

PHILIP GODLEWSKI,

Plaintiff,

v.

CHRIS KELLY et al.,

Defendants.

: IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY, PA

:  
: No: 2021-CV-2195  
:

:  
: JURY TRIAL DEMANDED

**PLAINTIFF'S BRIEF IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

MAURIB KELLY  
LACKAWANNA COUNTY

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## **QUESTIONS PRESENTED**

I. WHETHER THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSES OF ACTION SOUNDING IN DEFAMATION.

II. WHETHER THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSE OF ACTION SOUNDING IN FALSE LIGHT INVASION OF PRIVACY.

III. WHETHER THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSES OF ACTION SOUNDING IN INTENTIONAL INTERFERENCE WITH EXISTING OR PROSPECTIVE CONTRACTUAL RELATIONS.

## **STATEMENT OF THE CASE**

1. **Procedural History.**

Godlewski does not quarrel with Defendants' recitation of the procedural history of this matter.

2. **Facts of the Case.**

Godlewski will set forth relevant facts, with citations to the record, at appropriate points in the course of the argument.

3. **Notes Concerning Exhibits.**

To avoid unnecessary duplication, Godlewski will make reference to Defendants' exhibits rather than attach them again to this brief. Citation to Defendants' exhibits will appear as "Defendants' Ex. #."

Exhibits appended by Godlewski will be referenced as "Ex. #."



## ARGUMENT

Defendants have, in their brief, characterized the questions presented as a series of some 8 legal issues spread over 18 points of argument. For the sake of clarity and ease, Godlewski proposes that the issues be addressed in three sections, each addressing Godlewski's particular claims.

Before turning to argument on substantive points, Godlewski will set forth the standards relevant for consideration of a motion for summary judgment. The Pennsylvania Rules of Civil Procedure permit a party to move for summary judgment in whole or in part on the following conditions:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2 (1-2)

In considering a motion for summary judgment, the Court may consider evidence of record in pleadings, depositions, answers to discovery, affidavits and signed expert reports.

Pa.R.C.P. 1035.1 (1-3).

In construing the rules regarding summary judgment, the Superior Court has held that "[s]ummary judgment is made available by Pa.R.C.P. 1035 when the pleadings, depositions, answers to interrogatories, admissions on file and supporting affidavits considered together reveal no genuine issue of material fact and the moving party is entitled to judgment as a matter

of law." Harris by Harris v. Easton Pub. Co., 335 Pa.Super. 141, 152, 483 A.2d 1377, 1382-83 (1984) (citing Husain v. Berkel, Inc., 234 Pa.Super. 452, 341 A.2d 174 (1975). However, "[t]estimonial affidavits of the moving party or his witnesses, not documentary, even if uncontradicted, will not afford sufficient basis for the entry of summary judgment, since the credibility of the testimony is still a matter for the jury." Curran v. Philadelphia Newspapers, Inc., 497 Pa. 163, 183, 439 A.2d 652, 662 (1981) citing Goodrich-Amram 2d, s 1035(b): 4, pp. 434-35. "That trial by testimonial affidavit is prohibited "cannot be emphasized too strongly." Id. citing Goodrich-Amram 2d, s 1035(d): 1, pp. 455.

Further, "[t]o determine the absence of a material fact, [the court] must view the evidence in the light most favorable to the non-moving party and any doubts must be resolved against the entry of judgment." Id. Finally, "[i]n doing so, [the court] must accept as true all well-pleaded facts in [the non-moving party's] pleadings and give the [non-moving party] the benefit of all reasonable inferences to be drawn therefrom. Id. (citing Spain v Vicente, 315 Pa.Super. 135, 461 A.2d 833 (1983).

As the comments to Rule 1035.2 establish, "[o]ral testimony alone, either through testimonial affidavits or depositions, of the moving party or the moving party's witnesses, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See Nanty-Glo v. American Surety Co., 309 Pa. 326, 163 A. 523 (1932); Penn Center House, Inc. v. Hoffman, 553 A.2d 900 (1989). In Nanty-Glo, the Pennsylvania Supreme Court observed:

"In the words of Justice Sharswood, 'However clear and indisputable may be the proof when it depends upon oral testimony, it is nevertheless the province of the jury to decide, under instructions from the court, as to the law applicable to the

facts, and subject to the salutary power of the court to award a new trial if they should deem the verdict contrary to the weight of the evidence.' Reel v. Elder, 62 Pa. 308, 1 Am. Rep. 414. This rule is firmly established. Second National Bank v. Hoffman, 229 Pa. 429, 78 A. 1002; Newman v. Romanelli, 244 Pa. 147, 90 A. 556; McGlenn Distilling Co. v. Dervin, 260 Pa. 414, 103 A. 872; see. The credibility of these witnesses, without whose testimony plaintiff could not have recovered, was for the jury, and plaintiff's motion for binding instructions should not have been granted."

Nanty-Glo, 309 Pa. at 238, 163 A. at 524.

In the context of defamation claims, the Pennsylvania Supreme Court has held that "[w]e are satisfied that the case law of the Supreme Court of the United States supports our adherence to the Nanty-Glo rule in this controversy of the existence of actual malice." Curran, 497 Pa. at 184, 439 A.2d at 662. The Curran court noted that "in Hutchinson v. Proxmire, 443 U.S. 111 (1979), the Supreme Court 'express(ed) some doubt about the 'rule' favoring the use of summary judgment in determining whether a plaintiff has adequately shown actual malice under Times v. Sullivan:

'The proof of 'actual malice' calls a defendant's state of mind into question, New York Times Co. v. Sullivan, 376 U.S. 254 (1964) and does not readily lend itself to summary disposition. See 10 Wright & Miller, Federal Practice & Procedure s 2730, at 590-592"

Curran, 497 Pa. at 184, 439 A.2d at 662 citing Hutchinson, 443 U.S. at 120, n. 9. Additionally, "the Supreme Court has specifically stated that the defendant in a defamation action cannot insure a favorable verdict 'by testifying that he published with a belief that the statements were true.'" Curran, 497 Pa. at 184-85, 439 A.2d at 662-63 citing St. Amant v. Thompson, 390 U.S. 727, 732 (1968). "Rather, '(t)he finder of fact must determine whether the publication was indeed made in good faith.'" Id.

With these foundational points established, me may move to examination of the substantive questions presented.

I. THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSES OF ACTION SOUNDING IN DEFAMATION.

The Pennsylvania Uniform Single Publication Act ("USPA") (42 Pa.C.S.A. § 8341 *et seq.*) establishes the respective burdens of proof placed upon a plaintiff and a defendant in a defamation action.

Pursuant the USPA a plaintiff in a defamation action bears the burden of proving the following:

1. The defamatory character of the communication.
2. Its publication by the defendant.
3. Its application to the plaintiff.
4. The understanding by the recipient of its defamatory meaning.
5. The understanding by the recipient of it as intended to be applied to the defendant.
6. Special harm resulting to the plaintiff from its publication.
7. Abuse of a conditionally privileged occasion.

42 Pa.C.S.A. § 8343 (a)(1-7).

The defendant has the burden of proving, when the issue is properly raised:

1. The truth of the defamatory communication.<sup>1</sup>

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<sup>1</sup> Godlewski acknowledges the burden shifting requirement that public figures must prove the falsehood of the defamatory communication.

2. The privileged character of the occasion on which it was published.
3. The character of the subject matter of defamatory comment as of public concern.

42 Pa.C.S.A. § 8343 (b)(1-3).

The USPA further provides that "[i]n all civil actions for libel, no damages shall be recovered unless it is established to the satisfaction of the jury, under the direction of the court as in other cases, that the publication has been maliciously or negligently made, but where malice or negligence appears such damages may be awarded as the jury shall deem proper." 42 Pa.C.S.A. §8344. Godlewski agrees that in this case, he may not recover upon a mere showing of negligence on the part of Defendants. Rather, Godlewski, as a public figure, must demonstrate actual malice on the part of Defendants.

Godlewski will explore each of the USPA factors followed by a discussion of the concept of malice.

A. Plaintiff's burden of proof.

1. Defamatory character of the communication.

The Superior Court has found that "[a] communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from dealing with him." Rush v. Philadelphia Newspapers, Inc., 732 A.2d 648, 652 (Pa.Super. 1999) (citing Maier v. Maretti, 448 Pa.Super. 276, xx, 671 A.2d 701, 704 (1995)). Additionally, "[a] communication is also defamatory if it ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his business, trade

or profession." *Id.* Finally, "[i]t is for the court to determine whether the statement at issue is capable of a defamatory meaning. Corabi v. Curtis Publ. Co., 441 Pa. 432, 273 A.2d 899 (1971).

In this matter, the parties agree that the relevant communication is the February 14, 2021 column, written by Chris Kelly, and published in the Times-Tribune. See Defendants' Exhibit 1, ST 3721-3723. In Godlewski's complaint, Godlewski alleges that the column defames Godlewski's character by: a. asserting that Godlewski admitted to having sexual relationship with a minor and that Godlewski pled guilty to an offense involving that sexual relationship; b. impugning Godlewski's fitness as a realtor; and c. associating Godlewski with the January 6 insurrection at the Capitol.

a. Alleged sexual relationship.

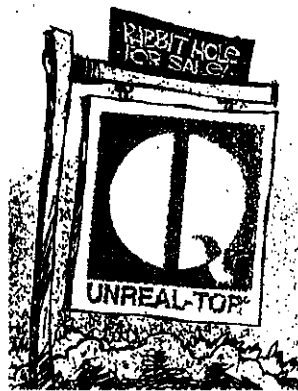
With respect to the alleged sexual relationship, the column contains the following language:

Here's "proof." In the normal course of reporting this column, I stumbled upon some legal troubles in Godlewski's recent past. In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 16-year-old girl. Lackawanna County detectives said Godlewski had sex with the girl in cars and homes he had access to as a real estate agent. Godlewski, 28 at the time, was sentenced to three to 28 months, with the first three months to be served under house arrest and the balance as probation.

Defendant's Ex. 1, ST 3723. This text is an unambiguous accusation of criminal, sexual activity with a minor. In Defendants' Brief, they make no argument that this text is not capable of defamatory meaning. As the accusation of criminal, sexual misconduct would unquestionably lower one's reputation in the community, Godlewski has met his burden with respect to this prong.

b. Fitness as a realtor.

The column leads with the following cartoon:



Defendants' Ex. 1, ST 3721. The headline reads, "QAnon Realtor has a deal for gullible." Defendants' Ex. 1, ST 3721. The article then asserts "One of the QAnon movement's most devoted dead-enders is a Clarks Summit-based Realtor..." and "...Phil Godlewski, who lives in Duryea but sells homes under the name of a national real estate franchise." Defendants' Ex. 1, ST 3721.

Chris Kelly testified that the cartoon points out that Godlewski is a realtor in conjunction with Q beliefs. Defendants' Ex. 44, 30: 25, 31: 1-3. This information about Godlewski's profession was included even though Time-Tribune executive editor Larry Holeva ("Holeva") testified that Holeva saw no connection between Godlewski's political beliefs and Godlewski's

fitness as a realtor. Ex. 1, 46: 6-12, 47: 1-2, 3-7. Holeva testified that "unreal" means not believable. Holeva further testified that it would not be unreasonable to think that the cartoon suggested that Godlewski was not an honest realtor. Ex. 1, 51: 15-24.

Combined, these factors indicate that Godlewski has proffered sufficient evidence to conclude that the illustration, together with the text of the article, suggests that Godlewski is not fit to conduct business as a realtor. Defendants themselves have not argued in their brief that these representations are not defamatory in nature. Accordingly, the Court should find that the cartoon and related text are capable of defamatory meaning.

c. Affiliation with January 6 insurrection.

Defendants argue that Kelly's prose concerning Godlewski's role in the January 6 insurrection and the QAnon movement is not actionable as it contains statements of Kelly's opinion. However, as Defendants point out, "[a] statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion ... A simple expression of opinion based on disclosed facts is itself not sufficient for an action of defamation." Kurowski v. Burroughs, 994 A.2d 611, 618 (Pa.Super. 2010). Godlewski will demonstrate the actionable nature of Kelly's column as it makes numerous assertions of fact or implies the existence of undisclosed facts.

The column refers to Godlewski as a "purveyor of poison that had curdled the hearts and minds of millions who may never recover." Defendants' Ex. 1, ST 3722. The column then immediately moves to discuss the January 6 insurrection stating, "The Capitol riot is empirical evidence that we ignore at our peril. Despite the demolition of its so-called prophecies, the Q movement marches on. Godlewski happily calls out the cadence." Defendants' Ex. 1, ST 3722.



Despite admitting that Godlewski was not present at the Capitol on January 6, the column goes on to link Godlewski with the event by mentioning Godlewski's posts to Facebook that day. Defendants Ex. 1, ST 3722. The column also asserts that "Godlewski's lies have consequences beyond his immediate family. Millions of Americans have lost parents, grandparents, siblings, children, and friends to the QAnon cult. They watched in helpless horror as their loved ones were led down rabbit holes from which they may never return. Godlewski bears some responsibility for that..." Defendants' Ex. 1, ST 3723.

Holeva testified that whether Godlewski beats the cadence of the Q movement is a matter of fact rather than opinion. Ex. 1, 44: 25, 45: 1-5. These facts can be found through witnesses, literature, and documents, all of which must be reviewed by ethical standards. Ex. 1, 45: 6-17. Kelley reluctantly conceded that he may have been trying to convey that Godlewski had moral responsibility for the Capitol riot. Defendants' Ex. 44, 41: 25, 42: 1-16. Kelly asserted in his testimony that Godlewski was part of the movement that made the Capitol riot happen. Defendants' Ex. 44, 41: 5-24. This implies factual knowledge of causal connections between Godlewski's public statements and the insurrection. Through their testimony, Defendants have conceded that the statements in the column concerning Godlewski's alleged involvement in fomenting an insurrection imply supporting facts which are not disclosed.

In the course of the article, Kelly alternately asserts that "thousands" or "millions" of Americans have been harmed by Godlewski. This is a factual assertion and it implies that Kelly had factual data, which he did not disclose, to back up Kelly's assertions. While Kelly testified that Godlewski was "one of the main pushers" (Defendants' Ex. 44, 34: 3-12), Kelly was forced to concede that he in fact had no metric to back up his assertions (Defendants' Ex. 44, 35: 18-23)

and that Kelly only spoke on condition of anonymity with one person whose marriage broke up over Godlewski's activities. Defendants' Ex. 44, 37: 18-24. The clear implication of the article is that Godlewski harmed countless people and that Kelly has factual proof. None of the factual proof is disclosed because it simply did not exist. Accordingly, Kelly's statements associating Godlewski with an insurrection and the destruction of countless lives are capable of defamatory meaning and are actionable.

2. Publication by defendant.

There is no genuine dispute of material fact that Defendants published the posts. Defendants' Exhibit 1 indicates that the column, written by Chris Kelly, was published on Sunday, February 14, 2021 in the Times-Tribune. Defendants' Ex. 1, ST 3721.

3. Application to plaintiff.

There is no genuine dispute of material fact that the column applied to Godlewsk as Godlewski is named throughout. Defendants' Ex. 1, ST 3721-3723. If corroboration is required, Kelly testified that the QAnon realtor who sells rabbit holes is Godlewski. Defendants' Ex. 44, 26: 1-7. The Q realtor illustration refers to Godlewski. Defendants' Ex. 44, 27: 1-17. The phrase "Clarks Summit based realtor and dead-ender" refers to Godlewski. Defendants' Ex. 44, 23: 8-21.

4. Understanding by recipient of defamatory meaning.

The Superior Court has held that "when determining whether a communication is defamatory, the court will consider what effect the statement would have on the minds of the average persons among whom the statement would likely circulate." *Id.* Further, "[t]he words

must be given by judges and juries the same significance that other people are likely to attributed to them." Id.

There is no genuine dispute of material fact that recipients understood, or could understand the content of the column to be defamatory as the content accuses Godlewski of having illicit sex with a minor, implies his unfitness to be a realtor, and asserts that Godlewski bears responsibility for the January 6 insurrection and has ruined the lives of countless people.

5. Understanding by recipient of communication applied to plaintiff.

There is no genuine dispute of material fact that the recipients understood or would have reasonably been expected to understand the post to be applied to Godlewski for the reasons set forth in factor 3.

6. Special harm to plaintiff.

Under Pennsylvania law, "[t]he term 'special harm' as used in the statute has been interpreted to mean 'general damages' which are proven upon a showing of 'actual harm.' 'Actual harm' includes 'impairment of reputation and standing in the communicaty, ... personal humiliation, and mental anguish and suffering.'" Joseph v. Scranton Times, L.P., 89 A.3d 251, 261 (Pa.Super. 2014) (citing Brinich v. Jencka, 757 A.2d 388, 297 (Pa.Super. 2000)).<sup>2</sup> Further, "[a]s used in section 569 of the Restatement, the 'special harm' that a libel plaintiff need not show is actually 'special damages.' 'Special damages' are 'economic harm' and pecuniary loss.' Id. (citing Pilchesky v. Gatelli, 12 A.3d 430, 444 (Pa.Super. 2011).

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<sup>2</sup> Note that Joseph was affirmed in part and reversed in part on other grounds in Joseph v. Scranton Times, L.P., 634 Pa. 35, 129 A.3d 404 (2015).

Under this rubric, "in order to satisfy the 'special harm' element of a defamation claim, a libel plaintiff need only show 'actual harm' to establish 'general damages.' A libel plaintiff need not show 'special damages' to satisfy the statutory burden of proving 'special harm.'" *Id.*

In the present case, Godlewski is able to testify to the humiliation and suffering he has endured.

Assuming *arguendo* that the Court declines to find special harm, Godlewski may proceed upon a theory of defamation per se. Pennsylvania recognizes the following four categories of defamation per se: words imputing (1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct. Restatement (Second) of Torts § 570 (1977). Whether the words allegedly used by a defendant were defamatory per se is a question for the court. *Fox, v. Kahn*, 421 Pa. 563, 221 A.2d 181.

In this matter, Godlewski has suffered defamation per se in three respects. The column imputes criminal conduct to Godlewski together with serious sexual misconduct. The column also asserts Godlewski's unfitness to be a realtor.

a. Imputation of Criminal Activity/Serious Sexual Misconduct.

In the column, Kelly writes, "In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl." Defendants Ex. 1, ST 3723. This passage directly accuses Godlewski of committing a sex crime against a minor. Further, by identifying Godlewski as a high school baseball coach, the column suggests that Godlewski's alleged sexual misconduct is of a serious nature by implying the abuse of a position of trust with minors.

b. Imputation of business misconduct.

Pennsylvania has followed the Second Restatement of Torts by adopting the standard,

"One who publishes a slander that ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business, trade or profession, or of his public or private office, [ ...] is subject to liability without proof of special harm."

Restatement (Second) of Torts § 573 (1977).

Further, a statement may be defamatory per se although it does not explicitly charge the subject with a failure of business or professional performance. See Agriss v. Roadway Exp., Inc., 334 Pa.Super 295, 583 A.2d 456 (1984) (Wherein an accusation of opening company mail was held capable of being understood both as an accusation of criminal activity and unfitness for business.)

In the instant case, the column makes numerous references to Godlewski's status as a realtor. Chris Kelly's testified that the cartoon points out that Godlewski is a realtor in conjunction with Q beliefs. Defendants' Ex. 44, 30: 25, 31: 1-3. This information about Godlewski's profession was included even though Times-Tribune executive editor Larry Holeva ("Holeva") testified that Holeva saw no connection between Godlewski's political beliefs and Godlewski's fitness as a realtor. Ex. 1, 46: 6-12, 47: 1-2, 3-7. Holeva testified that "unreal" means not believable. Ex. 1, 48: 20-24. Holeva further testified that it would not be unreasonable to think that the cartoon suggested that Godlewski was not an honest realtor. Ex. 1, 51: 15-24.

7. Conditionally privileged occasion.

Defendants have not asserted any conditional privileges. Rather, Defendants have asserted qualified privileges which will be discussed *infra*.

B. Defendants' burden of proof.

Pursuant the USPA the defendant has the burden of proving, when the issue is properly raised:

1. The truth of the defamatory communication.<sup>3</sup>
2. The privileged character of the occasion on which it was published.
3. The character of the subject matter of defamatory comment as of public concern.

42 Pa.C.S.A. § 8343 (b)(1-3).

1. Truth of the defamatory communication.

It is axiomatic that "a defendant may avoid liability for defamation if it shows that its statements were 'substantially true.'" Graboff v. Colleran Firm, 744 F.3d 128, 136 (3rd Cir. 2014) (citing 42 Pa.C.S.A. §8343 (b)(1) and Dunlap v. Philadelphia Newspapers, Inc., 301 Pa.Super. 475, xx, 448 A.2d 6, 15 (1982). "However, a defamatory statement must be viewed in context." Id. (citing Baker v. Lafayette College, 516 Pa. 291, xx, 532 A.2d 399, 402 (1987). Additionally, "a defendant cannot use truth as a defense where 'the implication of the communication as a whole was false,' even if the statement is 'literally accurate.'" Id. (citing Dunlap v. Philadelphia Newspapers, Inc., 301 Pa.Super. 475, xx, 448 A.2d 6, 15 (1982).

It is not disputed that "[i]f the statement in question bears on a matter of public concern, or the defendant is a member of the media, First Amendment concerns compel the plaintiff to

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<sup>3</sup> Defendant acknowledges that the burden of disproving the falsehood of a defamatory communication shifts to the plaintiff when as in this case, he is a public figure. For the sake of clear organization, this factor is discussed in the place given in the USPA. The required standard of proof will be discussed below.

prove, as an additional element, that the alleged defamatory statement is in fact false." Lewis v. Philadelphia Newspapers, Inc., 833 A.2d, 185, 191 (Pa.Super. 2003) citing Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 777 (1986). However, Defendants ask this Court to demand that Godlewski meet this burden by clear and convincing evidence. The Defendants do not cite a single case from the courts of Pennsylvania or the Third Circuit which supports their request. Rather, Defendants concede that Supreme Court has declined to express a view on the required standard of proof. See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 661, n. 2 (1989).

Defendants refer to Lewis as controlling authority in this matter though the Lewis court did not impose a heightened burden of proof on a public figure plaintiff where the falsehood of the defamatory statements is concerned. Lewis, 833 A.2d at 191. Similarly, none of Lewis's progeny suggests that a heightened burden is required. See, *inter alia*, Joseph v. Scranton Times, L.P., 89 A.3d 251, 261 (Pa.Super. 2014); Rubin v. CBS Broadcasting Inc., 170 A.3d 560, 565 (Pa.Super. 2017); Castelliani v. Scranton Times, L.P., 161 A.3d 285, 298 (Pa.Super. 2017); Coleman v. Ogden Newspapers, Inc., 142 A.3d 898, 905 (Pa.Super. 2016); Dougherty v. Philadelphia Newspapers, LLC, 2015 WL 10916956, \*6 (Pa.Super. 2015). Given the strong weight of authority against Defendant's argument, this Court should decline to expand the law and apply the preponderance of evidence standard to Godlewski's burden of proving falsehood.

Defendants go to great lengths in their brief to attempt to establish that Godlewski has, in their opinion, lied about various matters.<sup>4</sup> Defendants point to a lengthy laundry list of affidavits, letters and other documents, responses to discovery requests, and deposition testimony

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<sup>4</sup> See Defendants' argument items G, H, I, J.

which they assert constitute the basis for summary judgment not because they are uncontradicted by counter-evidence or testimony, but rather because they show Godlewski has been dishonest. This is not a new narrative from the Defendants as it is the same one they offered at the February 6, 2023. In response, this Court wrote, "the unmistakable truth is that the credibility of Plaintiff, or any party, is not within the domain of this Court at the discovery phase."<sup>5</sup>

The same is true at summary judgment. The Superior Court has long held:

"credibility is a matter for the jury, as is the weight to be accorded to particular pieces of evidence. See Martin v. Evans, 551 Pa. 496, 505, 711 A.2d 458, 463 (1998) (explaining that credibility determinations are within the sole province of the jury, which is entitled to believe all, part or none of the evidence presented). Moreover, credibility of evidence is not a proper consideration at the summary judgment stage because the trial court may not summarily enter judgment when the evidence depends on oral testimony. Resolution Trust Corp. v. Urban Redevelopment Authority, 536 Pa. 219, 225, 638 A.2d 972, 975 (1994).

Gutteridge v. A.P. Green Services, Inc., 804 A.2d 643, 652-53 (Pa.Super. 2002).

To attempt to establish an illicit sexual relationship between Godlewski and DuBorgel, Defendants rely upon the oral testimony of persons such as DuBorgel, a friend named Ciara O'Malley who claims to have knowledge of the party's sexual activity<sup>6</sup>, as well as items such as a

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<sup>5</sup> See the Court's Memorandum and Order of January 22, 2024.

<sup>6</sup> This claim is made despite Defendant Kelly's concession that O'Malley did not claim to have actually witnessed sexual intercourse between Godlewski and DuBorgel.



letter from the principal of the high school where Godlewski worked<sup>7</sup>, and affidavits from Brienna DuBorgel, Linda DuBorgel<sup>8</sup>, and even one submitted in conjunction with a search warrant over a decade ago and the affidavit of probable cause in the criminal prosecution. As excludable hearsay under Pa.R.E. 801 and 802, each and every one of the statements submitted in these affidavits will require the actual testimony of the affiant at the time of trial. During the sanctions hearing held by the Court in 2023, Godlewski offered his oral testimony that his sexual relationship with DuBorgel began after DuBorgel was an adult. See transcript excerpts attached as Exhibit 3, pp. 81-85. As there is a direct conflict of oral testimony, there is a genuine issue of material fact which must be submitted to a jury.

In their attempts to support the truth of the allegation that Godlewski engaged in an illicit sexual relationship with DuBorgel, Defendants problematically rely on a set of alleged text messages (Defendants Ex. 15, ST 2790 - 2905) exchanged between DuBorgel and Godlewski at the time of the alleged illicit sexual encounter.<sup>9</sup> However, Defendants cannot, at least at this stage, authenticate the text messages.

Defendants propose Com v. Orr, 255 A.2d 589 (Pa.Super. 2021) as controlling authority. In Orr, the Commonwealth offered the testimony of officer Daniel Lentz who extracted data from the defendant's cell phone. Id. at 593-594. This testimony, together the circumstantial testimony

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<sup>7</sup> This document is excludable hearsay under Pa.R.E. 801 and 802 which would require the testimony of the principal at the time of trial.

<sup>8</sup> The affidavit of Linda DuBorgel was produced for the first time on January 19, 2024. See January 19, 2024 email from Jennifer Smolley of Haggerty, Hinton & Cosgrove, LP attached hereto as Exhibit 2. As the affidavit was produced some 19 days after the close of discovery, it should be disregarded for purposes of deciding the summary judgment motion.

<sup>9</sup> Defendants concede that Godlewski denies that the messages are his. See, *inter alia*, Defendants's brief at p. 25.

of other witnesses, was found sufficient to authenticate the text message retrieved by Lentz. Id. at 601.

In the instant case, Defendants propose that the Court consider a purported extraction report in tabular form. Defendant's Exhibit 15, ST 2790-2905. Defendants attempt to authenticate the text messages through the affidavit of former ADA Patricia Lafferty ("Lafferty"). Defendants' Exhibit 15. In her affidavit, Lafferty indicates that the report attached as Exhibit B is the result of "forensic analysis" by the Pennsylvania State Police ("PSP"). This statement fails to authenticate the text messages or make them admissible as evidence for both legal and factual reasons.

The Pennsylvania Rules of Evidence suggest that either direct evidence such as the testimony of a person with personal knowledge or various sorts of circumstantial evidence must be adduced in order to connect digital evidence with a person. Pa.R.E. 901 (b)(11). In this case, Lafferty does not claim in her affidavit that she had any direct knowledge of the means used to analyze DuBorgel's phones and Lafferty does not assert that she produced the tabular report of alleged text messages. Additionally, the affidavit does not address any circumstantial factors which point to Godlewski's ownership, possession, control or access to the device which allegedly sent the messages at the time they were transmitted. Even if Lafferty's affidavit did assert these things, Lafferty would still be required to testify concerning these matters so that Lafferty's credibility could be gauged by the jury. Thus, as a matter of law, Defendants have failed, at this stage, to authenticate the messages.

Factually, the record is replete with documents which question the authenticity of the text messages. First, despite the fact that Defendants' assert that the messages are the result of

extraction from DuBorgel's cell phones, the tabular report indicates "Phil Gadlowski Cell Phone." Defendants' Ex. 15, ST 2709. There is no explanation for this discrepancy.

Second, the documentary record establishes that whoever generated the report, it was not the PSP as claimed by Defendants and Lafferty. Corporal Derek Fozard ("Fozard") of the PSP generated a General Investigation Report ("GIR") with respect to his forensic examination of various electronic items. See relevant portions of GIR attached as Exhibit 4, ST 2906, 2910-2912. Fozard writes that "These conversations could not be exported using the Cellebrite program/hardware..." Ex 4, ST 2910. This is further documented by Fozard on the Cell Phone Forensic Analysis Worksheet for DuBorgel's Iphone where it states, "Cellebrite cable 110 for accessing phone. Phone NOT recognized by Cellebrite" and shows that no items were checked as data extracted. Ex. 4, ST 2911. The same document, referencing DuBorgel's Pantech phone, states, "Cellebrite cable NA for accessing phone" and shows that no items were checked as data extracted. Ex. 4, ST 2912.

After failing to download data from the phones, Fozard asserts that he performed a "scroll analysis." Ex. 4, ST 2910. Fozard explains that "[d]uring this scroll analysis, I used a video camera to record the screen display of each phone as I displayed the text on the screen of these devices. I then saved the video files to a DVD one for each phone to be driven to the case officers for review at a later time." Ex. 4, ST 2910.

In this statement Fozard indicates that the product of examination of the phones consists of video files on a DVD.<sup>10</sup> Fozard does not claim to have compiled any tabular list of the alleged text messages. As a result, there is absolutely no evidence to indicate who prepared the

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<sup>10</sup> This alleged DVD has never been produced by Defendants.

document containing the alleged text messages or the methods used. It is only certain that Fozard did not do so as he could not electronically extract data and generated only a video of him manually scrolling through the phones. There is not even any indication whether the alleged text messages came from the iPhone, the Pantech phone, or both. Accordingly, there is a complete legal and factual failure to authenticate the alleged text messages and the Court should find that their authenticity and admissibility is a question to be deferred to trial where the Court and the jury may hear testimony and make appropriate determinations.

As has been noted by both the Defendants and Godlewski, Godlewski has repeatedly testified that he denies having an illicit sexual relationship with DuBorgel. As the jury is free to believe some, all or none of a witness's testimony, and to accord that testimony whatever weight the jury chooses, Godlewski's testimony alone, if believed, is sufficient to create a genuine issue of material fact.

That said, Godlewski can point to documentary evidence that Kelly's assertion that Godlewski admitted to having sex with a minor is false. The Criminal Complaint in the underlying case contained the following allegation with respect to a count of corruption of minors:

**PACC 6301 (a)(1) Corruption of Minors**

IN THAT, on or about January 2008-present, THE DEFENDANT, Philip GODLEWSKI, being 18 years of age and upwards, did corrupt or tend to corrupt the morals of the victim, [REDACTED] a minor under the age of 18 years, by engaging in acts of sexual intercourse, or aided, abetted, enticed or encouraged a minor in the commission of a crime or knowingly assisted or encouraged such minor in violating his/her parole or court order, in violation of Section 6301(a)(1) of the PA Crimes Code. M-1

To wit: The defendant, GODLEWSKI, did engage in sexual intercourse with a minor child victim under the age of

This language contains an explicit allegation that Godlewski engaged in sexual intercourse with a minor. However, the information removes the accusation of sexual intercourse and reads:

**COUNT 1: CORRUPTION OF MINORS**

(18 C.P.S.A. Sec. 6301(a-1); Grade: Misdemeanor 1; \$10,000.00; 5 years; unlawfully, being of the age of 18 years and upwards, corrupt or tend to corrupt the morals of a less than 18 years of age, or did aid, abet, entice or encourage any such minor in the commission of a crime, or did knowingly assist or encourage such minor in violating his or her parole or any court, to wit; the defendant did repeatedly have inappropriate text messages and contact with a

Additionally, Godlewski's Guilty Plea Colloquy contains the following paragraphs:

16. The elements of the crime charged are as follows:

*Being of the age of 16 or older, by one act consents of  
kind to consent of the parents of a minor*

16(a) Do you understand these are the elements of the crimes charged that you are pleading to? Yes.

17. The District Attorney indicates this is what you did on the date of the crime charged:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In their deposition testimony, Defendants concede that the Information supersedes the Criminal Complaint. Ex 1, 15: 7-12, Ex. 1 48: 11-15. Defendants admit that the Information contains no allegation that Godlewski engaged in sexual activity with a minor. Ex. 1, 33: 8-10, Defendants' Ex. 44, 52: 4-11. Defendants agree that the Guilty Plea Colloquy contains neither any factual that Godlewski had sex with a minor or any admission that Godlewski did so. Ex.1, 35: 16-23, Ex. 1, 54: 15-25, 55: 9. Larry Holeva candidly testified that one cannot conclude from the court documents that Godlewski admitted to having sex with a minor. Ex. 1, 36: 12-16.

Given the documentary evidence combined with the testimonial admissions of the Defendants, a jury could reasonably conclude that the allegations contained in the column were false. Accordingly, the motion for summary judgment must be denied and the case listed for trial.

2. The privileged character of the occasion of publication.

Defendants assert that certain statements in the column regarding the criminal prosecution are protected under the fair report privilege. It is well established that "a newspaper possesses a qualified privilege to make a fair and accurate report of the proceedings, and if the article is not published solely for the purpose of causing harm to the person defamed, no

responsibility attaches, even though the contents of the article are false or defamatory." Binder v. Triangle Publications, Inc. 442 Pa. 319, 324, 275 A.2d 53, 56 (1971). However, "[q]ualified privilege is one that can be lost by abuse, such as overly embellishing an account of a proceeding." Id. The account must be fair, accurate, and complete. Sciandra v. Lynett, 409 Pa. 595, 600, 187 A.2d 586, 588-89 (1963).

In the case *sub judice*, the Times-Tribune's account was neither fair, nor accurate, nor complete. As discussed above, Kelly's column entirely failed to set forth the actual charge to which Godlewski pled guilty, the indication of underlying facts contained in the Information, or the fact that Godlewski's Guilty Plea Colloquy contains no indication whatsoever of admitting to having sex with a minor. In light of these omissions, Defendants have abused their qualified privilege.

3. Subject matter of communication as public concern.

The parties have agreed that, for purposes of this lawsuit, Godlewski is a public figure and the matters discussed in the column are of public concern.

C. Issues of malice.

Defendants contend that Godlewski cannot demonstrate actual malice and is thus barred from recovery. Additionally, Defendants assert that, even if found liable, Godlewski cannot recover punitive damages for failure to show common law malice. Godlewski will address each of these points in turn.

1. Actual malice.

It is well settled that a public official (or figure) "must prove that the statement was made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard whether

it was false or not." Curran v. Philadelphia Newspapers, Inc., 376 Pa.Super. 508, 513, 546 A.2d 639, 642 (1988). "'Actual malice' must be proven with 'clear and convincing' evidence." Id. citing Bose Corp. v. Consumers Union, 466 U.S. 485 (1984). Such proof must establish "that the defendant realized that the statement was false or subjectively entertained serious doubt as to the truth of the statement." Id. citing New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964).

"The term 'reckless disregard' is not amenable to one infallible definition. It is a term which is understood by considering a variety of factors in the context of an actual case." Id. Such factors may include:

- a. Whether the author published a statement in the face of verifiable denials and without further investigation or corroboration, where allegations were clearly serious enough to warrant some attempt at substantiation.
- b. Evidence of unexplained distortion or the absence of any factual basis to support an accusation.
- c. Clear departures from acceptable journalistic procedures, including lack of adequate prepublication procedures; the use of wholly speculative accusations and accusatory inferences; and the failure to utilize or employ effective editorial review.

Id., 376 Pa.Super. at 514, 546 A.2d at 642. (Internal citations omitted).

In the case at bar, Defendants deviated from acceptable journalistic standards to a degree which constitutes reckless conduct. In his deposition testimony, Executive Editor Holeva testified that columns have more latitude than news articles to reflect opinion. Ex. 1, 10: 14-23. However, the opinions need to be based in fact. Ex. 1, 11: 2. The same research must be done for

a news article or an opinion column. Ex. 1, 11: 13-14. Further, journalists must base their reporting on accurately obtaining information from multiple sources, interview or documents. Ex. 1, 12: 5-14. Reporters have an ethical standard to pursue information to the best of their ability to get a complete story. Ex. 1, 16: 8-12.

In the context of reporting on a criminal case, every reporter should examine the criminal complaint, information, and guilty plea colloquy. Ex. 1, 15: 3-18. It is known that an information supersedes a criminal complaint as a charging document. Ex. 1, 15: 7-12. Further, reporters pick up this knowledge quickly and a veteran reporter should know it. Ex. 1, 18: 10-18. It is consistent with a journalist's ethical responsibility to review all of the documents listed in a criminal case. Ex. 1, 18: 19-23.

In the context of this case, Holeva testified that Holeva would have expected Kelly to speak to the county detective, review paperwork available, read the history of the case, and check electronic archives. Ex. 1, 26: 20-25, 27: 1-3. Additionally, Kelly should have looked at law enforcement investigative files. Ex. 1, 37: 19-25, 38: 1-2. Kelly should have looked at court files in addition to independent interviews and any type of investigative work. Ex. 1, 38: 6-14.

Kelly had an ethical obligation to review the criminal complaint. Ex. 1, 27: 15-20. Kelly reviewed that document. Defendants' Ex. 44, 46: 21-25. Kelly had an ethical obligation to review the information. Ex. 1, 27: 21-25. Kelly did not review the information. Defendants' Ex. 44, 52: 20-23. Kelly had an ethical obligation to review the guilty plea colloquy. Ex. 1, 28: 1-6. Kelly examined the colloquy. Defendants' Ex. 44, 52: 24-25, 53: 1. These documents, and their relevant differences, have been discussed at pages 22 and 23, *supra*. Holeva admitted that one cannot conclude from this documents that Godlewski pled to or admitted to having sex with a



minor. Ex. 1, 36: 12-16. Kelly admits that there is no indication in the Common Pleas documents that Godlewski pled to or admitted to having sex with a minor. Defendants' Ex. 44, 36: 12-22. Despite knowing that the guilty plea colloquy contained no admission that Godlewski had sex with a minor, Kelly did not think he should look further. Defendants' Ex. 44, 58: 3-8. Further, Kelly testified that he wasn't even certain whether the language in the information was a result of something that Godlewski pled to. Defendants' Ex. 44, 52: 12-19. Per Holeva, failure to do investigative work beyond review of the criminal complaint, information, and guilty plea colloquy prior to publishing that Godlewski had sex with a minor would be a breach of Kelly's ethical obligation to pursue information to the best of Kelly's ability. Ex. 1, 38: 15-22.

Kelly was well aware, from his text discussions with Godlewski, that Godlewski denied having had sex with DuBorgel while she was a minor and that he denied pleading guilty to doing so. Despite the fact that Kelly had, in the form of the guilty plea colloquy, corroborative evidence of Godlewski's denial, Kelly elected to publish his own preconceived notions concerning the criminal case without taking the simple step of actually consulting all relevant documents.

Further, Kelly wrote, "my editor and I discussed whether to include the information which is public and was previously published in the Times-Tribune." Defendants' Ex. 1, ST 3723. From this statement, as well as the totality of circumstances outlined, a reasonable jury could conclude that Defendants acted recklessly and with serious doubts as to the veracity of the allegations against Godlewski. Accordingly, the motion for summary judgment must be denied.

2. Common law malice.

Defendants assert that, in order for Godlewski to recover punitive damages, Godlewski must make a showing of malicious, reckless, willful, or oppressive conduct. Godlewski suggest that the course of conduct established in his argument on actual malice provides the basis from which a jury might conclude that Defendants' publication of its allegations regarding sexual activity was at least reckless and willful if not malicious.

To those facts may be added Kelly's publication of allegations that Godlewski ruined the lives of thousands or millions without any evidence to support those assertions. Defendants' Ex. 44, 35: 18-23, 37: 18-24. Kelly's malice is made further apparent by Kelly's fixation on Godlewski's occupation as a realtor. In fact, every illustration considered for placement with the column referred to Godlewski's occupation. Defendants' Ex. 44, 32: 6-12. This was done despite the fact that Kelly admits that nothing about espousal of Q beliefs affects Godlewski's fitness as a realtor (Defendants' Ex. 44, 25: 8-13). A jury may well conclude that the article was a malicious attempt to destroy Godlewski's career using facts unrelated to it. For these reasons, the motion for summary judgment must be denied.

II. THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSE OF ACTION SOUNDING IN FALSE LIGHT INVASION OF PRIVACY.

The tort of false light invasion of privacy "imposes liability on a person who publishes material that 'is not true, is highly offensive to a reasonable person, and is publicized with knowledge or in reckless disregard of its falsity.'" Graboff v. Colleran Firm, 744 F.3d 128, 136 (3rd Cir. 2014) (citing Larsen v. Phila. Newspapers, Inc., 375 Pa.Super. 66, A.2d 1181, 1188 (1988); Restatement (Second) of Torts § 652E).

The Eastern District of Pennsylvania has noted that "Pennsylvania courts 'consistently apply the same analysis' to defamation and false light claims 'when the causes of action are based on the same set of underlying facts.'" Suniaga v. Downingtown Area School District, 504 F.Supp.3d 430, 454 (E.D. Pa. 2020) citing Graboff at 136.

For the reasons articulated in the analysis of the defamation claims, Defendants' motion for summary judgment must be denied with respect to the false light invasion of privacy claims.

III. WHETHER THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO PLAINTIFF GODLEWSKI'S CAUSES OF ACTION SOUNDING IN INTENTIONAL INTERFERENCE WITH EXISTING OR PROSPECTIVE CONTRACTUAL RELATIONS.

Given the circumstances and state of evidence surrounding the case, Godlewski is not seeking relief under these causes of action.

**CONCLUSION**

For the foregoing reasons, Plaintiff Philip Godlewski respectfully requests that the Honorable Court deny Defendants' motion for summary judgment with respect to Godlewski's causes of action sounding in defamation and false light invasion of privacy.

Respectfully submitted,

**KOLMAN LAW, P.C.**

/s/ Timothy M. Kolman

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Attorneys for Plaintiff.

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY, PENNSYLVANIA

1			
2	PHILIP GODLEWSKI,	:	CIVIL DIVISION
3		:	
4	Plaintiff	:	
5	VS	:	
6		:	NO. 2021-CV-2195
7	CHRIS KELLY, et al.	:	
8		:	
9	Defendants	:	

DEPOSITION OF LAWRENCE HOLEVA

Taken at the Lackawanna Bar Association,  
233 Penn Avenue, Scranton, PA 18503, on Tuesday,  
December 19, 2023 at 2:04 p.m., by Allison M.  
Ross, RPR.

\* \* \*

VERITEXT LEGAL SOLUTIONS

MID-ATLANTIC REGION

4949 Liberty Lane

Suite 200

Allentown, PA 18106

**Exhibit**

Page 2

1 APPEARANCES:  
 2 -- ON BEHALF OF THE PLAINTIFF:  
 3 KOLMAN LAW, P.C.  
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 14  
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Page 4

1 STIPULATION  
 2 It is hereby stipulated by and between  
 3 counsel for the respective parties that all  
 4 objections except as to the form of the question  
 5 are reserved to the time of the trial.  
 6 \* \* \*  
 7 LAWRENCE HOLEVA, called as a witness,  
 8 being duly sworn, testified as follows:  
 9 \* \* \*  
 10 EXAMINATION  
 11 BY MR. BOWERS:  
 12 Q. Hello, Mr. Holeva. My name is Tim  
 13 Bowers. We met informally before the deposition.  
 14 I represent Mr. Godlewski, and I have some  
 15 questions for you today. All right?  
 16 A. Sure.  
 17 Q. Would you prefer for me to call you  
 18 Mr. Holeva or Larry?  
 19 A. Larry is fine.  
 20 Q. Larry. Okay. I'm Tim and so is Tim and  
 21 so is Tim.  
 22 So have you ever been deposed before?  
 23 A. I have.  
 24 Q. How long ago?  
 25 A. At least 20 years ago.

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1 Q. So quite a while. So just a few ground  
 2 rules. When you give an answer, you have to give  
 3 a verbal linguistic answer like yes or no instead  
 4 of uh-huh or uh-uh. Okay?  
 5 A. Yes.  
 6 Q. Sometimes we get excited about asking  
 7 questions or giving answers and we may end up  
 8 talking over each other. Will you wait until I  
 9 finish the question before answering?  
 10 A. Absolutely.  
 11 Q. And in return, I'll give you the courtesy  
 12 of making sure you're finished with your answer  
 13 before I start another question. All right?  
 14 A. Thank you.  
 15 Q. Sometimes lawyers come out with a  
 16 horribly mangled garbled question that may be  
 17 unintelligible to regular people. If I ask  
 18 anything that you don't understand because it's  
 19 come out as a bad question, will you tell me so?  
 20 A. Yes.  
 21 Q. And if I ask you a question and you  
 22 answer it, can I presume that you've heard and  
 23 understood the question before answering?  
 24 A. Yes.  
 25 Q. Okay. Is there anything affecting your

Page 6

1 ability to understand questions put to you and to  
2 give accurate answers today?  
3 A. No.  
4 Q. So let's move into the actual questions  
5 then. Are you currently employed?  
6 A. Yes.  
7 Q. Where are you employed?  
8 A. I'm employed at the Scranton  
9 Times-Tribune.  
10 Q. In what capacity are you employed?  
11 A. I'm the executive editor.  
12 Q. I saw a recent article in the Washington  
13 Post. Do you anticipate that's going to continue  
14 after this recent takeover?  
15 A. Yes.  
16 Q. How long have you been the executive  
17 editor?  
18 A. Twelve years.  
19 Q. What was your job before being executive  
20 editor?  
21 A. I was the managing editor of the Citizens  
22 Voice in Wilkes-Barre and the Standard Speaker in  
23 Hazleton.  
24 Q. How long were you managing editor of  
25 those papers?

Page 7

1 A. Eight years.  
2 Q. So we're back about 20 years now of  
3 history. Are those other papers were they owned  
4 by the same group as the Scranton Times?  
5 A. Yes.  
6 Q. And before being managing editor there,  
7 how were you employed?  
8 A. I was employed as a journalist in  
9 different capacities since 1983.  
10 Q. Okay.  
11 A. 1987 with the Scranton Times. 1983 to  
12 1987 with the former Scrantonian Tribune which  
13 was a competitor.  
14 Q. When you were employed as a journalist  
15 before becoming an editor, what sort of  
16 journalism did you do? What beats did you have?  
17 A. I started off covering municipal news. I  
18 moved and I covered cops and courts. I changed  
19 papers and I took a city beat. I covered the  
20 City of Scranton and the Scranton neighborhoods.  
21 I moved to sports where I was a ten-year baseball  
22 writer, four years as an assistant sports editor,  
23 and then I moved back into the news department in  
24 Scranton in 1998.  
25 Q. What was your favorite thing to do?

Page 8

1 A. Covering baseball.  
2 Q. You never covered Mr. Godlewski playing  
3 baseball, did you?  
4 A. I didn't know he did.  
5 Q. You might have been a little young for  
6 that when you were covering sports.  
7 MR. GODLEWSKI: '98 to 2002.  
8 THE WITNESS: I just left sports.  
9 MR. BOWERS: Don't --  
10 MR. GODLEWSKI: Oh, sorry.  
11 BY MR. BOWERS:  
12 Q. How long were you covering cops and  
13 courts doing criminal stuff?  
14 A. I did that for about a year and a half.  
15 Q. Did you become familiar with the way a  
16 criminal case flows at that point?  
17 A. Yes. I covered Wayne County Court.  
18 Q. Okay. How many cases do you think you  
19 covered over the course of your year and a half?  
20 A. Six because one was a long extended case.  
21 Q. What was it?  
22 A. It was a murder case.  
23 Q. Okay. And you were there from arrest  
24 through jury verdict?  
25 A. Yes.

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1 Q. Tell me about being an executive editor.  
2 I don't know the newspaper world. What are your  
3 duties as executive editor?  
4 A. Currently or under the old ownership  
5 because they're quite different?  
6 Q. Let's do old ownership because that's  
7 when the article would have been published that  
8 gave rise to this lawsuit. So let's talk about  
9 that period of time.  
10 A. As the executive editor of the group, I  
11 oversee the managing editors of each property.  
12 So the managing editor in Scranton, Wilkes-Barre,  
13 Hazleton, and Pottsville would report to me. I  
14 would set vision and strategy. I would handle  
15 our union negotiations. I would handle our  
16 budgets. It was more of an administrative job  
17 overseeing the journalism.  
18 Under the new company, it's quite  
19 different because it's a larger company and  
20 corporate management handles the unions, the HR  
21 issues, the budgeting, and more of the  
22 administrative work.  
23 Q. So you've now been able to return more to  
24 the actual journalism side of that?  
25 A. Yes.

Page 10

1 Q. In 2021 would you have had any direct  
2 involvement with selection of material for  
3 columns in one of the newspapers?  
4 A. No.  
5 Q. Who would have done that?  
6 A. The managing editor at the newspaper.  
7 Q. And the managing editor would work under  
8 your strategic direction?  
9 A. Correct.  
10 Q. At that point in time had you issued any  
11 strategic direction for sort of selection of  
12 material for columns?  
13 A. No.  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] that distinction.  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 Q. Could you tell me more about that  
25 latitude to add opinion. I'm gathering that that

Page 11

1 latitude is not without boundaries?  
2 [REDACTED]  
3 [REDACTED]  
4 Q. Okay. How does basing that opinion in  
5 fact differ from, say, gathering facts for a news  
6 article?  
7 A. I don't know.  
8 Q. Okay. Maybe not the best question. If  
9 one of your writers were going to produce a  
10 column on a subject, what research or  
11 investigation would you expect them to conduct in  
12 order to generate material for the column?  
13 [REDACTED]  
14 [REDACTED]  
15 Q. What research is that?  
16 A. I don't know specifically what you're  
17 asking.  
18 Q. Okay. Let's back up and make sure I  
19 understand.  
20 Whether someone is writing an article, a  
21 news article, or an opinion column, you expect  
22 them to do similar research to generate a factual  
23 basis, correct?  
24 A. Yes.  
25 Q. What does research to generate a factual

Page 12

1 basis look like for a reporter or a columnist?  
2 A. I think it would depend what the subject  
3 matter they were reporting on.  
4 Q. Okay. Tell me more about that.  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 Q. Okay. With respect to documents, is  
16 there a standard in your paper for judging the  
17 reliability or credibility of a document to be  
18 used as a source?  
19 A. Yes.  
20 Q. What is that standard?  
21 A. Generally, if it's a legal document it  
22 would meet our standard.  
23 Q. How about interviews? Is there a  
24 standard for determining the credibility of  
25 someone who's interviewed or the reliability?

Page 13

1 A. Yes.  
2 Q. What is that standard?  
3 A. You would test their credibility to make  
4 sure that they had direct knowledge or had  
5 expertise in whatever that area of research might  
6 be.  
7 Q. Okay. Let's talk about writing a column  
8 about a criminal prosecution. And you are  
9 familiar, again, with writing -- with journalism  
10 in that field because you've done it yourself,  
11 right?  
12 A. Yes.  
13 Q. What sort of documents would you expect  
14 that your columnists would look at before forming  
15 -- writing a column and forming opinions about a  
16 criminal prosecution?  
17 MR. HINTON: Objection to the form of the  
18 question. You can answer.  
19 THE WITNESS: I think that depends on  
20 what they were writing about. In some cases it  
21 might be a court document, it might be a  
22 transcript of a court document, it might be a  
23 police report. It may be an interview with  
24 someone who has knowledge of the investigation  
25 because they did the investigation. And there's







█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

6 Q. Would spot-checking involve review of

7 court documents if they were reporting on a

8 criminal case?

9 A. Most likely not.

10 Q. Are there circumstances in which it would

11 since you indicated that it was most likely not

12 the case?

13 A. Yes, depending on who the supervisory

14 editor was on the first read.

15 Q. All right.

16 A. So in this case, a column would be going

17 to a higher level supervisory editor, so there's

18 less chance that it would have gone through a

19 spot-check of documents at the next level of

20 editing.

21 Q. All right. At what level would it have

22 gone through a check of documents?

23 A. If the first draft of the story was not

24 handled by a senior editor, if it was handled by

25 a junior editor. So that would be a regular news

1 story that came through the desk. And if the

2 supervisory editor had it afterwards they would

3 spot-check.

4 Q. That's for a regular news story, correct?

5 A. Correct.

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

9 Q. What happens next?

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

24 Q. So that final edit is really about

25 formatting to make sure everything is in place

1 correctly?

2 A. Correct. It's a proofing.

3 Q. And would it be accurate to say then that

4 content review would have happened at previous

5 levels?

6 A. Yes.

7 Q. And is this the process that is followed

8 every time a column is written?

9 A. Yes.

10 Q. At any point in time do questions about

11 columns come to you in your capacity as executive

12 editor?

13 A. Yes.

14 Q. When might a question about a column rise

15 to the level of you as an executive editor?

16 A. It would only happen if the managing

17 editor or designee for a column raised a question

18 with them.

19 Q. How frequently does that happen?

20 A. Rarely.

21 Q. What sorts of things raise questions that

22 are brought to you?

23 A. Gosh, I can't even think of one that did,

24 but they do on occasion. I want to think of

25 columns. A column that would raise a suspicion

1 that there was an issue with it. I'm trying to

2 think of one that -- I'm trying to think of an

3 example and I can't, but there have been.

4 Q. In your 12 years as an executive editor,

5 how often do you think that that's happened?

6 A. Ten.

7 Q. All right. I would like to move our

8 discussion more specifically to the column that's

9 the subject matter of this case.

10 A. Sure.

11 Q. So I'm going to show you -- I have a copy

12 of it. I've marked it as Deposition Exhibit No.

13 1.

14 (Exhibit 1 was marked for

15 identification.)

16 BY MR. BOWERS:

17 Q. Do you recognize this as a copy of the

18 column written by Chris Kelly that ran on

19 February 14, 2021 titled QAnon Realtor Sells

20 Rabbit Holes on YouTube?

21 A. Yes.

22 Q. First, did this column, was it a column

23 that a managing editor raised a question with to

24 you?

25 A. No.



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1 A. Thank you.  
2 Q. You've seen criminal complaints before in  
3 your experience as a journalist, correct?  
4 A. Yes.  
5 Q. I'm going to direct you to a page of the  
6 complaint that's got a Bate stamp on the bottom  
7 that says ST0616.  
8 Do you see at Offense Number 7 -- it's  
9 toward the top of the complaint -- that there's a  
10 charge of corruption of minors?  
11 A. Yes.  
[REDACTED]

Page 31

[REDACTED]

3 Q. What's your understanding of the  
4 importance of an accusation in a criminal  
5 complaint?  
6 A. (No response.)  
7 Q. Let me rephrase that. That's a bad  
8 question.  
[REDACTED]

12 Q. Allegation. Good. And would you have  
13 expected Mr. Kelly to review the criminal  
14 complaint prior to writing the February 14, 2021  
15 column about Mr. Godlewski?  
16 A. Yes.  
17 Q. Okay. I'm going to show you a copy of  
18 what's marked for identification as Deposition  
19 Exhibit 3.  
20 (Exhibit 3 was marked for  
21 identification.)  
22 BY MR. BOWERS:  
23 Q. I'll represent to you that this is the  
24 information filed in Mr. Godlewski's case. Does  
25 that appear to be what it is to you?

Page 32

1 A. Yes.  
2 Q. Do you now recall after we talked about  
3 the sequence of criminal complaint versus  
4 information that an information is filed after a  
5 criminal complaint?  
6 A. Yes.  
[REDACTED]

16 Q. So how many counts do you see on  
17 Mr. Godlewski's information?  
18 A. One.  
19 Q. And what is that count?  
20 A. A corruption of minors.  
21 Q. And can you read the description of that  
22 offense. Don't worry about the citation and the  
23 grading but just what it says he did.  
[REDACTED]

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[REDACTED]

15 Q. I'm going to show you what I've marked  
16 for identification as Deposition Exhibit 4.  
17 (Exhibit 4 was marked for  
18 identification.)  
19 BY MR. BOWERS:  
20 Q. I'll represent to you this is a copy of  
21 Mr. Godlewski's guilty plea colloquy that he  
22 entered in that case. Are you familiar with what  
23 a guilty plea colloquy is?  
24 A. Yes.  
25 Q. What's your understanding of what it is?

Page 34

1 A. This would be the final disposition  
2 before the Court had accepted the plea.  
3 Q. And have you seen these before?  
4 A. No.  
5 Q. Not this particular one but a guilty plea  
6 colloquy in general?  
7 A. Oh yes, I have.  
8 Q. And is a guilty plea colloquy something  
9 that you would expect Mr. Kelly to have reviewed  
10 prior to writing his article -- his column about  
11 Mr. Godlewski?  
12 A. Again, if it was available, yes, or if it  
13 was necessary. There would be a time where you  
14 might not because you have the information from  
15 another source.  
16 Q. Okay.  
17 A. Whether that be someone with firsthand  
18 knowledge of the case or documentation.  
19 Q. Let's focus on this document for a moment  
20 then we can talk about those things.  
21 I'm going to direct you to page 3 of it  
22 which is also marked with a Bate stamp ST 0586.  
23 Do you see paragraph 16? It says, The  
24 elements of the crimes charged are as follows?  
25 A. Yes.

Page 35

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 Q. And if we look at paragraph 17, would you  
11 agree with me that it says, The District Attorney  
12 indicates this is what you did on the date of the  
13 crime charged and there's nothing written in  
14 after that?  
15 A. Yes.  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 Q. Based on the documents that you have in  
25 front of you, would you consider it consistent

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1 with a journalist's ethical obligation to pursue  
2 information to the best of his ability to end an  
3 inquiry about whether or not Mr. Godlewski had  
4 sex with a minor with this information?  
5 A. Again, I think it depends on what other  
6 information the journalist knows to be factual,  
7 and you would have obtained that in a lot of  
8 different ways. As I read number 16, it appears  
9 to be intentionally vague. It's not specific  
10 about what constituted those corruption of a  
11 minor. It's an admission but not a detail.  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 Q. What information or rather what sources  
24 of information would you expect a journalist in  
25 the discharge of the ethical obligation to pursue

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1 information to the best of his ability to look at  
2 to verify that?  
3 A. Investigative files, investigative work,  
4 investigative insight, investigative sourcing.  
5 Q. Whose files -- when you say investigative  
6 files, whose files are you talking about?  
7 MR. HINTON: Objection to the form of the  
8 question. He said investigative sourcing.  
9 Doesn't just necessarily mean hard paper and hard  
10 files.  
11 MR. BOWERS: Mr. Holeva said a number of  
12 things. I believe files were one of them. We  
13 are going to go through the list.  
14 MR. HINTON: Then we focus right on just  
15 files.  
16 BY MR. BOWERS:  
17 Q. Do you need me to repeat the question?  
18 A. Yes, please.  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 Q. Okay. Do you know if Mr. Kelly did any  
 4 of that investigation?  
 5 A. I don't know specifically on this case.  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 Q. Okay. And, again, because you weren't  
 24 directly involved with this article, you don't  
 25 know whether that investigation was done,

1 correct?  
 2 A. Correct.  
 3 Q. Have you told me all the sources of other  
 4 information you would expect a journalist to  
 5 investigate prior to writing the column about  
 6 Mr. Godlewski?  
 7 A. Yes.  
 8 MR. BOWER: One moment, please.  
 9 (A short break was taken at 2:48 p.m.;  
 10 after which, the following occurred at 2:49 p.m.)  
 11 BY MR. BOWERS:  
 12 Q. Larry, I would like to ask you, if I can,  
 13 about some other aspects of the Chris Kelly QAnon  
 14 Realtor Sells Rabbit Holes on YouTube. And you  
 15 have the copy in front of you I see?  
 16 A. Yes.  
 17 Q. In addition to the accusation in it that  
 18 Mr. Godlewski had sexual intercourse with a  
 19 minor, there are a number of accusations about  
 20 Mr. Godlewski's involvement with the January 6  
 21 insurrection at the Capitol, correct?  
 22 MR. HINTON: Objection to the form of the  
 23 question. Can you point him out to the specific  
 24 accusations.  
 25 MR. BOWERS: Okay. I'm asking him for

1 his recollection.  
 2 MR. HINTON: Of this ten-page article  
 3 that you put in front of him?  
 4 MR. BOWERS: Let me rephrase the question  
 5 a little bit.  
 6 MR. HINTON: Why don't you point him to  
 7 the paragraphs that you claim Mr. Godlewski was  
 8 involved in the insurrection.  
 9 MR. BOWERS: I appreciate your educating  
 10 me on the way to take a deposition and ask a  
 11 question.  
 12 MR. HINTON: I'm giving you a lot of  
 13 leeway, Tim. You've been extremely vague in all  
 14 of your questions here today. So I'm giving you  
 15 some leeway, but let's talk specifics.  
 16 BY MR. BOWERS:  
 17 Q. Larry, are you familiar with the entire  
 18 content of the article?  
 19 A. Yes.  
 20 Q. Would you agree with me that the  
 21 accusation that Mr. Godlewski had sexual  
 22 intercourse with a minor is not the only  
 23 accusation about Mr. Godlewski contained in the  
 24 column?  
 25 A. Yes.

1 Q. Based on your recollection of the column,  
 2 what else does it assert about Mr. Godlewski?  
 3 A. It asserts that he is involved with  
 4 QAnon. Do you want me to look at the column or  
 5 take this off recollection?  
 6 Q. Just tell me your recollection of it  
 7 first and then we can look at specifics.  
 8 A. It asserts that he had some USA Today  
 9 exposure in the January 6th riot at the Capitol.  
 10 Q. Okay. And that's your recollection based  
 11 on reading the column as, you know, the day it  
 12 was printed as an average Scranton Times reader  
 13 might see it, correct?  
 14 A. Correct.  
 15 Q. And you understood those things to refer  
 16 to Phil Godlewski, correct?  
 17 MR. HINTON: Objection to the form of the  
 18 question. You can answer.  
 19 THE WITNESS: Specific parts were  
 20 directed at Mr. Godlewski. There was also a lot  
 21 of QAnon generalities in this column.  
 22 BY MR. BOWERS:  
 23 Q. When the column suggests that  
 24 Mr. Godlewski beat the drum of the QAnon  
 25 movement, how did you understand that accusation?

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1 A. That he was spreading the word of the  
2 QAnon movement.  
3 Q. Did you understand it to mean that he was  
4 a leader in that movement?  
5 A. No.  
6 Q. What sort of research would you have  
7 expected Mr. Kelly to do in the discharge of his  
8 ethical obligation to pursue information to the  
9 best of his ability to perform in verifying that  
10 Mr. Godlewski beat the drum of the Q movement?  
11 A. It would mean that he had talked with  
12 enough people who had listened or heard of  
13 Mr. Godlewski's involvement with QAnon.  
14 Q. How many people?  
15 A. I don't know if there's a specific answer  
16 to that.  
17 Q. I'm going to direct you to page -- the  
18 second page, and I'm going to look at the  
19 paragraph that is next to the bottom that starts  
20 the Capitol riot. Would you agree with me that  
21 it says, The Capitol riot is empirical evidence  
22 that we ignore this insidious war on truth at our  
23 peril. Despite the demolition of all its  
24 so-called prophecy, the Q movement marches on,  
25 Godlewski happily calls out the cadence.

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1 A. Yes, I see it.  
2 Q. Would you agree with me that that  
3 connects Mr. Godlewski to the Capitol riots?  
4 A. Not directly.  
5 Q. Would you agree with me that it creates  
6 the implication that Mr. Godlewski was involved  
7 in the Capitol riots?  
8 MR. HINTON: Objection.  
9 THE WITNESS: I wouldn't even go that  
10 far, but it does indicate that he is calling out  
11 in support of the Q movement.  
12 BY MR. BOWERS:  
13 Q. What sort of sources or research should  
14 Chris Kelly have done in his pursuit of his  
15 ethical obligation to pursue information to the  
16 best of his ability in determining that Godlewski  
17 happily calls out the cadence of a Q movement  
18 that it perpetrated a riot at the Capitol?  
19 MR. HINTON: Objection to the form of the  
20 question. That's not what it says, but you can  
21 answer.  
22 THE WITNESS: A reporter who is covering  
23 this would have multiple sources, whatever they  
24 may be, interviews with people, witness to  
25 literature, documentation whether that be video

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1 or written word, and information you would derive  
2 from interviews.  
3 Q. Have you now told me every source of  
4 information that you would expect a reporter to  
5 look to to pursue the -- to discharge the ethical  
6 obligation to pursue information to the best of  
7 his ability prior to writing the column about  
8 Mr. Godlewski?  
9 A. To the best of my knowledge I have.  
10 Q. And if a reporter had not, in fact,  
11 examined all of the sources of information prior  
12 to writing the column about Mr. Godlewski, would  
13 that be a breach of the ethical obligation?  
14 A. We're talking ethical obligations of two  
15 different things, an opinion story or a news  
16 article. It certainly would on a news article.  
17 The columnist has latitude in an opinion piece,  
18 but the fact is still going to be the fact. And  
19 --  
20 Q. Just to be clear, did you tell me earlier  
21 that you would expect the same research to be  
22 done whether it was a news article or an opinion  
23 column?  
24 A. On fact I did, yes.  
25 [REDACTED]

Page 45

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 Q. I'm going to direct you to the front  
19 page. Do you see that in the title of the column  
20 it says QAnon Realtor Sells Rabbit Holes?  
21 A. Yes.  
22 Q. And do you see that there's a cartoon  
23 that appears immediately below that showing what  
24 appears to be a parody of a real estate sign  
25 saying unrealtor?



1 A. Yes.  
2 Q. Mr. Godlewski was working as a realtor at  
3 the time that this was published, correct?  
4 A. I know that from reading this column,  
5 yes.

[REDACTED]

13 Q. What's the connection between  
14 Mr. Godlewski's work as a realtor and the  
15 accusation that he had sexual relations with a  
16 minor?

17 A. I don't understand the question.

18 Q. Well, this is a column about  
19 Mr. Godlewski's political beliefs, correct?

20 MR. HINTON: Objection. The column  
21 speaks for itself.

22 MR. BOWERS: You can answer.

23 THE WITNESS: Yes.

24 BY MR. BOWERS:

[REDACTED]

1 impugn his integrity as a realtor?

2 MR. HINTON: Objection.

3 THE WITNESS: I think the mention of  
4 Mr. Godlewski as a realtor is only an identifier.  
5 It speaks to who he does or what he does.

6 BY MR. BOWERS:

7 Q. Would you agree with me there's not just  
8 a mention somewhere in the article that he's a  
9 realtor? There is, in fact, a cartoon drawing  
10 the icon conspicuously to the fact that he's a  
11 realtor, correct?

12 A. Yes.

13 Q. And, in fact, that he is an unrealtor,  
14 correct?

15 A. That is the parody of this illustration.

16 Q. And does that not -- and it says that he  
17 sells rabbit holes as a realtor, correct?

18 A. Again, as the parody of this illustration  
19 does say that.

[REDACTED]

1 [REDACTED]

12 Q. Does being a realtor impact assessment of  
13 Mr. -- strike that. Does the fact that  
14 Mr. Godlewski -- strike that again. Does the  
15 fact that Mr. Godlewski is engaged in the  
16 business of selling real estate affect assessment  
17 of his political beliefs by the general public  
18 who are reading this?

19 A. I wouldn't know that.

20 MR. HINTON: Are you speaking for the  
21 general public?

22 THE WITNESS: Yeah, I wouldn't know that.

23 BY MR. BOWERS:

24 Q. Does mention of the fact that  
25 Mr. Godlewski as a realtor do anything other than

2 BY MR. BOWERS:

3 Q. Is there a single factual allegation in  
4 this article that Mr. Kelly has in some way been  
5 a dishonest realtor?

6 MR. HINTON: Objection to the form.  
7 Godlewski.

8 MR. BOWERS: Sorry. I apologize. Let me  
9 rephrase.

10 BY MR. BOWERS:

11 Q. Is there any factual allegation in this  
12 article that Mr. Godlewski is a dishonest  
13 realtor?

14 A. No.

15 MR. HINTON: Hold on. Let me object to  
16 the form of the question. Do you want to read  
17 the article and take a look at it, Larry, or do  
18 you want to go by memory?

19 THE WITNESS: I can go by memory I think  
20 on this one.

21 MR. HINTON: Okay.

[REDACTED]

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1 this.

2 BY MR. BOWERS:

3 Q. And the criminal elements that were

4 included in the column, have nothing to do with

5 his profession as a realtor, do they?

6 MR. HINTON: Let me object to form of the

7 question and point out that the article

8 specifically says last February Godlewski was

9 charged with theft by deposition, forgery, and

10 related charges --

11 MR. BOWERS: Counsel, you're not

12 testifying.

13 MR. HINTON: The Real Estate Commission

14 has taken his license.

15 MR. BOWERS: You're not testifying here

16 today.

17 MR. HINTON: You have put in front of him

18 a ten-page article and said go by memory of what

19 it says. Go ahead, sir.

20 MR. BOWERS: I think Mr. Holeva is

21 perfectly capable for answering for himself.

22 MR. HINTON: Go ahead.

23 BY MR. BOWERS:

██

██

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1 much for answering our questions.

2 (The deposition concluded at 3:07 p.m.)

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3 Q. And is there any allegation that his

4 activities as, you know, an alleged proponent of

5 the QAnon movement impacted his pursuit of the

6 profession of realty?

7 A. Not directly, no.

8 Q. And yet, the headline leads with the fact

9 that he's a realtor, correct?

10 A. Yes.

11 Q. And the cartoon chosen focuses on the

12 fact that Mr. Godlewski was a realtor, correct?

13 A. Yes. Again, it's a parody and play on

14 the fact that he was a realtor, unreal.

15 ██

16 ██

17 ██

18 ██

19 ██

20 ██

21 ██

22 ██

23 ██

24 ██

25 MR. BOWERS: Mr. Holeva, thank you so

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1 CERTIFICATE


2 I hereby certify that the proceedings and

3 evidence are contained fully and accurately in

4 the notes taken by me on the within proceedings

5 and that this is a correct transcript of the

6 same.

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10 Allison M. Ross, RPR

11 Notary Public

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Commonwealth of Pennsylvania Rules of Civil

Procedure

Title 231, Chapter 4000

Depositions and Discovery

Rule 4017

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within thirty days of its submission to the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if

any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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HHC <hhc@haggertylaw.net>

Fri 1/19/2024 10:00 AM

To: Timothy M. Kolman, Esq. <TKolman@KolmanLaw.com>; Timothy Bowers, Esq. <TBowers@KolmanLaw.com>

Cc: Tim Hinton <timhinton@haggertylaw.net>; Kathleen A. Carrozza <KCarrozza@KolmanLaw.com>; Sarra Small <SSmall@KolmanLaw.com>

1 attachments (13 MB)

ST 3925-3926 (w ST 3193-3499)-Affidavit Linda DuBorgel.pdf;

Dear Attorneys Kolman and Bowers:

Please see the attached Affidavit of Linda DuBorgel marked ST 3925-3926 with an attachment of previously produced ST 3193-3499 documents.

Thank you.

Jennifer Smolley

Haggerty Hinton & Cosgrove LLP

1401 Monroe Ave., Suite 2

Dunmore, PA 18509

[hhc@haggertylaw.net](mailto:hhc@haggertylaw.net)

Ph. (570) 344-9845

Fax (570) 343-9731

**Exhibit 2**

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1 answered some discovery, some interrogatories by me.  
2 And I want to point your attention to number seven.

3 A. Okay.

4 Q. Number seven says: Did you have sex or a  
5 sexual relationship with BD-- You know that's Brienna  
6 DuBorgel?

7 A. (Nodding in the affirmative.)

8 COURT REPORTER: Yes?

9 BY MR. HINTON:

10 Q. -- at any time? Do you see that question?

11 A. Yes.

12 THE COURT: You can't nod. That's  
13 why she interrupted you.

14 MR. GODLEWSKI: I got you. Yeah.

15 THE COURT: Okay.

16 BY MR. HINTON:

17 A. My answer was no.

18 Q. Okay. So you lied there?

19 A. I believe I misunderstood the question  
20 because of the context.

21 Q. What's so confusing about that question? Do  
22 you not understand the words any time?

23 A. I believe this set of interrogatories was  
24 part of another set of interrogatories that I got  
25 relatively at the same time. Some of those-- most of



1 the other questions in regards to my relationship with  
2 Brie had the fifteen year old. In fact, almost all of  
3 your interrogatories had the fifteen year old. This is  
4 the only time that you ever asked me directly did I  
5 have a sexual relationship with Brie. And I believe I  
6 misconstrued what you were asking as when she was  
7 fifteen because of all of the prior interrogatories  
8 that did mention when she was fifteen.

9 Now, I don't see those questions that I'm  
10 referring to in this particular set, but there's been a  
11 lot of different sets.

12 Q. You're a smart guy, right?

13 A. (No response given.)

14 Q. Mensa? Aren't you a member of Mensa?

15 A. I'm not a member of Mensa, no.

16 Q. High IQ, though? You've had your IQ tested?

17 MR. KOLMAN: Objection. Irrelevant.

18 BY MR. HINTON:

19 Q. So you were-- the second part of the  
20 question is: If yes, when did you have sex or sexual  
21 relationship with her and how long did the sexual  
22 relationship last? And you answered N/A, not  
23 applicable, correct?

24 A. Yes.

25 Q. So didn't that help clear up any confusion

1 you may have had about the question?

2 A. No, it didn't clear up any confusion at all  
3 because once I read if yes, I didn't read the rest  
4 because the answer was no to number seven.

5 Q. So at no time did you admit in discovery in  
6 this case to ever having a sexual relationship with  
7 Brienna, is that correct?

8 A. Can you restate that?

9 Q. Did you ever admit in any of your discovery  
10 responses that you had a sexual past with Brie?

11 A. I believe in the question that I was asked  
12 in one of the interrogatory sets, if the text messages  
13 between Brie and I, the most recent text messages, were  
14 true. And to that question I answered-- or were  
15 accurate or were from me. To that question I answered  
16 yes. And the content of the text messages in which I  
17 was referring to did reference a recent sexual  
18 relationship.

19 Q. Okay. Well, let's get that on paper here.  
20 When was your recent sexual relationship  
21 with her?

22 THE COURT: When was the admission  
23 made or when did the act take place, Tim?

24 MR. HINTON: The only thing he  
25 admitted, Your Honor, is that these were his

1 text messages.

2 THE COURT: I'm asking you that. I  
3 don't know what date you're asking about,  
4 when he made an admission or when he  
5 actually had it.

6 MR. HINTON: When did he begin a  
7 sexual relationship with Brie.

8 BY MR. HINTON:

9 A. I would say 2013, 2014, 15, somewhere in  
10 that--

11 Q. All right. So you're still on probation at  
12 that time from corrupting her at that time and you're  
13 having sex with her at that time?

14 A. No.

15 Q. You were on probation for two years, weren't  
16 you?

17 A. I know. You're putting me on the spot, and  
18 I can't remember when our relationship was.

19 Q. So let's get this straight. So you admitted  
20 in Court--

21 A. I'm sorry. I could correct the record if I  
22 may. It was almost certainly from 2015 to 2016. And I  
23 remember that because of the time that I started my  
24 real estate company was the same year.

25 Q. Okay. So you started the agency with George

1 Plisko, correct, 2015?

2 A. Correct.

3 Q. And at that time you began a sexual  
4 relationship with Brie?

5 A. Yes.

6 Q. All right. So you corrupted her--

7 MR. KOLMAN: Objection.

8 BY MR. HINTON:

9 Q. --2009 and 10, correct?

10 THE COURT: Factually accurate  
11 question. Overruled.

12 BY MR. HINTON:

13 Q. You corrupted her in 2009 and 2010?

14 A. I pled guilty to corruption of minors, yes.

15 Q. Of her, though, not some unspecified victim?

16 It was Brienna, right?

17 A. The one that was in the complaint, yes.

18 Q. She's the victim?

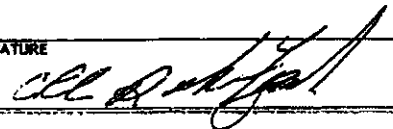
19 A. Of course.

20 Q. You corrupted her?

21 A. Yes.

22 Q. And you served probation for two years and  
23 then you began a sexual relationship with the person  
24 you corrupted earlier?

25 A. Correct.

SP 7-0025 (10-83)	1. INCIDENT NO. X43-0035198	2. DATE OF REPORT 04/05/2010
PENNSYLVANIA STATE POLICE GENERAL INVESTIGATION REPORT	3. INVESTIGATING OFFICER [REDACTED]	
	4. TROOP - STATION BCI Computer Crime Unit - NEPA CCU	
6. SUBJECT (NATURE OF INVESTIGATION OR NAME AND ADDRESS OF INDIVIDUAL) Forensic Examination of Digital Media for evidence of communication(s) between victim and suspect(s). Suspect: Phillip John GODLEWSKI W/N M DOB: 6/26/83 From Scranton, PA Suspect: Thomas P NEZLO W/N M DOB: 2/11/77 From Tafton, PA		
8. INSTRUCTIONS: REPORT WILL BE PREPARED IN THE FOLLOWING ORDER: REASON FOR INVESTIGATION, SYNOPSIS OF INVESTIGATION, CONCLUSION, RECOMMENDATIONS AND COMMENT (WHEN APPROPRIATE), LIST OF ATTACHMENTS (IF ANY) AND DETAILS WHICH SUPPORT THE SYNOPSIS.		
<u>ADDITIONAL SUBJECTS:</u> NA		
<u>REASON FOR INVESTIGATION:</u> To examine digital media brought by Officer Steven DERENICK from the Taylor Boro Police Department for conversations between the above listed suspect(s) and the minor female victim. Original incident number for Officer DERENICK case is 2010-2540.		
<u>SYNOPSIS OF INVESTIGATION:</u> [REDACTED] Item 01 being an 8 GB iPhone s/n 880033EPY7H Item 02 being a Toshiba Satellite Laptop L25 s/n X510997OW Item 03 being a Dell Inspiron PC Tower service tag # JX5LLF1 Item 04 being a Pantech Cellular Phone s/n 9121045938. All items are detailed on the attached lab request form (attachment # 1) and the forensic worksheets (attachment # 2). In addition to the items Officer DERENICK brought with him a copy of the consent to search forms (attachment # 3). I reviewed the details of signed consent forms and determined that authorization to conduct the search of these items was present. A Lab Inventory number for this case was generated, that number being X43A2-3794. An examination of the data found on the aforementioned items produced some electronic communications that from the victim which were saved electronically for case investigator(s) to review. The reports I generated were copied to a separate CD for the case investigators to review at their convenience. My examination of this media was performed using equipment and software licensed to this officer and/or the Pennsylvania State Police.		
<u>CONCLUSION:</u> [REDACTED]		
<u>RECOMMENDATIONS AND COMMENT:</u> Examine the content of the media I provided and determine if any additional analysis is required.		
<u>LIST OF ATTACHMENTS:</u> 1. Lab Request Form. 2. Forensic Worksheet. [REDACTED] 4. Printed copy of Hard Drive Label(s).		
7. SIGNATURE 	BADGE NO. 6229	8. SUPV. INITIALS MLG/6053
		9. <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> SUPPLEMENTAL

**Exhibit**  
ST 2906





**PENNSYLVANIA STATE POLICE**  
 Bureau of Criminal Investigation - CCU  
 1800 Elmerton Ave., Harrisburg, PA 17110  
 Phone (717)346-0683 Fax (717)772-0118



**CELL PHONE FORENSIC ANALYSIS WORKSHEET**

Incident Number:	X43-0035198	Lab Number:	X43A2-3794
Date:	03/22/2010	Submitted By:	Officer Steve DERENICK
Requesting Agency:	Taylor Police	Requesting Officer:	Officer Steve DERENICK
Telephone:	570-562-2210	Other Contact Info:	
Evidence Received By:	Cpl. Derek Fozard	Analyst:	Cpl. Derek Fozard

Submitted Phone # 1			
Manufacturer:	APPLE	Model:	8GB IPHONE V 3.12
Serial Number:	880033EPY7H MODEL mb046ll		
Phone Number:	570-	Service Provider:	AT&T
Other Identifying Info:	Color IMEI ID # 012020008839346		
Other Hardware:	<input type="checkbox"/> SIM Card ID	Description:	89014104211937985730
	<input type="checkbox"/> SD Card	Description:	
	<input type="checkbox"/> Other Media	Description:	

**NOTES (ALL NOTES IN INK):**

~~Call to 110 for missing phone. This is NOT a legal case.~~

Software: 1.1.1.4 UFED , Full Image: 1.0.2.4 , Tiny Image: 1.0.2.1

The following data was extracted:

   Contacts,    SMS Text Messages,    Images, and    Audio Recordings

NO SD Micro Card found in Phone.

X0dub0rgel@aim.com email account on phone

Incident Number:	X43-0035198	Lab Number:	X43A2-
------------------	-------------	-------------	--------

Submitted Phone # 2			
Manufacturer:	<del>HTC</del>	Model:	C740
Serial Number:	S/N 9121045938		
Phone Number:	570	Service Provider:	AT&T
Other Identifying Info:	IMEI: 011917000562480		
Other Hardware:	<input checked="" type="checkbox"/> SIM Card ID	Description:	89014104232713392339
	<input type="checkbox"/> SD Card	Description:	
	<input checked="" type="checkbox"/> Other Media	Description:	SdMICRO card 4GB

NOTES (ALL NOTES IN INK):

~~Call logs were not accessed on phone.~~

Software: 1.1.1.4 UFED, Full Image: 1.0.2.4, Tiny Image: 1.0.2.1

The following data was extracted:

   Contacts,    SMS Text Messages,    Images, and NA Audio Recordings    Call Logs

~~00 Videos~~

4GB SD Micro Card found in Phone.



**FORENSIC ANALYSIS WORKSHEET**

Case Number:	X43-0035198	Lab Number:	X43A2-3794
Date:	03/22/2010	Submitted By:	Cpl. Derek Fozard
Requesting Agency:	Taylor Boro Police	Requesting Officer:	Officer Steve DERENICK
Telephone:	570-562-2210	Other Contact Info:	
Evidence Received By:	Officer Steve DERENICK	Analyst:	Cpl. Derek Fozard

Submitted System/Media/Phone # 1			
Manufacturer:	Toshiba	Model:	Satellite
Serial Number:	X5109970W	BIOS DATE/TIME:	LAPTOP 03/22/2010 1331 REAL TIME: 03/22/2010 1331
Other Identifying Info:			
Other Hardware:	<input type="checkbox"/> 3.5" Floppy Drive <input type="checkbox"/> CD ROM <input type="checkbox"/> CD RW <input type="checkbox"/> DVD ROM <input checked="" type="checkbox"/> DVD RW <input type="checkbox"/> SD Card <input type="checkbox"/> Memory Stick <input type="checkbox"/> Compact Flash <input type="checkbox"/> Zip Drive <input type="checkbox"/> Blu-ray		
Hard Drive #1 of #01:	FUJITSU	IDE / SATA / SCSI	
	Jumper Settings as Received: NA	Model:	
	Size (GB): 40 GB	Serial Number:	
Acquisition Hash:	Verification Hash:		
0ffba58bc20c585556709e6562e71f0f	0ffba58bc20c585556709e6562e71f0f		
Hard Drive # of	WD / Maxtor / Seagate / IBM / Quantum / Other	IDE / SATA / SCSI	
	Jumper Settings as Received: M / S / GS	Model:	
	Size (GB):	Serial Number:	
Acquisition Hash:	Verification Hash:		

**Submitted System/Media # 2**

Manufacturer:	Dell	Model:	Inspiron 531S
Serial Number:	Service Tag JX5LLF1	BIOS DATE /TIME	PC: 03/23/2010 0706 REAL TIME: 03/23/2010 0706
Other Identifying Info:	Item 03		
Other Hardware:	<input type="checkbox"/> 3.5" Floppy Drive <input type="checkbox"/> CD ROM <input type="checkbox"/> CD RW <input checked="" type="checkbox"/> DVD ROM <input checked="" type="checkbox"/> DVD RW <input type="checkbox"/> SD Card <input type="checkbox"/> Memory Stick <input type="checkbox"/> Compact Flash <input type="checkbox"/> Zip Drive <input type="checkbox"/> Blu-ray		
Hard Drive #1 of 01:	SAMSUNG	IDE / SATA / SCSI	
	Jumper Settings as Received: NA	Model:	HD321KJ
	Size (GB): 320	Serial Number:	S0ZEJ1MQ128558
Acquisition Hash:	Verification Hash:		
7f8478008d224785547746e92376baa0	7f8478008d224785547746e92376baa0		
Hard Drive #2 of	WD / Maxtor / Seagate / IBM / Quantum / Other	IDE / SATA / SCSI	
	Jumper Settings as Received: M / S / CS	Model:	
	Size (GB):	Serial Number:	
Acquisition Hash:	Verification Hash:		
Type of Media		Label:	
Type of Media		Label:	
Type of Media		Label:	
Type of Media		Label:	
Type of Media		Label:	
Type of Media		Label:	
Type of Media		Label:	