

2 A There is. It's not a numbered line. However, there is
3 a section entitled lobbyist/lobbyist's principals.

4 Q Okay. So, the word lobbyist's principal appears on the
5 electronic Statement of Economic Interest?

6 A That's correct.

7 Q Up until '08, did the name lobbyist's principal appear
8 on the Statement of Economic Interest form?

9 A Yes, sir, as I recall, that's correct.

10 Q No, I'm sorry.

11 Before '08, was it -- was the, was the word lobbyist's
12 principals, that word, on the form?

13 A Oh, no, sir.

14 Q Okay.

15 A No, I'm sorry. I misunderstood you.

16 Q And so that was a change in '08?

17 A Yes.

18 Q Okay. And so, in this '08 form, it appears as
19 lobbyists/lobbyist's principals, and then it says filer does
20 not have any lobbyists/lobbyist's principals items to
21 disclose.

22 The -- explain to the jury how that information gets
23 populated in, in that blank on the, the form if you're
24 completing it electronically.

25 A Yes, sir. As you, as you go through the form, the, the

Herb Hayden - Direct examination
By Mr. Griffin

1 system brings up the next section to be filled out, and it
2 asks you the question whether or not you have anything to
3 disclose in that section. If you check no, then it
4 automatically just goes to the, the next section, and asks
5 you the same question. If you check yes, then it opens up
6 another screen, and provides the, the sections in order to
7 list the name of the lobbyists or lobbyist's principals, and
8 all the same information that we talked about from the paper
9 copy.

10 Q Okay.

11 A And as you fill one section out, it automatically opens
12 up the next section to allow you to put in the relationship,
13 the amount, and, and so forth.

14 Q The, the form that the jury sees on display here, and
15 will -- that are completed and that are in evidence, is that
16 what the filer initially sees when they're completing the
17 form?

18 A While they're completing the form?

19 Q Yeah, I mean---

20 A No.

21 Q Okay. What does the filer see?

22 A The filer sees those -- the instructions to, to file.
23 It asks the question do you have anything to disclose in
24 this section or words to that effect. And then, as you --
25 if you check yes, and it opens up, it asks you for the, the

Herb Hayden - Direct examination
By Mr. Griffin

1 name of the lobbyists or lobbyist's principals, and then,
2 when you complete that, it goes to the next section or the
3 next blank, and it asks you to put in the address or the
4 relationship or the amount as, as it goes.

5 (WHEREUPON, State's Exhibit No. 44 was marked for
6 identification purposes at this time.)

7 Q Okay. Now, I've, I've marked earlier for
8 identification, State's Exhibit 44, and I'm gonna ask if you
9 can identify Exhibit 44.

10 A Yes, sir, this is a, a copy of the State Ethics
11 Commission's User Guide for filing a Statement of Economic
12 Interest.

13 Q And was this the version that was in effect -- it says
14 one -- is this the first version that was in effect of '08?

15 A Yes, sir.

16 Q Okay.

17 A It's Version 1-01-01.

18 Q And, and is this User Guide, how, how is it available
19 or made available to the user of the system?

20 A When you, when you go online and, and open up your
21 account, there's a link on that, that page where you can
22 click -- you can click on it, and it takes you to the User
23 Guide, and then you can scroll down through. This takes you
24 step-by-step of how to, to fill out the, the Statement of
25 Economic Interest.

Herb Hayden - Direct examination
By Mr. Griffin

1 Q Okay. And, and in this User Guide, does it accurately
2 depict the screen shots that a user would fill in to
3 populate---

4 A Yes.

5 Q ---what ultimately is up on---

6 A Yes, sir.

7 Q ---the form?

8 A It does.

9 Q And what's that exhibit number again?
10 I forgot.

11 A 44.

12 MR. GRIFFIN: Your Honor, I'd like to move Exhibit 44
13 in evidence. I shared a copy with counsel previously.

14 MR. LIMBAUGH: That's this?

15 MR. GRIFFIN: Yes.

16 MR. LIMBAUGH: No objection.

17 THE COURT: Without objection, it's in evidence.

18 MR. GRIFFIN: Thank you.

19 (WHEREUPON, State's Exhibit No. 44 was received into
20 evidence at this time.)

21 Q I learned from yesterday. So I have my own copy here.
22 So you keep that.

23 A All right.

24 Q And I'm gonna take this over to---

25 A okay.

Herb Hayden - Direct examination
By Mr. Griffin

1 Q ---to the projector.

2 And, and, Mr. Hayden, let's go to Page 34, and will you
3 show the jury first what's -- what begins on Page 34.

4 A Lobbyists.

5 Q Okay. And since you have a copy up there in your hands
6 and you probably can't read this, but will you read the, the
7 small print for the jury?

8 A All right. Beginning with identify?

9 Q Yes, sir.

10 A All right. It says identify the name and relationship
11 of any lobbyist who is an immediate member of your family or
12 an individual or business with which you or a member of your
13 immediate family is associated. Identify any lobbyists or
14 lobbyist's principal who has purchased goods or services of
15 more than \$200 from you, a member of your immediate family,
16 or an individual or business with which you are associated.
17 Identify the type of goods or services purchased, the
18 amount, and from whom the material was purchased, and it
19 says---

20 Q Then, Mr. Hayden, is this the -- is this what the filer
21 would see?

22 Is this the screen shot they would see?

23 A Yes.

24 Q Okay. And then if you'll read the instructions down
25 here?

Herb Hayden - Direct examination
By Mr. Griffin

1 It says Step 3, 4, 5.

2 Can you read that for us please?

3 A Step 3 is enter the lobbyist's name. Step 5, if the
4 lobbyist is related to you by family or business
5 relationship, check the block, I'm sorry, check the box next
6 to the relationship, and enter the nature of the
7 relationship. Step 5. If the lobbyist has purchased goods
8 or services of more than \$200, check the box next to goods
9 or services, and, one, enter a description of the goods or
10 services purchased, two, enter the amount of the sale,
11 three, enter the name of the person or business from whom
12 the purchase was made. Step 6, click, click save to save
13 the information you have entered.

14 Q Okay. And then -- and if the user/filer doesn't
15 complete anything, is there another screen to go to?

16 What's on the next screen?

17 A The lobbyist's principal.

18 Q Okay. And, and, again, at, at the very top, the fine
19 print, is that the same language that you just read for---

20 A Yes.

21 Q ---lobbyists?

22 A Yes, it is.

23 Q And -- but here it says Statement of Economic Interest,
24 lobbyists, lobbyist's principal, and, under the term
25 lobbyists, it says lobbyist's principal name, does it not?

Herb Hayden - Direct examination
By Mr. Griffin

1 A That's correct.

2 Q And then so if someone was required to disclose the
3 identity of a -- lobbyist's principals as, as set forth
4 above, would they put the name of the lobbyist's principal
5 in that blank?

6 A That's correct.

7 Q And so, when you, you read the instructions for
8 lobbyist's principals down here please?

9 A Yes, sir. Step 3, enter the lobbyist's principal name.
10 Step 4, the lobbyist's principals has purchased goods or
11 services of more than \$200, one, enter a description of the
12 goods or services purchased, two, enter the amount of the
13 sale, three, enter the name of the person or business from
14 whom the purchase was made. Step 5, click save to save the
15 information you have entered.

16 Q Does -- to complete the online form, does the filer
17 have to go through every screen?

18 A They have to go through every section of the, of the,
19 this, the form. The only time they see a screen such as
20 this is if they click the yes -- enter yes---

21 Q Okay.

22 A ---as their answer for that particular section. If
23 they say no, then they don't have anything to disclose, then
24 it immediately goes to the next question area.

25 Q Thank you for pointing that out. I was not doing a

Herb Hayden - Direct examination
By Mr. Griffin

1 very good job up here.

2 So, if you'll go to Page 33?

3 A (Witness complies.)

4 Q Is this the screen you're talking about?

5 A Yes, sir.

6 Q And so, on, on this screen, and, again, it has the same
7 fine print, the same language?

8 A Yes, sir.

9 Q And, and what, what this screen, screen ask the filer?

10 A It, it, it asks to identify whether you have
11 information for a lobbyist. It says please select the time,
12 either lobbyists or lobbyist's principal --

13 Q Okay.

14 A -- or if you have, if you have nothing to disclose into
15 this section, you check the skip for now block, hit the next
16 button, and it takes you to the next area to be entered.

17 Q So, the filer -- would the filer have to make an
18 election here, either lobbyists, lobbyist's principal, or
19 skip --

20 A Yes.

21 Q -- in order to complete the form?

22 A Yes.

23 Q Under what circumstances, Mr. Hayden, is a filer
24 required to disclose a, a financial relationship with a
25 lobbyist principal?

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 A If, if there is -- if there's any, any relationship,
2 family relationship as, as, as it's instructed in the or
3 shown in the instructions or if, if they're---

4 MR. LIMBAUGH: Your Honor, I'm gonna object to that. I
5 think he's actually rendering a legal opinion, and he's not
6 qualified to do that.

7 THE COURT: Okay. I think we're getting close to where
8 we---

9 MR. GRIFFIN: Okay.

10 THE COURT: ---said we weren't gonna go.

11 MR. GRIFFIN: Sure.

12 All right. Sorry about that.

13 The -- answer any questions that counsel may have.

14 CROSS-EXAMINATION

15 BY MR. LIMBAUGH:

16 Q Good morning, Mr. Hayden.

17 A Good morning.

18 Q How are you?

19 I've just got a few questions I, I, I think. I hope
20 it's just a few. Make sure I understood. Excuse me. I
21 left my glasses without which I am more dangerous than
22 usual. I just want to make sure I understand kind of the --
23 a little bit of the actual functionality of the online
24 system.

25 A All right.

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 Q Okay. Because I, I'm not sure that I did.

2 The, the form -- when a filer goes on to the system to
3 file a Statement of Economic Interest, my understanding was,
4 and correct me if I'm wrong, that the, that the first thing
5 that they will get to, or not the first thing, but what they
6 will get to is a heading that, in this case, it would say
7 lobbyists, and then they first have to make a determination
8 of whether they have information that they believe to be
9 required to be reported under that general heading?

10 A That's correct.

11 Q Okay. It appears to me that, even in, in the current
12 format, and the, and the format that presumably has
13 essentially been unchanged since it, it went online in 2008,
14 that the heading that leads a potential, leads a filer to
15 the lobbyist's principal information that they may have to
16 file, that that heading is now and has always been
17 lobbyists.

18 Is that correct?

19 Am I reading that correctly?

20 A I think that's correct.

21 Q Is there any particular reason us -- and given the
22 assumption that the goal of the State Ethics Commission in
23 crafting this form is to ensure/encourage filers to file
24 everything they're suppose to file, is there any reason that
25 that heading doesn't say lobbyists/lobbyist's principal?

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 They're not the same thing, are they?

2 A No, sir.

3 Q Okay. They, in fact, they're a very important and
4 distinct differences between lobbyists and lobbyist's
5 principals in all different contexts.

6 Isn't that correct?

7 A Certainly.

8 Q And particularly in the context of what's required to
9 be disclosed and, and filled out on a Statement of Economic
10 Interest. It's important. There's an important
11 distinction.

12 A Yes, sir.

13 Q Okay. So, you don't, as you sit here today, you don't
14 have any particular explanation for why that doesn't say
15 lobbyists/lobbyist's principals?

16 A I, I don't.

17 Q Okay. Would you agree with me that it should?

18 A I didn't, I didn't create the forms. So, I, I can't---

19 Q Well, I assume that when you were the executive
20 director that you had -- I'm not trying to cast blame on
21 you. Don't get me wrong. That's not what, that's not what
22 this is.

23 A That's all right.

24 Q Not what this is about at all.

25 But as the executive director, I assume you had some

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 input I mean before this thing went live?

2 A Yes, sir.

3 Q Okay. Okay. Would you agree with me that it would be
4 a better practice for that heading to say

5 lobbyists/lobbyist's principals to be sure you pull in
6 everybody you want to pull in?

7 A I think, I think that's, that's probably correct. I
8 mean but it -- that -- it's identified under the table of
9 contents when you read down the, the heading as lobbyists,
10 and then, under that, the subheadings, is lobbyists and
11 lobbyist's principal.

12 Q The table of contents found where?

13 A In, in this document.

14 Q Okay. But if I log on to the Statement of Economic
15 Interest, if I'm a, if I'm a filer, and I log on to the
16 Ethics Commission website, and to start filling out my
17 Statement of Economic Interest, is -- do I see the table of
18 contents?

19 A You would only see the table of contents if you
20 opened up the user guide.

21 Q Right.

22 But if I just go to the form, start filling out the
23 form, and follow the headings---

24 A Uh-huh. (Affirmative).

25 Q ---that I see, I'm never gonna see anything about

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 lobbyist's principals unless I click through based on this
2 heading that says lobbyists.

3 Isn't that correct?

4 A I, I think that's correct.

5 Q Okay.

6 A It's been a long time since I, I filed a Statement of
7 Economic Interest, and I never had any information to
8 disclose under the lobbyists section. So --.

9 Q Uh-huh. (Affirmative).

10 A -- I, I think that's correct.

11 Q Okay. So, if I was a filer and I didn't think, rightly
12 or wrongly, I didn't think I had anything to file under
13 lobbyist's principal either, I wouldn't even ever get to
14 lobbyist's principal stuff unless I went through lobbyists
15 stuff first, right?

16 A Well, when you -- as you're progressing through the
17 form --

18 Q Uh-huh. (Affirmative).

19 A -- you, you have the section just prior to lobbyists
20 is, is creditors, and it asks you whether or not you have
21 any---

22 Q I'm sorry. I'm over here. I didn't mean to hide from
23 you.

24 A It asks you whether or not you have any information
25 about creditors to disclose. And if you, if you don't, you,

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 again, you click the skip for now, and hit the next button,
2 and the next screen that pops up in front of you is
3 lobbyists, and it asks you do you have anything to, to
4 declare or to disclose about lobbyists or lobbyist's
5 principal or, if not, skip for now. So, you don't---

6 Q Okay.

7 A You don't miss this screen just by saying I didn't have
8 any, any lobbyist's principal information. That, that
9 screen, on Page 33, automatically comes up when you exit the
10 screen involving creditors.

11 Q Okay. Okay.

12 A So, you would see it at, at that point.

13 Q Okay. I got you.

14 You would agree with me, I, I assume and hope, that the
15 information that is required to be included on a Statement
16 of Economic Interest is governed by the statutes of the
17 state of South Carolina?

18 A That's correct.

19 Q It's not determined by the South Carolina Ethics
20 Commission, correct?

21 A That's correct.

22 Q Okay. So, your function in this process would be to,
23 as best you can, require no more and no less information
24 from a filer then the statutes require them to file,
25 correct?

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 A That's correct.

2 Q Okay. So, if, if there is information that is asked
3 for in the Statement of Economic Interest that is, in fact,
4 beyond the scope of what the statutes required, that would
5 have been inadvertent, wouldn't it?

6 A I, I don't think it was inadvertent. I think that was
7 the interpretation of the, the Ethics Commission at, at the
8 time that the statement, that -- at the time that the
9 Commission was given the jurisdiction over lobbyists in, in
10 1993, and I think that was the, the Commission's
11 interpretation of what information was needed in order to,
12 to provide the, the information required by the statute.

13 Q Okay. But you do agree that in -- regardless of the
14 Commission's interpret -- what it may of been, that, in
15 fact, what is required to be reported is, is solely governed
16 by what the statutes say?

17 A Yes, sir, the language in 8-13---

18 Q Okay.

19 A ---1130.

20 Q Okay. Let me, let me ask you another question here.

21 The Ethics, Ethics Commission, as you've said, does not
22 have jurisdiction over legislators, correct?

23 A Up until 2017 that was -- yes, that was---

24 Q That's the period of time in which---

25 A ---correct.

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 Q ---with which we're concerned. So, I don't even want
2 to talk about anything---

3 A Right.

4 Q ---that's happened since.

5 A Okay.

6 Q Okay. But the Ethics Commission has jurisdiction over
7 all manner of other public officials in South Carolina from
8 the Governor, I don't want to say on down because
9 everybody's valuable in what they do, but from the Governor
10 through a long list of other public officials and---

11 A That's correct.

12 Q ---employees of the, of the---

13 A Yes, sir.

14 Q ---State?

15 A Yes.

16 Q And various subdivisions.

17 A Every -- everyone who's employed by a state, county,
18 municipal, or any other public service district is -- falls
19 under the jurisdiction of the Ethics Commission.

20 Q Okay. And, and so, in the event that one of the filers
21 over which the Ethics Commission has, has jurisdiction --

22 A Uh-huh. (Affirmative).

23 Q -- one of those filers fails to file a Statement of
24 Economic Interest form, just completely fails to file it --

25 A Uh-huh. (Affirmative).

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 Q -- in a, in any given year -- let's say, let's say the
2 Governor doesn't, whatever reason, would you -- you were the
3 chief law enforcement officer at the Ethics Commission as
4 well, right --

5 A That's correct.

6 Q -- from what I heard you saying?

7 Okay. Would you go arrest the Governor?

8 A No.

9 Q Why not?

10 A Failure to file, there are provisions in the
11 Commission's policy to contact the individual. It's done by
12 mail, by letter, and advise the in -- that -- the filer of
13 their delinquency, and a -- the statute provides for \$100
14 late filing penalty that would be levied at that time, and
15 the, the filer is, is placed on notice that, if they don't
16 file within the next ten days, after receiving the letter,
17 then that penalty will begin to go up, and as if the filer
18 files within that ten days, then there's the penalty is the
19 \$100 late filing penalty. If not, then further action can
20 be taken, and total failure to file is a criminal penalty,
21 yes, or has a criminal penalty.

22 Q Okay. So, what would happen then is, if, if -- well,
23 and not only is -- not only does that procedure and process
24 that you just describe apply for a failure to file entirely,
25 it also applies in the event that, for whatever reason, the

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 Ethics Commission believes that a, a filing that was done
2 was either insufficient, incomplete, incorrect, exact same
3 process, correct?

4 A Correct.

5 Q Okay.

6 A Under the -- prior to the, the electronic filing, if a
7 form was, was not complete, the form would be returned to
8 the filer highlighting that -- the, the sections that were
9 not completed, and, and instruct the filer to complete the
10 form and return it.

11 Q Uh-huh. (Affirmative).

12 A Under the, the current electronic filing, you can't
13 file an incomplete form.

14 Q But you can file an incorrect form?

15 A You can file an incorrect form, yes, sir.

16 Q And, and let's just take that example then.

17 In that, in that case -- well, I'm, I'm envisioning
18 sort of a difficult time determining, in some cases, whether
19 the, the failure is to complete everything you were suppose
20 to complete versus filing an incorrect form, and it -- and,
21 you know, I think those might overlap I guess is what I'm,
22 what I'm getting at.

23 But, in either event, if somebody either failed to fill
24 out a section they were suppose to fill out, or they filled
25 out a section in an incomplete manner for some reason or

Herb Hayden - Cross-examination
By Mr. Limbaugh

1 other, whatever it may be that causes this Statement of
2 Economic Interest to not be 100 percent entirely completely
3 compliant with the statute, okay?

4 A All right.

5 Q It is, it is accurate to say, is it not, that, as the
6 chief law enforcement officer of the Ethics Commission, you
7 would not have been able to, even if you'd been personally
8 inclined for some reason, to go arrest somebody for that
9 without going through the process you'd previously described
10 as would apply if they had failed completely to file it?

11 A Correct.

12 Q Okay. You don't have jurisdiction over legislators, do
13 you?

14 A No, sir.

15 Q But that statute on which you are relying for that
16 process which you would follow in the event of these things
17 happening to someone over which you did have jurisdiction
18 does apply to legislators?

19 A That's correct.

20 Q Same statute?

21 A That's correct.

22 Q Okay. That's all I have. Thank you.

23 THE COURT: Thank you.

24 Mr. Griffin.

25 REDIRECT EXAMINATION

Herb Hayden - Redirect examination
By Mr. Griffin

1 BY MR. GRIFFIN:

2 Q Mr. Hayden, are, are there criminal penalties
3 applicable under the Ethics Act for filing a false Statement
4 of Economic Interest?

5 A Yes.

6 Q And if someone fails to disclose a financial
7 relationship that they're required to report involving a
8 lobbyist principal, is that a criminal offense?

9 A It can be. There is a criminal penalty, yes, sir.

10 Q Now, you talked -- now, you were asked about failing to
11 file or filing an incomplete form.

12 A Uh-huh. (Affirmative).

13 Q And, and you've said, initially, total lack of filing,
14 and, and what happens?

15 You get, you get notice that you haven't filed the
16 form?

17 A Right. There's a letter that goes out indicating that
18 the, the delinquency in filing, and \$100 late filing penalty
19 is levied. The person is placed on notice that if they
20 don't file within ten days of receipt of the letter that
21 penalty then begins to go up at \$10 a day until such time as
22 they file.

23 Q Now, now, you mentioned earlier, also when it became
24 electronic filing, that if someone on, on this form checked
25 skip for now, then it would, it would bypass the subsequent

Herb Hayden - Redirect examination
By Mr. Griffin

1 questions about lobbyist and then lobbyist's principals --

2 A That's correct.

3 Q -- right?

4 And if they checked skip for now, a filer, and didn't
5 check either lobbyists or lobbyist's principal, and kept
6 going, would they be allowed -- I mean would the system
7 accept the submission of the form?

8 A Yes, at -- once -- if, if I may elaborate?

9 Q Sure.

10 A Once you go through all of these sections, and you've
11 either filled in some of the information or the information
12 that's requested or you've checked skip for now, at the end,
13 then a screen pops up and asks you -- shows you what you
14 have, what you have, have filed. And it asks you if, if
15 everything is correct. And it gives you an opportunity to
16 go back to any section that you have not completed or that
17 you, that you, that you checked skipped for now, and go back
18 to that section and add any information in that section that
19 you might want to, to add. And then, if you say that you
20 don't have any changes to make, then you have an opportunity
21 to, to click the filed button.

22 Q And if you'll go to that screen, that filing
23 confirmation screen, I think it's on Page 563 of the User
24 Guide?

25 A I'm sorry. Page what?

Herb Hayden - Redirect examination
By Mr. Griffin

- 1 Q 53---
- 2 A 53?
- 3 Q ---of the User Guide.
- 4 A Yes, sir.
- 5 Q And if you could read to the jury what the
6 certification says?
- 7 A It says electronic filing, Statement of Economic
8 Interest, filing confirmation, and, in bold, certification.
9 I certify that the contents of this statement are true,
10 correct, and complete to the best of my knowledge and
11 belief. I understand that if this statement is not received
12 within five days of the deadline, a late filing penalty of
13 \$100 will be levied. And then it asks the question are you
14 sure you want to file now. And you have two choices, either
15 go back or click file.
- 16 Q And then if someone hit file, that they have then
17 certified that everything on the form is true and correct,
18 right?
- 19 A That's correct.
- 20 Q And they're criminal penalties associated with filing a
21 false certification, correct?
- 22 A Yes, sir.
- 23 Q And we're not talking about late filing, late filing
24 penalties, are we?
- 25 A No.

Herb Hayden - Redirect examination
By Mr. Griffin

1 Q I'm gonna show you 9-J through N, electronic filings of
2 Mr. Harrison, and I want to ask if you will tell the jury if
3 Mr. Harrison ever disclosed any relationship with a lobbyist
4 principal on those forms.

5 A No, sir, there's no disclosure.

6 Q And would he have been able to file those forms without
7 certifying that they were true and correct?

8 A No, .sir.

9 Q All right. Two last points you were asked about this
10 form, whether it could be clearer on the filing system, and
11 I'm, I'm at Page 33 of, of the User Guide.

12 A Uh-huh. (Affirmative).

13 Q So, just to be clear, the big term lobbyists up there,
14 that, that's not showing up on the screen. That's in the
15 User Guide.

16 Correct?

17 A Correct.

18 Q And so what's in blocks is the screens that the user
19 would see?

20 A Yes.

21 Q And there it says first thing you see is Statement of
22 Economic Interest, lobbyists, lobbyist's principal, correct?

23 A Correct.

24 Q I want to ask you.

25 How does one become a lobbyist principal?

Herb Hayden - Redirect examination
By Mr. Griffin

1 A By -- there's a registration process with the State
2 Ethics Commission. There's a, a fee that is paid, and a
3 form that is filled out, and this is done on an annual
4 basis. So, anyone can file who has the need to employ a
5 lobbyist.

6 Q Now, that gets to my point. To be a lobbyist
7 principal, you got to hire a lobbyist.

8 But being required to file as a lobbyist principal, you
9 have to hire a lobbyist, right?

10 A Well, the lobbyist's principal filed first, but,
11 technically, you can't have one with the other.

12 Q Correct.

13 So, this is asking identification of information about
14 the lobbyists or, or the company that hires the lobbyist,
15 correct?

16 A Yes, either.

17 Q Okay. And, lastly, the -- go back to 9-B where---

18 A 9-B.

19 Q Well, you don't have it in front of you.

20 A No, sir.

21 Q This is the exhibit in evidence --

22 A Oh, okay.

23 Q -- we talked about earlier. This is Mr. Harrison's
24 paper filed Statement of Economic Interest --

25 A Yes, sir.

Herb Hayden - Redirect examination
By Mr. Griffin

1 Q -- filed on April 20th, 2000. March 20th, I'm
2 sorry, 2000. The -- it has the name of BellSouth and SCANA.

3 Are, are BellSouth and SCANA lobbyist's principals in
4 2000?

5 A As far as I know, yes, sir.

6 Q Okay. And it discloses goods and services purchased
7 and the amount, does it not?

8 I mean can you see it?

9 A The amount?

10 As I recall, it was 20,000 on one, and 58,500 on the
11 other -- on SCANA as I --.

12 Q And so, it was disclosed, was it not?

13 A Yes, sir.

14 Q And, to your knowledge, was it ever disclosed again?

15 A No.

16 Q Any information?

17 A Not to my knowledge.

18 Q Thank you.

19 That's all I have, Your Honor. Thank you.

20 THE COURT: Anything further?

21 MR. LIMBAUGH: Yes.

22 THE COURT: Certainly.

23 MR. LIMBAUGH: Just a few.

24 RECROSS EXAMINATION

25 BY MR. LIMBAUGH:

Herb Hayden - Recross examination
By Mr. Limbaugh

1 Q All right. Mr. Hayden, I realize that the information
2 that Mr. Griffin has been asking you about regarding
3 lobbyist's principals, the relationship or association
4 between a filer and lobbyist's principals, that information
5 is sought to be captured on the Statement of Economic
6 Interest now.

7 A Correct.

8 Q I understand that.

9 However, you do understand and would agree with me that
10 the report of the identity of lobbyist's principals with
11 whom a filer may have had -- may have -- either, either the
12 file or a business with which they were associated had
13 purchased goods and service in a preceding calendar year
14 more than \$200, that report is actually not required to be
15 made on the Statement of Economic Interest, but is, in fact,
16 a requirement, a separate requirement, of a report under a
17 different statute?

18 Namely 8-13-1130.

19 A Correct.

20 Q Okay. So, the requirement of the filing of that
21 information is, in fact, not included among or on the list
22 of information that's to be included in a Statement of
23 Economic Interest?

24 It is a separate report?

25 A I'm sorry. I -- I'm not---

Herb Hayden - Recross examination
By Mr. Limbaugh

1 Q what is---

2 A ---not following you.

3 Q Okay. You would agree with me that what is required to
4 be reported on the Statement -- required by statute to be
5 reported on the Statement of Economic Interest is a function
6 of the statute that says what's to be reported on a
7 Statement of Economic Interest, correct?

8 A Yes, sir.

9 Q Okay. So, if there's a separate statute that
10 specifically includes the requirement of reporting that
11 association between lobbyist's principals and a legislator
12 or a business with which he's -- he or she is associated,
13 that's where that requirement comes from?

14 Not from the Statement of Economic Interest, correct?

15 A Are you talking about the difference between the
16 requirements in Section 8-13-1110 and 8-13-1130?

17 Q Bingo.

18 A Correct.

19 Q Okay.

20 A These -- the lobbyist's principal -- the, the
21 requirement of filing is from 8-13-1130.

22 Q Right.

23 And the enforcement provision about which you and I
24 were talking before, that particular enforcement provision
25 relates to files a late statement or a re (sic) or a late

Herb Hayden - Recross examination
By Mr. Limbaugh

1 statement or report or fails to file a required statement or
2 report must be assessed a civil penalty, and it goes through
3 the civil penalties and then progresses to the potential for
4 criminal --

5 A Correct.

6 Q -- penalties?

7 A Correct.

8 Q Okay. So, if a -- even a -- I understand that the
9 current online Statement of Economic Interest, in fact,
10 includes what I think we've agreed is actually information
11 that's not required on a Statement of Economic Interest, but
12 is required under section 1130 for convenience sake or
13 whatever?

14 A Uh-huh. (Affirmative).

15 Q Is that correct?

16 Would you agree with that?

17 Let me, let me back up. Maybe, maybe I can -- okay. I
18 know -- this stuff is -- it can be---

19 A Are you saying that that -- the requirements of 1130
20 are not required to be filed on the Statement of Economic
21 Interest?

22 Q That's, that's a sort of, but let me, let me, let me --
23 let's me try it a different way. We've already agreed, I
24 believe, that what is required on the Statement of Economic
25 Interest is a, is entirely a function of statute, and it's

Herb Hayden - Recross examination
By Mr. Limbaugh

1 whatever the statute says.

2 A Correct.

3 Q We've agreed with that?

4 A Yes, sir.

5 Q We have also agreed that the information that is
6 required to be reported under Section 1130---

7 A Uh-huh. (Affirmative).

8 Q ---is -- stands on its own. It's not what's
9 required -- in, included in what's required to be reported
10 on the Statement of Economic Interest?

11 A Well, if, if -- the language says in addition to the
12 requirements of, of 8-13-1110, but the, the, the statute
13 also provides that the Commission is responsible for
14 creating a form for the information to be filed.

15 Q I---

16 A And the---

17 Q Yes, but the Commission---

18 A In creating that form, the Commission included the
19 requirement of 1130 on the Statement of Economic Interest.

20 Q I agree that they did that, but you have, I think,
21 already agreed with me that the Commission doesn't have the
22 authority to require information to be reported on a
23 Statement of Economic Interest beyond what the statute
24 requires to be reported?

25 A Well, all I -- no, I would -- in, in that -- I'm sorry.

Herb Hayden - Recross examination
By Mr. Limbaugh

1 In that context, no, I would disagree with that because the
2 statute provides that the Commission creates the form, and
3 establishes what is to be required to be filed on the form.

4 Q You sure about that?

5 A Yes, sir.

6 Q You sure that the Commission gets to re -- to decide
7 what goes on the form?

8 Not the Legislature?

9 A On the form?

10 Q Yeah.

11 A No, sir.

12 Q No, sir, what?

13 What are you disagreeing with?

14 A That -- it's the Commission's responsibility to, to
15 create the form, and to approve everything that goes on this
16 form.

17 Q Yeah.

18 The, the Statement of Economic Interest is a, is a
19 vehicle by which information is required to be reported by
20 statute is collected and retained, correct?

21 A Correct.

22 Q Okay. It is not a vehicle by which the State Ethics
23 Commission decides what filers have to disclose, is it?

24 A The -- obviously the State Ethics Commission doesn't---

25 Q Make---

Herb Hayden - Recross examination
By Mr. Limbaugh

1 A ---can't change the statute.

2 Q Doesn't make the law, right?

3 A No. No.

4 Q Okay.

5 A But one of the, one of the responsibilities of the
6 State Ethics Commission, as prescribed in the statute, is to
7 create the form and to ensure that the information that is
8 required by statute is reported on that, on that form.

9 Q The information required by statute to be reported on
10 the Statement of Economic Interest, you, you couldn't -- you
11 couldn't just -- the, the Ethics Commission couldn't just
12 decide on its own to include any other category of
13 information be, beyond what the statute says is suppose to
14 be on the Statement of Economic Interest, correct?

15 A Well, the, the Commission's responsibilities are to
16 determine what form the, the required information is to be
17 filed on. There is no -- there is no separate form for
18 information required in 8-13-1130.

19 Q That is correct, and, in fact, maybe it's in the wrong
20 statute. Bear with me one second.

21 In fact, 8-13-1130 says, I'm not gonna read the whole
22 thing, but in addition to the Statement of Economic Interest
23 required pursuant to Section 8-13-1110, et cetera --

24 A Yes, sir.

25 Q -- so by the very terms of 1130, that -- whatever

Herb Hayden - Recross examination
By Mr. Limbaugh

1 reporting requirement is contained in that Code Section, and
2 we, we agree that it's the one that relates to reporting
3 business associations with lobbyist's principals --

4 A Uh-huh. (Affirmative).

5 Q -- by its very terms, it says, in addition to the
6 Statement of Economic Interest, that pretty clearly
7 suggests, does it not, that it's not in the Statement of
8 Economic Interest?

9 A Well, certainly I don't think you can, you can
10 interpret it that way, but the regulations that governed the
11 establishment of, of the forms provides for the State Ethics
12 Commission to create the, the form and to provide the
13 inform -- the, the space on the form, if you will, to file
14 the, the necessary information, and the regs provide that,
15 that no form may be substituted for any form that is
16 developed and created by the State Ethics Commission. And
17 the State Ethics Commission, when the Statement of Economic
18 Interest was, was created, the new one, for -- and, and
19 after the 1991 act, created the, the Statement of Economic
20 Interest to include the language, I'm sorry, the requirement
21 provided in the language of 8-13-1130.

22 Q No, sir, but I'm -- that's all I've got. Thank you.

23 THE COURT: Okay. Anything further, Mr. Griffin?

24 MR. GRIFFIN: No, Your Honor.

25 THE COURT: Any objection to Mr. Hayden being excused?

1 MR. GRIFFIN: None from us.

2 THE COURT: You're excused, sir. Thank you for being
3 here.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 Are we okay, ladies and gentlemen?

7 Can we go ahead and put our next witness up?

8 MR. LLOYD: Your Honor, could we approach real quick?

9 THE COURT: Sure.

10 You want to take a short break, ladies and gentlemen?

11 Yes, you do?

12 THE JUROR: Yes.

13 THE COURT: Do not discuss this case. Wouldn't be
14 appropriate to do so. Please leave your notes in your
15 seats. We'll be back with you shortly. Thank you.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Y'all need to speak with me or --?

19 MR. LIMBAUGH: Well, I---

20 MR. LLOYD: We certainly don't need to approach at this
21 point in time.

22 THE COURT: What's up?

23 MR. LLOYD: I just need, I just need to preserve for
24 the record, Your Honor, understand what we discussed this
25 morning, but everything we just went on with -- between the

1 direct and cross is what I was talking about in chambers
2 this morning.

3 Mr. Hayden was giving legal opinions that were clearly
4 outside of just his realm of knowledge without notice to us
5 to, number one, know that he was gonna testify as to
6 opinions, and, number two, decide whether or not we wanted
7 to counter that with our own expert testimony. A lot of
8 matters had to be get -- gotten into, I understand that,
9 based on some of the statements during the direct. We had
10 to deal with those on cross.

11 But, Your Honor, I think his testimony is just way
12 beyond just facts, and it, it clearly got into his
13 interpretations of what the Ethics Commission can do and not
14 do pursuant to regulations, which are issues we discussed
15 earlier.

16 THE COURT: Mr. Griffin.

17 MR. GRIFFIN: Your Honor cautioned defense counsel
18 about the scope of their questioning on cross-examination.
19 Defense counsel's the one that went into statutory analysis
20 with Mr. Hayden on the stand saying the form can't require
21 more than the statute, and then Mr. Hayden responded to the
22 questions on direct. I mean they objected to me asking a
23 question that I was just gonna -- I was trying to elicit who
24 is required to file, you know, you know, who, who qualifies
25 as a person who's associated with a business.

1 I was not -- and that's really not very controversial,
2 but I stopped. That's the only required question that I
3 asked. The defense is the one that opened the door for
4 this, and they could of stopped anytime---

5 MR. LLOYD: Your Honor?

6 MR. GRIFFIN: ---and could of asked the Court to
7 instruct the witness not to give those opinions.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. GRIFFIN: But they -- he was asking for those
10 opinions.

11 THE COURT: Our concern, again, was we talked about it.
12 We, in chambers, when we decided not to do the proffer, but,
13 instead, just to allow him to testify was that his position
14 as director that he could testify as to the forms, what was
15 to be filled out, and then we were gonna allow you,
16 obviously, on cross to ask we -- I do think, Mr. Limbaugh,
17 you went into some extent and was inviting him to comment
18 because you were trying to get him to say that this statute
19 doesn't require the dollar amount. I mean obviously that's
20 what you were trying to get him to say, and he, of course,
21 wouldn't quite go there.

22 But I think, at some point, he did agree with you on a
23 good bit of what you were trying to do, which might of been
24 to the point it was a legal opinion. But I still think, you
25 know, his role as the director, I think in -- I think he's

1 fine. I think he was within his purview, and---
2 MR. GRIFFIN: Thank you.
3 MR. LLOYD: Your Honor, I just---
4 THE COURT: It is what it was. I don't know what it
5 is.
6 MR. GRIFFIN: And the---
7 MR. LLOYD: And I just wanted to make sure that---
8 THE COURT: You preserved it for the record.
9 MR. LLOYD: ---we preserved it and---
10 THE COURT: Absolutely.
11 MR. LLOYD: Your Honor, I just want to raise now the,
12 the -- if we could, during the break, probably lunch break,
13 take a thought about whether we want to request some sort of
14 curative instruction or instruction related to that. We may
15 not.
16 THE COURT: Okay.
17 MR. LLOYD: But limitation.
18 THE COURT: Absolutely. You've raised it. I'll
19 certainly consider it.
20 MR. LLOYD: Thank you.
21 THE COURT: Absolutely I'll consider it.
22 Okay. Do y'all -- let's take about five quick minutes.
23 I see Representative Pitts back there, and I'm sure he wants
24 to get up and get back home if he possibly can.
25 So, five minutes.

1 Is that fine?
2 SOLICITOR PASCOE: That's great.
3 THE COURT: And then you're gonna put Representative
4 Pitts up and then---
5 SOLICITOR PASCOE: We rest.
6 THE COURT: ---the States's gonna rest, correct?
7 SOLICITOR PASCOE: We have some documents.
8 What were we gonna do, Jim?
9 MR. GRIFFIN: Yeah, Your Honor. We, we have some---
10 SOLICITOR PASCOE: Do that now?
11 MR. GRIFFIN: ---certified public record documents.
12 This is the -- we'll let Baker explain.
13 THE COURT: Can y'all agree to them then?
14 SOLICITOR ALLEN: We'll try.
15 MR. LLOYD: I don't know.
16 THE COURT: Okay. Well, how about this?
17 I'm gonna step down for five minutes. Why don't you
18 show him what it is first, and then, if you two can agree to
19 it, that's fine.
20 MR. GRIFFIN: Yes, ma'am.
21 THE COURT: Or, if not, I'll come right back, and I can
22 rule on it.
23 Okay. But obviously you need to let Mr. Lloyd or
24 Mr. Limbaugh take a look at it.
25 MR. GRIFFIN: Okay.

1 SOLICITOR ALLEN: House Journals.
2 THE COURT: House Journals.
3 Okay. I'm gonna take five minutes. I'm gonna let Pam
4 take five minutes if that's okay with everybody.
5 MR. LLOYD: Can we do ten?
6 I'm not sure we---
7 SOLICITOR PASCOE: All right. You don't know.
8 MR. LLOYD: I'm not sure what that is.
9 THE COURT: All right. Let's take ten minutes. I just
10 want to make sure we get all the testimony in before lunch.
11 (WHEREUPON, a short recess was taken at this time.)
12 THE COURT: All right. Is everyone ready to go?
13 SOLICITOR PASCOE: Yes, Your Honor.
14 THE COURT: Let's bring the jury in, sir.
15 THE BAILIFF: Yes, Your Honor.
16 THE COURT: Thank you.
17 (WHEREUPON, the following takes place within the
18 presence of the jury.)
19 THE BAILIFF: The jury's seated, Your Honor.
20 THE COURT: Thank you, sir.
21 Welcome back, ladies and gentlemen.
22 If you would call your next witness, sir.
23 SOLICITOR PASCOE: Thank you.
24 Representative Mike Pitts.
25 THE COURT: Come on forward, Representative Pitts.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 (Witness complies.)

2 THE CLERK: If you would please, Mr. Pitts, place your
3 left-hand on the Bible. Raise your right-hand.

4 MIKE PITTS, being first duly
5 sworn, testified as follows:

6 THE CLERK: Please state your full name.

7 THE BAILIFF: State your name.

8 THE WITNESS: Thank you.

9 THE BAILIFF: State your full name.

10 SOLICITOR PASCOE: I can do it.

11 DIRECT EXAMINATION

12 BY SOLICITOR PASCOE:

13 Q Good morning, Chairman Pitts.

14 A How are you, sir?

15 Q Could you state your full name for the record, sir?

16 A It's Michael A. Pitts. Most people call me Mike.

17 Q And I'll call you Chairman.

18 All right. All right. Mr. Chairman, it's publically
19 known you had a health scare this week?

20 A Yes, sir, I did.

21 Q And I appreciate you -- but you were still able to get
22 here today, and I appreciate it. So, thank you.

23 Also, just want to point this out so I don't get
24 admonished by the Judge, that you have asked me to speak
25 very loudly this morning.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 A Yes, sir, the medications that they put me on, they're
2 causing a severe ringing in my ears, and I'm already close
3 to deaf to begin with. So, if -- when I'm -- when questions
4 are directed, if you would yell at me, it would probably be
5 good.

6 Q I will do that, yes, sir, and you let me know if you
7 don't, if you don't understand or hear what I'm saying.
8 Okay?

9 A Yes, sir.

10 Q Okay. Sir, Mr. Chairman, you are currently in the
11 South Carolina House of Representatives?

12 A That's correct.

13 Q Prior to being -- where do you reside?

14 A Pardon?

15 Q Where do you live?

16 A I live in Laurens County, South Carolina.

17 Q Okay. And prior to being elected and serving in the
18 State House, what did you do?

19 A I was -- well, just prior to being elected, I was
20 coaching college baseball. I did that post-retirement from
21 the police department, the Greenville City Police
22 Department.

23 Q And how long were you with the -- in law enforcement?

24 A I was in -- well, I was in law enforcement from 1977
25 until 1996 as a civilian law enforcement officer. I served

Mike Pitts - Direct examination
By Solicitor Pascoe

1 as a military police officer prior to that.

2 Q Yes, sir.

3 which, which branch?

4 A Army.

5 Q And why did you retire from law enforcement?

6 A I fractured C5, 6, and 7 vertebra in my neck.

7 Q And, Chairman, when were you first elected to the House
8 of Representatives?

9 A In 2002.

10 Q So, you've been there 16 years now?

11 A Yes, sir.

12 Q Okay. And what district do you represent?

13 A I represent District 14, which consists of parts of
14 Laurens and Greenwood Counties.

15 Q What positions and committees do you currently sit on?

16 A I serve as the Chairman of the Budget Committee that
17 does all law enforcement for the House -- for the state, for
18 State Law Enforcement, the State Correctional Systems, and
19 the State Judiciary. And I also serve as Chairman of
20 Ethics.

21 Q Okay. Chairman of the House Ethics Committee---

22 A Yes.

23 Q ---now?

24 A Yes, sir, that's correct.

25 Q And, very briefly, where does the Legislature convene?

Mike Pitts - Direct examination
By Solicitor Pascoe

- 1 where do y'all do your work?
- 2 A In -- at the State Capital here in Columbia.
- 3 Q Are y'all in session right now?
- 4 A No, sir, we're not.
- 5 Q Do most legislators have other full-time jobs?
- 6 A Yes, sir, they do.
- 7 Q And are legislators public officials, sir?
- 8 A Yes, sir, they are or we are.
- 9 Q Okay. And are -- and your duties are prescribed in the
- 10 Constitution and the South Carolina Ethics Act?
- 11 A Yes, sir, Constitution, the Code of Laws, and primarily
- 12 the Ethics Act.
- 13 Q And you're elected to single districts, correct?
- 14 A That's correct.
- 15 Q What is the South Carolina Ethics Act?
- 16 A South Carolina Ethics Act is the act put in place in
- 17 1992 that governs the ethics of the State General Assembly,
- 18 and any other elected public officials, and however many
- 19 appointed officials.
- 20 Q And, just for clarification, when you say General
- 21 Assembly, that's the House and the Senate?
- 22 A Yes, sir.
- 23 Q Okay. How long have you been Chairman of the House
- 24 Ethics Committee?
- 25 A Since December of 2017, or correction, 2016.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 Q Okay. How long have you been on the House Ethics
2 Committee as a member?

3 A Fifteen years.

4 Q And what -- and who makes up the House Ethics
5 Committee, and, and explain to the jury exactly what it is,
6 what the House Ethics Committee is?

7 A The House Ethics Committee is the committee that is
8 elected by the House at large during organizational session.
9 It is the committee that oversees the House's adherence or
10 the members of the House and their adherence to the ethics
11 laws. It is made up of five Democrats and five Republicans
12 so that it is equally balanced, and no partisan issues can
13 come into play.

14 Q Who is ultimately responsible to know the ethics laws
15 in the House?

16 A Individual legislators are.

17 Q Do you know the Defendant, Jim Harrison?

18 A Yes, sir, I do.

19 Q And how do you know the Defendant, Jim Harrison?

20 A Jim was serving the House when I entered the House of
21 Representatives in 2002.

22 Q And did you consider him a friend?

23 A Yes, sir, I do.

24 Q Okay. Do you have any animosity towards him
25 whatsoever?

Mike Pitts - Direct examination
By Solicitor Pascoe

1 A No, sir, I don't.

2 Q And if you got to the House in December of 2002 and he
3 left in December 2012, that means y'all served ten years
4 together?

5 A That's correct.

6 Q And were the two of you in the same caucus?

7 A Yes, sir.

8 Q What caucus, what caucus is that?

9 A We're both in the Republican Caucus.

10 Q In the ten years you worked with your friend, Jim
11 Harrison, in the House, were you ever aware that he was
12 employed at Richard Quinn & Associates?

13 A No, sir, I was not.

14 Q What did you think his full-time employment was when he
15 was in the House with you?

16 A An attorney.

17 Q Okay. What -- would it surprise you to learn the
18 Defendant made \$84,000 a year at Richard Quinn & Associates?

19 A Yes, sir, it would.

20 Q What position did the Defendant, Jim Harrison, hold
21 when he was in the House?

22 A He was -- while I -- while we served together, he was
23 Chairman of the Judiciary Committee.

24 Q And explain to the jury just how important a position
25 Chairman of Judiciary Committee is.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 A Well, as legislators or as representatives in the House
2 or senators in the Senate, one of your constitutional duties
3 is to make the law, and the Judiciary Committee Chairman
4 sets the agenda for what bills comes before the Judiciary
5 Committee. So, he can determine or she can determine
6 exactly which bills get heard, and which bills do not get
7 heard.

8 Q Were you or are -- were you familiar with Richard Quinn
9 & Associates?

10 A Yes, sir, I am.

11 Q Were you ever aware that Richard Quinn & Associates had
12 lobbyist's principals that were clients?

13 A No, I was not.

14 Q Did you know Representative Rick Quinn?

15 A Yes, sir, I do.

16 Q Was he a friend of yours or someone you hung out with?

17 A He was an associate, but not a -- I wouldn't consider
18 him a friend.

19 Q Did you know his father, Richard Quinn, Senior?

20 A Pardon?

21 Q Did you know his father, Richard Quinn, Senior?

22 A Yes, sir, I did. I met Richard Quinn, Senior when I
23 was running for office the original -- in my original
24 campaign. RQ&A ran my original campaign, and a young man by
25 the name of Mark Plowden was the one that actually was the

Mike Pitts - Direct examination
By Solicitor Pascoe

1 hands-on director of my campaign.

2 Q Tell me something I, I don't even remember, and that
3 would of been back in 2002?

4 A In 2000 -- during the election cycle of 2002, correct.

5 Q And did Jim Harrison work on your campaign at all?

6 A No, sir, I wasn't aware that he was associated with
7 RQ&A at that time.

8 SOLICITOR PASCOE: I'm going to show him the
9 December 16th letter.

10 I'm gonna show you what's marked as State's Exhibit 8,
11 and I'll let you keep that.

12 Do you recognize that, sir?

13 A Yes, sir, I do.

14 Q And is, is that a letter that the House Ethics
15 Committee retrieved for our office some time this summer?

16 A Pardon?

17 Q Is that a letter that the House Ethics Committee, under
18 your leadership, retrieved for me this summer, some time
19 this summer?

20 A Yes, sir, it is.

21 Q A letter addressed to you from the Defendant, Jim
22 Harrison?

23 A That's correct.

24 Q I would ask that State's Exhibit -- was it, eight, I'm
25 sorry, 8 be admitted into evidence.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 MR. LLOYD: 8-B?

2 SOLICITOR PASCOE: No, I'm sorry.

3 What is it?

4 THE COURT: You said 8 before.

5 SOLICITOR PASCOE: Eight. State's Exhibit---

6 THE COURT: Right. You said 8.

7 SOLICITOR PASCOE: Be -- 8 be admitted into evidence.

8 MR. LLOYD: No objection.

9 SOLICITOR PASCOE: Okay.

10 MR. LLOYD: Can we just verify that's what it is?

11 SOLICITOR PASCOE: Sure.

12 Here you go, Mr. Chairman. Thank you.

13 MR. LIMBAUGH: As opposed to 8 Alpha.

14 MR. LLOYD: Without objection, Your Honor.

15 THE COURT: Thank you. It's in evidence.

16 (WHEREUPON, State's Exhibit No. 8 was received into
17 evidence at this time.)

18 Q This letter, which is State's Exhibit 8, is addressed
19 on December 19th, 2016, to you, correct?

20 A Yes, sir.

21 Q And I tell you, I have an extra copy. So, I'll let you
22 keep State's Exhibit 9 while I'll keep the copy.

23 But when was the first time you ever saw that letter?

24 A The first time I ever saw the letter?

25 Q Yes, sir.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 A When my chief legal staff, Jane Shuler, showed it to me
2 and made me aware that she had found it in our office.

3 Q And that was this summer, sir?

4 A Yes, sir, it was.

5 Q Okay. Had -- was the letter lost for some time at
6 House Ethics?

7 A Yes, sir, it was. The letter, as you see, has a date
8 that it was received on it.

9 Q Uh-huh. (Affirmative).

10 A But it was placed in a file by, I think, the
11 legislative assistant in our office.

12 Q Had you received this letter -- had you received it on
13 December the 19th, 2016, what would you have done with it?

14 A Had I received this particular letter --

15 Q Yes, sir.

16 A -- at that point in time?

17 I would of had to had given it my chief of staff, which
18 is Jane Shuler, and asked her to research it compared with
19 the, with the Ethics Act. I'm not an attorney. I have to
20 depend on my attorneys to do that, and then it would of been
21 presented back to the full committee to determine what to do
22 with it.

23 Q And who ultimately would of gotten this letter?

24 A The -- who -- it would of ultimately landed in the
25 hands of the Attorney General.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 Q Or myself?

2 A Or yourself.

3 Q And why is that?

4 A Because, in this letter, it states that -- let me. I
5 was an employed contact consultant at RQ&A. Therefore, it
6 was a business with which I was associated during some or
7 all of the period RQ&A performed services for several
8 business entities whom I believe were registered as
9 lobbyist's principals. By statement or, or by what's in
10 this letter, it would be in direct conflict with the Ethics
11 Act.

12 Q In direct conflict.

13 Did you know, in December of 2016, that Jim Harrison
14 had been employed at Richard Quinn & Associates?

15 A No, sir.

16 Q Tell the jury briefly what a Statement of Economic
17 Interest is.

18 A A Statement of Economic Interest is a statement, a form
19 that each legislator must fill out, and send in
20 electronically now to the State Ethics Commission. And it
21 declares any income that we have as legislators from
22 governmental entities or any associates that are lobbyist's
23 principals.

24 Q And how often do you file it, sir?

25 A Yearly.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 Q And how important is transparency with legislators?

2 A It's extremely important from my prospective because
3 transparency is how the public views our integrity. They
4 want lights shined on us so they know what we're doing, and
5 how we are spending the State's money to, to a great degree.
6 That's part of the transparency issue as well.

7 Q And to see whether you have a conflict of interest or
8 not?

9 A That's correct. They want to know who is influencing
10 what we do and how we vote.

11 Q I'm sorry. I'm gonna write that down.

12 And who, ultimately, is responsible to file an accurate
13 and complete report so the people can know who influences
14 you and why you vote a certain way?

15 A Each individual legislator's responsible for their own
16 SEI, which is the responsibility of their own actions.

17 Q And how well have you known, personally, since 2003,
18 when you first got in the House, that you were suppose to
19 report lobbyist's principals that you may have a business
20 association with?

21 A From day one.

22 Q And how come you've known since day one?

23 A Because we were briefed in organizational session on
24 the ethics law, and what we could and could not do. It was
25 a lot to comprehend for a freshman legislator because

Mike Pitts - Direct examination
By Solicitor Pascoe

1 they're -- there's an entire initiation to being a member of
2 the House in a two day time period. But the, the basic
3 thrust of or the basic idea of, of the Ethics Act, of filing
4 the SEI and quarterly reporting, is, is extenuated at that
5 point.

6 Q And have there also been Advisory Opinions that House
7 members read?

8 A Yes, sir.

9 Q And I want to show you what's been marked as State's
10 Exhibits 11 and 12.

11 Do you recognize those?

12 A Yes, sir, I do. They are in the ethics -- the, the
13 advisory opinion booklet that each legislator has. Although
14 this particular one would of been before my time in service.

15 Q Yes, sir, cause one of those is from 1992. One of
16 those opinions, yes, sir.

17 A Yes, sir.

18 Q Okay. And the other opinion is from 1999---

19 A 1999.

20 Q ---April?

21 And, finally, Mr. Chairman, just one more area.

22 Are, are there a number of ways that a legislator, a
23 legislator can affect legislation, legislation or decisions
24 or public business in the State House?

25 A Yes, sir, there would be.

Mike Pitts - Direct examination
By Solicitor Pascoe

1 Q Such as -- give, give me an example of a way a
2 legislator can, can affect a legislation decision.

3 A Well, the legislative process operates off of personal
4 relationships just like any other entity does. Well, for
5 instance, military background, I'll follow my leaders. I'll
6 follow my NCOs and my officers, and, to a lesser degree, the
7 same thing happens in the General Assembly. People look up
8 to leadership. People follow leadership.

9 So, if there's a difference in viewpoint of who
10 actually sponsors legislation and who doesn't, my example of
11 that would be I'm very active in, in the outdoor arena,
12 hunting, fishing, and have worked on issues nationwide. So,
13 if I file a bill in the General Assembly based on wildlife
14 or natural resource issues, most people pay attention to it,
15 and will listen to it.

16 So, I can have an effect simply because of the trust
17 and respect that folks have when I put my name on a bill or
18 I sponsor it. Also, when I testify or, or speak on that
19 particular bill, people tend to listen a lot more now than
20 they did when I was a freshman.

21 Q Yes, sir. Yes, sir.

22 And, of course, the obvious way a legislator can effect
23 a legislative decision is just vote for it himself, correct?

24 A That's correct. If it's, if it's a bill that would
25 personally benefit me, I'm suppose to recuse myself from

Mike Pitts - Direct examination
By Solicitor Pascoe

1 that bill to begin with.

2 Q What were some of the -- you said you're big about
3 outdoors?

4 A Yes, sir.

5 Q You're big when it comes to gun rights?

6 A That's correct.

7 Q Correct?

8 If, if you ever took money from the NRA or worked for a
9 company that took money from the NRA, the National Rifle
10 Association --

11 A Yes, sir, I took a campaign donation.

12 Q Oh. Go ahead. I'll let you finish.

13 A A campaign donation 16 years -- 14 years ago.

14 Q And I need to clarify my question. Not campaign
15 donations.

16 But if you worked for a company, okay, and that company
17 took money from the NRA to advocate gun rights, and you knew
18 that --

19 A No, sir.

20 Q -- you're gonna go to the Legislature and vote for NRA
21 bills?

22 A No, sir, I couldn't vote for the bill not if I'm gonna
23 personally benefit from it financially.

24 Q And, finally, when you were talking about those leaders
25 and that they can have influence over other legislators,

Mike Pitts - Direct examination
By Solicitor Pascoe

1 from 2002 to 2012, was Jim Harrison a leader in the
2 Legislature?

3 A Yes, sir, Jim Harrison was a strong leader in the
4 Legislature. He actually ran for Speaker of the House when
5 I first got to the General Assembly.

6 Q And he almost won, correct?

7 A Yes, sir.

8 SOLICITOR PASCOE: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 SOLICITOR PASCOE: Judge, I've got to put this back
11 before I lose it.

12 THE COURT: Thank you.

13 THE WITNESS: Could I get some water?

14 THE COURT: Of course.

15 SOLICITOR PASCOE: Yes.

16 THE COURT: Please.

17 Q That's all I have, Chairman Pitts. Please answer any
18 questions that defense counsel has for you.

19 THE WITNESS: Thank you sir.

20 THE BAILIFF: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. LLOYD:

23 Q Good morning, Mr. Chairman.

24 A How are you, sir?

25 Q Doing well. I'm glad you're doing well. We're gonna

Mike Pitts - Cross-examination
By Mr. Lloyd

1 try to get you out of here real soon. I promise.

2 First of all, let me ask you, Mr. Chairman. You've,
3 you've covered with Mr. Pascoe what the Ethics Committee
4 does in the House of Representatives.

5 Let me ask you, if you would, just tell the jury, do
6 members -- I know you've talked about advisory opinions.

7 Do members come to the House Ethics Committee to get
8 your input or your opinion about how members should comply
9 with ethics laws?

10 A Yes, sir, they go to staff. They are directed to go to
11 staff, and the reason for that is that, if they come to me,
12 then I could not hear a case if they were involved in it,
13 and I, as chair of ethics, I would have to recuse myself.

14 Q And among your staff is -- there's, there's -- I know
15 you talked about Ms. Shuler.

16 She's your chief of staff?

17 A That's correct.

18 Q And she's also a lawyer?

19 A That's correct.

20 Q And I understand you might be adding staff right now.
21 You're adding more lawyers -- another lawyer at least.

22 Is that correct?

23 A Yes, sir, from the time that I became Chairman
24 following Chairman Kenny Bingham's departure from the House,
25 we have actually increased staff to two attorneys as opposed

Mike Pitts - Cross-examination
By Mr. Lloyd

1 to one. We've also now got two law clerks where we once had
2 none, and we also have a legislative assistant who basically
3 operates as a secretary for the committee.

4 Q And, Mr. Chairman, one of the reasons you have that
5 staff is because the statutes that govern ethics
6 requirements for both legislators and other elected
7 officials can be kind of complicated.

8 Isn't that correct?

9 A All law can be complicated.

10 Q And particularly when you add more lawyers, right?

11 A Yes, sir.

12 Q Is it true that they're not a whole lot of individual
13 lawyers even who are familiar with the State Ethics Act?

14 Isn't that fair to say?

15 A I would say that, in the black and white technicality
16 of the law in depth, you would be right. But the general
17 gist of the ethics law, each individual member of the House
18 should know.

19 Q Sure. I'm not disputing that, that issue. But like
20 with a lot of laws, you can read the statute, but they're
21 sometimes Court opinions or other opinions that bear on what
22 that particular statute means.

23 Is that fair to say?

24 A There are. There are clarifications to most every law
25 written in the codes.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Q And since you've been on House Ethics, and even as
2 Chairman of House Ethics, you've made an effort to have
3 House Ethics sort of clarify instructions for filling out
4 Statements of Economic Interest or other disclosure
5 requirements about -- for members.

6 Is that correct?

7 A Yes, sir, that's correct. That was started under
8 Chairman Bingham and continued by myself, and that was the
9 need for the increase in staff is to make sure that people
10 100 percent knew what they were suppose to do. All they
11 have to do is ask us.

12 Q And you and Chairman Bingham saw a need, based on not
13 only your knowledge of the Ethics Act and the requirements
14 of the House Ethics Committee, but on members coming to
15 you -- the committee asking questions, you saw a need to try
16 to further clarify what it re -- what kind of filing of
17 disclosure requirements there are for those members.

18 Is that fair?

19 A That is correct.

20 Q Now, you talked about the 2016 letter from Mr. Harrison
21 that was found this summer. I'm not sure if you still have
22 it.

23 A I do.

24 Q You don't dispute that that letter was sent in December
25 of 2016, do you?

Mike Pitts - Cross-examination
By Mr. Lloyd

1 A Pardon?

2 Q You don't dispute the fact that that letter was sent to
3 your office in December of 2016?

4 A No, sir, I, I don't know when it was sent.

5 Q It was---

6 A But I don't dispute that.

7 Q But it was stamped received in December of 2016?

8 A That's correct.

9 Q And it was just a clerical error, as far as you know,
10 as to why it was misfiled.

11 Is that correct?

12 A I don't know that it was actually misfiled. You
13 brought up a very valid point, sir, of where we've gone from
14 where we began with staff. And when this letter was
15 received, my personal interpretation is Jane Shuler was our
16 staff. She was our only staff, and she was extremely
17 overwhelmed with all that, that ethics was requiring at that
18 time.

19 Q I'm in a hundred percent agreement, and I'm not, I'm
20 not casting any aspersions on anything staff wise. It
21 just -- I wanted to get to the point that Mr. Harrison, as
22 far as you know, sent that letter, and received by your
23 office, and then he had nothing else to do with the fact
24 that it may of been misplaced or misfiled or anything like
25 that.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Is that correct?

2 A As far as I know.

3 Q Now, in your service on the House Ethics Committee, are
4 you aware of any -- well, first, let me back up.

5 The House Ethics Committee has the power to discipline
6 members or sanction members if they fail to comply with
7 ethics requirements.

8 Is that correct?

9 A We are in certain instances. If it is a criminal act,
10 by law, we are suppose to send it on to the Attorney
11 General's Office.

12 Q Sure, and we'll get to that in a moment, but just in
13 terms of a late filing or somebody forgets to file a
14 required document, the, the House Ethics Committee has not
15 only jurisdiction over that, but then they could punish a
16 member or sanction a member for that.

17 Is that correct?

18 A We can and we have.

19 Q And I know earlier we talked about the fact that, in
20 the last couple of years, some jurisdictional issues have
21 changed as far as the House and Senate Ethics Committee
22 versus the State Ethics Committee.

23 Is that right?

24 A That's correct. Some, some jurisdictional issues and
25 some procedure has changed. I'm -- I think I'm correct in

Mike Pitts - Cross-examination
By Mr. Lloyd

1 that it -- that went fully into effect in April of this
2 year.

3 Q And for our purposes here today, we don't have to worry
4 about that because, during the time Mr. Harrison served, he
5 would of been under the full jurisdiction of the House
6 Ethics Committee.

7 Is that right?

8 A That's correct.

9 Q During your time on the committee as either a member or
10 as Chairman of the committee -- and I'll just include that.
11 I think that was -- you began Chairman after Mr. Harrison's
12 service.

13 Is that right?

14 A Pardon now?

15 Q You became Chairman of House Ethics after Mr. Harrison
16 left the House?

17 A Yes, sir.

18 Q Right?

19 A I did.

20 Q But during your time as a member of House Ethics
21 Committee, are you aware of any discipline or sanctions that
22 the Committee imposed on Mr. Harrison?

23 A No, I am not.

24 Q Now, earlier Mr. Pascoe asked you about whether you
25 were aware that Mr. Harrison worked at R -- Richard Quinn &

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Associates.

2 Do you recall that?

3 A Yes, sir, I do.

4 Q Is it safe to say though -- they're 124 members in the
5 House, right?

6 A That's correct.

7 Q You-all know each other. A lot of you are close
8 friends, just friendly with others, but it's fair to say
9 that relationship runs the whole gamut with all 120 -- of
10 the 123 other members.

11 Is that right?

12 A Yes, sir, I've got some that I consider brothers or
13 sisters, and I've got some that I just might not like.

14 Q You're not gonna get any argument from anybody in here.

15 Is it unusual that you wouldn't know the occupation or
16 business relationships of every other member of the House of
17 Representatives?

18 A Yes, sir, their, their, their occupation I might not
19 know until I got to know them well. It's -- this coming --
20 this years incoming freshman class, it will take me a while
21 to learn those guys.

22 Q And a lot of members, even members that you've served
23 with for a long time, they have a primary occupation, and
24 then they have side businesses or other jobs.

25 Is that correct?

Mike Pitts - Cross-examination
By Mr. Lloyd

1 A That's correct.

2 Q Now, Mr. Chairman, a moment ago, I'm not sure if you
3 still have it up there, Mr. Pascoe asked you about the 1999
4 Ethics Opinion that was issued by House Ethics.

5 Do you have that?

6 A I do. It's not real clear, but I have it.

7 Q And when you say it's not real clear, is the copy not
8 as --?

9 A Yes, sir.

10 Q -- distinct?

11 Okay.

12 A Yes, sir, I did not mean that the opinion was not
13 clear, but the copy is not clear.

14 Q And have you had a chance to review that opinion?

15 A Yes, sir.

16 Q And, essentially, that opinion says that it is
17 perfectly legal for a member to work for an entity that, as
18 a business, that has clients which are lobbyist's
19 principals?

20 Is that fair to say?

21 A Yes, it is.

22 Q And as you sit here today, you're not aware of
23 anything, either from -- under the Ethics Act or opinions by
24 the House Ethics Committee that would dispute that opinion,
25 are you?

Mike Pitts - Cross-examination
By Mr. Lloyd

1 A No, sir, the only other part of that is that you are
2 required to report if you are receiving that.

3 Q Well, we'll get into that in a moment, but earlier you
4 said, in response to Mr. Pascoe, that had you received Mr.
5 Harrison's December, 2016 letter, you would have given it to
6 Jane Shuler to research. Eventually it would of been given
7 to the full committee, and then, ultimately, it would of
8 gone to the Attorney General.

9 Do you require -- do you recall that testimony?

10 A Yes, sir, I, I said that's what I believe would happen.

11 Q And you said it would go to the Attorney General
12 because that, that relationship between a member and a, an
13 employer or a business, which has lobbyist's principals
14 clients, is prohibited.

15 Do you recall that?

16 A What I said was it's prohibited if it's not reported I
17 think.

18 Q Okay. Well, we'll get into that in a moment.

19 So, you would agree with me that merely being an
20 employee of a business that has lobbyist's principal clients
21 is not prohibited by the law?

22 A That's correct.

23 Q And, in fact, they're members currently sitting in the
24 General Assembly who have consulting businesses, and, among
25 their clients, are lobbyist's principals.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Isn't that correct?

2 A Yes, sir, there are. They're far fewer now than there
3 were.

4 Q They're other members of the General Assembly sitting
5 there right now that work for or own public relations firms
6 that have lobbyist's principal clients.

7 Isn't that correct?

8 A Yes, sir.

9 Q And they're members sitting currently in, even the
10 House of Representatives, who provide consulting services
11 directly to lobbyist's principals.

12 Isn't that correct?

13 A Yes, sir.

14 Q And you're not aware of anything in the law, either the
15 Ethics Act or the House Ethics Opinions, that says that's
16 illegal?

17 A It says it's illegal for them to have that association?

18 Q Okay. Can you tell me if you -- off the top of your
19 head, if you can remember, where in the Ethics -- where in
20 the -- either the Ethics Act or---

21 MR. LIMBAUGH: He was asking.

22 MR. LLOYD: Oh, oh, I'm sorry.

23 MR. LIMBAUGH: You were---

24 Q Were you asking me a question?

25 A Yes, sir, I was.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Q Okay. Let me phrase the question. Members who either
2 work for companies that have lobbyist's principal clients or
3 who themselves have businesses that directly provide
4 consulting services to lobbyist's principals, that's a legal
5 business relationship.

6 Is that correct?

7 A That is a legal business.

8 Q All right.

9 A I was misunderstanding the term a legal or illegal.

10 Q Okay. I'm, I'm -- that was my fault, Mr. Chairman.
11 I'm sorry.

12 Staff always takes the blame, right?

13 Now, a little bit ago -- first of all, let me ask you
14 this, Mr. Chairman.

15 Prior to you showing up here today, have you had an
16 opportunity to discuss your testimony or this case with
17 Mr. Pascoe or anybody from the State?

18 A Have I had an opportunity to?

19 Q Yes, sir.

20 A Yes, sir.

21 Q And, and you, you did, in fact, discuss, not only your
22 testimony, but the fact that you were gonna be here, and
23 asked about certain subjects prior to today.

24 Is that correct?

25 A I was actually interviewed by Mr. Pascoe and a State

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Law Enforcement Division agent about the documents that
2 we're looking at, and my knowledge of those.

3 Q Okay. And there's nothing wrong with that. I don't
4 mean to suggest that.

5 A Yes, sir.

6 Q I was just asking that, prior to today, you had
7 discussed that material that's in front of you as exhibits
8 with the State.

9 Is that correct?

10 A That's correct.

11 Q And a little while ago Mr. Pascoe asked you how
12 legislators can affect legislative decisions.

13 Do you recall that testimony?

14 A Yes, sir, I do.

15 Q And you said they're a variety of ways that that can
16 happen.

17 Do you recall that?

18 A Yes, sir, I do.

19 Q In the times that you met with Mr. Pascoe prior to
20 today, did Mr. Pascoe ever show you particular specific
21 legislation, and say did Mr. Harrison ever come to you and
22 try to influence you on that legislation?

23 A No, sir, he did not.

24 Q As you sit here today, can you recall any legislation
25 that Mr. Hair -- that Mr. Harrison came to you and said

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Mr. Pitts, would you vote for or against this particular
2 bill?

3 A Do I recall Mr. Harrison asking me that?

4 Q Yes, sir.

5 A Yes, sir, I do.

6 Q Okay. Would you tell the jury exactly what that
7 legislation was?

8 A It was -- I remember Jim coming to me on the -- I'm --
9 he was very involved in the, the cigarette tax bill. He was
10 very involved in the school choice stuff, and I remember
11 talking with him about both.

12 Q Do you recall when that was?

13 A sir?

14 Q Do you recall when that was?

15 A No, sir, I just remember that I caught a lot of heat
16 during that particular period of time because of the
17 involvement of a millionaire out of New York, and I can't
18 remember his name.

19 Q Mr. Rich?

20 A Howard Rich.

21 Q Now, there, they're a number of -- let's say over the
22 last 15 years they've been a number of bills introduced to
23 raise the cigarette tax.

24 Is that right?

25 A That's correct.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Q Do you recall which bill it was that Mr. Harrison
2 talked to you about?

3 A No, sir, I do not.

4 Q Do you remember the year?

5 A Sir?

6 Q Do you remember the year?

7 A No, sir, I do not.

8 Q Do you remember and, and, likewise, there've been a
9 number of bills related to what we call as an umbrella topic
10 school choice.

11 Do you recall that?

12 A Yes, sir, there were a lot of school choice bills,
13 and---

14 Q Yeah.

15 A ---and a lot of -- many cigarette tax bills. One
16 particular legislator, now Senator, one particular House
17 member, now Senator, Rick Trice, he tried to do it through
18 legislation, and in the budget every year to raise the
19 cigarette tax. So, that was a constant thing, but there was
20 a period of time where there was a big push, and I always
21 remember Chairman Harrison. I also remember Chairman -- the
22 Chairman of LCI talking to me about the same issue during
23 that period of time.

24 Q And during that period of time, is it fair to say that,
25 when they talked to you, that that was the position of the

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Speaker of the House and the leadership of the House of
2 Representatives?

3 A I would say I -- that's when I paid attention to them
4 when they came to talk to me was their position.

5 Q But you -- is it fair to say that the leadership of the
6 House had taken that position when they were talking to you?

7 A No, sir, because the -- at that point in time I don't
8 recall the Speaker even talking to me about it, either of
9 those issues.

10 Q And who was the Speaker at that time?

11 A The Speaker during that period of time would of been
12 Bobby Harrell.

13 Q When the cigarette tax bill or legislation was up
14 before the General Assembly, you said that was over a long
15 period of time?

16 A Pardon?

17 Q That issue had come up over a long period of time?

18 A Yes, sir, it did, but it got -- it, it was like a, a
19 wave cresting, and both sides of that debate were spending a
20 lot of money around the State House trying to influence the
21 outcome. By lobbyists are -- what I mean by influence, they
22 had hired a good number of lobbyists to, to push legislators
23 in that direction, both for and against.

24 Q And the same thing with school choice?

25 A Same thing with school choice. Although the dynamics

Mike Pitts - Cross-examination
By Mr. Lloyd

1 were a lot different, it was basically public education
2 fighting against the school choice in general.

3 Q And even within the school choice agenda, there were
4 different sides to those issues even though they were
5 ostensibly on the same side.

6 Is that correct?

7 A Well, in the, in the eyes of my constituents, it was
8 just one. It was Howard Rich.

9 Q Well, we'll leave it at that.

10 A And the reason---

11 Q Yes, sir.

12 A ---sir, was because public education was throwing
13 Howard's name out there, and saying that he was unduly
14 influencing legislators.

15 Q But, but there are -- there were other groups, other
16 than Howard Rich, who were supporting school choice issues.

17 Is that correct?

18 A Yes, sir, there were.

19 Q And within that group supporting school choice, there
20 were competing views on what type of legislation should
21 pass.

22 Is that correct?

23 A It is my view that they just wanted a school choice
24 bill passed to open the door, so to speak, or, or to use a
25 phrase, to get the camel's nose under the tent.

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Q And---

2 A It really didn't matter which piece of legislation
3 passed as long as it was school choice legislation.

4 Q Just so that we're clear though, how long do you think
5 the school choice issue has been before the General Assembly
6 in South Carolina?

7 A Since early in my career. I couldn't give you an exact
8 date..

9 Q Certainly through the 2000s?

10 A Sir?

11 Q Certainly through the 2000s?

12 A Well, I know that when I ran in 2002 it was not an
13 issue in the campaign, but I made it one because I believed
14 in school choice, and I was one of the first putting it into
15 a campaign to begin with.

16 Q So, in terms of -- in terms of your support for school
17 choice, nobody had to convince you to be in favor of school
18 choice?

19 A That's correct.

20 Q Now, Mr. Chairman, I'm not gonna, I'm not gonna quiz
21 you on the Ethics Act Statutes.

22 Okay. What is required in a Statement of Economic
23 Interest is governed by the Ethics Act Statutes.

24 Is that correct?

25 A I'm sorry?

Mike Pitts - Cross-examination
By Mr. Lloyd

1 Q Oh, I'm sorry.

2 What, what is governed -- what is required to be in a
3 Statement of Economic Interest, that's governed by the
4 statutes in the Ethics Act?

5 A Any, any money that, that we, as legislators, receive
6 from different entities, one being a lobbyist principal, one
7 being a, a -- governmental entities, one being associates
8 that have an interest in that, and it can be as simple as
9 gifts. We are required to disclose gifts that we may
10 receive. For instance, something from the University of
11 South Carolina.

12 Q And what's required to be on, on the Statement of
13 Economic Interest, you would agree with me that definition
14 of income greatly expanded in 2016?

15 A Yes, sir, it did.

16 Q And prior to that, there was a much more limited
17 disclosure requirement as it related to income.

18 Isn't that correct?

19 A I don't know that -- I don't know that that would be an
20 absolutely correct statement, but it did change.

21 Q There was some income that wasn't required to be on
22 that form.

23 Isn't that correct?

24 A Yes, sir.

25 Q And sitting here today, in order for us to determine

Mike Pitts - Cross-examination
By Mr. Lloyd

1 what was required to be on that form for -- as far as a
2 member's income is concerned, we would have to consult the
3 statute.

4 Isn't that correct?

5 A Yes, sir.

6 Q Now, just the last thing, Mr. Chairman. If a member
7 failed to file or was late filing certain documents or
8 disclosures required by the Ethics Act, some of those
9 disclosures, the Ethics Committee can determine not to have
10 been willful violations.

11 Isn't that correct?

12 A That's correct. We have a series of exemptions that we
13 use.

14 Q And if you determined that's not a willful violation,
15 that's not something that goes to a prosecutor. That's
16 something that the Commission -- I mean the Committee
17 handles internally.

18 Isn't that correct?

19 A Yes, sir, we go to a late filing. If it's a late
20 filing, that late filing starts off as \$100 fine, and it can
21 build up to a 51 or \$5,300 fine. I believe it's 53. But
22 the Ethics Committee, upon hearing an appeal from the
23 individual, can use the sliding scale anywhere from that 100
24 to the 5,300 according to, to the issue. A death in the
25 family, a computer issue, I think we've got five that we can

Mike Pitts - Cross-examination
By Mr. Lloyd

1 use to, to exempt that, and I lost track of the original
2 question.

3 Q That's all right. I'll just ask you this. Not every
4 filing under the Ethics Act or the omissions of every filing
5 is a criminal act.

6 Is that correct?

7 A That's correct. You have technical violations, and you
8 have criminal violations.

9 Q Nothing further, Mr. Chairman. Thank you.

10 A Thank you, sir.

11 THE COURT: Mr. Pascoe.

12 REDIRECT EXAMINATION

13 BY SOLICITOR PASCOE:

14 Q Just a couple areas, Mr. Chairman.

15 You mentioned that there were a couple of bills that
16 you remember that Mr. Harrison came to you and talked to you
17 about.

18 A Yes, sir.

19 Q And one was the cigarette tax.

20 A The cigarette tax was whether or not to increase the
21 cigarette tax in the State of South Carolina.

22 Q And when he -- do you ever remember him going on the
23 House Floor or telling you personally that he worked for a
24 company that got \$15,000 from BlueCross Blueshields (sic) to
25 try to get the cigarette tax passed?

Mike Pitts - Redirect examination
By Solicitor Pascoe

1 Do you ever remember him saying that to you?

2 A No, sir, I don't.

3 Q You mentioned school choice was another one of the
4 areas he came and talked to you about.

5 A Yes, sir.

6 Q Have you ever heard of the South Carolinians for
7 Responsible Government?

8 A Yes, sir, I have.

9 Q Is that a school choice group?

10 A Yes, sir.

11 SOLICITOR PASCOE: Approach, Your Honor?

12 Let me see if I can find it if I can.

13 THE COURT: Yes.

14 Q Oh, we got lucky. I'm gonna show -- approach you and
15 show you what's been marked as State's Exhibit 40.

16 Okay. And the South Carolinians for Responsible
17 Government, they were pushing school choice hard, weren't
18 they?

19 A Yes, sir.

20 Q Okay.

21 A That, South Carolinians for Responsible Government was
22 actually the front group for Howard Rich, the individual
23 that I brought up earlier.

24 Q Okay. And do ever remember Mr. Harrison explaining to
25 the House Floor or to you I work for a company that gets

Mike Pitts - Redirect examination
By Solicitor Pascoe

1 thousands of dollars a month from the South Carolinians for
2 Responsible Government?

3 A No, sir.

4 Q And did, did you know back then, and specifically this
5 would be in 2009, did you know back then that Jim Harrison
6 was the legislative strategy adviser for the South
7 Carolinians for Responsible Government?

8 A No, sir, I did not.

9 Q And I'm not gonna ask you what your opinion is, but I'm
10 curious, do you have an opinion about that?

11 Yes or no.

12 A Yes, sir.

13 MR. LLOYD: Objection.

14 SOLICITOR PASCOE: I didn't ask him what it was.

15 MR. LIMBAUGH: It's not relevant.

16 SOLICITOR PASCOE: Is there an objection to me asking
17 him what his opinion is?

18 MR. LLOYD: Yes, that's what I was---

19 THE COURT: Okay.

20 MR. LLOYD: ---objecting to.

21 SOLICITOR PASCOE: Okay. I won't ask that question.
22 That's all I have. Thank you so much, Mr. Chairman.

23 A Thank you.

24 SOLICITOR PASCOE: Oh.

25 MR. LLOYD: Just real briefly.

Mike Pitts - Recross examination
By Mr. Lloyd

1 RECROSS EXAMINATION

2 BY MR. LLOYD:

3 Q Chairman, just real briefly.

4 The, the cigarette tax increase that Mr. Pascoe just
5 asked you about, you don't remember what bill that was, do
6 you?

7 A No, sir, I don't.

8 Q You don't even remember what year that was?

9 A No, sir, I don't.

10 Q School choice, there were a lot of school choice bills.
11 Can you tell us which bill that was that Mr. Harrison
12 would of talked to you about?

13 A No, sir, I cannot.

14 Q Can you at least narrow it down to a year?

15 A Sir?

16 Q Can you narrow it down to a year?

17 A No, sir, I can narrow it down to a period of years
18 because it was, it was something that went over a three or
19 four year period of time where, as I've stated before,
20 Mr. Rich was pumping a ton of money into the State of South
21 Carolina on that issue.

22 Q But you don't know when Mr. Harrison talked to you?

23 You can't give us a year --

24 A No, sir, I cannot.

25 Q -- so that we can't narrow it down to a bill?

Mike Pitts - Recross examination
By Mr. Lloyd

1 A No, sir, I cannot.

2 Q Thank you, Mr. Pitts. Mr. Chairman. I'm sorry.

3 THE COURT: Anything else?

4 SOLICITOR PASCOE: No, Your Honor. I'm sorry.

5 THE COURT: Chairman Pitts, Chairman Pitts, you're
6 excused, sir. Thank you.

7 THE WITNESS: Thank you.

8 THE BAILIFF: Watch your step.

9 THE WITNESS: Thank you, sir.

10 SOLICITOR PASCOE: Thank you, Chairman. Thank you.

11 MR. GRIFFIN: Your Honor, can we approach on a
12 scheduling matter?

13 THE COURT: Please.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: Ladies and gentlemen, we're talking about
17 scheduling. There are a number of things that I need to do
18 with the lawyers today. There is a very brief matter I need
19 to take up with them.

20 What I would like to do, ladies and gentlemen, is just
21 have you wait for that moment for about those ten minutes or
22 so. What I believe I'm gonna do is go ahead and excuse you
23 for the rest of the day, ladies and gentlemen. I don't want
24 you sitting back there waiting on us, and what we have to do
25 is going to take a substantial amount of time. My hope is,

1 is that, if I can get this matter resolved, then we will
2 finish the case tomorrow morning. I would like y'all to
3 come back, I'm hoping 9:30 if that's acceptable to you-all,
4 and we will wrap it up.

5 All right. Which means that whatever is left will be
6 presented, if there's anything, and then we will argue and
7 charge.

8 So, Mr. Foreperson, y'all go back to your jury room. I
9 promise it won't be more than ten minutes. I'm gonna bring
10 you back out here, and I very much hope to bring you back
11 out here, and then, then send you home.

12 Okay?

13 THE FOREMAN: Yes, ma'am.

14 THE COURT: Okay. I appreciate it.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Gentlemen, the door is closed.
18 Let's talk about the House Journals.

19 MR. GRIFFIN: Yes, Your Honor. There are six journals.
20 Each one certified true copied by the Clerk of the House.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. GRIFFIN: And in the, the -- they're -- the first
23 one that we would like to introduce as a public record is
24 the Journal for March 28th, 2012, which deals with a school
25 choice bill, and it, it has the, the vote taken on, on the

1 bill, and it has the record of Mr. Harrison's voting for the
2 bill, and---

3 THE COURT: Mr. Griffin, let me ask you.

4 Who are you gonna get to testify to that because I'm
5 certainly not gonna let you publish that to the jury when it
6 gets put it?

7 So, typically, you would of had to ask that of say
8 Chairman Pitts or some of other, I don't know, I guess
9 Charles Reid could do it. I mean I think they're a plethora
10 of people that could of done it.

11 But, but how do we not just dump that on a jury?

12 I just don't think they're gonna know what to do with
13 it---

14 MR. GRIFFIN: Right.

15 THE COURT: ---and what to look for.

16 So, how, how do we get that in front of them cause I
17 think, I think there's lots of way to do it. I haven't
18 heard your argument against it yet. I mean they're public
19 records, and, again, relevance and all the rest of it we'll
20 talk about later, but I understand why you want to use them.

21 MR. GRIFFIN: Right.

22 THE COURT: But, but how do I -- how do I give it to
23 them with them understanding what it is they're suppose to
24 use that piece of evidence for?

25 MR. GRIFFIN: Well, Your Honor, it would -- I mean we

1 could call a witness to explain it. We can call Mr. Hayden
2 back to the stand, and he could explain it, if necessary.
3 We've not intended to do that. We could simply -- I mean
4 what we'd intended to do was -- is use it in the closing
5 argument. I means it's not -- I mean it talks about school
6 choice. It's got the votes. It's got the names. It's not
7 that complicated, but that, but---

8 THE COURT: Well, I'm gonna guess that, out of the 12
9 that are gonna finally hear this case, not a one of them --
10 well, okay. Maybe I'm wrong. Maybe one will have read a
11 House Journal. Maybe one.

12 MR. GRIFFIN: Right.

13 THE COURT: I just want to make sure that they know
14 what to do with this, Mr. Griffin.

15 MR. GRIFFIN: Well, I---

16 THE COURT: That's my concerns. You're just gonna dump
17 them all on them, and---

18 MR. GRIFFIN: I completely understand, Your Honor.

19 THE COURT: So, tell me -- what is your objection to it
20 other than that somebody needs to say what it is?

21 What else is your objection?

22 MR. LIMBAUGH: Well, I, I mean the primary objection,
23 Your Honor, is that, in, in the absence of context, it's --
24 they're just -- they're, they're giving -- they're admitting
25 into evidence, giving it to the jury, allowing Mr. Pascoe to

1 essentially would have to be testifying by---

2 THE COURT: Well, I totally am not gonna allow him to
3 do that.

4 MR. LIMBAUGH: Well, I understand, but if, if---

5 THE COURT: Oh, you mean in his closing?

6 MR. LIMBAUGH: In his closing---

7 THE COURT: He'll be testifying in his closing.

8 MR. LIMBAUGH: In his closing, if, if, if somebody,
9 whether it's a witness or Mr. Pascoe in his closing, or, you
10 know, a juror isn't taking these bills, and saying okay,
11 this is what this bill is about, guessing, I'm not talking
12 about Mr. Pascoe cause he'll be saying what he wants them to
13 think there about, but guessing, does this particular bill,
14 in fact, have any impact whatsoever on an economic interest
15 of a business with which Mr. Harrison was associated.
16 Namely Richard Quinn & Associates.

17 So, he's gonna be up there saying look, here's a school
18 choice bill. We don't know if it's the one Mr. Pitts was
19 talking about. We don't know what, if any, economic impact
20 there may have been to that particular -- from that
21 particular bill to RQ&A, which is the only thing that
22 matters in this context. I mean he's not gonna -- he can't
23 just get up in front of this jury and say look, we've been
24 talking for three days about tobacco taxes, and Richard
25 Quinn & Associates -- & Associates worked for BlueCross and

1 Blueshield, and Jim Harrison worked for Richard Quinn, and
2 look here's a, here's a healthcare bill, a tobacco tax bill.
3 So --.

4 THE COURT: Here's his vote on it.

5 MR. LIMBAUGH: Clearly, RQ&A had an economic interest
6 in this piece of legislation, and Mr. Harrison worked for
7 RQ&A. So what?

8 He should of recused himself from voting on this. He
9 can't testify to that. Well, obviously, he can't testify to
10 it.

11 THE COURT: I think he can---

12 MR. LIMBAUGH: They can't even make a connection.

13 THE COURT: I would think, in the House Journal though,
14 right, Mr. Pitts couldn't tie specific times to, you know,
15 when these various school choice bills came in. I think he
16 said a three, four, or five year period. House Journals
17 have dates on them.

18 So, is there any reason why -- and I'm not helping
19 anyone make their case.

20 MR. LLOYD: No.

21 THE COURT: I can assure you. But---

22 MR. LLOYD: Can I, can I---

23 THE COURT: Yeah. Go ahead.

24 MR. LLOYD: ---just add on that, Your Honor --

25 THE COURT: Go ahead.

1 MR. LLOYD: -- before you say that respectfully?

2 THE COURT: Yeah, it's okay.

3 MR. LLOYD: The issue ultimately is, again, the
4 statutes defining the economic interest, large class
5 exception, whether or not there's a direct economic
6 interest, and whether or not it meets the definition of
7 business with which he's associated. Even, even under the
8 House -- the State Ethics Commission opinions, they say
9 that's a case-by-case determination. There's no such thing
10 as just a blanket school choice, and you're always excluded
11 from that.

12 There's school choice bills about moving from one
13 school -- public school to another school that's outside of
14 the area you're zoned for in your district.

15 THE COURT: So, what I'm hearing your objection is that
16 unless they have a witness that can say exactly what this
17 bill has to do with it---

18 MR. LLOYD: Exactly.

19 THE COURT: ---and how it affects, and where Harrison
20 was on this bill. I mean there's got to be more specifics
21 to lay a foundation for what this is. As it relies -- it's
22 improperly putting before the jury something that they
23 cannot assume.

24 MR. LLOYD: That they would literally just have to
25 speculate about.

1 MR. LIMBAUGH: Let me -- can I add---

2 THE COURT: Sure.

3 MR. LIMBAUGH: ---before you move on from that?

4 I want to make it -- because it's a, it's a crucial
5 point. It's a crucial legal point that they cannot simply
6 rely on the concept that a lobbyist principal client of RQ&A
7 was interested, in a general sense or even a specific sense,
8 in a bill. They have to be able to prove that there -- that
9 the business with which Jim Harrison was associated, RQ&A,
10 had an economic interest in a specific piece of legislation.
11 Not a general category of legislation, and there is no way
12 on God's green earth that, that there has been evidence
13 presented to tie any of these bills to an economic interest
14 of Richard Quinn & Associates. Not even close. And, in the
15 absence of that, they're -- they are clearly irrelevant.

16 SOLICITOR PASCOE: The, the---

17 THE COURT: Okay. Just go ahead, but---

18 SOLICITOR PASCOE: I'm---

19 THE COURT: ---other than each of these lobbyist's
20 principals having testified up here that they had RQ&A on
21 retainer every month to be able to call them whenever there
22 was anything of any interest that they needed help on, I
23 mean that's, that's testimony I heard.

24 SOLICITOR PASCOE: Yes. Can I---

25 THE COURT: Sure.

1 SOLICITOR PASCOE: ---and also---

2 THE COURT: Sure.

3 SOLICITOR PASCOE: ---can I point out something?

4 This is one of -- my concern is they're worried about
5 what I would do in closing. I don't want them getting up
6 after me, especially if they get last argument, if they get
7 it, and saying they didn't put any bills in. They didn't
8 even put any bills in that Mr. Harrison sponsored or voted
9 on for these lobbyist's principals. So, that was -- that's,
10 A, my first concern.

11 The second thing, just to give you an example, the
12 economic interest in the cigarette tax, and this is already
13 in evidence, but not the bill. In 2000 and -- in the summer
14 of 2018, as Your Honor may recall, Harrison voted to sustain
15 the veto. Several months later, like in the Fall maybe of
16 2008, BlueCross BlueShield, and this is in evidence, hired
17 Richard Quinn & Associates for \$15,000 for "cigarette tax
18 advocacy." There's your economic interest, 15---

19 THE COURT: Is that because it was -- was that on the,
20 the memo line?

21 SOLICITOR PASCOE: It is on it, yes.

22 THE COURT: It was on the memo line and checked?

23 Correct me if I'm wrong?

24 SOLICITOR PASCOE: On the invoice.

25 THE COURT: Am I right on this?

1 Is this the right one?

2 SOLICITOR PASCOE: On the invoices. It's on at least
3 two or three invoices, and it says cigarette tax or tobacco
4 tax advocacy and that's it, right?

5 THE COURT: Right.

6 SOLICITOR PASCOE: And then Jim Harrison, several
7 months later, who had voted to sustain a veto over the
8 summer, now he's voting to sponsor. I mean he's sponsoring
9 legislation---

10 THE COURT: Uh-huh. (Affirmative).

11 SOLICITOR PASCOE: ---for tobacco tax. I'm kind of --
12 I mean that's why we need to somehow get that in, the bill
13 in.

14 THE COURT: I can just tell you---

15 SOLICITOR PASCOE: Your Honor, I agree with you. I
16 don't---

17 THE COURT: We can't just throw it in is the problem.
18 We can't -- somehow you've got to lay a -- you know, have
19 someone testify to it. I'm not -- just not sure who that is
20 or how you do that.

21 SOLICITOR PASCOE: Or we could reach some kind of
22 stipulation on some of these.

23 THE COURT: That requires them.

24 SOLICITOR PASCOE: Yeah.

25 MR. LLOYD: And, Your Honor, I don't mean to belabor

1 this point, but---

2 THE COURT: Yeah.

3 MR. LLOYD: ---that's why Charles Reid can't show up
4 and say yeah, these are the House Journals, and his voting
5 record.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LLOYD: Because the issue is not whether or not the
8 lobbyist's principal had an economic interest. We can all
9 say BlueCross had an interest in---

10 THE COURT: Right.

11 MR. LLOYD: ---cigarette tax. The issue is, and the
12 analysis that goes into whether there's an economic interest
13 to RQA, separate and distinct from that of anybody else in
14 the State of South Carolina, is the issue. That's what
15 somebody has to be able to testify to. Not just hey, here's
16 a bill. This one's about cigarette tax increase or about
17 school choice in general, and let's tie that, and make the
18 analysis applicable to Mr. Harrison and RQA.

19 SOLICITOR PASCOE: The only thing I can think of is we
20 can try to reach a stipulation about sponsoring legislation
21 and/or call a witness. You know, we can call a witness.
22 So, then, of course, we're gonna want to go into the -- more
23 even -- you know, like he voted this way, and then he voted
24 this way.

25 THE COURT: I mean I think your witness is gonna have

1 to be probably a legislator. I can't imagine who it would
2 be other than I agree I don't think Charles Reid can just
3 get up here, and testify that, you know, this is the record.
4 I don't think that's even gonna give you enough context for
5 what you're trying to do with it, and I completely
6 understand what you're trying to do. But you're gonna have
7 to have someone with some more knowledge. Kind of like Mr.
8 Pitts did or Chairman Pitts did even more detailed knowledge
9 of this is what happened. I just don't know if you have
10 that person or that person exists.

11 MR. LIMBAUGH: I mean if we, we could just take a
12 second just to see what they're proposing.

13 SOLICITOR PASCOE: Sure.

14 THE COURT: Okay.

15 MR. LIMBAUGH: I mean as far as a stipulation---

16 SOLICITOR PASCOE: Maybe we can pull something out---

17 MR. LIMBAUGH: I mean we might, I don't know, but we
18 got to hear it first.

19 THE COURT: Okay. What do you want me to do with this
20 jury?

21 Do you want me to just give you five minutes?

22 MR. LIMBAUGH: It may just -- it might just take a
23 minute.

24 THE COURT: Take a minute.

25 MR. LIMBAUGH: I mean if, if you've got something---

1 THE COURT: Take a minute. Go talk.
2 MR. LIMBAUGH: ---formulated---
3 THE COURT: Talk.
4 (Pause.)
5 THE COURT: So, you cannot enter into a stipulation.
6 Is that what I hear?
7 MR. LIMBAUGH: Yeah, I don't think we're going to be
8 able to. I'm sorry.
9 THE COURT: Okay. Well, the State needs to rest their
10 case. I don't want to leave it open till tomorrow morning
11 for more and more testimony just to keep coming.
12 MR. LLOYD: Your Honor, I mean we're not trying to
13 belabor the point.
14 THE COURT: I know.
15 MR. LLOYD: Either they have a witness that ties
16 specific legislation so that we can either cross-examine
17 them on statutory requirements or not. Absent that, I don't
18 know how you even---
19 THE COURT: Yeah.
20 MR. LLOYD: ---can allow that to come in.
21 THE COURT: And, and I would agree with that. I think
22 it's gonna take a legislator who was there at the time or a
23 staff member I guess. Although I don't know. I don't even
24 think a staff member could opine.
25 MR. GRIFFIN: What's that?

1 THE COURT: That's not their position.
2 (Pause.)
3 THE COURT: All right.
4 MR. GRIFFIN: All right. So, Your Honor, we don't have
5 a---
6 THE COURT: You don't have someone that---
7 MR. GRIFFIN: All right. So, we, we -- for the
8 proffer, we would just -- so, one Journal relates to the
9 Base Load Review Act.
10 THE COURT: Uh-huh. (Affirmative).
11 MR. GRIFFIN: One Journal relates to -- the two
12 Journals relates to cigarette tax. Make that three
13 Journals. And, and they're dated the time period around
14 when BlueCross BlueShield was making payments. And so we
15 can link the date up for the cigarette tax journals through
16 what's already in evidence from BlueCross BlueShield
17 payments showing he voted against it, and then he voted for
18 it after the payments. And those are, those are three House
19 Journals that establish that. Actually those are four.
20 SOLICITOR PASCOE: Can I tell him one thing?
21 Thanks.
22 (Pause.)
23 SOLICITOR PASCOE: Well, I mean before we even, even
24 try this, Your Honor---
25 THE COURT: Yeah.

1 SOLICITOR PASCOE: ---since they're certified reports,
2 couldn't it be as easy as just putting someone on the stand
3 who knows how to read who would be to able to say going
4 from -- I've got these certified reports, and then, on such
5 and such a date, Mr. Harrison responded to the Base Load
6 Review Act, and then go to the next one. On such and such a
7 date, Mr. Harrison responds to the cigarette tax, and then
8 the next one. On such and such a date, he sponsored the
9 school choice bill, and something that easy. So, you're
10 right. I mean I don't want this going back to the jury.

11 But how come it can't be that easy?

12 THE COURT: Someone's got to link it up. I actually
13 think you could have with any of the legislator witnesses
14 and ask them. I think you could of said, and handed it to
15 them, or even just asked them the question of isn't it true
16 that, you know, looking at the House Journal cause I
17 understand they're not gonna have an independent
18 recollection of how Jim Harrison voted in 2000 and whatever.

19 You could say here, look at the House record. Here it
20 is right here. I, I just think you got to lay the
21 foundation for it. I just don't know what a jury's gonna do
22 with that, and, until you can link it all up, it's not
23 relevant.

24 MR. GRIFFIN: Well, then, Your, Your Honor, after that
25 ruling, we -- the State will rest and---

1 THE COURT: Okay. In front of the jury.
2 MR. GRIFFIN: ---when you call the jury in.
3 THE COURT: Okay. Okay. All right. Let's bring the
4 jury back in.
5 THE BAILIFF: Yes, Your Honor.
6 (WHEREUPON, the following takes place within the
7 presence of the jury.)
8 THE BAILIFF: The jury is seated, Your Honor.
9 THE COURT: Thank you.
10 Ladies and gentlemen, I appreciate you waiting on us.
11 Mr. Pascoe.
12 SOLICITOR PASCOE: Thank you, Your Honor.
13 At this time, the State rests.
14 THE COURT: Ladies and gentlemen, at this time the
15 State has rested their case.
16 As I told you before, I'm gonna go ahead and send you
17 home for the day.
18 Mr. Foreperson, is 9:30 okay to start with everyone
19 tomorrow morning, and I say 9:30 because I don't want you
20 sitting back there any longer than you have to?
21 But if you-all will be here at 9:30 tomorrow morning,
22 we will go ahead and we will wrap up this case, ladies and
23 gentlemen. I see everything on track. So, I have no
24 concerns there.
25 I need to remind you again don't discuss this case. It

1 wouldn't be appropriate to do so. Don't do any independent
2 research in reference to anything you've heard. Get a good
3 night's sleep. We look forward to seeing y'all back
4 tomorrow morning.

5 All right. Thank you.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. We'll go ahead and take an hour
9 and a half.

10 Is that how long you want?

11 MR. LIMBAUGH: Gracious plenty. More than enough.

12 THE COURT: Plenty?

13 MR. LIMBAUGH: Gracious plenty.

14 THE COURT: All right. So, 3:00?

15 Come on back at 3:00?

16 MR. LIMBAUGH: Yes, Your Honor. Thank you.

17 THE COURT: Is that all right with everybody?

18 SOLICITOR PASCOE: That's perfect.

19 MR. GRIFFIN: Thank you.

20 THE COURT: Okay. We'll see you-all back at 3:00.

21 MR. LLOYD: Thank you, Your Honor.

22 (WHEREUPON, Court was in recess for the lunch hour.)

23 THE COURT: All right. I trust everyone got some food?
24 Yes?

25 MR. LLOYD: Tea.

1 THE COURT: Tea?
2 Is that what I heard?
3 I got some snacks back there.
4 Do you need anything?
5 MR. LLOYD: No, thank you.
6 THE COURT: Okay.
7 (Pause.)
8 THE COURT: Okay. All right. We don't have Mr. Pascoe
9 here.
10 Do I need to wait on him or --?
11 MR. GRIFFIN: No, ma'am.
12 THE COURT: Very good.
13 MR. GRIFFIN: He is doing his homework for tomorrow.
14 THE COURT: Very good.
15 All right. Mr. Limbaugh, I think it's you.
16 MR. LIMBAUGH: Well, we, we can discuss that, Your
17 Honor.
18 THE COURT: Okay.
19 MR. LIMBAUGH: I guess just to go ahead and get us kind
20 of on the record as what we're doing, at this, at this time,
21 Mr. Harrison moves for directed verdict as to all four
22 counts of the indictment or the indictments I guess they're
23 two.
24 THE COURT: Uh-huh. (Affirmative).
25 MR. LIMBAUGH: If -- with the Court's permission, I was

1 going to argue two counts, and Mr. Lloyd was gonna argue two
2 counts --

3 THE COURT: Absolutely.

4 MR. LIMBAUGH: -- if that's okay.

5 THE COURT: Certainly.

6 MR. LIMBAUGH: And I do want to -- I, I -- everybody in
7 this courtroom understands that, in most cases, a motion for
8 directed verdict, verdict is proforma.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LIMBAUGH: I mean it, it always happens.

11 In this case, it's, in our view, anything but, and I, I
12 don't want Your Honor to misinterpret what I'm, what I'm
13 about to say as me lecturing the Court on your obligations
14 and duties as the Judge. It's not meant in that way at all.
15 It's, it's related to the nature of this case.

16 But I do want to make a point that directed verdict is,
17 you know, it's part of the whole constitutional and
18 statutory system of criminal justice that, that's, that's
19 designed, in part, not in, in total certainty, to protect
20 the rights of the Defendant. And, in a case like this, in
21 particular, where it is very complicated particularly from a
22 legal prospective, we just want -- we want to make, make the
23 point that we're -- we are reliant on the Court to look at
24 the statutes, look at the law, and see how it relates to the
25 facts that have been admitted into evidence.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. LIMBAUGH: And, and if it's the Court's
3 determination, obviously, as we hope that it will be, that
4 this is just not a case that should go to this jury, that
5 there's not sufficient evidence, under the law that governs
6 every aspect of these indictments, for this jury to make the
7 determination. We believe that it can be decided as a
8 matter of law on all four counts.

9 So, with that said, with the Court's permission, I
10 believe Mr. Lloyd is gonna address Counts 1 and 4, which
11 would be the conspiracy and the perjury, and then I'll take
12 the two misconducts in the middle.

13 THE COURT: Okay.

14 MR. LLOYD: Thank you, Your Honor.

15 Your Honor, you, you have the indictments?

16 THE COURT: I do.

17 MR. LLOYD: I just wanted to make sure.

18 THE COURT: I do.

19 MR. LLOYD: Your Honor, let me, if I can, please before
20 we start with the perjury count or indictment, they're
21 obviously two counts to that. I won't lecture the Court
22 about the standard. I know Your Honor's very familiar with
23 the standard in directed verdict cases as well as the law.

24 Obviously, the issue with perjury is it's a willfully,
25 false, or incomplete, or misleading statement under oath

1 that's material to the issues in dispute.

2 Your Honor, the indictment for perjury has two separate
3 counts, and they're two separate very specific statements.

4 THE COURT: Right.

5 MR. LLOYD: And I would suggest to Your Honor that
6 there's not one shred of evidence, not even an innuendo,
7 that those two statements are false. The first statement
8 specifically that Mr. Harrison was indicted for, and I know
9 Your Honor has it in front of you --

10 THE COURT: Yeah, I do.

11 MR. LLOYD: -- is when asked why he was receiving
12 payment from Richard Quinn & Associates and First
13 Impressions when he was Chairman of the House Judiciary
14 Committee, Committee, Mr. Harrison testified, under oath,
15 that Richard Quinn "asked me if I would consider and he
16 might have started asking me before if I'd consider
17 working -- coming to work for them. I think he enjoyed the
18 way I seemed to handle my campaign, and could help him on
19 other campaigns." The statement goes on to say "but I knew
20 that, as long as I worked on campaigns and nothing more,
21 that I didn't feel I had a conflict of interest."

22 Your Honor, as to that specific statement, there was no
23 evidence presented by the State that that conversation
24 didn't happen between Mr. Quinn and Jim Harrison. So, we
25 don't even necessarily get to whether it's true or false.

1 They don't put anything in the record for Your Honor to
2 consider in making the determination as to whether or not
3 that statement itself is true. And, you know, we could get
4 into the materiality issue and deal with Agent Smith during
5 his testimony. Obviously, we contend that this is not
6 material at all.

7 Agent Smith eventually admitted, in my line of
8 questioning, that it didn't matter to the, the status of
9 their investigation as to what Mr. Harrison's role was at
10 RQA as it related to how they were gonna investigate the
11 case under the Ethics Act. His status didn't change the
12 analysis they had to go through to determine whether or not
13 he could legally work there, whether or not he had violated
14 any parts of the Ethics Act dealing with conflicts of
15 interest or anything else.

16 The mere fact that he was an employee at RQA
17 establishes his obligations under the Ethics Act. None of
18 that changes no matter what he said his role was there.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. LLOYD: And I think, as I said to Agent Smith, it
21 wouldn't have mattered if he was the COO or the CEO for that
22 matter or the night watchman. His status and whether he's
23 doing legal acts under the Ethics Act or illegal acts under
24 the Ethics Act never changes. Their analysis is---

25 THE COURT: Is the issue though it's not whether or not

1 he was the CEO or COO or the janitor?

2 Isn't the issue of whether or not he was doing anything
3 for the money that he was being paid?

4 I mean that, that's what I understood the point to be
5 is that there's no testimony about what he did, and the
6 State brought numerous people in here who worked for RQ&A,
7 including Rebecca Mustian, who says she doesn't know what he
8 did.

9 MR. LLOYD: And---

10 THE COURT: I mean that's what we heard from the
11 testimony.

12 MR. LLOYD: Right, Your Honor. And they may be
13 relevant to other counts for which he was indicted. The
14 Grand Jury didn't indict him for saying that's -- he did no
15 work or he said he worked all the time. What they indicted
16 him for was a very specific statute -- statement.

17 THE COURT: Well, let me ask you. I mean the last part
18 of the statement, I don't think there's anything untrue
19 about it. Harrison also testified that I knew, as long as I
20 worked on campaigns, and nothing more, that I didn't feel I
21 had a conflict of interest. Well, that's a truthful
22 statement I believe, but it's, it's before---

23 MR. LLOYD: The question though was---

24 THE COURT: Well, I understand that---

25 MR. LLOYD: ---why were you receiving a payment, and he

1 says---

2 THE COURT: Why are you receiving payment.

3 MR. LLOYD: He says my conversation with Richard Quinn
4 was that he asked me if I would consider, and he might have
5 started asking me before I consider coming to work for them.
6 I think he enjoyed the way I seemed to handle my campaign,
7 and could of helped him on other campaigns.

8 THE COURT: Uh-huh. (Affirmative).

9 MR. LLOYD: There's no evidence at all that refutes
10 that statement. None.

11 Now, they -- as it relates to other issues in this case
12 or other counts of indictments -- in the indictments, that
13 might be relevant as to how much work he did or little work
14 he did. But as to the perjury, there's no evidence
15 whatsoever in the record to contradict him saying this is --
16 when I began working there, this is what my conversation
17 with Richard Quinn was.

18 Now, Your Honor has the -- and -- transcript from Mr.
19 Harrison's testimony.

20 THE COURT: Right.

21 MR. LLOYD: They could of followed up and asked him
22 other questions about what, what he actually did long term
23 there in terms of work duties, but they didn't do that, and
24 what they presented to the State Grand Jury was that that
25 particular statement was false.

1 THE COURT: Let me ask you.

2 where is his testimony or where did his testimony come
3 from -- was it in a follow-up interview with the FBI about
4 the campaigns that he worked on?

5 I mean part of their reason for putting up Trey Walker
6 and for Adam Piper was to show I didn't know he was working
7 for any campaigns.

8 So, where was the testimony that, that he had worked on
9 campaigns because I, I tend to look at this, and say -- I
10 agree. I think it could be -- I think it could be a true
11 statement, but that's why they started their relationship.
12 I think it could be a true statement that he did a good job
13 on his own campaign, and he liked the way he handled it. He
14 didn't go, in his Grand Jury testimony, then go on and lie
15 and say I worked on these ten campaigns, did he?

16 I never saw that.

17 MR. LLOYD: No, Your Honor, and I would just dispute
18 that he lied about that, and there's---

19 THE COURT: And I'm not -- I'm saying---

20 MR. LLOYD: ---testimony -- right. I understand your
21 position.

22 THE COURT: I mean well, this is what I want to ask you
23 is this, and I understand we're talking about the perjury
24 indictment. But let's say, in all of this, if the only
25 thing that they could of alleged that Jim Harrison had done

1 was not report Rick Quinn & Associates having received a
2 business with which he was associated receiving payments
3 from that lobbyist -- from lobbyist's principals, if that is
4 the only thing they have, let's just say that, that's it,
5 what does that fit the elements of?

6 Does that fit for common law?

7 MR. LLOYD: I'm gonna---

8 THE COURT: Misconduct in office?

9 I mean---

10 MR. LLOYD: Yeah, we're gonna address that.

11 THE COURT: Help me out, and we're kind of almost
12 backing into it, but, yeah.

13 MR. LIMBAUGH: That's fine. If that's all they had---

14 THE COURT: And you can put aside -- you don't have to
15 put the numbers in.

16 MR. LIMBAUGH: Yeah.

17 THE COURT: Let's put aside your theory of you don't
18 have to put the numbers in, but you do have to disclose the,
19 the names of, you know, money and I never tortured this
20 because I know you think it, again, it's from lobbyist's
21 principals, and not lobbyist's principals like RQ&A, and
22 that he's working for RQ&A. Forget that whole argument.

23 MR. LIMBAUGH: Uh-huh. (Affirmative).

24 THE COURT: Let's just say that he was required.

25 was he -- what could he be found guilty of if the jury

1 believed that?

2 MR. LIMBAUGH: Okay. If -- so, the question -- just so
3 I, I, I know what I'm -- exactly what I'm, what I'm trying
4 to answer.

5 The question would be if we take, for the sake of
6 argument, that he was suppose to and did not report the
7 identity of lobbyist's principals who retained Richard Quinn
8 & Associates---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LLOYD: ---what would that support?

11 THE COURT: what, what statute is he violating?

12 what is he -- what is he violating?

13 what part of the Ethics Act---

14 MR. LIMBAUGH: Okay.

15 THE COURT: ---is he violating---

16 MR. LIMBAUGH: Okay.

17 THE COURT: ---and then, therefore, what -- either the
18 statute or the common law is he violating?

19 MR. LIMBAUGH: Yes, ma'am.

20 Our argument is going to be that the answer to that is,
21 is none, and for the following reason.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LIMBAUGH: That there's a -- that -- and maybe this
24 will help. Put away the whole question of the Statement of
25 Economic Interest because it is---

1 THE COURT: Right.

2 MR. LIMBAUGH: ---it is irrelevant---

3 THE COURT: Okay.

4 MR. LIMBAUGH: ---to everything we've been talking
5 about because there is a specific Code Section, 8-13-1130,
6 that says that this is a report in addition to the Statement
7 of Economic Interest that you have to file if these
8 parameters are met.

9 Assuming he did not file that, which I think the
10 evidence supports that he did not file that report until
11 December of 2016, our position is that it is clear, under
12 the Ethics Act, that that failure is not a criminal act.

13 THE COURT: Okay.

14 MR. LIMBAUGH: The, the Ethics Act provides that a
15 crime is committed if, and only if a required, a required
16 filer fails to respond to notice from a supervising
17 authority, in this case the House Ethics Committee, of the
18 failure to file that required report. That once that notice
19 is given, and there's a continued failure to file, only then
20 can it become a criminal act. And that the State is not
21 permitted to bootstrap into statutory misconduct or common
22 law misconduct a failure that, by the terms of the Ethics
23 Act, is not a criminal act.

24 THE COURT: Okay.

25 MR. LIMBAUGH: That's the semi short version.

1 THE COURT: Okay. And I'm sorry. I don't know if
2 y'all are -- maybe let's back up and let's start with just
3 the perjury indictment again.

4 I guess the question first becomes is whether or not
5 his statement that, when asked why he was receiving money
6 from Richard Quinn & Associates, while he was Chairman of
7 the House, he testified that Richard Quinn asked me if I
8 would consider, and it started maybe asking me, even before
9 that, whether or not I would work for them. I think he
10 enjoyed the way I seemed to handle my campaign, and could
11 help him on other campaigns.

12 MR. LLOYD: And, Your Honor, that's where I was---

13 THE COURT: I mean what's untruthful about that?

14 MR. LLOYD: And all your other statements that you did
15 reference about whether he worked on the McCain campaign
16 or---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LLOYD: ---you know, John Huntsman, and all of that
19 sort of stuff, there was testimony about that. I don't
20 dispute that.

21 THE COURT: Right.

22 MR. LLOYD: That's not what they charged him with
23 perjury for. They had the opportunity to do that after both
24 his Grand Jury testimony, and his interview with the FBI,
25 and the SLED agent. They didn't put that in the indictment.

1 They didn't bring those statements up.

2 THE COURT: Okay.

3 MR. LLOYD: They only brought up this specific
4 statement, and there was no evidence put in the record here
5 contradicting that statement or proving that it was false at
6 all.

7 I know that they're other statements that they have
8 disagreements about, and that I understand from Your Honor's
9 questions, they're other issues maybe regarding how much he
10 worked for McCain, did he work directly for McCain, did he
11 work for Trey -- with Trey Walker and all of that---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. LLOYD: ---they had an opportunity to indict him
14 for those statements. They didn't. They indicted him for
15 this specific statement, and there's no evidence in the
16 record showing that this statement is false.

17 THE COURT: Well, it doesn't require if, in the
18 interview, willfully, false, misleading, incomplete, and
19 material. So, I think the argument could be it was
20 definitely misleading---

21 MR. LLOYD: Well, if---

22 THE COURT: ---is what the State---

23 MR. LLOYD: If we---

24 THE COURT: That's what the State would argue.

25 MR. LLOYD: Right.

1 THE COURT: And, again, I'm not trying to talk for you,
2 but, you know --.

3 MR. LLOYD: If we take the misleading part of the
4 statement, they could of followed up and said, you know, did
5 you do anything else. Was there, you know, other duties
6 that you had or that you should of performed or anything
7 like that. They could of followed up on this line of
8 questioning.

9 All they put in the indictment though is, as to this
10 particular question, his answer was I had this conversation
11 at the very beginning with Richard Quinn.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. LLOYD: Not, not whether or not, somewhere down
14 the, the road, they're other circumstances or conversations
15 or inaction that changed what he actually did.

16 THE COURT: Okay.

17 MR. LLOYD: And I want to concentrate on not his
18 actions down the road somewhere.

19 THE COURT: Right.

20 MR. LLOYD: This statement to them was as to here's the
21 conversation I had with Richard Quinn period.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: They're no more questions to him about
24 that. Nobody follows up with him to go into whatever
25 happens somewhere down the road. His answer to them was

1 here's the conversation I had with Richard Quinn at the very
2 beginning and then it ends, and that's all they choose to
3 put in the indictment.

4 MR. GRIFFIN: Your Honor, if I can address---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. GRIFFIN: The Court's exactly right. It's
7 misleading and incomplete. The testimony is on Page 19
8 beginning at Line 13 of the transcript, which is in
9 evidence, and I'll just read in the record.

10 And it says when did you start working and getting
11 money from Richard Quinn & Associates and why? Explain that
12 to the jury about when and why did you start working there,
13 and what did you get paid for.

14 And his answer is around 2000. I hadn't gone back and
15 pulled my tax records, but I think it was 2000. Richard
16 asked me if I would consider, might have started asking me
17 before, if I'd consider coming to work for them. I think he
18 enjoyed the way I seemed to handle my campaign, and could
19 help him on other campaigns. Initially I discouraged that
20 because I thought it would hurt my law practice too much,
21 but, eventually, once I was satisfied that they knew I was
22 an attorney primarily, but I would enjoy helping them with
23 some of the campaigns they did, and they made me an offer
24 and I said I would do it. But I made sure they understood
25 that that was not my primary job.

1 And then down at the bottom on Page 20, Line, Line 20,
2 it says what did you get a paycheck from Richard Quinn &
3 Associates or First Impressions for?

4 Then he says, the Grand Jury probably doesn't know.
5 I'm sure you know about running campaigns. I mean part of a
6 campaign, you're developing issues to a candidate that -- a
7 candidate should run on, and it goes on to talk about
8 polling and stuff.

9 What we have in the evidence in the record is, in 1999,
10 Representative Harrison writes a letter to the House Ethics
11 Committee saying he's gonna be chief operating officer, and,
12 and a partner. We have a ton of evidence that he never
13 worked on any campaigns. Never worked on any campaigns.
14 Not, not when he started, and, in fact, the documents in the
15 record show, when he started, he was starting working for
16 lobbyist's principals. The, the Exhibit 5, which is -- we
17 fought for a while to get that in, but that's, that's an
18 internal memo. That's at the very beginning, and, and he is
19 the -- he is partner of record and identifies BlueCross
20 BlueShield, Palmetto-Health, SCANA, Unisys.

21 THE COURT: This was the unsigned memo from Richard
22 Quinn to him --

23 MR. GRIFFIN: Yes, Your Honor.

24 THE COURT: -- that was pulled off the server?

25 MR. GRIFFIN: So, that's day one.

1 THE COURT: Okay.

2 MR. GRIFFIN: And day one he's telling the Grand Jury
3 he was hired to do campaigns. So, it's -- the jury could
4 find that this statement is, is false, misleading,
5 incomplete. And so it's a factual question for the jury.

6 MR. LLOYD: Your Honor, I would just point out that
7 they could of put all of that in the indictment. The
8 question to Mr. Harrison that he answered was this is a
9 conversation I had with Richard Quinn. Then they kind of
10 meander around into other topics.

11 Interestingly, the State didn't indict him on that.
12 All this stuff about how much did he work on campaigns,
13 whether he actually worked on campaigns, some time after
14 that initial conversation, they didn't choose to indict him
15 on that. The indictment is the notice document. That's
16 what, that's what they said was a false or misleading
17 statement, and there's no evidence to show that that
18 particular conversation didn't happen or that it somehow was
19 misleading that he had that conversation with Richard Quinn.

20 THE COURT: Do you want to respond any more?

21 MR. GRIFFIN: Oh, Your, Your Honor, the indictment
22 clearly, in, in subparagraph C, talks about why the
23 statement is incomplete and misleading, and says Harrison
24 gave incomplete testimony by failing to inform the Grand
25 Jury that he was hired by Richard Quinn & Associates as an

1 officer and operational or managerial role, role, which he
2 described to House Ethics Commission. And so that -- and
3 we've proven all this.

4 He said it. It's incomplete. It's misleading.
5 Clearly, the implication here is I was hired to do campaigns
6 because, as long as I knew it, that I worked on campaigns, I
7 didn't feel I had a conflict of interest. I mean that, that
8 is the -- that's the implication of this statement, and it's
9 proven to be false or at least a jury could find it to be
10 false.

11 MR. LLOYD: Your Honor, at best I would say that all of
12 that that Mr. Griffin has talked about, at best, what he's
13 saying is Mr. Harrison didn't answer the question he's
14 asking now. The question that was asked Mr. Harrison gave a
15 response about a conversation he specifically had.

16 Now, I understand---

17 THE COURT: I don't think he was responsive to the
18 question at all.

19 MR. LLOYD: Exactly.

20 THE COURT: But that's upon Mr. Pascoe, and whoever
21 asked the question, to say that isn't what I asked.

22 MR. LLOYD: Exactly.

23 THE COURT: And follow-up.

24 MR. LLOYD: Exactly. And the only statement that they
25 have put in the indictment is as to his conversation

1 initially with Richard Quinn.

2 Now, Your Honor, ten minutes later or the next day, a
3 whole lot of things could of changed. But his response to
4 their question was I had a conversation early on with
5 Richard Quinn, and here's what we talked about. And no
6 evidence that that's not true, and there's anywhere
7 misleading as to other facts. At best, it's nonresponsive
8 to, to the question. But, again, they never followed up,
9 even in the Grand Jury, to clarify what he was talking about
10 or if there's more that they wanted to know about that.
11 They had the opportunity.

12 MR. GRIFFIN: Your Honor, the implication in the
13 statement, I mean he, he -- I was hired to do campaigns. As
14 long as I did campaigns, I knew I didn't have a problem, I
15 didn't have a conflict of interest. That's it.

16 The, the jury -- so, so, we're not here asking Your
17 Honor to find him guilty or innocent. What we're asking
18 Your Honor to do is determine whether sufficient evidence
19 for the record a jury could make---

20 THE COURT: Make that decision.

21 MR. GRIFFIN: ---a determination this is misleading,
22 incomplete testimony, and was it willful. And certainly the
23 other evidence around the case puts -- would show that as
24 well. So, I mean it's a jury question.

25 MR. LIMBAUGH: I don't want to---

1 THE COURT: It's okay.

2 MR. LIMBAUGH: ---double team, but what the heck.

3 Your Honor, if this -- this is, this is -- this seems
4 to me to be very -- a very, a very simple question.
5 Mr. Griffin's idea that a -- an answer by Mr. Harrison to a
6 question, the answer to which from Mr. Harrison is, in
7 total, the recitation of his recollection of a conversation
8 he had with Richard Quinn, that it can somehow be
9 incomplete, misleading, or anything else is complete
10 nonsense.

11 The answer -- the total -- the totality of the answer
12 is this is a conversation. My recollection of a -- of the
13 conversation I had with Mr. Quinn. The question is, is
14 that -- is there any evidence in the record that says that
15 that statement, that this is my recollection of the
16 conversation I had with Mr. Quinn, false, and there isn't.
17 There's nothing that says that when Harrison says my
18 recollection is I had this conversation with Mr. Quinn, and
19 this is what I recall us talking about, period, end of
20 story.

21 Unless there's evidence in the record that shows that
22 that conversation never happened, and that he's lying about
23 his recitation of that conversation, this case -- this, this
24 count's got to go out cause there's no evidence that it's
25 false. None. They could -- they can't, you know, go into

1 all this other stuff about who you work for or what
2 campaigns he works, what he didn't, should he have said,
3 anything else, that's not what they charged him with. They
4 charged him with making a, a very specific particular false
5 statement, and the entirety of that statement is his
6 recollection of a conversation with Richard Quinn. If
7 there's nothing to prove that that never happened or that
8 he's lying about his recollection of it, then there's no
9 perjury.

10 MR. GRIFFIN: He affirmatively stated that Richard
11 Quinn hired him so that "he could help him on other
12 campaigns." That's, that's in the indictment. I think he
13 enjoyed the way I seemed to handle my campaign, and could
14 help him on other campaigns. That's what he says. And
15 we're talking about at the beginning of the hiring of Jim
16 Harrison by Richard Quinn & Associates.

17 We've got the memo at the hiring that says zero about
18 helping him with campaigns. It says zero about helping
19 him with campaigns. It says partner of record for these
20 corporate clients. So, yes, there's evidence in the record
21 that contradicts exactly what he says.

22 MR. LLOYD: Your Honor, he -- that's like you asking me
23 a question, do we have jury charges to hand up to your
24 clerk---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. LLOYD: ---to charge the jury at the end of the
2 case, and I answer you Judge, I had bacon and eggs for
3 breakfast this morning.

4 Now, it might not be responsive to your question, but
5 it's not a false statement. And that's the problem they're
6 stuck with.

7 They had the opportunity, number one, in the Grand
8 Jury, to follow-up on that, and I know Mr. Griffin says
9 look, that his memos, at some point dated, at some point
10 about what his role would be, and that's what he used to
11 submit a, a request to the Ethics Committee. There's no
12 evidence about when that occurred. That could of occurred
13 the next day, the next month, six months later from this
14 conversation that Mr. Harrison answered.

15 Now, again, they indicted him on this particular
16 statement. They had the opportunity to indict him on
17 statements related to how much work did you do on the McCain
18 campaign, how much work did you do on the Beasley campaign.
19 They had every opportunity to go through this transcript as
20 well as his interview with the FBI and SLED agents and pick
21 out all that material that he wants to bootstrap into this
22 particular statement. They didn't do that.

23 THE COURT: Okay. You want to go to Count Two?

24 MR. LLOYD: Count Two, again, Your Honor, is a very
25 specific statement. Mr. Harrison was asked to explain to

1 the Grand Jury why he went off payroll, and became a
2 contract consultant. Mr. Harrison's statement, again very
3 specific, Mr. Quinn asked me if I would consider going off
4 payroll, and become a contract consultant, and I did that.
5 And we discussed, because I was not available as much as
6 maybe I had been early, that my salary was significantly
7 reduced because I acknowledged to them that I didn't think I
8 could put in the time that we initially had agreed that I
9 would do.

10 Agreed. No evidence in the record to contradict that
11 statement. None.

12 The only witness that even touched on that subject,
13 Your Honor, was Rebecca Mustian.

14 THE COURT: Right, with the cash flow problem, and the
15 emails.

16 MR. LLOYD: No, Your Honor. What she said was
17 Mr., Mr. Harrison wasn't working as much. His hours -- he
18 wasn't putting in as much time. That's exactly what she's
19 saying. In fact, I think the answer caught Mr. Griffin by
20 surprise cause he asked her a second time.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. LLOYD: Now, there may of been other factors that
23 came into play, cash flow and all of that, but Mr. Harrison
24 says I had a conversation with Richard Quinn. I wasn't
25 putting in as much time, and we talked about reducing my

1 pay, and me going to contract status.

2 when asked that question, the only evidence in the
3 record that goes to that statement, not whether or not there
4 was cash flow problems as well or anything else, the only
5 evidence in the record that goes to that statement was
6 Rebecca Mustian saying Jim wasn't putting in as much time.

7 So, that statement is not only not misleading or false
8 or anything like that, it's backed up by their witness.

9 Right. Again, we get back to the specific conversation
10 he had with Richard Quinn. The only person who could really
11 dispute that conversation in either case is Richard Quinn.

12 MR. GRIFFIN: Your Honor, what we have in the record
13 are the emails where Richard Quinn is drafting letters to
14 Jim Harrison and Jim Merrill explaining why they're gonna
15 have to be reduced, and it's because of -- I think you, you
16 recall it says something about the economy and they put
17 all---

18 THE COURT: Need more corporate clients.

19 MR. GRIFFIN: Need more---

20 THE COURT: I remember maybe you need to do a little
21 more work---

22 MR. GRIFFIN: One thing---

23 THE COURT: ---getting corporate clients.

24 MR. GRIFFIN: Yeah, there's, there's nothing in there
25 saying, you know, I appreciate you coming to me and saying

1 you're not putting enough time in.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. GRIFFIN: And, you know, so you want us to cut your
4 pay. I mean that didn't happen.

5 The fact of the matter is Jim Harrison was getting a
6 check every month, and the evidence is, thus far, no one
7 knows what he did. I mean that's even their, their best
8 defense, and they're cross-examining Rebecca Mustian saying
9 well, you know, your dad, he didn't really pay much
10 attention. And so, you know, could be that Jim Harrison
11 kept getting paid, and your dad really didn't realize he was
12 getting paid and for -- to, to do nothing. I mean that's --
13 and that went on.

14 Now, she said, personally, I didn't observe his work
15 habits. So, I don't know if he was working more or less,
16 but I do know we couldn't make payroll based upon what --
17 the money was coming in, that's what the emails said, and
18 that I brought it to the attention, and then we, we cut
19 salaries. And, frankly, in that email thread, there's
20 discussions about, you know, should we call them or should
21 we just send an email or, you know, and those they decide to
22 send it in writing.

23 This states that Mr. Harrison went to them, and
24 acknowledged that I haven't been able to put as much time in
25 it as I, as I intended at the beginning. And so --.

1 THE COURT: Well, I don't think it said he went to
2 them. It says---

3 MR. GRIFFIN: Well, it says---

4 THE COURT: ---Mr. Quinn asked me.

5 MR. GRIFFIN: It says that, as we discussed, because I
6 was not available as much as maybe I had been earlier, that
7 my salary was significantly reduced because I acknowledged
8 to them I didn't think I could put the time into it that we
9 had initially agreed that I would do. And that's---

10 MR. LIMBAUGH: Your Honor, we get---

11 MR. GRIFFIN: That's not the reason.

12 MR. LLOYD: And, again, Your Honor, the -- we're
13 talking about a very specific conversation---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LLOYD: ---that he had with Richard Quinn.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LLOYD: There's no evidence to suggest that, at --
18 that, number one, those two statements are irreconcilable,
19 that he couldn't of had that conversation with Richard Quinn
20 and said look, you know, we're gonna cut your pay. Okay.
21 I'm not putting in that much time. No problem.

22 On the top of that, the FBI agent, and I believe or
23 Jeremy Smith, Lieutenant Smith, testified that, that what
24 we're talking about was an email shown to him during the
25 course of the interview that brings up this hey, RQA is

1 having cash flow problems.

2 There's no testimony that Jim disputed that or that
3 that could of been an additional reason he was being cut in
4 pay. He said I had a conversation with Richard Quinn. He
5 said I need to cut your pay, and we need to put you on a
6 consultant basis. And I wasn't putting in that much time.

7 That's the end of the, the statement that we're
8 determining whether or not that statement is true or false.
9 The two are not irreconcilable.

10 THE COURT: I guess, I guess where we're, we're all
11 having a bit of a issue is you're, you're arguing that that
12 statement, in and of itself, is not false.

13 Then how is it not misleading?

14 MR. LLOYD: Well, what does it -- well, what -- let's
15 take it from this standpoint, Your Honor.

16 THE COURT: Yeah.

17 MR. LLOYD: What is it misleading about?

18 THE COURT: Well, he's saying that he worked, and that
19 the work he did, and what he got paid for at RQA was for
20 working on campaigns.

21 MR. LLOYD: No, no, no. This statement is about---

22 THE COURT: I'm sorry. I read the first one.

23 MR. LLOYD: ---the time.

24 THE COURT: I apologize. The Count One.

25 MR. LLOYD: This statement is about them cutting his

1 pay, and his answer is I'm not putting in that much time.
2 Richard Quinn came to me and said we're cutting your pay,
3 and putting you on a consultant basis. And his response is
4 well, I'm not putting in that much time as maybe we had
5 originally discussed.

6 THE COURT: Forgive me, why does this matter?

7 why does that statement, in and of itself, matter?

8 MR. LLOYD: None of them two statements are material.

9 THE COURT: I mean what -- my question is why does this
10 matter if he went from being on payroll, now to a check, and
11 its reduction went from being however much a month to, you
12 know, a third of that?

13 MR. LLOYD: Your Honor, that's always been our issue
14 with this case. His -- whether he's a part-time consultant,
15 whether he's on salary, whether he's COO, whether he is,
16 again, out -- up front just answering the phones, none of
17 that matters in terms of what they wanted to investigate to
18 determine whether or not Mr. Harrison and RQA were violating
19 the Ethics Act. None of that.

20 They knew that Mr. Harrison was an employee at RQA.
21 His status changing from a paid employee to an independent
22 contractor and he had to file a 1099 doesn't affect his
23 relationship with RQA, and doesn't affect his obligations or
24 non-obligations under the Ethics Act. That's the issue
25 we've always had is that, at the end of the day, whether

1 Mr. Harrison was doing absolutely no work whatsoever, he
2 could of walked in -- Richard Quinn could of looked at Jim
3 Harrison, and said you know what? I like you, you're a
4 friend of my son, I want to hire you. I'm not gonna make
5 you show up. I'm not gonna make you do any work at all.

6 The issue is, is Harrison violating the Ethics Act.
7 None of this goes to determining that. Not a bit of it.

8 The only thing investigators need to know is there's an
9 employment relationship between Jim Harrison and RQA. That
10 was established from day one. Jim Harrison's never denied
11 he worked for RQA. Never in this entire case.

12 I understand that they want to bring in issues about
13 how much work he did, whether he actually worked with Trey
14 or just with Richard Quinn. We can fight about that all day
15 long. But, ultimately, what not only we have to deal with
16 in this hearing for directed verdict motions, but what the
17 jury has to consider, as it puts the facts to the statutes,
18 what is his status. His status is he's an employee with
19 RQA.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LLOYD: Being a -- an employee with RQA may or may
22 not establish certain obligations under the Ethics Act.
23 None of that changes based on what we're talking about in
24 these two statements, which is my issue about, number one,
25 materiality, but whether they're misleading, whether they're

1 false.

2 There's no evidence that they're false. Now, if they
3 want to go into these issues about campaigns, and how much
4 he actually worked, they could of charged him with that.
5 They didn't. These two statements, in and of themselves,
6 have not been proven to be false, and they're not
7 irreconcilable with any other facts that have been put into
8 the record.

9 THE COURT: Do y'all want to --?

10 MR. GRIFFIN: Yes, Your Honor.

11 The reason Mr. Harrison is being asked these questions
12 is what are you doing for money. The reason it's important
13 to know what are you doing for the money is 8-13-700(A).

14 Are you using your official position to obtain an
15 economic interest for yourself?

16 Are you being paid because you're the Chairman of the
17 House Judiciary Committee or are you being paid for work
18 that you're doing?

19 And if you're doing work, what work are you doing?

20 And, and why was your pay cut from 80,000 to 24,000 or
21 whatever, whatever it was.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. GRIFFIN: And he says the reason it was cut is
24 because I acknowledge to them I didn't think I could put the
25 time into it that we initially agreed that I would do.

1 what the evidence is, he put no time into it after
2 maybe 2000, 2001 at the very beginning. He had the office
3 at the first location. They relocated next door. He didn't
4 have an office, and that was one of the first couple years.
5 And ten years go by, or, or however -- so, I'm 2002. Yeah,
6 ten years go by with 2000 -- no, eight years. 2010. He's
7 being paid all along, and, and no one can say his workload
8 decreased, but this, this statement, this misleading
9 statement, makes it sound like, come 2010, I couldn't devote
10 as much time as I had the last eight years, which is totally
11 misleading because there's no evidence he did anything
12 honestly. Anything other than take money because he's
13 Chairman of the House Judiciary Committee, and that's what
14 they were investigating.

15 So, that's why it's material. That's what -- and, and
16 from -- and the implication here is my salary's cut because,
17 in 2010, I couldn't devote as much time as I had been
18 previously.

19 Well, the evidence is no one knew what -- and on God's
20 green earth he did there from the day he was hired, except
21 for maybe one year, when he showed up at the office, you
22 know, frequently. But, after that, no one knows.

23 THE COURT: Okay.

24 MR. LIMBAUGH: And, Your Honor, I thinks it's important
25 to point out something here.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. LIMBAUGH: What the evidence shows is that Trey
3 walker didn't work with him. Adam Piper didn't work with
4 them. That doesn't establish what he was or -- well, what
5 it, what it may establish is that he was not working with
6 Trey walker, and it establishes that he apparently was not
7 working with Adam Piper.

8 There is -- now, if they had chosen to call Richard
9 Quinn, for instance, who is immune from prosecution in
10 anything in this matter, it would only put himself in
11 jeopardy if he lied, if they had wanted to call Mr. Richard
12 Quinn to the stand, and say Mr. Quinn, what did you and Jim
13 Harrison work on, and Mr. Quinn had testified we didn't work
14 on anything, well, you know, that'd be a horse of a
15 different color.

16 But they have -- they can't argue, by, by negative
17 implication, that because they've proven that Jim Harrison
18 didn't work with Trey walker, and didn't work with Adam
19 Piper, that he didn't do work on campaigns. They've only
20 proven those things. They haven't -- there's nothing in the
21 evidence about what Jim and Richard Quinn were working on
22 together. That's one -- that's one thing.

23 The other is it's right back to the same argument on
24 the first one, that they chose, this was the State's
25 decision, they chose to cite two very specific pieces of Mr.

1 Harrison's testimony to the Grand Jury as the basis for the,
2 the perjury indictments. It so happens that both of those
3 statements are Mr. Harrison's recitations of conversations
4 he had with Mr. Quinn, specific conversations he had with
5 Mr. Quinn.

6 There is nothing in the evidence to show that his
7 recitation of those conversations is false. If they can't
8 show that those -- that conversation was false, it isn't
9 perjury. He doesn't have an obligation to go on, after he
10 recites what his conversation was with Mr. Harrison --
11 Mr. Quinn, for which they've charged him with perjury, to go
12 on and talk about everything else that's involved in this
13 case. He has no obligation to do that, and, as Reggie said,
14 if the State wanted to charge him with perjury for lying
15 about the work he did at RQ&A, it could presumably have gone
16 through the Grand Jury testimony, and said Mr. Harrison
17 testified here that he did this, this, this, and this. And
18 the evidence in -- you know, there's sufficient evidence in
19 the record to, to show that that statement was false.

20 They didn't do that. They cited two very specific
21 pieces of his testimony. Both of which are recitations of
22 conversations he had with Richard Quinn. There's no
23 evidence that either one of those is false.

24 THE COURT: Okay. Let's go on to the criminal
25 conspiracy.

1 MR. LLOYD: Can, can I just --?

2 THE COURT: Yeah.

3 MR. LLOYD: I don't want to beat this horse to death,
4 but, again, as to 700(A) --

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LLOYD: -- these conversations don't go to that.
7 700(A) is going to Harrison using his office to get himself
8 an economic benefit. It didn't matter what he was doing,
9 whether that's a conversation he had with Richard Quinn or
10 not.

11 If their contention is that this statement is
12 misleading because we wanted to know what was he actually
13 working on campaigns or was he just hanging out drinking
14 coffee, none of that is, is material to their analysis under
15 700. 700 doesn't go to -- and I think that's been an issue
16 in this case all along.

17 (Pause.)

18 THE COURT: Keep going. I'm sorry.

19 MR. LLOYD: Oh, I'm sorry.

20 THE COURT: No, no.

21 MR. LLOYD: And we do -- I know we do keep going back
22 to these statutes.

23 THE COURT: No, and I -- I was just asking to get a
24 copy of it. So, that's fine.

25 MR. LLOYD: And, Your Honor, at the end of the day, to

1 just sort of summarize all of these statutes, they all
2 center around official conduct. It isn't whether or not Jim
3 Harrison had a relationship with Richard Quinn, and he had a
4 plum job with Richard Quinn. There's nothing illegal about
5 that.

6 700 doesn't even touch that. What 700(A) and (B) get
7 to, and what this case has been about, is that supposedly
8 Jim Harrison is getting paid, sometimes the theory changes,
9 it's either by Richard Quinn or as a pass through from
10 lobbyist's principals, to take official legislative actions.
11 That's the only thing the Ethics Act gets to.

12 Whether -- I guess it -- whether he is, in fact, just
13 the beneficiary of a plum job, because he and Richard Quinn
14 know each other, doesn't have any bearing on whether or not
15 he's violated 700(A) or (B). These statements, in and of
16 them -- they could of just said to, to Jim Harrison do you
17 work at RQA?

18 Yes.

19 Did you work there from 1999 or 2000 to 2012?

20 Yes.

21 End of inquiry. End of it.

22 Anything they needed to analyze in terms of their
23 investigation, as it relates to this case, was done right
24 there and then. It didn't matter what he did. If he just
25 hung light bulbs or chandeliers or whatever, their inquiry

1 as far as Ethic Act violation purposes ended with do you
2 work there. Nothing else is needed.

3 I'm sorry, Your Honor. You wanted to go to conspiracy.

4 THE COURT: That's okay. That's okay.

5 MR. LLOYD: Your, Your Honor, there's been no, again,
6 absolutely no evidence presented that there was ever an
7 agreement between Richard Quinn and Jim Harrison to do an
8 unlawful act. None.

9 There's been no evidence presented that Jim Harrison
10 and Richard Quinn entered into an agreement to do lawful
11 acts to reach an unlawful objective.

12 THE COURT: Okay.

13 MR. LLOYD: Now, on the first one, I would suggest that
14 that one's pretty easy. There's -- first of all, there's no
15 evidence of an agreement other than employment agreement
16 between Richard Quinn and Jim Harrison.

17 That, in and of itself, fails the first part of this
18 inquiry because the employment agreement between Richard
19 Quinn and Jim Harrison isn't illegal. In and of itself, if
20 that's the only evidence we're stuck with, which it is,
21 there's no evidence that that relationship is illegal or
22 unlawful under any statute, under any common law rule.
23 None.

24 So, if we go to the issue of is there an agreement to
25 do lawful things, hire Jim Harrison to do -- reach unlawful

1 objectives, there's no evidence that Richard Quinn ever
2 asked Jim Harrison to do anything. I mean -- and this is
3 where we keep going back and forth throughout this case,
4 throughout the time that we've been dealing with this case
5 over a year or so.

6 The theory shifts. Nobody knows Jim works there. Jim
7 is, as Mr. Griffin said, Jim doesn't do anything. Jim
8 doesn't even show up. They took his office from him.

9 THE COURT: Well, I've actually heard two theories,
10 that he doesn't do anything, and I've heard he's the COO.

11 MR. LLOYD: Exactly. But let's take the one that he
12 doesn't do anything. Then there's an agreement that we're
13 gonna hire Jim Harrison, and not ask him to do anything,
14 legal or illegal. That's not a conspiracy.

15 If he's COO, there's nothing illegal about that. We've
16 heard nothing but testimony -- obviously, the, the issue is,
17 is there a lack of evidence here. But all the evidence is,
18 even if he's COO, there's nothing illegal about that. This
19 has been a back and forth of 'let's, you know, we're talking
20 about one issue, let's make him a do nothing employee. If
21 we're talking about something else, well, he's COO.

22 What we're left with is no evidence of an agreement,
23 other than the hiring agreement. That's certainly lawful.
24 I think even they would agree the mere hiring of Jim
25 Harrison is legal.

1 The only, the only acts, whether it's COO or as this do
2 nothing employee, because you have to -- even in -- where
3 you're pursuing something as an unlawful objective, you have
4 to do something. I mean you have to even do legal acts to
5 get to that unlawful objective.

6 Here, whether you say he's a COO or he's the do nothing
7 employee, there's not -- there's nothing that bridges that
8 gap. There's nothing in the memo of lawful acts towards an
9 unlawful objective.

10 THE COURT: Can I have -- can y'all go address -- cause
11 I will say the criminal conspiracy one is, is, is definitely
12 more problematic.

13 I mean you didn't have Richard Quinn testify, Rick
14 Quinn testify, and I'm just thinking of people who could
15 testify they were part of this group that would know. Jimmy
16 Merrill didn't testify. Tracy Edge didn't testify. And
17 criminal conspiracy is much more difficult.

18 I mean I thought it was gonna come in through Rebecca
19 Mustian, but I, I didn't see it come in through her either.

20 Where is the evidence?

21 And we all know the law. We all know that you can
22 prove it by circumstantial evidence. However, you have to
23 understand that all the circumstantial evidence must point
24 to it, and not just look suspicious. So, that's the problem
25 that I'm looking at here.

1 So, Mr. Griffin, I need you to tell me every piece of
2 evidence---

3 MR. GRIFFIN: Sure.

4 THE COURT: ---that, either testimony or whatever's in
5 there, that shows there was a criminal conspiracy because I,
6 I do have a problem with how you prove this case without it.

7 MR. GRIFFIN: Sure.

8 So, here's the scheme in a nutshell, and then I'll get
9 to the evidence.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. GRIFFIN: The scheme is that Representative
12 Harrison took lobbyist's principal money from Richard Quinn
13 & Associates pursuant to an agreement that he had with
14 Richard Quinn to conceal the transfer of those proceeds from
15 lobbyist's principal clients and the public. And, in
16 return, actively supported legislation, legislation of RQA
17 lobbyist's principal clients.

18 THE COURT: Ask you a question.

19 Did he -- and maybe I missed this.

20 I mean did he, did he pay taxes on that money?

21 I mean what does his tax return say?

22 MR. GRIFFIN: He got W-2 income.

23 THE COURT: Right. And he -- I'm assuming he declared
24 it, correct?

25 MR. LIMBAUGH: Right.

1 MR. LLOYD: Absolutely, Your Honor.

2 THE COURT: Okay.

3 MR. GRIFFIN: Right.

4 THE COURT: Okay.

5 MR. GRIFFIN: What he did not declare -- he did not
6 declare the relationship to the public on a Statement of
7 Economic Interest, and I'm not talking about his personal
8 income.

9 THE COURT: Right.

10 MR. GRIFFIN: I'm talking about the lobbyist's
11 principal money to RQA.

12 THE COURT: Okay.

13 MR. GRIFFIN: We can talk about whether they're
14 retainers or not, but the lobbyist's principals all
15 testified that, you know, regardless of the, of the niceties
16 of cutting the definition of retainer, while some lawyers
17 are fighting over it, they wouldn't get close to the
18 situation. The, the -- Chuck Beaman from Palmetto-Health
19 said, you know, you just consider a conflict of interest.
20 They don't want to go there.

21 So, the lobbyist's principals would not have kept
22 funneling hundreds of thousands of dollars into RQA had they
23 known that Jim Harrison was on the payroll. The public and
24 the lobbyist's principals had a right to know that Jim
25 Harrison was on the payroll because the law required it.

1 was their evidence of agreement?

2 Absolutely.

3 Rebecca Mustian, who's the CFO and handled the, the HR
4 files of the company, says I don't know what he did. That
5 was an agreement between he and my dad. And then to prove
6 the existence of a conspiracy, you can prove it through
7 circumstantial evidence, and evidence that the activities
8 are of mutual benefit to both parties of the alleged
9 conspiracy. And, and here the mutual benefit is you keep
10 getting money in from the lobbyist's principals by keeping
11 him a secret.

12 And, and this could not be more clearer than, at the
13 very beginning, Mr. Harrison did it correctly. And then
14 there was a change.

15 Now, we don't know the answer -- the reason for the
16 change cause we, you know, can't call Mr. Harrison and ask
17 him. And, Mr. Quinn, we have other issues with him.

18 But we know it was reported accurately the first time,
19 and then, 12 years go by, and it wasn't reported again, and
20 what happens in the interim?

21 Mr. Harrison's interviewed by The State Newspaper
22 Editorial Board, and he's asked specifically about his
23 relationship with RQ&A, and what does say?

24 He says I'm not getting a paycheck.

25 But what was happening?

1 I was getting a paycheck.

2 Mr. Quinn, over and over and over, has never told any
3 lobbyist's principals that Mr. Harrison was on the payroll.

4 THE COURT: Well, how do they know then?

5 MR. GRIFFIN: They testified. Every one of them.

6 Were you ever told Mr. Harrison's on the payroll?

7 Yes.

8 When we met with Mr. Quinn, did you -- did anyone ever
9 tell you Mr. Harrison was on the payroll?

10 No, they didn't.

11 Had you known he was on the payroll, what difference
12 would it make?

13 We wouldn't have given them any money. We wouldn't
14 have gone in that relationship. We would of turned it off
15 immediately.

16 To -- the lobbyist's principal, yesterday afternoon
17 that's what they all said.

18 MR. LLOYD: Your Honor?

19 MR. LIMBAUGH: Your Honor, what I have---

20 MR. LLOYD: Mr. Limbaugh needs to address something
21 with you.

22 THE COURT: Okay.

23 MR. LLOYD: The two points that Mr. Griffin just said
24 that I think are important. One, we need to stop talking
25 about past throughs. Harrison was paid by RQA. Not

1 lobbyist's principals. His salary, there's -- there was no
2 evidence he was ever paid any money directly by the
3 lobbyist's principal.

4 Two, this issue of that lobbyist's principal
5 representatives came in here and said oh, had we known, we
6 wouldn't of hired RQA. Here's the missing element in that.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LLOYD: Nobody testified that hey, I told Richard
9 Quinn that, if he had legislators, we wouldn't hire him or
10 that Richard Quinn came in here and said hey, I knew that if
11 I hired legislators, they wouldn't hire me. That's a very
12 critical missing element of what Mr. Griffin just said.

13 Without that, there's absolutely no reason to believe
14 that there was any kind of an agreement to hide all of this
15 by Richard Quinn in order to keep these lobbyist's
16 principals paying money. There's a very important piece of
17 fact that they've left out.

18 MR. LIMBAUGH: Well, yeah -- well, one other thing.

19 well, I, I hope we can just put this little piece of
20 this thing to rest once and for all.

21 The obligation to report the relationship with the
22 lobbyist's principals is not in the Statement of Economic
23 Interest. It's not in the statute that governs what's in
24 the Statement of Economic Interest. It is solely in
25 8-13-1130. That is the only place where there's an

1 obligation.

2 There was nothing ever in the Statement of Economic
3 Interest Statute that would of required Mr. Harrison, during
4 his employment with Richard Quinn & Associates, to report,
5 either the over relationship with the lobbying -- with
6 Richard Quinn & Associates had with lobbyist's principals or
7 Richard Quinn & Associates income from lobbyist's
8 principals. Never existed, or Mr. Harrison's for that
9 matter. Never happened. Never existed. The obligation's
10 solely under 1130.

11 Now, Mr. Griffin's response on, on the argument with
12 regard to the conspiracy is it is, it is perfectly
13 illustrative of the problem with this case. He's, he's
14 arguing about things and facts that the State finds
15 distasteful. He's arguing about things and facts that maybe
16 should of been unlawful. Maybe they should be unlawful.
17 Maybe the statutes need to be amended to make them unlawful.
18 Perhaps it should be illegal for a legislator to work for
19 anybody that employs a lobbyist -- that works for a --
20 lobbyist's principals. That, that's probably a pretty good
21 idea actually. But that's not what the law -- not what it
22 is now. Not what it was between '99 and 2012.

23 So, when you're talking about a criminal conspiracy,
24 even if Mr. Quinn and Mr. Harrison didn't want lobbyist's
25 principals to know that Mr. Harrison worked there, there was

1 nothing illegal about Mr. Harrison working there.

2 what is the actual crime about which they conspired?

3 They're -- there's no evidence of one. I mean if they,
4 if there was evidence in the record, which there is not,
5 that Mr. Quinn and Mr. Harrison conspired to -- for
6 Mr. Harrison to go to the Legislature and vote in favor of
7 House Bill 3999 on whatever, because one of their clients
8 wanted them to do that, no, yeah, maybe. That might, but
9 there's not any. There's not any.

10 There's no crime here that -- about, about which
11 anybody conspired, and that, when you get right down to it,
12 is the biggest problem the State, in our opinion, has always
13 had, and has never understood. Their whole case from jump
14 has been we're gonna talk about the fact that this
15 legislator worked for Richard Quinn & Associates, and
16 Richard Quinn & Associates worked for lobbyist's principals,
17 and he was paid \$80,000, and maybe he did a lot, maybe he
18 did a little.

19 what they've never been able to show is that he did
20 anything illegal. Never. But having -- they've had however
21 many years to put that together. They've had this trial to
22 do it. Hasn't happened yet. And if, if they can't prove
23 that, and I don't mean to be doing my closing argument
24 because I'm kind of -- but they can't prove a conspiracy,
25 and there's no evidence of one cause there's no evidence of

1 a crime.

2 MR. LLOYD: Your Honor, can we -- oh, Mr. Griffin.

3 THE COURT: Yes, Mr. Griffin, go ahead.

4 MR. GRIFFIN: Thank you.

5 I don't know what, what I heard back in chambers on the
6 record and what I'm hearing now. I thought, back in
7 chambers on the record, there was an acknowledgment by the
8 defense that 8-13-1130 requires -- required Mr. Harrison to
9 identify the lobbyist's principals, and, and, and their
10 complaint is it doesn't require them to identify the amount
11 of money the lobbyist's principals paid on the Statement of
12 Economic Interest. And so we can start there.

13 For 12 years, the identity of the lobbyist's principals
14 were never disclosed on the Statement of Economic Interest.
15 That's a violation of the Ethics Act period. End of story.

16 Secondly, 2-17-110(G), 110(G) says a lobbyist principal
17 may not employ, on retainer, a firm or organization in which
18 a public official has an economic interest. Mr. Harrison,
19 by virtue of his employment at Richard Quinn & Associates,
20 had an economic interest. It's -- it -- economic interest
21 is, is someone under arrangement who receives benefit --
22 economic benefit of \$50 or more. He's in excess of \$50 by
23 more than \$80,000 and, the lobbyist's principals, it's
24 illegal for them to pay Richard Quinn & Associates on
25 retainer.

1 Now, they want to quibble about what retainer means,
2 and we got it in evidence. I know the SCANA guy said, for
3 almost a year, they did nothing, did zero, and we paid them
4 a monthly retainer. In the books of Richard Quinn &
5 Associates, they identified these payments as retainers.
6 So, if he wants to say there's nothing, nothing illegal
7 about this, he's wrong because they're two statutes clearly
8 have been violated.

9 THE COURT: So, you're referring to what?

10 MR. GRIFFIN: Well, as to -- addition to 8-13-1130 --.

11 THE COURT: I've got that.

12 What's the second one?

13 MR. GRIFFIN: Two -- Title 2. 17-110(G).

14 THE COURT: It says a lobbyist and lobbyist's principal
15 or a person acting on behalf of a lobbyist's principal or
16 lobbyist principal may not employ, on retainer, a public
17 official.

18 MR. GRIFFIN: And then keep going. It says a firm
19 down, a lot more words, it says a firm or organization in
20 which public official or public employee has an economic
21 interest.

22 THE COURT: Okay.

23 MR. GRIFFIN: And that would be RQ&A.

24 THE COURT: Okay.

25 MR. LLOYD: Your Honor, can I just say two things?

1 THE COURT: Go ahead.

2 MR. LLOYD: First of all, you don't even get there
3 because 2-17-110(G) doesn't apply to Jim Harrison. It
4 doesn't apply to Richard Quinn. The prohibition is on
5 lobbyists or lobbyist's principals. That's when they
6 violate that, and that's when you're prosecuted on that.

7 Your Honor, with all due respect to the witnesses that
8 came in here this week from the lobbyist's principals, and
9 gave this self-serving testimony that oh, my God, had we
10 known, we would of had nothing to do with them, here's the
11 thing, Your Honor. They could of asked them in the Grand
12 Jury. They could of asked them here.

13 Did you ever talk to Richard Quinn about that?

14 No.

15 Unless you, unless you link that sentiment that oh, we
16 wouldn't have hired him, you know, save us from this
17 meddlesome trouble. You have to be able to point out that
18 Richard Quinn would of known, at that time, hey, if I hired
19 him, Jim Harrison, I lose these clients. There's no
20 evidence that even touches on that issue.

21 So, that's an important link that is missing. They're
22 trying to establish now that these guys can just show up,
23 and go well, I've been watching this thing for the last
24 three or four years, and, oh, yeah, we would of been away
25 from that. That doesn't meet what has to have been known by

1 Richard Quinn and Jim Harrison at the time, that any of
2 these guys had any reservations or might of had any
3 reservations.

4 Let's set aside -- you know, we can argue about the
5 definition of retainer all day long, but we don't even get
6 there because it doesn't even apply to Richard Quinn and Jim
7 Harrison in terms of punishment.

8 Your Honor, there's something fundamental that's always
9 bothered me about this case, and I think it's the problem
10 that we have now, is the problem that we kept trying to deal
11 with, and will deal with in jury questionnaire -- charges is
12 the problem we've had with certain evidence coming in and
13 not coming in. There's a reason the State did not charge
14 one individual under the State Ethics Act. Your Honor's
15 been on this case -- this entire case, all of these
16 defendants. None of these indictments came into this Court
17 and said Jimmy Merrill or Rick Quinn or Jim Harrison, I
18 don't mean to be on---

19 THE COURT: I understand. No.

20 MR. LLOYD: ---violated 8-13-700(A), and the problem
21 with this whole case, Your Honor, and what's been
22 frustrating, what has been frustrating for Mr. Harrison is
23 they know they can't prove, if you have to read that statute
24 and apply it to these facts, that he violated it. What
25 they've tried to do is bootstrap into statutory misconduct,

1 common law misconduct, and criminal conspiracy, all of their
2 crazy, not crazy, but disputed theories about the Ethics
3 Act, and then Mr. Limbaugh said it might be theories about
4 wonderful ideas on how to amend the Ethics Act.

5 I applaud him for that, but the reason this State has
6 never charged a defendant in this case, four year
7 investigation, FBI, SLED, a Grand Jury, subpoenas, search
8 warrants, all of that, under the Ethics Act, is because they
9 can't prove, under 1130, 700(A), 700(B), or anything else in
10 that section, in that title, that there was a specific
11 violation. That's what's ultimately missing in this case.

12 MR. GRIFFIN: Two, two points.

13 THE COURT: Go ahead.

14 MR. GRIFFIN: I don't think it really matters, for
15 purposes of our argument here today, but, as Mr. Baker
16 points out, Senator Courson was charged under the Ethics Act
17 campaign provisions, 8-13-48(A), but, but back to---

18 MR. LLOYD: And, Your Honor, I apologize.

19 I, I will concede that to Mr. Griffin, and the reason
20 why he was charged under that is not because of the conduct
21 between an employment relationship or anything else between
22 RQA.

23 THE COURT: Right.

24 MR. LLOYD: It had to do with a -- John Courson's
25 conduct in his campaign. What I was referring to is this

1 theory about Tracy Edge and Jim Harrison working for RQ&A.
2 I, I don't dispute that John Courson was charged for
3 something very specific about how he handled his campaign
4 account. But what I'm talking about is this theory that the
5 State has been pushing, for four years almost now, about
6 these legislators who work for RQA.

7 The State can charge -- Mr. Griffin says that they
8 violated 700(A) or 700(B), the State could of charged it,
9 and I would go further, Your Honor. Other than the common
10 law misconduct, which they threw in there, which carries a
11 higher penalty, carries the exact same penalty as statutory
12 misconduct, they chose not to file charges against these
13 individuals under the Ethics Act itself because, number one,
14 1130's not a crime, and they can't prove, based on these
15 facts that they brought in here in front of Your Honor, in
16 front of this jury, that any of these people violated
17 700(A), 700(B), or anything else.

18 MR. GRIFFIN: One more correction.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. GRIFFIN: Mr. Merrill was indicted for violating
21 8-13-1130, and he pled guilty to misconduct, but I don't
22 disagree with Mr. Lloyd. Mr. Pascoe and the State could
23 have charged Mr. Harrison with 12 separate counts of
24 eleven -- violating 1130. There's no doubt about that.
25 And, and it's probably an easier burden to prove than

1 meeting the misconduct standard, but we're arguing
2 conspiracy.

3 I, I do want to address one other point.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. GRIFFIN: That it's not illegal for Mr. Harrison or
6 Mr. Quinn to violate 2-17-110 because that governs what
7 lobbyist's principals can do. That's why they're charged
8 under the conspiracy statute. 16-17-410 says to do an
9 unlawful -- to do a lawful act by unlawful means, and the
10 unlawful means here are to get lobbyist's principals to pay
11 money that they couldn't -- that, that's illegal to -- for
12 them to pay by concealing from them, and from the public,
13 that Mr. Harrison is receiving -- well, he's, he's
14 associated with a business, RQA, that receives more than
15 \$200 from lobbyist's principals.

16 And so that's, that's the conspiracy. That's the
17 criminal elements of it, the unlawful elements. There's,
18 there's an agreement. There's mutual benefit, mutual
19 conduct. The -- initially I think it's very significant
20 initially. Mr. Harrison reported it correctly, and then, 12
21 years go by, and he doesn't report it correctly. I mean
22 that's a significant fact. The jury can -- I mean it's a
23 jury question, Your Honor. I understand it's closer than
24 the others, but it is a jury question.

25 MR. LIMBAUGH: Very briefly.

1 THE COURT: Yes.

2 MR. LIMBAUGH: Sorry.

3 THE COURT: You're okay.

4 MR. LIMBAUGH: The State could not have charged -- I
5 mean they, they may of charged Mr. Merrill under 1130,
6 but -- and I don't know if Mr. Merrill or his lawyer thought
7 about that, but violation of 8-13-1130's not a crime. So,
8 quite clearly by its own terms. So, I, I don't know why
9 that they just didn't -- it doesn't become a crime, as I
10 said, unless and until you fail to respond to notice from
11 the supervising authority. That's when it becomes a crime.
12 It's clear as it can be in the statute.

13 I want to just briefly touch on this whole retainer
14 issue because this, again, it just -- it demonstrates, in
15 another way, the frustration, the madness involved in this
16 case because it, it -- the State's theories -- I mean it's
17 like trying to nail jello to a tree. There's no reporting
18 obligation under 1130 unless lobbyist's principals buys
19 goods and services from a business with which Mr. Harrison
20 is associated. They want to argue, on the one hand, these
21 were retainers.

22 THE COURT: If they're retainers---

23 MR. LIMBAUGH: If they're retainers, they're not buying
24 goods and services.

25 THE COURT: Yeah.

1 MR. LIMBAUGH: If they're not retainers, and they're
2 buying goods and services, then there's no prohibition on
3 Mr. Harrison working for Richard Quinn & Associates while he
4 does work for them. So, you know, it, it -- it's -- it
5 seems like, at some point, they got to figure out what their
6 theory is, and I mean we're, you know, already rested their
7 case, and here we are at directed verdict. But, you know,
8 how, how you can say, in one breath, the, the criminal
9 conspiracy here was not complying with 1130, which isn't
10 required, you know, if, if these are, in fact, retainers as
11 the State wants to define them.

12 If they are not retainers, as the State apparently
13 sometimes does and sometimes doesn't, but doesn't want to
14 define it, then there's, there's no crime here, whether the
15 lobbyist's principals are willing to get on the stand and,
16 you know, is afraid of their shadows as they all seemed to
17 be, even though they've all been granted immunity, it's
18 really beside the point. The point is what is it, and I
19 think, frankly, Your Honor, that you have the ability, based
20 on the evidence, to determine, as a matter of law, that
21 these were not retainers as that term is defined in that
22 statute.

23 I don't even think it's a question of facts because
24 every one of them -- you can call them whatever you want to.
25 They love to use the word retainer. Lobbyist's principals

1 use the word retainer. Oh, people use the word retainer,
2 but it -- retainer means what the statute says it means in
3 this context, and that -- that's clear. And every one of
4 them, to my recollection of the lobbyist's principals, made
5 it, made it clear that, whatever was called and that however
6 the payments were made, monthly, annually, whatever, they
7 were paying Richard Quinn & Associates for services. They
8 weren't paying them just to -- for -- to be available as
9 that is used in the statute whereby they would have to pay
10 additionally for work that they did.

11 They've paid them X number of dollars, and whatever the
12 work was that they needed done, that's what they got for
13 their money.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LIMBAUGH: It wasn't---

16 MR. LLOYD: Your Honor, can I just say one---

17 THE COURT: Yeah.

18 MR. LLOYD: I promise you.

19 THE COURT: Can I just ask a quick question?

20 Can a retainer be converted into payment for goods and
21 services?

22 In other words, can it -- it's almost like when you
23 bill against, you know, what the retainer is.

24 Can it, can it, can it change is my question?

25 MR. LIMBAUGH: I think---

1 THE COURT: And my opinion is it doesn't. You don't
2 ever get back is how I'm taking it in this case. It's, it's
3 paid monthly. Regardless if you do no work, or a ton of
4 work, it's there.

5 MR. LIMBAUGH: Yeah, I mean I think -- I -- the problem
6 is that, that the word retainer is such -- it's, it's such a
7 common term particularly that lawyers use.

8 THE COURT: Right.

9 MR. LIMBAUGH: And I'm not even sure that it has a, a
10 commonly accepted definition in the legal field --

11 THE COURT: I was gonna say in the legal field.

12 MR. LIMBAUGH: -- because sometimes a lawyer will say,
13 you know, I'm gonna go get -- you know, in, in the legal
14 field, I mean it's not unheard of, frankly, probably more
15 common in, in like domestic---

16 THE COURT: Right.

17 MR. LIMBAUGH: ---areas where, you know, if I'm sensing
18 trouble at home, you know, and I may, I may go give a
19 retainer to, you know, some lawyer to hold on me. I mean
20 and not -- I may not actually be getting any service from
21 them other than creating a conflict. Some retainer might be
22 where I, if I'm a lawyer, I accept, you know, a \$25,000 fee
23 for a case against which I will bill --

24 THE COURT: Uh-huh. (Affirmative).

25 MR. LIMBAUGH: -- you know, and, of course, I think,

1 ethically, if I was -- resolved the case, and there's still
2 money in that left over, the client gets that back. I
3 suppose, you know, you could also have a flat fee for a
4 case---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LIMBAUGH: ---and it'd be very common to call that
7 a retainer.

8 THE COURT: I mean I'm just looking at this. Even when
9 you pull up just the word retainer---

10 MR. LIMBAUGH: Yeah.

11 THE COURT: ---you know, obviously in this---

12 MR. LIMBAUGH: I did the same thing.

13 THE COURT: I think it holds something in place, and
14 then the second definition under it is a noun is a fee paid
15 in advance to someone, and it goes along, and it says
16 especially an attorney, in order to secure or keep their
17 services when required. So, there's your services is my, my
18 concern. It's your goods and, goods and services.

19 I get your argument. I know what you're arguing. I
20 understand that.

21 MR. LLOYD: Your Honor, can I just put on the record---

22 MR. LIMBAUGH: I would---

23 THE COURT: Yeah.

24 MR. LLOYD: ---real quickly---

25 MR. LIMBAUGH: I don't know that it's -- I mean it's

1 not in the record. So, if they want to object to what I'm
2 gonna say, I don't blame them, but --

3 THE COURT: Okay.

4 MR. LIMBAUGH: -- I mean---

5 MR. GRIFFIN: I object.

6 MR. LIMBAUGH: That, that provision was---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LIMBAUGH: I mean it's common -- it's common
9 knowledge that that provision was crafted and came from the
10 concern about entities. Primarily, if I remember correctly,
11 like utilities.

12 MR. LLOYD: Railroads.

13 MR. LIMBAUGH: Railroads.

14 THE COURT: Okay.

15 MR. LIMBAUGH: Sending \$20,000 to Senator X---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LIMBAUGH: ---as a retainer and requiring, asking
18 of, expecting zero in, in return for it, and that's why,
19 when the Ethics Act was passed, they put that provision in
20 so that lobbyist's principals could not just send money
21 directly to a legislator or the employer of a law firm---

22 THE COURT: Right.

23 MR. LIMBAUGH: ---generally, which is what was the
24 case, and get nothing for it. So, if they're gonna do that,
25 if they're gonna pay money to a, a legislator or their

1 employer, they got to be getting services for it---

2 THE COURT: Okay.

3 MR. LIMBAUGH: ---as Richard Quinn.

4 THE COURT: Okay.

5 MR. LLOYD: I was, I was gonna address---

6 THE COURT: Go ahead and---

7 MR. LLOYD: ---one thing---

8 THE COURT: ---finish up.

9 MR. LLOYD: ---that he just addressed, and, and the
10 second issue, Your Honor.

11 This, this shifting back and forth between this
12 retainer or there's a requirement under 1130, how are you
13 suppose to know which of these agreements or relationships
14 between RQA and lobbyist's principals fit under retainer,
15 2-17-110, versus 1130?

16 I -- the State hasn't -- yeah, how's the jury gonna do
17 it because, as we're standing here right now, how, how is
18 the State explaining to you which of those agreements are
19 subject to 2-17-110, which ones are subject to 1130?

20 THE COURT: Uh-huh. (Affirmative).

21 MR. GRIFFIN: Your Honor is correct. The definition of
22 retainer, and let's use the word retainer, and I'm gonna
23 read it, a retainer, for purposes of this section, is a
24 payment for availability to perform services rather than for
25 actual services rendered. The -- using the plain, ordinary

1 use of the term retainer is -- and, and all of Mr. -- RQA's
2 clients that testified were under this arrangement.

3 We paid them monthly whether they worked or not.
4 whether they worked a lot or worked a little, they got a
5 monthly payment.

6 THE COURT: I didn't hear any of them say though that
7 they were paying them for nothing.

8 MR. LLOYD: Right.

9 THE COURT: I certainly didn't hear that comment
10 because if anyone had asked the follow-up question of you
11 were paying them cause you thought they were doing something
12 good, right, because none of these CFSS, CEOs, or head of
13 governmental department affairs was gonna stand up in here,
14 and say yeah, we were paying them for nothing.

15 MR. GRIFFIN: Mr.---

16 THE COURT: I mean that just wasn't gonna happen.

17 MR. GRIFFIN: Mr. McFadden from SCANA said that he
18 reduced the -- he, he reduced the payment under the
19 agreement from \$9,750 a month to \$6,000 a month cause they
20 went a whole year without hearing from Richard Quinn &
21 Associates.

22 Now, he didn't say they didn't do nothing, but they had
23 no contact with them for a year. That's what he testified
24 to. That sounds like doing nothing to me, and really the
25 question is -- I mean you're, you're paying them on

1 retainer. There's no other way to cut it. I mean that's --
2 if you use a plain language, use the definition of the
3 statute, availability to perform services as Your Honor
4 says, the money's there. So, they actually performed
5 services one month.

6 They, you know, they're, they're using that money to
7 compensate themselves for services. The next month, they're
8 available to continue using services.

9 They don't use it up, but guess what?

10 They get another check the month after. That it's
11 their business model, and that is a retainer, and the --
12 trying to say it's something different is I mean -- tortures
13 the language of the statute, and, and, at least, a crazy,
14 illogical result it is.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. GRIFFIN: So, this statute only prohibits
17 lobbyist's principals or lobbyists from paying money to a
18 member of the Legislature to do nothing. That's what,
19 that's what they want to say. Now, we call those bribes in
20 my background, but that's what he says. This only applies
21 to a bribe. Paying them to do nothing or just paying them
22 off. I mean that -- it's not what retainer means.

23 THE COURT: But then it begs the question of why are
24 the lobbyist's principals paying Richard Quinn & Associates
25 at all.

1 If they don't know that Harrison isn't working there,
2 if they don't know that Tracy Edge is working there, if they
3 don't know Jimmy Merrill's working there, so what are they
4 paying him for?

5 If they're not doing anything, if they're, if they're
6 not really providing any services, what are they paying him
7 for?

8 I mean what -- why do you get paid?

9 I mean they made a lot of money. They paid out---

10 MR. GRIFFIN: Well---

11 THE COURT: I'm saying RQA made a lot of money. RQA
12 paid out a lot of money too.

13 MR. GRIFFIN: As the testimony, and other matters have
14 brought to light, RQA had, had long tentacles at the State
15 House.

16 THE COURT: Uh-huh. (Affirmative).

17 MR. GRIFFIN: Had an extended family. Call it
18 Quinndom.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. GRIFFIN: How do you get there?

21 You pay people secretly. That's -- but the -- that's
22 how Richard Quinn and RQA got there. The lobbyist's
23 principals don't know that's how they got there. They just
24 know that his network is strong as it could be, and you want
25 him on your side cause you sure don't want him against you.

1 And so they're gonna pay him 8,000, \$10,000 a month. Some
2 of it's for insurance that he doesn't show up on the other
3 side of an issue, and some of it is for work.

4 I mean that's what the business model was and that's
5 what---

6 THE COURT: Well, I agree, some of it was insurance.
7 So, again, someone was opposing a bill, you just didn't want
8 to be able to hire RQA to, you know, help them get it
9 passed, and you don't want it.

10 okay. Let's---

11 MR. LLOYD: Your Honor, there's just---

12 THE COURT: I still have to say I have a problem with
13 the criminal conspiracy, and the evidence that's been shown,
14 whether or not there was a criminal conspiracy. I still, I
15 still have an issue with that.

16 Again, we all understand what our standard is, and it's
17 any evidence, but the problem on a conspiracy, and you're
18 talking about circumstantial evidence, is all of it's got to
19 point together. And, and I just -- I'm having a hard time,
20 and I've had that from the beginning, and I know you
21 acknowledge that. You realize that, but that's where it's
22 difficult---

23 MR. GRIFFIN: Sure.

24 THE COURT: ---when you don't have a Richard Quinn or a
25 Rick Quinn or someone that was involved in it testifying. I

1 think---
2 MR. LLOYD: Your Honor, before you---
3 THE COURT: I'm sorry. Go ahead.
4 MR. LLOYD: Before Mr. Limbaugh addresses this issue---
5 MR. LIMBAUGH: Mr. Limbaugh was gonna ask for a
6 restroom break before we---
7 MR. LLOYD: Oh.
8 THE COURT: Yeah, that's fine, and we can take one---
9 MR. LIMBAUGH: ---keep going.
10 THE COURT: ---Mr. Limbaugh.
11 MR. LLOYD: Can I just say---
12 THE COURT: Yes.
13 MR. LLOYD: Did Mr. Griffin just concede that 1130 is
14 out of this case?
15 MR. GRIFFIN: No.
16 MR. LLOYD: He just said well, these are all retainers.
17 MR. LIMBAUGH: He said they're all retainers.
18 MR. GRIFFIN: No, I, I agree---
19 MR. LLOYD: Either they're retainers -- if they're
20 retainers---
21 MR. GRIFFIN: I agreed---
22 MR. LLOYD: ---1130 is out.
23 THE COURT: Agreeing with me---
24 MR. GRIFFIN: I agree with Judge Mullen that---
25 THE COURT: Listen, all of this is -- I'm throwing it

1 out there. These are not my opinions. These are what some
2 of the facts show or could show. I mean I can tell you
3 right now I'm playing devil's advocate just like anyone
4 else. The jury can take it any way they want. I'm just
5 saying that this is what was out there. So, again --.

6 MR. GRIFFIN: It is---

7 THE COURT: I don't have an opinion on it. Truly I
8 don't. I don't care.

9 MR. GRIFFIN: It is---

10 THE COURT: My point is those -- it's -- yeah.

11 MR. GRIFFIN: Is there---

12 THE COURT: You know, I'm looking for the evidence and
13 so -- sorry.

14 MR. GRIFFIN: They're being paid to be available to
15 perform services, and then the months that they perform
16 services, they take -- that retainer is -- pays them for
17 their services. That's what---

18 MR. LLOYD: Again, Your Honor, how are you suppose to
19 determine that just for this motion, let alone how's the
20 jury suppose to determine which months they want to apply?

21 Either 1130's in or 2-17-110 is an object of this case.
22 You cannot have both or we got to have some evidence that
23 differentiates between which months they want to say he had
24 to report, and which ones applied for a retainer---

25 THE COURT: Okay.

1 MR. LLOYD: ---even if they didn't do anything.
2 MR. LIMBAUGH: Can we take like 12?
3 THE COURT: Yes, I'm so glad you asked for 12 instead
4 of ten. Absolutely.
5 Okay. Yeah, let's go ahead. Sure. Let's take 12
6 minutes.
7 MR. LIMBAUGH: Great. Thank you.
8 THE COURT: Absolutely.
9 MR. LLOYD: Thank you.
10 (WHEREUPON, a short recess was taken at this time.)
11 THE COURT: Okay. Are we ready to move on to---
12 MR. LIMBAUGH: I think we are, and, in fact, Your
13 Honor---
14 THE COURT: Okay.
15 MR. LIMBAUGH: ---would you, would you mind, and
16 certainly no disrespect meant, if I sit for this because I'm
17 gonna be looking at---
18 THE COURT: I don't care.
19 MR. LIMBAUGH: I didn't think you would, but I'm gonna
20 be looking---
21 THE COURT: I'm fine.
22 MR. LIMBAUGH: ---at code sections.
23 THE COURT: It's all good.
24 MR. LIMBAUGH: Great. Thank you.
25 I guess we -- I don't know frankly whether we really

1 need to delineate between statutory misconduct, and common
2 law misconduct for the purposes of this, Reggie. I mean
3 I -- cause I think, in both counts, they are, they are tied
4 inextricably to violations of the Ethics Act.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LIMBAUGH: So, it seems to us that, that the
7 conversation can be and should be limited to what the State
8 of the evidence is, and the law---

9 THE COURT: Okay.

10 MR. LIMBAUGH: ---on the Ethics Act issues. So, that's
11 what---

12 THE COURT: Okay.

13 MR. LIMBAUGH: ---what we're gonna talk about.

14 I mean if we -- you know, it's kind of -- it's, it's a
15 strange circumstance that we find ourselves in in that I
16 think that Your Honor, under the circumstances, could rule,
17 for instance, that the evidence is insufficient under the
18 law to support a finding by the jury of a violation of one
19 or more sections of the Ethics Act, but not all.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LIMBAUGH: So, you know, we're, in that sense I
22 guess, that -- we're not -- unless Your Honor were to find,
23 which I think is possible, and we will certainly argue for
24 that, there was---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. LIMBAUGH: ---the law -- the, the evidence does not
2 support the finding of any violation of the Ethics Act at
3 all, I think it's possible that Your Honor could say these
4 three are out. Mr. Pascoe, you can't argue these three to
5 the jury. They're no longer pending. They're no longer
6 relevant.

7 THE COURT: Uh-huh. (Affirmative).

8 MR. LIMBAUGH: But this one remains as the potential
9 hook on which you can hang your case.

10 THE COURT: Okay.

11 MR. LIMBAUGH: So, that's sort of where we're coming
12 from.

13 THE COURT: Okay.

14 MR. LIMBAUGH: I'll just, I'll just take them in order
15 that they, that they follow in the, in the statute.

16 8-13-700, and I'm gonna, I'm gonna just go ahead and
17 read it. I will---

18 THE COURT: 700(A).

19 MR. LIMBAUGH: I'm sorry?

20 THE COURT: 700(A)?

21 MR. LIMBAUGH: 700(A). And I will---

22 THE COURT: I've got it.

23 MR. LIMBAUGH: I will skip the parts that don't apply.

24 THE COURT: Right.

25 MR. LIMBAUGH: Obviously, the State's gonna be

1 following along, and they can say something if they think
2 I'm missing whatever.

3 No public official may knowingly use his official
4 office to obtain an economic interest for himself --

5 THE COURT: Or business with which---

6 MR. LIMBAUGH: ---or a business with which he is
7 associated.

8 THE COURT: Right.

9 MR. LIMBAUGH: It is our position that there is no
10 evidence that tends to prove that Jim Harrison used his
11 official office to obtain an economic interest for himself
12 or a business with which he's associated.

13 The only way -- the only way that, that the jury could
14 conclude that that section had been violated requires
15 inferences from assumptions, from innuendo. There is, in
16 fact, no evidence in the record that Mr. Harrison was hired
17 by Richard Quinn & Associates because he was a House member.
18 There's -- there just simply isn't any.

19 There's been lots of evidence introduced that is
20 innuendo. You know, they, they want to say -- I mean the
21 State's case has been he was hired. He is a House member or
22 was a House member at the time.

23 THE COURT: Uh-huh. (Affirmative).

24 MR. LIMBAUGH: But there's -- there is no evidence that
25 the reason he was hired by Richard Quinn & Associates is

1 because he was a House member. There isn't any. That's the
2 assumption they, they want people to make, but that's not
3 good enough.

4 There has to be some evidence that that's why he was
5 hired by Richard Quinn & Associates, and that's the only
6 issue around which there could of been a violation of 700
7 because there is no evidence -- certainly there's no
8 evidence, and really not even an allegation, you know, that
9 somebody else paid him to, to do something because he was a
10 House member.

11 The whole case, as far as 700(A) is concerned, is did
12 he get hired by Richard Quinn & Associates because he was a
13 House member. There's no evidence of that.

14 THE COURT: Mr. Griffin.

15 MR. GRIFFIN: Your, Your Honor, I, I mean I guess it's
16 fine to go down the Ethics statute, but he's charged with
17 common law misconduct in office, and it---

18 THE COURT: I guess the question though is does this
19 section apply?

20 So, I, I do think we have to go through each section.
21 I do.

22 MR. GRIFFIN: Well, there's certainly evidence that,
23 that he obtained an economic interest for himself by using
24 his official office. That is for -- he received over
25 \$900,000 from RQ&A, had absolutely little or no work product

1 to show what he did for the receipt of the money. The CFO
2 of the company has no idea what he did. He monthly,
3 weekly -- bi-weekly he received checks, and it's -- so, a
4 jury could -- a jury could find, based on this evidence
5 doing inferences in the light most favorable to the State,
6 that the only reason he was being paid by RQ&A was because
7 of his powerful position in the Legislature.

8 Todd Rutherford testified about how powerful---

9 THE COURT: Excuse me.

10 Does it matter if he actually exerts that power under
11 this statute?

12 Because I think that's part of where we're -- I've seen
13 a little bit of -- we all sit around here and just assume
14 that, obviously, because he was so powerful, that he must
15 have been able to get votes, twist arms. I think the one
16 thing you-all put up was the cigarette tax that didn't pass
17 and then did pass.

18 MR. GRIFFIN: Right.

19 THE COURT: Does it -- is it a requirement of the
20 statute that you actually show that he actually did anything
21 like that or is it just -- but then how do you prove that
22 Rick -- Richard Quinn was just paying him \$80,000 a year for
23 no reason?

24 MR. GRIFFIN: Well, I mean you call CFO of the company,
25 and say what was Mr. Harrison doing. Don't know.

1 Mr. Harrison testifies in the Grand Jury. I, I worked on
2 campaigns. That's why I was hired. You put the campaign
3 folks up there.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. GRIFFIN: Did you work on campaigns -- did he work
6 on campaigns with you?

7 No. No. No. No. No.

8 MR. LIMBAUGH: There were too many nos in there.

9 MR. GRIFFIN: Well, at least -- there were three, three
10 campaign folks who testified I believe.

11 MR. LIMBAUGH: I'm just messing with you.

12 MR. GRIFFIN: Maybe just two. Maybe just two.

13 THE COURT: It's okay.

14 MR. GRIFFIN: So, that's the evidence. That's the do
15 nothing evidence for sure. And I mean ask yourself, and
16 I've asked them.

17 Do you think Jim Harrison would have received \$80,000 a
18 year for all these years for whatever he was doing if he
19 wasn't a member of the House, wasn't Chairman of the House?

20 And I think we all honestly answered that question to
21 ourselves, and we know what the answer is. Heck no.

22 MR. LIMBAUGH: Your Honor, I want to---

23 THE COURT: Uh-huh. (Affirmative).

24 MR. LIMBAUGH: I'm sorry.

25 THE COURT: Go ahead.

1 MR. GRIFFIN: Were you asking---

2 MR. LIMBAUGH: Were you gonna say something?

3 THE COURT: No, I wasn't saying anything.

4 MR. LIMBAUGH: No, I just want to make sure. I
5 wouldn't interrupt Jim.

6 THE COURT: No, go ahead.

7 MR. LIMBAUGH: Okay. I, I think, and I didn't, I
8 didn't actually phrase this this way initially, but I do
9 think -- I think Your Honor either advertently or
10 inadvertently brought it to my attention that, probably
11 inadvertently, but it was -- that the, the way statute --
12 no, you know, I mean it---

13 THE COURT: It's okay.

14 MR. LIMBAUGH: Something that was said made me, made me
15 think this. It says use his official office. Now -- to, to
16 obtain an economic benefit for himself or a business with
17 which he's associated.

18 Now, I'm, I'm, I'm not arguing that this is the case at
19 all, but I believe that the way this statute is written,
20 that even, even if Richard Quinn & Associates, that from
21 their own prospective, hired Mr. Harrison because he was a
22 House member, even if that's what was going through their
23 heads---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. LIMBAUGH: ---that still doesn't equate to a

1 violation of 700(A) because 700(A) requires that the public
2 official use his official office to obtain an economic
3 interest for himself or a business with which he's
4 associated, and they're, they're -- you know, I understand
5 that the State wants to argue that all of this whole, you
6 know, whatever of evidence of various and sundry things
7 doesn't look right, or whatever they want to, want to argue,
8 but that's just not good enough, and this jury can't -- they
9 can't convict Mr. Harrison of something of -- that isn't a
10 criminal act. No matter how bad the State thinks it looks,
11 no matter how -- no matter how bad the jury might think it
12 all looks, and that -- that's where the Court, again, is --
13 has got to be -- and I'm not saying if you rule against us
14 that you failed your duty. You know, I just don't want any
15 implication like that. But that's why the Court has to be a
16 bull, and work in, in an instance in a case like this and in
17 particular.

18 This statute uses very specific language. The
19 obligation -- the legal obligations on the public officials
20 are governed by what the statute says, and if the statute
21 says that he has to use his official office acting as Jim
22 Harrison---

23 THE COURT: That's very general though.

24 MR. LIMBAUGH: Absolutely.

25 THE COURT: I mean you agree, right?

1 That's very general.

2 MR. LIMBAUGH: It, it---

3 THE COURT: I mean use. The word use.

4 MR. LIMBAUGH: It, it is, it's -- it is -- you -- I'm
5 not sure that it is as general as Your Honor might be
6 suggesting or thinking because it's using his official
7 office --

8 THE COURT: Uh-huh. (Affirmative).

9 MR. LIMBAUGH: -- to gain this economic benefit. That
10 means doing some act in his official capacity. Using his
11 official office. They could of -- they didn't have to put
12 that language in there. They could of just said no public
13 official can -- I mean they, they could of written it
14 differently if they wanted it to be broader.

15 THE COURT: Right.

16 MR. LIMBAUGH: They didn't. They said he has to use
17 his official office. I mean that, that I -- that calls, to
18 my mind, for instance, and, and I don't remember the details
19 specifically, but I think it's an analogous situation in the
20 Bobby Harrell matter for instance.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. LIMBAUGH: If I recall correctly, Bobby Harrell,
23 one of the problems that, that Speaker Harrell had was he
24 sent some communications to DHEC, if I remember right, about
25 some pharmacy issue, a business that he had on the side as a

1 pharmacy supply company of some description, and he sent a
2 letter to DHEC trying to get, you know, business basically
3 from the State of South Carolina for his pharmacy.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. LIMBAUGH: And he sent it on Speaker letterhead.
6 That's using your official office or attempting to use your
7 official office for---

8 THE COURT: To influence something.

9 MR. LIMBAUGH: ---to obtain an economic benefit.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. LIMBAUGH: Just getting hired by Richard Quinn &
12 Associates, and also, at the same time, being a legislator
13 isn't enough. They -- I mean, in, in our view, this statute
14 requires him to show that somehow, some way Mr. Harrison
15 used his official office to obtain an economic benefit for
16 himself or the business with which he's associated.

17 THE COURT: I think they get past directed verdict on
18 that though. As to this portion, to 700(A), I think they
19 do. I think, I think the word use, I think there is
20 evidence in the record that that could apply, and that would
21 apply.

22 MR. LLOYD: Your Honor, can I just---

23 THE COURT: Yeah.

24 MR. LLOYD: ---point out, when you say that term is, is
25 very broad -- I'm not looking at a computer. So, I'm

1 standing. That that term is very broad, and I'm (sic) just
2 bring to the Court's attention, again, the Rule of Lenity
3 and how we interpret criminal statutes.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. LLOYD: It's to give notice to somebody as to
6 specifically what conduct is allowed and not allowed. If we
7 just say it's broad enough to encompass, I'm a public
8 official, and the job I got while I'm a public official,
9 puts me under 700(A). I would argue, respectfully to Your
10 Honor, that is so broad that you have no idea as to what
11 conduct you're suppose to refrain from doing other than
12 either, one, you, one, be a public official or, two, you can
13 get this particular job while you're a public official.

14 THE COURT: All right. Well, again, I'm, I'm not gonna
15 torture it. The Legislature wrote it. You charged him
16 under it. I think there's evidence of it.

17 So, I say we go to the next one.

18 MR. LIMBAUGH: Okay. Thank you, Your Honor.

19 The, the next one would, of course, be I guess 700---

20 THE COURT: (B).

21 MR. LIMBAUGH: --- (B).

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LIMBAUGH: It is -- I won't go -- I won't read it.
24 I don't think that's---

25 THE COURT: Yeah.

1 MR. LIMBAUGH: ---that's necessary.
2 THE COURT: So, he can---
3 MR. LIMBAUGH: What I want to point out in that one --
4 I'm sorry.
5 THE COURT: Attempt to use his office to influence a
6 governmental decision in which he is --.
7 MR. LIMBAUGH: Yeah, I mean 700(B) is -- I mean what I
8 think colloquially, colloquially we can just call it -- we
9 can call it the recusal statutes.
10 THE COURT: Yeah.
11 MR. LIMBAUGH: Right?
12 THE COURT: Yeah.
13 MR. LIMBAUGH: Because that's, that's all it really
14 deals with---
15 THE COURT: Right.
16 MR. LIMBAUGH: ---is---
17 THE COURT: And what you're suppose to do.
18 MR. LIMBAUGH: Yes, ma'am.
19 THE COURT: You may need to recuse yourself.
20 MR. LIMBAUGH: That's right. And with regard to that,
21 to, to 700(B), it is -- it's crucial to keep in mind that
22 the business with which Mr. Harrison was associated was
23 RQ&A.
24 THE COURT: Right.
25 MR. LIMBAUGH: Okay. We're not talking about what

1 interests or what economic interests may or may not have
2 accrued to any of the lobbyist's principals because those
3 are not businesses with which Mr. Harrison was associated.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. LIMBAUGH: So, the analysis under 700(B) has to
6 begin at that point. What, if any, economic interest of
7 Richard Quinn & Associates would have been impacted by any
8 piece of legislation that the State wants to talk about.

9 The fact of the matter is there's nothing in the
10 evidence at all that tends to suggest that Richard Quinn &
11 Associates had an economic interest as that term is defined
12 in the statute --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LIMBAUGH: -- in any of the -- any legislation.
15 Now, of course, you know we had the big fight about
16 introducing bills and journals and all that kind of stuff.

17 So, they're -- at the moment -- they're -- not at the
18 moment. They've rested, but there -- there's no evidence
19 about any particular piece of legislation about whether or
20 not Mr. Harrison violated 700(B) because he voted on any
21 particular bill. But even, even if there was, the State
22 would have to prove that Richard Quinn & Associates had an
23 economic interest in the -- in, in what happened to a piece
24 of legislation, and it's, and it's -- it is literally bill
25 by bill, vote by vote, sponsorship by sponsorship. Not

1 just, again, some amorphous all encompassing concept that
2 the lobbyist's principal clients of Richard Quinn &
3 Associates probably had an interest in some category of
4 legislation.

5 I mean in order to prove a violation of 700(B), the
6 State is got to prove, A, that Mr. Harrison took action on a
7 particular bill. There is nothing in the record as to a
8 particular action that Mr. Harrison took on any particular
9 bill period.

10 There's -- there was testimony from Trey Walker, I
11 acknowledge, that he talked generally about Mr. Harrison,
12 you know, voting to sustain a veto on something to do with
13 the tobacco tax, and that he subsequently voted in favor of
14 some bill related to the tobacco tax.

15 THE COURT: Okay.

16 MR. LIMBAUGH: Well, that's not even close to good
17 enough to showing that he took action on a specific piece of
18 legislation on which he should of recused himself, and that
19 the reason he should of recused himself was because Richard
20 Quinn & Associates had an economic interest in that
21 legislation. No evidence of that at, at all in any respect,
22 and that's what this -- that's what they have to prove, and
23 there's no evidence of it.

24 THE COURT: Mr. Griffin.

25 MR. GRIFFIN: So, Your Honor, we have two specific

1 examples that are before the jury on this, violating this
2 section.

3 One is the tobacco tax, and you've got the BlueCross
4 BlueShield hiring RQ&A, paying them \$15,000 for tobacco tax
5 advocacy. You've got Mr. Harrison twisting arms to pass the
6 legislation, and we heard that this morning from Chairman
7 Pitts.

8 Now -- and then the other piece of legislation is
9 school choice. We have SCRG, and we have the document in
10 which Mr. Harrison is a legislative adviser to that group
11 who pays RQ&A, a business which he's associated, and, and
12 it's a single issue advocacy, advocacy group by some
13 billionaire, Howard Rich, from New York as we heard. I mean
14 those are two instances that RQ&A has a direct interest in
15 those -- that, that legislation passing. That's a business.
16 He works to pass it. And so there is evidence in the record
17 to support it.

18 THE COURT: So, where's the testimony that he worked to
19 pass it?

20 MR. GRIFFIN: Chairman Pitts said that---

21 THE COURT: He said he talked to him about the
22 legislation. I mean I, I -- no one asked the question, but
23 I don't know how you -- almost the best of what you got out
24 of that testimony was -- is that leadership has a big
25 influence on how the members vote.

1 And, and how do you distinguish between if it was just
2 because it's a Republican agenda or Republican leadership is
3 pushing something versus his working it because RQ&A has a
4 client that wants it passed?

5 MR. LLOYD: Your Honor---

6 MR. GRIFFIN: Well, it's---

7 MR. LLOYD: ---could I add something to that?

8 MR. GRIFFIN: It's a recusal statute is what it is,
9 and, and -- so, Mr. -- Chairman Pitts was testifying. Mr.
10 Lloyd was asking him questions, and he said do you recall
11 Mr. Harrison ever contacting you or discussing with you
12 legislation. He goes yes, I do.

13 Which ones?

14 Chairman Pitts says tobacco tax, and he says school
15 choice.

16 On redirect, Mr., Mr. Pascoe gets up and says were you
17 aware that Mr. Harrison -- that BlueCross -- that BlueCross
18 BlueShield---

19 THE COURT: Uh-huh. (Affirmative).

20 MR. GRIFFIN: ---was a client of RQ&A, and they had
21 paid RQ&A a fee to advocate for the tobacco tax?

22 No, I wasn't.

23 Did Mr. Harrison recuse himself, make it known on the
24 floor or to the speaker that he had this interest?

25 No, he didn't.

1 Same questions about school choice. That is in the
2 record, Your Honor.

3 MR. LIMBAUGH: Your Honor, here -- here's, here's a
4 couple problems with this. Nobody, neither Trey Walker, nor
5 Mike Pitts, nor any other witness has testified as to a
6 particular bill, a specific piece of legislation on which
7 Mr. Harrison took action. They have talked generally about
8 the tobacco tax. They've talked generally about school
9 choice.

10 That's not, that's not what 700 -- 700(B) relates to
11 action -- it says no public official, blah, blah, may make,
12 participate in making, or in any way attempt to use his
13 office to influence a governmental decision in which he, et
14 cetera.

15 Okay. We need to know what governmental decision. You
16 can't recuse yourself, as the statute -- as those Code
17 Section goes on to talk about, from an issue.

18 THE COURT: Well, I think they influence a governmental
19 decision would be him working the bill. I'm not saying they
20 don't do that without being paid, but maybe there is an
21 incentive. I, I guess---

22 MR. LIMBAUGH: No, you can't---

23 THE COURT: I feel like you're torturing it a little
24 bit, and I mean a perfect example is this. We talk about --
25 so, originally, when we talk about the tobacco tax,

1 originally he opposed it we heard. well, that's a
2 Republican decision. You know, any tax issue with -- and
3 then, all of a sudden, he gets, under their theory, of
4 course---

5 MR. LIMBAUGH: well, I'll address that in a second, but
6 yes.

7 THE COURT: He then turns around and changes his mind,
8 and I don't know who else did. It passed. So, obviously,
9 he wasn't the only Republican to change their mind. It
10 passed.

11 So, my question is, is that enough?

12 Is that enough to go to the jury?

13 Is it enough to give them -- is it enough for them to
14 convict him of, of a violation of this?

15 MR. LIMBAUGH: I think it let -- and then -- I'm sorry.

16 THE COURT: Go ahead.

17 MR. LIMBAUGH: I'll defer to, to Reggie---

18 THE COURT: Go ahead.

19 MR. LIMBAUGH: ---if you don't mind, but I, I think
20 it's very important to also not lose sight of the economic
21 interest of Richard Quinn & Associates being fundamental to
22 the, to the whole analysis here. So---

23 THE COURT: well, isn't the payment---

24 MR. LIMBAUGH: ---there has to have been---

25 THE COURT: ---by these lobbyist's principals in lots

1 and lots and lots of monies is got to be a benefit to RQA.

2 It's got to be a benefit to RQA.

3 I mean how can it not with how much they're being paid?

4 MR. LLOYD: No, the -- go ahead. You want to answer---

5 THE COURT: Am I missing something?

6 Tell me, what am I missing?

7 MR. LLOYD: Your Honor, this is an issue, and, again,
8 ignore the benefit of economic interest to the lobbyist's
9 principal. That, that doesn't come into play in (B).

10 THE COURT: Okay.

11 MR. LLOYD: 700(B). It's not even the legislation that
12 we need to focus on. What, what 700(B) focuses on is, if
13 you -- let's take this case about cigarette tax. You
14 passed -- if you vote to pass this or influence the passage
15 of the cigarette tax bill, any cigarette tax bill, that the
16 passage of that bill, the effects of the law, and let's stop
17 talking about legislation and bills, that new law creates an
18 economic benefit for either that member or the business with
19 which, with which he's associated --

20 THE COURT: So, how does it not---

21 MR. LLOYD: -- that is separate and apart from any---

22 THE COURT: I understand that, but how is him not being
23 successful -- how does RQ&A not being or being successful in
24 passing a bill not say we want to hire him again, BlueCross
25 Blueshield, because they were able to get the cigarette tax

1 passed?

2 I mean through their work, through their efforts. So,
3 let's go back again.

4 MR. LLOYD: It's speculation.

5 MR. LIMBAUGH: It's speculative.

6 THE COURT: Well, there are -- put them on -- whatever
7 they were paying him for, goods or services or retainer,
8 they continued to do it.

9 MR. LLOYD: But that's the point, Your Honor. There's
10 nothing in the, in the evidence other than that all of these
11 companies had a long term relationship with RQA, long
12 before, long after, this particular bill came up. And you
13 pointed out something about Mike Pitts, Chairman Pitts---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LLOYD: ---testimony. I'm, I'm taking the State's
16 argument to you about the, the significance of that.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LLOYD: And when, and when he talked about, for
19 example, school choice, the State would tell you that Jim
20 Harrison violated school choice or violated 700(B) by
21 talking to Mike Pitts about presumably a billionaire comes
22 in and pays RQA to influence Mike Pitts to---

23 THE COURT: And he said he couldn't be influenced cause
24 he already---

25 MR. LLOYD: He already supported it.

1 THE COURT: ---supported it.

2 MR. LLOYD: Exactly.

3 THE COURT: He already agreed with it. He said he made
4 it in his own part of his campaign.

5 MR. LLOYD: Their own argument is, is that this
6 billionaire shows up, pays Jim Harrison through RQA to go
7 talk to somebody who already supports it?

8 So, we don't have any evidence, number one, of what
9 that conversation is. We don't have any evidence from Mike
10 Pitts as to what his conversation with Jim Harrison was
11 about cigarette tax or the tobacco tax. But the one
12 instance they bring up is that Jim Harrison, influenced by
13 Howard Rich, the billionaire, went to a member who already
14 supported the very issue, and had a conversation with him
15 about it.

16 MR. LIMBAUGH: The other thing, before---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LIMBAUGH: I know the State's gonna want their,
19 their fair share of time here, but, again, I, I, I
20 understand what you're -- Your Honor's getting at about the,
21 the, the, the notion that, in a general way, that RQA
22 benefits by things happening the way their lobbyist's
23 principal clients wants them to happen.

24 Okay. I, I get that. But that's not sufficient under
25 700(B). I mean it -- there has to be an economic benefit as

1 that's defined, as that's defined in the statute that
2 accrues to the business with which Harrison's associated as
3 a result of him participating, voting, whatever on a bill.

4 All right.

5 THE COURT: So, what you're saying---

6 MR. LIMBAUGH: Take, take the tobacco tax money. I'm
7 sorry.

8 THE COURT: So, what you want is there to be something
9 like, so they get it passed, and then magically the next
10 month RQA gets paid \$100,000 because it's passed as opposed
11 to the normal retainer.

12 MR. LIMBAUGH: I think---

13 THE COURT: I mean your -- that would be an argument
14 for an economic interest if he -- if they could show that
15 Jim Harrison influenced it---

16 MR. LIMBAUGH: Yes, I think---

17 THE COURT: ---and got it passed.

18 MR. LIMBAUGH: That's a very good example because it's
19 actually one that Mr. Lloyd and I were talking about at
20 lunch trying to figure out how in the world, you know, this,
21 this could be.

22 MR. GRIFFIN: It's---

23 MR. LIMBAUGH: Or let's say -- I mean cause they want
24 to talk on the tobacco tax. They want to talk about
25 BlueCross.

1 Okay. So, we know what's in the record with regard to
2 that. It's a good example.

3 Richard Quinn & Associates does not gain the first
4 economic benefit from whether the -- a tobacco tax, and, as
5 yet, and for, you know, now and ever more, unidentified bill
6 that related to the tobacco tax, if that passed, Richard
7 Quinn & Associates got \$15,000 from BlueCross & Blueshield
8 presumably for tobacco tax advocacy. That's what they got.

9 THE COURT: Okay.

10 MR. LIMBAUGH: The bill passes. They still have that
11 \$15,000. The bill doesn't pass, they still have that
12 \$15,000. End of story as far as that goes.

13 Now, whether or not BlueCross, if the bill passes,
14 would be so happy that -- with Richard Quinn & Associates
15 that they would hire them again for another project or put
16 them on retainer is purely speculative. And you cannot hang
17 a violation of 700(B) on somebody based on speculation as to
18 what the impact might be on a lobbyist principal who hires
19 Richard Quinn & Associates by the passage of some bill.
20 There's got to be evidence of what the economic benefit is
21 to RQA by a bill passing if, and I'll be -- and this is --
22 this will conclude what I -- the point I want to make.

23 If, and I don't, I don't believe there would of been
24 anything illegal about doing this. It's unlawful to retain
25 a lobbyist on a contingency basis. That's illegal under the

1 statute. Couldn't do that. I don't believe there's
2 anything in the statute that would have precluded, for
3 instance, BlueCross & Blueshield entering into an advocacy
4 agreement with RQ&A that was, in fact, contingent on the
5 bill passing.

6 So, they could of said we will pay you \$20,000 if the
7 tobacco tax passes. That would be a much harder case for,
8 you know, a situation for us to argue about because then
9 clearly, if that bill, still unidentified, were to pass,
10 there is a direct economic benefit to RQ&A in the passage of
11 that legislation. In the case that we know about that
12 actually exists, there wasn't. They got paid 15 grand.
13 They got it. They got to keep it whether it passed or not,
14 and we can't speculate as to what impact anything might of
15 had on lobbyist's principals, BlueCross, or otherwise in the
16 future. That's not what the, what the law requires, what it
17 says.

18 THE COURT: Okay. You want to respond?

19 Someone?

20 MR. GRIFFIN: Yeah, Your Honor hit the nail on the head
21 earlier. I mean it's -- whether they got paid for tobacco
22 tax advocacy, RQA has a financial interest in the tobacco
23 tax bill. Mr. Harrison, a member of RQA, or it's associated
24 with, and it does -- it's illegal to have a contingency fee,
25 but they have an economic interest in that, and it's RQA's

1 interest. And it's, you know, it's -- in this consulting
2 world, it's about winners and losers.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. GRIFFIN: And if you're a loser, loser, loser,
5 you're out of business tomorrow. But if you're a winner,
6 winner, winner, your business grows and grows and grows.
7 There is an economic interest in -- but it's specific to
8 legislation, and, and specific to RQ&A's ability to get
9 legislation passed. Absolutely.

10 MR. LIMBAUGH: Your Honor, they, they -- there's all
11 sorts of witnesses that the State could have called to prove
12 a violation of 700(B). I mean they, they could of -- they
13 could of called people to talk about specific, specific
14 bills, and, and what Harrison did or didn't do, and votes he
15 did or didn't take, and conversations he did, he did or
16 didn't have. They could of called Richard Quinn. They
17 could of called Rick Quinn to testify, you know, about
18 what -- about any of this stuff.

19 They didn't do it. They, for better or worse, and I
20 think for worse, they're stuck with what they did prove.
21 And what they did prove does not constitute a violation of
22 700(B). There's no -- we don't even have a bill to look at.
23 We don't have a bill to argue about. We don't have a vote
24 to argue about.

25 Anyway, I, I think that's about as much as we can say.

1 THE COURT: Okay. Well---

2 MR. LLOYD: Your Honor, before we leave 700, could---

3 MR. LIMBAUGH: Or as much as---

4 THE COURT: Sure.

5 MR. LIMBAUGH: ---I could say about it.

6 THE COURT: Sure.

7 MR. LLOYD: Well, it's more of a question than a
8 statement, and I know Your Honor's rulings on 700(A).

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LLOYD: I guess my question goes to the charges you
11 would give for the jury, and what we're allowed to argue and
12 not allowed to argue as it relates to 700(A) or (B), and the
13 first question is, for example, you said you believe there
14 was enough evidence for -- to find, at least to get past a
15 DV---

16 THE COURT: Yeah.

17 MR. LLOYD: ---that he used his office to obtain an
18 economic interest for himself.

19 My question is does that limit it in terms of what we
20 can argue to the jury and, and say to the jury?

21 Is it limited to his obtaining employment at RQA versus
22 talking about all -- I know we've been talking about a lot
23 of other things, but what 700(A) goes to is the specific use
24 of his office to obtain an economic interest. The economic
25 interest here, based on what I heard, was getting -- not

1 doing anything else---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. LLOYD: ---before we go to anything else, was
4 simply getting the job at RQA, and, and that's where I'm
5 sort of struggling with what are we actually arguing to the
6 jury was the conduct that violates that.

7 Is it just that he got a job at RQA or are we talking
8 about something else?

9 THE COURT: You want to answer?

10 MR. GRIFFIN: Your Honor, the evidence that he used his
11 office for economic gain is that he continued to get paid
12 from RQA for over ten years for, what the evidence shows,
13 doing nothing other than being Chairman of the House
14 Judiciary Committee. And then they're other specifics.
15 Like this SCRG issue, that's a specific instance where he's
16 being promoted by RQ&A as the legislative adviser to the
17 SCRG for purposes of school choice legislation to get a
18 contract with the millionaire out of New York, Howard Rich,
19 to promote that legislation.

20 That's, again, using his position for economic income.
21 I mean there's a lot of different ways it, it comes in, but,
22 the bottom line is, getting a job as a chief operating
23 officer, and, and doing the, the work?

24 THE COURT: In and of itself, there's nothing wrong
25 with that.

1 MR. GRIFFIN: Not, not yet. But getting paid for ten
2 years, eighty something thousand dollars a year for doing
3 nothing?

4 There's a problem.

5 MR. LLOYD: Your Honor, there's no evidence that
6 Mr. Harrison even knew that that marketing document existed.
7 So, there's no, there's no connection with him except that I
8 believe Ms. Mustian testified that yeah, that's kind of the
9 thing that her dad might put together.

10 Number one, there's no evidence that he -- the client
11 actually or the proposed client actually ever saw it, that
12 Jim Harrison ever actually saw it. It was a proposal to
13 them, to SCRG.

14 We don't know what year it was. We did hear, as
15 testimony from her, that some years they were a client, some
16 years they weren't. That's a marketing proposal there. But
17 set that aside, there's nothing that connects Jim Harrison
18 even knowing about that document. So, when we -- when
19 Mr. Griffin talks about Jim Harrison using -- first of all,
20 all we know is that Jim Harrison got a job at RQA. We don't
21 know that---

22 THE COURT: What it is.

23 MR. LLOYD: We don't -- or that Richard -- and let's
24 take for a moment, Your Honor, cause we are kind of talking
25 about well, there's a lot of innuendo, and that's it.

1 Let's take for a moment that Richard Quinn thought it
2 was great to have employees who worked at the Legislature.
3 You can ascribe that to Richard Quinn, and there's nothing
4 illegal about Richard Quinn doing that. But you can't
5 ascribe that to Jim Harrison. There's no evidence that said
6 Jim Harrison went to Richard Quinn and said hey, I'm a
7 member of the Legislature. Hire me.

8 All we know is he was friends with Rick, and he got a
9 job at RQA. That's, that's the extent of what we know, and,
10 and when I say or ask the question about what are we
11 actually arguing to the jury, Mr. Griffin says well, we're
12 gonna wave this document around and say well, he, he used
13 his office for that purpose --

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LLOYD: -- to do this marketing thing.

16 Well, there's nothing that ties him to that. There's
17 testimony and evidence that possibly Richard Quinn drafted
18 that and it was a draft, but there's nothing that ties
19 Mr. Harrison to that.

20 MR. LIMBAUGH: And there's no evidence it ever left
21 Quinn's office.

22 MR. LLOYD: Exactly. But that's my struggle with what
23 exactly are we saying he used his office to do.

24 Is it just to get a job at RQA or is it to do certain
25 other things that I'm not aware of exactly how far down that

1 road we go?

2 THE COURT: Kind of begs the question on a whole.
3 Someone asked for a charge on accomplice liability, which
4 was the State, which I don't see how that has anything to do
5 with anything, but I figured y'all would educate me if that,
6 in some way -- I mean you can argue the conspiracy portion
7 of it, but I just don't see it as accomplice liability. I
8 mean that -- that's so far off of what we're talking about
9 here.

10 So, be that as it may. I still -- I got to tell you.
11 So, for the defense, looking at 700(B), when you just look
12 at it saying that a public official may, in any way, attempt
13 to use his office to influence a governmental decision, I
14 think there is some evidence. I think, I think you can
15 argue what you want. I think you can argue to whatever
16 extent you want, but I do think that there is some evidence
17 from which you could say that Harrison used or attempted to
18 use his office to influence a decision made by the
19 Legislature or even someone in the Legislature, and that RQA
20 had an economic interest in it.

21 So, you know, that -- I think it's, I think it's
22 appropriate.

23 MR. LLOYD: But, again---

24 THE COURT: I don't know if we need to charge all the
25 rest of it of what they're suppose to do.

1 MR. LLOYD: I -- no, I don't think so, Your Honor.

2 But, again, are we talking about that -- and, again, I
3 don't want them arguing just to amorphous hey, you know,
4 there were always these other clients, Blue -- SCANA, for
5 example. And that by virtue of SCANA being a client of RQA,
6 there's an economic interest there because, again, the, the
7 legislation, if it passes---

8 THE COURT: Uh-huh. (Affirmative).

9 MR. LLOYD: ---or it fails, that act itself has to
10 create some -- and we keep using the term economic interest.
11 It has to create some gain for either the member or the
12 business he's associated with. And I use this example, Your
13 Honor.

14 The moment the contract is signed between BlueCross
15 BlueShield---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LLOYD: ---or SCANA and RQA, we're done. That's,
18 that's off the table. So, now the only question is---

19 THE COURT: But it's a continuing contract every year,
20 and I think that's part of the problem with this case. It
21 wasn't a one time deal. I know they said they were year
22 long contracts, but they were year long contracts that
23 continued the entire time.

24 Correct me if I'm wrong, while Jim Harrison was there,
25 he was being paid as well?

1 MR. GRIFFIN: Yes, ma'am.

2 THE COURT: And I think your other problem with that
3 too, and I -- I'm not, I'm not quite sure for what you use
4 it. I mean I understand you're arguing to the jury, but
5 where you ascribe, and you show the table where, out of the
6 \$10,000 a month SCANA pays us, 2,000 is earmarked towards
7 Harrison. I mean you can tell me what you're using that for
8 in trying to insinuate, but he's working on their behalf for
9 that.

10 I mean is that -- that's what I assume you're trying to
11 get the jury to believe?

12 MR. GRIFFIN: Well, it's -- it allocates lobbyist's
13 principal money to him, and it's not being -- I mean it's
14 kind of a relation---

15 THE COURT: Remember that's, that's RQ&A allocating the
16 money. That's not the lobbyist's principals.

17 MR. GRIFFIN: Well, well---

18 THE COURT: So, I think you better be careful with
19 that. I would be. I'm trying to figure out what else
20 you're using that for, and say to help show that he must of
21 worked on those bills to---

22 MR. GRIFFIN: Right.

23 THE COURT: ---or, or for that client.

24 MR. GRIFFIN: And, and primarily to show he wasn't
25 working on campaigns, which, by his testimony, he says as

1 long as I'm working on campaigns, I know I don't have a
2 conflict of interest.

3 well, guess what?

4 He didn't work on any campaigns, and it's pretty clear
5 the things that he did work on, and the -- we just went
6 through the conflict of interest and the recusal statute.

7 THE COURT: Okay. All right. Well, I do think, under
8 700(B), I, I think it's appropriate to charge it.

9 So, let's keep going. Let's keep going.

10 MR. LIMBAUGH: I believe that then would take us to
11 705---

12 THE COURT: (B), yeah.

13 MR. LIMBAUGH: Now -- well, I'm not gonna speak out of
14 school here, and say what Mr. Griffin told me yesterday. I
15 don't know -- are y'all pursuing -- are you-all still
16 pursuing under 705?

17 THE COURT: Almost seems like the lobbyist's principal
18 would have to know that he was on the payroll for 705 to
19 apply.

20 MR. LIMBAUGH: Right.

21 THE COURT: I mean that's how I read it, but, you know,
22 y'all have been on this a lot longer.

23 MR. LIMBAUGH: We had had a preliminary discussion
24 from which I may have incorrectly inferred that they may not
25 pursue that particular one. If I miss---

1 MR. GRIFFIN: Your Honor, we don't---
2 MR. LIMBAUGH: I thought I would ask.
3 MR. GRIFFIN: No.
4 THE COURT: You're not. Okay.
5 MR. LIMBAUGH: All right. So, we can---
6 THE COURT: Let's get past---
7 MR. LIMBAUGH: Thank you.
8 MR. GRIFFIN: So, we can skip 705.
9 THE COURT: Now 720.
10 MR. GRIFFIN: I just need to tell Pascoe about it.
11 THE COURT: You're charged with that, Mr. Griffin.
12 MR. GRIFFIN: Yes, ma'am.
13 THE COURT: Okay. Now we're talking about 720 now,
14 right?
15 MR. LIMBAUGH: I mean I don't---
16 THE COURT: No person may -- to a public -- I'm just
17 gonna read it. Sorry.
18 MR. LIMBAUGH: I mean they charged --.
19 THE COURT: I think. No person may offer or no person
20 may pay to a public official, and no public official may
21 receive money for giving or assistance given in the Court
22 advice, sorry, for assistance given in the course of
23 employment.
24 MR. LIMBAUGH: I think that, honestly, Your Honor, I
25 don't -- I mean I don't know what the State's argument is on

1 that. I---

2 MR. GRIFFIN: Your Honor, it doesn't apply.

3 THE COURT: Doesn't apply.

4 Okay. Thank you.

5 MR. LIMBAUGH: That's a good argument.

6 THE COURT: The last one I have is 2-17-110(G).

7 MR. LLOYD: Yeah, 2-17-110.

8 MR. LIMBAUGH: Okay. Well, we do need to talk about

9 1130.

10 THE COURT: We do.

11 MR. LIMBAUGH: Ma'am?

12 THE COURT: Okay. I said -- the last -- what about

13 2-17-110(G)?

14 MR. GRIFFIN: Your Honor, that does -- 110(G), I mean

15 we talked about that earlier. That, that does apply to the

16 action---

17 THE COURT: Sorry. We did talk about it. Sorry.

18 MR. GRIFFIN: ---to the whole scheme.

19 THE COURT: Not employed---

20 MR. GRIFFIN: Misconduct in office, the scheme that the

21 lobbyist's principals---

22 THE COURT: Oh, this is the whole retainer portion.

23 MR. GRIFFIN: Yes, ma'am.

24 MR. LIMBAUGH: Now that -- well -- okay. Mr. Harrison

25 is statutorily incapable of violating that statute. If, if

1 there was a violation of that Code Section by a lobbyist's
2 principal or by lobbyist's principals, it only applies to
3 them.

4 MR. GRIFFIN: And---

5 MR. LIMBAUGH: So, the purposes of statutory or
6 criminal misconduct on the part of Mr. Harrison---

7 THE COURT: Or it could be RQ---

8 MR. LIMBAUGH: Well, I'm not, I'm not saying it may not
9 have some application in another context in this case.

10 THE COURT: Uh-huh. (Affirmative).

11 MR. LIMBAUGH: But---

12 THE COURT: I mean isn't the question that RQA may not
13 employ, on retainer, a public official who is not
14 associated---

15 MR. LIMBAUGH: No. No, ma'am, it's---

16 THE COURT: I was wrong.

17 MR. GRIFFIN: No.

18 MR. LIMBAUGH: The issue is---

19 MR. GRIFFIN: Is the lobbyist's principals cannot
20 employ RQA on retainer --

21 THE COURT: Okay.

22 MR. GRIFFIN: -- if they have an employee or a
23 compensated agent, which Mr. Harrison was, on their payroll
24 or compensated agent. And so that -- and, and I go back to
25 the charge is misconduct in office. It's not you violated

1 A, B, C, D, and the misconduct in office is that they had
2 this scheme to keep it secret, and it induced lobbyist's
3 principals to unknowingly violate this statute because they
4 were paying RQA on retainer, which they were not permitted
5 to do, and continued to do so because it was secret that
6 Mr. Harrison was on the payroll.

7 MR. LIMBAUGH: Your Honor, that---

8 THE COURT: So, how does Mr. Harrison violate this
9 then?

10 MR. LIMBAUGH: That, that big old popping sound I think
11 or which I just heard was a can of worms. We're going right
12 back to where we started in this conversation. The
13 indictment charges him for statutory and common law
14 misconduct based solely and entirely on violations of the
15 Ethics Act.

16 Now, I thought we had established, at the beginning of
17 this hearing, that they were not making general allegations
18 beyond allegations of violations of the Ethics Act. That's
19 what they charged in the indictment, that the basis for the
20 statutory and common law misconduct counts both were
21 specific to and limited to the fact that Mr. Harrison
22 allegedly violated provisions of the Ethics Act.

23 So, now I'm hearing that Mr. Griffin wants this case to
24 be broader than what the indictment says, but we'll -- I'll
25 leave that for a moment. Probably gonna have to come back

1 to it. Mr. Harrison can not violate two -- 2-17-110. Only
2 a lobbyist principal. Neither Mr. Harrison nor Richard
3 Quinn & Associates.

4 As I said, that, that code section may be relevant if
5 we were talking about a conspiracy context or this context,
6 that context. But it -- he didn't -- he can't violate it.

7 So, I, I just don't want -- I mean as far as this
8 motion is concerned, it needs to be clear, in our view,
9 that, if the state proves that lobbyist's principals hired a
10 legislator and were paying retainers, as the statute -- that
11 Code Section defines them, that that somehow is a hook on
12 which Mr. Harrison can be convicted of statutory or common
13 law misconduct. I mean that, that can't be.

14 THE COURT: That's contrary to the testimony they all
15 gave. So --.

16 MR. LLOYD: I'm -- pardon?

17 Sorry?

18 THE COURT: I said it's contrary to the testimony they
19 all gave.

20 MR. LIMBAUGH: Well, it's also not a statute---

21 THE COURT: Yeah.

22 MR. LIMBAUGH: ---that, that he can violate.

23 THE COURT: I understand that.

24 MR. LIMBAUGH: Yeah. Okay.

25 MR. GRIFFIN: It's the motivation for keeping this

1 secret. That statute is the motivation for keeping this
2 secret. So, it --.

3 THE COURT: But just read it. I mean I, I'm just
4 looking here and literally scratching my head. A lobbyist,
5 lobbyist's principals, or a person acting on behalf of a
6 lobbyist or a lobbyist's principal may not employ, on
7 retainer, a public official.

8 MR. GRIFFIN: Or in the said business which public
9 official is associated.

10 THE COURT: But, again, it still has to be a lobbyist,
11 a lobbyist's principal, or a person acting on behalf of the
12 lobbyist. So, it still requires---

13 MR. GRIFFIN: Cannot employ a business which is -- a
14 public official is associated with.

15 So, what that says is BlueCross Blueshield, SCANA,
16 AT&T, you cannot hire Richard Quinn & Associates. That's
17 what that says. Richard Quinn & Associates can't make money
18 to pay Jim Harrison if, if the lobbyist's principals know
19 that Harrison falls within that definition that he's
20 associated with that business. That's the whole motivation.

21 THE COURT: So, I guess the only -- so, the only person
22 that violate this though is the lobbyist's principal.

23 MR. LLOYD: And, Your Honor, I'm not being
24 disrespectful, but---

25 THE COURT: It's a---

1 MR. LLOYD: ---they could of indicted BlueCross
2 BlueShield.

3 THE COURT: And they didn't.

4 MR. LLOYD: They didn't.

5 MR. GRIFFIN: No, they couldn't because they didn't
6 know because the---

7 MR. LLOYD: The Grand Jury---

8 MR. GRIFFIN: ---the Defendant and Mr. Quinn conspired
9 to keep it secret. That's the conspiracy.

10 MR. LLOYD: Your Honor, their own report from the Grand
11 Jury recommended charges against those lobbyist's
12 principals.

13 MR. LIMBAUGH: Well, it says there was probable cause.

14 MR. LLOYD: There was probable cause.

15 THE COURT: Right.

16 MR. LLOYD: So, whatever they presented regarding those
17 lobbyist's principals, they thought there was probable cause
18 to indict them for something, but they didn't, and the only
19 ones who can violate that are BlueCross, SCANA, et cetera.

20 THE COURT: So, how does this apply because I'm still
21 having a hard time?

22 Is it -- are you saying by virtue of RQA being hired,
23 because he's a member of RQA, he's responsible?

24 MR. GRIFFIN: No. What, what I'm saying is this
25 statute is the motivation for keeping it secret, for

1 violating 8-13-1130, for not disclosing publically, which
2 Mr. Harrison is required to disclose publically under 1130,
3 his relationship with these lobbyist's principals. Had he
4 disclosed his relationship with these lobbyist's principals,
5 the lobbyist's principals would, would have not or could
6 not, and it would of been unlawful for them to knowingly pay
7 RQA a retainer, which they did. It's -- so, you have to
8 read them together.

9 THE COURT: So, the -- your point is you want it
10 charged just so -- to say the reason behind why they can't
11 do it---

12 MR. GRIFFIN: Yes.

13 THE COURT: ---cause he can't violate this.

14 MR. GRIFFIN: I, I agree with that.

15 THE COURT: Okay.

16 MR. GRIFFIN: But they can't take money -- they
17 wouldn't be allowed to take money if, if he publically
18 disclosed the relationship because these lobbyist's
19 principals would be violating the law had they known.
20 That's the motivation for keeping it secret, for violating
21 1130.

22 MR. LLOYD: The problem is you're suppose to charge the
23 law that the jury is to apply the facts to decide whether to
24 convict or not convict Mr. Harrison. They can't use that to
25 convict him of anything, and that -- and that's the problem.

1 MR. GRIFFIN: And he will say in the closing argument
2 we're not alleging that in this statute. What we're saying,
3 this is the motivation for him violating 1130 because you
4 have this law out there that says SCANA, AT&T, whomever, you
5 cannot pay Richard Quinn & Associates any money on retainer
6 if Jim Harrison is associated with that business as defined.
7 And he was. And he didn't disclose it for 12 years so that
8 they can continue getting the money.

9 MR. LIMBAUGH: Your Honor, we had -- here's the---

10 THE COURT: Go ahead.

11 MR. LIMBAUGH: Yeah, I know -- I mean here, here, here
12 we are, are again. It -- and I think we're maybe just kind
13 of going down rabbit holes here --

14 THE COURT: Yeah.

15 MR. LIMBAUGH: -- unintentionally or not. I mean what,
16 what this motion is concerned with is whether there is
17 sufficient evidence, based on the law, to---

18 THE COURT: Good point.

19 MR. LIMBAUGH: It's not.

20 THE COURT: You're arguing a directed verdict motion.
21 Not what we're charging the jury.

22 MR. LIMBAUGH: That's exactly right.

23 THE COURT: And I understand you.

24 MR. LIMBAUGH: And what, what I want to make certain
25 of, as far as this motion is concerned, and what I'm -- was,

1 was getting confused about is the, the State cannot be
2 arguing that, that Jim Harrison can be convicted for
3 statutory misconduct and/or common law misconduct by virtue
4 of a lobbyist principal violating---

5 THE COURT: Right.

6 MR. LIMBAUGH: ---that Code Section. I mean nobody's
7 saying they can't argue about, you know---

8 THE COURT: Right.

9 MR. LIMBAUGH: ---lobbyist's principals, what they did,
10 didn't do, and et cetera, et cetera. That's why I'm making
11 this. It's got to be clear---

12 THE COURT: Right.

13 MR. LIMBAUGH: ---that, that, even though, and, again,
14 I've gone back to what I said before. The indictment
15 specifically pegs both the statutory common law charge, and,
16 I'm sorry, the statutory misconduct charge, and the common
17 law misconduct charge to violations of the Ethics, Ethics
18 Act.

19 THE COURT: Right.

20 MR. LIMBAUGH: So, if now, all of a sudden, we're
21 responsible for---

22 THE COURT: No, you're not gonna answer to 2-17-110. I
23 have---

24 MR. LIMBAUGH: Or anything else that's not a violation
25 of the Ethics Act---

1 THE COURT: Right.

2 MR. LIMBAUGH: ---would be our point. So, any -- and

3 I -- well --.

4 THE COURT: Okay.

5 MR. LIMBAUGH: Anyway, as to that one, I think we've

6 probably---

7 THE COURT: Okay.

8 MR. LIMBAUGH: ---dug as deep a hole as we can dig.

9 THE COURT: Sorry.

10 MR. LIMBAUGH: And I don't know if -- well, I guess we

11 have finished -- well, the State is finished with the Ethics

12 Act, and the only other part of it that I wanted to, to

13 raise, again, and this one, you know, it's a little, it's a

14 little tricky, again, obviously, it's 1130.

15 THE COURT: 1130, right.

16 MR. LIMBAUGH: We were gonna get to it eventually, Your

17 Honor.

18 MR. GRIFFIN: Please don't.

19 MR. LIMBAUGH: And our argument with regard to 1130

20 is -- I mean it's really pretty simple.

21 THE COURT: Okay.

22 MR. LIMBAUGH: And that is that the State should not be

23 able to bootstrap into statutory misconduct or common law

24 misconduct something that's not conduct that---

25 THE COURT: Is a violation.

1 MR. LIMBAUGH: Even if it happened, it's not a crime --

2 THE COURT: Right.

3 MR. LIMBAUGH: -- under the Ethics Act, and we, we
4 don't need to belabor it. We've already -- but, very
5 briefly, because I'm a lawyer, and it's what we do, 1130---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LIMBAUGH: ---if you don't file a report, which is
8 what we're talking about here, and, again, Statements of
9 Economic Interest are not relevant to this case whatsoever
10 because the statute defines what has to be in the Statement
11 of Economic Interest, and this is a totally separate filing
12 as -- by its own terms. It says in addition to the
13 Statement of Economic Interest required pursuant to Section
14 8-13-1110. A person who is required to file that Statement
15 of Economic Interest---

16 THE COURT: Shall file.

17 MR. LIMBAUGH: ---shall further report. Okay.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. LIMBAUGH: So -- and then -- and we know what it is
20 they're suppose to report. They're suppose to report the
21 identity of any lobbyist's principals who have purchased
22 either from them---

23 THE COURT: Right.

24 MR. LIMBAUGH: ---or a business with which you're
25 associated more that \$200 worth of goods and previous

1 company here I believe it says. But -- okay. Mr. Harrison
2 didn't -- if -- assume the evidence shows that he didn't
3 file that report --

4 THE COURT: Right.

5 MR. LIMBAUGH: -- that's not a crime. Not filing that
6 report is not a crime because, if you go down to 8-13, the
7 penalty section, 8-13-1520 -- is it 20 or 10?

8 No, it's 10. I'm sorry.

9 8-13-1510, civil and criminal penalties for late filing
10 or failure to file a report or statement required by this
11 chapter. It's says except as -- 1510(A). Except as
12 otherwise specifically provided in this chapter, person
13 required to file a report or statement, I think it's
14 important that they make that distinction, under this
15 chapter, who files a late statement or report or fails to
16 file a required statement or report, must be assessed a
17 civil penalty as follows, and it talks about in Subsection
18 1, a \$100 fine, and then, Subsection 2, notice from the
19 supervising authority --

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LIMBAUGH: -- that the report hasn't been filed.
22 There's an additional \$10 a day fine, et cetera, et cetera.

23 It's only when you get down to (B), that would be just
24 for the record, 8-13-1510(B), after the maximum civil
25 penalty has been levied and a required statement or report

1 has not been filed, the person in Sub (1), for a first
2 offense, guilty of a misdemeanor, et cetera, et cetera.

3 THE COURT: Uh-huh. (Affirmative).

4 MR. LIMBAUGH: So, it's clear that the statutory scheme
5 that the, that the Legislature has enacted with regard to
6 1130, when taken together -- I mean in its, in its entirety,
7 does not contemplate that the failure to file reports under
8 1130 constitutes a crime. So, if the State's theory is that
9 the failure to file these reports, which is not a criminal
10 act, constitutes statutory or common law misconduct, and
11 there's proof---

12 THE COURT: Well, that would be eventual negligence.

13 What about the individual negligence, and is that what
14 your---

15 MR. LIMBAUGH: Failing to file, and being---

16 THE COURT: That's what I'm wondering.

17 Can, can a jury use that to show or say okay, since he
18 didn't file for the nine years following, can they find
19 that?

20 Can they find -- I mean I'm assuming that's why you
21 charge the statutory misconduct was because the habitual
22 negligence.

23 MR. GRIFFIN: The, the lower standard, yes, Your Honor.

24 THE COURT: All right.

25 MR. GRIFFIN: And --.

1 THE COURT: But can't -- somebody answer that question
2 first.

3 MR. LLOYD: Your Honor, I---

4 THE COURT: Can the jury find that?

5 MR. GRIFFIN: Yes.

6 MR. LLOYD: And this kind of gets into our requested
7 jury charge. I don't think they can. I don't think they
8 can.

9 THE COURT: Tell me why not.

10 MR. LLOYD: State v. Rowell, you can't -- this is not
11 civil concepts of negligence. So, you can't just use a mere
12 statutory violation. You crossed the middle line --

13 THE COURT: Uh-huh. (Affirmative).

14 MR. LLOYD: -- and, and there was something that
15 happened, therefore you're liable. That case specifically
16 talks about in areas of the criminal negligence.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LLOYD: We're not talking about simple negligence
19 under civil concepts of law, and it specifically talks about
20 look, if the General Assembly wants to make, for purposes of
21 a criminal violation --

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: -- the mere violation of a statute, a
24 criminal act, in this case either reck -- criminal
25 recklessness or criminal negligence, they have to

1 specifically do so. But to lower that standard to something
2 that would be akin to simple civil and mere negligence, I
3 argue, under that case, cannot do that. Not you, Your
4 Honor.

5 THE COURT: I understand.

6 MR. LLOYD: But just in general.

7 THE COURT: I understand.

8 MR. GRIFFIN: So, Your, Your Honor, the, the charge is
9 misconduct in office, and common law misconduct in office.
10 And, and that -- the, the indictment is based upon
11 violations of the Ethics Act.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. GRIFFIN: Now -- and, and we have numerous
14 violations of the Ethics Act we've talked about, and we
15 clearly have a violation of the Ethics Act under 1130. They
16 don't dispute that.

17 Now, somehow or another they're trying to say that,
18 that the Ethics Act is the exclusive remedy, and that
19 someone can't be criminally charged unless you follow the
20 guidelines under the civil and criminal penalty for late
21 filing section under 8-13-1510, and that's just not
22 accurate.

23 Under State v. Harrell case that went to the Supreme
24 Court, and State v. Thrift, they say that Ethics Act is a
25 civil act. It's a civil enforcement statute.

1 THE COURT: Okay.

2 MR. GRIFFIN: It doesn't preclude the Attorney General
3 from prosecuting separately.

4 All right. Start there.

5 THE COURT: Okay.

6 MR. GRIFFIN: We -- it -- it's not exclusive remedy,
7 exclusive jurisdiction here, and what they're saying it
8 is -- that's what they're arguing is that oh, you can't
9 prosecute him criminally until the Ethics Commission or
10 whomever sends you one notice, and said you're late, you pay
11 \$100. Two notices. You didn't pay then. So, now you owe,
12 after receiving certified mail, whatever the -- up to
13 \$5,000.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. GRIFFIN: And then, if you don't do that, then
16 the -- then you're gonna be guilty of a misdemeanor. I mean
17 that's all generated at the Ethics Commission---

18 THE COURT: Right.

19 MR. GRIFFIN: ---or the Ethics Committee.

20 THE COURT: Right.

21 MR. GRIFFIN: And you -- you've, you've addressed this
22 more than once.

23 THE COURT: Yeah.

24 MR. GRIFFIN: And so---

25 MR. LLOYD: No, Your Honor, that's not---

1 MR. LIMBAUGH: I'm not sure what we're arguing now.
2 There's, there's an important difference here.

3 The provisions of the Ethics -- of the Ethics Act carry
4 criminal penalties for, for their violation. 700, 700(B),
5 705.

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LIMBAUGH: Violate them, there are, in the Ethics
8 Act, there are criminal, criminal penalties. What was being
9 argued in the Harrell case was that somehow or another the
10 Ethics -- House Ethics Committee had to have the first bite
11 at any, at anything under the Ethics Act. And, of course,
12 the Supreme Court said no, because it is, you know, it is a
13 criminal statute that can be prosecuted.

14 Well, as a general proposition, that is true. What is
15 different about 1130 is that, within the Ethics Act itself,
16 this statutory scheme, the conduct being complained of,
17 namely failing to file these reports under the Ethics Act
18 itself, is not a criminal act. The failing to file the
19 reports under 1130 is not a criminal act. Failing to
20 respond to it after notice by the supervising authority in
21 filing it is a criminal act.

22 So, it's our argument that the State can't hang a
23 statutory misconduct -- certainly not common law. I mean
24 we'll just put aside the habitual negligence---

25 THE COURT: Negligence.

1 MR. LIMBAUGH: ---thing for a moment. But it certainly
2 cannot hang a common law misconduct charge on a violation of
3 a statutory provision that is not criminal in our view.

4 THE COURT: Okay. Well, I, I actually think we can
5 charge 1130 cause I think it does go or it's a misconduct
6 charge. So --.

7 MR. LLOYD: Is it statutory or common law?

8 THE COURT: Pardon?

9 MR. LLOYD: Statutory or common law?

10 THE COURT: I think statutory. That's, that's my --.

11 MR. LLOYD: And, Your Honor, as to that particular
12 issue, the only evidence we have in the record, and, again,
13 at this stage arguing is there evidence, is that it wasn't
14 filed. There's no evidence other than it wasn't filed. So,
15 obviously, willfulness about that I think is out.

16 The issue is, is the mere violation of 1130, can --
17 does that rise cause we have to assume it was just simple
18 negligence for, for the sake of argument.

19 THE COURT: Or he could of intentionally omitted in
20 putting down all the lobbyist's principals---

21 MR. LLOYD: Well---

22 THE COURT: ---after the first time.

23 MR. LLOYD: ---that, that gets into the willful issue.

24 THE COURT: Right.

25 MR. LLOYD: I thought we were just talking for a moment

1 about the habitual negligence issue. If it's habitual
2 negligence that we're talking about, the only evidence we
3 have in the record is it wasn't filed. So, now we're at
4 what does that mean, criminally, for Mr. Harrison.

5 we've got to show more than, at best under that theory,
6 he simply forgot to file it. That would be simple
7 negligence. That's simple, simple negligence.

8 what we're saying is you can't employ -- you can't have
9 the jury employ hey, well, maybe he just simply forgot, and
10 we can convict him criminally under a civil standard, and I
11 think that's the issue that we were raising with Rowell---

12 THE COURT: Uh-huh. (Affirmative).

13 MR. LLOYD: ---and that line of cases that say you
14 can't bring in a low standard of civil negligence into a
15 criminal charge unless, unless the Legislature specifically
16 says so.

17 when does it specifically say so?

18 strict liability statutes.

19 They can lower the standard all day long. Here, what
20 they're saying is, habitual negligence -- statutory
21 misconduct would ordinarily require, obviously, a higher
22 standard they simple negligence. There's no indication that
23 the Legislature intended simple negligence to allow for a
24 conviction under statutory misconduct. They talk about
25 negligence.

1 Negligence, in criminal law, means criminal negligence.
2 That's a higher standard.

3 MR. GRIFFIN: Your Honor, I'm, I'm, I'm afraid that
4 I'm -- I, I heard -- and I don't want, I don't want to argue
5 after you ruled, but I'm not sure I got my arguments in
6 about common law misconduct.

7 THE COURT: Okay.

8 MR. GRIFFIN: The -- I mean his interpretation, the
9 defense's interpretation, of the civil criminal penalty for
10 late filing is dead wrong, and it's dead wrong because you
11 look at -- well, first, as, as Mr. Hayden testified, who's
12 the director of the committee, he says that's for when you
13 don't file. That's when you don't file.

14 What Mr. Harrison did was file, and he filed an
15 incomplete false report. And you look at 1520, which is --
16 which 8-13-1520, and this is a statute that applies when
17 you, when you file false reports with the Ethics Commission
18 or, or the House Ethics Committee.

19 And it says except as otherwise specifically provided
20 in this chapter, a person who violates any provision of this
21 chapter is guilty of a misdemeanor and, upon conviction,
22 must not be fined more than \$5,000 or imprisoned for not
23 more than the one year or both. It doesn't -- there's no
24 graduated civil penalties.

25 Now, now, they latch on to this except as otherwise

1 provided in this chapter, but if you look at the Subsection
2 B, that's -- that talks about penalties for campaign
3 contribution violations where you don't disclose, and it has
4 a -- sort of a treble damages penalty in addition to that.
5 But there's, there's no logical reading of, of 1510 to say,
6 because I didn't put on the Statement of Economic Interest
7 that I filed, my relationship, that I should have under 1130
8 with a lobbyist principal, that I didn't file. I mean he
9 did file.

10 MR. LLOYD: Your Honor, we're back---

11 MR. LIMBAUGH: I think he's---

12 MR. LLOYD: ---to talking about the Statement of
13 Economic Interest.

14 THE COURT: Exactly.

15 MR. LLOYD: That's not -- and this is, this is what
16 we've been dealing with for a year, and I don't mean this
17 with Mr. Griffin, but I mean overall with the State's
18 theory.

19 If we start talking about 1130, they start talking
20 about well, he didn't report or disclose something under
21 Statement of Economic Interest.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: And we say hey, it's not required under the
24 Statement of Economic Interest. We move off to something
25 else. It's not required.

1 So, first of all, 1510 applies to Statements of
2 Economic Interest. I don't dispute that. He files a false
3 one. He does anything related to that, that's 1510. 1510
4 specifically and expressly doesn't apply to, to 30 -- to
5 1130.

6 MR. LIMBAUGH: No, 1510 does.

7 MR. LLOYD: No, I'm sorry. The, the prosecution -- the
8 prosecutable statute for the Ethics Act doesn't apply,
9 making it a criminal penalty doesn't apply to 1130. That's
10 not -- it does apply to the Statement of Economic Interest.
11 But, again, the way they get to 1130 is to go back to the
12 Statement of Economic Interest. 1130 specifically isn't
13 talking about the Statement of Economic Interest.

14 MR. LIMBAUGH: 1510---

15 MR. GRIFFIN: So, so, Your Honor, what they are saying
16 is you have to file a completely separate form to disclose
17 the information under 1130.

18 MR. LIMBAUGH: Absolutely.

19 MR. GRIFFIN: Not true. The Ethics Commission, House
20 Ethics Committee and Senate Ethics Committee have only ever
21 required one form. The statute says one form.

22 Who produces the form?

23 The Ethics Commission produces the form under the
24 statute.

25 Who has to fill out that form?

1 Everybody who's a filer, and, under regulation, said
2 you got to complete the form. There is nothing, except in
3 their mind, and a separate form to be filed for this
4 information. It does not exist.

5 MR. LIMBAUGH: Your Honor, here's the point.

6 MR. GRIFFIN: It doesn't exist.

7 MR. LIMBAUGH: I'm -- with all due respect---

8 MR. GRIFFIN: Doesn't exist.

9 MR. LIMBAUGH: With all due respect to Mr. Griffin, and
10 everybody else that I'm fixing to impute here, not their
11 characters, but they're wrong. It's very, it's very simple.

12 Mr. Hayden was wrong. Mr. Griffin's wrong. Anybody
13 who says that the information required by 8-13-1130 is
14 information that's required by the Statement of Economic
15 Interest, they say that, they're wrong.

16 What's required to be on a Statement of Economic
17 Interest is specifically delineated in the statute. These
18 are the things to be included on the Statement of Economic
19 Interest.

20 okay. 1120. What is required to be reported in 1130
21 is what 1130 says is required to be reported. It is a
22 report. It specifically says, in addition to the Statement
23 of Economic Interest, a report shall be made. It doesn't
24 say on your Statement of Economic Interest put this. It
25 says in addition to the Statement of Economic Interest.

1 when these, when this situation applies, a report is duly
2 filed. And that's why in, in 15 -- oh well, right. Right.

3 I mean it goes to the supervising authority, but it --
4 and, and the, the, the criminal part of that, what is it,
5 1510, 1510 says that it applies -- that that procedure---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LIMBAUGH: ---that notice requirement, if you fail
8 to file a statement or a report it, in and of itself, makes
9 the distinction. It, it acknowledges that there are --
10 there are things such as statements, things such as reports.

11 THE COURT: well, let me ask you.

12 If I went and pulled up and looked up this right now,
13 how many reports are out there?

14 MR. LIMBAUGH: Of -- for 1130?

15 THE COURT: Uh-huh. (Affirmative).

16 I want to know, I want to know who's filing these
17 additional reports.

18 MR. LLOYD: Your Honor, that's a little bit of a
19 problem here. You'd have to go back to -- in time to do
20 that.

21 THE COURT: Right.

22 MR. LLOYD: The definition -- and this is why -- I
23 think it gets really complicated with this case and all
24 these statutes and moving parts.

25 In 2016, the General Assembly made effective a change

1 in the definition of income.

2 THE COURT: Okay.

3 MR. LLOYD: The change in the definition of income now
4 requires information which would include 1130 information --

5 THE COURT: Okay.

6 MR. LLOYD: -- in the Statement of Economic Interest.
7 Prior to 2016, that would not have been there.

8 So, to, to find what you just said, Your Honor, you
9 would have to go, in Mr. Harrison's case or any other
10 legislator, to House Ethics.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. LLOYD: Knock on Jane Shuler's door, and say Jane,
13 give me every 1130 report because that's the only -- in
14 fact, that's the only place it's required under the statute
15 to be housed.

16 MR. LIMBAUGH: Yeah, but it's also part of the problem
17 that we've -- that -- in this case just in general. I'm --.

18 MR. GRIFFIN: I mean y'all are double teaming. I stand
19 up.

20 MR. LIMBAUGH: Okay.

21 MR. GRIFFIN: You stand up. I apologize, Your Honor.

22 MR. LIMBAUGH: I'm sorry.

23 MR. GRIFFIN: It's very frustrating.

24 MR. LIMBAUGH: I'll, I'll stand.

25 THE COURT: Everyone's tired.

1 MR. LIMBAUGH: No, you're right. You're right.

2 THE COURT: Everyone's tired.

3 MR. LIMBAUGH: You're right. That was my bad.

4 MR. GRIFFIN: That's all right.

5 THE COURT: All right. Mr. Griffin, go ahead.

6 MR. GRIFFIN: If I can address two things.

7 One is, if you just read the plain language of
8 8-13-1130, and it says in addition to the Statement of
9 Economic Interest required pursuant to 8-13-1110---

10 THE COURT: Uh-huh. (Affirmative).

11 MR. GRIFFIN: ---a person required to file the
12 statement shall further report, to the appropriate
13 supervisory office, the information. It says shall further
14 report. It doesn't say file another report. It says shall
15 further report.

16 It also point -- direct the Court's attention to
17 Regulation 52-204 of the---

18 THE COURT: Uh-huh. (Affirmative).

19 MR. GRIFFIN: ---of our Code of Regulations. And under
20 E, it says the following forms are available from the
21 Commission. The Commission's forms are adopted by the
22 Commission in complying with the registration and disclosure
23 requirements of the Act. There are 14 forms listed here.

24 There is no form listed under regulation, separate
25 form, for lobbyist's principal disclosures because the

1 statute doesn't say shall file a report. It says you shall
2 further report. Where the lobbyist's principal disclosure
3 is, is found, clearly found, after 2008, is only the
4 electronic form that was filed by Mr. Harrison. He had to
5 make an election to do that---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. GRIFFIN: ---to say skip---

8 THE COURT: I, I heard that argument---

9 MR. GRIFFIN: ---and then it---

10 THE COURT: Many times.

11 MR. GRIFFIN: And then -- and he certifies,
12 certifies---

13 THE COURT: Okay.

14 MR. GRIFFIN: ---certifies it.

15 THE COURT: I think y'all are torturing the statute.
16 I'm gonna charge it cause I think it's appropriate. I am.
17 So --.

18 MR. GRIFFIN: And, Your Honor, I -- just to be clear,
19 you're not limiting it to statutory misconduct because of
20 some similar argument that they were making over there. I'm
21 not quite sure what that was, but --.

22 THE COURT: Well, do we need to go now to --?

23 MR. LLOYD: Your Honor, that brings us though the issue
24 of 1120. We have to charge the burden in 1120 that was in
25 effect at the time Jim Harrison served.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. LLOYD: At the time he served, for example, there
3 was no requirement for him to report the income from RQA.
4 Lobbyist's principals---

5 THE COURT: Dollar amount?

6 You mean the dollar amount?

7 MR. LLOYD: The dollar amount. Lobbyist's principals
8 and all.

9 THE COURT: I understand that.

10 MR. LLOYD: And because of that, he would of had no
11 obligation -- in other words, the way you get to reporting
12 the names of the lobbyist's principals on the SEI
13 currently---

14 THE COURT: Uh-huh. (Affirmative).

15 MR. LLOYD: ---is you're reporting the dollar amount.
16 Why are you reporting the dollar amounts?

17 You're reporting the dollars amounts because the
18 definition of income changed.

19 THE COURT: Right.

20 MR. LIMBAUGH: Well, it's also that the -- before the
21 income was required to be reported, there was nothing on the
22 even -- I mean there was nothing on the Statement of
23 Economic Interest form that existed prior to this time that
24 related to 1130 information. There was nothing on it.

25 So, I mean which I'm pretty sure supports my point,

1 which is that it was, in fact, a separate report that was
2 required to be filed. There was no where on this Statement,
3 Statement of Economic Interest form prior---

4 THE COURT: It was asking---

5 MR. LIMBAUGH: ---to this change.

6 THE COURT: ---can I find -- someone whose filed this
7 separate part that has it because I've never heard of it
8 existing.

9 MR. LIMBAUGH: And, again, that -- I understand that.
10 And, and I mean this kind of goes---

11 THE COURT: Yeah.

12 MR. LIMBAUGH: ---you know one of our, one of our
13 arguments on the, on the question of willfulness. Unless a
14 legislator happened to know, just for whatever reason, about
15 the requirements of 1130---

16 THE COURT: Uh-huh. (Affirmative).

17 MR. LIMBAUGH: ---who was in the position where they
18 were suppose to file that, there was, there was no mechanism
19 by which they were ever going to be made aware of it if they
20 didn't know. In other words, because, on the Statement of
21 Economic Interest, there was no place that said this is
22 where you report 1130 stuff. So, it -- and it, it only
23 shows up now if you have to report income, which was never
24 the case for Mr. Harrison.

25 There, there have been reports. I don't know --

1 Mr. Hayden's not gonna testify again.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. LIMBAUGH: But, in, in checking, just -- there have
4 been reports of 11 -- 1130 reports---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LIMBAUGH: ---done in the form of a letter or just
7 a whatever to the Ethics Commission in the past is my
8 understanding. I don't know whether there were ever any
9 done to House Ethics or Senate Ethics or not, but, but
10 that's, that's the way it had -- would have to be done.
11 It's a separate filing from the Statement of Economic
12 Interest, and I, I mean I, I, I understand what
13 Mr. Griffin's arguing, but I think it's clear, from the
14 language of the statute itself, that they are separate
15 reports. One's a statement, and one's a report.

16 THE COURT: Okay. I, I don't think it's clear. I
17 agree with Mr. Griffin's reading of the statute. So, let's
18 get past that.

19 MR. LIMBAUGH: Unless there's some other statute
20 that -- like outside of the Ethics Act that the State's
21 planning on using -- use as a basis for its statutory or
22 common law misconduct, then --.

23 THE COURT: That's all I've got.

24 MR. LIMBAUGH: ---I think that---

25 THE COURT: That's all I've got right now in what I've

1 planned on charging. So --.

2 MR. GRIFFIN: We were thinking about adding RICO.

3 MR. LIMBAUGH: Yeah.

4 MR. GRIFFIN: That's a joke.

5 THE COURT: Yes, I know.

6 MR. LLOYD: Your Honor, we have an issue---

7 THE COURT: Yeah.

8 MR. LLOYD: ---though as it relates to -- I think we
9 mentioned to Your Honor this whole issue of the double
10 jeopardy issue with these, and that's why -- and my
11 apologies to Jim about this. That's where I thought you
12 were going when you were talking about habitual negligence.

13 THE COURT: Okay.

14 MR. LLOYD: What would constitute negligence versus
15 willful conduct under the statutory misconduct as well as
16 willful conduct under common law misconduct. You know, our
17 position, obviously, don't need to bore Your Honor. Your
18 Honor's familiar with the standard of Blockburger and the
19 same elements.

20 To the extent that the State is arguing any of these
21 violations were willfully done, for both common law and
22 statutory, we got a double jeopardy problem. They have to
23 delineate which willful -- which conduct -- which acts, if
24 any, were a violation in this case constitute willful
25 misconduct or willful actions for common law misconduct or,

1 separately, statutory misconduct. And, therefore, I guess
2 we get into this issue of what are they arguing constitutes
3 just habitual negligence. whatever we decide on---

4 THE COURT: Okay.

5 MR. LIMBAUGH: ---charging.

6 THE COURT: So, what is it?

7 which conduct are you arguing under habitual
8 negligence?

9 MR. GRIFFIN: Your Honor, that's not the, that's not
10 the, the issue. You can have the same conduct violate two
11 separate statutes. I mean the -- and so as long as the
12 statutes have separate elements, and the two common law and
13 the statutory misconduct statutes do have separate elements
14 with regard to -- and, and Mr. Allen's pulling up. I think
15 you've already ruled on this issue, issue in the Courson
16 case, and he's pulling up your order right now.

17 THE COURT: I just said he could be charged with -- no,
18 in the Courson case, all I did was say he could be charged
19 with both common law and statutory misconduct.

20 MR. LLOYD: And, Your Honor---

21 THE COURT: That's, that's all they argued in front of
22 me.

23 MR. LLOYD: Yeah. I'm, I'm assuming nobody's arguing
24 that he committed fraud. Habitual drunkenness, I think, is
25 part of the statutory misconduct.

1 MR. GRIFFIN: Your Honor?

2 MR. LLOYD: So, all we're left with is intentional --

3 what would be intentional acts of official misconduct.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. LLOYD: Well, if, if -- then were arguing that---

6 THE COURT: Uh-huh. (Affirmative).

7 MR. LLOYD: ---for statutory misconduct, we can also

8 argue that as to common law misconduct, which requires

9 willful acts because, again, Your Honor, the only conduct

10 we're arguing in both cases is the statutory, is the

11 statutory violations under the Ethics Act. We're not

12 arguing separate willful conduct.

13 THE COURT: I mean official misconduct would have to be

14 willful, right?

15 MR. LLOYD: Right.

16 THE COURT: It has to be willful.

17 MR. LLOYD: Right. Set aside the issue of habitual

18 negligence.

19 THE COURT: Right. Right. Obviously. Okay.

20 MR. GRIFFIN: And so common, common law misconduct, in

21 the Hess case, says misconduct includes any act, any

22 omission, any breach of duty of public concern by persons in

23 public office provided it has been willfully and

24 dishonestly. The---

25 MR. LLOYD: And not to interrupt, Jim.

1 MR. GRIFFIN: Yes.

2 MR. LLOYD: But the, the focus is on are you
3 potentially punishing a defendant for the same conduct under
4 two different statutes that don't have separate elements.

5 MR. GRIFFIN: Well, they---

6 MR. LLOYD: So, if, if they were arguing, Your Honor,
7 for this purpose, 1130 applies to habitual negligence under
8 statutory misconduct---

9 THE COURT: Uh-huh. (Affirmative).

10 MR. LLOYD: ---obviously the -- you know, they could
11 argue well, 1130's violation also was done willfully --

12 THE COURT: Uh-huh. (Affirmative).

13 MR. LLOYD: -- and they'd have to make that argument
14 and point to evidence there. But what they can't do is say
15 there's willful misconduct under the statute -- under the
16 statutory misconduct---

17 THE COURT: Uh-huh. (Affirmative).

18 MR. LLOYD: ---8-1-800, and there's willful violations
19 of the same ethics statute under common law misconduct.

20 MR. GRIFFIN: Well, I didn't know we were arguing
21 double jeopardy, but, but let me point out the, the
22 different elements between the statutory misconduct---

23 THE COURT: Well, we're really just talking about the
24 official misconduct, right, as to -- because that's the only
25 way it potentially could be.

1 MR. LLOYD: Right. And, and that---

2 THE COURT: Right.

3 MR. LLOYD: ---would just leave us with habitual
4 negligence.

5 THE COURT: Okay.

6 MR. LLOYD: Okay.

7 MR. GRIFFIN: And so to prove statutory misconduct, the
8 one element that is not in common law misconduct is, is the
9 public officer. Authority has to be limited to a single
10 election or judicial district.

11 THE COURT: Uh-huh. (Affirmative).

12 MR. GRIFFIN: All right. That's separate, and that's
13 not required under common law.

14 So, it's not like it's a lesser included offense, and
15 that the standard is different, habitual negligence versus
16 willful and dishonest. Willful and dishonest being -- you
17 know, I could see them arguing it's a lesser included. That
18 doesn't get you double jeopardy. It gets you the lesser
19 included, but the requirement under misconduct under 8-1-80
20 is we have to prove, and we did, that the House member's
21 authority is limited to a single election or judicial
22 district. And that appears nowhere in common law.

23 MR. LLOYD: Your Honor, I would just point out that
24 they don't have to prove that his position was subject to a
25 single election or anything else because Your Honor already

1 ruled that statutory misconduct was coming in.

2 THE COURT: Right.

3 MR. LLOYD: Because we run into that issue, as though
4 we had then on arguing about that, of all of these other
5 things that seem to indicate, I think, persuasively, that
6 this doesn't even apply to legislators.

7 THE COURT: Okay.

8 MR. LLOYD: The 8-1-80 doesn't apply to legislators.
9 So, I think we're past that issue of whether it applies to
10 him or not.

11 THE COURT: I mean I, I don't know what to do other
12 than you -- short of -- you want to know what specific
13 conduct is applied as to both or not to both so there is no
14 double jeopardy issue.

15 MR. LLOYD: Right. I, I just don't want them to be
16 able to argue that there is -- I think we got 700(A) and
17 (B).

18 THE COURT: Is it -- it's only deemed if you don't find
19 him guilty of fraud for doing X, then you can't just find
20 him guilty of habitual negligence for the same acts?

21 Is that what you're saying?

22 MR. LLOYD: No. No, Your Honor.

23 THE COURT: Okay.

24 MR. LLOYD: What we're saying is, is that -- let's take
25 out for a moment the habitual negligence.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. LLOYD: I will almost treat that as a separate
3 statute for purposes of this argument. That statutory
4 misconduct and common law misconduct---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. LLOYD: ---both require willful acts. In this
7 case, what the State is arguing is that Mr. Harrison
8 willfully violated eight seven -- 8-13-700(A) and (B), for
9 example. They can't get a conviction against him for
10 willful violation of 700(A) and (B)---

11 THE COURT: Uh-huh. (Affirmative).

12 MR. LLOYD: ---on -- for the -- under two different
13 laws, common law and statutory. That's double jeopardy.
14 It's not just you can't be tried as your -- it's not just
15 you can't be tried --

16 THE COURT: Right.

17 MR. LLOYD: -- successively. You can't hand down nor
18 can the jury convict, and, therefore, expose to punishment
19 for the exact same conduct when the two laws for which you
20 might be convicted on require the exact same thing. In this
21 case, willful violation of 8-13-700(A) and (B).

22 THE COURT: Okay. Now, I understand. I got you.
23 Okay.

24 MR. GRIFFIN: But they don't. They don't require the
25 same thing clearly, and, and the two, two different things,

1 as I mentioned earlier, one is the -- A, the statutory is
2 limited to public officer whose authority is limited to a
3 single election or judicial district. There's no such
4 requirement under common law.

5 THE COURT: Right.

6 MR. GRIFFIN: Plus, he pointed out, habitual negligence
7 is here. It's not under common law, and every -- Your
8 Honor, double jeopardy does not prohibit someone being tried
9 on multiple counts based on the same course of action that
10 might violate multiple statutes. It happens all the time.
11 That's not the test for double jeopardy. Otherwise, you
12 wouldn't be allowed to have a conspiracy and a substantive
13 count in a drug case cause it's the same conduct, and I mean
14 it's---

15 MR. LLOYD: The reason you can do it because
16 Blockburger, Blockburger says you can do it. They're not
17 the same substantively element wise, and that's what
18 Blockburger says we have to concentrate on.

19 If, if Mr. Griffin is right, and that's a factual issue
20 as to whether 8-1-80 applies, despite Your Honor's previous
21 ruling---

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: ---then that issue has to go to the jury as
24 to whether or not Mr. Harrison fits within the definition of
25 public officer.

1 THE COURT: So, just how I'm hearing his argument and
2 what he's telling me is this. This is what I hear is that,
3 under the common law, it requires that the State prove the
4 Defendant willfully and dishonestly failed to properly and
5 faithfully discharge duties imposed by law while a public
6 official.

7 Okay. Then, in going to statutory misconduct in
8 office, you're talking about, again, Defendant is guilty of
9 statutory misconduct when they must prove that the
10 Defendant, while a public officer, whose authority is
11 limited, blah, blah, blah, is guilty of official misconduct.
12 They really -- don't really define it. I mean that's what
13 I'm seeing -- at least that's what I'm hearing your
14 argument, and you're saying those are the same things.

15 MR. LLOYD: Yeah. And, Your Honor, it -- I, I know it
16 brings up issues that we raised with Your Honor before, and
17 I was trying not to replot that ground---

18 THE COURT: Okay.

19 MR. LLOYD: ---that there's not sufficient definition
20 in anywhere on, on official misconduct or statutory
21 misconduct to give notice.

22 THE COURT: Uh-huh. (Affirmative).

23 MR. LLOYD: But, here, we're specifically talking about
24 official misconduct.

25 well, what does that mean?

1 The only way I can make it make any sense is it means
2 the exact same thing that common law misconduct means. I
3 have -- I don't have another -- right, and when -- the
4 conduct is the exact same thing, violation of the Ethics
5 Act. But I don't have another definition to apply to
6 official misconduct other than the common law definition.

7 THE COURT: Okay. So, I understand---

8 MR. LLOYD: It's a---

9 THE COURT: Maybe that's just something we have to get
10 to if, in fact, he is convicted of both of them, and then,
11 at that point, we can choose.

12 MR. LLOYD: Well---

13 THE COURT: I mean that sounds bad, but --.

14 MR. LLOYD: Yeah, but here's the problem, Your Honor.
15 The jury can't guess as to what official misconduct is.
16 When, when they don't have sufficient guidance to apply the
17 facts to, and, in this case, either there's a definition of
18 official misconduct or not, they, they don't know the law to
19 apply to these facts. So, we can't give it to them, and say
20 hey, you guys got to figure out -- as Your Honor knows, you
21 can never say hey, jury, y'all determine what this means.

22 THE COURT: No, we actually say it all the time. We
23 say use its plain and ordinary meaning.

24 MR. LLOYD: Right.

25 THE COURT: But I don't know what the plain and

1 ordinary, ordinary meaning---

2 MR. LLOYD: Exactly.

3 THE COURT: ---of official misconduct is.

4 MR. LLOYD: Right. And, and those -- I would agree
5 with you in circumstances where it's clear, you know,
6 there's no issue about hey, you know, how's this defined.
7 You just apply, apply plain and ordinary meanings.

8 THE COURT: So, it's not defined at all?

9 official misconduct is not defined at all?

10 MR. LLOYD: Misconduct in this State is not really
11 defined. What, what's happened with all of these decisions,
12 Your Honor, I would suggest is they look at the acts, and
13 they go yeah, that's official -- I means that's misconduct,
14 whether it's common law or statutory. That's what really
15 happens. They don't offer much in what it does---

16 THE COURT: It sounds like pornography. You know it
17 when you see it.

18 MR. LLOYD: Exactly.

19 MR. GRIFFIN: Your Honor, the Attorney General has an
20 opinion on it, for what it's worth.

21 MR. LIMBAUGH: You mean Bob Cook.

22 THE COURT: Ah, that's --.

23 MR. GRIFFIN: Bob Cook has an opinion at -- and it's
24 2014 West Law 2538230. It says official misconduct is any
25 unlawful behavior by a public officer in relation to the

1 duties of his office, willful in character, involving
2 intentional wrongdoing or total lack of concern for the
3 conduct. That's what he -- Bob Cook says it is.

4 MR. LLOYD: And, Your Honor, that goes back to not -- I
5 know you're tired.

6 THE COURT: No, it's okay.

7 MR. LLOYD: We can get out of here.

8 If you read all of this together, they're talking about
9 something more, again, than simple negligence. Official
10 misconduct, fraud, corruption. They're talking about public
11 corruption, but then you get to this habitual negligence.
12 I'd argue that that, in and of itself, is further example
13 that we're not talking about the civil concept of, you know,
14 you committed mere negligence by itself because they're,
15 they're clearly getting at something corrupt that a public
16 official did.

17 THE COURT: I'm surprised they put in habitual
18 negligence because---

19 MR. LLOYD: Whatever that means.

20 THE COURT: ---frankly that'd sweep in a lot of people
21 for a lot of things.

22 MR. LLOYD: And, Your Honor, you're familiar with, for
23 example, budget provisos have the exact same force of law as
24 a statute.

25 THE COURT: Uh-huh. (Affirmative).

1 MR. LLOYD: Public officials, particularly in spending
2 areas, violate those all the time. Unintentionally maybe.

3 THE COURT: Right.

4 MR. LLOYD: But if you take the State's position, all
5 of those people just committed a prosecutable crime ipso
6 facto. The mere fact that they maybe over spent a line in
7 their budget or whatever, the mere negligent doing of that
8 subjects them to a criminal offense.

9 THE COURT: So, I don't know exactly what you're asking
10 me to do other than change the statute, and take out
11 habitual negligence. But I understand we're still back to
12 the argument of misconduct, and whether or not it's the same
13 thing. I mean you guys both agreed and said that you just
14 want straight up, is he guilty or not guilty of statutory,
15 common law, civil, or, sorry, conspiracy, criminal
16 conspiracy, if it's, if it's still going forward, and
17 perjury.

18 Okay. So, from what I'm getting then, this argument is
19 something we need to deal with as far as it being a double
20 jeopardy issue, and not necessarily -- I still think it's
21 appropriate to charge the statute because I think it---

22 MR. LLOYD: No. Yeah, I, I, I don't mean to misstate.
23 To the extent---

24 THE COURT: Yeah.

25 MR. LLOYD: ---whatever Your Honor's ruling is about

1 the standard---

2 THE COURT: Right.

3 MR. LLOYD: ---applicable on negligence---

4 THE COURT: Right.

5 MR. LLOYD: ---what I'm arguing is the only thing you
6 could charge on 8-1-80 is habitual negligence cause we're
7 talking about the same conduct. I think we all agree on
8 that. We're talking about the exact same violations of the
9 Ethics Act Statutes.

10 THE COURT: That's all you want charged?

11 You want taken out official misconduct, fraud,
12 oppression?

13 MR. LLOYD: Right. There's no---

14 THE COURT: Corruption?

15 MR. LLOYD: Exactly.

16 MR. LIMBAUGH: Unless they want to drop the common law
17 misconduct.

18 MR. LLOYD: Yes, there's, there's no difference between
19 official misconduct and corruption, I would argue, and the
20 common definition of misconduct because we don't have
21 anything else to go by. And my suggestion would be, if we
22 don't having anything else to go by, we can't give a legal
23 term to the jury and say hey, you got to make it up.

24 MR. GRIFFIN: Your Honor, he was indicted for violating
25 that statute. I think it's appropriate to charge the

1 statute.

2 THE COURT: I think I'm gonna charge it. I mean I --
3 again, the common law statute says he must willfully and
4 dishonestly fail to properly and faithfully to discharge
5 duties imposed by law while a public official. I, I think i
6 just have to charge them both. I'm not so sure what we're
7 gonna do, and how we're gonna define official misconduct.
8 Again, I think we're back to that problem again, but --.

9 MR. LLOYD: Depending on how we define it, we're -- I
10 would argue back to the Blockburger.

11 THE COURT: Okay. All right. So, have I heard
12 everything on the directed verdict for the most part?

13 MR. LIMBAUGH: Yes, ma'am.

14 THE COURT: I got to tell you. I mean as far as
15 everything I see, just, you know, obviously taking them into
16 the light most favorable to the State, I think there is
17 evidence from which this jury could find, you know,
18 Mr. Harrison guilty of, of course, using circumstantial and
19 maybe a little direct evidence, but as to the perjury, again
20 know -- I know I've heard your argument. I understand your,
21 your argument, but I do think the jury could find it
22 misleading what he said. So, I think that goes to the jury.
23 I think both the common law and the statutory go. I still
24 am struggling with the conspiracy. I just am.

25 MR. GRIFFIN: I can try again, Your Honor. I mean

1 that---

2 THE COURT: Yeah, I'm sitting here thinking in context
3 of the case, and it's -- Justice Hearn has ruled twice now
4 in cases where there jury -- isn't enough to send things to
5 the jury, and all the evidence, even if it just looks
6 suspicious. I'm thinking about, you know, the guy that took
7 the, the TV or stole the TV at the civic or community
8 center. There was a drop of blood, and all of that was not
9 enough. That was all circumstantial evidence. She said
10 that was not enough to that to the jury, and that it should
11 have been -- do you -- does anyone know that case?

12 MR. LLOYD: Yes, Your Honor. You're---

13 THE COURT: Everyone keeps citing that case, and I can
14 tell you there's been other ones too. I mean I've -- I had
15 another case where -- that I'm pretty sure Justice Hearn
16 wrote it as well.

17 MR. GRIFFIN: So, so, Your Honor---

18 THE COURT: I'm just not so sure how we're getting to
19 the criminal conspiracy. I'm just not so sure. Again---

20 MR. GRIFFIN: Well, I'll help on that.

21 THE COURT: Help me.

22 MR. GRIFFIN: One last try.

23 THE COURT: Help me.

24 MR. GRIFFIN: So, Ms. Mustian testified that the
25 arrangement was between her dad, Mr. Quinn, excuse me, Mr.

1 Harrison. She did not know what his duties were, what he
2 did, but dad made the decision how much he got paid, and for
3 him to continue to get paid.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. GRIFFIN: Now, we have seen, as we've gone through
6 this---

7 THE COURT: Uh-huh. (Affirmative).

8 MR. GRIFFIN: ---that it looked like, for ten years, he
9 was getting paid to do nothing. I mean it -- hard to put
10 work product behind what he did other than the position in
11 the House.

12 who was authorizing payment for that purpose?

13 The evidence is Richard Quinn was.

14 I think that's enough circumstantial evidence, and
15 direct evidence. Specific agreement. Dad authorized the
16 payment. He got paid for ten years for doing nothing, and
17 he was Chairman of the House Judiciary Committee.

18 MR. LLOYD: Evidence of what though, Your Honor?

19 I mean, again, there's an absence of evidence that
20 there was an agreement between -- I know it's -- I'm a
21 little bit lost on this because the State, again, Friday, he
22 was in a conspiracy with everybody. Raegan Quinn. Rebecca
23 Quinn. Rick Quinn. I'm assuming, just for the sake of
24 argument, that we're down to Richard Quinn.

25 Is that fair?

1 MR. GRIFFIN: Yes.

2 THE COURT: Yes. I think that's fair.

3 MR. LLOYD: Then the, the agreement between Richard
4 Quinn -- the only evidence we have is that the agreement
5 between Richard Quinn and Jim Harrison was I'm gonna hire
6 you.

7 THE COURT: Right.

8 MR. LLOYD: That's, that's it.

9 THE COURT: And we don't know that it's I'm gonna hire
10 you, and you're gonna go do things illegal.

11 MR. LLOYD: Right.

12 THE COURT: You know, like make people vote a certain
13 way, and --.

14 MR. LLOYD: Exactly.

15 THE COURT: -- insert influence.

16 MR. LLOYD: There's no evidence of that. There's
17 absolutely -- at the root of this case, Your Honor,
18 everybody that got on the stand, including the lobbyist's
19 principal, said I didn't know, I didn't know he was there.
20 I mean I -- let's be frank. At this moment, I think there
21 was a lot of self-serving testimony out of them, but let's
22 take them for -- their word for it. I didn't know he was
23 there.

24 Did you ever ask Richard Quinn to have Jim Harrison do
25 anything?

1 No.

2 All of the witnesses they came up here, did you ever
3 hear Richard Quinn ask Jim Harrison to do anything in his
4 legislative capacity?

5 No.

6 Did you ever see Jim Harrison do anything on his
7 legislative capacity for RQA?

8 No.

9 THE COURT: Richard Quinn ever tell you that hey, I've
10 got Harrison on the payroll. So, he's ours and we're good.

11 MR. LLOYD: No.

12 THE COURT: He'll do what I need.

13 MR. LIMBAUGH: No.

14 MR. LLOYD: So, I mean that's where we're sort of left.
15 I mean that -- Rebecca said yeah, my dad was the one
16 responsible for hiring him, and that's who he worked with.
17 But, beyond that, that's the only agreement we know about in
18 this case. So, Richard Quinn agreed to hire Jim Harrison.

19 MR. GRIFFIN: And, and we have---

20 THE COURT: Yes.

21 MR. GRIFFIN: So, he didn't tell the lobbyist's
22 principals. We know why, the motivation, and we've talked
23 about the statute that would prohibit lobbyist's principals
24 from paying RQA---

25 THE COURT: Uh-huh. (Affirmative).

1 MR. GRIFFIN: ---had they known that. But he did
2 present Mr. Harrison to his lobbyists -- lobbyist's
3 principal clients. Pam Lackey testified that she would meet
4 with Richard Quinn. Jim Harrison would stick his head in.

5 Mr. McFadden, from SCANA, testified they would meet.
6 Jim Harrison would be in there in the meetings with -- early
7 in the legislative affairs meetings, and then he'd sort of
8 discontinue that.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. GRIFFIN: And then there was a meeting in 2012 with
11 Kenny Bingham, Rick, Mr. Quinn, and he said I would -- I
12 will bring Mr. Harrison up to speed. He can't make it. I
13 mean those are the things that---

14 MR. LLOYD: No.

15 MR. GRIFFIN: ---Mr.---

16 MR. LLOYD: No, that's not even the evidence that was
17 in. McFadden testified that he went to two meetings where
18 Jim Harrison and some other legislators gave a legislative
19 update.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. LLOYD: Hey, this is what we passed this year. He
22 then said -- I can't remember the other thing he said---

23 MR. GRIFFIN: Well, there was---

24 MR. LLOYD: ---he actually did, but---

25 MR. GRIFFIN: I wasn't referring to the email where it

1 talks about that.

2 MR. LLOYD: Right.

3 MR. LIMBAUGH: That meeting took---

4 MR. LLOYD: That, that he was suppose to -- that
5 Richard was trying to have a meeting oh, by the way, Jim
6 can't be there. There's no testimony as to what the meeting
7 was even about.

8 Pamela Lackey said I'm sitting in Richard's office
9 talking about whatever they're talking about, and I know two
10 times Jim Harrison stuck his head and say hey, how you
11 doing, what y'all working on this year. She told him and he
12 left.

13 So, that's, that's the agreement that we have evidence
14 of.

15 THE COURT: Okay. I'm gonna have to think on that one
16 just a little longer. I'll email y'all so you know. We'll
17 talk in the morning. But that one I have a harder time
18 with.

19 Okay.

20 MR. LLOYD: Your Honor, I hate to ask.

21 THE COURT: It's okay.

22 You want to take a break?

23 MR. LLOYD: No. Well---

24 THE COURT: Okay.

25 MR. LLOYD: And we can take a break if everybody wants,