

NORTH CAROLINA COURT OF APPEALS

BETH DESMOND,

Plaintiff-Appellee,

v.

THE NEWS AND OBSERVER
PUBLISHING COMPANY and
MANDY LOCKE,

Defendants-Appellants

)
)
)
)
)
)
)
)
)
)

From Wake County

BRIEF OF AMICI CURIAE

INDEX

TABLE OF CASES AND AUTHORITIES	iii
INTRODUCTION	2
ARGUMENT	4
I. THE VERDICT IN THIS CASE WILL INTOLERABLY CHILL SPEECH THAT THE FIRST AMENDMENT WAS DESIGNED TO PROTECT.....	4
A. THE PRESS PLAYS AN ESSENTIAL ROLE IN SCRUTINIZING GOVERNMENT.	5
B. TO GIVE BREATHING SPACE TO PUBLIC DEBATE AND PREVENT SELF-CENSORSHIP, PUBLIC OFFICIAL LIBEL PLAINTIFFS MUST MEET THE HIGH BURDEN OF PROVING FALSITY AND ACTUAL MALICE.....	6
II. DESMOND DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE NEWSPAPER DEFENDANTS ACTED WITH ACTUAL MALICE.	7
A. THIS COURT IS CONSTITUTIONALLY REQUIRED TO INDEPENDENTLY EVALUATE WHETHER THE EVIDENCE IS SUFFICIENT TO ESTABLISH ACTUAL MALICE.....	7
B. DESMOND MUST PROVE THAT THE NEWSPAPER DEFENDANTS HAD SUBJECTIVE DOUBTS ABOUT THE TRUTH OF THE STATEMENTS OR A HIGH DEGREE OF AWARENESS OF THEIR PROBABLE FALSITY.	8
C. DESMOND FAILED TO PROVE ACTUAL MALICE. ...	10
CONCLUSION.....	14
CERTIFICATE OF COMPLIANCE.....	16
CERTIFICATE OF SERVICE.....	17

CONTENTS OF APPENDIX.....	18
Statements of Interest for <i>Amici Curiae</i>	App. 1
Ames Alexander & Gavin Off, <i>Read the Full NC Prison Investigation: Wrong Side of the Bars?</i> , Charlotte Observer, June 2, 2017, https://perma.cc/Z9TP-8DHT ...	App. 6
Gavin Off & Ames Alexander, <i>How We Reported the Prison Series</i> , Charlotte Observer, May 31, 2017, https://perma.cc/K8YP-HSR	App. 9
Jennifer Bowman, <i>How Wanda Greene Became an Accused Embezzler, and What's Next for the Ex-Buncombe Manager</i> , Citizen Times, April 27, 2018, https://perma.cc/4PL2-WTB3	App. 11
Steve DeVane, <i>Have We Been Eating GenX in Our Food for Years?</i> , Fayetteville Observer, Mar. 3, 2018, https://bit.ly/2Gd45d9	App. 19
Ben Railton, <i>Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism</i> , Saturday Evening Post, Feb. 27, 2018, https://perma.cc/Y4BA-RGVM	App. 22

TABLE OF CASES AND AUTHORITIES

Cases:

<i>Bose Corp. v. Consumers Union of United States, Inc.</i> , 466 U.S. 485 (1984)	8, 9
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964)	4, 5, 10
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323 (1974)	4, 6, 7, 8
<i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596 (1982)	5
<i>Griffin v. Holden</i> , 180 N.C. App. 129, 636 S.E.2d 298 (2006)	10
<i>Hall v. Piedmont Publ'g Co.</i> , 46 N.C. App. 760, 266 S.E.2d 397 (1980)	5, 8
<i>Herbert v. Lando</i> , 441 U.S. 153 (1979)	8
<i>Hustler Magazine, Inc. v. Falwell</i> , 485 U.S. 46 (1988)	4
<i>James v. Bledsoe</i> , 221 N.C. App. 434, 727 S.E.2d 25 (2012)	8
<i>Milkovich v. Lorain Journal Co.</i> , 497 U.S. 1 (1990)	4
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966)	6
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964)	2, 3, 7, 8
<i>N.Y. Times Co. v. United States.</i> , 403 U.S. 713 (1971)	6
<i>NAACP v. Button</i> , 371 U.S. 415 (1963)	6
<i>Proffitt v. Greensboro News & Record, Inc.</i> , 91 N.C. App. 218, 371 S.E.2d 292 (1988)	12
<i>Rosenblatt v. Baer</i> , 383 U.S. 75 (1966)	5
<i>Rossignol v. Voorhaar</i> , 316 F.3d 516 (4th Cir. 2003)	5
<i>St. Amant v. Thompson</i> , 390 U.S. 727 (1968)	8

Tavoulareas v. Piro, 817 F.2d 762 (D.C. Cir. 1987) (*en banc*).....10, 11

Time, Inc. v. Pape, 401 U.S. 279 (1971) 12, 13

Other Authorities:

Ames Alexander & Gavin Off, *Read the Full NC Prison Investigation: Wrong Side of the Bars?*, Charlotte Observer, June 2, 2017, <https://perma.cc/Z9TP-8DHT> 13

Ben Railton, *Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism*, Saturday Evening Post, Feb. 27, 2018, <https://perma.cc/Y4BA-RGVM>11

Gavin Off & Ames Alexander, *How We Reported the Prison Series*, Charlotte Observer, May 31, 2017, <https://perma.cc/K8YP-HSR4>.. 13

Jennifer Bowman, *How Wanda Greene Became an Accused Embezzler, and What's Next for the Ex-Buncombe Manager*, Citizen Times, April 27, 2018, <https://perma.cc/4PL2-WTB3> 13

Steve DeVane, *Have We Been Eating GenX in Our Food for Years?*, Fayetteville Observer, Mar. 3, 2018, <https://bit.ly/2Gd45d9> 14

NORTH CAROLINA COURT OF APPEALS

BETH DESMOND,)	
)	
Plaintiff-Appellee,)	
)	
v.)	
)	<u>From Wake County</u>
THE NEWS AND OBSERVER)	
PUBLISHING COMPANY,)	
MCCLATCHY NEWSPAPERS, INC.,)	
and MANDY LOCKE,)	
)	
Defendants-Appellants)	

BRIEF OF AMICI CURIAE

The *amici* listed below, through their counsel and pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure and their accompanying Motion for Leave to File Brief of *Amici Curiae*, hereby submit this brief in support of The News & Observer Publishing Company and Mandy Locke (collectively, the “Newspaper Defendants”).¹

Amici are the Reporters Committee for Freedom of the Press, ABC, Inc., The Associated Press, Capitol Broadcasting Co., Community Newspapers Inc., Daily Tar Heel, The Fayetteville Observer, Gannett Co., Inc., Nexstar Media Group, Inc., North Carolina

¹ No person or entity—other than *amici curiae*, their members, or their counsel—directly or indirectly wrote this brief or contributed money for its preparation. N.C. R. App. P. 28(i)(2).

Association of Broadcasters, North Carolina Press Association, Paxton Media Group, The Pilot, Raycom Media, Inc., Tribune Media Company, and WBTV, LLC. A full description of *amici*'s respective principal places of business and their interests in this case are set forth in the Appendix.

INTRODUCTION

This case presents an issue of critical importance to all North Carolina journalists: the proper application of the constitutional “actual malice” standard to allegedly defamatory speech about a public official. The U.S. Supreme Court has recognized a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). As the Supreme Court noted, to allow that uninhibited discussion and avoid “self-censorship” by critics of official conduct, it is necessary to protect even some speech that is false and defamatory, even at the risk of harm to individual reputation. *Id.* at 279. “[E]rroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the breathing space that they need . . . to survive.” *Id.* at 271–72 (quotations omitted).

For that reason, a public official, in order to recover in a libel action, must prove that a false statement was made with knowledge of its falsity or with reckless disregard as to its falsity. *Id.* at 279–80. When courts misapply the actual malice standard and punish protected speech, however, valuable expression about issues of public concern may be chilled because “would-be critics of official conduct may be deterred from voicing their

criticism, even though it is believed to be true and even though it is in fact true” *Id.* at 279.

Amici write to emphasize: (1) the failure of Plaintiff Beth Desmond (“Desmond”) to prove actual malice and (2) the dangers to free speech and a free press posed by the erroneous actual malice standard applied by the trial court.² Both North Carolina and national news media writing about North Carolina public affairs are threatened by this aberrational and excessive verdict. Its potentially chilling effect may deprive the public of future news reporting on issues of significant public concern. It should be reversed.

The press plays an indispensable constitutional role in monitoring the conduct of government. The newspaper articles at issue raised important questions about the State Bureau of Investigation’s (“SBI”) analysis of firearms used in violent crimes. Desmond, through her analysis and testimony in numerous criminal trials, has had a significant impact on the criminal justice process in North Carolina. In short, the news articles that gave rise to Desmond’s lawsuit are the precise type of speech by the precise type of libel defendant that the First Amendment is meant to protect. The punishment of such speech because of the improper application of the actual malice standard will create an intolerable chilling effect; speakers may steer clear of speech critical of government conduct for fear that they too could face lengthy court battles and staggering jury verdicts. *See id.* at 279.

² To avoid unnecessary duplication of arguments, *amici* focus on the misapplication of the actual malice standard and do not address the other issues raised by the Newspaper Defendants on appeal.

It is an appellate court's special and solemn responsibility to safeguard speech and prevent self-censorship by conducting an independent review of the entire record. Appellate courts must reexamine *de novo* the evidentiary basis for a trial court's conclusion that allegedly defamatory speech is outside First Amendment protection. The evidence must constitute clear and convincing proof that the defendants subjectively acted with actual malice in publishing false statements about the public official. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974).

The evidence in this case did not establish that the Newspaper Defendants acted with actual malice. Even as news organizations apply the utmost care to verifying information, occasional inaccuracies or disputes regarding interpretations of statements about the conduct of public officials may still occur. But the circumstantial evidence of fault Desmond relied upon at trial does not meet the demanding constitutional standard required to establish actual malice. Upholding the verdict in this case would strip speakers in North Carolina of the First Amendment's robust protections for open discussion of public issues and deprive the public of this necessary open debate.

ARGUMENT

I. THE VERDICT IN THIS CASE WILL INTOLERABLY CHILL SPEECH THAT THE FIRST AMENDMENT WAS DESIGNED TO PROTECT.

The First Amendment protects practically all speech about public officials because of the "undoubted 'chilling' effect" that defamation liability otherwise has on public debate. *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52 (1988). Accordingly, a public figure defamation plaintiff must prove both falsity and actual malice. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Actual malice must be proven by clear and convincing

evidence. *Gertz*, 418 U.S. at 342. “The question whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17 (1990) (citation omitted).

A. The press plays an essential role in scrutinizing government.

Speech examining the conduct of public officials is “the essence of self-government.” *See Garrison*, 379 U.S. at 75. And criticism of government requires that the public be permitted to discuss the actions of government officials. *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966); *see also Rossignol v. Voorhaar*, 316 F.3d 516, 522 (4th Cir. 2003) (describing “criticism of [] official conduct” as the “heart” of the First Amendment).

The operation of the criminal justice system is a matter of utmost public significance. Protecting the public’s safety and ensuring justice is done are fundamental roles of government. Speech about such activities is critically important, as public scrutiny “enhances the quality and safeguards the integrity” of the criminal justice process. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (finding a First Amendment right of access to criminal trials).

The speech at issue here serves the public’s interest in examining the government’s conduct within the state’s criminal justice system. *The News & Observer* articles raised important questions about the reliability of SBI investigatory techniques and about the quality of Desmond’s work in her official capacity as an SBI forensic firearms examiner. (R 9 pp 893–902, 906–07). The analysis and courtroom testimony of forensic firearms examiners, like Desmond, have a significant effect on the administration of justice. The public has an interest in ensuring that the techniques such examiners use are reliable and

that their position is not abused. *Cf. Hall v. Piedmont Publ'g Co.*, 46 N.C. App. 760, 763, 266 S.E.2d 397, 400 (1980) (declaring a medical examiner to be a public official for purposes of libel law because of the “potential for great social harm if [the position was] abused”).

The First Amendment presupposes that the press will play a leading part in examining government officials' conduct, as the Newspaper Defendants did here. *See Mills v. Alabama*, 384 U.S. 214, 219 (1966) (“The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs.”). Journalists represent the public as watchdogs over government. *See N.Y. Times Co. v. United States.*, 403 U.S. 713, 717 (1971) (Black, J., concurring) (noting that the First Amendment protects the press’s “essential role in our democracy”). The general public will be better equipped to assess the SBI firearms analysis program if it is fully knowledgeable about how the program operates, and few others in North Carolina would have the resources to investigate such a complex topic if the news media were chilled from doing so.

B. To give breathing space to public debate and prevent self-censorship, public official libel plaintiffs must meet the high burden of proving falsity and actual malice.

In tension with the strong commitment to an uninhibited public debate is the state's interest in redressing perceived harm to individual reputations. When weighing these “competing concerns,” the U.S. Supreme Court has “been especially anxious to assure to the freedoms of speech and press that ‘breathing space’ essential to their fruitful exercise.” *Gertz*, 418 U.S. at 342 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). To prevent a chilling effect on public discourse, First Amendment jurisprudence permits

public officials to recover for defamation only when they prove that the speech was false *and* that it was made with actual malice, or “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Sullivan*, 376 U.S. at 280. Because speakers will naturally “steer far wider of the unlawful zone,” a rule imposing liability for mere falsity would “dampen[] the vigor and limit[] the variety of public debate.” *Id.* at 279. Thus, mistakes and even unintentional falsehoods must be protected to ensure the “breathing space” for speech about critical government functions. *Id.* at 271–72.

When courts fail to properly apply this exacting standard, it poses grave dangers to the public discourse. Not only does it punish the protected speech at issue, but an unquantifiable amount of future speech scrutinizing government conduct may never occur at all. This is precisely the “intolerable self-censorship” that the First Amendment protects against. *See Gertz*, 418 U.S. at 340. The verdict in this case is particularly dangerous because its crippling size will weigh on the shoulders of all North Carolina news organizations. *See Sullivan*, 376 U.S. at 294 (Black, J., concurring) (“The half-million-dollar verdict does give dramatic proof, however, that state libel laws threaten the very existence of an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials.”).

II. DESMOND DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE NEWSPAPER DEFENDANTS ACTED WITH ACTUAL MALICE.

A. This Court is constitutionally required to independently evaluate whether the evidence is sufficient to establish actual malice.

The U.S. Supreme Court has repeatedly held “that in cases raising First Amendment issues . . . an appellate court has an obligation to ‘make an independent

examination of the whole record’ in order to make sure that ‘the judgment does not constitute a forbidden intrusion on the field of free expression.’” *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984) (quoting *Sullivan*, 376 U.S. at 284–86). This requirement of independent appellate review is “a rule of federal constitutional law.” *Id.* at 510. Accordingly, in defamation actions, “[j]udges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of ‘actual malice.’” *Id.* at 511.

- B. Desmond must prove that the Newspaper Defendants had subjective doubts about the truth of the statements or a high degree of awareness of their probable falsity.

A public official defamation plaintiff must satisfy the daunting test of proving a defendant’s subjective state of mind by clear and convincing evidence. *See Herbert v. Lando*, 441 U.S. 153, 160 (1979); *Gertz*, 418 U.S. at 342; *Hall*, 40 N.C. App. at 764–65. Proof of reckless disregard of whether a statement was false or not requires the plaintiff to show that a defendant had a “high degree of awareness of [its] probable falsity.” *Garrison*, 379 U.S. at 74. “Reckless disregard” is not measured “by whether a reasonably prudent man would have published, or would have investigated before publishing.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Rather, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” *Id.*; *see also James v. Bledsoe*, 221 N.C. App. 434, 727 S.E.2d 25 (2012) (quoting *St. Amant* with approval).

Bose Corp. v. Consumers Union illustrates the necessity of proving a defendant's subjective state of mind to demonstrate actual malice. Bose Corporation sued Consumer Reports for product disparagement after it printed a review of a Bose speaker that stated that the sound "tended to wander about the room." *Bose Corp.*, 466 U.S. at 487-88. The district court found the statement was false because, based on his later descriptions, the reviewer had actually heard the sound wander "along the wall." *Id.* at 490. The district court concluded that "no reasonable reader" would understand the statement in the review as describing lateral movement along the wall and that, because the reviewer was an intelligent person who understood English, he must have known it was inaccurate when he published it. *Id.* at 496-97.

The Supreme Court held that the district court erred in finding actual malice, emphasizing the "significant difference between proof of actual malice and mere proof of falsity." *Id.* at 511 (footnote omitted). Noting that actual malice rests entirely on an evaluation of the reviewer's state of mind, *id.* at 494, the Court found that, even if the language in the review was inaccurate on its face, the reviewer did not realize the inaccuracy at the time of publication. The Court stated:

The choice of such language, though reflecting a misconception, does not place the speech beyond the outer limits of the First Amendment's broad protective umbrella. Under the District Court's analysis, any individual using a malapropism might be liable, simply because an intelligent speaker would have to know that the term was inaccurate in context, even though he did not realize his folly at the time.

Id. at 513. In other words, the inaccuracy of a statement alone is not clear and convincing evidence of actual malice if the defendant did not know or believe it was inaccurate when it was published.

C. Desmond failed to prove actual malice.

An independent review of the record reveals that Desmond did not provide clear and convincing evidence of actual malice. The circumstantial evidence of actual malice Desmond relied upon at trial does not prove that the Newspaper Defendants knew the challenged statements were false or entertained serious doubts about their truthfulness at the time of publication.

To demonstrate actual malice, Desmond relied in part upon a July 29, 2010, email written by *News & Observer* photographer Shawn Rocco to Locke as evidence of the Newspaper Defendants' purported bias. As the Newspaper Defendants have noted, see Br. in Support of Defs.' Mot. for J. Notwithstanding the Verdict, or, in the Alternative, for a New Trial at 21-24 (filed Jan. 3, 2017), however, alleged personal hostility is not evidence of actual malice. See, e.g., *Garrison*, 379 U.S. at 73-74; *Griffin v. Holden*, 180 N.C. App. 129, 137, 636 S.E.2d 298, 305 (2006); *Varner v. Bryan*, 113 N.C. App. 697, 704, 440 S.E.2d 295, 300 (1994).

Similarly, an investigative journalist's adversarial stance toward the subject of her reporting is not evidence of actual malice. The holding of the U.S. Court of Appeals for the District of Columbia in *Tavoulareas v. Piro*, 817 F.2d 762 (1987) (*en banc*), is instructive. The president of an oil company and his son sued *The Washington Post* for

defamation based on an article it published by Patrick Tyler. *Id.* at 771. Plaintiffs claimed that certain statements by Tyler demonstrated actual malice:

Toward the beginning of his investigation, Tyler remarked to [another reporter] that “[i]t is not every day you knock off one of the seven sisters [a term for the seven largest oil companies],”; he later referred to his article in part as a ‘case against Tavoulaareas’; and after the article appeared, he characterized a session between Tavoulaareas and *Post* editors as one in which the *Post* “blew [Tavoulaareas] out of the water,” and sent him home with his “tail between his legs.”

Id. at 795 (footnote and internal citations omitted). The Court rejected this argument. It acknowledged that these remarks “may reasonably be interpreted as revealing that Tyler had adopted an adversarial stance toward Tavoulaareas. But, as in other professions, an adversarial stance is fully consistent with professional, investigative reporting.” *Id.* The Court concluded that “[a]n adversarial stance is certainly not indicative of actual malice.” *Id.*

Rocco’s adversarial attitude toward the SBI³ was appropriate for an investigative journalist. There is a long history in American journalism of reporters taking a skeptical, aggressive approach toward those in power. *See, e.g., Ben Railton, Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism*, *Saturday Evening Post*, Feb. 27, 2018, <https://perma.cc/Y4BA-RGVM> (describing adversarial journalism practiced during the Vietnam War). A reporter who seeks to aggressively

³ *Amici* agree with the Newspaper Defendants that evidence of Rocco’s attitude toward the SBI is not probative of the attitude of Locke and Neff—the authors of the articles at issue—or the attitude of the editors of *The News & Observer*. *See* Br. in Support of Defs.’ Mot. for J. Notwithstanding the Verdict, or, in the Alternative, for a New Trial at 23–24 (filed Jan. 3, 2017). However, even if this Court concludes that Rocco’s attitude could be relevant to establishing Newspaper Defendants’ subjective state of mind toward the SBI or Desmond, it does not establish the existence of actual malice.

cover matters of public concern does not leave a trail of actual malice just because she asks tough, probing questions.

Evidence that a reporter may have misunderstood information provided by her sources is equally insufficient to demonstrate actual malice. *See, e.g., Proffitt v. Greensboro News & Record, Inc.*, 91 N.C. App. 218, 228, 371 S.E.2d 292, 297 (1988) (affirming summary judgment for defendants for a lack of clear and convincing evidence of actual malice when the evidence suggested the reporter may have misunderstood plaintiff's comments to the reporter about an alleged affair). As the Newspaper Defendants have noted, *see* Defs.' Pet. for Discretionary Review Prior to a Determination by the Ct. of Appeals Pursuant to N.C.G.S. § 7A-31(b) at 27 (filed May 4, 2018), the U.S. Supreme Court has held that the news media does not act with actual malice when it has published a report that is a "rational interpretation" of a large amount of source material.

In *Time, Inc. v. Pape*, Time magazine published a story about a government report regarding police brutality. 401 U.S. 279, 281 (1971). The story included information from the report about an incident of police brutality in Chicago; however, it failed to state that the government report about the incident was not an independent finding by the government that the incident had actually occurred, but rather recounted the allegations contained in a legal complaint. *Id.* at 281-82. One of the policemen named in the report sued Time for libel for failing to make clear that its story reported no more than allegations. *Id.* at 282. The U.S. Supreme Court held that the omission of the word "alleged" from the story "amounted to the adoption of one of a number of possible rational interpretations of a document that bristled with ambiguities. The deliberate

choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of ‘malice’ under [Sullivan].” *Id.* at 290. The Court concluded that the actual malice standard cannot be satisfied simply by a proof that an interpretation was “wrong.” *Id.* at 291.

This rational interpretation standard is of great importance to the news media since, as the Court explained in *Pape*,

a vast amount of what is published in the daily and periodical press purports to be descriptive of what somebody said rather than of what anybody did. Indeed, perhaps the largest share of news concerning the doings of government appears in the form of accounts of reports, speeches, press conferences, and the like.

Id. at 285–86. For example, in June 2017, *The Charlotte Observer* published a report on the “hidden world of drugs, sex and gang violence” inside North Carolina’s prisons. Ames Alexander & Gavin Off, *Read the Full NC Prison Investigation: Wrong Side of the Bars?*, *Charlotte Observer*, June 2, 2017, <https://perma.cc/Z9TP-8DHT>. The reporters relied on “thousands of pages of court records, emails to and from public officials, employee dismissal letters and medical examiner reports” as well as interviews or correspondence with more than 230 people. Gavin Off & Ames Alexander, *How We Reported the Prison Series*, *Charlotte Observer*, May 31, 2017, <https://perma.cc/K8YP-HSR4>. Other North Carolina news outlets also frequently publish investigative reports based on summaries of large quantities of information from public records and interviews. See, e.g., Jennifer Bowman, *How Wanda Greene Became an Accused Embezzler, and What’s Next for the Ex-Buncombe Manager*, *Citizen Times*, April 27, 2018, <https://perma.cc/4PL2-WTB3> (reporting on an investigation into a former city manager for embezzlement and wire

fraud by reviewing a large number of public records); Steve DeVane, *Have We Been Eating GenX in Our Food for Years?*, Fayetteville Observer, Mar. 3, 2018, <https://bit.ly/2Gd45d9> (relying on interviews with experts to report on whether a potentially dangerous compound had contaminated crops and livestock in the area).

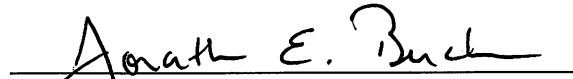
Because Locke's reporting provided a rational interpretation of the information provided by her sources, claims that she misinterpreted what she heard are insufficient to demonstrate actual malice because they fail to show that Locke had subjective knowledge that the statements at issue were false or that she possessed a high degree of awareness of their probable falsity.

CONCLUSION

For the reasons set forth above, *amici* respectfully urge this Court to vacate the judgment below and remand the case to the Superior Court to enter judgment in Defendants-Appellants' favor notwithstanding the verdict or, alternatively, for a new trial.

Respectfully submitted, this 21st day of May, 2018.

ESSEX RICHARDS, P.A.


Jonathan E. Buchan
State Bar No. 8205
Email: jbuchan@essexrichards.com
1701 South Boulevard
Charlotte, NC 28203
Telephone: 704-377-4300
Facsimile: 704-372-1357

Bruce D. Brown, Esq.*

Katie Townsend, Esq.*

Caitlin V. Vogus, Esq.*

Josh R. Moore, Esq.*

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, D.C. 20005

Telephone: (202) 795-9300

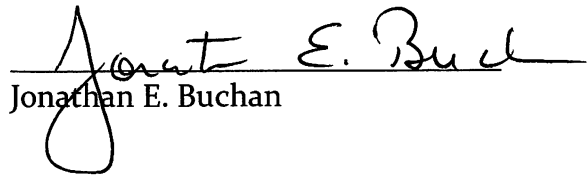
Facsimile: (202) 795-9310

**Of counsel*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the *Amici Curiae* certifies that the foregoing brief, which is prepared using a 12-point proportionally spaced font with serifs, is less than 3,750 words (excluding cover, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by Microsoft Word.

This the 21st day of May, 2018.


Jonathan E. Buchan

CERTIFICATE OF SERVICE

I certify that I served the attached Brief of *Amici Curiae* on the following counsel of record by regular U.S. Mail, first-class, postage prepaid, and by electronic mail, addressed as follows:

James T. Johnson
Dement Askew, LLP
333 Fayetteville Street
Suite 1513
P.O. Box 711
Raleigh, NC 27602
jjohnson@dementaskew.com
*Counsel for Plaintiff-Appellee
Beth Desmond*

John A. Bussian
The Bussian Law Firm, PLLC
Wells Fargo Capitol Center
150 Fayetteville Street, 17th Floor
Raleigh, NC 27601
jbussian@aol.com
*Counsel for Defendants-Appellants The
News & Observer Publishing Company
and Mandy Locke*

This the 21st day of May, 2018.


Jonathan E. Buchan
State Bar No. 8205
Email: jbuchan@essexrichards.com
Essex Richards, P.A.
1701 South Boulevard
Charlotte, NC 28203
Telephone: 704-285-7107
Facsimile: 704-372-1357

CONTENTS OF APPENDIX

Statements of Interest for *Amici Curiae* App. 1

Ames Alexander & Gavin Off, *Read the Full NC Prison Investigation: Wrong Side of the Bars?*, Charlotte Observer, June 2, 2017, <https://perma.cc/Z9TP-8DHT>App. 6

Gavin Off & Ames Alexander, *How We Reported the Prison Series*, Charlotte Observer, May 31, 2017, <https://perma.cc/K8YP-HSR>.....App. 9

Jennifer Bowman, *How Wanda Greene Became an Accused Embezzler, and What's Next for the Ex-Buncombe Manager*, Citizen Times, April 27, 2018, <https://perma.cc/4PL2-WTB3> App. 11

Steve DeVane, *Have We Been Eating GenX in Our Food for Years?*, Fayetteville Observer, Mar. 3, 2018, <https://bit.ly/2Gd45d9> App. 19

Ben Railton, *Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism*, Saturday Evening Post, Feb. 27, 2018, <https://perma.cc/Y4BA-RGVM>App. 22

STATEMENTS OF INTEREST OF AMICI CURIAE

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide *pro bono* legal representation, *amicus curiae* support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

ABC, Inc. is a broad-based communications company. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations such as WTVD in Raleigh, North Carolina, that regularly gather and report news to the public. ABC News produces the television programs *World News Tonight with David Muir*, *Good Morning America*, *Nightline*, *20/20*, and *This Week*, among others.

The Associated Press, Inc. ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. The AP covers news in all 100 North Carolina counties. On any given day, AP's content can reach more than half of the world's population.

Capitol Broadcasting Company, Incorporated ("CBC"), is a North Carolina corporation located in Wake County. Among other things, CBC owns and operates three

television stations in North Carolina, including WRAL-TV, which provides broadcast and online coverage of news about Raleigh and the surrounding area.

Community Newspapers Inc. publishes 25 newspapers in Georgia, Florida and North Carolina. In North Carolina, Community Newspapers Inc. publishes *The Andrews Journal*, the *Cherokee Scout*, the *Clay County Progress*, the *Crossroads Chronicle*, *The Franklin Press*, *The Graham Star*, *The Highlander*, the *Mitchell News-Journal*, and the *Smoky Mountain Times*.

DTH Media Corp. is a nonprofit corporation located in Chapel Hill, N.C., that publishes *The Daily Tar Heel*, a student-led newspaper that serves UNC students and the community, and published online at www.dailytarheel.com.

The Fayetteville Observer, a division of DB North Carolina Holdings, Inc., is a news organization that maintains its principal place of business in Cumberland County, North Carolina. Among other things, the company publishes *The Fayetteville Observer*, a daily general interest newspaper that circulates in Cumberland and surrounding counties. The company also publishes a news and information website at www.fayobserver.com.

Gannett Co., Inc. is a leading news and information company which publishes USA Today and more than 100 local media properties including *The Asheville Citizen-Times*. Each month more than 110 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

Nexstar Media Group, Inc. ("Nexstar") is a leading diversified media company that leverages localism to bring new services and value to consumers and advertisers

through its traditional media, digital and mobile media platforms. Nexstar owns, operates, programs or provides sales and other services to 169 television stations and related digital multicast signals reaching 100 markets or approximately 39% of all U.S. television households. Nexstar owns and operates television stations WNCT-TV in Greenville, North Carolina, and WNCN in Raleigh, North Carolina.

The **North Carolina Association of Broadcasters** (“NCAB”) is a trade association whose regular members include nearly all of the television and radio stations in North Carolina—some 32 television stations and 168 radio stations statewide. An important function of NCAB is to represent the interests of its members in the state and federal courts of North Carolina in cases addressing issues of free speech and the First Amendment. NCAB has been granted leave to file *amicus curiae* briefs in numerous cases before the North Carolina Supreme Court and North Carolina Court of Appeals in matters involving First Amendment issues, public records, open meetings, and other matters that could impact on its members’ various newsgathering and news reporting activities.

The **North Carolina Press Association** is a trade association of 150 daily and weekly newspapers across the state. Since 1873 NCPA has supported North Carolina newspapers, readership and advertising. We work to protect the public’s right to know through the defense of open government and First Amendment freedoms, and we help maintain the public’s access to local, state and federal governments.

The North Carolina Division of **Paxton Media Group** operates seven daily newspapers, including *The High Point Enterprise*, *The Sanford Herald*, the *(Henderson)*

Daily Dispatch, the (Roanoke Rapids) *Daily Herald*, the (Lenoir) *News-Topic*, the (Monroe) *Enquirer-Journal*, and the (Forest City) *Daily Courier*.

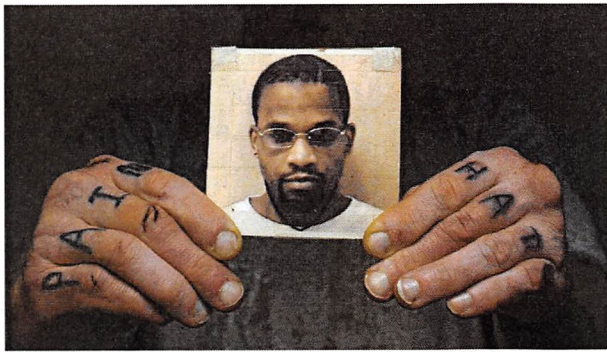
The Pilot, LLC, is a North Carolina corporation located in Southern Pines that publishes *The Pilot*, a twice-weekly newspaper, and www.thepilot.com, both of which provide coverage of news in Moore County and the surrounding area.

Raycom Media, Inc. (“Raycom”) is a Delaware corporation headquartered in Montgomery, Alabama and one of the nation’s largest privately-owned local media companies. Raycom subsidiaries currently own or provide services to 65 television stations and 2 radio stations in 44 markets across 20 states. Raycom subsidiary CNHI, LLC publishes over 100 newspapers and other titles in 23 states. Of the television stations, WBTV(TV) of Charlotte, North Carolina, and WECT(TV) of Wilmington, North Carolina, actively report the news in the state of North Carolina.

Tribune Media Company (“Tribune”) through its subsidiary Tribune Broadcasting Company, LLC, owns or operates 42 local television stations, reaching more than 50 million households, making it the largest independent station group in the United States, with affiliates representing all of the major over-the-air networks, including CBS, ABC, FOX, NBC, the CW, and My TV. Tribune owns and operates WGHP in Greensboro.

WBTV, LLC (“WBTV”) is a Delaware limited liability company that is authorized by the North Carolina Secretary of State to do business within the state and whose principal place of business is located in Charlotte, Mecklenburg County, North Carolina. WBTV covers news in greater Charlotte and the surrounding areas of North Carolina and

South Carolina, and statewide issues throughout North Carolina. WBTV also disseminates online coverage at www.wbvtv.com. WBTV is part of a diversified, employee-owned communications company, Raycom Media, which, among other things, owns and/or provides services for 65 television stations in 44 markets across 20 states.



Wesley Turner, a former inmate at Lanesboro Correctional Institution, was stabbed to death in a 2012 prison fight. Investigators and lawyers believe a prison manager knew the attack was coming and did nothing to stop it. Chuck Liddy - cliddy@newsobserver.com

SPECIAL REPORTS

Read the full NC prison investigation: Wrong side of the bars?

BY AMES ALEXANDER AND GAVIN OFF
aalexander@charlotteobserver.com

June 02, 2017 09:20 AM

Updated April 09, 2018 02:06 PM

A Charlotte Observer special report on corruption inside NC prisons - and the officers who fuel it

A Charlotte Observer investigation found that a hidden world of drugs, sex and gang violence thrives inside North Carolina's prisons – and that officers who are paid to prevent such corruption are instead fueling it. Prison officers frequently collude with inmates on crimes that endanger staff members, inmates and the public.

The newspaper's five-part investigation found that some officers run lucrative contraband rings inside prisons. Others have sex with inmates. Still others beat shackled prisoners, or team up with gang members to allow brutal attacks.

State leaders, meanwhile, have created the very conditions that allow corruption to flourish.

Breaking News

Be the first to know when big news breaks

Enter Email Address

I'm not a robot

reCAPTCHA
Privacy - Terms

SIGN UP

Part 1: Sex, drugs and cellphones

- Secret gesture, bloody shanks: Did prison officials allow this deadly attack?
- How your tax dollars fund sex, drugs and abuse in NC prisons

- This NC prison manager is accused of helping inmates attack other prisoners
- Here's how NC could fight corruption in prisons
- How we reported the prison series
- 13 commonly used prison slang terms

Part 2: Plotting a crime on a cellphone

- From solitary confinement, a gang leader used a smuggled cellphone to order a killing
- How NC prisons make life too easy for officers who smuggle drugs, cellphones

Part 3: Who's guarding the guards?

- They had violent pasts and gang ties. Then they became prison officers
- NC prison officer planned to behead 2 people. Then the FBI stepped in.
- Under suspicion, prison officer resigns - then gets rehired
- Inadequate training puts prison officers - and inmates - in danger

Part 4: When officers attack

- Inmates say officers handcuffed them, then broke their bones
- Officers allegedly made inmates put skin-blistering hot sauce on their genitals
- Abused inmates 'have no one to go to' because of budget cuts

Part 5: Sexual affairs threaten safety

- Prison employee accused of giving her lover cologne, steroids - and a poodle
- Inmate says prison employee was his lover and drug smuggler
- Stacey the prison poodle

Follow-ups

- Lawmakers decry 'shocking' prison corruption uncovered by the Observer
- Charlotte Observer investigation prompts state review of prison corruption
- NC prisons get tougher in their fight against smuggled drugs and cellphones
- NC to launch sweeping study into prison problems revealed by Observer
- 'I was scared to death.' Will faster training help prison officers cope with dangers?
- Inmate alleges that prison staffer forced him to have sex - and wins in court
- 2 NC prison employees killed as escape attempt is thwarted. Workers attacked with hammers.
- After violent prison deaths, a top state official is stepping down.
- It was the deadliest escape attempt in NC history: 'Kill me,' inmate told officer.
- Video captures inmate brutally attacking her for 43 seconds. Why didn't anyone help?

- Prison staff shortages, dangers have climbed. 'We need help,' officer says.
- After 5 deaths, state leader listening to concerns from prison officers
- 'They could have raped me or killed me.' Faulty radios put prison officers in danger.
- 'Mass chaos' reigned during fatal NC prison attacks, says one of the accused killers
- An inmate set a fire and waited for her. The untold story of a prison murder.
- NC prisons face changes following tragic year and Observer investigation
- 'Everybody dozes': Prison officers sleep on the job, putting lives at risk
- Prison inmates found hanging, beaten to death. Where were the officers?
- Stab-resistant shirts, body alarms. Prisons gear up to defend against inmate attacks.
- Before deadly rampage, inmates had keys, scissors and a secret hiding spot, report finds
- Big changes are coming to notorious NC prison. Will they end Lanesboro's problems?

Editorial

- Broken N.C. prisons demand stout response
- Kevin Siers cartoon: Who's the prisoner in North Carolina's prisons?
- Phil Berger and Tim Moore play politics in the face of tragedy
- Kevin Siers cartoon: The Legislature's response to NC prison crisis

SUGGESTED FOR YOU



Hero Mom Saves the Day After Killing Gunman Outside School



Famous Chefs Who Are Jerks in Real Life



Meghan Markle's Mom Doria Ragland Quits Her Job



'Sons of Anarchy' Star's Son Sadly Commits Suicide



The Real Reason You Don't Hear About Caitlyn Jenner Anymore



This is Meghan Markle's Ex-Husband



The Untold Truth of Prince Harry



Prince Harry's Ex-Girlfriend Shows Up to Royal Wedding

COMMENTS ▼



Inmates in segregation peer out of their cells at Lanesboro Correctional Institution in Polkton. John D. Simmons - jsimmons@charlotteobserver.com

SPECIAL REPORTS

How we reported the prison series

BY GAVIN OFF AND AMES ALEXANDER
goff@charlotteobserver.com
aalexander@charlotteobserver.com

May 31, 2017 03:29 PM
Updated June 01, 2017 10:30 AM

In 2015, a team of reporters began investigating North Carolina's 55 prisons and the role that correctional officers play in abusing and colluding with some of the state's most violent and manipulative criminals. These officers – men and women hired to oversee and protect inmates – sometimes fuel corruption instead, the Observer found.

[READ MORE: How your tax dollars fund sex, drugs and abuse in NC prisons]

For this series, reporters paid particular attention to the state's maximum-security prisons.

Reporters combed through thousands of pages of court records, emails to and from public officials, employee dismissal letters and medical examiner reports.

Breaking News

Be the first to know when big news breaks

Enter Email Address

I'm not a robot

reCAPTCHA
[Privacy](#) - [Terms](#)

SIGN UP

They also interviewed or corresponded with more than 230 people. Among them: more than 80 inmates and more than 65 current and former prison employees.

State Department of Public Safety officials repeatedly delayed or denied access to some information.

▪ It took two years and repeated **MORE FROM OUR PRISON INVESTIGATION** data on contraband and uses of force. Even then, much of the data was too incomplete to use.

- Until lawyers got involved, state prison officials limited the number of inmates who reporters could interview.
- They refused to let the Observer send prisoners a short survey that asked about violence, contraband and corruption.
- Officials opened reporters' letters to prisoners, some inmates said.
- Despite repeated requests, N.C. prison officials refused to provide the Observer prison surveillance video or a report on a fatal inmate stabbing in 2012. State leaders cited a law that guards the confidentiality of "sensitive public security information." Reporters, however, obtained video of a September 2012 attack at Lanesboro Correctional Institution from another source.

Yet, state prison leaders insisted they are open with the public.

"Transparency is very important," said David Guice, chief deputy secretary for adult correction and juvenile justice. "I'm not in the business of hiding anything."

[READ MORE: Secret gesture, bloody shanks: Did prison officials allow this deadly attack]

Gavin Off: 704-358-6038

SUGGESTED FOR YOU



What Brooke Hogan's Life is Like Now



The Untold Truth of Don Jr.'s New Girlfriend



The Untold Truth of Krispy Kreme



The Stunning Transformation of Meghan Markle



This Ivanka Trump Photo Op is Freaking People Out



The Biggest Scandals to Ever Plague 'Good Morning America'



Dad Purposely Plows Car Into Restaurant, Killing Daughter



'Survivor' Judge's Violate NDA, \$5 Million Fine on the Line

Sex, drugs and cellphones

Murders at Lanesboro prison

Plotting crime on

COMMENTS



SPONSORED CONTENT

Every Judge on Shark Tank Loves this Product

By **Get Superior Wellness** — Achieve Visibly Younger Looking and Firmer Skin Today!

SUBSCRIPTIONS

Start a Subscription
Customer Service

MORE FROM OUR PRISON INVESTIGATION



99¢ for the **First Month**



Spring Sale On Now

Subscribe Today
([http://offers.citizen-times.com/specialoffer?](http://offers.citizen-times.com/specialoffer?gps-source=BENBmay&utm_medium=nanobarap&utm_source=bounce&utm_campaign=SPRING18)
gps-
source=BENBmay&utm_medium=nanobarap&utm_source=bounce&utm_campaign=SPRING18)

How Wanda Greene became an accused embezzler, and what's next for the ex-Buncombe manager

Jennifer Bowman, jb Bowman@citizentimes.com Published 10:06 a.m. ET April 27, 2018 | Updated 12:39 p.m. ET April 27, 2018



(Photo: Matt Burkhart/mburkhart@citize)

ASHEVILLE — When Wanda Greene retired from a more than 20-year career with Buncombe County, she left with a largely favorable reputation as a numbers guru and, according to her elected bosses, the best manager ever seen in Western North Carolina's largest municipality.

The well-spirited sendoff didn't last long.

Behind the scenes, officials already had restricted Greene's access to records and county property. They would hand over documentation of questionable financial expenditures to federal investigators less than a week after her departure, launching a criminal investigation that would ultimately [accuse her of embezzlement and wire fraud](#) ([/story/news/local/2018/04/05/former-buncombe-county-manager-wanda-greene-son-indicted-federal-grand-jury/467138002/](#)).

[grand-jury/467138002/](#).

More: [Ex-Buncombe manager Wanda Greene, son indicted: Embezzlement, wire fraud among charges](#) ([/story/news/local/2018/04/05/former-buncombe-county-manager-wanda-greene-son-indicted-federal-grand-jury/467138002/](#)).

Prosecutors so far have targeted some \$200,000 of what they said were improper purchases over a decade. But the Citizen Times has uncovered [more than \\$3 million of controversial transactions](#) ([/story/news/local/2018/04/05/see-numbers-wanda-greene-tied-3-6-million-controversial-spending/470041002/](#)) during that same time period.

Now, Greene's post-retirement reputation is marred with allegations of nepotism, a disregard for transparency and a tendency to elude commissioner approval.

See: [Former Buncombe manager Wanda Greene was friend to some, foe to others](#) ([/story/news/local/2017/10/14/if-she-didnt-like-you-hard-times-would-come/688586001/](#)).

It's a step that could decide the fate of her retirement benefits — and members of her family. Her son, former county employee Michael Greene, also has been indicted, while other relatives have been identified as potential witnesses.

Both Wanda and Michael Greene [have pleaded not guilty](#) ([/story/news/local/2018/04/13/former-buncombe-manager-wanda-greene-son-plead-not-guilty-federal-court-friday/498605002/](#)).

More: [Wanda Greene, son plead not guilty in federal court Friday](#) ([/story/news/local/2018/04/13/former-buncombe-manager-wanda-greene-son-plead-not-guilty-federal-court-friday/498605002/](#)).

Federal officials, who said early on that Wanda Greene "and others" were under investigation, haven't ruled out the possibility of additional charges.

Prosecutors have since tied an unnamed commissioner to spending improperly purchased gift cards, but the U.S. attorney's office would not say whether the elected official is under investigation.

The only thing the office would say: The investigation is ongoing.

This is how Wanda Greene became an accused thief.

Red flags

County officials have largely blamed previously unknown expenditures as management overrides, the result of Greene quietly giving herself authority through ordinances or by simply ignoring policies.

- App. 12 -

But the former county manager began leaving a paper trail long before she retired, and was able to avoid oversight for which commissioners were responsible.

As county manager, Greene was never regularly evaluated ([/story/news/local/2018/02/06/county-manager-finance-officer-among-staff-set-review-buncombe-commissioners-review-county-manager-f/300368002/](#)) as county manager. And she never provided a detailed, line-item budget to commissioners — meaning the board for years approved ordinances that provided only summaries of the county's annual spending plans.

Greene also used those budget ordinances to push through personnel-related actions, including a controversial \$1.4 million retention incentive program, the discretion to grant bonuses to certain employees and the authority to appoint the chief financial officer ([/story/news/local/2017/09/20/federal-investigation-underway-county-appoints-finance-director-with-federal-investigation-underway/685126001/](#)).

The CFO, a position now filled by Tim Flora, is an employee of the Board of Commissioners. He reports directly to elected officials.

Court documents have revealed other issues known to the county.

Greene told a county employee she gave up her county-issued credit card to avoid disclosure under the state's public records law, according to the grand jury indictment.

More: North Carolina's municipal managers condemn Wanda Greene's alleged conduct ([/story/news/local/2018/02/19/north-carolina-municipal-managers-condemn-buncombe-county-wanda-greene/351136002/](#))

And nearly a decade ago, her son, former county employee Michael Greene, was found by then-Internal Auditor Tim Flora to have engaged in fraud against the county. Prosecutors said his credit card was revoked, but the matter was referred to his mother.

Michael Greene never was disciplined, according to the indictment.

In a presentation to commissioners ([/story/news/local/2018/01/16/wanda-greene-investigated-buncombe-county-gets-clean-audit/1038484001/](#)) earlier this year, Flora said Wanda Greene handed down "peculiar decisions and direction" in fall 2016, though "nothing concrete." But Greene's "questionable actions" raised red flags by last spring, he said.

Flora also has said he opposed the use of economic development funds to give an advance payment to Skyland Fire and Rescue ([/story/news/local/2017/12/07/buncombe-economic-development-funds-skyland-fire-department-payments/920118001/](#)), ultimately stopping at least one transaction directed by Greene.

More: Buncombe County used economic development fund for advance Skyland fire payments ([/story/news/local/2017/12/07/buncombe-economic-development-funds-skyland-fire-department-payments/920118001/](#))

Beyond the indictment

While the grand jury indictment targets only \$200,000 worth of purchases, the Citizen Times has reported on nearly \$3.6 million worth of controversial expenditures.

The indictment showed much of what had been previously reported: Greene is accused of using county-issued credit cards to pay for personal purchases, including home decor, phone payments and gift cards.

Prosecutors billed the cost of Buncombe-bought gift cards at more than \$90,000 over a decade-long period ([/story/news/local/2017/12/14/buncombe-county-wanda-greene-gift-card-purchases-outspent-other-counties-expenses/889467001/](#)). That includes purchases Greene made and those she directed her assistants to buy, according to the indictment.

But from retention incentives to equestrian advertisements, the largest amount of controversial spending is not included in the indictment.

More: Wanda Greene's alleged gift card purchases outspent other North Carolina counties ([/story/news/local/2017/12/14/buncombe-county-wanda-greene-gift-card-purchases-outspent-other-counties-expenses/889467001/](#))

In mid-2016, Greene created a program that gave a total of some \$1.4 million in extra compensation for certain employees. The list of recipients was decided by Greene and includes herself. Commissioners say they were unaware, but Greene included the change in a budget ordinance that was approved by a majority of commissioners.

The board, instead, debated for nearly an hour on other budget issues before approving the budget in a split vote ([/story/news/local/2017/10/21/2-m-pay-boosts-top-buncombe-officials-passed-unquestioned-commissioners/761974001/](#)).

Another \$600,000 in spending is tied to a Polk County-based Tryon International Equestrian Center, a new facility owned by business mogul Mark Bellissimo. Most of it went toward advertising and sponsorships signed off by Greene ([/story/news/local/2017/12/02/wanda-greene-spent-577-000-taxpayer-money-equestrian-groups-worth-iv/898059001/](#)).

Though the ads promote the Asheville Regional Airport, the airport did not contribute any funding. That's a different strategy than that of Greenville-Spartanburg International Airport, which paid for its own sponsorship with the equestrian center, according to documents obtained by the Citizen Times through a public records request.

Greene also used taxpayer funds for a private dining reception ([/story/news/local/2018/02/10/buncombe-payments-wanda-greene-tryon-equestrian-center-ellen-frost/320110002/](#)) with the equestrian center's CEO, Mark Bellissimo, and some of the area's most prominent names in the business and real estate community.

Records show Greene also used her county-issued credit card to pay for retail trips and pricey dining ([/story/news/local/2018/03/10/wanda-greene-credit-card-paid-fine-dining-tj-maxx-retail-shopping/374723002/](#)). She logged nearly \$40,000 in meals during a three-year period, with as many as 25 restaurant trips in a single month.

Some meals were exceptionally costly: She once spent \$1,201 at the Second Empire Restaurant and Tavern in Raleigh, and \$766 at the Space Needle's SkyCity Restaurant in Seattle.

An expense report obtained by the Citizen Times revealed Greene received more than \$257,000 in reimbursements ([/story/news/local/2018/04/22/wanda-greene-reimbursed-257-000-buncombe-county-funds/520413002/](#)) in the final years she worked at Buncombe. She submitted redacted receipts in which she used black marker or white correction fluid to remove information such as email addresses, credit card information and descriptions of purchased items.

Greene also was reimbursed for payments that were originally paid for by her son.

More: [Wanda Greene redacted her own receipts. Did she violate public records law? \(/story/news/local/2018/04/24/buncombe-manager-wanda-greene-redacted-own-michael-greene-receipts-violate-public-records-law/542198002/\)](#)

Such expense reports are reviewed by finance staff, county attorney Michael Frue said, and are checked to see whether documentation of the transaction is submitted.

The county has not yet responded to requests on which county staffer reviewed Greene's reports, and how staff could approve redacted receipts.

The county's response

As they work to restore public trust, county officials consistently point to their policy changes since Greene departed.

Among the most recent changes: The placement of strict [restrictions on county-bought meals and gift cards \(/story/news/local/2018/04/04/after-wanda-greene-buncombe-commissioners-consider-strict-restrictions-gift-cards-meals/485885002/\)](#).

More: [After Wanda Greene, commissioners consider strict restrictions on gift cards, meals \(/story/news/local/2018/04/04/after-wanda-greene-buncombe-commissioners-consider-strict-restrictions-gift-cards-meals/485885002/\)](#)

With the input of a county staff team, officials have implemented policies that create a liaison position to consider requests from the few departments that are still allowed to buy gift cards. Such purchases were not explicitly prohibited under previous county rules, but the new policies now clearly state gift cards cannot be provided as payment for goods and services.

County-funded meals should be "cost-effective and reasonable" under the policy, and staff are required now to submit receipts, invoices, an agenda of the meeting and an accurate attendance list.

See: [Anonymous hotline, no-retaliation policy set up for Buncombe County staff \(/story/news/local/2017/10/03/anonymous-hotline-no-retaliation-policy-set-up-buncombe-county-staff/729177001/\)](#)

Other changes implemented by Buncombe officials include limiting the county manager's spending limits; requiring a vote on economic development funds; setting a cap on employee bonuses; and scaling back the authority of the board chairman.

You can read a document from the county outlining its changes since the launch of the Greene investigation here:

[Buncombe County's "steps taken" \(https://www.scribd.com/document/377487871/Buncombe-County-s-steps-taken#from_embed\) by Jennifer Bowman \(https://www.scribd.com/user/210983187/Jennifer-Bowman#from_embed\) on Scribd](#)

Enhanced Board Oversight

- Limited spending and authority of the County Manager
- Capped bonuses at \$1,000 for an employee and required that they are reported publicly
- Appointed the County Chief Financial Officer with a direct reporting line to the Board
- Delimited authority and roles of County Manager and Chief Financial Officer
- Performance review process put in place for the appointed positions of County Manager, Clerk to the Board and Chief Financial Officer and annually reviews and their contracts for renewal
- Clarified that only a public, majority vote of the Board can authorize funding for Economic or Community Development
- Delimited purpose of Personnel and Budget Ordinances and restricts one from altering the other
- Ensuring the practice of requiring public hearings as part of the budget process with all segments being recorded
- Requiring public notice and public hearing to change the Personnel Ordinance
- Replaced any previous "Chairman Discretion" provisions in the Personnel Ordinance with a public vote of the majority of the County Board

Educating the Board and Public on the Budget Process

- Opened the budget process to greater public accountability through:
 - Commissioners receive a line item budget to review
 - Monthly work sessions from November-June are public sessions are open, recorded and streamed
 - Published Budget summaries
 - Link made available to the public to minutes approving budget actions
- Realigned current County staff to establish a Performance Management Team that provides ongoing fiscal and programmatic monitoring

Redefined the role of the Audit Committee

- Better defined the role of Audit Committee:
 - Strengthened the Charter and Bylaws
 - Management removed from committee
 - Additional Commissioner added to committee for a total of two
- Committee given more authority related to Internal Auditor
 - New, defined role for Internal Audit
 - Internal Auditor provided more independence
 - Established the Internal Auditor as the central point for all Whistle-Blower complaints
- Additional Internal Auditor resources (e.g., added staff) to the Board
- Clarified the reporting line of Internal Auditor with access to the Board
- Ensured the Internal Auditor cannot be hired, fired or disciplined without consultation with the Audit Committee
- Gave the Audit Committee the responsibility of approving

Making Access Easy: created different "Dashboards" to give the Board and Public Access to Our Operations and Activities

Public Dashboards are organized for simple searches to examine:

- County debt levels and affordability
- New capital projects planned
- County budget
- Staff salaries and benefits

Additional Website Information:

- Links to the County Board meeting minutes and Board approvals
- Upcoming proposed County Board actions which require two-week notice and description of the proposed changes, including proposed policy changes which are red-lined to make it easy to track the suggested changes
- Review of current Freedom of Information Requests through a single web portal
- Review of Let's Talk Comments

Creating Open Lines of Communication with the Public and with Our Staff

Externally:

- Establishing the role of Public Information Officer
- Responding to all Freedom of Information requests in a timely and complete manner
- Created the "Let's Talk" platform that allows the public to provide input through comment cards, via our County webpage and by leaving a voice mail with input

Internally:

- Initiated a "Speak Up" campaign to promote the "No Retaliation" policies and an Employee Protection Hotline encouraging employees to speak up if they see something
- Instituted regular weekly County senior leadership and monthly management team meetings and including all department leaders in policy/budget decisions
- Holding staff "drop ins" with County Manager on a regular basis and on an issue-specific basis

HR: Review of Practices, Ordinance and Classification and Compensation

- Revised the County Personnel Ordinance to address roadblocks to communication between the Commissioners and staff, established an Employee Protection Hotline and a No Retaliation Policy, and addressed nepotism
 - Capped bonuses at \$1,000 for an employee and required that they are reported publicly
- Initiated a Classification and Compensation Study
- Established best practices to ensure consistency across departments in hiring, termination and disciplinary actions

In an April 13 statement released after the Greenes' not guilty pleas, commissioners and county administration said they were committed to ensuring "full accountability."

"The actions of the former county manager Wanda Greene and Michael Greene are the exception and do not represent the more than 1,400 public servants who continue the work of the county each day with integrity and professionalism," the joint statement said.

The county, at times, has refused to hand over records before the legality of withholding them has been challenged by the Citizen Times. Officials initially declined to provide records related to credit card spending by Greene's assistants, and has not released [life insurance records \(/story/news/local/2017/10/03/anonymous-hotline-no-retaliation-policy-set-up-buncombe-county-staff/729177001/\)](#).

First denying the request on the grounds of an ongoing criminal investigation, the county now has shifted its reasoning to claim any life insurance policy payments for Greene is part of her private personnel file.

Two months later, the county has yet to respond to a challenge from a Citizen Times attorney that the records are subject to public disclosure.

Next steps

The 56-count indictment accuses both Greenes of wire fraud and conspiracy charges. Wanda Greene additionally has been charged with embezzlement.

Some charges carry maximum penalties of 20 years in prison per count.

Both will be tried in a system that, through either pleas or trials, has convicted more than 90 percent of defendants. That's a rate that has remained at that level since at least the early 2000s, according to annual data [released by the U.S. Department of Justice \(https://www.justice.gov/usao/resources/annual-statistical-reports\)](https://www.justice.gov/usao/resources/annual-statistical-reports).

The mother and son could lose a portion of their retirement benefits if convicted. North Carolina law restricts pensions for public officials convicted of a federal or state felony related to the job, targeting the years of service related to the crime. Individual pension contributions or earned interest is not affected.

The indictment's accusations of illegal spending span a decade.

"Full-time public employees are required to contribute 6 percent of their salary to the retirement system," said Stephanie Hawco, a spokesperson with State Treasurer Dale Folwell's office. "They are always entitled to receive a refund of those contributions."

"Based on the outreach efforts of (Department of State Treasurer) staff, many district attorneys and judges are now aware of the felony forfeiture laws and in some instances as part of the plea bargain process, DAs have negotiated with defendants who were public employees to use their refunded contributions to pay restitution."

The U.S. attorney's office says the investigation is ongoing. In the indictment, prosecutors tied an unnamed commissioner to spending some of the improperly purchased gift cards. That commissioner was not named, but was described as serving at the time the cards were used between 2011-2012.

All five commissioners at the time – David Gantt, Holly Jones, Carol Peterson, K. Ray Bailey and Bill Stanley – have denied they are the official mentioned in the indictment. A spokesperson with the U.S. attorney's office would not say whether the unnamed commissioner is under investigation.

A federal judge last week [denied the Greenes' request \(/story/news/local/2018/04/24/buncombe-manager-wanda-greene-redacted-own-michael-greene-receipts-violate-public-records-law/542198002/\)](https://www.wncn.com/story/news/local/2018/04/24/buncombe-manager-wanda-greene-redacted-own-michael-greene-receipts-violate-public-records-law/542198002/) to be able to communicate with several relatives.

Greene has two sisters employed by the county: Irene Wolfe, an accountant, and Peggy Hughes, a staffer in the jail's identification bureau. The judge said both are potential witnesses – Wolfe additionally has received a grand jury subpoena – and should not be in communication with the Greenes.

The judge also ordered the Greenes to not have contact with Rebecca Gillespie, Wolfe's daughter. Gillespie is not employed by Buncombe County but has been interviewed by the State Bureau of Investigation, according to court documents.

Under the conditions of their release, Wanda and Michael Greene are allowed to speak to each other but cannot discuss the investigation. They are prohibited from communicating with county staff.

Both Greenes are due in court on May 29 in Charlotte for a status conference before U.S. Judge Robert Conrad.

Court documents show Greene is represented by Thomas Amburgey, a former assistant district attorney, and Noell Tin, a prominent Charlotte defense lawyer.

Tin represented Kenneth Kagonyera following his wrongful conviction in the 2000 murder of Walter Rodney Bowman in Fairview. Tin also is the lawyer for Jane Whaley, the founder of the Spindale-based Word of Faith church who is accused of abusing and brainwashing children to keep them in the congregation.

Though her legal counsel has largely declined to comment on matters related to the investigation, Amburgey has said that Wanda Greene has been cooperating with investigators and will continue "as long as her assistance is needed."

By the numbers

Some \$200,000 of spending is targeted by prosecutors in their indictment of Wanda and Michael Greene. But other controversial expenditures have surfaced since the former county manager's retirement.

Retention incentives: \$1,464,000

Skyland payments: \$925,000

Equestrian funding: \$593,773.70

Greene's expense reports: \$257,031.95

Greene's credit cards: \$208,339

Assistants' cards: \$126,760.96

1.5 percent bonuses: \$118,366

Total: \$3,693,871.61

The players

Wanda Greene



Then-Buncombe County Manager Wanda Greene listens in at a county commissioners meeting June 7, 2016. (Photo: File photo)

Greene began working for the county as an assistant manager, and three years later would be promoted to the top administrative job. For 20 years, she led Buncombe during a time the county saw strong finances and high bond ratings. It wasn't until after her retirement that allegations of embezzlement would surface.

Michael Greene

[Buy Photo](#)



Michael Greene, former Buncombe County employee, gets into a vehicle after leaving the federal courthouse in Asheville with his attorney Ted Besen after his arraignment on charges of wire fraud and conspiracy Thursday, April 12, 2018. (Photo: Matt Burkhardt/mburkhardt@citize)

Greene's only son, Michael, was hired by the county in 2004 and most recently worked as a business intelligence manager in the budget department. Prosecutors say no disciplinary action was taken when an internal audit in 2009 found he defrauded the county, though his county-issued credit card was revoked. He resigned the same day the federal investigation was confirmed and has been indicted by a grand jury alongside his mother.

David Gantt

[Buy Photo](#)



David Gantt, former Buncombe County Chairman, accepts a humanitarian award during the Martin Luther King, Jr. Prayer Breakfast January 14, 2017. (Photo: Angela Wilhelm, /awilhelm@citizen-times.com)

Gantt and Wanda Greene joined — and left — Buncombe County's top ranks around the same time. An attorney himself, Gantt was the board's longtime chairman who has praised Greene for her administrative leadership. Greene did not receive regular performance reviews under Gantt's tenure. He's often declined to comment to the Citizen Times amid the ongoing investigation.

Brownie Newman

Buy Photo



Buncombe County Board of Commissioners Chairman Brownie Newman (Photo: Matt Burkhardt/mburkhart@citizen-times.com)

Newman became board chairman after Gantt, and had priorly served as commissioner during Greene's tenure. He's led commissioners through the investigation and through policy changes in the aftermath, including the launch of performance evaluations. His call for reducing salaries after bonuses and retention incentives were disclosed did not receive support from a majority of commissioners.

Mike Fryar

Buy Photo



Commissioner Mike Fryar (Photo: Matt Burkhardt/mburkhart@citizen-times.com)

Fryar publicly clashed with Greene, and was known to question expenditures as commissioner. Greene once tried to justify extra pay she granted herself by saying Fryar caused her to work extra hours, and in 2015 accused him of nearly hitting her in the face with a phone. Fryar denied the claim. He has said that Greene often tried to keep commissioners away from staff and attempted to pit commissioners against each other.

Ellen Frost

Buy Photo



Commissioner Ellen Frost (Photo: Matt Burkhardt/mburkhart@citizen-times.com)

Frost was once friends with Greene, but their friendship ended prior to Greene's retirement. Frost was aware of Greene's equestrian-related charges, though the commissioner says she did not know the extent. She has since denounced Greene's spending and has made amends with Fryar, a fallout for which both blame Greene.

Greene's assistants

Four county employees, two of which have not been publicly identified, provided assistant duties for Greene. The indictment accuses Greene of using some of their county-issued credit card information for personal purchases, and directing at least two of them to travel to retail stores and buy gift cards in bulk. **Mila White** and **Rachel Norton** were previously named in a temporarily unsealed search warrant application; the other two were identified in the indictment only by their initials. County officials have not responded to a request by the Citizen Times for their names.

Mandy Stone

[Buy Photo](#)



Buncombe County Manager Mandy Stone (Photo: Matt Burkhardt/mburkhart@citizen-times.com)

Stone's employment with the county began in 1981, preceding even Greene's longtime tenure. Previously the health and human services director, Stone also served as an assistant county manager and became Greene's successor after a majority of commissioners decided against a search. She was named county manager just 10 days after Greene announced her retirement. Stone also was a recipient of Greene's controversial retention incentive program. Her management style is a stark contrast to that of Greene, serving less as a spokesperson as the county navigates through the investigation.

Tim Flora

[Buy Photo](#)

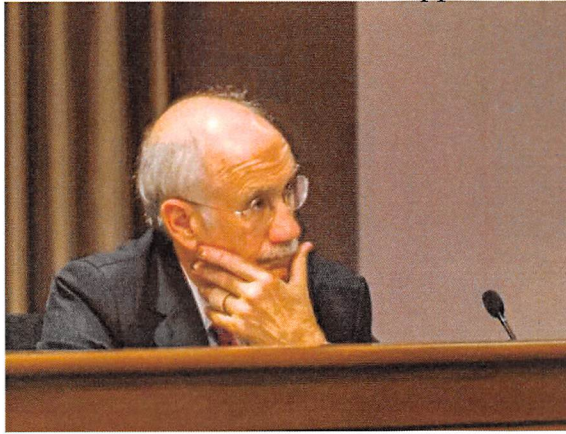


Chief Finance Officer Tim Flora (Photo: Matt Burkhardt/mburkhart@citizen-times.com)

A county employee for more than a decade, Flora serves as the county's chief finance officer. He serves at the will of the board, meaning commissioners have the authority to hire and fire him. That's despite the authority commissioners had given Greene in a June 2015 budget ordinance. During Greene's tenure, Flora reported directly to Price. Commissioners took action last year to formally recognize him as finance officer. Flora also served as internal auditor when it was concluded Michael Greene defrauded the county.

Jon Creighton

[Buy Photo](#)



Jon Creighton, Buncombe County assistant county manger and planning director (Photo: Matt Burkhardt/mburkhardt@citizen-times.com)

The longtime assistant county manager and planning director worked alongside Greene during her tenure, and was the supervisor of at least one assistant whose credit card information was being used by Greene. Including supplements and a retention incentive, he was the recipient of an additional \$269,000 in additional pay handed out by Greene during her last two years with the county. Creighton retired in December.

Irene Wolfe

Wolfe is one of two of Greene's sisters employed by the county. She previously worked as financial services manager but days after the investigation became public, took a voluntary reassignment — and a \$30,000 pay cut — to become an accountant. Last week, a federal judge denied Wanda and Michael Greene's requests to communicate with Wolfe, saying she and two other relatives — **Peggy Hughes**, the second sister employed by the county, and Wolfe's daughter, **Rebecca Gillespie** — were potential witnesses. The judge also revealed that Wolfe received a grand jury subpoena.

Unnamed commissioner

The indictment ties a then-serving commissioner to spending of improperly purchased gift cards, though the official is not named. Prosecutors say the cards were used between 2011 and 2012 at Sam's Club and Walmart to buy items such as beef tenderloin, jewelry and wine. All five commissioners who served at the time — **Gantt**, **Holly Jones**, **Carol Peterson**, **K. Ray Bailey** and **Bill Stanley** — have denied they are the commissioner mentioned in the indictment. The U.S. attorney's office would not say whether the unnamed commissioner is under investigation.

Join now
99¢ First Month

Subscribe Now
([http://offers.citizen-times.com/specialoffer?](http://offers.citizen-times.com/specialoffer?gps-source=BEAZmay&utm_medium=agilityzone&utm_source=bounce-exchange&utm_campaign=UWEB2017)
gps-
source=BEAZmay&utm_medium=agilityzone&utm_source=bounce-
exchange&utm_campaign=UWEB2017)

Read or Share this story: <https://www.citizen-times.com/story/news/local/2018/04/27/how-wanda-greene-became-accused-embezzler-and-whats-next-ex-buncombe-manager/300741002/>

Have we been eating GenX in our food for years?

By Steve DeVane

Staff writer

Posted Mar 3, 2018 at 5:00 PM

So far, no state or federal agency is looking at whether the potentially dangerous compound has contaminated crops and livestock for miles around the Chemours plant.

John and Merle Stevens haven't eaten collards from their garden since Thanksgiving dinner.

"I quit giving them to my neighbors, and I quit eating them," John said.

The couple in southern Cumberland County says they worry that a potentially cancer causing chemical might be in the leafy vegetable they've grown and enjoyed since they moved to their home on N.C. 87 about 33 years ago.

"We're afraid of the GenX," Merle said.

So far, nobody knows whether GenX may have been contaminating crops and livestock for years around the Chemours plant, where the compound is made. The facility is about a mile from the Stevenses' house, off N.C. 87 at the Bladen-Cumberland county line, in a rural area surrounded by thousands of acres of farms in every direction. The potential harm of GenX in humans isn't known; it has been linked to several forms of cancer in animal studies. The compound is used to make nonstick cookware and other products.

The state started investigating Chemours in June after the Wilmington StarNews reported that researchers had published information the previous year that showed the compound had been found in the Cape Fear River. The company agreed to stop discharging GenX into the river, but the chemical has since been discovered in more than 280 private wells around the plant, including more than 150 at levels above the state's provisional health goal. It also has been found in two lakes near the plant and a creek.

The Stevenses have stopped drinking water from their well, which tests showed had a level of GenX just below the state's provisional health goal.

Last month, state officials announced GenX has been detected in rainwater around the Chemours plant, lending weight to investigators' belief that the compound has been airborne around the facility and raising the possibility that it might have found its way into crops grown in the area. In addition to private gardens and produce for roadside stands, corn and soybeans are prominent in fields around the plant.

Officials with the North Carolina Cooperative Extension say they don't have much information about GenX and the potential contamination of crops.

Lisa Childers, director of the Cumberland County Extension office, said staff there have not received many requests for information about the compound.

"We stand ready to help concerned farmers and other people with questions on this topic, but can't provide any information or guidance until the state or federal agencies collect and analyze the appropriate samples and provide the health interpretation for us," she said.

W. Gregory Cope, a professor of applied ecology and environmental toxicology at N.C. State University, said the school refers questions on GenX in crops to the state Department of Environmental Quality or Department of Health and Human Services.

"We really can't provide any guidance or information on that until state and federal agencies collect and analyze those samples and, more importantly, interpret what those data mean," he said.

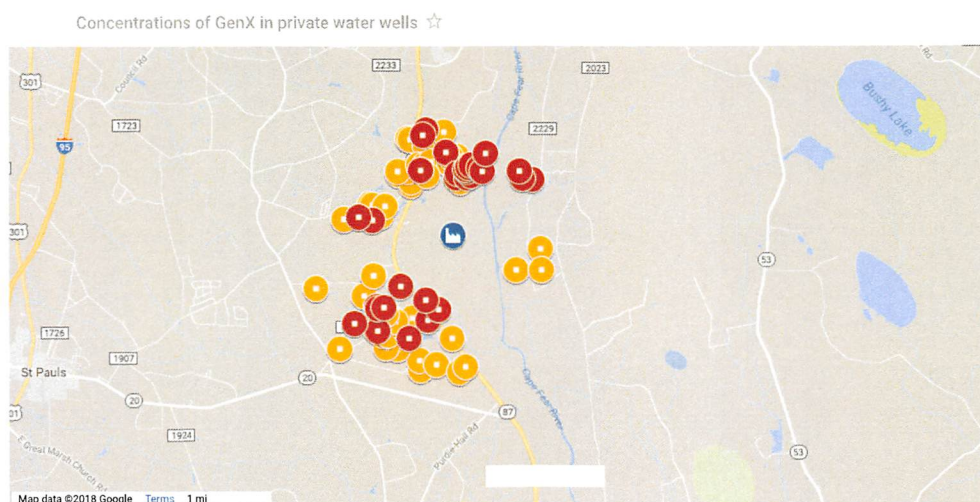
The Stevenses aren't the only ones concerned. Mike Watters, who lives in a neighborhood near the plant, has talked with hundreds of residents who live in the area.

"I know a lot of people plan on not having gardens this year," he said.

So far, no state or federal agency is specifically looking at whether there's GenX in the crops around Chemours. Without tests of the produce, it's impossible to know whether there's enough of the chemical in the vegetables to be harmful. But previous research of compounds similar to GenX indicates that fears might be well-founded.

MAP: Concentration of GenX in private wells





Cobey Culton, a DHHS spokesman, said state officials do not have information about how GenX may be taken up into crops. Limited information is available about similar compounds, known as per- and polyfluoroalkyl substances and more commonly called by their PFAS acronym, he said.

"We do know that PFAS can be taken up into plant tissue, but PFAS levels in crops vary based on many factors, including crop type, PFAS chain length, soil type and other environmental factors," Culton said.

For example, some researchers have found that the chemical makeup of the compound and certain characteristics of a plant influence the amount of substances found in particular fruits and vegetables.

Culton said state officials will continue to learn more.

"There are currently no recommendations against eating local produce," he said.

Michael Scott, director of DEQ's Division of Waste Management, said tests are being run on soil from the Chemours property and the air from the company's smokestacks. Those tests likely will determine whether state officials decide to test soil on private property around the plant, he said.

State officials realize there are many unanswered questions about GenX, Scott said. DEQ, DHHS and the state's Department of Agriculture are working together, he said.

"We're rapidly trying to find these answers," he said. "Everybody is stepping up to the plate to try to answer these questions."

Scott said state officials also are studying research done in other states, including a report from Minnesota's Department of Health. The September 2014 study looked at fruits and vegetables grown in soil contaminated with compounds similar to GenX.

Researchers in Minnesota determined that the health benefits of growing and eating homegrown produce "greatly outweigh any potential risk" from low levels of the compounds in the produce.

For John and Merle Stevens and others who live near the Bladen County plant, the question is whether the levels of GenX are low enough to reach a similar conclusion.

Another avenue of research for the state is from a Dutch study of vegetables around a Chemours plant in the Netherlands.

Scientists from that country talked to North Carolina's Science Advisory Board in January about the study.

The Dutch scientists said carrots, beets, lettuce and other vegetables at 10 sites around the Chemours plant there were tested. About 60 percent did not have GenX or another compound called PFOA, but those grown closer to the plant had both, they said. PFOA is an acronym for perfluorooctanoic acid, also known as C8.

The compounds also were found in grass and leaves around the Chemours plant in the Netherlands, according to the scientists.

Jacob de Boer, a scientist in the Netherlands, presented information about that study at a Society of Environmental Toxicology and Chemistry meeting in November. He said the presence of PFOA in grass and leaves several years after the plant stopped using the compound shows that the chemical most likely worked its way into the plants through the soil and roots.

"The release of GenX to the atmosphere and surface water causes increasing concentrations in vegetation and drinking water," he said.

The Center for Environmental Health, a nonprofit organization that seeks to protect people from toxic chemicals, studied how compounds similar to GenX are used to make some products. The group tested plates, bowls, clamshells and multi-compartment food trays. The findings: 58 percent contained the compounds.

Ansjie cq Miller, director of policy and partnerships for the center, said the compounds aren't adequately regulated.

"As a result, millions of Americans could be ingesting a chemical that many experts believe has no safe exposure level," she said.

Christopher Higgins, an associate professor in the Department of Civil and Environmental Engineering at the Colorado School of Mines, conducted research on the presence of compounds similar to GenX in vegetables. Two studies looked at whether the compounds could get into the produce grown in soil that has sludge with the compounds, while the other looked at crops grown with water that had the compounds in it.

VIDEO: Steve DeVane sits down with representatives with the NC Dept. of Environmental Quality

The research showed that the compounds could work their way through roots into the crops in either case. Higgins said it's difficult to say which of the compounds he tested is similar to GenX, but he would expect it to behave like the others.

"It would not surprise me in the least if something like GenX was making its way into plants," he said.

Higgins said tests should look at whether GenX is in crops and produce grown around the Chemours facility.

"It's a very good question to be asking," he said. "It's a reasonable question to be asking."

The level of GenX in the plants would be revealing, Higgins said.

"It still very well could be considered safe to be consuming that produce," he said.

When GenX was discovered in honey grown near the Bladen County plant, DHHS looked at the level of contamination in the substance, according to Culton, the department spokesman.

"It was determined that honey is unlikely to be a significant source of exposure to GenX or related chemicals given the relatively small amounts that are consumed by the average person," he said.

The Stevenses stopped eating produce from their garden after they heard that GenX was in the nearby beekeeper's honey. The couple usually plants cabbage, turnips and other vegetables. They also have blueberry bushes, a grape vine, and peach, apple, plum and persimmon trees.

The couple says they have noticed differences in some of their vegetables. About 10 years ago, they saw something on peas that made them wonder whether something had been sprayed on a nearby field. When they checked, they were told that nothing had been applied to the hay grown there.

Several years ago, the Stevenses noticed that the leaves on their potato plants were "crispy."

"It didn't kill the potatoes," John Stevens said. "We didn't think anything about it until the GenX came up."

Watters said he plans to plant two gardens this year, watering one with water from his contaminated well and one with bottled water. He wants to see the difference.

"I always raise gardens," he said. "I am concerned about it."

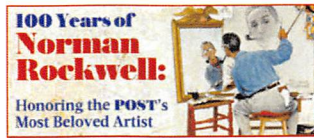
But the Stevenses don't plan to grow any produce this year.

"You get out here and work to have something and lose every bit of it," Merle Stevens said.

Her husband said the couple is waiting to see what state officials find in their investigation.

"We don't know what will happen," he said.

Staff writer Steve DeVane can be reached at sdevane@fayobserver.com or 486-3572.



[Home](#) / [History](#) / Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism

Considering History: Walter Cronkite, David Halberstam, and Two Legacies of Adversarial Journalism

By: [Ben Railton](#)

Published: February 27, 2018

Share 32

Tweet

Save

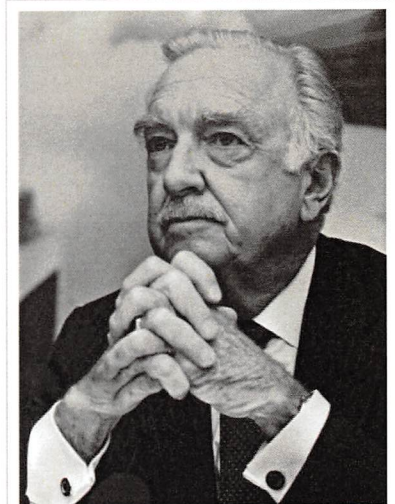
This series by American studies professor Ben Railton explores the connections between America's past and present.

Fifty years ago this evening, on February 27, 1968, legendary CBS News anchor Walter Cronkite concluded a special report on the ongoing conflict in Vietnam with a [striking three-minute commentary](#). The special report had cast a long and searching look at the haphazard progress and challenges of the “police action” in Southeast Asia, but Cronkite’s closing commentary went much further still.

Acknowledging that his “analysis must be speculative, personal, subjective,” he nonetheless laid bare the stark realities of the situation in Vietnam: “For it seems now more certain than ever, that the bloody experience of Vietnam is to end in a stalemate. To say that we are closer to victory today is to believe in the face of the evidence, the optimists who have been wrong in the past.”

Cronkite’s sober realism wasn’t just an overarching attempt to counter such optimistic narratives of the war—it was also quite specifically adversarial to the perspectives coming out of the American military and political leadership. “With as much restraint as I could,” Cronkite narrated, “I turned to our own leaders whose idea of negotiation seemed frozen in memories of General McArthur’s encounter with the Japanese aboard the Battleship Missouri. ... We’ve been too often disappointed by the optimism of the American leaders.” As he so often did, Cronkite presented this adversarial stance in a restrained and civil way, a tone befitting his role as an elder statesman of American journalism. But his opposition to the narratives coming out of Washington was clear and crucial nonetheless.

That restrained, civil, and statesmanlike form of rebuke could be called public adversarial journalism, and was a key facet of [Cronkite’s voice and role](#) throughout his decades on the air. It had the ability to shift national conversations in a gentle but very real way, framing a new way of understanding unfolding histories and issues for both Cronkite’s listeners and the powerful figures to whom he was speaking his truths. Building on the legacy of influential predecessors like [Edward R. Murrow](#), and making this critical tone a more consistent part of his efforts as anchor than any of his contemporaries, Cronkite’s public adversarial journalism became a vital component of the television news landscape throughout the 1960s and 70s.



Walter Cronkite (Wikimedia Commons)



David Halberstam in 1978. (William H. Mortimer, Wikimedia Commons)

Yet while such public adversarial journalism has vital roles to play in changing national conversations by speaking uncomfortable truths, it is not necessarily as well-equipped for investigating and uncovering such truths. For that, a more private adversarial journalism is needed, one that confronts leaders and spin artists directly, calls them out on their partial or false representations, and works to find the truth that lies behind them. In the same period as Cronkite’s public stance on the Vietnam War, a young [investigative journalist named David Halberstam](#) modeled this form of private adversarial journalism, helping shift the relationship of war journalists to the military effort in the process.

Halberstam told the story of his most striking and inspiring moment of private adversarial journalism in a [2005 speech to the Columbia School of Journalism](#):

Probably the moment I am proudest of in my career is this: By the fall of 1963, I was one of a small group of reporters in Saigon— we had enraged Washington and Saigon by filing pessimistic dispatches on the war. In particular, my young colleague, Neil Sheehan, and I were considered the enemy. The president of the United States, JFK, had already asked the publisher to pull me.

One day that fall, there was a major battle in the Delta (the Americans were not yet in a full combat role; they were in an advising and support role). MACV—the American military command— tried to keep out all reporters so they could control the information. Neil and I spent the day pushing hard to get there—calling everyone, including Ambassador Henry Cabot Lodge and General Paul Harkins. With no luck, of course.

In those days, the military had a daily late afternoon briefing given by a major or a captain, called the Five O’clock Follies, because of the generally low value of the information.

On this particular day, the briefing was different, given not by a ajor but by a major general, Dick Stilwell, the smoothest young general in Saigon. It was in a different room and every general and every bird colonel in the country was there. Picture if you will rather small room, about the size of a classroom, with about 10 or 12 reporters there in the center of the room. And in the back, and outside, some 40 military officers, all of them big time brass. It was clearly an attempt to intimidate us.

Get our free newsletter to stay up to date on our latest articles.

Your email

Sign up

And I stood up, my heart beating wildly—and told him that we were not his corporals or privates, that we worked for *The New York Times* and UP and AP and *Newsweek*, not for the Department of Defense.

I said that we knew that 30 American helicopters and perhaps 150 American soldiers had gone into battle, and the American people had a right to know what happened.

Through this and many other moments of private adversarial journalism, Halberstam and colleagues like Sheehan were able to uncover the truth of what was happening with US forces and efforts in Vietnam—a truth that became a crucial influence on shifting the perspectives on the war of public journalists and figures like Cronkite.

While they differ in tone, role, and other specifics, Cronkite's and Halberstam's public and private adversarial journalism are ultimately complementary, each a necessary part of a journalistic enterprise that pursues truth and presents it to its audiences and society. The legacies of both these men and moments remain vital models for American journalism.



The Saturday Evening Post History Minute: The Man Who Saved Andrew Johnson's Presidency



The People Machine: A History of Elections and Algorithms



8 of History's Most Destructive Lies

THE SATURDAY EVENING POST

[About Us](#)
[Contact Us](#)
[Advertising](#)
[Internships
& Careers](#)

[Customer Service](#)
[Submission Guidelines](#)
[Subscription Fraud Information](#)
[Limerick Contest](#)
[Where's Ben Franklin's Key](#)

[Licensing](#)
[Privacy Policy](#)
[Disclaimer](#)

Children's Magazines

[Humpty Dumpty](#)
[Jack and Jill](#)