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IN THE SUPREME COURT OF THE VIRGIN ISLANDS

Appeal No. 2021-0001

**SENATOR ADLAH DONASTORG, JR., BENEDICTA DONASTORG,
ADLAH DONASTORG, SR., JOSEPINA DONASTORG, ELLA MORON
AND NORMA DURAN,
Appellants**

**DAILY NEWS PUBLISHING CO. INC., LOWE DAVIS, HOLLAND
“DYKE” REDFIELD, VITELCO AND OAKLAND BENTA.
Appellees.**

On Appeal from
The Superior Court of the Virgin Islands
Division of St. Thomas

Superior Court Civ. No. SX-2002-CV-00117 (STT)

**JOINT APPENDIX
Volume II**

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SENATOR ADLAI DONASTORG, JR.,
 BEHEICTA DONASTORG, ADLAI
 DONASTORG, SR., JOSEFINA
 DONASTORG, ELLA MORON AND NORMA
 DURAN,

Plaintiffs,

vs.

DAILY NEWS PUBLISHING COMPANY,
 INC., LOWE DAVIS, HOLLAND "DYKE"
 REDFIELD, VITELCO and OAKLAND
 BENTA,

Defendants.

Case No. 117/2002

THE ORAL DEPOSITION OF MARTY SCHLADEN

was taken on the 14th day of February, 2011, at the Law
 Offices of Rohn and Carpenter, LLC, 1101 King Street,
 Christiansted, St. Croix, U.S. Virgin Islands, between the
 hours of 1:04 p.m. and 2:02 p.m. pursuant to Notice and
 Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman, RPR-RMR
 Registered Merit Reporter
 Caribbean Scribes, Inc.
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A-P-P-E-A-R-A-N-C-E-S

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By: Lee J. Rohn

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By: Kevin A. Rames

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By: Mark Eckard

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Susan C. Nissman, RPR-RMR
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MARTY SCHLADEN -- DIRECT

MARTY SCHLADEN,

1 Called as a witness, having been first duly sworn,
 2 testified on his oath as follows:
 3

DIRECT EXAMINATION

4

5 **BY MS. ROHN:**

6 Q. Would you state your name for the record, please?

7 A. Marty Schladen.

8 Q. Mr. Schladen, my name is Lee Rohn. I represent

9 Senator Donastorg in a case against The Daily News. And you

10 have been tendered as a deponent by The Daily News in that

11 matter.

Are you aware of that?

12 A. Yes, ma'am.

13 **MS. ROHN:** Okay. Kevin, I understand that

14 Mr. Schladen was taken this morning about his employment

15 history?

16 **MR. RAMES:** Yes, that is correct.

17 **MS. ROHN:** Rather than go through that whole

18 thing again, I would like to have an agreement that that

19 testimony, as to his employment history, be referenced and

20 made a part of this deposition?

21 **MR. RAMES:** without objection.

22 **MS. ROHN:** Okay. Just trying to save you

23 some time.

24 **THE WITNESS:** I appreciate that.

25

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MARTY SCHLADEN -- DIRECT

- 1 Q. (Ms. Rohn) Have you -- where do you currently
2 live?
3 A. El Paso, Texas.
4 Q. And what do you do there?
5 A. I'm a newspaper reporter.
6 Q. And I take it that's -- that was discussed in your
7 deposition --
8 A. Yes.
9 Q. -- earlier this morning?
10 Have you ever been -- other than this
11 morning, have you ever been deposed before?
12 A. No, ma'am.
13 Q. Have you ever been the subject of any litigation
14 before?
15 A. No, ma'am.
16 Q. Never been named in any litigation involving a
17 newspaper?
18 A. No, ma'am.
19 Q. Have any of the stories that you've written ever
20 been the subject to litigation?
21 A. No, ma'am. Well, I have been called to testify in
22 one case in federal court, of which a story played a
23 tangential part.
24 Q. Okay. And who did you work for? What paper?
25 A. The Muncie Star Press in Indiana.

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MARTY SCHLADEN -- DIRECT

- 1 Q. And what was your story about?
2 A. To tell you the truth, I don't even remember now.
3 It was the mid-'90s. I testified for like, not even three
4 minutes.
5 Q. When were you first contacted about either this
6 case or the Hansen -- well, when were you first contacted
7 regarding any litigation concerning The Daily News?
8 A. I don't remember which came first. At one point,
9 Attorney Rames had contacted me, and then at another point,
10 you had contacted me in connection with the Tim McDonald
11 litigation.
12 Q. All right. Did you ever give a statement for the
13 Tim McDonald litigation?
14 A. I -- you asked me questions and I answered them,
15 but it wasn't a deposition. It wasn't sworn.
16 Q. Okay. And did we only have that one conversation?
17 A. I believe so.
18 Q. You didn't testify in the McDonald case?
19 A. No, ma'am.
20 Q. And your first contact, whether it was before that
21 or after that, with Mr. Rames, what was the nature of that
22 contact?
23 A. It was the Hansen litigation.
24 Q. And, specifically, what was discussed in that
25 first conversation?

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- 1 A. It was an e-mail. It was e-mail and telephone,
2 and he just brought me up-to-date on what the status of the
3 litigation was, and what might happen subsequently in terms
4 of depositions, that sort of thing.
5 Q. And what did he tell you as to the status of the
6 litigation?
7 A. That it was ongoing; and that your office had some
8 interest in deposing me.
9 Q. At that point, did you discuss what your knowledge
10 might be?
11 A. No, ma'am.
12 Q. How many e-mails or conversations have you had
13 with Kevin Rames since then?
14 A. Conversations, I'd say two or three, maybe four.
15 E-mails, we exchanged quite a few just working out the
16 logistics of coming here, and there were a few e-mails about
17 the cases themselves.
18 Q. And have you saved those e-mails?
19 A. I have saved most of them. My work e-mail, we
20 have to purge it pretty quickly because there's no memory
21 space in it.
22 Q. Okay. The e-mails that you have saved, do you
23 have any problem giving me copies of them?
24 A. I generally have problems giving copies of my
25 e-mails to anybody.

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- 1 Q. Well, I can certainly subpoena them from you if
2 you'd rather I do this?
3 A. Is that something you plan to do?
4 Q. Yes.
5 A. Well, why don't you go ahead and do that.
6 Q. Okay. I'm putting you on notice now that you will
7 be subpoenaed for those e-mails, and so please do not
8 destroy anything.
9 A. Okay.
10 Q. That would be obstructive of justice.
11 A. Yes, ma'am.
12 Q. Other than e-mails, did you receive any other
13 correspondence from Attorney Rames?
14 A. No, ma'am.
15 Q. Okay. You said that some of the e-mails were
16 about the cases themselves.
17 What about the cases were in those e-mails?
18 A. There were the depositions, like the deposition
19 Jason Robbins gave in the Hansen matter. Really nothing
20 relating to the Donastorg matter. I don't even believe I've
21 read the complaint in this case.
22 Q. Okay. Other than sending you depositions, were
23 there any substantive statements about the case?
24 A. That Kevin had made --
25 Q. Um-hum.

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MARTY SCHLADEN -- DIRECT

1 A. -- or -- we had -- we had verbal conversations
2 about them.

3 Q. No, I'm talking about the e-mails themselves.

4 A. The e-mails. Well, he's proposing a motion for
5 summary judgment. That's about it.

6 Q. Okay. Now, the -- have you had any substantive
7 conversations with Mr. Rames, Kevin Rames, Attorney Rames,
8 about the Donastorg case?

9 A. No, ma'am. We talked about it yesterday, and I
10 think we got together for a couple, three, maybe 3-4 hours,
11 and it was very much the minor topic.

12 Q. Well, the conversations that you did have, what
13 were the substance of them?

14 A. That you're arguing that The Virgin Islands Daily
15 News had a policy of, you know, attacking Senator Donastorg.

16 Q. Anything else?

17 A. No, ma'am.

18 Q. Have you reviewed any documents concerning the
19 Donastorg case?

20 A. No, ma'am.

21 Q. Who paid for your flight here?

22 A. The Daily News, as I understand it.

23 Q. What do you mean, as you understand?

24 A. Well, I got -- my itinerary had Jason Robbins'
25 name at the top of it.

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1 Q. And do you know how much that ticket -- was it a
2 round-trip ticket?

3 A. Yes.

4 Q. Do you know how much it was?

5 A. Like \$966--some dollars, I think.

6 Q. And when did you get here?

7 A. Saturday night.

8 Q. And where are you staying?

9 A. Frederikstad Hotel.

10 Q. Is that where you asked to stay?

11 A. Yes, ma'am.

12 Q. Why did you ask to stay in that hotel?

13 A. When I lived here, I lived on the west side. I
14 still have some friends there, so I'm close to them.

15 Q. And who paid for your hotel?

16 A. The Daily News.

17 Q. And how long are they paying for your hotel?

18 A. Till Wednesday or -- well, yeah, till Wednesday
19 morning.

20 Q. And do you know why, if your deposition is today,
21 they're paying for it until Wednesday?

22 A. We tried to set it up -- well, I came here and
23 worked with Kevin on Sunday, and I wanted to have a free day
24 while I was here.

25 Q. Is The Daily News paying for your hotel the whole

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1 time you're here?

2 A. Yes, ma'am.

3 Q. Are they paying for your food?

4 A. The business-related food expenses, which will end
5 after today.

6 Q. Do you have a rental car?

7 A. No, ma'am.

8 Q. Are they paying for your transportation?

9 A. As it relates to this case, but not other
10 transportation.

11 Q. Are they paying for any loss of wages?

12 A. Yes, ma'am.

13 Q. Anything else that they're paying for that I
14 haven't asked you about?

15 A. No, ma'am.

16 Q. Have you ever met Mr. Eckard?

17 A. No, ma'am, not that I remember.

18 Q. Do you have any -- any convictions?

19 A. Yes, ma'am.

20 Q. And what are those?

21 A. 1990, I was convicted of DUI.

22 Q. And where were you living then?

23 A. Indiana.

24 Q. Do you know Senator Donastorg?

25 A. Yes, ma'am.

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1 Q. And how do you know him?

2 A. I covered the senate when I worked for The Daily
3 News.

4 Q. And what -- what period of time did you work for
5 The Daily News?

6 A. From some point in 2002, until, I believe, March
7 of '04. I think early 2002 till -- till March of '04.

8 Q. And in covering the senate, did you ever actually
9 speak to Senator Donastorg?

10 A. Yes, ma'am.

11 Q. And on how many occasions would you say you've
12 spoken to him?

13 A. At least a dozen.

14 Q. Do you remember the subject matter on what things
15 you talked to him about?

16 A. Several things. He -- the -- the conversations
17 almost always would be initiated by the news of the day,
18 whatever story I was writing out of the senate meeting, and
19 if he was -- happened to be a particular player in that, I'd
20 interview him. But I know he was deeply aggrieved with The
21 Daily News and didn't feel as though he got a fair shake
22 from it.

23 I think that one of the reasons he was
24 willing to talk to me is because, unlike some other members
25 of the senate, he knew that, you know, you talk to a

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1 reporter, that's how you get your side of the story in the
2 paper.
3 Q. And did he tell you why he was deeply aggrieved by
4 The Daily News?
5 A. He didn't feel the coverage that he'd gotten was
6 fair.
7 Q. Did you agree with him?
8 A. No, ma'am. I had no basis to agree with him.
9 Q. You didn't have conversations with him in which
10 you said, yeah, that story's really bad, I wouldn't have
11 written that story that way?
12 A. No, ma'am.
13 Q. Okay.
14 A. Not that I recall.
15 Q. How many conversations did you have with Senator
16 Donastorg about his feeling that The Daily News was
17 attacking him?
18 MR. RAMES: Object to form.
19 THE WITNESS: It's hard for me to say at the
20 point. That was 8-9 years ago, but it was more than one.
21 Q. (Ms. Rohn) Did you give him any advice?
22 A. I told him that I couldn't speak for other people,
23 but, you know, as long as he was dealing with me, I'd do
24 everything I could to be fair to him.
25 Q. And what other people were you referring to that

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1 you couldn't speak for?
2 A. Everybody else at the paper. I don't hold a
3 management -- didn't hold a management position. I was in
4 charge of me, and that was it.
5 Q. Was Mr. Donastorg's complaint specifically towards
6 Ms. Lowe Davis?
7 A. I think he complained about her, but he complained
8 about the entire organization.
9 Q. Okay. Did you ever commensurate with him about
10 Ms. Davis' behavior at The Daily News?
11 A. No, ma'am, I don't remember doing that.
12 Q. Do you remember specifically what his complaints
13 were about Lowe Davis?
14 A. I remember just generally he felt like the paper
15 was out to get him.
16 Q. And when he told you this, other than, Gee, you're
17 going to get a straight shot from me, did you have any other
18 statements that you made to him?
19 A. Not that I remember, other than to talk about the
20 news of the day. And as I remember it, I got along with him
21 pretty well.
22 Q. Do you remember any of the specific stories that
23 he complained to you about?
24 A. I really do not.
25 Q. Do you know Jeffrey Prosser?

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1 A. No, ma'am. I stood in the same room as him one
2 time, and he had to be identified to me after I left. I
3 didn't even know who it was.
4 Q. So you never had any conversations with him?
5 A. No, ma'am.
6 Q. Do you know Lowe Davis?
7 A. Yes, ma'am.
8 Q. And how do you know Lowe Davis?
9 A. She hired me at The Daily News.
10 Q. And what was your title at The Daily News?
11 A. Reporter.
12 Q. And she got you from the Galveston paper; is that
13 right?
14 A. No, ma'am. I had worked at the Galveston paper at
15 some point in the past, but I was an assistant city editor
16 at The Biloxi Sun Herald when she hired me.
17 Q. And did you ever have any position with The Daily
18 News, other than reporter?
19 A. No, ma'am.
20 Q. How would you describe your relationship with Lowe
21 Davis?
22 A. It was fine at first, and then it soured.
23 Q. And when did it sour?
24 A. It soured in '04. I believe early '04.
25 Q. Are you aware of what caused it to sour?

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1 A. Yes, ma'am.
2 Q. And what was that?
3 A. Lee Williams was on board at that time, and he
4 wrote a story about a contract that was let by the
5 government to a company called COMtek and I objected to the
6 story itself. High up in the story, it made some pretty,
7 you know, strong implications that I didn't believe were
8 supported further down in the story. And it referred back,
9 it said that this could draw some comparisons to the Global
10 Resources Management story.
11 And when we did that story, I wrote a memo to
12 Lowe saying that I thought that -- that that story needed to
13 have its, what was up high, stronger supported down low,
14 because this really jeopardized our credibility. And pretty
15 shortly thereafter, well, like a day after she received it,
16 I was disciplined.
17 Q. Did you think you warranted discipline?
18 A. Do I think I did?
19 Q. Yes.
20 A. Oh, absolutely not.
21 Q. What were you disciplined for?
22 A. I was told that I was -- my work performance was
23 flagging; and that I was trying to stab a colleague in the
24 back; and that I couldn't be trusted.
25 Q. Up until you complained about the COMtek story, or

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1 make observations about COMtek story, had you ever had any
2 indication that your work performance was flagging?
3 A. No, ma'am.
4 Q. And, factually, was your work performance
5 flagging?
6 A. No, ma'am.
7 Q. Had you stabbed Lee Williams in the back?
8 A. No, ma'am.
9 Q. Did you feel that the discipline was in
10 retaliation for observations of lack of journalistic ethics?
11 MR. RAMES: Object to form.
12 THE WITNESS: Yeah, I don't know if -- I
13 don't want to go as far as to say lack of journalistic
14 ethics. I thought it was -- I thought it was weak
15 reporting, and I think that that's what I was disciplined
16 for; was questioning what they were doing on St. Thomas and
17 criticizing them.
18 Q. (Ms. Rohn) Okay. Were you a friend of Lee
19 Williams?
20 A. I was friendly with him. You know, he was on St.
21 Thomas, I was on St. Croix. We didn't socialize.
22 Q. Okay. Did Lee Williams subsequently leave the
23 paper?
24 A. Yes, ma'am.
25 Q. Do you know why he left the paper?

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1 A. I do not. I think maybe I've heard some rumors,
2 but you don't even -- can't even tell you what the substance
3 of those is now.
4 Q. Did you ever have any disagreements with Lowe
5 Davis yourself?
6 A. Yes, ma'am.
7 Q. And what were the nature of those disagreements?
8 A. I think I just described it.
9 Q. That one?
10 A. Yeah.
11 Q. Any others?
12 A. No. I mean, nothing that's out of the -- it's a
13 collaborative relationship, reporter and editor, so you
14 don't always agree on everything, you know. So it's very
15 common to have, you know, day-to-day disagreements, but that
16 was the only one that was major.
17 Q. Did you ever have any disagreements with her about
18 changes that she made in your stories?
19 A. Well, in the Hansen case, when it turned out that
20 Esdel was not an owner, I wished we hadn't put that in the
21 story, but --
22 Q. Did you put it in or did she put it in?
23 A. She put it in.
24 Q. What is supposed to be the procedure that's
25 followed if an editor changes a reporter's story --

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1 A. Well, she --
2 Q. -- at The Daily News?
3 A. She called me and said that she wanted to put that
4 in, and I said, well, my reporting hasn't developed that.
5 And she said, well, mine has. So I said, Then, you know,
6 you're the boss. Then so she did. But, really, that's what
7 an editor should do, is if an editor is changing your story
8 substantively, he or she should call you and run it past
9 you, and she did that.
10 Q. Was that the procedure at The Daily News?
11 A. Well, you know, I mean, there's not a manual that
12 lays out how we do everything, but that would be -- that
13 would be normal operating procedure there, and at any other
14 paper.
15 Q. No, my question was in practice, --
16 A. In practice.
17 Q. -- did Ms. Davis call reporters when she was
18 changing the stories or did she not, or was she 50/50 or
19 what?
20 A. And I couldn't --
21 MR. RAMES: Object to form.
22 THE WITNESS: I couldn't answer that 50/50.
23 I'm sure it didn't happen every single time. I'd like to
24 think it happened the majority of the time. The only
25 person's stories I know about are my own. And I didn't --

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1 it didn't happen to me, you know. I had no big problems
2 with her that way.
3 Q. (Ms. Rohn) Were you aware of other reporters who
4 were complaining that Ms. Davis had changed their stories?
5 A. No, ma'am.
6 Q. Do you know about Mr. McDonald?
7 A. No. I barely knew Tim. I think he came shortly
8 before I left.
9 Q. Do you know Eunice Bedminister?
10 A. Yes.
11 Q. And how do you know Eunice Bedminister?
12 A. She was our bureau chief. She was my immediate
13 supervisor.
14 Q. How was your working relationship with her?
15 A. Great.
16 Q. Okay. Were you aware of any difficulties between
17 Ms. Bedminister and The Daily News?
18 A. Yes, ma'am.
19 Q. And what were you aware of?
20 A. General working condition things. You know,
21 expecting her to be at work well beyond -- well, well beyond
22 the 40-hour work week. Not being reasonable in those kinds
23 of demands was a problem that Eunice had.
24 Q. Okay. Did you ever discuss with her your problems
25 at The Daily News?

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1 A. Yes, ma'am.

2 Q. And what sorts of things did you discuss with her?

3 A. The whole scenario that I outlined to you a minute

4 ago, Eunice was aware of, as I was doing it.

5 Q. Ms. Badmister has given a deposition.

6 Were you and she friends?

7 A. Yes, ma'am.

8 Q. She stated at Page 8, there was a question, "Why

9 were you fed up?" Talking about why she was fed up with The

10 Daily News. And she said, "There were a lot of reporters,

11 there were a lot of folks that, in between the time that

12 Mr. Prosser took over, when we were -- when we were owned by

13 Gannet and Mr. Prosser took over, that were either let go,

14 quit, for a variety of reasons that they should not have

15 been let go or they should not have been put in a position

16 to be forced to quit."

17 Were you aware of that?

18 MR. RAMES: Object to form.

19 THE WITNESS: Yes, ma'am.

20 Q. (Ms. Rohn) Okay. And what reporters were you

21 aware of that were forced to quit?

22 A. Billy Shields. Nancy Cole.

23 Q. Nancy Cole?

24 A. Yeah. I wouldn't say -- forced to quit may be too

25 strong, but they became disillusioned and no longer wanted

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1 to work there.

2 Q. Anybody else?

3 A. Not that I can think of right now.

4 You have to remember that I was in the

5 St. Croix office, so I was isolated from most of the staff.

6 Q. Question and answer goes on, "And what do you mean

7 by that?"

8 And her answer is, "The most recent case was

9 Marty Schladen, for example. There's another reporter of

10 mine's name Nancy, but I can't remember her last name. And

11 they were -- I think they were contesting a story that was

12 written that they thought that put (Senator) -- Delegate

13 Christensen in a bad light, and I think he may have called

14 over to management and said --"

15 Do you recall having a conversation about a

16 story that put Donna Christensen in a bad light?

17 MR. RAMES: Object to form.

18 THE WITNESS: It's the same story. It's the

19 COMtek story. We didn't call; Nancy and I wrote a memo and

20 sent it over there.

21 Q. (Ms. Rohn) Okay. Going through her testimony

22 about you. She then goes on, Page 14, says, "Those were the

23 kind of letters that were going back and forth. So Isaac

24 Coursey, Carl Caesar, Marty. Nancy ... (wrote letters) or

25 may have signed the letter that Marty wrote saying that you

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1 put Delegate Green in a bad light, and that's what makes us

2 look bad because people think we're vindictive."

3 MR. RAMES: Object to form.

4 Q. (Ms. Rohn) Did you, indeed, put your name to a

5 letter that said that?

6 MR. RAMES: Object to form.

7 THE WITNESS: That's not what it said.

8 Q. (Ms. Rohn) Did you -- did you believe that the

9 COMtek story made it look like The Daily News was

10 vindictive?

11 A. No. I think it made us look like we didn't do the

12 kind of solid journalism that I aspire to.

13 Q. Was there more than one person -- was this in a

14 phone call or in writing?

15 A. Writing.

16 Q. And was there more than one person who signed this

17 letter?

18 A. I did, and Nancy Cole did.

19 Q. Did Isaac Coursey sign it?

20 A. No, not that I remember. I don't even know Isaac

21 Coursey. It may be somebody I've met and forgotten.

22 Q. Do you know Carl Caesar or Caesar?

23 A. No, ma'am. No, ma'am.

24 Q. Do you still have a copy of this letter?

25 A. No, ma'am.

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1 Q. Then she goes to say, "Nancy eventually wouldn't

2 take it. She quit. Marty stayed on for as long as he

3 could, and then he wanted -- he left, because he wanted to

4 file suit and he couldn't. I think he was told by his

5 lawyer that he couldn't do that."

6 Did you go to a lawyer to sue The Daily News?

7 A. Yes, ma'am.

8 Q. What lawyer did you go to?

9 A. Vince Colianni, Jr.

10 Q. And why did you go sue The Daily News?

11 A. Constructive discharge.

12 Q. And why didn't you sue them?

13 A. I did.

14 Q. Oh, sorry. Shouldn't assume anything.

15 A. That's okay.

16 Q. When did you sue them?

17 A. Would have been in '04. I forget the exact date.

18 Q. And what happened to that lawsuit?

19 A. As far as I know, it's languishing in the courts.

20 I tried to contact Colianni before I came down here and was

21 unsuccessful.

22 Q. Did you discuss settling that lawsuit as part of

23 your testimony?

24 A. No, ma'am.

25 Q. And she goes on to say, "He had planned on

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1 sticking it out no matter what they did to him."
 2 was that your plan before you quit?
 3 A. That was -- I was, I guess, groping for a plan,
 4 and that was one of the things that I discussed.
 5 Q. And why did you decide not to stick it out and to
 6 leave?
 7 A. Because of the advice that Colianni had given me.
 8 Q. Don't tell me the advice of your lawyer.
 9 A. Okay.
 10 Q. It's kind of confidential between the two of you.
 11 A. Okay. Well, yeah, there's this idea that you
 12 can't sue for constructive discharge if you're still working
 13 and the situation had become intolerable. They had taken
 14 all my big stories away from me and given them to Lee
 15 Williams and had me writing stuff that a rookie reporter
 16 would be doing.
 17 Q. Did they eventually do the same thing to Lee
 18 Williams?
 19 A. I don't know. I was gone by then.
 20 I recall hearing that he left and there was
 21 some bad blood, but I don't know what happened.
 22 Q. Do you know Perry Brothers?
 23 A. The name rings a bell, but I don't know if I ever
 24 met that individual or not.
 25 Q. Do you know Karen Goodlaw?

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1 A. No, ma'am.
 2 Q. Derek Phipps?
 3 A. No.
 4 Q. Nicole Bollatini?
 5 A. No, ma'am.
 6 Q. Gary McCracken?
 7 A. That name sounds a lot more familiar than any of
 8 the others that you've read, but I don't remember him.
 9 Q. Okay. Were there persons -- Ms. Eunice
 10 Bedminster has defended under oath that there were persons
 11 at The Daily News who were what she called *persona non*
 12 *grata*, people that The Daily News didn't like.
 13 Are you aware of that?
 14 MR. RAMES: Object to form.
 15 THE WITNESS: You mean people that we
 16 covered?
 17 Q. (Ms. Rohn) Yes.
 18 A. No, I was not. I'm not aware of that.
 19 Q. You never heard anyone make negative comments
 20 about anyone that you covered?
 21 A. I'm sure there were negative comments. That
 22 happens in every newsroom, but there was no hit list or
 23 anything like that.
 24 Q. Any of the stories that you wrote covering the
 25 senate, were any of those changed concerning Senator

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1 Donastorg?
 2 A. Not to my recollection.
 3 Q. Well, were you aware that Senator Donastorg was
 4 adverse to VITELCO and ICC?
 5 A. Yes, ma'am.
 6 Q. And how were you aware of that?
 7 A. He told me. You know, he felt that VITELCO and
 8 ICC had outsized power in the territory. And that The Daily
 9 News was an organ for which they maintained that power.
 10 Q. Did you disagree with him?
 11 A. Yes, yes.
 12 Q. Did you -- in fact, were there a number of stories
 13 about Senate Donastorg's efforts to reign in VITELCO and
 14 ICC?
 15 MR. RAMES: Object to form.
 16 THE WITNESS: I have some recollection of
 17 those stories, but one of the things that you have to
 18 remember is, this was thousands of news stories ago for me.
 19 Q. (Ms. Rohn) Okay. Were you aware of Mr. Prosser's
 20 involvement in the paper?
 21 A. That he owned it, yes, ma'am.
 22 Q. Were you aware of any influence he had over
 23 anything that was printed in the paper?
 24 A. No, ma'am. As far as his -- any involvement in
 25 day-to-day newspaper operations, I never had any evidence of

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1 that.
 2 Q. The editorials in the paper, did you know how they
 3 were selected?
 4 A. I thought that Ariel Meichior wrote those.
 5 Q. Well, Mr. Ariel Meichior has been deposed before
 6 he died and has verified that he, once Prosser took over the
 7 paper, he never wrote any editorials.
 8 A. He didn't? His name was on the editorial page.
 9 MR. RAMES: Object to form.
 10 Q. (Ms. Rohn) Sure was, wasn't it?
 11 A. Yeah.
 12 Q. Do you know a guy by the name of Ed Crouch?
 13 A. Yes, ma'am.
 14 Q. Were you aware of what his participation was in
 15 the editorials?
 16 A. No, not really. Once again, I was on St. Croix
 17 and all this stuff happened across all those miles of water,
 18 so I wasn't -- I wasn't involved.
 19 Q. Do you -- were you aware of -- that Jeffrey
 20 Prosser was sending editorials to the paper to be published?
 21 A. I was not. And if I had been, I would have been
 22 very disturbed.
 23 Q. And why is that?
 24 A. Because he does have a hand in all these other
 25 companies.

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1 Q. Do you recall the story called "Prosser Bails Out
2 the Virgin Islands"?

3 A. Yes, ma'am.

4 Q. Do you know who wrote that?

5 A. I do not. It was written before I got here, and
6 Eunice showed it to me one day.

7 Q. Eunice inform you that Mr. Prosser participated in
8 that story being -- appearing in The Daily News?

9 A. No, ma'am.

10 Q. Why did she show you that particular story?

11 A. Because we were talking about -- I had gotten
12 assurances when I took this -- before I took this job that,
13 you know, Prosser was a controversial figure in the Virgin
14 Islands, but the paper had editorial independence, and that
15 Lowe said it was in her contract. And I had brought that up
16 to Eunice, and this is when things had started to go south
17 after Lee Williams had gotten here, as I remember. And
18 Eunice dug out that story and showed it to me and -- as
19 evidence that perhaps the paper is not as agnostic when it
20 comes to the subject of Jeff Prosser as it might be.

21 Q. Based upon your training, when you're doing an
22 investigative story, or any kind of, really, story, what are
23 you supposed to do to check your facts?

24 A. Well, first thing you want to do is, if there are
25 any people who are directly involved in that story, you

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1 should call them and run it by them and get their -- their
2 version of it.

3 Then beyond that, it depends on the nature of
4 the story. If they're relevant government records, those
5 are good things. Court records are like gold. You know, so
6 it depends, case to case. You want to do what you can
7 within the time limits that you're faced with to corroborate
8 the information you're getting ready to print.

9 Q. Well, what is more important, an accurate story or
10 a timeline?

11 A. It's a balancing act. They're both important.

12 Q. Well, I take it investigative pieces are less time
13 sensitive than news stories; is that true?

14 MR. RAMES: Object to form.

15 THE WITNESS: Well, that's not always true.
16 Sometimes what you want to do is, if you've got a story
17 that's a really powerful story, you want to publish pretty
18 quickly, because -- especially when you're writing about
19 people with a lot of influence and a lot of money, they work
20 behind the scenes to kill the story before it even makes it
21 into print, and that's happened to me more than once.

22 Q. (Ms. Rohn) Really? In the Virgin Islands?

23 A. No, ma'am.

24 Q. What do you know as far as your training as to the
25 requirement of fact checking?

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1 MR. RAMES: Object to form.

2 THE WITNESS: You want the story to be as --
3 you want it to be completely accurate.

4 Q. (Ms. Rohn) And what are you supposed to do to fact
5 check?

6 A. You want to -- to the extent possible, you want
7 to, if you make a statement of fact, particularly a
8 sensitive one, you want to doublecheck that it's correct.

9 Q. And how would you go about doing that?

10 A. Well, for example, in El Paso right now, we've got
11 a big utility controversy brewing, and so in the midst --
12 there's -- the government had to take several days off
13 because utilities were asking them to a couple of weeks ago.
14 And so before I printed that, they took all three days off
15 because the utilities asked them, I called to ask, so all
16 three of these days or did you call off one because of the
17 weather? And the answer I got back was, No, we called off
18 two hours because of the weather. Those are the sorts of
19 things you go back in fine grain detail.

20 Q. Okay. Now, do you -- from your training, does an
21 editor of a story also have responsibility to make sure that
22 items in the story have been fact checked?

23 A. Yes, but -- you know, I have been an editor, and
24 when you're dealing with multiple stories, one of the things
25 you want to do is rely on your reporter's competence that

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1 the stories they're turning in are accurate.

2 Q. So you don't fact check as an editor?

3 A. You can, but you don't -- you're under completely
4 different time constraints. And the presumption, when a
5 reporter turns in a story, is that that information in it is
6 correct.

7 Q. I'd like to show you Exhibit 300.
8 (Deposition Exhibit No. 300 was
9 marked for identification.)
10 This was produced in the Hansen case as the
11 policy concerning stories printed by The Daily News as
12 produced in 2004.

13 Have you ever seen this document before?

14 A. Not that I recall.

15 Q. Have you ever been -- this ever been explained to
16 you in substance?

17 A. Not that I recall.

18 Q. Do you know "Dyke" Redfield?

19 A. Please say the name again.

20 Q. Holland Redfield.

21 A. Oh, yes.

22 Q. How do you know him?

23 A. Through my work at The Daily News, and I had
24 reason to talk to him on several occasions.

25 Q. And what were those reasons to talk to him?

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- 1 A. To tell you the truth, I don't remember anymore,
2 but I can remember standing in his office talking to him.
3 Q. Where was his office when you talked to him?
4 A. I believe in St. Croix, in Sunny Isle.
5 Q. And was that the ICC office, VITELCO office?
6 A. It was in that building, but I don't know which
7 particular company.
8 Q. What sorts of things did you discuss with him?
9 A. I do not recall. I know one thing I do recall
10 talking to him about was, he had just gone -- he was
11 friendly with Andrew Card, who was then President Bush's
12 chief of staff, and he was telling me, you know, stories
13 from the Oval Office.
14 Q. Did you contact him when you had stories about
15 VITELCO?
16 A. No, ma'am.
17 Q. Have you ever discussed Senator Donastorg with
18 him?
19 A. No, ma'am, not that I recall.
20 Q. Do you know Oakland Benta?
21 A. Yes, ma'am.
22 Q. Excuse me. I have a cold.
23 How do you know Oakland Benta?
24 A. If it's the same individual, and I believe it is,
25 Senator Hansen, I did a story about some academic

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- 1 credentials that was put on her resume, and it turned out
2 that they came from an institution that was accredited by
3 the Liberian Education Ministries, and she got a bachelor's
4 and master's on the same day, and we were trying to give
5 her -- you know, get her side of the story and she wouldn't
6 return phone calls. This was during the -- the election
7 campaign when she was running against Governor Turnbull.
8 And she was having a rally outside of Frederiksted one
9 Friday night, and Jason wanted me to try and interview her
10 there. And they sent Oakland Benta with me as kind of a
11 bodyguard, which, at the time I didn't think that was
12 necessary, but at least I got to know him.
13 Q. Who did you understand he worked for?
14 A. ICC.
15 Q. Were you ever aware that Senator Donastorg had
16 been investigated by ICC or its related companies?
17 A. I recall something about them hiring a private
18 investigator.
19 Q. How do you learn that?
20 A. Oh, through the grapevine. Possibly from Eunice.
21 Q. And what did you learn about that?
22 A. Oh, that they had hired a private investigator to
23 check out -- check "Fonsie" out, which struck me as being
24 kind of politically foolish. You know, I don't know what
25 they expected to find out.

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- 1 Q. Did you ever see any of the documents from the
2 investigation?
3 A. No, ma'am.
4 Q. Were you ever informed of the results of the
5 investigation?
6 A. No, ma'am.
7 Q. Do you know who had paid for the investigation?
8 A. Well, my understanding was ICC.
9 Q. Were you ever aware that The Daily News had had --
10 excuse me, ICC or its related companies had had the
11 consultant to the PSC investigate it?
12 MR. RAMES: Object to form.
13 THE WITNESS: The Public Service Commission?
14 And the consultant, who would that individual have been?
15 Q. (Ms. Rohn) That would have been Mr. Rice from a
16 consulting group that was determining whether or not VITELCO
17 could raise its rates or not.
18 MR. RAMES: Object to form.
19 THE WITNESS: I was not aware. I was not
20 aware of that.
21 Q. (Ms. Rohn) Were you ever aware that ICC or its
22 related companies had Lori Gilmore and Beryl Faulkner
23 investigated, because they made complaints against VITELCO?
24 MR. RAMES: Object to form.
25 THE WITNESS: No, ma'am.

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- 1 Q. (Ms. Rohn) Were you aware that The Daily News had
2 referred to Senator Donastorg as a "rogue"?
3 A. No, ma'am.
4 Q. During the entire time that you worked there, you
5 never heard him referred to in that name?
6 A. No, ma'am, not that I recall.
7 Q. Did you ever hear either -- well, did you ever
8 hear Lowe Davis make any negative comments about Senator
9 Donastorg?
10 A. No, not that I remember.
11 Q. Or hear Jason Robbins make any negative statement
12 about him?
13 A. No, ma'am.
14 (Respite.)
15 There is a letter I'll give you, Exhibit 56.
16 (Deposition Exhibit No. 56 was
17 marked for identification.)
18 First of all, have you ever seen this letter
19 before?
20 A. No, ma'am. This would have been after -- oh, no,
21 no, this was before I got to The Daily News.
22 Q. If you go to the second page, and it's about 1, 2,
23 3, 4, 5, 6 paragraphs down, it says, "Our News staff is even
24 careful to avoid voicing opinions in public or in the
25 newsroom about any person or topics they cover."

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1 Were you ever aware that was a requirement at
2 The Daily News?

3 MR. RAMES: Object to form.

4 THE WITNESS: That's typical in every
5 newsroom, you know, you're a human being, too, so you're
6 allowed to have opinions, but if they're about people you
7 cover, you really need to keep them to yourself. I mean,
8 you talk -- you talk more frankly with your colleagues than
9 you do members of the general public, but you always have to
10 have in mind that, you know, your credibilities can be
11 affected if you go out there and think, oh, I think
12 so-and-so is a real idiot.

13 Q. (Ms. Rohn) And if you'll go to the last page, the
14 third paragraph, "Sometimes we don't run a story that has
15 checked out. Why not? Because we don't run stories that do
16 not serve the general public interest."

17 Is that a policy at The Daily News?

18 A. Yeah, I think that's unremarkable. I don't know
19 if I'd write it like this. Sometimes we don't run stories
20 because they're just dull.

21 Q. Says, "Some people would argue that it's a big
22 story if we find out a public official has been hit with a
23 complaint about failure to pay alimony or child support. I,
24 however, tend to think this is more a private matter and
25 should not become a story in our newspaper unless it

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1 develops into something of much greater general public
2 concern, such as ability to handle the public's money."

3 Is that a policy at The Daily News?

4 A. If it was, I was unaware of it, and I would have
5 objected to it.

6 Q. And why is that?

7 A. Because I think if somebody is running for
8 elective office or in another position of high public
9 responsibility, whether or not they're meeting their
10 obligations as a parent goes to whether -- it could be --
11 indicate whether or not they're responsible people.

12 Q. Okay. Exhibit 60.

13 (Deposition Exhibit No. 60 was
14 marked for identification.)

15 This is a press release from ICC.

16 First of all, did you get press releases from
17 ICC while you were a reporter?

18 A. I'm sure I did, but I don't have a specific memory
19 of it. Again, I get press releases, numerous press releases
20 every day.

21 Q. Okay. Well, I'm just really focusing on ICC.

22 A. Yes.

23 Q. Whether or not ICC would give press releases to
24 The Daily News?

25 A. I'm sure we did. I'm sure we did get them.

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1 Q. This press release references the fact that
2 Senator Donastory was going to be suing The Daily News for
3 investigating him. And ICC's response is, "Is this for
4 real?"

5 Do you think that a newspaper has a right to
6 investigate? Hire investigators and try to dig up dirt on
7 persons in the community?

8 MR. RAMES: Object to form.

9 THE WITNESS: I believe it's their right, I
10 suppose, the same as it's anybody's right to hire a private
11 investigator. But, I think that, you know, I mean, we
12 should do our own investigating, and it should be not
13 digging dirt, as you say, it should be looking for things
14 that might relate to the person's fitness to do their job.

15 Q. (Ms. Rohn) In your experience as a reporter, do
16 you think whether or not someone is behind -- a senator who
17 is behind on his mortgage payments is newsworthy?

18 A. I would need more context, but potentially. I
19 have written about how a city councilman was behind on his
20 taxes, and, you know, the rational being that here he is,
21 sitting on city council, spending everybody else's taxes,
22 tax money, you know, but he's behind on his own.

23 Q. It would be a little different than whether or not
24 he's making mortgage payments?

25 A. It would be a little different, and that's why --

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1 MR. RAMES: Object to form.

2 THE WITNESS: Sorry.

3 MR. RAMES: Please go ahead.

4 THE WITNESS: It would be a little different,
5 so you would have to look at these on a case-by-case basis.

6 Q. (Ms. Rohn) Have you ever done a story concerning
7 someone not making mortgage payments?

8 A. Well, yeah, I was the business reporter for The
9 Fort Wayne Journal Gazette and -- during the whole mortgage
10 meltdown, and I was writing about, you know, massive
11 foreclosures and all the pain that was associated with that
12 in September-November of 2008.

13 Q. That's not exactly the same thing, is it?

14 MR. RAMES: Object to form.

15 THE WITNESS: Well, it's people not making --
16 not being able to make their mortgage payments.

17 Q. (Ms. Rohn) Now, I'd like to show you Exhibit 61.

18 MR. EDGARD: Do you want him to have the
19 sticker?

20 MS. ROHN: Yeah.

21 (Deposition Exhibit No. 61 was
22 marked for identification.)

23 Q. (Ms. Rohn) Look at the bottom story, "Sen.
24 Donastory and (his) wife face foreclosure on their Wintberg
25 home."

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1 Do you recall seeing this when it came out?

2 A. This, I think, was before I got to The Daily News.

3 Q. Generally, if you're going to do a story that you

4 picked up from the courthouse that a foreclosure action had

5 been filed, as a journalist, what sorts of things should you

6 do before you printed such a story?

7 MR. RAMES: Object to form.

8 THE WITNESS: You'd call, in this case,

9 Senator Donastorg.

10 Q. (Ms. Rohn) Call Senator Donastorg.

11 would you call the bank to find out the

12 nature of it?

13 A. Chances are you would.

14 Q. The opening lead on this story is, "A St. Thomas

15 senator may find himself looking for a new place to live if

16 he cannot pay off the mortgage on his Wintberg home."

17 Is that the type of lead story line that you

18 would write to -- a story about someone having a foreclosure

19 action --

20 MR. RAMES: Object to form.

21 Q. (Ms. Rohn) -- filed against them?

22 A. Possibly.

23 Q. That just because a foreclosure action had been

24 filed, you immediately assume that the entire mortgage had

25 to be paid off, and you would immediately assume that they

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1 would be looking for a house?

2 MR. RAMES: Object to form.

3 THE WITNESS: It depends on what sort of

4 demand he had made on him by the bank. If they -- I mean,

5 isn't it possible they said -- gave him a notice of default

6 and say, You got to pay this loan or we're going to

7 foreclose on your house?

8 Q. (Ms. Rohn) Well, in the fourth column, last

9 paragraph, "It's being taken care of," Sen. Donastorg

10 said. 'The bank dropped the ball. I don't understand why

11 this is a major issue.'"

12 If that is the statement made by the person

13 who was supposedly in foreclosure, would you agree with me

14 that the opening sentence that he may be "looking for a new

15 place to live," and have to pay the full mortgage, was not

16 in balance with the rest of the story?

17 MR. RAMES: Object to form.

18 THE WITNESS: I'd need to read the rest of

19 the story.

20 Q. (Ms. Rohn) Go ahead.

21 A. And I'd need -- I mean, I would want to see what

22 else Billy was looking at when he wrote this story.

23 (Witness reads document.)

24 And the bank would not comment.

25 Q. Mr. Donastorg says that this is a mistake. I've

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1 paid this off. The bank doesn't comment, and the lead line

2 is, he's going to be looking for a new place to live. Do

3 you think that's balanced?

4 MR. RAMES: Object to form.

5 THE WITNESS: Well, it doesn't say that. It

6 says that he may be looking for a new place to live.

7 Q. (Ms. Rohn) Do you know whether or not Mr. Shields

8 wrote this, or whether or not this was edited by Lowe Davis?

9 MR. RAMES: Object to form.

10 THE WITNESS: I have no idea. Sorry, Kevin.

11 MR. RAMES: Quite all right.

12 Q. (Ms. Rohn) So you, as a journalist, think that's a

13 balanced story?

14 MR. RAMES: Object to form.

15 THE WITNESS: I would need to read the bank

16 documents that Billy was looking at, but we had a -- an El

17 Paso city councilman who got caught for the second time

18 driving without a driver's license. And this was this

19 summer, and every time I called him up, he said, this is

20 being taken care of. This is being taken care of. And a

21 month later, I check with DPS, he still doesn't have a

22 driver's license.

23 You know, when a public official makes a --

24 makes a statement, we need to greet that with healthy

25 skepticism.

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1 Q. (Ms. Rohn) Exhibit 63.

2 (Deposition Exhibit No. 63 was

3 marked for identification.)

4 Have you ever seen this editorial before?

5 A. Once again, I think this was before I started.

6 Q. Do you think that because a bank files a

7 foreclosure action against you, that that, as a reporter,

8 that automatically means you actually owe the money, or that

9 it would be in dispute?

10 MR. RAMES: Object to form.

11 THE WITNESS: No, ma'am, I don't think it

12 automatically means that.

13 Q. (Ms. Rohn) This editorial says, "Clearly, many

14 V.I. senators can't even manage their own money, how can we

15 expect them to know how to manage taxpayers' money?"

16 Do you think the fact that a bank files a

17 foreclosure action, means that somebody can't manage their

18 money?

19 MR. RAMES: Object to form.

20 THE WITNESS: It certainly can mean that.

21 Q. (Ms. Rohn) Well, aren't those allegations, sir,

22 that are not facts? They're just what one side said versus

23 what another side says?

24 MR. RAMES: Object to form.

25 THE WITNESS: Well, that these -- this

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1 foreclosure notice was filed is a fact.
 2 Q. (Ms. ROHN) No. Is a fact that the bank claims
 3 something that has not yet been proved; isn't that true?
 4 A. Sure.
 5 (Deposition Exhibit No. 84 was
 6 marked for identification.)
 7 Q. Exhibit 84, have you ever seen this editorial from
 8 March 1st, 2004?
 9 A. Can you give me a second to look at it?
 10 Q. Sure.
 11 A. (Witness reviews document.) No, I haven't seen
 12 this before.
 13 Q. You never read it at or near the time it came out?
 14 A. No.
 15 Q. Did you read the editorials at *The Daily News* when
 16 you worked there?
 17 A. As a general matter of policy, I tend to avoid the
 18 editorials at every paper I worked for. I read them from
 19 time to time, but I don't read them regularly.
 20 Q. Have you talked to Senator Donastorg since you
 21 left the Virgin Islands?
 22 A. No, ma'am.
 23 Q. How often would you speak to him when you were
 24 here?
 25 A. The senate would meet on St. Croix, how often, you

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1 know, once, twice a month; is that right? So, you know, I
 2 probably spoke to him one out of every three senate
 3 meetings, maybe, you know.
 4 Q. Were you friends?
 5 A. We were friendly. I -- politicians and I can't
 6 really be friends.
 7 Q. Why is that?
 8 A. Because I have to have -- I have to have some
 9 objective distance.
 10 Q. Have you seen Eunice since you have been here?
 11 A. No, ma'am. Wondered how she's doing.
 12 MS. ROHN: I have no further questions.
 13 MR. RAMES: Nothing for this witness.
 14 MR. ECKARD: Nothing from me.
 15
 16
 17
 18
 19 (Whereupon the deposition concluded
 20 at 2:02 p.m.)
 21
 22
 23
 24
 25

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CERTIFICATE

C-E-R-T-I-F-I-C-A-T-E

I, SUSAN C. NISSMAN, a Registered Merit Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, MARTY SCHLADEN, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness to the oral interrogatories propounded by counsel were taken by me in Stenotype and thereafter reduced to typewriting under my personal direction and supervision.

I further certify that the facts stated in the caption hereto are true; and that all of the proceedings in the course of the hearing of said deposition are correctly and accurately set forth herein.

I further certify that I am not counsel, attorney or relative of either party, nor financially or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand as such Registered Merit Reporter on this the 24th day of February, 2011, at Christiansted, St. Croix, United States Virgin Islands.

My Commission Expires: June 8, 2011
 Susan C. Nissman, RPR-RMR
 NP-145-07

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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Senator Adlah Donastory, Jr., Benedicta Donastory, Adlah Donastory, Senior, Josephina Donastory, Ella Moran, and Norma Duran,)	
)	CIVIL NO.
Plaintiffs,)	117/2002
)	PAGES 1-218
vs.)	
DAILY NEWS PUBLISHING COMPANY, INC., INNOVATIVE COMMUNICATION CORP., JEFFREY PROSSER, LOWE DAVIS, HOLLAND "DIXIE" REDFIELD, and VITELCO,)	
Defendants.)	

APPEARANCES:

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DEPOSITION OF JASON ROBBINS

Date: Tuesday, September 14, 2010
Time: 9:28 a.m.
Location: Rohn and Carpenter
1217 Bjerge Gade
St. Thomas, Virgin Islands
Reported by: N. Antoinette Cerge
RFR-National/CSR-California
Realtime Writer/Notary Public

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1 ST. THOMAS, VIRGIN ISLANDS; TUESDAY, SEPT. 14, 2010

2 11:07 A.M.

3 -000-

4 JASON ROBBINS,

5 having been first duly sworn,

6 was examined and testified as follows:

7 EXAMINATION

8 BY MS. ROHN:

9 Q State your name for the record, please.

10 A Jason Robbins.

11 Q And Mr. Robbins, where do you reside?

12 A St. Thomas.

13 Q Where in St. Thomas?

14 A Estate St. Peter.

15 Q Your address, sir?

16 A 31-20 Hibiscus Lane.

17 Q And how long have you lived there?

18 A About eight years.

19 Q Do you live there with anyone?

20 A There is no one else in that same

21 residence; there are other people in the building.

22 Q Prior to that, where did you live?

23 A Mountain Top Condos on St. Thomas.

24 Q Are you presently employed?

25 A Yes.

1 Q Where?

2 A Daily News Publishing Company.

3 Q What's your current position?

4 A My title is Publisher.

5 Q When did you become Publisher?

6 A I was assigned that title in August 2008.

7 Q How long have you worked for

8 The Daily News?

9 A Eleven-and-a-half years.

10 Q When you were first employed, what was

11 your position?

12 A Assistant Managing Editor.

13 Q And how long did you hold that position?

14 A I can't immediately recall.

15 Q Approximately?

16 A A year or two.

17 Q And who did you report to?

18 A I'm sorry, you said do or did?

19 Q Who did you report to?

20 A J. Lowe Davis.

21 Q And what was her title at that time?

22 A Executive Editor.

23 Q And what was the next position you held?

24 A Deputy Executive Editor.

25 Q Who did you report to?

1 A Ms. Davis.

2 Q How long did you have that position?

3 A I don't immediately recall, but it was

4 approximately a year.

5 Q And then your next position?

6 A Retained the title Deputy Executive Editor

7 and added the title Chief Operating Officer -- I'm

8 sorry -- added the title Deputy Chief Executive

9 Officer.

10 Q What did you do as a Deputy Chief

11 Executive Officer?

12 A Responsible for day-to-day operations,

13 oversight and specific project management for the

14 business side of the newspaper.

15 Q Did you continue to report to Ms. Davis?

16 A Yes.

17 Q How long did you hold that position?

18 A I believe I carried that title for two

19 years.

20 Q What was your next position?

21 A Retained the title Deputy Executive

22 Editor, and acquired the title of Chief Operating

23 Officer concurrently with what that.

24 Q To what?

25 A Currently with that.

1 Q Did you continue to report to Ms. Davis?
 2 A Yes.
 3 Q What did you do as Chief Operating
 4 Officer?
 5 A Much of the same duties but with
 6 additional responsibility for bottom line revenue.
 7 Q How long did you hold that position?
 8 A About three years.
 9 Q And what was your next position?
 10 A My next title was Executive Editor and
 11 Chief Executive Officer.
 12 Q What did you do as Chief Executive
 13 Officer?
 14 A I was responsible for all company
 15 operations and financial performance.
 16 Q How long did you hold that position?
 17 A In effect, it is the same position I hold
 18 now, acquired a different title in 2008. But in
 19 regard to the Chief Executive responsibilities,
 20 those remain the same.
 21 Q So are you still called CEO or are you
 22 Publisher now?
 23 A My title now is Publisher.
 24 Q And can you tell me precisely what your
 25 duties are as Publisher?

1 Q Is there any particular person who's a
 2 liaison between Times-Shamrock and The Daily News?
 3 A My direct report is Mr. George Lynett,
 4 Junior.
 5 Q And where is he out of?
 6 A I'm sorry, I can't quite hear you.
 7 Q Where is he located?
 8 A Scranton, Pennsylvania.
 9 Q And how often do you do direct reports to
 10 him?
 11 A I communicate with him quite frequently.
 12 Q Daily? Weekly?
 13 A It depends.
 14 Q Well, average-wise, how often do you
 15 communicate with him?
 16 A Several times a week, a few times a week.
 17 Q When Times-Shamrock purchased
 18 The Daily News, were there disclosures made to them
 19 as to pending litigation?
 20 A Can you clarify the context of that? Are
 21 you talking about at the point of purchase or --
 22 Q At any time --
 23 A -- as part of the purchase process?
 24 Q At any time prior to purchase.
 25 A Pending litigation was a part of the

1 A I'm responsible for all company operations
 2 and financial performance.
 3 Q And who do you report to?
 4 A Times-Shamrock Communications Executive.
 5 Q I'm sorry?
 6 A Times-Shamrock Communications Executive
 7 Board.
 8 Q "Executive" what?
 9 A Executive Board.
 10 Q And who makes up that Board?
 11 A The Chief Executive Officers of
 12 Times-Shamrock Communications.
 13 Q Who are?
 14 A William Lynett.
 15 Q Lynett? Can you spell it for me?
 16 A L-y-n-e-t-t.
 17 Q Uh-huh.
 18 A W. Scott Lynett.
 19 Q Uh-huh.
 20 A Matthew Heggerty.
 21 Q Uh-huh.
 22 A Robert Lynett.
 23 Q Uh-huh.
 24 A George Lynett, Junior.
 25 That's all.

1 presentation to all potential buyers of the company.
 2 Q And how was that information as to pending
 3 litigation conveyed?
 4 A I believe it was conveyed both verbally
 5 and in writing.
 6 Q What type of a document was it conveyed in
 7 writing?
 8 A I don't have the complete file, so I can't
 9 answer that comprehensively.
 10 Q Well, was there a purchase offer or
 11 something that included your pending litigation?
 12 A I'm not sure how you would define
 13 "purchase offer," but I can finish my answer.
 14 Q Sorry. I didn't mean to interrupt you.
 15 A -- and say there was a list of pending
 16 cases with the status of the case.
 17 Q Was there an evaluation as to the
 18 potential liability of that case?
 19 A Not that I recall.
 20 Q Did you have verbal communications about
 21 pending litigation?
 22 A I had verbal communications or made verbal
 23 presentation about the fact that there was pending
 24 litigation but not discussion about the litigation
 25 in specific.

1 Q So, generally, you notified them there was
2 pending litigation but were not specific, or was not
3 specific about which cases and what they regarded?

4 A Are you asking me personally or are you
5 asking The Daily News?

6 Q Did you do this in your capacity as an
7 officer of The Daily News?

8 A The substance of communications about
9 pending litigation were primarily handled by the
10 Innovative Communication Corporation Bankruptcy
11 Trustee and his staff, so I know that communications
12 occurred; I don't know the substance of most of
13 those; I wasn't present for them.

14 Q Were you asked by the Trustee -- was the
15 Daily News asked by the Trustee to provide
16 information as to pending litigation?

17 A Daily News was asked to arrange for its
18 counsel to provide a matrix of active cases in which
19 The Daily News is a party. That is the extent of
20 written communication that I'm familiar with,
21 directly, I should say.

22 Q Since the takeover by Times-Shamrock, have
23 you had any evaluations?

24 A Me, personally?

25 Q Yes.

1 A No.

2 Q What did you do to prepare to be the
3 30(b) (6) Witness today?

4 A Reviewed the 30(b) (6) Summons, the
5 material that was referenced there, the material in
6 the case file.

7 Q Anything else?

8 A Not that I recall.

9 Q Okay. Well, what material in the case
10 file?

11 A The filings between the parties or by the
12 respective parties.

13 Q When you say "filings," are you talking
14 about court filings?

15 A Yes.

16 Q Did you review any of the articles that
17 are subject to this cause of action?

18 A The articles that were cited in the
19 filings.

20 Q Any editorials?

21 A There were editorials among those.

22 Q Did you speak to Ed Crouch --

23 A No.

24 Q -- about the editorials?

25 A No, I did not.

1 A No.

2 Q Have you done any evaluations of the
3 employees of The Daily News?

4 A Times-Shamrock? No.

5 Q Yes.

6 What type of management control does
7 Times-Shamrock exercise over The Daily News?

8 MR. RAMSES: Object to form.

9 You can go ahead.

10 THE DEPARTMENT: Times-Shamrock requires
11 close communication about financial performance.
12 Local operational management is left to the
13 Daily News Publishing Company and its managers and
14 staff.

15 BY MS. ROHN:

16 Q Are there written reports that are made
17 between The Daily News and Times-Shamrock?

18 A Can you specify what type of report?

19 Q Any kind of written report that's done on
20 a regular basis.

21 A There are only financial summary, just
22 data files transported back and forth.

23 Q Does the Times-Shamrock Board review any
24 articles or editorials of The Daily News prior to
25 publication?

1 Q Why not?

2 A I have no means of communicating with
3 Mr. Crouch.

4 Q Well, let's see here. Mr. Crouch used to
5 be on the Editorial Board; is that correct? -- of
6 The Daily News?

7 A To my recollection, his name was listed
8 under a heading "Editorial Board" for several years.

9 Q All right. And you never learned of his
10 phone number during that entire time?

11 A To the extent that I ever had a phone
12 number for Mr. Crouch, I recollect trying to dial it
13 years ago and it was no longer active.

14 Q Did you inquire of anyone as to how to get
15 in touch with Mr. Crouch?

16 A No.

17 Q Why not?

18 A Why should I?

19 Q So you'd be prepared to answer questions
20 today.

21 A I'm prepared to --

22 MR. RAMSES: Object to the form.

23 THE DEPARTMENT: -- answer questions today.

24 BY MS. ROHN:

25 Q Did you make an effort to contact any of

1 the reporters on any of the news stories?
 2 A No.
 3 Q Why not?
 4 A I did not see a pressing need to do so.
 5 Q Did you make any effort to determine who
 6 had edited the news stories that are the subject of
 7 this litigation?
 8 A I was familiar with who had done the
 9 editing of the stories.
 10 Q And how were you familiar with that?
 11 A From personal experience.
 12 Q And who was responsible for the editing of
 13 those stories?
 14 A Which stories?
 15 Q The ones that are the subject of this
 16 litigation that you already said you know who the
 17 editor was.
 18 MR. RAMES: Object to the form.
 19 THE DEPENDENT: There's 20 stories in that
 20 stack, and there's different editors for every
 21 story, and there are editorials in there that were
 22 not edited by The Daily News.
 23 BY MS. ROHN:
 24 Q Sir, I didn't ask you about the
 25 editorials, I asked you about the news stories.

1 Q Did you meet with counsel before your
 2 deposition?
 3 A Yes.
 4 Q And when did you first meet with him about
 5 preparing for your deposition?
 6 A Saturday.
 7 Q Where was the meeting?
 8 A In my office -- actually, it was in my
 9 conference room.
 10 Q And was anyone else present besides
 11 yourself?
 12 A Ms. Davis.
 13 Q Anyone else?
 14 A No.
 15 Q How long did the meeting take place?
 16 A I don't specifically recall.
 17 Q Approximately?
 18 A A couple of hours.
 19 Q What is Ms. Davis' current position, if
 20 any, with The Daily News?
 21 A Ms. Davis is the Executive Director of
 22 The Virgin Islands Daily News.
 23 Q And how long has she held that position?
 24 A She has held that title currently since
 25 August 2008.

1 MR. RAMES: Object to form.
 2 THE DEPENDENT: No. You asked me about the
 3 articles, and that includes both news stories and
 4 editorials.
 5 And if you want to quibble with me about
 6 nomenclature, we can.
 7 BY MS. ROHN:
 8 Q No problem, sir.
 9 Your attitude is duly noted.
 10 MR. RAMES: Object to form.
 11 THE DEPENDENT: As is yours.
 12 MR. RAMES: There's no expression of
 13 attitude here.
 14 BY MS. ROHN:
 15 Q News stories is the subject of my inquiry,
 16 sir.
 17 A That wasn't clear before, but I understand
 18 it now.
 19 Q Did you make any effort to find out who
 20 edited those news stories?
 21 A As I said earlier, I did not need to make
 22 an effort, I knew who was responsible for the
 23 editing of those stories.
 24 Q Who was it?
 25 A Ms. Davis.

1 Q And who does she report to?
 2 A Me.
 3 Q Who also is on the Editorial Board
 4 currently -- since 2008, who else has been on the
 5 Editorial Board for the Daily News?
 6 A Since 2008, the Editorial Board is
 7 comprised of myself, Ms. Davis, Kevin Downey,
 8 Alfred Loiten, Kenny Ryan.
 9 Q Kevin -- I'm sorry. Kevin Downing?
 10 A Downey.
 11 Q Downey.
 12 And who else?
 13 A Kenny Ryan, Alfred Loiten.
 14 Q Can you say his last name again?
 15 A Loiten.
 16 Q L-o-y-t-o-n?
 17 A L-o-i-t-e-n. Mr. Loiten is no longer on
 18 the Board, after leaving employment with the
 19 Daily News.
 20 Q So anybody else took his place?
 21 A Not presently.
 22 Q Does The Daily News currently write
 23 editorials for its paper?
 24 A On occasion.
 25 Q And how does it decide when it will and

1 will not write editorials for the paper?
 2 A At its discretion.
 3 Q And what factors go in to exercising that
 4 discretion?
 5 A Newsworthiness, timeliness, public
 6 interest.
 7 Q Is Orve Robbins a Virgin Islands Resident?
 8 A Who?
 9 Q Did you tell me Davis Robbins? Who is the
 10 Robbins guy?
 11 A I'm the Robbins guy.
 12 Q Is Mr. Downey a Virgin Islands Resident?
 13 A Yes.
 14 Q And does he work for The Daily News?
 15 A Yes.
 16 Q And what is his position?
 17 A Advertising Director.
 18 Q And how long has he held that position?
 19 A Seven years.
 20 Q Mr. Kenny Ryan, is he a Virgin Islands
 21 Resident?
 22 A Yes.
 23 Q And is he employed by The Daily News?
 24 A Yes.
 25 Q And what's his position?

1 A No.
 2 Q And did you have conversation with any
 3 other persons in order to prepare for your
 4 deposition?
 5 A No.
 6 Q Did you review any other depositions of
 7 other witnesses who have previously been taken in
 8 this matter?
 9 A No.
 10 Q For instance, you didn't read
 11 Eunice Beadrinister's deposition?
 12 A I'm not aware that there even was a
 13 Eunice Beadrinister deposition in that case.
 14 Q Have you ever had personal conversations
 15 with Senator Donastorg?
 16 A I have met Senator Donastorg on a few
 17 occasions. The communication between us was limited
 18 to hand shakes and pleasantries. There was no
 19 substance beyond that that I recall.
 20 Q Have you ever interviewed him concerning
 21 any stories or editorials that were in
 22 The Daily News?
 23 A I personally, no.
 24 Q Have you ever assigned anyone else to
 25 interview him concerning editorials or news stories

1 A Production Director.
 2 Q How long has he held that position?
 3 A Approximately fifteen years.
 4 Q And Alfred Loiten, when he was on the
 5 Editorial Board, what was his position?
 6 A Circulation Director.
 7 Q Who is the current Circulation Director?
 8 A I do not have one; I do not have that
 9 title currently assigned to anyone.
 10 Q What are the functions of the persons on
 11 the Editorial Board?
 12 A To offer suggestions and discussions about
 13 potential editorial topics.
 14 Q Who writes editorials?
 15 A Generally myself.
 16 Q Did you do anything else to prepare for
 17 your deposition?
 18 A Nothing that I specifically recall.
 19 Q Other than the meeting on Saturday with
 20 Attorney Rames, did you have any other meetings with
 21 Attorney Rames to prepare for your deposition?
 22 A No.
 23 Q Did you have conversations with Ms. Davis,
 24 aside from those with Mr. Rames, about this
 25 deposition, to prepare for it?

1 in The Daily News?
 2 A Daily News journalists have spoken with
 3 Senator Donastorg on probably hundreds of occasions,
 4 and during the extent of my tenure as a Manager of
 5 the Newsroom, I would have been directly or
 6 indirectly responsible for those activities.
 7 Q Have you ever made any statements in your
 8 capacity as an officer of The Daily News derogatory
 9 towards Senator Donastorg?
 10 A No.
 11 Q Ever referred to him --
 12 Well, you were present when Mr. McDonald's
 13 testimony as to the statement that he's testified under
 14 oath that he's made. Do you refute those?
 15 MR. RAMES: Object to form.
 16 THE DEPONENT: I'm not sure what testimony
 17 from Mr. McDonald you're referring to.
 18 BY MS. ROHN:
 19 Q Well, you were present in the courtroom
 20 for the occasion of McDonald versus The Daily News
 21 yourself and Ms. Davis, were you not?
 22 A Yes.
 23 Q And do you not recall Mr. McDonald
 24 testifying under oath about the derogatory names
 25 that you had called Senator Donastorg, and the

1 statements that you would make about him?
 2 MR. RAMES: Object to the form; it's a
 3 compound question.
 4 THE DEPOSITION: I recall Mr. McDonald
 5 making statements in court as a Plaintiff against
 6 The Daily News, yes.
 7 BY MS. ROHN:
 8 Q Do you recall the statements he made about
 9 statements you had made about Senator Donastory?
 10 MR. RAMES: Object to form.
 11 THE DEPOSITION: I do not recall
 12 Mr. McDonald ever quoting me during that testimony.
 13 BY MS. ROHN:
 14 Q Have you ever heard anyone at
 15 The Daily News make derogatory statements concerning
 16 Senator Donastory?
 17 A No.
 18 Q And it is your testimony under oath that
 19 you have never made any statements that could be
 20 considered derogatory about him; is that correct?
 21 MR. RAMES: Object to the form.
 22 THE DEPOSITION: I can't put myself in the
 23 position of the entirety of the human race, but I
 24 have never intended to express pejorative or
 25 derogatory statements about Senator Donastory.

1 Q Have you prepared a list?
 2 A I do not have one, but I believe that
 3 those have been presented during Discovery, and I've
 4 seen them in the case file.
 5 Q So you are unaware of anyone other than
 6 those who have previously been disclosed; is that
 7 correct?
 8 A That's correct.
 9 Q Can you explain to me the relationship
 10 between The Daily News Publishing -- what was the
 11 relationship between The Daily News Publishing
 12 Company and Innovative Communication Corporation?
 13 A As I understood it, Innovative
 14 Communication Corporation was a holding company that
 15 owned the stock of Daily News Publishing Company.
 16 Q In addition, was Mr. Crouch on the
 17 Editorial Board? I think we've established that he
 18 was.
 19 Who placed Mr. Crouch on the Editorial Board
 20 for The Daily News?
 21 A I do not know. The Editorial Board was a
 22 function of the Innovative Communication
 23 Corporation.
 24 Q So the Editorial Board was controlled by
 25 ICC?

1 BY MS. ROHN:
 2 Q Can you tell me, please, the name and
 3 address of all persons that you have knowledge of --
 4 excuse me -- that have knowledge of relevant facts
 5 concerning this lawsuit, which is Item Number 8 in
 6 the Notice of Deposition?
 7 A I could do my best.
 8 Q Okay. Have at it.
 9 A You're going to have to narrow it down.
 10 Q Sir --
 11 A You want the name and address of every
 12 reader of The Daily News? Do you want the name and
 13 address of every person who's walked through the
 14 door at The Daily News? Every employee?
 15 The people that are responsible for reporting
 16 and information gathering for the stories that
 17 reference Senator Donastory are the people who are
 18 bylined on those stories.
 19 Q Sir, you were supposed to be prepared to
 20 answer for me those persons who have knowledge of
 21 relevant factual information about the allegations
 22 in the Complaint.
 23 A To the extent that the statute or the
 24 Court rules require me to memorize the physical
 25 addresses of those individuals, I have not done so.

1 A Yes.
 2 Q Did ICC consult The Daily News concerning
 3 the editorials that it wished placed in the paper?
 4 A No.
 5 Q Did The Daily News have any ability to
 6 edit the editorials sent to be published in the
 7 newspaper?
 8 A No.
 9 Q Did The Daily News have any ability to
 10 refuse to print editorials sent to it by ICC?
 11 A No.
 12 Q And from The Daily News' information, who
 13 were the predominant persons at ICC who wrote those
 14 editorials?
 15 MR. RAMES: Object to the form.
 16 THE DEPOSITION: I don't know.
 17 The Daily News does not know.
 18 BY MS. ROHN:
 19 Q How would the editorials be received?
 20 A I believe they were transmitted
 21 electronically most of the time.
 22 Q Well, are you stating under oath that you
 23 couldn't tell who transmitted them?
 24 MR. RAMES: Object to the form. Question
 25 wasn't asked.

1 BY MS. ROHN:
 2 Q Is that what you're saying?
 3 A I am not saying that, no.
 4 Q Well, who transmitted them?
 5 A I do not know. There is no record of
 6 that. The employee who received those is no longer
 7 employed and is not reachable by The Daily News.
 8 Q Who was that employee?
 9 A Ariel Melchoir, Junior.
 10 Q Have you ever reviewed the Deposition of
 11 Ariel Melchoir, Junior, concerning who wrote the
 12 editorials that was taken in the Hillary Hodge case?
 13 A Not that I immediately recall.
 14 Q If Mr. Melchoir testified that the
 15 editorials were written predominantly by Ed Crouch
 16 and Jeffrey Prosser, do you have any facts to
 17 dispute that?
 18 A I have nothing to support or dispute that
 19 statement.
 20 Q Who would determine the budget of
 21 The Daily News while it was still owned by ICC?
 22 A That was an ICC Corporate function.
 23 Q Did The Daily News have any input in that?
 24 A Not in the decision-making of the company
 25 budget. Yes or no on the budget was a Corporate

1 A The only officers of which I was ever made
 2 aware, or the only board of which I was ever made
 3 aware, the members were Mr. Prosser,
 4 Attorney Joel Holt, and Ms. Eling Joseph, E-l-i-n-g.
 5 Q And to your knowledge did those Board
 6 officers ever make any policy decisions for
 7 The Daily News that were conveyed to The Daily News?
 8 A No.
 9 Q Other than Mr. Crouch who worked for ICC,
 10 were there any other ICC employees who were also
 11 employed by The Daily News?
 12 MR. RAMES: Object to the form.
 13 THE DEPARTMENT: There were no ICC employees
 14 who were also employed by The Daily News. Your
 15 question implies that Mr. Crouch was employed by
 16 both; he was not.
 17 BY MS. ROHN:
 18 Q Who was Mr. Crouch employed by?
 19 A ICC.
 20 Q And he was on the Editorial Board of
 21 The Daily News; is that correct?
 22 A He was listed under -- his name was listed
 23 under the heading "Editorial Board" on a page of
 24 The Daily News -- Virgin Islands Daily News that was
 25 controlled, managed and operated by ICC. That's the

1 function at ICC.
 2 Q If The Daily News needed to make a capital
 3 expenditure, who had to approve those capital
 4 expenditures?
 5 A ICC.
 6 Q If The Daily News wanted to give employees
 7 raises, who had to approve those raises?
 8 A ICC.
 9 Q If The Daily News wanted to hire an
 10 employee, who had to approve that hiring?
 11 A ICC.
 12 Q Were there common officers between
 13 The Daily News and ICC?
 14 A No.
 15 Q Did The Daily News have officers?
 16 A Could you define "officers" for the
 17 context of your question?
 18 Q President, treasurer, secretary, corporate
 19 officers.
 20 A You mean Board officers or --
 21 Q Corporate officers.
 22 A Okay. To my knowledge there was a
 23 three-person Board, as is required of a stock
 24 company.
 25 Q And who were those officers?

1 extent of my knowledge of his name and his
 2 association.
 3 Q Were there other ICC employees who were on
 4 the Editorial Board?
 5 A Not that I recall.
 6 Q How many times --
 7 A I'm sorry. Let me continue.
 8 I do not know if the listing that was published
 9 by ICC in The Daily News included all the members of the
 10 Editorial Board. Again, that's a Corporate function that
 11 I had no knowledge of.
 12 Q How many times have you been deposed?
 13 A Several.
 14 Q Well, how many times?
 15 A I don't know.
 16 Q Have you been deposed by anybody besides
 17 me?
 18 A Yeah.
 19 Q Who else has deposed you?
 20 A Most recently, Ryan Greene.
 21 Q Anybody else besides me?
 22 A I don't immediately recall.
 23 Q What was Jeffrey Prosser's involvement
 24 with The Daily News? This is Item Number 10.
 25 A Through ICC, he owned The Daily News.

1 Q How often would he come to the newspaper?

2 A To my knowledge, he was present at the
3 newspaper office on two occasions, once before he
4 purchased the newspaper, and once in, I believe it
5 was 2000 or 2001 for an award ceremony.

6 Q How often would he contact the Management
7 employees of the newspaper?

8 A Most Management employees never spoke with
9 Mr. Prosser. During Ms. Davis' tenure as Chief
10 Executive, and my own as Chief Executive under ICC,
11 both of us had conversations or communications with
12 Mr. Prosser on the occasion of our Appointment to
13 the Chief Executive position and annually during
14 budget meetings.

15 Q And what would be the nature of the
16 conversations annually during the budget meetings?

17 A The financial performance of
18 The Daily News.

19 Q He would be telling you or you would be
20 telling him?

21 A It was a discussion and a conversation.

22 Q Did Mr. Prosser have the capacity to
23 determine what news stories would be placed in the
24 paper?

25 A No.

1 Q Are you aware of an incident when the
2 paper did a story on the Bird family where
3 Mr. Prosser had it removed from the online
4 newspaper?

5 MR. RAMES: Object to form.

6 THE DEPARTMENT: What you're describing as
7 an incident did not happen.

8 BY MS. ROHN:

9 Q Did you ever have a conversation with
10 Mr. Claxton about that incident?

11 A No.

12 Q Do you know Mr. Claxton?

13 A You're referring to Mr. Melvin Claxton who
14 wrote that article?

15 Q Yes, sir.

16 A I can't say that I know him; I know who he
17 is.

18 Q Ever spoken to him?

19 A I believe I've only spoken to him once.

20 Q And what was that occasion?

21 A He walked into The Daily News' office on a
22 social visit.

23 Q Was The Daily News available to ICC or
24 Mr. Prosser on a daily basis prior to his
25 publication?

1 MR. RAMES: Object to form.

2 THE DEPARTMENT: No.

3 BY MS. ROHN:

4 Q Was there some mechanism for ICC and/or
5 Mr. Prosser and/or Mr. Crouch to be able to review
6 The Daily News before it was published?

7 A No.

8 Q Is The Daily News created in a computer?
9 In other words, is it generated through computer
10 copy?

11 A I'm really not quite sure I understand the
12 question.

13 Q And I've never worked for a newspaper.
14 But when you generate news stories, are they
15 generated now in a computer rather than in the old
16 days, where they were posted out on a board?

17 A Correct. Yes, the process of writing,
18 editing, and page layout is all computerized now.

19 Q And are there access codes to obtain
20 access to that computer information?

21 A The users have log-ins.

22 Q Did Mr. Prosser or Mr. Crouch or anyone
23 else from ICC have log-ins?

24 A No. It's an internal system; there's no
25 way to access it externally.

1 Q And there were no ICC employees throughout
2 The Daily News that could have accessed it
3 internally?

4 A No.

5 Q And the Editorial page, how is it
6 published? How was it published during the ICC era?

7 A The content of the Editorial page would be
8 determined by the staff, by ICC, and would be laid
9 out electronically and published in the same manner
10 as the other pages of the newspaper.

11 Q So would The Daily News lay out the
12 Editorial page?

13 A The Daily News' clerk would lay out the
14 page, yes.

15 Q And where would they get the information
16 to put on that page?

17 A I believe that typically Mr. Melchoir or
18 Ms. Bailey would provide a list of the items for the
19 page and the general idea of the arrangement of
20 those items and identify a spot in the computer
21 server where they would place the text files and
22 image files.

23 Q Letters to the Editor, who decided what
24 Letters to the Editor would be written --

25 MR. RAMES: Object to form.

1 BY MS. ROHN:
 2 Q -- or would be published?
 3 A ICC.
 4 Q And how would they get those letters to
 5 the Editor?
 6 A I'm certain that there were any number of
 7 sources to the extent that letters -- excuse me --
 8 letters to the Editor were submitted directly to
 9 The Daily News; those were forwarded to Mr. Malchoir
 10 and Ms. Bailey.
 11 Q And then what did they do with them?
 12 A I don't know. That was an ICC function to
 13 the extent that they were reviewed and selected and
 14 chosen for publication.
 15 Q Where is Marilyn Bailey now?
 16 A I don't know.
 17 Q Is she still on St. Thomas?
 18 A I don't know.
 19 Q How long did you work with her?
 20 A About nine years.
 21 Q Ever go to her house?
 22 A Not that I recall.
 23 Q When she left, what was the purpose of her
 24 leaving or the reason that she gave for leaving?
 25 A She was laid off.

1 BY MS. ROHN:
 2 Q Was it with the Daily News or ICC? Sorry.
 3 A I believe both companies were referenced
 4 in the document.
 5 Q Did you ever have a contract with ICC?
 6 A No.
 7 Q Who was your contract with?
 8 A At one point I had a contract with
 9 Daily News Publishing Company.
 10 Q Is that contract still in effect?
 11 A No.
 12 Q Who is your contract with now?
 13 A I do not currently hold an employment
 14 contract with anyone.
 15 Q What is the nature of your employment?
 16 A I'm an Executive of the Daily News
 17 Publishing Company; I'm on payroll.
 18 Q An employee at will?
 19 MR. RAMES: Object to form.
 20 THE DEFENDANT: To the extent that that
 21 exist in the Virgin Islands, yes.
 22 BY MS. ROHN:
 23 Q Has Holland Redfield ever been employed by
 24 The Daily News?
 25 A No.

1 Q Who laid her off.
 2 A I did.
 3 Q Why did you lay her off?
 4 A For business reasons.
 5 Q And when you laid her off -- when
 6 The Daily News laid her off, was she still a
 7 Resident of St. Thomas?
 8 A To my knowledge, yes.
 9 Q Have you spoken to her since you laid her
 10 off?
 11 A Not that I recall.
 12 Q Do you know whether or not she's spoken to
 13 anyone else at The Daily News since she was laid
 14 off?
 15 A Not that I recall.
 16 Q And what was the nature of the business
 17 decision that caused you to lay her off?
 18 A Ms. Bailey was among several layoffs that
 19 The Daily News conducted in December 2008 after a
 20 comprehensive assessment of the business performance
 21 of the company.
 22 Q Ms. Davis' contract, is it with
 23 The Daily News or ICC?
 24 MR. RAMES: Object to the form.
 25

1 Q Has he ever suggested news stories for the
 2 Daily News?
 3 A No.
 4 Q He ever acted as a public relations
 5 persons for The Daily News?
 6 A No.
 7 Q To your knowledge has he ever been
 8 employed at ICC to perform the job of Public
 9 Relations for The Daily News?
 10 A Only to the extent that when he spoke for
 11 ICC as a corporate entity, at times, by inference,
 12 The Daily News would be included in that, but he did
 13 not have any direct responsibility for representing
 14 The Daily News or communicating on behalf of
 15 The Daily News at any point.
 16 Q Has The Daily News ever had a public
 17 relations officer?
 18 A No one with that title, no.
 19 Q Anybody employed who performed that
 20 function?
 21 A In effect, the entire staff of
 22 The Daily News performs that function because of the
 23 nature of the business. I don't mean that to be a
 24 flip response; that is the nature of newspapers.
 25 Q And why do you say that?

1 A Because the product and the performance of
2 the company is immediately visible on a daily basis
3 to thousands of people territory-wide, and the
4 entire staff plays a role in that.

5 Q What is your understanding of the function
6 of a public relations officer?

7 A To present the image of the company to the
8 exterior community.

9 Q If you limited the definition of a public
10 relations officer to a person who is speaking on
11 behalf of the corporation on issues of public
12 relations, would there be somebody who filled those
13 functions at The Daily News?

14 A The chief executives of the company, the
15 people who held the chief executive positions at the
16 company.

17 Q Do you know Holland Redfield?

18 A I'm acquainted with him.

19 Q How did you become acquainted with him?

20 A I met him socially many years ago at a
21 public function on St. Croix, and subsequent to
22 that, on occasion, would see him at ICC Corporate
23 facilities.

24 Q And why would you be at ICC's Corporate
25 facilities?

1 A For annual budget meetings.

2 Q Did a representative of The Daily News
3 attend ICC Corporate meetings?

4 A For clarity, can you define "corporate
5 meetings"?

6 Q Shareholder meetings, Board of Directors
7 meetings.

8 A No. I'm sorry, let me amend that.

9 On occasion, 2001, 2002, somewhere in there, on
10 a couple of occasions Ms. Davis was asked to give a
11 financial performance presentation to the ICC Board, as
12 were the heads of other ICC subsidiaries. So to the
13 extent that that was a -- she was only present for that
14 section of that meeting.

15 Q What was your understanding of
16 Mr. Redfield's position with ICC or any of its
17 related companies?

18 A As I recall, his title was Vice President
19 of the Corporate Affairs, and to my knowledge he
20 played some role in marketing of the various
21 telecommunication companies' products but more often
22 was focused on press releases, public communications
23 at that time.

24 Q And would The Daily News from time to time
25 receive press releases from him?

1 A As I recall, a number of press releases
2 from ICC were on his letterhead, not all, but
3 certainly a significant share, a noticeable share.

4 Q Did you ever know him to do press releases
5 on behalf of VTELCO?

6 A To my recollection, it's possible, but I
7 don't explicitly recall an individual press release
8 of that type.

9 Q When The Daily News would receive press
10 releases from ICC, was there an option whether or
11 not to print them or were they printed?

12 A The press releases from ICC or the other
13 ICC subsidiaries were processed in the same way as
14 all press releases are. Some were disseminated for
15 reporting or reviewed in the context of adding some
16 information to the story, some were thrown in the
17 trash. If it was a mundane announcement, like a
18 sponsorship of an event, that might be turned over
19 to be summarized in a community brief, the same way
20 other press releases would be handled.

21 MS. ROHN: Okay. Take a break.

22 (Off record.)

23 BY MS. ROHN:

24 Q Now, getting back to editorials, if the
25 ICC didn't have access to the newspaper, how would

1 it be that they would write editorials that would
2 reference stories -- news stories that were in the
3 paper?

4 MR. RAMES: Object to form.

5 BY MS. ROHN:

6 Q For instance, the newspaper writing a
7 story about police officers being arrested, and an
8 editorial the same day about the problems
9 referencing that story and the problems with police
10 officers?

11 MR. RAMES: Object to form.

12 THE DEPENDENT: To my knowledge and
13 recollection, the dynamic you're describing did not
14 occur.

15 BY MS. ROHN:

16 Q Now, what was the procedure at
17 The Daily News -- this is Item 13 -- the procedure
18 at The Daily News during -- we'll start during the
19 ICC days -- as to assigning news stories?

20 A The procedure, both currently and
21 indefinitely into the past at The Daily News, as
22 well as at every other newspaper, that some
23 reporters specialized in a particular topical area
24 of stories, in which case stories of that nature are
25 most frequently done by those reporters; otherwise,

1 stories are referred to as general assignment or
2 just general issues stories, in which case any
3 reporter, based on time of day, workflow, just the
4 fact that they happen to be at the office at a
5 particular moment, might be the individual who
6 becomes responsible for that story.

7 Q And what were the different types of topic
8 assignments?

9 A Topical beats would include things like
10 Education, Healthcare, Human Resources Services,
11 Environment Development, Public Safety, Crime and
12 Court, Government Operations. Those might be broken
13 down further or combined in ways that matched either
14 the basic knowledge or the skill of a particular
15 reporter.

16 A reporter might have either one or several
17 topical beats. The specifics vary over the course of
18 time and even over the course of, say, a week-long period
19 in which someone's days off had to be accommodated.

20 Q Were there ever reporters that were
21 assigned to a particular legislator?

22 A To a particular legislator, no.

23 Q Were there reporters who were assigned
24 generally --

25 A I'm sorry. Let me clarify.

1 In the context of election periods, there
2 frequently has been a division of the field of candidates
3 among the reporting staff which would technically fall
4 into the definition of someone being assigned a
5 particular legislator. Reporter A might get several
6 candidates for election, to process or communicate their
7 candidate questionnaires or communicate with them about,
8 you know, we need to arrange to take a photograph or
9 something like that. Beyond that, there is no assignment
10 of a reporter to particular legislator.

11 Q Were there reporters that were assigned to
12 cover the Legislature generally?

13 A Generally, there is at least one reporter
14 assigned to cover the Legislative branch in general
15 at any given time or to take the lead on the
16 reporting on the Legislative branch.

17 Q And under the practice or policy of
18 The Daily News that there was a story about a
19 particular legislator, would that then be assigned
20 to that particular reporter?

21 A More often than not, unless there was a
22 compelling reason, such as the lead legislative
23 reporter was absent or otherwise preoccupied. Very
24 often there are situations where there's two or
25 three or ten things all happening at the same time,

1 in which case any reporter might be the one that
2 ends up reporting.

3 On occasion, the Legislature has hearings on
4 St. Croix or St. John, or it venues outside the normal
5 Legislative chambers, and, again, that might be a
6 significant factor in the reporter who might not be
7 normally expected to cover Legislative events, to be the
8 one to go.

9 Q And what was the practice or policy at
10 The Daily News, from ICC forward, to supervise
11 reporters assigned to stories?

12 A Reporters are supervised by either an
13 editor -- excuse me.

14 Reporters are supervised either by a Bureau
15 Chief or the City Editor directly. And the Bureau Chiefs
16 and the City Editors in turn report to either the Deputy
17 Executive Editor, if there is someone in that position,
18 or to the Executive Editor.

19 Q And what were the categories Bureau
20 Chiefs?

21 A From the ICC period forward, the only
22 Bureau Chief assignment was the St. Croix Bureau
23 Chief.

24 Q And who have been the St. Croix Bureau
25 Chiefs besides Bunice Bedminister?

1 A Prior to Ms. Bedminister, the previous
2 person holding that title was John Duchemin,
3 D-u-c-h-e-m-i-n.

4 Q Anybody after Bunice?

5 A No, not appointed anyone to that title
6 since then.

7 Q Was Will Jones a Bureau Chief?

8 A Your questions prompts me to recollect
9 that I believe his final title with The Daily News
10 may have been ~~Frederiksted~~ Bureau Chief, but I
11 cannot state that with absolute certainty, but I
12 think it was something like that.

13 Q Who have been the City Editors?

14 A William Brown and -- during the period of
15 ICC, it was William Brown.

16 Q And who is it now?

17 A Gerry Yandel.

18 Q Y-a-n-d-l-e?

19 A D-e-l.

20 Q And is that a he or a she?

21 A It's a man.

22 Q When did he become the City Editor?

23 A June of this year.

24 Q And what happened to William Brown?

25 A He left employment.

1 Q Did he resign?
 2 A He resigned.
 3 Q And what was his stated reason for
 4 resigning?
 5 A His wife had accepted a job in the States,
 6 and he relocated to accompany her there.
 7 Q Did you know where in the States he
 8 relocated to?
 9 A Not specifically; it was in New England.
 10 Q Well, would The Daily News have
 11 information as to where he is?
 12 A I do not have his physical address.
 13 Q Well, wouldn't you have to send him W-4s,
 14 W-2s, that sort of information?
 15 A As I said, I do not have an address for
 16 him on file.
 17 Q You have no address to send him his tax
 18 documents?
 19 MR. RAMES: Object to form.
 20 THE DEFENDANT: I do not have one on file.
 21 BY MS. ROHN:
 22 Q Do you know anybody at The Daily News who
 23 would know how to contact him?
 24 A Not to my immediate knowledge, no.
 25 Q Do you remember the name of the company

1 his wife went to work for?
 2 A She's a Federal employee.
 3 Q Do you know in what particular Federal
 4 agency?
 5 A No, I don't.
 6 Q Now, in what manner would the City Editor
 7 and/or the Bureau Chief supervise the reporters?
 8 A I'm not sure I understand.
 9 Q Would they have to give them drafts of
 10 their reporting? Would they give them information
 11 as to what to do to research a story? What would
 12 they do to supervise them?
 13 A They would work with the reporters to
 14 understand the information that the reporter had
 15 gathered, and would then work with the reporter
 16 through the editing process.
 17 Q Now, would the City Editor or Bureau Chief
 18 do the actual editing, or would someone else? -- of
 19 the news story?
 20 A The most significant editing, especially
 21 the editing that requires dialogue between the
 22 editor and the reporter for purposes of
 23 clarification or expanding a section of the story
 24 for context and things like that would occur between
 25 any of the editors and the reporters, but more often

1 than not it would be either the City Editor or the
 2 Executive Editor working with that.
 3 Bureau Chief position typically is less
 4 hands-on with editing, although some editing does occur.
 5 Q And so you said the City Editor and/or the
 6 Editing staff -- I think you said --
 7 A No, the Executive Editor.
 8 Q -- the Executive Editor, which would have
 9 been either yourself or Lowe Davis?
 10 A Correct.
 11 Q When did this editing usually occur?
 12 A In the evening hours.
 13 Q Was there any policy as to whether or not
 14 the reporter should be present during the editing
 15 process?
 16 A Policy is that the reporters always had
 17 the option to be present. On occasion reporters
 18 were -- the editing could not be achieved
 19 effectively unless the reporter was present, and so,
 20 I guess in effect the reporter was required to be
 21 present in that case, but that would be on very
 22 technical issues, such as legislation, financial
 23 reporting, and things like that.
 24 Q Was there a policy at The Daily News with
 25 regard to having the editor either present or spoken

1 to if their stories were to be substantively
 2 altered?
 3 MR. RAMES: Object to form.
 4 THE DEFENDANT: You used "the editor." Did
 5 you mean the reporter?
 6 BY MS. ROHN:
 7 Q Sorry. It did sound awkward to me, too.
 8 Was there a policy that the reporter should
 9 either be present or spoken to if there was going to be
 10 a substantive change in their story through editing?
 11 A Yes.
 12 Q And what was that policy?
 13 A Exactly what you just articulated.
 14 Q And why is that policy in place?
 15 A To ensure the fairness and accuracy of
 16 stories.
 17 Q Who determined the headlines for stories?
 18 A The Editing staff.
 19 Q And is that also true of sub headlines?
 20 A Yes.
 21 Q Do the reporters have any input into the
 22 headlines or sub headlines?
 23 A At times. If they choose to, they can
 24 participate in the headline-writing process; it's
 25 not required of them. If they see a headline, maybe

1 they'll offer a suggestion.

2 Q What is the policy at The Daily News as to
3 how substantively headlines are created?

4 A I'm sorry, I don't quite understand.

5 Q It's a hard question. I'm trying to
6 think --

7 Is there any policy as to what generally
8 should or should not go into a headline?

9 A The general principles of headline writing
10 are such that the -- term is key words, key words of
11 a headline, which are the subjects or the words that
12 indicate the subjects or the substantiative action
13 that occurred that's being related in the story,
14 that as many of those key words be present in the
15 headlines as possible.

16 When I say that, you know, if the action is
17 spending, you know, "spending" or a synonym will be in
18 there; the names of the people or organizations,
19 newsworthy, notable figures would be in a headline.

20 The impact of the story, like the "House
21 catches fire," if the house was the story, then you would
22 maybe write and say -- instead of saying "House catches
23 fire," you might say "House burns down." That's more
24 information in a concise summarise form for the reader.

25 Q Are headlines suppose to be factually

1 based?

2 A Headlines are required to be fair and
3 accurate as in the same standard as stories.

4 Q Are headlines suppose to contain opinions?

5 A Not on these stories, but only to the
6 extent that there might be a headline for an opinion
7 article.

8 Q Let me limit this.

9 Headlines to news stories, are they suppose
10 to have opinions in them?

11 A No.

12 Q Headlines for news stories, are they
13 suppose to editorialize?

14 A The word "editorialize" is a deeply
15 subjective characterization that can be applied to
16 any headline to an extent. A headline has virtually
17 no editorializing or a headline has a lot of
18 editorializing. So there is no such thing as a pure
19 headline without editorialization because there's a
20 selection process that determines what key words are
21 in the headline, and because that process is
22 subjective, opinions always may differ.

23 But to speak in very broad and general terms,
24 the headline of a story is supposed to characterize the
25 nature of the event or action or issue that's being

1 described in the story, and to confine itself within that
2 parameter.

3 Q During the editing process, is there a
4 policy about fact checking?

5 A Well, fact checking occurs during the
6 editing process.

7 Q Is it suppose to occur during every
8 editing process?

9 A The entirety of the editing of a story is
10 what I'm referring to by the phrase "editing
11 process." Throughout that process, fact checking
12 occurs. Generally the bulk of fact checking occurs
13 during what is called the first read edit or the
14 main edit of the story, which is the part of the
15 process I was referring to earlier when I
16 characterized -- where I described that the City
17 Editor and/or the Executive Editor, that that person
18 or those people are usually responsible for.

19 Q And what do they do as part of the fact
20 checking process?

21 A They work with the reporters to review any
22 facts about which they have questions or -- I'm
23 sorry -- factual statements about which they have
24 questions or clarifications or contextualizations
25 that they feel would be useful to the reader in

1 order to fully understand the event or the issue and
2 its consequences or relationship to other events and
3 issues.

4 Q And so just so -- I'm trying to
5 understand.

6 If the news story -- I'm limiting this to
7 news stories at this point -- has various facts, is the
8 editor suppose to check each fact and find out the
9 factual basis for those factual statements?

10 A No. That is going beyond the scope of the
11 editor's role; that is the reporter's
12 responsibility.

13 Q So which facts does the editor check?

14 A Well, the editor is reviewing the story
15 and the context of a great deal of experience with
16 stories of that type, of the issues of that type of
17 other stories on the same topic, people, incidents,
18 issues. And as such, if they are reading through
19 the story, and say at the end of "World War II in
20 1954," they would, of course, red light, "you've
21 transposed -- to the reporter, "You've transposed
22 the last two digits in this date." Those are the
23 type of fact checking that an editor most often
24 occurs.

25 Now, in the event that an editor is going

1 through a story or over the course of the editing
2 process, you know, multiple facts come in to question, or
3 it looks like a reporter has used source material that
4 maybe has been superseded, such as a citation from the
5 V.I. Code that perhaps has been amended since the
6 publication, maybe that will be set back in entirety to
7 the reporter to go back and review for fact checking.

8 But, again, to the extent that facts are
9 gathered, the primary responsibility is on the reporter.

10 Q In the setting of an investigative
11 reporting piece, is it still the reporter's
12 responsibility to fact check, or is there more fact
13 checking then done by the editor?

14 A In the context of an investigative report,
15 there is a much more rigorous process of editing
16 that usually involves a minimum of three editors,
17 any of whom -- or all of whom, I should say -- are
18 walking through the factual statements in the story
19 at various points to ensure that those are presented
20 with complete accuracy and fairness, to the extent
21 that it might be a point that could be -- we don't
22 want it to be written in such a way that it could be
23 interpreted more than one way.

24 Q Did The Daily News have reporters who were
25 primarily assigned investigative reporting during

1 the ICC period?

2 A Yes.

3 Q And who would those reporters had been?

4 A We had one reporter with a primary
5 investigative portfolio; that was Lee Williams.

6 Q And is Lee Williams still with the paper?

7 A No.

8 Q When did he leave?

9 A 2004.

10 Q And why did he leave?

11 A He had accepted a job offer from another
12 newspaper.

13 Q Ms. Bedminister has testified under oath
14 that he left because his investigative reporting
15 stories were substantially altered by Lowe Davis
16 without his input.

17 Do you have any knowledge of that?

18 MS. ROHN: Object to form.

19 THE DEPARTMENT: I have no knowledge of
20 Ms. Bedminister's Deposition.

21 BY MS. ROHN:

22 Q Do you have any knowledge of Mr. Williams
23 becoming upset or making comments about the fact
24 that an investigative report that he had done had
25 been altered in its editing?

1 MR. RAMES: Object to form.

2 THE DEPARTMENT: I have no knowledge of
3 Mr. Williams expressing communications of that type.

4 I would state categorically that to the
5 extent that anyone made direct or indirect statements
6 or inferences that Daily News reporting or
7 investigative reporting was done incorrectly or
8 unethically, that that never occurred.

9 BY MS. ROHN:

10 Q Have you spoken to Mr. Williams since he
11 left The Daily News?

12 A Not that I recall.

13 Q Do you know where he went?

14 A When he left The Daily News, he went to
15 work for the Wilmington News Journal in Delaware.

16 Q Are you familiar with a reporter by the
17 name of Marty Schladen?

18 A Yes.

19 Q And what was Mr. Schladen's job with
20 The Daily News?

21 A He was a reporter on St. Croix.

22 Q And can you tell me the circumstances of
23 his leaving?

24 A He resigned.

25 Q And do you have any knowledge of his

1 resigning as a result of alterations to news stories
2 that he wrote?

3 MR. RAMES: Object to form.

4 THE DEPARTMENT: I have no knowledge of him
5 making statements to that effect, but I can state
6 categorically that no inaccurate or unethical
7 alterations were ever made to any stories that he
8 wrote for The Daily News.

9 BY MS. ROHN:

10 Q Have you seen Mr. Schladen since he left?

11 A No. I seem to recall that after he left
12 The Daily News, I saw him on the street on
13 St. Croix.

14 Q Have you spoken to him in the recent past?

15 A No.

16 Q Who makes the ultimate decision as to
17 whether or not a story is going to be published or
18 not?

19 A The Executive Editor.

20 Q And what is done to attempt to ensure that
21 a news story is not bias?

22 A It is audited and reviewed in the context
23 of the Newsroom's staff's experience and expertise.

24 Q Would you agree with me that news stories
25 should not be bias?

1 MR. RAMES: Object to form.
2 THE DEFENDENT: I am not exact of your
3 definition of the word "bias" in the context of that
4 question, but I would say that in all context and
5 instances, news stories should be fair and accurate.

6 BY MS. RORER:

7 Q Well, would you agree with me that news
8 stories should be impartial?

9 A Your use of the word "impartial" in this
10 context, it's not -- the word "impartial" implies
11 that all parties be dealt with in exactly the same
12 way to the -- in exactly the same manner and with
13 comparable, say, space in a story. That is not
14 possible in journalism or in news reporting. So to
15 the extent that from a technical basis, I would not
16 agree with you.

17 On an ethical basis, defining the word
18 "impartial" as not taking one party's side, I would say
19 yes, that a news stories should be impartial to the
20 extent that "impartiality" is defined as not taking
21 sides.

22 Q During the IOC period, what was the
23 relationship between The Daily News and VITELCO?

24 A The companies had common ownership --

25 Q Well, for instance --

1 A -- the Daily News used VITELCO product,
2 and VITELCO used Daily News product.

3 Q Well, did Management employees at
4 The Daily News receive free phone service?

5 A No.

6 Q Did The Daily News receive free phone
7 service?

8 A No.

9 Q Did VITELCO get free newspapers?

10 A No.

11 I should clarify.

12 There were newspapers sent to VITELCO staff who
13 were outsourced as -- to whom The Daily News had
14 outsourced accounting functions, and among those
15 functions were financial analyses of the inch counts of
16 ads in the newspapers, the number of classifieds, and,
17 things like that. So those papers were sent to VITELCO's
18 facility, but they were as part of that function, not as
19 copies for the use of the VITELCO staff.

20 Q My next question. Were there employees of
21 VITELCO who performed functions for The Daily News?

22 A There were employees of IOC, VITELCO, and
23 I believe other subsidiaries who were part of a
24 combined Accounting office or part of a combined
25 Human Resources office that performed services on a

1 contractual basis for The Daily News.

2 Q Were those written contracts or verbal
3 contracts?

4 A I believe they were written, but I do not
5 have immediate knowledge of them.

6 Q And, in fact, the Human Resources of
7 IOC/VITELCO, I think that was Mr. Changasing
8 actually performed Human Resources functions for
9 The Daily News; is that correct?

10 A That's correct. That's what I was
11 describing.

12 Q And who were the Accounting persons who
13 also did accounting work for The Daily News?

14 A I believe at various points virtually
15 everyone in the Accounting offices at IOC or the
16 combining accounting, IOC, VITELCO, Daily News,
17 et cetera, Accounting staff. I believe virtually
18 everyone did work for virtually all the companies
19 that were part of IOC at various points, but the
20 primary point of contact for Accounting services was
21 Deborah McDonald.

22 Q Now, can you please tell me all the claims
23 that had been filed against The Daily News for
24 slander, defamation, or libel in the last seven
25 years?

1 A Mrs. Ethlyn Joseph brought a claim against
2 The Daily News.

3 Judge Leon Kendall filed a claim against
4 The Daily News.

5 Mr. Radel Hansen filed a claim against
6 The Daily News. At one point his wife, Mrs. Alicia
7 Hansen, was a part of that case, and is no longer.

8 Yourself, Attorney Lee Rohn, has filed a claim
9 against The Daily News.

10 And, as you know from today's proceeding,
11 Mr. Dunastory has filed a complaint against
12 The Daily News.

13 I believe that's all.

14 Q Was there a procedure at The Daily News,
15 at any time since its acquisition by IOC, as to
16 determining who would be the reporter assigned to
17 stories concerning himself?

18 MR. RAMES: Object to form.

19 BY MS. RORER:

20 Q -- concerning Senator Dunastory?

21 A I'm sorry --

22 Q Yeah, I got to rephrase it; that statement
23 got pretty --

24 Was there any procedure at The Daily News for
25 determining who would be assigned stories concerning

1 Adlah Donastorg or his family members?
 2 MR. RAMES: Object to form.
 3 THE DEFENDENT: There was no specific
 4 procedure pertaining to Senator Donastorg and his
 5 role as a political candidate, a member of the
 6 Virgin Islands Legislature. Most often the stories
 7 that would involve him would be covered by the
 8 reporter working on Legislative branch coverage,
 9 except in situations where the issue at hand was
 10 more topically related to other areas, such as
 11 environment or sport issues.

12 BY MS. ROHN:

13 Q Are there, or have there ever been any
 14 files kept concerning Senator Donastorg?

15 A No.

16 Q Whether in computer or physical?

17 A There are computer files that have stories
 18 that mention his name, but if you mean is there a
 19 file of information about Senator Donastorg, no.

20 Q When you say there are computer files
 21 mentioning his name, what type of computer files
 22 are --

23 A I said there were computer files that are
 24 stories that mention his name.

25 Q So is there a computer file that says all

1 the stories ever written on Senator Donastorg?

2 A No.

3 Q So how are those computer files kept?

4 A Well, every time we write a story, a
 5 computer file is created. And there have been
 6 hundreds of times when a story has had Senator
 7 Donastorg's name in it.

8 Q So you're just speaking about a location
 9 in the computer where you could find a story that
 10 was written that had Senator Donastorg in it?

11 A There is no index of stories on
 12 Senator Donastorg, except what exist in the case
 13 file.

14 Q And when you refer to the case file, what
 15 are you referring to?

16 A The file of the documents produced in this
 17 case.

18 Q Does that case file include the
 19 investigation file on Senator Donastorg?

20 A Not to my knowledge.

21 Q Have you ever seen the investigation file
 22 on Senator Donastorg?

23 A No.

24 Q When were you first made aware that there
 25 was an investigation file on Senator Donastorg?

1 A I think when The Daily News was added as a
 2 defendant in these proceedings.

3 Q You mean VITELCO or Daily News?

4 A No -- when VITELCO was added. I'm sorry.
 5 Whenever it first appeared as a factor in this case,
 6 to my knowledge, that was my earliest awareness that
 7 that report exist.

8 Q You didn't cover the fact -- it wasn't
 9 covered in your newspaper, the fact that VITELCO had
 10 Mr. Donastorg investigated?

11 MR. RAMES: Object to form.

12 BY MS. ROHN:

13 Q Beg your pardon?

14 A Not that I recall.

15 Q Can you tell me why The Daily News didn't
 16 cover that when it was front page news of the Avis?

17 MR. RAMES: Object to form.

18 THE DEFENDENT: Avis makes their own
 19 decisions. I don't know why.

20 BY MS. ROHN:

21 Q Do you know what was the result of the
 22 news decision not to cover the fact that
 23 Senator Donastorg and his family and friends and
 24 contributors had been all investigated by IOC and/or
 25 VITELCO?

1 MR. RAMES: Object to form.

2 THE DEFENDENT: I cannot even stipulate to
 3 the facts as you present them in that question, so I
 4 can't respond further.

5 BY MS. ROHN:

6 Q What facts can't you stipulate to?

7 A Your question implies that an
 8 investigation occurred, that I have no knowledge of.

9 Q Does The Daily News read the Avis?

10 A Not often.

11 Q Are you aware of any filings kept on any
 12 members of Senator Donastorg's family?

13 A There are no such files.

14 Q Are you aware of any files kept on myself?

15 A There are no such files.

16 Q Has The Daily News ever participated in
 17 any investigations into Senator Donastorg?

18 A Can you define "investigation"?

19 Q Yes. Going out and attempting to obtain
 20 information on Senator Donastorg as to some aspect
 21 of his life or activities.

22 A No. The only research that we've ever
 23 done on Senator Donastorg are in the context of
 24 stories that have been reported, written, and
 25 published in the Daily News.

1 Q Was The Daily News ever made aware that
2 Senator Donastorg believed The Daily News was
3 investigating him?

4 MR. RAMES: Object to form.

5 THE DEPUTANT: Only in the context of
6 filings in this case.

7 BY MS. ROHN:

8 Q When you say only in conjunction with
9 filings in this case, what --

10 MR. RAMES: Object to form.

11 BY MS. ROHN:

12 Q -- are you referencing?

13 A The Complaint in this case alleges that
14 The Daily News colluded in what it describes as an
15 investigation into Senator Donastorg, if I recall
16 correctly, and that is the only extent to my
17 knowledge of Senator Donastorg pointing at

18 The Daily News as being responsible for something
19 like that, which, in point of fact, never occurred.

20 Q Are you aware of letters from 2008 in
21 which he accuses The Daily News of the investigating
22 him?

23 MR. RAMES: Object to form.

24 THE DEPUTANT: Again, when you use the
25 word "investigate," that has such a wide range of

1 possible definitions that it's difficult for me to
2 answer, given that I'm representing a newspaper
3 publishing company in this deposition.

4 I don't mean to be difficult, but if I can
5 state clearly, The Daily News has never conducted any
6 interview, research, or publication, or gathering of
7 information about Senator Donastorg except as part of
8 the news gathering process, and all of those stories
9 have been published.

10 If Mr. Donastorg had other communications,
11 it's not anything that I'm aware of.

12 Q Are you aware of reporters for
13 The Daily News going to Child Support to try to find
14 out if he owed any child support?

15 A Maybe they did. That's a typical question
16 of political candidates.

17 Q Really? You do that for every candidate?

18 A Yes, we did. And we published the answers
19 in The Daily News last week.

20 Q Were you aware of persons going to
21 Child Support when it wasn't an election year to
22 find out whether or not Senator Donastorg was behind
23 on his child support payments?

24 MR. RAMES: Object to form.

25 THE DEPUTANT: I have no recollection of

1 that.

2 BY MS. ROHN:

3 Q I'm sorry, I don't read The Daily News.
4 When did you do a story on who owes child
5 support?

6 A We send out questionnaires to all
7 political candidates in every election. And for
8 several cycles, among the questions has been, "Are
9 you or have you been in arrears on child support
10 payments?"

11 And in the most recent cycle, which was the
12 Primary Election on Saturday, that was included in the
13 questionnaire. And the candidates' full responses were
14 published last week.

15 Q Are there any investigation files or --
16 excuse me.

17 Are there any files kept on myself?

18 MR. RAMES: Object to form; asked and
19 answered.

20 THE DEPUTANT: As I said earlier, no such
21 files exist.

22 BY MS. ROHN:

23 Q Do you know the names of the persons at
24 The Daily News who have been assigned to compile
25 information concerning Senator Donastorg?

1 MR. RAMES: Object to form.

2 THE DEPUTANT: No one at The Daily News
3 has been assigned to compile information on
4 Senator Donastorg.

5 BY MS. ROHN:

6 Q So no one at The Daily News was assigned
7 to go to Child Support to see if he was paying his
8 child support?

9 A As I said earlier, I have no recollection
10 of that specific action on behalf of the Reporting
11 staff of The Daily News. It's possible that it
12 happened. It's possible and, in fact, certain that
13 it's happened for any number of candidates that
14 we've posed that question to them.

15 Q Were there particular reporters that are
16 assigned to the recent domestic violence charges
17 against Senator Donastorg?

18 A I believe there were two reporters who did
19 the bulk of the stories on that case so far.

20 Q And who were they?

21 A Corliis Smithen -- C-o-r-l-i-s-s,
22 S-m-i-t-h-e-n -- and Ailene Torres -- A-i-l-e-n-e,
23 T-o-r-r-e-s.

24 Q And how long had Ms. Smithen been with the
25 paper?

1 A I think about three years.
 2 Q What's her title?
 3 A She's a reporter.
 4 Q Does she have a particular beat or a topic
 5 that she covers?
 6 A Court proceedings, crime.
 7 Q Who?
 8 A Crime and court proceedings.
 9 Q And why was she picked?
 10 A Because it was a court proceeding, and it
 11 was a report of a crime.
 12 Q And Ailene Torres, what is her position
 13 with the paper?
 14 A She was a reporter.
 15 Q How long has she been there?
 16 A Six months.
 17 Q And does she have a particular beat?
 18 A Same beat as Ms. Malone.
 19 Q Who was in charge of editing those
 20 stories?
 21 A Mr. Brown.
 22 Q Mr. Brown? I thought he was gone?
 23 A No. I'm sorry.
 24 Can you remind me the date of that proceeding?
 25 Q It's ongoing.

1 Q What is the policy of The Daily News with
 2 regard to running paid advertisements?
 3 A We run paid advertisements.
 4 Q Is there any policy about censoring them?
 5 MR. RAMSES: Object to form.
 6 THE DEPARTMENT: The word "censoring"
 7 implies wrongdoing. I think there is no policy to
 8 commit wrongdoing.
 9 BY MS. ROHN:
 10 Q Are there persons who you will not run
 11 paid advertising about?
 12 A No.
 13 Q Are there subjects for which you will not
 14 run paid advertisements about?
 15 A No.
 16 Q Has The Daily News ever offered any
 17 incentives to anyone, any employee to write stories
 18 that were adverse to Senator Donastorg?
 19 A No.
 20 Q Have you ever read the Deposition of
 21 Will Jones?
 22 A What deposition of Will Jones?
 23 Q There was a Deposition of Mr. Jones taken
 24 in the Nilfield (phonetic) case.
 25 A Not to my recollection.

1 A The initial date of that proceeding?
 2 Q Four or five months ago, the most.
 3 A Well, it might have been Mr. Brown, it
 4 might have been somebody else, to the extent that
 5 the Editing staff who were on the payroll at the
 6 time those stories were edited.
 7 Q Anybody else?
 8 A The Editing staff who were on the payroll
 9 at the time those stories were edited. Without any
 10 specific dates, I really can't go forward. It's not
 11 part of the portfolio stories I reviewed for this.
 12 Q Well, did you edit those stories?
 13 A I reviewed those stories.
 14 Q What was your purpose of reviewing those
 15 stories?
 16 A Personal interest.
 17 Q Did you do anything to fact check those
 18 stories?
 19 A No. As I said, I did not edit those
 20 stories.
 21 Q Who would have been in charge of fact
 22 checking those stories, say in the last two months?
 23 A In the last two months?
 24 Q Yeah.
 25 A Ms. Davis, Mr. Yandle.

1 Q Mr. Jones testified under oath, and has
 2 also given an Affidavit under oath, that when he was
 3 Bureau Chief for The Daily News, he was offered
 4 money to write negative stories about
 5 Senator Donastorg by The Daily News.
 6 Do you have any knowledge of that?
 7 A I have no knowledge of that deposition.
 8 Q Do you have any knowledge of him being
 9 offered money to write --
 10 A He was not.
 11 Q -- negative --
 12 And what research did you do to make that
 13 statement?
 14 A I know for a fact that no such activities
 15 occurred at The Daily News.
 16 Q And how do you know that?
 17 A For one thing, there's no opinions.
 18 Q Do you know whether or not ICC ever
 19 offered any employees at The Daily News money to
 20 write negative stories about Senator Donastorg?
 21 A They did not. ICC did not.
 22 Q And how do you know that?
 23 A ICC did not interfere with the reporting
 24 at The Daily News.
 25 Again, there is no record of payment or of such

1 stories.

2 Q Were there any discussions at
3 The Daily News about voting or not voting for
4 Senator Donastorg?

5 A No.

6 Q None of your reporters sat around and
7 talked about who they were voting and not voting
8 for?

9 A No.

10 Q What is the policy of the Daily News to
11 investigate complaints of defamation?

12 A Complaints of against The Daily News?

13 Q Yes.

14 A We review the claim and determine whether
15 there are any merits to it.

16 Q And who would be in charge of reviewing
17 the claim?

18 A Counsel and management.

19 Q And that management would be you and
20 Ms. Davis, or are there others?

21 A Me and Ms. Davis.

22 Q And what does that review encompass?

23 A It varies depending on the claim.

24 Q Well, I'm talking about a claim for
25 defamation.

1 A Well, it varies depending on the claim.
2 You know, 50 bucks and a piece of notebook paper,
3 and you file a claim. As we all know, any number of
4 things can be said by any number of people about a
5 defendant, so it's a situational basis. And
6 depending on the statements in the claim, it may be
7 very clearly obvious from the outset that there is
8 no merit to it, or it may imply or state baldly
9 allegations of fact or incidents or events that need
10 additional review, in which case typically that's
11 talking about or referring to things that had been
12 published in the paper, and those articles will be
13 retrieved and reviewed in the context of the claim
14 made about those.

15 Q In the circumstances in which articles are
16 retrieved and reviewed as a result of a claim for
17 defamation, what is nature of the review of those
18 articles?

19 A We read them.

20 Q Anything else?

21 A The article is compared or evaluated in
22 light of the claim being made, and we make a
23 determination on whether the claim is a reasonable
24 characterization of the article in question.

25 Q So you read the article.

1 And then what standard do you use to
2 determine whether or not the article is a reasonable
3 characterization of what occurred?

4 A Experience and expertise on the part of
5 The Daily News Management, legal expertise on the
6 part of counsel.

7 Q And who would be the counsel who would be
8 reviewing them?

9 A Whoever we have retained as counsel in
10 that matter.

11 Q Who currently do you retain in that
12 matter?

13 A For matters currently active,
14 Attorney Rames is counsel to The Daily News.

15 Q And how long has he been counsel to
16 The Daily News?

17 A Twelve years.

18 Q When The Daily News received the complaint
19 of Senator Donastorg that he'd been defamed, did
20 The Daily News investigate that complaint?

21 A As I said, we evaluate such complaints and
22 we reviewed the article that was cited, and Senator
23 Donastorg's filing, and determined that there was
24 certainly no defamation that occurred as a
25 consequence of that article or that was caused by

1 that article.

2 Q And who participated in that
3 investigation?

4 A Myself, Ms. Davis, counsel, who I have
5 described earlier.

6 Q Robbins, Davis, and Rames; is that right?

7 A That's what I just said. Yes.

8 Q And how long did this investigation take?

9 A It's a review process from the time we got
10 the Complaint, you know, made an assignment to the
11 archivist to pull the appropriate article for us to
12 review. I don't explicitly remember if it was the
13 same day or the next day that we began the verbal
14 communication with counsel, but it would have been
15 very prompt.

16 Q Well, in this particular case, it was more
17 than one article, wasn't it? A series of articles
18 and editorials, was it not?

19 A I'm sorry. If I was speaking in the
20 singular and should have used plural, then please
21 accept that substitution.

22 Q Did you pull the editorials as well?

23 A I would not have reviewed the editorials,
24 no.

25 Q And why not?

1 A Because I had no role in the review of the
2 editorials. As a process of referring the case to
3 counsel would have left it to the discovery and
4 evaluation and responses to interrogatories to
5 determine if the editorials even needed to be
6 evaluated.

7 My responsibilities are limited to the
8 activities of The Daily News Publishing Company, which
9 were the news stories.

10 Q Well, the editorials also go out on paper
11 that's owned by the Daily News Publishing Company,
12 doesn't it? -- don't they?

13 A The editorials were controlled and
14 directed by IOC. That's the beginning and end of
15 it.

16 Q Really? Who published them?

17 A They're printed in The Daily News.

18 Q Well, isn't that publishing, sir?

19 A No. There's a big difference.

20 Q Didn't you publish those to the public?

21 A Publications to the public is -- the
22 person who publishes something is the person who's
23 responsible for the content. IOC was responsible
24 for that content.

25 Q Was there a standard on the Editorial page

1 of The Daily News that said "We're not responsible
2 for the content of this page"?

3 MR. RAMES: Object to form.

4 THE DEPCMENT: Not that I recall.

5 BY MS. ROHN:

6 Q Was there anything to tell the reader that
7 the editorials in the paper were not those of
8 The Daily News?

9 A There may have been, but, again, that was
10 not a content of the newspaper that I had
11 responsibility for, and I took very certain care to
12 ensure that I took no role or influence on those
13 pages.

14 Q You just let somebody put whatever they
15 wanted in there?

16 MR. RAMES: Object to form.

17 THE DEPCMENT: No. I let the owner of the
18 paper follow his policy, which was that his
19 corporation would control the content of those
20 pages.

21 BY MS. ROHN:

22 Q Are you disputing that the Editorial page
23 of the newspaper is a publication of The Daily News?

24 MR. RAMES: Object to form.

25 THE DEPCMENT: I'm disputing that

1 The Daily News was responsible for the content of
2 Editorial pages during the period of ownership
3 controlled by IOC and Mr. Prosser.

4 BY MS. ROHN:

5 Q Well, The Daily News was Mr. Prosser,
6 wasn't it?

7 MR. RAMES: Object to form.

8 THE DEPCMENT: No, it was not.

9 The Daily News is a newspaper company that
10 publishes The Virgin Islands Daily News, and during the
11 term of Mr. Prosser's ownership, it was responsible for
12 news gathering, news reporting, advertising, and
13 distribution. It was not responsible for the content
14 of the pages labeled "Opinion" that are in the center
15 of the newspaper during that period.

16 BY MS. ROHN:

17 Q Well, the Daily News Publishing Company
18 was a corporation, was it not?

19 MR. RAMES: Object to form.

20 BY MS. ROHN:

21 Q Isn't it?

22 A It is an incorporated entity.

23 Q And it owns The Daily News, does it not?

24 A It publishes The Virgin Islands Daily
25 News.

1 Q And at the time of the IOC involvement, it
2 was wholly owned by IOC?

3 A To my knowledge; I do not know that
4 firsthand.

5 Q And the IOC was wholly owned by
6 Jeffrey Prosser; isn't that true?

7 MR. RAMES: Object to form.

8 THE DEPCMENT: I do not know the breakdown
9 of ownership. I know that Mr. Prosser was the Chief
10 Executive and Chairman of that corporation.

11 BY MS. ROHN:

12 Q Well, Daily News Publishing Company owns
13 the newspaper, doesn't it?

14 A It publishes the newspaper. There is a --

15 Q It publishes the entire newspaper, doesn't
16 it?

17 A It prints the newspaper.

18 Q Is there something on the masthead of the
19 Editorial page that says, "This isn't part of
20 The Daily News"?

21 MR. RAMES: Object to form.

22 THE DEPCMENT: Not that I am aware of.

23 BY MS. ROHN:

24 Q Does some other company pay for the
25 editorials besides the Daily News Publishing

1 Company?

2 MR. RAMES: Object to form.

3 THE DEPENDENT: ICC was responsible for

4 generating the editorials, and the Daily News never

5 paid for them.

6 BY MS. ROHN:

7 Q Well, wasn't Ariel Melchoir a Daily News

8 employee? -- Ariel Melchoir, Junior?

9 MR. RAMES: I think it's two hours in.

10 Can we take a break?

11 MS. ROHN: Wait, wait. I'm going to

12 finish this question.

13 THE DEPENDENT: He reported to ICC.

14 BY MS. ROHN:

15 Q Wasn't he a Daily News employee, sir, on

16 the Daily News payroll?

17 A I am not sure who cut his checks.

18 Q Well, if he's testified under oath in the

19 Hillary Hodge case that he was a Daily News

20 employee, paid for by The Daily News, do you have

21 any facts to dispute that?

22 A Well, I know that I never budgeted

23 Mr. Melchoir's salary; I never had any role in

24 evaluating his performance; I never had any role in

25 securing payments for him or arranging other

1 compensation to him.

2 Q Do you have any facts to dispute the fact

3 that he was paid and employed by The Daily News?

4 MR. RAMES: Objection to form; asked and

5 answered.

6 THE DEPENDENT: The facts that I just

7 recited.

8 BY MS. ROHN:

9 Q Who did he get his paycheck from?

10 A I don't know.

11 Q Are you aware of the little NOPA system

12 that the ICC has as to delegating who is employed by

13 what company?

14 A I recollect that they used a personnel

15 procedure of that kind.

16 Q I think it was called a Personnel

17 Notification Form.

18 Have you seen those?

19 A I don't remember.

20 Q Do you have any facts to dispute that

21 Mr. Melchoir, on a Personal Notification Form, says

22 that he was an employee of The Daily News?

23 MR. RAMES: Object to form.

24 THE DEPENDENT: I don't know what it said.

25

1 BY MS. ROHN:

2 Q He was on the Editorial Board, was he not?

3 A That's correct.

4 Q Who else was on the Editorial Board?

5 A The names published in the newspaper under

6 the heading "Editorial Board" included Mr. Crouch,

7 Mr. Melchoir, and I believe at one point Jeanette

8 Millin.

9 Q And who was Jeanette Millin employed by?

10 A She reported to ICC.

11 Q Who was she employed by, sir?

12 A Well, she reported to ICC, so she was

13 employed by them. I don't know how they did the

14 accounting.

15 Q Did she get her paycheck from the

16 Daily News?

17 A She probably got her paycheck at

18 The Daily News, but I don't know what the paycheck

19 said. As I've described earlier in regard to

20 Ms. Bailey and Mr. Melchoir, I had no role in

21 budgeting for her, determining her evaluations,

22 determining her compensation, or arranging any type

23 of compensation for her.

24 Q Where was Ms. Millin's office?

25 A She didn't have an office. She, on

1 occasion, worked at a desk at The Daily News

2 building for a while, and then she began working at

3 an office or a desk or somewhere at one of the other

4 ICC facilities.

5 Q Where was Mr. Melchoir's office?

6 A Mr. Melchoir occupied an office in

7 The Daily News building on St. Thomas.

8 Q Did the Daily News report -- excuse me. I

9 forgot. I'm on to another subject.

10 (Recess.)

11 BY MS. ROHN:

12 Q In fact, Ariel Melchoir's email address on

13 your Editorial page of The Daily News was

14 The Daily News, was it not?

15 MR. RAMES: Object to form.

16 BY MS. ROHN:

17 Q Aerial@DailyNewsPublishing?

18 A I don't recall Mr. Melchoir's email

19 address.

20 Q We'll look at some documents to refresh

21 your recollection.

22 Now, did The Daily News report the claim by

23 Holland Redfield --

24 Well, first of all, did The Daily News report

25 the fact that Senator Donastroy had been investigated

1 by ICC or VITECOP?

2 A Not that I recollect.

3 Q And why would that be?

4 A Why would it be? You can pose either
5 question. It a news judgment, for one thing. We
6 did not have the facts at hand about whether an
7 investigation occurred or any report about the
8 investigation.

9 Q Did The Daily News try to obtain those
10 facts?

11 A No.

12 Q Why not?

13 A It was not a newsworthy matter in the
14 context of Senator Donastorg's responsibilities as a
15 Senator.

16 Q Can you explain to me the basis of how
17 The Daily News determined that its affiliated
18 company has spent thousands of dollars investigating
19 not only Senator Donastorg but all of his staff that
20 worked in his office --

21 A The Daily News had no factual knowledge of
22 any of that.

23 Q If you'd let me finish my question.

24 -- that it was reported in The Source, in the
25 Avis, on virtually every talk show?

1 An affiliate of The Daily News had
2 investigated Senator Donastorg, every staff person who
3 had worked in his office, every contributor who had
4 contributed to his campaign, and all of his family and
5 friends. How was it that The Daily News decided that
6 that wasn't newsworthy to at least investigate whether
7 or not that had occurred?

8 MR. RAMES: Object to form.

9 THE DEPOSEE: The Daily News makes news
10 judgments based on the expertise and experience of
11 its editors. I have no idea what the standards are
12 in other media. I have no knowledge of what other
13 media reported in the context of the question that
14 you're asking, or whether the reporter that you
15 described in that question is -- what you're
16 referring to as the investigation was represented in
17 those media.

18 BY MS. ROHN:

19 Q Well, you existed in St. Thomas during
20 that period of time, did you not?

21 A What period of time?

22 Q During the period of time that The Source
23 and the Avis and the talk shows were all talking
24 about this investigation.

25 A I just said, I don't have any knowledge of

1 what other media besides The Daily News did in the
2 context of any activity to undertake by ICC in
3 regard to Mr. Donastorg.

4 Q So your testimony under oath is that you
5 had no idea that there was an investigation of
6 Mr. Donastorg?

7 MR. RAMES: Object to form.

8 THE DEPOSEE: As I said earlier, that
9 knowledge of the fact that there was a document
10 that's referred to as an investigative report and
11 the activity that results in that report, my only
12 knowledge that that even exist is from perusal of
13 the filing in this matter.

14 BY MS. ROHN:

15 Q How does The Daily News stay current on a
16 daily basis as to what is occurring on the island?

17 A We talk to people.

18 Q What kind of people do you talk to?

19 A Everyone, anyone.

20 Q But not a single person you talked to
21 informed you that there was an investigation that
22 had been uncovered?

23 A I didn't say that. I'm testifying in this
24 deposition on behalf of the Daily News Publishing
25 Company as to the scope of what The Daily News knew

1 then and knows now about the matter that you're
2 asking me questions on.

3 Q Sir, at the time of this, you were a
4 Management employee at The Daily News, were you not?

5 A Yes, I was.

6 Q Were you, as a Management employee at
7 The Daily News, aware that there was, and it had
8 been revealed that there had been an investigation
9 of Senator Donastorg?

10 A I am aware that there have been reporting
11 of that type based on what you've just asked me, but
12 I do not -- did not and do not plan to make a habit
13 of reviewing other media.

14 It is a fact that the Daily News sets the
15 standard here, and if other media choose to pursue other
16 journalistic options, that's entirely within their right
17 and privilege.

18 Q What is the basis of your statement that
19 "The Daily News sets the standard here"?

20 A Absolutely fact.

21 Q What fact?

22 A The fact that we are the dominant media in
23 this market; the fact that more readers are familiar
24 with our product than with any other news medium in
25 the Virgin Islands; and the fact that we have been

1 recognized by virtually every journalistic
2 organization in the United States for quality of our
3 work.
4 Q You actually go out and covet those
5 awards, don't you? You send out publications, try
6 to lobby for those awards, don't you, sir?
7 MR. RAMES: Object to form.
8 THE DEPONENT: No.
9 BY MS. ROHN:
10 Q Daily News doesn't do that, sir?
11 A There's no venue for lobbying for awards.
12 Q Really, sir?
13 You aren't the person who sends and nominates
14 yourself for those awards, sends the information, says,
15 "I want to be considered for?"
16 A Certainly, just like a student --
17 MR. RAMES: Object to form.
18 THE DEPONENT: Just like a student would
19 apply to go to college, just like a candidate would
20 run for office.
21 BY MS. ROHN:
22 Q And you make certain representations to
23 those organizations as to the integrity of your
24 paper, don't you?
25 MR. RAMES: Object to form.

1 aware of the investigation the day before it was
2 printed in the Avis?
3 MR. RAMES: Object to form.
4 THE DEPONENT: I have no knowledge of
5 Attorney Hartmann's information.
6 BY MS. ROHN:
7 Q You know Kevin Rames, right?
8 A Yes.
9 Q Were you aware that Kevin Rames was the
10 attorney for ICC, and that the judge ordered ICC to
11 make the report public?
12 MR. RAMES: Object to form.
13 THE DEPONENT: Again, the report that
14 you're referring to is not something that I'm
15 familiar with. I've never seen it, never had a copy
16 of it. No one at The Daily News has ever seen it or
17 had a copy of it.
18 BY MS. ROHN:
19 Q And that's because you never asked for it,
20 have you, sir?
21 A I don't know if anyone at the Daily News
22 ever asked for it. I know that I never directed
23 anyone to ask for it. I know that The Daily News'
24 Management, as a entity, didn't direct anyone to ask
25 for it.

1 THE DEPONENT: I don't believe that any of
2 those organizations have ever questioned the
3 integrity of The Daily News.
4 BY MS. ROHN:
5 Q Now, the question that I had originally
6 asked you, sir, was at or near the time it was
7 disclosed that there was an investigation of
8 Senator Donastory, were you aware of that?
9 A As I said, I don't recall being aware of
10 that. I certainly was not aware that there was an
11 investigation at any point until the fact of it, or
12 the allegations that it exists became clear through
13 the documents found in the course of the Donastory
14 lawsuit against The Daily News.
15 Your earlier question was referring to reports
16 about it, and I don't recall any knowledge or lack of
17 knowledge or anything about those reports.
18 Q Do you know Carl Hartmann?
19 A Carl Hartmann, yes.
20 Q And how do you know Carl Hartmann?
21 A He is an attorney who, at one point,
22 worked for ICC.
23 Q Did he also do work for The Daily News?
24 A I believe so.
25 Q Were you aware that Carl Hartmann was

1 Q Were there any conversations with anyone
2 in ICC about this investigation?
3 A No.
4 Q No one from ICC contacted The Daily News
5 and gave them their view of the event?
6 A No.
7 Q Senator Redfield didn't contact
8 The Daily News and give a statement as to why ICC
9 had investigated Senator Donastory?
10 A Not that I'm aware of or recall.
11 Q What is the policy at The Daily News
12 regarding retracting statements made in the
13 newspaper as far as news stories?
14 A Will you define "retracting"?
15 Q Does The Daily News ever retract stories?
16 A The Daily News has never retracted a
17 story, but in order for me to answer your question
18 fully and accurately, I'm going to need you to
19 define what you mean by "retracting."
20 Q Where you write a statement that says "We
21 said in the newspaper, and it was incorrect."
22 A The Daily News has a correction policy. A
23 retraction is something else.
24 Q All right. Well, what's your correction
25 policy, sir?

1 A If facts are unclear or incorrect in the
2 newspaper, The Daily News will publish a piece on
3 Page 2 or 3 that it is labeled "Setting the Record
4 Straight" in which the unclear or inaccurate
5 information is referenced and the clarification or
6 correction is stated.

7 Q And what are the factors that go in to
8 deciding that this retraction would be on Page 2 or
9 3?

10 A That is just the normally convenient place
11 to place those items.

12 Q Why wouldn't there be a policy that says
13 that the retraction should be given the same import
14 as the original story?

15 MR. RAMES: Object to form.

16 THE DEPENDENT: Again, you're using the
17 word "retraction," and that's not what I'm referring
18 to.

19 BY MS. ROHN:

20 Q Sorry.

21 A To the extent that there are universal
22 standards in the newspaper industry, clarification
23 and correction are typically present on the second
24 or third page of a newspaper.

25 In the case of a retraction, which is when a

1 newspaper rescinds a story as being substantially flawed
2 in total, would that merit play as a story kept on par
3 kept with the original publication.

4 Q Does The Daily News have any procedure in
5 which they have disinterested persons come and
6 review stories that they think might be sensitive or
7 might have a great impact on someone who they're
8 writing about?

9 A No.

10 Q Why not?

11 A Why would we? This is -- what you're
12 suggesting is almost unheard of practice in American
13 Journalism. And, quite frankly, we don't need
14 anyone else to make clear for us what is fair and
15 accurate, we are experts at that ourselves.

16 MS. ROHN: Exhibit Number 1.

17 (Plaintiffs' 1 Exhibit marked for identification.)

18 BY MS. ROHN:

19 Q Do you have it in front of you?

20 A I have what you handed out.

21 Q Can you review Exhibit 1 and tell me if
22 you've ever seen that document before?

23 A I have not.

24 Q Were you ever made aware that a company by
25 the name of Atlantic Tele-Network had the consultant

1 for the PSC investigated?

2 A I have no knowledge of any of that.

3 Q Were you aware that The Daily News
4 published various news stories negative to the
5 consultant to the PSC?

6 MR. RAMES: Object to form.

7 THE DEPENDENT: What consultant? What
8 stories?

9 BY MS. ROHN:

10 Q Mr. Madan, Georgetown Consulting Services.

11 A What about him?

12 Q Are you aware that there were a series of
13 news stories which called into question his
14 appropriateness for being a consultant?

15 A What stories? When were they published?

16 Q Sir, I'm asking you, are you aware of
17 them?

18 A I'm unaware of anything in connection with
19 Mr. Madan or the PSC and its relationship with
20 Mr. Madan, if even Mr. Madan and the PSC's
21 relationship existed.

22 Q Are you aware that The Daily News
23 published a series of editorials negative toward
24 Mr. Madan?

25 A Did it?

1 Q I'm asking you if you're aware of it, sir?

2 A I have no knowledge of those.

3 Q Do you ever read the Editorial page of
4 The Daily News?

5 A Not when ICC owned the newspapers.

6 Q Why is that?

7 A Because it was outside the scope of my
8 responsibility, and the separation was absolute and
9 very rigid as directed by Mr. Prosser.

10 Q Was that in writing, sir?

11 A Not that I recall. Actually, yes, it was.
12 It was.

13 Q Really? What document is this?

14 A It was written into my employment contract
15 at that time that I had one, that I would have no
16 responsibility for Opinion content of
17 The Daily News, as I recall.

18 Q Well, that is not what I'm asking you,
19 sir.

20 You said that you were directed not to review
21 the Editorial page.

22 MR. RAMES: Object to form.

23 BY MS. ROHN:

24 Q Were you directed not to review the
25 Editorial page?

1 A Well, I think that both by putting it in
2 contract and by directing me not to review the
3 Editorial page, it was very clear what my
4 responsibilities were.

5 Q Was the "Don't review the Editorial page"
6 in writing, sir?

7 A In the contract.

8 Q Your contract just said you weren't to
9 participate in writing editorials; isn't that
10 correct, sir?

11 A If I recollect correctly, it said I have
12 to have nothing to do with the Opinion pages.

13 Q And you thought that meant you couldn't
14 even read them?

15 A No. But I felt that in an abundance of
16 caution, there was no reason to inadvertently
17 intrude into those by involving myself there.

18 Q Were you aware that as the Management
19 employee of The Daily News, that VITELCO was
20 regulated by the Public Service Commission?

21 MR. RAMES: Object to form.

22 THE DEPARTMENT: I am aware from reporting
23 and editing done by The Daily News that the phone
24 company is among the agencies, utilities regulated
25 by the PSC.

1 BY MS. ROHN:

2 Q And were you aware that the phone company
3 was wholly owned by the same company that wholly
4 owned The Daily News?

5 A That was my understanding.

6 Q And were you aware that there was
7 animosity between VITELCO and PSC?

8 A I don't believe that a company and a board
9 can engage in an emotion. I'm aware that there were
10 disagreements and disputes.

11 Q Well, there were lawsuits, weren't there,
12 sir?

13 A Were there lawsuits?

14 Q Didn't VITELCO sue the PSC?

15 A Maybe it did; I don't know. There is an
16 awful lot of stuff back and forth for a long, long
17 time.

18 Q Did you know Albert Sheen?

19 A No, I did not.

20 (Plaintiffs' Exhibit 6 marked for identification.)

21 BY MS. ROHN:

22 Q Exhibit Number 6. Exhibit Number 6 is an
23 Avis news article, "VITELCO offers to settle all
24 rate cases with PSC."

25 Are you aware of whether or not

1 The Daily News covered this subject?

2 A I am not.

3 Q Would you agree with me that VITELCO,
4 agreeing to settle rate cases, would be newsworthy?

5 A I cannot make that kind of stipulation in
6 the abstract.

7 Q Would you agree with me the fact that part
8 of that settlement is that Mr. Prosser would cease
9 to being a management position with VITELCO would be
10 newsworthy?

11 A To state my earlier answer, I cannot state
12 in the abstract to newsworthiness to events with
13 which I'm unfamiliar and which I only have
14 information about from a secondhand source.

15 (Pause in proceedings - WAPA power outage.)

16 (Plaintiffs' Exhibit 7 marked for identification.)

17 BY MS. ROHN:

18 Q Can you review Exhibit Number 7, sir?

19 (Pause in proceedings.)

20 THE DEPARTMENT: All right.

21 BY MS. ROHN:

22 Q Can you tell me why the same day that
23 The Daily News didn't cover a story, that
24 Mr. Prosser had agreed to remove himself from
25 Vitelco, The Daily News chose to write a story about

1 the fact that Mr. Prosser had bought a jet?

2 MR. RAMES: Object to form. Doesn't say
3 Mr. Prosser agreed to buy a jet.

4 MS. ROHN: Yes, it does.

5 "Top executive officers of the V.I.
6 Telephone Corporation recently
7 purchased a private jet."

8 MR. RAMES: -- "for Vitelco's parent
9 company."

10 MS. ROHN: But they assure rate payers
11 they won't be using it for Vitelco's business.

12 MR. RAMES: I wasn't commenting on that, I
13 was commenting on your representation that Prosser
14 bought a jet. In fact, I shouldn't comment at all.

15 Object to the form.

16 BY MS. ROHN:

17 Q Can you tell me why, that, sir, was
18 newsworthy?

19 A I cannot comment in the abstract on the
20 newsworthiness of events that occurred nineteen
21 years ago, that I have no direct knowledge about.

22 Q Would you agree with me that before
23 printing in the paper that the jet would not be
24 used -- would not be charged to Vitelco, that there
25 ought to have been some requests for documentation

1 as to who the jet was charged to?
 2 MR. RAMES: Object to form.
 3 THE DEPONENT: I cannot comment in the
 4 abstract about events nineteen years ago of which I
 5 have no firsthand knowledge.
 6 BY MS. ROHN:
 7 Q In your normal fact checking of a story
 8 when you received a news item from someone
 9 affiliated with a company that owned your paper,
 10 what fact checking would you do?
 11 A There's any number of actions to be taken
 12 depending on the nature of the information released.
 13 Among the first and foremost is the verification
 14 that the information released is indeed from the
 15 individual or organization that it's represented to
 16 be from; and then subsequent to that, there are
 17 infinite number of avenues of fact checking that
 18 might be needed, necessary, or desired.
 19 (Defendants' Exhibit 13 marked for identification.)
 20 BY MS. ROHN:
 21 Q Exhibit 13. This is a story from the
 22 Daily News, May 31st, 1999, in which it discusses
 23 that Andrew Rutnick, among others, was appointed to
 24 the PSC.
 25 Were you aware of any animosity between the

1 Daily News and Mr. Rutnick?
 2 A Again, the use of the --
 3 MR. RAMES: Object to form.
 4 THE DEPONENT: -- word "animosity," which
 5 is an emotional state that I don't believe can exist
 6 in a company or institution, and certainly would not
 7 expect a public figure like Mr. Rutnick to engage
 8 in, but that aside, I'm unaware of any public or
 9 private disagreements or disputes that arose from
 10 their interaction.
 11 BY MS. ROHN:
 12 Q Were you present at the trial of
 13 Mr. McDonald in which Ms. Eunice Bedminster
 14 testified that Mr. Andrew Rutnick was persona non
 15 grata at the Daily News, and the Daily News wouldn't
 16 published anything positive about him?
 17 MR. RAMES: Object to form.
 18 THE DEPONENT: I was present for
 19 Ms. Bedminster's testimony in that case, and I know
 20 for a fact that any representation of any figure
 21 being persona non grata, as you put it, is factually
 22 inaccurate because such conditions and activity did
 23 not exist at the Daily News.
 24 (Plaintiffs' Exhibit 14 marked for identification.)
 25

1 BY MS. ROHN:
 2 Q Is Exhibit 14 in front of you?
 3 A No.
 4 MR. RAMES: Not yet. He does now.
 5 BY MS. ROHN:
 6 Q This is an article from The Daily News
 7 from March 2nd, 1991, reporting that Ann Abramson
 8 has sued the Public Service Commission over the
 9 activities of Georgetown Consulting Group because
 10 they weren't selected by competitive bids.
 11 Does this refresh your recollection as to
 12 whether or not The Daily News has indeed published
 13 stories about the Georgetown Consulting Group?
 14 MR. RAMES: Object to form.
 15 THE DEPONENT: If this photocopy is in
 16 fact really what it represents, this is a story from
 17 The Daily News, March 2nd, 1991, then I would agree
 18 that in fact the Daily News has published news
 19 stories that refer to Georgetown Consulting.
 20 BY MS. ROHN:
 21 Q The article in the next-to-last paragraph
 22 says:
 23 "Vitelco President, Jeffrey J.
 24 Prosser, maintained Friday that the
 25 commission is breaking the law by

1 not putting the consultant contract
 2 out for bid."
 3 Would The Daily News had had a responsibility
 4 to disclose to its readers that Mr. Prosser was also
 5 the President of The Daily News?
 6 MR. RAMES: Object to form.
 7 THE DEPONENT: On March 2nd, 1991, the
 8 Daily News Publishing Company was owned by the
 9 Gannett Company.
 10 BY MS. ROHN:
 11 Q Thank you.
 12 MR. RAMES: Is this going to be an exhibit
 13 to this deposition?
 14 MS. ROHN: Yeah.
 15 MR. RAMES: Do you have a complete copy?
 16 MS. ROHN: Doubt it.
 17 (Plaintiffs' Exhibit 15 marked for identification.)
 18 BY MS. ROHN:
 19 Q Exhibit 15.
 20 MR. RAMES: So this exhibit is a portion
 21 of the article?
 22 MS. ROHN: Yeah, and you're about to get
 23 the second half.
 24 BY MS. ROHN:
 25 Q This is the second page of that article,

1 and it notes several things. One:
 2 "Georgetown President, Mr. Madan,
 3 has been critical of Vitelco. In
 4 September, he recommended the
 5 commission decrease phone rates by
 6 \$6.8 million. Madan also
 7 recommended the commission deny
 8 VITELCO's request for a rate
 9 increase of approximately the same
 10 amount."

11 Would you agree with me that positions at the
 12 PSC took on rates and rate increases and decreases were
 13 newsworthy items?

14 A Again, I cannot comment on the
 15 newsworthiness of events 19 years ago about which I
 16 have no firsthand knowledge or direct participation
 17 in the coverage of. I would agree that the
 18 newspaper published stories about them.

19 Q In the article in the next-to-last column,
 20 Hodge, being the attorney for the PSC:

21 "Hodge pointed to \$440,000 in
 22 consulting and public-relations
 23 fees paid to Abramson by VITELCO
 24 and its parent company, Atlantic
 25 Tele-Network, between 1988 and

1 MR. BCKARD: Object to form.
 2 THE DEFENDENT: I have no knowledge of any
 3 activity or interaction between Mr. Prosser and
 4 Ms. Abramson beyond the scope of the awareness I had
 5 of her affiliation on the Board of the company that
 6 I referred to in a previous answer.

7 BY MS. ROHN:

8 Q Did The Daily News ever receive a news tip
 9 that Mr. Prosser was paying Ms. Abramson money while
 10 she was in prison?

11 A I have no knowledge of anything like that.
 12 (Plaintiffs' Exhibit 35 marked for identification.)

13 BY MS. ROHN:

14 Q Exhibit 35. Have you ever seen this
 15 document before, sir?

16 A No. I've never seen any documents with
 17 the Sheraw letterhead on it.

18 Q One of the results in this investigation
 19 into Senator Donastorg is that he did not attend
 20 California State University at Fullerton as reported
 21 in The Daily News, is a report from June 24, 1998.

22 Was the substance of this report ever
 23 provided to The Daily News, that Mr. Donastorg had not
 24 attended that college?

25 A No.

1 1991."

2 Were you aware of the connection between
 3 Ms. Abramson and VITELCO?

4 A What connection?

5 Q Were you aware of any connection between
 6 Ms. Abramson and ICC or VITELCO?

7 MR. BCKARD: Object to form.

8 THE DEFENDENT: The only personal knowledge
 9 I have of any relationship between Ms. Abramson and
 10 VITELCO is from my awareness several years ago that
 11 she was on the ICC Corporate Board at some point. I
 12 have no other knowledge about their relationship,
 13 their activities, or any work that she did or was
 14 alleged to have done or not done for ICC or any of
 15 its subsidiaries.

16 I have never had a conversation with
 17 Ms. Abramson; I did meet her once at a social function.

18 Q Were you aware that Ms. Abramson was
 19 convicted of a felony?

20 A I recall The Daily News publishing stories
 21 on Mrs. Abramson's trial, conviction, and
 22 sentencing.

23 Q Were you aware of the fact that
 24 Jeffrey Prosser regularly sent her money while she
 25 was in prison?

1 Q Did The Daily News ever report that
 2 Mr. Donastorg had not attended that college?

3 A I don't recall.

4 Q Isn't it a fact, sir, that The Daily News,
 5 in its reporting on Senator Donastorg as a
 6 candidate, reported that he had listed graduating
 7 from a college he did not graduate from?

8 A Oh, we did report that, but I don't recall
 9 it being Cal State Fullerton.

10 Q Where did you get the information that he
 11 had not graduated from college?

12 A I don't believe it was -- the report, as I
 13 reflected on it further, the report that
 14 The Daily News did publish was not specifically
 15 disputing whether or not Mr. Donastorg had attended
 16 the institution in question in that story but
 17 whether the institution was, in fact, a legitimate
 18 academic institution.

19 Q And where did The Daily News get the
 20 information to do that story?

21 A That story was based on Mr. Donastorg's
 22 representation of his educational credentials and
 23 The Daily News fact checking of the accuracy of
 24 those, as it does for all political candidates for
 25 the Legislature and Government House.

1 Q Did The Daily News receive any information
2 from an outside source that caused it to investigate
3 that issue?

4 A No. The Daily News reported on that issue
5 as a matter of course, as it does for all political
6 issues.

7 (Pause in proceedings.)

8 (Plaintiffs' Exhibit 38 marked for identification.)

9 BY MS. ROHN:

10 Q Exhibit 38. This is an Editorial from
11 The Daily News.

12 If you'll look at the masthead, sir. Was
13 indeed at one point Ariel Melchoir, Jr., the Publisher
14 and Editor of The Daily News?

15 A Mr. Melchoir is accredited with that title
16 in this masthead.

17 Q Do you have any reason to believe that's
18 not true?

19 A I have no reason to believe that this was
20 not his title at the time of publication, although
21 this photocopy does not include the date of the
22 page. However, Mr. Melchoir never acted in the
23 scope of duties normally under the purview of people
24 with the title Publisher or persons with the title
25 Editor of an American newspaper.

1 Q What duties do you claim he didn't do that
2 he normally would have done had he --

3 A Mr. Melchoir was never responsible for the
4 Company's operations or financial performance, and
5 he was never responsible for the news content.

6 Q Mike Middlesworth is listed as CEO and
7 Executive Editor. Do you know Mr. Middlesworth?

8 A I have never met Mr. Middlesworth.

9 Q And on this particular masthead, Ed Crouch
10 is listed at the IOC Consultant.

11 Were you aware that at some point Edwin
12 Crouch was an IOC consultant for The Daily News?

13 A Mr. Crouch was never an IOC consultant for
14 The Daily News. I assume that IOC Consultant is his
15 title, and that he was employed by IOC.

16 Q If you go into the middle of this report,
17 it indicates -- I guess the third paragraph:

18 "At the PSC hearing Wednesday,
19 VTELECO President Samuel Ebbensen
20 said the PSC consultant's report is
21 seriously flawed."

22 And then it goes, next paragraph:

23 "It is important to remember that
24 Connecticut-based Madan has enjoyed
25 a long an enormously lucrative

1 relationship with the PSC. When
2 the PSC accepts his recommendations
3 that a utility -- such as VTELECO,
4 et al -- should be subject to a
5 rate investigation, Madan then
6 supervises the investigation and
7 bills hundreds of thousands of
8 dollars in fees. Who pays the
9 fees? Not the utility, but the
10 utility's customers."

11 First of all, is it the habit of
12 The Daily News to identify where someone is from?

13 MR. RAMSES: Object to form.

14 BY MS. ROHN:

15 Q "Mr. Madan, a Connecticut-based consultant
16 group," is that appropriate for a newspaper?

17 A It is very frequent that a newspaper
18 article will refer to the locale in which an
19 individual organization is based.

20 Q Why would that be newsworthy or important
21 to a story or an editorial?

22 A To illustrate the level of association or
23 local familiarity of that individual or
24 organization.

25 Q This editorial goes on to say:

1 "But regulatory body should not be
2 threatened by a rogue senator who
3 is trying - yet again - to play
4 politics and jeopardize the
5 economic well-being of the people
6 he supposedly represents. Enter
7 Senator Adlah Donastorg, who is
8 threatening an attempt to disband
9 the PSC and fire its chairman."

10 Do you believe that the term "rogue senator"
11 is an appropriate term to use in an editorial?

12 A I believe that any term can be appropriate
13 if it is used based on conventional definitions and
14 that is the intended idea of the person creating the
15 article in question. It's no one's place to judge.
16 If they intended -- if the creators of this Opinion
17 piece intended to characterize Mr. Donastorg as a
18 rogue, or anyone as a rogue, that is, in fact, the
19 correct word to use unless they wanted to use a
20 synonym for the word "rogue," although none
21 particularly comes to mind.

22 I don't think that in light of common usage, it
23 is particularly prerogative, and it certainly is not a
24 defamatory word, as evidenced by Governor Palin's use of
25 the word "rogue" in her autobiography that was published

1 earlier this year, which was titled "Going Rogue," and
2 she appears to consider it quite the compliment to be
3 characterized that way.

4 And, in fact, any number of politicians over
5 the last several decades have espoused similar epithets
6 or characterizations as they presented themselves to the
7 public.

8 To the extent that the case in question here,
9 as I said, it's not my place to judge, but if they meant
10 rogue, then certainly they've used the word accurately.

11 Q What is your understanding of the
12 definition of "rogue"?

13 A Typically it is used in the context of
14 politics to refer to someone who is not beholdng to
15 the powers, institutional powers that be.

16 Q Now, it goes on to say:

17 "Donastorg is an example of one of
18 the most anti-business legislators
19 in recent memory."

20 That's a factual statement, is it not, sir?

21 MR. RAMS: Object to form.

22 THE DEPENDENT: No, it is not a factual
23 statement, it is a statement of opinion and --

24 BY MS. ROHN:

25 Q Where does it say that it is an opinion?

1 unless it can be demonstrated by empirical facts,
2 such as pointing to a car and referring to it as a
3 red car if it is, in fact, red; then that is
4 empirically demonstrated.

5 But aside from that, the language in the
6 selection of particular words is a very subjective
7 process, and while perhaps it is a difficult thing for
8 young children or people without the advantage of hearing
9 clearly or reading fully what was presented as an
10 opinion -- and sometimes that might difficult to
11 understand the difference between sections of the piece
12 that are opinions and sections of the piece that are
13 indisputably factual recitations. There's just really
14 not any way to present such an idea except with the
15 language of common use in our community.

16 Q So, again, you think -- excuse me one
17 second.

18 You think the term "anti-business legislator"
19 is an opinion?

20 A I don't think that; it is quite obviously
21 a characterization which in and of itself is an
22 opinion.

23 On top of that, it's labeled as an editorial,
24 and on top of that, it's labeled as an opinion. And on
25 top of that, opinion is particular speech writing,

1 It says "he is," doesn't it?

2 A I believe that your understanding of
3 expressions of opinion in written context of this
4 type is perhaps not what is standard practice
5 throughout the English-speaking world. People do
6 not preface their opinions by saying "I have an
7 opinion and here it is," they state categorically
8 either a fact or an opinion, and then it's up to the
9 reader or the audience, listener to assess for their
10 own self whether the opinion, the statement is a
11 fact or an opinion or a combination thereof.

12 I would suggest that since this piece is on a
13 page that is headed with the word "Opinion," that it is
14 quite abundantly clear that it is very likely opinions
15 will be present here, and that this is presented as a
16 product of an editorial board, and as is standard
17 practice throughout American Journalism. Anything that
18 is labeled as an editorial or the product of an editorial
19 board is a statement of opinion or a statement -- or
20 herald of an article that includes opinion. I don't
21 believe there's any room for misunderstanding.

22 Q So you think "anti-business legislator" is
23 an adjective that is an opinion?

24 A Well, actually, any adjective would, in
25 fact, fall under the characterization of opinion

1 protected by the First Amendment, and quite sacred in
2 this community and throughout the country.

3 MS. ROHN: Exhibit 39.

4 (Plaintiffs' Exhibit 39 marked for identification.)

5 BY MS. ROHN:

6 Q This is a news story from The Daily News
7 from Wednesday, July 15, 1998.

8 Were you at the paper by that time?

9 A No.

10 Q I take it, then, you have no knowledge as
11 to this news story; is that correct?

12 A I have no firsthand knowledge of this news
13 story.

14 Q What year did you come to the paper?

15 A 1999.

16 Q Can you tell me when in 1999?

17 A February 24th.

18 Q Were you aware that the Editorial that we
19 just looked at in Exhibit 38 that had been entitled
20 "The public's right to know," resulted in
21 Penny Feuerzeig resigning her position with
22 The Daily News because it was so ethically improper?

23 MR. RAMS: Object to form.

24 THE DEPENDENT: I refuse to stipulate to
25 your characterization of the editorial. And I have

1 no knowledge of the relationship or the dynamics of
 2 the relationship between Mrs. Feuerzeig and
 3 The Daily News or her opinion of this --
 4 (Plaintiffs' Exhibit 41A marked for identification.)
 5 BY MS. ROHN:
 6 Q Exhibit 41A.
 7 A -- article.
 8 Q Have you ever reviewed that story before,
 9 sir?
 10 A No.
 11 Q Story indicates:
 12 "A top editor of The Daily News
 13 quit yesterday because she believes
 14 the newspaper has lost its
 15 journalistic credibility since
 16 territorial tycoon,
 17 Jeffrey Prosser, took it over just
 18 five months ago."
 19 It goes on to say:
 20 "The Editorial written by Prosser
 21 defending VITKOCO rates published
 22 in yesterday's edition in a
 23 one-page letter, she cited the
 24 editorial as a reason for her
 25 immediate resignation."

1 Vice President at Emerging
 2 Communications, which owns VITKOCO.
 3 He's also The Daily News' Editorial
 4 Board Member."
 5 Do you dispute the truth of that statement?
 6 A I have no basis for knowing any of the
 7 facts relating to Mr. Crouch's role, title,
 8 relationship w Emergent Communications of ICC or
 9 The Daily News as characterized there.
 10 I have no knowledge who wrote that editorial or
 11 any others during the operation of ICC by Mr. Prosser.
 12 And I have no basis for knowing or rebutting
 13 anything that Mrs. Feuerzeig may have to say about it.
 14 Q The editor of the story goes on to say:
 15 "The Editorial was written by
 16 Prosser, said Daily News CEO and
 17 Executive Editor
 18 Mike Middlesworth."
 19 Do you have any facts to dispute that fact?
 20 A I have no factual knowledge or second hand
 21 knowledge of anything to do with who wrote that
 22 editorial. And certainly if the owner of the
 23 newspaper elected to write an editorial, that was
 24 within the scope of his rights.
 25 (Plaintiffs' Exhibit 42 marked for identification.)

1 It goes on to say:
 2 "The editorial destroyed the last
 3 shreds of credibility that may have
 4 remained. It also crossed an
 5 ethical line."
 6 Having read that editorial, do you disagree
 7 with Ms. Feuerzeig?
 8 MR. RAMES: Object to form.
 9 THE DEPENDENT: I have no knowledge as to
 10 the veracity of the Avis' report, and so I will not
 11 stipulate that it is accurate in its representation
 12 of Mrs. Feuerzeig's comments or assessments of the
 13 editorial. I certainly respect her right to hold
 14 whatever opinion that she chooses, and as is
 15 expressed, to the extent that it is accurately
 16 expressed in the Avis story, certainly opinions are
 17 her right to publicly espouse even when they're
 18 printed on pages that are not headed with the word
 19 "Opinion."
 20 Q On the second page of this document, it
 21 says:
 22 "Despite her decision-making
 23 authority as Editorial Page Editor,
 24 yesterday's piece was written and
 25 unilaterally imposed by Ed Crouch,

1 BY MS. ROHN:
 2 Q Exhibit 42. Have you ever reviewed that
 3 editorial from the Avis, June 4, 1998, entitled
 4 "What a rogue?"
 5 A No.
 6 (Plaintiffs' Exhibit 46 marked for identification.)
 7 BY MS. ROHN:
 8 Q Exhibit 46. This is a news story. I use
 9 that word loosely --
 10 MR. RAMES: Object to form.
 11 BY MS. ROHN:
 12 Q -- that's headlined, "Senator: No
 13 conflict of interest with firm selling to hospital."
 14 Is that a proper headline?
 15 A It is a headline written in the style and
 16 form very common in American newspapers.
 17 Q Kind of like "Senator, I didn't beat my
 18 wife?"
 19 MR. RAMES: Object to form.
 20 THE DEPENDENT: I don't see the parallel
 21 that you're implying.
 22 BY MS. ROHN:
 23 Q Do you think that it was newsworthy to
 24 report that a company that Senator Donastorg was
 25 affiliated with had been paid \$11,000 in a year?

1 MR. RAMES: Object to form.
 2 THE DEPONENT: I cannot comment in the
 3 abstract on the newsworthiness of events 13 years
 4 ago that I have no firsthand knowledge of.
 5 BY MS. ROHN:
 6 Q And the fact that the last paragraph of
 7 story says that:
 8 "Indeed, the actions of
 9 Senator Donastorg didn't break any
 10 rules or weren't against any laws."
 11 Do you think that this is an appropriate news
 12 story --
 13 MR. RAMES: Object to form.
 14 BY MS. ROHN:
 15 Q -- that says -- the news story that says
 16 the senator didn't violate any laws?
 17 MR. RAMES: Object to form.
 18 BY MS. ROHN:
 19 Q Is that right? Is that an appropriate
 20 news story?
 21 A Speaking in the generic abstract, you see
 22 stories like that all the time.
 23 Q And you think they are appropriate?
 24 A I didn't say that. I said --
 25 Q Well, that was my question, sir.

1 insurance company's position on this action.
 2 Q Well, have you ever spoken to anybody from
 3 the insurance company on this cause of action?
 4 A Not that I immediately recall.
 5 Q Are you aware of any reservation of rights
 6 or claims of lack of coverage?
 7 A Every insurance company reserves its
 8 right; I'm sure that's been done in this case.
 9 Q Why are you sure that's been done in this
 10 case?
 11 A 'Cause every insurance company always
 12 reserves its rights.
 13 Q Are you aware of a reporter by the name of
 14 Hal Hatfield?
 15 A Yes.
 16 Q And was he there while you were there?
 17 A Yes.
 18 Q Did Mr. Hatfield have a drinking problem?
 19 MR. RAMES: Object to form.
 20 THE DEPONENT: To my knowledge he was
 21 subject to alcoholism at points in his life.
 22 BY MS. ROHN:
 23 Q But he was retained by The Daily News; is
 24 that correct?
 25 MR. RAMES: Object to form.

1 Was that an appropriate news story?
 2 A I can't comment on the newsworthiness of
 3 events and issues that were raised 13 years ago that
 4 I have no firsthand knowledge of. I have no idea
 5 what the context of this is. I don't know if this
 6 story was printed singly or in a series of reports
 7 on this issue. And I have no idea what initiated
 8 the reporting process, whether it was an
 9 announcement from the public or calls from readers
 10 or anything else.
 11 There are a host of factors that go in to
 12 considering newsworthiness, and it would be inappropriate
 13 and extreme for me to presume to infer those simply from
 14 the end result story.
 15 (Plaintiffs' Exhibit 50 marked for identification.)
 16 BY MS. ROHN:
 17 Q Exhibit 50. Is that the insurance policy
 18 applicable to this cause of action?
 19 A If it is the policy -- a copy of the
 20 policy produced, and it's a matter of Discovery in
 21 this case, I have no reason to dispute that it is an
 22 accurate copy.
 23 Q To your knowledge is the insurance company
 24 defending this cause of action?
 25 A I do not have direct knowledge of the

1 THE DEPONENT: Would you ask the question
 2 again, please?
 3 BY MS. ROHN:
 4 Q He was retained by The Daily News despite
 5 those bouts with alcoholism; isn't that correct?
 6 A Your characterization that the bouts of
 7 alcoholism were concurrent with his employment at
 8 The Daily News is not necessarily something that I
 9 would be in a position to stipulate to.
 10 Q Is it your testimony that he did not have
 11 bouts of alcoholism while he was an employee of
 12 The Daily News?
 13 A I did not say that.
 14 Q Well, did he have bouts of alcoholism
 15 while he was employed at The Daily News?
 16 A Mr. Hatfield received treatment for
 17 alcoholism at a time when he was employed by
 18 The Daily News.
 19 Q Did Mr. Hatfield's employment with
 20 The Daily News terminate?
 21 A Mr. Hatfield resigned and retired to the
 22 United States, to my knowledge.
 23 Q Were you ever made aware of the fact that
 24 Mr. Hatfield made statements to others, "I'm going
 25 to go earn my bonus by writing a negative story

1 about Senator Donastorg"?

2 MR. RAMES: Object to form.

3 THE DEPARTMENT: I've never heard of

4 Mr. Batfield making such a statement; if he did, I'm

5 certain it was only in jest.

6 (Plaintiffs' Exhibit 51 marked for identification.)

7 BY MS. ROHN:

8 Q Exhibit 51. It's a story written by

9 Mr. Batfield, dated June 12, 2001.

10 Are you familiar with this story, sir?

11 A Yes.

12 Q You were at the paper during this period

13 of time, right?

14 A Yes.

15 Q And would you have been one of the people

16 who would have edited this story, sir?

17 A I do not recall whether I edited this

18 story.

19 Q Somebody should have edited this story,

20 would you agree with me?

21 MR. RAMES: Object to form.

22 THE DEPARTMENT: Multiple people did edit

23 this story.

24 BY MS. ROHN:

25 Q This story indicates -- it's a story about

1 against his own bill?

2 MR. RAMES: Object to form.

3 THE DEPARTMENT: You're referring to a

4 public document that does not exist. In the

5 immediacy of the moment, Mr. Batfield was recording

6 this meeting on the evening after it had occurred

7 but not present before it. He gathered his

8 information from the Committee Chairmen.

9 BY MS. ROHN:

10 Q How do you know that, sir?

11 A 'Cause I was required to research the

12 issues surrounding the reporting of this story as

13 part of my duties as 30(b)(6) Witness for the

14 Company.

15 Q And who told you that he checked with the

16 head of the department?

17 MR. RAMES: Object to form.

18 You're referring to Committee Chair?

19 THE DEPARTMENT: The Committee Chairmen,

20 Senator Dowe, is described as a reference, as the

21 source of this information in the lead paragraph of

22 the story.

23 BY MS. ROHN:

24 Q Where does this say that Senator Dowe said

25 that Donastorg voted against his own bill? It

1 the voting on the bill to reduce the size of the

2 Legislature. And on the second column, the last

3 paragraph, it says:

4 "Ironically, Donastorg voted no on

5 his own bill, while three senators

6 who opposed the bill - Committee

7 Chairman Donald Cole, Senator

8 Adelbert Bryan, and Senator David

9 Jones - voted to send it on to the

10 Rules Committee. Donastorg wanted

11 to send his bill directly to the

12 full senate for a vote when it

13 meets in session on June 25th."

14 Now, there's some pretty easy ways to figure

15 out how a senator votes on a bill, sir?

16 MR. RAMES: Object to form.

17 THE DEPARTMENT: Define "easy."

18 BY MS. ROHN:

19 Q There is a vote call in a vote count that

20 shows who voted what, isn't there, sir, for every

21 bill.

22 A I believe they're supposed to be.

23 Q Okay. And would you expect someone who is

24 a fact checker to check to see whether or not from

25 that easy public document Senator actually voted

1 doesn't say that at all, does it, sir?

2 A I was not quoting the story, I was

3 describing the report in general. And if you want

4 me to quote the story, then there's nothing to that

5 effect quoted in the story.

6 Q Well, then, where did you get the

7 information that that's where he got the information

8 from?

9 A By reading the story and being a human

10 being of average intelligence and understanding what

11 was written --

12 Q Well, you point out to me where in this

13 story it indicates that the reporter, Mr. Batfield,

14 got the information that Senator Donastorg voted

15 against his own bill from Senator Dowe.

16 A The story is what it is, and it's right

17 here (indicating). If you --

18 Q You said --

19 MR. RAMES: Objection to form.

20 Allow him to finish his answer, please.

21 THE DEPARTMENT: I can't --

22 BY MS. ROHN:

23 Q Let me rephrase my question.

24 You said a person of minimum intelligence or

25 average intelligence could read the story and determine

1 from the story that Mr. Hatfield got the information
2 that Senator Donastorg voted against his own bill from
3 the story.

4 So, sir, you're of average intelligence.
5 Please tell me where in this story you would get that
6 information from.

7 MR. RAMES: Object to form.

8 You can answer.

9 THE DEPOIMENT: I did not say that a person
10 of average intelligence could understand the story.
11 I said I understand this story, and that I am of
12 average intelligence.

13 If you disagree with me, there's nothing I
14 can do about that.

15 BY MS. ROHN:

16 Q Sir, tell me where, from your average
17 intelligence, you determined from reading this
18 article that it was Senator Dowe that told
19 Mr. Hatfield that Senator Donastorg voted against
20 his own bill.

21 MR. RAMES: Object to form.

22 THE DEPOIMENT: I read the story, and
23 that's what I understand.

24 BY MS. ROHN:

25 Q Now, there is an additional statement in

1 the story as it is factual.

2 "The strategy of members of the
3 Senate majority is to pass the bill
4 through the Government Operations
5 and Rule committees to force all
6 senators to take a stand on the
7 legislation to the full Senate."

8 What factual support do you find in this
9 story for that statement?

10 MR. RAMES: Object to form.

11 THE DEPOIMENT: The story is reporting the
12 reporter's understanding of the situation; it stands
13 by itself.

14 BY MS. ROHN:

15 Q It's an opinion, isn't it, sir?

16 A No. It is an evaluation of the situation.

17 Q So there is some factual information that
18 that's the reason they're putting it in that
19 committee?

20 Where did he get the factual support that
21 that was the reason it was going to that committee?

22 MR. RAMES: Object to form.

23 THE DEPOIMENT: As I said, my understanding
24 is that the information in the story came from the
25 Committee Chair.

1 BY MS. ROHN:

2 Q Doesn't quote or even attribute that
3 comment to the Committee Chair, does it, sir?

4 A No.

5 Q In fact checking this story, would
6 The Daily News not understand that claiming that a
7 senator voted against his own bill would be a non
8 positive story?

9 MR. RAMES: Object to form.

10 THE DEPOIMENT: Your characterizations
11 continue to be inaccurate in this regard.

12 The information presented in reports by
13 The Daily News at the time of publications is always
14 believed to be fully fair and accurate. That is
15 something that I can state without any reservation and
16 without exception.

17 BY MS. ROHN:

18 Q Then tell me, sir, why was the beginning
19 of the sentence prefaced with "Ironically, Donastorg
20 voted no on his own bill." What factual basis would
21 you have that that would be ironic?

22 MR. RAMES: Object to form.

23 THE DEPOIMENT: Well, the definition of the
24 word "ironic" is when events in and of themselves
25 seem to be counterintuitive to the facts at issue

1 contextually.

2 The word "ironically" is presented as an
3 adverbial phrase introducing a situation that might be
4 of particular interest to readers of the story and
5 elaborating on why, in fact, based on the information
6 that was provided to the Daily News by the Legislative
7 official, that Senator Donastorg had a bill in front of
8 the committee and he opposed the action being taken on
9 that bill. It's very clear from this description in
10 the story that the rationale that was attributed to
11 Senator Donastorg by the Committee Chairman was that he
12 opposed the action on the bill, not the bill itself.

13 Q Where do you get the information that the
14 information that he opposed the action on the bill
15 and not the bill itself came from?

16 A Where it says that he wanted it to go to
17 the full Senate instead of going to Rules.

18 Q If Mr. Hatfield had never spoken to
19 Mr. Donastorg, how would he know what
20 Senator Donastorg wanted?

21 A This is information relayed by the
22 Committee Chairman, and it's veracity was borne out
23 by the representation of The Daily News in the
24 committee.

25 Q In fact, Senator Donastorg did not vote

1 against his own vote, had he?
 2 A That is correct. The information about
 3 the vote was incorrect when it was presented to
 4 The Daily News by the Committee Chairman.
 5 (Plaintiffs' Exhibit 52 marked for identification.)
 6 BY MS. ROHN:
 7 Q Exhibit 52. Is that what you call your
 8 correction?
 9 MR. RAMSES: Object to form.
 10 MS. ROHN: Well, I don't want to hear use
 11 the word "redaction," so -- or "retraction," so --
 12 MR. RAMSES: Withdraw my objection,
 13 objection about the word "your." And I think that
 14 "your" is proper in this context, and my objection
 15 is withdrawn.
 16 THE DEPARTMENT: This is a correction.
 17 BY MS. ROHN:
 18 Q This correction, can you tell from this
 19 document what page this document was on?
 20 A Page 2.
 21 Q This correction in the small box in the
 22 corner, that's the sole correction you made to the
 23 statement that Senator Donastorg had voted against
 24 his own bill?
 25 A To my knowledge, yes.

1 information from the Committee Chairman,
 2 Senator Oile, but this retraction says that he got
 3 it from a staff member, doesn't it?
 4 MR. RAMSES: Object to form.
 5 THE DEPARTMENT: I don't dispute what the
 6 correction states.
 7 BY MS. ROHN:
 8 Q Well, do you correct your prior testimony
 9 as to where he got the information from?
 10 A It is possible.
 11 My perception of this source of the information
 12 for the June 12 story in response to your earlier
 13 questions was not fully accurate, but in the context of
 14 preparing for this deposition, that is the understanding
 15 that I have.
 16 Q Well, where did you get that understanding
 17 from if it wasn't from this retraction?
 18 A Reading the story.
 19 Q Have you ever asked Hal Hatfield where he
 20 got the information from?
 21 A Hal Hatfield died.
 22 Q Prior to his death, when everybody was
 23 investigating whether or not to even make a
 24 correction, anybody asked him where he got the
 25 statement from?

1 Q Why did it take two days to write this
 2 correction?
 3 A It did not.
 4 Q Wasn't the original story June 12?
 5 A Yes.
 6 Q And this correction is June 14?
 7 A That's correct.
 8 Q Isn't that two days?
 9 A It didn't take two days to correct it; it
 10 took two days to go through the process of being
 11 made aware that there was an inaccuracy of the
 12 story, being in a position to verify whether in fact
 13 the story had been inaccurate, and to craft and
 14 publish the item labeled "Setting the Record
 15 Straight." One day is the normal goal, two days is
 16 not uncommon.
 17 In fact, if at any point the subject of a story
 18 makes the newspaper aware of an inaccuracy, that it does
 19 bear out that news report was inaccurate, the paper will
 20 present a correction to the public, whether that's one
 21 day, two days, ten days, ten years.
 22 Very famously last year The New York Times
 23 printed a correction 70-some years after the fact of the
 24 original report.
 25 Q Now, you testified that he got this

1 A I am certain that as part of the editing
 2 process, that Mr. Hatfield had a conversation with
 3 one or more editors about the error and its origin.
 4 I do not -- and the proper way to correct it and
 5 present the correction in writing. I do not recall
 6 personally having a conversation with Mr. Hatfield
 7 about that.
 8 Q Well, in fact, if Mr. Hatfield had told
 9 the person investigating this that he had got it
 10 from the Committee Chair, that's what your
 11 correction would have said, not a committee staff
 12 person; isn't that true, sir?
 13 A I was not the person that he communicated
 14 with.
 15 Q From your regular knowledge of the
 16 policies at the newspaper --
 17 A You're asking --
 18 Q -- don't you accurately say where the
 19 information came from?
 20 A It is the goal at all times to be fair and
 21 accurate in the report to the public.
 22 Q Do you have any reason to believe that
 23 The Daily News was inaccurate when it said that
 24 Mr. Hatfield informed them he got the information
 25 from a staff member?

1 A I have no basis to doubt the accuracy of
2 the published correction on June 14, 2001. Your
3 description of the dynamics that may or may not have
4 occurred between Mr. Hatfield and the editors of
5 The Daily News, I don't have knowledge of and can't
6 comment on.

7 (Plaintiffs' Exhibit 53 marked for identification.)

8 BY MS. ROHN:

9 Q Exhibit 53. This is a news story from
10 The Daily News, November 1st.

11 You were employed at the paper at that time?

12 A Yes.

13 Q And who is Susanna Henighan?

14 A She is the reporter who gathered the
15 information and wrote the story.

16 Q Does she still work for the Daily News?

17 A No.

18 Q Do you know where she is now?

19 A No.

20 Q This indicates:

21 "Senator Donastorg, Jr., has
22 charged that the Industrial
23 Development Commission Director,
24 Frandelle Gerard, used her position
25 to solicit donations from Caneel

1 Bay for the St. Croix Foundation
2 for Community Development which she
3 chairs."

4 Then two paragraphs down states:

5 "Donastorg failed to produce any
6 documentation to back up his
7 accusations, and on Tuesday, he
8 would not return calls to his
9 office requesting further comment
10 and information."

11 If Donastorg made a charge, why would you
12 make a representation in your story that he failed to
13 produce documentation? What documentation would you
14 have expected him to produce?

15 MR. RAMSES: Object to form.

16 THE DEPENDENT: Documents.

17 BY MS. ROHN:

18 Q If he's seemingly making a charge, why
19 would you think he would have to bring documents
20 with him?

21 MR. RAMSES: Object to form.

22 THE DEPENDENT: If he's accusing others of
23 wrongdoing, and he wouldn't back it up?

24 BY MS. ROHN:

25 Q He wouldn't back it up, is that your

1 statement?

2 A No. I'm asking the question. If he's
3 accusing others of wrongdoing, why wouldn't he back
4 it up?

5 Q Did anybody from The Daily News ask him
6 for documentation?

7 A Yes, we called his office many times.

8 Q Really?

9 A It's purported right here (indicating).

10 Q Uh-huh.

11 And you would agree with me that before
12 saying someone would not return phone calls, you'd have
13 to actually call them, wouldn't you?

14 A That would be logical.

15 Q Now, this says that this accusation was
16 made in a letter to Governor Turnbull in which he
17 asked for an investigation.

18 So it's The Daily News' position that when he
19 asked Governor Turnbull for an investigation, he had to
20 produce documentation?

21 MR. RAMSES: Object to form.

22 THE DEPENDENT: I don't see that in the
23 story.

24 BY MS. ROHN:

25 Q Well, it says he failed to produce

1 documentation.

2 A That's true.

3 Q The accusation was made in a letter to
4 Governor Turnbull.

5 So is it The Daily News' news story that when
6 he wrote the letter asking for an investigation, he was
7 obligated to produce documentation?

8 A We're making no comments about

9 Senator Donastorg's obligations in this story.

10 Q Well, you are, aren't you?

11 A Where?

12 Q You say "Donastorg failed to produce any
13 documentation," as if he had an obligation.

14 MR. RAMSES: Object to form.

15 THE DEPENDENT: He was requested to produce
16 documentation, and he failed to do so in response to
17 that request. That request was made by
18 The Daily News. His obligation's separate from that
19 or separate from the question.

20 BY MS. ROHN:

21 Q When was he asked to produce
22 documentation?

23 A When The Daily News called.

24 Q So The Daily News personally asked him for
25 documentation?

1 A There is no Daily News personally, but
 2 there is a reporter who was working for The
 3 Daily News on this story -- name is Susanna
 4 Henighan -- and she made those calls.

5 Q This news story goes on to say:
 6 "Donastorg's letter is the latest
 7 in a long and often personal attack
 8 on the IDC and Gerard."
 9 Do you think that's a news statement?
 10 MR. RAMES: Object to form.
 11 THE DEPENDENT: It is a description of a
 12 sequence of communications.
 13 BY MS. ROHN:
 14 Q And then it says:
 15 "Recently he filed a Writ of
 16 Mandamus in Territorial Court
 17 seeking copies of employment
 18 records from the Virgin Islands
 19 Telephone Corporation, an IDC
 20 beneficiary."
 21 At the time the story was written, was
 22 The Daily News aware that there were allegations that
 23 VITELCO had violated their IDC requirements of minimum
 24 of employees?
 25 MR. RAMES: Object to form.

1 did not at any point as of the date of this article,
 2 and as such, he had, in fact, failed to produce any
 3 documentation up to that point regardless of who was
 4 asking for it or even whether it had been asked for.

5 Specifically, however, in the context of this
 6 published article, The Daily News had asked for
 7 documentation, and additionally, he had failed both in
 8 general and in response to the specific request from the
 9 newspaper to present documentation.

10 Q So they had personally asked Donastorg for
 11 documentation?
 12 A I know from reading this story that the
 13 newspaper contacted Senator Donastorg's office.
 14 (Plaintiffs' Exhibit 54 marked for identification.)
 15 BY MS. ROHN:
 16 Q Exhibit 54. This appears to be the actual
 17 letter that's being reported in the paper. Would
 18 you agree with me, sir?
 19 A Yeah, it appears to be, but I can't
 20 stipulate. I have no reason to doubt that it is.
 21 Q And if you look at the first starred
 22 paragraph on the first page:
 23 "I ask you to consider the facts.
 24 I am elected representative of the
 25 People of the Virgin Islands, have

1 THE DEPENDENT: I recall the fact that such
 2 allegations were made. I don't recall the specific
 3 date in comparison to the publication of the story.
 4 BY MS. ROHN:
 5 Q And it also says:
 6 "Donastorg also charged in his
 7 October 24th letter that Gerard has
 8 not penalized any IDC beneficiaries
 9 since becoming Director in April of
 10 1999.
 11 Going further in the story:
 12 "Gerard said two beneficiaries'
 13 certificates are in the revocation
 14 pipeline, and seven or eight more
 15 are under investigation."
 16 Confirming it, does it not, that she had not
 17 disciplined any IDC companies; is that correct? Would
 18 you agree with that?
 19 A The story speaks for itself.
 20 Q You would agree, wouldn't you, sir, that
 21 before you could claim that he failed to produce
 22 documents, he hadn't been asked for documents?
 23 That's a fair statement, isn't it, sir?
 24 A Actually, it is not. If he had at any
 25 point the opportunity to present documentation, he

1 been attempting to review public
 2 records within the IDC for nearly a
 3 year now."
 4 And then it goes on to say that they have
 5 withheld those records in order to protect VITELCO and
 6 IDC from scrutiny.
 7 Now, if the agency itself has withheld
 8 documents, how would you expect Senator Donastorg to
 9 produce them to you?
 10 A I empathize entirely with Senator
 11 Donastorg's efforts to acquire public documents; it
 12 is a real problem in the Virgin Islands. The
 13 bureaucracy has failed to promptly and completely
 14 present those upon request from the people of this
 15 community.
 16 However, the issue that you're referring to in
 17 the published story referring to whether or not -- the
 18 question of whether or not Mr. Donastorg had any
 19 documentation to back up his allegation against
 20 Mrs. Gerard and the Industrial Development Commission
 21 remains; he did not present -- he failed to present
 22 documentation to back up his allegations. That is not a
 23 subjective statement, that is a clear and factual
 24 statement, that he did not do so. He did not do so
 25 either in general or upon request from the newspaper.

1 Mr. Donastorg, if he had responded to
2 The Daily News' calls to his office, would have had the
3 opportunity to make clear that he'd been unable to get
4 the documents that he was requesting if that in fact is
5 what happened, but, again, he did not return
6 The Daily News' calls.

7 Q In fact, hadn't The Daily News, previous
8 to this, reported a story in which Senator Donastorg
9 had filed a Mandamus action trying to force the IDC
10 to produce the very documents you said he failed to
11 produce?

12 MS. ROHN: Object to form.

13 THE DEPENDENT: In the November 1st story,
14 we refer to Senator Donastorg having filed that Writ
15 of Mandamus, and I believe it's the same one that
16 you just referred to.

17 Separately from that, I do not explicitly
18 recall at this time whether we published a story about
19 that specific file.

20 BY MS. ROHN:

21 Q Now, there's some handwriting on this
22 page. Do you recognize this handwriting?

23 A No, I don't.

24 (Plaintiffs' Exhibit 55 marked for identification.)

25

1 BY MS. ROHN:

2 Q Exhibit 55. This is a November 2nd, 2000
3 letter from Senator Donastorg to your reporter
4 Susanna Henighan.

5 Have you reviewed this letter before?

6 A I believe so.

7 Q And it refers to a fact:

8 "For nearly three years I have
9 tolerated Daily News articles and
10 editorials that range from the
11 subtly slanted to the blatantly
12 inaccurate."

13 And he is well aware of the motivations of
14 your newspaper's ownership.

15 In fact, the documents that Senator Donastorg
16 was attempting to obtain were documents to show that
17 VITELCO and IOC had violated IDC benefit requirements,
18 were it not?

19 A I have no idea what documents --

20 Q Isn't that what the story said?

21 A No, it's not.

22 MR. RAMSES: Object to form.

23 THE DEPENDENT: And if you'll let me

24 finish.

25 I have no knowledge of what public documents

1 Senator Donastorg exclusively asked for from the IDC or
2 if he actually did the asking. I have no reason to
3 doubt that he did, since he said that he did, but I
4 have no knowledge of whether he did. I have no
5 knowledge of what those documents might have been.

6 I have seen his reference to efforts to
7 acquire documents in the letter of October 24 to
8 Governor Turnbull in which he alleges that Mrs. Gerard
9 is trying to protect VITELCO and IOC.

10 And I have seen this letter of November 2nd,
11 2000, in which he states his opinion about
12 The Daily News' reports on him, which is perfectly
13 within his right to hold and to express, and his
14 characterizations of the ownership of The Daily News,
15 which I have no knowledge of or basis to judge what
16 their attitudes towards Senator Donastorg were because
17 I've never had a conversation or communication with
18 them about him.

19 I don't know how else to respond to your
20 question more fully or clearly than that.

21 Q Well, sir, wasn't his Mandamus action and
22 public document that was filed publicly, anybody
23 could have gone and seen what documents he was
24 trying to access?

25 And, in fact, didn't you write a story on

1 exactly what document he was trying to get, which was
2 the VITELCO payroll?

3 MR. RAMSES: Excuse. Object to form.

4 Which of those three questions do you expect
5 the witness to answer?

6 MS. ROHN: We can do them in order.

7 MR. RAMSES: If you can remember them in
8 order.

9 THE DEPENDENT: You asked whether a Writ of
10 Mandamus is a public document, and the answer is
11 yes.

12 You asked whether Senator Donastorg had filed
13 one. And then, according to our report, he filed one.
14 Whether we're talking about the same one, as I said
15 earlier, I don't know.

16 Did we get a copy of that Writ of Mandamus
17 and report on it? I don't immediately recall, and I
18 don't recall it being in the material produced in this
19 case that I have reviewed in preparation for this
20 deposition. It is certainly possible that we did,
21 certainly possible that we didn't.

22 In speaking in general about public
23 documents, there are thousands filed every single day
24 in the Virgin Islands, and it's imminently possible
25 that we saw it; it's imminently possible that we missed

1 it or didn't see it at various points.

2 To the extent that there was any interest by
3 Senator Donastorg in the issues and activities related
4 to VITTELLO and ICC as is demonstrated by The Daily News
5 published reports and by the correspondence that we've
6 just been reviewing, that's certain, and it is an issue
7 where a fact that I was aware of, that
8 Senator Donastorg was taking an interest in those
9 matters, but that's evidenced entirely by the reports
10 in the newspaper that I was responsible for directly
11 for the years.

12 Q The letter from Senator Donastorg goes on
13 to say:

14 "You stated in your story
15 'Donastorg failed to produce any
16 documentation to back up his
17 accusations, and on Tuesday he
18 would not return calls to his
19 office requesting further comment
20 and information.' This is a
21 boldfaced lie. You first spoke
22 with a member of my staff after
23 8:00 p.m. Tuesday evening at her
24 residence. She immediately
25 attempted to reach me, but was

1 unable to relay your message to me
2 until after midnight. The next day
3 my staff member checked the voice
4 mail on her personal cell phone,
5 and it was indicated that you had
6 also attempted to contact her at
7 approximately 6:00 p.m."

8 Now, based upon two voice messages to a staff
9 person, do you really believe that that's fair to say
10 that Senator Donastorg refused to return phone calls?

11 MR. RAMES: Object to form.

12 THE DEPARTMENT: It is factually accurate
13 that Senator Donastorg did not return those phone
14 calls. And it is frequent to the point of
15 commonplace for any public figure or their staff to
16 be on-call 24/7, and to respond to inquiries from
17 The Daily News or constituents at any point of the
18 night or day.

19 In regard to public accusations of a major
20 public figure, in this case the Head of Industrial
21 Development -- or -- excuse me -- the Director of the
22 Industrial Development Commission having done things
23 that might be characterized as criminal wrongdoing, it
24 is the type of major newsworthy event that would
25 generate headlines, generate coverage in the newspaper,

1 and would, in fact, instigate very pressing reporting
2 from The Daily News to reach the staff of a legislator
3 or the legislator himself. And it had not been
4 uncommon previous to that point for Mr. Donastorg to be
5 available in the evening and far later sometimes, other
6 days and not far later than this.

7 So you're characterization that this is
8 somehow out of bounds or untoward is completely off
9 base.

10 Q So it's your position, or The Daily News'
11 position that you can leave two voice mails, and if
12 they're not returned, then Senator Donastorg failed
13 to return your phone calls?

14 A That's a factual description of what
15 happened. I mean, the only way it would not be
16 correct is if he had in fact returned the calls,
17 which he did not do.

18 Q Well, you actually never spoke --
19 Daily News actually spoke to no one, did they?

20 A Daily News left messages for Senator
21 Donastorg's staff, according to Senator Donastorg in
22 this letter. I have no basis for knowing whether or
23 not he has listed comprehensively all the telephone
24 contacts to Senator Donastorg's office and staff.
25 In fact, I'm certain that The Daily News reporter

1 would have called the office repeatedly and called
2 all staff members for him at office and after hours
3 contacts repeatedly before concluding that we were
4 not going to hear back from him that evening.

5 Q But there is a difference between saying
6 we left messages that weren't returned and he
7 wouldn't return the phone call, isn't there?

8 MR. RAMES: Object to form.

9 THE DEPARTMENT: He didn't return the phone
10 call. And there is no difference there.

11 BY MS. ROHN:

12 Q Goes on to say:

13 "You made no effort to reach me at
14 my office nor during office hours."
15 Do you dispute that that's true?

16 A I have no basis for assessing whether
17 that's true because I do not have a chronological
18 phone log describing the attempts to contact
19 Senator Donastorg's office.

20 I know that if in fact this story broke at a
21 time and the office would have been open, that would have
22 been the first called made. Even after hours, that
23 normally would have been the first call made. And
24 certainly the fact that Senator Donastorg's staff member
25 had made a cell phone number available for contact after

1 hours to the reporter indicates that the reporter should
2 be able to call that number and expect a response from
3 Senator Donastorg after hours. This is entirely within
4 the scope of normal practices of The Daily News and
5 virtually every newspaper that reports on the activities
6 of politicians and other public figures. And there is
7 nothing to be questioned about the rectitude of how and
8 what and when this reporter attempted to contact
9 Senator Donastorg.

10 Q Question goes on to ask:

11 "And how could I have failed to
12 produce anything when nothing was
13 requested?"

14 Do you dispute that nothing was requested
15 from Senator Donastorg?

16 A As I've described earlier,
17 Senator Donastorg did in fact fail to produce any
18 documentation. The fact that it subsequently was
19 requested and he still did not produce it is besides
20 the point.

21 He sent a letter to the Governor in which he
22 accused the Head of the IDC of wrongdoing, and that
23 letter did not include any documentation. That letter
24 became public, and it did not include any documentation.

25 Senator Donastorg was contacted -- efforts were

1 made to contact him to request that he produce
2 information; he did not respond to those phone calls.

3 But regardless of whether he was explicitly
4 asked for documentation, he, at the point of publication
5 of this article, had failed to produce any documentation
6 of any kind to substantiate the allegations made in this
7 letter to Governor Turnbull.

8 Q How many newspapers have you worked for?

9 A Four.

10 Q Which were?

11 A Virgin Islands Daily News, Pensacola News
12 Journal, The Beaumont Enterprise, and The Battalion.

13 Q The who?

14 A The Battalion.

15 Q Okay. Let's go with The Battalion. What
16 kind of a newspaper is that?

17 A It is a daily college newspaper covering
18 Texas A&M University.

19 Q And you were on there as a student at the
20 college?

21 A I served as Executive Editor while I was a
22 student.

23 Q Okay. The Beaumont Enterprise, what kind
24 of newspaper is that?

25 A It is the daily newspaper in Beaumont,

1 Texas.

2 Q What's the circulation?

3 A I don't know what it is now.

4 Q How long did you work there?

5 A Three years.

6 Q What was your position?

7 A I had various positions. I began as a
8 Copy Editor and subsequently was promoted. My final
9 title was Design Editor and Redesign Director.

10 Q What does a design editor do?

11 A Responsible for the production process in
12 the newsroom, and for the visual presentation of
13 stories, headlines and artwork, including
14 photographs and illustrations.

15 Q Pensacola -- what was it?

16 A News Journal.

17 Q And what kind of newspaper was that?

18 A It is the daily newspaper in Pensacola,
19 Florida.

20 Q What's the circulation?

21 A I don't know what it is now.

22 Q What was it when you were there?

23 A I don't immediately recall.

24 Q More or less than 20,000?

25 A More.

1 Q More or less than \$50,000?

2 A More.

3 Q What was your position there?

4 A Assistant News Editor.

5 Q How long were you there?

6 A About a year and three months.

7 (Plaintiffs' Exhibit 56 marked for identification.)

8 BY MS. ROHN:

9 Q Exhibit 56. Do you recognize this as the
10 letter from Lowe Davis to Senator Donastorg in
11 response to his letter which was Exhibit 55?

12 A I recognize this as a letter from
13 Ms. Davis, and it does appear to be in response to
14 his letter of November 2nd, 2000.

15 Q This letter acknowledges that the request
16 for an investigation of Prandelle Gerard was
17 received by The Daily News on Sunday, October 29th,
18 does it not?

19 A Where does it say that?

20 Q Fourth paragraph.

21 A That is what this letter states.

22 Q And the article that was published, which
23 is Exhibit 53, wasn't published until November 1st,
24 2000; isn't that correct?

25 A That's correct.

1 Q So The Daily News had the 29th, the 30th,
2 the 31st, and the 1st to contact Senator Donastory
3 as to his position; is that correct?

4 A No, he had the 29th, 30th, and 31st. The
5 story was published on the 1st, and so we could not
6 contact him --

7 Q I stand corrected.

8 You had three days?

9 A That is apparent from the chronology that
10 is indicated here.

11 Q And it says:

12 "We immediately began making
13 efforts to independently verify the
14 facts underlying your charges
15 against her."

16 It sets out speaking with Caneel Bay
17 representatives, obtaining a copy of the IDC
18 certificate, speaking with Caneel Bay's attorney,
19 speaking with St. Croix Foundation, obtaining a copy of
20 the Foundation's annual report, and speaking with
21 Ms. Gerard.

22 You see that? That's on Paragraph 5 -- or
23 some paragraph, Paragraph 4.

24 A I see where you're describing.

25 Q Why wouldn't part of that be speaking with

1 Senator Donastory in those three days?

2 A This letter does not indicate that we
3 weren't trying to reach Senator Donastory. In fact,
4 if you read further, you'll see the exact
5 description of the sequence of efforts to contact
6 him.

7 Q Right. They waited until October 31st, at
8 6:00 o'clock p.m., for the first attempt to contact
9 him; isn't that true, sir?

10 A What this letter indicates is that they
11 did not have their questions ready for
12 Senator Donastory until the 31st, and that they
13 immediately began trying to contact him as soon as
14 they were prepared to properly interview him and to
15 request information about this matter.

16 In addition, they already had voluminous
17 amounts of information about Senator Donastory's
18 information and the opinion that he expressed in the
19 multiple page letter that he transmitted to
20 Governor Turnbull in October.

21 Q In fact, this letter says:

22 We don't print news about
23 accusations unless we have
24 independently verified the points
25 and the accusations."

1 That is the policy of The Daily News, isn't
2 it, sir?

3 A That is an accurate description of
4 The Daily News' policy.

5 Q Is it true, sir, that the public is free
6 to sit in and observe your news budget hearings?

7 If I want to come down tomorrow and watch
8 your budget hearings, I could walk in and do that, sir?

9 A The public, yes.

10 Q Well, am I the public, sir?

11 A I believe that given the nature of our
12 ongoing acrimonious positions in a separate legal
13 matter, it would be inappropriate for us to
14 associate outside the processes of the court, but
15 then once those are resolved, then, certainly.

16 Q So Ron Belfon could go in and sit and
17 listen to your budget hearings; is that right?

18 A The public is welcome to come in and --
19 request and come in, yeah.

20 Q All right. It says:

21 "It was about 6:00 p.m. on Tuesday,
22 October 31st when Ms. Henighan
23 finally got all of her other
24 information together, and the one
25 remaining point needed in the story

1 was your response."

2 So if this is the necessary part of her
3 story, why would she wait until after
4 Senator Donastory's office was closed to try to contact
5 him?

6 MR. RAMES: Object to form; asked and
7 answered.

8 THE DEFENDANT: She did not wait until his
9 office was closed to try to contact him, she waited
10 until she was prepared to properly interview him in
11 regard to these questions and request for
12 information, and then she immediately began trying
13 to contact him.

14 BY MS. ROEN:

15 Q Then it indicates that the attempts to
16 contact were a phone message left on cell phone; is
17 that correct?

18 And then nothing else was done until
19 8:00 p.m. when they called the spokesperson's home.
20 Is that a fair presentation of that letter?

21 A I believe so.

22 Q It says:

23 "Not wishing to disturb your
24 spokesperson at home, Ms. Henighan
25 waited until around 8:00 p.m. for a

1 response to her message. At that
2 point she did call your
3 spokesperson, Ms. Nicole
4 Bollandini, at home."
5 So I'm a little confused. You wouldn't want
6 to call the spokesperson at home at 6:00 o'clock at
7 night, but you would wait until 8:00 o'clock at night,
8 and then call her at home. How is that helpful to the
9 spokesperson?
10 A Messages had been left --
11 Q A message had been left.
12 A Are you going to let me finish?
13 Q Yes. But it's not messages, sir; it's a
14 message.
15 MR. RAMSES: You interrupted the answer --
16 MS. ROHN: Yes, I have.
17 MR. RAMSES: -- and that's not proper.
18 BY MS. ROHN:
19 Q My question is, sir, it's not messages,
20 it's a message on the cell phone.
21 MR. RAMSES: You may answer either one of
22 those questions in the order that they were
23 presented or in the opposite order.
24 THE DEPOSED: Ms. Henighan called and
25 left a message for Ms. Bollandini, and waited for

1 Ms. Bollandini to have an opportunity to call her
2 back. It is, I believe, certainly understandable
3 that repeated phone calls at around 6:00 o'clock;
4 which is the typical time for people to be getting
5 home, might not be well set, particularly if the
6 message had already been received and Ms. Bollandini
7 just hadn't had an opportunity to call Ms. Henighan
8 back.
9 I don't believe that this can be
10 characterized as anything other than good manners that
11 were perhaps unsuccessful in ensuring a prompt
12 response. But, however, 8:00 o'clock in the evening is
13 not unduly or arduously late, neither for the
14 correction of the newspaper or for people who receive
15 telephone calls. And so --
16 Q But --
17 A -- Ms. Henighan called again.
18 Q But at 8:00 o'clock there was no
19 communication with Senator Donastory. All that
20 happened is that you got a hold of his spokesperson
21 to tell his spokesperson you were trying to get a
22 hold of him; isn't that correct?
23 A Well, Ms. Bollandini is in charge of
24 communication for Senator Donastory and his office,
25 and I believe that is quite a substantive contact

1 for a reporter to make to a political official. If
2 in fact the person that speaks for and communicates
3 to the public for a public official cannot reach
4 that official, it is certainly unlikely that the
5 reporter could have reached the official through
6 other means.
7 Q Now, where in here does it indicate that
8 any documents have been asked to be given to you by
9 Senator Donastory?
10 A I don't believe that Ms. Davis got into
11 that. In this letter Ms. Davis was responding to
12 Mr. Donastory's concerns about the coverage of him
13 in the newspaper, and endeavoring to reach out and
14 bridge any misunderstandings that might be
15 occurring.
16 Q Didn't Mr. Donastory's letter ask, "And
17 how could I have failed to produce anything when
18 nothing was requested?" Wasn't she responding to
19 his letter? And she didn't respond to that, did
20 she, sir?
21 A Ms. Davis' letter was designed, I believe,
22 to serve the purpose that I've just described, and
23 as we've gone through, I think, four times now.
24 Mr. Donastory, under any definition of the
25 terms "failed to produce documents," did in fact fail to

1 produce any documents to support his allegations about
2 Ms. Gerard, the St. Croix Foundation, and the IDC.
3 Regardless of whether he had been specifically requested
4 for those by The Daily News or anyone else, to the extent
5 that Ms. Davis chose or did not think of including that
6 particular point of contention in this letter, I
7 recognize certainly that it is not an issue that she
8 discusses, but in the course of three pages, she does, in
9 fact, go through a number of the issues that
10 Senator Donastory raised in his letter to Ms. Henighan.
11 Q Mid point in the letter, second page of
12 the letter, it says:
13 "Our news staff is even careful to
14 avoid voicing opinions in public or
15 in the newsroom about any person or
16 topics they cover."
17 Is that the policy of the V.I. Daily News?
18 A It's standard practice in American
19 Journalism; it is certainly the standard practice at
20 The Daily News, and it is commonplace at every
21 newspaper where I have worked and every newspaper
22 with which I have been familiar in my career.
23 In fact, we have a written policy about
24 employees' expressions of political sentiment in the
25 workplace.

1 Q And where is that written policy
2 contained?

3 A It's a policy that's distributed to our
4 staff as a matter of course with their Employee
5 Handbook and in similar materials.

6 Q On the last page of this letter, about
7 midway, it's the last paragraph that says:
8 "Sometimes we don't run a story
9 that has checked out. Why not?
10 Because we don't run stories that
11 do not serve the general public's
12 interest. Some people would argue
13 that it's a big story if we find
14 out a public official has been hit
15 with a complaint about failure to
16 pay alimony or child support. I,
17 however, tend to think this is more
18 a private matter and should not
19 become a story in our newspaper
20 unless it develops into something
21 of much greater general public
22 concern, such as ability to handle
23 the public's money."
24 Is that the sentiment and policy of
25 The Daily News?

1 A Is what the sentiment and policy?

2 Q That you tend not to print stories such as
3 public officials who are not paying alimony or child
4 support?

5 A I'm not quite sure I understand what
6 you're asking me.

7 Typically, as questions of public officials,
8 that includes the question about child support in the
9 context of their running for office and demonstrating
10 their ability to responsibly handle financial matters and
11 familial and moral responsibility insofar as that
12 reflects on their ability to take a position and uphold
13 the interest of the Virgin Islands community.

14 You are referring to a section of Ms. Davis'
15 letter where she is, I believe, presenting a very
16 singular example to illustrate the prior point, which is
17 that not every story that we report ends up being
18 published because there is not a pressing public concern
19 of wrongdoing or responsibility or other substantial
20 issue at the heart of the story, and she then cites this
21 other example.
22 (Plaintiffs' Exhibit 64 marked for identification.)
23 BY MS. ROHN:
24 Q Do you have the exhibit in front of you?
25 In fact, Senator Donastory had, in June of

1 2000, provided The Daily News with documentation
2 indicating just as he was claiming, that VITTELCO's list
3 of employees was inaccurate at best, had he not?

4 MR. RAMES: Object to form.

5 THE DEPONENT: That is what this described
6 in this story from June 9, 2000.

7 BY MS. ROHN:
8 Q So he had produced documentation to
9 support his accusation to The Daily News long before
10 The Daily News stated he failed to produce any
11 documentation, hadn't he?

12 MR. RAMES: Object to form.

13 THE DEPONENT: Are you referring back to
14 the story about his accusation against Ms. Gerard
15 and the St. Croix Foundation?

16 BY MS. ROHN:
17 Q His accusations against Ms. Gerard were
18 that VITTELCO was not meeting its obligation, and she
19 wasn't investigating companies for not meeting their
20 obligations.

21 A You're not accurately describing the
22 contents of that story or that incident.

23 Mr. Donastory had presented his information
24 that challenged VITTELCO's description of the staff list.
25 We reported on that in June.

1 October, he wrote Governor Turnbull and accused
2 Ms. Gerard of wrongdoing, and he did not produce any
3 documentation to that effect.

4 You're mixing and matching documentation, and
5 there's nothing I can do about that except say no.

6 Q Well, wasn't one of things that he was
7 criticizing Ms. Gerard for not monitoring VITTELCO
8 because they did not have the correct number of
9 employees required by their IDC permit?

10 A It's what we seem to be purporting on
11 November 1st.

12 Q She has failed to penalize a single IDC
13 recipient for violating their IDC benefit
14 requirements; isn't that what he's complaining
15 about?

16 A We quote him as such in this story of
17 November 1st.

18 Q But isn't this documentation indeed that
19 VITTELCO was not meeting its IDC requirements?

20 A No. It is documentation that -- it is
21 production of a document that he is challenging that
22 VITTELCO had produced. He is making accusation based
23 on that, and there is nothing that was produced that
24 wouldn't empirically support a conclusion about that
25 allegation.

1 Q Well, did you, through your reporting,
2 understand that VITELCO had to keep a current
3 employment of 466 people in order to maintain IDC
4 benefits?

5 A I'm aware that VITELCO had to maintain an
6 employee complement of a certain number. I don't
7 recall exactly what the number was or the specific
8 consequences if it failed to do that.

9 Q And in June of 2000, according to your own
10 newspapers article:

11 "Donastorg's office on Thursday
12 provided The Daily News with a copy
13 of VITELCO's employees list in
14 which they identified two employees
15 who were no longer employed, and
16 three employees who had been
17 transferred to other companies, who
18 had crossed over."

19 A Okay.

20 Q So clearly that's documentation to show
21 that they were violating their IDC permit, no?

22 A Clearly this is a document. Documentation
23 in support of an allegation about VITELCO would be
24 entirely separate from documentation in support of
25 an allegation against Mrs. Gerard and the St. Croix

1 Foundation.

2 (Plaintiffs' Exhibit 79 marked for identification.)

3 BY MS. ROHN:

4 Q Exhibit 79.

5 MR. RAMES: I'd like to note for the
6 record that the redacted version of Page 1 is
7 unreadable.

8 MS. ROHN: I'm not questioning on Page 1.

9 MR. RAMES: I understand.

10 BY MS. ROHN:

11 Q If you'll go to Page 2 of this document.

12 MR. RAMES: May I ask if Page 2 is a
13 separate article or the same one?

14 MS. ROHN: It appears to be three press
15 releases. This one is August 17, 2000.

16 MR. RAMES: I understand. Thank you.

17 MS. ROHN: There's one July 6, 2000, one
18 August 17, 2000, and one September 7, 2000.

19 MR. RAMES: Thank you.

20 BY MS. ROHN:

21 Q Does The Daily News dispute that they
22 received these press releases from
23 Senator Donastorg?

24 A Ten years after the fact. I can't state
25 explicitly whether we received this press release or

1 not. I have no reason to assume that we did not,
2 but I also have no reason to conclude that we did.

3 Q And I take it you don't recall whether or
4 not your newspaper ran a story on the fact that its
5 sister corporation was violating its IDC benefits?

6 MR. RAMES: Object to form.

7 THE DEPOSITION: I don't explicitly recall
8 whether or not we ran a story immediately related to
9 this press release.

10 BY MS. ROHN:

11 Q Well, would you agree with me that the
12 fact that a company was getting tax benefits, such
13 that it was not being required to pay taxes to the
14 Virgin Islands Government, had been found by the
15 requirements of those tax benefits, would be a
16 newsworthy story?

17 MR. RAMES: Object to form.

18 THE DEPOSITION: Your question begs a lot
19 of -- presents a lot of absolutes and begs a lot of
20 conclusions that I can't make in the abstract.

21 As I've said several times, you can't make
22 news judgments in the abstract; you cannot base a story
23 solely off the press release; and you cannot interpret
24 after the fact the genesis of a news story unless you
25 were a direct participant in the creation of it.

1 In and of itself, tax benefits are very often
2 newsworthy; I don't dispute that.

3 In and of itself, large companies are often
4 newsworthy; I don't dispute that.

5 But if we reported on every single thing that
6 happened in relation to every single tax benefit, of
7 every single thing that happened in relation to the
8 large companies in the Virgin Islands, much less the
9 small ones, and the comprehensive list of the IDC, IDC
10 beneficiaries, we'd publish a paper the size of a phone
11 book everyday, and nobody would have any interest in
12 reading it because it's dry and dull material.

13 BY MS. ROHN:

14 Q How about as dry and dull as reporting
15 that a senator has a foreclosure action against him;
16 that's newsworthy? But the fact that somebody may
17 be stealing millions of dollars from the Virgin
18 Islands Government is not?

19 MR. RAMES: Object to form.

20 THE DEPOSITION: When you say "may have
21 been," it begs the entire question. Allegations
22 without substantiation in the form of documentation
23 can be presented by anybody with a piece of notebook
24 paper, and if they add 50 bucks to it, it could turn
25 into a lawsuit.

1 BY MS. ROHN:

2 Q Sir, this is a News Release as a result of
3 a Senate hearing in which the IDC admitted to the
4 Senate that VITELLO was in violation of their
5 permit. You don't think that would be newsworthy,
6 sir?

7 MR. RAMES: Object to form.

8 THE DEONENT: You are asking me
9 whether -- I've already told you I don't even
10 remember whether we reported on this or not, and I
11 cannot comment in the abstract.

12 You seem to be attributing a great deal more
13 to press releases than press releases actually receive
14 from this newspaper or any other.

15 (Plaintiffs' Exhibit 81 marked for identification.)

16 BY MS. ROHN:

17 Q Exhibit 81 is a letter written by
18 Senator Donastorg to Lowe Davis and Mr. Crouch of
19 the Virgin Islands Daily News, dated February 28,
20 2006.

21 Have you reviewed this document before?

22 A I believe so.

23 Q Was that "I believe so"? I'm sorry, I
24 couldn't hear you.

25 A That's what I said.

1 Q This accuses The Daily News of
2 investigating Senator Donastorg and following him
3 and stalking him.

4 Has The Daily News investigated
5 Senator Donastorg?

6 A No.

7 Q Was there an effort to contact
8 Senator Donastorg or even his spokesperson, to find
9 out the basis for his accusations?

10 A What accusations, these accusations in
11 this letter?

12 Q Yes.

13 A No.

14 Q Why not, sir?

15 A Because they were without foundation and
16 furious, and we did not feel that they merited a
17 response.

18 Q Really?

19 You knew what Ed Crouch was up to?

20 MR. RAMES: Object to form.

21 THE DEONENT: I don't know what Ed Crouch
22 did. You asked what I did, and you asked what
23 The Daily News did, and I'm responding on behalf of
24 The Daily News in the deposition.

25

1 BY MS. ROHN:

2 Q Sir, you said they were baseless. Did you
3 contact Mr. Crouch to find out whether or not --

4 A I had no association with Ed Crouch at the
5 time of this letter or anytime subsequent to that.
6 Mr. Crouch was not an employee of The Daily News and
7 had no role in the newsroom operation. I assume
8 that Mr. Donastorg forwarded this letter to him; I
9 did not.

10 (Plaintiffs' Exhibit 82 marked for identification.)

11 BY MS. ROHN:

12 Q Exhibit 82. On August 16, 2004, did
13 The Daily News send an Open Public Records Act
14 letter to Senator Donastorg asking for all of his
15 travel, per diem, and other individual expenses
16 since his term began in January 2003?

17 A That information is what this letter
18 requests.

19 Q And all contracts that his office has
20 awarded, with contractor's name, job description,
21 pay, and duration of contract; is that correct?

22 A That is among the information that this
23 letter requests.

24 Q Why was this information requested of
25 Senator Donastorg?

1 A I believe it was requested as a matter of
2 course. This information is requested as a matter
3 of course of news gathering and reporting of all the
4 senators.

5 Q So you would have a similar letter to all
6 the other senators for the same time period?

7 MR. RAMES: Object to form.

8 THE DEONENT: I have no idea what's in
9 the file, but this is a standard request for public
10 information from a public official that
11 The Daily News has sent out hundreds, if not
12 thousands over the course of the last decade, most
13 recently as evidenced by the voluminous
14 correspondence that was required in order to
15 generate the Virgin Islands Government's public
16 employee salary list that was published in August.

17 (Plaintiffs' Exhibit 83 marked for identification.)

18 BY MR. RAMES:

19 Q Exhibit 83. Senator Donastorg responds to
20 you; is that correct? -- or The Daily News?

21 A This letter of August 19th appears to be
22 the response to the letter of August 16th that we
23 just discussed, yes.

24 Q And he also told you he had his own
25 concern about legislative spending, and sent several

1 letters in that regard to The Daily News; is that
 2 correct?
 3 A He makes that comment in this letter.
 4 Q Did The Daily News contact him to follow
 5 up on that story?
 6 A What story?
 7 Q A story that there were senators who were
 8 improperly spending money.
 9 A What you're referring to doesn't exist.
 10 You admit Senator Donastorg commented that he
 11 had his own concerns about legislative spending, so did
 12 we, as evidenced by our initial request to Senator
 13 Donastorg and by any number of stories in The Daily News
 14 published before, during, and after the period in
 15 question in this correspondence.
 16 (Plaintiffs' Exhibit 84 marked for identification.)
 17 BY MS. ROHN:
 18 Q Exhibit 84, Editorial, Daily News,
 19 March 1st, 2004.
 20 This document states:
 21 "It's an election year, and at
 22 least one senator is attempting to
 23 use The Government Employees
 24 Retirement System to advance his
 25 reelection efforts, even if it

1 What facts did The Daily News have to
 2 substantiate that that was the only reason he was
 3 sponsoring that legislation?
 4 A That is a statement of opinion. It is
 5 headed "Opinion," presented by an Editorial Board,
 6 which, by definition, is an opinion. That in and of
 7 itself is not a factual statement, it is a statement
 8 of opinion; there's no two ways about it. This is
 9 an opinion piece, it is not a factual or fact-based
 10 report, although facts may play an issue in the
 11 creation or formation or presentation of an opinion.
 12 The statement that you highlighted in your question
 13 to me is, in fact, an opinion.
 14 (Plaintiffs' Exhibit 85 marked for identification.)
 15 BY MS. ROHN:
 16 Q Exhibit 85, Editorial, Daily News,
 17 April 6th, 2004.
 18 If you'll go down mid sentence.
 19 "Now, with an election seven months
 20 away, Senator Adlah Donastorg, Jr.
 21 is floating a proposal that would
 22 separate Motor Vehicles from the
 23 Police Department and create a new
 24 government bureaucracy. He wants
 25 to guarantee that \$1 million or

1 hurts the pensions of thousands of
 2 current and future V.I. Government
 3 employees."
 4 What factual support did The Daily News have
 5 that he was making his comments in an effort to advance
 6 his reelection efforts?
 7 A It's a statement of opinion.
 8 Q What facts did The Daily News have that he
 9 was hurting the pensions of thousands of current and
 10 former V.I. Government employees?
 11 A That is a statement of opinion.
 12 Q You will agree that the senator that is
 13 referred to in this was Senator Donastorg, would you
 14 not?
 15 A What is your question?
 16 Q You'll agree, where it says, "At least one
 17 senator" is referring to Senator Donastorg? By the
 18 next paragraph it says --
 19 A I believe that that is a reasonable
 20 reading of this Editorial.
 21 Q And then it goes on in the third paragraph
 22 to say:
 23 "This issue is being raised only in
 24 an attempt to endear a senator to
 25 voters in an election year."

1 10 percent of the amount collected
 2 for vehicle and licensing fees
 3 would be used to financially
 4 support the newly created
 5 government agency."
 6 "As Chairman of the Senate Finance
 7 Committee, he has been unable to
 8 pass a territorial budget for
 9 fiscal year 2004."
 10 Sir, isn't it true that it's the Governor
 11 that passes fiscal budgets?
 12 A I believe that budgets are in fact
 13 legislation that is passed by the Legislature, and
 14 the Governor is required by the Revised Organic Act
 15 of 1954 to present a budget that is then reviewed
 16 and voted on by the Legislature, and the Legislature
 17 is appropriately the Body that is described as
 18 passing legislation. The Governor may then veto or
 19 concur with it and sign it.
 20 Q And, in fact, in 2004, isn't it a fact
 21 that the Governor failed to timely present a budget?
 22 A Your opinion. I don't know.
 23 Q It goes on to say:
 24 "With the Senator's problems of
 25 managing his personal finances..."

1 What facts did The Daily News have in April
2 of 2002 that the Senator had problems managing his
3 personal finances?

4 A It is the opinion of the Editorial Board
5 in The Daily News that was described. And in this
6 piece, it was in a section of the paper that was
7 titled "Opinions" and presented as an editorial for
8 April 6, 2004, that Senator Donastorg has problems
9 managing his finances. It is undisputedly presented
10 as an opinion; it is, in fact, an opinion. And what
11 factual bases were referenced or used as support for
12 arguments to make that opinionated conclusion, I am
13 not aware, because the editorials that were printed
14 in The Daily News were, in fact, published by, and
15 totally coordinated and controlled by ICC as a
16 Corporate function. The Daily News Publishing
17 Company had no role in the creation, generation, or
18 propagation of those, other than to print them as
19 directed by its Corporate parent, and I had no other
20 knowledge about them.

21 (Plaintiffs' Exhibit 87 marked for identification.)

22 BY MS. ROHN:

23 Q Exhibit 87.

24 Did you receive --

25 MR. RAMES: One moment, please.

1 BY MS. ROHN:

2 Q Did you receive at any time a copy of this
3 letter from October 26, 2006?

4 A I either received a copy of it or was
5 briefed on the substance of it at some point.

6 Q Was the Daily News indeed going to print a
7 story concerning Senator Donastorg's college
8 credentials?

9 MR. RAMES: Object to form; no reference
10 to that in this letter.

11 THE DEPONENT: What are you talking about,
12 about --

13 MR. RAMES: Excuse me. I'm sorry.

14 I'll withdraw the objection. I didn't get
15 down to the third paragraph.

16 THE DEPONENT: Where are you talking
17 about?

18 BY MS. ROHN:

19 Q The Daily News intends to use information
20 in that improper investigation to defame him, in
21 particular, to claim that his college education is
22 similar to that claim by Senator Hansen.

23 Wasn't The Daily News contemplating writing a
24 story to that effect?

25 A The Daily News was never contemplating

1 writing a story about anything resulting from this
2 investigation that you've repeatedly referred to
3 that either VITELCO or ICC, or some collaboration of
4 both, managed to produce through Sheraw and
5 Associates. Daily News had no access to it, had no
6 knowledge, except in the context of documents and
7 filings in this case, and it had no opportunity to
8 see it, and never did see it, never did possess it.
9 There is absolutely nothing to -- no substance, no
10 accuracy, no validity to any allegation against
11 The Daily News as having used that report or
12 anything related to that investigation in regard to
13 the production of any news story whatsoever.

14 (Plaintiffs' Exhibit 88 marked for identification.)

15 BY MS. ROHN:

16 Q Exhibit 88 is a letter dated October 4,
17 2005, from The Daily News to Senator Donastorg,
18 asking for a list of all the employees on your
19 office staff during 2007, as well as those you plan
20 to hire in 2006, within nine days.

21 What was the purpose of attempting to get
22 that information?

23 A To collect and publish the list of -- I
24 believe it's to collect and publish the list of all
25 employees and financial activities of various

1 government bodies.

2 If my recollection is accurate, letter or one
3 similar to it went out to all the legislators, department
4 heads in the Executive Branch and V.I. Government
5 agencies, and was subsequently printed by The Daily News
6 in a report that listed the names, job titles, and the
7 base salaries of all V.I. Government employees whose
8 information was disclosed by Personnel, the Legislature,
9 the Judiciary, and various agencies.

10 (Plaintiffs' Exhibit 92 marked for identification.)

11 BY MS. ROHN:

12 Q Exhibit 92. This is a news story by
13 The Daily News, dated --

14 MR. RAMES: Objection.

15 THE DEPONENT: No, it's not.

16 BY MS. ROHN:

17 Q Sorry. By the Source, dated May 1st,
18 2003.

19 "A private investigation firm hired
20 by Innovative Communication
21 Corporation or related companies
22 has been ordered to turn over all
23 information resulting from a secret
24 investigation on Senator Adlah
25 'Ronzie' Donastorg to the senator

1 in connection with his defamation
2 lawsuit against ICC and others."
3 Did The Daily News print a similar story?
4 A I don't think so.
5 Q And why not?
6 A The Daily News typically does not publish
7 stories on pending civil matters.
8 Q Was The Daily News aware of allegations
9 ICC or its related companies had paid \$20,000 on
10 Rocky Liburd's mortgage?
11 A No.
12 Q Was The Daily News aware that in 2003
13 Mr. Liburd's mortgage was foreclosed on his home?
14 A Not that I'm aware.
15 Q Can you tell me how The Daily News became
16 aware of the fact that Donastorg's mortgage was
17 being foreclosed but not the filing of Rocky
18 Liburd's foreclosure?
19 MR. RAMES: Object to form.
20 THE DEFENDENT: As I've described earlier,
21 The Daily News frequently checks the files of public
22 records at the courthouse and other agencies. At
23 the time they reported on the foreclosure against
24 Senator Donastorg, that material was in the file,
25 and we reported on it.

1 responsibility of anyone employed by The Daily News, and
2 I cannot comment or provide insight on anything to do
3 with it.
4 Q Exhibit 101 -- I did that one already.
5 Give it back.
6 (Plaintiffs' Exhibit 104 marked for identification.)
7 BY MS. ROHN:
8 Q Exhibit 104, a news story in The Daily
9 News, dated November 7, 2003, by Tim McDonald,
10 Who would have edited this story?
11 A The story would have gone through the
12 editing process. The City Editor and/or the
13 Executive Editor would have done the substantive
14 editing on it.
15 Q Would you agree with me that this is a
16 fairly positive story of how Sugar Ray Leonard is
17 coming to promote the event?
18 A No. There's no such thing as a positive
19 or negative story; there are issues in stories that
20 various individuals view as positive, negative,
21 good, bad, plus, minus, green, red. That's a
22 subjective assessment that is in the mind of the
23 reader and the perception of the reader, and it is
24 entirely personal, and cannot be controlled by the
25 substance of the story.

1 If any material about another public figure,
2 such as a legislator or an executive branch department
3 head had come to light, as it did, for example, with
4 the similar action against Frandelle Gerard, with the
5 property owned on St. Croix, would have reported on it,
6 and have reported on it.
7 (Plaintiffs' Exhibit 98A marked for identification.)
8 BY MS. ROHN:
9 Q Exhibit 98A, an editorial in
10 The Daily News in August 2004. "Blind eye to
11 cockfighting? Animal cruelty nonetheless!"
12 This is a story on a bill for animal
13 cruelty --
14 A No, it is not; it is an editorial.
15 Q Do you know why it was necessary to place
16 the fact that the primary sponsor for this bill was
17 Senator Donastorg?
18 A This is an editorial; it's a statement of
19 opinion. It was produced by ICC. I have no
20 knowledge of the production of the editorial, who
21 did it, or what the decision-making process was.
22 Aside from that, it is an expression of
23 opinion, and was on the Opinion page, separate from the
24 operations of The Daily News and Daily News Publishing
25 Company. It was outside of the portfolio of

1 Its headline, its byline, in and of itself,
2 they report about a famous guy coming to the
3 Virgin Islands. Most people like to hear that, and most
4 people enjoy reading about it, to the extent that they
5 might be interested in that person or the event that the
6 person is coming to attend.
7 Q Can you explain to me why the fact that
8 Senator Donastorg was the person who had gotten
9 Sugar Ray Leonard to come and promote this fight is
10 not mentioned anywhere in this news story?
11 A I don't think that -- I have no basis for
12 knowing that Senator Donastorg was in fact the
13 person who reached out and got, Senator Donastorg
14 himself, personally; maybe he did, maybe he didn't.
15 But I don't believe that the purpose of the story is
16 to talk about who made this happen, it is designed
17 to talk about what people can expect to happen. So
18 there's really no up, down, or sideways about
19 whether or not Senator Donastorg is mentioned in
20 this story. He happens not to be mentioned. There
21 is no intent to mention or not mention him. It's
22 just the nature of reporting a story with what, at
23 times, is limited space; what, at times, is limited
24 time; what, at times, is limited attention, and
25 certainly a story that few people can find fault

1 with when we're talking about something nice,
2 something that is going to be a nice thing in the
3 opinion of almost everybody who reads it. You know,
4 it is certainly not the type of story that would
5 rise to the level of urgent, all hands-on deck
6 attention during the editing process.

7 Q In fact, in the mid part of Page 2 of the
8 story, it says:

9 "The V.I. Government committed
10 \$300,000 to the event in hopes it
11 will publicize the territory as a
12 tourism destination."

13 Do you see that?

14 A That's what the story says.

15 Q It doesn't say anything about
16 Senator Donastorg pushed through this legislation,
17 does it?

18 MR. RAMES: Object to form.

19 THE DEPENDENT: I don't see that in the
20 story. It, in fact, refers to the V.I. Government.
21 And regardless of who pushes legislation or who
22 opposes legislation, there are, in fact, 15 senators
23 who are eligible to cast votes on whether
24 legislation passes, and then, further, it has to go
25 to Government House for the Governor to either sign

1 or veto it, and so there's a nine people, typically,
2 involved in legislation becoming law in the
3 Virgin Islands. So it is, in fact, the V.I.
4 Government that's responsible for the money being
5 spent here. And I don't believe that the accuracy
6 of that statement can be disputed.

7 (Plaintiffs' Exhibit 105 marked for identification.)

8 BY MS. ROHN:

9 Q Exhibit 105. If you go to the last
10 paragraph on the first page.

11 "However, the V.I. Legislature sees
12 fit to spend hundreds of thousands
13 of tax dollars on music festivals
14 no one attends, and a boxing match
15 that may or may not persuade
16 tourists to visit the island."

17 Do you know what the factual basis was that
18 the boxing match would not persuade tourists to visit
19 the island?

20 A This is a statement of opinion. It is
21 presented as an opinion; it is presented as an
22 editorial, which in of itself is, by definition, an
23 opinion. I have no knowledge of any discussions or
24 substantiative analysis that went into the
25 production of this editorial because it is, in fact,

1 an editorial that appeared on the Opinion page of
2 The Virgin Islands Daily News, which is an
3 operational function of IOC's Corporate level, and
4 for which I was directly excluded by the owner of
5 the Company, by the language of my contract, and by
6 the pattern and practice that went on for nearly a
7 decade.

8 (Plaintiffs' Exhibit 108 marked for identification.)

9 BY MS. ROHN:

10 Q Exhibit 108. This is a story -- a
11 November 7, 2003 news story in The Daily News. The
12 headline, "No TV contract yet, but ESPN will visit
13 St. Thomas boxing site."

14 And if you go to the last line on that first
15 page:

16 "Donastorg sponsored an amendment
17 to a bill appropriating the money
18 for Tourism to pay for the event."

19 This is a story about how there is no
20 contract yet.

21 Can you tell me why we went from the
22 government appropriated, to Donastorg did this?

23 MR. RAMES: Object to form.

24 THE DEPENDENT: Senator Donastorg is
25 mentioned because he was still actively involved in

1 the negotiations and the representations between the
2 Virgin Islands and the promoters and organizers of
3 the event. In fact, he was trying to make it
4 happen, as is stated in the paragraph immediately
5 preceding the reference to him sponsoring the
6 amendment to the bill which set aside the money to
7 be paid out. That is a contextual statement that is
8 there to fully illustrate the extent of his role in
9 endeavoring to get this event for the
10 Virgin Islands.

11 (Plaintiffs' Exhibit 110 marked for identification.)

12 BY MS. ROHN:

13 Q Exhibit 110, news story; this one
14 November 1st, 2003, "No ESPN contract yet for V.I.
15 boxing card."

16 A Okay.

17 Q This one, if you go down to the
18 next-to-the-last paragraph:

19 "Senator Adlah Donastorg, Jr., who
20 had been the point man for the
21 Virgin Islands for bringing the
22 fight to town, also was unavailable
23 for comment."

24 Can you tell me why there's a story -- when
25 there's a story that the contract may not happen,

1 Senator Donastorg is the pointman, but when there's a
2 story about how Sugar Ray Leonard is coming and a
3 fight's going to go on, and it's going to generate a
4 lot of money for the Virgin Islands, he's not
5 mentioned?

6 A As we reported on October 24th,
7 Senator Donastorg was heavily involved in the effort
8 to ensure that the event did, in fact, come off.

9 On November 1st we have a follow-up report, and
10 in the -- yeah. On November 1st we had a follow-up
11 report, and as is the matter of course, when we write
12 follow-up stories, typically we reach out again to the
13 actors that were previously significant to the ongoing
14 issue, as indicated by previous reports, and give them an
15 opportunity to give us updates, information, and
16 clarification, and whatever the case maybe. And so, in
17 fact, since Senator Donastorg was, on November 1st, still
18 part of the team, to our knowledge, of people who were
19 trying to make this happen, we wanted to clarify for
20 people who tried -- for the reader that we tried to find
21 out information from Senator Donastorg, and he wasn't
22 available in time for us to publish any comments that he
23 might have made in the story that was printed on
24 November 1st.

25 Again, these are stories about who and the

1 people who was trying to bring the event about, and so
2 those individuals are referenced.

3 When we're talking about the event in general,
4 is an activity that the reader might get to go to, then
5 those figures in the story -- those people are not
6 necessarily figures in the story, because that is not its
7 focus. There's limited space, limited time to present
8 all the information to the reader.

9 (Plaintiff's Exhibit 115 marked for identification.)

10 BY MS. ROHN:

11 Q Exhibit 115 is a story December 16, 2003,
12 "Boxing event showcases paradise for 781,000
13 viewers."

14 A Okay.

15 Q In this particular article, it indicates
16 that the senator sponsored the legislation.

17 Now, in a previously article -- which we're
18 about to get through -- when things were going bad, it
19 represented that Senator Donastorg pushed through the
20 legislation.

21 Can you tell me why the difference in
22 representation?

23 MR. RAMES: Object to form.

24 THE DEPENDENT: There's no difference in
25 representation.

1 (Plaintiffs' Exhibit 137 marked for identification.)

2 BY MS. ROHN:

3 Q Exhibit 137. This is a Press Release,
4 October 19, 1998.

5 Were you ever made aware of this Press
6 Release?

7 A No.

8 Q When Senator Donastorg sued IOC and
9 The Daily News, can you tell me why The Daily News
10 failed to report that?

11 A I've already told you The Daily News does
12 not typically report on pending civil matters
13 involving itself or other cases.

14 Q Really?

15 Did The Daily News report on the fact that
16 Sheraw sued me?

17 A I don't remember.

18 Q It did, didn't it?

19 MR. RAMES: Object to form.

20 THE DEPENDENT: I don't remember.

21 BY MS. ROHN:

22 Q So how do you draw the line, sir?

23 MR. RAMES: One question at a time.

24 THE DEPENDENT: Show me the story you're
25 talking about.

1 BY MS. ROHN:

2 Q Daily News printed a story that Sheraw and
3 IOC sued me for releasing an investigative report.

4 Can you tell me why they didn't publish the
5 story when Donastorg sued the IOC for investigating
6 them?

7 MR. RAMES: Object to form.

8 You can answer.

9 THE DEPENDENT: Without showing me the
10 stories at issue, I can't offer any kind of comment.
11 And certainly the issues of anything involving you
12 personally is not something that I've reviewed in
13 preparation for the 30(b) (6) Deposition in the
14 Donastorg case.

15 BY MS. ROHN:

16 Q Can you tell me why The Daily News failed
17 to cover the story that the PSC was investigating
18 VITELLO for not having set up the 911 calls it was
19 obligated to have done?

20 A The Daily News reported any number of
21 stories about the PSC and VITELLO. There certainly
22 was no neglect on covering that issue or any others,
23 and I specifically recall probably a dozen or more
24 stories that talk about the 911 system and the
25 collection of fees there. So to the extent that

1 you're implying that The Daily News somehow was
 2 covering that up, there's nothing to it.
 3 MR. RAMSES: Would you like to take a
 4 break?
 5 MS. ROHN: Yeah. I'm almost finished.
 6 (Recess.)
 7 (Plaintiffs' Exhibit 122 marked for identification.)

8 BY MS. ROHN:
 9 Q Exhibit 122, Editorial for December 11,
 10 Daily News, "Boxing and tourism, a TKO; maybe
 11 Spongebob can help."
 12 You recognize this as an editorial that ran
 13 in The Daily News on December 11th, 2003?
 14 A That's what it appears to be.
 15 Q This indicates:
 16 "Local promoters touted the boxing
 17 match as the best thing ever to
 18 help promote tourism in the
 19 Virgin Islands. As fast as you
 20 could say TKO, Senate Vice Chairman
 21 Adlah Donastorg managed to get
 22 legislation passed that pulled
 23 \$300,000 out of the Tourism
 24 Revolving Fund so V.I. tax payers
 25 could subsidize a boxing match.

1 Would you agree that certainly
 2 Senator Donastorg didn't do that on his own; it would
 3 have required nine senators and the Governor?
 4 A It would have required Senator Donastorg
 5 to get at least seven other senators and the
 6 Governor to enable the V.I. Government to spend the
 7 money on anything, whether it was a boxing match or
 8 a highway or anything else.
 9 Q "While we have no objection to the
 10 boxing match itself, we do object
 11 to squandering \$300,000 of V.I. tax
 12 payers money on the event under the
 13 guise of promoting tourism. It
 14 was, in reality, an ego trip for a
 15 couple of senators."
 16 What facts are you aware of that the actual
 17 motive for the spending of the money was an ego trip?
 18 A This is a statement of opinion presented
 19 as an opinion in an article labeled "Editorial." It
 20 was produced and published by ICC, as a Corporate
 21 function, outside the scope of responsibilities of
 22 myself or anyone else at the Daily News. I have no
 23 further information about it.
 24 Q "Using false or wildly inflated
 25 statistics to validate the wasteful

1 spending of \$300,000 helps no one."
 2 What factual basis does The Daily News have
 3 that any statistics provided were false?
 4 A That is a statement of opinion; it's
 5 presented as an Opinion in an article labeled
 6 "Editorial" in a page and in a section named
 7 "Opinion." It is clearly an opinion as presented to
 8 the readers and to anyone.
 9 Further, it was produced as a function of the
 10 ICC at the Corporate level, outside of the involvement of
 11 anyone at the Daily News, and I have no further knowledge
 12 of it.
 13 (Plaintiffs' Exhibit 172 marked for identification.)
 14 BY MS. ROHN:
 15 Q Exhibit 172. This is the Dismissal of the
 16 Foreclosure action that was filed in February 2002,
 17 two months later.
 18 Can you --
 19 MR. RAMSES: Not that this was filed in
 20 February?
 21 MS. ROHN: No. The Foreclosure action was
 22 filed in February 2002 and dismissed in April 2002.
 23 BY MS. ROHN:
 24 Q Can you tell the Ladies and Gentlemen of
 25 the Jury why The Daily News did not publish a story

1 that the matter had been dismissed with prejudice?
 2 MR. RAMSES: Object to form.
 3 THE DEPARTMENT: I'm not aware that
 4 The Daily News ever became aware of this filing
 5 until the proceedings in this case. And certainly
 6 Senator Donastorg would have been well advised to
 7 have sent a copy of the file as a press release --
 8 which he obviously knew how to do -- to get the
 9 information to The Daily News when FirstBank filed
 10 this.
 11 BY MS. ROHN:
 12 Q Given his lack of success of having any of
 13 his press releases published, why would you think he
 14 would do that?
 15 A Your description of him having lack of
 16 success in getting his press releases published is
 17 inaccurate. Mr. Donastorg has sent probably
 18 thousands of press releases to the Daily News, and a
 19 huge number of those have contained information that
 20 subsequently was used in the reporting, news
 21 gathering operations of the newspaper.
 22 If you're implying that press releases should
 23 be picked up and printed whole cloth by The Daily News or
 24 any other responsible newspaper or other news gathering
 25 organization, I would differ with your opinion of how

1 that dynamics should operate.
 2 Q Great.
 3 What other press release did The Daily News
 4 publish?
 5 A There are any number of times that the
 6 senator sent out press releases --
 7 Q Name me one.
 8 A You want to show me an article in a press
 9 release --
 10 Q You're the one who says you know what they
 11 are and you know they've been published; so what's
 12 been published?
 13 MR. RAMES: Objection.
 14 BY MS. ROHN:
 15 Q Give me one --
 16 MR. RAMES: Excuse me. One question at a
 17 time, one answer at a time.
 18 BY MS. ROHN:
 19 Q Give me one information that was received
 20 from a press release from Senator Donastorg that
 21 The Daily News published.
 22 A Senator Donastorg regularly sends out
 23 press releases, or has sent out press releases about
 24 his votes in the Legislature. That information is
 25 very frequently in the newspaper on a breakdown

1 MR. RAMES: Object to form.
 2 THE DEFENDENT: Neither I nor anyone else
 3 at The Daily News or under the direction of
 4 Daily News Management and staff had any role or
 5 knowledge of the editorial process that went into
 6 producing those of the evaluative deliberations that
 7 determine the opinions of those editorials
 8 expressed. That was all the function of ICC. And I
 9 have no further knowledge about the editorials
 10 except as I've described previously.
 11 (Plaintiffs' Exhibit 126 marked for identification.)
 12 BY MS. ROHN:
 13 Q Exhibit 126. This is a Press Release from
 14 Senator Donastorg from March of 2005, urging that
 15 the tax benefit package for VITELCO, recently
 16 approved by the EDC, be rejected as a travesty, and
 17 why, that they have fired striking workers; they
 18 padded their company payroll; may have not paid
 19 pensions, et cetera.
 20 Can you tell me why when both the Source and
 21 the Avis printed extensive stories on the press release
 22 and the problems with VITELCO, The Daily News was
 23 silent?
 24 A The Daily News does not base its reporting
 25 on the Source or the Avis, and in fact sets the

1 basis, on senator-by-senator basis.
 2 He has made himself available to The Daily
 3 News' staff on a number of occasions to state his
 4 opinion.
 5 He's been quoted in The Daily News, either from
 6 press releases or from direct interviews at various
 7 times.
 8 Mr. Donastorg certainly has not been
 9 disassociated from coverage in The Daily News, and while
 10 press releases have been used, certainly the better
 11 option, which is to speak to him or his office and staff
 12 directly, is the preferred form for us.
 13 And what we have pursued most energetically, I
 14 cannot give you a citation by citation example of what
 15 stories included what information from which press
 16 releases; unfortunately, I didn't prepare in that regard.
 17 But I would be happy to take a stack of press releases
 18 and a stack of stories and show you the similar
 19 information between them if that's something that you
 20 wanted to iterate and provide me with.
 21 Q Can you explain to me why The Daily News
 22 continued to write editorials after April of 2002
 23 accusing Senator Donastorg of having problems
 24 handling his own personal finances given that the
 25 lawsuit had been dismissed?

1 standards for those news organizations in every
 2 other -- in the Virgin Islands, and, for that
 3 matter, the BVI. What goes into news is news
 4 gathering and newsworthy. Discernments are their
 5 own business and outside the scope of anything that
 6 I would be appropriately commenting on.
 7 I will say that the issues that are raised in
 8 Senator Donastorg's Press Release are covered in great
 9 length by The Daily News and various stories over time
 10 and in their immediate proximate dates to this release.
 11 And I will state categorically that neither this
 12 release -- a release of this type from Senator Donastorg
 13 nor from any other senator in which they endeavored to
 14 state an opinion position would be the basis in and of
 15 itself of a story in The Daily News or any other
 16 responsible newspaper.
 17 (Plaintiffs' Exhibit 123 marked for identification.)
 18 BY MS. ROHN:
 19 Q Exhibit 123 is the Affidavit of
 20 Sterling McPherson in this manner, recounting under
 21 oath that he'd been interviewed by Mr. McDonald,
 22 provided information.
 23 And in Number 4:
 24 "I read, with amazement, the
 25 article in The Daily News as it was

1 not at all in keeping with the
 2 information I had given to
 3 Mr. McDonald on behalf of
 4 The Daily News."
 5 Number 5:
 6 "I contacted Mr. McDonald at
 7 The Daily News to question about
 8 how the story could have been
 9 written, that I was completely
 10 shocked at what I just read, and
 11 that the story was not true."
 12 Number 6:
 13 "The reporter then stated that I
 14 should not go off, and then
 15 requested that should we talk. I
 16 agreed. And he then told me he
 17 that had not written the article.
 18 He then said it was because of
 19 Senator Donastorg, and that is a
 20 vendetta here. He then said if I
 21 told anyone this, he would get
 22 fired. He then confirmed that the
 23 editor had written the article and
 24 used his name."
 25 When did you first see this Affidavit?

1 A I don't remember.
 2 Q Would you agree with me that you have seen
 3 this Affidavit?
 4 A I've seen this Affidavit.
 5 Q Would you agree with me that shortly
 6 after, or sometime after receiving this Affidavit,
 7 Mr. McDonald was indeed fired?
 8 MR. RAMES: Objection.
 9 THE DEFCNENT: Mr. McDonald was never
 10 fired from The Daily News; I believe he resigned.
 11 MS. ROHN: I believe a jury has found
 12 otherwise, haven't they?
 13 MR. RAMES: Objection; improper.
 14 MS. ROHN: It's not improper.
 15 MR. RAMES: You're testifying.
 16 MS. ROHN: No, sir.
 17 BY MS. ROHN:
 18 Q You were at the trial --
 19 MR. RAMES: If you want to ask a question,
 20 ask a question.
 21 BY MS. ROHN:
 22 Q You were a defendant, were you not,
 23 Mr. Robbins?
 24 A Ask your question again, please.
 25 Q McDonald versus The Daily News, Lowe

1 Davis, and Jason Robbins, you were a defendant, were
 2 you not?
 3 A I was a defendant in that case.
 4 Q And in fact the Jury awarded punitive
 5 damages against you for your wrongful firing of
 6 Mr. McDonald, didn't they?
 7 A That isn't the way I recall the case
 8 resolving.
 9 Q You don't recall that being the Jury
 10 award?
 11 A I recall that the case settled with no
 12 admission of liability on either side, and that was
 13 the end of it.
 14 Q Sir, do you recall what the Jury's finding
 15 was?
 16 A I don't specifically recall the specific
 17 stipulations of the Jury finding, no, but I do
 18 recall and know without doubt that Mr. McDonald
 19 quit.
 20 Q The Jury disagreed with you, did it not,
 21 sir?
 22 A I don't know what the Jury found.
 23 Q They found that Mr. McDonald had been
 24 wrongfully discharged, did they not?
 25 A I just told you I didn't recall the

1 specifics of their verdict.
 2 But I will stipulate for the record here that
 3 the recitations of fact in which Mr. McPherson
 4 characterizes the article is inaccurate, and in which he
 5 relays a conversation in which Mr. McDonald described the
 6 unethical, inappropriate behavior by The Daily News in
 7 which Mr. McDonald claimed not to have written the
 8 article, all of that is absolutely false.
 9 Why he would represent this, I have no idea and
 10 do not intend to make comment, but I know that it is
 11 inaccurate in total.
 12 Q Sir, you in the habit of having a jury
 13 verdict of hundreds of thousands of dollars against
 14 you and you don't remember what the jury found?
 15 MR. RAMES: Objection; asked and answered.
 16 BY MS. ROHN:
 17 Q I'm curious how cavalier you are to that
 18 fact. Can you answer my question?
 19 MR. RAMES: Wait. Wait.
 20 Objection.
 21 MS. ROHN: I note your objection.
 22 MR. RAMES: Excuse me. I'm not finished
 23 with my objection.
 24 MS. ROHN: Okay, finish with it.
 25 MR. RAMES: Objection to form.

1 BY MS. ROHN:
 2 Q Are you accustomed to having hundreds of
 3 thousands of dollars awarded against you in punitive
 4 damages and not remember what they were for?
 5 MR. RAMES: Object to form.
 6 THE DEPOSITION: I have never had hundreds
 7 of thousands of dollars in punitive damages against
 8 me awarded in any case.
 9 BY MS. ROHN:
 10 Q How many times have you been sued before,
 11 sir?
 12 A You'll have to tell me; you've done it.
 13 Q How many times have you had a jury award
 14 against you, sir?
 15 A None.
 16 Q Sir, you didn't sit in there and listen to
 17 the Jury give their award?
 18 A I know the end result of that case; it was
 19 a settlement with no liability for either side.
 20 Q Do you think that nullifies a jury award,
 21 sir?
 22 MR. RAMES: Objection; it calls for legal
 23 conclusion.
 24 THE COURT REPORTER: Did you answer?
 25 MS. ROHN: He did very smugly. He said,

1 "In fact, it did."
 2 MR. RAMES: Objection to the --
 3 MS. ROHN: I heard him quite clearly.
 4 MR. RAMES: -- characterization which will
 5 not come across on the transcript. There was
 6 nothing smug about it.
 7 (Plaintiffs' Exhibit 176A marked for identification.)
 8 BY MS. ROHN:
 9 Q 176A. This is an Editorial in
 10 The Daily News, June 5th, 2003, "Senators, get a
 11 grip."
 12 Go to the middle part with the star:
 13 "As recently as last month, Senate
 14 Finance Committee Chairman, Adlah
 15 Donastory, Jr., was pushing to
 16 spend \$300,000 of tax payers money
 17 on a boxing match."
 18 What facts would you have that it was
 19 Senator Donastory that pushed to have this thing?
 20 A What is your question?
 21 Q What factual basis is there that it was
 22 Senator Donastory who pushed to have this money
 23 spent on a boxing match?
 24 A Well, separately from the fact that this
 25 is an editorial, it is presented as an opinion; it

1 was generated as a function of Innovative
 2 Communication Corporation at the Corporate level. I
 3 would point out that as reported on few occasions in
 4 news articles in The Daily News, that
 5 Senator Donastory was the sponsor of the amendment
 6 that resulted in legislation that funded the boxing
 7 match. I don't believe that his activity can be
 8 divorced from that.
 9 Q What evidence do you have that he had to
 10 push anyone to vote for that bill?
 11 A It doesn't say that he pushed anyone.
 12 But, again, this is an Opinion article that's
 13 presented as an editorial under the page labeled
 14 "Opinion," and was something that was produced by
 15 ICC. And I don't have any knowledge of what their
 16 deliberations were or considerations were in
 17 determining that opinion, how they wrote it, who
 18 wrote it, or anything else in that regard.
 19 MS. ROHN: I have no further questions at
 20 this time.
 21 MR. RAMES: Nothing for this witness.
 22 Oh, excuse me. I'm sorry. You're next.
 23 MR. EDWARD: Well, I was gonna say that I
 24 have nothing further for this witness.
 25 MR. RAMES: Then I have nothing further

1 for this witness.
 2 (Whereupon, the Deposition concluded at 4:56 P.M.)

3 -000-

JURAT

I, Jason Robbins, certify that I have read the foregoing transcript of my Deposition taken on Tuesday, September 14, 2010, and have signed it subject to the following changes:

PAGE LINE CORRECTION

COURT REPORTER'S CERTIFICATE

I, N. Antoinette Cerge, Registered Professional Reporter with the National Court Reporters Association; Certified Shorthand Reporter, licensed in the State of California; Notary Public in the U.S. Virgin Islands, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

Dated: September 25, 2010

N. Antoinette Cerge, RPR/CSR

Deponent

Date

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Senator Adlah Donastorg, Jr.,)
Benedicta Donastorg, Adlah)
Donastorg, Senior, Josephina)
Donastorg, Ella Morca, and)
Norma Duran,)
)
Plaintiffs,)
)
vs.)
)
DAILY NEWS PUBLISHING COMPANY, INC.,)
INNOVATIVE COMMUNICATION CORP.,)
JEFFREY PROSSER, LOWE DAVIS,)
HOLLAND "DYKE" REDFIELD, and VITELCO,)
)
Defendants,)
)
-----)

CIVIL NO.
117/2002
PAGES 1-142

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DEPOSITION OF J. LOWE DAVIS

Date: Wednesday, September 15, 2010
Time: 12:01 p.m.
Location: Rohn and Carpenter
1217 Ejerge Gade
St. Thomas, Virgin Islands
Reported by: N. Antoinette Cerge
RPR-National/CSR-California
Realtime Writer/Notary Public

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1 A I have oversight of all news.
2 Q Why would the executive editor have
3 oversight of all news?
4 Do you have anything to do with the Editorial
5 page?
6 A No.
7 Q And when you say you have oversight of all
8 news, what does that oversight entail?
9 A I make the final determination of what
10 goes into the paper, what stories we are going to
11 assign, and to whom, and when they're going to
12 appear in the paper.
13 Q How long have you held that position?
14 A Since 1999.
15 Q Who do you report to?
16 A Jason Robbins.
17 Q How long have you been reporting to
18 Jason Robbins?
19 A Let's see. Since 1997, I believe.
20 Q You've been reporting to Jason Robbins
21 since 1997?
22 A Oh, I'm sorry -- 2007. I'm sorry.
23 Q That's okay. I was going to say, that
24 takes a whole lot of your deposition testimony and
25 throws it out of here.

1 ST. THOMAS, VIRGIN ISLANDS; TUESDAY, SEPT. 15, 2010
2 12:01 P.M.
3 -000-
4 J. LOWE DAVIS,
5 having been first duly sworn,
6 was examined and testified as follows:
7 EXAMINATION
8 BY MS. ROHN:
9 Q Good afternoon, Ms. Davis.
10 Could you state your name for the record,
11 please.
12 A J. Lowe Davis.
13 Q Ms. Davis, where do you presently reside?
14 A St. Thomas.
15 Q Name and address, please.
16 A 44B Cabrit Point.
17 Q How long have you lived there?
18 A Ten and a half years.
19 Q Anybody live there with you?
20 A No.
21 Q Where are you presently employed?
22 A The Virgin Islands Daily News.
23 Q And what is your present position?
24 A I'm the Executive Editor.
25 Q And what do you do in that regard?

1 MR. RAMES: Yeah.
2 BY MS. ROHN:
3 Q Okay. Is it true that previously
4 Mr. Robbins reported to you?
5 A Correct.
6 Q And now you report to Mr. Robbins?
7 A Correct.
8 Q What occurred to cause that flip?
9 A At corporate level, there was a change in
10 our positions and rolls.
11 Q And what was that change?
12 A He became the CEO -- which is another term
13 for Publisher -- and I became the Editor.
14 Q And was that something you requested or
15 something that was dictated?
16 A It was dictated.
17 Q And who was it dictated by?
18 A I do not know.
19 Q Well, who informed you of that fact?
20 A Mr. Jim Heying -- James Heying, the Chief
21 Operating Officer for ICC.
22 Q Did he give you a reason?
23 A No.
24 Q Did he tell you who had made the decision?
25 A No.

1 Q Do you, yourself, believe you know why?
 2 MR. RAMES: Object to form.
 3 You can go ahead.
 4 THE DEPONENT: It would only be wild
 5 speculation.
 6 BY MS. RCHN:
 7 Q Did this result in a change in salary?
 8 A Yes.
 9 Q Did it result in a decrease in your
 10 salary?
 11 A Yes.
 12 Q So it was a demotion?
 13 A Well, half of my duties were removed,
 14 so -- yes.
 15 Q Prior to this occurring, had you received
 16 any written or verbal reprimands or discussions as
 17 to dissatisfaction with your job performance?
 18 A None whatsoever.
 19 Q Now, from past depositions, I understand
 20 that you were actually an employee of ICC; is that
 21 correct?
 22 A No.
 23 Q Didn't you produce a contract between
 24 yourself and ICC?
 25 A It was a contract between me and

1 decisions?
 2 MR. RAMES: Object to form.
 3 THE DEPONENT: What you mean by my
 4 "employment decisions"? Do you mean by personal
 5 employment --
 6 BY MS. RCHN:
 7 Q Uh-huh.
 8 A -- or over my employment of people in the
 9 News Department?
 10 Q Your personal employment.
 11 A Well, it was a contract. Of course at the
 12 end of the Contract they had the right to extend it
 13 or not extend it.
 14 Q Who is "they"?
 15 A ICC and The Daily News.
 16 Q So there was a contract with ICC?
 17 A As you have stipulated that you have a
 18 copy of.
 19 Q Well, boy, you got me totally confused
 20 now.
 21 Did you or did you not have a contract with
 22 ICC?
 23 A You know, I did not look at this -- I have
 24 not looked at that contract in, what, three or four
 25 years, so I don't remember.

1 The Virgin Islands Daily News.
 2 Q Who paid you?
 3 A The Virgin Islands Daily News.
 4 Q Ma'am, you don't recall given me a
 5 contract in which you had a contract with ICC and
 6 pay checks from ICC?
 7 A I don't recall that, no. I remember
 8 seeing paychecks that had "Virgin Islands
 9 Daily News" on them. I will have to go back and
 10 look at that, but I do know that my salary was part
 11 of our budget.
 12 Q Well, was Mr. Heying an employee of
 13 The Virgin Islands Daily News?
 14 A No.
 15 Q Am I not correct that previously you have
 16 testified that as a part of the terms and conditions
 17 of your employment, ICC had no control over your
 18 employment decisions?
 19 MR. RAMES: Object to form.
 20 THE DEPONENT: I don't understand.
 21 BY MS. RCHN:
 22 Q Have you previously represented under oath
 23 that a term and condition of your agreeing to being
 24 the -- to go to work for The Daily News was that ICC
 25 would have no control over your employment

1 I do know that ICC was the corporate parent of
 2 The Daily News and controlled the money.
 3 Q And obviously, what job you held; is that
 4 correct?
 5 A Well, since it was a contract, it was
 6 specified as to what the job was.
 7 Q Was your contract up for renewal in 2007?
 8 A Yes.
 9 Q And so they declined to renew your
 10 existing contract, and gave you a different one; is
 11 that correct?
 12 A That's correct.
 13 Q Now, when The Daily News was purchased by
 14 the -- I call them the Shamrock outfit -- I'm sure
 15 you have a special name, but can we agree that we
 16 know who we're talking about if I refer to the
 17 "Shamrock" outfit?
 18 A Let's call them the Times-Shamrock
 19 Corporation.
 20 Q All right. Time Shamrock it is.
 21 A "Times," plural.
 22 Q Times-Shamrock.
 23 When they purchased The Daily News, did you
 24 continue your existing contract?
 25 A They did not do contracts.

1 Q But that's not my question.
 2 Did your existing contract continue or did it
 3 end at the time Times-Shamrock purchased the paper?
 4 A I continued in my position as an employee
 5 of Times-Shamrock.
 6 Q But without a contract?
 7 A Correct.
 8 Q Did any other terms and conditions of your
 9 employment change when Time-Shamrock took over?
 10 A "Times."
 11 Q Times-Shamrock.
 12 A No.
 13 Q Same salary? Same benefits? Same
 14 pension?
 15 A Well, they have a completely different
 16 insurance plan, and they have a different and
 17 better, in fact, 401K Plan, and so a number of those
 18 things changed upon their purchase.
 19 Q Do you have anyone at Times-Shamrock that
 20 you report to?
 21 A No.
 22 Q So you report solely to Jason Robbins?
 23 A Correct.
 24 Q Are there any people from Times-Shamrock
 25 that you speak to on a regular basis?

1 BY MS. ROHN:
 2 Q You can't talk to him.
 3 A I'm just trying to remember.
 4 Q You have to remember of your own personal
 5 knowledge.
 6 A Saturday, I believe; several days ago.
 7 Q Who else was present?
 8 A Let's see. In the lobby, we had the door
 9 open, so the Circulation people were going back and
 10 forth.
 11 Q Who are the Circulation people?
 12 A Oh, all of the people who --
 13 Q Names, please.
 14 MR. RAMES: Excuse me. Object to form.
 15 THE DEPENDENT: I'm trying to remember.
 16 MR. RAMES: Let me finish.
 17 THE DEPENDENT: Okay.
 18 MR. RAMES: Object to form with respect to
 19 the definition of the word "present." Present in
 20 the building? Present in the room?
 21 MS. ROHN: I asked her who was present for
 22 the meeting. That's what she answered.
 23 MR. RAMES: No. I don't think you said
 24 "who." You said "who was present?" It just as well
 25 means present in the building.

1 A No.
 2 Q Who reports to you?
 3 A Everyone in the News Department.
 4 Q Are you still studying to be in the
 5 seminary?
 6 A I've completed my studies.
 7 Q And what have you done since completing
 8 your study in that regard?
 9 A I am doing practicums, serving at two
 10 churches.
 11 Q What are your hours of work at
 12 The Daily News?
 13 A I'm salaried, so it's to meet the tasks,
 14 but generally I am into the office between 12:00 and
 15 1:00 p.m., and there until we go to press, which is
 16 between 1:00 and 2:30 or 3:00 a.m.
 17 Q What did you do to prepare for this
 18 deposition?
 19 A I spoke with counsel, I read my subpoena,
 20 and I reviewed the documents that we produced for
 21 Discovery.
 22 Q When did you speak with counsel?
 23 THE DEPENDENT: When was it, day before
 24 yesterday? I'm sorry.
 25

1 BY MS. ROHN:
 2 Q Who was present -- who could hear anything
 3 said in the meeting?
 4 A Attorney Rames, and Jason Robbins came in
 5 from time to time.
 6 Q And how long did this meeting last?
 7 A About two, two-and-a-half, three hours,
 8 maybe.
 9 Q And how much of that time was spent
 10 reviewing documents?
 11 A I'm sorry?
 12 Q How much of that time was spent reviewing
 13 documents?
 14 A I would say all of it.
 15 Q Do you know Senator Donastorg?
 16 A I'm sorry?
 17 Q Do you know Senator Donastorg?
 18 A Senator Donastorg, I have never personally
 19 met Senator Donastorg.
 20 Q Do you have any opinions of
 21 Senator Donastorg?
 22 A I would decline to comment on my opinions.
 23 Q Sorry, ma'am, you don't have that option.
 24 Please answer.
 25 A I think I do.

1 Q No, you don't.
 2 A I don't have to tell you what my thoughts
 3 are or my personal opinions.
 4 Q Yes, ma'am, you do. This is a malice
 5 action, and, yes, ma'am, you do. So answer my
 6 question.
 7 A I think that in this case, the legal term
 8 of malice does not apply to my opinion.
 9 Q Ma'am, answer my question, or I'll ask to
 10 have the Court find you in contempt.
 11 MR. RAMES: Let's go off the record.
 12 MS. ROHN: I'm not going off the record.
 13 This is a pending question. She has no right not to
 14 answer.
 15 BY MS. ROHN:
 16 Q Answer my question.
 17 A My opinion has no bearing on this.
 18 Q Ma'am, that's for a court to decide.
 19 You're not a judge.
 20 Answer my question.
 21 MR. RAMES: It is a legitimate question.
 22 THE DEFENDANT: I have voted for
 23 Senator Donastorg in every election that he has run
 24 for senator.
 25 Does that answer your question?

1 A I know who he is; I haven't seen him in a
 2 dozen years.
 3 Q Well, ma'am, you personally fired him,
 4 didn't you? Don't you know who he is?
 5 A I said I know who he was --
 6 MR. RAMES: Object to form.
 7 Hold on. Wait a moment after she asks the
 8 question so that I can interject a response.
 9 Object to the form. There were two questions
 10 asked.
 11 BY MS. ROHN:
 12 Q You know who Will Jones is, don't you?
 13 A Yes, I do.
 14 Q Do you dispute Will Jones' sworn testimony
 15 that you offered him money for any negative story he
 16 could write about Senator Donastorg?
 17 A Yes, I do.
 18 Let me be very clear about that answer. Yes, I
 19 dispute that I ever offered Will Jones any money to write
 20 anything negative about Senator Donastorg.
 21 Your question was somewhat twisted.
 22 Q Have you ever discussed Senator Donastorg
 23 with Jeffrey Prosser?
 24 A No.
 25 Q Have you ever discussed Senator Donastorg

1 BY MS. ROHN:
 2 Q No, ma'am.
 3 I asked you what your opinions were. You're
 4 talking about actions.
 5 A Well, I wouldn't vote for anybody that I
 6 didn't think could perform well as a senator.
 7 Q Have you ever used derogatory terms about
 8 Senator Donastorg?
 9 A No.
 10 Q You were present at the trial of McDonald
 11 versus The Daily News, were you not?
 12 A Yes, I was.
 13 Q You heard the testimony of Mr. McDonald as
 14 to the pejorative terms you used towards
 15 Mr. Donastorg?
 16 A I don't recall.
 17 MR. RAMES: Object to form.
 18 BY MS. ROHN:
 19 Q Do you know Eunice Bedminister?
 20 A Yes, I do.
 21 Q Have you ever referred to
 22 Senator Donastorg in a negative manner in front of
 23 Ms. Bedminister?
 24 A I certainly don't think so.
 25 Q Do you know Will Jones?

1 with Ed Crouch?
 2 A No.
 3 Q What was Senator Donastorg's position --
 4 excuse me.
 5 What was Jeffrey Moorehead's -- excuse me.
 6 What was Jeffrey Prosser's position with
 7 The Daily News?
 8 A He was the owner of ICC, which meant that
 9 by extension he was owner of The Virgin Islands
 10 Daily News.
 11 Q And what control did he have over
 12 The Daily News?
 13 A He had financial control of
 14 The Daily News.
 15 Q He had control over whether or not you
 16 continued working for The Daily News as well, did he
 17 not?
 18 A Well, I had a contract, so if he wanted to
 19 end the contract, he could, but I would go to court.
 20 Q He could simply decide not to renew it,
 21 couldn't he, ma'am?
 22 A Well, he did; he offered me a different
 23 one.
 24 Q I thought you said Mr. Heying did that,
 25 and that you didn't know who had him do that.

1 MR. RAMES: That's a compound question. I
2 object to the form.
3 THE DEPARTMENT: It is.
4 Mr. Prosser was the one who signed the
5 contract. My conversation was with Mr. Heying.
6 BY MS. ROHN:
7 Q Did Mr. Prosser or anyone from ICC ever
8 provide The Daily News with story suggestions?
9 A No.
10 Q Never?
11 A I can't recall any.
12 Q Did Mr. Prosser or anyone from ICC ever
13 provide any documentation to The Daily News to be
14 used in stories?
15 A I believe that there was a press
16 conference at one time pertaining to something, but
17 that was for all media, so it was nothing
18 specifically to The Daily News.
19 Q Did the fact that Mr. Prosser owned the
20 newspaper influence what types of stories
21 The Daily News would print about ICC or Mr. Prosser?
22 A No.
23 Q Did it influence its choices of whether or
24 not to run stories that were negative about ICC or
25 Mr. Prosser?

1 BY MS. ROHN:
2 Q And did The Daily News end up suing
3 Mr. Claxton?
4 A Not to my knowledge.
5 Q When was the last time you've spoken to
6 Melvin Claxton?
7 A I could not honestly tell you. It's been
8 years.
9 Q Do you know Holland Redfield?
10 A Vaguely.
11 Q Have you ever met him?
12 A Yes.
13 Q And what are the circumstances of your
14 meeting him?
15 A He was a senator, a sitting senator when I
16 first came to work at The Daily News, and I ran into
17 him at a Chamber of Commerce event; and then later
18 on he would occasionally be in the building when
19 The Daily News went to ICC Headquarters to present
20 our annual budget.
21 Q Were you aware that he was a spokesperson
22 for The Daily News?
23 A Yes.
24 MR. RAMES: Object to form.
25

1 A No.
2 Q Do you recall doing an investigative
3 report between The Daily News and Melvin Claxton
4 about the Bird family?
5 A I'm sorry?
6 Q Do you recall a joint investigative report
7 that was done by The Daily News and Melvin Claxton
8 about the Bird family out of Antigua?
9 A Vaguely.
10 Q And do you recall telling Mr. Claxton that
11 you had to pull the story off of the wire because it
12 was negative to Mr. Bird's family, which was an ally
13 of Mr. Prosser?
14 A Well, there are two parts to that. You
15 are presupposing that A) I told Mr. Claxton that,
16 and B) that I did that. A) I did not tell
17 Mr. Claxton, and B) I did not do it.
18 Q So if Mr. Claxton has a printout of the
19 Internet paper from before your conversation and
20 after a conversation, and the story has been pulled,
21 that was just coincidence?
22 MR. RAMES: Object to form.
23 THE DEPARTMENT: I can't even begin to
24 answer that question. I've never seen such a thing,
25 and I can't imagine how it would exist.

1 BY MS. ROHN:
2 Q And how had you become aware he was a
3 spokesperson for The Daily News?
4 A I believe at some point around -- boy -- I
5 don't know -- 2002, 2003, 2004, sometime around
6 then, he spoke with me to tell me that he was the
7 Vice President of -- I believe it is Corporate
8 Affairs -- and that --
9 Oh, I know what it was.
10 There was a press release stating that Holland
11 Redfield said such and such concerning ICC, and I asked
12 the reporter to call him and ask him why he was speaking,
13 and he said he was the Spokesperson for ICC.
14 Q Was he also the spokesperson for VITELCO
15 if you needed a public statement from VITELCO?
16 A I don't recall. I think that most of the
17 time we went directly to whoever at VITELCO we
18 needed to talk to.
19 Q Did The Daily News ever investigate the
20 fact that Mr. Redfield went to work for ICC within
21 three days of stopping being a senator?
22 MR. RAMES: Object to form.
23 THE DEPARTMENT: No.
24 BY MS. ROHN:
25 Q Now, in addition to getting the budget for

1 The Daily News, did the ICC also handle
 2 The Daily News' Human Resources issues?
 3 A There was a consolidated Human Resources
 4 Department that handled all of the Human Resources
 5 matters for all of the companies under the ICC
 6 umbrella.
 7 Q So the answer would be yes?
 8 A Sure.
 9 Q What, besides Human Resources and funding,
 10 did ICC perform for Daily News?
 11 A I don't -- let's go back and define
 12 "funding."
 13 Q Well, you said they set your budget.
 14 A But they didn't give us any money.
 15 Q Did Daily News ever receive any money from
 16 ICC?
 17 A Not that I recall.
 18 Q So what did they budget?
 19 A I'm sorry?
 20 Q What did they budget?
 21 A We presented our revenue and our
 22 expenditure budget.
 23 Q And they had to approve it?
 24 A They received it. We never received any
 25 kind of disapprove or approve; we just presented it

1 they give a discount rate?
 2 A Well, I think you would have to ask the
 3 Advertising Department that, but there are a variety
 4 of structures for advertising. If you have a
 5 contract for a certain amount, you get a discount.
 6 If you have a contract to place a certain number of
 7 ads, color, et cetera, versus black and white, you
 8 get a different kind of a discount.
 9 Did they particularly get a discount? Not to
 10 my knowledge. It would depend upon what their contract
 11 was, and, also, it would depend upon whether they were
 12 placing ads through an advertising agency or directly
 13 to us.
 14 Q The paper that the newspaper was printed
 15 on, was that brought into the Virgin Islands through
 16 VITELCO?
 17 A Through VITELCO? I don't believe so.
 18 Q You aren't aware of whether or not because
 19 VITELCO was an IDC company and didn't pay import
 20 duties, that the newspaper was brought in through
 21 VITELCO?
 22 MR. RAMES: Object to form.
 23 THE DEFONENT: I have no knowledge of what
 24 you're talking about. I don't even understand the
 25 question.

1 to them. We used our own revenues to take care of
 2 our own expenses.
 3 Q Was there a pension plan?
 4 A Yes.
 5 Q Who funded the pension plan?
 6 A Well, ICC plus the -- well, not all of the
 7 employees. The union employees are under a
 8 different pension plan.
 9 Q Who funded the nonunion pension plan?
 10 A ICC and the employees.
 11 Q Was there a health program?
 12 A Yes.
 13 Q Health insurance program?
 14 Who funded the health insurance?
 15 A That would have been employees who elected
 16 to be part of it and ICC.
 17 Q What was ICC's role in the newspaper as
 18 far as the publication of the newspaper?
 19 A You mean the content?
 20 Q Yes.
 21 A ICC's role in the -- well, they placed ads
 22 through the Advertising Department. They had
 23 nothing to do with the News Department. And ICC ran
 24 the Editorial Department.
 25 Q When ICC placed ads in The Daily News, did

1 BY MS. ROHN:
 2 Q Well, did The Daily News purchase the
 3 newspaper --
 4 A Yes, we did.
 5 Q -- paper, paper, or did --
 6 A Yes, The Daily News did.
 7 Q And where did you purchase it from?
 8 A We purchased it from a paper supplier in
 9 Canada, whose name I don't recall.
 10 Q Did you pay duty on that paper?
 11 A I can't recall. I know that we paid
 12 excise taxes.
 13 Q Who funded capital expenditures for
 14 The Daily News?
 15 A Well, there were very few capital
 16 expenditures.
 17 Q The ones that there were, who funded them?
 18 A The Daily News.
 19 Q How often would you speak to
 20 Jeffrey Prosser?
 21 MR. RAMES: Object to form.
 22 What period?
 23 MS. ROHN: During the time that he owned
 24 the paper.
 25 THE DEFONENT: I wasn't there all of the

1 time that he owned the paper, but during the time
 2 that I was there and he owned the paper, perhaps
 3 once a year.
 4 BY MS. ROHN:
 5 Q How often did you speak to Eling Joseph or
 6 any of his workers?
 7 MR. RAMES: Object to form.
 8 THE DEPONENT: Who is Eling Joseph?
 9 BY MS. ROHN:
 10 Q His secretary.
 11 A I can't recall ever speaking to her.
 12 Q How often would you speak with Ed Crouch?
 13 A Never.
 14 Q How were the editorials received by
 15 The Daily News?
 16 A I can't answer that question.
 17 Q You were the CEO, and you don't know how
 18 they were received?
 19 A I had nothing to do with the editorials.
 20 Q Well, how did they get to the Editorial
 21 page?
 22 A I don't understand your question.
 23 Q How did they get printed in the paper?
 24 A They got printed in the paper on the
 25 press.

1 that said "This page isn't ours; it's ICC's page"?
 2 A That is understood in American Journalism,
 3 that the --
 4 Q Ma'am, the question is simple --
 5 MR. RAMES: Excuse me. Let her finish her
 6 answer.
 7 THE DEPONENT: I'm answering your
 8 question.
 9 The owner of the newspaper owns the
 10 editorial. The editorial is the opinion of the owner.
 11 BY MS. ROHN:
 12 Q Ma'am, how does the public who reads
 13 The Daily News know that that's the opinion of ICC
 14 and not The Daily News?
 15 A I don't know.
 16 Q Again, my question to you was, was there
 17 any disclaimer ever in The Daily News that the
 18 opinions on the Editorial page were not those of
 19 The Daily News?
 20 A I don't recall.
 21 Q You don't recall ever seeing them or you
 22 don't recall --
 23 What is it you don't recall?
 24 A Well, since I had nothing to do with those
 25 two pages, the content of those two pages --

1 Q All right. And how did the press receive
 2 them to get printed in the paper?
 3 A They received them on metal plates.
 4 Q And how did they get on those metal
 5 plates?
 6 A From film off of a computer.
 7 Q And how do they get in the computer?
 8 A From, I believe, Marilyn Bailey doing a
 9 rough draft, and someone in graphics, someone at a
 10 clerical level who knew how to do page layout, put
 11 the material on the two Opinion pages onto the
 12 computer.
 13 Q And where did Marilyn Bailey get the
 14 substance to put in the rough draft?
 15 A I have no idea.
 16 Q You haven't previously testified that
 17 Ed Crouch or Jeffrey Prosser wrote the editorials?
 18 A I think I previously testified when you
 19 pressed me who I thought might have, and I said that
 20 that would be my guess, but I don't know.
 21 Q In any event, the editorials were included
 22 in the publication of The Daily News; is that
 23 correct?
 24 A The Daily News printed the editorials.
 25 Q Was there a disclaimer on The Daily News

1 Daily News printed those two pages, Daily News did
 2 not publish them.
 3 The Daily News publishes content that The Daily
 4 News produces. The Daily News did not produce those two
 5 pages, so I did not have any reason to be looking at the
 6 those two pages.
 7 Q Ma'am, were they printed on paper
 8 purchased by The Daily News?
 9 A Yes.
 10 Q And when The Daily News sold the paper,
 11 they got paid for those pages, didn't they?
 12 A I'm sorry?
 13 Q When The Daily News sold the paper to the
 14 public, The Daily News took that money, didn't it?
 15 A Yes.
 16 Q You didn't take out five percent and give
 17 it to ICC because it wasn't your -- it was their
 18 publication, did you, ma'am?
 19 A This is a rather tortured --
 20 Q I don't think --
 21 MR. RAMES: She's answering the question.
 22 BY MS. ROHN:
 23 Q -- torturing --
 24 A I don't understand what you're getting at.
 25 Q Did you pay them for that work, ma'am?

1 A Pay who?
 2 Q ICC, for the work they did on the
 3 Editorial page.
 4 A I don't get what you're getting at.
 5 Q Ma'am, answer my question. Did you ever
 6 pay any money to ICC because they provided
 7 editorials to The Daily News?
 8 A Well, all of the profits of The Daily News
 9 went to ICC --
 10 Q Well --
 11 A -- so by extension, I suppose you could
 12 say yes.
 13 Q Were there any profits from
 14 The Daily News, ma'am?
 15 A Yes, there were.
 16 Q And how did they go to ICC?
 17 A I don't understand that question.
 18 Q Well, at the end of year, did you write
 19 them a check?
 20 A I believe it was an ongoing daily process
 21 through the banks.
 22 Q So the money that came into
 23 The Daily News, did it go into an ICC account?
 24 A It went into a Daily News account that was
 25 then shifted to an ICC account.

1 THE DEponent: That's not what I said.
 2 MR. RAMES: Compound question.
 3 BY MS. ROHN:
 4 Q What do you define as "profit"?
 5 A Money that you have left over after you
 6 have paid your expenses.
 7 Q But you said this was done on a daily
 8 basis.
 9 MR. RAMES: Object to form.
 10 BY MS. ROHN:
 11 Q You said this was an ongoing process on a
 12 daily basis.
 13 A Yeah. We had a detailed deposit of all of
 14 the cash, all checks, all of the credit card
 15 payments that goes into the bank. There was a bank
 16 account that The Daily News had, that each day, at
 17 the end of the day, shifted to ICC. But the
 18 Accounting Office kept very close track, down to the
 19 penny, of how much of that belonged to
 20 The Daily News.
 21 Q Really? You saw those documents from the
 22 Accounting Department?
 23 A I was informed of that by the head of the
 24 Accounting Department who handled The Daily News'
 25 accounts.

1 Q And how was it shifted to an ICC account?
 2 A I don't know.
 3 Q If you don't know, how do you know it was?
 4 A I just know that from day-to-day the
 5 bank's statement indicated that.
 6 Q How did you do a budget if you never had
 7 any profits?
 8 MR. RAMES: Object to form.
 9 THE DEponent: I didn't say we didn't have
 10 profit.
 11 BY MS. ROHN:
 12 Q You said they were all paid to
 13 The Daily News.
 14 MR. RAMES: Object to form.
 15 THE DEponent: I did not say that.
 16 BY MS. ROHN:
 17 Q You said all profits went to ICC; that's
 18 what you testified to.
 19 A That's right. And you just said, "Why did
 20 you say that all the profits went to
 21 The Daily News?"
 22 Q No, ma'am.
 23 How did you have a budget if you had no
 24 profits? -- therefore you had no money to spend?
 25 MR. RAMES: Object to form.

1 Q So you've never seen those?
 2 A I can't recall. I saw many documents.
 3 Q As you sit here today, you can't recall
 4 seeing them?
 5 A Well, I am sitting here today, and you are
 6 questioning me today, so I'm trying to give you my
 7 answer about what I know today.
 8 Q Well, I'm confused.
 9 So at the end of the day the excess money,
 10 the profits go to ICC. The next day there is a bill
 11 for \$20,000, and you don't have the money because that
 12 money went to ICC. How do you pay that bill?
 13 A Well, we don't pay it on that day.
 14 Q How do you ever get the money to pay that
 15 bill?
 16 A You know, I did not prepare to answer
 17 these kinds of questions.
 18 Q I can't help that.
 19 A I had no idea you were going to ask these.
 20 These were not in --
 21 Q You're not a 30(b)(6) --
 22 MR. RAMES: Excuse me. You can't talk at
 23 the same time.
 24 BY MS. ROHN:
 25 Q Ma'am, you're not a 30(b)(6) witness.

1 MR. RAMES: She is --
 2 THE DEPOENT: That's correct, I'm not the
 3 30(b)(6).
 4 BY MS. ROHN:
 5 Q So I have no obligation to tell you what
 6 I'm going to ask you.
 7 MR. RAMES: Excuse me.
 8 Objection.
 9 You can only speak one at a time, question,
 10 and then answer.
 11 BY MS. ROHN:
 12 Q Ms. Davis, I have no obligation to tell
 13 you in advance what questions I'm going to ask you.
 14 Now, will you answer my question, please?
 15 MR. RAMES: Object to form.
 16 THE DEPOENT: Please ask your question
 17 again.
 18 BY MS. ROHN:
 19 Q If, you at the end of each day, pay
 20 whatever profits you had in your account to ICC, if
 21 you then have a large expenditure, how do you pay
 22 for that?
 23 A The process was we would receive an
 24 invoice; I would approve or disapprove the
 25 invoice -- this was when I was CEO -- I would send

1 MR. RAMES: Object to form.
 2 THE DEPOENT: I don't know what you're
 3 asking.
 4 BY MS. ROHN:
 5 Q What would the document be called that she
 6 would give you, The Daily News, to tell
 7 The Daily News how much they owed her? Was it a
 8 time sheet? Was it a requisition? What was it
 9 called?
 10 A I don't recall.
 11 Q So let me ask you if this is a fair
 12 interpretation.
 13 The Daily News received income and had
 14 expenditures. The Daily News would put income in a
 15 bank account, which, at the end of the day, ICC would
 16 then take. And if The Daily News wanted to spend money
 17 on an expenditure, they would then go to ICC and ask
 18 them for the money.
 19 A That is not a fair representation.
 20 Q Well, then, you explain to me where they
 21 got the money for expenditures.
 22 A Where who got the money for expenditures?
 23 Q The Daily News.
 24 A From the money that we have made.
 25 Q That ICC had taken?

1 that down to the Accounting Office, which would then
 2 arrange for payment.
 3 Q Would that be the ICC's Accounting Office?
 4 A Well, the office that handled
 5 The Daily News' accounting.
 6 Q Which was ICC employees; is that correct?
 7 A We paid part of their salaries because --
 8 Q Ma'am, were they employed by ICC?
 9 MR. RAMES: Excuse me.
 10 Objection. You're interrupting the witness.
 11 BY MS. ROHN:
 12 Q Were they employed by ICC?
 13 A I believe so.
 14 Q And who were these people that you would
 15 give the invoices to?
 16 A Deborah McDonald.
 17 Q And how much would you pay her on behalf
 18 of The Daily News?
 19 A She kept track of her hours, and these
 20 were presented for our budgeting purposes.
 21 Q And where would the money come from?
 22 A From Daily News' revenue.
 23 Q And what would the document be called that
 24 she supposedly prepared for what you owed her from
 25 The Daily News?

1 A ICC --
 2 MR. RAMES: Object to form.
 3 THE DEPOENT: -- didn't take it, per se;
 4 it was in a single account, as I understand it.
 5 I will tell you that I did not pursue exact
 6 the information about this. I wanted to be sure that
 7 we had enough money to pay our bills and to make our
 8 payroll and do everything that we needed to do.
 9 BY MS. ROHN:
 10 Q You know Mr. Cumbermack?
 11 A Vaguely.
 12 Q Ever had any conversations with him?
 13 A Socially.
 14 Q How do you know him socially?
 15 A I think Chamber of Commerce and some kind
 16 of a reception at some point at Government House.
 17 Q Do you know Oakland Benta?
 18 A He's the Deputy Police Commissioner.
 19 Q That's the first time you ever met him?
 20 A I have never formally met him.
 21 Q Did you understand that previous to being
 22 the Deputy Police Commissioner, that he worked for
 23 ICC or one of its subsidiaries?
 24 A At one point I believe he did.
 25 Q And what did you understand his job

1 position to be?
 2 A I did not know.
 3 Q Did ICC provide security for
 4 The Daily News?
 5 A No.
 6 Q Did The Daily News have security?
 7 A No.
 8 Let me correct that.
 9 When we were owned by Gannett, there was a time
 10 when we had a security guard through the night hours.
 11 Q Do you know Mr. Sharp? I think his name
 12 is David Sharp.
 13 A Vaguely.
 14 Q How did you meet him? Have you ever met
 15 him?
 16 A Several times, yes.
 17 Q When did you first meet him?
 18 A I think in a St. Thomas Humane Society
 19 reception.
 20 Q Do you have an understanding that he works
 21 for -- or worked for one of the ICC subsidiaries?
 22 A Yes.
 23 Q Who did you understand he worked for?
 24 A I believe he was the head of VITELCO.
 25 Q And do you recall what period of time?

1 Q How long did you work with her?
 2 A I guess it was six or seven years.
 3 Q Ever been to her house?
 4 A No.
 5 Q Do you know where she lives in St. Thomas?
 6 A No.
 7 Q Why did she leave The Daily News?
 8 A I don't know.
 9 Q Was she let go?
 10 A I don't know.
 11 Q Did you make the decision for her to leave
 12 or was that Jason Robb's decision?
 13 MR. RAMES: Object to form.
 14 THE DEFENDENT: I don't know whose decision
 15 it was.
 16 BY MS. ROHN:
 17 Q Do you know William Brown?
 18 A Yes, I do.
 19 Q How long did you work with him?
 20 A I guess it was about nine, ten years.
 21 Q Do you know where he is now?
 22 A Not specifically.
 23 Q How about generally?
 24 A I believe he is in New England.
 25 Q Do you know if he's working for a paper in

1 A No.
 2 Q And did you have any interaction with him
 3 in your position with The Daily News?
 4 A No.
 5 Q How often would you see him?
 6 A I can't even begin to answer that; I mean,
 7 almost never.
 8 I think it's time for me to stand up.
 9 MR. RAMES: Okay. We'll take a two or
 10 three-minute break.
 11 MS. ROHN: Sure. No problem.
 12 (Recess.)
 13 BY MS. ROHN:
 14 Q Would The Daily News receive accountings
 15 from ICC as to its financial information?
 16 A I'm sorry?
 17 Q Would The Daily News' receive accountings
 18 from ICC on a periodic basis?
 19 A We got monthly financial reports; they
 20 were from Deborah McDonald, who was our Business
 21 Office Head.
 22 Q Do you know where Marilyn Bailey is now?
 23 A No, I don't.
 24 Q How long did you work with her?
 25 A I'm sorry?

1 New England?
 2 A No, I don't.
 3 Q Do you know Lee Williams?
 4 A Yes, I do.
 5 Q Do you know where he is now?
 6 A No, I don't.
 7 Q When is the last time you spoke to him?
 8 A Three years ago.
 9 Q And where was he when you last spoke to
 10 him?
 11 A We were both at an Associated Press
 12 Managing Editors Conference.
 13 Q And at that time, where was he working?
 14 A The Delaware News Journal -- I'm sorry --
 15 The Wilmington News Journal, in Wilmington,
 16 Delaware.
 17 Q Who was on the Editorial Board of
 18 The Daily News during the time period that ICC owned
 19 the paper?
 20 A I don't know.
 21 Q Do you know Ariel Melchoir, Junior?
 22 A I knew him.
 23 Q Was he on The Daily News' payroll?
 24 A I was signatory to his paychecks.
 25 Q Did the money come from The Daily News?

1 A Yes, it did.
 2 Q And, ma'am, you're testifying under oath
 3 you didn't know he was on the Editorial Board?
 4 A I didn't pay any attention to the
 5 editorial pages or the editorial board, or any of
 6 the function of the editorial board or who was on
 7 it.
 8 Q So you signed his paycheck and didn't know
 9 what he did?
 10 A I was instructed to do that.
 11 Q Really? Who instructed you to pay his
 12 paycheck?
 13 A Mr. Heying.
 14 Q Marilyn Bailey, was she on The Daily News'
 15 payroll?
 16 A Same situation as Mr. Melchoir.
 17 Q In any event, she was paid by
 18 The Daily News, isn't that correct?
 19 A She was paid out of Daily News funds, yes.
 20 Q Did there come a time that The Daily News
 21 learned that ICC and/or VITELCO had had
 22 Senator Donastorg investigated?
 23 A We heard that there was a story in the
 24 Avis; I don't recall the date.
 25 Q Would you agree with me that the story in

1 the Avis set out that Atlantic Tele-Network had paid
 2 for an in-depth investigation of Senator Donastorg,
 3 including his family members, friends, contributors?
 4 A I don't recall that story.
 5 Q Well, what story do you recall?
 6 A I recall hearing that there was a story to
 7 that effect.
 8 Q Did you not read the Avis to read the
 9 story?
 10 A No, I didn't.
 11 Q Why not?
 12 A I don't recall why not.
 13 Q Well, did you believe the fact that a
 14 corporation had had a senator investigated was
 15 newsworthy?
 16 MR. RAMES: Object to the form of the
 17 question.
 18 THE DEPENDENT: It had nothing to do with
 19 us. We did not have any knowledge of that
 20 investigation. We certainly didn't have the report,
 21 and so we don't report what other newspapers report.
 22 BY MS. ROHN:
 23 Q Well, let's see here.
 24 Did you have anybody pick up the phone and
 25 call VITELCO or Atlantic Tele-Network and ask them if

1 they'd investigated the senator?
 2 A Nope.
 3 Q Why not?
 4 A This is melee that didn't have anything to
 5 do with us.
 6 Q I see.
 7 And did you call Senator Donastorg and ask
 8 him, "I hear that you have a report that says you've
 9 been investigated. Can we see it?"
 10 A No.
 11 Q Why not?
 12 A Why would we?
 13 Q You don't think the fact that someone was
 14 trying to find dirt on a senator to use was
 15 newsworthy?
 16 MR. RAMES: Object to form.
 17 THE DEPENDENT: I think you're presuming a
 18 lot of things. But if Senator Donastorg did not
 19 give us the report -- he gave it to the Avis after
 20 you gave it to him. I believe the Avis --
 21 I heard on the radio that he said that you
 22 gave him the report, and he gave it to the Avis.
 23 Clearly, he did not want us to have it, so -- this was
 24 an Avis report.
 25 Q What would make you think because one

1 newspaper had it, that meant he didn't want you to
 2 have it?
 3 A Why wouldn't he have given it to us?
 4 Q Maybe the Avis asked for it and you
 5 didn't.
 6 MR. RAMES: Object to form.
 7 THE DEPENDENT: I have no idea. I don't
 8 know how that came down.
 9 BY MS. ROHN:
 10 Q You don't know because you never asked
 11 him, did you, ma'am?
 12 A I don't believe that any of our reporters
 13 did.
 14 Q You didn't assign it to anybody to be
 15 investigated, did you, ma'am?
 16 A No.
 17 Q Well, can you explain to me why that
 18 wasn't newsworthy, but the fact that there was an
 19 unverified complaint that a bank alleged that
 20 Senator Donastorg was behind on his mortgage
 21 payments was something you would assign to a
 22 reporter?
 23 MR. RAMES: Objection to form.
 24 THE DEPENDENT: That's a pretty multiple
 25 statement. Let's take it apart.

1 What are you talking about?
 2 BY MS. ROHN:
 3 Q The news story in The Daily News that
 4 Senator Donastorg was being foreclosed on and might
 5 need to go find a new place to live.
 6 A I recall that story.
 7 Q I'm sure you do.
 8 How was that --
 9 MR. RAMES: Object to form.
 10 BY MS. ROHN:
 11 Q -- something that you would assign a
 12 reporter to investigate but not the fact that your
 13 parent company was trying to dig up dirt on the
 14 senator?
 15 MR. RAMES: Object to form.
 16 THE DEPONENT: Well, there's several
 17 aspects of what you're saying.
 18 Let me simply state that as a routine weekly
 19 event, the court reporter goes through the filings in
 20 the District Court, and anytime a high-ranking public
 21 official is named in a complaint, they make a copy of
 22 it and bring it in and do a story about it.
 23 I did not assign anyone to do a story about
 24 Senator Donastorg's foreclosure. And it was a court
 25 document stating that FirstBank was foreclosing on his

1 recall that the reporter asked Senator Donastorg
 2 about it several times, and said, "Let me know how
 3 this ends." And Donastorg said, "I will." And then
 4 he did not. And eventually the filing from the
 5 court showed up -- or the filing in court.
 6 Q Really? Why didn't you do a story, "Case
 7 was dismissed"?
 8 A We did.
 9 Q Really?
 10 A Uh-huh.
 11 Q Well, can you tell me why I have asked for
 12 all stories about Senator Donastorg, and there's no
 13 story about the case being dismissed?
 14 MR. RAMES: Object to form.
 15 THE DEPONENT: I can't tell you that
 16 because I thought we would have produced it. I'll
 17 be happy to look for it.
 18 BY MS. ROHN:
 19 Q You would agree it should have been
 20 reported, wouldn't you, ma'am?
 21 MR. RAMES: Object to form.
 22 THE DEPONENT: If for some reason the
 23 Archives Clerk overlooked it, I wasn't aware that it
 24 had been overlooked.
 25

1 mortgage.
 2 Q You think that everything in a complaint
 3 is true?
 4 A Well, that's why we called
 5 Senator Donastorg to ask him about it.
 6 Q And he said it wasn't true, didn't he?
 7 A He said it was being taken care of.
 8 Q He said it was not accurate, and it was
 9 taken care of. Isn't that what he said?
 10 MR. RAMES: Object to form.
 11 THE DEPONENT: I believe we would have to
 12 look at that story, because we quoted him.
 13 BY MS. ROHN:
 14 Q You tried to call the attorney for the
 15 bank, and they wouldn't return your phone call,
 16 would they?
 17 A I don't recall if they said "no comment"
 18 or just didn't return the phone call.
 19 Q So if somebody goes to the court routinely
 20 and sees all filings, can you tell me why
 21 The Daily News didn't do a story when the case was
 22 dismissed two months later?
 23 MR. RAMES: Object to form.
 24 THE DEPONENT: We did a story as soon as
 25 it was actually filed, if I recall correctly. And I

1 BY MS. ROHN:
 2 Q Ma'am, my question was, you would agree
 3 that since you did report that he had been
 4 foreclosed on, when the case was dismissed two
 5 months later, you should have done a story that it
 6 was dismissed as well?
 7 MR. RAMES: Object to form.
 8 THE DEPONENT: I would agree that we did
 9 eventually do a story on the fact that this had been
 10 dealt with.
 11 BY MS. ROHN:
 12 Q Not my question, ma'am.
 13 I was asking you journalisticly whether or
 14 not you agree that if you report someone's been sued,
 15 and you then find out that two months later the
 16 complaint was dismissed, that you should do a story so
 17 that it would be balanced and fair?
 18 MR. RAMES: Object to form.
 19 THE DEPONENT: I would agree that we
 20 should do a story as soon as we find out what the
 21 situation is.
 22 BY MS. ROHN:
 23 Q Did you edit that story?
 24 A Which story?
 25 Q The story that Senator Donastorg had been

1 foreclosed against.
 2 A I don't recall whether I did or whether
 3 somebody on the Copy Desk did.
 4 Q Aren't you the ultimate editor that
 5 decides what goes in the paper and what does not?
 6 A Yes.
 7 Q So ultimately you were responsible for
 8 that story; is that correct?
 9 A Yes.
 10 Q Now, are you of the opinion that all
 11 foreclosures result in -- all actions for
 12 foreclosures result in foreclosure?
 13 MR. RAMES: Object to form.
 14 THE DEBONENT: I don't understand your
 15 question.
 16 MS. ROHN: Well, are you of the opinion
 17 that any time a foreclosure action is brought, that
 18 means that it will go through to the end, and the
 19 person will lose their house?
 20 THE DEBONENT: I think that that's the
 21 potential ultimate.
 22 BY MS. ROHN:
 23 Q Many times, would you agree, foreclosure
 24 actions are brought because there is a disagreement
 25 over payment?

1 parent company digging up dirt on Senator Donastorg.
 2 at the time of the investigation you seem to be
 3 talking about, the parent company of The Daily News
 4 was the Garnett Corporation, and as far as I know,
 5 they did not dig up any dirt on Senator Donastorg.
 6 BY MS. ROHN:
 7 Q You're saying in 2002 Garnett owned
 8 The Daily News?
 9 A No.
 10 Q Well, then, how could it be the Parent
 11 company of The Daily News in 2002, ma'am?
 12 A And what dirt was our parent company at
 13 that time trying to dig up on Senator Donastorg?
 14 I'm unaware of any.
 15 Q Ma'am, in 2004, was the parent company of
 16 The Daily News not ICC?
 17 A Yes.
 18 Q And the sister company of The Daily News
 19 VITELCO?
 20 A I wouldn't call it a sister company, it
 21 was another company owned by ICC.
 22 Q And --
 23 A We didn't have any connection with them.
 24 Q And you think the fact that it was
 25 discovered that that company had hired an

1 MR. RAMES: Object to form.
 2 THE DEBONENT: I think that the bank would
 3 have to answer that, or a lender would have to.
 4 BY MS. ROHN:
 5 Q The story that was written in the paper on
 6 February 6, 2002 says:
 7 "When contacted at his office, the
 8 senator said the bank either made a
 9 mistake or that he took care of the
 10 problem, and left any further
 11 comment to the bank. 'It's being
 12 taken care of. The bank dropped
 13 the ball. I don't understand why
 14 this is a major issue.'"
 15 That's the quote in the paper.
 16 So, actually, Senator Donastorg denied that
 17 this was a valid complaint, didn't he?
 18 A As the story states.
 19 Q So can you tell me again why this
 20 unsubstantiated dispute over a bank payment is
 21 newsworthy, but the fact that your parent company
 22 was trying to dig up dirt on the senator wasn't?
 23 MR. RAMES: Object to form.
 24 THE DEBONENT: You're making a lot of
 25 presumptions there. I don't know anything about the

1 investigator, who had illegally obtained banking
 2 information, invaded the privacy of the senator and
 3 his family and his friends and his supporters, was
 4 not news?
 5 MR. RAMES: Object to form.
 6 THE DEBONENT: We've already been through
 7 that, and I have already answered the question.
 8 BY MS. ROHN:
 9 Q How many times have you or a newspaper
 10 that you've been associated with in a management
 11 capacity been sued for slander or defamation?
 12 A How many times have you sued us?
 13 Q I'm not limiting this to The Daily News,
 14 ma'am. I'm talking about the other companies that
 15 you've been involved that have also been sued.
 16 A Many, but not necessarily during my time
 17 there or --
 18 Q I said while you were --
 19 A -- have anything to do with me.
 20 Q I said while you were a management
 21 employee.
 22 A I didn't catch that part of your question.
 23 Would you rephrase --
 24 Q While you were a management employee at
 25 any newspaper, how many times had they been sued?

1 A I am trying to remember how many times
2 The Daily News has been sued. And one time in
3 Pensacola, Florida.
4 Q And that time in Pensacola, Florida, was
5 there a large verdict against the newspaper?
6 A There was.
7 Q And what was the size of that verdict,
8 ma'am?
9 A I have no idea. I was not at the
10 Pensacola Daily News when that lawsuit was filed.
11 Q But it was as a result of stories that you
12 were responsible for, was it not?
13 A That is incorrect.
14 Q Really? You weren't a witness in that
15 case?
16 A No; I was deposed.
17 Q And you were deposed as to your actions as
18 it relates to that story, were you not?
19 A I was questioned, yes.
20 Q And it's your testimony under oath that
21 you had no involvement in that story?
22 A Well, they're a number of stories, many of
23 which I had no involvement in. And the issues in
24 particular that were the focus of that case, as I
25 recall, were ones that were done after I had left

1 Were you aware that there was conflicts
2 between Senator Donastorg and VITELCO?
3 MR. RAMES: Object to form.
4 THE DEPONENT: Define "conflicts."
5 BY MS. ROHN:
6 Q That he was against things that VITELCO
7 wanted to do.
8 A Uh-huh. Yes.
9 Q And were you aware that there was some
10 animosity between VITELCO and Senator Donastorg?
11 MR. ECKARD: Object to form.
12 THE DEPONENT: I don't know that I would
13 define it as animosity.
14 BY MS. ROHN:
15 Q How would you define it?
16 A I don't know what you're saying. I
17 believe he appeared before Public Services
18 Commission from time to time and objected to VITELCO
19 rates.
20 Q And did he also object to VITELCO's IDC
21 benefits?
22 A I believe so.
23 Q And did he also claim that VITELCO was not
24 fulfilling its 911 requirements?
25 A What are 911 requirements?

1 Pensacola News Journal, as I recall. And the
2 verdict was overturned.
3 Q And The Daily News has been sued for
4 defamation from people besides myself; isn't that
5 true?
6 A Others of your clients. Your clients have
7 brought defamation suits against The Daily News.
8 Q Judge Kendall has also brought a
9 defamation suit against The Daily News, did he not?
10 A That's correct.
11 Q And he didn't do it through me, did he?
12 A Not to my knowledge.
13 Q What happened to that lawsuit?
14 A The verdict has been overturned.
15 Q Is it on appeal?
16 A I don't know. I believe so.
17 Q Do you know what grounds the verdict was
18 overturned on?
19 A I'm sorry.
20 Q Do you know what grounds the verdict was
21 overturned on?
22 A I can't recite that for you; it's been a
23 while since I've read that Opinion from Judge Ross.
24 Q Was The Daily News aware -- well, were you
25 aware -- I'm sorry.

1 Q Having a 911 system that actually works.
2 A I don't recall that specifically.
3 Q And when the investigation into Senator
4 Donastorg was revealed, were you aware of the
5 statements made by Holland Redfield regarding the
6 supposed motive for the investigation?
7 A The Daily News did not report on any of
8 that.
9 Q I didn't ask you that. I asked you if you
10 were aware of what he said.
11 A I don't recall that I was. I don't recall
12 what he said, and I don't recall that I was aware of
13 it.
14 Q Do you know Andrew Rutnik?
15 A I'm sorry, who?
16 Q Andrew Rutnik.
17 A That name is familiar. You'll have to
18 remind me who he is --
19 Q Well --
20 A -- or was.
21 Q He's a resident of St. John. He was the
22 Commissioner of Licensing.
23 A Okay. Yes. He was Commissioner of
24 Licensing and Consumer Affairs during at least part
25 of Governor Turnbull's Administration, I believe.

1 And his wife is an artist, and their daughter was
 2 killed in a very tragic automobile accident, and
 3 they sponsor the Ruby Rutnik Softball Tournament
 4 every year.

5 Q And have you ever met him personally?
 6 A No, I haven't.
 7 Q Okay.
 8 A Oh, no, that's not true. He introduced
 9 himself to me once on the St. John Perry.
 10 Q And was there animosity between
 11 The Daily News and Andrew Rutnik?
 12 A Not that I recall. Animosity is an
 13 emotion that I'm not willing to attribute to
 14 anything that The Daily News does.
 15 Q Well, was there a dispute of any nature
 16 between him and The Daily News?
 17 A I don't recall so.
 18 Q Do you know the term "persona non grata"?
 19 A The Latin term?
 20 Q Yes.
 21 A Vaguely. It's been about 50 years since I
 22 took Latin.
 23 Q And what do you understand that that term
 24 signifies?
 25 A An unwelcomed person.

1 it.
 2 (Telephone ringing.)
 3 THE DEPENDENT: I'm sorry. That's my time
 4 to go to church.
 5 (Pause in proceedings.)
 6 BY MS. ROHN:
 7 Q Do you remember what year you went to work
 8 for The Daily News?
 9 A Yes.
 10 Q And what was it?
 11 A 1994.
 12 (Plaintiffs' Exhibit 42 marked for identification.)
 13 BY MS. ROHN:
 14 Q I'd like to show you Exhibit 42.
 15 MS. ROHN: Do you have my exhibits from
 16 yesterday? Can we show her my exhibits from
 17 yesterday so we only have one set?
 18 MR. ECKHARD: We don't have copies.
 19 MS. ROHN: Yeah, but I gave you copies
 20 yesterday.
 21 MR. ECKHARD: That's true.
 22 THE DEPENDENT: You all want to see it?
 23 MR. RAMES: I'm familiar with it.
 24 BY MS. ROHN:
 25 Q Do you dispute that The Daily News, in an

1 Q Was Andrew Rutnik persona non grata at
 2 The Daily News?
 3 A Not to my knowledge.
 4 Q Were you aware that VITELCO had Mr. Madan,
 5 the Consultant for the PSC, investigated?
 6 A What?
 7 Q Were you aware that VITELCO had Mr. Madan,
 8 who was the Consultant for the PSC, investigated by
 9 Dennis Sheraw?
 10 A I know nothing about this. It does not
 11 ring bell at all.
 12 When did this supposedly happened?
 13 Q Well, that investigation report was
 14 released at the same time that the Donastory
 15 investigation report was released.
 16 A I don't have any knowledge of it.
 17 Q Would you agree with me that someone
 18 investigating the Consultant for the Regulatory
 19 Agency, to try to determine if they can find any
 20 dirt on him or if he's belonging to any white clubs,
 21 would be newsworthy?
 22 A That's such a hypothetical, I can't even
 23 begin to answer that. I don't know what the context
 24 is that you're saying. I'm not aware of any such
 25 investigation, so I can't express an opinion about

1 editorial, referred to Senator Donastory in or
 2 around June of 1998 as a "rogue"?
 3 MR. RAMES: Object to form.
 4 THE DEPENDENT: I was not in the territory,
 5 and I was not working for The Daily News in June of
 6 1998, so I have no knowledge of that.
 7 BY MS. ROHN:
 8 Q I thought I asked you, you said 1994.
 9 That's right, you worked for them, and then stopped,
 10 and then started again.
 11 A Correct.
 12 Q The second employment, when did it begin?
 13 A December the 18th, 1998.
 14 Q Okay.
 15 (Plaintiffs' Exhibit 50 marked for identification.)
 16 BY MS. ROHN:
 17 Q Exhibit 50. This document has been
 18 produced in this case as the insurance policy
 19 applicable to this cause of action.
 20 Given your management position at the time
 21 this policy was acquired, do you have any information
 22 to dispute that?
 23 A I did not review this document, so I can't
 24 say yes or no.
 25 Q Well, take your time then.

1 A It's a long document.
 2 Q Not really. Go ahead and take your time.
 3 MS. ROHN: While she's doing that, off the
 4 record.
 5 (Off record.)
 6 BY MS. ROHN:
 7 Q This policy of insurance insures both ICC
 8 and the Daily News.
 9 Do you recall whether or not there was any
 10 denial of coverage or reservation of rights on this
 11 claim?
 12 A No, I don't recall anything like that.
 13 Q What date did you say you returned?
 14 A I'm sorry?
 15 Q What date did you say you returned to
 16 The Daily News?
 17 A December the 18th, 1998.
 18 (Plaintiffs' Exhibit 51 marked for identification.)
 19 BY MS. ROHN:
 20 Q Exhibit 51. You would have been the head
 21 management person at The Daily News on June 12,
 22 2001; is that correct?
 23 A Correct.
 24 Q Do you see the item on that page,
 25 "Legislation reduction on agenda for Rules

1 Committee?"
 2 A Correct.
 3 Q And that was the time you recall that
 4 Senator Donastorg actually attempted to reduce the
 5 size of the Legislature?
 6 A I vaguely recall that.
 7 Q Do you recall the reporter Hal Hatfield?
 8 A Yes, I do.
 9 Q Would you agree with me that Mr. Hatfield
 10 had a drinking problem?
 11 A I would not.
 12 Q Really? You have no knowledge of that?
 13 A I think that you have to define "drinking
 14 problem."
 15 Q That he periodically drank to excess --
 16 excess during the day.
 17 A I have no knowledge of that.
 18 Q Do you have any knowledge of him going for
 19 rehabilitation for his drinking?
 20 A I do know that he went to rehabilitation.
 21 Q Do you recall when that was?
 22 A No.
 23 Q This news story, written by Hal Hatfield,
 24 says, quote, "Ironically, Donastorg voted no" --
 25 A Excuse me. Could you tell me where you

1 are?
 2 Q Second column, last paragraph.
 3 A I see. Okay.
 4 Q "Ironically, Donastorg voted no on
 5 his own bill, while three senators
 6 who opposed the bill -- Committee
 7 Chairman Donald Cole, Senator
 8 Adelbert Bryan, and Senator
 9 David Jones -- voted to send it on
 10 to the Rules Committee."
 11 Now, do you fact check as an editor?
 12 A Not specifically fact check, no.
 13 Q Well, what do you understand is your
 14 responsibility as an editor is?
 15 A I think that we covered that in the first
 16 two or three questions of this deposition.
 17 The fact checking is done by the reporter and
 18 by editors at a lower level than me. If I spot something
 19 that I know to be incorrect -- like, let's say Adelbert
 20 Bryan's name is misspelled -- I would catch that.
 21 Q And on this particular story, who would
 22 have been the lower level editors who should have
 23 fact checked?
 24 MR. RAMES: Object to form.
 25 THE DEPONENT: 2001, I can't even remember

1 who our Copy Desk was at that time. I would --
 2 BY MS. ROHN:
 3 Q Will Brown?
 4 A I don't remember who all was on the Copy
 5 Desk at the time.
 6 Q Well, is it the policy of The Daily News
 7 to comment on whether or not facts are ironic or
 8 not?
 9 MR. RAMES: Object to form.
 10 THE DEPONENT: I've seen that in stories.
 11 BY MS. ROHN:
 12 Q Isn't that an opinion?
 13 A Not necessarily. It's a transitional
 14 phrase to point out something that's unusual.
 15 Q Would you agree that how someone votes on
 16 a bill is readily available from the Senate on their
 17 documents to show who voted for what?
 18 A Yes.
 19 Q And that's a fairly easy fact to check?
 20 A Not necessarily.
 21 Q Why do you say so?
 22 A Because it takes some time for the person
 23 who is recording what's transpiring in a committee
 24 meeting and the voting to get that into a transcript
 25 for purposes of checking.

1 Q There isn't in fact a daily log that shows
2 what issues came up for vote and who voted for what?
3 A I don't know that that is so.
4 Q Well, if someone were going to report on
5 what happened at the Legislature, would you have
6 expected them to have been present?
7 A Not if they're at something else. Our
8 Legislature reporter frequently has to run from one
9 to another, and if one -- there's many committee
10 meetings, and some are held simultaneously, or the
11 reporter's having to cover something outside the
12 Legislature.
13 Q If the person is not at the legislative
14 meeting, then is there a level of knowledge that
15 they would be expected to require before they ask
16 someone what occurred at a meeting?
17 A I don't understand the question.
18 What do you mean by "level of knowledge"?
19 Q If they wanted to know what occurred at a
20 legislative committee meeting and they weren't
21 there --
22 A Correct.
23 Q -- would there be some requirement at
24 The Daily News that the person that they tried to
25 get that information from be somebody who would be

1 stories.
2 Q If you were going to report that a senator
3 voted against his own bill, ironically, would you
4 expect that reporter to contact the senator if he
5 hadn't been present to make sure that that was
6 accurate?
7 MR. RAMES: Object to form.
8 THE DEFPONANT: I would hope that he would.
9 BY MS. ROHN:
10 Q This story goes on to say:
11 "Donastorg wanted to send his bill
12 directly to the full Senate for a
13 vote when it meets in session on
14 June 25th."
15 If Senator Donastorg was never contacted, how
16 would a reporter put in the paper what he wanted to do?
17 A I can't tell you that.
18 Q Would you agree with me that that's not
19 good journalism?
20 MR. RAMES: Object to form.
21 THE DEFPONANT: I do not know what went
22 into -- what gave Hal Hatfield that knowledge. I
23 think the next paragraph probably is the explainer
24 there.
25

1 likely to have that knowledge?
2 A Yes.
3 Q Okay. And as far as the legislative
4 meeting is concerned, what level of knowledge would
5 The Daily News expect that person to have?
6 A To first of all call whoever was on staff
7 and taking the minutes of the meeting, and then call
8 the chairman of the committee.
9 Q Those would be the expectations?
10 A I'm sorry?
11 Q Those are the expectations?
12 A Your question was how do you find out what
13 happened.
14 Q So calling the chairman of the
15 committee --
16 A Well, first of all, the staffer who took
17 the minutes, if they can recall; and if they are
18 unclear -- especially if they are unclear, you call
19 the chairman.
20 Q And if you were accusing a senator of
21 voting against his own bill, would you expect the
22 reporter to contact the senator, and, if he wasn't
23 present at the hearing, to make sure that was
24 correct?
25 A We don't make accusations in our news

1 BY MS. ROHN:
2 Q Well, the next paragraph says:
3 "The strategy of members of the
4 Senate majority is to pass the bill
5 through the Government Operations
6 and Rules Committee to force all
7 senators to make a stand on the
8 legislation in the full Senate."
9 Now, there's no attribute to any quote from
10 anyone as to where that fact of what the strategy was,
11 is there?
12 A I'm sorry, I didn't get the question.
13 Q This is not attributed to anybody; it's
14 just a statement, isn't it?
15 A This had been stated a number of times by
16 the members of the Senate majority on radio and in
17 our own stories.
18 Q Really? You heard those radio shows?
19 A From time to time I've heard talk shows
20 and radio shows.
21 Q No, those particular shows.
22 A What particular shows?
23 Q The one in which you claim the senators
24 would actually be foolish enough to go on the radio
25 and tell people what their strategy was.

1 MR. RAMES: Excuse me. Excuse me.
 2 Object to form.
 3 Please go ahead.
 4 THE DEPONENT: I didn't -- you're
 5 presuming that they wanted to keep it secret.
 6 BY MS. ROHN:
 7 Q Ma'am, my question is, did you actually
 8 hear that radio show?
 9 MR. RAMES: Object to form.
 10 THE DEPONENT: I believe I did.
 11 BY MS. ROHN:
 12 Q Great.
 13 What radio show was it?
 14 A I don't recall.
 15 Q Who was the host?
 16 A I don't recall. I listened to a number of
 17 them in the morning, switching back and forth.
 18 Q Really? Who do you listen to in the
 19 mornings?
 20 A I don't anymore.
 21 Q Who did you listen to in the morning?
 22 A Oh, boy. Starting pretty early in the
 23 morning, I believe it was John Greaux at the time.
 24 What was his name, on St. Croix? He's not
 25 there anymore. I don't remember his name.

1 "Senator Adlah Donastorg, Jr. did
 2 not vote against the bill to reduce
 3 the size of the senate from fifteen
 4 to nine members when it was
 5 approved by the Committee on
 6 Government Operations, Planning and
 7 Environmental Protection last week.
 8 An article Tuesday, on Page 11 of
 9 The Daily News, about the vote was
 10 based on information provided by
 11 committee staff."
 12 Do you agree with me that talking to some
 13 committee staff was insufficient to have written that
 14 article?
 15 MR. RAMES: Object to form.
 16 THE DEPONENT: I think you are presuming a
 17 great deal.
 18 BY MS. ROHN:
 19 Q I'm just presuming what the newspaper said
 20 it was based on.
 21 A I've already told you who Hal Hatfield
 22 told me he spoke with.
 23 Q Well, then, why won't you put that in the
 24 retraction?
 25 Why wouldn't you say --

1 Sam Topp, and later in the day on St. Croix.
 2 I'm trying to remember who that is. Alvin G., is that
 3 it? But not always.
 4 Q And it's your testimony that
 5 The Daily News had run stories about this strategy
 6 prior to this?
 7 A I did not say that we had run stories
 8 about that.
 9 Q I thought you said it was in prior
 10 stories.
 11 A I don't believe so.
 12 Q So you're not claiming that there had been
 13 any prior stories of in The Daily News about this
 14 strategy of the majority?
 15 A I don't recall.
 16 (Plaintiffs' Exhibit 52 marked for identification.)
 17 BY MS. ROHN:
 18 Q I'd like to show you Exhibit 52. This is
 19 a -- I believe I've been informed -- a correction;
 20 is that correct?
 21 A A Setting the Record Straight, yes.
 22 Q Can you tell me why it took two days to
 23 make this correction?
 24 A No.
 25 Q The correction says:

1 A It was --
 2 Q Excuse me. I'm not finished with my
 3 question.
 4 Why wouldn't you say it was based upon a
 5 committee staff, the chairman, and the chairman of the
 6 committee?
 7 MR. RAMES: Object to form; two questions
 8 on the table.
 9 BY MS. ROHN:
 10 Q You may answer.
 11 A My first answer is this is not a
 12 retraction.
 13 My second is, I don't even understand what your
 14 question was.
 15 Q If, in fact, Mr. Hatfield had told
 16 The Daily News that the basis for his information
 17 was both a staff member and the chairman of the
 18 committee, why would The Daily News simply mention a
 19 staff person and not the far superior chairman of
 20 the committee?
 21 MR. RAMES: Object to form.
 22 THE DEPONENT: I don't recall.
 23 MS. ROHN: Off the record for a moment.
 24 (Off record.)
 25 (Plaintiffs' Exhibit 53 marked for identification.)

1 BY MS. ROHN:

2 Q Exhibit 53. This is a story written on
3 November 1st, 2000.

4 Would you have been the Chief Executive
5 Editor and CEO at that time?

6 A I was CEO and Executive Editor.

7 Q And in that position, you would have been
8 ultimately responsible for the publication of this
9 story?

10 A Yes, I would have.

11 Q This news story states:

12 "Senator Adlah Donastorg, Jr. has
13 charged that the Industrial
14 Development Commission, Prandelle
15 Gerard, used her positions to
16 solicit donations from Caneel Bay
17 for the St. Croix Foundation for
18 the community development which she
19 cheers."

20 First of all, was that based upon a letter
21 that Senator Donastorg had written to the Governor?

22 A I think that you misread this.

23 Q I read it word-for-word.

24 A No, you didn't.

25 Q Well, how did I misread it?

1 A "Positions" singular, not positions
2 plural.

3 Q Ma'am, did this come from a letter that he
4 wrote to the Governor?

5 A I don't remember how it came to us. I
6 believe he may have faxed a copy of the letter, or
7 it's possible that the Governor faxed us the letter.
8 I don't recall how actually that originated for us.
9 I believe that Roger Dewey faxed us something even
10 before we saw the letter.

11 Q Was the Governor in the habit of faxing
12 The Daily News correspondence he'd received?

13 A I wouldn't say "in the habit"; we got lots
14 of faxes from Government House.

15 Q Well, you didn't say "Government House,"
16 you said "the Governor."

17 A Okay. Government House.

18 Q And then the story says, third paragraph:
19 "Donastorg failed to produce any
20 documentation to back up his
21 accusations, and on Tuesday, he
22 would not return calls to his
23 office requesting further comment
24 and information."

25 First of all, what documentation do you claim

1 that Donastorg was responsible to provide to
2 The Daily News?

3 MR. RAMES: Object to form.

4 THE DEPCONENT: I'm not sure I understand
5 your question.

6 BY MS. ROHN:

7 Q Well, you have stated in this story that
8 he failed to produce any documentation, which would
9 infer that he had a duty to do so.

10 MR. RAMES: Object to form.

11 BY MS. ROHN:

12 Q So what documentation do you claim he
13 failed to produce?

14 MR. RAMES: Object to form.

15 THE DEPCONENT: Documentation that Gerard
16 had solicited donations from Caneel Bay for
17 St. Croix Foundation for the community
18 development -- for community development.

19 BY MS. ROHN:

20 Q Now, wasn't it a fact, ma'am, that
21 Senator Donastorg had simply asked for an
22 investigation?

23 A I don't recall.

24 Q Well, if he had simply asked for an
25 investigation, why would he have had to have

1 produced documentation?

2 A You are presupposing that he had simply
3 asked for an investigation, and I said I don't know
4 that.

5 Q And the statement "he would not return
6 phone calls," would you agree to me infers that he
7 knew he had phone calls and he would not return
8 them?

9 MR. RAMES: Object to form.

10 THE DEPCONENT: We use that terminology
11 when we have left a message asking that we be called
12 back, and --

13 BY MS. ROHN:

14 Q Why wouldn't that be correctly "he did not
15 return phone calls," not "he would not return phone
16 calls"?

17 A Well, the difference would be most likely
18 that the reporter had checked several times and been
19 told that "he has been given your message," or the
20 reporter was told "he has been given your message
21 and chooses is not to return your call." I do not
22 know what was said, but I know that the reporter
23 would have stated it correctly.

24 Q Well, if you were going to, as the
25 Executive Editor, allow this statement to be placed

1 in your newspaper, shouldn't you have asked the
 2 reporter what occurred that you now say "he would
 3 not return the phone call?"
 4 A And your question was?
 5 Q As the Executive Editor, editing this
 6 story, would it behoove you as correctly editing the
 7 story to contact the reporter and say, "What is the
 8 basis for the statement 'he would not return the
 9 phone calls'?"
 10 A I'm sure that I did.
 11 Q Now, if you go to the second column, first
 12 paragraph:
 13 "Donastorg made the accusation
 14 against Gerard in an October 24th
 15 letter to Governor Charles Turnbull
 16 in which he called for an
 17 investigation of the St. Croix
 18 Foundation and an audit of its
 19 financial contributions."
 20 Isn't that indeed what he had done, was
 21 called for an investigation?
 22 A That's what that said.
 23 Q Well, if he's calling for an
 24 investigation, why would he need to be the person
 25 who would need to be presenting documentation?

1 not penalized any IDC beneficiaries
 2 since becoming Director in April of
 3 1999."
 4 Now, were you aware that the company that he
 5 was criticizing for not being penalized was the other
 6 wholly owned subsidiary of ICC, VITELCO?
 7 MR. RAMES: Object to form.
 8 THE DEPONENT: I'm sorry?
 9 BY MS. ROHN:
 10 Q Was The Daily News aware -- or, more
 11 particularly, were you aware, that the IDC company
 12 that he was complaining had not been penalized was
 13 VITELCO?
 14 A It says, "no beneficiaries," plural.
 15 Q Well, if you go to the next column, third
 16 from the bottom paragraph:
 17 "Donastorg's letter is the latest
 18 in a long and often personal attack
 19 on the IDC and Gerard. Recently he
 20 filed a Writ of Mandamus in
 21 Territorial Court seeking copies of
 22 employment records from the Virgin
 23 Islands Telephone Corporation and
 24 IDC beneficiaries."
 25 Do you see that?

1 A I don't know that that's all that he did.
 2 I cannot read Donastorg's mind.
 3 Q I thought you were quoting from a letter?
 4 A I don't believe that we quote from that
 5 letter; I think it would refer to the letter.
 6 Q Is it your testimony that you actually had
 7 a conversation with Donastorg about this?
 8 A That I personally did?
 9 Q That The Daily News did.
 10 A I don't know. I believe we said that he
 11 did not phone calls.
 12 Q I'm perplexed by why you would say, "I
 13 don't know what's in his mind" if you're basing this
 14 on a letter he wrote.
 15 A I don't know that that's all we based it
 16 on. This was from ten years ago, and I don't
 17 recall.
 18 Q From this story, does it indicate there
 19 was anything else you based it on?
 20 A I don't think it's specifically spelled
 21 out.
 22 Q Then, down a couple paragraphs, and it
 23 says:
 24 "Donastorg also charged in his
 25 October 24th letter that Gerard has

1 A Yes.
 2 Q Okay. And what personal attacks of
 3 Donastorg against IDC was this newspaper referring
 4 to?
 5 A I don't recall.
 6 Q Well, would you agree with me that before
 7 accusing a senator of making attacks on a personal
 8 basis, that you would need to have a factual basis
 9 for that?
 10 A I would state that this is not a personal
 11 attack on Senator Donastorg.
 12 Q And my question was, you have accused him
 13 of attacking IDC on a personal basis, have you not?
 14 A I don't call this an accusation.
 15 Q You have stated that he attacks IDC on a
 16 personal basis, have you not?
 17 MR. RAMES: Object to form.
 18 THE DEPONENT: This states:
 19 "Donastorg's letter is the latest
 20 in a long and often personal attack
 21 on IDC and Gerard."
 22 BY MS. ROHN:
 23 Q Right.
 24 You are stating that his attacks are
 25 personal, are you not?

1 A Often personal.
 2 Q Are you not?
 3 A The story states that.
 4 Q Okay.
 5 A Would you agree with me that there would
 6 need to be factual basis before you tell your
 7 readers that the attacks that Senator Donastorg are
 8 making are not as a result of his position as a
 9 senate but personal?
 10 MR. RAMES: Object to form.
 11 THE DEPENDENT: I'm losing you on this. I
 12 don't know what you're getting at.
 13 Could you ask the question another way?
 14 BY MS. ROHN:
 15 Q Ma'am, do you understand the difference
 16 between an attack on a company as a result of your
 17 representation of the People of the Virgin Islands
 18 versus attack on a company for your own personal
 19 benefit?
 20 A I don't think that that's what this story
 21 implies.
 22 Q Well, what are you implying by "personal,"
 23 ma'am?
 24 A "Personal" often refers to someone -- in
 25 this case, I believe refer to fitness to hold that

1 can't begin to answer. Were you aware that at this
 2 period of time Senator Donastorg had filed an action
 3 for Mandamus and had been urging the Legislature to
 4 pass a bill because VITELCO had gone below its
 5 required number of employees to maintain its IDC tax
 6 benefits, and then fraudulently transferred persons
 7 from other corporations onto the VITELCO payroll who
 8 weren't really working for VITELCO?
 9 MR. RAMES: Object to form.
 10 THE DEPENDENT: Where's the question in
 11 that? Can you break it down into separate
 12 questions, please?
 13 BY MS. ROHN:
 14 Q Were you aware that during this period of
 15 time those were the allegations that were being made
 16 by Senator Donastorg?
 17 MR. RAMES: Object to form.
 18 THE DEPENDENT: I don't recall what the
 19 allegations were.
 20 The very next sentence of the paragraph --
 21 the most recent paragraph to which you drew my
 22 attention says:
 23 "Recently, he filed a Writ of
 24 Mandamus in Territorial Court
 25 seeking copies of employment

1 position, not Donastorg's personal, but the fitness
 2 of Ms. Gerard or the people who were members of the
 3 IDC.
 4 Q This says:
 5 "Donastorg's letter is the latest
 6 in a long and often personal
 7 attack."
 8 The word being "Donastorg," how in the world
 9 could you read this anybody else besides Donastorg?
 10 A You know, it's like we're on different
 11 planets, what you're saying and what I'm saying.
 12 Attack on the IDC and Gerard --
 13 Q How do you personally --
 14 MR. RAMES: Excuse me.
 15 THE DEPENDENT: -- not attack on Donastorg.
 16 BY MS. ROHN:
 17 Q How do you personally attack a
 18 corporation?
 19 A I don't believe the IDC is a corporation.
 20 Is it?
 21 Q It's a --
 22 A It's a commission.
 23 Q It's an independent entity. How do you
 24 personally attack an independent entity?
 25 A That's just an abstract question that I

1 records from the Virgin Islands
 2 Telephone Company and IDC
 3 beneficiaries."
 4 (Plaintiffs' Exhibit 55 marked for identification.)
 5 BY MS. ROHN:
 6 Q Exhibit 55. This is a letter dated
 7 November 2nd, 2000, to Susanna Henighan, who was a
 8 reporter who wrote the story we were just speaking
 9 of.
 10 First of all, do you know where
 11 Susanna Henighan is now?
 12 A I do not.
 13 Q Do you know when she left The Daily News?
 14 A I don't recall specifically.
 15 Q Do you remember why she left
 16 The Daily News?
 17 A Yes.
 18 Q Why?
 19 A She wanted to return to Tortola.
 20 Q Was she a native of Tortola?
 21 A No.
 22 Q Well, then, what do you mean by "she
 23 wanted to return to Tortola"?
 24 A She previously lived on Tortola, and she
 25 wanted to go back and live there.

1 Q This letter, the second paragraph, says:
 2 "For nearly three years, I have
 3 tolerated Daily News articles and
 4 editorials that range from the
 5 subtly slanted to the blatantly
 6 inaccurate."
 7 And goes on in the next sentence to say he's
 8 well aware of the motivations of your newspaper's
 9 ownership.
 10 And the next paragraph, he says:
 11 "You stated in your story that,
 12 quote, 'Donastorg failed to produce
 13 any documentation to back up his
 14 accusations, and on Tuesday, he
 15 would not return calls to his
 16 office requesting further comment
 17 and information.' This is a bold
 18 face lie. You first spoke with a
 19 member of my staff after 8:00 p.m.,
 20 Tuesday evening, at her residence.
 21 She immediately attempted to reach
 22 me but was unable to relay the
 23 message to me until after midnight.
 24 The next day my staff member
 25 checked the voice mail on her

1 personal cell phone, and it was
 2 indicated that you had attempted to
 3 contact her at approximately
 4 6:00 p.m."
 5 Now, is it your position as a former
 6 Executive Editor of The Daily News that the calling of
 7 someone else at 8:00p.m. at night indicates a decision
 8 by Senator Donastorg that he would not return your
 9 phone call?
 10 MR. RAMES: Object to form.
 11 THE DEPOINENT: I need to break and get --
 12 BY MS. ROHN:
 13 Q After you finish answering this question.
 14 A I'm not sure what you're --
 15 Q There's a question on the table.
 16 A I'm going to have trouble answering it
 17 because my throat is closing up.
 18 Q Ma'am, normally when there's a question on
 19 the table, you can't break during a question on the
 20 table.
 21 A And your question is?
 22 Q Was it the position of The Daily News,
 23 when you were the Executive Editor, that speaking to
 24 someone at 8:00 o'clock at night, who was a staff
 25 member, was the equivalent of Senator Donastorg

1 refusing to return a phone call?
 2 A I don't recall all of the time elements
 3 and Susanna Henighan's efforts to reach
 4 Senator Donastorg.
 5 Q Ma'am, that's not my question.
 6 My question is --
 7 A I don't understand your question, then.
 8 Q My question is, if indeed
 9 Senator Donastorg is accurate, that the sole actual
 10 contact was a call after 8:00 o'clock at night to a
 11 staff person, that, in the eyes of The Daily News,
 12 when you were Executive Editor, was sufficient to
 13 represent to the People of the Virgin Islands that
 14 be refused to return a phone call?
 15 MR. RAMES: Object to form.
 16 THE DEPOINENT: Well, you are asking me to
 17 presuppose that this was the only call, and that it
 18 was after 8:00 p.m.
 19 BY MS. ROHN:
 20 Q Yes, ma'am, I am asking you that.
 21 A And he is referring to something about
 22 6:00 p.m., and I don't quite follow his logic here,
 23 and, I don't follow yours.
 24 He frequently --
 25 Q Ma'am, the letter is real clear. There

1 was a voice message left, with no personal contact
 2 at 5:00 p.m., and the only actual contact was made
 3 after 8:00 p.m. to a staff member.
 4 And my question to you is, given that
 5 scenario, is that in the minds of The Daily News
 6 sufficient to tell the readers that Senator Donastorg
 7 refused to return a phone call?
 8 A I do not recall that that was the only
 9 phone call --
 10 Q Ma'am --
 11 MR. RAMES: Excuse me.
 12 THE DEPOINENT: -- 8:00 p.m.
 13 MR. RAMES: No interruptions.
 14 BY MS. ROHN:
 15 Q -- I'm not asking you to accept that. I'm
 16 asking you to recall that -- I'm asking you to
 17 accept that if that was the case, is that
 18 sufficient?
 19 MR. RAMES: Object to form.
 20 THE DEPOINENT: I do not accept that this
 21 is accurate.
 22 BY MS. ROHN:
 23 Q I'm asking you to -- it's a
 24 hypothetical -- accept that this is correct. Is
 25 that sufficient to represent to your readers that he

1 would not return a phone call?
 2 MR. RAMES: Object to form.
 3 THE DEPENDENT: I will not accept that that
 4 is correct. That is my answer to your question.
 5 BY MS. ROHN:
 6 Q Ma'am, if you don't answer my question, I
 7 will ask the Court to have you go in front of the
 8 judge and answer it in front of the judge.
 9 A Okay.
 10 Q I'm asking you to accept a hypothetical,
 11 that that is the sole content, and then your
 12 newspaper printed that he would not return the phone
 13 call.
 14 A My answer would depend upon what the
 15 content of the conversations with the member of the
 16 staff was and exactly what the member of the staff
 17 said. Perhaps the member of the staff said "He
 18 doesn't want to talk to you." I don't know, I
 19 cannot possibly answer a hypothetical.
 20 Q Okay. The letter goes on to say:
 21 "He made no effort to reach me at
 22 my office nor during office hours."
 23 Was there a reason that you can recall as to
 24 why, from October 24th, the date of the letter, until
 25 November 1st, when this article was written, there was

1 no effort to contact Senator Donastorg at his office
 2 during office hours?
 3 MR. RAMES: Object to form.
 4 THE DEPENDENT: I cannot answer that.
 5 BY MS. ROHN:
 6 Q And there is a question as well:
 7 "And how could I have failed to
 8 produce anything when nothing was
 9 requested?"
 10 Would you agree with me that if
 11 Senator Donastorg had not been requested to provide any
 12 information he couldn't have refused to provide
 13 information?
 14 A I had no idea whether he was asked for
 15 anything. I do not know, as I have said, the
 16 content of the conversation between Susan Henighan
 17 and Senator Donastorg's staffer.
 18 Q And, in fact, Senator Donastorg, in the
 19 last paragraph, asked you to print a correction to
 20 your story, did he not?
 21 A So I see.
 22 (Plaintiffs' Exhibit 56 marked for identification.)
 23 BY MS. ROHN:
 24 Q Exhibit 56, please.
 25 Exhibit 56, would you agree with me, is your

1 response to Senator Donastorg's letter?
 2 A Yes. That has my signature.
 3 Q Now, on the fourth paragraph, this letter
 4 acknowledges that on Sunday, October 29th, the
 5 St. Thomas Newsroom received, via fax, a copy of
 6 your letter to Governor Charles Turnbull.
 7 So The Daily News had the letter as of
 8 October 29; is that correct?
 9 A It states so here.
 10 Q And the news story wasn't written until
 11 November 1st; isn't that correct?
 12 A No, it was printed on November 1st.
 13 Q That's not publishing it.
 14 A You said "written."
 15 Q Oh. Sorry.
 16 Now, your letter, in the next paragraph,
 17 says:
 18 "We hold fairness to be equally
 19 important as accuracy, and we go to
 20 great lengths to give" --
 21 A Where are you, please?
 22 Q The next paragraph, the second sentence.
 23 A "All the above is standard procedures?"
 24 Q Second paragraph.
 25 A Okay.

1 Q "We hold fairness to be equally
 2 important as accuracy, and we go to
 3 great lengths to give all sides
 4 equal treatment and equal
 5 opportunity to defend themselves."
 6 A On the second paragraph of what I have in
 7 front of me, it says --
 8 Q Ma'am, I said "the next paragraph"; I
 9 didn't say "the second paragraph."
 10 A You did say the second --
 11 Q No, ma'am. I said "the next paragraph."
 12 MR. RAMES: There's no reason to argue.
 13 BY MS. ROHN:
 14 Q We're on Sunday, October 29th. Then we
 15 went to the next paragraph, which starts, second
 16 sentence, "We hold fairness."
 17 You see that sentence?
 18 A I do now.
 19 Q Now, if you weren't attacking
 20 Senator Donastorg, why would you put in there that
 21 he had a right to defend himself?
 22 MR. RAMES: Objection to form. Does not
 23 say "himself."
 24 THE DEPENDENT: We're talking about all
 25 sides and themselves.

1 BY MS. ROHN:
 2 Q Is that indeed supposed to be the policy
 3 of The Daily News?
 4 A We certainly try to follow that.
 5 Q The next sentence says:
 6 "The public is always free to sit
 7 and observe our news budget
 8 meetings."
 9 Is that true?
 10 A Yes, it is.
 11 Q So I could go and sit in on news budget
 12 meetings?
 13 A Certainly. Would you like to?
 14 Q I'm going to.
 15 And then the last two lines say:
 16 "We don't print news about
 17 accusations unless we have
 18 independently verified the points
 19 in the accusations."
 20 Do you see that?
 21 A Is that the sentence that begins:
 22 "Those who have taken the
 23 opportunity can testify, after
 24 hearing and seeing the way we
 25 evaluate stories and their

1 content," that we don't print news
 2 about accusations unless we have
 3 independently verified the points
 4 in the accusations?"
 5 Q Correct. Right.
 6 A Okay.
 7 Q That's the policy of The Daily News --
 8 A Yes.
 9 Q -- is that right?
 10 A Yes.
 11 Q So in the foreclosure article against
 12 Senator Donastorg, what did The Daily News do to
 13 independently verify those accusations?
 14 A Oh, we go back to that article which is
 15 based on a filing by FirstBank. That is a court
 16 document, filed in court; therefore, that is
 17 something that we can rely upon and verify.
 18 We didn't say that -- we never said that
 19 Senator Donastorg had failed to make any payments. We
 20 said that the bank had foreclosed -- or had filed
 21 foreclosure papers. And then independently we called
 22 Senator Donastorg and asked him for his side, which we
 23 prominently display. And we also called the bank, and
 24 the bank's attorney did not -- I don't remember whether
 25 he said "I'm not going to comment" or if he just didn't

1 answer. I don't recall. We state so in the story.
 2 Q Well, ma'am, actually, you didn't just say
 3 that the bank had filed suit; the newspaper actually
 4 said Senator Donastorg would be looking for a new
 5 place to live --
 6 MR. RAMES: Object to form.
 7 BY MS. ROHN:
 8 Q -- didn't you?
 9 MR. RAMES: Not the complete sentence.
 10 THE DEPENDENT: That's not the complete
 11 sentence, and it's not how the sentence was phrased.
 12 BY MS. ROHN:
 13 Q Now, you go on to say on the --
 14 A Are we still on this letter?
 15 Q Yes, we are.
 16 Two paragraphs down, you confirm what
 17 Senator Donastorg has said in his letter.
 18 "It was about 6 p.m. on Tuesday,
 19 October 31st, that Ms. Henighan
 20 finally got all the other
 21 information together, and the one
 22 remaining point needed in the story
 23 was your response ..."
 24 "Ms. Henighan called your aide,
 25 Nicole Bollentini, and left a

1 message on her cell phone that she
 2 was seeking you."
 3 Doesn't say anything about what she was
 4 seeking you.
 5 "We had previously called your
 6 staff around that time and had
 7 success obtaining information, and
 8 we hoped we would have this time.
 9 "Not wishing to disturb your
 10 spokesperson at home, Ms. Henighan
 11 waited until around 8 p.m. for a
 12 response to her message. At that
 13 point, she did call your
 14 spokesperson, Ms. Nicole
 15 Bollentini, at home. She informed
 16 Ms. Bollentini that since none of
 17 the documentation we found had
 18 revealed what you charged in your
 19 letter to the governor, we were
 20 looking for documentation or
 21 further comment from you.
 22 "Ms. Bollentini said that we should
 23 get the Caneel Bay certificate, and
 24 we would see the proof.
 25 "Ms. Henighan said that she had it

1 right in front of her, and there
 2 was nothing in it about the
 3 St. Croix Foundation. Ms. Henighan
 4 emphasized that she wanted to hear
 5 from you. Ms. Bollentini said she
 6 would try to contact you and ask
 7 you to call back."
 8 Now, that is the sole contact.
 9 Is it The Daily News' position that leaving a
 10 voice message, without talking to anyone, and calling a
 11 staff member after 8:00 o'clock at, night and asking to
 12 speak to the senator, is sufficient to represent to its
 13 readers that the senator refused to return the phone
 14 call?
 15 MR. RAMES: Object to form.
 16 THE DEPCMENT: First of all, I don't know
 17 necessarily that there was not anything further
 18 after the 8:00 o'clock call. I know that
 19 Ms. Henighan continually attempted to speak with
 20 Ms. Bollentini, that there was some emotion involved
 21 on the part of Ms. Bollentini. And we did hold the
 22 story for quite some time. And I think that at some
 23 point Ms. Bollentini assured Ms. Henighan that
 24 Senator Donastorg had received the message.
 25

1 MR. RAMES: What do you think I was
 2 flipping for?
 3 MS. ROHN: It says, "would not return."
 4 MR. RAMES: "Failed to produce any
 5 documentation," not "refuse," which is what you were
 6 referring to.
 7 MS. ROHN: No, no, no. I'm returning
 8 their phone call. It says "he would not return the
 9 phone call."
 10 MR. RAMES: That's exactly what it says.
 11 It does not say "refuse."
 12 BY MS. ROHN:
 13 Q You're going to tell the Jury, ma'am,
 14 under oath --
 15 MR. RAMES: There will be no jury in this
 16 case.
 17 MS. ROHN: Oh, yes, sir, there will.
 18 BY MS. ROHN:
 19 Q You're going to tell the Jury, ma'am,
 20 under oath, that you're explaining to
 21 Senator Donastorg all the things that were done to
 22 contact him, and you know that she made multiple
 23 other phone calls, and that Ms. Bollentini told her
 24 that the senator would call her back, and you didn't
 25 put it in this letter?

1 BY MS. ROHN:
 2 Q Really? Where is that in your letter?
 3 A This letter does not give the history of
 4 the world.
 5 Q Right.
 6 You're trying to explain to Senator Donastorg
 7 how this is a misunderstanding, and this is what
 8 actually occurred, and then you don't put in there what
 9 actually occurred?
 10 MR. RAMES: Object to form.
 11 BY MS. ROHN:
 12 Q Is that right, Ms. Davis?
 13 MR. RAMES: I'd like to put on the record
 14 that counsel is raising her voice. I'd like to put
 15 on the record --
 16 MS. ROHN: I'm not incredulous.
 17 MR. RAMES: Of course you are. Of course
 18 you are.
 19 And I'd like to put on the record that
 20 counsel consistently exchanges the word "refused,"
 21 which is not in the article, for the word "failed,"
 22 which is in the article.
 23 MS. ROHN: -- said "would not return."
 24 MR. RAMES: It says "failed" --
 25 MS. ROHN: Read it yourself, sir.

1 MR. RAMES: Objection to form; it's a
 2 compound, calls for speculation.
 3 THE DEPCMENT: You're really trying to
 4 harass me here.
 5 BY MS. ROHN:
 6 Q I'm just incredulous about your
 7 constant --
 8 MR. RAMES: Object to form.
 9 BY MS. ROHN:
 10 Q -- change of memory.
 11 MR. RAMES: How long can one person be
 12 incredulous?
 13 BY MS. ROHN:
 14 Q Answer my question, please.
 15 A And would you please tell me what your
 16 question was?
 17 Q Ma'am, if, in fact, you knew that there
 18 were multiple other attempts to make phone contact,
 19 and a representation by Ms. Bollentini that the
 20 senator would call back, why in the heck wouldn't
 21 you put it in this letter?
 22 A I said I believe, I did not say that there
 23 were. I seem to recall -- I believe that
 24 Ms. Henighan made multiple phone calls to try to
 25 reach Ms. Bollentini.

1 Q Ma'am, if that were true, why wouldn't you
2 put that belief in that letter?

3 MR. RAMES: Object to form.

4 THE DEONENT: I believed, and I believed
5 at the time I wrote the letter that this was
6 perfectly clear, what we had attempted to do, that
7 we had attempted to get his statement.

8 BY MS. ROHN:

9 Q And it's your testimony that based upon
10 those two contacts in this letter, you felt that was
11 sufficient, as the Executive Editor, to tell your
12 readers that Senator Donastory would not return a
13 phone call?

14 MR. RAMES: Object to form.

15 THE DEONENT: Well, we are talking about
16 the letter, not --

17 MR. RAMES: Wait. Just hesitate for a
18 moment before you answer.

19 Object to form.

20 THE DEONENT: Are you asking -- are we
21 going back to the story where we say he would not
22 return our phone call --

23 BY MS. ROHN:

24 Q Yes, ma'am.

25 A -- or are we talking about the letter --

1 Q Ma'am, I've already answered you, "yes,
2 ma'am."

3 A I don't understand your question. Would
4 you rephrase your question or say it again?

5 Q Certainly.

6 A Are we talking about the article, or are
7 we talking about my letter to Senator Donastory?

8 Q Your letter, am I correct, is an
9 explanation to Senator Donastory as to why the
10 article said what it did, is it not?

11 A It would appear to be so.

12 Q And so your letter indicates, am I not
13 correct, that those two contacts were sufficient for
14 The Daily News to represent to its readers that
15 Senator Donastory would not return your phone call?

16 MR. RAMES: Object to form.

17 THE DEONENT: There are many elements of
18 this that are not spelled out in this letter. I
19 vaguely remember that are Ms. Bollettini had said to
20 Ms. Henighan, "I'm going to call him now. I'll let
21 you know if I don't reach him," something to that
22 effect.

23 BY MS. ROHN:

24 Q Really? Then why didn't you put that in
25 this letter, ma'am?

1 A I don't know. We were talking about --
2 this particularly states when we were attempting to
3 get him, and when we were calling senators, we
4 typically call them as late as midnight or after.

5 Q The letter, middle paragraph, about the
6 middle of the page says:

7 "Our news staff is even careful to
8 avoid voicing opinions in public or
9 in the newsroom about any person or
10 topics they cover."

11 Is that a policy of The Daily News?

12 A I said we are careful.

13 Q Is the policy of The Daily News to be
14 careful not to avoid voicing opinions in public --

15 MR. RAMES: Object to form.

16 BY MS. ROHN:

17 Q -- or in the newsroom?

18 A You said "not to avoid"?

19 BY MS. ROHN:

20 Q No.

21 Is it the policy of The Daily News to be
22 careful to be sure to avoid voicing opinions in public
23 or in the newsroom about any person or topics they
24 cover?

25 A This is what I advise the news staff.

1 Q Is there a written document to that
2 effect?

3 A Not to my recollection.

4 Q If you go to the third page of this
5 letter, second paragraph:

6 "That is not to say we don't get
7 'news tips' from various people
8 working for ICC or a subsidiary."

9 You want to change your prior sworn testimony
10 that you didn't get news tips from ICC or its
11 subsidiaries?

12 MR. RAMES: Object to form.

13 THE DEONENT: That was not your question,
14 and that was not my answer.

15 BY MS. ROHN:

16 Q Next paragraph:

17 "Sometimes we don't run a story
18 that has checked out. Why not?
19 Because we don't run stories that
20 do not serve the general public
21 interest. Some people would argue
22 that it's a big story if we find
23 out a public official has been hit
24 with a complaint about failure to
25 pay alimony or child support. I,

1 however, tend to think this is more
2 a private matter and should not
3 become a story in our newspaper
4 unless it develops into something
5 of much greater general public
6 concern, such as ability to handle
7 the public's money."
8 Was that the policy of The Daily News while
9 you were there?

10 A I believe that I'm speaking of myself
11 here, "I, however, tend to think."

12 Q Well, you, as Executive Editor, would then
13 exert your feelings when you would edit the paper;
14 isn't that correct?

15 MR. RAMES: Object to form.

16 THE DEPONENT: I think that that's a
17 wildly general statement and question.

18 BY MS. ROHN:

19 Q So can you explain to me again why the
20 unverified complaint for which the attorney wouldn't
21 return a call to verify the accusation was
22 newsworthy as to the senator's foreclosure if indeed
23 you don't think that those things are anything but a
24 private matter?

25 MR. RAMES: Objection; asked and answered

1 at least three times in this deposition.

2 THE DEPONENT: Exactly. I mean, I've
3 answered this question a number of times. But that
4 question presupposes that it's an unverified
5 complaint; it is a complaint.

6 BY MS. ROHN:

7 Q Do you know the difference between a
8 complaint and a verified complaint, ma'am?

9 A No, I don't.

10 Q A complaint is just something somebody
11 said. A verified complaint is that the person who
12 says it, verifies under oath that the statements
13 that they made are true.

14 A And?

15 Q So the difference between a verified
16 complaint, which someone has verified under oath is
17 true, and an unverified complaint, is an unverified
18 complaint are simply allegations which may or may
19 not be true.

20 MR. RAMES: Object to form.

21 THE DEPONENT: And I believe if you are
22 talking about the story concerning the foreclosure,
23 that was a court document which was filed by
24 officers of the court.

25

1 BY MS. ROHN:

2 Q So all complaints -- but a verified
3 complaint is one in which there is a verification
4 under oath that the allegations are true.

5 A That, I don't know. What I would say is
6 that it is verified that this is what the bank is
7 claiming, and that is what our story says. It does
8 not say that their claims are so.

9 Q Except for your statement about he may be
10 needing a place to live.

11 MR. RAMES: Object to form.

12 THE DEPONENT: I believe the operative
13 verb is "may."

14 BY MS. ROHN:

15 Q Now, tell me, ma'am, how the fact that a
16 bank claims that Senator Donastory missed payments
17 on his loan, and Senator Donastory's denial of that,
18 amounted to something of much greater general public
19 concern such as the ability to handle the public
20 money.

21 MR. RAMES: Object to form.

22 BY MS. ROHN:

23 Q How did that raise to that level, ma'am?

24 MR. RAMES: Object to form.

25 THE DEPONENT: Anytime someone in a

1 position to handle the public's money has financial
2 difficulties that result in legal action, we have
3 attempted at the time to report it if it comes to
4 our attention.

5 BY MS. ROHN:

6 Q Well, how is that different than a public
7 official has been hit with a complaint about failure
8 to pay alimony of child support, and you don't think
9 that's of public concern?

10 A We don't even see those complaints; they
11 are in Family Court, and that's private.

12 Q Ma'am, this presupposes that you've seen
13 them.

14 A No, it doesn't.

15 Q Sure. It says.

16 "Some people would argue that it's
17 a big story if we find out a public
18 official has been hit with a
19 complaint about failure to pay
20 alimony."

21 How are these two any different?

22 MR. RAMES: Object to form.

23 BY MS. ROHN:

24 Q You got a complaint about no alimony, you
25 got a complaint about foreclosure. One is not

1 supporting children, one's not paying a bank. How
 2 are they different?
 3 MR. RAMES: If my recollection is correct,
 4 I believe that that's two, three, four questions.
 5 MS. ROHN: Right.
 6 BY MS. ROHN:
 7 Q Answer my question.
 8 MR. RAMES: Well, no.
 9 THE DEPONENT: Which one?
 10 MR. RAMES: Hold on.
 11 If you remember the order that they were
 12 presented in, you can answer them in the order that
 13 they were presented in.
 14 THE DEPONENT: I do not remember the order
 15 of the questions, so let's take them one at a time.
 16 BY MS. ROHN:
 17 Q You agree that in your letter, you
 18 presuppose that both of the allegations were based
 19 upon a complaint, do you not?
 20 A What?
 21 Q In your letter --
 22 A What allegations?
 23 Q The allegations that he's not paying his
 24 mortgage, and the allegations of not paying child
 25 support, both are based upon a complaint?

1 nor would we wish to, because that really is not
 2 something to which we have any access.
 3 BY MS. ROHN:
 4 Q What? She's going to give you the
 5 official complaint that's filed with the agency, and
 6 you don't have any access to it?
 7 A We have that, but we do not have access to
 8 the outcome of it.
 9 Q But you didn't have access to the outcome
 10 of the foreclosure either, but you printed the story
 11 anyway, didn't you, ma'am?
 12 A We printed the story after it had been
 13 filed, that it had not been resolved at the time we
 14 printed it.
 15 Q And the complaint would have been filed --
 16 and child support would have been filed just as
 17 well, wouldn't it, ma'am?
 18 MR. RAMES: Object to form.
 19 Hold on.
 20 Objection to form.
 21 Go right ahead.
 22 THE DEPONENT: That is a Family Court
 23 issue. Matters before the Family Court are not
 24 public. We see none of those filings.
 25 (Plaintiffs' Exhibit 64 marked for identification.)

1 MR. RAMES: Object to form.
 2 THE DEPONENT: A complaint takes many
 3 forms. We have had mothers come to The Daily News
 4 complaining that the father of their children --
 5 BY MS. ROHN:
 6 Q Ma'am --
 7 A -- has not --
 8 MR. RAMES: Don't interrupt.
 9 THE DEPONENT: -- paid child support, and
 10 it has been a public official.
 11 BY MS. ROHN:
 12 Q Ma'am, how does a mother, coming to
 13 The Daily News, equate with an individual getting
 14 hit by a complaint?
 15 MR. RAMES: Object to form.
 16 THE DEPONENT: I'm not sure what you're
 17 getting at.
 18 BY MS. ROHN:
 19 Q You're presupposing "hit by a complaint"
 20 is a complaint has been filed against them; isn't
 21 that correct, ma'am?
 22 MR. RAMES: Object to form.
 23 THE DEPONENT: If a mother comes to
 24 The Daily News even with a complaint that -- with a
 25 copy of it, we really can't do anything with that,

1 BY MS. ROHN:
 2 Q Exhibit 64.
 3 MR. RAMES: Sorry, I don't seem to have
 4 that one. Yes, in fact, I do.
 5 Please go ahead.
 6 BY MS. ROHN:
 7 Q This is a story from June 9, 2000,
 8 "ICC/Donastorg square off over VITELCO tax breaks,"
 9 in which -- if you go to the second column, last
 10 paragraph:
 11 "Donastorg's office on Thursday
 12 provided The Daily News with a copy
 13 of VITELCO employee list which his
 14 spokesman said was the list
 15 Donastorg was operating from. The
 16 list contained the names of two
 17 former employees, one of whom has
 18 left the Virgin Islands, and one of
 19 whom transferred to VITELCO at her
 20 own request in early 1999. It also
 21 contained the names of three
 22 current employees who do crossover
 23 work for multiple companies."
 24 Wasn't this indeed a document that Donastorg
 25 had already given you in support of his complaint that

1 there were IDC companies who were in violation of their
2 permit?

3 MR. RAMES: Object to form.

4 THE DEPOENT: We haven't talked about
5 that.

6 BY MS. ROHN:

7 Q That's part of accusations that you listed
8 in the newspaper that he was complaining about, was
9 IDC companies who were violating their permit were
10 not being investigated.

11 A I believe that this story is before the
12 story --

13 Q Exactly.

14 A No. This story is ahead of "Donastorg/IDC
15 director wrangle over accusations of abuses."

16 Q The Donastorg is October of 2000.

17 A That is correct.

18 Q And this is June of 2000; it is five
19 months before.

20 A And the November story, in which we say
21 that he did not provide any documentation of his
22 accusations, that was pertaining to IDC Director
23 Frandelle Gerard using her position to solicit
24 donations from Caneel Bay for St. Croix Foundation
25 for community development.

1 This pertains to his accusation that -- let's
2 see. He issued a press release saying he sought and
3 obtained an employee list, and that ICC was listing
4 Daily News employees on its employee list to comply with
5 the IDC requirements. Those are two different sets of
6 documents.

7 Q Actually, the news story, which is
8 Exhibit 53, concerns two allegations against the
9 IDC. If you look at the second paragraph, column
10 fourth from the bottom:

11 "Donastorg also charged in his
12 October 24th letter that Gerard has
13 not penalized any IDC beneficiaries
14 since becoming Director in April of
15 1999."

16 Isn't that indeed what he's criticizing her
17 for, is two things; one, requiring them to give to the
18 St. Croix Community Foundation; and two, not penalizing
19 IDC corporations who are in violation of their permit?

20 A And your question is?

21 Q Hadn't he, in fact, already given
22 The Daily News documentation to show that they were
23 in violation of their permit?

24 A Well, what this says is that IDC had not
25 penalized. And this June 2000 story talks about his

1 claim that there are Daily News employees on the
2 VITELCO payroll. This does not talk about
3 Frandelle Gerard and the penalties.

4 Q Indeed the import of the persons being on
5 the payroll of VITELCO is that they were padding
6 their payroll because they have the correct number
7 of employees for their IDC benefits --

8 MR. RAMES: Object to form.

9 BY MS. ROHN:

10 Q -- isn't that a fact?

11 MR. RAMES: Excuse me. Object to form.

12 THE DEPOENT: I believe that the story
13 states that he issued a press release saying he
14 sought and obtained a VITELCO employee list that he
15 said showed the telephone company's payroll included
16 people working for other ICC subsidiaries, and then
17 later on including the Daily News.
18 (Plaintiffs' Exhibit 60 marked for identification.)

19 BY MS. ROHN:

20 Q Exhibit 60. That is a Press Release from
21 Holland Redfield, where it says:

22 "ICC received a copy of a complaint
23 that Senator Donastorg allegedly
24 intends to file today."

25 And then, if you go to the sixth from the

1 bottom line:

2 "The allegations in the Complaint
3 are not only denied" --

4 A Wait, wait, wait. Where are you?

5 Q Sixth from the bottom.

6 A I see it.

7 Q "The allegations in the complaint
8 are not only denied, but I am sure
9 that these allegations will not
10 hinder The Daily News from
11 reporting about Senator Donastorg
12 or any other public official as it
13 sees fit. Indeed, it is the
14 people's right to know the facts.
15 For example, it is true that a bank
16 is foreclosing on
17 Senator Donastorg and the suit is
18 still pending. As long as
19 politicians don't pay their bills
20 while the rest of us do, newspapers
21 will report it."

22 Did you receive this report from

23 Mr. Redfield?

24 A I don't recall it. I don't see a date on
25 it either.

1 Q This is referencing the fact that
2 Senator Donastorg was going to sue, and was suing
3 ICC for defamation and harassment for having
4 investigated him.
5 A Okay.
6 Q So was it unusual to receive these press
7 releases from ICC?
8 A I couldn't tell you yes or no. We get
9 upwards of a hundred press releases a day.
10 Q There was a -- I'm almost finished.
11 There was an editorial in The Daily News on
12 March 1st, 2004, "GERS as political fodder."
13 And the article states:
14 "It's an election year, and at
15 least one senator is attempting to
16 use the Government Employees
17 Retirement System to advance his
18 reelection efforts, even if it
19 hurts the pensions of the thousands
20 of current and future
21 V.I. Government employees."
22 Now, what factual basis did The Daily News
23 have that Senator Donastorg's efforts were for his own
24 reelection efforts?
25 MR. RAMES: Can we show her the exhibit?

1 by \$1 billion."
2 What facts did The Daily News have prior to
3 printing that in its paper?
4 A I do not know who wrote the editorial. I
5 do not know what they referred to in producing the
6 editorial.
7 Q Then, last paragraph:
8 "The fact that Senator Donastorg
9 states the GERS should 'be happy to
10 pay out (the four percent interest)
11 as it is only a pittance compared
12 to what they would owe any employee
13 that chooses to retire with the
14 system,' shows how little he
15 understands about investing money
16 for the long term."
17 What facts did The Daily News have as to
18 Senator Donastorg's knowledge of how to invest in
19 the --
20 A This is an editorial. I know nothing
21 about who wrote it or what their thought process was
22 or what they relied upon to write the editorial.
23 Q And the next editorial is one from
24 April 6th, 2004.
25 (Plaintiffs' Exhibit 85 marked for identification.)

1 MS. ROHN: Well, I was trying to short
2 circuit it because I have to go through my whole
3 box.
4 Do you have a copy of it?
5 MR. RAMES: Yes, yes, I believe we do. It
6 is Exhibit Number 84.
7 (Plaintiffs' Exhibit 84 marked for identification.)
8 THE DEPCMENT: And your question was.
9 BY MS. ROHN:
10 Q What facts did The Daily News have that
11 the basis for Senator Donastorg's legislation was to
12 advance his reelection efforts?
13 A I can't possibly answer that. This is an
14 editorial.
15 Q What facts did The Daily News have that
16 the bill that was being proposed by
17 Senator Donastorg would hurt the pensions of
18 thousands of current and future V.I. Government
19 employees?
20 A I don't even know anything about that bill
21 or what was referred to there.
22 Q The editorial goes on to say in the fifth
23 paragraph:
24 "By even the most conservative
25 estimates, the GERS is underfunded

1 BY MS. ROHN:
2 Q And in the one, two, three, four -- fifth
3 paragraph:
4 "Now, with an election seven months
5 away, Senator Adlah Donastorg, Jr.
6 is floating a proposal that
7 separate Motor Vehicles from the
8 Police Department and create a new
9 government bureaucracy. He wants
10 to guarantee that \$1 million or
11 10 percent of the amount collected
12 for vehicle and license fees --
13 whichever is greater -- would be
14 used to financially support the
15 newly created government agency.
16 The Motor Vehicles Department
17 generates between \$10 million and
18 \$12 million annually and spends
19 about \$1.1 million."
20 What facts did The Daily News have that the
21 Motor Vehicles Department generates between \$10 million
22 and \$12 million annually?
23 A This is an editorial, appeared on the
24 Opinion pages. I don't know anything about who
25 wrote the editorial or what they relied upon to

1 produce it.

2 Q Goes on to say:

3 "As chairman of the Senate Finance

4 Committee, he has been unable to

5 pass a territorial budget for

6 fiscal year 2004 which began

7 October 1st, 2003."

8 What facts did the Daily News have that the

9 reason that the budget had not passed was the fault of

10 Senator Donastorg?

11 MR. RAMES: Object to form.

12 THE DEPONENT: This is an editorial. I do

13 not know. It is on the Opinion page. I do not know

14 what the editorial writer -- whoever that was -- I

15 don't know who it was -- relied upon to produce this

16 editorial.

17 BY MS. ROHN:

18 Q The document goes to say:

19 "With the senator's problems in

20 managing his personal finances and

21 the government's, we are weary of

22 any proposal from him to create a

23 new government agency."

24 What facts --

25 A I don't actually see that.

1 year strategy to curry favor with

2 voters and offer hope of creating

3 jobs in a new government

4 bureaucracy."

5 What facts did The Daily News have that that

6 was the motivation for that legislation?

7 A That is an editorial; it appears on the

8 Opinion page. I don't know who wrote the editorial,

9 and, I don't know what they relied upon to produce

10 it.

11 Q The next document is a news story, May 30,

12 2003. "VI-backed boxing event called off, future

13 uncertain."

14 Sub headline, "No TV coverage scheduled

15 despite promise when Donastorg got VI to appropriate

16 \$300,000."

17 Who does the titles and subtitles or

18 headlines and sub headlines for the stories?

19 A I'm uncomfortable answering questions

20 about stories that I can't see in front of me.

21 Thank you.

22 Q You're welcome.

23 A Can I keep them here?

24 Q Well, we're going to go back and forth,

25 ma'am.

1 Q It says he's been unable -- the next

2 sentence.

3 MR. RAMES: Hold on, please.

4 BY MS. ROHN:

5 Q Look at the second page.

6 A I don't have a second page. Second page

7 is an index of section headlines.

8 Q Well, I'm going to let you see this

9 document. I'm going to get up and show it to you.

10 Evidently my second page was cut off.

11 A This is what the second page is.

12 Q It's right there on the first page.

13 A I see. Okay.

14 Q It says:

15 "With the senator's problems in

16 managing his personal finances and

17 the government's..."

18 What facts did The Daily News have that the

19 senator had problems managing his personal finances?

20 A This is an editorial that appeared on the

21 Opinion page. I don't know who wrote the editorial.

22 I don't know what they relied upon to produce the

23 editorial.

24 Q And then it goes on:

25 "This appears to be an election

1 A Okay. I would prefer you not hover over

2 me.

3 Q Well, you're not going to get your

4 preference.

5 The question was, who does the headlines and

6 sub headlines?

7 A I'm very uncomfortable with you this close

8 to me.

9 Q Okay.

10 A And the question is who does the headlines

11 and the sub headlines?

12 Q Yes, ma'am.

13 A It is a group effort by the Copy Desk

14 editors.

15 Q Now, you've heard the testimony of

16 Mr. McDonald, that he certainly didn't contribute to

17 those headlines, have you not?

18 A I don't recall his testimony.

19 Q What facts did The Daily News have that

20 Donastorg got the V.I. to appropriate \$300,000?

21 A The legislation and the process of the

22 legislation.

23 Q Now, does The Daily News understand that

24 Senator Donastorg doesn't have the ability to

25 single-handily pass any legislation?

1 A I don't believe that's what this story
2 says.

3 Q What did Donastorg do to get the
4 Virgin Islands to appropriate \$300,000?

5 A The appropriation was tacked onto a bill
6 intended to fund the rebuilding of the collapsed
7 Market Square Pavilion.

8 Q Well, seven senators had to vote for that
9 bill, didn't they?

10 A Yes.

11 Q And the Governor had to sign that bill,
12 didn't he?

13 A Yes.

14 Q So why is only Senator Donastorg singled
15 out for this?

16 A He was the originator of the idea, this
17 very good idea to do this.

18 Q Were you aware that that bill passed
19 unanimously?

20 A No, I'm not. I didn't recall that.

21 Q Were you aware that there was more than
22 one sponsor to this bill?

23 A I would not be surprised. Anytime there's
24 a good idea, a lot of senators jump on it.

25 Q Well, then, why is Senator Donastorg

1 singled out as the sole sponsor and person who got
2 this to happen?

3 MR. RAMES: Object to form.

4 THE DEPONENT: I can't recall
5 specifically, but I believe he was the one that
6 spoke most vociferously and most pervasively on the
7 Senate floor in favor of it.

8 BY MS. ROHN:

9 Q The story goes on to say:

10 "The professional boxing event that
11 Senator Adlah Donastorg, Jr. pushed
12 the V.I. Government to support with
13 \$300,000."

14 What did Senator Donastorg do to push the
15 V.I. Legislature to support it?

16 A I don't recall the details, but typically
17 in referring to the process of a bill or an
18 amendment working its way through, the primary
19 originator of the bill sometimes has to persuade
20 other senators to get onboard, and in this case, as
21 I remember, he did; and they realized that this was
22 a good idea, and they got onboard.

23 You have several ways of -- you can say that a
24 senator carries a bill; that's the senator who introduces
25 it and babysits it all way through.

1 If there's some necessity to talk other
2 senators into it, that's a push.

3 Sometimes you say simply that they sponsored
4 it. We don't always mention all the sponsors; we tend to
5 mention primarily whoever is the originator of it.

6 Q What --

7 A And you will see in such things as the
8 questionnaires that we send out to the candidates,
9 we ask them what they're going to do, and the
10 incumbents almost inevitably talk about what they
11 did do, and they lay claim to legislation, when, in
12 fact --

13 Oh, my God, I spilled all this. I'm sorry.
14 Although I don't know who I'm apologizing to here.

15 Q That would be me; it's my office.

16 A I'm sorry.

17 At any rate, some of our senators answered
18 their questionnaire saying that "I passed a bill," or "I
19 sponsored a bill" for this that and the other, when, in
20 fact, ultimately all the senators voted for it and the
21 Governor signed it.

22 And so --

23 Q What facts did The Daily News have that
24 Senator Donastorg had to talk his fellow senators in
25 to unanimously voting for this bill?

1 A I don't recall specifically, but whoever
2 was our legislative reporter at the time would have
3 kept track of that and how this was going.

4 Q Really? Mr. McDonald, who was in charge
5 of the story?

6 A Mr. McDonald was not our legislative
7 reporter. Anything that involves another reporter's
8 beat he would have spoken with whoever that was.

9 This was in 2003. Who would that have been?
10 Don't remember whether that was still Hal, who really had
11 a photographic memory for everything that was going on in
12 the Legislature. I believe it was Hal. It may have been
13 Jeremy Peters.

14 Q Mr. McDonald has testified that this
15 original paragraph about Senator Donastorg and
16 pushing his fellow senators to push this through to
17 the V.I. Government was not in his story, and was
18 added by you. Do you dispute that?

19 MR. RAMES: Object to form.

20 THE DEPONENT: I believe I recall that
21 that was his testimony. I dispute the accuracy of
22 his testimony.

23 BY MS. ROHN:

24 Q Now, the next paragraph says:

25 "The event's future is uncertain."

1 What facts did The Daily News have that the
2 event's future was uncertain?

3 A That would be in the third paragraph:

4 "Showtime officials said Thursday
5 they will not televise the fight
6 and had no plans to do so."

7 Then, two paragraphs down:

8 "Without a television deal, a fight
9 of that magnitude is not likely.

10 "The fight may or may not happen,"
11 said" -- whatever her name is --

12 "Marina Capurro of Showtime Boxing,
13 which handles the cable company's
14 boxing broadcast. 'In any case, we
15 won't televise it.'"

16 Q Okay. Were you aware that Mr. McDonald
17 claims that this story was changed in the sense that
18 Showtime wasn't the only company that they were
19 going to to televise it, and that indeed they were
20 in communications with HBO to televise it, and that
21 Mr. McPherson, the Fight Promoter, had told him
22 exactly that?

23 MR. RAMES: Object to form.

24 THE DEPENDENT: Boy, there was a lot of
25 questions and a lot of elements to that. Which one

1 do you want me to answer first?

2 BY MS. ROHN:

3 Q Anyone that you choose.

4 A Was I aware that Mr. McPherson, the
5 Promoter, was talking to HBO?

6 Q Had told the reporter and you had put in
7 his story that there was an alternate TV
8 probability?

9 MR. RAMES: Object to form.

10 THE DEPENDENT: I don't recall that
11 Mr. McDonald ever testified to that. When we found
12 out about it, we reported it.

13 BY MS. ROHN:

14 Q Well, here goes:

15 "McPherson, who is on St. Thomas
16 now, said Thursday that he is
17 talking with several cable networks
18 also. He named Showtime, HBO,
19 ESPN, and a pay-per-view station as
20 possibilities, but he did not
21 indicate their levels of interest."

22 A So why did you ask me a question?

23 Q See if you were truthful.

24 A I didn't remember that.

25 I remember that Mr. McDonald said that he

1 didn't believe anything that Mr. McPherson said.
2 (Plaintiffs' Exhibit 122 marked for identification.)

3 BY MS. ROHN:

4 Q Exhibit 122. Do you have that in front of
5 you?

6 A I do.

7 Q Editorial, December 11, following the
8 fight; is that right?

9 A I don't remember when the fight was. I
10 don't know if this is after the fight.

11 Q Well, it says it was last Friday.

12 A Okay.

13 Q Starts out:

14 "Don't be surprised if the true
15 ratings for last Friday's night's
16 boxing match 'Rumble In Paradise,'
17 fall far, far short of the
18 'estimated' \$85 million viewers."
19 That's how it starts out.

20 Second paragraph in the middle:

21 "As fast as you could say 'NO,
22 Senate Finance Chairman" --

23 A Wait. Wait. Where are you?

24 Q Second paragraph, in the middle.

25 A Okay. I got it.

1 Q "As fast as you could say 'NO,
2 Senate Finance Chairman Adlah
3 Donastory managed to get
4 legislation passed that pulled
5 \$300,000 out of Tourism's Revolving
6 Fund so V.I. tax payers could
7 subsidize the boxing match."

8 What facts did The Daily News have that
9 somehow Senator Donastory had managed to pull \$300,000
10 out of Tourism's revolving fund?

11 A This is an editorial; it appeared on the
12 Opinion page. I don't know who wrote the editorial;
13 I don't know what was in the mind of the editorial
14 writer or what the editorial writer relied upon to
15 produce the editorial.

16 Q Would you agree with me that factually
17 Senator Donastory hadn't taken any money from
18 Tourism?

19 A I'm not going to agree to anything out of
20 an editorial.

21 Q What facts did The Daily News have that
22 the purpose for Senator Donastory passing the
23 legislation was an ego trip?

24 A This was an editorial, it was not a news
25 story, so I cannot comment on it.

1 Q What facts did The Daily News have that
2 Senator Donastorg had used false or widely-inflated
3 statistics to validate the wasteful spending of
4 \$300,000?
5 A I do not believe that appears in a news
6 story.
7 Q What facts did The Daily News have that
8 the spending of \$300,000 was wasteful?
9 A I don't believe that that appears in the
10 news story. You are continually referring to an
11 editorial.
12 (Plaintiffs' Exhibit 126 marked for identification.)
13 BY MS. ROHN:
14 Q Exhibit 126. This is a Press Release that
15 Senator Donastorg sent to The Daily News.
16 Can you tell me why The Daily News did not do
17 a story on this issue?
18 MR. RAMES: Object to form.
19 THE DEPONENT: You presuppose that we did
20 not. I don't know that we did or didn't.
21 (Plaintiffs' Exhibit 87 marked for identification.)
22 BY MS. ROHN:
23 Q Exhibit 87 is a letter dated October 26th,
24 2006, from myself to your counsel, complaining that
25 The Daily News tends to use an improper

1 Why were you asking Senator Donastorg for a
2 list of all employees in his office for the fiscal year
3 2005?
4 A We sent this to all of the senators. We
5 were planning, as we frequently do roughly every two
6 years, to print the Legislature payroll.
7 (Plaintiffs' Exhibit 81 marked for identification.)
8 BY MS. ROHN:
9 Q And, finally, Exhibit 81.
10 Did you receive this letter from
11 Senator Donastorg?
12 A I think I did.
13 Q He's complaining that he's being
14 investigated and followed by The Daily News; is that
15 correct?
16 A That is what he is saying.
17 Q Did you conduct any investigation into
18 these allegations?
19 A Yes, I did.
20 Q What was the investigation?
21 A I said, "What the heck is this?" And I
22 asked every reporter, "What is he talking about
23 here?" And nobody had any idea.
24 Q That was the extent of your investigation?
25 A What more could I have done?

1 investigation done by VITELCO to defame
2 Senator Donastorg, particularly the part of the
3 investigation about whether or not he had a college
4 education.
5 A Wait, wait, wait, wait. This is 2006.
6 Let's see.
7 (Pause in proceedings.)
8 THE DEPONENT: I see. I see where you
9 are.
10 And what is your question?
11 BY MS. ROHN:
12 Q First of all, have you seen this letter
13 before?
14 A I don't recall it. Probably. Oh, yes.
15 It's from you, I believe, to Attorney Ruskin.
16 Q And Attorney Rames, is it not?
17 A Yes, it is.
18 Q Did The Daily News rely on information
19 from ICC and/or VITELCO about Senator Donastorg's
20 educational background?
21 A No.
22 (Plaintiffs' Exhibit 88 marked for identification.)
23 BY MS. ROHN:
24 Q Exhibit 88. It's a request for public
25 information from yourself to Senator Donastorg.

1 Q I'm not here to answer questions, ma'am.
2 A Okay. Yes, we certainly were not
3 investigating and following Senator Donastorg.
4 Q Did you speak to Mr. Crouch to see if he
5 was?
6 A No.
7 MS. ROHN: I don't have any further
8 questions.
9 MR. RAMES: I have nothing for this
10 witness.
11 MR. BOWARD: I have nothing.
12 (Whereupon, the Deposition concluded at 3:05 P.M.)
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JURAT

I, J. Lowe Davis, certify that I have read the foregoing transcript of my Deposition taken on Wednesday, September 15, 2010, and have signed it subject to the following changes:

PAGE LINE CORRECTION

Deponent

Date

COURT REPORTER'S CERTIFICATE

I, N. Antoinette Cérge, Registered Professional Reporter with the National Court Reporters Association; Certified Shorthand Reporter, licensed in the State of California; Notary Public in the U.S. Virgin Islands, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

Dated: September 29, 2010

N. Antoinette Cérge, RPR/CSR

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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS - ST. JOHN**

SENATOR ADLAH DONASTORG, JR.;)	
BENEDICTA DONASTORG; ADLAH)	
DONASTORG, SR.; JOSEFINA)	
DONASTORG; ELLA MORON and)	CIVIL NUMBER 117/2002
NORMA DURAN,)	
)	
Plaintiffs,)	
)	
v.)	ACTION FOR DAMAGES
)	
DAILY NEWS PUBLISHING CO., INC.;)	
LOWE DAVIS; HOLLAND "DYKE")	<u>JURY TRIAL DEMANDED</u>
REDFIELD; VITELCO and OAKLAND)	
BENTA,)	
)	
Defendants.)	

**DEFENDANT DAILY NEWS PUBLISHING CO. INC'S RESPONSES TO PLAINTIFF
ADLAH DONASTORG'S JR.'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant J. Lowe Davis responds to Senator Adlah F. Donastorg's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

The following general objections and responses are hereby made and incorporated in each response to each of the Interrogatories set forth below.

1. In responding to the Interrogatories, The Daily News reserves (a) any objections as to competency, relevancy, materiality, privilege, and admissibility of any of the responses; (b) the right to object to other discovery procedures involving and relating to the subject matter of the Interrogatories; and (c) the right to amend or supplement the responses in the event that any information is unintentionally omitted or is learned during the course of discovery.

2. The Daily News objects to the Interrogatories to the extent that they seek discovery of attorney work-product or information or communications protected from discovery by privilege, including, but not limited to, (a) the attorney work-product doctrine; (b) the attorney-client privilege; (c) the reporter's privilege under the First Amendment to the United States Constitution, federal common law, or Virgin Islands common law; and (d) any other applicable privileges. The inadvertent production of any material protected from disclosure by privilege is not intended to be and shall not be (i) a waiver of such privilege and/or protection in

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whole or in part or (ii) a waiver of the right to object to the use of any such information in this or any other proceeding.

3. The Daily News objects to the Interrogatories to the extent they are overly broad, unduly burdensome, vague and/or ambiguous, or to the extent that they seek information which is unrelated to matters at issue in this action and are not reasonably calculated to lead to the discovery of admissible evidence.

4. The Daily News objects to the Interrogatories to the extent that they seek or purport to impose on them obligations other than those prescribed by the Federal Rules of Civil Procedure, and defendants respond to the Interrogatories in accordance with those Rules.

5. The Daily News objects to the Interrogatories, and Definitions set forth therein, to the extent that they ask more Interrogatories than permitted under Rule 33(a)(1) of the Federal Rules of Civil Procedure.

6. The Daily News objects to the Interrogatories to the extent they seek redundant or duplicative information.

7. The Daily News objects to the Interrogatories to the extent they call for legal conclusions.

8. In some instances, The Daily News may provide information that is not specifically called for by any of the Interrogatories or that is subject to one or more of the objections stated herein. By providing such information, The Daily News objects does not agree to provide any other information that is not called for by any Interrogatory or that is privileged or is subject to some other objection.

9. The Daily News reserves the right to amend and/or supplement these responses.

10. In these responses, whenever The Daily News employs the phrase "subject to and without waiving its objections," they are responding to the particular Interrogatory as it may be narrowed by the general and specific objections and without waiver thereof.

SPECIFIC RESPONSES

INTERROGATORY NUMBER 1

Set forth all instruction, influence, direction, control, decision, review and/or involvement of Jeffrey Prosser during the past three (3) years, whether directly or indirectly, with regard to the Daily News publishing, editing, deleting, censoring, researching, changing, altering and/or slanting of publications, articles, editorials, political columns, letters to the editor and other information, including but not limited to those involving plaintiff, Adlah Donastorg, Jr., the subject matter of the articles, editorials, political columns, letters to the editor and other information, the content of the articles, editorials, political columns, letters to the editor and other information, the truthfulness and accuracy of the articles, editorials,

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political columns, letters to the editor and other information, applicable dates and identify each individual to whom such information was directed.

ANSWER TO INTERROGATORY NUMBER 1:

The Daily News objects to Interrogatory Number 1 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 1 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all instructions or direction, influence or control, review and involvement of Jeffrey J. Prosser in the publication, editing, deleting, censoring, researching or altering of any news articles or publications whether or not that information is at issue in the litigation, regardless of whether Senator Adlah F. Donastorg alleges that the news articles or publications are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news article or editorial. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg had the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

Jeffrey J. Prosser gave no instructions or direction, he exercised no influence or control, he undertook no pre-publication review and he was not involved in the publication, editing, deleting, censoring, researching or altering any news articles or publications, notwithstanding the subject matter.

Jeffrey J. Prosser, in his capacity as the Chairman and Chief Executive Officer of Innovative Communication Corporation, had the authority give instructions and directions, to exercise influence or control, to undertake pre-production review and to otherwise be involved in the publication of the Opinion pages of The Daily News, which may include editorials, political columns, letters to the editor and other information. The Daily News has no knowledge of when or whether he did so.

INTERROGATORY NUMBER 2:

Set forth all instruction, influence, direction, control, decision, review and/or involvement of Lowe Davis during the past three (3) years, whether directly or indirectly, with regard to the Daily News publishing, editing, deleting, censoring, researching, changing, altering and/or slanting of publications, articles, editorials, political columns, letters to the editor and other information, including but not limited to those involving plaintiff, Adlah Donastorg, Jr., the subject matter of the articles, editorials, political columns, letters to the editor and other information, the content of the articles, editorials, political columns, letters to the editor and other information, the truthfulness and accuracy of the articles, editorials, political columns, letters to the editor and other information, applicable dates and identify each individual to whom such information was directed.

ANSWER TO INTERROGATORY NUMBER 2:

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The Daily News objects to Interrogatory Number 2 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 2 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all instructions or direction, influence or control, review and involvement of J. Lowe Davis in the publication, editing, deleting, censoring, researching or altering of any news articles or publications whether or not that information is at issue in the litigation, regardless of whether Senator Adlah F. Donastorg alleges that the news articles or publications are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news article or editorial. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

J. Lowe Davis, in her capacity as the Executive Editor of The Daily News, has and exercises the authority, within appropriate limits, to give instructions and directions, to exercise influence and control, to undertake pre-production review and to otherwise be involved in the publication of the news articles and related non-editorial publications in The Daily News.

J. Lowe Davis did not give instructions or directions, did not exercise influence or control, she undertook no pre-publication review and she was not involved in the publication, editing, deleting, censoring, researching or altering of the Opinion pages of The Daily News, which may include editorials, political columns, letters to the editor and other information during ICC's ownership of The Daily News, which ended on June 5, 2008.

INTERROGATORY NUMBER 3:

Set forth all instruction, influence, direction, control, decision, review and/or involvement of Holland "Dyke" Redfield during the past three (3) years, whether directly or indirectly, with regard to the Daily News publishing, editing, deleting, censoring, researching, changing, altering and/or slanting of publications, articles, editorials, political columns, letters to the editor and other information, including but not limited to those involving plaintiff, Adlah Donastorg, Jr., the subject matter of the articles, editorials, political columns, letters to the editor and other information, the content of the articles, editorials, political columns, letters to the editor and other information, the truthfulness and accuracy of the articles, editorials, political columns, letters to the editor and other information, applicable dates and identify each individual to whom such information was directed.

ANSWER TO INTERROGATORY NUMBER 3:

The Daily News objects to Interrogatory Number 3 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 3 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all instructions or

direction, influence or control, review and involvement of Holland "Dyke" Redfield in the publication, editing, deleting, censoring, researching or altering of any news articles or publications whether or not that information is at issue in the litigation, regardless of whether Senator Adlah F. Donastorg alleges that the news articles or publications are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news article or editorial. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

Holland "Dyke" Redfield gave no instructions or direction, he exercised no influence or control, he undertook no pre-publication review and he was not involved in the publication, editing, deleting, censoring, researching or altering any news articles or publications, notwithstanding the subject matter.

The undersigned has no knowledge as to whether Holland "Dyke" Redfield gave instructions or directions, or exercised influence or control, or undertook pre-publication review or was involved in the publication, editing, deleting, censoring, researching or altering of the Opinion pages of The Daily News, which may include editorials, political columns, letters to the editor and other information.

INTERROGATORY NUMBER 4:

Set forth all instruction, influence, direction, control, decision, review and/or involvement of Innovative Communication Corporation (ICC) during the past three (3) years, whether directly or indirectly, with regard to the Daily News publishing, editing, deleting, censoring, researching, changing, altering and/or slanting of publications, articles, editorials, political columns, letters to the editor and other information, including but not limited to those involving plaintiff, Adlah Donastorg, Jr., the subject matter of the articles, editorials, political columns, letters to the editor and other information, the content of the articles, editorials, political columns, letters to the editor and other information, the truthfulness and accuracy of the articles, editorials, political columns, letters to the editor and other information, applicable dates and identify each individual to whom such information was directed.

ANSWER TO INTERROGATORY NUMBER 4:

The Daily News objects to Interrogatory Number 4 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 4 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all instructions or direction, influence or control, review and involvement of Innovative Communication Corporation (ICC) in the publication, editing, deleting, censoring, researching or altering of any news articles or publications whether or not that information is at issue in the litigation, regardless of whether Senator Adlah F. Donastorg alleges that the news articles or publications

are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news article or editorial. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

Innovative Communication Corporation (ICC) gave no instructions or direction, it exercised no influence or control, it undertook no pre-publication review and it was not involved in the publication, editing, deleting, censoring, researching or altering any news articles or publications, notwithstanding the subject matter.

ICC, as the owner of The Daily News, had the authority, by and through its principals, to give instructions and directions, to exercise influence or control, to undertake pre-production review and to otherwise be involved in the publication of the Opinion pages of The Daily News, which may include editorials, political columns, letters to the editor and other information. Subsequent to the sale of The Daily News on June 5, 2008, ICC has played no management role in The Daily News.

INTERROGATORY NUMBER 5:

Set forth all instruction, influence, direction, control, decision, review and/ or involvement of VITELCO during the past three (3) years, whether directly or indirectly, with regard to the Daily News publishing, editing, deleting, censoring, researching, changing, altering and/or slanting of publications, articles, editorials, political columns, letters to the editor and other information, including but not limited to those involving plaintiff, Adlah Donastorg, Jr., the subject matter of the articles, editorials, political columns, letters to the editor and other information, the content of the articles, editorials, political columns, letters to the editor and other information, the truthfulness and accuracy of the articles, editorials, political columns, letters to the editor and other information, applicable dates and identify each individual to whom such information was directed.

ANSWER TO INTERROGATORY NUMBER 5:

The Daily News objects to Interrogatory Number 5 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 5 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all instructions or direction, influence or control, review and involvement of Virgin Islands Telephone Corporation (Vitelco) in the publication, editing, deleting, censoring, researching or altering of any news articles or publications whether or not that information is at issue in the litigation, regardless of whether Senator Adlah F. Donastorg alleges that the news articles or publications are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news article or editorial. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator

Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

Vitelco gave no instructions or direction, it exercised no influence or control, it undertook no pre-publication review and it was not involved in the publication, editing, deleting, censoring, researching or altering any news articles or publications, notwithstanding the subject matter.

The undersigned has no knowledge as to whether Vitelco or any of its principals gave instructions or directions, or exercised influence or control, or undertook pre-publication review or was involved in the publication, editing, deleting, censoring, researching or altering of the Opinion pages of The Daily News, which may include editorials, political columns, letters to the editor and other information.

INTERROGATORY NUMBER 6:

Identify all letters, correspondence, memoranda, information or other communication to any Daily News employee of or concerning Senator Adlah Donastorg, Jr., including regarding elections, voting for or against him, including those from VITELCO, ICC or any of its affiliate, setting forth the date, the contents of the communication, the manner in which the communication took place, to whom such information was directed, by whom the information was made, the identity of the author of such communication and who directed or instructed the distribution of such information.

ANSWER TO INTERROGATORY NUMBER 6:

The Daily News objects to Interrogatory Number 6 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 6 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The Daily News has no knowledge of any letters, correspondence, memoranda, information or other communication to any Daily News employee of or concerning Senator Adlah Donastorg other than Press Releases that were issued from time to time by his office. In addition, The Daily News may have been the recipient of proposed Letters to the Editor by concerned citizens who undertook to comment on the actions of Senator Donastorg. Those items of correspondence would have been conveyed to the Editorial Board of The Daily News for such further action as it deemed appropriate.

INTERROGATORY NUMBER 7:

Identify each reporter or other employee of the Daily News who was offered, given, paid or received any bonus, payment, benefit, compensation or other perk subsequent to providing

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defendant with an article or information concerning Adlah Donastorg, Jr., including the type and amount of compensation, reason and basis for such compensation, the identity of each individual involved, participating, authorizing or instructing with regard to such compensation, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 7:

The Daily News objects to Interrogatory Number 7 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 7 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all bonuses, payments, benefits, compensation or other perks that a reporter or an editor may have received from The Daily News after that reporter or editor wrote or edited a story concerning Senator Donastorg notwithstanding when in time it may have been paid or whether it had any relationship whatsoever to the story. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

No employee of The Daily News was ever offered, given, paid or received any bonus, payment, benefit, compensation or other perk consequent to providing The Daily News with any article or information concerning Adlah F. Donastorg, Jr.

INTERROGATORY NUMBER 8:

As to each article, publication, editorial, political column, letter to the editor and other information published in the Daily News during the past three (3) years involving plaintiff, Adlah Donastorg, Jr., including, but not limited to the articles described in plaintiff's complaint, set forth the date of publication, each individual who participated, involved, influenced, wrote, compiled, researched, instructed, authorized, directed and/or advised with regard to such publication, the identity of the published writer of the article, the identity of the writer of the article and the contents of the article.

ANSWER TO INTERROGATORY NUMBER 8:

The Daily News objects to Interrogatory Number 8 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 8 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. For example, this Interrogatory seeks information regarding any and all news articles or editorials referencing Senator Adlah F. Donastorg, notwithstanding whether or not the news articles or editorials are at issue in the litigation, regardless of whether Senator Donastorg has alleged that the news articles or editorials are false or defamatory, and whether or not Senator Donastorg has even stated a claim based on the news articles or editorials. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents

providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants.

INTERROGATORY NUMBER 9:

Set forth all efforts, action and measures taken by the defendant during the past three (3) years to investigate, research, verify, confirm, correct or ensure the truthfulness, of any information published involving plaintiff, Adlah Donastorg, Jr., in the Daily News, including efforts to safeguard against untrue stories and information or biased stories and articles, such as the articles about plaintiff published on or about November 1, 2000, June 12, 2001 and January 15, 2002, articles or publications regarding plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, plaintiff and the St. Croix Foundation, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn and any other information, publication or statement regarding plaintiff, including the applicable dates and identify each individual who participated, directed, conducted, instructed or authorized with regard to such actions, efforts and measures.

ANSWER TO INTERROGATORY NUMBER 9:

The Daily News objects to Interrogatory Number 9 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 9 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The Daily News relies upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relies upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable.

INTERROGATORY NUMBER 10:

Set forth the complete reason and basis for any failure, refusal or delay in taking or making any action, efforts, or measures to investigate, research, verify, confirm, correct or ensure the truthfulness, of any information published involving plaintiff, Adlah Donastorg, Jr., in the Daily News, including making efforts to safeguard against untrue stories and information or biased stories and articles, such as the articles about plaintiff published on or about November 1, 2000, June 12, 2001 and January 15, 2002, articles or publications regarding plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, plaintiff and the St. Croix Foundation, plaintiff's efforts or attempts to

audit VITELCO, reduce its rates, and have its IDC benefits withdrawn and any other information, publication or statement regarding plaintiff, identify each individual making, instructing or participating with regard to the same, including the applicable dates.

ANSWER TO INTERROGATORY NUMBER 10:

The Daily News objects to Interrogatory Number 10 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 10 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The premise of this Interrogatory is that the news articles referred to are untrue or biased against Senator Adlah F. Donastorg. The Daily News rejects this premise on the basis that the news articles referred to are based upon facts that were generated in the newsgathering process and are intended solely to impart those facts to the public. The articles to which Interrogatory Number 10 refer are not untrue or biased against Senator Donastorg.

INTERROGATORY NUMBER 11:

Set forth all publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same, including the name and title of the person making or publishing any such statement, to whom the publication or statement was made, the complete reason and basis for making such a publication or statement, the identity of all persons present, the date, time and location the publication or statement took place and the identity of who authorized the making of the statement.

ANSWER TO INTERROGATORY NUMBER 11:

The Daily News objects to Interrogatory Number 11 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also

objects to Interrogatory Number 11 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The premise of this Interrogatory is that the news articles referred to are adverse, disparaging, derogatory or negative to or about Senator Adlah F. Donastorg. The Daily News rejects this premise on the basis that the news articles referred to are based upon facts that were generated in the newsgathering process and are intended solely to impart those facts to the public. The articles to which Interrogatory Number 11 refer are not adverse, disparaging, derogatory or negative to or about Senator Adlah F. Donastorg.

INTERROGATORY NUMBER 12:

Please state whether you or someone acting on your behalf retracted or corrected any of the publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same, including the date and time of each such retraction or correction, a full description of each such retraction or correction, including the name and title of the person making the retraction or correction, the identity of all persons present and the identity of who authorized or instructed the making of the retraction or correction.

ANSWER TO INTERROGATORY NUMBER 12:

The Daily News objects to Interrogatory Number 12 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 12 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

On June 14, 2001, The Daily News published a correction titled "Setting the Record Straight" to its June 11, 2001, article concerning a vote by Senator Adlah F. Donastorg in the Thursday, June 7, 2001, meeting of the Committee on Government Operations, Planning and Environmental Protection concerning whether he voted against a Bill that he had sponsored to reduce the size of the Virgin Islands Legislature from 15 to 9. In the correction, The Daily News stated that the report of the vote was inaccurate and that an unnamed committee staffer had erroneously informed The Daily News that Senator Donastorg voted against the Bill.

INTERROGATORY NUMBER 13:

Set forth with specificity all actions you took to verify the truthfulness or accuracy of any publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same, identifying by name and title of each person involved, participating or authorizing such action, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 13:

The Daily News objects to Interrogatory Number 13 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 13 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The Daily News relied upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relied upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. The reporters and the editors work together cooperatively and efficiently in the process of obtaining, investigating, confirming, verifying, finding or otherwise

obtaining information for the purpose of preparing and publishing news articles in The Daily News. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable.

INTERROGATORY NUMBER 14:

If no action was taken by you, your agent's and/or employees to verify the truthfulness of any publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same, set for the complete reason and basis, the name and title of each person who instructed, participated or was involved with any decision with regard to the same, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 14:

The Daily News objects to Interrogatory Number 14 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 14 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The Daily News relied upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relied upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. The reporters and the editors work together cooperatively and efficiently in the process of obtaining, investigating, confirming, verifying, finding or otherwise obtaining information for the purpose of preparing and publishing news articles in The Daily News. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable.

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INTERROGATORY NUMBER 15:

Set forth the name, address and occupation of each individual or entity to whom you, or anyone on your behalf, disseminated any publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same, set for the complete reason and basis, the name and title of each person disseminating such information, the name and title of each person who instructed, participated or was involved with any decision with regard to the same and the dates and methods of such dissemination.

ANSWER TO INTERROGATORY NUMBER 15:

J. Lowe Davis, who is the Executive Editor of The Daily News, from December 18, 1998 to December 1, 2006 and again from June 6, 2008 to the present, was and is responsible for the publication of all news articles in The Daily News. In this effort, Ms. Davis was assisted by Jason Robins, in his capacity as the Assistant Editor and William Brown, in his capacity as the City Editor. The contact information for J. Lowe Davis and Jason Robbins are c/o Law Offices of K.A Rames, P.C. 2111 Company Street, Suite 3, Christiansted, V.I. The last known address for William Brown is 15 French Road, Gilmanton, N.H.

INTERROGATORY NUMBER 16:

Set forth each and every fact, circumstance or event upon which you base any publications, communications, information, conversations, statements, remarks, insinuations and inferences made by defendant, or anyone on behalf of the defendant, that were adverse, disparaging, derogatory or negative to or about plaintiff, Adlah Donastorg, Jr. or that otherwise cast plaintiff in a bad light, including, but not limited to any relating to the content, truthfulness, falsity or accuracy of the Daily News articles involving plaintiff, plaintiff taking, accepting or otherwise being involved in bribes, use or involvement of any AT&T plane, travel to St. Lucia, attendance at the St. Lucia Jazz Festival, involvement in any criminal activity or arrests, attempts to cover up an arrest, plaintiff's mortgage, mortgage payments, involvement in foreclosure proceedings, bank accounts, bank account balances and fiscal responsibility, plaintiff's voting on a bill in or about June 2001, referring to plaintiff as a Rogue Senator, plaintiff and the St. Croix

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Foundation, voting for or against plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, motives behind the VITELCO audit, or any investigation of plaintiff, his family and the reason or pretext for same.

ANSWER TO INTERROGATORY NUMBER 16:

The Daily News objects to Interrogatory Number 16 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 16 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The premise of this Interrogatory is that the news articles referred to are adverse, disparaging, derogatory or negative to or about Senator Adlah F. Donastorg. The Daily News rejects this premise on the basis that the news articles referred to are based upon facts that were generated in the newsgathering process and are intended solely to impart those facts to the public. The articles to which Interrogatory Number 16 refer are not adverse, disparaging, derogatory or negative to or about Senator Adlah F. Donastorg.

INTERROGATORY NUMBER 17:

Please state the substance of any and all conversations, communications, statements or meetings made by or between the Daily News and plaintiff, Adlah Donastorg, Jr. regarding the content, truthfulness, falsity or accuracy of any Daily News articles, stories or editorials involving plaintiff, plaintiff's efforts or attempts to audit VITELCO, reduce its rates, and have its IDC benefits withdrawn, obtaining a "positive working relationship" between plaintiff and defendant, publishing personal articles about plaintiff, building a library in plaintiff's name, taking any action or remuneration in exchange for plaintiff to cease criticizing VITELCO, ICC or any of its affiliates, information that plaintiff had to be careful, should discontinue his attacks on defendant VITELCO and/or publicly support VITELCO, ICC and any of its affiliates, indicating each individual participating in any such communication, each individual present during such communication, the location the communication took place, the identity of who authorized or instructed such communication, the reason and basis for the communication, who initiated the communication, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 17:

The Daily News objects to Interrogatory Number 17 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 17 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible

evidence. For example, this Interrogatory seeks information regarding any conversations, communications, statements or meetings with between The Daily News and Senator Adlah F. Donastorg regardless of whether Senator Donastorg alleges that any actionable statement was made or resulted from any such contacts and whether or not Senator Donastorg has even stated a claim based on any such conversations, communications, statements or meetings. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The premise of this Interrogatory is that The Daily News had conversations, communications, made statements or attended meetings with Senator Adlah F. Donastorg. The Daily News is a corporation, one which makes statements to and communicates with the public through its Opinion pages, which, during the period at issue, were controlled only by Innovative Communication Corporation. In fact, reporters working for The Daily News have had many conversations, communications and meetings with Senator Adlah F. Donastorg and his professional staff over the years, some of which became part of the substance of news articles and some of which did not. In addition, Senator Donastorg and his professional staff have issued many press releases to the media in general, and to The Daily News in particular. On the foregoing basis, The Daily News has neither the records nor the recollection to state the substance of those conversations, communications statements or meetings.

INTERROGATORY NUMBER 18:

Set forth each and every fact, circumstance, event, reason and basis that defendant published any articles, editorials or other information about plaintiff, Adlah Donastorg, Jr. that contained misinformation, untrue or false information, false facts or misleading information, identify the publication, describe the misinformation, untrue or false information, false facts and/or misleading information, the identity of who authorized or instructed such publication, the reason and basis for the publication, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 18:

The Daily News objects to Interrogatory Number 18 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 18 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, the Daily News has produced documents providing responsive information, and Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

On June 14, 2001, The Daily News published a correction titled "Setting the Record Straight" to its June 11, 2001 article concerning a vote by Senator Adlah F. Donastorg in the Thursday, June

7, 2001 meeting of the Committee on Government Operations, Planning and Environmental Protection concerning whether he voted against a Bill that he had sponsored to reduce the size of the Virgin Islands Legislature from 15 to 9. In the correction, The Daily News stated that the report of the vote was inaccurate and that an unnamed committee staffer had erroneously informed The Daily News that Senator Donastorg voted against the Bill

INTERROGATORY NUMBER 19:

Set forth each and every instruction, direction, order and other information provided or communication to any Daily News employee with regard to publishing, obtaining, investigating, confirming, verifying, finding or otherwise procuring information concerning plaintiff, Adlah Donastorg, Jr., including the name and title of the person giving or making such instruction, to whom the instruction was given, the manner in which the instruction was made, who authorized the making such instruction, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 19:

The Daily News relied upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relied upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. The reporters and the editors work together cooperatively and efficiently in the process of obtaining, investigating, confirming, verifying, finding or otherwise obtaining information for the purpose of preparing and publishing news articles in The Daily News. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable.

INTERROGATORY NUMBER 20:

Set forth each and every fact, circumstance, event, reason and basis for any investigation of plaintiff Adlah Donastorg, Jr., his wife and/or his relatives, including a description of the investigation, the identity of who authorized or instructed such investigation, the identity of each individual involved or participating in such action along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 20:

The Daily News had no involvement in and has no knowledge of any fact, circumstance, event, reason and basis, for any investigation of Senator Adlah F. Donastorg, his wife and/or his relatives.

INTERROGATORY NUMBER 21:

Set forth all procedures, measures, guidelines, criteria, policies or action of the defendant during the last five (5) years, to ensure, research, confirm or verify the accuracy, truthfulness, integrity, bias and fairness of any publication, editorial, attitudes, statements

and other information with regard to the Daily News, including those which are designed to prevent, safe guard or minimize the risk of publication of false, misleading, inaccurate, untrue or biased information, along with all actions, steps, or other conduct taken by the Defendant to monitor and improve the effectiveness of such programs, any training provided and a description of any information disseminated.

ANSWER TO INTERROGATORY NUMBER 21:

The Daily News objects to Interrogatory Number 21 because it is overly broad, unduly burdensome, and duplicative of other discovery taken in this litigation. The Daily News also objects to Interrogatory Number 21 because it seeks information that is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory's sweeping requests for information would be unduly burdensome to address, particularly given the overbreadth of the Interrogatory itself. Moreover, Senator Donastorg has the opportunity to seek responsive information in the depositions of all Defendants. Subject to and without waiving its objections, The Daily News responds as follows:

The Daily News relied upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relied upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. The reporters and the editors work together cooperatively and efficiently in the process of obtaining, investigating, confirming, verifying, finding or otherwise obtaining information for the purpose of preparing and publishing news articles in The Daily News. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable.

INTERROGATORY NUMBER 22:

Identify all individuals who have been or are an employee, officer, director, shareholder, partner, owner or board member of The Daily News that has also held a position as an employee, officer, director, shareholder, partner, owner or board member with Innovative Communication Corporation, or any of its affiliates, subsidiaries or related entities, including VITELCO, during the past five (5) years, indicating as to each, the position held, the percentage or amount of interest, percentage of work performed for each defendant, the reason and basis for concurrent positions, and if any changes have been made, the reason and basis, along with applicable dates

ANSWER TO INTERROGATORY NUMBER 22:

During the subject period, Jeffrey J. Prosser was the President and Eling S. Joseph was the Secretary/Treasurer of the Daily News Publishing Company, Inc.; Jeffrey J. Prosser, Joel H. Holt and Eling S. Joseph were the members of the Board of Directors of the corporation. Jeffrey J. Prosser was also the President and Chairman of the Board of Directors of Innovative Communication Corporation (ICC) and the Chief Executive Officer and Chairman of the Board of Directors of Virgin Islands Telephone Corporation (Vitelco). The Daily News has no

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knowledge as to whether Joel H. Holt and Eling S. Joseph were officers or directors of ICC or Vitelco. The directors were appointed by ICC and the officers were appointed by the directors. These persons had no involvement with the day-to-day operation of The Daily News and The Daily News is unaware of applicable dates.

INTERROGATORY NUMBER 23:

Itemize any and all payments and expense relating to any investigation of plaintiff Adlah Donastorg, Jr., his wife and/or his relatives, including the amount of the payment, the manner in which payment was made, to whom the payment was made, the identity of who authorized or instructed such payment, the source of funds used for the payment, the identity of each individual involved or participating in such payment, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 23:

The Daily News had no involvement in and has no knowledge of any fact, circumstance, event, reason and basis, for any investigation of Senator Adlah F. Donastorg, his wife and/or his relatives.

INTERROGATORY NUMBER 24:

State whether you received, requested or obtained any reimbursement for any payments and expenses made by you relating to any investigation of plaintiff Adlah Donastorg, Jr., his wife and/or his relatives, including the amount of the reimbursement, the manner in which reimbursement was made, from whom the reimbursement was made, the identity of who received such reimbursement, the identity of each individual involved or participating in such reimbursement, along with the applicable dates.

ANSWER TO INTERROGATORY NUMBER 24:

The Daily News had no involvement in and has no knowledge of any fact, circumstance, event, reason and basis, for any investigation of Senator Adlah F. Donastorg, his wife and/or his relatives.

INTERROGATORY NUMBER 25:

Please set forth each and every fact, event, reason, basis and circumstance to support your sixteenth affirmative defense asserted in your answer to plaintiffs' first amended complaint that any injuries or damages suffered by plaintiffs arising out of the Sheraw investigation were wholly or substantially caused by the publication of the Sheraw investigatory files by Senator Donastorg or Lee J. Rohn, when you first became aware of said facts and identify each person with knowledge of each such fact.

ANSWER TO INTERROGATORY NUMBER 25:

Senator Adlah F. Donastorg claims that his reputation was damaged by the dissemination of the Sheraw investigation to the general public. Senator Adlah F. Donastorg was solely responsible for disseminating the Sheraw investigation to the general public.

Respectfully Submitted,
K. A. RAMES, P.C.

Dated: June 2, 2011



Kevin A. Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00820
(340)773-7284 / Fax (340)773-7282

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2011, I caused a true and correct copy of the foregoing DEFENDANT THE DAILY NEWS PUBLISHING CO., INC.'S RESPONSES TO PLAINTIFF ADLAH F. DONASTORG, JR.'S FIRST SET OF INTERROGATORIES to be served upon the following:

Lee J. Rohn, Esq.
Law Offices of Rohn and Carpenter, LLC
1101 King Street
Christiansted, VI 00820
VIA HAND DELIVERY

Jeffrey B.C. Moorehead, Esq.
CRT Brow Building
1132 (48) King Street, Suite 3
Christiansted, VI 00820
Via U.S. Mail

Mark Eckard, Esq.
Groner & Eckard, P.C.
53 King Street, 3rd Floor
Christiansted, V.I. 00820
Via Hand Delivery



KEVIN A. RAMES, ESQ.

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CERTIFICATION

I hereby swear and affirm that the Answers to the above Interrogatories are true and correct to the best of my knowledge and belief.

DAILY NEWS PUBLISHING CO.



Name

Publisher

Title

Jason Robbins

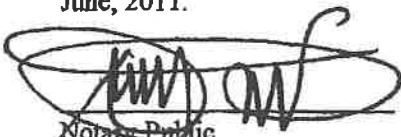
Print Name

June 1, 2011

Date

ATTEST:

Subscribed and Sworn to
Before me on this 1st day of
June, 2011.



Notary Public

KEVIN A. RAMES, ESQ.
NOTARY PUBLIC # LPN: 056-07
MY COMMISSION EXPIRES: 10-11-11
ST. CROIX, U.S. VIRGIN ISLANDS

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IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS

SENATOR ADLAH DONASTORG, JR., and
BENEDICTA DONASTORG

Plaintiffs,

v.

DAILY NEWS PUBLISHING CO., INC.,
INNOVATIVE COMMUNICATION
CORPORATION and JEFFREY PROSSER
LOWE DAVIS,
HOLLAND "DYKE" REDFIELD, and
VITELCO

Defendants.

CIVIL NO. 117/2002

AFFIDAVIT OF LOWE DAVIS

STATE OF FLORIDA

COUNTY OF WEST PALM BEACH

SS:

I, J. LOWE DAVIS (also known as LOWE DAVIS), being first duly sworn, depose and say:

1. The statements contained in this affidavit are based upon my personal knowledge.
2. The Daily News Publishing Co. publishes The Virgin Islands Daily News (collectively "the Daily News").
3. Innovative Communication Corporation ("ICC") is a the sole owner of the Daily News.
4. I have been the Executive Editor of the Daily News since December 1998, and the CEO of the Daily News since June 2000.

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5. I have sole responsibility for the news operation of the Daily News.
6. Jeffrey Prosser does not personally employ me or any of the individuals who work for the Daily News.
7. To my knowledge Jeffrey Prosser is not now and has not been an officer or director of the Daily News, and he has no operational position or role at the Daily News.
8. For all times relevant to the first amended complaint I know Adlah Donastorg to have been a U.S. Virgin Islands senator.
9. It is my understanding that as a Virgin Islands senator, Adlah Donastorg participates in both the budgetary and appropriations functions of the Legislature, and shares responsibility for the Territory's fiscal condition.
10. For all times relevant to the first amended complaint I know Adlah Donastorg to have been a public official.
11. For all times relevant to the first amended complaint I know Adlah Donastorg to have been a public figure.
12. It is my understanding that Benedicta Donastorg is Adlah Donastorg's wife.
13. To the best of my knowledge Jeffrey Prosser did not make or publish to third parties any of the statements averred by Plaintiffs in the first amended complaint.
14. Jeffrey Prosser did not instruct or order me or any person working for the Daily News to make or publish to third parties any of the statements averred by Plaintiffs in the first amended complaint.
15. I know of no instances when Jeffrey Prosser ever directed the news gathering or reporting of the Daily News.

16. I know of no instances when Jeffrey Prosser ever assigned to reporters any news stories or ever directed reporters to pursue or not pursue any particular stories, including stories concerning either Plaintiff.

17. I know of no instances when Jeffrey Prosser ever caused any news stories or editorials about Plaintiffs to be published.

18. I know of no news stories or editorials about Plaintiffs in the Daily News that concerned matters outside of the public interest.

19. Neither the Daily News nor myself ever engaged Dennis Sheraw & Associates (Sheraw) to perform any investigations, and specifically no investigations of either Plaintiff.

20. Neither I nor the Daily News ever published the contents of the Donastorg investigation report, or disclosed its contents to third parties.

21. I have never seen the Donastorg investigation report.

22. I did not learn about the Donastorg investigation report until its existence was disclosed by Donastorg himself.

23. Neither I, the Daily News, nor to my knowledge any Defendant, ever caused any assault on the persons of either Plaintiff.

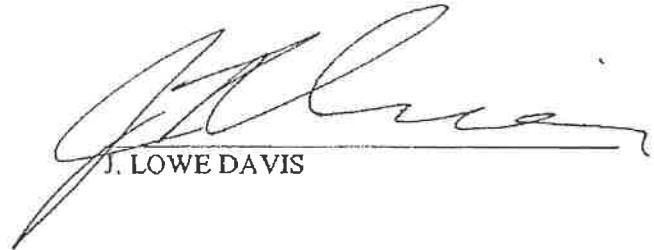
24. Neither I, the Daily News, nor to my knowledge any Defendant physically intruded into the private home, office or other physical place of seclusion of either Plaintiff.

25. Neither I, the Daily News, nor to my knowledge any Defendant directly or personally acted with regard to any alleged intrusion into the privacy of either Plaintiff.

26. Neither I, the Daily News, nor to my knowledge any Defendant had the intent to cause either Plaintiff emotional distress.

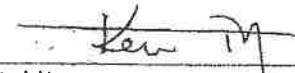
27. All the information in news stories or editorials about Plaintiffs in the Daily News was gleaned from public sources, including court files, other public documents and interviews with willing third parties.

FURTHER AFFIANT SAYTH NOT.



J. LOWE DAVIS

Subscribed and Sworn to before me
this 5 day of march, 2004



Notary Public **KEN E. RYAN**
COMMISSION EXP: MARCH 4, 2007
NP-048-03

My Commission Expires: _____

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SENATOR ADLAH DONASTORG, JR.
BENEDICTA DONASTORG, ADLAH
DONASTORG, SR. JOSEFINA
DONASTORG, ELLA MORON and
NORMA DURAN,

Plaintiffs,

v.

DAILY NEWS PUBLISHING CO, INC.
LOWE DAVIS, HOLLAND "DYKE" REDFIELD
VITELCO, AND OAKLAND BENTA


Defendant.

)
)
)
)
)
)
) CIVIL NO. ST-2002-CV-117
)
) ACTION FOR DAMAGES
)
) JURY TRIAL DEMANDED
)
)
)

JOINDER IN DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, Holland Redfield, by counsel and hereby joins in the FRCP Rule 12(b) and Rule 12 (b)(2) Motion for Judgment on the Pleadings filed by Virgin Islands Telephone Corporation (herein "Vitelco") on November 10, 2011 and the Rule 56 Motion for Summary Judgment filed by the Daily News Publishing Co., Inc. on July 30, 2014, against all Plaintiffs. In this regard, defendant Redfield fully adopts and incorporates said Rule 12(b) and Rule 12(b)(2) pleadings filed by Vitelco and the Rule 56 pleadings filed by Daily News Publishing Co., Inc. in full as if filed by him and joins in said motions to dismiss or to otherwise dispose of the Fourth Amended Complaint currently pending against him.

Dated: November 13, 2014


Joel M. Holt
2132 Company Street
Christiansted, VI 00820
(340) 773-8709

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CERTIFICATE OF SERVICE

I hereby certify that on this November 13, 2014, I caused a true and exact copy of the foregoing to be hand delivered to:

Lee J. Rohn, Esq.
1101 King Street
Christiansted, VI 00820

Oakland Benta
P.O. Box 3388
Frederiksted, VI 00841

Kevin Rames, Esq.
2111 Company Street, Suite 3
Christiansted, VI 00822

Mark W. Eckard, Esquire
P.O. Box 24849
Christiansted, VI 00824



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SENATOR ADLAH DONASTORG, Jr.,
BENEDICTA DONASTORG, ADLAH
DONASTORG, Sr., JOSEFINA
DONASTORG, ELLA MORON and
NORMA DURAN,

Plaintiff(s),

v.

DAILY NEWS PUBLISHING CO. INC.,
LOWE DAVIS, HOLLAND "DYKE"
REDFIELD, VITELCO and OAKLAND
BENTA,

Defendant(s).

CIVIL NO. 117/2002

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

I. Introduction

Plaintiffs submit their Response to Defendants Daily News Publishing Co. Inc. and Lowe Davis' Motion for Summary Judgment and Brief in Support. Plaintiffs incorporate their Responses to Defendants' "Statement of Material Facts About Which There is No Genuine Issue" herein for all purposes, and will refer to their Responses to Defendants' facts as "RSOF ¶ ___" for ease of reference. Defendants failed to show that the law and undisputed facts mandate entry of judgment their favor so their motion must be denied.

II. Facts and Evidence Supporting Claims

In Defendants' first 17 pages of their motion they recite facts, including references to Senator Donastorg's supposed "political antics" and his "long running drama," but don't cite to any evidence

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whatsoever to support the false allegations in their fact statement. (Mot. 1-17.) Plaintiffs object to any factual representation contained in Defendants' brief that is not supported by a specific cite to evidence in the record or a reference to evidence cited in Defendants' alleged Statement of Material Facts About Which There is No Genuine Dispute.¹ Plaintiffs' facts are all supported by a cite or cites to the record contained in Plaintiffs' Response to Defendants' alleged Statement of Material Facts About Which There is No Genuine Dispute ("RSOF").²

Plaintiffs identified the primary defamatory, false light, and privacy-invading publications, events, or transactions in RSOF ¶¶1 & 4. Malice, bad-motive, and intent-to-defame facts are additionally identified in RSOF ¶¶ 7, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 25, 29.a., 32, 33, 34, 35, 36, 50, 51, 52, 54, 60, 61, 79, and 80.

RSOF ¶4.A shows: (1) that Prosser, owned, operated and controlled ICC, VITELCO, and The Daily News, and operated them in a joint and integrated fashion to achieve both his personal and business objectives; (2) Prosser and VITELCO used The Daily News to publish both editorials and news articles that furthered Prosser and VITELCO's interests pursuant to a common-scheme or plan; (3) in conjunction with RSOF ¶4.B, Prosser's interests included a carrying out a common goal, scheme or plan of, (a) unfairly and falsely slanting the news and editorials in favor of VITELCO and ICC to garner public support for the "Prosser Plan" and his other business interests, while at the same time, (b) discrediting Prosser's opponents (like Senator Donastorg) and dissuading them from challenging his veiled scheme to defraud Virgin Islands rate payers and taxpayers and loot employee

¹ See FED. R. CIV. P. 56(c)(1) & (2).

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pensions by defaming opponents, by painting them in a false light, and intimidating them through invasive, privacy invading tactics, if they would not accept bribes, kick-backs (like offering to build Senator Donastorg a library wing, *i.e.*, effectively offering rivals a carrot or the stick); and (4) that at all material times, Prosser's agents like Oakland Benta and former Senator Holland Redfield acted as participants in the common scheme on behalf of Prosser and ICC's subsidiaries, including The Daily News. (RSOF ¶4.A & B.)

Specifically with regards to Senator Donastorg, RSOF ¶4.B.1 shows that Oakland Benta did security work for Prosser, ICC, VITELCO, and The Daily News, and commissioned an improper investigation into Senator Donastorg and his family's private life. Benta contacted Dennis Sheraw to conduct unlimited, "*carte blanche*" investigations into numerous people, including Senator Donastorg, various local lawyers, Falkner, PSC consultant Madan, and Senator Donastorg's family and associates. No writing governed the terms of the engagement and there were no limits placed on the scope of the investigation into Senator Donastorg's private life. Sheraw advised ICC and the related companies in writing as early as 1990 that the reports he was generating contained information that was obtained "confidentially" and that "cannot be released or disseminated." Sheraw's instructions to his investigators was to "dig up anything and everything" on the targets and he did so because ICC and the related companies instructed him that they were "looking for negative information." Sheraw's company obtained confidential information through techniques like "pretext" calling, which is industry slang for calling an organization and telling a lie and giving false

² Cites to the record will not be unnecessarily repeated in the brief to make it easier to read; these facts listed herein closely track the RSOF facts, which contain specific cites to the record.

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identification to gain access to confidential information, and improperly obtaining confidential information at the instruction of ICC from confidential phone records of ICC and VITELCO. Sheraw and his company dug up personal information such as Social Security Numbers on targets like Donastorg and his family members by gaining access to private employee files, tax records, banking records, and confidential credit reports. (RSOF ¶4.B.1.)

With respect to Senator Donastorg and all of his family members, the evidence shows Sheraw gathered "confidential source information" from "law enforcement" sources and campaign contributors; gathered private bank-account information that is "difficult to obtain and highly confidential in nature and should be handled accordingly,"; and made "pretext calls" to gain confidential information from medical providers including the St. Thomas Hospital, in an effort to find "indiscretions"; and made pretext calls to lawyers and colleges like California State University, Fullerton. When Senator Donastorg learned about the investigation, he was shocked and dismayed that Defendants were trying to destroy his life with the investigation into his private affairs. He was rightfully frightened for his safety, was afraid to go out in public and suffered extreme emotional distress. Senator Donastorg's family was also terrified and distressed. Senator Donastorg disclosed the investigation to the *St. Croix Avis* because he feared for his life and thought coverage of the issue might protect him. Senator Donastorg was intimidated by the penetration into his private affairs and the penetration into his private bank accounts. In addition to the report, Prosser, Redfield, ICC, and the cabal had Senator Donastorg followed in 2000, 2001, and 2002. Senator Donastorg was actually and literally terrified by Prosser, ICC, VITELCO, and the related company's actions including creating the investigative file, penetrating his bank accounts, invading his privacy, invading the

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privacy of his family, and finding out the places he frequented in his personal life. Despite the devastating nature of the investigation, after it became public, Redfield falsely defended the investigation on the radio and additionally slandered Senator Donastorg while doing so. (RSOF ¶4.B.1.)

RSOF ¶4.B.2 shows that in July 1998, The Daily News documented that Senator Donastorg was backing legislation mandating that the PSC examine VITELCO's rate structure; Senator Donastorg also questioned VITELCO's compliance with its requirements to obtain EDC tax benefits. VITELCO responded that Senator Donastorg was looking into VITELCO for "sloppy political reasons" and The Daily News gave VITELCO a platform to "question the consultant's [Mr. Madan] methodology in reaching his conclusions" that VITELCO's rates were improperly inflated. In addition, employees who were listed as VITELCO employees for purposes of obtaining a tax credit were actually working for The Daily News. Senator Donastorg consistently pressed his claims of fraud against VITELCO and, in 2000, went to court to make VITELCO open its employee records because they were violating their employment requirements in connection with EDC tax breaks. Senator Donastorg also exposed VITELCO's rate-formula and rate-of-return figures around the same time. Senator Donastorg's interest in VITELCO's improper inflated rates and tax-credit violations and his efforts to bring VITELCO into compliance with its regulatory and contractual obligations made Donastorg a Prosser enemy, as demonstrated by the fact that Prosser through his agents sent a letter to VITELCO employees telling them not to vote for Senator Donastorg. Prosser's influence on The Daily News was obvious from the way it selectively failed to report on negative stories about ICC, VITELCO, and Prosser's companies and painted those companies in a positive light while

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publishing and slanting the news stories against Senator Donastorg. The Daily News' malice was the result of the actions Senator Donastorg took against VITELCO. (RSOF ¶4.B.2.)

Will Jones, the St. Croix Bureau Chief of The Daily News, admitted to Senator Donastorg that Prosser, Crouch, and VITELCO had a "hands on" approach in running The Daily News and placed undue pressure on the reporters. ICC/VITELCO accounting manager, Elizabeth Coggins testified Prosser was vindictive—he "would get hard feelings"—and that it was widely and publically known that Senator Donastorg was a Prosser enemy. (RSOF ¶4.B.2.) Will Jones admitted that Ed Crouch offered to pay him extra money to manufacture a false story about a supposed police cover up of Senator Donastorg firing a gun and causing a disturbance, and when Will Jones refused, he was ostracized and removed as Bureau Chief. The Daily News Reporter, Tim McDonald, also testified under oath at his own trial that, "Lowe and Jason continually demeaned [Senator Donastorg], insulted him. They called him an idiot, and they made fun of him, and were very demeaning in general to him. They called him corrupt and incompetent."

When Senator Donastorg leveled charges against Prosser, ICC and VITELCO over the improper tax breaks and unfair rates, The Daily News published an article painting Senator Donastorg in a false light by falsely accusing him of making personal attacks against individuals without documentation to support the false claim that Senator Donastorg was also falsely attacking Prosser, ICC, and VITELCO. Robbins Deposition Exhibit 53 is a November 1, 2000 article written by Susanna Henighan headlined "Donastorg, IDC director wrangle over accusations of abuses." The story states that Senator Donastorg has charged that the IDC Commission Director, Frandelle Gerard, used her position to solicit donations from Caneel Bay for the St. Croix Foundation for Community

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Development, which she chairs, but that "Donastorg failed to produce any documentation to back up his accusations, and on Tuesday, he would not return calls to his office requesting further comment on the information." The story goes on to say that "Donastorg's letter is the latest in a long and often personal attack on the IDC and Gerard," and falsely implies that Donastorg's allegations that Gerard has not penalized any IDC beneficiaries since becoming Director in April of 1999 were untrue when, in fact, Gerard had admitted to The Daily News that these allegations were true. (RSOF ¶4.B.2.)

The story makes the false claim that Donastorg: (1) made false, unsupported allegations against the IDC Director; (2) was asked for but failed to produce documents by The Daily News; and that (3) he was called, but "refused" to respond to accusations that he had made false and unsupported claims and personal attacks against Gerard. It was absolutely a false statement that Senator Donastorg did not have documents to back up his allegations. Senator Donastorg was also not making unsupported "personal attacks" against Gerard; he was questioning the practices of an instrumentality of the government and Gerard's role in her official capacity, and falsely calling the attack "personal" was done for the purpose of painting Senator Donastorg in a bad light. (RSOF ¶4.B.2.)

Importantly, Robbins' Deposition Exhibit 64 ("ICC, Donastorg square off over Vitelco tax breaks") evidences that, "Donastorg's office on Thursday actually provided The Daily News with a copy of the VITELCO employee list which his spokesman said was the list Donastorg was operating from," and the list showed "current employees who crossover work for multiple companies." In other words, The Daily News had actual knowledge that Donastorg: (1) actually had documents supporting his allegations against the IDC and VITELCO; and (2) had already actually produced

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these documents to The Daily News to support his claims against IDC referenced in Donastorg's letter to the Governor. As of June 9, 2000, Senator Donastorg had provided The Daily News with documentation indicating just as he was claiming, that VITELCO's list of employees was incorrect. Senator Donastorg's press releases, which The Daily News had in its possession, also showed that Senator Donastorg had documentation that VITELCO was receiving tax benefits while violating a tax-break requirement regarding the number of employees it had to employ. Robbins could not adequately explain why The Daily News did not think that VITELCO violating its permit by failing to employ the requisite number of employees was newsworthy and why it falsely accused Senator Donastorg of making "unsupported accusations" when it had those very same documents in its possession. Cumbermack admitted that there were times when VITELCO was not in compliance with the IDC agreement and that the companies shared payroll and employees and administration expenses. Nevertheless, Redfield was issuing false press releases effectively calling Senator Donastorg a liar and claiming Senator Donastorg was after confidential employee information and wanted to release it to the public without doing any investigation into the facts. (RSOF ¶4.B.2.)

Moreover, Donastorg's actual charge made in a letter to the Governor of the Virgin Islands was that he, himself, had asked for public documents from the IDC director to back up VITELCO's support for tax exemptions, but that "Ms. Gerard has made it her personal mission to withhold these records in order to protect VITELCO and ICC from scrutiny." Davis admitted that The Daily News had a copy of the letter. It was simply false to state that Donastorg made a false charge unsupported by documents when Donastorg's *basic complaint was that the IDC director was the one withholding documents* to protect VITELCO and ICC; it was also independently false that Donastorg had refused

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to produce documents supporting his claim as demonstrated by Robbins Deposition Exhibit 64 because he had actually given The Daily News the documents about the IDC tax breaks. (RSOF ¶4.B.2.)

To make matters worse, Robbins claimed The Daily News writer, Susanna Henighan, called Donastorg and asked for an explanation but that he refused provide any. Robbins admitted that before writing down ~~that~~ a person refused to return phone calls, they would first have ~~to~~ be called and given an opportunity to respond. Although Robbins claims Donastorg “could have returned calls” to clear up the misconception about Donastorg’s failure to produce documents, Robbins admits that The Daily News had actual knowledge that Donastorg had tried to get *additional* documents for the IDC but was stymied and that it even wrote a story that Senator Donastorg had filed a mandamus action and about his attempts to get the documents. Robbins claims it is “fair” to expect public figures to be on-call to answer their questions “24/7” and “day and night” and speciously claims that he doesn’t see the difference between reporting that Senator Donastorg “wouldn’t return phone calls” and “didn’t return phone calls.” (RSOF ¶4.B.2.)

On November 4, 2000, Senator Donastorg wrote Henighan a letter showing how false and misleading the November 1, 2000 article about the “failure to produce documents” was and that the assertion that Senator Donastorg refused to return her telephone calls was a “bold faced lie.” Henighan had left a voice message at 8:00 p.m.—substantially after hours—and Henighan had made no effort to reach Senator Donastorg’s office during business hours before the story ran. Senator Donastorg requested a clarification of this misrepresentation within 72 hours but one never came. Robbins has no basis to dispute Senator Donastorg’s version of events. Davis claimed in her letter

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that placing an after hours phone call immediately before the story runs is sufficient to represent that Senator Donastorg "would not" return phone calls although ethical standards of journalism provide otherwise. (RSOF ¶4.B.2.)

Rather than publishing a retraction, Davis wrote a letter to Donastorg confirming that the reporter did not call Senator Donastorg's office until after hours. Robbins admitted that the "chronology" indicated that the paper was ~~working~~ on the story for three days and had been working with the people accused of wrongdoing to get their side of the story for three days before it ran and that Senator Donastorg's office should have been contacted earlier, during regular business hours, even though Senator Donastorg's input was a "necessary part of her story." Nothing in Davis's letter suggests that The Daily News ever asked Senator Donastorg to produce documents. (RSOF ¶4.B.2.)

Davis was questioned at length over these factual misrepresentations and why the article was presented in this way and she was evasive, defensive, and could not adequately explain the basis for any of The Daily News' factual misrepresentations. Thus, the evidence shows that The Daily News knowingly made false reports when it claimed: (1) Donastorg made false allegations and that these allegations were made without documentary support; (2) that Donastorg was asked to produce documents when the basic nature of his claim was the IDC's improper withholding of documents; and that (3) Donastorg has "refused" to respond to The Daily News when it asked for his documentary support based on one after-hours phone request for documents that Donastorg had provided to The Daily News months earlier. (RSOF ¶4.B.2.)

The primary principals charged with defending VITELCO by attacking Senator Donastorg were Holland Redfield, Lowe Davis, and Ed Crouch. John Tutein, an ICC employee, also

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approached Senator Donastorg and told him that if he would stop attacking VITELCO, they would build a library for him on the East End; he threatened that the alternative was The Daily News running negative personal stories about him. Thus, when Senator Donastorg brought a conflict of interest between Frandelle Gerard and her charities and her position as Director of the IDC to light, The Daily News made good on its threat by printing this story that painted Senator Donastorg in a false and bad light because of the Gerard's role in covering for VITELCO. This is corroborated by the fact that The Daily News published a false VITELCO press release that Senator Donastorg was improperly seeking private employee information, but ignored Senator Donastorg's press releases about actions he was taking against ICC and its tax evasion. Davis admitted that The Daily News did not report on any aspect of the story that Prosser and ICC had outrageously investigated Senator Donastorg's personal life and invaded his privacy although the other Virgin Islands papers gave it front-page coverage. (RSOF ¶4.B.2.)

RSOF ¶4.B.3 shows that on June 12, 2001 The Daily News published a story that falsely claimed Donastorg "ironically" "voted no" on a bill he proposed to, among other things, reduce the number of V.I. Senators. Davis admitted there is no attribution to a source for the story and that no one contacted Senator Donastorg to verify the story. The Daily News admitted that the vote was a matter of public record and that it falsely reported that Senator Donastorg voted against his own bill when he did not. The "news story" also claimed that, "the strategy of members of the Senate majority is to pass the bill through the Government Operations and Rule committees to force all Senators to take a stand on the legislation to the full Senate." Senator Donastorg called The Daily News and told them the story about him voting against his own bill was false. (RSOF ¶4.B.3.)

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The Daily News admitted that the representation that Donastorg had voted against his own bill was factually false when made and that it did not contact Donastorg to verify the accuracy of this factual misrepresentation. Senator Donastorg specifically asked Hal Hatfield—the reporter who admitted he could get a bonus for writing negative information about Senator Donastorg—who his source was for the false statement about Senator Donastorg voting against his own bill, and Hatfield could not identify any particular person as the source. Given the hatred Prosser, IGC and The Daily News had for Donastorg and the threats to file false stories and its request to reporters to file false stories about Donastorg, this false story was intentional. (RSOF ¶4.B.3.)

The Daily News refused to retract the false story or rewrite the story because of the seriousness of the false statement contained in the original story. Robbins admitted that a full retraction of a story would merit the same play and should be kept on par with the original story. The Daily News later printed a correction in a small box on page two. The correction states that the source of the factual inaccuracy was a staffer and not the Committee Chairman. In fact, constituents were calling Donastorg about the article and were angered and confused as to why he purportedly voted against his own bill, which demonstrates the defamatory sting of the false article. It was malicious that the “correction” was placed so inconspicuously when the false article was prominent and caused him such bad publicity. (RSOF ¶4.B.3.)

RSOF ¶4.B.4 shows that, on February 6, 2002, The Daily News published a “news story” about a foreclosure action that was dismissed before it was even served on Senator Donastorg because it was filed based on a bank error. Despite that, in the article, The Daily News falsely claimed that Senator Donastorg was going to be “finding himself looking for a new place to live.”

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The Daily News also reported false facts about what Senator Donastorg owed and the terms of his mortgage. The Daily News falsely reported or implied that Senator Donastorg could not pay off his mortgage or meet his monthly obligations. Moreover, although The Daily News wrote about Senator Donastorg's erroneous foreclosure action, it selectively ignored an actual foreclosure action brought against Jeffrey Prosser's friend Senator Rocky Liburd, who was supporting the "Prosser Plan." (RSOF ¶4.B.4.)

Davis could not adequately explain why an unverified, unsupported foreclosure action against the Senator was even newsworthy. Davis testified falsely that The Daily News, in fact, wrote a follow-up story about the dismissal of the action, but The Daily News never produced such an article because it was never written. The Daily News should have written a follow-up article about the dismissal of the action, but it did not because of its malice against Senator Donastorg. (RSOF ¶4.B.4.)

RSOF ¶4.B.5 shows that while Redfield was V.P. of Corporate Affairs, there was a "bewilderment" and "tension" at ICC over Senator Donastorg's positions with respect to VITELCO and ICC, utility rates, the PSC, and various rate and regulatory matters. In several false press releases or quotes Redfield made to the St. Croix Avis, Redfield made the unsupported accusation that Senator Donastorg was telling, "outright lies" and that ICC was an innocent victim in attacks over surcharge issues. Redfield also admitted that he went on Sam Topp's radio show on or around October 2, 2002 to try and explain about the privacy-invading investigation into Senator Donastorg. He introduced himself as "Senator Redfield and ICC." Redfield told Topp the investigation occurred in 1998 and that "the victim in this situation is not Senator Donastorg, its

ICC,” because Senator Donastorg for years had made slanderous statements against Prosser and was also “questioning and attacking.” Redfield, in his deposition, could not actually state any “slanderous statements” Senator Donastorg had made against Prosser. (RSOF ¶4.B.5.)

On the radio, Redfield falsely claimed that the investigation related to an “alleged event that took place, back in—in that time period where it was alleged that he had flown on an AT&T aircraft down to a jazz festival.” Redfield admitted he did not have any information that Senator Donastorg flew on an AT&T jet to a jazz festival, but he nevertheless stated, “This is what instituted the investigation.” Redfield falsely claimed on the radio that the investigation was “non-routine,” despite the fact that Prosser was investigating all his enemies. Redfield admitted in his deposition that the fact of the investigation was supposed to be a secret. (RSOF ¶4.B.5.)

On the radio, Redfield also falsely claimed that the investigation was justified because Senator Donastorg was “extremely close” to “this Georgetown group” that was evaluating the company. He admitted in his deposition that the events he was describing on the radio occurred after the report was completed. Redfield—without any factual basis—also accused Senator Donastorg of using information obtained by “our competitors” against ICC and VITELCO. On the radio, Redfield stated that, “The report was done to basically find out whether there was some relationship that was developed between our competitors and [Senator Donastorg], to the detriment of the company.” Redfield represented that there was “absolutely nothing” to any of Senator Donastorg’s allegations, and that Senator Donastorg just wanted to “destroy the livelihoods of over four hundred and some employees, and put in jeopardy a utility [ICC] in the Virgin Islands.” Redfield could not articulate a factual basis to make these representations in his deposition and admitted that he was now

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“following the story” that Prosser had actually siphoned off millions and millions of dollars for the utility. Redfield misrepresented on the radio that Senator Donastorg was leveling charges either to benefit ICC competitors or because he was simply mean-spirited. Redfield admitted he had no facts that Senator Donastorg was in bed with ICC’s competitors. Redfield said on the radio that, Senator Donastorg was a “mean-spirited individual who was trying to destroy a company,” to “seek votes or to gain sympathy from the public,” but admitted he did not have any facts to support that statement either. Redfield admitted he was talking about Senator Donastorg wanting to destroy “all the [ICC subsidiary] companies.” Redfield claims he asked to see the investigation report on Donastorg before he went on the air, but “they said it was confidential,” so he did not actually know what it said or what its purpose was. (RSOF ¶4.B.5.)

Redfield falsely told the public that the purpose of the investigation was to look for an AT&T connection with Senator Donastorg and that it was “professionally done”; but in his deposition Redfield claimed that he did not actually know why they conducted the investigation or who even conducted it. In fact, no one ever asked Sheraw to investigate whether Senator Donastorg had ever been transported on an AT&T plane. Redfield also admitted that he had no evidence and conducted no investigation into whether Senator Donastorg had any relationship with AT&T. Redfield commented on the investigation in his capacity as V.P. of Corporate Affairs. (RSOF ¶4.B.5.)

Although Redfield was speaking in his corporate capacity as V.P. of Corporate Affairs, in his deposition he was pressed on where he got his information about the privacy-invading report, but he stammered repeatedly that he “can’t recall” talking to anybody about the purpose of the investigation. Then he admitted he talked to Prosser about it, but continued to evade questions about Prosser’s role

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in the investigation and its purpose. Redfield then admitted no facts were disclosed to him that revealed any connection between Senator Donastorg and AT&T: "none." The AT&T allegation was just something "that was bantered around" . . . "just within the company" . . . and "many places," . . . "well, not many places," . . . "I heard it," . . . "I don't recall," . . . meh, "I don't recall. I don't recall." (Redfield Dep. 133.) Redfield finally admitted he did nothing to verify any connection between Senator Donastorg and AT&T or a plane trip and he was not aware of any facts to support the allegation. Regarding the AT&T connection, Redfield admitted that he went on the air with the allegation without a "shred of evidence" to support that statement—he couldn't even identify where the "allegation" came from. (RSOF ¶4.B.5.)

Redfield made these statements knowing how easy it is to ruin a person's reputation in a small community. Redfield admitted that he did not care whether his statements on the radio ruined Senator Donastorg's reputation in the community. Redfield admitted that he made the AT&T accusation without calling Senator Donastorg to get his side of the story. (RSOF ¶4.B.5.)

The evidence and testimony supports Senator Donastorg's testimony that Redfield, while acting in his corporate capacity on behalf of ICC and its subsidiaries, including The Daily News and VITELCO, defamed him. Redfield falsely called Senator Donastorg a liar and accused him of slandering Prosser. Redfield's radio broadcasts with negative statements were timed to correspond with negative "news stories" and editorials coming out in The Daily News. Redfield, while speaking on behalf of VITELCO, defamed Senator Donastorg on the radio by claiming that Donastorg received improper AT&T perks, like riding on an AT&T aircraft. The Prosser, VITELCO, Redfield, Davis, and Crouch, cabal threatened, by actions and words, that The Daily News would write

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negative, personal stories about Donastorg unless he worked to maintain a "better relationship" with them and that's exactly what happened when Senator Donastorg refused the carrot. (RSOF ¶4.B.5.)

Ed Crouch had access to the privacy-invading report as editor of The Daily News. Redfield coordinated the attacks and defamed Senator Donastorg by publishing false stories that Senator Donastorg was maligning Prosser's companies and launching false and baseless attacks in coordination with The Daily News Stories. Senator Donastorg did not take a trip to St. Lucia on an AT&T plane and Redfield's publication of this information on the Sam Topp Show and repeatedly to others was false. Redfield spread lies that Senator Donastorg was "in bed with" AT&T and accused Senator Donastorg of lying about taking perks from AT&T. Redfield also falsely claimed that Senator Donastorg was fiscally irresponsible in his personal affairs without any basis to make the claim. (RSOF ¶4.B.5.)

Redfield's defamatory and false-light publications damaged Senator Donastorg and caused members of the public to approach him about his "corruption" and his being in bed with AT&T. Members of the public called Senator Donastorg's office about Redfield's radiobroadcast and some believed his false accusations of corruption. The false charges cost Donastorg the gubernatorial election in 2006. The privacy-invasive investigation and the defamatory tactics gave Senator Donastorg acid reflux and caused him to live in fear. The public needed to know the extent Prosser and his companies would invade someone's privacy to intimidate them, and there is a difference between a person's public and private life, so despite his fears, Senator Donastorg went public with the report. (RSOF ¶4.B.5.)

RSOF ¶4.B.6 shows that The Daily News printed a series of articles about a professional

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boxing match that took place in late 2003. Senator Donastorg was one of many politicians who thought that a globally televised sporting event would be good for the Virgin Islands and help promote sports tourism. In this series of articles, The Daily News—at every turn—falsely pushed the idea that it was Senator Donastorg's sole idea to earmark \$300,000 from the Tourism Revolving Fund for the boxing match, and then painted Senator Donastorg in a false, negative light by falsely claiming that there was not actually going to be a boxing match; that ESPN (or any other network) was not going to televise the event; that there was no venue; and that if it ended up in Lionel Roberts Stadium, ESPN was not going to cover it. The evidence shows that The Daily News tied Senator Donastorg to the boxing match and reported that it was not going to go forward and ran negative stories about it; but when positive actions resulted from the match, The Daily News did not mention his name and gave others credit for the success. The series of articles The Daily News printed on the boxing match, when viewed together, were designed to: (1) set Donastorg up as the fall guy for the \$300,000 if the event failed; (2) exclude him from positive coverage for the event if and when it succeeded; and (3) slam him as being solely responsible for the \$300,000 earmark regardless of whether it succeeded. (RSOF ¶4.B.6.)

First, it was false and materially misleading to target Senator Donastorg as the only proponent of the boxing match and solely responsible for the \$300,000. Davis admitted that Seven Senators and the Governor had to sign the \$300,000 appropriations bill. (RSOF ¶4.B.6.) Second, The Daily News had a policy that it would tell reporters if there were going to be substantial changes to a story by editors to ensure fairness and accuracy in the news article. Tim McDonald was The Daily News sports writer who was assigned to cover the lead-up to the boxing match. A story McDonald wrote

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that was ultimately published on May 30, 2003, did not have anything to do with Senator Donastorg or the \$300,000 appropriation. Nevertheless—although Davis falsely denies it, which shows consciousness of wrongdoing—Davis changed the lead in the story about the boxing match and left McDonald's byline on it. Davis inserted a paragraph that emphasized that Donastorg was the Senator who "pushed" for a \$300,000 appropriations bill. Davis completely changed the content of the first two paragraphs by adding two new paragraphs. McDonald testified that, "in the 20 years of journalism, I've never had that happen." (RSOF ¶4.B.6.)

In addition to writing a new lead, Davis changed other parts of the story. "The meaning was changed. The context was changed. Everything was changed." "I didn't mention Donastorg's name at all in the story." Davis inserted Senator Donastorg into the story when "he had nothing to do with the story." Davis also changed the story to falsely claim that, "Donastorg did not return Daily News telephone calls requesting comments about the status of the bout," because McDonald—the supposed author of the story—never contacted Senator Donastorg and did not turn in a story with his name in it. (RSOF ¶4.B.6.)

McDonald testified the new article was offensive and disparaging to Senator Donastorg because it claimed he "pushed" for a \$300,000 appropriation for an event that the story claimed "will not happen" as scheduled. The original thrust of the article was that there had been a simple schedule change. The Daily News tried to force McDonald to sign a false affidavit that he was the sole author of the story and that Davis, consistent with established procedures, simply edited the story, when, in fact, Davis radically altered the story. When McDonald refused to back down, The Daily News fired McDonald and sent thugs to his home with billy clubs and his picture to intimidate

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him. (RSOF ¶4.B.6.)

The Daily News then falsely reported there was no ESPN contract in place and that there would not be a championship fight. In fact, there was no actual uncertainty that a promoter would provide the event. Sterling McPherson confirmed that the information contained in The Daily News article was false and that he had provided contrary information to The Daily News. The Daily News intentionally created false allegations about the match it claimed Senator Donastorg was spearheading. The Daily News also reported that there was no heavy weights scheduled but omitted that there was a big Sugar-Ray-Leonard backed welterweight card. The Daily News also falsely reported that Senator Donastorg was directly negotiating with the promoters and the facility for contract rights, which would have been an improper conflict of interest and was simply false. McDonald admitted to Senator Donastorg that Davis had manipulated the story. The statement that there was "no TV coverage scheduled despite promises when Donastorg got V.I. to appropriate \$300,000" is blatantly misleading because while there was no contract in place, they were simply negotiating over the terms of the contract; the fact of TV coverage was not in doubt. The boxing article quotes McPherson as saying, "its all up in the air right now," but McPherson's and McDonald's testimony show that The Daily News deliberately misquoted McPherson. The article was false in that McPherson was misquoted and Davis omitted information to place Senator Donastorg in a false, bad light. In contrast, when The Daily News ran positive stories about the Boxing Match, Senator Donastorg's name was not included. (RSOF ¶4.B.6.)

For example, the November 7, 2003 article, Robbins Deposition Exhibit 104, is a positive article about Sugar Ray Leonard coming to promote the fight. Robbins could not explain why

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Senator Donastorg was not mentioned in this article if he was the primary person to “push” the fight and the \$300,000 appropriation. Compare this with Robbins Deposition Exhibit 105, which ran a few days earlier, which rips the Senator for the \$300,000 appropriation for a “boxing matching that may or may not persuade tourists to visit islands,”; and Robbins Deposition Exhibit 108, which ran the same day, and focuses on the uncertainty of the event and the fact that Senator Donastorg “sponsored the amendment” for the appropriation; and with Robbins Deposition Exhibit 110, which ran a few days later, that describes Senator Donastorg as the “point man” of the event when the story is about “no contract yet for V.I. card.” Robbins could not adequately explain why Senator Donastorg was singled out for the negative press and why his name did not appear in the positive articles. (RSOF ¶4.B.6.)

Despite the false news reports that the event was doomed, it was a huge success. Nevertheless, after it was over, The Daily News wrote another false article about the match and Senator Donastorg to place him in a false, bad light and that contained false, defamatory statements about Senator Donastorg, including that Senator Donastorg had taken money from the tourism fund solely for an “ego trip”; that Senator Donastorg had intentionally used false or inflated statistics to validate the \$300,000 appropriation; and that the \$300,000 appropriation was “wasteful.” Neither Robbins nor Davis had any facts that support the assertion in Robbins Deposition Exhibit 122 that Senator Donastorg had taken money from the tourism fund for an “ego trip”; that Senator Donastorg himself had used false or inflated statistics to validate the wasteful spending of \$300,000; or that the \$300,000 appropriation was even wasteful. (RSOF ¶4.B.6.)

Robbins admitted that, under journalistic ethics, news stories must be fair and accurate.

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Robbins also admitted News stories must not “take sides” and must be presented impartially. The Daily News obviously failed to comply with these journalistic standards with respect to the boxing match. (RSOF ¶4.B.6.)

RSOF ¶4.B.7 shows that, on March 1, 2004, The Daily News ran a news story critical of Senator Donastorg and that falsely accused him of using the GERS to advance his re-election efforts, “even if it hurts the pensions of thousands of current and future V.I. Government employees.” The “news” article falsely reported that Senator Donastorg had “no support from anyone else in the legislature” and was guilty of “pre-election politicking.” The article misquotes Senator Donastorg in a defamatory way, who never indicated that unless the agency must “do it my way or I’ll get rid of you,” and, in fact, this was never one of his “hallmarks.” Senator Donastorg is, himself, a businessman, and he’s never been “anti-business,” and he did not take any actions designed to “cripple” the Virgin Islands economy. Senator Donastorg has no problems managing his own finances and he does not have any role in managing the Government’s finances. Senator Donastorg at no point used GERS to advance his reelection efforts. The Daily News falsely reported that GERS was under an imminent threat of collapse and falsely implied that Senator Donastorg was responsible for an immanent collapse. (RSOF ¶4.B.7.)

Robbins did not have any facts to support the defamatory assertion that Senator Donastorg was using the GERS to advance his re-election efforts or the other misrepresentations in the news story. Davis admitted that she had no facts that supported these assertions either. The claim that Senator Donastorg was playing politics with GERS to advance his re-election efforts, “even if it hurts the pensions of thousands of current and future V.I. Government employees,” is false and

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defamatory. The Article also makes a number of false factual assertions that GERS was “underfunded by \$1 billion” and about the way interest calculated in an effort to put Senator Donastorg in a false, bad light. The article also attributed to Senator Donastorg statements in quotes that he did not make—*i.e.*, that “GERS should ‘be happy to pay out (the 4 percent interest compared to what they would owe any employee that chooses to retire in the system,)”—to additionally defame him and paint him in a bad light. (RSOF ¶4.B.7.)

RSOF ¶4.B.8 shows that The Daily News published an article on April 6, 2004 that improperly and falsely claimed Senator Donastorg had “problems managing his personal finances,”—which is a defamatory statement of fact—and that Senator Donastorg had been “unable to pass a territorial budget for fiscal year 2004,” when it was the Governor’s job to pass the budget. Robbins admitted that Senator Donastorg is the Senator referenced in the article and the primary target of the article’s attacks and that there was no factual basis for the accusation that Senator Donastorg has “problems managing he personal finances” or that he was responsible for failing to pass the territorial budget. Davis admitted she had no facts to support these assertions. In fact, Senator Donastorg did not have any problems managing his personal finances whatsoever: “that is totally erroneous.” (RSOF ¶4.B.8.)

RSOF ¶4.B.9 shows that on August 30, 2004 The Daily News published an article about a bill sponsored by Senator Donastorg to increase criminal penalties for animal cruelty. Nevertheless, the gist of the article is that Senator Donastorg sponsored a bill that “specifically excludes cockfighting” from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. Robbins admitted that The Daily News has no facts to support anything in

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the article, and Senator Donastorg simply moved a bill that was sponsored by the Humane Society to reduce animal cruelty in a form that was the most aggressive that they believed could be passed in the legislature. The Daily News had no basis to claim that Senator Donastorg supported cockfighting. (RSOF ¶4.B.8.)

II. Standards

A. Summary Judgment Standards

A party against whom relief is sought may move for summary judgment, with or without supporting affidavits, on all or part of a claim.³ The judgment sought should be rendered only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.⁴ According to the Virgin Islands Supreme Court, the court: (1) may not weigh the evidence or determine the credibility of witnesses; (2) it must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported; and deny summary judgment—a drastic remedy—when the non-movant presents actual evidence amounting to “more than a scintilla, showing a genuine issue for trial.”⁵ The court may only grant summary judgment “when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact.”⁶ Finally, a court cannot, consistent with due process, grant summary judgment on an issue or ground

³ See FED. R. CIV. P. 56(b).

⁴ See FED. R. CIV. P. 56(c)(2); *Conoshenti v. Pub. Serv. Elec. & Gas Co.*, 364 F.3d 135, 140 (3rd Cir. 2004).

⁵ See *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527-28 (V.I. 2013).

⁶ See *id.*

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not raised in the motion without first providing the nonmovant with advance notice of the issue and a full and fair opportunity to respond.⁷

Additionally, courts should be cognizant that, “different inferences might be drawn from the evidence presented in the record. On summary judgment, however, when viewing the sufficiency of the [evidence], our role is not to act as factfinder. Instead, we must consider the evidence taken in the light most favorable to the non-movant and determine whether the evidence is [sufficient to support the non-movant’s case].”⁸ One definition of a “fact finding” itself is just a fact-finder’s “conclusion by way of reasonable inference from the evidence,”⁹ and “the jury may draw whatever reasonable inference or inferences that flow from” the evidence presented in the record.¹⁰ The U.S. Supreme Court recognizes that “facts” themselves are a product of inference and reflection based on an opinion of what more basic facts imply.¹¹ In contrast, inferences from evidence are only impermissible when they are based solely on “surmise,” “speculation,” and “conjecture,” and the

⁷ See, e.g., *United Corp. v. Tutu Park, Ltd.*, 55 V.I. 702, 711 (V.I. 2011) (citing *Cool Fuel, Inc. v. Cornett*, 685 F.2d 309, 311-12 (9th Cir. 1982) (holding that court may *sua sponte* enter summary judgment against the party who moved for summary judgment, but only if that party has had a fair opportunity to dispute that issue); *Ramsey v. Coughlin*, 94 F.3d 71, 73-74 (2d Cir. 1996) (holding that, though trial court may in some circumstances raise issue of summary judgment *sua sponte*, “[s]ummary judgment should not be granted ... unless the losing party has been given an opportunity to demonstrate that there are genuine material issues for trial.”) (quoting *Hispanics for Fair and Equitable Reapportionment v. Griffin*, 958 F.2d 24, 25 (2d Cir. 1992)).

⁸ See *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 286 (3d Cir. 2000).

⁹ See *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 164 (1988) (citing *Black’s Law Dictionary* 569 (5th ed. 1979)).

¹⁰ See *Waters v. Genesis Health Ventures, Inc.*, 400 F. Supp. 2d 814, 820 (E.D. Pa. 2005).

¹¹ See *Beech Aircraft Corp.*, 488 U.S. at 168-69 (citing E. Cleary, *McCormick on Evidence* 27 (3d ed. 1984) (“There is no conceivable statement however specific, detailed and ‘factual,’ that is not in some measure the product of inference and reflection as well as observation and memory”); R. Lempert & S. Saltzburg, *A Modern Approach to Evidence* 449 (2d ed. 1982) (“A factual finding, unless it is a simple report of something observed, is an opinion as to what more basic facts imply”).

Court must view the *record evidence as a whole* to determine whether any view of the evidence can support reasonable inferences in favor of the non-movant.¹²

To determine whether there is a genuine issue for trial, courts analyze the evidence in the context of the substantive law governing the cause of action.¹³ To determine an unsettled principle of Virgin Islands common law, as established in *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 981-84 (V.I. 2011), or when confronted with a common-law issue that the V.I. Supreme Court has not resolved—or that has been addressed only through erroneous reliance on former 1 V.I.C. § 4—courts must “engage in a three-factor analysis: first examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands.”¹⁴

I. Argument

A. The Daily News and J. Lowe Davis are jointly and severally liable for all the transactions and occurrences at issue in this suit along with all the other defendants, including Redfield, because they acted in concert in the furtherance of a common scheme, plan, or design, and were part of a joint enterprise.

1. Defendants failed to move for summary judgment on the issue of concerted action, intrusion-into-seclusion or false-light invasion of privacy, or Redfield's slander and defamation.

¹² *E.g., Fireman's Fund Ins. Co. v. Videfreeze Corp.*, 540 F.2d 1171, 1179-81 (3d Cir. 1976) (trial judge erred in analyzing an expert's testimony in isolation in from the record as a whole in connection with a Rule 50 motion, and noting that much of the supporting evidence “cuts both ways,” or could be viewed differently by reasonable jurors).

¹³ *See Machado v. Yacht Haven U.S.V.I.*, 2014 V.I. Supreme LEXIS 51, at *5-8 (V.I. Oct. 16, 2014).

¹⁴ *See Better Bldg. Maint. of the V.I., Inc. v. Lee*, 60 V.I. 740, 757 (V.I. 2014) (citing *Gov't of the V.I. v. Connor*, 60 V.I. 597, 603 (V.I. 2014)); *see also Walters v. Walters*, 60 V.I. 768, 777 n.11 (V.I. 2014) (“[W]e recently explained [in *Connor*] that the Superior Court is not bound by this Court's ‘prior erroneous reliance’ on 1 V.I.C. § 4.”).

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The V.I. Supreme Court recognizes the doctrine of "acting in concert" or "aiding and abetting," even for purposes of imposing criminal liability, and that the law itself "recognizes that ordinarily, anything a person can do for himself or herself may also be accomplished through the direction of another person, as his or her agent, *or by acting in concert with, or under the direction of another person or persons in a joint effort or enterprise.*"¹⁵ The V.I. Supreme Court, thus, expressly, and broadly, recognizes "alter-ego," "joint-enterprise," and "concerted-action" theories as viable under the law,¹⁶ which includes theories like that articulated in § 876 of the RESTATEMENT (SECOND) OF TORTS:

For harm resulting to a third person from the tortious conduct of another, one is

¹⁵ See *Nanton v. People of the Virgin Islands*, 52 V.I. 466, 484-85 (V.I. 2009) (emphasis added).

¹⁶ See *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484-495 (3d Cir. 2001) (discussing similarities and differences between "alter ego," "joint or common enterprise," "co-employer," and "direct" liability for employment torts and officers, agents, parents, and subsidiary corporations); *Graves v. Lowery*, 117 F.3d 723, 728 (3d Cir. 1997) (using the terms "co-employer" and "joint-employer" interchangeably and applying the control test to determine whether a person is in an employment discrimination case); *N.L.R.B. v. Browning-Ferris Indus. Of Pa., Inc.*, 691 F.2d 1117, 1123 (3d Cir. 1982) (discussing "joint" or "co-employer" liability in employment cases); *Shillingford v. Hess Oil of the Virgin Islands*, No. 98-232, 2009 U.S. Dist. LEXIS 53371 at *13-15 (D.V.I. June 18, 2009) (ruling that other factors, such as an employee's expectations, while not dispositive, are relevant to the inquiry); *Schwab v. McDonald* (In re I. McD, LLC), 405 B.R. 555, 563 (Bankr. M.D. Pa. 2009) ("[I]n a 'reverse' piercing, assets of the corporate entity are used to satisfy the debts of a corporate insider so that the corporate entity and the individual will be considered one and the same.") (quoting *In re Mass*, 178 B.R. 626, 627 (M.D. Pa. 1995)); *Mendez v. HOVENSA, L.L.C.*, 49 V.I. 826, 836 (D.V.I. 2008) (ruling that the "control test" and the "joint employer doctrine" apply to the V.I. Wrongful Discharge Act and should be expansively applied to "ensure that the remedial purpose of the laws intended to protect workers are fulfilled," and that a person or entity may be a "joint employer" when he did the hiring and firing; (2) directly administered any disciplinary procedures; (3) maintained records of hours, handled the payroll, or provided insurance; (4) directly supervised the employees; or (5) participated in the collective bargaining process."); *Gateco, Inc. v. Safeco Ins. Co. of Am.*, Civ. No. 05-2869, 2006 U.S. Dist. LEXIS 50313 (E.D. Pa. July 24, 2006) (Where one corporation so dominates and controls another to the point where its separate existence is a sham, a court may pierce the corporate veil of the subservient corporation and hold that it and the dominant corporation are one.); *Hoffmann v. Dandurand*, 180 S.W.3d 340, 348 (Tex. App. - Dallas, 2005) (Considerations to be weighed before liability attaches under a single enterprise theory are: "(1) common employees; (2) common offices; (3) centralized accounting; (4) payment of wages by one corporation to another corporation's employees; (5) common business name; (6) services rendered by the employees of one corporation on behalf of another corporation; (7) undocumented transfers of funds between corporations; and (8) unclear allocation of profits and losses between corporations."); *Sleusman v. Brooks*, 32 Pa. D. & C.3d 187, 192-96 (Pa. Ct. Cm. Pls. 1984) (collecting cases and authorities on liability for "co-employer," or "joint" or "common" enterprise liability making each party liable for the conduct of the other members of the joint enterprise).

subject to liability if he: (a) does a tortious act in concert with the other or pursuant to a common design with him; or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself; or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.¹⁷

Here, Plaintiffs alleged throughout their Fourth Amended Complaint—and specifically in ¶¶ 10, 12, and 13—that all Defendants were acting in concert or in a conspiracy in a common scheme to defame and discredit and intimidate Senator Donastorg. Plaintiffs have also raised alter ego and joint enterprise in numerous previous motions, including motions to compel discovery on the relationships of the various subsidiaries to ICC. Neither The Daily News nor J. Lowe Davis moved for summary judgment on this issue.¹⁸ (Mot. 1-46.) Moreover, neither The Daily News nor J. Lowe Davis moved for summary judgment addressing in any way, shape, or form, Redfield's slander and defamation published, for example, on the Sam Topp show or in quotes in the *St. Croix Avis*, or the privacy-invading investigation and report into Senator Donastorg and his family's private affairs, or on any intrusion-into-seclusion or false-light invasion of privacy whatsoever. Thus, neither The Daily News nor J. Lowe Davis have demonstrated—or even attempted to demonstrate—how the facts and law show that they are entitled to judgment as a matter of law on these issues.¹⁹

¹⁷ See RESTATEMENT (SECOND) OF TORTS § 876 (1977).

¹⁸ The Daily News and Davis falsely claimed on Page 22 of its motion that Plaintiffs do not alleged that “The Daily News conducted the investigation, commissioned the investigation or took any part in the investigation,” but this is false because Plaintiffs repeatedly pleaded that all Defendants were acting jointly and in concert. Defendants did not move for summary judgment on this issue.

¹⁹ See FED. R. CIV. P. 56(a) (“A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”).

2. **The law and the facts independently show that The Daily News and J. Lowe Davis are liable for all of the conduct referenced herein under a number of concerted-action theories.**

RSOF ¶4.A shows: (1) that Prosser, owned, operated and controlled ICC, VITELCO, and The Daily News, and operated them in a joint and integrated fashion to achieve both his personal and business objectives; (2) Prosser and VITELCO used The Daily News to publish both editorials and news articles that furthered Prosser and VITELCO's interests pursuant to a common-scheme or plan; (3) in conjunction with RSOF ¶4.B, Prosser's interests included a carrying out a common goal, scheme or plan of, (a) unfairly and falsely slanting the news and editorials in favor of VITELCO and ICC to garner public support for the "Prosser Plan" and his other business interests, while at the same time, (b) discrediting any opponents of the Prosser Plan and opponents (Like Senator Donastorg) and dissuading them from challenging his veiled scheme to defraud Virgin Islands rate payers and taxpayers and loot employee pensions by defaming opponents, by painting them in a false light, and intimidating them through invasive, privacy invading tactics, if they would not accept bribes, kick-backs (effectively offering rivals a carrot or the stick); and (4) that at all material times, Prosser's agents like Oakland Benta and former Senator Holland Redfield acted as participants in the common scheme on behalf of Prosser and ICC's subsidiaries, including The Daily News. (RSOF ¶4.A & B.) Thus, even if The Daily News had moved for summary judgment on these issues, it would not be entitled to it.

B. Defamation

In the Virgin Islands, defamation contains the following elements: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at

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least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.²⁰ A statement is defamatory if, “it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him,”²¹ and the “falsity” of the statement also must go to the “gist” or “sting” of the defamatory statement.²² A defendant cannot use truth as a defense when, “the implication of the communication as a whole was false,” even if the statement is “literally accurate”—defamation may be established where a statement, viewed in context, creates a false implication.²³ A defamatory communication may consist of a statement in the form of an opinion if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.²⁴ Opinions that imply allegations of defamatory acts are themselves defamatory and actionable, and when the underlying facts are not disclosed that statement of opinion is, therefore, reasonably capable of a defamatory meaning.²⁵ A court must look to the “fair and natural meaning which will be given it by reasonable persons of ordinary intelligence,” and examine

²⁰ See *Chapman v. Cornwall*, 58 V.I. 431, 444 (V.I. 2013); see also *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 581-82 (V.I. 2012) (“This Court has adopted the basic elements for a claim of defamation set forth in the Second Restatement of Torts.”); *Kendall v. Daily News Publ’g Co.*, 55 V.I. 781, 787 (V.I. 2011) (quoting RESTATEMENT (SECOND) OF TORTS § 558 for the elements of defamation) (internal quotation marks omitted), *aff’d*, 716 F.3d 82 (3d Cir. 2013).

²¹ See *Graboff v. Collieran Firm*, 744 F.3d 128, 136 (3d Cir. 2014).

²² See *id.*

²³ See *id.*

²⁴ See RESTATEMENT (SECOND) OF TORTS § 566 (1977); *Avins v. White*, 627 F.2d 637, (3d Cir. 1980); see also *In Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

²⁵ See, e.g., *Nunavati v. Burdette Tomlin Mem. Hosp.*, 857 F.2d 96, 107 (3d Cir. 1988); *Redco Corp. v. CBS, Inc.*, 758 F.2d 970, 972 (3d Cir. 1985).

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the publication as a whole and in context,²⁶ to determine its likely effect on the reader, and the effect it is likely to produce, "in the minds of the average persons among whom it is intended to circulate."²⁷

A court may determine as a matter of law whether a statement is defamatory, assuming that it is capable of only one meaning.²⁸ When the words are capable of either a defamatory or non-defamatory construction the trier of fact must determine their meaning,²⁹ based upon three factors: (1) content; (2) verifiability; and (3) context.³⁰ The court must also look at the "sting" or "gist" of the defamatory meaning, and a defamatory statement need not specifically name the plaintiff, as long as the reference could be reasonably understood to refer to the plaintiff.³¹

A slander consists of the publication of defamatory matter through spoken words or gestures; a libel is defamation in print or physical form.³² One who slanders another is subject to liability although no special harm results if the publication imputes to the other a matter incompatible with her business, trade or profession.³³ One who publishes a slander that ascribes to another conduct,

26 See *Taj Mahal Travel v. Delta Airlines*, 164 F.3d 186, 189 (3d Cir. 1998).

27 See *Burton v. Teleflex Inc.*, 707 F.3d 417, 434 (3d Cir. 2013); see also *Tucker v. Fischbein*, 237 F.3d 275, 282 (3d Cir. 2001).

28 See *id.*

29 See *id.*

30 See, e.g., *McLaughlin v. Rosario, Bailets & Talamo, Inc.*, 331 N.J. Super. 303, 312 (App. Div. 2000); see also *Tucker v. Fischbein*, 237 F.3d 275, 282 (3d Cir. 2001).

31 See, e.g., *Taj Mahal Travel v. Delta Airlines, Inc.*, 164 F.3d 186, 189 (3d Cir. 1998); *McDowell v. Paiewonsky*, 769 F.2d 942, 946 (3d Cir. 1985); *Diikstra v. Westerink*, 168 N.J. Super. 128, 133, 401 A.2d 1118, 1120 (N.J. Super. Ct. App. Div. 1979).

32 See RESTATEMENT (SECOND) OF TORTS §§ 568(1) and (2) (1977); see also *Avirs v. White*, 627 F.2d 637, 643 (3rd Cir. 1980).

33 See RESTATEMENT (SECOND) OF TORTS § 570(c) (1977); *McDonald v. Davis*, 2009 U.S. Dist. LEXIS 17309, at *31-33 (D.V.I. Apr. 24, 2009).

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characteristics or a condition that would adversely affect his fitness for the proper conduct of her lawful business, trade or profession, is subject to liability without proof of special harm.³⁴

In “public figure” defamation cases, the First Amendment requires application of the rules espoused by the Supreme Court in *New York Times Co. v. Sullivan*.³⁵ Judges “must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars entry of any judgment that is not supported by clear and convincing proof of actual malice.”³⁶ In the context of summary judgment, however, where the trial court is prohibited from weighing evidence and making findings of fact, normal summary judgment standards apply.³⁷ Moreover, the First Amendment does not protect statements with “*provably false factual connotation[s]*” in any event.³⁸

In *Kendall v. Daily News Publishing*, the V.I. Supreme Court held that where the statements are uttered by a media defendant and involve matters of public concern, the burden of proving the falsity of each statement falls on the plaintiff.³⁹ Second, only statements that are “provable as false” are actionable; hyperbole and expressions of opinion not provable as false are constitutionally protected.⁴⁰ Finally, the Constitution “prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made

34 See RESTATEMENT (SECOND) OF TORTS § 573 (1977); *Sprauve v. CBI Acquisitions, LLC*, No. 09-165, 2010 U.S. Dist. LEXIS 92604, at 37 & n.9 (D.V.I. Sep. 2, 2010).

35 See *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 581-82 (V.I. 2012) (citing *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984)).

36 See *id.*

37 See *id.*

38 See *In the Matter of Disbarment of Rogers*, 60 V.I. 293, 303 (V.I. 2013) (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990)).

39 See *Kendall*, 55 V.I. at 788.

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with 'actual malice.'"⁴¹ Actual malice is a statement made "with knowledge that it was false or with reckless disregard of whether it was false."⁴²

According to the Virgin Islands Supreme Court, a "reckless disregard" for the truth ... requires more than a departure from reasonably prudent conduct."⁴³ There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.⁴⁴ The standard is a subjective one—there must be sufficient evidence to permit the conclusion that the defendant actually had a high degree of awareness of probable falsity.⁴⁵ In the Third Circuit's review of the *Kendall* case, it held that the "actual malice" standard applies to simple statements of fact that are defamatory on their face.⁴⁶ In defamation-by-implication cases, however, a plaintiff must show that the defendants were at least reckless in that they knew that the statements were likely implying a defamatory meaning and still made the statement despite their knowledge of that likelihood.⁴⁷

Plaintiffs note that Defendants expressly and implicitly argue throughout their brief that statements in editorials are, by definition, opinions, and that opinions are not actionable, relying on *dicta* in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) that the First Amendment "protects ideas."

40 *See id.*

41 *See id.*

42 *See id.*; see also *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510-11 (1991); *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

43 *See Kendall*, 55 V.I. at 788 (citing *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989)).

44 *See id.*

45 *See id.*

46 *See Kendall v. Daily News Publ. Co.*, 716 F.3d 82, 92-95 (3d Cir. 2013).

47 *See id.*

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The United States Supreme Court has since expressly rejected this proposition, however, and Defendants cited no case that says they are privileged to defame people in op-ed pieces.⁴⁸ To the contrary:

Thus, we do not think this passage from *Gertz* was intended to create a wholesale defamation exemption for anything that might be labeled "opinion." *See Cianci, supra*, at 62, n.10 (The "marketplace of ideas" origin of this passage "points strongly to the view that the 'opinions' held to be constitutionally protected were the sort of thing that could be corrected by discussion"). Not only would such an interpretation be contrary to the tenor and context of the passage, but it would also ignore the fact that expressions of "opinion" may often imply an assertion of objective fact. *If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar."* As Judge Friendly aptly stated: "[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.'" *See Cianci, supra*, at 64. It is worthy of note that at common law, even the privilege of fair comment did not extend to "a false statement of fact, whether it was expressly stated or implied from an expression of opinion." Restatement (Second) of Torts, § 566, Comment a (1977).⁴⁹ Apart from their reliance on the *Gertz* dictum, respondents do not really contend that a statement such as, "In my opinion John Jones is a liar," should be protected by a separate privilege for "opinion" under the First Amendment. But they do contend that in every defamation case the First Amendment mandates an inquiry into whether a statement is "opinion" or "fact," and that only the latter statements may be actionable. They propose that a number of factors developed by the lower courts (in what we hold was a mistaken reliance on the *Gertz* dictum) be considered in deciding which is which. But we think the "breathing space" which "freedoms of expression require in order to survive," *Hepps*, 475 U.S. at 772 (quoting *New York Times*, 376 U.S. at 272), is adequately secured by existing constitutional doctrine without the creation of an artificial dichotomy between "opinion" and fact.

48 *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (2009).

49 *See id.* at 18-20.

Moreover, even Robbins, the current head of The Daily News, recognized that there is not always a clear distinction between "opinions" and facts. Robbins, The Daily News' Rule 30(b)(6) representative, testified that statements like "The Daily News sets the standard here [in the Virgin Islands]" is not a statement of opinion, but is a statement that is "absolutely fact." (Robbins Dep. 93.)

Finally, Defendants' "discussion" of the publications that Defendants cited on pages 24-40 of their brief does not contain a "discussion" of any of the deposition testimony in this case or any additional cites to the record, other than to the articles. Defendants failed to specifically move on any specific element of defamation; apply the law to the facts; or "show" that they are entitled to judgment as a matter of law based on the record. Plaintiffs object to any factual representation that is not supported by a record cite.⁵⁰

1. Defendants acted with malice and the specific intent to defame

In *Kendall*, the Third Circuit expressly held that a jury could: (1) disregard testimony by an interested party that there was no defamatory intent or that the mistake was in good faith; and (2) credit either "direct or circumstantial" evidence "that the defendants themselves understood the potential defamatory meaning of their statements" to find actual malice sufficient to support a claim for both direct defamation and defamation-by-implication cases.⁵¹ Although the jury verdict in *Kendall* was reversed, it was only reversed because the plaintiff in those cases presented no evidence to support this element; there was certainly no direct or circumstantial malice evidence of a Prosser

⁵⁰ See FED. R. CIV. P. 56(a) & (c)(1) & (c)(2).

⁵¹ *Kendall*, 716 F.3d 93-95.

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grudge against Judge Kendall or that he was a Prosser enemy, or anything akin to the evidence in the record in this case.⁵² As is clear from *Kendall*, the jury is entitled to draw reasonable inferences from the record as a whole, including all the facts discussed in RSOF ¶4, and examine the defamatory statements in the context of evidence of a systemic program designed to discredit, defame, and intimidate Senator Donastorg when it evaluates whether the defamation at issue was “mere negligence,” or done with reckless disregard for the truth and/or with a bad motive or that the defendant was aware of the defamatory implications of its speech.⁵³

The evidence discussed in RSOF ¶7, including Bedminister’s testimony, shows that as early as 1998, after Prosser took over ownership of The Daily News, there was a culture of unprofessionalism, slanting news, and attacking reporters on “the list” like Marty Schladen, Isaac Coursucy, and Nicole Bollentini, who became “*persona non grata*” in the eyes of The Daily News Management because they weren’t on board with the program of running attack stories against political enemies. Prosser’s interference with the paper became so bad that Bedminster described the work environment as a “plantation” and that “it was an April fool’s joke” the way that the stories were “basically just spat out by Lowe” without conducting an investigation into the facts. Reporters quit over the way the paper was editorializing news stories and the way management was quashing negative stories about Prosser’s political friends, like Prime Minister Bird. Other reporters like Lee Williams quit because the editors were altering their stories.

RSOF ¶22 shows that despite promises by Prosser that ICC was not going to interfere with the news operations because he “didn’t want to destroy the integrity of the newspaper,” Prosser

⁵² See *id.*

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appointed Ed Crouch to the editorial board who immediately replaced an editorial Feuerzeig wrote with one critical of Senator Donastorg and that was drafted under a "conflict of interest." Feuerzeig and Melchoir felt the same way: "disappointed they wanted to use it, and the contents of it was way out of line, and it was in conflict with what we're trying to do." Feuerzeig quit over the article. When editors and reporters are quitting over the unfair contents of articles due to their unfair and conflicted nature, a reasonable jury could conclude there were bad motive and a subjective intent to defame.

A reasonable jury could conclude that Robbins, Davis, and The Daily News testified falsely about their motives and treatment of Senator Donastorg in their depositions and interrogatory responses, which shows consciousness of wrongdoing. For example, Fact No. 18 quotes The Daily News Interrogatory response as stating: "no employee of The Daily News was ever offered, given, paid, or received any bonus, payment, benefit, compensation or other perk consequent to providing The Daily News with any article or information concerning Adlah F. Donastorg, Jr." The Daily News reporters expressly contradict this evidence and a reasonable jury could disbelieve it and find that it shows consciousness of wrongdoing and subjective defamatory intent.

For example, Will Jones is a former reporter of The Daily News and worked at the paper from April 1994 to December 1999. Jones was the Bureau Chief from September 1995 to February 1999 when he was demoted for the failure to write a false story about Senator Donastorg. Jones testified it was part of general knowledge that to get ahead you had to be willing to write negatively false stories about those on ICC and Prosser's enemies list, including Senator Donastorg. Davis and

53 See *Kendall*, 716 F.3d at 92-95.

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Robbins regularly spoke badly about Senator Donastorg and it was clear from Jones' observation that they harbored malice towards him. Jones testified it was clear that Prosser did not like Senator Donastorg and neither did Davis who was the Editor in Chief of the paper and who regularly sought to have negative stories printed against him. The Daily News through Davis and Robbins assigned reporters like Jones to dig up dirt on Senator Donastorg.

For example, Jones met with Ed Crouch at Breezes Restaurant on a Sunday morning in 1998. Crouch handed Jones an envelope and said it was a Police Report that Senator Donastorg had fired a gun at someone but the top brass at the Police Department was covering it up. Crouch instructed Jones to go from St. Croix to St. Thomas to investigate but not to report to anyone but him and Middlesworth what Jones learned. Crouch assured Jones that if he could dig up dirt on Senator Donastorg he would get a benefit. Crouch told Jones that the reason that The Daily News knew it was a cover up is that the Police Report had not been filed.

Jones went to St. Thomas and to the Police Department and checked the blotter and the incident was indeed listed on the blotter as a disturbance of the peace. Jones called the Assistant Commissioner of Police, Bruce Hamlin, who read the report to Jones over the phone and told Jones that someone had gone to the Donastorg home in the early morning and was banging on the door and that Donastorg's father called the police and fired a shot in the air. Jones informed Middlesworth and Crouch about the information and they attempted to get Jones to write a story anyway about Donastorg being the one who fired the gun anyway but he refused. After Jones refused to write the story he was ostracized and transferred back to St. Thomas and removed as Bureau Chief and Crouch would no longer speak to him. This evidence alone is sufficient for a jury to conclude that

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everything Robbins, Davis, and The Daily News claim about their motives and willingness to publish false stories about Senator Donastorg is false and that they were not simply making good-faith, negligent mistakes in reporting or that they didn't understand the defamatory purpose of their stories.

Additionally, RSOF ¶18 shows Hal Hatfield, an agent of The Daily News and a Daily News reporter, specifically told Senator Donastorg that he was going to write a negative story about Senator Donastorg so that he could collect a bonus, in the presence of at least three witnesses in the Fort Christian Parking Lot, including Kenneth Augustus, Desmond Perceival, and Winston [Last Name Unknown]. This evidence additionally contradicts The Daily News and Davis' sworn testimony that there were no bonuses for negative stories. Then Hatfield—consistent with evidence that he was looking for a bonus—writes a false, negative story about Senator Donastorg claiming that he voted against his own bill based on a “source” that he can't identify.

Moreover, Davis swore under oath that she didn't make substantive changes to the boxing story to paint Senator Donastorg in a bad light (Davis Dep. 132), but McDonald's testimony flatly refutes this testimony and shows that she changed the lead in the boxing story for the express purpose of painting Senator Donastorg in a bad light. (RSOF ¶60.) In Fact No. 13, The Daily News presented as an undisputed fact that, “The Daily News editors Lowe Davis or Jason Robbins [never] make any negative comments about Senator Donastorg,” and Davis testified that she never used derogatory terms to describe Senator Donastorg. (Davis Dep. 18.) But McDonald, in addition to Will Jones, flatly contradicted this testimony at his trial, and testified that, “Lowe and Jason continually demeaned him, insulted him. They called him an idiot, and they made fun of him, and were very demeaning in general to him. They called him corrupt and incompetent.” (McDonald

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Trial Tr. 68-69.) Again, a jury could believe that Davis and The Daily News are lying about the fact that they never said anything negative about Senator Donastorg in private, which shows consciousness of wrongdoing, and that they were actively slanting stories and intending defamation.

John Tutein, an ICC employce, also approached Senator Donastorg and told him that if he would lay off VITELCO, they would build a library for him on the East End; he threatened that the alternative was The Daily News running negative personal stories about him. Thus, when Senator Donastorg brought a conflict-of-interest allegation between Frandelle Gerard and her charities and her position as Director of the IDC to light, The Daily News made good on its threat by printing this story that painted Senator Donastorg in a false, defamatory, and bad light because of the Gerard's role in covering for VITELCO.

In fact, the defamatory statements on Redfield's radio broadcast that Donastorg was a liar, a slander, and in bed with AT&T, and had taken a ride in an AT&T jet, were obviously made up out of thin air for the express purpose of defaming and discrediting Senator Donastorg. Redfield tried to couch the jet-ride fabrication as an "allegation" to cover himself, but he couldn't even identify who had made this "allegation" and it certainly wasn't made by anyone he could name that contended that they had actual evidence of the "allegation." This evidence, coupled with evidence that Donastorg was a Prosser enemy subject to a privacy-invading investigation and who was specifically and continually slandered by Redfield on the radio and in press releases over an extended period as discussed in RSOF ¶4 would allow a reasonable jury to conclude that the defamation discussed herein and in the following sections was intentional or reckless and not merely negligent mistakes.

Finally, Crouch wrote the editorials for Prosser and neither Davis (as a Rule 30(b)(6)

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representative of The Daily News) nor Lowe could or would articulate any facts to support anything Crouch wrote down on paper. Senator Donastorg testified to the false, misleading, and defamatory facts contained in these editorials, as discussed in RSOF ¶4 and in the sections below. Given the express evidence that Crouch demoted Jones because he refused to write a false, negative story about Senator Donastorg, a jury could properly and safely assume Crouch was aware of the defamatory nature of the pieces he wrote and specifically intended to defame.

2. The articles concerning the ICC/VITELCO tax break and rate violations (RSOF ¶ 4.B.2) were defamatory and published with objective and subjective malice.

The articles discussed in RSOF ¶4.B.2 falsely painted Senator Donastorg as an “anti-business” senator who was out to destroy ICC, VITELCO, and the economy of the Virgin Islands.⁵⁴ Robbins Deposition Exhibit 53 makes the false claim that Donastorg: (1) made false, unsupported allegations against the IDC Director; (2) was asked for but refused to produce documents by The Daily News; and that (3) he was called, but “refused” to respond to accusations that he had made false and unsupported claims and personal attacks against Gerard. These are not opinions, they are verifiable factual claims made with the intent to discredit Senator Donastorg as a person who makes false allegations with the intent to destroy business and hurt the economy of the Virgin Islands for political reasons. It is objectively verifiable that Donastorg’s *basic complaint was that the IDC*

⁵⁴ Defendants contend in one sentence early in their brief that claims arising out of Ex. 38 (“The public’s right to know”—May 29, 1998), in which the Defendants labeled Senator Donastorg a “rogue senator,” are time barred. Exhibit 38 is part of an ongoing scheme to defame Senator Donastorg and is encompassed in the defamation described in this section. Under the “continuing violations” doctrine, as recognized by the V.I. Supreme Court in *Anthony v. FirstBank Virgin Islands*, 58 V.I. 224, 230-31 (V.I. 2013), when a [claim] involves continuing or repeated conduct, the limitations period does not begin to run until the date of the last injury or when the [wrongful] conduct ceased.” Limitations is an affirmative defense and they failed to discuss the continuing violation doctrine or show that this exhibit is not part of a continuing violation.

director was the one withholding documents to protect VITELCO and ICC and The Daily News knew it; it was also verifiably false that Donastorg had refused to produce documents supporting his claim as demonstrated by Robbins Deposition Exhibit 64 because he had actually given The Daily News the documents about the IDC tax breaks. Moreover, Senator Donastorg was also not making unsupported "personal attacks" against Gerard; he was questioning the practices of an instrumentality of the government and Gerard's role in her official capacity. In short, the evidence discussed in RSOF ¶4.B.2. shows that The Daily News published false, defamatory facts about Senator Donastorg; the defamatory "sting" of the false facts arose from the false facts; the false facts were about Senator Donastorg; The Daily News knew the facts were false when it published them; and The Daily News was motivated to publish the false facts to protect its parent and sister companies, ICC and Vitelco, and knew that the sting of the piece was defamatory. There is more than sufficient evidence to meet the standards articulated in the *Kendall* case.⁵⁵

3. The article that titled "Donastorg Votes Against this Own Bill" discussed in RSOF ¶4.B.3 is false and defamatory.

Robbins Exhibit 51 claimed Donastorg "ironically" "voted no" on a bill he proposed to, among other things, reduce the number of V.I. Senators. This statement is an objectively verifiable false fact. The sting of the false fact is that Senator Donastorg is incompetent or dishonest because he sponsored a bill and then voted against it. Constituents were calling Donastorg about the article and were angered and confused as to why he purportedly voted against his own bill, which demonstrates the public understood the defamatory sting of the false article. There is no attribution

⁵⁵ See *id.*

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to a source for the story and no one contacted Senator Donastorg to verify the story. The vote was a matter of public record. (RSOF ¶4.B.3.)

Moreover, a jury could conclude that the article was published in reckless disregard for the truth and with the intent to defame because: (1) The Daily News falsely claimed it got the story from a Committee member it did not; (2) the author of the article admitted he was paid bonuses for writing negative articles about Donastorg; (3) the author of the article could not actually identify a source when confronted by Senator Donastorg; (4) The Daily News refused to retract the entire false story or rewrite the story because of the seriousness of the false statement contained in the original story; and (5) Robbins admitted that a full retraction of a story would merit the same play and should be kept on par with the original story. (RSOF ¶4.B.3.)

4. The article about the erroneous foreclosure action (RSOF ¶4.B.4) contains false and defamatory facts and was published with malice.

The February 6, 2002 article about the erroneous foreclosure action that was dismissed before it was even served on Senator Donastorg claimed without any support that he was going to be “finding himself looking for a new place to live.” The Daily News also reported false facts about what Senator Donastorg owed and the terms of his mortgage. The defamatory “sting” of the article is that Senator Donastorg cannot pay his bills, is irresponsible with money, and cannot meet his monthly obligations, which are objectively verifiable false facts. There is no dispute the article was about Senator Donastorg and that the false statement goes to the defamatory sting. These statements were made with reckless disregard for the truth to paint Senator Donastorg in a false, bad light, and a jury could conclude based on the record as a whole that The Daily News intended to

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defame. (RSOF ¶4.B.4.)

5. **The evidence discussed in RSOF ¶4.B.5 shows that Redfield lied about Senator Donastorg and leveled false corruption charges on the radio and in press releases and did so with the specific intent to defame.**

The facts discussed in RSOF ¶4.B.5 show that Redfield—while acting on behalf of Prosser, ICC, VITELCO, and The Daily News, repeatedly defamed and slandered Senator Donastorg with objectively verifiable false facts. (RSOF ¶4.B.5.) Redfield made the unsupported, objectively verifiable false accusations that: Senator Donastorg was telling “outright lies” about ICC and VITELCO; that ICC was the “real victim” of the privacy-invading investigation that it commissioned; that Senator Donastorg had “slandered” Prosser; that the purpose of the privacy-invading investigation was to investigate “corruption allegations” that Prosser and Redfield simply invented out of thin air, when, in fact, there were no corruption allegations and the true purpose of the investigation was to “dig up dirt” and invade Senator Donastorg’s privacy; that there was evidence of an “event that took place, back in—in that time period where it was alleged that he had flown on an AT&T aircraft down to a jazz festival”; that the investigation was “non-routine,” despite the fact that Prosser was investigating all his enemies; that Senator Donastorg was “extremely close” to “this Georgetown group” that was evaluating the company; that Senator Donastorg was using information obtained by “our competitors” against ICC and VITELCO; that there was “absolutely nothing” to any of Senator Donastorg’s allegations against ICC and VITELCO; and that Senator Donastorg wanted to “destroy the livelihoods of over four hundred and some employees, and put in jeopardy a utility in the Virgin Islands.” Redfield had no factual basis to make these claims in his deposition and admitted that he was now “following the story” that Prosser had actually siphoned off

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millions and millions of dollars from the utility [ICC]. The evidence shows that Redfield's claims were factually, objectively and demonstrably false and published with malice, with the intent to defame and discredit Senator Donastorg, and to protect Prosser and his companies. The defamatory sting of these publications flowed directly from the publication of false facts and the defamatory sting damaged Senator Donastorg and caused members of the public to approach him about his "corruption" and his being in bed with AT&T. Constituents called Senator Donastorg's office about Redfield's radiobroadcast because they believed Defendants' false accusations of corruption. The false charges cost Donastorg the gubernatorial election in 2006. The privacy-invasive investigation and the defamatory tactics gave Senator Donastorg acid reflux and caused him to live in fear. (RSOF ¶4.B.3.)

6. The article written about the boxing match contained false facts and was designed to paint Senator Donastorg in a false, negative light. (RSOF ¶4.B.6.)

The evidence discussed in RSOF ¶4.B.6 shows that The Daily News printed the series of articles that referenced in the header of this section about a professional boxing match that took place in late 2003. The Daily News—at every turn—tried to falsely push the idea that it was Senator Donastorg's sole idea to earmark \$300,000 from the Tourism Revolving Fund for the boxing match, and then paint Senator Donastorg in a false, negative light by falsely claiming things like there was not actually going to be a boxing match; that ESPN (or any other network) was not going to televise the event; that there was no venue; and that if it ended up in Lionel Roberts Stadium, ESPN wasn't going to cover it. The evidence shows that The Daily News tried to tie Senator Donastorg to the boxing match and falsely report that it was not going to go forward and run negative stories about it;

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but when positive things resulted from the match, The Daily News did not mention his name and gave others credit for the success. In other words, the series of articles The Daily News printed on the boxing match, when viewed together, were designed to: (1) set Donastorg up as the fall guy for the \$300,000 if the event failed; (2) exclude him from positive coverage for the event if and when it succeeded; and (3) slam him as being solely responsible for the \$300,000 earmark regardless of whether it succeeded. The Daily News ~~printed~~ false and materially misleading facts implying that Senator Donastorg was the only proponent of the boxing match and solely responsible for the \$300,000, but Davis admitted that Seven Senators and the Governor had to sign the \$300,000 appropriations bill. Davis also altered the lead of one of the main stories and other parts of it to make it materially false and then fired the story's author when he complained about it and refused to lie to cover up Davis's improper actions. The new article was offensive and disparaging to Senator Donastorg because it claims he "pushed" for a \$300,000 appropriation for an event that the story falsely claimed "will not happen" as scheduled. The original thrust of the article was that there had been a simple schedule change. The Daily News tried to get McDonald to sign a false affidavit that he was the sole author of the story and that Davis, consistent with established procedures, simply edited the story, when, in fact, Davis radically altered the story. A jury could conclude Davis then lied about altering the story in her deposition, which shows consciousness of wrongdoing. (RSOF ¶4.B.6.)

Moreover, despite the false news reports that the event was doomed, it was a huge success. Nevertheless, after it was over, The Daily News wrote another false article about the match and Senator Donastorg to place him in a false, bad light and that contained false, defamatory statements

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about Senator Donastorg, including that Senator Donastorg had taken money from the tourism fund solely for an "ego trip"; that Senator Donastorg had intentionally used false or inflated statistics to validate the \$300,000 appropriation; and that the \$300,000 appropriation was "wasteful." Neither Robbins nor Davis had any facts that support the assertion that Senator Donastorg had taken money from the tourism fund for an "ego trip"; that Senator Donastorg himself had used false or inflated statistics to validate the wasteful spending of \$300,000; or that the \$300,000 appropriation was even wasteful. (RSOF ¶4.B.6.) There is more than sufficient evidence to conclude that The Daily News published articles in connection with the boxing match that contained false and defamatory facts; that the articles were manipulated; and that The Daily News did so with the specific intent to defame Senator Donastorg as a result of malice.

7. **The facts and evidence discussed in RSOF ¶4.B.7 shows that The Daily News falsely claimed that Senator Donastorg was using the GERS to further his re-election efforts "even if it hurts the pensions of thousands of current and future V.I. Government employees."**

The facts and evidence discussed on RSOF ¶4.B.7 show that The Daily News ran an article and accused Senator Donastorg of using the Government Employees Retirement System ("GERS") to advance his re-election efforts, "even if it hurts the pensions of thousands of current and future V.I. Government employees," and accused him of being "anti-business." The article falsely reported the Senator Donastorg had "no support from anyone else in the legislature" and was guilty of "pre-election politicking," which are objectively and verifiably false facts. The Article also made a number of objectively false factual assertions that GERS was "underfunded by \$1 billion" and about the way interest calculated in an effort to put Senator Donastorg in a false, bad light. (Donastorg vol.

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II Dep. 334-35.) The article also falsely attributed to Senator Donastorg statements in quotes that he did not make—*i. e.*, that “GERS should ‘be happy to pay out (the 4 percent interest compared to what they would owe any employee that chooses to retire in the system,’—to additionally defame him and paint him in a bad light. The article misquotes Senator Donastorg in a defamatory way, who never indicated that unless the agency must “do it my way or I’ll get rid of you,” and, in fact, this was never one of his “hallmarks.” Senator Donastorg is, himself, a businessman, and he’s ~~never~~ been “anti-business,” and he didn’t take any actions designed to “cripple” the Virgin Islands economy. Senator Donastorg has no problems managing his own finances and he did not have any role in managing the Government’s finances. Senator Donastorg at no point used GERS to advance his reelection efforts. The Daily News falsely reported that GERS was under an imminent threat of collapse and implied that Senator Donastorg was responsible for an imminent collapse. Robbins did not have a single fact to support the defamatory assertion that Senator Donastorg was using the GERS to advance his reelection efforts or the other misrepresentations in the article. Davis admitted that she had no facts that supported these assertions either. A reasonable jury could conclude that The Daily News published the piece with reckless disregard for the truth with the intent to defame as a result of actual malice.

8. The Car Registration Article: Ex. 85 (“Registering V.I. automobiles”—April 6, 2004).

The facts and evidence discussed in RSOF ¶4.B.8 shows that The Daily News published an article that falsely claimed Senator Donastorg had “problems managing his personal finances,”—which is an objectively and verifiably false defamatory statement of fact—and that Senator

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Donastorg has been "unable to pass a territorial budget for fiscal year 2004," when it was the Governor's job to pass the budget. Robbins admitted that Senator Donastorg is the Senator referenced in the piece and the primary target of the article's attacks and he did not have any factual basis for the accusation that Senator Donastorg has "problems managing he personal finances" or that he was responsible for failing to pass the territorial budget. Davis admitted she had no facts to support these assertions. In fact, Senator Donastorg did not have any problems managing his personal finances whatsoever and this representation "is totally erroneous." A reasonable jury could conclude that The Daily News published these objectively and provably false facts with reckless disregard for the truth and with the intent to defame and that the defamatory sting of these false facts were directed at Senator Donastorg as a result of actual malice.

9. The facts and evidence discussed in RSOF ¶4.B.9 show that The Daily News falsely painted Senator Donastorg as a person who promotes cockfighting when, in fact, he was strengthening an existing animal cruelty statute.

The facts and evidence discussed in RSOF ¶4.B.9 show that The Daily News published an article about a bill sponsored by Senator Donastorg to increase criminal penalties for animal cruelty, but the gist of the piece was that Senator Donastorg sponsored a bill that "specifically excludes cockfighting" from the definition of animal cruelty and falsely implied that he was in favor of or promoted cockfighting. Robbins admitted that The Daily News had no facts to support anything in the article, and Senator Donastorg simply moved a bill that was sponsored by the Humane Society to reduce animal cruelty in a form that was the most aggressive that they believed could be passed in the legislature. The Daily News had no basis to claim or imply that Senator Donastorg supported cockfighting, and a reasonable jury could conclude that The Daily News published this article in

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reckless disregard of the truth and with the specific intent to defame and discredit Senator Donastorg as a result of actual malice.

C. Invasion of Privacy

The RESTATEMENT (SECOND) OF TORTS § 654A provides four types of privacy claims: (1) unreasonable intrusion upon the seclusion of another (§ 652B); (2) appropriation of the other's name or likeness (§ 652C); (3) unreasonable publicity into ~~the~~ other's private life (§ 652D), and unreasonable "publicity" that places another in a "false light before the public" (§ 652E).⁵⁶ Defendants devoted less than ½ a page to Plaintiffs' privacy claims in their brief, and moved for summary judgment solely on the ground that Plaintiffs cannot meet the elements of a § 652D claim. Defendants also do not claim the First Amendment bars any of Plaintiffs' privacy claims. Defendants did not discuss any facts or show that Plaintiffs cannot support § 652B or § 652E claim and, thus, they failed meet their threshold burden under Rule 56(a) and the Court should deny the motion on this basis alone. Independently, Plaintiffs meet the elements of § 652B & § 652E, and the evidence shows that Defendants intentionally and with malice invaded Senator Donastorg's right to private seclusion and publicized false facts to paint him in a false, bad light.

Plaintiffs could not find a V.I. Supreme Court case addressing the elements of any common-law invasion of privacy claim, but Defendants do not dispute in their less-than-half-a-page treatment of Plaintiffs' privacy claims that §§ 654A-E claims are not actionable in the Virgin Islands. (Def's Mot. 44.) In any event, under the *Bank's* analysis, this Court should adopt the Restatement (Second) of Torts §§ 652A-E as the *minimum* privacy-protective common law rules in the Virgin Islands.

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First, courts applying Virgin Islands law have recognized invasion-of-privacy claims and used § 652 as the rule of decision in the past and in every V.I. case that Plaintiffs could locate on LEXIS.⁵⁷ Second, other states in the Third Circuit like Pennsylvania have adopted § 652 and all the elements of all four types of invasion of privacy claims.⁵⁸ Finally, as noted by the Supreme Court in *Cox Broadcasting*:

- “[T]he century has experienced a strong tide running in favor of the so-called right of privacy. In 1967, we noted that ‘[it] has been said that a ‘right of privacy’ has been recognized at common law in 30 States plus the District of Columbia and by statute in four States.’ *Time, Inc. v. Hill*, 385 U.S. 374, 383 n. 7. We there cited the 1964 edition of Prosser’s Law of Torts. The 1971 edition of that same source states that “[i]n one form or another, the right of privacy is by this time recognized and accepted in all but a very few jurisdictions.” W. Prosser, *Law of Torts* 804 (4th ed.) (footnote omitted).”⁵⁹

As of now, comment c. to § 652A states that the four types of privacy claims listed above are almost “universally accepted” as the “minimum” protection for privacy, but that there is room for further development:

Thus far, as indicated in the decisions of the courts, the four forms of invasion of the right of privacy stated in this Section are the ones that have clearly become crystallized and generally been held to be actionable as a matter of tort liability. Other forms may still appear, particularly since some courts, and in particular the Supreme Court of the United States, have spoken in very broad general terms of a somewhat undefined “right of privacy” as a ground for various constitutional decisions involving indeterminate civil and personal rights. These and other references to the right of privacy, particularly as a protection against various types of governmental

56 See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 494 & n.22 (1975).

57 E.g., *Francis v. Pueblo Xtra Int'l, Inc.*, 412 Fed. Appx. 470, 476 (3d Cir. 2010); *Smith v. V.I.P.A.*, No. 2002-227, 2005 U.S. Dist. LEXIS 56, at *12-15 (D.V.I. 2005); *Bussue v. Paradise Motors*, 29 V.I. 181, 183 (D.V.I. 1994); *Venzen v. Abraham*, 18 V.I. 385, 388-89 (D.V.I. 1981); *Firstbank P.R. v. Webster*, 2013 V.I. LEXIS 5, at *8-10 (V.I. Super. Ct. Jun. 17, 2013).

58 See, e.g., *Graboff v. Collieran Firm*, 744 F.3d 128, 137-39 (3d Cir. 2014).

59 See *Cox Broadcasting Corp.*, 420 U.S. 469, 488 (1975).

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interference and the compilation of elaborate written or computerized dossiers, may give rise to the expansion of the four forms of tort liability for invasion of privacy listed in this Section or the establishment of new forms. Nothing in this Chapter is intended to exclude the possibility of future developments in the tort law of privacy.⁶⁰

Thus, it appears that virtually every other jurisdiction recognizes at least the forms of invasion of privacy recognized by the Restatement and there is also room for expansion of the protection under the common law. Given the V.I. Supreme Court's recent decisions in cases like *Machado v. Yacht Haven*, which broadly recognized protection for tort victims consistent with modern trends,⁶¹ Plaintiffs assert that the better rule for the Virgin Islands is to recognize at the very least the privacy interests protected by the Restatement and to broadly interpret the elements to protect privacy and victims of privacy invasions.

1. "False Light" Invasion of Privacy

A "false light" claim 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."⁶² This does not depend upon making public any facts concerning the private life of the individual as long as the publicity is false.⁶³ The interest protected is the interest of the individual to be free from the defendant painting the individual in an objectionable false light or false position, or

⁶⁰ See RESTATEMENT (SECOND) OF TORTS § 652A, cmt. c.

⁶¹ See *Machado*, 2014 V.I. LEXIS 51 at *29-44.

⁶² See *Giraboff v. Collieran Firm*, 744 F.3d 128, 316 (3d Cir. 2014) (quoting *Larsen v. Philadelphia Newspapers, Inc.*, 375 Pa. Super. 66, 543 A.2d 1181, 1188 (1988) (en banc) (citing RESTATEMENT (SECOND) OF TORTS § 652I)); see also *Romaine v. Kallinger*, 109 N.J. 282, 294, 537 A.2d 284 (1988); *Vogel v. W.T. Grant Co.*, 458 Pa. 124, 129 n.9, 327 A.2d 133 (1974).

⁶³ See RESTATEMENT (SECOND) OF TORTS § 652E, cmt. a.

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in other words, otherwise than as he is.⁶⁴ Although in many cases the false publicity is also defamatory, *it is not necessary that the plaintiff prove he was also defamed.*⁶⁵ It is enough that he is given unreasonable and highly objectionable publicity that attributes to him *characteristics, conduct or beliefs that are false.*⁶⁶ When a plaintiff meets these elements he is entitled to a remedy even if one is not available for defamation.⁶⁷ To illustrate:

1. A is an actress. B, seeking to advertise a motion picture, sends out to 1,000 men letters on scented pink feminine stationery, signed with A's name, which invite each man to meet A on a particular evening in front of a designated theater. The language and tone of these letters suggest prior acquaintance and an assignation. B is subject to liability to A for both libel and invasion of privacy.
2. A is a taxi driver in the city of Washington. B Newspaper publishes an article on the practices of Washington taxi drivers in cheating the public on fares, and makes use of A's photograph to illustrate the article, with the implication that he is one of the drivers who engages in these practices. A never has done so. B is subject to liability to A for both libel and invasion of privacy.
3. A is a renowned poet. B publishes in his magazine a spurious inferior poem, signed with A's name. Regardless of whether the poem is so bad as to subject B to liability for libel, B is subject to liability to A for invasion of privacy.
4. A is a Democrat. B induces him to sign a petition nominating C for office. A discovers that C is a Republican and demands that B remove his name from the petition. B refuses to do so and continues public circulation of the petition, bearing A's name. B is subject to liability to A for invasion of privacy.
5. A is a war hero, distinguished for bravery in a famous battle. B makes and exhibits a motion picture concerning A's life, in which he inserts a detailed narrative of a fictitious private life attributed to A, including a nonexistent romance with a girl. B knows this matter to be false. Although A is not defamed by the motion picture, B is subject to liability to him for invasion of privacy.⁶⁸

The false-light publicity must be of a kind that would be highly offensive to a reasonable

64 See *id.* cmt. b.

65 See *id.*

66 See *id.*

67 See *id.*

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person,⁶⁹ *i.e.*, a reasonable person would be justified feeling seriously offended and aggrieved,⁷⁰ like when there is a major misrepresentation of his character, history, activities or beliefs.⁷¹ The Restatement provides examples for illustration:

6. A is a noted musician. B writes and publishes a biography of A, which is in general a correct and favorable portrayal. Included in the book are a number of minor mistakes concerning details of A's career, together with accounts of a few fictitious but quite unimportant incidents in which A is reported to have been involved and conversations he is reported to have had with others. These are not defamatory and nothing in the book casts any adverse reflection upon A's character or reputation. B's attention is called to these errors, but he nevertheless publishes the book. B has not invaded A's privacy.

7. A and other police officers of a city maintain in the police department a "Rogues Gallery" of photographs, fingerprints and records of those convicted of crime. B is accused of robbery, arrested, fingerprinted and jailed. He is released when the accusation proves to be a matter of mistaken identity and another man is convicted of the crime. Although B never has been convicted of any crime, A insists, over B's objection, in including B's photograph and fingerprints in the Rogues Gallery. A has invaded the privacy of B.

8. A, a child ten years old, is knocked down and injured, without any negligence on her part, by a negligently driven automobile. After the accident, while she is lying in the street with her face showing so that she can be identified, her photograph is taken. Two years later B publishes in his magazine an article on the negligence of children and uses the picture of A, with the caption, "They Ask to Be Killed," to illustrate the article. This is an invasion of A's privacy.

9. A is the pilot of an airplane flying across the Pacific. The plane develops motor trouble, and A succeeds in landing it after harrowing hours in the air. B Company broadcasts over television a dramatization of the flight, which enacts it in most respects in an accurate manner. Included in the broadcast, however, are scenes, known to B to be false, in which an actor representing A is shown as praying, reassuring passengers, and otherwise conducting himself in a fictitious manner that does not defame him or in any way reflect upon him. Whether this is an invasion of A's privacy depends upon whether it is found by the jury that the scenes would be

68 *See id.*, illustrations to cmt. b.

69 *See id.* cmt. c.

70 *See id.*

71 *See id.*

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highly objectionable to a reasonable man in A's position.⁷²

As discussed by a Pennsylvania appellate court addressing a false-light claim under Restatement § 652E involving a series of articles and editorials brought by a public figure against a media defendant, the elements of the claim differ substantially from defamation and do not require proof of falsity of any particular fact, only *that the scenario depicted created a false impression*:

The trial court concluded, in the first instance, that the extension of First Amendment protections effectively undermines Krajewski's false light claims, as she could not prove falsity and actual malice. Trial Court Opinion, 9/29/11, at 27 (citing *Snyder, supra*). We disagree. Proof of false light does not devolve on evidence that every single statement is itself false, but rather that the scenario depicted created a false impression, even if derived from true statements. As our discussion of Krajewski's related defamation claim elucidates, significant indicia of falsity is apparent in the Northeast Times' treatment of the Holmesburg Library closing, suggesting a causal relationship the paper could not document, and an obligation by Krajewski to disgorge a meal from the public trough that, arguably, she had not consumed. Naturally, such suggestions would tend to cast her in a false light. We have little doubt that a significant number of readers would infer that Krajewski and others like her were systematically pilfering the public purse, accessing money that did not belong to them. That impression is rendered more virulent by the obvious linkage the paper's content draws between the Krajewski's participation in the DROP program and the closing of the Holmesburg Library. At very least, the page appears to suggest that Krajewski could have stopped the closing of the library had she chosen to do so and that, instead, she elected to "take the money and run."⁷³

Here, the evidence discussed in RSOF ¶4 shows that Defendants consistently—and over a period of years—painted Senator Donastorg with false *characteristics, conduct or beliefs* in a manner that a reasonable person would find highly offensive for the improper purpose of discrediting him and covering up Prosser, ICC, and VITELCO's misconduct. The false *characteristics, conduct,*

⁷² See *id.* cmt. c, illustrations.

⁷³ See *Krajewski v. Gusoff*, 2012 Pa. Super. 166, 53 A.3d 793 (Pa. Super. 2012), appeal to Pa. Sup. Ct. *dism'd*, 84 A.3d 1057 (Pa. 2014).

or beliefs include that Senator Donastorg: (1) is anti-business when he's not; (2) is a liar when he's not; (3) is a slanderer and defamer when he's not; (4) is corrupt, takes bribes, and is in bed with AT&T when he's not; (4) can't manage his personal finances or public finances and is incompetent when the evidence shows he's not; (5) votes against his own bills when he doesn't; (6) systematically makes *false, unsupported allegations* against businesses because he's mean and vindictive and to further his political career and because he wants to destroy the economy of the Virgin Islands, when, in fact he had support for his allegations and Defendants knew it and he did it to stop Prosser's corruption; (8) wants to use public funds and programs solely to further his own political career when the contrary is true; (9) acts on his own as a "rogue" and makes decisions based solely on his ego and without support from any other member of the legislature when he does not; and (10) hates animals and supports cockfighting when he, in fact, is an animal rights supporter. Defendants failed to address this claim at all, let alone explain how on earth they could possibly be entitled to summary judgment on this record.

2. **Intrusion into Seclusion**

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.⁷⁴ *This claim does not depend upon any publicity given to the person whose interest is invaded or to his affairs;*⁷⁵ it consists solely of an intentional interference with his interest in solitude or seclusion of a kind that would be

⁷⁴ See RESTATEMENT (SECOND) OF TORTS § 652B (1977).

⁷⁵ See *id.* cmt. a.

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highly offensive to a reasonable person.⁷⁶ The invasion *may be by some form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents.*⁷⁷ The intrusion itself makes the defendant subject to liability, even though there is no publication or other use of any kind of the photograph or information outlined.⁷⁸ Illustrations:

1. A, a woman, is sick in a hospital with a rare disease that arouses public curiosity. B, a newspaper reporter, calls her on the telephone and asks for an interview, but she refuses to see him. B then goes to the hospital, enters A's room and over her objection takes her photograph. B has invaded A's privacy.
2. A, a private detective seeking evidence for use in a lawsuit, rents a room in a house adjoining B's residence, and for two weeks looks into the windows of B's upstairs bedroom through a telescope taking intimate pictures with a telescopic lens. A has invaded B's privacy.
3. The same facts as in Illustration 2, except that A taps B's telephone wires and installs a recording device to make a record of B's conversations. A has invaded B's privacy.
4. A is seeking evidence for use in a civil action he is bringing against B. He goes to the bank in which B has his personal account, exhibits a forged court order, and demands to be allowed to examine the bank's records of the account. The bank submits to the order and permits him to do so. A has invaded B's privacy.
5. A, a professional photographer, seeking to promote his business, telephones B, a lady of social prominence, every day for a month, insisting that she come to his studio and be photographed. The calls are made at meal times, late at night and at other inconvenient times, and A ignores B's requests to desist. A has invaded B's privacy.⁷⁹

Here, Defendants failed to address the privacy-invading report at all in their motion. The

⁷⁶ See *id.* cmt. a.

⁷⁷ See *id.* cmt. b.

⁷⁸ See *id.*; see also *Vernars v. Young*, 539 F.2d 966, 969 (3d Cir. 1976); *Firstbank P.R. v. Webster*, No. 12-239, 2013 V.I. LEXIS 5, at *9-10 (V.I. Super. Ct. Jan. 17, 2013).

⁷⁹ See RESTATEMENT (SECOND) OF TORTS § 652B, cmt. b, illustrations.

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facts and evidence discussed on RSOF ¶4.B.1 shows that Defendants conducted an offensive, privacy-invading investigation to “dig up anything and everything” on Prosser enemies—including Senator Donastorg and his family—from “confidential source information” from “law enforcement” sources and campaign contributors; gathered confidential bank-account information that is “difficult to obtain and highly confidential in nature and should be handled accordingly,”; and made “pretext calls” to gain confidential information from medical providers including the St. Thomas Hospital, in an effort to find “indiscretions”; and made pretext calls to lawyers and colleges like California State University, Fullerton. When Senator Donastorg learned about the investigation, he was shocked and dismayed that Defendants were trying to destroy his life with the investigation into his private affairs. Senator Donastorg’s family was also terrified and distressed. Senator Donastorg disclosed the investigation to the *St. Croix Avis* because he feared for his life and thought coverage of the issue might protect him. Senator Donastorg was intimidated by the penetration into his private affairs and the penetration into his private bank accounts. In addition to the report, Prosser, Redfield, ICC, and the cabal had Senator Donastorg followed in 2000, 2001, and 2002. Senator Donastorg was actually and literally terrified by Prosser, ICC, VITELCO, and The Daily News’ actions, including creating the investigative file, penetrating his bank accounts, invading his privacy, invading the privacy of his family, and finding out the places he frequented in his personal life. Despite the devastating nature of the investigation, after it became public, Redfield falsely defended the investigation on the radio and additionally slandered Senator Donastorg while doing so. (RSOF ¶4.B.1.) Defendants failed to move on this claim and they certainly failed to show that they are entitled to summary judgment; any reasonable person would be offended by this invasion of privacy. Moreover, the investigation was

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conducted on all the members of Senator Donastorg's family, and all Plaintiffs have been injured by the invasion. (RSOF ¶4.B.1.)

D. Intentional Infliction of Emotional Distress

Defendants do not contest that this jurisdiction recognizes a claim for intentional infliction of emotional distress, but no local statute addresses the claim, and the Supreme Court of the Virgin Islands has yet to adopt the common-law elements.⁸⁰ Under the Restatement rule, to recover for intentional infliction of emotional distress, a plaintiff must show the defendant, "who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to" the plaintiff, and that the Defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society."⁸¹ Applying a *Banks* analysis, this Court has previously ruled that Restatement (Second) of Torts § 46 reflects the common law of this jurisdiction:

First, the general rule of this section has been adopted by virtually every Virgin Islands court to address intentional infliction of emotional distress. Second, a review of the case citations listed in the Restatement (Second) of Torts § 46 suggests that a majority of jurisdictions have adopted a similar rule to § 46. Finally, considering the longstanding application of this construction of Intentional Infliction of Emotional Distress in Virgin Islands courts, the Court finds that the Restatement (Second) of Torts § 46 represents the soundest rule for the Virgin Islands, and is in accord with local public policy.⁸²

Here, the evidence discussed in RSOF ¶4 and throughout independently shows that Defendants engaged in extreme and outrageous conduct designed to threaten, bully and intimidate

⁸⁰ See *Joseph v. Sugar Bay Club & Resort*, No. Civil No. ST-13-CV-491. 2014 V.I. LEXIS 14, at *3-11 (V.I. Super. Ct. Mar. 17, 2014.)

⁸¹ See RESTATEMENT (SECOND) OF TORTS § 46 (1977).

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Senator Donastorg, and that this multi-year pattern of outrageous conduct caused him to suffer from severe emotional distress. Moreover, the investigation was conducted on all the members of Senator Donastorg's family, and all Plaintiffs have been injured by the outrageous conduct of Defendants. (RSOF ¶4.B.1.)

E. Tortious Interference

Plaintiffs could not locate a V.I. Supreme Court listing the elements for tortious interference, but Defendants do not dispute such a claim is available in the Virgin Islands. Under the *Bank's* analysis, this Court should adopt the Restatement (Second) of Torts § 766, *et seq.*, as the *minimum* protection for victims whose contracts and business relations have been interfered with. The Superior Court and federal courts interpreting Virgin Islands law have consistently relied on Restatement § 766 *et. seq.* to supply the rule of decision in the past in tortious interference cases,⁸³ and Plaintiffs are not aware of better rules of decision for the Virgin Islands. The elements should be that: (1) a contractual relationship existed between the plaintiff and a third party; (2) the defendant knew about the contract; (3) the defendant intentionally and improperly interfered with the contract; (4) the interference was the proximate cause of one party to the contract failing to perform; (5) the defendant intended to harm the plaintiff by interfering with the contract; and (6) the non-performance resulted in harm to the plaintiff.⁸⁴ One who intentionally and improperly interferes with the

⁸² See *id.* at *3-11.

⁸³ E.g., *Gov't Guar. Fund of Rep. of Finland (Skopbank) v. Hyatt Corp.*, 955 F. Supp. 441, 452 (D.V.I. 1997) (listing the elements of a claim for intentional interference with contract); *Sorber v. Glacial Energy VI, LLC*, No. ST-10-CV-588, 2013 V.I. LEXIS 69, at *13-15 (V.I. Super. Ct. Nov. 22, 2013).

⁸⁴ See *Gov't Guar. Fund of Rep. of Finland (Skopbank)*, 955 F. Supp. at 452 (listing the elements of a claim for intentional interference with contract).

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performance of a contract between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.⁸⁵ *A person is not privileged to interfere with a contractual relationship merely because the contract is terminable at will.*⁸⁶ The liability factors include: "(a) the nature of the actor's conduct; (b) the actor's motive; (c) the interests of the other with which the actor's conduct interferes; (d) the interests sought to be advanced by the actor; (e) the societal interests in protecting the freedom of action of the actor; (f) the contractual interests of the other; and (g) the relations between the parties."⁸⁷ According to the Third Circuit, improper conduct must be either tortious, illegal, or wrongful by some measure external to the interference itself.⁸⁸ The presence or absence of ill will toward the person harmed may clarify the purposes of the actor's conduct and may be, accordingly, an important factor in determining whether the interference was improper.⁸⁹

Here, the evidence discussed in RSOF ¶4.B.1, shows that Defendants tortiously interfered with Senator Donastorg's business relationships, including when VITELCO cut his personal telephone service for over three weeks; failed to respond to calls to repair his lines for over three weeks, which directly interfered with Donastorg's business as a Senator and as a business owner; called his business clients and asked questions about their business dealings, which Donastorg

85 See RESTATEMENT (SECOND) OF TORTS § 766 (1979).

86 See RESTATEMENT (SECOND) OF TORTS § 766 cmt. g (1979).

87 *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 767).

88 See *Windsor Secs., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 664-65 (3d Cir. 1993).

89 See RESTATEMENT (SECOND) OF TORTS § 766 cmt. g (1979).

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learned about from a client MD McCaley; and as a result, the client wanted to discontinue doing business with Donastorg's company, Carrier Medical Supplies. (Donastorg Dep. 142-50.)

RESPECTFULLY SUBMITTED,
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiffs

.. DATED: November 17, 2014

BY: 

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 17th day of November, 2014, I caused a true and correct copy of PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT to the following:

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BY:  (rl)

JA000703

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SENATOR ADLAH DONASTORG, Jr.,
BENEDICTA DONASTORG, ADLAH
DONASTORG, Sr., JOSEFINA
DONASTORG, ELLA MORON and
NORMA DURAN,

Plaintiff(s),

v.

DAILY NEWS PUBLISHING CO. INC.,
LOWE DAVIS, HOLLAND "DYKE"
REDFIELD, VITELCO and OAKLAND
BENTA,

Defendant(s).

CIVIL NO. 117/2002

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER

THIS MATTER having come before the Court on **Plaintiffs' Response to Defendants' Motion for Summary Judgment and Brief in Support;**

ORDERED that Plaintiffs' Motion is **GRANTED**, and further;

ORDERED that Defendants' Daily News Publishing Co, Inc. and Lowe Davis's Motion for Summary Judgment is **DENIED**;

SO ORDERED this ____ day of _____ 2014.

Judge of the Superior Court

ATTEST:
MS. ESTRELLA GEORGE
ACTING CLERK OF THE COURT

By: _____
Clerk Supervisor

Distribution List:
Lee J. Rohn, Esq.
Joel Holt, Esq.
Kevin Rames, Esq.
Oakland Benta, Pro Se

DATE: _____

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FILED

July 19, 2022 10:05 AM
SCT-Civ-2021-0001
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

SENATOR ADLAH DONASTORG, Jr.,
BENEDICTA DONASTORG, ADLAH
DONASTORG, Sr., JOSEFINA
DONASTORG, ELLA MORON and
NORMA DURAN,

Plaintiffs,

v.

DAILY NEWS PUBLISHING CO. INC.,
LOWE DAVIS, HOLLAND "DYKE"
REDFIELD, VITELCO and OAKLAND
BENTA,

Defendants.

CIVIL NO. 117/2002

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFFS' AMENDED¹ RESPONSE TO DEFENDANTS'
ALLEGED STATEMENT OF MATERIAL FACTS
ABOUT WHICH THERE IS NO GENUINE ISSUE**

Plaintiffs submit their Response to Defendants Daily News Publishing Co. Inc. and Lowe Davis' "Statement of Material Facts About Which There is No Genuine Issue" and Counterstatement of Facts. Plaintiffs will refer to their responses to Defendants' facts as "RSOF ¶__" for ease of reference.

I. Editorials and News Articles

1. Plaintiffs only identify, by date, three news articles published on:
 - a. November 1, 2000, *see* Exh. 1;
 - b. June 12, 2001, *see* Exh. 2A;

¹ Plaintiffs' Response is being amended only to designate exhibit numbers to the various articles to reduce duplication in Plaintiffs' Appendix.

c. and sometime “[i] January 2002.” Complaint at ¶¶ 12(b), 12(e), 12(g) and 13; *See also* Exhibit 3.

RESPONSE:

Disputed in part. Plaintiffs identify three defamatory articles “by date” in their Fourth Amended Complaint, but deny that this represents the exclusive list of ways Daily News Publishing Co. Inc. and Lowe Davis defamed Senator Donastorg or presented Senator Donastorg in a false light; invaded Plaintiffs’ privacy; or otherwise damaged Plaintiffs. Plaintiffs specifically identified other defamatory and/or false-light publications in their Fourth Amended Complaint ¶¶ 12(e), 12(f), 12(h), 17-23, and the privacy-invasive investigative report in ¶¶ 17-20, which were further identified by date or as an exhibit in discovery, specifically:

Plaintiffs specifically identified defamatory and false-light publications in Jason Robbins Rule 30(b)(6) deposition (and in J. Lowe Davis’s deposition), including: Robbins Deposition Exhibits: 38 (“The public’s right to know”—May 29, 1998); 39 (“Vitelco disputes PSC study”—July 15, 1998); 46 (“Senator: no conflict of interest with firm selling hospital”—March 21, 1997); 51 (“Legislation reduction on agenda for Rules Committee”—June 12, 2001); 52 (“Setting the record Straight”—June 14, 2001); 53 (“Donastorg, IDC director wrangle over accusations of abuses”—November 1, 2000); 64 (“ICC, Donastorg square off over Vitelco tax breaks”—June 9, 2000); 84 (“GERS as political fodder”—March 1, 2004); 85 (“Registering V.I. automobiles”—April 6, 2004); 98A (“Blind eye to cockfighting? Animal cruelty nonetheless!”—August 22, 2004); 105

("Volunteerism is nice, but ..."—October 29, 2003); 108 ("No TV contract yet, but ESPN will visit St. Thomas boxing cite"—October 28, 2003); 110 ("No ESPN contract yet for V.I. boxing card"—November 1, 2003); 122 ("Boxing and tourism, a TKO; maybe "Spongebob" can help"—December 11, 2003).

Plaintiffs specifically identified defamatory and false-light publications in Holland Redfield's deposition, Redfield Deposition Exhibits: 63 ("Insolvent V.I. Senators"—February 7, 2002); 71 ("Donastorg asks court to make Vitelco open employee records"—September 8, 2000); 86A ("Transcript, Redfield Radio Interview"—October 2, 2002); 143 ("Innovative official fires back at Donastorg"—*Avis*, August 1, 2002); 145 ("Senator Donastorg strikes back,"—*Avis*, Oct. 3, 2002"); 147 ("Outright Lies"—*Avis*, May 11, 2002); 161 ("Looking for dirt"—*Avis*, October 2, 2002); 167 ("Donastorg-ICC fight unleashes flurry of lawsuits"—October 5, 2002).

Plaintiffs specifically identified defamatory and false-light articles in Marty Schladen's deposition, Schladen Deposition Exhibits: 60 ("ICC Press Release"—March 1, 2002); 61 ("Sen. Donastorg and wife face foreclosure on their Wintberg home"—February 6, 2002).

Plaintiffs specifically identified defamatory and false-light publications in Michael Cumbermack's deposition, Cumbermack Deposition Exhibits: 70 ("Donastorg demands data on Vitelco's IDC compliance"—August 17, 2000).

Plaintiffs specifically identified defamatory and false-light publications in Response to The Daily News' First set of Interrogatories Nos. 7-14 (Senator Donastorg

Deposition Exhibit 17, **MSJ Ex. 23**), including publishing statements “falsely accusing him of covering up an arrest that in reality never occurred, that he was a fiscally irresponsible person, that he had ulterior motives for wanting VITELCO audited,” and that “Donastorg was accepting perks from AT&T and had flown on their private jet to St. Lucia.” Plaintiffs specifically identified defamatory publications in Donastorg Deposition Exhibit 93A (“e-mail re: Prosser plan”) and Donastorg Deposition Exhibit 14 (composite of 14 stories about the boxing (**MSJ Ex. 14**), Donastorg vol. II Dep. 257.)

Plaintiffs specifically identified defamatory and false-light publications in William Brown’s deposition, Brown Deposition Exhibits: [Def’s] 13 (“V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000”—May 30, 2013); 104 (“Sugar ray Leonard to promote V.I. Boxing match for ESPN2’s ‘Friday Night at the Fights’”—November 7, 2003).

Plaintiffs specifically identified defamatory and false-light publications in McDonald’s deposition, McDonald Deposition Exhibits 6 (“Big money title fight rings up big gamble on marketing the V.I.”—April 25, 2003); 12 (“ESPN commits to televising V.I.’s ‘Rumble in Paradise’”—November 5, 2003).

Plaintiffs specifically identified the privacy-invading April 16, 1998 Confidential Report to Oakland Benta from Sheraw Investigations concerning Senator Adlah “Foncie” Donastorg as Dennis Shaw Deposition Exhibit 36, and the report and related documents and invoices have been discussed in a number of depositions taken in this case, including the Shaw and Erickson depositions.

In chronological order, by Exhibit Number, for the Court's reference and convenience, the relevant exhibits, which can be found in the depositions filed with the Court, containing or relating to actionable conduct are:

- Ex. 46 ("Senator: no conflict of interest with firm selling hospital"—March 21, 1997), **MSJ Ex. 7**;
- Ex. 36 (April 16, 1998 Confidential Report to Oakland Benta concerning Senator Adlah "Foncie" Donastorg), **MSJ Exs. 3 & 4**;
- Ex. 38 ("The public's right to know"—May 29, 1998), **MSJ Ex. 8**;
- Ex. 39 ("Vitelco disputes PSC study"—July 15, 1998), **MSJ Ex. 9**;
- Ex. 64 ("ICC, Donastorg square off over Vitelco tax breaks"—June 9, 2000), **MSJ Ex. 9**;
- Ex. 70 ("Donastorg demands data on Vitelco's IDC compliance"—August 17, 2000), **MSJ Ex. 9**;
- Ex. 71 ("Donastorg asks court to make Vitelco open employee records"—September 8, 2000), **MSJ Ex. 9**;
- Ex. 53 ("Donastorg, IDC director wrangle over accusations of abuses"—November 1, 2000), **MSJ Ex. 9**;
- Ex. 51 ("Legislation reduction on agenda for Rules Committee"—June 12, 2001), **MSJ Ex. 10**;
- Ex. 52 ("Setting the record Straight"—June 14, 2001), **MSJ Ex. 10**;
- Ex. 61 ("Sen. Donastorg and wife face foreclosure on their Wintberg home"—February 6, 2002), **MSJ Ex. 11**;
- Ex. 63 ("Insolvent V.I. Senators"—February 7, 2002), **MSJ Ex. 11**;
- Ex. 60 ("ICC Press Release"—March 1, 2002), **MSJ Ex. 15**,
- Ex. 147 ("Outright Lies"—*Avis*, May 11, 2002), **MSJ Ex. 17**;

Ex. 143 ("Innovative official fires back at Donastorg"—*Avis*, August 1, 2002), **MSJ Ex. 17**;

Ex. 86A ("Transcript, Redfield Radio Interview"—October 2, 2002), **MSJ Ex. 16**;

Ex. 161 ("Looking for dirt"—*Avis*, October 2, 2002), **MSJ Ex. 17**,

Ex. 145 ("Senator Donastorg strikes back,"—*Avis*, Oct. 3, 2002"), **MSJ Ex. 17**;

Ex. 167 ("Donastorg-ICC fight unleashes flurry of lawsuits"—October 5, 2002); **MSJ Ex. 18**;

Ex. 6 ("Big money title fight rings up big gamble on marketing the V.I."—April 25, 2003), **MSJ Ex. 14**;

Ex. [Def's] 13 ("V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000"—May 30, 2013), **MSJ Ex. 14**;

Ex. 108 ("No TV contract yet, but ESPN will visit St. Thomas boxing cite"—October 28, 2003), **MSJ Ex. 14**,

Ex. 105 ("Volunteerism is nice, but ..."—October 29, 2003), **MSJ Ex. 14**;

Ex. 110 ("No ESPN contract yet for V.I. boxing card"—November 1, 2003), **MSJ Ex. 14**;

Ex. 12 ("ESPN commits to televising V.I.'s 'Rumble in Paradise'"—November 5, 2003), **MSJ Ex. 14**;

Ex. 104 ("Sugar ray Leonard to promote V.I. Boxing match for ESPN2's 'Friday Night at the Fights'"—November 7, 2003), **MSJ Ex. 14**;

Ex. 122 ("Boxing and tourism, a TKO; maybe "Spongebob" can help"—December 11, 2003), **MSJ Ex. 14**.

Ex. 84 ("GERS as political fodder"—March 1, 2004); **MSJ Ex. 19**;

Ex. 85 ("Registering V.I. automobiles"—April 6, 2004); **MSJ Ex. 20**;

Ex. 98A ("Blind eye to cockfighting? Animal cruelty nonetheless!"—August 22, 2004), **MSJ Ex. 21**.

2. The Daily News, through counsel, has ascertained during the course of discovery, the dates of articles and editorials seemingly referred to, but not pled by date in the Complaint; including editorials published on:
 - a. March 1, 2004, *see* Exh. 4;
 - b. April 6, 2004; *see* Exh. 5 and
 - c. August 30, 2004; *see* Exh. 6;
 - d. and an editorial published on May 29, 1998 that characterized Senator Donastorg as a "rogue senator" *see* Exh. 7. The term "rogue" has been applied liberally in the press to refer to public figures as diverse as Senator Tom Coburn of Oklahoma, Senator Jim Jeffords of Vermont, former Governor of Alaska Sarah Palin and former Representative Republican House Majority leader Tom Delay of Texas. This is evidenced by a simple internet search that reveals the repeated use of the term "rogue" in a manner that describes a politician who either departs from the mainstream of his party, or who takes anomalous or contrarian political positions. *See* Exh. 8.

RESPONSE:

Disputed in part. Plaintiffs object to the representation that, the "Daily News, through counsel, has ascertained during discovery," because this representation is not supported by evidence or a cite to the record and no evidence supports the assertion as to what opposing counsel has, in fact, "ascertained," in discovery, and Plaintiffs dispute that Defendants' list is complete. *See* FED. R. CIV. P. 56(c)(1) (A party asserting that a fact cannot be genuinely disputed must support the assertion by citing to particular parts of materials in the record, "including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials."); FED. R. CIV. P. 56(c)(2) ("A party may object that the material cited to support or dispute a fact

cannot be presented in a form that would be admissible in evidence.”). Plaintiffs have identified defamatory and/or false-light publications contained in the pleading and discovery record in response to RSOF ¶1, and this list far exceeds Defendants’ list above. Moreover, in context, the term “rogue” is not endearing—it’s actionable. For example, the RESTATEMENT (SECOND) OF TORTS § 652E, cmt. b., illustration 7 list misidentifying someone as being a part of a “rogues gallery” as placing them in a disparaging and actionable false light, and Senator Donastorg testified to the defamatory nature of this description in his deposition. (Donastorg vol. I Dep. 26-27.)

3. Other publications referenced in this action include news stories published on:

a. June 9, 2000; *see* Exh. 9.

b. February 6, 2002 and; *see* Exh. 10.

d. a series on the use of public monies to fund a boxing event that ran from May 30, 2003 -December 16, 2003. *See* Exh. 11.

RESPONSE:

Disputed in part. Plaintiffs object to the representation that, “other publications referenced in this action include,” because this statement is not supported by evidence or a record cite and Plaintiffs’ dispute that Defendants’ list is complete. *See* FED. R. CIV. P. 56(c)(1) (A party asserting that a fact cannot be genuinely disputed must support the assertion by citing to particular parts of materials in the record, “including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.”); FED. R. CIV. P. 56(c)(2) (“A party may object that the

material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). Plaintiffs have identified defamatory and/or false-light publications contained in the pleading and discovery record in RSOF ¶1, and this list far exceeds Defendants’ list above.

II. Depositions and Interrogatories

4. There has been no deposition testimony to support a *prima facie* defamation claim. See Exhs. 12-15.

RESPONSE:

Disputed. Plaintiffs object that the above statement is not a “fact”; it is a legal conclusion and Defendants failed to cite to or discuss any specific testimony or even indicate what they mean when they say, “there has been no deposition testimony to support a *prima facie* defamation claim.” See FED. R. CIV. P. 56(c)(1) (A party asserting that a fact cannot be genuinely disputed must support the assertion by citing to particular parts of materials in the record, “including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.”). The defamatory and false-light publications are listed in RSOF ¶1 and are specifically discussed herein in greater detail herein. Plaintiffs dispute that the publications specifically referenced do not support a defamation, false light, or invasion of privacy claim, as will be briefed in Plaintiffs’ legal brief in response to summary judgment, and as shown in the response to this fact. The following facts contained in depositions, affidavits, and exhibits support a claim of defamation, false-light invasion of

privacy, or intrusion-into-seclusion invasion of privacy, and can all be fairly attributed to The Daily News:

A. The Daily News Organization and its Role as an ICC Subsidiary

Jason Robbins is currently the Publisher of The Daily News Publishing Company and has been since 2008; before that he held various positions including Managing Editor and reported to J. Lowe Davis, the Executive Editor. (Robbins Dep. 7-8.) Robbins was and is a high-level member of The Daily News' management team responsible for both news content and business operations. (Robbins Dep. 7-9.) Robbins is currently responsible for "all company operations and financial performance" of The Daily News. (Robbins Dep. 10.) Robbins reports to the Times-Shamrock Communications Executive Board, which is made of the Chief Executive Officers of Times-Shamrock Communications. (Robbins Dep. 10.) Times-Shamrock Communications owns The Daily News and requires "close communication about financial performance," but "local operational management is [allegedly] left to The Daily News Publishing Company and its managers and staff." (Robbins Dep. 11-14.) Robbins was The Daily News Rule 30(b)(6) representative. (Robbins Dep. 15.) J. Lowe Davis is currently The Daily News' Executive Director and has held the position since 2008 when she was effectively demoted from the position to the top news person at the paper. (Robbins Dep. 19) Davis now reports to Robbins. (Robbins Dep. 20.) Since 2008 the Editorial Board has been comprised of Robbins, Davis, Kevin Downey,

Alfred Loiten, and Kenny Ryan (who is no longer employed by The Daily News).
(Robbins Dep. 20.)

During the relevant period, however, the evidence shows that Prosser controlled all of his entities, including The Daily News, and made all the important strategic decisions for each company. (See, e.g., Sharp Dep. 10-11.) Robbins admitted that during the ICC period, The Daily News and VITELCO had common ownership. (Robbins Dep. 62-63.) In fact, ICC was a holding company during the relevant period that owned the stock of The Daily News Publishing Company and ICC controlled the money. (Robbins Dep. 27-28; Davis Dep. 12; Sharp Dep. 7.) During the relevant period Davis's contract was with both The Daily News and ICC and shows that these two entities operated as an integrated entity. (Robbins Dep. 39.) Davis personally attended annual budget meetings at ICC corporate offices during the relevant period. (Robbins Dep. 42.) ICC was responsible for The Daily News' budget, financial operation, and HR functions. (Robbins Dep. 29-30; Cumbermack Dep. 52.) The only Daily News Board Members were Prosser, Joel Holt, Prosser's attorney, and Eling Joseph, Prosser's secretary. (Robbins Dep. 31; see also Cumbermack Dep. 62-65.) Robbins admitted that ICC, VITELCO, and other subsidiaries had an integrated accounting and human-resource function. (Robbins Dep. 63-64; Cumbermack Dep. 34-36, 41-44) ICC/VITELCO's HR person, Ms. Chongasing, actually performed the human-resource function for The Daily News. (Robbins Dep. 64.) ICC/VITELCO's accounting person, Deborah McDonald, performed The Daily News' accounting

function. (Robbins Dep. 64.) According to another ICC/VITELCO accounting manager, Elizabeth Coggins, Prosser "controlled pretty much everything," (Coggins Dep. 8-10), and he placed Ed Crouch in charge of The Daily News editorials. (Coggins Dep. 12). The Editorial Board included Ed Crouch, Mr. Melchoir, and Jeanette Millin, who were ICC employees. (Robbins Dep. 88.) ICC and The Daily News are covered by the same insurance policy that covers defamation claims. (Davis Dep. 68; **MSJ Ex. 24.**) Davis admitted that ICC "swept" up all The Daily News' daily revenue and transferred it into an ICC account on a daily basis; all the profits went to Prosser through ICC's integrated accounts; and all the profits and expenses and losses were allocated to each of Prosser's entities by ICC accountant Deborah McDonald at her discretion through a complicated accounting procedure. (Davis Dep. 33-39; see *a/so* Sharp Dep. 7, 18-19, 29-30; Cumbermack Dep. 16-22.) This included co-mingling pension funds for the related entities, which resulted in a default in all the related entities pension obligations in 2006. (Cumbermack Dep. 74-76.)

Thus Prosser, through ICC, owned The Daily News (Robbins Dep. 33), and ICC determined the content of the editorial page. (Robbins Dep. 36.) ICC controlled the Editorial Board and placed Ed Crouch on the Editorial Board. (Robbins Dep. 27-28.) The Daily News at one point listed Melchoir as its Publisher and Editor even though Melchoir never "acted in the scope of duties normally under the purview of people with the title Publisher or persons with the title Editor of an American newspaper." (Robbins Dep. 114; **MSJ Ex. 8.**) The Daily News could not edit editorials sent to it by ICC or

refuse to publish them. (Robbins Dep. 28.) "Letters-to-the-editor" content was an ICC function. (Robbins Dep. 37.) ICC is responsible for the editorial content and The Daily News publishes the content. (Robbins Dep. 82.) Prosser owned and controlled ICC as CEO and Chairman and Prosser, thus through ICC, owned and controlled The Daily News. (Robbins Dep. 85.)

Throughout Robbins and Lowes deposition, they claimed that the editorial pages were somehow separate from The Daily News in general because Prosser and ICC controlled this part of the paper and allegedly they were kept separate from the newsgathering function. The Daily News now, ridiculously, claims that it does not know who transmitted editorials from ICC to The Daily News because they were sent electronically and the employee who received them, Ariel Melchoir, is no longer employed, and that it has no information—on behalf of The Daily News—to confirm or deny whether Ed Crouch and Jeffrey Prosser were predominantly responsible for The Daily News' editorials when ICC owned The Daily News. (Robbins Dep. 29.) Robbins admitted, however, that he isn't aware of disclaimers or anything else that would let the public know that ICC was solely responsible for The Daily News' editorial content or that ICC and The Daily News were somehow unconnected separate entities. (Robbins Dep. 82-84.) Robbins admitted that The Daily News prints the entire paper; there isn't anything on the masthead of the Editorial Page that says, "this isn't part of The Daily News." (Robbins Dep. 85.) Lowe also admitted that she is not aware of any disclaimer in the paper telling readers that The Daily News isn't responsible for the content of the

editorial page. (Lowe Dep. 31-32.) In short, The Daily News as an entity is still responsible for the content of the editorials published by its owners even if the editorials were not written by actual news journalists, because the editorials were not written by “outsiders”—they were written by persons who owned and controlled the paper and who were acting as agents of The Daily News.

In addition, in 1998, Prosser hired Holland “Dyke” Redfield when he left the Legislature of the Virgin Islands to work for VITELCO in public relations as “Director of Government Affairs and Employee Development.” (Redfield Dep. 19, 31-32, 39-42; Redfield Dep. Ex 96.) Redfield traveled from St. Croix to St. Thomas everyday on a corporate airplane and got paid a six-figure salary. (Redfield Dep. 42.) Redfield’s job entailed, “you know, listen to the news and read newspapers and find out what’s going on, anything that was applicable to us, Lee, that kind of thing.” (Redfield Dep. 43-45.) Redfield technically worked for both EmCom and VITELCO at the time. (Redfield Dep. 46; Redfield Dep. Ex 96.)

Shortly after Redfield started, he was promoted to Vice President of Corporate Affairs working directly for ICC and held this position during the entire period relevant to this lawsuit, although his VITELCO “employee number” remained the same and his “starting service date” remained the same until he was terminated in 2007. (Redfield Dep. 49-52, 64-65, 72; **MSJ Ex. 22**; *see also* Robbins Dep. 42-43.) As V.P. of Corporate Affairs, Redfield dealt with “media issues” and was “working for, you know, the different entities under that umbrella.” (Redfield Dep. 53.) ICC was a holding

company that "oversaw all the other different companies" and Redfield was tasked with "dealing with problems, dealing with issues related to these companies." (Redfield Dep. 76.) These entities included the entities "that were under Innovative Communications." (Redfield Dep. 53-54.) Redfield also acted as, "well, an in-between at times," "between the entity, the holding company, and the—and the different subsidiaries." (Redfield Dep. 56.) Redfield's job covered "service-related issues with the different companies." (Redfield Dep. 66-67.) Redfield consulted with Davis on issues; Davis and Redfield attended board meetings together. (Redfield Dep. 106.) Redfield made press releases on behalf of The Daily News, including a press release about this lawsuit because The Daily News was one of ICC's subsidiaries—and without any factual support—claimed Senator Donastorg was "not paying his bills." (E.g., Redfield Dep. 157-63; **MSJ Ex. 16.**) Thus, at all material times, Redfield was acting as an agent of ICC and all of its subsidiaries, including The Daily News, and all the Defendants were operating as a joint, integrated enterprise to further Prosser's interests.

B. Actionable Conduct and Publications

- 1. Privacy-Invasive Report: Ex. 36 (April 16, 1998 Confidential Report to Oakland Benta concerning Senator Adlah "Foncie" Donastorg) (MSJ Ex. 3-4)**

The Daily News and Davis failed to address the privacy-invasive report in its summary judgment motion or statement of facts. The facts are that Oakland Benta did security work for Prosser, ICC, VITELCO and the subsidiaries that commissioned an

investigation into Senator Donastorg and his family's private life. (Donastorg vol. I Dep. 101.) Dennis Sheraw is the President of Dennis Sheraw and Associates, which is a private investigations firm. (Sheraw Dep. 6-7.) Julie Erickson is a former Dennis Sheraw and Associates employee as well as Sheraw's daughter. (Sheraw Dep. 7; Erickson Dep. 7.) Erickson isn't personally licensed as a private investigator and never has been. (Sheraw Dep. 9.) ICC and its related companies, through Oakland Benta, contacted Sheraw to conduct unlimited, "*carte blanche*" investigations into numerous people, including Senator Donastorg, various local lawyers, Falkner, PSC consultant Madan, and Senator Donastorg's family and associates. (Sheraw Dep. 8-15, 18; Erickson Dep. 12, 18-19, 30, 34; *see also* Erickson Dep. Exs. 1, 3, 4, 33, 34, 35, 36, 48, 52, 92A.) Jeffrey Prosser, Benta, Ed Crouch, Al Sheen, and Holland Redfield were ICC contact persons for Sheraw or were persons with which Sheraw discussed the report. (Sheraw Dep. 16-17, 83.)

No writing governed the terms of the engagement and there were no limits placed on the scope of the investigation into Senator Donastorg. (Sheraw Dep. 18-19.) Sheraw advised ICC and the related companies in writing as early as 1990 that the reports he was generating contained information that was obtained "confidentially" and that "cannot be released or disseminated." (Sheraw Dep. 23-24; **MSJ Ex. 1**; *see also* **MSJ Ex. 5**.) Sheraw's instructions to his investigators was to "dig up anything and everything" on the targets and he did so because ICC and related companies instructed him that they were "looking for negative information." (Sheraw Dep. 26-27.) Sheraw's

company obtained confidential information through techniques like "pretext" calling, which is industry slang for calling an organization and telling a lie and giving false identification to gain access to confidential information, and obtaining information from confidential phone records from ICC and VITELCO. (Sheraw Dep. 33-34, 57-59.) Sheraw and his company dug up personal information like Social Security Numbers on targets and family members by gaining access to private employee files, tax records, banking records, and confidential credit reports. (Sheraw Dep. 31-38.) Things like banking information and Social Security Numbers are private, as recognized by Holland Redfield when he balked at providing his Social Security Number during his deposition, "because it's confidential information, and I just don't feel its appropriate." (Redfield Dep. 7.) Local Rule 5.3(l)(1)(a) itself recognizes that Social Security Numbers are, in-and-of-themselves, confidential and protected and not for public dissemination, and the April 1, 2004 Order issued in this very case—directing that confidential information relating to Lori Gilmore, including her "social security number, address, and phone number," be redacted from the report—recognizes the same thing. Redfield also testified that ICC considered things like personnel records, Social Security Numbers, salaries, pay scales, "these type of things" to be private and confidential and protected from disclosure. (Redfield Dep. 167-71; **MSJ Ex. 5.**)

With respect to Senator Donastorg and all of his family members, the evidence shows Sheraw gathered "confidential source information" from "law enforcement" sources and campaign contributors; gathered private bank-account information that is

“difficult to obtain and highly confidential in nature and should be handled accordingly,”; and made “pretext calls” to gain confidential information from medical providers including the St. Thomas Hospital, in an effort to find “indiscretions”; and made pretext calls to lawyers and colleges like California State University, Fullerton. (Sheraw Dep. 63-76; Erickson Dep. 21, 29, 34-35, 38-39, 44-61, 65.) Sheraw considers the “raw data,” sources, and confidential information he gathers to be “trade secrets” and “confidential.” (Sheraw Dep. 79.)

When Senator Donastorg learned about the investigation, he was shocked and dismayed and that Defendants were trying to destroy his life with the investigation into his private affairs. (Donastorg vol. I Dep. 87-91.) Senator Donastorg’s family was also terrified and distressed. (*E.g.*, Benedicta Donastorg Aff.; Benedicta Donastorg Dep. 68-72; Adlah Donastorg Sr. Dep. 45-60; Fela McBean Aff.; Josefina Donastorg Aff.; Josefina Donastorg Dep. 12-25; Marvin Bramble Aff.; Ella Moron Aff.; Ella Moron Dep. 21-39; Angel Ortiz Aff.; Kenrick Augustus Aff.) Senator Donastorg disclosed the investigation to the *St. Croix Avis* because he feared for his life and thought coverage of the issue might protect him. (Donastorg vol. I Dep. 92-93.) Senator Donastorg was intimidated by the penetration into his private affairs and the penetration into his private bank accounts. (Donastorg vol. I Dep. 93.) In addition to the report, Prosser, Redfield, ICC, and the cabal had Senator Donastorg followed in 2000, 2001, and 2002. (Donastorg vol. I Dep. 94-95.) A The Daily News reporter, Joseph Tsidulko, also improperly tried to get confidential information from a government agency about alleged

claims that Donastorg was not paying child support which was just false. (Dean Barnes, Esq, Aff.) Senator Donastorg was actually and literally terrified by Prosser, ICC, VITELCO, and the related company's actions including creating the investigative file, penetrating his bank accounts, invading his privacy, invading the privacy of his family, and finding out the places he frequented in his personal life. (Donastorg vol. I Dep. 95-96.) Senator Donastorg's business relationships also suffered, including when VITELCO cut his personal telephone service for over three weeks; failed to respond to calls to repair his lines for over three weeks, which directly interfered with Donastorg's business as a Senator and as a business owner; called his business clients and asked questions about their business dealings, which Donastorg learned about from a client MD McCaley; and as a result, the client wanted to discontinue doing business with Donastorg's company, Carrier Medical Supplies. (Donastorg Dep. 142-50.)

Despite the devastating nature of the investigation, after it became public, Redfield falsely defended the investigation on the radio and additionally slandered Senator Donastorg while doing so. (Donastorg vol. I Dep. 97-100; **MSJ Ex. 16** ("Transcript, Redfield Radio Interview"—October 2, 2002.) Redfield's defamation in connection with the report is discussed in detail in RSOF ¶ 4.B.5.

2. **Articles Concerning ICC/VITELCO Tax Break and Rate Violations: Ex. 38 ("The public's right to know"—May 29, 1998); Ex. 39 ("Vitelco disputes PSC study"—July 15, 1998); Ex. 64 ("ICC, Donastorg square off over Vitelco tax breaks"—June 9, 2000); Ex. 70 ("Donastorg demands data on Vitelco's IDC compliance"—August 17, 2000); Ex. 71 ("Donastorg asks court to make Vitelco open employee records"—September 8, 2000); Ex. 53 ("Donastorg, IDC director**

wrangle over accusations of abuses”—November 1, 2000); MSJ Exs. 8 & 9.

In July 1998, The Daily News documented that Senator Donastorg was leading legislation mandating that the PSC examine VITELCO's rate structure; Senator Donastorg also questioned VITELCO's compliance with its obligations to obtain IDC tax benefits. (**MSJ Ex. 8**; see also **MSJ Ex. 6**.) VITELCO responded that Senator Donastorg was looking into VITELCO for "sloppy political reasons" and The Daily News gave VITELCO a platform to "question the consultant's [Mr. Madan] methodology in reaching his conclusions" that VITELCO's rates were improperly inflated. (**MSJ Ex. 8**.) In fact, employees who were listed as VITELCO employees for purposes of obtaining tax credits² were actually working for The Daily News. (Donastorg vol. I Dep. 163.) Senator Donastorg consistently pressed his claims of fraud against VITELCO and, in 2000, went to court to make VITELCO open its employee records because they were violating their employment requirements in connection with EDC tax breaks. (Redfield Dep. 153-54; **MSJ Ex. 9**.) Senator Donastorg also questioned VITELCO's rate-formula and rate-of-return figures around the same time. (Donastorg vol. I Dep. 68-69.) Senator Donastorg's interest in VITELCO's improper inflated rates and tax-credit violations and his efforts to bring VITELCO into compliance with its regulatory and contractual obligations made Donastorg a Prosser enemy (*E.g.*, Donastorg vol. I Dep. 234-41), as demonstrated by the fact that Prosser through his agents sent a letter to

² The granting of tax credits required VITELCO to employ a certain number of employees. VITELCO violated that requirement and frequently falsely listed ICC or The Daily News employees as VITELCO employees.

VITELCO employees telling them not to vote for Senator Donastorg. (Donastorg vol. I Dep. 81-83.) Prosser's influence on The Daily News was obvious from the way it selectively failed to report on negative stories about ICC, VITELCO, and Prosser's companies and painted those companies in a positive light while slanting the news against Senator Donastorg. (Donastorg vol. I Dep. 184-85; see also Sharp Dep. 19-21.) The Daily News' hostility was the result of the actions Senator Donastorg took against VITELCO. (Donastorg vol. I Dep. 205; see also Cumbermack Dep. 59.)

Will Jones told Senator Donastorg that Prosser, Crouch, and VITELCO had a "hands on" approach in running The Daily News and placed undue pressure on the reporters. (Will Jones Aff.; Donastorg vol. I Dep. 171-79.) Coggins testified Prosser was vindictive—he "would get hard feelings"—and that it was widely and publically known that Senator Donastorg was a Prosser enemy. (Coggins Dep. 51-52.) Will Jones confirmed that Ed Crouch offered to pay him extra money to manufacture a story about a supposed police cover up of Senator Donastorg firing a gun and causing a disturbance, and when Will Jones refused, he was ostracized and removed as Bureau Chief. (Will Jones Aff.) Reporter Tim McDonald also testified under oath at his own trial that, "Lowe and Jason continually demeaned [Senator Donastorg], insulted him. They called him an idiot, and they made fun of him, and were very demeaning in general to him. They called him corrupt and incompetent." (McDonald Tr. Tr. 68-69.)

After Senator Donastorg leveled charges against Prosser, ICC and VITELCO over the improper tax breaks and unfair rates, The Daily News published an article

trying to paint Senator Donastorg in a false light by accusing him of making personal attacks against individuals without documentation to support the lie that Senator Donastorg was also improperly attacking Prosser, ICC, and VITELCO. Robbins Deposition Exhibit 53 is a November 1, 2000 article written by Susanna Henighan headlined "Donastorg, EDC director wrangle over accusations of abuses." (Robbins Dep. 142; **MSJ Ex. 9.**) The story states that Senator Donastorg has charged that the Industrial Development Commission Director, Frandelle Gerard, used her position to solicit donations from Caneel Bay for the St. Croix Foundation for Community Development, which she chairs, but that "Donastorg failed to produce any documentation to back up his accusations, and on Tuesday, he would not return calls to his office requesting further comment on the information." (Robbins Dep. 142-43; **MSJ Ex. 9.**) The story goes on to say that "Donastorg's letter is the latest in a long and often personal attack on the EDC and Gerard," and falsely implies that Donastorg's allegations that Gerard has not penalized any EDC beneficiaries since becoming Director in April of 1999 were untrue when, in fact, Gerard had admitted to The Daily News that these allegations were true. (*E.g.*, Robbins Dep. 146-48; **MSJ Ex. 9.**)

The story makes the false implicit claim that Donastorg: (1) made false, unsupported allegations against the EDC Director; (2) was asked for but failed to produce documents by The Daily News; and that (3) he was called, but "refused" to respond to accusations that he had made false and unsupported claims and personal attacks against Gerard. (*E.g.*, Davis Dep. 79-87.) It was absolutely a false statement

that Senator Donastorg did not have documents to back up his allegations. (Donastorg vol. I Dep. 241-43.) Senator Donastorg was also not making unsupported "personal attacks" against Gerard; he was questioning the practices of an instrumentality of the government and Gerard's role in her official capacity, and falsely calling the attack "personal" was done for the purpose of painting Senator Donastorg in a bad light. (*E.g.*, Donastorg vol. I Dep. 245-50.)

Importantly, Robbins' Deposition Exhibit 64 ("ICC, Donastorg square off over Vitelco tax breaks") shows that, "Donastorg's office on Thursday provided The Daily News with a copy of VITELCO employee list which his spokesman said was the list Donastorg was operating from," and the list showed "current employees who crossover work for multiple companies." (Davis Dep. 116; **MSJ Ex. 9.**) In other words, The Daily News had actual knowledge that Donastorg: (1) actually had documents supporting his allegations against the EDC and VITELCO; and (2) had already actually produced these documents to The Daily News to support his claims against EDC referenced in Donastorg's letter to the governor six months before The Daily News wrote the false article in November. (*E.g.*, **MSJ Ex. 14.**) As of June 9, 2000, Senator Donastorg had provided The Daily News with documentation indicating just as he was claiming, that VITELCO's list of employees was inaccurate at best. (Robbins Dep. 171-75; **MSJ Ex. 9.**) Senator Donastorg's press releases, which The Daily News had in its possession, also show that Senator Donastorg had documentation that VITELCO was getting tax benefits while violating a tax-break requirement regarding the number of

employees it had to employ. (*E.g.*, Robbins Dep. 175-76; **MSJ Ex. 9.**) Robbins could not adequately explain why The Daily News didn't think that VITELCO violating their permit by failing to employ the requisite number of employees was newsworthy and why it accused Senator Donastorg of making "unsupported accusations" when it had those very same documents in its possession. (*E.g.*, Robbins Dep. 177-78.) Cumbermack admitted that there were times when VITELCO was not in compliance with the EDC agreement and that the companies shared payroll and employees and administration expenses. (Cumbermack Dep. 46-50, 68.) Nevertheless, Redfield was issuing false press releases effectively calling Senator Donastorg a liar and claiming Senator Donastorg was after confidential employee information and wanted to release it to the public without doing any investigation into the facts. (*E.g.*, Redfield Dep. 166-77.)

Moreover, Donastorg's actual charge made in a letter to the Governor of the Virgin Islands was that he, himself, had asked for public documents from the EDC director to back up VITELCO's support for tax exemptions, but that "Ms. Gerard has made it her personal mission to withhold these records in order to protect VITELCO and ICC from scrutiny." (Robbins Dep. 148-49; **MSJ Ex. 9.**) Davis admitted that The Daily News had a copy of the letter. (Davis Dep. 78-82.) It was simply false to imply that Donastorg made a false charge unsupported by documents when Donastorg's *basic complaint was that the EDC director was the one withholding documents* to protect VITELCO and ICC; it was also independently false that Donastorg had refused to produce documents supporting his claim as demonstrated by Robbins Deposition

Exhibit 64 because he had actually given The Daily News the documents about the EDC tax breaks. (Donastorg vol. I Dep. 241-44; **MSJ Ex. 9.**)

To make matters worse, Robbins claims Daily News writer Susanna Henighan called Donastorg and asked for documentation but that he did not provide any. (Robbins Dep. 145-46.) But Robbins admitted that before writing down that a person refused to return phone calls, they would first have to be called and given an opportunity to respond. (Robbins Dep. 143-44; see *also* Davis Dep. 91-94.) Although Robbins claims Donastorg “could have returned calls” to clear up the misconception about Donastorg’s failure to produce documents, Robbins admits that The Daily News had actual knowledge that Donastorg had tried to get *additional* documents for the EDC but was stymied and that it even wrote a story that Senator Donastorg had filed a mandamus action and about his attempts to get the documents. (Robbins Dep. 148-50; **MSJ Ex. 9.**) Robbins speciously claims it is “fair” to expect public figures to be on-call to answer their questions “24/7” and “day and night” and speciously claims that he doesn’t see the difference between reporting that Senator Donastorg “wouldn’t return phone calls” and “didn’t return phone calls.” (Robbins Dep. 156-57.)

On November 4, 2000, Senator Donastorg wrote Henighan a letter showing how false and misleading the November 1, 2000 article about the “failure to produce documents” was and that the assertion that Senator Donastorg failed to return her telephone calls was a “bold faced lie.” (Robbins Dep. 151; Davis Dep. 94-95; **MSJ Ex. 14.**) Henighan had left a voice message at 8:00 p.m.—substantially after hours—

and Henighan had made no effort to reach Senator Donastorg's office during business hours before the story ran. (Robbins Dep. 154-55; **MSJ Ex. 9.**) Senator Donastorg requested a clarification of this misrepresentation within 72 hours but one never came. (Robbins Dep. 154-55; Davis Dep. 94-103; **MSJ Ex. 14.**) Robbins has no basis to dispute Senator Donastorg's version of events. (Robbins Dep. 156-59.) Davis also speciously claimed in her letter that placing an after hours phone call immediately before the story runs is sufficient to represent that Senator Donastorg "would not" return phone calls. (Davis Dep. 106-07.)

Rather than publishing a retraction, Davis wrote a letter to Donastorg confirming that the reporter did not call Senator Donastorg's office until after hours. (Robbins Dep. 161-62; **MSJ Ex. 9.**) Robbins admitted that the "chronology" indicated that the paper was working on the story for three days and had been working with the people accused of wrongdoing to get their side of the story for three days before it ran and that Donastorg's office could have been contacted earlier, during regular business hours, even though Senator Donastorg's input was a "necessary part of her story." (Robbins Dep. 161-68; **MSJ Ex. 9.**) Nothing in Davis's letter suggests that The Daily News ever asked Senator Donastorg to produce documents. (Robbins Dep. 167-68; **MSJ Ex. 9.**)

Davis was questioned at length over these factual misrepresentations and why the article was presented in this way and she was evasive, defensive, and couldn't adequately explain the basis for any of The Daily News' factual misrepresentations. (Davis Dep. 77-112, 116-19.) Thus, the evidence shows that The Daily News knowingly

made false reports when it claimed: (1) Donastorg made false allegations and that these allegations were made without documentary support; (2) that Donastorg was asked to produce documents when the basic nature of his claim was the EDC's improper withholding of documents; and that (3) Donastorg has "refused" to respond to The Daily News when it asked for his documentary support based on one after-hours phone request for documents that Donastorg had provided to The Daily News months earlier.

The primary principals charged with defending VITELCO by attacking Senator Donastorg were Holland Redfield, Lowe Davis, and Ed Crouch. (Donastorg vol. I Dep. 206.) John Tutein, an employee of ICC, also approached Senator Donastorg and told him that if he would lay off VITELCO, they would build a library for him on the East End; he threatened that the alternative was The Daily News would continue running negative personal stories about him. (Donastorg vol. I Dep. 224-34.) Thus, when Senator Donastorg brought a conflict of interest between Frandelle Gerard and her charities and her position as Director of the EDC to light (Donastorg vol. I Dep. 236-37), The Daily News made good on its threat by printing this story that painted Senator Donastorg in a false and bad light because of the Gerard's role in covering for VITELCO. (Donastorg vol. I Dep. 238-39.) This is corroborated by the fact that The Daily News published a false VITELCO press release that Senator Donastorg was improperly seeking private employee information (Donastorg vol. II Dep. 383-88), but frequently ignored Senator Donastorg's press releases about actions he was taking against ICC and its tax evasion. (Donastorg vol. II Dep. 388-91.) Davis also admitted

that The Daily News did not report on any aspect of the story that Prosser and ICC had investigated Senator Donastorg and invaded his privacy although the other Virgin Islands papers gave it front page coverage. (Davis Dep. 60.)

3. Donastorg Votes Against this Own Bill: Ex. 51 (“Legislation reduction on agenda for Rules Committee”—June 12, 2001); Ex. 52 (“Setting the record Straight”—June 14, 2001) (MSJ Ex. 10)

Robbins Exhibit 51 is a June 12, 2001 “news story” published in The Daily News that “multiple people” edited. (Robbins Dep. 130-31.) The news story claims Donastorg “ironically” “voted no” on a bill he proposed to, among other things, reduce the number of V.I. Senators. (Robbins Dep. 130-31; **MSJ Ex. 10.**) Davis admitted there is no attribution to a source for the story and that no one contacted Senator Donastorg to verify the story. (Davis Dep. 70-71.) The Daily News admitted that the vote was a matter of public record and that it falsely reported that Senator Donastorg voted against his own bill when he did not. (Robbins Dep. 132-33; Davis Dep. 68; **MSJ Ex. 10.**) The “news story” also claims that, “the strategy of members of the Senate majority is to pass the bill through the Government Operations and Rule committees to force all senators to take a stand on the legislation to the full Senate.” (Robbins Dep. 135; **MSJ Ex. 10.**) Senator Donastorg called The Daily News and told them the story about him voting against his own bill was false. (Donastorg vol. I Dep. 208-09.)

The story does not attribute any source to this factual representation. (Robbins Dep. Ex. 36; **MSJ Ex. 10.**) The Daily News admitted that the representation that Donastorg had voted against his own bill was factually false when made and that it did

not contact Donastorg to verify the accuracy of this factual representation. (Robbins Dep. 137-38; **MSJ Ex. 10.**) Senator Donastorg specifically asked Hal Hatfield—the reporter who admitted he could get a bonus for writing negative information about Senator Donastorg—who his source was for the false statement about Senator Donastorg voting against his own bill, and Hatfield could not identify any particular person as the source. (Donastorg vol. I Dep. 216.) Given the hatred Prosser, ICC and The Daily News had for Donastorg and the threats to file and actual filing false stories and its request of reporters to file false stories about Donastorg, this false story was intentional. (Donastorg vol. I Dep. 217.)

The Daily News refused to retract the false story or rewrite the story because of the seriousness of the false statement contained in the original story. (Donastorg vol. I Dep. 221-22.) Robbins admitted that a full retraction of a story would merit the same play and should be kept on par with the original story. (Robbins Dep. 98-99.) The Daily News later printed a correction in a small box on page two. (Robbins Dep. 128; **MSJ Ex. 10.**) The correction states that the source of the factual inaccuracy was a staffer and not the Committee Chairman. (Robbins Dep. 139-40; Davis Dep. 76-77; Donastorg vol. I Dep. 216-18.) In fact, constituents were calling Donastorg about the article and were angered and confused as to why he purportedly voted against his own bill, which demonstrates the defamatory sting of the false article. (Donastorg vol. I Dep. 219-23.) It was malicious that the “correction” was placed so inconspicuously when the false article was prominent and caused him such bad publicity. (Donastorg vol. I Dep. 220.)

4. **The Erroneous Foreclosure Action: Ex. 61 (“Sen. Donastorg and wife face foreclosure on their Wintberg home”—February 6, 2002); Ex. 63 (“Insolvent V.I. Senators”—February 7, 2002); Ex. 60 (“ICC Press Release”—March 1, 2002) (MSJ Ex. 11.)**

Marty Schladen's Deposition Exhibit 61 (“Sen. Donastorg and wife face foreclosure on their Wintberg home”) is a February 6, 2002 article about a foreclosure action that was dismissed before it was even served on Senator Donastorg because it was filed based on a bank error. (MSJ Ex. 11.) Despite that, in the article, The Daily News claimed that Senator Donastorg was going to be “finding himself looking for a new place to live,” which is a false statement. (Donastorg vol. II Dep. 300.) The Daily News also reported false facts about what Senator Donastorg owed and the terms of his mortgage. (Donastorg vol. II Dep. 301-03.) The Daily News falsely reported or implied that Senator Donastorg could not pay off his mortgage or meet his monthly obligations. (Donastorg vol. II Dep. 303-05.) Moreover, although The Daily News wrote about Senator Donastorg's erroneous foreclosure action, it selectively ignored a foreclosure action brought against Jeffrey Prosser's friend Senator Rocky Liburd, who was supporting the “Prosser Plan.” (Donastorg vol. II Dep. 370-72.)

Davis could not adequately explain why an unverified, unsupported foreclosure action against the Senator was even newsworthy. (Davis Dep. 54-55.) Davis testified falsely that The Daily News, in fact, wrote a follow-up story about the dismissal of the action, but The Daily News never produced such an article. (Davis Dep. 51.) To the contrary, however, The Daily News never wrote a story about the foreclosure being voluntarily dismissed pre-answer. (Donastorg vol. II Dep. 396-97.) The Daily News

admits it should have written a follow-up article about the dismissal of the story (*E.g.*, Davis Dep. 52), but it did not because of its malice against Donastorg.

5. **Redfield's Defamatory Accusation: Ex. 86A ("Transcript, Redfield Radio Interview"—October 2, 2002); 147 ("Outright Lies"—*Avis*, May 11, 2002); Ex. 143 ("Innovative official fires back at Donastorg"—*Avis*, Aug. 1, 2002); Ex. 161 ("Looking for dirt"—*Avis*, October 2, 2002); Ex. 145 ("Senator Donastorg strikes back,"—*Avis*, Oct. 3, 2002"); Ex. 167 ("Donastorg-ICC fight unleashes flurry of lawsuits"—October 5, 2002). (MSJ Exs. 15-17.)**

While Redfield was V.P. of Corporate Affairs, he testified that there was a "bewilderedness" and "tension" at ICC over Senator Donastorg's positions with respect to VITELCO and ICC, utility rates, the PSC, and various rate and regulatory matters. (Redfield Dep. 97-101, 104-05.) In several press releases or quotes Redfield made to the St. Croix *Avis*, Redfield made the unsupported accusation that Senator Donastorg was telling, "outright lies" and that ICC was an innocent victim in attacks over surcharge issues. (Redfield Dep. 177-85; **MSJ Ex. 17**; see also Redfield Dep. 224-30.) Redfield also admitted that he went on the Sam Topp's radio show on or around October 2, 2002 to talk about the privacy-invading investigation on Senator Donastorg. (Redfield Dep. 194; **MSJ Ex. 16**.) He introduced himself as "Senator Redfield and ICC." (Redfield Dep. 195.) Redfield told Topp the investigation occurred in 1998 and that "the victim in this situation is not Senator Donastorg, its ICC," because Senator Donastorg for years has made slanderous statements against Prosser and was also "questioning and attacking." (Redfield Dep. 196.) Redfield, in his deposition, could not actually

testify to any "slandorous statements" Senator Donastorg had made against Prosser. (Redfield Dep. 196-97.)

On the radio, Redfield falsely claimed that the investigation related to an "alleged event that took place, back in—in that time period where it was alleged that he had flown on an AT&T aircraft down to a jazz festival." (Redfield Dep. 200.) Redfield admits he didn't have any information that Senator Donastorg flew on an AT&T jet to a jazz festival, but he nevertheless stated, "This is what instituted the investigation." (Redfield Dep. 200-01.) Redfield falsely claimed on the radio that the investigation was "non-routine," despite the fact that Prosser was investigating all his enemies. (*E.g.*, Sheraw Dep. 8-15, 18; Erickson Dep. 12, 18-19, 30, 34; see *also* Erickson Dep. Exs. 1, 3, 4, 33, 34, 35, 36, 48, 52, 92A.) Redfield admitted in his deposition that the fact of the investigation was supposed to be a secret. (Redfield Dep. 203-04.)

On the radio, Redfield also falsely claimed that the investigation was justified because Senator Donastorg was "extremely close" to "this Georgetown group" that was evaluating the company, but he admitted in his deposition that the events he was describing on the radio occurred after the report was completed. (Redfield Dep. 204-05.) Redfield—without any factual basis—also accused Senator Donastorg of using information obtained by "our competitors" against ICC and VITELCO. (Redfield Dep. 206.) On the radio, Redfield stated that, "The report was done to basically find out whether there was some relationship that was developed between our competitors and [Senator Donastorg], to the detriment of the company." (Redfield Dep. 206-07.)

Redfield represented that there was "absolutely nothing" to any of Senator Donastorg's allegations, and that Senator Donastorg just wanted to "destroy the livelihoods of over four hundred and some employees, and put in jeopardy a utility [ICC] in the Virgin Islands." (Redfield Dep. 210.) Redfield could not articulate a factual basis to make this representation in his deposition and admitted that he was now "following the story" that Prosser had actually siphoned off millions and millions of dollars from the utility. (Redfield Dep. 211-12.) Redfield represented on the radio that Senator Donastorg was leveling charges either to benefit ICC competitors or because he was simply mean-spirited. (Redfield Dep. 213.) Redfield admitted he had no facts that Senator Donastorg was in bed with ICC's competitors. (Redfield Dep. 213-14.) Redfield said on the radio that, Senator Donastorg was a "mean-spirited individual who was trying to destroy a company," to "seek votes or to gain sympathy from the public," but admitted he didn't have any facts to support this statement either. (Redfield Dep. 215-19.) Redfield admitted he was talking about Senator Donastorg wanting to destroy "all the [ICC subsidiary] companies." (Redfield Dep. 220-21.) Redfield claims he asked to see the report before he went on the air, but "they said it was confidential," so he didn't actually know what it said or what its purpose was. (Redfield Dep. 215.)

Redfield falsely told the public that the purpose of the investigation was to look for an AT&T connection with Senator Donastorg and that it was "professionally done"; but in his deposition Redfield claimed that he didn't actually know why they conducted the investigation or who even conducted it. (Redfield Dep. 119-26.) In fact, no one ever

asked Sheraw to investigate whether Senator Donastorg had ever been transported on an AT&T plane. (Sheraw Dep. 83.) Redfield also admitted that he had no evidence and conducted no investigation into whether Senator Donastorg had any relationship with AT&T. (Redfield Dep. 127.) Redfield commented on the investigation in his capacity as V.P. of Corporate Affairs. (Redfield Dep. 127.)

Although Redfield was speaking in his corporate capacity as V.P. of Corporate Affairs, in his deposition he was pressed on where he got his information about the privacy-invading report, but he stammered repeatedly that he "can't recall" talking to anybody about the purpose of the investigation. (Redfield Dep. 128-29.) Then he admitted he talked to Prosser about it (Redfield Dep. 130-31), but continued to evade questions about Prosser's role in the investigation and its purpose. (Redfield Dep. 132-33, 142-43.) Redfield then admitted no facts were disclosed to him that revealed any connection between Senator Donastorg and AT&T: "none." (Redfield Dep. 132.) The AT&T allegation was just something "that was bantered around" . . . "just within the company" . . . and "many places," . . . "well, not many places," . . . "I heard it," . . . "I don't recall," . . . meh, "I don't recall. I don't recall." (Redfield Dep. 133.) Redfield finally admitted he did nothing to verify any connection between Senator Donastorg and AT&T or a plane trip and he was not aware of any facts to support the allegation. (Redfield Dep. 133-35, 143.) Regarding the AT&T connection, Redfield admitted that he went on the air with the allegation without a "shred of evidence" to support that statement. (Redfield Dep. 143-44.) Redfield made these statements knowing how easy

it is to ruin a person's reputation in a small community. (Redfield Dep. 145-46.) Redfield testified that he didn't care whether his statements on the radio ruined Senator Donastorg's reputation in the community. (Redfield Dep. 146.) Redfield admitted that he made the AT&T accusation without calling Senator Donastorg to get his side of the story. (Redfield Dep. 147.)

The above evidence and testimony supports Senator Donastorg's testimony that Redfield, while acting in his corporate capacity on behalf of ICC and its subsidiaries, including The Daily News, defamed him. Redfield called Senator Donastorg a liar and accused him of slandering Prosser, which is false. (Donastorg vol. II Dep. 366.) Redfield's radio broadcasts with negative statements were timed to correspond with negative press coming out in The Daily News. (Donastorg vol. I Dep. 41-42.) Redfield, while speaking on behalf of VITELCO, defamed Senator Donastorg on the radio by claiming that Donastorg received improper AT&T perks, like riding on an AT&T aircraft. (Donastorg vol. I Dep. 46-47, 50-51.) The Prosser, VITELCO, Redfield, Davis, and Crouch, cabal threatened, by actions and words, that The Daily News would write negative, personal stories about him unless he worked to maintain a "better relationship" with them (Donastorg vol. I Dep. 48-49), and that's exactly what happened. Ed Crouch had access to the privacy-invading report as editor of The Daily News. (Donastorg vol. I Dep. 170.) Redfield coordinated the attacks and defamed Senator Donastorg by publishing false stories that Senator Donastorg was maligning Prosser's companies and launching false and baseless attacks in coordination with The Daily

News Stories. (Donastorg vol. I Dep. 50-51.) Senator Donastorg did not take a trip to St. Lucia on an AT&T plane and Redfield's publication of this information on the Sam Topp Show and repeatedly to others was false. (Donastorg vol. I Dep. 52-53, 59.) Redfield spread lies that Senator Donastorg was "in bed with" AT&T and accused Senator Donastorg of lying about taking perks from AT&T. (Donastorg vol. I Dep. 53-54.) Redfield also falsely claimed that Senator Donastorg was fiscally irresponsible in his personal affairs without any basis to make the claim. (Donastorg vol. I Dep. 55-56.)

Redfield's defamatory publications damaged Senator Donastorg and caused members of the public to approach him about his "corruption" and his being in bed with AT&T. (Donastorg vol. I Dep. 110-11.) Members of the public called Senator Donastorg's office about Redfield's radiobroadcast and some believed the false accusations of corruption. (Donastorg vol. I Dep. 112-13.) The false charges cost Donastorg the gubernatorial election in 2006. (Donastorg vol. I Dep. 113.) The privacy-invasive investigation and the defamatory tactics gave Senator Donastorg acid reflux and caused him to live in fear. (Donastorg vol. I Dep. 118-27.) The public needed to know the extent Prosser and his companies would invade someone's privacy to intimidate them (Donastorg vol. I Dep. 158), and there is a difference between a person's public and private life (Donastorg vol. I Dep. 164), so despite his fears, Senator Donastorg went public with the report. (Donastorg vol. I. Dep. 158.)

6. **The Boxing Match: Donastorg Deposition Ex. 14 (composite of 14 stories about the boxing match.); Ex. 6 ("Big money title fight rings up big gamble on marketing the V.I."—April 25, 2003); Ex. [Def's] 13 ("V.I. Backed boxing event called off, future uncertain; no TV**

coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000”—May 30, 2013); Ex. 108 (“No TV contract yet, but ESPN will visit St. Thomas boxing cite”—October 28, 2003); Ex. 105 (“Volunteerism is nice, but ...”—October 29, 2003); Ex. 110 (“No ESPN contract yet for V.I. boxing card”—November 1, 2003); Ex. 12 (“ESPN commits to televising V.I.’s ‘Rumble in Paradise’”—November 5, 2003); Ex. 104 (“Sugar ray Leonard to promote V.I. Boxing match for ESPN2’s ‘Friday Night at the Fights’”—November 7, 2003); Ex. 122 (“Boxing and tourism, a TKO; maybe ‘Spongebob’ can help”—December 11, 2003) (MSJ Ex. 14.)

The Daily News printed the series of articles that referenced in the header of this section about a professional boxing match that took place in late 2003. Senator Donastorg was one of many politicians who thought that a globally televised sporting event would be good for the Virgin Islands and help promote sports tourism. In this series of articles, The Daily News—at every turn—falsely pushed the idea that it was Senator Donastorg’s sole idea to earmark \$300,000 from the Tourism Revolving Fund for the boxing match (Donastorg vol. I Dep. 199), and then painted Senator Donastorg in a false, negative light by falsely claiming there was not actually going to be a boxing match; that ESPN (or any other network) was not going to televise the event; that there was no venue; and that if it ended up in Lionel Roberts Stadium, ESPN wasn’t going to cover it. (Donastorg vol. I Dep. 192.) The evidence shows that The Daily News tried to tie Senator Donastorg to the boxing match and report that it was not going to go forward and ran negative stories about it (Donastorg vol. I Dep. 186, vol. II Dep. 376-81); but when positive actions resulted from the match, The Daily News did not mention his name and gave others credit for the success. (Donastorg vol. II Dep. 376-81.) The series of articles The Daily News printed on the boxing match, when viewed together,

were designed to: (1) set Donastorg up as the fall guy for the \$300,000 if the event failed; (2) exclude him from positive coverage for the event if and when it succeeded; and (3) slam him as being solely responsible for the \$300,000 earmark regardless of whether it succeeded. (*E.g.*, Donastorg vol. II Dep. 282-98.)

First, it was false and materially misleading to target Senator Donastorg as the only proponent of the boxing match and solely responsible for the \$300,000. (Donastorg vol. II Dep. 269.) Davis admitted that Seven Senators and the Governor had to sign the \$300,000 appropriations bill. (Davis Dep. 129.)

Second, The Daily News had a policy that it would tell reporters if there was going to be substantial changes to the story by editors to ensure fairness and accuracy in stories. (Robbins Dep. 53.) Tim McDonald was The Daily News sports writer who was assigned to cover the lead-up to the match. (McDonald Dep. 82, 111-13.) A story McDonald wrote that was ultimately published on May 30, 2003, did not have anything to do with Senator Donastorg or the \$300,000 appropriation. (McDonald Dep. 82, 111-13.) Nevertheless—although Davis falsely denies it, which shows consciousness of wrongdoing (Davis Dep. 132)—Davis changed the lead in the story about the boxing match and left McDonald's byline on it. (McDonald Dep. 82, 111; **MSJ Ex. 14** ("V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000"—May 30, 2013)). Davis inserted a paragraph that emphasized that Donastorg was the senator who "pushed" for a \$300,000 appropriations bill. (McDonald Dep. 112.) Davis completely changed the

content of the first two paragraphs by adding two new paragraphs. (McDonald Dep. 82-83.) McDonald testified that, "in the 20 years of journalism, I've never had that happen." (McDonald Dep. 82.)

In addition to writing a new lead, Davis changed other parts of the story. (McDonald Dep. 85.) "The meaning was changed. The context was changed. Everything was changed." (McDonald Dep. 86.) "I didn't mention Donastorg's name at all in the story." (McDonald Dep. 113.) Davis inserted Senator Donastorg into the story when "it was my belief he had nothing to do with the story." (McDonald Dep. 86.) Davis also changed the story to falsely claim that, "Donastorg did not return Daily News telephone calls requesting comments about the status of the bout," because McDonald—the supposed author of the story—never contacted Senator Donastorg and didn't turn in a story with his name in it. (McDonald Dep. 114.)

In context, McDonald testified the new article was offensive and disparaging to Senator Donastorg because it claims he "pushed" for a \$300,000 appropriation for an event that the story claimed "will not happen" as scheduled. (McDonald Dep. 118-19.) The original thrust of the article was that there had been a simple schedule change. (McDonald Dep. 119.) The Daily News tried to force McDonald to sign a false affidavit that he was the sole author of the story and that Davis, consistent with established procedures, simply edited the story, when, in fact, Davis "radically altered the story." (McDonald Dep. 139-40, 145-47.) When McDonald refused to back down, The Daily News fired him and sent three thugs to his home with billy clubs and his picture that was

hanging in his office to intimidate him. (McDonald Dep. 188-200; see *also* McDonald Trial Tr. 68-80, 103-05, 169-88.)

The Daily News then falsely reported there was no ESPN contract in place and that there would not be a championship fight when this was not true. (Donastorg vol. I Dep. 198-99.) In fact, there was no actual uncertainty that a promoter would provide the event. (Donastorg vol. I Dep. 192-93, 198-99.) Sterling McPherson confirmed that the information contained in The Daily News article was false and that he had provided contrary information to The Daily News. (Donastorg vol. I Dep. 211; McPherson Aff.). The Daily News intentionally created false uncertainty about the match that it claimed Senator Donastorg was spearheading. (Donastorg vol. I Dep. 211-14.) The Daily News also did things like report that there was no heavy weights scheduled but omitted that there was a big Sugar-Ray-Leonard backed welterweight card. (Donastorg vol. I Dep. 196.) The Daily News also falsely reported that Senator Donastorg was directly negotiating with the promoters and the facility for contract rights, which would have been an improper conflict of interest and was simply false. (Donastorg vol. II Dep. 290-91.) McDonald admitted to Senator Donastorg that Davis had manipulated the story. (Donastorg vol. I Dep. 233.) The statement that there was "no TV coverage scheduled despite promises when Donastorg got V.I. to appropriate \$300,000" is blatantly misleading because while there was no contract in place, they were simply negotiating over the terms of the contract; the fact of TV coverage was not in doubt. (Donastorg vol. II Dep. 265-70.) The boxing article quotes McPherson as saying, "its all up in the

air right now," but McPherson's and McDonald's testimony shows that The Daily News deliberately misquoted him. (Donastorg vol. II Dep. 376.) The article was false in that McPherson was misquoted and Davis omitted information to place Senator Donastorg in a false, bad light. (Donastorg vol. II Dep. 272-73.) In contrast, when The Daily News ran positive stories about the Boxing Match, Senator Donastorg's name wasn't included. (Donastorg vol. II Dep. 274.)

For example, the November 7, 2003 article, Robbins Deposition Exhibit 104, is a positive article about Sugar Ray Leonard coming to promote the fight. Robbins could not adequately explain why Senator Donastorg was not mentioned in this article if he was the primary person to "push" the fight and the \$300,000 appropriation. (Robbins Dep. 191-94.) Compare this with Robbins Deposition Exhibit 105, which ran a few days earlier, which rips the Senator for the \$300,000 appropriation for a "boxing matching that may or may not persuade tourists to visit islands,"; and Robbins Deposition Exhibit 108, which ran the same day, and focuses on the uncertainty of the event and the fact that Senator Donastorg "sponsored the amendment" for the appropriation; and with Robbins Deposition Exhibit 110, which ran a few days later, that describes Senator Donastorg as the "point man" of the event when the story is about "no contract yet for V.I. card." (Robbins Dep. 196-98; Robbins Dep. Exs. 105, 108, 110.) Robbins could not adequately explain why Senator Donastorg was singled out for the negative press and why his name didn't appear in the positive articles. (Robbins Dep. 197-99.)

Despite the false news reports that the event was doomed, it was a big success. Nevertheless, after it was over, The Daily News wrote another nasty article about the match and Senator Donastorg to place him in a false, bad light and that contained false, defamatory statements about Senator Donastorg, including that Senator Donastorg had taken money from the tourism fund solely for an "ego trip"; that Senator Donastorg had intentionally used false or inflated statistics to validate the \$300,000 appropriation; and that the \$300,000 appropriation was "wasteful." (**MSJ Ex. 14** "Boxing and tourism, a TKO; maybe "Spongebob" can help"—December 11, 2003.) Neither Robbins nor Davis had any facts to support the assertion in Robbins Deposition Exhibit 122 that Senator Donastorg had taken money from the tourism fund for an "ego trip"; that Senator Donastorg himself had used false or inflated statistics to validate the wasteful spending of \$300,000; or that the \$300,000 appropriation was even wasteful. (Davis Dep. 136-37; Robbins Dep. 202-03.)

Robbins admitted that news stories should be fair and accurate. (Robbins Dep. 62.) Robbins also admitted News stories should not "take sides" and should be presented impartially. (Robbins Dep. 62.) The Daily News obviously failed to comply with these standards with respect to the boxing match.

7. The GERS article: ("GERS as political fodder"—March 1, 2004) (MSJ Ex. 19)

A Daily News article is reproduced as Robbins Deposition Exhibit 84 ("GERS as political fodder") in that it was critical of Senator Donastorg. The Daily News ran the piece and accused Senator Donastorg of using the Government Employees Retirement

System ("GERS") to advance his re-election efforts, "even if it hurts the pensions of thousands of current and future V.I. Government employees." (Robbins Dep. 183; **MSJ Ex. 19.**) The article falsely reported the Senator Donastorg had "no support from anyone else in the legislature" and was guilty of "pre-election politicking." (Donastorg vol. II Dep. 309, 313) The article misquotes Senator Donastorg in a defamatory way, who never indicated that unless the agency must "do it my way or I'll get rid of you," and, in fact, this was never one of his "hallmarks." (Donastorg vol. II Dep. 310.) Senator Donastorg is, himself, a businessman, and he's never been "anti-business," and he didn't take any actions designed to "cripple" the Virgin Islands economy. (Donastorg vol. II Dep. 310-14.) Senator Donastorg has no problems managing his own finances and he doesn't have any role in managing the Government's finances. (Donastorg vol. II Dep. 397-98.) Senator Donastorg at no point used GERS to advance his reelection efforts. (Donastorg vol. II Dep. 399-403.) The Daily News falsely reported that GERS was under an imminent threat of collapse and implied that Senator Donastorg was responsible for an imminent collapse that, in fact, never happened. (Donastorg vol. II Dep. 403.)

Robbins could not articulate any facts The Daily News had to support the defamatory assertion that Senator Donastorg was using the GERS to advance his re-election efforts or the other misrepresentations in the article. (Robbins Dep. 182-85; **MSJ Ex. 14.**) Davis admitted that she had no facts that supported these assertions either. (Davis Dep. 122-24.) The claim that Senator Donastorg was playing politics with

GERS to advance his re-election efforts, "even if it hurts the pensions of thousands of current and future V.I. Government employees," is false and defamatory. (Donastorg vol. II Dep. 331-334.) The Article also makes a number of false factual assertions that GERS was "underfunded by \$1 billion" and about the way interest calculated in an effort to put Senator Donastorg in a false, bad light. (Donastorg vol. II Dep. 334-35.) The article also attributed to Senator Donastorg statements in quotes that he did not make—*i.e.*, that "GERS should 'be happy to pay out (the 4 percent interest compared to what they would owe any employee that chooses to retire in the system,"—to additionally defame him and paint him in a bad light. (Donastorg vol. II Dep. 335.)

8. The Car Registration Article: ("Registering V.I. automobiles"—April 6, 2004) (MSJ Ex. 20)

A Daily News article is reproduced as **MSJ Ex. 20** ("Registering V.I. automobiles."). The article improperly and falsely claims Senator Donastorg has "problems managing his personal finances,"—which is a defamatory statement of fact—and that Senator Donastorg has been "unable to pass a territorial budget for fiscal year 2004," when it was the Governor's job to pass the budget. (**MSJ Ex. 20.**) Robbins admitted that Senator Donastorg is the Senator referenced in Exhibit 85 and the primary target of the article's attacks. He could not articulate any factual basis for the accusation that Senator Donastorg has "problems managing he personal finances" or that he was responsible for failing to pass the territorial budget. (Robbins Dep. 183-85; Dep. Ex. 85.) Davis admitted she had no facts to support these assertions. (Davis Dep. 124-26.)

In fact, Senator Donastorg did not have any problems managing his personal finances whatsoever: "that is totally erroneous." (Donastorg vol. II Dep. 326.)

9. Cockfighting: ("Blind eye to cockfighting? Animal cruelty nonetheless!"—August 22, 2004) (MSJ Ex. 21.)

Robbins Deposition 98A ("Blind eye to cockfighting? Animal cruelty nonetheless!") is an August 30, 2004 article that The Daily News published. (Robbins Dep. 190; **MSJ Ex. 21.**) The article was about a bill sponsored by Senator Donastorg to increase criminal penalties for animal cruelty. (**MSJ Ex. 21.**) Nevertheless, the gist of the piece is that Senator Donastorg sponsored a bill that "specifically excludes cockfighting" from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. (**MSJ Ex. 21.**) Robbins admitted that The Daily News has no facts to support anything in the article (Robbins Dep. 190-91), and Senator Donastorg simply moved a bill that was sponsored by the Humane Society to reduce animal cruelty in a form that was the most aggressive that they believed could be passed in the legislature. (Donastorg vol. II Dep. 323-34.) The Daily News had no basis to claim that Senator Donastorg supported cockfighting.

5. No deponent testified that The Daily News falsified any of the alleged articles. *Id.*

RESPONSE:

Disputed. Plaintiffs object that this statement fails to discuss any specific evidence or contain a specific cite to the record. See FED. R. CIV. P. 56(c)(1) & (2). Plaintiffs also object to the term "falsified" as undefined and lacking in specific meaning in the context of a defamation and invasion of privacy case. The "fault" standard for a

media defendant in a public-figure defamation case is “publication of a statement with knowledge of falsity or reckless disregard as to truth or falsity.” See, e.g., *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510-11 (1991). A plaintiff can also recover when the media defendant gives “publicity” which unreasonably places the other in a “false light before the public.” (§ 652E). See, e.g., RESTATEMENT (SECOND) OF TORTS § 654E; *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 494 & n.22 (1975); see also *Graboff v. Colleran Firm*, 744 F.3d 128, 136 (3d Cir. 2014). A plaintiff can also recover for an intentional intrusion into his solitude or seclusion if the intrusion would be highly offensive to a reasonable person, regardless of publication or the truth or falsity of the private information that was discovered during the intrusion. See, e.g., RESTATEMENT (SECOND) TORTS § 652B (1977); *Vernars v. Young*, 539 F.2d 966, 969 (3d Cir. 1976); *Firstbank P.R. v. Webster*, No. 12-239, 2013 V.I. LEXIS 5, at *9-10 (V.I. Super. Ct. Jan. 17, 2013). Plaintiffs discussed and summarized the defamatory, false-light publications or series of false-light publications, the privacy-invading actions, and the evidence supporting the fault standard in relation to each publication or related series of publications in RSOF ¶4.

6. No deponent testifies that The Daily News reporters or editorial staff had knowledge of the false implications of any news articles or published any articles with reckless disregard of their truth. *Id.*

RESPONSE:

Disputed. See RSOF ¶4.

7. Former reporter and St. Thomas Bureau Chief Eunice Bedminster characterized The Daily News as a “plantation.” See Bedminster Dep. 24:20-25, 26:2-25; 27:1-18, April 19,

2007. See Exh. 12.

RESPONSE:

Admit. Bedminster testified that, after Prosser took over ownership of The Daily News, there was a culture of unprofessionalism, slanting news, and attacking reporters on "the list" like Marty Schladen, Isaac Courseuy, and Nicole Bollentini, who became "*persona non grata*" in the eyes of The Daily News Management because they weren't on board with the program of running attack stories against political enemies. (*E.g.*, Bedminster Dep. 7-14, 17-18, 50-61.) The "other name" for "the list" was the "shit list." (Bedminster Dep. 74.) "That's the other name we called it." (Bedminster Dep. 74.) Prosser's interference with the paper became so bad that Bedminster described the work environment as a "plantation" and that "it was an April fool's joke" the way that the stories were "basically just spat out by Lowe" without conducting an investigation into the facts. (Bedminster Dep. 18.) Bedminster testified Prosser was involved because directives came down from management to silence reporters like Will Jones from reporting anything negative about Prosser's friends, such as former Governor Roy Schneider. (Bedminster Dep. 19.) Reporters quit over the way the paper was editorializing news stories and the way management was quashing negative stories about Prosser's political friends, like Prime Minister Bird. (Bedminster Dep. 19-20.) Other reporters like Lee Williams quit because the editors were altering their stories. (Bedminster Dep. 20-21.) The Daily News had a list of people "you knew" were

disfavored because The Daily News would take an "insignificant story" and "it suddenly became a huge story." (Bedminster Dep. 21.)

8. Bedminster wrote the February 6, 2002 Daily News Article concerning First Bank's foreclosure action against Senator Donastorg and his wife on their Estate Wintberg home. *Id.*

RESPONSE:

Disputed. The article in question is Schladen Deposition Exhibit 61 ("Sen. Donastorg and wife face foreclosure on their Wintberg home"). Bedminster testified that she "may have" written the story, but that, "how I would have found out was through Lowe." (Bedminster Dep. 24-25.) Bedminster recalls Davis instructed her to write a story about the frivolous and erroneous foreclosure action involving Senator Donastorg and that Davis likely got the information from "certain lawyers who [I] knew would call and give information," (Bedminster Dep. 24-25), but Bedminster later testified that she really didn't recall whether she was the one who actually wrote the story. (Bedminster Dep. 60.) Again, she "may have" written the story, but she would have received the information to be published from Davis. (Bedminster Dep. 24-25.)

9. Bedminster testified that the news stories were factually accurate and thoroughly investigated; that she never heard the editorial staff imply that the Senator was a *persona non grata* (Dep. 21:22-22:2); or speak about Senator Donastorg in a derogatory manner (Dep. 16:20-23; 17:1-3). *See* Exh. 12.

RESPONSE:

Disputed. Plaintiffs object to the vague reference to "the news stories" in the above fact because Bedminster testified about a number of news stories that were unrelated to Senator Donastorg and she never once testified that any particular story

written about Senator Donastorg was factually accurate. None of the sections of deposition Defendants cite to say anything to the contrary. Plaintiffs also object to the false implication that Bedminster was testifying in a way that exonerated The Daily News. Bedminster testified that there were news stories she worked on that contained factual references that were "basically just spat out by Lowe." (Bedminster Dep. 18.) Bedminster testified that she had heard of the slanted stories about Senator Donastorg and the ICC investigation and Prosser's efforts to paint him in a bad light and protect ICC. (Bedminster Dep. 15-19.) With regards to Senator Donastorg, Bedminster testified that she wasn't generally privy to information about him (Bedminster Dep. 22), but that the paper in general was slanting news *for Prosser's friends* and *against Prosser's enemies*. (E.g., Bedminster Dep. 29-33.) Bedminster recalls forming an opinion that The Daily News picked on Donastorg as one of the people the paper didn't like and that it published unfair stories about him. (Bedminster Dep. 36.) A fair inference from Bedminster's testimony is she thought Senator Donastorg was on the "shit list."

10. Bedminster also testified that she could not identify any stories concerning Senator Donastorg that were even unfair in her opinion (Dep. 20:14-20). *See* Bedminster Dep. 24:20-25,26:2-25; 27: 1-18, April 19, 2007. *See* Exh. 12.

RESPONSE:

Disputed. Bedminster recalls forming an opinion at the time that The Daily News picked on Donastorg as one of the people the paper didn't like and published unfair stories about him. (Bedminster Dep. 36.)

11. Bedminster testified that the article was based wholly on a thorough investigation of Court documents. (Dep. 26.) See Exh. 12.

RESPONSE:

Denied. The article Defendants are referring to in Fact No. 11 and Fact No. 8 is Schladen Deposition Exhibit 61 ("Sen. Donastorg and wife face foreclosure on their Wintberg home"). Bedminster was not referring to the Donastorg foreclosure article (**MSJ Ex. 11**) on page 26 of her deposition; she was referring to obtaining court documents about Attorney Rohn's unrelated court case, and, Bedminster never stated that she conducted a "thorough" investigation into that "story" in any event. (Bedminster Dep. 25-27.) Regarding Attorney Rohn's unrelated court case, Bedminster ultimately refused to do the story because she didn't feel the story she was instructed to write was newsworthy and, in fact, she didn't have complete information about the case. (Bedminster Dep. 27-28.) Regarding the Donastorg foreclosure story, Bedminster testified that that she "may have" written the story, but that "how I would have found out was through Lowe," (Bedminster Dep. 24-25), and any information about it would have been sent to her, *i.e.*, she didn't conduct any independent investigation into the foreclosure story and she was not even sure whether she wrote it. (Bedminster Dep. 27.)

12. Bedminster also testified that she never witnessed the editorial staff make substantive changes to reporters' articles. (Depo. 21:2-7.) See Exh. 12.

RESPONSE:

Disputed as misleading. Bedminster testified that there were no significant changes to her stories because they knew she would have just quit and she never wrote any stories about Donastorg (with the possible exception of the foreclosure article found in **MSJ Ex. 11**) (Bedminster Dep. 25), but she also testified that, after Prosser bought the paper, information was added to stories after other reporters turned the story in, including stories written by Lee Williams, Marty Schladen, Issac Coursey, and Perry Brothers, for example. (*E.g.*, Bedminster Dep. 49-59.) Lee Williams was the primary investigative reporter for Daily News until he quit in 2004. (Robbins Dep. 58-59.) Marty Schladen was a St. Croix reporter who also quit. (Robbins Dep. 60.) Tim McDonald also admitted that editors changed his stories after they were written and confirmed that statements Sterling McPherson gave in connection with the boxing match were materially misquoted and that Davis substantially altered the articles. (Donastorg vol. I Dep. 211-13, 232-34; McPherson Aff.; McDonald Dep. 117-18.)

In fact, as discussed in more detail in RSOF ¶4, Davis substantially changed the May 30, 2003 story about the boxing match and left McDonald's byline on it. (McDonald Dep. 81-82, 111; **MSJ Ex. 14** ("V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000"—May 30, 2013)). Davis completely changed the content of the first two paragraphs by adding two new paragraphs. (McDonald Dep. 82-83.) McDonald testified, "in the 20 years of journalism, I've never had that happen." (McDonald Dep. 82.)

In addition to writing a new lead, Davis changed other parts of the story. (McDonald Dep. 85.) "The meaning was changed. The context was changed. Everything was changed." (McDonald Dep. 86.) Davis inserted a paragraph that emphasized that Donastorg was the senator who "pushed" for a \$300,000 appropriations bill. (McDonald Dep. 112.) "I didn't mention Donastorg's name at all in the story." (McDonald Dep. 113.) Davis inserted Senator Donastorg into the story when "it was my belief he had nothing to do with the story." (McDonald Dep. 86.) Davis also changed the story to falsely claim that, "Donastorg did not return Daily News telephone calls requesting comments about the status of the bout," because McDonald—the supposed author of the story—never contacted Donastorg and didn't turn in a story with his name in it. (McDonald Dep. 114.)

In context, the new article was offensive and disparaging to Senator Donastorg because it claims he pushed for a \$300,000 appropriation for an event that the story claimed "will not happen" as scheduled. (McDonald Dep. 118-19.) The original thrust of the article was that there had been a simple schedule change. (McDonald Dep. 119.) The Daily News tried to get McDonald to sign a false affidavit that he was the sole author of the story and that Davis consistent with established procedures edited the story, when, in fact, Davis radically altered the story. (McDonald Dep. 139-40, 146-47.) Then The Daily News fired McDonald and sent three thugs to his home with billy clubs and his picture that was hanging in his office to intimidate him. (McDonald Dep. 188-200; see *a/so* McDonald Trial Tr. 68-80, 103-05, 169-88.)

13. Former Daily News reporter Marty Schladen testified that, although he was aware that Senator Donastorg thought the paper was after him, that The Daily News wrote a number of stories in support of Senator Donastorg's positions. Schladen Dep. 27:7-14, Feb. 14, 2011. See Exh. 13.

RESPONSE:

Disputed. Defendants object that this purported fact is unsupported by the record cite. See FED. R. CIV. P. 56(c)(1) & (2). Schladen did not testify at 27:7-14 that "that The Daily News wrote a number of stories in support of Senator Donastorg's positions," or anything resembling this purported fact. (Schladen Dep. 27.) Moreover, Schladen is an interested witness who is aligned with The Daily News; he was represented by The Daily News's counsel during the deposition; and he was compensated for his time, lost wages, and expenses in connection with his deposition (Schladen Dep. 9-12). Even if he had expressed a general opinion that the paper had published some unidentified positive stories about Donastorg in the past, this opinion would not establish any material fact regarding the specific articles that are the subject of this lawsuit and referenced in RSOF ¶1.

14. Mr. Schladen further testified that he never heard The Daily News editors Lowe Davis or Jason Robbins ever make any negative comments about Senator Donastorg. (Dep. 36:7-14.) See Exh. 13.

RESPONSE:

Disputed in part. Plaintiffs admit that Schladen so testified, but deny that this establishes any relevant material fact as a matter of law for purposes of summary judgment or that this relates to the truth, falsity, or actionability of any publication or document referenced in RSOF ¶1. Moreover, Schladen is an interested witness who is

aligned with The Daily News; The Daily News's counsel represented him during the deposition; and he was compensated for his time, lost wages, and expenses in connection with his deposition. (Schladen Dep. 9-12.)

15. Paragraph 12(a) does not speak to any of the elements of defamation, but alleges that The Daily News "[o]ffered reporters bonuses if the recipients would write derogatory stories about Senator Donastorg, with no requirement that the stories are actually truthful." Complaint ¶ 12(a).

RESPONSE:

Disputed. Plaintiffs object that the statement beginning with, "Paragraph 12(a) does not speak to any of the elements of defamation, but alleges that The Daily News....," is not a statement of fact. In any event, evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. See FED. R. EVID. 401. Evidence tending to show that reporters were offered bonuses for writing derogatory stories about Senator Donastorg without regard for the truth is evidence of actual malice and also would make it more likely that The Daily News knowingly published false facts or acted in reckless disregard for the truth or that it unreasonably painted Senator Donastorg in a false light. Plaintiffs admit that The Daily News "[o]ffered reporters bonuses if the recipients would write derogatory stories about Senator Donastorg, with no requirement that the stories are actually truthful," as alleged in Fourth Amended Complaint ¶ 12(a).

16. Both The Daily News' 30(b)(6) witness, Jason Robbins and former Daily News Executive Editor J. Lowe Davis testified that, The Daily News never offered any such incentives. Robbins Dep. 76:16-19, Sept. 13, 2010; Davis Dep. 19:14-20, Sept. 15, 2010.

See Exhs. 14, 15.

RESPONSE:

Disputed in substance, *i.e.*, Plaintiffs admit that Robbins and Davis so testified, but deny that their testimony is undisputed or establishes this fact as a matter of law. Robbins and Davis are interested witnesses. Robbins is a The Daily News Rule 30(b)(6) representative and Davis is named personally as a defendant and their testimony is contradicted by admissions of other The Daily News agents. Hal Hatfield, a The Daily News agent and reporter, specifically told Senator Donastorg that he was going to write a negative story about Senator Donastorg so that he could collect a bonus, in the presence of at least three witnesses in the Fort Christian Parking Lot, including Kenneth Augustus, Desmond Perceival, and Winston [Last Name Unknown]. (Sen. Donastorg vol. I Dep. 32-36, 183; Donastorg Res. to Daily News' First Set of Interrogatory Nos. 2-3, **MSJ Ex. 23**.) Reporter Will Jones, an agent of The Daily News, also told Senator Donastorg that he could collect a bonus for writing a negative story about him. (Sen. Donastorg vol. I Dep. 36-37, 173-74.) Bedminster also confirmed that Perry Brothers and Will Jones were offered money if they wrote negative stories about Donastorg. (Bedminster Dep. 84.) Davis herself recognized that there was a factual dispute between her testimony and Will Jones' sworn statement. (Davis Dep. 19.)

17. Lowe Davis testified that she never even assigned a reporter to cover the foreclosure action concerning the Donastorg's Estate Wintberg home, but, rather, that it was the practice of the paper to have the reporter assigned to the Court "beat" review District Court filings and write a story anytime a high-ranking official was named in a Complaint. Davis Dep. 49:18-22.

RESPONSE:

Disputed in substance, *i.e.*, Plaintiffs admit that Davis so testified, but deny that her testimony is undisputed or establishes this fact as a matter of law. The article in question is Schladen Deposition Exhibit 61 ("Sen. Donastorg and wife face foreclosure on their Wintberg home"). Davis' testimony conflicts with Bedminster's testimony and a reasonable jury could conclude that Davis is lying about this fact based on this conflicting testimony. Bedminster recalls Davis instructed her to write a story about the frivolous and erroneous foreclosure action involving Senator Donastorg and that Davis likely got the information from "certain lawyers who [I] knew would call and give information." (Bedminster Dep. 24-25.) Davis also testified falsely that The Daily News wrote a follow-up story about the dismissal of the action, but The Daily News never produced such an article. (Davis Dep. 51.) In fact, The Daily News never wrote a story about the foreclosure being voluntarily dismissed pre-answer. (Donastorg vol. II Dep. 396-97.) The Daily News admits it should have written a follow-up article about the dismissal of the story (*E.g.*, Davis Dep. 52), but it did not because of its malice towards Senator Donastorg.

Importantly, the statement in the February 6, 2002 article that Senator Donastorg was going to be "finding himself looking for a new place to live" is a false statement. (Donastorg vol. II Dep. 300.) The Daily News also reported false facts about what Senator Donastorg owed and the terms of his mortgage. (Donastorg vol. II Dep. 301-03.) The Daily News falsely reported or implied that Senator Donastorg could not pay

off his mortgage or meet his monthly obligations. (Donastorg vol. II Dep. 303-05.) Moreover, although The Daily News wrote about Senator Donastorg's erroneous foreclosure action, it selectively ignored a foreclosure action brought against Prosser friend Senator Rocky Liburd, who was supporting the "Prosser Plan." (Donastorg vol. II Dep. 370-72.) Davis could not adequately explain why an unverified, unsupported foreclosure action against the Senator was even newsworthy. (Davis Dep. 54-55.)

18. The Daily News' sworn responses to interrogatories state that:

The Daily News relies upon its experienced and professional reporters to diligently pursue facts and to report on the reactions and responses of individuals both within and without the U.S. Virgin Islands to those facts and their implications. The Daily News relies upon its experienced and professional editors to review and assess every news article that is prepared by its reporters in reliance on those facts. This process constitutes the method by which the employees of The Daily News ensure that the news articles printed in The Daily News accurate and reliable. Def.'s Resp. to Pl.'s First Set of Irogs No.9. *See* Exh. 16.

RESPONSE:

Disputed in substance. Plaintiffs admit that is what the interrogatory says, but deny that it is, in substance, true. First, Plaintiffs object to this self-serving and conclusory interrogatory response as inadmissible under Federal Rule of Civil Procedure 33(c) (permissible use of interrogatories limited by the Evidence Rules), Superior Court Rule 12 (Federal Rules of Evidence apply to Superior Court proceedings), and Federal Rule of Evidence 602, because it is vague as to time, lacks foundation, doesn't describe any specific event, and this conclusory statement itself fails to show that it is based on the personal knowledge of any specific witness. Evidence Rule 602 states that a "witness may testify to a matter only if evidence is introduced

sufficient to support a finding that the witness has personal knowledge of the matter.”
See also FED. R. CIV. P. 56(c)(2) (evidence relied on to support summary judgment must be shown to be admissible at trial) & (4) (affidavit or declaration testimony must show that it is based on the personal knowledge of a witness who is competent to testify at trial).

Second, to the extent this is even a “statement of fact,” it is disputed by the sworn testimony of Daily News reporters like Eunice Bedminster. She testified that, after Prosser took over ownership of The Daily News, there was a culture of unprofessionalism, slanting news, and attacking reporters like Marty Schladen, Isaac Courseuy, and Nicole Bollentini, who became “*persona non grata*” in the eyes of The Daily News Management because they weren’t on board with the program of running attack stories against political enemies. (*E.g.*, Bedminster Dep. 7-14, 17-18, 50-61.) Prosser’s interference with the paper became so bad that Bedminster described the work environment as a “plantation” and that “it was an April fool’s joke” the way that the stories were “basically just spat out by Lowe” without conducting an investigation into the facts. (Bedminster Dep. 18.) Bedminster thought Prosser was involved because directives came down from management to silence reporters like Will Jones from reporting anything negative about Prosser’s friends, such as former Governor Roy Schneider. (Bedminster Dep. 19.) Reporters quit over the way the paper was editorializing news stories and the way management was quashing stories Prosser’s political friends, like Prime Minister Bird. (Bedminster Dep. 19-20.) Other reporters like

Lee Williams quit because the editors were altering their stories. (Bedminster Dep. 20-21.) The Daily News had a list of people "you knew" were disfavored because The Daily News would take an "insignificant story" and "it suddenly became a huge story." (Bedminster Dep. 21.) Davis specifically instructed Bedminster to write a story about the frivolous and erroneous foreclosure action involving Senator Donastorg; Davis likely got the information from "certain lawyers who [I] knew would call and give information." (Bedminster Dep. 24-25.)

Bedminster's observation of The Daily News was that the "integrity of the paper declined after Mr. Prosser bought it," and it "ceased being a community paper and became a vendetta paper under Prosser." (Bedminster Dep. 30-31.) There was also an understanding at the paper that, "you didn't paint Prosser or his companies in a bad light." (Bedminster Dep. 32, 85-86.) In contrast, Senator Donastorg was one of the people who "was one of the people they were after" to write stories about him that "weren't fair," (Bedminster Dep. 36.), *i.e.*, he was on the "shit list."

Marty Schladen is a reporter who confirmed Bedminster's testimony about the pressure put on reporters and how they were driven to quit if they didn't toe Prosser's line. (Schladen Dep. 21-22.) Schladen confirmed that his own relationship "soured" with Davis when she made edits that included unsupported allegations or inferences in connection with a story about COMTek. (Schladen Dep. 16.) Schladen felt the support for the story was so thin that it "really jeopardized our credibility." (Schladen Dep. 16.) Schladen received unfair discipline because he questioned the lack of factual support

for the story and he was consequently labeled "untrustworthy." (Schladen Dep. 16-17.) Schladen testified that, on another occasion, he objected to Davis inserting facts into one of his stories that were not properly supported and that ultimately turned out to be false. (Schladen Dep. 18-19.) "She [Davis] called me and said that she wanted to put that in, and I said, well, my reporting hasn't developed that. And she said, well, mine has. So I said, then, you know, you're the boss." (Schladen Dep. 19.)

Additionally, the staff turnover as a result of Prosser's policies was well documented in the Press. In Robbins Deposition Exhibit 41A ("Top Daily News editor resigns"), Penny Freuerzeig was quoted as saying she resigned because "the newspaper has lost its journalistic integrity" as a result of Prosser's editorial interference with The Daily News. "[Prosser's interference] crossed an ethical line that she felt so strongly about that she couldn't work for The Daily News any longer." (**MSJ Ex. 8.**)

19. The Daily News' sworn responses to interrogatories further state that: no employee of The Daily News was ever offered, given, paid, or received any bonus, payment, benefit, compensation or other perk consequent to providing The Daily News with any article or information concerning Adlah F. Donastorg, Jr. Def.'s Resp. to Pl.'s First Set of Irogs. No.7. *See* Exh. 16.

RESPONSE:

Disputed in substance, *i.e.*, Plaintiffs admit that is what the interrogatories say, but deny that that this self-serving interrogatory response establishes this fact as a matter of law. Hal Hatfield, an agent of The Daily News and a Daily News senior reporter, specifically told Senator Donastorg that he was going to write a negative story about Senator Donastorg so that he could collect a bonus, in the presence witnesses in

the Fort Christian Parking Lot, including Kenneth Augustus, Desmond Perceival, and Winston [Last Name Unknown]. (Sen. Donastorg vol. I Dep. 32-36; Donastorg Res. to Daily News' First Set of Interrogatory Nos. 2-3, **MSJ Ex. 23.**) Reporter Will Jones, an agent of The Daily News, also told Senator Donastorg that he was told by Lowe Davis that he would collect a bonus for writing a negative story about him. (Sen. Donastorg vol. I Dep. 36-37, 173.) Bedminster, the St. Croix Bureau Chief for The Daily News, also confirmed that Perry Brothers and Will Jones were offered money if they wrote negative stories about Donastorg. (Bedminster Dep. 84.)

III. Substance of Editorials and Articles

20. On May 29, 1998, The Daily News published an editorial entitled "*The public's right to know*," attached hereto as Exhibit 3 that refers to Senator Donastorg as a "rogue" senator. Exh. 7.

RESPONSE:

Admit.

21. The editorial criticized Mr. Walter Challenger, then the Chairman of the Virgin Islands Public Services Commission (PSC), for failing to release a telephone rate investigation Report that was commissioned by the PSC. Exh. 7.

RESPONSE:

Admit.

22. There are three paragraphs that refer to Senator Donastorg directly, and one that appears to refer to him indirectly. The paragraph referenced in Plaintiffs' Complaint states: ...Utilities, especially monopolies such as electric and telephone companies, should be regulated. But the regulatory body should not be threatened by a rogue senator who is trying—yet again—to play politics and jeopardize the economic well-being of the people he supposedly represents. Enter Sen. Adlah Donastorg who is threatening an attempt to disband the PSC and fire its chairman. Exh. 7.

RESPONSE:

Admit. Senator Donastorg started taking issue with the VITELCO tax exemption as far back as 1998 when he started asking for documents to support the exemption. He actually filed suit against ICC. (Donastorg vol. I Dep. 67; Complaint/Answer, *Donastorg v. ICC*, Civil No. 2002-97.) Davis admitted that she was aware Senator Donastorg had opposed VITELCO and Prosser on tax exemptions, rates, and regulatory compliance issues. (Davis Dep. 59-60.) The Daily News misstated facts in favor of Prosser's companies and against Donastorg and stressed that Mr. Madan (the person who prepared the report), is an outsider "from Connecticut" and that he "has enjoyed a long and enormously lucrative relationship with PSC," and that the "utility's customers" pay his fees. (**MSJ Ex. 8.**) The article then claims that Senator Donastorg—based on his role in asking for transparency in a public agency in relation to Prosser's company—was the most "anti-business" Senator in recent memory who was trying to "cripple" the local economy; that his "hallmark" has been to attempt to abolish government agencies who don't do his bidding; that he has "no support from anyone else in the legislature" for questioning the PSC; that he was improperly "playing politics with the economic wellbeing of the people he represents" and had no legitimate motivation for questioning why the PSC was protecting VITELCO by refusing to produce a public report regarding telephone rates; and, accordingly, calling Senator Donastorg a "rogue" senator. In the context of the article, this editorial is defamatory. (*E.g.*, **MSJ Ex. 14**; Donastorg vol. I Dep. 26-27.) The entire portion of the article that purports to

state facts about Donastorg is false and was intended to paint Senator Donastorg in a false, bad light. (Donastorg vol. II Dep. 306-14.)

Penny Feuerzeig, the then editor of the paper, resigned over the article reproduced as Robbins Deposition Exhibit 38 because “the Editorial written by Prosser defending VITELCO rates . . . destroyed the last shred of credibility that may have remained” after Prosser took over the paper. (*E.g.*, Robbins Dep. 120-23; **MSJ Ex. 8.**) Robbins, The Daily News’s corporate representative on the issue, admitted that The Daily News had no basis to rebut “anything that Mrs. Feuerzeig has to say about it.” (Robbins Dep. 123-24.)

Sworn testimony from Melchior in the Penny Feuerzeig's separate case confirms that—despite promises by Prosser that ICC was not going to interfere with the news operations because he “didn’t want to destroy the integrity of the newspaper” (Melchior Dep. 25-42)—Prosser appointed Ed Crouch to the editorial board who immediately replaced an editorial Feuerzeig wrote with one critical of Senator Donastorg and that was drafted under a “conflict of interest.” (Melchior Dep. 50-52, 79-86; **MSJ Ex. 8.**) Feuerzeig and Melchoir felt the same way: “disappointed they wanted to use it, and the contents of it was way out of line, and it was in conflict with what we’re trying to do.” (Melchoir Dep. 51-52.) Feuerzeig quit over the article. (*E.g.*, Melchoir Dep. 56; Robbins Dep. 121-22; **MSJ Ex. 8.**) When editors and reporters are quitting over the unfair contents of articles due to their unfair and conflicted nature, a reasonable jury could conclude there was bad motive and a subjective intent to defame.

The Editorial Board included Ed Crouch, Melchoir, and Jeanette Millin, who were employed by ICC. (Robbins Dep. 88.) Ed Crouch was listed on The Daily News' masthead as an ICC consultant. (Robbins Dep. 115; **MSJ Ex. 8.**) Robbins admitted that The Daily News' editorial board described Senator Donastorg as a "Rogue Senator who is trying—yet again—to play politics and jeopardize the economic well-being of the people he supposedly represents." (Robbins Dep. 117; **MSJ Ex. 8.**) Robbins admitted Daily News described Senator Donastorg as one of the most "anti-business legislators in recent memory." (Robbins Dep. 118-21; **MSJ Ex. 8.**) But Robbins could not articulate any factual support The Daily News had for making these defamatory assertions. (Robbins Dep. 118-21.) Senator Donastorg is, himself, a businessman, and he's never been "anti-business," and he didn't take any actions designed to "cripple" the Virgin Islands economy. (Donastorg vol. II Dep. 310-14.) Senator Donastorg has no problems managing his own finances and he doesn't have any role in managing the Government's finances. (Donastorg vol. II Dep. 397-98.)

23. On March 1, 2004, The Daily News published an editorial entitled "*GERS as political fodder*" attached hereto as Exhibit 1, in which the newspaper criticized the efforts of Senator Donastorg to mandate that the Government Employees Retirement System (GERS) to pay four percent (4%) interest on the lump sum funds paid to persons who elect to leave government service before retirement. *See* Exh. 4.

RESPONSE:

Admit that a Daily News article is reproduced as Robbins Deposition Exhibit 84 ("GERS as political fodder") and that it was critical of Senator Donastorg. The Daily News ran the piece and falsely accused Senator Donastorg of using the Government

Employees Retirement System ("GERS") to advance his re-election efforts, "even if it hurts the pensions of thousands of current and future V.I. Government employees." (Robbins Dep. 183; **MSJ Ex. 19.**)

The article falsely reported the Senator Donastorg had "no support from anyone else in the legislature" and was guilty of "pre-election politicking." (Donastorg vol. II Dep. 309-313.) The article misquotes Senator Donastorg in a defamatory way, who never indicated that unless the agency "do it my way or I'll get rid of you," and this was never one of his "hallmarks." (Donastorg vol. II Dep. 310.) Senator Donastorg is, himself, a businessman, and he's never been "anti-business," and he didn't take any actions designed to "cripple" the Virgin Islands economy. (Donastorg vol. II Dep. 310-14.) Senator Donastorg has no problems managing his own finances and he doesn't have any role in managing the Government's finances. (Donastorg vol. II Dep. 397-98.) Senator Donastorg at no point used GERS to advance his reelection efforts. (Donastorg vol. II Dep. 399-403.) The Daily News falsely reported that GERS was under an imminent threat of collapse and implied that Senator Donastorg was responsible for an imminent collapse that, in fact, never happened. (Donastorg vol. II Dep. 403.)

The Daily News could not cite to a single fact to support the defamatory assertion that Senator Donastorg was using the GERS to advance his re-election efforts or the other misrepresentations in the article. (Robbins Dep. 182-85; **MSJ Ex. 19.**) Davis admitted that she had no facts that supported these assertions either. (Davis Dep. 122-24.) The claim that Senator Donastorg was playing politics with GERS to advance his

re-election efforts, "even if it hurts the pensions of thousands of current and future V.I. Government employees," is false and defamatory. (Donastorg vol. II Dep. 331-334.) The Article also makes a number of false factual assertions that GERS was "underfunded by \$1 billion" and about the way interest calculated in an effort to put Senator Donastorg in a false, bad light. (Donastorg vol. II Dep. 334-35.) The article also attributed to Senator Donastorg statements in quotes that he did not make—*i.e.*, that "GERS should 'be happy to pay out (the 4 percent interest compared to what they would owe any employee that chooses to retire in the system,'"—to additionally defame him and paint him in a bad light. (Donastorg vol. II Dep. 335.)

24. The March 1, 2004 editorial ends with The Daily News stating that the four percent payout is a "pittance", and noted Senator Donastorg's lack of understanding the long-term implications of such decisions. *See* Exh. 4.

RESPONSE:

Admit. *See also* RSOF ¶23.

25. On April 6, 2004, The Daily News published an editorial entitled "*Registering V.I. automobiles*", attached hereto as Exhibit 2, concerning the unpleasantness attendant to obtaining a driver's license or a vehicle in the Virgin Islands. *See* Exh. 5.

RESPONSE:

Admit that a Daily News article is reproduced as Robbins Deposition Exhibit 85 ("Registering V.I. automobiles."). The article improperly and falsely claims Senator Donastorg has "problems managing his personal finances,"—which is a defamatory statement of fact—and that Senator Donastorg has been "unable to pass a territorial budget for fiscal year 2004," when it was the Governor's job to pass the budget. (MSJ

Ex. 19.) Robbins admitted that Senator Donastorg is the Senator referenced in Exhibit 85 and the primary target of the article's attacks and he could not articulate any factual basis for the accusation that Senator Donastorg has "problems managing his personal finances" or that he was responsible for failing to pass the territorial budget. (Robbins Dep. 183-85; **MSJ Ex. 19.**) Davis admitted she had no facts to support these assertions. (Davis Dep. 124-26.) In fact, Senator Donastorg did not have any problems managing his personal finances whatsoever: "that is totally erroneous." (Donastorg vol. II Dep. 326.)

26. The April 6, 2004 editorial referenced three propositions to improve the system, one from Elton Lewis, the Commissioner of Police, who suggested hiring a consultant to pose alternative solutions, one from Andrew Rutnik, the Commissioner of Licensing and Consumer Affairs, who suggested that jurisdiction be transferred to his Department, and one from Senator Donastorg, who suggested that the Division of Motor Vehicles be made its own department outside the direct purview of the Police Department. *See* Exh. 5.

RESPONSE:

Admit. *But see* RSOF ¶25.

27. The April 6, 2004 editorial opposed establishing a new Department of Motor Vehicles, which, the proposal suggested be funded with either One Million Dollars (1,000,000.00) or ten percent (10%) of vehicle and license fees, whichever was greater. *See* Exh. 5.

RESPONSE:

Admit. *But see* RSOF ¶25.

28. The April 6, 2004 editorial referred to the failure of the Senate Finance Committee to pass a FY 2004 budget under the chairmanship of Senator Donastorg, noting that as of April 6, 2004, the budget was some six months overdue. *See* Exh. 5.

RESPONSE:

Admit that the article falsely claims that Senator Donastorg was responsible for, but failed to, pass the FY 2004 budget. See also RSOFF ¶25.

29.a. In the April 6, 2004 editorial, reference was made to Senator Donastorg's "...problems in managing his personal finances and the government's ...," a clear reference to the foreclosure action on his personal residence that had been filed by FirstBank Puerto Rico in 2002 and to the failure of his legislative committee to vote out a FY 2004 budget. See Exh. 5.

RESPONSE:

Disputed. Plaintiffs object that no evidence shows that the reference to Senator Donastorg's "problems managing his personal finances" is a "clear reference" to the foreclosure action filed, 2 years before in 2002, which was dismissed well before 2004, as the article does not reference the 2002 erroneous foreclosure action. See FED. R. CIV. P. 56(c)(1) & (2). Robbins—The Daily News' Rule 30(b)(6) representative—admitted that The Daily News knew the foreclosure action was dismissed in April 2002 because it was erroneous and filed due to a bank error (although The Daily News refused to run a story on the dismissal after publicizing the filing of the erroneous foreclosure action), so the 2002 dismissed foreclosure actions provides no support for the false fact that Senator Donastorg had problems managing his personal finances. (E.g., Robbins Dep. 203-04; **MSJ Ex. 11.**) Moreover, assuming that dismissed foreclosure action was, in fact, the support for this statement, a reasonable jury could conclude that the statement was made in reckless or knowing disregard for the truth because Davis admitted that The Daily News knew the action had been dismissed over two years prior to the 2004 article (E.g., Davis Dep. 51), and, The Daily News admits it

should have written a follow-up article about the dismissal of the story (*E.g.*, Davis Dep. 52), but it did not because of its malice towards Senator Donastorg. In any event, Robbins testified on behalf of The Daily News as its Rule 30(b)(6) representative that he had no knowledge of any factual basis for the assertion that Senator Donastorg had problems managing his personal finances. (Robbins Dep. 184-85.)

29.b. The April 6, 2004 editorial states that Senator Donastorg's Finance Committee failed to pass the budget for the Territory by October, 2003, and had not yet done so by April, 2004. *See* Exh. 5.

RESPONSE:

Admit that the article falsely claims that Senator Donastorg was responsible for, but failed to, pass the FY 2004 budget. *See also* RSOF ¶25.

30. Passing a budget for the Territory directly affects thousands of Virgin Islanders on a multi-year basis.

RESPONSE:

Plaintiffs object in that this statement is irrelevant to any issue in dispute (FED. R. EVID. 401); no evidence shows Senator Donastorg was responsible for passing the budget and no witness so testified (FED. R. EVID. 601 & 602); and the statement is factually unsupported by any cite to any evidence in the record. *See* FED. R. CIV. P. 56(c)(1) & (2).

31. Senator Donastorg subjected himself to public critique by chairing a legislative committee which failed to pass a budget.

RESPONSE:

Plaintiffs object that no evidence shows Senator Donastorg was responsible for passing the budget or that he chaired a legislative committee that was responsible for but failed to pass a budget (FED. R. EVID. 601 & 602); and the statement is factually unsupported by any cite to evidence in the record. See FED. R. CIV. P. 56(c)(1) & (2).

32. On August 30, 2004, The Daily News published an editorial entitled "*Blind eye to cockfighting? Animal cruelty nonetheless!*" This editorial concerned a bill that ultimately became Title 14 Chapter 7 of the Virgin Islands Code, entitled "Animals and Birds." This Code section concerned criminal penalties and standards for animal abuse in the Territory of the Virgin Islands. See Exh. 6.

RESPONSE:

Admit that Robbins Deposition 98A ("Blind eye to cockfighting? Animal cruelty nonetheless!") is an August 30, 2004 article that The Daily News published. (Robbins Dep. 190; **MSJ Ex. 21.**) The article was about a bill sponsored by Senator Donastorg to increase criminal penalties for animal cruelty. (**MSJ Ex. 21.**) Nevertheless, the gist of the piece is that Senator Donastorg sponsored a bill that "specifically excludes cockfighting" from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. (**MSJ Ex. 21.**) Robbins admitted that The Daily News has no facts to support anything in this article (Robbins Dep. 190-91), and Senator Donastorg simply moved a bill that was sponsored by the Humane Society to reduce animal cruelty in a form that was the most aggressive that they believed could be passed in the legislature. (Donastorg vol. II Dep. 323-34.)

33. The particular focus of the editorial is the definition of animal abuse in the first degree which provides, at Title 14 V.I.e. § 18.1(e), as follows:

Any person who maliciously and unnecessarily: (e) uses or traps domestic dogs, cats or other animal as bait, prey or target or other malicious activities, including for the purpose of, but not limited to, training dogs or other animals to fight, excluding adult male fowl used for the sport of cockfighting ... See Exh. 6.

RESPONSE:

Disputed that the focus of the article is on the definition of abuse. The gist of the piece is that Senator Donastorg sponsored a bill that "specifically excludes cockfighting" from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. (MSJ Ex. 21.) Robbins admitted that The Daily News has no facts to support anything in this article (Robbins Dep. 190-91), and Senator Donastorg simply moved a bill that was sponsored by the Humane Society to reduce animal cruelty in a form that was the most aggressive that they believed could be passed in the legislature. (Donastorg vol. II Dep. 323-34.)

34. The editorial noted the cruelty of the sport, the prospect for illegal wagering on the sport and the numbing effect of the violence on young children. See Exh. 5.

RESPONSE:

Disputed in part. The gist of the piece is that Senator Donastorg sponsored a bill that "specifically excludes cockfighting" from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. (MSJ Ex. 21.) Robbins admitted that The Daily News has no facts to support anything in this and claimed that The Daily News was not responsible for the content of the article. (Robbins Dep. 190-91.) The purpose of the article was to tie Senator Donastorg to cockfighting and paint him in a bad, false light by selectively omitting the fact that he was strengthening an

existing bill against animal cruelty and not supporting cockfighting. (Donastorg vol. II Dep. 323-34.)

35. Senator Donastorg is only mentioned in the editorial as follows: “ ... [w]e are puzzled why senators specifically excluded cockfighting from Bill 25-0149, whose primary sponsor is Sen. Adlah Donastorg. See Exh. 6.

RESPONSE:

Disputed to the extent this implies that the gist of the piece was something other than that Senator Donastorg sponsored a bill that “specifically excludes cockfighting” from the definition of animal cruelty and falsely implies that he was in favor of or promoted cockfighting. (**MSJ Ex. 21.**) Robbins admitted that The Daily News has no facts to support anything in this and claimed that The Daily News was not responsible for the content of the article. (Robbins Dep. 190-91.) The purpose of the article was to tie Senator Donastorg to cockfighting and paint him in a bad, false light by selectively omitting the fact that he was strengthening an existing bill against animal cruelty and not supporting cockfighting. (Donastorg vol. II Dep. 323-34.)

36. On June 9, 2000 The Daily News published an article, “*ICC, Donastorg Square off over Vitelco Tax Breaks*” See Exh. 9.

RESPONSE:

Admit that Robbins Deposition Exhibit 64 (“*ICC, Donastorg square off over Vitelco tax breaks*”) is a June 9, 2000 The Daily News Article. This article is connected with a concerted and coordinated effort by Prosser, VITELCO, ICC, and The Daily News to: (1) defame Senator Donastorg and paint him in a false light; and (2) to unfairly paint Prosser and his companies in a positive light to cover up for Prosser, VITELCO, and

ICC's wrongdoing. This article must be viewed in conjunction with Robbins Deposition Exhibits 38 ("The public's right to know"), 39 ("Vitelco disputes PSC study") and 53 ("Donastorg, EDC director wrangle over accusations of abuses"), Cumbermack Deposition Exhibit 70 ("Donastorg demands data on Vitelco's EDC compliance"), and Redfield Deposition Exhibit 71 ("Donastorg asks court to make Vitelco open employee records"). The gist of the defamation and false light of the article is that Donastorg is a rogue, anti-business Senator who has a regular practice of making false and unsupported accusations against companies to harm the Virgin Islands for the sole purpose of furthering his political career. In turn, The Daily News falsely painted ICC and VITELCO as the victim of Senator Donastorg's unfair, unsupported, and anti-business attacks, when, in fact they were at fault and not victims at all.

In July 1998, The Daily News documented that Senator Donastorg was leading legislation mandating that PSC examine VITELCO's rate structure; Senator Donastorg also questioned VITELCO's compliance with its obligations to obtain EDC tax benefits. **(MSJ Ex. 9.)** VITELCO responded by falsely accusing that Senator Donastorg was looking into VITELCO for "sloppy political reasons". The Daily News gave VITELCO a platform to defamatorily "question the consultant's [Mr. Madan] methodology in reaching his conclusions" that VITELCO's rates were improperly inflated. **(MSJ Ex. 9.)** In fact, Donastorg was correct and The Daily News knew that employees who were listed as VITELCO employees for purposes of obtaining a tax credit were actually working for The Daily News. (Donastorg vol. I Dep. 163.) Senator Donastorg consistently pressed

his claims against VITELCO and, in 2000, went to court to make VITELCO open its employee records because they were violating their employment requirements in connection with EDC tax breaks. (**MSJ Ex. 9.**) Senator Donastorg also questioned VITELCO's rate-formula and rate-of-return figures around the same time. (Donastorg vol. I Dep. 68-69.) Senator Donastorg's interest in VITELCO's unfair inflated rates and tax-credit violations and his efforts to bring VITELCO into compliance with its regulatory and contractual obligations made Donastorg a Prosser enemy (*E.g.*, Donastorg vol. I Dep. 234-41), as demonstrated by the fact that Prosser or his agents sent a letter to VITELCO employees telling them not to vote for Senator Donastorg. (Donastorg vol. I Dep. 81-83.) Prosser's influence on The Daily News was obvious from the way it selectively failed to report on negative stories about ICC, VITELCO, and Prosser's companies and painted those companies in a positive light while slanting the news against Senator Donastorg. (Donastorg vol. I Dep. 184-85; see *also* Sharp Dep. 19-21.) The Daily News' hostility was the result of the actions Senator Donastorg took against its sister company VITELCO. (Donastorg vol. I Dep. 205; see *also* Cumbermack Dep. 59.)

Will Jones, senior reporter for The Daily News, told Senator Donastorg that Prosser, Crouch, and VITELCO had a "hands on" approach in running The Daily News and placed undue pressure on the reporters. (Donastorg vol. I Dep. 171-79.) Coggins, an executive for The Daily News, admitted Prosser was vindictive—he "would get hard

feelings”—and that it was widely and publically known that Senator Donastorg was a Prosser enemy. (Coggins Dep. 51-52.)

After Senator Donastorg leveled charges against Prosser, ICC and VITELCO over the improper tax breaks and unfair rates, The Daily News published an article painting Senator Donastorg in a false light by accusing him of making personal attacks against individuals without documentation to support the lie, and that Senator Donastorg was also improperly attacking Prosser, ICC, and VITELCO. Robbins Deposition Exhibit 53 is a November 1, 2000 article written by Susanna Henighan headlined “Donastorg, EDC director wrangle over accusations of abuses.” (Robbins Dep. 142; **MSJ Ex. 9.**) The story states that Senator Donastorg has charged that the Industrial Development Commission Director, Frandelle Gerard, used her position to solicit donations from Caneel Bay for the St. Croix Foundation for Community Development, which she chairs, but that “Donastorg failed to produce any documentation to back up his accusations, and on Tuesday, he would not return calls to his office requesting further comment on the information.” (Robbins Dep. 142-43; **MSJ Ex. 9.**) The story goes on to say that “Donastorg’s letter is the latest in a long and often personal attack on the EDC and Gerard,” and falsely implies that Donastorg’s allegations that Gerard has not penalized any EDC beneficiaries since becoming Director in April of 1999 were untrue when, in fact, Gerard had admitted to The Daily News that these allegations were true. (*E.g.*, Robbins Dep. 146-48; **MSJ Ex. 9.**)

The story makes the false implicit claims that: (1) Donastorg made false, unsupported allegations against the EDC Director; (2) he was asked for but failed to produce documents by The Daily News; and (3) that he was called, but “refused” to respond to accusations that he had made false and unsupported claims and personal attacks against Gerard. (*E.g.*, Davis Dep. 79-87.) It was absolutely a false statement that Senator Donastorg did not have documents to back up his allegations. (Donastorg vol. I Dep. 241-43.) Senator Donastorg was also not making unsupported “personal attacks” against Gerard; he was questioning the practices of an instrumentality of the government and Gerard’s role in her official capacity, and calling the attack “personal” was done for the purpose of painting Senator Donastorg in a bad light. (*E.g.*, Donastorg vol. I Dep. 246-50.) Further, Donastorg had not “refused” to return calls. (**MSJ Ex. 9.**)

Importantly, Robbins Deposition Exhibit 64 (“ICC, Donastorg square off over Vitelco tax breaks”)—the article referenced by Defendants in this fact—itself shows that “Donastorg’s office on Thursday provided The Daily News with a copy of VITELCO’s employee list which his spokesman said was the list Donastorg was operating from,” and the list showed “current employees who crossover work for multiple companies.” (Davis Dep. 116; Robbins Dep. Ex. 64.) In other words, The Daily News had actual knowledge that Donastorg: (1) actually had documents supporting his allegations against the EDC and VITELCO regarding the tax issue; and (2) had already actually produced these documents to The Daily News to support his claims against EDC referenced in Donastorg’s letter to the governor six months before The Daily News

wrote the false article in November. (*E.g.*, **MSJ Ex. 9.**) Robbins likewise didn't dispute that as of June 9, 2000, Senator Donastorg had provided The Daily News with documentation evidencing just as he was claiming, that VITELCO's list of employees was inaccurate at best. (Robbins Dep. Ex. 171-75; **MSJ Ex. 9.**) Senator Donastorg's press releases that The Daily News had in its possession, also show that Senator Donastorg had documentation that VITELCO was getting tax benefits while violating a tax-break requirement regarding the number of employees it had to employ. (*E.g.*, Robbins Dep. 175-76; **MSJ Ex. 9.**) Robbins could not explain why The Daily News didn't think that VITELCO violating their permit by failing to employ the requisite number of employees was not newsworthy or why it was accusing Senator Donastorg of making "unsupported accusations" when it had those very same documents in its possession. (*E.g.*, Robbins Dep. 177-78.) Cumbermack—VITELCO's Rule 30(b)(6) witness—admitted that there were times when VITELCO was not in compliance with the EDC agreement and that the companies shared payroll and employees and administration expenses. (Cumbermack Dep. 46-50, 68.) Nevertheless, and to make matters worse, Redfield was issuing ICC and VITELCO's false press releases calling Senator Donastorg a liar and falsely claiming Senator Donastorg was after confidential employee information and wanted to release confidential employee information to the public. (*E.g.*, Redfield Dep. 166-77.)

Senator Donastorg's actual charge made in a letter to the Governor was that he, himself, had asked for public documents from the EDC director to back up VITELCO's

support for tax exemptions, but that "Ms. Gerard has made it her personal mission to withhold these records in order to protect VITELCO and ICC from scrutiny." (Robbins Dep. 148-49; **MSJ Ex. 9.**) Davis admitted that The Daily News had a copy of the letter. (Davis Dep. 78-82.) It was simply false to imply that Donastorg made a false charge unsupported by documents when Donastorg's *basic complaint was that the EDC director was the one withholding documents* to protect VITELCO and ICC; it was also an independently false statement that Donastorg had refused to produce documents supporting his claim regarding the improper tax breaks as demonstrated by Robbins Deposition Exhibit 64.

To make matters worse, Robbins claims The Daily News writer Susanna Henighan called Donastorg and asked for documentation but that he didn't provide any. (Robbins Dep. 145-46.) But Robbins admitted that, before writing down that a person refused to return phone calls, they would first have to be called and given an opportunity to respond. (Robbins Dep. 143-44; see also Davis Dep. 91-94.) Although Robbins claims Donastorg "could have returned calls" to clear up the misconception about Donastorg's failure to produce documents, The Daily News had actual knowledge that Donastorg had tried to get *additional* documents from the EDC but was stymied and that it even wrote a story that Senator Donastorg had filed a mandamus action and his attempts to get the documents. (Robbins Dep. 148-50; **MSJ Ex. 9.**) Robbins speciously claims it is "fair" to expect public figures to be on-call to answer their questions "24/7" and "day and night" and speciously claims that he doesn't see the

difference between reporting that Senator Donastorg “wouldn’t return phone calls” and “didn’t return phone calls.” (Robbins Dep. 156-57.)

On November 4, 2000, Senator Donastorg wrote Henighan a letter showing how false and misleading the November 1, 2000 article about the “failure to produce documents” was and that the assertion that Senator Donastorg failed to return her telephone calls was a “bold faced lie.” (Robbins Dep. 151; Davis Dep. 94-95; **MSJ Ex. 9.**) Henighan had left a voice message at 8:00 p.m.—substantially after hours—and Henighan had made no effort to reach Senator Donastorg’s office during business hours before the story ran. (Robbins Dep. 154-44; **MSJ Ex. 9.**) Senator Donastorg requested a clarification of this misrepresentation within 72 hours but one never came. (Robbins Dep. 154-55; Davis Dep. 94-103; **MSJ Ex. 9.**) Robbins has no facts to dispute Senator Donastorg’s version of events. (Robbins Dep. 156-59.) Davis speciously claimed in a letter that placing an after hours phone call immediately before the story runs is sufficient to represent that Senator Donastorg “would not” return phone calls. (Davis Dep. 106-07.)

Rather than publishing a retraction, Davis wrote a letter to Donastorg confirming that the reporter did not call Senator Donastorg’s office until after hours. (Robbins Dep. 161-62; **MSJ Ex. 9.**) Robbins admitted that the “chronology” indicated that the paper was working on the story for three days and had been working with the people accused of wrongdoing to get their side of the story for three days before it ran and that Donastorg’s office could have been contacted earlier, during regular business hours,

even though Senator Donastorg's input was a "necessary part of her story." (Robbins Dep. 161-68; **MSJ Ex. 9.**) Nothing in Davis's letter suggests that The Daily News ever asked Senator Donastorg to produce documents. (Robbins Dep. 167-68; **MSJ Ex. 9.**)

Davis was questioned at length in her deposition over why these factual misrepresentations were made and why the article was presented in such a slanted way and she was evasive, defensive, and adequately couldn't explain the basis for any of The Daily News' factual misrepresentations. (Davis Dep. 77-112, 116-19.) Thus, the evidence shows that The Daily News knowingly made false reports when it claimed: (1) Donastorg made false allegations and that these allegations were made without documentary support; (2) that Donastorg was asked to produce documents when the basic nature of his claim was the EDC's improper withholding of documents; and that (3) Donastorg has "refused" to respond to The Daily News when it asked for his documentary support based on one after-hours phone request for documents that Donastorg had provided to The Daily News months earlier.

The evidence makes clear that the primary principals charged with defending VITELCO by attacking Senator Donastorg were Holland Redfield, Lowe Davis, and Ed Crouch (Donastorg vol. I Dep. 206), but John Tutein also approached Senator Donastorg and told him that if he would lay off VITELCO, they would build a library for him on the East End; he threatened that the alternative was The Daily News would continue running negative personal attack stories about him. (Donastorg vol. I Dep. 224-34.) Thus, when Senator Donastorg brought to light a conflict of interest between

Frandelle Gerard and her charities and her position as Director of the EDC (Donastorg vol. I Dep. 236-37), The Daily News made good on its threat by printing this story that painted Senator Donastorg in a false and bad light because of the Gerard's role in covering for VITELCO. (Donastorg vol. I Dep. 238-39.) This is corroborated by the fact that The Daily News published a false VITELCO press release that Senator Donastorg was improperly seeking private employee information (Donastorg vol. II Dep. 383-88), but frequently ignored Senator Donastorg's press releases about actions he was taking against ICC and its tax evasion. (Donastorg vol. II Dep. 388-91.) Davis also admitted that The Daily News did not report on any aspect of the story that Prosser and ICC had investigated Senator Donastorg and invaded his privacy although the other Virgin Islands papers gave it front page coverage. (Davis Dep. 60.)

37. The article refers to a press release by Senator Donastorg, which alleges that employees from a variety of Innovative Communication Corporation (ICC) subsidiaries were working for Vitelco in an effort to secure and maintain tax exemption benefits, which requires a certain level of hiring. *See* Exh. 9.

RESPONSE:

Disputed. Donastorg did not claim those employees were working for VITELCO. To the contrary, he was revealing that VITELCO was falsely listing The Daily News employees as working for VITELCO when they did not to fraudulently obtain tax benefits. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

38. The principals of ICC, through its chief operating officer and its spokesman, denied the allegations, claiming that the purpose of the personnel decisions was "corporate consolidation, not tax evasion." *See* Exh. 9.

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

39. Senator Donastorg was quoted in the article. *See* Exh. 9.

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

40. The Daily News published an article on November 1, 2000 entitled "*Donastorg, IDC director wrangle over accusations of abuse*", attached hereto as Exhibit 1, in which Senator Donastorg charges that the Director of the Industrial Development Commission improperly used her position to solicit donations for the S1. Croix Foundation. *See* Exh. 1.

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

41. The November 1, 2000 Article reports on a public controversy regarding a letter dated October 24, 2000 in which Sen. Donastorg charged that (then) Virgin Islands Industrial Development Commission (the "IDC") Director Frandelle Gerard ("Director Gerard") "used her position to solicit donations from Caneel Bay for the S1. Croix Foundation for Community Development, which she chairs." *See* Exh. 1.

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

42. The November 1, 2000 Article reports on Director Gerard's response to Sen. Donastorg's October 24, 2000 letter and the response of Caneel Bay's *counsel*. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

43. The November 1, 2000 Article states that Sen. Donastorg also charged in his October 24, 2000 letter that Director Gerard had “not penalized any IDC beneficiaries since becoming director in April 1999.” *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

44. In the November 1, 2000 article, both Ms. Frandelle Gerard, the Executive Director of the IDC, and Mr. Roger Dewey, the Executive Director of the St. Croix Community Foundation, are reported to have denied the allegations. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

45. The November 1, 2000 Article also discusses Director Gerard’s response to this additional charge. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

46. [Defendants failed to include a Fact No. 46 in Original.]
47. The article reports on complaints that Senator Donastorg raised over time concerning the operation and management of the IDC, with a reference to Senator Donastorg’s earlier written demand for Ms. Gerard’s resignation. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of this article in RSOF ¶¶4.B.2 & 36.

48. On June 12, 2001, The Daily News published an article entitled "*Legislation reduction on agenda for Rules Committee.*" Exh. 2A.

RESPONSE:

Admit. Robbins Exhibit 51 is an article entitled "Legislation reduction on agenda for Rules Committee."

49. The focus of the June 12, 2001 article was the scheduling of a hearing on the bill, sponsored by Senator Donastorg, to reduce the size of the Legislature from 15 to 9, and to reduce the Legislature's budget concomitantly. The article reports that, the Rules Committee's consideration of the measure followed it being voted out of the Committee on Government Operations, Planning and Environmental Protection the previous week "... after lengthy hearings on all islands" *Id.*

RESPONSE:

Denied in part. The "focus" of the article was the false claim that Senator Donastorg voted against his own bill. See RSOF ¶ 4.

50. The June 12, 2001 article is the one and only article referenced in this litigation that contains a factual error. The article incorrectly stated that Senator Donastorg voted against the bill in that Committee, on the basis that he wanted to send the bill to the floor of the Senate for consideration, rather than to the Rules Committee. *Id.*

RESPONSE:

Disputed that the "June 12, 2001 article is the one and only article referenced in this litigation that contains a factual error." Plaintiffs object that this representation is

unsupported by any record cite. See FED. R. CIV. P. 56(c)(1) & (2). Moreover, Plaintiffs discussed the other false, defamatory, and false-light articles in RSOF ¶4, showing that this representation is disputed. Admit that the article incorrectly stated that Senator Donastorg voted against the bill, when he did not.

In fact, Robbins Deposition Exhibit 51 is a June 12, 2001 "news story" published in The Daily News that "multiple people" edited. (Robbins Dep. 130-31.) The news story claims Donastorg "ironically" "voted no" on a bill he proposed to, among other things, reduce the number of V.I. Senators. (Robbins Dep. 130-31; **MSJ Ex. 10.**) Davis admitted there is no attribution to a source for the story and that no one contacted Senator Donastorg to verify the story. (Davis Dep. 70-71.) The Daily News admits that the vote was a matter of public record and that it falsely reported that Senator Donastorg voted against his own bill. (Robbins Dep. 132-33; Davis Dep. 68; **MSJ Ex. 10.**) The "news story" also claims that, "the strategy of members of the Senate majority is to pass the bill through the Government Operations and Rule committees to force all senators to take a stand on the legislation to the full Senate." (Robbins Dep. 135; **MSJ Ex. 10.**) Senator Donastorg called The Daily News and told them the story about him voting against his own bill was false. (Donastorg vol. I Dep. 208-09.)

The story itself does not attribute any source to this factual representation. (**MSJ Ex. 10.**) The Daily News admitted that the representation that Donastorg had voted against his own bill was factually false when made and that it did not contact Donastorg to verify the accuracy of this factual representation. (Robbins Dep. 137-38; **MSJ**

Ex. 10.) Senator Donastorg specifically asked Hal Hatfield, the reporter who admitted he could get a bonus for writing negative information about him, who his source was for the false statement about Senator Donastorg voting against his own bill, and Hatfield could not identify any particular person as the source. (Donastorg vol. I Dep. 216.) Given the hatred Prosser, ICC and The Daily News had for Donastorg and the threats to file and actually filing false stories and its request of reporters to file false stories about Donastorg, this false story was intentional. (Donastorg vol. I Dep. 217.)

The Daily News refused to retract the false story or rewrite the story because of the seriousness of the false statement contained in the original story. (Donastorg vol. I Dep. 221-22.) The Daily News later printed a correction in a small box on page two. (Robbins Dep. 128; **MSJ Ex. 10.**) The correction states that the source of the factual inaccuracy was a staffer and not the Committee Chairman. (Robbins Dep. 139-40; Davis Dep. 76-77; Donastorg vol. I Dep. 216-18.) In fact, constituents were calling Donastorg about the article and were angered and confused as to why he purportedly voted against his own bill, which demonstrates the defamatory sting of the false article. (Donastorg vol. I Dep. 219-23.) It was malicious that the "correction" was placed so inconspicuously when the false article was prominent and caused him such bad publicity. (Donastorg vol. I Dep. 220.)

51. On June 14, 2001, two days after the article was published, a Correction appeared under the headline "Setting the Record Straight" in a boxed statement on page 11 of that edition of The Daily News. Exh.2B.

RESPONSE:

Plaintiffs admit that Robbins Deposition Exhibit 52 ("Setting the record Straight"—June 14, 2001) is a retraction that is contained in a small, non-descript box on page two of The Daily News. The retraction did not remove the false and defamatory string of the original article. Robbins admitted that a full retraction of a story would merit the same play and should be kept on par with the original story (Robbins Dep. 98-99), which did not happen in Robbins Deposition Exhibit 52.

52. The June 14, 2001 Retraction reported that the reference made to Senator Donastorg's vote in the July 12 story was in error, and that Senator Donastorg did in fact vote to refer the bill to the Rules Committee. The Correction attributed the error to the staff of the legislative committee. *Id.*

RESPONSE:

Disputed that the retraction removed the defamatory sting or that it was sufficiently conspicuous or on par with the importance of the defamatory false fact published in the original article. See RSOF ¶ 51. Also, the retraction contradicts Robbins' sworn testimony that the source of the false accusation was a Committee member—not a staffer—and the reasonable inference is that there is a dispute as to whether there was even a source for the original story. (*E.g.*, Robbins Dep. 135-36.)

53. The June 14, 2001 Retraction, entitled "Setting the Record Straight," stated as follows:

Sen. Adlah Donastorg, Jr. did not vote against the bill to reduce the size of the Senate from 15 to nine members when it was approved by the Committee on Government Operations, Planning and Environmental Protection last week.

See Exhibit 2B.

RESPONSE:

Disputed that the retraction removed the defamatory sting or that it was sufficiently conspicuous or on par with the importance of the defamatory false fact published in the original article. See RSOF ¶ 51.

54. On February 6, 2002, The Daily News published an article, attached as Exhibit 7, entitled "*Sen. Donastorg and wife face foreclosure on their Wintberg home.*" See Exh. 10A.

RESPONSE:

Plaintiffs admit that Schladen Deposition Exhibit 61 is a February 6, 2002 article titled "Sen. Donastorg and wife face foreclosure on their Wintberg home." The Daily News ran this article in conjunction with Redfield Deposition Exhibit 63 ("Insolvent V.I. Senators"), which is an editorial that falsely accuses Senator Donastorg of an inability to manage his personal finances. ("Insolvent V.I. Senators"—February 7, 2002) (**MSJ Ex. 11.**) ICC and Redfield followed up shortly thereafter with an ICC Press release, touting the fact that "a bank is foreclosing on Senator Donastorg," and that "as long as politicians don't pay their bills, while the rest of us do, newspapers will report it." (Davis Dep. 120-21; **MSJ Ex. 15.**) Exhibit 61 is one of the non-newsworthy stories that was simply "spat out by Lowe." (*E.g.*, Bedminster Dep. 24-25.)

55. The February 6, 2002 article noted the filing of a Complaint in federal court for debt and foreclosure of mortgage on property owned by Senator and Mrs. Donastorg, a Complaint which demanded judgment for the outstanding amount of the mortgage, plus accrued and outstanding interest. *Id*

RESPONSE:

Admit. See *a/so* RSOF ¶¶ 4.B.3, 54.

56. The February 6, 2002 article quoted accurately from Paragraph 7 of the Complaint, which declared a default of the Donastorgs' Mortgage. Senator Donastorg was contacted for a

comment on the proceedings, and stated, without further clarification, that "...It's being taken care of; the bank dropped the ball, I don't understand why its a major issue ..." . *Id.*

RESPONSE:

Admit. See also RSOF ¶¶ 4.B.3, 54.

57. The February 6, 2002 article reported on a Complaint that had been filed in the U.S. District Court on February 4, 2002, in which FirstBank Puerto Rico claimed that Senator and Mrs. Donastorg had defaulted in the payment of their mortgage. *Id.*

RESPONSE:

Admit. See also RSOF ¶¶ 4.B.3, 54.

58. The February 6, 2002 article references a Complaint by FirstBank against Senator and Mrs. Donastorg demands a judgment of priority and foreclosure, and a personal judgment against them for any deficiency if the entire judgment on the debt is not satisfied by the sale of the residence. *Id.*

RESPONSE:

Admit. See also RSOF ¶¶ 4.B.3, 54.

59. The Complaint by FirstBank was filed on February 2, 2002, the Service of Process on the Defendants on February 5 and February 12, 2002 and the April 29 filing and the Court's April 30, 2002 Order confirm the voluntary dismissal of the Complaint. See Exh. 10B.

RESPONSE:

Admit. See also RSOF ¶¶ 4.B.3, 54.

60. Between May 30, 2003 and December 16, 2003, The Daily News published a series of fourteen articles concerning a professional boxing match that was underwritten by an appropriation of \$300,000.00 from the Tourism Revolving Fund. Exh. 11.

RESPONSE:

Admit that The Daily News printed a series of articles that are reproduced in Donastorg Deposition Exhibit 14 (composite of 14 stories about the boxing, Donastorg

vol. II Dep. 257), and in Ex. 6 ("Big money title fight rings up big gamble on marketing the V.I."—April 25, 2003); Ex. [Def's] 13 ("V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000"—May 30, 2003); Ex. 108 ("No TV contract yet, but ESPN will visit St. Thomas boxing cite"—October 28, 2003); Ex. 105 ("Volunteerism is nice, but ..."—October 29, 2003); Ex. 110 ("No ESPN contract yet for V.I. boxing card"—November 1, 2003); Ex. 12 ("ESPN commits to televising V.I.'s 'Rumble in Paradise'"—November 5, 2003); Ex. 104 ("Sugar ray Leonard to promote V.I. Boxing match for ESPN2's 'Friday Night at the Fights'"—November 7, 2003); Ex. 122 ("Boxing and tourism, a TKO; maybe 'SpongeBob' can help"—December 11, 2003). (**MSJ Ex. 14.**) Disputed that that the "professional boxing match" was "underwritten by an appropriation of \$300,000.00 from the Tourism Revolving Fund," as Plaintiffs object that Defendants failed to cite any record evidence that supports this fact. See FED. R. CIV. P. 56(c)(1) & (2).

The articles referenced herein are about a professional boxing match that took place in late 2003. Senator Donastorg was one of many politicians who thought that a globally televised sporting event would be good for the Virgin Islands and would help promote sports tourism. In this series of articles, The Daily News—at every turn—tried to falsely claim that it was Senator Donastorg's sole idea to earmark \$300,000 from the Tourism Revolving Fund for the boxing match (Donastorg vol. I Dep. 199), and then paint Senator Donastorg in a false, negative light by falsely claiming there was not actually going to be a boxing match; that ESPN wasn't coming; that there was no

venue; and that if it ended up in Lionel Roberts Stadium, ESPN wasn't going to cover it. (Donastorg vol. I Dep. 192.) The evidence shows that The Daily News tied Senator Donastorg to the boxing match and reported that it wasn't going to go forward or ran negative stories about it (Donastorg vol. I Dep. 186, vol. II Dep. 376-81), but when positive events resulted from the match, The Daily News didn't mention his name and gave others credit for the success. (Donastorg vol. II Dep. 376-81.) The series of articles The Daily News printed on the boxing match were designed to: (1) set Donastorg up as the fall guy for the \$300,000 if the event failed; (2) exclude him from positive coverage for the event if and when it succeeded; and (3) slam him as being solely responsible for the \$300,000 earmark regardless. (E.g., Donastorg vol. II Dep. 282-98.)

First, it was false and materially misleading to target Senator Donastorg as the only proponent of the boxing match and solely responsible for the \$300,000. (Donastorg vol. II Dep. 269.) Davis admitted that Seven Senators and the Governor had to sign the \$300,000 appropriations bill. (Davis Dep. 129.)

Second, Tim McDonald was a The Daily News sports writer who was assigned to cover the lead-up to the match. (McDonald Dep. 82, 111-13.) The story McDonald wrote was ultimately published on May 30, 2003 and didn't have anything to do with Senator Donastorg or the \$300,000 appropriation. (McDonald Dep. 82, 111-13.) Nevertheless—although Davis falsely denies it, which shows consciousness of wrongdoing (Davis Dep. 132), Davis changed the lead in the story about the boxing

match and left McDonald's byline on it. (McDonald Dep. 82, 111; ("V.I. Backed boxing event called off, future uncertain; no TV coverage scheduled despite promise Donastorg got V.I. to appropriate \$300,000"—May 30, 2013), **MSJ Ex. 14.**) Davis inserted a paragraph that emphasized that Donastorg was the senator who "pushed" for a \$300,000 appropriations bill. (McDonald Dep. 112.) Davis completely changed the content of the first two paragraphs by adding two new paragraphs. (McDonald Dep. 82-83.) McDonald testified that, "in the 20 years of journalism, I've never had that happen." (McDonald Dep. 82.)

In addition to writing a new lead, Davis changed other parts of the story. (McDonald Dep. 85.) "The meaning was changed. The context was changed. Everything was changed." (McDonald Dep. 86.) "I didn't mention Donastorg's name at all in the story." (McDonald Dep. 113.) Davis inserted Senator Donastorg into the story when "it was my belief he had nothing to do with the story." (McDonald Dep. 86.) Davis also changed the story to falsely claim that, "Donastorg did not return Daily News telephone calls requesting comments about the status of the bout," because McDonald—the supposed author of the story—never contacted Donastorg and didn't turn in a story with his name in it. (McDonald Dep. 114; see *also* McDonald Trial Tr. 68-80, 103-05, 169-88.)

McDonald, an experienced reporter, testified the new article was offensive and disparaging to Senator Donastorg because it claims he pushed for a \$300,000 appropriation for an event that the story claimed "will not happen" as scheduled.

(McDonald Dep. 118-19.) The original thrust of the article was that there had been a simple schedule change. (McDonald Dep. 119.) When Senator Donastorg objected to the story, The Daily News tried to force McDonald to sign a false affidavit that he was the sole author of the story and that Davis, consistent with established procedures, simply edited the story, when, in fact, Davis radically altered the story. (McDonald Dep. 139-40, 146-47.) When McDonald refused to back down, The Daily News then fired him, lied and said the firing had nothing to do with his refusal to lie and made false claims of attendance issues and sent three thugs to his home with billy clubs and his picture that was hanging in his office to intimidate him. (McDonald Dep. 188-200; see also McDonald Trial Tr. 68-80, 103-05, 169-88.) McDonald ultimately sued The Daily News in the District Court of the Virgin Islands and a jury found that The Daily News, Lowe Davis and Jason Robbins had lied about why McDonald was fired and awarded compensatory and punitive damages. (Jury Verdict Form dated March 12, 2009 in *McDonald v. Daily News, et. al.*, Civil No. 2004-93.)

The Daily News then falsely reported there was no ESPN contract in place and that there would not be a championship fight with no factual support. (Donastorg vol. I Dep. 198-99.) In fact, there was no actual uncertainty that a promoter would provide the event. (Donastorg vol. I Dep. 192-3.) McPherson confirmed that the information contained in The Daily News article was false and that he had provided contrary information to The Daily News. (Donastorg vol. I Dep. 211; McPherson Aff.). The Daily News intentionally and falsely created uncertainty about the match that it claimed

Senator Donastorg was spearheading. (Donastorg vol. I Dep. 211-14.) The Daily News also reported that there was no heavy weights scheduled but purposefully omitted that there was a big Sugar-Ray-Leonard backed welterweight card. (Donastorg vol. I Dep. 196.) The Daily News also falsely reported that Senator Donastorg was directly negotiating with the promoters and the facility for contract rights, which would have been an improper conflict of interest and was simply false. (Donastorg vol. II Dep. 290-91.) McDonald admitted to Senator Donastorg that Davis had manipulated the story. (Donastorg vol. I Dep. 233.) The statement that there was "no TV coverage scheduled despite promises when Donastorg got V.I. to appropriate \$300,000" is blatantly false as written because while there was no contract "in place", they were simply negotiating over the terms of the contract; the fact of TV coverage was not in doubt. (Donastorg vol. II Dep. 265-70.) The boxing article quotes McPherson as saying, "its all up in the air right now." McPherson's and McDonald's testimony evidences that The Daily News deliberately misquoted him. (Donastorg vol. II Dep. 376.) The article was false in that McPherson was misquoted and Davis omitted favorable information to place Senator Donastorg in a false, bad light. (Donastorg vol. II Dep. 272-73.) In contrast, when The Daily News ran positive stories about the Boxing Match, Senator Donastorg's name wasn't included. (Donastorg vol. II Dep. 274.)

For example, the November 7, 2003 article, Robbins Deposition Exhibit 104, is a positive article about Sugar Ray Leonard coming to promote the fight. Robbins could not explain why Senator Donastorg was not mentioned in this article if he was the

primary person to “push” the fight and the \$300,000 appropriation. (Robbins Dep. 191-94.) Compare this with Robbins Deposition Exhibit 105, which ran a few days earlier, which rips the Senator for the \$300,000 appropriation for a “boxing matching that may or may not persuade tourists to visit islands,”; and Robbins Deposition Exhibit 108, which ran the same day, and focuses on the uncertainty of the event and the fact that Senator Donastorg “sponsored the amendment” for the appropriation; and Robbins Deposition Exhibit 110, which ran a few days later, describes Senator Donastorg as the “point man” of the event when the story is about “no contract yet for V.I. card.” (Robbins Dep. 196-98; Robbins Dep. Exs. 105, 108, 110.) Robbins could not explain why Senator Donastorg was singled out for the negative press and why his name didn’t appear in the positive articles. (Robbins Dep. 197-99.)

Despite the false news reports that the event was doomed, it was a huge success. Nevertheless, after it was over, The Daily News wrote another false article about the match and Senator Donastorg to place him in a false, bad light and that contained false, defamatory statements about Senator Donastorg, including that Senator Donastorg had taken money from the tourism fund solely for an “ego trip”; that Senator Donastorg had intentionally used false or inflated statistics to validate the \$300,000 appropriation; and that the \$300,000 appropriation was “wasteful.” (**MSJ Ex. 14**, “Boxing and tourism, a TKO; maybe “SpongeBob” can help”—December 11, 2003.) Neither Robbins nor Davis could articulate any facts that support the assertion in Robbins Deposition Exhibit 122 that Senator Donastorg had taken money from the

tourism fund for an "ego trip"; that Senator Donastorg himself had used false or inflated statistics to validate the wasteful spending of \$300,000; or that the \$300,000 appropriation was even wasteful. (Davis Dep. 136-37; Robbins Dep. 202-03.)

Robbins, The Daily News' Rule 30(b)(6) representative, testified that statements like "The Daily News sets the standard here [in the Virgin Islands]" is not a statement of opinion, but is a statement that is "absolutely fact." (Robbins Dep. 93.) Robbins admitted that news stories should be fair and accurate. (Robbins Dep. 62.) Robbins also admitted News stories should not "take sides" and should be presented impartially. (Robbins Dep. 62.) The Daily News obviously failed to comply with these standards with respect to the boxing match.

61. The primary sponsor of the legislation that granted the appropriation was Senator Donastorg. *Id*

RESPONSE:

Disputed in part. Seven Senators and the Governor had to sign the \$300,000 appropriations bill. (Davis Dep. 129.)

62. The articles commence with reporting on the preliminary contract negotiations and conclude with a post-fight analysis. Of the twelve articles, Senator Donastorg is mentioned in seven of the fourteen articles. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

63. The first article of the series, dated May 30, 2003, had the headline "*VI-backed boxing*

event called off, future uncertain" with the sub-headline "No TV coverage scheduled despite promise when Donastorg got VI to appropriate \$300,000.00." Exhibit 13. The article reported that Senator Donastorg pushed the VI government to support the event, but that no TV coverage had yet been arranged. The promoter, Sterling McPherson, was quoted as saying that there were ongoing negotiations with various cable networks. Other than identifying Senator Donastorg as the moving force behind that legislation, there was no reference to Senator Donastorg. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

64. The second article of the series, dated September 22,2003, had the headline "*Sugar Ray Leonard to promote VI boxing match for ESPN2's Friday Night at the fights, planners say*" (Exhibit 14). The article did not make any reference to Senator Donastorg. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

65. The third article of the series, dated October 24, 2003, had the headline "*No contract yet, but ESPN will visit St. Thomas boxing site*" referred to a site visit by representatives of ESPN and that a formal announcement was imminent. Peter Sauer, the UVI Athletic Director, who was providing the venue, was reported as saying that he was negotiation with officials, including Senator Donastorg on the logistics of the fight. In addition, Senator Donastorg was identified as having sponsored the amendment that appropriated the funds to pay for the event. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

66. On October 31, 2003 The Daily News published two articles (the fourth and fifth in the series). The first article was entitled "*Sugar Ray says VI boxing events is a go*" (Exhibit 16) with the sub-headline "*No world title at stake, but welterweights include a talented prospect.*" *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

67. The second article, on the same page, was entitled "*Leonard Readies St. Thomas for Rumble in Paradise.*" *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

68. In the first October 31 article, there is a one-paragraph reference to Senator Donastorg as follows "[T]he government appropriation, which Sen. Adlah Donastorg, Jr. sponsored as an amendment to a bill and will draw from the Revolving Tourism Fund, is intended to show case the Virgin Islands as a tourism destination." *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

69. Senator Donastorg is not referred to in the second October 31 *article. Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speak for themselves and are attached as exhibits.

70. The sixth article of the series was published on November 1, 2003 and had the headline "No ESPN contract yet for VI boxing card" (Exhibit 17). The only reference to Senator Donastorg was as follows "Sen. Adlah Donastorg, Jr., who has been the point man for the Virgin Islands in bringing the fight to town, also was unavailable for comment." The articles focused on the efforts of the promoters to firm up the bout and the fighters, and gave some details about the complexity of the preparations. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

71. The seventh article of the series was published on November 5, 2003 and was entitled "ESPN commits to televising V.I.'s 'Rumble in Paradise'" (Exhibit 18). The article had a photograph of Senator Donastorg and Sugar Ray Leonard in a press conference with the caption "Sen. Adlah Donastorg, Jr. and Sugar Ray Leonard announcing plans for the fight during Leonard's trip to the Virgin Islands last week." The article reported three quotes from Senator Donastorg lauding the fight as a springboard for future sporting events, and concerning the fact that the main event was for the "Continental America's" title, which likened the title to a Double-A baseball title. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

72. The eighth article of the series was published on November 7, 2003 and was entitled "*UVI Sports Center secured as the site for boxing bouts ticket situation unclear*" (Exhibit 19) reported on the uncertainty of where and when to secure tickets for the six-fight card. In the article, there are three references to Senator Donastorg. The first was that he was unavailable for comment, the second was that he worked with UVI officials to secure use of the VI Sports Center and, third, that neither he nor the University officials would comment on the financial arrangements for the use of the facility. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

73. The ninth article of the series, published on November 8, 2003, was entitled "*Two local boxers ready to rumble in December's professional event*" (Exhibit 20). The November 8 article did not mention Senator Donastorg. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

74. The tenth and eleventh articles were published on December 4, 2003. The first December 4 article was entitled "*Heavyweight bout dropped from St. Thomas boxing card*" (Exhibit 21) did not mention Senator Donastorg. *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

75. The second December 4 article, on the same page, was entitled "*Leather ready to fly at last in St. Thomas boxing show.*" In that article, Senator Donastorg was identified as the "Rumble in Paradise ringmaster who sponsored legislation to bring the fight to St. Thomas." Senator Donastorg was quoted as lauding the upcoming ESPN broadcast and characterizing it as a "... springboard for future major events ..." *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

76. The twelfth article of the series was published on December 5, 2003, the day of the fights. The article was entitled "*Countdown to fight time marked by flurry of activity*" (Exhibit 22). Senator Donastorg is not mentioned in the December 5 article. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

77. The thirteenth article of the series was published on December 6, 2003 and is entitled "*Rumble in Paradise -Burton Defeats Lorenzo in Main Event*" (Exhibit 23). Senator Donastorg is not mentioned in the December 6 article. *Id.*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

78. The fourteenth and final article in the boxing series was published in The Daily News on December 16, 2003. The article was entitled "*Boxing event showcases 'paradise' for 781,000 viewers*" (Exhibit 24). Senator Donastorg was reported as saying that the publicity the Virgin Islands received far exceeds the \$300,000.00 expenditure from the Tourism Revolving Fund. In addition, the article quotes Senator Donastorg as saying that "... The timing couldn't have been better as Northeastern viewers got to see our sunshine and beaches on the eve of the season's first major snowstorm." *Id*

RESPONSE:

Disputed as incomplete and for its lack of context. Plaintiffs explained the false, defamatory, and false-light context of these article in RSOF ¶¶60. The text of the articles speaks for itself and the articles are attached as exhibits.

IV. Affidavits

79. By affidavit dated March 5, 2004, Lowe Davis stated that in her capacity as editor in chief of The Daily News that she "knows of no news stories or editorials about Plaintiffs in The Daily News that concerned matters outside the public interest." Davis Aff. ¶ 17, Exh.17

RESPONSE:

Disputed in substance. First, Plaintiffs object that this self-serving and conclusory affidavit cannot establish any fact as a matter of law for purposes of summary judgment, and it is inadmissible because it is vague as to time; lacks foundation; doesn't describe any specific event or specific article; and this conclusory statement itself fails to show that it is based on the personal knowledge of any specific

witness. See FED. R. EVID. 602; see also FED. R. CIV. P. 56(c)(2) (evidence relied on to support summary judgment must be shown to be admissible at trial) & (4) (affidavit or declaration testimony must show that it is based on the personal knowledge of a witness who is competent to testify at trial).

Second, according to Robbins, the standards for publication of a story involve “newsworthiness, timeliness, and public interest,” (*E.g.*, Robbins Dep. 21), and according to Robbins, for example, the fact that ICC had investigated Senator Donastorg was “not a newsworthy matter in the context of Senator Donastorg’s responsibilities as a senator.” (Robbins Dep. 90-95, see also 68.) As another example, The Daily News had information about and actual foreclosure brought against Senator Rocky Liburd, but The Daily New chose not to run this story about these personal matters. (*E.g.*, Donastorg vol. II Dep. 370-72.) The articles contained in Robbins Deposition Ex. 61 (“Sen. Donastorg and wife face foreclosure on their Wintberg home”—February 6, 2002) and Robbins Deposition Ex. 63 (“Insolvent V.I. Senators”—February 7, 2002) (**MSJ Ex. 11**) contain matters—that are not only false—that concern Senator Donastorg’s private life only and are not matters of public concern. Robbins Deposition Exhibits 61 and 63 did not meet the standards of “newsworthiness, timeliness, and public interest” described by Robbins as the standard for publication. (*E.g.*, Robbins Dep. 21.)

80. Davis further stated that, “[a]ll the information in news stories or editorials about Plaintiffs in The Daily News was gleaned from public sources, including court files, other public document and interviews with willing third parties.” *Id.* ¶ 27, Exh. 17.

RESPONSE:

Disputed in substance. First, Plaintiffs object that this self-serving and conclusory affidavit cannot establish any fact as a matter of law for purposes of summary judgment, and it is inadmissible because it is vague as to time; lacks foundation; doesn't describe any specific event or specific article; and this conclusory statement itself fails to show that it is based on the personal knowledge of any specific witness. See FED. R. EVID. 602; see *also* FED. R. CIV. P. 56(c)(2) (evidence relied on to support summary judgment must be shown to be admissible at trial) & (4) (affidavit or declaration testimony must show that it is based on the personal knowledge of a witness who is competent to testify at trial).

Second, this paragraph of Davis' affidavit contradicts her own deposition testimony; her deposition is filled with examples where Davis admitted she lacked personal knowledge of the facts and sources used for the articles at issue. (*E.g.*, Davis Dep. 70-71, 76, 122-26, 136-37.)

RESPECTFULLY SUBMITTED
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DATED: November 20, 2014

BY



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Christiansted, St. Croix
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on November 20, 2014, I caused a true and correct copy of **PLAINTIFFS' AMENDED RESPONSE TO DEFENDANTS' ALLEGED STATEMENT OF MATERIAL FACTS ABOUT WHICH THERE IS NO GENUINE ISSUE** to be served via hand delivery/ U.S. mail upon the following:

VIA HAND DELIVERY

Joel H. Holt, Esquire
Law Offices of Joel Holt
Quinn House
2132 Company Street, Suite 2
Christiansted, VI 00820
Email Address: holtvi@aol.com
Attorney For: Holland "Dyke" Redfield and
Innovative Communications Corporation

VIA HAND DELIVERY

Kevin Rames, Esquire
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Attorney For: Daily News Publishing Co.,
Lowe Davis

VIA U.S. MAIL

Oakland Benta, Pro Se
P.O. Box 3388
Frederiksted, VI 00841

BY:  _____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on July 15, 2022, I electronically filed the foregoing with the Clerk of the Court using the VIJFES system, which will send a notification of such filing (NEF) to the following:

Kevin Rames, Esq.

K. A. Rames, P.C.

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jannett@rameslaw.com

Attorney For: Daily News Publishing Co., Lowe Davis

BY: /s/ Rhea R. Lawrence