STATE OF MINNESOTA
IN COURT OF APPEALS

Jerry L. Moore,

Respondent,

v.

John Hoff a/k/a Johnny Northside,

Appellant.

Court of Appeals No. A11-1198

RESPONDENT'S BRIEF AND APPENDIX

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INTRODUCTION

Appellant's appeal is conceptually and structurally flawed.

The Appeal is conceptually flawed

Although Appellant has worked to articulate his 'legal' issue as whether the jury "verdict" violates the First Amendment if the jury relied on protected speech – this is a dodge. In actuality, Appellant is challenging the ***jury instructions***, without using those words. Why not use the words? Because Appellant did nothing to timely challenge the jury instructions below. Appellant:

- Did not ever file a pleading containing proposed jury instructions (**RA:45**), let alone ones that triggered the district court to consider the First Amendment with regard to tortious interference with contract;[1]
- Did not make any verbal objections to any draft jury instruction during the court's charging session; and
- Did not order the transcript of the charging session.

It is too late now for Appellant to challenge the jury instructions.

The Amicus brief acknowledges that the problem is the jury instructions (Amicus Brief Section II, p. 9-10). But the Amicus should not be permitted to raise new issues on appeal (that is, trying to make up for what Appellant did not litigate below).

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[1] Finally, part way through the trial, Appellant identified standard JIGs as jury instructions. These cannot now be interpreted as seeking a First Amendment review or a jury finding of malice or anything similar.

Appeal is structurally flawed

It is clear that this appeal is intended to help someone. But even if successful, it is not going to help Appellant Hoff.

Hoff appears a mere stand-in. Amicus counsel and a journalist who did not attend the trial, and who is apparently married to a member of the Society Pro created this argument (after the trial),[2] and only *then* did Appellant make the argument. (This is well-documented in this litigation, and will be discussed below.) Although the media has a right to be interested, it lacks standing to create the argument and then perpetuate this appeal.

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[2] See the blog post 'article' by David Brauer for MinnPost at http://www.minnpost.com/braublog/2011/03/johnny-northside-damn-right-were-appealing-60000-judgment, cited within an Amicus cite, http://www.thedeets.com/2011/03/11/johnny-northside-trial-follow-up/, which indicates that David Brauer talked to John Borger (Amicus counsel) who stated, "The award left media lawyers flabbergasted because, as Faegre & Benson's John Borger puts it, "If the statement was true, there should be no recovery. There is caselaw in Minnesota that the providing of truthful information is not a basis for tortious interference." The Amicus argues that the district court's ruling has upset or confused journalists. But what left media lawyers "flabbergasted" was the incorrect portrayal of what occurred at trial, by Brauer and Borger. See also (See Clark-Strike Aff. (May 16, 2011 filed with the district court) ¶5).

FACTUAL STATEMENT & PROCEDURAL HISTORY

(& RESPONSE TO UNTITLED PARAGRAPH AT APPELLANT BRIEF p. 4)

Plaintiff Jerry Moore ("Moore") sued out this case in mid 2009, against Defendants John Hoff and Don Allen. (Complaint at **AA:1;RA:1-3**). John Hoff, who publishes a blog entitled, "The Adventures of Johnny Northside" ("Hoff"), has a law degree from the University of North Dakota, although he did not obtain a law license. (**T:37-8**).

Appellant is obviously concerned he will be challenged for not raising First Amendment issues in this litigation below. In the untitled paragraph at Appellant's Opening-Brief p. 4, Appellant contends that Plaintiff Moore was the first to raise the First Amendment, in his Complaint. It is true that the Complaint used the words "First Amendment" (this is an obvious legal issue in many defamation cases). Appellant cites to his "Answer" as mentioning the First Amendment.[3] But even on *notice* of First Amendment issues, Defendant Hoff missed his opportunity to bring any dispositive motions, where these issues usually get fleshed out. (**RA:1-2**).

Initially, Defendants Hoff and Allen were represented by licensed Attorney Albert T. Goins, Sr., Esq. (Answer at **AA:28**).

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3 But the Answer was not filed until winter 2011. (**RA:2**).

Ironically, the first joust by Defendants was to bring a motion for a more definite pleading, presumably to facilitate a motion on legal and constitutional issues. (**RA:1**). But no substantive motion like that was ever brought.

Plaintiff brought a motion to disqualify defense counsel due to a conflict of interest between Defendants Hoff and Allen. (**RA:1-2**). Although this was denied, it seems undisputed that this was eventually the basis for Attorney Goins' withdrawal. Appellant certainly cannot contend that he was not on notice of the conflict issue.

Moore settled with Defendant Don Allen.[4]

The case proceeded to trial.

Trial

Pre-trial proceedings

By the time pre-trial pleadings were due pursuant to the Trial Order (**RA:30**), Hoff represented himself.[5] He filed witness and exhibits lists, but no proposed jury instructions and no motions *in limine*. (**RA:45; RA:1-2**)

Plaintiff Jerry Moore timely filed all pre-trial pleadings, including proposed jury instructions. (**RA:4;RA:5-18;RA30-33**).

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4 The district court discussed the settlement with the parties outside the hearing of the jury. (**T:158-61**).

5 The district court file will show a letter from Attorney Anfinson, who was performing some role just prior to trial which was less than officially representing Defendant Hoff.

Hoff was quickly thereafter represented by Paul Godfread, Esq. (**RA:1 & 2**).

Attorney Godfread appeared for the first time on **February 10, 2011.** (**RA:27-29**). The district court confirmed that Plaintiff had filed all pre-trial submissions as ordered. And, given that Defendant's lawyer was new to the case, expanded the time for Defendant to file pre-trial pleadings until **March 1.** *Id.* That would give Plaintiff one day to review Defendant Hoff's trial pleadings, with a pre-trial hearing set for that day (**March 2**). (*Id.*; **RA:1-2**).

Even after being given additional time to do so, Defendant Hoff still did not file any proposed jury instructions. (*See generally* **RA:1-3;RA:45**). Hoff filed one motion *in limine* relating to the Communications Decency Act ("CDA") (discussion of this legal issue at **T:109-110** and Respondent's bench memo at **RA:53-54**).

Defendant did not address the First Amendment in any pre-trial pleading, or in any meaningful way before the district court.

The *district court* raised the First Amendment issues regarding the defamation claim. The district court decided to hold a hearing on **March 3, 2011.** (District court order at **AA:29-35**). Appellant did not purchase this transcript.

The district court initiated argument and ruling on two main issues: **1)** whether the allegedly defamatory statements were fact or opinion; and **2)** whether Jerry Moore was a limited purpose public figure. Presumably, the district court

raised these issues in furtherance of its duty to prepare legally-correct jury instructions.

1. *Fact v. opinion*

At the **March 3** hearing, the district court considered whether the statements were of 'fact' or opinion. *Id.* Plaintiff Moore assisted the district court with his bench memo at **RA:57-59** regarding opinion versus fact, and highlighting that opinion is absolutely protected under First Amendment analysis. Moore also assisted the district court by preparing an exhibit that pulled each allegedly defamatory statement out of the Complaint. (**RA:66**).

Appellant did not purchase that transcript, but it can be reasonably inferred that had Defendant Hoff *wanted* all of the allegedly defamatory statements to go to the jury, that the district court would not have needed to hold a hearing regarding the allegedly defamatory statements from the Complaint.

Yet Appellant appears to be arguing before this Court that the jury should have been given more opportunity to weigh the falsity of more statements. Not only did Appellant not raise these issues properly at the district court, Appellant affirmatively squandered those opportunities created for him by the district court.

Following the **March 3** hearing, the result was that only one allegedly defamatory statement went to the jury. "**Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a**

high-profile fraudulent mortgage at 1564 Hillside Av. N." (*See* Special Verdict Form (SPV) at **AA:36,** hereinafter "The Falsity Sentence." See also the district court's order at **AA:30-31**). It was this one sentence for which the jury was asked to determine whether Moore had met his burden to prove falsity.

This Court can also note that Appellant did not appeal any of the determinations by the district court. In other words, Appellant lost his opportunity to allow the jury to determine by special verdict query whether additional statements (besides The Falsity Sentence) were indeed false. However, it can be inferred from the evidence adduced, that the jury found numerous statements besides The Falsity Sentence to be false.

2. *Private v. public person*

The district court also raised on **March 3**, the issue of whether Jerry Moore (a private person[6]) was a 'limited purpose public figure.' *Id.* Over the objection of Plaintiff Moore (*see* Moore's bench memo at **RA:60-66**), the district court ruled that Jerry Moore was a limited purpose pubic figure as a matter of law.

Obviously 'limited public person' status informed the district court's jury instructions for defamation, which asked the jury about falsity, defamatory meaning, and actual malice. (SVF at **AA:36**).

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6 No one has ever argued that Jerry Moore is an elected official or government official.

Moore contends that the district erred as a matter of law in determining that he was a limited purpose public figure. Moore contends that his proposed "negligence" jury instructions (**RA:15-17**) should have been given.[7]

Appellant did not argue it was an issue of 'public concern'

It is clear that below, neither the Appellant nor the Amicus argued that an issue of public concern was at issue. (**AA:29-35**). Note how Plaintiff Hoff's bench memos touch on the 'public concern' facet of First Amendment law. (See, e.g., **RA:60**), and cited to case law. But Defendant Hoff never raised the issue, *even when the district court geared up a full day evidentiary hearing* to litigate First Amendment issue(s).

And Defendant Hoff did not raise this issue (public concern) after the trial in his motion to vacate.

Trial evidence

Rather than summarizing the entire trial, Respondent Moore here focuses on evidence that supports the tortious interference verdict.

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[7] The 'public figure' ruling ended up having no consequence for Moore regarding his defamation claim, because Moore did not meet his burden of proving falsity. (**AA:36**). However, now that Appellant and the Amicus are arguing on appeal that appellate courts should scour the trial evidence regarding tortious interference with contract in order to ensure the First Amendment is protected, Moore triggers the same rigorous analysis *also required by appellate courts* to determine whether the district court's threshold determination regarding the Plaintiff's statue was correctly made. (See argument below.)

Stevan Jackson

Stevan Jackson testified that he had known Jerry Moore since the mid 1980's. He knew Jerry Moore's reputation for being educated and articulate, for doing things for the community and being an upstanding citizen. (**T:21-3**).

Jackson testified that he's aware of the blog Adventures of Johnny Northside, and that Hoff is "pro Don Samuels" (a Minneapolis City Council Member). (**T:24-5**). Jackson stated that it seems that anyone who disagrees with Don Samuels or his group of people gets attacked by Hoff on his blog. After Hoff's blog posts, Jackson noted that Moore's reputation in the community was that of a 'criminal.' (**T:25-6**).

John Hoff

John Hoff testified that the Adventures of Johnny Northside is his blog and he has control of it. (**T:47**). Hoff testified that he has a degree in English and a law degree but no law license. (**T:37-8**). Hoff stated he was a journalist and he covers "news." (**T:50**). Hoff said he has studied journalistic ethics, including the tenets to:

- Avoid conflict of interest;
- Separate news from opinions;
- Balance competing points of view;
- Corrections should be published when errors are discovered; and
- Be judicious in naming criminal suspects until the filing of charges

But he did not necessarily agree that ethics demand that he allow persons who are the subject of adverse news stories to have a reasonable opportunity to respond. (**T:41-2**).

Hoff disagreed that he was biased in favor of Don Samuels, but said he supports Samuels in a lot of things he does. (**T:50**). He did agree that he wrote a lot of negative things about Samuels' challenger in the 2009 City Council election, and that Jerry Moore supported the challenger (Natalie Johnson Lee) in that campaign. (**T:53-4**).

In June 2009, Hoff received information that Jerry Moore was working at UROC[8] at the U of M. (**T:58-9**). Don Allen had told him that Moore was working at UROC, and Hoff called "reliable people" who confirmed this. (**T:61**).

Hoff identified **Exhibit 101** as his **June 21, 2009** blog post and it was received into evidence. (**T:60;RA:19-22**). Hoff stated that it was true that 'movers and shakers' were upset about Moore's employment at UROC. (**T:75**).

Hoff waited for a week to publish his June 21 blog post, while 'people' were trying to talk to 'people' at the U. (**T:90**). Hoff stated that calls were made to the U of M about Moore, and that he had "specific and general" knowledge about this. (**T:92**).

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8 Urban Research and Outreach Center (see **Exhibit 101** at **RA:21**).

Colloquy with the Court about the 'defamation zone'

After the jury was released at the end of the first day of testimony, the district court picked up the thread of the CDA issue. Moore had dubbed the comments following a blog post as the 'defamation zone' in his Complaint.

When Attorney Godfread entered the case, he filed a motion *in limine* to exclude all comments below the blog posts. The district court had not yet ruled on the DCA issue, but stated that it appeared the discussion was getting into the 'defamation zone.' Moore's counsel stated, "I'm not going there because of defamation. I'm going there because of intentional interference." (**T:94**). Hoff's attorney heard this discussion and responded. Still, Defendant Hoff said nothing about any legal similarity between defamation and tortious interference.

Moore had provided a bench memo in response to Hoff's motion (filed by Attorney Godfread) regarding the CDA (**RA:53-4**), and contended:

- That immunity is always an affirmative defense and Defendant has the burden;
- The Act protects ISP's and intermediaries and JNS is not an intermediary (Blogspot is the intermediary);[9] and
- There was an incitement by Hoff, aiding and abetting the intentional interference with Moore's employment contract, and that under four federal

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9 Note that the URL of JNS is [JNS].blogspot.com.

cases that is outside any immunity that the CDA would provide even if it applied.

(**T:96-7**). Moore further contended that Blogspot can be used to allow all comments to publicly post, but Hoff was monitoring the comments and deciding which ones to publish, which made him a content provider, liable under case law interpreting the CDA. *Id.* Moore requested that the district court permit Moore to talk to the jury about the comments.

The following morning the district court ruled that Hoff could not be held liable for any of the comments to the blog post(s), but if during questioning witnesses admit to posting comments, then the comments can come in. (**T:109-110**). And if Moore can identify a poster, then they can be subpoena'd. (**T:112**).

Later, the parties redacted **Exhibits 101** and **102** so that no comments that had been excluded by the district court would go to the jury room. The district court accepted un-redacted versions as court exhibits. (**RA:67-73**).

Hoff's continued testimony

John Hoff continued testifying, and **Exhibit 102** was admitted. Hoff agreed that **Exhibit 102** was his post from **June 23, 2009** and that he authored everything on it. (**T:127-28**).

A known credible source at U of M gave information to a known, creditable source in the Hawthorne Neighborhood, who conveyed it to me earlier today:

Jerry Moore, the former Executive Director of JACC, who is currently involved in a lawsuit against JACC, was "let go" from his job at the University of Minnesota UROC program. According to the U of M source....

It was reportedly coverage on this blog which "blew open" the issue of Moore's hiring and forced the hand of U of M decision-makers after the issue had been quietly, respectfully brought to their attention over a week ago. I am told pages were printed from my previous blog post about Moore's hiring by UROC, including the extensive comment stream, and these pages got "waved around" a bit in a discussion at U of M.

...

Hoff testified that he approved the comments that were posted, and posted a comment of his own. (**T:129**). Hoff did not caution anyone that it would be illegal to attempt to get Moore fired. He claimed that "Source A" told him to be careful about frivolous and vexatious lawsuits.

Donald W. R. Allen, II

Don Allen testified that he is a marketing and PR consultant. (**T:163**). John Hoff contacted him and came to his office to find out his positions. Hoff indicated that the goal of his blog was to talk about Level 3 sex offenders, houses in the neighborhood, post pictures of black men that have gotten into trouble with the law and let people comment on the information. (**T:165-66**).

Initially, Allen guided 'hits' to Hoff's blog. And at first he linked from his blog to Hoff's blog. But he later removed the link because he became "concerned." *Id.* Allen did not like the way Hoff deconstructed black men. (**T:168**). When Allen removed the link, Hoff told him he had to be on the right 'team.' *Id.*

Allen stated that he had visited Hoff's blog a number of times and had left some comments there. He confirmed that "Goodpony" is Megan Goodmundson. (**T:169**). Allen studied Hoff's writing style to determine that Hoff was leaving allegedly anonymous comments to his own blog posts. (**T:170**).

Allen confirmed that he (Allen) had written some of the comments to **Exhibit 101** (**RA:21-2**). Allen wrote the 'comment' entitled "Don 'I said it' Allen said..." It was the content of an email that Allen had sent to Dr. McClaurin, the Executive Director of the U's UROC. (**T:170-73**).

> **Don "I said It" Allen said...**
>
> Email sent to Dr. McClaurin:
>
> Dear Dr. McClaurin,
>
> This email is to give you a heads up on a pending situation, that could possibly turn into a **public relations nightmare** for the University of Minnesota/Urban Research and Outreach Center.
>
> On last week, allegedly – Mr. Jerry Moore and Mike Kestner were released from the Northside Marketing Task Force board of directors. This comes on the heels of several different scenarios involving Mr. Moore and his relationship with Tynessia Snoddy who is under indictment for mortgage fraud as reported on KSTP-TV-(Read

it here: http://kstp.com/news/stories/S795057.stml?cat=1).

Mr. Moore did a deal that remains in question where he received a $5000 check for "new windows" at 1564 Hillside Avenue North. Mr. Moore put no new windows in said property. This was a conflict of interest, at the time he was JACC's executive director. More importantly – he was not a "window repairmen" either.

From the court documents that surfaced in the Larry Maxwell trail (sic) with an invoice for $5000 to JL Moore Consulting and the current Jordan Area Community Council court case, I feel there could have been a (sic) error in judgment on the part of the UROC in collaborating with Mr. Moore.

There is enough public information to support the claims made in this email, I hope that the U of M's corrective action is swift and covert to avoid more media distribution of this information as it pertains to UROC, the U of M and the connection with Mr. Moore which would be "he gets a check" from the University of Minnesota to discuss Mortgage Foreclosures and other information in the community.

The current story out is here: http://adventuresofjohnnynorthside.blogspot.com/2009/06/former-jacc-executive-director-jerry.html, **the Independent Business News Network will consider covering this on Tuesday**, but since our media group is trying to do business with the U of M, I will remain cordial and diplomatic – **for now**.

Dr. McClaurin, I would be glad to forward to you name of community stakeholders that are qualified to be topic specific for anything UROC needs to discuss in the community. I would also offer you the services of the public relationships branch of V-Media Marketing for any message distribution you might see fit.

If you have any question, please contact me at 612-[redacted].

Very best regards,

Donald W.R. Allen, II-Chairman
V-Media Development Corporation, Inc – a Minnesota Non-Profit,
Public Relations and Advocacy Organization

[addresses and phone numbers redacted]

June 22, 2009 12:17 AM

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Bolded text is bolded in the original.
Bolded and underlined is the emphasis added.

Allen testified that John Hoff called him up knowing that Allen could get to Dr. McClaurin before Hoff could. Hoff said Moore can't work at the U of M, we have to stop this. Hoff said that Megan Goodmundson had made phone calls to the U of M already. (**T:174**).

Allen discussed the email above (which he later posted as a comment on Hoff's blog) and they decided that since Allen had closer ties to Dr. McClaurin, it would be better if Allen sent the email. Hoff asked him to send the email. Hoff and Megan Goodmundson were blind-copied on the email when it was sent. Hoff's goal was to disturb the employment of Moore. (**T:175**).

Allen also testified that he believed that the comment dated June 21, 2009, 11:14 AM is from Hoff (commenting on his own post). Allen said it reads 'Anonymous,' but when you look at the third paragraph, this is a trend in Hoff's comments.

"Let's track down the contact information for these people, post this, and have a coordinated effort to remove Jerry Moore and restore credibility to the partnership."

(T:176).

Allen stated that Hoff harbors ill will toward Moore. That Hoff doesn't want Moore employed in North Minneapolis at any agency. That Hoff has issues with successful Blacks, Hispanics, Asians, and even poor Caucasians that live in North Minneapolis. Allen said he knew one of Hoff's goals is to take down Moore by any means necessary. Moore supported one of Samuel's opponents, and that is another reason Hoff despises Moore. **(T:178)**.

Had Defendant Hoff raised First Amendment issues below, then Moore could have countered that *he* had a First Amendment right to vote for and work for Natalie Johnson Lee for public office. Because Hoff did not make the argument, Moore lost that opportunity to litigate his First Amendment rights in the district court.

Allen testified that Hoff, his followers and his blog led to Moore's termination. **(T:180-82)**. Based on what Allen knew, he believed the U of M did not want a negative publicity campaign. Because of Hoff's attacks on individuals rather than issues, the U of M walked away from Jerry Moore. **(T:182-3)**.

Allen testified that he wish he had never sent the email. That his wife is a Professor at the U of M, and when she became pregnant, Hoff blogged that she was carrying Allen's 'demon seed,' and that she was an idiot. And that now when you goggle his wife's name, you pull up Hoff's article. Allen ended by saying he wished he had never met John Hoff, talked to Hoff, or looked at his blog. (**T:184**).

Allen testified that Hoff made threats against him in an effort to intimidate him from testifying in the case. Allen received an anonymous threatening email the night before he testified. He also had an intimidating telephone call on the Saturday before his radio show. Allen said he felt intimidated about testifying at trial. (**T:197-98**).

Jerry Moore

Jerry Moore testified that he moved to Minneapolis in the 1980's, went to school, then worked for the Urban League and Jordan Area Community Council. (**T:200-04**). In about April 2009 he obtained a job at UROC. (**T:205**). He lost that employment with UROC in June 2009. (**T:207-8**).

UROC supervisors never criticized Moore's work. No projects were ending at the time he lost his job. (**T:208-09**). **Exhibit 103** was admitted, the letter that terminated Moore from UROC. (**RA:26;T:210**). The letter does not state that Moore was being terminated for any type of poor performance or misconduct. *Id.* Moore

believed he was in good standing with UROC and his employment would continue. (**T:218**).

Moore testified that Dr. McClaurin's 'right hand person' was Makeda Zulu-Gillespie. She worked closely with Moore and knew his work. (**T:220**).

Moore testified that he was never charged with any type of mortgage fraud crime. (**T:210**). He testified that the statements in **Exhibit 101** (Hoff's June 21, 2009 blog post) are false. (**T:216;T:276-303**).

Makeda Zulu-Gillespie

Makeda Zulu-Gillespie testified that she worked for UROC and that there were no problems with Moore's work when he was there. Dr. McClaurin made the decision to terminate Moore from employment. At the time of Moore's termination, there was no change in the U's need for assistance with that project. (**T:225**).

Michael Kestner

Michael Kestner was born and raised in North Minneapolis. In 2005 he started joining organizations on the north side. (**T:259**). Kestner met Jerry Moore on the Northside Marketing Task Force. (**T:260**).

Hoff explained the philosophy of his blog to Kestner. Kestner referred to it as "romancing the struggle": to draw out the entertainment value of North Minneapolis. (**T:261-63**).

Hoff accused Moore of mortgage fraud in statements to Kestner. Hoff ranted and exhibited ill will and 'bile' when he talked about Moore. (**T:264-68**).

Megan Goodmundson

Defendant Hoff called Megan Goodmundson to the witness stand. Goodmundson testified that she had told Hoff that Moore was "involved" with at least one fraudulent mortgage transaction. (**T:337**). The Falsity Sentence included the word "involved," and Hoff's defense placed emphasis on the word "involved." It is reasonable that the jury decided "involved" was too vague to prove false. After all, even judges and juries are "involved" in mortgage fraud cases (trials).

Closing Arguments

Defendant Hoff's closing argument addressed intentional interference with contract at **T:435**. The only argument made was that there was no evidence Hoff interfered. The jury obviously did not agree.

Defendant Hoff's closing then strayed into areas of law that had *not* been raised by Hoff outside the hearing of the jury and/or which were not supported by the evidence. (**T:436-8**).

- The U of M is a public institution;
- UROC specifically uses public money to help people in the neighborhood deal with housing and mortgage issues;

- Hoff's justification is that this is a matter of public interest;
- Hoff's writing involves matters of public concern, matters of politics, matters of public funds and their use, matters of crime and public safety, and matters that were controversial and under discussion in north Minneapolis.

It was improper for Hoff to raise these issues for the first time in Closing and in this manner. It prevented Moore from making argument to the district court about how to handle such issues. And it prevented the district court from ruling on them.

Plaintiff Objection To Defense Closing Argument

Plaintiff Moore objected to the Defense closing argument by saying "objection." Then at **T:486**, Moore explained his objection to the district court.

Hoff made no objections to Plaintiff's closing argument

It is not clear what the Amicus is arguing about Moore's closing argument.[10] Defendant Hoff made no objections to any closing argument by Plaintiff. He did not make any objections:

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10 Perhaps the Amicus brief is suggesting that Moore's arguments lack merit because Moore discussed the *blog posts* in closing argument. This is a strange argument, since it was Moore who offered **Exhibits 101** and **102** into evidence. The blog posts are *evidence* and they were properly discussed for various reasons (including but not limited to showing Hoff's motive). It is strange to argue, essentially, that Moore cannot even discuss the exhibits at closing. The legal standard is simply not that words cannot be considered in American trials.

- during closing argument,
- immediately after closing argument outside the presence of the jury, or
- in post-verdict motions.

And, of course, Appellant did not order the jury instruction transcript for this Court. Neither Appellant Hoff nor the Amicus should be allowed, now, to try to resurrect issues about Moore's closing argument.

The Verdict

The jury returned the verdict on **March 11, 2011**. See Special Verdict Form at **A:36**. The jury did not find that The Falsity Statement was **true**. The jury found that Moore had not met his burden of proving it was **false**. Those are not the same thing. Arguments by Hoff or the Amicus that the jury found the sentence was "true" are simply not accurate.

The jury was *not* asked whether the other statements in **Exhibits 101** and **102** were false. Hoff never asked the jury to answer those questions.

The jury was asked one damage question for all three claims. Consistent with the verdict, the Court filed judgment in favor of Moore on two claims, tortious interference with contract **and** interference with prospective employment advantage for a total of $60,000.

The blogosphere erupts after trial

After the trial, the media started the rumor that the jury verdict for tortuius interference was based on The Falsity Sentence. (See Moore's motion to strike at the district court level, as well as on appeal, and supporting affidavits.)

Society Pro Insinuated Itself Into District Court Matter

After trial, on or about **March 23, 2011**, and ***before*** Hoff filed any post-verdict motions, the Society Pro presumed to file a purported "amicus" memorandum at the district court.

As Moore pointed out in his memorandum filed with the district court,[11] the Society presumed to tell the district court and the parties about the case they had just tried. It turned out the Society had not performed *any* factual research, had not read a transcript.

Moore's motion to strike the Amicus brief in the district court, as well as litigation on appeal pointed out:

- The Society did not know the facts. The Society would not respond to Plaintiff counsel who was trying to tell them they did not know the facts;
- The Society had *given* Hoff his legal issue (Hoff, to his detriment, took it);

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11 Plaintiff's Memorandum of Law filed in Support of his Motion to Strike Pleading of Society, dated May 16, 2011.

- On appeal, in its purported request to file Amicus brief under Minn.R.Civ.App.P. 129, the Society (now joined by others) went far beyond Appellate Rule 129 and, once again, handed Hoff his appeal issue (this time refined), that the appellate court must peruse the record to ensure the First Amendment was respected below.

So Hoff jumped on that argument. And following the purported Amicus brief, Hoff filed post-verdict motions, including a motion for judgment as a matter of law and a motion for new trial.

Post-verdict motions denied

Hoff's post-verdict motions were denied. (**A-Add-1**, *et seq.*) The district court noted that for judgment as a matter of law, the district court must take into account all of the evidence in the case, view that evidence in a light most favorable to the jury verdict, and not weigh the evidence or judge the credibility of witnesses. (**A-Add-2-3**). The district court elucidated that standard. *Id.*

The district court also discussed the new trial standard, "the verdict [must be] so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." (**A-Add-3-4**).

This appeal followed.

ARGUMENT

I. Standard of Review.

The Appellant does not properly discuss the standard of review, either by the district court, or by Minnesota's appellate courts, of a post-trial motion for judgment as a matter of law, or motion for new trial. For the proposition that a First Amendment question of "constitutional fact" compels de novo review, Appellant cites to a federal case. Appellant Opening-Brief p. 9.

As recently as 2010, the Minnesota Supreme Court stated :

> We review de novo a district court's decision to deny a motion for judgment as a matter of law. *Gilbertson v. Leininger,* 599 N.W.2d 127, 130 (Minn. 1999). We have said that when a district court considers a motion for judgment as a matter of law, it "must view the evidence in the light most favorable to the jury verdict, and should not grant [the motion] unless the evidence is practically conclusive against the verdict and reasonable minds can reach only one conclusion, (or) the jury's findings are contrary to the law applicable in the case." *Diesen v. Hessburg,* 455 N.W.2d 446, 452 (Minn. 1990) (citation omitted) (internal quotation marks omitted). We have also said, "An answer to a special verdict question should be set aside only if it is perverse and palpably contrary to the evidence, or where the evidence is so clear as to leave no room for differences among reasonable persons." *Kelly v. City of Minneapolis,* 598 N.W.2d 657, 662 (Minn. 1999) (citation omitted) (internal quotation marks omitted).
>
> We note that the Eighth Circuit has held that if a determination of liability is based on more than one ground, a verdict should be sustained if the plaintiff is entitled to recover on the basis of one of the grounds. *See Hinkle v. Christensen,* 733 F.2d 74, 76 (8th Cir. 1984). In essence, this means that if the plaintiff is entitled to recover on one ground, a court need not consider the other grounds. *Id.* We agree.

Moorhead Econ. Dev. Auth. V. Anda, 789 N.W.2d 860, 887-88 (Minn. 2010). Appellant has turned this standard on its head. Rather than the burden being on Appellant to show why the jury verdict is palpably wrong, Appellant has essentially asked this Court to require Respondent to prove that the jury did not consider The Falsity Sentence. That clearly is not the standard.

The lack of focus on the appellate standard of review exacerbates problems with Appellant's analysis. For example, at Appellant Opening-Brief p. 17, Appellant states, "Furthermore, the trial court's claim that defendant 'did not present any evidence' in support of his argument is hardly persuasive, because it turns the governing law on its head. It was obviously plaintiff's burden to offer admissible and relevant evidence...." Surely, it was Plaintiff's burden to prove his claims *at trial,* but it was Defendant's burden *to prove his motion for judgment as a matter of law.*

Appellant contends that the review is "*de novo*" because he is raising legal issues. First, Appellant cites to *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. Ct. App. 2010). That cite is in apposite. *Harrison* is a motor vehicle driver's license revocation proceeding, involving implied-consent case and the application of the Fourth Amendment. At page 920, *Harrison* cites to *Shane v. Comm'r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998) for the proposition that "where the facts are **undisputed**, questions of law are reviewed de novo." (Emphasis added). The facts were heavily disputed at trial.

Having reviewed the Amicus request to file brief citing to *Bose Corp. v. Consumers' Union of U.S., Inc.*, 466 U.S. 485, 509 n. 27 (1984), Appellant cites the case for the proposition that First Amendment questions of 'constitutional fact' compel the U.S. Supreme Court's *de novo* review. But it is far from clear how the Minnesota Supreme Court (the highest court in a state that has a duty to protect *state* interests) would rule on this issue. In *State v. Nielson*, 2011 Minn. App. Unpub. LEXIS 1055 (Minn. Ct. App. 2011), the Court of Appeals held it could not grapple with an argument under the federal constitution because the Minnesota Supreme Court had not yet done so. It is not clear why this would be handled any differently in this case.

Stated another way, Appellant has not cited any *Minnesota* case that held that the appellate courts must conduct an independent review of the evidence. *Bose*, 466 U.S. at 508, n. 26.

Of course, Minnesota appellate review cases are not deficient on this angle, as they permit the reviewing court to parse the district court's new trial analysis. Properly, it seems, because the trial judge sat through the trial and observed the witnesses and the jury, this Court has deferred to the discretion of the district court in new trial motions.

And nothing about the citation to *Bose* get around the problem of Appellant failing to proffer any proposed jury instructions, to challenge any instructions the

district court planned to give, objecting to any jury instructions at trial, or disputing the instructions following the verdict. Note that the *Bose* included a challenge to the jury instruction. Indeed, Bose-Court noted that the High Court has rejected the contention that a jury finding of obscenity vel non is insulated from appellate review **so long as the jury was properly instructed**, and there is some evidence to support its findings. Bose, 466 U.S. at 507.

Nowhere does Appellant cite a case for the proposition that a defendant may withhold all objections (such as to jury instructions) and lie in wait until *after* a jury's verdict, and then claim that the court should have applied the law differently. Indeed, see cases cited by the district court at **A-App-2-3.**

Further, as the internal cite makes clear, the 'contrary to law' standard is really that "the evidence cannot sustain the verdict." *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990). The standard is *not*, as Appellant wants it to be, that there might have been one sentence that the jury should not have considered. Otherwise, no jury verdict would stay shut. All an appellant would need to do is point out one evidentiary error by the district court, allowing one testimonial sentence to go before the jury, for example, and the Appellant would win. That does not happen in the Minnesota appellate system. Here, the district court noted in

footnote 3 at **A-Add-5**,[12] that Appellant did not even object to The Falsity Sentence at trial. Indeed, at trial, Hoff discussed The Falsity Sentence over and over.

II. Appellant Did Not Correctly Appeal The Issue(s).

Appellant Hoff articulates the relief he requests in his opening-brief-conclusion as a request to ***reverse*** the **judgment** below. But Appellant only challenges one claim: intentional interference with contract. The "judgment" is a composite judgment. The Special Verdict Form asked the jury one damage question, to be filled out if the jury had found in favor of Plaintiff on any of the three claims (defamation, intentional interference, or interference with prospective employment advantage).

As is noted above, Defendant Hoff failed at any time to challenge the jury instructions or the SVF. It is too late now to do so.[13]

So this Court is faced with a situation where Appellant's request is for half of the judgment to be "reversed" as a matter of law (the tortious interference claim). That still leaves the *entire amount* of the $60,000 judgment intact, as $60,000 is also

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12 Respondent understands that this footnote falls under the 'new trial' section of the district court order.

13 *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (the Court of Appeals will generally not review constitutional questions for the first time on appeal.). Parties cannot make new arguments (not made in the district court) on appeal. *See, e.g., Jacobson v. $ 55,900 in U.S. Currency*, 728 N.W.2d 510, 522 (Minn. 2007), citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (an appellate court may not consider a question never litigated in district court). This footnote applies to all arguments by Respondent Moore that Appellant failed to litigate the appropriate issues below.

the amount awarded for interference with employment advantage.[14] This Court can reject this entire appeal because the Appellant's entire argument is ineffectual to achieve the relief requested. (This is the problem created by the Amicus coming up with an argument based on a trial that they didn't even attend, let alone participate in.)

Although the appeal is articulated as an appeal from the denial of a motion for JAML, a closer reading of the Appellant's arguments (and including those of Amicus), shows that this is *really* an appeal from the denial of a motion for new trial.

The argument that the jury should not have been permitted to consider certain evidence (here framed as a First Amendment issue), or should not have been permitted to draw the conclusion that it drew, is really a request for a new trial. It is a sideways attack on the jury instructions given by the district court, without using the word 'jury instructions.' It is a way of saying, the district court should have done *something* to ensure that the jury did not improperly consider evidence. And the obvious way the district court does *something* is in the form of jury instruction. Note how the Amicus really acknowledges that this is about the jury instructions. (Amicus Brief p. 9-10). And the remedy for faulty jury instructions is a new trial.

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[14] As Plaintiff Moore pointed out in his opposition to Defendant's post-verdict motions, Hoff never raised any arguments regarding the interference with employment advantage claim. This is likely because Hoff really got his argument from the Amicus, and *they* only raised it with regard to tortious interference. The framework of this appeal likely now recognizes that is too late to challenge the verdict/judgment with regard to the interference with employment advantage claim.

Defendant Hoff did bring a post-verdict motion for new trial, below. The district court denied the motion for new trial. The district court correctly pointed out that,

> In order to grant a motion for a new trial on the grounds that the evidence does not justify the verdict, "the verdict [must be] so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." A motion for a new trial should be "granted cautiously and used sparingly." A decision to grant a new trial rests in the sound discretion of the district court and will be reversed only upon a clear abuse of that discretion. [Citations omitted.]

(Add:4).

But Appellant did not appeal the district court's denial of that motion. Why? Likely because he never challenged the jury instructions, and did not purchase the transcript of the charging session. Or because he realized he could not show the district court clearly abused its discretion.

Or perhaps Appellant realized his misstep below - failing to seek a new trial on the interference with employment advantage claim. Hoff never grappled below with the obvious problem that *even if* there were a problem with the jury instruction for tortious interference with contract, the damage amount for the two claims on which Plaintiff prevailed were combined in the SVF. Certainly, Hoff did not challenge the award on the interference with employment advantage claim on appeal. A new trial cannot be granted on less than all damage claims unless the

district court is able to say that the issue to be retried is so distinct and separable from the others that the trial of it alone may be had without injustice. *Swanson v. Thill*, 227 Minn. 122, 152 N.W.2d 85 (Minn. 1967).

But having failed to properly protect his jury instruction challenge, or his motion for new trial on two claims for which damages were collectively awarded, it is inappropriate for Appellant *or* the Amicus to attempt to cast an appeal that is in actuality an appeal from the denial of a motion for new trial (such as would be made if the jury was not properly instructed), as one 'as a matter of law.'

Respondent asserts that even on the 'issue of law' that appellant urges, the analysis is fatally flawed. The Appellant/Amicus have picked one slice of First Amendment analysis, and tried to get this Court to focus on it to the exclusion of other aspects of that analytical framework. In doing so, they have deftly avoided the very appellate law they hope to have this Court consider.

Federal appellate courts do perform a First Amendment review in defamation cases, when there is a public issue or public figure involved.[15] This is **step 1**. Amicus skipped over that vital step in the analysis (discussed in Section II, below), pointedly focusing this Court on just one prong of the analysis – the evidence before the jury in **public** issue and **public** figure cases.

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15 And there has been some application to other state torts, but not a lot.

Then, having worked diligently to keep both the district court and this appellate court from focusing on **step 1** in the First Amendment analysis, the Amicus has actually argued that Respondent counsel violated *her* duty of candor to the court. (Amicus Brief p. 9, n. 4).[16]

Respondent Moore moved the Chief judge to strike Amicus brief on appeal, reasoning that if that brief was stricken, Moore would not need to brief for the Panel, all of the "Amicus" history below, to deal with the blog posts cited, or to use brief space to deal with slight variations in the Amicus argument. The Chief Judge ruled that this Panel is in the best position to decide the weight to be given to the 'articles' (website addresses to blog posts) which were not in the Record below, and the argument made by Amicus. Respondent does understand the ruling of the Chief Judge, and upon reflection, believes it is appropriate to alert this Panel to the unusual conduct of the Amicus in creating an issue and then perpetuating this appeal.

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16 Apparently the argument by Amicus (which actually cites an ethics canon), is that Moore's attorney should have: i) read every case she was involved in in the past; ii) decided whether there was any (even strained) argument that could assist Hoff (a lawyer with a lawyer); and iii) spontaneously make that argument to the district court. This is specious, and Amicus must know it. Aside from the obvious attack on Moore's counsel (which will be ignored; note the Amicus cites *not one single case* for the strained proposition they put forth), Amicus knows that lawyers have a duty to their *own clients*, to assist *them* in the litigation, not the other side. Amicus' argument is a strained attempt to explain why *Hoff* never litigated these issues in the district court.

When that is combined with the fact that Hoff only appealed one of the two claims that formed the basis of the damage award of $60,000 and judgment,[17] Moore asserts that this appeal is *not* designed to help John Hoff. It was created to help the Amicus. The Amicus lacks standing to make this appeal about its rights of its needs or even wants.

This appeal should be dismissed in its entirety because the relief requested cannot effectuate a reversal of the judgment.

III. STEP 1: JERRY MOORE'S STATUS MUST BE SCRUTINIZED ON APPEAL.

The same set of cases that the Appellant/Amicus relies on to support the notion that this appellate court is required by federal law to scour the trial evidence, makes clear that the **step 1** in that analysis, is to determine whether it is a private or public issue, and private or public person.

"At the outset, we note that 'the classification of a [claimant] as a public or private figure is a question of law to be determined initially by the trial court and then carefully scrutinized by an appellate court.' *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1081 n. 4 (3d Cir.) (citations omitted), *cert. denied*, 474 U.S. 864, 88 L. Ed. 2d 151, 106 S. Ct. 182 (1985)", cited in *U.S. Healthcare, Inc.,*

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17 It is too late, now, for Hoff to attempt to resurrect a challenge to the judgment against him for wrongful interference with prospective employment advantage. It would not be a proper reply brief topic, and by raising it here Moore is specifically cautioning Hoff not to try to raise that as a 'reply' issue.

United States Health Care Systems of Pennsylvania, Inc. and Health Maintenance Organization of New Jersey, Inc., 898 F.2d 914 (3d Cir. 1988).

Stated another way, because of the unique way that Appellant has postured this appeal (that because of one legal issue the entire judgment should be reversed), this Court may sustain the district court's judgment on any basis. *Cf., Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. Ct. App. 1995), *review denied* (Minn. Feb. 13, 1996) (this court may affirm a grant of summary judgment if it can be sustained on any ground).

As is discussed below, the greatest First Amendment protection is provided on issues of public concern, where the subject is a public official. This is really the point of the First Amendment, to permit citizens to criticize government. On the other hand, if the issue is private, or the subject is private, there is greatly diminished First Amendment 'interest,' and the State's interest in protecting its citizens from defamation, but also tortious interference with contract, is heightened.

> One can discern in these decisions two forces that may reshape the common-law landscape to conform to the First Amendment. The first is whether the plaintiff is a public official or figure, or is instead a private figure. The second is whether the speech at issue is of public concern. When the speech is of public concern and the plaintiff is a public official or public figure, the Constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a media defendant than is raised by the common law. When the speech is of public concern but the plaintiff is a private figure, as in *Gertz*, the Constitution still supplants the standards of the common law, but the constitutional requirements are, in at least some of their range, less forbidding than when the plaintiff is a public figure and the speech is of public concern. When the speech is of exclusively private concern and

> the plaintiff is a private figure, as in *Dun & Bradstreet*, the constitutional requirements do not necessarily force any change in at least some of the features of the common-law landscape.

Phila. Newspapers, Inc. v. Hepps, 475 U.S. 767, 775 (1986).

The below chart shows graphically the graduated First Amendment protections of the speaker. The chart moves from lightest (where the most protections are afforded the speaker) to the darkest, where the State's interest is paramount.

Public issue, public person	Public issue, private person
Private issue, public person	Private person, private issue

No issue of 'public concern'

> Although speech is generally protected, the Supreme Court has "long recognized that not all speech is of equal First Amendment importance. It is speech on 'matters of public concern' that is 'at the heart of the First Amendment's protection.'" *Dun & Bradstreet*, 472 U.S. at 758-59 (footnote and citations omitted). Such speech -- unlike expression that is "'no essential part of any exposition of ideas, and [is] of such slight social value as a step to truth that any benefit that may be derived from [it] is clearly outweighed by the social interest in order and morality,'" *Gertz*, 418 U.S. at 340 (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 86 L. Ed. 1031, 62 S. Ct. 766 (1942)) -- requires heightened constitutional protection in the defamation context.

United States Healthcare v. Blue Cross of Greater Phila., 898 F.2d 914, 928-29 (3d Cir. 1988). Hoff never argued that the fodder for the trial was a 'matter of public concern,' at least not in any way that would have led to a judicial ruing or otherwise informed the trial. It was too late even by closing arguments to begin inserting that issue into the trial.[18] It is surely too late now, on appeal, to argue for the first time in a reply brief, that this is an issue of public concern.

Ruling regarding public figure status was error

Jerry Moore argued below that he was a private person.

With due respect to the district court, that court erred in determining as a matter of law that Jerry Moore was a limited purpose public figure. Appellant Hoff did not order the transcript from **March 3**,[19] so we are limited to the district court's order in evaluating that decision.

The district court held that Jerry Moore was a 'limited purpose public figure' because he was Executive Director of JACC because it addressed housing issues. (**AA:30-33**). But the district court's analysis shows how it is flawed. The district court did not make any finding that Moore "thrust himself into the forefront of a

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18 Inserting a couple of phrases about it being public funds or an issue of public concern during closing arguments, was improper argument. It denied Moore from weighing in on the legal issues, and it prevented a ruling from the district court. Moore timely objected at closing argument, with a detailed explanation to the district court outside the hearing of the jury.

19 It is the job of the Appellant to order a sufficient amount of transcript for this Court to be able to review the issues. Due to the meagerness of the record on appeal no choice but to affirm. *Webster v. Schwartz*, 262 Minn. 63, 114 N.W.2d 280 (Minn. 1962).

particular controversy." The factual findings were that Moore became a Director of JACC, and then Executive Director. But not one of the findings shows Moore *as a matter of law* became a limited purpose public figure of his own volition. (If anything, those findings would be relevant in an analysis of 'involuntary' public figure - something the district court noted that Hoff never argued. This is, as the district court and *Metge* held, an exceedingly rare category.)

Further, the "findings" of the Court of Appeals in the *Metge* case cannot become "findings" in this case. *Metge v. Cent. Neighborhood Improvement Ass'n*, 549 N.W.2d 488, 495 (Minn. Ct. App. 2002). In *Metge*, there was a specific finding that, although a private non-profit corporation, the Central Neighborhood Improvement Association was 'imbued with a public purpose' and substantially supported by public funds. This finding was *not* made in Moore's case. The *Metge* Court also found that *Metge* had "enhanced media access" to respond to criticisms of her. This was not found by the district court, below.

See also cases where a much greater "cause célèbre" was at issue, and the plaintiff was deemed *not* to be a limited-purpose public figure:

> In *Time, Inc. v. Firestone*, 424 U.S. 448, 47 L. Ed. 154, 96 S. Ct. 958 (1976), the court found that plaintiff Mary Alice Firestone was not a limited purpose public figure regarding her divorce proceedings, despite the fact the divorce was a "cause celebre". Id. at 454. Analyzing Firestone's activities generating publicity, the court found that her "resort to the judicial process * * * is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court." Id. at 454. (quoting *Boddie v. Connecticut*, 401 U.s. 371, 376-77, 28 L.Ed. 2d 113, 91 S. Ct. 780 (1971). The court also found

that the fact Firestone held a few press conferences did not convert her into a public figure. *Firestone*, 424 U.S. at 454-55 n. 3. The court also stated:

While participants in some litigation may be legitimate "public figures," either generally or for the limited purpose of that litigation, the majority will more likely resemble respondent, drawn into a public forum largely against their will in order to attempt to obtain the only redress available to them or to defend themselves against actions brought by the state or by others. There appears little reason why these individuals should substantially forfeit that degree of protection which the law of defamation would otherwise afford them simply by virtue of their being drawn into a courtroom. Id. at 457.

In *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 61 L.Ed.2d 450, 99 S. Ct. 2701 (1979),[20] the Court held that the plaintiff, a nephew of Russian spies convicted during the 1950's, was not a public figure required to show actual malice on the part of Reader's Digest. Plaintiff was cited for contempt for failing to appear before a grand jury regarding the spy charges against his uncle and aunt. The Court found that while Wolston's failure to go before the grand jury and his contempt citation were newsworthy, Wolston did not engage in the type of behavior converting him to a public figure. The Court concluded: "[Our] reasoning leads us to reject the further contention of respondents that any person who engages in criminal conduct automatically becomes a public figure for purposes of comment on a limited range of issues relating to his conviction." *Id.* at 168.

Within this state's jurisdiction, the leading case appears to be *Jadwin v. Minneapolis Sta & Tribune Co.*, 367 N.W.2d 476 (Minn. 1985). Jadwin was the promoter, president, and principal shareholder of two companies, Bond Fund and Minnesota Fund Management. As part of an effort to attract sales of a mutual fund, Jadwin placed ads, mailed literature, and issued press releases on the fund. A reporter for the defendant paper investigated Jadwin's business, and in a March 5, 1980 article, the paper criticized Jadwin's companies. When the paper refused to retract certain statements, Jadwin filed a libel suit on behalf of himself and the two corporations organized by him.

The trial court granted summary judgment to plaintiffs, holding that plaintiffs were private figures, but that because the defamatory matter involved an issue of public concern, even a private plaintiff had to show actual malice. Id. at 480.

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[20] A criminal defendant does not automatically become a public figure, *see Wolston*, 443 U.S. 157, 61 L. Ed. 2d 450, 99 S. Ct. 2701 (1979).

Jadwin was not a general purpose or involuntary public figure, and the court found that "though the case is close, we affirm the trial court's finding that Jadwin is not a public figure." *Id.* at 485. Though Jadwin engaged in business actions including attracting media attention, this court held that Jadwin did not perform the types of activities which would transform him into a public figure. "To hold, in effect, that soliciting public investment automatically transforms any small businessman into a public figure would, in our view, expand the category beyond the limits contemplated by *Gertz*. Jadwin at no time met the rationale of access to rebut the alleged libelous publication that is a distinguishing feature between private individuals and public figures." *Id.* at 486.

...

In light of these previous cases, we must determine whether Jacobson is a limited purpose public figure required to show actual malice. KWEB argues that Jacobson thrust himself to the forefront of a public controversy, his criminal trial, to influence the resolution. Specifically, KWEB asserts that Jacobson used his access to the media to further his views. Our review of the record indicates that while Jacobson was the subject of numerous articles relating to his trial, Jacobson did not engage in the type of voluntary activity which would support a finding that he is a public figure. His situation is similar to that of the plaintiff in *Firestone*, who was compelled to go to court in order to obtain her divorce. In the present case, Jacobson was required to face the criminal charges pressed against him, and he appeared in court to defend himself. His interview in the paper, although it allowed Jacobson to profess his innocence, was primarily a reaction to this court's decision that day reversing his criminal conviction and granting a new trial. Jacobson took no other actions nor sought any other notoriety; in short, we find that the facts in the present case do not support petitioner's contention that respondent is a voluntary public figure.

...

> A community has a legitimate interest in the outcome of a felony trial, and our decision in no way affects the right to publish truthful information contained in public court records. *See Cox Broadcasting v. Cohn*, 420 U.S. 469, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975). We cannot, however, extend that protection to the publication of the statements in this case which are admitted to be inaccurate. *See Firestone*, 424 U.S. at 455. We hold that respondent Jacobson is a private individual, not a limited purpose public figure, for purposes of this defamation action, and is not required to show actual malice to establish a prima facie case.

Jacobson, supra.

In the case at bar, Moore was only a potential *witness* in the criminal proceedings concerning Larry Maxwell (never even called to the witness stand). According to the precedent cited above, even *Maxwell* would not become a limited-purpose public figure merely because a criminal case was filed against him. The district court makes clear that Moore did not hold a press conference or even contact the media himself. He was *contacted by* the media, in his role with JACC. And merely defending oneself does not transform someone into a public figure.

Further, the district court did not accurately determine what the 'controversy' was. Even if housing, or mortgage fraud were in general an issue of controversy in North Minneapolis, the controversy is not connected to The Falsity Statement. The Falsity Statement tied Jerry Moore to a potentially criminal act of mortgage fraud – though the district court did not find Jerry Moore had ever been charged with a crime.

Unless everyone "involved" even tangentially in a criminal case is to be made a 'public figure,'[21] the controversy at issue must be narrowly drawn to the topic over which the Minnesotan thrust himself into that very controversy. Here, the controversy was whether Jerry Moore was "involved" with mortgage fraud. The word "particular" controversy means there must be a connection between the controversy and the voluntary thrusting of oneself into it. There was no finding (factual or legal) that Moore had thrust himself into *that* controversy.

Finally, nothing about the alleged controversy that would have impacted others, other than Jerry Moore. The controversy found by the district court was a wide-spread, general issue relating to housing/mortgage fraud. Of course those issues touch a wide group of people. But whether *Jerry Moore* being "involved" in mortgage fraud (when he's just a witness or perhaps named in a document, but not even charged) would not touch a wide group of people (or at least, there was no finding by the district court that it would).

As a matter of law, the district court erred in holding that Jerry Moore was a limited-purpose public figure. Because it was a private person, private issue, the defamation standard was the negligence standard. (*See* Moore's proposed jury instructions for defamation.) Therefore, this Court need not reach **step 2** in the

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21 Surely the media has an interest in broadening the definition of 'public figure' and having everyone be deemed a public figure – that way they can never be sued. States have an interest in protecting private people from defamation and other torts.

analysis, namely whether there was sufficient First Amendment protection regarding the jury's verdict.

Because Hoff failed to raise any First Amendment issues at the district court with regard to the tortuous interference with contract claim, we do not know whether the district court would have held Moore to be any kind of public figure with regard to that claim. Note how in *United States Healthcare v. Blue Cross of Greater Phila.*, 898 F.2d 914 (3d Cir. 1988), two national healthcare companies jousting at each other with national advertising campaigns were found *not* to be limited purpose public figures.

IV. STEP 2: APPEAL IS 'STRAW MAN' ARGUMENT.

Even if this Court reaches **Step 2** of the First Amendment analysis, the district court must be affirmed.

Both Appellant and the Amicus reference numerous times the notion that a claim for tortious interference based on the allegedly defamatory statement, must be analyzed as a defamation claim. (See Appellant's Opening Brief p. 16, at which Apellant admits his post-verdict argument to the district court was that the tortious interference claim was based *soley* on The Falsity Sentence.) But this was never Moore's argument. Not before trial, or during trial, or after trial. This argument was invented by the Amicus after the trial, apparently to set up this appeal. Moore never argued that the Falsity Sentence was the only evidence supporting the tortious

interference claim. Once that card is removed from the bottom row, the house of cards falls.

Both Appellant, and the Amicus, have been put on repeated notice of this. They have set up a straw man, and knocked him down. But neither Appellant nor Amicus discuss the most poignant evidence at trial, or how the law should be applied to it. It is Appellant's job to show the district court erred in harmonizing the verdict with the evidence. It is not Moore's duty to show that the jury could not have considered certain evidence.

Moore here recalls to the reader that Defendant Hoff, below, squandered every opportunity to:

- Litigate First Amendment issues before the district court; or
- Request that the jury determine the falsity of *additional* statements (over and above The Falsity Statement).

And, of course, the jury never found that *all* of Hoff's statements on his blog posts were true. (Hoff did not even request special verdict queries regarding whether all statements on his blog posts were true.) He cannot now argue that every statement was true. That, alone, is a sufficient basis to affirm the district court, even if Hoff's argument was considered.

On Appeal, Amicus gave Hoff a more refined argument: that the jury should not have been permitted to consider any statement if doing so would infringe the

First Amendment. That standard is unwieldy. It appears what is being argued is that there was insufficient evidence of malice.

But given that this is Appellant/Amicus' argument, both failed to tell this Court what evidence is protected **speech**. And what is merely **conduct**. This is a fatal flaw, given that Appellant acknowledges that district court and Moore both analyzed evidence as *conduct*.

All of the evidence adduced at trial cannot be speech. And Appellant has not upheld his burden on appeal by merely saying so.[22]

Further, although there is clearly a dispute over what is **speech** and what is **conduct** for purposes of a tortious interference with contract claim, Appellant failed to explain why *all* trial evidence considered by the jury was speech (as opposed to conduct). Indeed, Appellant failed to grapple with this issue at all.

A boycott can be mostly or even all speech. And yet a boycott, as with any mode of expression, designed to secure an unlawful objective is not protected by the First Amendment. *Jews for Jesus, Inc. v. Jewish Community Relations Counci of New*

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22 Amicus has a long section in which it states Moore argued there was evidence of conduct, and then summarized various statements from Moore's closing argument. But this misses the point. Merely because there was discussion of the blog posts during closing argument is not the issue. The issue is whether there was some conduct. Amicus fails to grapple with this issue. Further, as Moore has noted before, the law is simply not that no words can be used in trials. Indeed, if that were the law, we'd never have any trials, and no one would be liable either civilly or criminally. We know that most trials are *mostly* words. That intent and motive are not only regularly shown by words, that in this case there were admissions by Hoff as to his motive, on his blog posts. There is no prohibition against this evidence: it is the best evidence of intent.

York, Inc., 968 F.2d 286 (2d Cir. 1992) (a case in which plaintiffs alleged tortious interference with contract), citing *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 425-27 (1990). A threat coupled with a demand involves a direct denial of a civil right and it may be punished. *Id.*

In *Jews for Jesus*, the defendants attempted to sanction their boycott by citing to *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). This case was also cited by Appellant/Amicus. The Second Circuit distinguished the case.

> Defendants erroneously rely on *Claiborne Hardware* to contend that the First Amendment renders their boycott (or threatened boycott) immune from liability. In *Claiborne Hardware,* black citizens in Claiborne County, Mississippi, boycotted white merchants in that county to force the government, as well as civic and business leaders, to effectuate the "rights of equality and of freedom that lie at the heart of the Fourteenth Amendment itself." 458 U.S. at 914. The boycott was enforced through peaceful picketing and speeches, as well as through violence and threats of violence. The Supreme Court of Mississippi affirmed a judgment against the boycotters that held them jointly and severally liable for all losses incurred by the targeted businesses as a result of the boycotters' tortious interference with those businesses.
>
> The Supreme Court reversed and held that the boycotters could not be held liable for the losses caused by the non-violent elements of the boycott. According to the Court, the state could not prohibit the non-violent elements of a "politically motivated boycott designed to force governmental and economic change and to effectuate rights guaranteed by the Constitution." *Id.* at 914-15; *see also id.* at 914 ("It is not disputed that a major purpose of the boycott . . . was to influence governmental action."). The Court further recognized that this was so despite the coercive nature of the boycott, stating that "speech does not lose its protected character . . . simply because it may embarrass others or coerce them into action." *Id.* at 910; *see also Organization for a Better Austin v. Keefe,* 402 U.S. 415 (1971). Finally, and most significantly for present purposes, the Court noted that it was not "presented with a boycott designed to secure aims that are themselves prohibited by a valid state law." *Claiborne Hardware*, 458 U.S. at 915 n. 49

> (citing *Hughes*, 339 U.S. 460, 70 S. ct. 718, 94 L. Ed. 2d 985); *see also* Claiborne Hardware, 458 U.S. at 933 ("At times the difference between lawful and unlawful collective action may be identified easily by reference to its purpose. In this case, however, petitioners' ultimate objectives were unquestionably legitimate."). For these reasons, the boycotters' peaceful activity was protected and they could not be held liable for the white merchants' business losses.
>
> *Claiborne Hardware* is therefore readily distinguishable. Unlike the boycott in that case, the threatened boycott and other concerted economic activity in the instant case, assuming plaintiffs' allegations to be true, were designed to achieve an objective prohibited by valid state and federal statutes. Moreover, in contrast to the boycott in *Claiborne Hardware,* the instant conduct was not political speech designed to secure governmental action to vindicate legitimate rights, but was a series of private communications in the context of a private dispute. Accordingly, the safe harbor carved out by *Claiborne Hardware* for certain boycott activity is unavailable to defendants.

The Second Circuit reversed the district court's dismissal of Plaintiffs' tortious interference claim and remanded the case.

In *Nicolosi Distributing, Inc. v. BMW of North America*, LLC, 2011 U.S. Dist. LEXIS 14586 (9th Cir. 2011), citing *CRST Van Expedited, Inc. v. Werner Enters.*, 479 F.2d 10909, 1107 (9th Cir. 2007), the Northern District of California discussed a tortious interference claim as "behavior" and "activity" as opposed to speech. *Ga. Pac. Consumer Prods., LP v. Von Drehle Corp.*, 618 F.3d 441 (4th Cir. 2010) discussed the activity as *conduct* (issue is whether defendant's conduct is unlawful or against public policy), and bad *act(s).*

It is clear that evidence supporting an intentional interference with contract claim can include threats or intimidation, defamation, duress, undue influence,

misuse of inside or confidential information. *Crandall Corp. v. Navistar Int'l Transp. Co.*, 302 S.C. 265, 395 S.E.2d 179, 180 (S.C. 1990). In *Ariba, Inc. v. Rearden Commerce, Inc.*, the Northern District of California analyzed a competitive threat as tortious interference with contract. The Eighth Circuit analyzed a threat to get government officials to institute criminal charges as conduct supporting a tortious interference claim. The threat clearly used words. *Bishop v. Tice*, 622 F.2d 349 (8th Cir. 1980).

Although Moore could not locate any Minnesota cases adopting Restatement of Torts (Second) §767 in evaluating a tortious interference with *contract* claim, *Lake County v. Huseby*, 2005 Minn. App. LEXIS 642 (Minn. Ct. App. 2005) did consider that Section in an interference with prospective economic advantage claim. Other states have applied that Restatement Section to tortious interference with contract claims. *See, e.g., MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928 (9th Cir. 2010); *Ga. Pac. Consumer Prods., LP v. Von Drehle Corp.*, 618 F.3d 441 (4th Cir. 2010); *Jefferson County School District No. R-1 v. Moody's Investor's Services, Inc.*, 175 F.3d 848 (10th Cir. 1999). The 7 factors include:

1. **the nature of the defendant's conduct,**
2. **the defendant's motive,**
3. the plaintiff's interests with which the defendant interfered,
4. the interests the defendant sought to advance,

5. the social interests in protecting the defendant's freedom of action and the plaintiff's contractual interests,
6. the proximity or remoteness of the defendant's conduct to the interference, and
7. the relations between the defendant and the plaintiff.

Factors 1 and 2 above are highlighted because a court should give greatest weight to the first two factors. *Id.* at 955-56. As discussed below, the nature of Hoff's conduct, combined with his motive, should be sufficient to sustain the verdict. (Moore also contends that the following factors also weigh in favor of the verdict.)

See also BCD, LLC v. BMW Mfg. Co., LLC, 360 Fed. Appx. 428 (4th Cir. 2010), in which the standard applied for tortious interference with contract was conduct carried out for an improper purpose, such as malice or spite, or through improper means, such as violence of intimidation. A party is justified, however, when acting in the advancement of its legitimate business interests of legal rights. If a legitimate purpose or right exists, the improper purpose must predominate in order to create liability.

In applying this standard to the facts of this case, consider:

- the evidence of Hoff's threat via email from Don Allen to create a **public relations nightmare**,

- Allen (in the email Hoff told him to send) stating they would remain cordial and diplomatic **for now**,
- the coordinated effort in the June 21 blog (Exh. 101) (let's have a coordinated)
- working 'behind the scenes' to get Moore fired,
- waiting a week to blog about it so that others could make calls behind the scenes,
- Hoff's ill will toward Moore,
- Hoff not wanting Black men to be successful,
- Hoff's attacks on Moore for campaigning for Natalie Johnson Lee (which Moore had a right to do),
- Hoff's desire to prevent Moore from working *anywhere* in North Minneapolis, and finally,
- Hoff wanting to take down Jerry Moore "by any means necessary"

is sufficient evidence to support an improper motive by Hoff. Appellant has not shown that it is not sufficient. Even if Hoff had a right to post news stories on his blog, he went far beyond this in his conduct (threats, intimidation, getting others to call the U).

Now that he lost the trial, Appellant and Amicus both portray Hoff as a guy who only wanted to tell the truth and publish it,[23] and if someone acted, that is not on him. Indeed, the majority of the cases cited by both Appellant and Amicus are cases in which the factual fodder for the tortious interference claim is only the story itself.[24] But there is a vast difference between publishing a new story (or even commentary) and letting people make of it what they will, and *taking actions* to get people to *do something* based on your 'stories.' Hoff clearly took action (contacted Allen and got him to send the email, having decided Allen's email would have the most impact), calling others, writing a post to the blog in which he called for a "coordinated effort" to get Moore fired. That's not speech.

And should there be any doubt, Hoff's motive tips the scale. Even if one were to decide that there was some protected speech by Hoff, which the Fourth Circuit discusses as pursuing legitimate business interests or legal rights, Hoff's motive tips the scale. Hoff's motive was *not* to express himself. Hoff's motive was to take down Jerry Moore using "any means necessary." Hoff did not just want to protect some public institution from having a mortgage defrauder working for it, Hoff wanted to prevent Hoff from working *anywhere* in North Minneapolis. He did not want Moore as a Black man to be successful. He wanted to punish Moore for asserting *his* First Amendment right to campaign for Natalie Johnson Lee. And, of course, Hoff bragged

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23 At Hoff's Brief p. 15, he argues that he was only telling the U of M about Moore's mortgage fraud. The jury did *not* find that Moore had committed mortgage fraud.

24 *See* Hustler Magazine, 485 U.S. at 53, in which the factual fodder for the non-defamation tort was the magazine article *itself.*

in his June 23 post (Exh. 102) about getting Moore fired. These facts are, of course, in *addition* to the facts discussed by the district court at **A-Add:4-5.**[25]

This is consistent with the case Moore cited below in opposition to post-verdict motions, *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991) permitted a promissory estoppel claim against a media defendant to forward, because it was supported by evidence that the newspaper had published a confidential informant's name, and was therefore not based on the same conduct as a defamation claim.

Appellant has done nothing to show that the jury's special verdict form answers were so "perverse and palpably contrary to the evidence" or that it is clear that the jury "[left] no room for differences among reasonable persons." *Moorehead, supra*, citing *Kelly*.

---

25 The district court reviewed evidence adduced at trial at **A-Add:4-5** including direct evidence: 1) Hoff actively worked to get Moore fired from his job; 2) contacting people at the U of M and encouraging others to do the same; 3) threatening to launch a negative public relationships campaign; 4) telling Don Allen to send an email to the decision-maker at the U (Dr. McClaurin), threatening a negative publicity campaign; and 5) Lobbying to get Plaintiff fired. As the district court pointed out, the jury also heard circumstantial evidence that Moore was fired one day after the email from Don Allen. Further, Defendant Hoff acknowledged that it was his goal to get Plaintiff fired, and that he was working "behind the scenes" to do so. Indeed, Hoff took credit for getting Moore fired. *Id.*

CONCLUSION

For all of the foregoing reasons, Respondent Moore respectfully requests that this Court affirmed the district court's judgment.

CERTIFICATE OF WORD COUNT

This Brief, utilizing automatic word count in Word Office 2010 is no more than 13,146 words, all inclusive.

Dated: March 22, 2012

ATTORNEY FOR RESPONDENT

Jill Clark, Esq. (196988)
Jill Clark, LLC
2005 Aquila Av. N.
Golden Valley, MN 55427
(Tel.) 763-417-9102

Respondent Appendix ("RA") Table of Contents

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1 This exhibit was redacted before it was sent to the jury, per instructions of the district court (T:109-110). RA (prepared for this appeal so not necessary precisely the way the exhibits were redacted for the jury) shows where the redactions occurred. This left pages that were mostly redacted: those were omitted here. The district court record sports the entire, un-redacted versions as court exhibits.

2 This exhibit was redacted before it was sent to the jury, per instructions of the district court (T:109-110). RA (prepared for this appeal so not necessary precisely the way the exhibits were redacted for the jury) shows where the redactions occurred. This left pages that were mostly redacted: those were omitted here. The district court record sports the entire, un-redacted versions as court exhibits.

3 Home address of Plaintiff redacted from this RA version.

Circles highlighting by me

REGISTER OF ACTIONS
CASE NO. 27-CV-09-17778

Jerry L Moore vs Donald W R Allen, John Hoff a/k/a Johnny Northside and John Does 1-5

§ § § § § § §

Case Type: **Contract**
Date Filed: **06/26/2009**
Location: **- Hennepin Civil**
Judicial Officer: **Reilly, Denise D.**

PARTY INFORMATION

		Lead Attorneys Pro Se
Defendant	**Allen, Donald W R** Mpls, MN 55401	
Defendant	**Hoff, John** *Also Known As* Northside, Johnny Minneapolis, MN 55411	**PAUL ALLEN GODFREAD** *Retained* 612-284-7325(W)
Defendant	**V-Media Development Corporation Inc**	
Plaintiff	**Moore, Jerry L**	**JILL ELEANOR CLARK** *Retained* 763-417-9102(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

04/13/2011 **Judgment - not all parties** (Judicial Officer: Reilly, Denise D.)
Monetary Award (Status: Active, Debtor: John Hoff; AKA Johnny Northside, Entered: 04/13/2011, Original Principal: $60,000.00)

OTHER EVENTS AND HEARINGS

06/26/2009 **Summons and Complaint and Certificate of Representation**
06/30/2009 **Notice of Case Assignment** (Judicial Officer: McShane, John Q.)
07/07/2009 **Order-Other** (Judicial Officer: McShane, John Q.)
07/08/2009 **Complaint-Civil**
07/10/2009 **Notice to Remove** (Judicial Officer: McShane, John Q.)
07/10/2009 **Notice of Case Reassignment** (Judicial Officer: Rosenbaum, Marilyn Brown)
07/14/2009 **Order to Recuse** (Judicial Officer: Rosenbaum, Marilyn Brown)
07/14/2009 **Notice of Case Reassignment** (Judicial Officer: Reilly, Denise D.)
07/27/2009 **Notice of Motion and Affidavit**
07/27/2009 **Memorandum**
09/01/2009 *CANCELED* **Hearing** (8:30 AM) (Judicial Officer Reilly, Denise D.)
Other
09/11/2009 **Memorandum**
09/16/2009 **Scheduling Order** (Judicial Officer: Reilly, Denise D.)
09/17/2009 **Memorandum**
09/23/2009 **Hearing** (8:30 AM) (Judicial Officer Reilly, Denise D.)
Result: Held
10/02/2009 **Complaint-Civil**
11/17/2009 **Notice of Motion and Affidavit**
11/17/2009 **Memorandum**
11/24/2009 **Memorandum**
12/01/2009 **Hearing** (8:30 AM) (Judicial Officer Reilly, Denise D.)
Result: Held
01/21/2010 **Notice of Motion and Motion**
01/28/2010 **Memorandum and Affidavit**
02/10/2010 *CANCELED* **Motion Hearing** (8:30 AM) (Judicial Officer Reilly, Denise D.)
Other
02/11/2010 **Correspondence**
04/05/2010 **Order for Trial** (Judicial Officer: Reilly, Denise D.)
05/24/2010 *CANCELED* **Court Trial** (8:00 AM) (Judicial Officer Reilly, Denise D.)
Other
08/30/2010 **Notice of Motion and Affidavit**
08/30/2010 **Memorandum**

09/13/2010	**Motion Hearing** (9:00 AM) (Judicial Officer Reilly, Denise D.) Result: Held
09/13/2010	**Motion** (Judicial Officer: Reilly, Denise D.)
11/01/2010	*CANCELED* **Court Trial** (8:00 AM) (Judicial Officer Reilly, Denise D.) *Other*
01/10/2011	**Order-Other** (Judicial Officer: Reilly, Denise D.)
01/18/2011	**Returned Mail**
01/19/2011	**Affidavit for Proceeding In Forma Pauperis**
01/19/2011	**Order for Proceeding In Forma Pauperis** (Judicial Officer: Reilly, Denise D.)
01/19/2011	**Notice-Other** (Judicial Officer: Reilly, Denise D.)
01/24/2011	**Motion**
01/24/2011	**Witness List**
01/24/2011	**Exhibit List**
02/01/2011	*CANCELED* **Court Trial** (9:00 AM) (Judicial Officer Reilly, Denise D.) *Other*
02/07/2011	**Scheduling Conference** (1:30 PM) (Judicial Officer Reilly, Denise D.) Result: Held
02/07/2011	**Answer**
02/10/2011	~~**Pre-trial** (1:30 PM) (Judicial Officer Reilly, Denise D.)~~ Result: Held
02/10/2011	**Correspondence**
02/10/2011	~~**Certificate of Representation**~~
03/01/2011	~~**Exhibit List**~~
03/01/2011	**Motion**
03/01/2011	**Affidavit of Service**
03/02/2011	**Hearing** (2:00 PM) (Judicial Officer Reilly, Denise D.) Result: Held
03/02/2011	**Answer**
03/03/2011	~~**Evidentiary Hearing** (9:30 AM) (Judicial Officer Reilly, Denise D.)~~ Result: Held
03/03/2011	**Order-Other** (Judicial Officer: Reilly, Denise D.)
03/07/2011	**Jury Trial** (9:00 AM) (Judicial Officer Reilly, Denise D.) **03/07/2011, 03/08/2011, 03/09/2011, 03/10/2011, 03/11/2011** Result: Held
03/11/2011	**Jury Verdict Returned** (Judicial Officer: Reilly, Denise D.)
03/11/2011	**Other Document**
03/16/2011	**Motion**
03/23/2011	**Notice of Motion and Motion**
03/23/2011	**Memorandum**
03/23/2011	**Affidavit of Service**
04/01/2011	**Notice of Motion and Motion**
04/01/2011	**Memorandum**
04/07/2011	**Order for Judgment** (Judicial Officer: Reilly, Denise D.)
04/07/2011	**Order for Judgment** (Judicial Officer: Reilly, Denise D.)
04/13/2011	**Processed Judgment Entry**
04/13/2011	**Notice of Entry of Judgment**
04/13/2011	**Processed Judgment Entry**
04/13/2011	**Notice of Entry of Judgment**
04/14/2011	**Notice-Other**
04/14/2011	**Affidavit of Service**
05/16/2011	**Motion**
05/16/2011	**Memorandum**
05/16/2011	**Affidavit-Other**
05/20/2011	**Memorandum and Affidavit**
05/24/2011	**Memorandum**
05/24/2011	**Order-Other** (Judicial Officer: Reilly, Denise D.)
05/26/2011	**Correspondence**
05/26/2011	**Other Document**
05/26/2011	**Memorandum**
05/31/2011	**Hearing** (8:30 AM) (Judicial Officer Reilly, Denise D.) Result: Held
05/31/2011	**Taken Under Advisement** (Judicial Officer: Reilly, Denise D.)
08/22/2011	**Order-Other** (Judicial Officer: Reilly, Denise D.)
08/29/2011	**Notice of Filing of Order**
10/26/2011	**Notice of Appeal**
10/27/2011	**Notice of Case Filing**
12/21/2011	**Transcript**
01/31/2012	**Request for Trial Court Record-Appellate Court**

FINANCIAL INFORMATION

	Defendant Allen, Donald W R	
	Total Financial Assessment	847.00
	Total Payments and Credits	672.00
	Balance Due as of 03/04/2012	**175.00**
07/30/2009	Transaction Assessment	422.00

07/30/2009	Mail Payment	Receipt # 1227-2009-28209	GOINS, ALBERT T, Sr.	(422.00)
11/24/2009	Transaction Assessment			100.00
11/24/2009	Counter Payment	Receipt # PSL27-2009-13980	GOINS, ALBERT T, Sr.	(100.00)
11/25/2009	Transaction Assessment			25.00
01/22/2010	Transaction Assessment			125.00
01/27/2010	Counter Payment	Receipt # PSL27-2010-00821	GOINS, ALBERT T, Sr.	(150.00)
01/28/2010	Transaction Assessment			25.00
08/31/2010	Transaction Assessment			125.00
03/02/2011	Transaction Assessment			25.00

Defendant Hoff, John

	Total Financial Assessment			897.00
	Total Payments and Credits			897.00
	Balance Due as of 03/04/2012			**0.00**
01/22/2010	Transaction Assessment			125.00
01/27/2010	Credit-Joint Filing			(125.00)
01/28/2010	Transaction Assessment			25.00
08/31/2010	Transaction Assessment			125.00
01/20/2011	Transaction Assessment			322.00
02/07/2011	Transaction Assessment			100.00
03/02/2011	Transaction Assessment			25.00
03/17/2011	Transaction Assessment			125.00
04/01/2011	Transaction Assessment			25.00
04/13/2011	Credit/In Forma Pauperis			(100.00)
04/14/2011	Credit Waived			(100.00)
04/14/2011	Credit/In Forma Pauperis			(322.00)
04/14/2011	Credit/In Forma Pauperis			(100.00)
04/15/2011	Mail Payment	Receipt # 1227-2011-12059	GODFREAD, PAUL ALLEN	(125.00)
05/27/2011	Transaction Assessment			25.00
05/27/2011	Counter Payment	Receipt # PSL27-2011-04040	GODFREAD, PAUL ALLEN	(25.00)

Interested Observor Minnesota Pro Chapter Society

	Total Financial Assessment			422.00
	Total Payments and Credits			422.00
	Balance Due as of 03/04/2012			**0.00**
03/25/2011	Transaction Assessment			322.00
03/25/2011	Mail Payment	Receipt # 1227-2011-09692	BORGER, JOHN P	(322.00)
03/25/2011	Transaction Assessment			100.00
03/25/2011	Mail Payment	Receipt # 1227-2011-09694	BORGER, JOHN P	(100.00)

Plaintiff Moore, Jerry L

	Total Financial Assessment			902.00
	Total Payments and Credits			902.00
	Balance Due as of 03/04/2012			**0.00**
06/30/2009	Transaction Assessment			327.00
07/01/2009	Mail Payment	Receipt # 1227-2009-24527	CLARK, JILL ELEANOR	(327.00)
09/14/2009	Transaction Assessment			125.00
09/17/2009	Mail Payment	Receipt # 1227-2009-34969	CLARK, JILL ELEANOR	(125.00)
11/18/2009	Transaction Assessment			125.00
11/20/2009	Mail Payment	Receipt # 1227-2009-43872	CLARK, JILL ELEANOR	(125.00)
01/25/2011	Transaction Assessment			125.00
04/19/2011	Mail Payment	Receipt # 1227-2011-12421	CLARK, JILL ELEANOR	(125.00)
05/18/2011	Transaction Assessment			100.00
05/18/2011	Mail Payment	Receipt # 1227-2011-16233	CLARK, JILL ELEANOR	(100.00)
05/25/2011	Transaction Assessment			100.00
05/25/2011	Mail Payment	Receipt # 1227-2011-17138	CLARK, JILL ELEANOR	(100.00)

January 24, 2011

The Honorable Denise D. Reilly
Hennepin County District Court
300 S. 6th Street
Minneapolis, MN 55487

Re: Moore v. Hoff *et al* (**27-CV-09-17778**)

Dear Judge Reilly:

Plaintiff is hereby filing the following trial pleadings per the Court's Trial Order:

- Plaintiff's Witness List;
- Plaintiff's Exhibit List (exhibits attached to Court's copy, and to Defendant);
- Plaintiff's Proposed Jury Instructions (word .doc emailed to chambers);
- Plaintiff's Motions *in Limine*;
- Parties' joint proposed stipulated facts.

At this time Plaintiff has not deposition testimony to be read at trial, although he may take a trial video deposition.

Sincerely,

s/jillclark

Jill Clark

JEC/slf
Enclosures
c: Via facsimile to civil filing (fax filing fee will follow); Client; John Hoff (*pro se* defendant)

JILL CLARK, P. A. ATTORNEY AT LAW
2005 AQUILA AVENUE NO. • GOLDEN VALLEY, MINNESOTA 55427 • PHONE: 763-417-9102 • FAX: 763-417-9112 • EMAIL: JILL@JILLCLARKPA.COM

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF HENNEPIN	FOURTH JUDICIAL DISTRICT

Jerry L. Moore, Plaintiff, v. Donald W.R. Allen, *et al*, Defendants.	Civil No. 27-cv-09-17778 **PLAINTIFF'S PROPOSED JURY INSTRUCTIONS**

Plaintiff proposes the following jury instructions:

10.15 Preliminary Instructions Before Trial

CIVJIG 10.15 Preliminary Instructions--Before Trial

Introduction

Members of the jury:

You have now been sworn in.

Of all the people in this courtroom, it is vital that you the jury be able to hear and see everything. If any of you have difficulty hearing or understanding what a witness is saying, or if a witness or an attorney should block your view, raise your hand immediately so that we can correct that.

Duties of the jury and the judge

Here are some basic rules about your job as a juror.

Your job will be to find what the facts are in this case by considering the evidence.

As judge I will apply the rules and tell you what you can and cannot consider as evidence.

What is evidence

1. Evidence is what witnesses say on the stand. This is called "testimony."

2. Evidence can be items like photographs and documents. These items are called exhibits.

3. There are also facts you must accept:

a. Evidence can be a fact agreed upon by the parties. This agreement is called a stipulation.

b. There may also be facts that I tell you to accept.

What is not evidence

The following are not evidence:

1. Nothing the attorneys say during the trial, including opening statements and closing arguments, is evidence.

2. The attorneys' questions are not evidence. The witnesses' answers are.

3. Objections are not evidence. Attorneys may object if they think a question or answer is against the rules:

a. I will sustain the objection if I think it is against the rules, and you should ignore this question or answer.

b. If I overrule the objection, the answer is evidence like the rest of the witness's testimony.

4. You cannot consider anything you hear or learn about this case outside this courtroom.

You must follow the instructions on what you can consider as evidence.

Taking notes

You may take notes during the trial. You do not have to.

Do not let your note taking distract you.

Your notes must stay in the courtroom during the trial.

You may take them into the jury room during deliberations.

Use your notes as an aid to your memory. Fit them in with your total recollection of the facts.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

Deciding the facts

Wait until you have heard all the evidence before you make up your mind.

Your best guide is your own good judgment, experience and common sense.

In addition ask yourself:

1. Is a witness being truthful?

2. Will a witness gain or lose if this case is decided a certain way?

3. How did a witness learn the facts? How did he or she remember and tell the facts?

4. What was his or her manner?

5. What was his or her age and experience?

6. Did the witness seem honest and sincere?

7. Was the witness frank and direct?

8. Is the testimony reasonable compared with other evidence?

9. Are there any other factors that bear on believability and weight?

Duty of the jury

You must decide the facts.

You and only you can decide the facts. Do not take anything I say or do as a sign of what the verdict should be.

You must apply the law to the facts.

You must follow the law I give you even if you don't agree with it.

How to act as a jury member

Now a few words about your conduct as jurors:

Do not let outsiders influence you.

Do not discuss this case with other jury members during the trial.

You will have plenty of time to do this at the end of the trial, once you have all the evidence.

If anyone tries to discuss this case with you outside the courtroom, report this to me.

Do not refer to any newspapers, books, magazines, the internet, or other sources of information to answer questions of fact or of law raised by the evidence or by the court's instructions.

Do not do your own investigation.

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom.

10.20 Post-trial Preliminary Statement

CIVJIG 10.20 Post-Trial Preliminary Statement--Duties of Judge and Jury

Instructions

I will give you your instructions.

The order in which I give the instructions is not important.

Consider all the instructions together.

You must apply the law in these instructions whether you agree with it or not.

You must follow all of the instructions. Do not single out some and ignore others--all of them are equally important.

I will give you a copy of these instructions to take into the jury room. You do not need to take notes as I read the instructions to you.

10.25 Statements of Counsel and Judge

CIVJIG 10.25 Statements of Counsel and Judge

Duties of the attorneys

The attorneys have professional duties:

1. They represent their clients.

2. They introduce evidence to support or defend their clients.

3. They make objections.

4. They argue their clients' cases.

Statements of the attorneys and judge

Nothing the attorneys say during the trial, including opening statement and closing argument, is evidence.

The attorneys' questions are not evidence. The witnesses' answers are evidence.

What I say or what the attorneys say about the evidence may be different from what you remember. If that happens, rely on your own memory.

What the attorneys say about the law may be different from what I say. If this happens, you must rely on what I say about the law.

10.30 Rulings on Objections to Evidence

CIVJIG 10.30 Rulings on Objections to Evidence

Rulings on evidence

The law has rules about the evidence allowed in a case. It is my duty to make sure the rules are followed.

Objections

Attorneys objected if they thought a question or answer is against the rules. Keep the following in mind about objections:

1. If I sustained the objection, ignore that question or answer.

2. If I overruled the objection, that answer is evidence like anything else.

3. Remember that objections by themselves are not evidence.

4. The fact that evidence has been objected to should not affect your view of the evidence.

Evidence that is not allowed

I have told you when other types of evidence are against the rules and have to be ignored or stricken from the record.

Notes taken by Jurors

CIVJIG 10.35 Notes Taken by Jurors

How to use notes

If you took notes during the trial, you may take them to the jury room.

Use the notes as an aid to your memory and not as a substitute for it.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

10.40 Separation of Jury Recess and jury

CIVJIG 10.40 Separation of Jury Recess of Jury

Recess of jury

This jury will be adjourned until *(time and date)*. **You may return home.**

While you are adjourned, there are some rules you must follow:

1. You must not discuss this case with anyone.

2. You must not let anyone discuss the case with you.

3. You must not do any investigation yourself or ask others to do it for you.

4. You must not refer to any newspapers, books, magazines, the internet, or other sources of information to answer questions of fact or of law raised by the evidence or by the court's instructions.

You are excused until *(time and date)*. **You will come back to the jury box before returning to your deliberations.**

10.45 Deliberation and Return of Verdict

CIVJIG 10.45 Deliberation and Return of Verdict

Deliberation and Return of Verdict

Here are some instructions about your deliberations and return of the verdict.

Items that will be in the jury room

During your deliberations you will have the following items in the jury room:

1. Any exhibits received in evidence,

2. The notes you took during the trial,

3. The written final instructions, and

4. The verdict form.

Selection of a foreperson

When you return to the jury room to discuss this case, you must select a jury member to be foreperson. That person will lead your deliberations.

The jurors' duty to discuss the case

The goal of jury deliberations is to talk among yourselves in order to reach an agreement about the verdict.

This agreement must be consistent with your own judgment.

Each of you must decide the case for yourself, but do so only after you have fully considered the views of your fellow jurors.

Re-examine your own view and change your mind, if you decide your original view was mistaken.

But do not change your mind just because other jurors disagree, or simply because of pressure to return a verdict.

Kinds of verdict

There are two kinds of verdicts: a unanimous verdict and a divided verdict.

Unanimous verdict

Your verdict must be unanimous, that is: all jurors must agree on all the answers.

The foreperson must date and sign the verdict form if your verdict is unanimous.

Divided verdict

If you cannot reach a unanimous verdict after six hours of deliberation, then *[five] [other number]***of you may return a divided verdict.**

If you return a divided verdict, each of the *[five] [other number]***jurors must sign and date the jury form.**

The same *[five] [other number]***jurors must agree on all answers.**

Return of the verdict

When you agree on a verdict, notify the *(bailiff) (jury attendant).*

You will return to the courtroom where your verdict will be received and read out loud in your presence.

[Sealed verdict

If you agree on a verdict when the court is in recess:

1. Put your completed verdict in the envelope and seal it.

2. Give the sealed envelope to _____.

3. You may leave the courthouse.

4. You must return to the court at _____, when I will receive your verdict in open court. The verdict will be read out loud in your presence.

5. Do not discuss the case with anyone or let anyone know your verdict, until it is read in court.]

Secrecy of the jury deliberations

Your deliberations must be secret and confidential.

You must not communicate with anyone except other jury members about the case during your deliberations.

During your deliberations, you may have questions about things unrelated to the case itself *(such as supplies or the physical facilities).* **If so, ask the** *(bailiff) (jury attendant).*

Juror's responsibility

You must not allow sympathy, prejudice, or emotion to influence your verdict.

The quality of your service will be reflected in the verdict you return to this court.

A just and proper verdict contributes to the administration of justice.

12.10 Direct and Circumstantial Evidence

CIVJIG 12.10 Direct and Circumstantial Evidence

Direct and circumstantial evidence

A fact can be proved in one of two ways:

1. A fact is proved by direct evidence when that fact is proved directly without any inferences.

2. A fact is proved by circumstantial evidence when that fact can be inferred from other facts proved in the case.

For example, the fact that "a person walked in the snow" could be proved:

1. By an eyewitness who testified directly that he or she saw a person walking in the snow, or

2. By circumstantial evidence of shoe-prints in the snow, from which it can be indirectly inferred that a person had walked in the snow.

Using direct and circumstantial evidence

You should consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence.

It is up to you to decide how much weight to give any kind of evidence.

12.15 Evaluation of Testimony – credibility of witnesses

CIVJIG 12.15 Evaluation of Testimony--Credibility of Witnesses

Guidelines for evaluating testimony

You must decide what testimony to believe and how much weight to give it.

Here are some guidelines:

1. Will a witness gain or lose if this case is decided a certain way?

2. What is the witness's relationship to the parties?

3. How did a witness learn the facts? How did he or she remember and tell the facts?

4. What was his or her manner?

5. What was his or her age and experience?

6. Did the witness seem honest and sincere?

7. Was the witness frank and direct?

8. Is the testimony reasonable compared with other evidence?

9. Are there any other factors that bear on believability and weight?

In addition, you should rely upon your own experience, good judgment, and common sense.

12.20 Evaluation of deposition evidence

CIVJIG 12.20 Evaluation of Deposition Evidence

Evaluating evidence given in a deposition

A witness's deposition may be presented when the witness cannot be at the trial in person. The deposition was given under oath.

When a deposition *(is) (was)***read to you:**

1. Give the evidence the same weight as you would if the person was present.

2. Use the same factors as you would in judging any evidence.

The manner of the person reading the deposition is not a factor.

[Evaluation of a videotaped deposition

A witness's deposition may be presented when the witness cannot be at the trial in person. The deposition was given under oath.

When you *(are) (were)***shown a videotape deposition:**

1. Give the evidence the same weight as you would if the person was present.

2. Use the same factors as you would in judging any evidence.]

12.25 Impeachment

CIVJIG 12.25 Impeachment

Guidelines for impeachment

[1 You may consider what the witness did or said in the past, if it is not consistent with what he or she is saying now.

If a past statement was not under oath, use it only to decide the truth or weight of what the witness is saying now.

If the past statement was under oath, or the witness is a party in this case *(or an agent for one of the parties)*, **then you may use what was said in the past to decide the issues in this case and the truth and weight of what the witness is saying now.]**

[2 You may consider whether the witness has been convicted of a crime. You may consider whether the kind of crime makes it more likely that he or she is not telling the truth.]

[3 You may consider a witness's reputation for truthfulness.]

14.15 Burden of Proof

CIVJIG 14.15 Burden of Proof

Deciding the issues in a case

You will be asked to answer "yes" or "no" to some questions on the verdict form.

The greater weight of the evidence must support a "yes" answer.

This means that all of the evidence, regardless of which party produced it, must lead you to believe that the claim is more likely true than not true.

Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence.

Any believable evidence may be enough to prove that a claim is more likely true than not.

40.30 Interference with contractual relationships

CIVJIG 40.30 Interference With Contractual Relationships

Definition of "intentional interference with a contractual relationship"

There is an intentional interference with a contractual relationship if:

1. There was a contract

2. *(Defendant)***knew about the contract**

3. *(Defendant)***intentionally caused the breach of the contract**

4. *(Defendant's)***actions were not justified.**

40.35 Interference with Prospective Advantage

CIVJIG 40.35 Interference With Prospective Advantage

Interfering with prospective advantage

Interference with prospective advantage means intentionally and improperly interfering with another person's prospective contractual relationship by:

1. Inducing or causing a third person not to enter or continue in the relationship, or

2. Preventing the other person from getting or continuing the relationship.

40.45 Damages for Interference with contractual relations/prospective advantage

CIVJIG 40.45 Interference With Contractual Relationships/Prospective Advantage--Damages

Damages for interference with a contractual relationship/prospective advantage

Damages for interference with a contractual relationship/prospective advantage may include:

1. The loss of benefits of the contract or the prospective relationship, and

2. Other losses that were directly caused by the interference, and

3. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference.

50.10 Defamatory communication

CIVJIG 50.10 Defamatory Communication

Definition of defamatory statement

A statement or communication is defamatory if it tends to:

1. So harm the reputation of a person that it lowers his or her esteem in the community, or

2. Deter third persons from associating or dealing with him or her, or

3. Injure his or her character, or

4. Subject this person to ridicule, contempt, or distrust, or

5. Degrade or disgrace this person in the eyes of others.

[A statement or communication may be defamatory because *(defendant)*:]

[1 Left out certain facts so the statement conveyed a defamatory meaning.]

[2 Linked statements in a way that conveyed a defamatory meaning.]

[3 Stated an opinion that conveyed defamatory facts.]

50.15 Publication

CIVJIG 50.15 Publication

Publication

A defamatory statement or communication is published if it is communicated to, and understood by, at least one person other than *(plaintiff)*.

[Intentional publication

A publication is intentional if:

1. It is made for the purpose of communicating the defamatory matter to a person other than *(plaintiff)*, **or**

2. With knowledge that the defamatory matter is substantially certain to be communicated.]

[Negligent publication

A publication is made negligently if a reasonable person would recognize that the defamatory matter will be communicated to a person other than *(plaintiff)*.**]**

[Compelled self-publication

Publication can occur in a situation where only *(plaintiff)***is told the statement and repeats it if:**

1. ***(Plaintiff)*****was compelled to repeat the defamatory statement or communication, and**

2. It was foreseeable to ***(defendant)*****that** ***(plaintiff)*****would be compelled to repeat it.]**

50.20 Per se (Committee recommended no instruction)

Defamation per se involves the defendant accusing the plaintiff of having committed a crime, or that affects the plaintiff in the plaintiff's business, trade, profession, office, or calling.

[These questions fit with SVF 50.91].

50.25 Falsity

Definition of "false"

Question _____ asks whether the statement (_____) was false.

A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true.

[A statement or communication is also false if the implication of the statement is false.]

50.45 Defamation negligence standard

CIVJIG 50.45 Defamation--Negligence

Defamation--negligence standard

(Defendant)**was negligent in the publication of a statement or communication if** ***(he) (she)*****knew or in the exercise of reasonable care should have known that the statement was false.**

50.50 Presumed damages

CIVJIG 50.50 Presumed Damages

Deciding harm for defamation

The only question for you to decide [in answering Question ____] is the amount of money *(plaintiff)***is entitled to receive for:**

1. Harm to *(his) (her)*reputation and standing in the community

2. Mental distress

3. Humiliation

4. Embarrassment

No evidence of actual harm is required.

50.55 Defamation actual damages

CIVJIG 50.55 Defamation--Actual Damages

Factors to consider in deciding damages for defamation

Damages for the publication of a defamatory statement or communication include:

1. Harm to *(plaintiff)*'s **reputation and standing in the community**

2. Mental distress

3. Humiliation

4. Embarrassment

5. Physical disability

6. Economic loss caused by the defamatory statement or communication.

50.60 Defamation special damage

CIVJIG 50.60 Defamation--Special Damage

Definition of "special damages"

"Special damages" means economic loss directly caused by a defamatory statement or communication.

Special damages include:

[1 Loss of employment]

[2 Loss of a presently existing advantage]

[3 Failure to realize a reasonable expectation of financial gain].

90.10 Compensation Damages

CIVJIG 90.10 Compensatory Damages--Personal and Property Damages--Definition

Question(s) __, __, and __ in the verdict form *(is) (are)*the damages question(s).

Answer each question independently

[You must answer these questions regardless of your answers to the other questions on the verdict form. Your verdict is not complete until these damages questions are answered.]

When you decide damages, do not consider the possible effect of your answers to other questions.

Damages are money

The term "damages" means a sum of money that will fairly and adequately compensate a person who has been *(injured) (harmed)*. **Damages may include past and future** *(injury) (harm)*. **It must be proved that future** *(injury) (harm)***is reasonably certain to occur.**

***

Dated: January 24, 2011

ATTORNEYS FOR PLAINTIFF
JILL CLARK, P.A.
s/jillclark

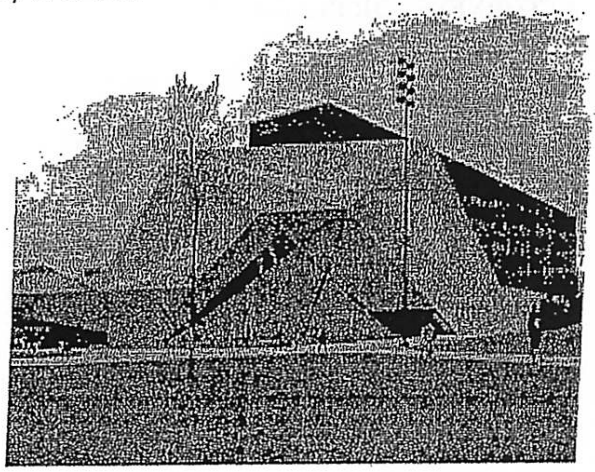
By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

The Adventures of Johnny Northside

Being the amazing, true-to-life adventures and (very likely) misadventures of a divorced man who seeks to take his education, activism and seemingly boundless energy to the North Side of Minneapolis, to help with a process of turning an arguably-blighted neighborhood into something approaching Urban Utopia. I wouldn't be here if I didn't want to be near my child. This blog is dedicated to my 12-year-old son Alex, and his dream of studying math and robotics at MIT.

Sunday, June 21, 2009

Former JACC Executive Director Jerry Moore Hired By U of M, Neighborhood Leaders Are All, Like, WTF?!!!



Stock Photo, U of M

Word reached me about a week ago from a source that former JACC Executive Director Jerry Moore had been hired by the UROC program at U of M.the nice (but obviously naive) folks bringing North Minneapolis that big, expensive, rather slowly-delivered project at the former Penn-Plymouth shopping center. Another creditable source made some calls and confirmed firsthand this was, in fact, the case. Jerry Moore is now--among many other things--a gopher.

My U of M gopher blood boils with shame. THE SHAME!!!!!!!!

Jerry Moore--who has been a plaintiff in a lawsuit against JACC, and was fired from his executive director position for misconduct, (fistfight, cough cough) is nothing if not a controversial figure in the Jordan Neighborhood...

So when word reached certain neighborhood movers and shakers about Jerry being hired by UROC, and being involved with some

Exhibit 101

kind of "research" about mortgage issues in North Minneapolis, consternation was followed by seething anger. Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N. The collective judgment of decent people in the Jordan Neighborhood--"decent" being defined as "not actively involved in mortgage fraud"--is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him?

Even assuming (as lawyers say) "arguendo" that Jerry Moore has received a bad rap over 1564 Hillside Ave. N., the problem remains that current JACC leadership will have nothing to do with Jerry Moore, and the Jordan Neighborhood makes up a big part of North Minneapolis. It's not hard to picture situations where the UROC people attempt to engage the leadership of Jordan, but all the "Jordanites" will want to talk about is, "Why the hell did you hire Jerry Moore, and when will you be getting rid of him? Get rid of him and we will talk."

That's the word I'm getting from neighborhood leadership. In fact, my reason for delaying posting about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess. With the matter still pretty much the same as it was a week ago, I was contacted and told to please, please blog about this matter. So: Jerry Moore is working for UROC, and UROC has just lost major cred with North Minneapolis leadership. (The ones not involved with mortgage fraud, anyway, which clearly doesn't include all the self-declared leadership)

In fact, some are going so far as to say UROC has never had the creditability of CURA, which is another program at U of M which has been working with neighborhood issues for a long time, very successfully, though often with a low profile. The question being asked in this time of budget cuts is "Why is there a UROC at all? Why not just have things done under CURA, a program with a proven track record which would never, in a hundred years, pull this kind of stupid bulls***t?"

*Posted by Johnny Northside at **9:57 AM***
*Labels: **Jerry Moore, Jordan Neighborhood, UROC***

11 COMMENTS:

Redacted

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About Me

Johnny Northside
Workaholic, dreamer, realistic idealist.

View my complete profile

Blog Archive

▼ **2009** (550)

▼ **06/21 - 06/28** (4)

Planting Juniper Trees In The Hawthorne Eco Villag...

Jordan Livability
27th and Penn Heating Up Again
1 week ago

Minneapolis Crime Watch
Stevens Square Burglaries
4 days ago

Minnesota Investment Property Blog
Free Investment Property Seminar
5 days ago

On The Other Side Of The Eye
A Visit To Space Aliens
1 week ago

Over North
The Adventures of Johnny Northside: Welcome to the Neighborhood
1 month ago

The Deets
Minneapolis' New Sidewalk Cuts Are Lame
5 days ago

The Healy House
2008 Pillsbury Ave - Another Endangered House
4 days ago

Twin City Real Estate Chat
That Little Gray House With The Black Shutters...With a Big Past!
1 week ago

www.johnnynorthsidemovie.com/

Redacted

Don "I said it" Allen said...

Email sent to Dr. McClaurin:

Dear Dr. McClaurin,

This email is to give you a heads up on a pending situation, that could possibly turn into a public relations nightmare for the University of Minnesota/Urban Research and Outreach Center.

On last week, allegedly - Mr. Jerry Moore and Mike Kestner were released from the Northside Marketing Task Force board of directors. This comes on the heels of several different scenarios involving Mr. Moore and his relationship with Tynessia Snoddy who is under indictment for mortgage fraud as reported on KSTP-TV - . (Read it here: http://kstp.com/news/stories/S795057.shtml?cat=1).

Mr. Moore did a deal that remains in question where he received a $5000 check for "new windows" at 1564 Hillside Avenue North. Mr. Moore put no new windows in said property. This was a conflict of interest, at the time he was JACC's executive director. More importantly - he was not a "window repairman" either.

From the court documents that surfaced in the Larry Maxwell trail with an invoice for $5000 to JL Moore Consulting and the current

Jordan Area Community Council court case, I feel there could have been a error in judgment on the part of the UROC in collaborating with Mr. Moore.

There is enough public information to support the claims made in this email, I hope that the U of M's corrective action is swift and covert to avoid more media distribution of this information as it pertains to UROC, the U of M and the connection with Mr. Moore which would be "he gets a check" from the University of Minnesota to discuss Mortgage Foreclosures and other information in the community.

The current story out is here: http://adventuresofjohnnynorthside.blogspot.com/2009/06/former-jacc-executive-director-jerry.html, the Independent Business News Network will consider covering this on Tuesday, but since our media group is trying to do business with the U of M, I will remain cordial and diplomatic - for now.

Dr. McClaurin, I would be glad to forward you names of community stakeholders that are qualified to be topic specific for anything UROC needs to discuss in the community. I would also offer you the services of the public relations branch of V-Media Marketing for any message distribution you might see fit.

If you have any question, please contact me at 612-986-0010.

Very best regards,

Donald W.R. Allen,II - Chairman
V-Media Development Corporation, Inc - A Minnesota Non-Profit,
Public Relations and Advocacy Organization
Email: donny@donny-allen.com
Office: (612) 332-6025
Direct: (612) 986-0010

June 22, 2009 12:18 AM

Redacted

The Adventures of Johnny Northside

Being the amazing, true-to-life adventures and (very likely) misadventures of a divorced man who seeks to take his education, activism and seemingly boundless energy to the North Side of Minneapolis, to help with a process of turning an arguably-blighted neighborhood into something approaching Urban Utopia. I wouldn't be here if I didn't want to be near my child. This blog is dedicated to my 12-year-old son Alex, and his dream of studying math and robotics at MIT.

Tuesday, June 23, 2009

JNS BLOG EXCLUSIVE: Former JACC Executive Director Jerry Moore "Let Go" From U of M UROC...

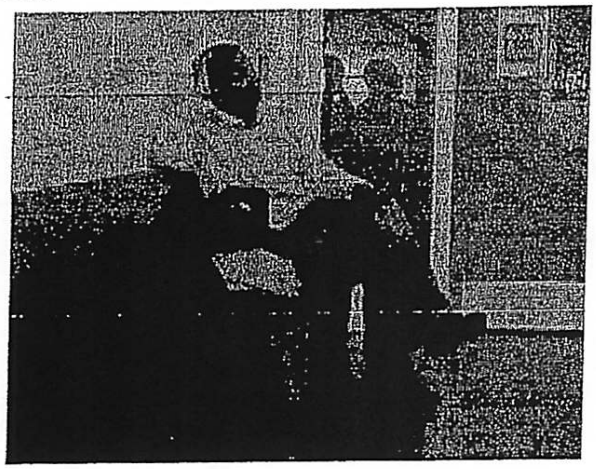

Photo By John Hoff, January 14 2009

A known, creditable source at U of M gave information to a known, creditable source in the Hawthorne Neighborhood, who conveyed it to me earlier today:

Jerry Moore, the former Executive Director of JACC, who is currently involved in a lawsuit against JACC, was "let go" from his job at the University of Minnesota UROC program. According to the U of M source....

It was reportedly coverage on this blog which "blew open" the issue of Moore's hiring and forced the hand of U of M decision-makers after the issue had been quietly, respectfully brought to their attention over a week ago. I am told pages were printed from my previous blog post about Moore's hiring by UROC, including the extensive comment stream, and these pages got "waved around" a bit in a discussion at U of M.

Exhibit 102

It continues to be my position that if Jerry Moore wants to discuss his point of view in detail, and cite such facts on his behalf as he wishes to cite, I will air his point of view. The comment threads are also open, subject only to relatively brief delays before I hit the APPROVE button.

The issue of other (reported but unconfirmed) controversial hires by U of M UROC continues to be a concern. The question keeps getting asked by neighborhood leaders: WHAT THE HECK IS THE DEAL WITH UROC? Are hiring decisions being made on the basis of tawdry political favors?

I say that merely "letting go" of Moore isn't good enough. The matter of how and why he was hired--and by whom--should be formally investigated by U of M.

Consider:

* Moore doesn't have a college degree.

* Moore is currently suing his former neighborhood association, (JACC) one of the neighborhood groups essential to UROC's North Minneapolis mission.

* Moore admitted being involved in a physical altercation with members of the JACC board in January of this year and was denied employment benefits on the basis of that misconduct. (Unknown if his appeal has been resolved, however) Moore was FIRED for that misconduct.

* The involvement of Jerry Moore's consulting firm with Larry "Maximum" Maxwell is a matter of public record in the Hennepin County court system. Maxwell just went down for more than a dozen felonies involving mortgage fraud. The LAST THING ON EARTH Jerry Moore should be doing is "research" involving mortgages, particularly research supported by a public entity funded by taxpayer dollars.

Based on any ONE of these factors, Moore shouldn't have been hired by U of M. But here you have all four factors. So what explains his hiring? This wasn't just a bone-headed move, to me this looks like somebody trying to throw patronage in the direction of Jerry Moore after his oh-so-justified termination from JACC, so Moore can be saved, inflated, propped up, and still around to fight battles on behalf of whoever-the-hell Moore fights for. (Would that be the right of poor North Minneapolis folks to get just as rich from mortgage fraud as well-to-do suburbanites?)

The more pressing question becomes: who else was hired by

UROC who shouldn't have been hired? All hiring decisions made by whoever hired Jerry Moore need to be reviewed and investigated, IMMEDIATELY.

With 1200 U of M jobs being elliminated, Jerry Moore somehow managed to land himself a sweet job for which he was supremely unqualified. This is not something that should be quietly swept under the rug by "letting go" of Moore. And I have reason to believe I'm not the only media entity which has its jaws in the ass bone of this issue.

*Posted by Johnny Northside at **12:03 PM***
*Labels: **Jerry Moore, Jordan Neighborhood, UROC***

5 COMMENTS:

Redacted

UNIVERSITY OF MINNESOTA

Twin Cities Campus *Urban Research and Outreach/Engagement Center*
Office of the Senior Vice President for System Academic Administration

110 Morrill Hall
100 Church Street S.E.
Minneapolis, MN 55455
Phone: 612-626-8839
Fax: 612-626-8388
www.uroc.umn.edu

June 22, 2009

Jerry Moore
[redacted]

Dear Jerry:

I regret to inform you that your services in the Office of the Senior Vice President for System Academic Administration at the University of Minnesota will no longer be needed; this is official notice that your position will be terminated and your last day of employment will be July 2, 2009. Your final paycheck will be issued on Wednesday, July 15.

Because your position is temporary, casual, and part-time you do not have bumping rights for any other positions and do not qualify to be placed on the layoff list. However, you may want to look for vacancies posted on the U of M Job Center website at http://www1.umn.edu/ohr/employment/.

This termination is not a reflection of the quality of your work, but rather results from a change in our need for assistance with the Mortgage Crisis Coalition action plan.

Thank you for your help with the project, and best of luck in your future endeavors.

Sincerely,

Irma McClaurin
Associate Vice President and Executive Director, Urban Research and Outreach/Engagement Center

C: Professor Shonda Craft
Sara Axtell, Community-Campus Health Outreach Liaison
Makeda Zulu-Gillespie, Community Liason
Cheryl Brady, Human Resources Officer

Exhibit 103

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

Jerry L. Moore, Plaintiff, -vs- John Hoff d/b/a Johnny Northside, Defendant.	TRANSCRIPT OF PROCEEDINGS D.C. FILE NO. 27-CV-09-17778

The above-entitled matter came duly on for hearing before the Honorable Denise D. Reilly, one of the Judges of the above-named Court, on February 7, 2011, at 1:30 p.m., and February 10, 2011, at 1:30 p.m., in Courtroom 655, Hennepin County Government Center, Minneapolis, Minnesota.

APPEARANCES:

MS. JILL CLARK, Attorney at Law, representing the plaintiff Jerry Moore who is personally present.

MR. JOHN HOFF, pro se, on February 7, 2011.

MR. PAUL GODFREAD, Attorney at Law, representing John Hoff on February 10, 2011.

Jennifer Hobbs, Clerk.

Linda K. Renner, Court Reporter.

* * * * *

Exhibit G

period.

THE COURT: I understand but that's not an issue because I gave a March 3rd trial date and those dates are February 26th and 27th and then March 26th and 27th. And I am not intending that this trial's going to take from February 3rd till March 26th even if we are off on Fridays.

MR. GODFREAD: Okay.

THE COURT: Okay. So then trial will begin March 3rd and I want counsel here at 9:30 and a jury trial has been demanded so we will be picking a jury that morning. Why don't I meet with the attorneys though prior to that day just to go over preliminary instructions.

Mr. Godfread, I appreciate that you've just been signed on to this case. Ms. Clark has filed all of the required pretrial submissions like jury instructions, motions in limine, those sorts of things. We will get you a copy of the order. I want to give you enough time to get that done and so I'm looking at the file. If you could have your items to us by March 1, that should give you enough time to get ready. Obviously you need to supply them to Ms. Clark as well. And then maybe I can see you all the afternoon of Wednesday, March 2nd, so that we could do

whatever we need to to get ready.

MS. CLARK: You would hear motions in limine and things like that?

THE COURT: Correct.

MR. GODFREAD: Okay. I think that should work, Your Honor.

THE COURT: Okay. And, Ms. Clark, are you checking your calendar?

MS. CLARK: I am. It's never as fast as you want it to be. You know, I only have a civil deposition that day. I can move that so that's no problem.

THE COURT: Okay. So why don't you plan on being here at 2:00.

And could I see counsel in chambers? I don't think there's anything else we need to do on the record. And we'll get you a copy of my pretrial order, what submissions are required, Mr. Godfread.

MR. GODFREAD: Thank you, Your Honor.

(Whereupon, the above proceedings concluded).

* * * * *

STATE OF MINNESOTA

COUNTY OF HENNEPIN

FILED
2009 -5 PM 1:59
BY _____ DEPUTY
HENN CO. DISTRICT COURT ADMINISTRATOR

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

Donald W R Allen, John Hoff a/k/a Johnny Northside and John Does 1-5,

Defendants.

TRIAL ORDER

Ct. File No.09-17778

1. The above-entitled matter is set for **court** trial during the Court's trial block commencing on **May 24, 2010** (and ending on **June 25, 2010**). The case will be allotted **2 days** for trial.

2. A case is subject to being called for trial on a 6-hour notice during this period. Counsel and all pro se parties (if they have not already done so) must provide this Court with a telephone number where they can be reached during the entire trial block.

3. If the case is not heard during this period, it will be scheduled during a subsequent civil block and a new order for trial will be sent.

4. **Counsel shall immediately notify the Court of any disposition of the case prior to trial.**

5. Counsel shall meet and accomplish the following before the case is called for trial:

   a. No later than **May 10, 2010**, exchange exhibit lists and copies of all exhibits. In accordance with Rule 130, Minn. Gen. R. Prac., exhibits must be pre-marked by counsel in a single series of Arabic numbers, without a designation of the party offering the exhibit. (Plaintiffs: exhibits 1-99; Defendant A: 100-199; Defendant B 200-299, etc.) **No other exhibits will be admitted in either party's case in chief.**

   b. Attempt to stipulate to admissibility of Exhibits.

   c. Any party submitting more than 10 exhibits shall present them in a three-ring binder with the exhibit numbers tabbed. In addition to the original court exhibits to be used in examination of witnesses and submitted to the finder of fact,

duplicate copies of the pre-marked exhibits and, where applicable, three-ring tabbed binders, shall be made available to the Court and all counsel or self-represented parties.

d. Stipulate as to all uncontested facts and matters not in controversy. A joint stipulation of uncontested facts shall be submitted to the Court **three days prior** to the first day of trial.

e. Exchange witness lists disclosing the names and addresses of all prospective witnesses. Copies shall be submitted to the Court **three days prior** to the first day of trial.

f. Exchange written designations of deposition testimony to be read at trial.

g. In a **jury** trial, provide to the Court **three days prior** to the first day of trial, both in hard copy and via email, requested jury instructions **(in form to be given to Jury – not just CIVJIG numbers)** and proposed special verdict forms.

h. Serve and file motions in limine, with authorities, on or before **May 10, 2010.**

i. In a bench trial, the direct examination of all experts shall take place by verified pre-marked written report. Such report[s] shall be delivered to the Court in chambers no later than **May 10, 2010.** The party adducing the expert testimony must produce the expert at trial for cross-examination.

6. Counsel shall be prepared to offer evidence in a timely manner. The Court will not grant a continuance to produce witnesses or evidence except in **the most extraordinary and unforeseeable circumstances**. In the event counsel have concerns regarding the availability of witnesses at trial, depositions shall be taken for use at trial.

7. Report to the Court on the day of trial ready to try the case. Commencement of trial will not be delayed to negotiate a settlement. The Court will make every effort to facilitate settlement prior to the first day of trial.

8. **Counsel are directed to confer and schedule a pretrial/settlement conference with the Court.**

9. Absent written objection filed with this Court within ten days of this Order, each counsel, on behalf of the parties, agrees that:

   a. Entry of judgment on a general verdict or an order for judgment based on a special verdict may be stayed for 30 days after the date of the verdict.

   b. A sealed verdict may be returned in the event that Court is not in session. The jury will return the verdict at the next session of the Court.

c. The presence of the clerk and reporter, the right to poll the jury and the right to have the verdict immediately recorded and filed in open court are waived.

d. A 5/6ths or 6/7ths verdict may be returned after six hours from the time the jury retires to commence its deliberations, excluding time required for meals, recesses or further instructions.

e. Any other Judge of District Court may receive and accept the return of the verdict if Judge Reilly is unavailable for any reason.

FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF SANCTIONS, WHICH MAY INCLUDE FINES OR THE ASSESSMENT OF COSTS AGAINST THE DELINQUENT PARTY, THE STRIKING OF PLEADINGS, REFUSAL TO ALLOW SUPPORT FOR OR OPPOSITION TO CERTAIN DESIGNATED CLAIMS OR DEFENSES, DISMISSAL OF THE ACTION, OR ENTRY OF A DEFAULT JUDGMENT. A FAILURE TO FURNISH INSTRUCTIONS AND/OR A PROPOSED SPECIAL VERDICT FORM MAY BE DEEMED A WAIVER BY THE PARTY AS TO THE PARTY'S RIGHT TO A TRIAL BY JURY ON THE ISSUE SO OMITTED. PURSUANT TO THE PROVISIONS OF RULE 49.01(a) OF THE MINNESOTA RULES OF CIVIL PROCEDURE, NO UNLISTED WITNESSES, INCLUDING IMPEACHMENT WITNESSES, OR UNLISTED EXHIBITS WILL BE ALOWED AT TRIAL EXCEPT UPON A SHOWING OF GOOD CAUSE, TO INCLUDE A SHOWING WHY THE WITNESS OR EXHIBIT WAS NOT LISTED.

BY THE COURT:

Dated: April 5, 2010

Denise D. Reilly
Judge of District Court

State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: 27-CV-09-17778
Case Type: Contract

Mailing Label

JILL ELEANOR CLARK
2005 AQUILA AVENUE NORTH
GOLDEN VALLEY MN 55427

Jerry L Moore vs Donald W R Allen, John Hoff a/k/a Johnny Northside and John Does 1-5

Please find enclosed, documents from Hennepin County Court Administration.

If you have any questions, please call 612-348-8607

Dated: 4/5/2010

Mark S. Thompson
Court Administrator
Hennepin County District Court
300 South Sixth Street, C-3
Minneapolis MN 55487-0332

cc: ALBERT T GOINS, Sr.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

FINAL DTY Jury Charge

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

JURY INSTRUCTIONS

Court File No. 27-CV-09-17778

CIVJIG 10.20 Post–Trial Preliminary Statement—Duties of Judge and Jury

I will give you your instructions.

The order in which I give the instructions is not important.

Consider all the instructions together.

You must apply the law in these instructions whether you agree with it or not.

You must follow all of the instructions. Do not single out some and ignore others—all of them are equally important.

Duties of the jury and the judge

You must decide what the facts are from the evidence you have heard and seen. You must apply the law to these facts. I will explain which laws apply.

The question you have to answer is listed on the verdict form. I will order a judgment based on your answer to the question and the law.

It is your exclusive duty to answer the question on the verdict form. Do not take anything I do or say as a sign of what the answer should be.

Decide the case on the evidence

Decide the case on the evidence.

Base your decision only on the evidence you have seen or heard in this courtroom.

You must not let events outside the courtroom influence you.

Your most important duty: Be impartial

You cannot take sides based on personal likes, dislikes or prejudices.

You must not be concerned that a particular answer on the verdict form is favorable to one party or the other.

CIVJIG 10.25 Statements of Counsel and Judge

Duties of the attorneys

The attorneys have professional duties:

1. They represent their clients.

2. They introduce evidence to support or defend their clients.

3. They make objections.

4. They argue their clients' cases.

Statements of the attorneys and judge

Nothing the attorneys say during the trial, including opening statement and closing argument, is evidence.

The attorneys' questions are not evidence. The witnesses' answers are evidence.

What I say or what the attorneys say about the evidence may be different from what you remember. If that happens, rely on your own memory.

What the attorneys say about the law may be different from what I say. If this happens, you must rely on what I say about the law.

CIVJIG 10.30 Rulings on Objections to Evidence

Rulings on Evidence

The law has rules about the evidence allowed in a case. It is my duty to make sure the rules are followed.

Objections

Attorneys may object if they think a question or answer is against the rules. Keep the following in mind about objections:

1. If I have sustained the objection, ignore this question or answer.

2. If I have overruled the objection, the answer is evidence like anything else.

3. Remember that objections by themselves are not evidence.

4. The fact that evidence has been objected to should not affect your view of the evidence.

Evidence that is not allowed

I will tell you when other types of evidence are against the rules and have to be ignored or stricken from the record.

CIVJIG 10.35 Notes Taken by Jurors

How to use notes

If you took notes during the trial, you may take them to the jury room.

Use the notes as an aid to your memory and not as a substitute for it.

A written note does not necessarily make a piece of evidence more important, whether you or another juror wrote it down.

CIV JIG 12.10 Direct and Circumstantial Evidence

Direct and circumstantial evidence

A fact can be proved in one of two ways:

1. A fact is proved by direct evidence when that fact is proved directly without any inferences.

2. A fact is proved by circumstantial evidence when that fact can be inferred from other facts proved in the case.

For example, the fact that "a person walked in the snow" could be proved:

1. By an eyewitness who testified directly that he or she saw a person walking in the snow.

2. By circumstantial evidence of shoe-prints in the snow, from which it can be indirectly inferred that a person had walked in the snow.

Using direct and circumstantial evidence

You should consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence.

It is up to you to decide how much weight to give any kind of evidence.

CIVJIG 12.15 Evaluation of Testimony— Credibility of Witnesses

Guidelines for evaluating testimony

You must decide what testimony to believe and how much weight to give it.

Here are some guidelines:

1. Will a witness gain or lose if this case is decided a certain way?

2. What is the witness's relationship to the parties?

3. How did a witness learn the facts? How did he or she know, remember, and tell the facts?

4. What was his or her manner?

5. What was his or her age and experience?

6. Did the witness seem honest and sincere?

7. Was the witness frank and direct?

8. Is the testimony reasonable compared with other evidence?

9. Are there any other factors that bear on believability and weight?

In addition, you should rely upon your own experience, good judgment, and common sense.

CIVJIG 12.25 Impeachment

Guidelines for impeachment

You may consider what the witness did or said in the past, if it is not consistent with what he or she is saying now.

If a past statement was not under oath, use it only to decide the truth or weight of what the witness is saying now.

If the past statement was under oath, or the witness is a party in this case (or an agent for one of the parties), then you may use what was said in the past to decide the issues in this case and the truth and weight of what the witness is saying now.

CIVJIG 14.15 Burden of Proof

Deciding the issues in a case

You will be asked to answer "yes" or "no" to some questions on the verdict form.

The greater weight of the evidence must support a "yes" answer to Questions 1, 2, 6 & 7.

This means that all of the evidence, regardless of which party produced it, must lead you to believe that the claim is more likely true than not true.

Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence.

Any believable evidence may be enough to prove that a claim is more likely true than not.

CIVJIG 50.10 Defamatory Communication

Definition of defamatory statement

A statement or communication is defamatory if it tends to:

1. So harm the reputation of a person that it lowers his or her esteem in the community, or

2. Deter third persons from associating or dealing with him or her, or

3. Injure his or her character, or

4. Subject this person to ridicule, contempt, or distrust, or

5. Degrade or disgrace this person in the eyes of others.

CIVJIG 50.15 Publication

Publication

The parties agree that the statement at issue was published and referred to Jerry Moore.

CIVJIG 50.25 Truth

Definition of "false"

Question 1 asks whether the statement **"Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N."** was false.

A statement or communication is false if it is not substantially accurate. Substantial accuracy does not require every word to be true. A statement or communication is substantially accurate if its substance or gist is true.

A statement or communication is also false if the implication of the statement is false.

CIVJIG 50.40 Actual Malice

It must be proved by clear and convincing evidence that the allegedly defamatory statement or communication was published with actual malice. With regard to Question 3, clear and convincing evidence must support a "Yes" answer.

Definition of "actual malice"

A statement or communication is published with "actual malice" if the person who published it knew it was false or had serious doubts about its truth.

Definition of "clear and convincing evidence"

"Clear and convincing evidence" means it is highly probable that the statement was published with actual malice.

Put another way, you must firmly believe that (defendant) published the statement or communication with actual malice.

CIVJIG 50.50 Presumed Damages

Deciding harm for defamation

The only question for you to decide in answering Questions 4 and 5 is the amount of money Jerry Moore is entitled to receive for:

1. Harm to his reputation and standing in the community

2. Mental distress

3. Humiliation

4. Embarrassment

5. Economic loss caused by the defamatory statement or communication, including loss of employment and/or loss of a presently existing advantage

No evidence of actual harm is required.

CIVJIG 40.30 Interference With Contractual Relationships

Definition of "intentional interference with a contractual relationship"

There is an intentional interference with a contractual relationship if:

1. There was a contract

2. John Hoff knew about the contract

3. John Hoff intentionally caused the breach of the contract

4. John Hoff's actions were not justified.

CIVJIG 40.35 Interference With Prospective Advantage

Interfering with prospective advantage

Interference with prospective advantage means intentionally and improperly interfering with another person's prospective contractual relationship by:

1. Inducing or causing a third person not to enter or continue in the relationship, or

2. Preventing the other person from getting or continuing the relationship.

CIVJIG 40.45 Interference With Contractual Relationships/Prospective Advantage—Damages

Damages are money

The term "damages" means a sum of money that will fairly and adequately compensate a person who has been harmed. Damages may include past and future harm. It must be proved that future harm is reasonably certain to occur.

Damages for interference with a contractual relationship/prospective advantage

Damages for interference with a contractual relationship/prospective advantage may include:

1. The loss of benefits of the contract or the prospective relationship, and

2. Other losses that were directly caused by the interference, and

3. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference.

CIVJIG 10.45 Deliberation and Return of Verdict

Here are some instructions about your deliberations and return of the verdict.

Items that will be in the jury room

During your deliberations you will have the following items in the jury room:

1. Any exhibits received in evidence

2. The notes you took during the trial

3. The written final instructions

4. The verdict form.

Selection of a foreperson

When you go to the jury room to discuss this case, you must select a jury member to be foreperson. That person will lead your deliberations.

The jurors' duty to discuss the case

The goal of jury deliberations is to talk among yourselves in order to reach an agreement about the verdict.

This agreement must be consistent with your own judgment.

Each of you must decide the case for yourself, but do so only after you have fully considered the views of your fellow jurors.

Re-examine your own view and change your mind, if you decide your original view was mistaken.

But do not change your mind just because other jurors disagree, or simply because of pressure to return a verdict.

Kinds of verdict

Unanimous verdict

Your verdict must be unanimous, that is: all jurors must agree on all the answers.

The foreperson must date and sign the verdict form if your verdict is unanimous.

Divided verdict

If you cannot reach a unanimous verdict after six hours of deliberation, then six of you may return a verdict.

If you return a verdict that is not unanimous, the six jurors must agree to sign and date the jury form.

The same six jurors must agree on all answers.

Return of the verdict

When you agree on a verdict, notify the jury attendant.

You will return to the courtroom where your verdict will be received and read out loud in your presence.

Secrecy of the jury deliberations

Your deliberations must be secret and confidential.

You must not communicate with anyone except other jury members about the case during your deliberations.

You have already received all of the evidence in this case. Testimony, whether from live witnesses or from witnesses who testified by deposition, will not be repeated for you and transcripts of testimony will not be provided to you.

During your deliberations, you may have questions about things unrelated to the case itself (such as supplies or the physical facilities). If so, ask the jury attendant.

If you have any questions of law or fact during the deliberations, your foreperson may write out the question and the clerk will bring the question to me. If you send a question to me, however, this is what you should expect me to do:

(a) If you send me any fact question, I will probably tell you that you already have all of the evidence and that you should rely on your own memories of the evidence presented.

I will not re-read any of the testimony to you or explain any of the exhibits because that would emphasize one piece of the evidence over all the rest of the evidence.

(b) If you send me a legal question, I will probably just refer you back to the particular instructions in these Jury Instructions that bear on your legal question.

Juror's responsibility

You must not allow sympathy, prejudice, or emotion to influence your verdict.

The quality of your service will be reflected in the verdict you return to this court.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

FINAL

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

SPECIAL VERDICT FORM

Court File No. 27-CV-09-17778

We, THE JURY, in the above-entitled action, for our special verdict, answer the question submitted to us as follows:

1. Was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." false?

_____
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question*: Did the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." convey a defamatory meaning as to Jerry Moore?

_____
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* By clear and convincing evidence, was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." made by John Hoff with actual malice?

_____
Yes or No

[If your answer to Question 3 was "Yes", then answer Questions 4 and 5.]

4. What amount of money will fairly and adequately compensate Jerry Moore for damages directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." up to the time of this verdict, for:

   a. Past harm to his reputation, mental distress, humiliation, and embarrassment? $_____

   b. Past economic loss? $_____

5. What amount of money will fairly and adequately compensate Jerry Moore for damages reasonably certain to occur in the future, directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." for:

a. Future harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Loss of future earning capacity? $_____

[Answer Questions 6 and 7 regardless of your answers to Questions 1-5.]

6. Did John Hoff intentionally interfere with Jerry Moore's employment contract?

_____
Yes or No

7. Did John Hoff interfere with Jerry Moore's prospective employment advantage?

_____
Yes or No

[If your answer to Questions 6 and/or 7 were "Yes," then answer Question 8.]

8. What amount of money will fairly and adequately compensate Jerry Moore for damages caused by interference with a contractual relationship and/or prospective advantage for:

a. Loss of benefits of the contract or the prospective relationship? $_____

b. Other losses directly caused by the interference? $_____

c. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference? $_____

_____
Foreperson

Jurors concurring sign here:

1._____ 4._____

2._____ 5._____

3._____ 6._____

Dated: _____at _____ o'clock ___.m. at Minneapolis, Minnesota.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

v.

John Hoff, a/k/a Johnny Northside,

Defendants.

Civil No. 27-cv-09-17778

Plaintiff's Memorandum of Law in Opposition to Defendant Hoff's post-verdict motions: CORRECTED

INTRODUCTION

Defendant Hoff's "post-verdict" motions read like a list of things he wish he had done during the litigation. Without exception, for each of the issues that Hoff now raises, he had over a year to raise them in the litigation, and did not. Even as we neared trial, and the Court graciously gave his new, incoming counsel additional time to file trial pleadings, Hoff failed to: a) file requested jury instructions; b) brief or even raise First Amendment issues; or c) seek to submit evidence that could have helped him dispute Moore's evidence.

Now, Hoff wants a 'do over.'

For the reasons stated below, all of Hoff's motions should be denied.

PROCEDURAL POSTURE AT TIME OF HEARING

Following several days of trial, the jury returned the special verdict form ("SVF" at **Att. A**).

Hoff did not file any "affidavits" with his post-verdict motions. He made legal argument that judgment should be entered in favor of Hoff.

Hoff made several legal arguments without discussing any facts, and Plaintiff contends that Hoff cannot, in some type of "reply" brief, expand arguments that were not briefed fully enough for Moore to be able to defend, or file affidavit(s).

Judgment was entered in favor of Moore.

Hoff sought and received permission to have his motions heard on May 31, 2011.

FACTUAL STATEMENT

Hoff did not allege or submit any new "facts" not already in the transcript-record.

The SVF asked the jury whether one specific statement was false, "**Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Av. N.**" Att. A, p.1 (the "falsity sentence"). That is the sole statement that the jury was asked to decide whether it was false.[1]

The SVF awarded $35,000 for the intentional interference with contract and/or interference with prospective employment advantage. Att. A, p. 2. Thirty-five thousand for "loss of benefits of the contract of the prospective relationship" and twenty-five thousand for "emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference." *Id.*

The SVF did not award anything for "future" damages. *Id.*

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1 False here means that plaintiff did not show by a preponderance of evidence that the statement was false. That is not the same as a finding by the jury that the statement was 'true.'

ARGUMENT

I. HOFF'S MOTIONS SHOULD BE DENIED.

Hoff contends that the jury's verdict was "inconsistent," because a "true" statement cannot form the basis for a claim of tortious interference with contract. Hoff does not directly address it, but may be implying that a claim of interference with prospective employment advantage is also subject to this analysis. Moore here asserts that Hoff's failure to apply his argument to both "interference" claims means he has waived the one.

However, Plaintiff argues in the alternative that even if Hoff had made the argument against both "interference" claims, the argument must fail.

Hoff avoids the evidence adduced at trial

There are various impediments to Hoff's argument, but the most glaring is that Hoff studiously avoids most of the evidence that supports the "interference" claims. The jury heard several days of evidence. Hoff only analyzes the falsity sentence. At no time did Moore ever contend that the falsity sentence was the basis for his interference claims against Hoff.[2]

Although it will be further addressed below, Hoff has an erroneous view of the First Amendment. The principal purpose of the First Amendment is to protect the citizenry *from*

---

[2] Because Hoff's memorandum section I focuses on the falsity sentence and whether its lack of falsity finding can be the basis of the interference claims, and because there was significant evidence that the jury could consider that was *not* the falsity sentence, most of Hoff's citations are irrelevant. The interference claims were not based on the same conduct or statements as the claim for defamation. Note that *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991) permitted a promissory estoppels claim against a media defendant to forward, because it was supported by evidence that the newspaper had published a confidential informant's name, and was therefore not based on the same conduct as a defamation claim. *NAACP* is not on point here. In that case, the hardware store argued that nearby boycotters should be liable for the assaults perpetrated by other people. The boycott was deemed First Amendment activity. Whether a boycott is protected by the First Amendment is an issue of fact in each particular case. Numerous boycotts (meaning pressure on someone else to do or not do something) have been found *not* to be protected by the First Amendment.

government. Hoff seems to assert that every single word he says is protected by the First Amendment, *no matter how it is used.* Hoff ignores thousands of years of British and American law, in which words of a defendant have been the basis of liability, either as an admission of conduct, or as an expression of intent.

Moore's use of Hoff's words as evidence of *intent* was completely proper.

Hoff was aware of, but studiously avoided evidence such as:

- Hoff blogged in his June 21, 2009 blog, "In fact my reason for delaying this post about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess." (Exh. 1).
- Don Allen testified that the goal was to get Moore fired, that he sent an email at Hoff's behest, the email threatened a public relations nightmare campaign (and Allen confirmed that was true, that was the intent of it), and that Allen blind-copied Hoff on the email ("Email"); (Exh. 1).
- That Email stated that Allen would wait a short time;
- Within one day[3] of the Email, Dr. McLaurin (who the U of M witness confirmed made the firing decision) sent Moore the termination letter at Exh. 3.
- Then, in his June 23, 2009 blog, Hoff bragged about getting Moore fired. (Exh. 2). Indeed, he posted, "I say that merely 'letting go' of Moore isn't good enough." Hoff's contemporaneous description was *not* that Moore had finished some assignment. Hoff, claiming to be 'in the know,' stated that Moore was "let go."

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3 Close timing is evidence of causation. *See, e.g., Clark County Sch. Dist. v. Breeden,* 532 U.S. 268, 273 (2001).

This is not an entire recitation of trial evidence, but the above facts are sufficient to show: a) Hoff took *actions* over and above his claimed "journalistic" diatribe to get Moore fired; b) that he intended to get Moore fired; and c) that there was a connection between his actions and Moore's termination.

Although Hoff suggested that there was insufficient circumstantial evidence – that is not accurate. One day between action and result is the strongest possible circumstantial evidence. Of course, in this case, there was also direct evidence (in the form of Don Allen's testimony and documentation).

Further, intent is nearly always proven by circumstantial evidence. Here, the jury had more than circumstantial evidence of intent: the jury could read Hoff's blogging of his mental attitude – which confirmed he intended to get Moore fired and then was proud of it when he did.

The Email from Don Allen is in evidence (as part of Exh. 1) and not one of those statements were determined by the jury not to be false. Indeed, *Hoff requested that any statement made by Don Allen be affirmatively removed from the statements that the jury would consider.*

Further, the Email is contained within Exhibit 1 (June 21 post), and Hoff bragged in Exhibit 2 (June 23 post) that pages from his blog were "waved around" at the U of M just before Moore was fired. There was plenty of evidence of "wrongful behavior" by Hoff – Hoff just refuses to deal with it in his post-verdict motions.

This is not a discussion of all of the evidence adduced at trial that the jury could reasonably consider in reaching its verdict on the interference claims, but it is sufficient.

Finally, defamation law does not trump all other torts. As Hoff concedes, the other torts must be based on the allegedly defamatory statements. Hoff memo page 4. Here, they were not.

Hoff did not ask for relief from the Court

At no point did Hoff ask the Court to have the jury find malice. At no point did Hoff ask, before or during the trial, to dismiss the interference claims based on the theories he now espouses. At no point did Hoff make any legal motions to the Court to clarify any of these issues. Yet Hoff had ample opportunity to do so. His incoming attorney was given additional time to file trial pleadings, but Hoff still did not file jury instructions. Later, the Court required that Hoff at least list the jury instructions from CivJIG by number, which Hoff did. It is too late, now, for Hoff to claim that the trial went forward without his theory being acknowledged.

Indeed, it was the *Court* who raised the issue of public figure status, and put on an evidentiary hearing. At that hearing, Hoff never contended that this was an "issue of public concern" case. That was his time to contend that, not now, after the jury verdict.

Hoff contends that the U.S. Supreme Court just held March 2, 2011 that the First Amendment can serve as a defense in state torts. The *Snyder case* (131 S. Ct. 1207) was a picketing case. And the state tort was intentional infliction of emotional distress. *Snyder* was *not* the first time a state tort had been subjected to a First Amendment analysis. (Indeed, see other cases cited by Hoff.) The issue is that for the defamation analysis to apply, the plaintiff needs to be seeking relief *based on the allegedly defamatory statements*. That is simply not the case here.

Hoff's argument about "cause" is misplaced

Hoff argues at page 5 of his memorandum that Moore did not prove that Hoff was the "cause" of his termination. The jury instruction read:

1. There was a contract

2. John Hoff knew about the contract

3. John Hoff intentionally caused the breach of the contract

4. John Hoff's actions were not justified.

Moore proved all of those elements, and there is sufficient evidence to establish those elements. It is simply not accurate that Zulu-Gillispie testified that Hoff was not a factor. And, the U of M witness did establish that the work was not done (it was ongoing when Moore was let go) and that even if that leg of the project finished, that there were other sections of the project that Moore would have been considered for. This was evidence that Dr. McLaurin's termination letter was *not accurate,* that there was no "change in [the] need for assistance" (meaning, it was not the true reason for the discharge). (This is what Moore argued, not that the U could not "readily disclose" the true reasons.)

No evidence jury was swayed by emotion

The irony of Hoff's argument that the jury was swayed by emotion, is that Moore has a right to discuss his "emotional distress" damages. The fact that the jury agreed he had incurred emotional distress is not the same as a runaway jury losing its head to passion. Twenty-five thousand dollars cannot, by any stretch, be deemed an out-of-proportion amount. Emotional distress damage amounts much higher than this one have been sustained.

Hoff has not put on one fact in support of this argument, nor cited any applicable law.

Lost wages were calculated nearly exactly (Hoff had a chance to show lack of mitigation or other defenses to damages and did not do anything) and 25k emotional distress does not show passion.

No problems with damages evidence

Hoff's argument re character evidence not briefed

Hoff has stated that the Court failed to allow "character" evidence. Moore cannot defend against this argument, which has not been explained. Hoff has not stated which evidence the Court allegedly excluded. For a court to 'exclude' evidence, Hoff must first try to offer it.

The jury calculated lost wages were calculated from Moore's testimony. *Hoff waived his right to put on evidence that Moore did not mitigate his damages, and he did not even cross examine Moore about his wage earnings.* He clearly waived the right to now complain.

CONCLUSION

For all of the above reasons, Plaintiff Jerry Moore respectfully requests that Hoff's post-verdict motions be denied in their entirety.

Dated: May 24, 2011

ATTORNEY FOR PLAINTIFF

-Copy-

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

Plaintiff's Bench Memo re CDA

Section 230 of Title 47 of the United States Code (47 U.S.C. § 230) was passed as part of the much-maligned Communication Decency Act of 1996.

"By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service". Zeran, infra. *Zeran v. America Online*, 129 F.3d 327, 330-31 (4th Cir. 1997), cert. denied, 524 U.S. 937 (1998) (in enacting § 230, Congress sought "to encourage service providers to self-regulate the dissemination of offensive material over their services" and to remove disincentives to self-regulation)

Section 230 "does not require [information content providers] to restrict speech; rather, it allows [them] to establish standards of decency without risking liability for doing so." *Green v. American Online, Inc.*, 318 F.3d 465, (3rd Cir. 2003)

CONTENT PROVIDER

The dividing line in determining whether an entity is an "internet service provider" or an "internet content provider" hinges on editorial publisher function and when something is a statement being made by the information content provider. An emerging trend, though, has been noted in some recent 230 cases where courts have begun to develop an inducement model. In these cases, facilitating or inducing illegal behavior seems to be troubling for claiming 230 immunity.

In *Fair Housing v. Roommates.com*, 489 F.3d 921 (9th Cir. 2007), [hereinafter *Roommates*], in which the 9th Circuit held that the housing locator site, Roommates.com, was not immune under Section 230. Roommates was not a passive publisher of the content; rather, the site had developed questionnaires to elicit potentially discriminatory information from users. Although the court found that Roommates.com was immune in regard to open-ended questions that suggested no particular information to be provided by members, the court found that its search mechanism and e-mail notifications meant that it was neither a passive pass-through of information provided by others nor merely a facilitator of expression. "By categorizing, channeling and limiting the distribution of users' profiles, Roommates provides an additional layer of information that it is 'responsible' at least 'in part' for creating or developing." *Id.* at 17. The court therefore held that the site was an information content provider and not immune under the publisher provisions of the CDA.

in *NPS LLC v. StubHub, Inc.*, 25 Mass.L.Rptr. 478, 2009 WL 995483 (Mass. Super. Ct. Jan. 26, 2009), the court found StubHub to be an "information content provider" if it could be

shown that they encouraged their users to violate ticket scalping laws. The court held that, "there is evidence in the record that StubHub materially contributed to the illegal 'ticket scalping' of its sellers. In effect the same evidence that is sufficient, if proven, to establish improper means is also sufficient to place StubHub outside the immunity provided by the CDA." *Id.* at *14.

When an internet service provider requests potentially defamatory material for the purpose of incorporating the provided material into a larger posting containing original "thoughts and contributions," section 230 immunity may not apply. *Woodhull v. Meinel,* 145 N.M. 533, 202 P.3d 126 (N.M. App. Ct. 2008)(in reversing a grant of summary judgment, the court stated that, the "defendant created a question as to whether [a previous posting] could reasonably be viewed as containing two substantive elements calling for separate analysis and treatment.")

AFFIRMATIVE DEFENSE

Like all immunity defenses, Moore contends that the CDA immunity defense is an "affirmative defense." See, e.g., *Novak v. Overture Servs., Inc.,* 309 F.Supp.2d 446, 452 (E.D.N.Y. 2004), the court noted that "invocation of Section 230(c) immunity constitutes an affirmative defense[, a]s the parties are not required to plead around affirmative defenses, such an affirmative defense is generally not fodder for a Rule 12(b)(6) motion." Nevertheless, the court granted the defendant's motion to dismiss pursuant to Section 230. Likewise, in *Doe v. GTE Corp.,* 347 F.3d 655, 657 (7th Cir. 2003), the Seventh Circuit wrote that "[a]ffirmative defenses do not justify dismissal under Rule 12(b)(6); litigants need not try to plead around defenses," but also affirmed the District Court's grant of the motion to dismiss. *Doctor's Associates, Inc. v. QIP Holders, LLC,* 2007 WL 1186026 (D. Conn. 2007) became the first case to actually deny a motion to dismiss pursuant to the dicta *Novak* and *GTE. Curran v. Amazon.com, Inc.,* 2008 WL 472433 (S.D. W.Va. Feb. 19, 2008) also followed *GTE* and denied a motion to dismiss, stating that, "immunity pursuant to § 230(c) of the CDA constitutes an affirmative defense."

###

Plaintiff's Bench Memo re damages

"Under Minnesota law, absent proof of actual malice (as here), a private defamation plaintiff **suing a media defendant on a matter of public concern**[1] has the burden of proving actual harm to his reputation to sustain his claim. Richie v. Paramount Pictures Corp., 544 N.W.2d 21, 26 (Minn. 1996)."

Because there is no First Amendment concern – no need to show malice – the state presumed damages (also known as per se damages) is applicable. See Weissman v. Sri Lanka Curry House, Inc., 469 N.W.2d 471 (Minn. Ct. App. 1991) and Dun & Bradstreet, *supra*. "The rationale of the common-law rules has been the experience and judgment of history that "proof of actual damage will be impossible in a great many cases where, from the character of the defamatory words and the circumstances of publication, it is all but certain that serious harm has resulted in fact." W. Prosser, Law of Torts § 112, p. 765 (4th ed. 1971); accord, *Rowe* v. *Metz, supra*, at 425-426, 579 P. 2d, at 84; Note, Developments in the Law -- Defamation, 69 Harv. L. Rev. 875, 891-892 (1956). As a result, courts for centuries have allowed juries to presume that some damage occurred from many defamatory utterances and publications. Restatement of Torts § 568, Comment *b*, p. 162 (1938) (noting that Hale announced that damages were to be presumed for libel as early as 1670). This rule furthers the state interest in providing remedies for defamation by ensuring that those remedies are effective. In light of the reduced constitutional value of speech involving no matters of public concern, we hold that the state interest adequately

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[1] Speech that it merely the concern of the business audience (like here – the business audience is the contestants) is not an issue of public concern. Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 759 (1985).

supports awards of presumed and punitive damages -- even absent a showing of "actual malice."

When a statement is defamatory per se, as is the case here, the statement is "actionable without proof of special damage." *Anderson*, 262 N.W.2d at 372; Restatement (Second) of Torts § 574 (1977) ("One who publishes a slander that imputes serious sexual misconduct to another is subject to liability to the other without proof of special harm."). In addition, general damages are presumed, and thus a plaintiff may recover without any proof that the defamatory publication caused him or her actual harm. Becker v. Alloy Hardfacing & Eng'g Co., 401 N.W.2d 655, 661 (Minn. 1987). Finally, when a statement is defamatory per se "punitive damages are recoverable without proof of actual damages." *Anderson*, 262 N.W.2d at 372 (citing *Loftsgaarden v. Reiling*, 267 Minn. 181, 126 N.W.2d 154 (1964)).

Plaintiff's Bench Memo re Opinion v Fact

Whether a statement is one of opinion, hence absolutely protected by the first amendment, or one of fact, is a question of law for the trial court. *See Janklow v. Newsweek, Inc.,* 788 F.2d 1300, 1305 n. 7 (8th Cir.1986) (en banc), *cert. denied,* 479 U.S. 883 (1986), cited with favor in Foley v. WCCO Television, Inc., 449 N.W.2d 497 (Minn. 1990).

From Janklow:

Opinion is absolutely protected under the First Amendment. Gertz v. Robert Welch, Inc., 418 U.S. 323, 339, 94 S.Ct. 2997, 3007, 41 L.Ed.2d 789 (1974). But it is hard to draw a bright line between "fact" and "opinion." There is a sense in which one's intention or motive in performing a certain act is properly categorized as "fact." Whether someone accused of mail fraud, say, had criminal intent is a question of "fact" to be decided by the jury in a criminal prosecution. Whether someone promising to perform a contract actually had no intention of doing so is a "fact" that, in some jurisdictions, will support a civil action for fraud. And in this sense, whether Governor Janklow prosecuted the case against Banks for revenge, or out of a genuine sense of duty, is a question of "fact." But the term "fact" need not have the same meaning in every legal context. The meaning we give to it should depend on the purposes of the law being applied. Here, that law is the First Amendment, which in the most uncompromising terms ("Congress shall make no law ...") seeks to protect freedom of speech.

In establishing the criteria by which to judge "Dennis Banks's Last Stand," we have looked at how a variety of courts have handled the fact/opinion distinction since its importance was made clear in Gertz.3 Recently, the issue was thoroughly ventilated by the

District of Columbia Circuit, Ollman v. Evans, 750 F.2d 970 (D.C.Cir.1984) (en banc), cert. denied, --- U.S. ---, 105 S.Ct. 2662, 86 L.Ed.2d 278 (1985), and we choose here to adopt the four factors suggested in Judge Starr's scholarly opinion, and to expand them, for reasons we will explain, to include elements of the concurrence by Judge Bork. We emphasize, however, that these factors must be considered together, that no solitary criterion can be dispositive, and that ultimately the decision whether a statement is fact or opinion must be based on all the circumstances involved. See Ollman, 750 F.2d at 1060 ("important these factors not be taken mechanically") (MacKinnon, J., concurring).

The first relevant factor identified in Ollman was the precision and specificity of the disputed statement, 750 F.2d at 981, a concern found in many fact/opinion cases. See, e.g., Buckley v. Littell, 539 F.2d 882 (2d Cir.1976), cert. denied, 429 U.S. 1062, 97 S.Ct. 786, 50 L.Ed.2d 777 (1977) (calling someone a "fascist" was indefinite and therefore opinion, while comparing him to a known libeller was specific and so fact). It is difficult to call a vague or imprecise statement a "fact"; in the present context, moreover, doing so would place the First Amendment at the mercy of linguistic subtleties and fourth-ranked dictionary definitions.

Tied to the concept of precision is that of verifiability. If a statement cannot plausibly be verified, it cannot be seen as "fact." Id. A statement regarding a potentially provable proposition can be phrased so that it is hard to establish, or it may intrinsically be unsuited to any sort of quantification. See Mr. Chow of New York v. Ste. Jour Azur, 759 F.2d 219, 226 (2d Cir.1985).

A third factor is the literary context in which the disputed statement was made. The statement must be taken as part of a whole, including tone and the use of cautionary language. Ollman, 750 F.2d at 982-83; see also Gregory v. McDonnell Douglas Corp., 17 Cal.3d 596, 131 Cal.Rptr. 641, 552 P.2d 425, 428 (Cal.1976). We include as well under the rubric of literary context the type of forum in which the statement was made, a factor which Judge Starr called "social context." Ollman, 750 F.2d at 983. This factor focuses on the category of publication, its style of writing and intended audience.

Finally, in deciding whether a statement is fact or opinion, a court must consider what we will call the "public context" in which the statement was made. It is true that the distinction between public and private figures which bears so heavily in many libel cases has no direct relevance here, see, e.g., Ollman, 750 F.2d at 975; no opinion is actionable, whether it concerns a private person or a public figure. However, when determining initially whether a statement is fact or opinion, it does a disservice to the First Amendment not to consider the public or political arena in which the statement is made and whether the statement implicates core values of the First Amendment. See Ollman, 750 F.2d at 1002-05 (Bork, J., concurring). In fact, as Judge MacKinnon recognized, "Judge Bork's skillful employment of 'the concept of a public, political arena' is crucial to a proper understanding of the analysis Judge Starr elucidates." Ollman, 750 F.2d at 1016 (MacKinnon, J., concurring).

Plaintiff's Bench Memo re Pubic v. Private

I. NOT A MEDIA DEFENDANT.

Although the courts have decided cases to protect media defendants, Hoff is not a media defendant.

II. NOT A PUBLIC FIGURE.

Even if John Hoff is a "media defendant," Moore is not a public figure. He is not a public official. Of course, the First Amendment concerns in defamation law arose when the media criticized public officials;[1] the media has the most latitude in criticizing public officials.

> One can discern in these decisions two forces that may reshape the common-law landscape to conform to the First Amendment. The first is whether the plaintiff is a public official or figure, or is instead a private figure. The second is whether the speech at issue is of public concern. When the speech is of public concern and the plaintiff is a public official or public figure, the Constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a **media defendant** than is raised by the common law. When the speech is of public concern but the plaintiff is a private figure, as in *Gertz*, the Constitution still supplants the standards of the common law, but the constitutional requirements are, in at least some of their range, less forbidding than when the plaintiff is a public figure and the speech is of public concern. When the speech is of exclusively private concern and the plaintiff is a private figure, as in *Dun & Bradstreet*, the constitutional requirements do not necessarily force any change in at least some of the features of the common-law landscape.

Phila. Newspapers, Inc. v. Hepps, 475 U.S. 767, 775 (1986). But neither public official *nor* matter of public concern are at issue here.

Moore is not a limited purpose public figure.

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1 See *Sullivan* case, below.

In Time, Inc. v. Firestone, 424 U.S. 448, 47 L. Ed. 154, 96 S. Ct. 958 (1976), the court found that plaintiff Mary Alice Firestone was not a limited purpose public figure regarding her divorce proceedings, despite the fact the divorce was a "cause celebre". Id. at 454. Analyzing Firestone's activities generating publicity, the court found that her "resort to the judicial process * * * is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court." Id. at 454. (quoting Boddie v. Connecticut, 401 U.s. 371, 376-77, 28 L.Ed. 2d 113, 91 S. Ct. 780 (1971). The court also found that the fact Firestone held a few press conferences did not convert her into a public figure. Firestone, 424 U.S. at 454-55 n. 3. The court also stated: While participants in some litigation may be legitimate "public figures," either generally or for the limited purpose of that litigation, the majority will more likely resemble respondent, drawn into a public forum largely against their will in order to attempt to obtain the only redress available to them or to defend themselves against actions brought by the state or by others. There appears little reason why these individuals should substantially forfeit that degree of protection which the law of defamation would otherwise afford them simply by virtue of their being drawn into a courtroom. Id. at 457.

In Wolston v. Reader's Digest Ass'n, Inc., 443 U.S. 157, 61 L.Ed.2d 450, 99 S. Ct. 2701 (1979),[2] the Court held that the plaintiff, a nephew of Russian spies convicted during the 1950's, was not a public figure required to show actual malice on the part of Reader's Digest. Plaintiff was cited for contempt for failing to appear before a grand jury regarding the spy charges against his uncle and aunt. The Court found that while Wolston's failure to go before the grand jury and his contempt citation were newsworthy, Wolston did not engage in the type of behavior converting him to a public figure. The Court concluded: "[Our] reasoning leads us to reject the further contention of respondents that any person who engages in criminal conduct automatically becomes a public figure for purposes of comment on a limited range of issues relating to his conviction." *Id.* at 168.

Within this state's jurisdiction, the leading case appears to be Jadwin v. Minneapolis Sta & Tribune Co., 367 N.W.2d 476 (Minn. 1985). Jadwin was the promoter, president, and principal shareholder of two companies, Bond Fund and Minnesota Fund Management. As part of an effort to attract sales of a mutual fund, Jadwin placed ads, mailed literature, and issued press releases on the fund. A reporter for the defendant paper investigated Jadwin's business, and in a March 5, 1980 article, the paper criticized Jadwin's

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2 A criminal defendant does not automatically become a public figure, *see Wolston*, 443 U.S. 157, 61 L. Ed. 2d 450, 99 S. Ct. 2701 (1979).

companies. When the paper refused to retract certain statements, Jadwin filed a libel suit on behalf of himself and the two corporations organized by him.

The trial court granted summary judgment to plaintiffs, holding that plaintiffs were private figures, but that because the defamatory matter involved an issue of public concern, even a private plaintiff had to show actual malice. Id. at 480.

Jacobson v. Rochester Communications Corp., 410 N.W.2d 830, * (Minn. 1987).

Jadwin was not a general purpose or involuntary public figure, and the court found that "though the case is close, we affirm the trial court's finding that Jadwin is not a public figure." *Id.* at 485. Though Jadwin engaged in business actions including attracting media attention, this court held that Jadwin did not perform the types of activities which would transform him into a public figure. "To hold, in effect, that soliciting public investment automatically transforms any small businessman into a public figure would, in our view, expand the category beyond the limits contemplated by *Gertz*. Jadwin at no time met the rationale of access to rebut the alleged libelous publication that is a distinguishing feature between private individuals and public figures." *Id.* at 486.

...

In light of these previous cases, we must determine whether Jacobson is a limited purpose public figure required to show actual malice. KWEB argues that Jacobson thrust himself to the forefront of a public controversy, his criminal trial, to influence the resolution. Specifically, KWEB asserts that Jacobson used his access to the media to further his views. Our review of the record indicates that while Jacobson was the subject of numerous articles relating to his trial, Jacobson did not engage in the type of voluntary activity which would support a finding that he is a public figure. His situation is similar to that of the plaintiff in *Firestone*, who was compelled to go to court in order to obtain her divorce. In the present case, Jacobson was required to face the criminal charges pressed against him, and he appeared in court to defend himself. His interview in the paper, although it allowed Jacobson to profess his innocence, was primarily a reaction to this court's decision that day reversing his criminal conviction and granting a new trial. Jacobson took no other actions nor sought any other notoriety; in short, we find that the facts in the present case do not support petitioner's contention that respondent is a voluntary public figure.

...

> A community has a legitimate interest in the outcome of a felony trial, and our decision in no way affects the right to publish truthful information contained in public court records. *See Cox Broadcasting v. Cohn*, 420 U.S. 469, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975). We cannot, however, extend that protection to the publication of the statements in this case which are admitted to be inaccurate. *See Firestone*, 424 U.S. at 455. We hold that respondent Jacobson is a private individual, not a limited purpose public figure, for purposes of this defamation action, and is not required to show actual malice to establish a prima facie case.

Jacobson, *supra*. Moore was never charged with any crime. However, the Partch case may be instructive here:

> Partch's alleged conduct was sufficiently egregious to prompt the serious charge against him and to cause community concern, but such conduct should be accurately characterized in news reports.

Partch v. Hubbard Broad., Inc., 29 Media L. Rep. 1534, *10 (Minn. Ct. App. 2001). In that case, the teacher had touched a student's breast over the top of her clothes, during class. The media reported him as "having sex" with the student. That was a gross exaggeration – and actionable by Partch. The media defendant argued "technical accuracy."

> Respondents also argue that while their statements may lack technical accuracy, they are substantially true with respect to the charges against Partch. In support of this contention, respondents cite several cases where defamation was forestalled because the disputed statement was substantially true, albeit technically inaccurate. The common thread among these cases, however, is that the distinction between the statement and the actual truth was minimal. For example, defamation was not established by a statement describing a father as having kidnapped his son, even though the father's actions did not constitute the specific criminal offense of kidnapping in Colorado. *See Anderson v. Cramlet*, 789 F.2d 840, 844-45 (10th Cir. 1986). Another example includes a newspaper article stating that the plaintiff received stolen property valued at $ 50,000, when in fact it was only valued at $ 505. *See Weisburgh v. Mahady*, 147 Vt. 70, 511 A.2d 304, 306 (Vt. 1986) (determining effect the same where sting of report was arrest for stolen

property, not the amount). Respondents cite a case in which a action failed following a newspaper report that the plaintiff was convicted of firing a gun during a dispute with a motorist, even though he was only convicted of exhibiting a gun. *See Read v. Phoenix Newspapers, Inc.*, 169 Ariz. 353, 819 P.2d 939, 941-42 (Ariz. 1991). In ruling the statement was not defamatory, however, the Arizona Supreme Court held that the statement was substantially true because the plaintiff had in fact discharged a gun during the dispute. 819 P.2d at 942. KSTP cites *Simonson v. United Press Int'l, Inc.*, 654 F.2d 478 (7th Cir. 1981), for the proposition that it was not defamatory for a newspaper to report a person was charged with rape when he was actually only charged with second-degree sexual assault. KSTP misstates the holding of *Simonson*, as there the record "made it clear that rape [intercourse without consent] had occurred." 654 F.2d at 481-82 & n.9.

Respondents also cite *Hovey v. Iowa State Daily Publ'n Bd.*, 372 N.W.2d 253, 254 (Iowa 1985), where an action for defamation was filed after a newspaper reported that a man had raped a female bartender and was charged with second-degree sexual assault. The man's conduct involved forcing the bartender to perform oral sex on him. *Id.* In finding no actionable defamation, the Iowa Supreme Court ruled that the reported truth (rape) was substantially true when compared with the actual truth (forced performance of oral sex). *Id.* at 256. What distinguishes the circumstances in *Hovey* from the case before us is that "rape" may reasonably encompass forced oral sex, whereas "having sex" does not reasonably contemplate Partch's alleged conduct of touching a student in the area of her breast on the outside of her clothing during class. Partch's alleged conduct was sufficiently egregious to prompt the serious charge against him and to cause community concern, but such conduct should be accurately characterized in news reports.

Id.

The Minnesota cases are dispositive here:

- Not every criminal defendant becomes a public figure, and Moore was not even charged with a crime.
- Not every lawsuit filed creates a public figure (Moore participating as plaintiff in JACC lawsuit did not transform him into a public figure).

For all of these reasons, Moore was not transformed into a public figure. He did not have "access" to the media the way a politician does. He had a limited ability to get his side of the story told. And merely defending himself in the media does not transform himself into a public figure.

###

False and defamatory statements per Complaint

53. The June 21 blog went on to make this false and defamatory statement: **"Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N."**

54. Hoff went on, **"The collective judgment of decent people in the Jordan Neighborhood – 'decent' being defined as 'not actively involved in mortgage fraud' – is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him."**

55. In context, the statement in Paragraph 54 is also defamatory of Jerry Moore.

56. Hoff went on to state "the current JACC leadership will have nothing to do with Jerry Moore...."

70. False and defamatory statement: **This comes on the heels of several different scenarios involving Mr. Moore and his relationship with Tynessia Snoddy who is under indictment for mortgage fraud as reported on KSTP-TV (Read it here: http:///kstp.com/news/storeis/S795057.shtml?cat=1).**

71. False and defamatory statement: **Mr. Moore did a deal that remains in question where he received a $5000 check for 'new windows' at 1564 Hillside Avenue North.**

72. False and defamatory statement: **This was a conflict of interest, at the time he was JACC's executive director.**

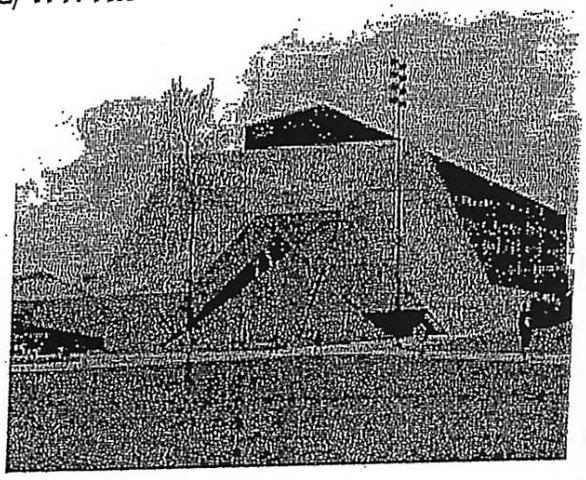
The Adventures of Johnny Northside

Being the amazing, true-to-life adventures and (very likely) misadventures of a divorced man who seeks to take his education, activism and seemingly boundless energy to the North Side of Minneapolis, to help with a process of turning an arguably-blighted neighborhood into something approaching Urban Utopia. I wouldn't be here if I didn't want to be near my child. This blog is dedicated to my 12-year-old son Alex, and his dream of studying math and robotics at MIT.

UNREDACTED

Sunday, June 21, 2009

Former JACC Executive Director Jerry Moore Hired By U of M, Neighborhood Leaders Are All, Like, WTF?!!!



Stock Photo, U of M

Word reached me about a week ago from a source that former JACC Executive Director Jerry Moore had been hired by the UROC program at U of M.the nice (but obviously naive) folks bringing North Minneapolis that big, expensive, rather slowly-delivered project at the former Penn-Plymouth shopping center. Another creditable source made some calls and confirmed firsthand this was, in fact, the case. Jerry Moore is now--among many other things--a gopher.

My U of M gopher blood boils with shame. THE SHAME!!!!!!!

Jerry Moore--who has been a plaintiff in a lawsuit against JACC, and was fired from his executive director position for misconduct, (fistfight, cough cough) is nothing if not a controversial figure in the Jordan Neighborhood...

So when word reached certain neighborhood movers and shakers about Jerry being hired by UROC, and being involved with some

Exhibit 101

UNREDACTED

kind of "research" about mortgage issues in North Minneapolis, consternation was followed by seething anger. Repeated and specific evidence in Hennepin County District Court shows Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N. The collective judgment of decent people in the Jordan Neighborhood--"decent" being defined as "not actively involved in mortgage fraud"--is that Jerry Moore is the last person who should be working on this kind of task and WHAT THE HELL was U of M thinking by hiring him?

Even assuming (as lawyers say) "arguendo" that Jerry Moore has received a bad rap over 1564 Hillside Ave. N., the problem remains that current JACC leadership will have nothing to do with Jerry Moore, and the Jordan Neighborhood makes up a big part of North Minneapolis. It's not hard to picture situations where the UROC people attempt to engage the leadership of Jordan, but all the "Jordanites" will want to talk about is, "Why the hell did you hire Jerry Moore, and when will you be getting rid of him? Get rid of him and we will talk."

That's the word I'm getting from neighborhood leadership. In fact, my reason for delaying posting about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess. With the matter still pretty much the same as it was a week ago, I was contacted and told to please, please blog about this matter. So: Jerry Moore is working for UROC, and UROC has just lost major cred with North Minneapolis leadership. (The ones not involved with mortgage fraud, anyway, which clearly doesn't include all the self-declared leadership)

In fact, some are going so far as to say UROC has never had the creditability of CURA, which is another program at U of M which has been working with neighborhood issues for a long time, very successfully, though often with a low profile. The question being asked in this time of budget cuts is "Why is there a UROC at all? Why not just have things done under CURA, a program with a proven track record which would never, in a hundred years, pull this kind of stupid bulls***t?"

*Posted by Johnny Northside at **9:57 AM***
*Labels: **Jerry Moore, Jordan Neighborhood, UROC***

11 COMMENTS:

Ranty said...
And how.

Support The Adventures of Johnny Northside

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About Me

Johnny Northside
Workaholic, dreamer, realistic idealist.

View my complete profile

Blog Archive

▼ **2009** (550)

▼ **06/21 - 06/28** (4)

Planting Juniper Trees In The Hawthorne Eco Villag...

I would like to add that Mr. Moore's reputation precedes him into other Northside neighborhoods as well.

This is a very troubling move on the part of UROC.

June 21, 2009 11:14 AM

Anonymous said...

I'll name names. Apparently it was Makeda Zulu-Gillespie and Irma McClaren (unsure if I'm spelling that right) who hired Jerry Moore. Makeda, avid JNS readers will remember, gave an impassioned speech during Kenya McKnight's ill-fated challenge to the DFL endorsement where she essentially praised people for being clueless.

I've been at community events with these two, and "clueless" is the absolute best word to describe their relationship to north Minneapolis.

Let's track down the contact information for these people, post it, and have a coordinated effort to remove Jerry Moore and restore credibility to the partnership.

And I am compelled to remind folks that since the U is a public institution, it is YOUR TAXPAYER DOLLARS that are now paying his salary.

June 21, 2009 1:17 PM

Anonymous said...

Any particular person to get a hold of at UROC? Or just go to the University President?

June 21, 2009 2:22 PM

Anonymous said...

This may well spell the failure of UROC, and Jerry's leadership has done, to a large extent, for the Northside Marketing Task Force.

Thanks for posting this. I have viewed UROC as potentially a huge benefit for North Minneapolis. I now see that this is not possible. Like other organizations supposedly here to help the African American community, they are either blind or determined to "help" those who are doing the most damage.

So disappointing!

June 21, 2009 2:47 PM

Sun Setting On A Rental Property Empire...
Lowry Avenue Bridge Goes Down, Here Is Video...
(Su...
Former JACC Executive Director Jerry Moore Hired B...

- ▸ 06/14 - 06/21 (28)
- ▸ 06/07 - 06/14 (33)
- ▸ 05/31 - 06/07 (30)
- ▸ 05/24 - 05/31 (31)
- ▸ 05/17 - 05/24 (32)
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- ▸ 01/25 - 02/01 (25)
- ▸ 01/18 - 01/25 (26)
- ▸ 01/11 - 01/18 (22)
- ▸ 01/04 - 01/11 (20)
- ▸ 2008 (861)

My Blog List

Holding Pond BUT Not Holding Us Down
This is the most sickening thing I have seen
1 month ago

Anonymous said...

I guess the u has jumped on the "no standards are low enough when it comes to the northside" bandwagon.

maybe your sources can post the names & contact information for the people we should be writing to about this.

June 21, 2009 5:21 PM

Anonymous said...

I suggest we all write to the Board of Regents - they can be reached right here:

http://www1.umn.edu/regents/regent_contact%20info.html

Be sure to include printed pages of blogs, news articles and other documentation of the type of quality leader that Mr Moore exemplifies.

June 21, 2009 7:24 PM

Don "I said it" Allen said...

Email sent to Dr. McClaurin:

Dear Dr. McClaurin,

This email is to give you a heads up on a pending situation, that could possibly turn into a public relations nightmare for the University of Minnesota/Urban Research and Outreach Center.

On last week, allegedly - Mr. Jerry Moore and Mike Kestner were released from the Northside Marketing Task Force board of directors. This comes on the heels of several different scenarios involving Mr. Moore and his relationship with Tynessia Snoddy who is under indictment for mortgage fraud as reported on KSTP-TV - (Read it here: http://kstp.com/news/stories/S795057.shtml?cat=1).

Mr. Moore did a deal that remains in question where he received a $5000 check for "new windows" at 1564 Hillside Avenue North. Mr. Moore put no new windows in said property. This was a conflict of interest, at the time he was JACC's executive director. More importantly - he was not a "window repairman" either.

From the court documents that surfaced in the Larry Maxwell trail with an invoice for $5000 to JL Moore Consulting and the current

Jordan Livability
27th and Penn Heating Up Again
1 week ago

Minneapolis Crime Watch
Stevens Square Burglaries
4 days ago

Minnesota Investment Property Blog
Free Investment Property Seminar
5 days ago

On The Other Side Of The Eye
A Visit To Space Aliens
1 week ago

Over North
The Adventures of Johnny Northside: Welcome to the Neighborhood
1 month ago

The Deets
Minneapolis' New Sidewalk Cuts Are Lame
5 days ago

The Healy House
2008 Pillsbury Ave - Another Endangered House
4 days ago

Twin City Real Estate Chat
That Little Gray House With The Black Shutters...With a Big Past!
1 week ago

www.johnnynorthsidemovie.com/

Jordan Area Community Council court case, I feel there could have been a error in judgment on the part of the UROC in collaborating with Mr. Moore.

There is enough public information to support the claims made in this email, I hope that the U of M's corrective action is swift and covert to avoid more media distribution of this information as it pertains to UROC, the U of M and the connection with Mr. Moore which would be "he gets a check" from the University of Minnesota to discuss Mortgage Foreclosures and other information in the community.

The current story out is here: http://adventuresofjohnnynorthside.blogspot.com/2009/06/former-jacc-executive-director-jerry.html, the Independent Business News Network will consider covering this on Tuesday, but since our media group is trying to do business with the U of M, I will remain cordial and diplomatic - for now.

Dr. McClaurin, I would be glad to forward you names of community stakeholders that are qualified to be topic specific for anything UROC needs to discuss in the community. I would also offer you the services of the public relations branch of V-Media Marketing for any message distribution you might see fit.

If you have any question, please contact me at 612-986-0010.

Very best regards,

Donald W.R. Allen,II - Chairman
V-Media Development Corporation, Inc - A Minnesota Non-Profit, Public Relations and Advocacy Organization
Email: donny@donny-allen.com
Office: (612) 332-6025
Direct: (612) 986-0010

June 22, 2009 12:18 AM

Anonymous said...

Update: rumor is the position he was hired for is to....

wait for it....

wait for it.....

wait for it....

RESEARCH FORECLOSURES!!!!

Here is an email addy to reach someone in charge: Dr. Irma McClaurin: imcclaur@umn.edu

She can be seen on a video on U-tube if you do a search for UROC.

June 22, 2009 7:02 AM

Anonymous said...

Here is his information:
Jerry L Moore
Appointment: Non/Exempt Temporary or Casual
System Academic Admin, Sr VP
UMN Twin Cities
E-mail Address: jlmoore@umn.edu
Internet ID: jlmoore
Address: 2511 23rd Ave N
Minneapolis, MN 55411
Phone: +1 612-387-0223

June 22, 2009 8:08 AM

Anonymous said...

The person in charge of the UROC Program is:
Robert Jones, PhD
Senior Vice President for System Academic Administration
Contact: 612-624-3533,
or jones012@umn.edu

Ms. McClaurin reports to Dr. Jones and she should be held accountable for her bad decision to hire someone so tied to mortgage fraud.

June 22, 2009 8:34 AM

Anonymous said...

Jerry Moore is already in the system (see below), meaning that he's already been hired.
The good news, however, may be that it appears that his appointment is "temp/casual," meaning that it should be reversible.

I agree that we should be writing to the Board of Regents, since Irma and Makeda are the ones who created this fictitious job for him. I would like to know, in this time when the University is

facing 1200 additional layoffs, who created this position, who wrote the job description, and how it is that a "research" position doesn't require a college education.

I think that this kind of nepotism is something that not only Jerry, but also Makeda and Irma should lose their jobs over.

http://tinyurl.com/mtvhym
Jerry L Moore
Appointment: Non/Exempt Temporary or Casual
System Academic Admin, Sr VP
UMN Twin Cities
E-mail Address: jlmoore@umn.edu
Internet ID: jlmoore
Address: 2511 23rd Ave N
Minneapolis, MN 55411
Phone: +1 612-387-0223

June 22, 2009 8:46 AM

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