

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE No. 50-2011-000246 XXXX MB

JESS R. SANTAMARIA,

Plaintiff,

-vs-

ANDREW F. SCHALLER,

Defendant.

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE  
DAVID E. FRENCH

VOLUME I  
(Pages 1-155)

Monday, April 2, 2012  
10:10 a.m. - 4:46 p.m.  
(Morning Session)

205 North Dixie Highway  
Courtroom 11D  
West Palm Beach, Florida 33401

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1  
2  
3 THE COURT: Have a seat. Good morning,  
4 ladies and gentlemen. All right. The Court has  
5 called up for trial the case of Jess Santamaria  
6 versus Andrew Schaller, is that how you pronounce  
7 it?

8 MS. KITTERMAN: Schaller.

9 THE COURT: Schaller. And I have to go to  
10 Tallahassee Wednesday night. So we have to do this  
11 trial in three days. Are we going to be able to do  
12 it?

13 MR. MARIANI: It's our plan we can,  
14 Your Honor, for the plaintiff.

15 MS. KITTERMAN: We'll do the best that we  
16 can. It depends on how long the plaintiff puts on  
17 witnesses.

18 THE COURT: Anything that needs to be brought  
19 up to the Court before we get started?

20 MS. KITTERMAN: One thing, Your Honor, I was  
21 asking was whether we have the right to invoke the  
22 rule before jury selection. Mrs. Santamaria is a  
23 potential witness in this case. So I didn't know  
24 if she could be excluded during voir dire.

25 MR. MARIANI: Your Honor, may I respond?

1 THE COURT: Yes, sir.

2 MR. MARIANI: Your Honor, it is our  
3 understanding that the rule invoked as to witnesses  
4 is not dealing with voir dire. And Mrs. Santamaria  
5 just wants to sit with her husband.

6 THE COURT: Well, she can't sit at counsel  
7 table.

8 MR. MARIANI: She won't sit at counsel table.

9 THE COURT: How many people are we bringing  
10 in?

11 THE BAILIFF: Twenty-four, Judge. You have  
12 the back bench open.

13 THE COURT: We'll have the back open?

14 THE BAILIFF: The back bench will be open.

15 MR. MARIANI: So whatever your preference is,  
16 Your Honor.

17 THE COURT: I'll invoke the rule, but once  
18 the jury has been sworn in, at that particular  
19 point, that will work. But she'll have to sit in  
20 the back.

21 MR. MARIANI: In the back of the courtroom?

22 THE COURT: Yes.

23 MR. MARIANI: Okay. Thank you.

24 THE COURT: Anything else need to be brought  
25 up?

1 MS. KITTERMAN: I don't believe so,  
2 Your Honor. I believe you have trial briefs from  
3 both sides. I don't know if you want to hear about  
4 the trial briefs before plaintiff puts on --

5 THE COURT: I haven't seen any trial briefs,  
6 I have a brief pretrial statement. Is that what  
7 you're referring to?

8 MS. KITTERMAN: Yes.

9 THE COURT: All right.

10 MR. MARIANI: Friday we submitted, pursuant  
11 to your request, the trial brief and jury  
12 instructions electronically so we could talk about  
13 that.

14 MS. KITTERMAN: Yeah, it's actually --

15 THE COURT: My JA is out this week, but did  
16 you send it to her?

17 MS. KITTERMAN: Yes. We e-mailed to your  
18 assistant, I mean, your judicial assistant.

19 MR. MARIANI: We have a paper copy of ours.

20 THE COURT: If I could have a paper copy, I  
21 would appreciate it because I was busy Friday.

22 Everybody in agreement that the Don King case  
23 is the controlling case for public figures?

24 MS. KITTERMAN: Yes, Your Honor.

25 MR. MARIANI: Well, not necessarily

1 controlling. I mean, there are other cases that --

2 THE COURT: I understand that.

3 MR. MARIANI: But it's certainly applicable.

4 THE COURT: That's the standard by which this  
5 case is going to be tried. You've got to prove  
6 actual malice.

7 MR. MARIANI: Oh, no question. We've never  
8 disputed actual malice. We agree.

9 THE COURT: Do you have another copy of this  
10 or do I need to make this for you?

11 MR. BARKSY: Oh, I have plenty of copies,  
12 Your Honor.

13 MR. MARIANI: And we submitted all the case  
14 law on Friday.

15 THE COURT: I'll pull that off at lunch time.

16 MR. MARIANI: It might be easier to do that  
17 at lunch time, exactly.

18 THE COURT: I don't think it is that  
19 complicated at this particular stage.

20 Now, this is what I want. I want the jury  
21 picked today, I want opening statements and I want  
22 some evidence put on today.

23 MR. MARIANI: That's the plan.

24 MS. KITTERMANN: What time do you end,  
25 Your Honor?

1 THE COURT: 5 o'clock. We'll go to about  
2 12:00, we'll come back at 1:30, we'll go to about  
3 3:00. Well, since we're picking the jury, we'll  
4 see how that works. It might. I don't know  
5 exactly when the breaks are going to happen, it  
6 depends where they fit. But, normally, that's what  
7 we'll do. We'll start tomorrow at 10 o'clock, not  
8 10:30, and we'll go to 12:00 to 1:30 is our lunch  
9 break and then come back, we'll go to about 3:00, I  
10 need to give about 20-minute break at that time and  
11 we'll see. All right?

12 MR. MARIANI: That's fine. All right. Yes,  
13 Your Honor.

14 THE COURT: Any other questions?

15 MR. MARIANI: Not from the plaintiff,  
16 Your Honor.

17 THE COURT: Very good.

18 MS. KITTERMAN: Thank you, Your Honor.

19 THE COURT: Let's bring them in.

20 (The Jury Venire Panel entered the courtroom  
21 after which the following proceedings were held:)

22 THE COURT: Good morning, Ladies and  
23 Gentlemen. Have a seat if you will, please.

24 Members of the Jury Venire Panel, my name is  
25 David French, I'm a circuit judge in and for the

1 15th Judicial Circuit. This is the highest trial  
2 level that we have in the state. You have  
3 68 counties in the state, but you only have  
4 20 circuits. But because Palm Beach is as large  
5 and is as populated as it is, it has its own  
6 circuit. And this is the case of Jess R.  
7 Santamaria versus Andrew F. Schaller or Schaller.  
8 Is that how you pronounce it, Schaller? Schaller.  
9 And what you are in is the civil division of the  
10 Circuit Court.

11 Now, the Circuit Court is made up of five  
12 different divisions; the largest being the civil  
13 division, the second largest being the criminal  
14 division. Then we have family, juvenile and  
15 probate. And the circuit judges have general  
16 jurisdiction over all of these areas, but the chief  
17 judge assigns us to particular divisions. And I'm  
18 assigned to the civil division right now, but that  
19 can change from year to year.

20 Be that case as it may, you're going to be  
21 asked for the next few days to decide a case. Now,  
22 this is a defamation case of which the plaintiff  
23 has brought against the defendant that arises out  
24 of an election process that took place here for  
25 commissioner. And these parties were both running,

1 as I understand it, for that particular office.  
2 And the plaintiff is bringing this action against  
3 the defendant and claiming that he published with  
4 intent -- with malice, defamatory information and  
5 so forth.

6 So you're going to have to decide the mores  
7 of your community and decide the issues in this  
8 particular case. You'll be working in conjunction  
9 with me. And as the trier of fact, I will give you  
10 the law, and we work as a team together and that  
11 will end up in a final verdict in this case. And  
12 that verdict will be your decision based upon the  
13 facts as you find it and based on the law that I  
14 give you. And that's basically how this process  
15 will work.

16 Right now as you can see, we have various  
17 personnel that make up the circuit court. At this  
18 time, I'm going to ask the plaintiff's attorney to  
19 introduce himself and his client to you.

20 MR. MARIANI: Good morning, I'm John Mariani,  
21 along with Dan Barsky. We have the privilege of  
22 representing Jess Santamaria, who is the  
23 County Commissioner from District 6.

24 THE COURT: All right. Now the defendant.

25 MS. KITTERMAN: Good morning, my name is

1 Christina Kitterman. I'm here with my partner,  
2 Cindy Diaz, and we're representing  
3 Mr. Andrew Schaller.

4 THE COURT: All right. Thank you.

5 Now, this young lady over to my right that is  
6 taking down everything, this is Miss Sullivan. She  
7 is a Court Stenographer. This is a court of  
8 record. Everything that is said and done in this  
9 courtroom is taken down by her. And that's for a  
10 variety of reasons, primarily for appellate court  
11 purposes and things of this nature. But you're  
12 going to be asked questions and you're going to  
13 have to answer audibly so that she can take it down  
14 correctly.

15 You've already met my deputy and she is the  
16 Court Bailiff. Deputy Sheriff Thomas has a couple  
17 of responsibilities, first and foremost is the  
18 security of this courtroom. And, secondly, she has  
19 the responsibility to work as a liaison between you  
20 and me. That means that anything that you have any  
21 questions of or a need to communicate to me, you  
22 bring them to her attention, she will then bring it  
23 to my attention and I will act upon it.

24 And immediately here to my left is  
25 Mr. Al Valencia. He is a Deputy Clerk and he works

1 for the clerk's office. And his primary  
2 responsibility will be to swear the jury in once we  
3 get you seated and also to swear in the witnesses.  
4 And once a witness is sworn in and starts answering  
5 questions, that is evidence in the case.

6 He also has a responsibility to take in all  
7 tangible documents which I allow to come into  
8 evidence. And he will secure those documents, he  
9 will identify those documents and he will keep them  
10 and preserve them so that at the end of this case  
11 when you go back to start your deliberations, all  
12 of those documents that I've allowed to come into  
13 evidence will be available for your use as you  
14 deliberate to your eventual verdict. And that  
15 pretty much makes up the people in this particular  
16 courtroom.

17 Now, I take it all of you had an opportunity  
18 to go downstairs, probably look at the film that  
19 kind of points out a little bit of what these  
20 trials are and what consists of the various  
21 personnel that operate them. But your -- like I  
22 said, your job is to determine the facts of this  
23 particular case and determine if there is any  
24 liability and if there is, what damages, if any,  
25 that are proximately caused as a result of the

1           alleged defamatory acts. So that's basically your  
2           job and my job and how this courtroom is going to  
3           operate for the next few days.

4           Now we're going to go into this questioning,  
5           answering questions session with you folks. Now,  
6           the reason we do that, it's called voir dire. It's  
7           a French word that means to speak the truth, a very  
8           important phase of the case, of the trial.

9           What we're trying to determine, is this an  
10          appropriate case for you to sit as a juror in this  
11          case. And these questions are not designed to  
12          embarrass you or designed at all to pry into your  
13          personal life. But we're trying to determine  
14          whether or not this is the right case for you to  
15          sit on.

16          Each and every one of you come with a  
17          background and an array of experiences, educational  
18          level and things of this nature. What makes a good  
19          juror is not that you don't have prejudices and  
20          opinions, we all do, that is human nature. But  
21          what makes a good juror is that you can set those  
22          prejudices and those opinions aside and judge this  
23          case solely upon the evidence that is presented in  
24          this case and the law that I give you. If you can  
25          do that, then that makes you a good juror.

1           Now, this whole jury process started a  
2 whole -- a long time ago back in 1215 in a little  
3 place in England. And the whole purpose was you  
4 people now decide the mores of your community, you  
5 decide what is right and wrong. And it's your  
6 collective wisdom that makes the jury system work  
7 so good. Your collective wisdom as a jury and  
8 jurors will rise above your individual intellect.  
9 And I promise you, 99.9 percent of the time, you  
10 folks get it right. That means you come up with a  
11 just decision based upon the evidence as you find  
12 it. And as a consequence, that's how our judicial  
13 system works.

14           It's protected by two very basic  
15 Constitutional amendments. The Sixth you all know  
16 about, and that's if you're going to take away  
17 somebody's civil liberties, they have a right to a  
18 jury trial. But what a lot of people don't  
19 understand and what is very unique to our system of  
20 justice is that the Seventh Amendment says that  
21 every controversy in excess of \$20, the parties can  
22 ask for a jury trial that is to be judged by a jury  
23 of their peers and they can have that trial.

24           Now, the importance of that is that our  
25 forefathers thought that property rights were just

1 as important as civil liberties. Money is property  
2 rights and that is what is being asked in this  
3 particular case. So that is why your services are  
4 so necessary. It is really the second highest  
5 service that you can perform for your community and  
6 for your government.

7 And think about the uniqueness of this. You  
8 will sit and you will participate at the highest  
9 levels of government and you will decide very  
10 important issues, sometimes that affect the whole  
11 community. And that's why your jury service is not  
12 only important to our way of justice and the  
13 backbone of our service, but it also is a part of  
14 why you have the privilege to live and work in this  
15 wonderful country.

16 And I tell you, the civil system doesn't  
17 exist pretty much anywhere else in the world and is  
18 really why our economy and our way of life is  
19 cherished by everybody. We have people that are  
20 fighting all over the world, that are stationed all  
21 over the world. We have them in Afghanistan and  
22 been in Iraq, and all of those people are there  
23 fighting to preserve these ideals.

#### 24 COURT'S QUESTIONS

25 So I'm going to be asking you folks starting

1 in the first row, is there anybody here that has  
2 such a significant hardship that you would be  
3 unable to sit here for the next few days and decide  
4 this important case? How about in the first row?  
5 Anybody in the second row? The third row? The  
6 fourth row?

7 UNIDENTIFIED PROSPECTIVE JUROR: Can you just  
8 elaborate one thing as far as when you say  
9 hardship, can you just explain that a little bit  
10 more?

11 THE COURT: Well, a hardship means that I  
12 have young children that I have to take care of.  
13 There is certain statutory requirements that I'm  
14 allowed to recognize as a hardship. I know that  
15 economically, it can certainly hurt people to come  
16 here. But this is only a few days and you're not  
17 asked to do this very often, believe it or not.  
18 But I can assure you at the end of this case, when  
19 you walk away at the end, you will have a much  
20 greater appreciation and respect for our legal  
21 system and you will be a much better citizen and a  
22 better person for having been involved in this  
23 decision process.

24 But hardship means something like if you're a  
25 student and you're going to school, you're going to

1 miss three days of classes, that I can appreciate  
2 and I'll recognize that. Now, if you're a lawyer,  
3 you're a doctor and you're just going to lose a lot  
4 of money, I'm not interested in that and the  
5 statute doesn't allow that because everybody has to  
6 serve. None of us are exempt.

7 Yes, ma'am, that's Miss Kelly?

8 MS. KELLY: I have a seven-year-old at home  
9 and I arranged for her to be taken care of today,  
10 but if it goes longer than a day, I really can't.

11 THE COURT: Okay. That's a statutory thing  
12 that I can allow. You have nobody that can take  
13 care of them tomorrow or the next day; is that  
14 correct?

15 MS. KELLY: Right.

16 THE COURT: All right, Miss Kelly, you can be  
17 excused. Go downstairs. Just leave your  
18 questionnaire on the seat. Thank you.

19 Anybody else in the second row? How about  
20 the third row? Fourth?

21 MR. BACALOS: I wasn't planning on staying  
22 more than a day if it's possible. My mother is  
23 scheduled for surgery tomorrow because she has  
24 kidney stones. And I'm the one who is supposed to  
25 be taking her tomorrow to Boca Community.

1 THE COURT: All right, sir, go ahead. You  
2 can go back downstairs.

3 THE BAILIFF: Leave your questionnaire on the  
4 bench, please.

5 THE COURT: All right. That was 4.2.  
6 Is that Miss Rivers?

7 MS. DULA: No, Joanne Dula.

8 THE COURT: Oh, okay. Miss Dula, what's your  
9 problem?

10 MS. DULA: I've been trying to get a job for  
11 a year and I was supposed to be back today. And I  
12 didn't have enough time. I can do a postponement,  
13 you know, for a month or so, but --

14 THE COURT: All right. Go downstairs. You  
15 tell them I'm going to discharge you for your  
16 service today and you get a postponement and put it  
17 off for several months out; okay?

18 MS. DULA: Thank you so much.

19 THE COURT: All right. That being all said  
20 and done, we're past that stage. Now I'm going to  
21 ask you folks to pull out your questionnaire that  
22 you have.

23 And starting with Mr. Walker, good morning,  
24 sir, would you be kind enough to answer these  
25 questions for me, please?

1 MR. WALKER: All right. You want me to just  
2 start talking?

3 THE COURT: Yes, sir, just go ahead and go  
4 down that list. What is your name, where do you  
5 live, that kind of stuff.

6 MR. WALKER: Okay. My name is Johnny Walker,  
7 Johnny James Walker. And I live at 3215 Windsor  
8 Avenue in West Palm.

9 THE COURT: I don't have to know your exact  
10 address. I just need to know the town that you  
11 live in; okay?

12 MR. WALKER: All right.

13 THE COURT: What town is that?

14 MR. WALKER: West Palm Beach.

15 THE COURT: Okay, sir, go ahead.

16 MR. WALKER: I'm currently -- well, I'm  
17 retired.

18 THE COURT: What did you retire from, sir?

19 MR. WALKER: From truck driving.

20 THE COURT: Okay. Very good. Thank you. Go  
21 ahead.

22 MR. WALKER: I'm married. My wife is  
23 unemployed, she's disabled. I do have children. I  
24 have three from my first wife, three from my second  
25 wife. And ages are -- my oldest son died when he

1 was 34 and I have a next son at 32. A daughter  
2 that is 33. I have -- all right. I got another  
3 daughter at 29. I have a son that's 28, 25. And  
4 my oldest boy is dead, like I said.

5 THE COURT: All right, sir. Are any of those  
6 people involved in the legal profession?

7 MR. WALKER: No.

8 THE COURT: All right. Thank you, go ahead.  
9 Have you ever been in a lawsuit before?

10 MR. WALKER: Yes.

11 THE COURT: All right. How long ago was  
12 that?

13 MR. WALKER: Three, four years.

14 THE COURT: What was the nature of that?

15 MR. WALKER: I was hurt on the job. It's  
16 been actually longer than that, about eight years.

17 THE COURT: Workmen's Compensation claim?

18 MR. WALKER: Yes.

19 THE COURT: Okay. Has that been resolved to  
20 your satisfaction?

21 MR. WALKER: Yes.

22 THE COURT: All right. Very good. Go ahead  
23 and continue, sir.

24 MR. WALKER: Okay. What number am I on,  
25 Number 9?

1 THE COURT: Yes, sir.

2 MR. WALKER: Yes. I have a friend that was  
3 in several car accidents. And my wife was in a  
4 lawsuit, she was a bus driver for the School Board  
5 and she was hurt on the bus.

6 And I've never been a juror.

7 No, I don't. No, I don't know anyone in the  
8 courtroom.

9 I think so, I can be.

10 THE COURT: You think you can be fair and  
11 impartial?

12 MR. WALKER: Yes.

13 THE COURT: All right. Thank you, sir, I  
14 appreciate that very much. Miss -- is it  
15 Lazarevic?

16 MS. LAZAREVIC: Maricka Lazarevic.

17 THE COURT: Okay. That was close then. Go  
18 ahead if you will, ma'am.

19 MS. LAZAREVIC: I live in West Palm Beach and  
20 currently I work in a bank as a banker, financial  
21 services associate. I am married and my husband is  
22 a bartender. We have no kids. We live alone.  
23 I've never been involved in a lawsuit or none of my  
24 close friends or family. I've never been on a jury  
25 before and I don't know anybody in the courtroom.

1 I think I can be a fair and impartial juror.

2 THE COURT: Thank you very much.

3 Miss Zheng?

4 MS. ZHENG: Yes. My name is Ling Zheng. I  
5 live in Lake Worth city. And I don't know.  
6 Number 4, I know, married. And my husband and my  
7 kids. I got two children, one is 13 and one is 19.  
8 And number 10, no, never. Number 11, no.

9 THE COURT: Have you ever been involved in a  
10 lawsuit? Have you ever been involved in a  
11 lawsuit --

12 MS. LAZAREVIC: (Shakes head.)

13 THE COURT: -- or made a claim for anything?  
14 That's a no?

15 MS. ZHENG: (Nods.)

16 THE COURT: I need you to answer audibly for  
17 me for the Court Reporter. Is that a no?

18 MS. ZHENG: Yes.

19 THE COURT: Yes, that means no, not --

20 MS. ZHENG: Yes.

21 THE COURT: Okay. Have you ever been on a  
22 jury before?

23 MS. ZHENG: No. And I don't know anybody.  
24 Number 12 is yes.

25 THE COURT: You can be fair and impartial?

1 MS. ZHENG: Yes.

2 THE COURT: Thank you very much. Where are  
3 you from?

4 MS. ZHENG: China.

5 THE COURT: And how long have you lived here?

6 MS. ZHENG: Twelve years.

7 THE COURT: Four years?

8 MS. ZHENG: No, 20 years.

9 THE COURT: Twenty years. Okay. Thank you  
10 very much.

11 Mr. Gomez?

12 MR. GOMEZ: Good morning. My name is  
13 Humberto Gomez, Jr. I currently live in West Palm  
14 Beach, Florida. Currently what I do for a living,  
15 currently enlisted in the Marine Corps, deploy  
16 September. No, I'm single. I live with both  
17 parents, they both have jobs, they're managers of  
18 dry cleaners. And I don't have children.

19 Do you have -- I have never been involved in  
20 a lawsuit. I don't know any close friends that  
21 have been in a lawsuit either. I've never been a  
22 juror in a jury before. I don't know anybody in  
23 the courtroom. And, affirmative, I can be a fair  
24 and impartial juror in this case.

25 THE COURT: What did you do in the

1 Marine Corps?

2 MR. GOMEZ: I'm doing recon, special ops.

3 THE COURT: Were you stationed --

4 MR. GOMEZ: I get deployed September 13th.

5 THE COURT: Very good. Thank you. We  
6 appreciate your service here.

7 MR. GOMEZ: No problem, sir.

8 THE COURT: Miss Harnish?

9 MS. HARNISH: My name is Bonnie Harnish. I  
10 live in Boca. I'm a secretary. I'm divorced. I  
11 have three kids, 41, 28, 35. Let's see. My son is  
12 a fireman, my daughter is a writer for  
13 Family Vacation. And my other youngest daughter is  
14 not employed.

15 I haven't been involved in a lawsuit. No  
16 close friends in a lawsuit. I've been on a jury  
17 before but it's been so long, I don't remember  
18 which one it was, what kind it was. I don't know  
19 anybody in the courtroom. And I can be fair and  
20 impartial.

21 THE COURT: Miss Harnish, when you were on  
22 that jury, were you able to reach a verdict?

23 MS. HARNISH: No.

24 THE COURT: Was that a hung jury?

25 MS. HARNISH: Yes.

1 THE COURT: Was that a criminal matter?

2 MS. HARNISH: I think so.

3 THE COURT: And were you the foreperson?

4 MS. HARNISH: No.

5 THE COURT: All right. Thank you very much.  
6 Miss Wilson?

7 MS. WILSON: Yes, my name is Jeanette Wilson.  
8 I live in Riviera Beach, Florida. I am a retired  
9 Court Reporter. I only worked in criminal. I  
10 occasionally now transcribe CDs from criminal  
11 court.

12 I am divorced. I have one son who is  
13 44 years old. He is a financial advisor. I sued  
14 Air Afrique airlines for stranding me in Africa. I  
15 do not have any close friends involved in a  
16 lawsuit. I was a foreman on a DWI case and we  
17 reached a verdict. I do not know anyone in this  
18 courtroom. And I can be fair and impartial.

19 THE COURT: Thank you, Miss Wilson.

20 Miss Riggle?

21 MS. RIGGLE: Miriam Riggle. I'm from  
22 Greenacres. I am a bank manager at TD Bank. I am  
23 engaged, getting married in a few weeks.

24 THE COURT: Congratulations.

25 MS. RIGGLE: My fiance is a police detective.

1 I have one daughter, she is 20. She's at the  
2 University of North Florida in college. I've never  
3 been involved in a lawsuit. No on Number 9 as far  
4 as any other friends, et cetera. I've never been  
5 on a jury and I do not know anyone in the  
6 courtroom. And, yes, I can be fair and impartial.

7 THE COURT: Thank you.

8 Miss Brookins?

9 MS. BROOKINS-KELLE: Miss Brookins-Kelle?

10 THE COURT: Yes, ma'am. Well, is that how --  
11 is that Brookins-Kelle? Is that --

12 MS. BROOKINS-KELLE: Brookins, a hyphen after  
13 the S.

14 THE COURT: Okay. Great.

15 MS. BROOKINS-KELLE: Good morning, everyone.  
16 My name is Anna Brookins-Kelle. I live in Boca.  
17 I'm currently a corrections officer for Broward  
18 County for the last 22 years. I am divorced. I  
19 have two children, 17 and 19. My oldest son is a  
20 full-time student at FAU and he works at Boca Town  
21 Square at the mall.

22 I've never been involved in a lawsuit. As  
23 far as I know, any close relatives or friends  
24 involved in a lawsuit, I don't know. I've never  
25 been on a jury before, I have been in a pool. I

1 know no one in this courtroom. And, yes, I can be  
2 fair and impartial.

3 THE COURT: Thank you, ma'am.

4 Mr. Latos?

5 MR. LATOS: Good morning. Steve Latos, I  
6 live in Boca Raton. I am in technology sales. I'm  
7 married. My wife is a homemaker. We have three  
8 daughters, 22, 24, and 26. The youngest is in  
9 retail sales, the middle one is in phone sales for  
10 a camera company, and the oldest one is a legal  
11 assistant at a firm in Atlanta.

12 Never been involved in a lawsuit. And as far  
13 as I know, I haven't had any friends or relatives  
14 be involved either. Been on a jury before about  
15 seven or eight years ago. I believe it was  
16 criminal in nature. I was the foreperson and we  
17 did reach a verdict. I don't know anyone in the  
18 courtroom and the answer to 12 is yes.

19 THE COURT: That is you can be fair and  
20 impartial?

21 MR. LATOS: Correct.

22 THE COURT: All right. Thank you very much.

23 Miss Brenda Moore-Pirtle, I believe it is;  
24 correct?

25 MS. MOORE-PIRTLE: Yes. My name is Brenda

1 Moore-Pirtle. I live in West Palm Beach. I am a  
2 homemaker, I am married. My husband is a recent  
3 retiree. I have three children, 29, 24 and 21. My  
4 oldest daughter is an epidemiologist, the other is  
5 a banker. The other is a senior in college, a  
6 graduating senior.

7 I've never been involved in a lawsuit. My  
8 father was involved in a lawsuit once, a  
9 slip-and-fall. I've never been on a jury. I do  
10 not know anyone in this courtroom, and I do feel  
11 that I can be fair and impartial.

12 THE COURT: Ma'am, what did your husband do  
13 before he retired?

14 MS. MOORE-PIRTLE: Automotive executive.

15 THE COURT: All right. Thank you very much.  
16 Mr. Brock?

17 MR. BROCK: My name is Alan Brock. I live in  
18 the city of Royal Palm Beach. I'm a supervisor at  
19 a drinking water plant for the City of Boynton  
20 Beach. I'm married. My wife is a supervisor for  
21 the Palm Beach County utilities. I have four  
22 children, the ages are 46, 40, 36, and 30.

23 THE COURT: And what do they do?

24 MR. BROCK: Okay. Let's see. The oldest  
25 one, the oldest one is unemployed. The next one is

1 a housewife. The next one works for Maroone in  
2 Lake Worth as an insurance adjuster. And my  
3 youngest daughter is a housewife.

4 THE COURT: Thank you, sir. Go ahead and  
5 continue.

6 MR. BROCK: Okay. My wife was involved in a  
7 lawsuit injury, settled out of court. Nobody else  
8 other than that. I have not been on a jury before.  
9 I don't know anyone in the courtroom and I can be  
10 fair and impartial.

11 THE COURT: What type of lawsuit was that?  
12 Was it a personal injury lawsuit?

13 MR. BROCK: Personal injury.

14 THE COURT: And how long ago was that?

15 MR. BROCK: Fifteen years maybe.

16 THE COURT: All right. Nothing about that  
17 would affect your ability to --

18 MR. BROCK: No, sir.

19 THE COURT: -- review the evidence and judge  
20 this case solely upon the evidence and the law that  
21 I give you?

22 MR. BROCK: Right.

23 THE COURT: All right. Thank you. Have a  
24 seat, sir.

25 All right. Then ms. Decker?

1 MS. DECKER: My name is Deeann Decker, I live  
2 in Jupiter. I am retired, I was in property  
3 management. My husband -- I'm married. My husband  
4 is retired, but he was an insurer of municipalities  
5 in New Jersey. I have three children, 45, 43 and  
6 39. One is in insurance, the other is an artist  
7 and my daughter is a homemaker.

8 I have been involved in a lawsuit, civil.  
9 One was for a car accident, personal injury, and  
10 the other was property damage on a building that I  
11 own. I don't know if my family has been involved  
12 in lawsuits really. I don't think so.

13 I sat on a jury, civil jury. One was for  
14 drug possession and we reached a verdict and the  
15 other was personal injury and that was settled  
16 outside the courtroom. I don't know anyone in the  
17 courtroom. And, yes, I believe I could make a fair  
18 judgment.

19 THE COURT: All right. Were you the  
20 foreperson on either one of those juries?

21 MS. DECKER: No.

22 THE COURT: Thank you very much.

23 Miss Covetskie?

24 MS. COVETSKIE: Hi, my name is  
25 Jenny Covetskie. I live in Wellington, Florida.

1 I'm currently a homemaker. I'm married. My  
2 husband is a Palm Beach County school police  
3 officer. I have two children, two daughters. One  
4 is 24, the other is 22. My oldest daughter has her  
5 own hair salon, she's a hair stylist. My youngest  
6 is hopefully soon to be a rock star.

7 And, yes, I was involved in a lawsuit, a  
8 personal injury lawsuit. It settled recently in  
9 January. And I don't know of any relatives or  
10 friends that are involved in a lawsuit. And I  
11 never served on a jury before. And I do, not  
12 personally, know Mr. Santamaria. And I can be an  
13 impartial juror in this case, fair and impartial  
14 juror.

15 THE COURT: That case that you just settled,  
16 was that arose out of a motor vehicle accident?

17 MS. COVETSKIE: Yes.

18 THE COURT: Has that been settled and  
19 resolved to your satisfaction?

20 MS. COVETSKIE: Yes.

21 THE COURT: I take it you know of  
22 Mr. Santamaria, but you don't know him personally;  
23 is that correct?

24 MS. COVETSKIE: Right.

25 THE COURT: Is there anything about what you

1 know about him that would affect your ability to  
2 listen to the evidence and judge him fairly and  
3 honestly?

4 MS. COVETSKIE: I just appreciate everything  
5 he's been doing for us.

6 THE COURT: Okay. Thank you very much. We  
7 may have some more inquiry on that.

8 All right. Now, next one is Miss Kimberly;  
9 is that correct?

10 MS. KIMBERLY: Yes. My name is Amy Kimberly.  
11 I live in West Palm Beach. I'm a fire inspector.  
12 I'm married. My husband is a firefighter. We have  
13 two children, they are 11 and 7. They're not  
14 adults. I have been involved in lawsuits related  
15 to child custody of my oldest son and death  
16 benefits, he died when he was young.

17 And let's see, I don't know any close friends  
18 or relatives that have been involved in lawsuits.  
19 I have never been selected for a jury. I don't  
20 know anyone in the courtroom. And, yes, I could be  
21 fair and impartial.

22 THE COURT: I'm sorry. I didn't get what you  
23 did for a living?

24 MS. KIMBERLY: A fire inspector.

25 THE COURT: A fire inspector. Okay. Very

1 good. As such, have you had to testify before?

2 MS. KIMBERLY: No.

3 THE COURT: Thank you very much.

4 Jennifer -- what is it, Perricelli?

5 MS. PERRICELLI: Perricelli.

6 THE COURT: Perricelli.

7 MS. PERRICELLI: All right. I'm  
8 Jennifer Perricelli. I live in Lake Worth. Right  
9 now, I'm trying to get back to school, I was a  
10 student, I'm trying to get back to school. And I  
11 clean houses to make a living.

12 I'm not married, I am single. I don't have  
13 any children. I've been involved in a lawsuit, I  
14 guess you would call it a personal injury, accident  
15 lawsuit. It has been settled. And my father was  
16 also in a lawsuit with me because he was the driver  
17 in the car of another lawsuit. So that hasn't been  
18 settled yet.

19 Never been on a jury. I don't know anybody  
20 in the courtroom. And I can be fair and impartial.

21 THE COURT: All right. Anything about the  
22 experience involved in that litigation with the  
23 claim that you made, either on your behalf or your  
24 father's behalf, that would affect your ability to  
25 listen to the evidence in this case and judge this

1 case solely upon the evidence and the law that I  
2 give you?

3 MS. PERRICELLI: No, sir.

4 THE COURT: All right. Thank you very much,  
5 I appreciate that.

6 Michelle Carriero?

7 MS. CARRIERO: Carriero.

8 THE COURT: All right, please.

9 MS. CARRIERO: My name is Michelle Carriero.  
10 I live in West Palm Beach. I don't have a job but  
11 I work for my mom for food. I'm single, I don't  
12 have no kids. I don't know anybody at all. So  
13 I've been in jury duty a long time ago. I don't  
14 know anybody in the courthouse. I guess that's  
15 all -- yeah (inaudible) I can be fair and  
16 impartial.

17 THE COURT: I'm sorry?

18 MS. CARRIERO: Yeah, I can't pronounce the  
19 last one. I can be impartial.

20 THE COURT: Oh. Can you be a fair and  
21 impartial juror on this case?

22 MS. CARRIERO: Yeah.

23 THE COURT: All right. You said you were  
24 involved in a lawsuit or a claim?

25 MS. CARRIERO: No.

1 THE COURT: No, did I miss that? All right.

2 MS. CARRIERO: No, I was in jury duty.

3 THE COURT: But you do work for your mother.  
4 What do you do for her?

5 MS. CARRIERO: I do the cashier for the food.

6 THE COURT: All right. Thank you very much.

7 Mr. Zimmerman?

8 MR. ZIMMERMAN: My name is Lonnie Zimmerman.  
9 I live in Boynton Beach, currently work at Lowe's.  
10 I am married. My wife is a house maker, homemaker.  
11 I have two children, 20 and 23. They're both in  
12 college. Yes, I've been involved in a lawsuit, it  
13 was a motorcycle accident. Don't know of any close  
14 relatives or friends.

15 Never been on a jury before. Don't know  
16 anybody in the courtroom. And, yes, I think I  
17 could be fair and impartial.

18 THE COURT: The motor vehicular accident, has  
19 that been resolved?

20 MR. ZIMMERMAN: Yes, it has, sir.

21 THE COURT: And anything about that that  
22 would affect your ability to listen to the evidence  
23 and judge --

24 MR. ZIMMERMAN: I don't think so.

25 THE COURT: -- this case fairly?

1 MR. ZIMMERMAN: Sure.

2 THE COURT: All right. Thank you very much.

3 MS. BOYD: I'm Beverly Boyd. I live in Palm  
4 Beach Gardens. I'm retired currently. I'm  
5 married. My husband is retired, a financial  
6 executive. My children are two boys, one is 36 and  
7 one is 34. The 36-year-old is a professional  
8 golfer. The 34-year-old is a financial analyst,  
9 Wall Street.

10 I have never been involved a lawsuit, nor  
11 have close friends or relatives. I have been on a  
12 jury before, it was a civil case and a verdict was  
13 reached. And I don't know anyone in the courtroom  
14 and I think I can be fair.

15 THE COURT: Were you the foreperson on that  
16 jury?

17 MS. BOYD: No.

18 THE COURT: What did you do before you  
19 retired?

20 MS. BOYD: A university professor. I'm a  
21 nurse by background, I taught healthcare  
22 administration.

23 THE COURT: All right. Thank you very much.  
24 Norbert Polacek?

25 MR. POLACEK: It's Bert Polacek.

1 THE COURT: My apologies. I kind of  
2 butchered that one.

3 MR. POLACEK: Well, it was pretty close.  
4 I live in Boca. I'm an insurance broker.  
5 I'm divorced. I have two kids, 17 and 19, they're  
6 both students. Never been involved in a lawsuit  
7 and I'm not aware of any friends or relatives who  
8 have either. I've never been on a jury before. I  
9 didn't know anyone here. And I can be fair and  
10 impartial.

11 THE COURT: You said you were an insurance  
12 broker?

13 MR. POLACEK: Yes.

14 THE COURT: Are you involved in the claims  
15 process at all?

16 MR. POLACEK: No.

17 THE COURT: All right. Thank you very much,  
18 sir.

19 Is it Rachael Woodward?

20 MS. WOODWARD: Yes. My name is  
21 Rachael Woodward. I currently live in Delray. I'm  
22 a registered nurse for an emergency department of a  
23 trauma hospital. I am divorced. I have a  
24 five-year-old son. I have never been involved in a  
25 lawsuit, neither do I know of anyone who has. I

1 have never served on a jury. I do not know anyone  
2 in this courtroom. And I believe I could be fair  
3 and impartial.

4 THE COURT: All right. Thank you very much.

5 Am I missing anybody back there?

6 Miss Rivers?

7 MS. RIVERS: Rivers.

8 THE COURT: Rivers. All right. Go ahead.

9 MS. RIVERS: My name is Samella Rivers. I  
10 live in South Bay, Florida. I am a bus driver for  
11 Palm Beach County Head Start. I am divorced and  
12 I'm the mother of two children. My youngest son is  
13 deceased and my oldest one is 43 years old, he's a  
14 maintenance man.

15 And I have been in a lawsuit, a car accident.  
16 And I don't know if I have any close relatives or  
17 friends ever been involved in a lawsuit. And I've  
18 never served on a jury duty before. Don't know  
19 anyone in the courtroom. And I think I could be  
20 fair and impartial on a jury case.

21 THE COURT: Thank you very much.

22 Now, ladies and gentlemen, that concludes my  
23 questioning of you. I'm going to turn this over to  
24 the attorneys, they're going to ask you some  
25 additional questions and follow up on some of mine.

1 Keep in mind, this process only works if you're  
2 honest and you're frank about your responses and  
3 that's the important part about this.

4 The jury selection, if we don't get jurors  
5 who are open minded, who can listen to the evidence  
6 and judge this case solely upon that, then that's  
7 when the system gets skewed. It doesn't -- like I  
8 said, the fact of whether or not you're picked  
9 doesn't mean you're a bad person or anything of  
10 that nature, it just means in the eyes of the  
11 attorneys and the Court and so forth, that for some  
12 reason or another, maybe you didn't get reached,  
13 but more importantly, maybe it's not an appropriate  
14 case for you to sit on. But your honesty and your  
15 frankness will be most appreciated.

16 Thank you very much. I will turn this over  
17 to plaintiff's counsel at that time.

18 MR. MARIANI: Thank you, Your Honor.

19 PLAINTIFF'S QUESTIONS

20 MR. MARIANI: Good morning again, everyone,  
21 I'm John Mariani along with Dan Barsky, and I have  
22 the privilege of representing Mr. Santamaria. I'm  
23 just going to ask you some follow-up questions and  
24 really more than questions, I'm going to try to  
25 talk about and have you talk about some concepts

1 and some of your views.

2 Is there anybody who feels very strongly  
3 about gossip and rumors? Have you ever dealt with  
4 a situation where somebody in your organization or  
5 a neighborhood or whatever was spreading gossip,  
6 anybody have a view about that?

7 Okay. Let me tell you a little something  
8 about what plaintiff is attempting to prove here.  
9 Mr. Santamaria is a County Commissioner and he  
10 represents District 6, and I think two or three of  
11 you live in District 6. In the beginning of the  
12 campaign for when he ran for reelection in 2010,  
13 the defendant published a document that included --

14 THE COURT: Counsel, I don't want to get too  
15 case specific here.

16 MR. MARIANI: Yes, Your Honor.

17 THE COURT: I've given them the information,  
18 I think that is sufficient to make a determination  
19 whether or not they can sit on this.

20 MR. MARIANI: Fair enough, Your Honor.

21 THE COURT: It's just a defamation, whether  
22 or not something was published maliciously. And  
23 you'll be getting specific jury instructions. And  
24 that's really all you need to know about this case  
25 at this particular point.

1                   Go ahead, sir.

2                   MR. MARIANI: Yes, sir.

3                   Miss Decker, you said you're a property  
4 manager?

5                   MS. DECKER: Yes.

6                   MR. MARIANI: And what type of property do  
7 you manage?

8                   MS. DECKER: Well, I did manage apartment  
9 buildings that we owned and also I have an art  
10 gallery in Hobe Sound and a five-story tower in  
11 New Jersey.

12                   MR. MARIANI: As the owner and manager of  
13 those properties, did you ever have to bring any  
14 lawsuits against tenants or others?

15                   MS. DECKER: Yeah, yeah. Landlord/tenant.

16                   MR. MARIANI: Did any of that turn you off  
17 about the judicial system that you couldn't serve  
18 properly on this jury?

19                   MS. DECKER: No.

20                   MR. MARIANI: Miss Wilson, you were a Court  
21 Reporter; is that right?

22                   MS. WILSON: Yes.

23                   MR. MARIANI: In your court reporting, how  
24 many trials did you do, do you remember?

25                   MS. WILSON: Thousands.

1 MR. MARIANI: Thousands?

2 MS. WILSON: I worked in criminal courts for  
3 30 years.

4 MR. MARIANI: Good for you. So you've seen a  
5 lot about the inside of the judicial process from  
6 your chair?

7 MS. WILSON: Yes.

8 MR. MARIANI: Okay. Is there anything about  
9 that experience that has turned you off about the  
10 judicial process? Will you be fair and reasonable  
11 in deciding the issues here?

12 MS. WILSON: I think it's fair. I think it's  
13 very fair.

14 MR. MARIANI: Did anybody ever have  
15 experience or have anybody in their extended family  
16 that worked for a newspaper or a media company like  
17 a television company or a radio company?

18 Mr. Brock, what do you think free speech  
19 means?

20 MR. BROCK: It means you can say what you  
21 want.

22 MR. MARIANI: And do you take that to mean  
23 you can say whatever you want under any  
24 circumstances?

25 MR. BROCK: I believe so, yes.

1 MR. MARIANI: Do you think there's any limits  
2 on what free speech means?

3 MR. BROCK: Well, I think I wouldn't get up  
4 in this courtroom and start cussing somebody out if  
5 that's what you mean.

6 THE COURT: It better not be the judge, I'll  
7 tell you right now.

8 MR. BROCK: There's a limit to where I would  
9 go with that, of course, yes.

10 MR. MARIANI: So do you have any views on how  
11 you would define a limit of free speech?

12 MR. BROCK: Just make sure I'm in the right  
13 in what I say and it doesn't come back to haunt me.

14 MR. MARIANI: Does anybody disagree with  
15 that? Would anybody take a different view of free  
16 speech?

17 How about Mr. Latos, what is your idea of  
18 free speech?

19 MR. LATOS: It sounds like we're getting into  
20 the area of defamation, right? I mean, I think you  
21 have a right to say whatever you like. Whether  
22 that fits decorum or is appropriate and no matter  
23 how you define appropriateness is another question.

24 MR. MARIANI: Who do you think should define  
25 appropriateness?

1 MR. LATOS: I think it depends. It depends  
2 on the nature of what was said and the nature of  
3 who was affected and how they were affected and  
4 whether there is, you know, some potential  
5 legalities around that. The truth should come into  
6 play, I would think. It's an important factor.

7 MR. MARIANI: And, Miss Brookins-Kelle, what  
8 do you feel about free speech?

9 MS. BROOKINS-KELLE: As long as it's true,  
10 why not say it? I mean, if it's -- obviously, if  
11 it's a lie, then that's a whole separate issue.  
12 However, if you say, well, Anna's only five-one.  
13 Well, that's true. Whatever my sensitivities  
14 towards being short, that's a whole separate issue.

15 MR. MARIANI: What about somebody who is out  
16 and pulls together information and just clumps it  
17 together and sends it out and there's some untruths  
18 in that, would you hold that person responsible?

19 MS. BROOKINS-KELLE: Well, then that as a  
20 whole is not the truth. If every one in there is  
21 the truth, that's one thing. If there is certain  
22 pieces in there that's not true, then that  
23 collectively as a whole is not the truth, it's  
24 taken totally out of context.

25 MR. MARIANI: Miss Riggle, what is your view

1 on that issue?

2 MS. RIGGLE: On the free speech?

3 MR. MARIANI: Yes.

4 MS. RIGGLE: I also believe that we're free  
5 to say what we want. I truly also believe it  
6 depends how you say it. But I think you're an  
7 American and it is free speech.

8 MR. MARIANI: Do you think there is any limit  
9 on free speech?

10 MS. RIGGLE: Yes. Again, it goes back to a  
11 person's -- you know, you've got to be careful what  
12 you're saying, of course, and that it's not lies  
13 that are out there, but yes.

14 MR. MARIANI: So would you change your views  
15 if we're talking about a campaign? For example,  
16 this is an election year, people are doing a lot of  
17 different campaigning, a lot of different  
18 advertising, all of that falls under free speech.  
19 But what is your view about the campaign ads and  
20 things like that?

21 MS. RIGGLE: Honestly, I don't pay attention  
22 to a lot of them because I feel that it's a lot of  
23 personal views and I never know what to believe and  
24 what not to believe, so I'd rather not listen to  
25 it.

1 MR. MARIANI: Miss Lazarevic, do you have a  
2 view about free speech?

3 MS. LAZAREVIC: We all have the right of  
4 saying what you want to say, but I guess everybody  
5 has its own story. When you say whether it's  
6 appropriate or no, each side has its own story.

7 MR. MARIANI: So who should decide what  
8 appropriate speech is, do you think?

9 MS. LAZAREVIC: Depending upon the situation,  
10 you should have common sense, also, of what to say  
11 and when to say it, how to say it.

12 MR. MARIANI: Miss Zheng, good morning. Can  
13 you tell us your view of free speech?

14 MS. ZHENG: (Shakes head.)

15 MR. MARIANI: No? Okay. Thank you. Do you  
16 have trouble speaking English, may I ask?

17 MS. ZHENG: A little bit. I not really  
18 understand what you're saying.

19 MR. MARIANI: Okay. Thank you.

20 MS. ZHENG: Sorry.

21 MR. MARIANI: Mr. Walker, good morning, sir.  
22 What is your view on free speech?

23 MR. WALKER: Well, I feel if it's not the  
24 truth, then you shouldn't say it. If you take  
25 something out of the middle of a sentence to make

1 your agenda sound right, then it's not -- that's  
2 not correct. You shouldn't do that. You shouldn't  
3 do that.

4 MR. MARIANI: Miss Harnish, good morning to  
5 you.

6 MS. HARNISH: Good morning.

7 MR. MARIANI: Would you share your views on  
8 free speech and is there any limit on it?

9 MS. HARNISH: I feel like anybody can say  
10 what they want at any time. And I think I would  
11 leave it up to the people to figure out if it's the  
12 truth or not.

13 MR. MARIANI: So would you not have a problem  
14 if people spread rumors about other people, say in  
15 your neighborhood?

16 MS. HARNISH: I would have a problem, but I  
17 couldn't tell if they were rumors or not. I  
18 wouldn't like somebody talking about me behind my  
19 back, but I feel like they need to say that, then  
20 that's free speech. We're not a communist country.  
21 So people can say whatever they want.

22 MR. MARIANI: Regardless of the consequences,  
23 do you think?

24 MS. HARNISH: Well, it's still a free  
25 country. We can say what we want.

1 MR. MARIANI: What if somebody --

2 MS. HARNISH: The truth or not.

3 MR. MARIANI: Oh, I'm sorry.

4 MS. HARNISH: I'm sorry. What?

5 MR. MARIANI: No, I interrupted you. You  
6 said whether it's true or not?

7 MS. HARNISH: Yeah. It's up to the other  
8 individual -- other person to find out if it's true  
9 or not themselves.

10 MR. MARIANI: I see. Now, is that your view  
11 regardless of what the nature of the comment is?

12 MS. HARNISH: Yes.

13 MR. MARIANI: For example, if somebody said  
14 you dyed your head and you didn't, that's one level  
15 of rumor, maybe. But how about if somebody said  
16 that a person was a criminal and that was false,  
17 would that fit within your category?

18 MS. HARNISH: I feel that they're allowed to  
19 say it, yes.

20 MR. MARIANI: Okay.

21 MS. HARNISH: And people are innocent until  
22 proven guilty on that case.

23 MR. MARIANI: I see. So if the law said that  
24 particular person said something that was  
25 considered defamation under the law and that was

1 proven to you, would you accept that rule and would  
2 you apply that rule if a judge told you to apply  
3 the rule?

4 MS. HARNISH: Yes.

5 MR. MARIANI: Mr. Gomez.

6 MR. GOMEZ: Yes.

7 THE COURT: Thank you for your service as the  
8 Judge mentioned.

9 MR. GOMEZ: You're welcome.

10 MR. MARIANI: What is your view about free  
11 speech?

12 MR. GOMEZ: It goes so much -- it goes so  
13 much of a way. Like in the Marine Corps, we're  
14 taught -- you know, we're based on honor, courage  
15 and commitment. So you ask me, I have -- I might  
16 have a different view on freedom of speech than  
17 somebody else. But to me, it means, you know,  
18 yeah, we're free to speak as long as it's the  
19 truth. There's sometimes where, I don't know,  
20 people are allowed to say what they want to say,  
21 but you can't really control what they say.

22 But if you were to ask me, like I said, I  
23 would, you know, not to do that. It's freedom of  
24 speech, yes, we can say what we want to a certain  
25 point, you know, but that's what I think freedom of

1 speech is.

2 MR. MARIANI: Do you think when people speak,  
3 they have a responsibility in what they say?

4 MR. GOMEZ: Yes. You have to have a certain  
5 responsibility and common sense in what you're  
6 saying. You can't just open your mouth for no  
7 reason.

8 MR. MARIANI: And what is your views about  
9 political campaigns and the mud slinging that goes  
10 on in political situations?

11 MR. GOMEZ: As long as it's all the truth,  
12 you know, it's allowed, that's my view. You know,  
13 as long as it's true, let the man best win. You  
14 know, we all have, you know, different views, we  
15 all have things we want to do. So let the best man  
16 win and then I think that's it. As long as it's,  
17 you know, real and appropriate about what the other  
18 person is saying about the other person, then I  
19 think it's, you know, appropriate. You know, like  
20 I said, as long as it's the truth, you know, you  
21 can't just base it on false information or make  
22 lies up.

23 MR. MARIANI: What if something is twisted in  
24 a way that makes it untrue, what would your view be  
25 about that in a political campaign?

1           MR. GOMEZ:  If it's purposely then, you know,  
2           I think it's wrong.  If it was not meant to -- you  
3           know, if it was just done out of action, not  
4           thinking, maybe there's a slight chance it can be,  
5           you know.  But I don't know, it's just -- that's  
6           what I think.

7           MR. MARIANI:  Mr. Zimmerman?

8           MR. ZIMMERMAN:  Yes.

9           MR. MARIANI:  Good morning, sir.

10          MR. ZIMMERMAN:  How are you?

11          MR. MARIANI:  Good.  How are you doing?

12          MR. ZIMMERMAN:  Okay.

13          MR. MARIANI:  What is your view about free  
14          speech and campaign type mud slinging?

15          MR. ZIMMERMAN:  The campaign stuff, I don't  
16          really listen to.  They all sound like they're full  
17          of it usually.  But as far as free speech, I  
18          usually don't open my mouth unless I know it to be  
19          true, unless it's about me, okay, then I'm free to  
20          say what I want.  Yeah, you're free to say whatever  
21          you want to say, just be prepared for the  
22          consequences.

23          MR. MARIANI:  Do you think there's any  
24          responsibility associated with speaking your mind?

25          MR. ZIMMERMAN:  I was taught to keep my mouth

1 shut if you were going to hurt others by what you  
2 were saying. And I guess that depends on what my  
3 perspective is as far as hurting somebody, it might  
4 not be the same as someone else's.

5 MR. MARIANI: Thank you, sir.

6 MR. ZIMMERMAN: You're welcome.

7 MR. MARIANI: I'm going to butcher the name,  
8 I apologize. Is it Carriero?

9 MS. CARRIERO: Yes. It's Carriero.

10 MR. MARIANI: Carriero. I'm sorry. My  
11 apology.

12 Did you say you were working for your mother  
13 as a cashier?

14 MS. CARRIERO: Yes.

15 MR. MARIANI: Is that in a business she has?

16 MS. CARRIERO: Yes, she has her own business.

17 MR. MARIANI: Okay. And I may have made a  
18 mistake, but are you -- are you attempting to get a  
19 job or are you just working with her?

20 MS. CARRIERO: I'm going to get a job. It's  
21 just hard right now.

22 MR. MARIANI: Okay. And have you watched  
23 many political campaigns recently?

24 MS. CARRIERO: Sometimes, not a lot ever.

25 MR. MARIANI: Do you have a view about free

1 speech and whether there is any limits on free  
2 speech?

3 MS. CARRIERO: Yes.

4 MR. MARIANI: What is your view?

5 MS. CARRIERO: It's a right to have free  
6 speech. I don't know how to say it. I'm sorry.  
7 I'm not like that. I don't say nothing to anybody.  
8 I keep everything in my world because it's none of  
9 their business. I don't want to hurt people's  
10 feelings, I'm not like that, so...

11 MR. MARIANI: Okay. Thank you.

12 And Miss Perricelli?

13 MS. PERRICELLI: Yes.

14 MR. MARIANI: What is your view of free  
15 speech?

16 MS. PERRICELLI: I feel like free speech is a  
17 privilege, but it's not a privilege that should be  
18 abused. Like if you're looking out for yourself,  
19 you should know better than if you're going tell a  
20 lie on somebody, that wouldn't be good because that  
21 might just come back to you. You know what I mean?  
22 You have to be knowledgeable about what you're  
23 saying, you can't just say it.

24 But it's a good privilege that we do have the  
25 right to say things because in other places, people

1 get tortured, they get punished for saying certain  
2 things they say. It's a very good privilege we  
3 have, but it shouldn't be abused.

4 MR. MARIANI: I appreciate that.

5 Miss Kimberly, good morning.

6 MS. KIMBERLY: Good morning.

7 MR. MARIANI: Would you share your view about  
8 free speech and whether there's any limit in your  
9 view?

10 MS. KIMBERLY: I'm sure there's a limit, but  
11 I don't think I could actually define it.  
12 Everybody's ethics are so different that, you know,  
13 some people think there's a -- you know, they can  
14 say whatever they want; whereas, you know, I was  
15 brought up that you say what's true and you don't  
16 spread lies or rumors or things likes that. But to  
17 be sure, I would probably need a legal definition  
18 to be able to really truly define it and apply it.

19 MR. MARIANI: Well, we won't get into that  
20 now, but if you were on the jury and the Judge did  
21 give you a legal definition, would you be able to  
22 apply that legal definition to the facts as you  
23 heard them as the testimony reveals?

24 MS. KIMBERLY: Absolutely.

25 MR. MARIANI: Okay. So whichever way the law

1 would direct you, you would feel that you could  
2 follow that and reach a just decision?

3 MS. KIMBERLY: Yes.

4 MR. MARIANI: Thank you.

5 Bert?

6 MR. POLACEK: Hi, thank you.

7 MR. MARIANI: What is your view of free  
8 speech and whether there's limits on it?

9 MR. POLACEK: Obviously, I'm all for free  
10 speech. I'm not sure that -- what the limits would  
11 be. I'm not sure what, who the -- who the person  
12 would be deciding what those limits are. But, you  
13 know, for the most part, I think it's a great part  
14 of who we are even though some of it on the fringes  
15 is irresponsible, makes you mad, utterly false.  
16 But, again, I don't know how you would box it in  
17 and what the consequences of that would be, so --

18 MR. MARIANI: Well, the Judge mentions that  
19 whoever is selected here to be the jury is going to  
20 represent the mores of the society in this area.  
21 So it's going to be up to that group of people to  
22 work with the Judge, listen to the evidence, and  
23 the Judge is going to give those people instruction  
24 about how to apply the law to whatever the facts  
25 are that you find.

1           So in that circumstance, do you think if you  
2 heard the limit from the Judge, that you could  
3 apply that limit to the facts?

4           MR. POLACEK: Sure. Legal limit, right.

5           MR. MARIANI: Yes. Do you have any view  
6 whether there should be a limit? If something is  
7 legally defamatory and the Judge defines that and  
8 you understand that, would you have any problem  
9 applying that legal definition to find something to  
10 be defamatory if the facts prove to you that it  
11 was?

12          MR. POLACEK: Absolutely. I would look to  
13 the law to make that definition.

14          MR. MARIANI: Okay.

15          MR. POLACEK: Does that answer your question?

16          MR. MARIANI: Yes, it does. Thank you, sir.

17          Miss Boyd, good morning.

18          MS. BOYD: Good morning.

19          MR. MARIANI: Same question to you.

20          MS. BOYD: Same answer, essentially.

21          MR. MARIANI: Really?

22          MS. BOYD: Yeah.

23          MR. MARIANI: Do you have any views about  
24 whether there should be or should not be a limit to  
25 free speech?

1 MS. BOYD: Well, generally, I really do  
2 believe it should be free and open speech.  
3 Whatever is a legal kind of definition of  
4 defamation, I don't know what it is or what the  
5 definition would be, but I certainly could apply  
6 that definition to the facts heard.

7 MR. MARIANI: And would you keep an open mind  
8 until you heard all of the evidence and the  
9 definitions that the Judge gave you?

10 MS. BOYD: Yes.

11 MR. MARIANI: Thank you.

12 Mr. Brock, you live in Royal Palm Beach.  
13 Mr. Santamaria is the commissioner that represents  
14 that area. Have you ever interacted with  
15 Mr. Santamaria on a personal level?

16 MR. BROCK: No, sir.

17 MR. MARIANI: Have you ever seen him speak?

18 MR. BROCK: Nope.

19 MR. MARIANI: Okay.

20 MR. BROCK: I stay out of politics.

21 MR. MARIANI: Do you --

22 MR. BROCK: Everybody has got everything bad  
23 to say about everybody all the time anyway.

24 MR. MARIANI: Sir, may I ask, do you vote in  
25 local politics?

1 MR. BROCK: Yes. Sometimes, not all the  
2 time.

3 MR. MARIANI: And Miss Covetskie?

4 MS. COVETSKIE: Yes.

5 MR. MARIANI: Sorry. I'm not pronouncing  
6 that correctly, am I?

7 MS. COVETSKIE: Covetskie.

8 MR. MARIANI: Okay. Thank you. You live in  
9 Wellington?

10 MS. COVETSKIE: Yes.

11 MR. MARIANI: That's also within  
12 Mr. Santamaria's district.

13 MS. COVETSKIE: Yes.

14 MR. MARIANI: Have you ever interacted  
15 directly Mr. Santamaria?

16 MS. COVETSKIE: No.

17 MR. MARIANI: Have you ever seen him speak?

18 MS. COVETSKIE: Not really.

19 MR. MARIANI: Okay. Is there anything about  
20 living within the district that would affect your  
21 ability to be fair and apply the laws that the  
22 Judge directed you to apply if you were a member of  
23 the jury?

24 MS. COVETSKIE: No.

25 MR. MARIANI: Is there anyone else that lives

1 within District 6?

2 Yes, Miss Rivers. I'm sorry, I can't see you  
3 behind the others. You live in South Bay, ma'am?

4 MS. RIVERS: Yes.

5 MR. MARIANI: Okay. And have you ever  
6 interacted with Mr. Santamaria on a personal level?

7 MS. RIVERS: No, sir.

8 MR. MARIANI: Okay. Is living within his  
9 district in any way going to interfere with your  
10 ability to be fair and impartial if you were a  
11 member of the jury?

12 MS. RIVERS: No.

13 MR. MARIANI: And follow what directions the  
14 Judge asked you to follow?

15 MS. RIVERS: Yes, I'm going to follow it.

16 MR. MARIANI: You would be able to do that,  
17 ma'am?

18 MS. RIVERS: Yes, sir.

19 MR. MARIANI: Now, has anybody here  
20 participated in public protests? You know, marched  
21 on Washington, anything like that?

22 MS. MOORE-PIRTLE: I have.

23 MR. MARIANI: Would you describe that for us,  
24 Miss Moore-Pirtle?

25 MS. MOORE-PIRTLE: Yes. It was a civil

1 rights demonstration in the '70s when I was a  
2 college student.

3 MR. MARIANI: And you did that to exercise  
4 your right of association and right to free speech,  
5 did you think that way back then?

6 MS. MOORE-PIRTLE: Did I?

7 MR. MARIANI: Think about exercising your  
8 right of association and free speech --

9 MS. MOORE-PIRTLE: Yes.

10 MR. MARIANI: -- when you marched?

11 MS. MOORE-PIRTLE: Yes.

12 MR. MARIANI: Did you feel that was very  
13 effective?

14 MS. MOORE-PIRTLE: Yes, I do.

15 MR. MARIANI: Anybody else involved in  
16 anything like that?

17 Yes, sir.

18 MR. LATOS: A protest against abortion  
19 several years ago.

20 MR. MARIANI: Here in Florida or somewhere  
21 else?

22 MR. LATOS: In Boca Raton.

23 MR. MARIANI: Oh, in Boca Raton?

24 MR. LATOS: Yes.

25 MR. MARIANI: And without getting into the

1 detail of that, you felt free to do that,  
2 obviously, that's part of our rights here?

3 MR. LATOS: Of course.

4 MR. MARIANI: And when you did that, did you  
5 try to do it in a responsible way?

6 MR. LATOS: Yes.

7 MR. MARIANI: Okay. Does anybody have such  
8 strong -- I'm not going to ask anybody your party  
9 affiliation, but I do want to ask a general  
10 question. Does anybody have such a strong feeling  
11 about one party or another that the fact that  
12 Mr. Santamaria is a Democrat, is that something  
13 that any of you would hold against him and not  
14 listen to his case and wait to decide this case  
15 until you've heard all of the evidence?

16 Feel free to mention that if that would be a  
17 problem. Okay. No one? Thank you. That's very  
18 good.

19 Now, if Mr. Santamaria is able to prove his  
20 case, let me ask Mr. Walker. If he's able to prove  
21 his case, would there be anything in your mind that  
22 would hold you from following the Judge's direction  
23 and giving Mr. Santamaria an award?

24 MR. WALKER: No.

25 MR. MARIANI: Okay. Now, conversely, if

1 Mr. Santamaria doesn't prove his case, would there  
2 be any reason for you not to -- decide not to give  
3 Mr. Santamaria an award?

4 MR. WALKER: No.

5 MR. MARIANI: So you're prepared to wait  
6 until the end of the evidence to decide whatever  
7 you way you think the evidence shows; is that  
8 right?

9 MR. WALKER: Yes.

10 MR. MARIANI: Did anybody ever write for a  
11 college newspaper or high school newspaper?

12 You did?

13 MS. DECKER: In college I did for political  
14 campaigns in New Jersey.

15 MR. MARIANI: Oh, you did?

16 MS. DECKER: Yes.

17 MR. MARIANI: When was that?

18 MS. DECKER: A long time ago, probably  
19 20 years ago.

20 MR. MARIANI: What type of writing did you  
21 do?

22 MS. DECKER: Political. Campaign work.

23 MR. MARIANI: Campaign literature,  
24 advertising and that sort of thing?

25 MS. DECKER: Uh-huh. Right. The first

1 person I did it for was Chris Christie when he ran  
2 for County Commissioner.

3 MR. MARIANI: Oh, did you?

4 MS. DECKER: Yes.

5 MR. MARIANI: When you did that work, were  
6 you taught any --

7 MS. DECKER: You had to be careful what you  
8 wrote.

9 MR. MARIANI: -- say limits?

10 MS. DECKER: Yes.

11 MR. MARIANI: And what is your recollection  
12 of what you were told back then?

13 MS. DECKER: Well, I had a journalism minor  
14 in college.

15 MR. MARIANI: Oh, you did?

16 MS. DECKER: So that's where I learned  
17 writing.

18 MR. MARIANI: So in terms of that campaign  
19 advertising, did you -- did people write down  
20 specific rules or how were the limits of what you  
21 would say and not say determined?

22 MS. DECKER: Well, I discussed with the  
23 person, the candidate, what your goals are going to  
24 be and what you were going to put down and you just  
25 went through all of that, but you had to be very

1 careful what you said.

2 MR. MARIANI: And once you wrote something,  
3 did anybody review it for accuracy?

4 MS. DECKER: Yes, the newspaper editors.

5 MR. MARIANI: I see. And what newspapers  
6 were these published at?

7 MS. DECKER: Our local newspapers in Wayne,  
8 New Jersey, and Pequannock, New Jersey, in Morris  
9 County.

10 MR. MARIANI: So how long have you lived in  
11 Florida?

12 MS. DECKER: Thirty years, off and on.

13 MR. MARIANI: And since you came to  
14 Florida --

15 MS. DECKER: No.

16 MR. MARIANI: -- have you done any writing in  
17 political type of literature?

18 MS. DECKER: No.

19 MR. MARIANI: Any other type of writing?

20 MS. DECKER: No.

21 MR. MARIANI: Has anybody ever written an  
22 editorial and sent it in to the newspaper, Palm  
23 Beach Post or Sun Sentinel or any other newspaper  
24 to get it published?

25 Ma'am, did you?

1 MS. DECKER: Yes.

2 MR. MARIANI: And what topics did you write  
3 on?

4 MS. DECKER: The last topic I wrote on was --  
5 it had to do with a criminal case of a sentencing  
6 where they accused Judge McSorley of not listening  
7 to the family at sentencing. And I was sitting  
8 behind the family at the time. It was up in  
9 North County, and that didn't happen the way they  
10 said it did. And I just wrote a correction.

11 MR. MARIANI: That was the last one you  
12 wrote?

13 MS. WILSON: That was the last one. And I  
14 wrote one about my son, about the Pathfinders.

15 MR. MARIANI: Did your son win a Pathfinder's  
16 award?

17 MS. WILSON: Yes, he won a Pathfinder's award  
18 and they had the 20th year anniversary of the  
19 Pathfinders and where the kids were and so forth.  
20 And they left my son out.

21 MR. MARIANI: Oh, that's too bad.

22 MS. WILSON: And I wrote them about that.

23 MR. MARIANI: So how many editorials  
24 approximately have you written?

25 MS. WILSON: Maybe three.

1 MR. MARIANI: And tell us when you wrote  
2 those, what type of -- you know, did you do any  
3 investigation or when you wrote what you were  
4 talking about, for example, about the judge and the  
5 sentencing.

6 MS. WILSON: Well, I was there. I was at the  
7 sentencing. I was sitting behind the family and I  
8 know what happened. And what they were saying in  
9 the paper was untrue. It was very bad, a very bad  
10 situation. And I just...

11 MR. MARIANI: I see. So you wrote to correct  
12 that?

13 MS. WILSON: Yes, I wrote a correction.

14 MR. MARIANI: And it did get published?

15 MS. WILSON: Yes.

16 MR. MARIANI: So when you did that and it got  
17 published, what did you feel in terms of what you  
18 accomplished?

19 MS. WILSON: I was surprised they published.

20 MR. MARIANI: All right. Were you glad they  
21 published it?

22 MS. WILSON: Yes.

23 MR. MARIANI: Miss Lazarevic again. You're a  
24 banker, did you say?

25 MS. LAZAREVIC: Yes.

1 MR. MARIANI: And for which bank? I'm sorry.

2 MS. LAZAREVIC: It's Crown Bank.

3 MR. MARIANI: And what do you do there?

4 MS. LAZAREVIC: Financial services associate,  
5 which I'm on the desk, like opening accounts and  
6 selling annuities, regular banking accounts.

7 MR. MARIANI: How long have you lived in  
8 Florida?

9 MS. LAZAREVIC: Since 2001. I was just away  
10 for two years, I was in Rhode Island for almost two  
11 years. And after that, I moved back again here.

12 MR. MARIANI: And where are you from  
13 originally?

14 MS. LAZAREVIC: Yugoslavia.

15 MR. MARIANI: How long have you been in the  
16 United States?

17 MS. LAZAREVIC: Since 2001.

18 MR. MARIANI: Are you a citizen here?

19 MS. LAZAREVIC: Yes, I am.

20 MR. MARIANI: Congratulations.

21 MS. LAZAREVIC: Thank you.

22 MR. MARIANI: May I confer with counsel for a  
23 moment?

24 THE COURT: Absolutely.

25 MR. MARIANI: I'm going to just take a moment

1 to speak with Mr. Barsky.

2 Thank you, I'm not going to use up any more  
3 of your time. I appreciate all your answers and  
4 your honesty. And thank you.

5 THE COURT: Thank you, counsel.

6 Is defense counsel ready to proceed?

7 MS. KITTERMAN: Yes, Your Honor.

8 THE COURT: All right. You may do so.

9 DEFENDANT'S QUESTIONS

10 MS. KITTERMAN: Good morning, everyone. I  
11 know it's getting towards lunchtime, so I'll try  
12 not to take up too much of your time because I feel  
13 my stomach grumbling, too.

14 I just want to follow up on a few things. We  
15 talked a lot about First Amendment and how you feel  
16 about who is allowed to say what and when they're  
17 allowed to say it, and a lot of people mentioned  
18 that as long as it's true, it's okay to say. But I  
19 want to know if you thought something was true at  
20 the time you said it is that still okay or is  
21 that -- should that be excluded from the freedom of  
22 speech.

23 Miss Harnish, I believe you were a big  
24 proponent of freedom of speech.

25 MS. HARNISH: You can say whatever you want,

1 true or false, it doesn't matter.

2 MS. KITTERMAN: Okay. Mr. Gomez?

3 MR. GOMEZ: That's right.

4 MS. KITTERMAN: You stated that you were --  
5 you believed in the freedom of speech, but people  
6 need to watch what they say basically?

7 MR. GOMEZ: Yeah.

8 MS. KITTERMAN: If somebody said something  
9 and when they said it, they thought it might be  
10 true, would that infringe on their freedom of  
11 speech? Would they have the right to say something  
12 if they thought it was true?

13 MR. GOMEZ: Yeah, I think so. I mean, as  
14 long as -- yes, if it is true, I think so, yeah. I  
15 mean, as long as they thought and didn't really  
16 mean it or, you know, actually purposely did it,  
17 yeah, I'm sorry, you know, let it slide, okay,  
18 don't do it again. You know, yeah, why not.

19 MS. KITTERMAN: Okay. And Mr. Walker?

20 MR. WALKER: Yes.

21 MS. KITTERMAN: Good morning?

22 MR. WALKER: Hi.

23 MS. KITTERMAN: You stated that basically if  
24 somebody takes something out of the middle of it,  
25 they can't do that, that that -- you know, they're

1 twisting things around. If somebody published a  
2 document and they were looking into the background  
3 of somebody, and one of the things that they were  
4 looking into is whether or not something was true  
5 and they thought it was true, do you think that  
6 would be a violation of their freedom of speech?  
7 Do you think they're allowed to say that?

8 MR. WALKER: Yes. If they believe what  
9 they're saying, yes.

10 MS. KITTERMAN: Okay.

11 MR. WALKER: I mean, why would they not say  
12 it?

13 MS. KITTERMAN: Okay. So when you are  
14 looking at a document at its whole, is it your  
15 belief that you don't just take one of those  
16 documents out of it and read it on its own to  
17 determine whether or not that's a violation of the  
18 freedom of speech?

19 MR. WALKER: Well, see, if the document -- if  
20 what you're taking out still stays true to what the  
21 document says as a whole, then there's no problem  
22 with that. But if you're taking it out to make it  
23 look better than what it really is, then I think  
24 you're kind of in trouble then.

25 MS. KITTERMAN: Okay. Mrs. Moore-Pirtle?

1 MS. MOORE-PIRTLE: Yes.

2 MS. KITTERMAN: Good morning. You stated  
3 that you marched in a civil rights march back in  
4 the '70s?

5 MS. MOORE-PIRTLE: Yes, I did.

6 MS. KITTERMAN: What was that for?

7 MS. MOORE-PIRTLE: You know, I'm not even  
8 sure. It was a long time ago.

9 MS. KITTERMAN: Where was it?

10 MS. MOORE-PIRTLE: It was in Michigan.

11 MS. KITTERMAN: Do you believe that somebody  
12 has a right to say something if they think it is  
13 true?

14 MS. MOORE-PIRTLE: If they say it's true,  
15 think it's true, but you have to look at intent.  
16 They can't -- I mean, if you say something that may  
17 be injurious to the other party, you have to look  
18 at the intent and you have to be pretty sure of  
19 yourself, that you're not violating the civil  
20 rights of someone else by putting bad information  
21 out.

22 MS. KITTERMAN: Okay. If the Judge were to  
23 instruct you on specific areas of the law and they  
24 said, you can't look at intent, you have to look to  
25 see whether he knew that it was true, would you be

1           able to follow that law?

2           THE COURT: Counsel, that's -- first off,  
3           that's an impermissible question. I will give you  
4           the law, is there anybody here that will not follow  
5           the law that I give you.

6           Now, there are limitations on freedom of  
7           speech and you need to know that, especially when  
8           you're dealing with public figures and so forth.  
9           You are going to get specific, legal instructions  
10          as to what, one, the standard of care and, two,  
11          what defamation is and what it isn't.

12          Now, other than that specific, I don't want  
13          any -- I don't want any commitments other than will  
14          you follow the law as I give it to you.

15          Is there anybody here that would not follow  
16          that law because of their personal beliefs, such as  
17          Miss -- what was it, Miss Harnish, you said that  
18          freedom of speech for right, wrong or indifferent,  
19          you ought to be able to say it. Well, there are  
20          certain limitations and if I give you the  
21          limitations on the law, will you follow the law or  
22          will you follow your personal conviction as you  
23          just stated?

24          MS. HARNISH: I will follow the law.

25          THE COURT: All right. That's what we need,

1 commitment. We are a country of laws and the rule  
2 of law is what matters.

3 MS. KITTERMAN: Yes, thank you.

4 THE COURT: Go ahead, ma'am.

5 MS. KITTERMAN: Thank you, Your Honor.

6 Has anybody ever ran in an election? You  
7 have?

8 MR. LATOS: Back in high school, just like  
9 Prom King kind of.

10 MS. KITTERMAN: Did you win?

11 MR. LATOS: Yes.

12 MS. KITTERMAN: Congratulations.

13 All right. Anybody else?

14 MS. HARNISH: Okay. I have. Association,  
15 condo associations, ran for president.

16 MS. KITTERMAN: Did you win?

17 MS. HARNISH: Yes.

18 MS. KITTERMAN: Were you opposed?

19 MS. HARNISH: Yes.

20 MS. KITTERMAN: And was there any type of  
21 campaigning going on?

22 MS. HARNISH: Yes, I went door to door and  
23 talked to the people.

24 MS. KITTERMAN: All right. Was there any  
25 type of political mud slinging going on?

1 MS. HARNISH: Huh-uh.

2 MS. KITTERMAN: Okay. Anybody else?

3 Anybody had a family member that has run for  
4 office?

5 MS. HARNISH: My husband, ex-husband.

6 MS. KITTERMAN: And what did he run for?

7 MS. HARNISH: Congress.

8 MS. KITTERMAN: Where, which Congress?

9 MS. HARNISH: In Wisconsin.

10 MS. KITTERMAN: Okay. Was he successful?

11 MS. HARNISH: No. Wrong party, wrong time.

12 MS. KITTERMAN: Did that campaign leave you  
13 with any biased opinions about the political  
14 election process?

15 MS. HARNISH: Yes.

16 MS. KITTERMAN: What are they? Do you think  
17 you would be able to be fair regardless of those  
18 biases?

19 MS. HARNISH: Yes.

20 MS. KITTERMAN: All right. We've discussed  
21 that Mr. Santamaria is a commissioner of county  
22 six -- or County Commissioner of District 6. Did  
23 anybody vote in that election that lived in his  
24 district?

25 Ms. Covetskie, you voted in it?

1 MS. COVETSKIE: Yes.

2 MS. KITTERMAN: Did you vote for  
3 Mr. Santamaria?

4 MS. COVETSKIE: Yes.

5 MS. KITTERMAN: Miss Rivers, did you vote in  
6 the election?

7 MS. RIVERS: Well, I can't remember because I  
8 don't always vote in all of the elections, but I  
9 vote in some. So I can't remember whether I voted  
10 in his election or not.

11 MS. KITTERMAN: Okay. Have you had the  
12 opportunity to hear any of the election speech that  
13 was going on during the 2010 County Commission  
14 election?

15 MS. RIVERS: No.

16 MS. KITTERMAN: And, Mr. Brock, I believe you  
17 live in the district as well. And you said you  
18 don't get involved in politics?

19 MR. BROCK: No.

20 MS. KITTERMAN: But sometimes you vote?

21 MR. BROCK: Very seldom.

22 MS. KITTERMAN: Did you happen to vote --

23 MR. BROCK: No.

24 MS. KITTERMAN: -- in the 2010?

25 MR. BROCK: No.

1 MS. KITTERMAN: Has anybody ever felt like  
2 they were shunned by somebody in the government?  
3 Has anybody ever asked a commissioner for help with  
4 their community? No? Okay.

5 Do you think -- does anybody think that  
6 somebody who is running for an election has the  
7 duty to research their opponent? Mr. Latos?

8 MR. LATOS: I think it's wise, certainly.

9 MS. KITTERMAN: Okay. And do you believe  
10 that if they find some information out that they  
11 are entitled to print what they find?

12 MR. LATOS: They have the freedom to print  
13 whatever they want. But then again, I think  
14 there's more wisdom in printing what they find that  
15 they believe is factual and is applicable.

16 MS. KITTERMAN: Okay. And again, a question  
17 to you, if the person printing the information  
18 thought it to be true, would you think that that  
19 was -- that he would be protected by the freedom of  
20 speech?

21 MR. LATOS: I would think so.

22 MS. KITTERMAN: Okay. And Miss  
23 Brookins-Kelle, same question to you. If you  
24 thought that somebody -- or if you heard that  
25 somebody thought what they were printing was true,

1 would that be protected by freedom of speech?

2 MS. MOORE-PIRTLE: I believe so.

3 MS. KITTERMAN: Miss Riggle, you stated you  
4 don't listen much to political campaigns.

5 MS. MOORE-PIRTLE: Correct.

6 MS. KITTERMAN: There's a lot of mud slinging  
7 going on. Do you think that the political  
8 opponents just make up what they say about the  
9 other political opponent?

10 MS. BROOKINS-KELLE: I would hope they're not  
11 making it up. I hope they've researched it.

12 MS. KITTERMAN: Okay.

13 MS. BROOKINS-KELLE: I just find it boring  
14 and childish sometimes and that's why I turn it  
15 off.

16 MS. KITTERMAN: What level of research do you  
17 think that a political opponent needs to go to  
18 before they figure out whether something is true or  
19 not?

20 MS. BROOKINS-KELLE: You know, whether  
21 there's court documents, whether there is other  
22 articles that have been written, I would think that  
23 that person would want to at least go to that  
24 level, yes.

25 MS. KITTERMAN: Okay. Miss Wilson?

1 MS. WILSON: Yes.

2 MS. KITTERMAN: Do you think that if somebody  
3 thought what they were saying was true, that they  
4 would have a duty to go investigate it further?

5 MS. WILSON: Yes.

6 MS. KITTERMAN: Okay. Do you think that if  
7 somebody found information that is on publicly  
8 available --

9 MS. WILSON: You said that is publicly  
10 available?

11 MS. KITTERMAN: Yes. How much further  
12 research do you think that somebody would have to  
13 do?

14 MS. WILSON: I think it should be more  
15 research. Research as much as possible.

16 MS. KITTERMAN: Okay. If somebody  
17 represented they did as much research as they could  
18 and they were now asking the community to say  
19 whether or not this is somebody, would you find  
20 that would be protected speech?

21 THE COURT: Counsel, can I see you all up  
22 here.

23 (The following proceedings were held out of  
24 the hearing of the jury:)

25 THE COURT: All right. You're getting a

1 little case specific here. I don't like to ask  
2 jurors, potential jurors to define legal terms,  
3 that's inappropriate. You don't pretry your case,  
4 and so forth. You're asking them about the issues  
5 in this case and how they're going to rule and  
6 whether they would accept it; that's inappropriate.  
7 Just very generally and you don't ask anybody.

8 I'm surprised you didn't object. But how  
9 they voted, that's confidential, irrespective of  
10 who the parties are. The point is can they be fair  
11 to your client if he was or wasn't successful or  
12 whatever the case, that is fair. But not violating  
13 the right of silence and their right of privacy  
14 with regards to their votes.

15 And what could -- affiliation they are,  
16 whether democrat or republican, that's not  
17 appropriate. I don't want to see commitments from  
18 the jurors on ultimate issues of fact in this  
19 particular case, so those are the things that  
20 bother me in voir dire. Because what we're all  
21 here to determine is if they can put any opinions  
22 or prejudice aside and can they judge solely upon  
23 the law and facts that they find in here. Now,  
24 that's it.

25 How much longer do you have?

1 MS. KITTERMAN: Not much. I'll just confer  
2 with my partner.

3 THE COURT: Because I think what I'll do is  
4 tell them to come back and 1:30, and then I'll give  
5 you guys over lunch or to hopefully try to figure  
6 out who you want and don't want. And we'll come  
7 back about 1:00 o'clock. And I know there's a  
8 luncheon downstairs with the Palm Beach Bar that I  
9 wanted to go to. But I won't let that interfere.  
10 I want to you finish up your voir dire, but I don't  
11 want to cut you short. Okay?

12 MS. KITTERMAN: Okay, thank you.

13 (The following proceedings were held in the  
14 presence and hearing of the Jury:)

15 MS. KITTERMAN: Does anybody have the opinion  
16 that if somebody is -- has a good reputation that  
17 it is impossible that they've ever committed a  
18 crime?

19 Mr. Zimmerman, you have a confused look on  
20 your face.

21 MR. ZIMMERMAN: Say that again?

22 MS. KITTERMAN: If someone has a great  
23 reputation, would it be your opinion that they  
24 could have never committed a crime?

25 MR. ZIMMERMAN: No.

1 MS. KITTERMAN: Anybody else? No?

2 Miss Decker.

3 MS. DECKER: Yes.

4 MS. KITTERMAN: When you were writing for the  
5 newspaper, do you know whether -- was there a  
6 difference between a journalism standard and a  
7 private individual standard?

8 MS. DECKER: Well, what do you mean?

9 MS. KITTERMAN: Like the duty to investigate.  
10 When you said --

11 MS. DECKER: Oh, yeah, you wouldn't write  
12 something that you didn't research or you didn't  
13 know to be true.

14 MS. KITTERMAN: Right. Is that the same  
15 standard for individuals?

16 MS. DECKER: In their speech or if they were  
17 writing?

18 MS. KITTERMAN: Just in general.

19 MS. DECKER: No, I mean people talk about all  
20 sorts of things. So I don't know that they  
21 necessarily research every sentence that they say.

22 MS. KITTERMAN: Miss Woodward, I don't think  
23 we've heard from you very much.

24 MS. WOODWARD: Good morning.

25 MS. KITTERMAN: Good morning. Do you work

1 night shifts?

2 MS. WOODWARD: No, no, I work days. I've  
3 been doing a lot of overtime.

4 MS. KITTERMAN: What hospital do you work at?

5 MS. WOODWARD: Delray Medical Center.

6 MS. KITTERMAN: What is your opinion of  
7 freedom of speech?

8 MS. WOODWARD: I believe it has limitations.  
9 We can say what we want to say, but it is a  
10 privilege, but it's every circumstance is  
11 different. You know, like in the work place, for  
12 example, you have to maintain a certain, you know,  
13 sense of professionalism and you can't just say  
14 what you want to say, true or not true. And if you  
15 even do say something slanderous about somebody,  
16 (inaudible) even if it is true to defame their  
17 character, there is consequences.

18 MS. KITTERMAN: Okay. And you said within  
19 the work place. Do you believe that for your  
20 personal life as well?

21 MS. WOODWARD: Yeah, absolutely.

22 MS. KITTERMAN: Okay. Just give me one  
23 second, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. KITTERMAN: That's all I have for you. I

1 hope you have a nice afternoon, we'll see you soon.

2 THE COURT: All right. Thank you, Counsel, I  
3 appreciate that.

4 MS. KITTERMAN: Thank you, Your Honor.

5 THE COURT: Ladies and Gentlemen, that  
6 concludes the voir dire questioning and so forth.  
7 I'm going to ask you to be back here at 1:30. And  
8 at that time we'll be able to have -- or at least I  
9 will hope we'll be able to select the jury and know  
10 which ones will have the opportunity to sit and  
11 listen to this case.

12 Now, you folks don't really know anything  
13 about the facts of this case and you're not to  
14 discuss this case amongst yourselves or with  
15 anybody else. You are not to do any research on  
16 this case, you're not to look it up. When you sit  
17 as a juror, that's very, very important that your  
18 decision be based solely upon the evidence  
19 presented in this courtroom and the evidence that  
20 has been presented in front of the attorneys and  
21 myself.

22 Now, these attorneys under normal  
23 circumstances would be more than happy to engage  
24 you in conversation and be polite to you, but  
25 they're under strict orders to stay away from you,

1 to avoid you at all costs. And if you try to  
2 engage them or try to ask them questions, you could  
3 place them in a very difficult position. So I'm  
4 going to ask you not to do that. We have to always  
5 avoid even the appearance of impropriety or  
6 favoritism.

7 So as a consequence, don't talk amongst  
8 yourselves about this case and stay away from the  
9 attorneys and their clients and I'll see you back  
10 here at 1:30. Now, I can't get started unless  
11 you're all here. Have a good lunch.

12 THE BAILIFF: Please leave the questionnaires  
13 on your chair.

14 (The Jury left the courtroom after which the  
15 following proceedings were held:)

16 THE COURT: All right. We're in recess until  
17 1 o'clock. I'll see you back here at that time.  
18 We're in recess.

19 (Luncheon recess was taken.)

20 (The following proceedings were held before  
21 the Court and out of the presence of the Venire.)

22 THE COURT: All right. I'm going to strike  
23 Miss Zheng. I don't think she understands English,  
24 can't read, she's not doing a very good job.  
25 Anybody have an object with that?

1 MS. KITTERMAN: No, Your Honor.

2 MR. MARIANI: Agreed, Your Honor.

3 THE COURT: All right. So if we don't do  
4 anything, your jury is 1.1, Johnny Walker; 1.2,  
5 Lazarevic; 1.4, Humberto Gomez; 1.5, Harnish; 2.1,  
6 Wilson; and 2.2, Miriam Riggle.

7 Now, I'll ask the plaintiff to start and  
8 just, do you have any challenges for cause on those  
9 six people?

10 MR. MARIANI: Your Honor, yes -- oh, no, not  
11 for cause, no.

12 THE COURT: I just want for cause, that's all  
13 I'm asking.

14 MR. MARIANI: I need to inform the Court if I  
15 may. I found out during the lunch hour that we do  
16 some work for TD Bank, that's Juror 2.2, Riggle is  
17 employed by TD Bank. In an abundance of caution,  
18 when I say we, I mean my law firm. So I just bring  
19 that the Court's attention.

20 THE COURT: Do you have any objection to  
21 that? You don't know this lady?

22 MR. MARIANI: No, and she indicated she  
23 didn't know any of us.

24 THE COURT: TD Bank, that's a big bank,  
25 right? It's like a Wells Fargo or something.

1 MR. MARIANI: I think it's bigger than  
2 Wells Fargo.

3 THE COURT: All right. Anybody else? Any  
4 objection?

5 MS. KITTERMAN: Yeah, as long as she  
6 doesn't -- does she have an idea that her company  
7 is represented by Shutts and Bowen?

8 MR. MARIANI: I have no idea. And it's not  
9 that -- understand, Your Honor, what I'm saying, we  
10 do some work. Banks like that have many, many  
11 different firms that do work for them. So just in  
12 an abundance of caution, I'm alerting the Court of  
13 that.

14 MS. KITTERMAN: We don't have an objection,  
15 Your Honor.

16 THE COURT: All right. Then that's your jury  
17 as we sit right now. Do you have any challenge for  
18 cause for the plaintiff? Cause.

19 MR. MARIANI: Not for cause, no.

20 THE COURT: All right. How about you,  
21 Ms. Kitterman, any for cause?

22 MS. KITTERMAN: No, Your Honor.

23 THE COURT: All right. The plaintiff goes  
24 first. You've got three strikes. You can back  
25 strike through the alternate.

1 MR. MARIANI: I'm going to strike Harnish,  
2 Your Honor.

3 THE COURT: Plaintiff's first on that. That  
4 puts us over to Brookins-Kelle, right? Now over to  
5 the defense.

6 MS. KITTERMAN: Defense would strike 2.1,  
7 Miss Wilson.

8 THE COURT: Defense's first one is Wilson.  
9 That puts us over to Mr. Latos. Back over to the  
10 plaintiff.

11 MR. MARIANI: No strikes in that group,  
12 Your Honor.

13 THE COURT: All right. He passes over to the  
14 defense.

15 MS. KITTERMAN: Within Row 2?

16 THE COURT: Those six people. You have  
17 Johnny Walker; Lazarevic; 1.4, Humberto Gomez; 2.2,  
18 Miriam Riggle; 2.3, Brookins-Kelle; and 2.4,  
19 Steven Mr. Latos. That's your jury.

20 MS. KITTERMAN: All right. Sorry. We don't  
21 have any strikes.

22 THE WITNESS: All right. We're back to the  
23 plaintiff one last time.

24 MR. MARIANI: We're done, Your Honor.

25 THE COURT: All right. Everybody is in

1 acceptance with this jury?

2 MS. KITTERMAN: Yes.

3 THE COURT: The will be jury 1.1,  
4 Johnnie Walker; 1.2, Maricka -- you're going to  
5 have fun with this one, Lazarevic; Humberto Gomez;  
6 2.2, Miriam Riggle; 2.3, Anna Brookins-Kelle; and  
7 2.4, Steven Latos.

8 Now, you each have one strike as far as an  
9 alternate; okay? So right now, over to the  
10 plaintiff. Your alternate is this Brenda  
11 Moore-Pirtle.

12 MR. MARIANI: We're fine with her,  
13 Your Honor.

14 THE COURT: How about from the defense?

15 MR. MARIANI: We're fine with her,  
16 Your Honor.

17 THE COURT: All right. That will be your  
18 alternate then, 2.5.

19 Now, when we seat these jurors, and you give  
20 the opening statements and so forth, during the  
21 course of this trial, I don't want them to know  
22 that only six people are going to decide this case  
23 and I certainly don't want them to know who the  
24 alternate is. So I will seat them in alphabetical  
25 order.

1 MR. MARIANI: So the first juror, Juror  
2 Number 1 will be the lowest.

3 THE COURT: Whoever comes up first in  
4 alphabetical order. So that way, they're in the  
5 game the whole time, they don't know.

6 MR. BARKSY: Your Honor, can we address an  
7 evidentiary issue before we call the jury?

8 THE COURT: Before we do that let me find out  
9 first, opening statements, how long do you need?

10 MR. MARIANI: Around 50 minutes, Your Honor.

11 THE COURT: Fifty? Can you stick to half an  
12 hour?

13 MR. MARIANI: How about 35 minutes.

14 THE COURT: Thirty-five minutes.

15 MS. KITTERMAN: Fifteen, 20 minutes,  
16 Your Honor.

17 THE COURT: That's fine. I will give you  
18 fair.

19 Who do you have that you want to put on  
20 today?

21 MR. BARKSY: We're going to put on  
22 Mrs. Santamaria. And if we have enough time,  
23 Michelle Santamaria as well.

24 THE COURT: Mrs. Santamaria?

25 MR. BARKSY: Yes.

1 THE COURT: And Michelle Santamaria?

2 MR. BARKSY: Yes, Your Honor.

3 THE COURT: Now, jury instructions, you  
4 didn't give me any instructions with regard to  
5 substantive law that is applicable in this case.  
6 What I have is the standard, but normally we give  
7 them what that law is going to be.

8 MS. KITTERMAN: Your Honor, when I e-mailed,  
9 there was substantive law in the e-mail within the  
10 defendant's jury instructions.

11 THE COURT: I don't have it, I may be wrong,  
12 proposed jury instructions. Who sent me this one?

13 MR. BARKSY: I did, Your Honor. And then  
14 with that, we sent along all of the substantive law  
15 that is applicable as well.

16 THE COURT: I apologize. My JA is on  
17 vacation this week.

18 MR. BARKSY: I have an additional copy of  
19 highlighted case law, Your Honor.

20 THE COURT: I'll take a look at that. You  
21 can give that to me and I'll give you something to  
22 read.

23 MS. KITTERMAN: I'll give you defendant's  
24 proposed jury instructions as well.

25 THE COURT: I'd like to take a look at that

1 as well before I instruct them.

2 MR. BARKSY: May I approach, Your Honor?

3 THE COURT: Yes, sir. These are standard  
4 jury instructions.

5 MR. BARKSY: That's all of the case law that  
6 supports our jury instructions.

7 THE COURT: We're not reinventing the wheel  
8 here, guys, just so you know.

9 All right. Did you look at her jury  
10 instructions, the defendant's?

11 MR. MARIANI: Yes, Your Honor.

12 THE COURT: Do you have any problem with  
13 those on the issue with the plaintiff's claim?

14 MR. MARIANI: In the description of the  
15 claim?

16 THE COURT: Look at 405, please.

17 MR. MARIANI: 405.7, public official. No, we  
18 don't have any concern about that one. I'm sorry,  
19 Your Honor, I'm not hearing you well. Are you just  
20 referring to 405.7, just the one?

21 THE COURT: Right. This is what I'm going to  
22 give them preliminarily.

23 MR. MARIANI: I'm fine with that one.

24 THE COURT: Okay.

25 On this defamation, it has to be clear and

1           convincing evidence to show that the defendant  
2           acted with actual malice.

3           MR. MARIANI: So it's our understanding that  
4           every issue, that the issue that that applies to is  
5           the actual malice standard. Every other issue  
6           is --

7           THE COURT: Well, they've got to find actual  
8           malice.

9           MR. MARIANI: Correct, by clear and  
10          convincing proof.

11          THE COURT: All right.

12          MR. MARIANI: We understand that. We agree  
13          that that's the law. But on every other issue in  
14          the case, Your Honor, it's not that standard, it's  
15          just the regular standard.

16          THE COURT: By a fair weight of the evidence.

17          MR. MARIANI: Correct.

18          THE COURT: Now, do we have to have the jury  
19          determine each element under those circumstances?

20          MR. MARIANI: Well, they do, Your Honor, and  
21          it's important that you give an instruction. I  
22          didn't realize -- certainly, after the evidence is  
23          in when you charge the jury, they need to  
24          understand that on factual issues, they have the  
25          ordinary burden of proof -- or standard, excuse me,

1 we have the burden of proof. And then on the issue  
2 of actual malice, because plaintiff is a public  
3 figure, the jury must find actual malice by clear  
4 and convincing evidence. But it's important that  
5 that is the one issue that is at that standard.  
6 Every other issue is at the ordinary standard.

7 THE COURT: 405.10, you okay with that,  
8 defamation per se?

9 MR. MARIANI: Yes, Your Honor. I think ours  
10 and theirs were the same.

11 THE COURT: Were they?

12 Do you agree with that?

13 MS. KITTERMAN: I think they were  
14 substantially similar.

15 THE COURT: Let's see. When I looked at  
16 yours, which the problem with yours, 202.1, then  
17 you go right into 202.2, which is explanation of  
18 the trial procedure, but really I'm supposed to  
19 give them the substance of law right after 202.1.  
20 That's when I tell them, I'm going to now give you  
21 what the law is at the beginning of the trial so  
22 you will be able to better understand what we're  
23 looking for. See, then you go on to 405, which is  
24 after the evidence but before the summation.

25 MR. MARIANI: That should not be before, we

1 understand that. Your Honor, I may need to  
2 apologize, but we sent all this over Friday  
3 thinking that -- I guess I'll withdraw my comment.

4 THE COURT: Yeah, I don't know. My JA would  
5 have normally done that. I don't even know if I  
6 can get into her computer.

7 MR. MARIANI: I apologize. Let's figure it  
8 out here and we'll do whatever the Court needs us  
9 to do.

10 THE COURT: Well, it just looks like hers are  
11 pretty much standard in the order that they're  
12 supposed to give. It's the same as yours except  
13 you didn't incorporate what the issues are for  
14 their determination.

15 MR. MARIANI: We're not doing that. There is  
16 only one item that I would change if Your Honor  
17 is -- 201.1.

18 THE COURT: 201.1, let me see that.

19 MR. MARIANI: The description of the case.  
20 We would -- I don't which one of those you would  
21 choose to read.

22 THE COURT: 201.1?

23 MR. MARIANI: 201.1. I'm looking at  
24 defendant's proposed description of the case. We  
25 obviously would prefer our description of the case.

1 THE COURT: Let me see what that says. What  
2 is your position?

3 MS. KITTERMAN: Your Honor, according to  
4 their instruction, they state that Jess Santamaria  
5 claims that a page of that document accused him of  
6 being convicted of a third degree felony of  
7 burglarizing a vehicle. Nowhere in the felony  
8 record does it say that. So that is not true.  
9 That is not in this case. And instructing the jury  
10 at this point that what Mr. Schaller published as  
11 defamation per se, I think is --

12 THE COURT: Before we even get any evidence  
13 in --

14 MS. KITTERMAN: Yes.

15 THE COURT: -- unless we have a stipulation.  
16 I agree. I think hers is a little bit less  
17 innocuous and we can always clean it up at the end  
18 after all of the evidence has come in and we've  
19 seen that.

20 MR. MARIANI: Let me reserve on that, but let  
21 me ask you then, Your Honor, on defendant's 201.1,  
22 I would ask defendant would ask you to change in  
23 the second paragraph, the word figure to official,  
24 defamation of a public official.

25 MS. KITTERMAN: We have no objection,

1 Your Honor.

2 THE COURT: The second paragraph?

3 MS. KITTERMAN: I guess.

4 MR. MARIANI: I guess that would be the third  
5 paragraph.

6 THE COURT: This is a case about defamation  
7 of a public official?

8 MR. MARIANI: Official.

9 MS. KITTERMAN: I have no objection,  
10 Your Honor.

11 THE COURT: All right. That is done.  
12 Anything else?

13 MR. BARKSY: Are we still on the jury  
14 instructions, Your Honor, or can we move on to  
15 evidentiary?

16 THE COURT: Let's get these jury instructions  
17 done. Done. All right. So 201.1, we're fine.

18 201.2, I've already told them who the  
19 personnel are in this courtroom so I don't have to  
20 do that again.

21 MS. KITTERMAN: Your Honor, I believe 201.3  
22 is before the voir dire process as well.

23 THE COURT: All right. So I'm taking all of  
24 that out. Actually, I'm going to just start with  
25 202.1. Why can't I do that? That's what I

1 normally do.

2 MR. MARIANI: Yes, you can, Your Honor.

3 THE COURT: I've already given them a  
4 statement of the case.

5 MS. KITTERMAN: That's fine, Your Honor.

6 THE COURT: That way, I don't have to get  
7 into -- they'll figure out what the case is about  
8 as we get into the evidence.

9 Everything else look okay to you? What  
10 defenses do you have in here, other than denial?

11 MS. KITTERMAN: Constitutional qualified  
12 privileges, Your Honor. I believe they're set  
13 forth in the jury instruction.

14 MR. MARIANI: May we be heard on the  
15 defenses, Your Honor?

16 THE COURT: Yes, sir.

17 MR. MARIANI: As it relates to a suggestion  
18 of a Constitutional defense, it's plaintiff's view  
19 that all of those issues are rolled into the  
20 heightened standard of actual malice. Plaintiff  
21 has acquiesced to that standard. It seems  
22 inappropriate and redundant to talk about that  
23 standard in the form of a defense.

24 THE COURT: These are not affirmative  
25 defenses. These are part of the elements necessary

1 for them to prove actual malice.

2 MS. KITTERMANN: There is actually an  
3 affirmative defense, Your Honor, that the  
4 statements that were published were not published  
5 as statements of fact, rather as questions --

6 THE COURT: Well --

7 MS. KITTERMANN: -- to inquire.

8 THE COURT: Well, then it doesn't -- but it's  
9 not an admission that, one, it was a false  
10 statement that was done with malice. That's  
11 basically what this case is about.

12 MS. KITTERMANN: Right, I understand that.

13 THE COURT: And all you're -- an affirmative  
14 defense is admitting the allegations as true, but  
15 there's an avoidance. Are you admitting as part of  
16 your defense that, one, you made the statement;  
17 two, that it was done with reckless disregard or  
18 malice? You're not.

19 MS. KITTERMANN: No.

20 THE COURT: So then it's not an affirmative  
21 defense. That's what I'm trying to say to you.

22 This is really part of the argument and  
23 elements necessary, so I'm not going to take that  
24 out at this time. We may visit it later on, but  
25 right now, I'm not going to take that out.

1 All right. Here we go into the trial  
2 procedures. All right. I'm going to start with  
3 202.1 in the plaintiff's instructions -- I mean  
4 defendant's instructions. All right. Now, you got  
5 something else you want to bring up? Because I've  
6 got jurors sitting out there.

7 MR. MARIANI: We do, but let me mention one  
8 more thing about your instructions if I may,  
9 Your Honor. Respectfully, in your opening to the  
10 jury, you used the phrase proximate cause. And I  
11 would like to submit that proximate cause is not an  
12 issue in this case. We're claiming defamation  
13 per se. And if we prove the elements of defamation  
14 per se, under Florida law and your statement  
15 under --

16 THE COURT: They can give nominal damages.

17 MR. MARIANI: They can give any damages they  
18 wish. And so the idea of proximate cause is not  
19 related to this case.

20 THE COURT: All right. Anything else?

21 MS. KITTERMAN: No, Your Honor.

22 MR. BARKSY: I would like to address a couple  
23 of evidentiary issues, if we could, Your Honor, and  
24 hopefully preadmit our first four exhibits, the  
25 ones we plan on using today so we can streamline

1 the process. I don't think there should be too  
2 many issues with them.

3 Plaintiff's Exhibit 1 is the Request For  
4 Inquiry, which is why we're here and Plaintiff's  
5 Exhibit 2 is a single page out of that document.  
6 So we can start with those at least, Your Honor.  
7 And I have two more that we plan on using and  
8 introducing today as well. So I don't think there  
9 is too much dispute over them.

10 THE COURT: You're talking about evidence at  
11 this particular point? We haven't even gotten the  
12 jury selected.

13 MR. MARIANI: But we wanted to use these two  
14 pieces to show the jury during opening, Your Honor.

15 THE COURT: That's a demonstrative issue.  
16 What are the two things, again? I'm sorry.

17 MS. KITTERMAN: Your Honor, their first  
18 suggested exhibit is a Request For Inquiry. This  
19 is not actually what was handed out by  
20 Mr. Schaller. So I would object to this because  
21 this is not his, this is not what he handed out.  
22 It's not what is available on his website.

23 MR. BARKSY: What is wrong with it?

24 MS. KITTERMAN: When he handed out the  
25 Request For Inquiry, it didn't have this, the first

1 page.

2 MR. BARKSY: That text is on his website.

3 MS. KITTERMAN: The text was on his website  
4 but that was not included in the Request For  
5 Inquiry, although it was on his website.

6 MR. MARIANI: So if we took out this one  
7 page, is this document acceptable?

8 MS. KITTERMAN: I would have to look through  
9 the document. I don't know because I printed off  
10 his website. This is something that I haven't  
11 seen.

12 MR. MARIANI: If I may, Your Honor.

13 MS. KITTERMAN: We have printed it straight  
14 from the website, if they would like to take a look  
15 at it.

16 MR. MARIANI: It wasn't handed out that way.  
17 It was handed out in this type of -- we're trying  
18 to be as authentic as we can. This is what is --  
19 so if there is one page that is incorrect here, if  
20 we take out that page, then this would be exactly  
21 what Mr. Schaller handed to people on  
22 September 13th. We're trying to let the jury see  
23 it in its form, not in a Xerox'd form.

24 THE COURT: Do you deny that?

25 MS. KITTERMAN: Mr. Schaller handed out a

1 spiral Request For Inquiry. I do not deny that.  
2 However, that is not one that he handed out, it's  
3 been reproduced by somebody else, and I don't know  
4 who. The Request For Inquiry that they're  
5 complaining of has consistently been available on  
6 Mr. Schaller's website. When you click on that PDF  
7 and print it out, this is exactly what is printed  
8 out. Where that document came from, I do not know.

9 THE COURT: Did you object to this as part of  
10 their exhibit list?

11 MS. KITTERMAN: Your Honor, I wasn't aware  
12 that that's how they were presenting it.

13 THE COURT: I'm looking at Number 1,  
14 Schaller's Request For Inquiry. Is that what you  
15 submitted?

16 MR. MARIANI: Yes, Your Honor.

17 THE COURT: All right. Did you object to it?

18 MS. KITTERMAN: Yes, Your Honor. Actually,  
19 when we were in deposition with Mr. Santamaria, he  
20 pulled that out for the first time. I had never  
21 seen it before. So I do not object to the Request  
22 For Inquiry. However, this is a Request For  
23 Inquiry that's available on Mr. Schaller's website.  
24 That document, I don't know where it came from and  
25 it was reproduced by somebody who was not

1 Mr. Schaller. So I do object to it. And this is  
2 the first time I'm seeing it like this.

3 THE COURT: Did you go over to his office?  
4 Did you look at his exhibits?

5 MS. KITTERMAN: I asked --

6 THE COURT: Did you identify them?

7 MS. KITTERMAN: Your Honor, I asked him to  
8 send me a copy of everything and I was not sent a  
9 copy of that. And when we were at Mr. Santamaria's  
10 deposition, I asked counsel, Mr. Santamaria was  
11 referring to something that --

12 MR. MARIANI: No, this is not the one that  
13 was at the deposition. So --

14 MS. KITTERMAN: May I finish?

15 Mr. Santamaria was referring to a spiral  
16 bound Request For Inquiry. When I asked if I could  
17 see that because it was the first time I had seen  
18 something like that, Mr. Mariani stated I was not  
19 allowed to see it.

20 MR. MARIANI: This is not that one. That was  
21 Mr. --

22 THE COURT: You have this listed on your  
23 list, too, and Request For Inquiry.

24 MS. KITTERMAN: Yes, Your Honor, this is the  
25 Request For Inquiry that we have listed.

1 MR. MARIANI: Your Honor, so the record is  
2 clear, Mr. Schaller didn't hand it out through his  
3 website, he handed out binders like this, on one  
4 day in front of the courthouse. And that's what  
5 we're showing -- that's what we want the jury to  
6 see, how it was used on that particular day. He  
7 didn't e-mail this to people. He handed them out.  
8 And on his website, there is an indication, you can  
9 see them holding up the black binder with the  
10 spiral.

11 THE COURT: Okay. That's what you claim.  
12 How are you going to introduce that into evidence?  
13 You didn't agree to record custodians, did you?

14 MR. MARIANI: No, we didn't, Your Honor.

15 THE COURT: So how are you going to introduce  
16 it into evidence?

17 MR. MARIANI: Well, several different ways,  
18 but we thought it would be --

19 THE COURT: Publication to a third party?

20 MR. MARIANI: We thought it would be  
21 stipulated to. But we can put it in through  
22 Mr. Santamaria, put it in through  
23 Michelle Santamaria, put it in through  
24 Mr. Schaller.

25 THE COURT: All right. Folks, that's why I

1 make you do pretrial catalogs.

2 MR. MARIANI: I understand, Your Honor, I  
3 understand.

4 THE COURT: Excuse me, sir, I'm talking.

5 Under Section 3, it says pretrial  
6 stipulations must be filed. And if you look  
7 under 4, each party's numbered list of trial  
8 exhibits with specific objections, if any, to  
9 schedules attached to the stipulation. Both of you  
10 attached this. Both of you did not object to it.  
11 Therefore, it's coming in because you waived it.

12 MS. KITTERMAN: May I respond, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. KITTERMAN: Okay. We both prepared our  
15 witness and exhibit lists and I produced this copy,  
16 this version to plaintiff. Plaintiff has never  
17 produced that copy to me.

18 THE COURT: Well, did you go over and look at  
19 his exhibits?

20 MS. KITTERMAN: I requested that they send me  
21 all of their exhibits. They did not.

22 MR. MARIANI: We sent copies, Your Honor.

23 THE COURT: You sent a copy of that?

24 MR. MARIANI: Yes, Your Honor.

25 THE COURT: What do you want me to do, one

1 says he did and one says he didn't.

2 MS. KITTERMAN: I have never gotten a copy of  
3 that, Your Honor.

4 THE COURT: Well, you've got it now. He says  
5 that's listed on his exhibit list.

6 If you want to explain it away, you can do  
7 that.

8 MR. MARIANI: If counsel wants me to take out  
9 this page.

10 MS. KITTERMAN: I don't know who produced  
11 this. I thought the entire time we were talking  
12 about the Request For Inquiry that was available on  
13 Mr. Schaller's website.

14 MR. MARIANI: No, we're talking about the one  
15 he handed out September 13th.

16 MS. KITTERMAN: Is this the one he handed  
17 out?

18 MR. MARIANI: Yes, it is.

19 MS. KITTERMAN: No, it's not because this  
20 wasn't included.

21 MR. MARIANI: Well, then we'll take that out.

22 THE COURT: Then why is it in there if it  
23 wasn't the document that was given?

24 MR. MARIANI: Your Honor, it's a verbatim  
25 description of the speech he gave when he handed

1 out the item.

2 THE COURT: Let me see it, please. What is  
3 the page, this one that is marked here?

4 MR. MARIANI: Right there, Your Honor.

5 THE COURT: This one here?

6 MR. MARIANI: Yes.

7 THE COURT: So what you have done here is  
8 somehow you typed up this speech that he gave on  
9 September 13th?

10 MR. MARIANI: No, we didn't type it up. This  
11 is what --

12 THE COURT: Is this something that was  
13 given -- this document right here, I want this  
14 marked right here, Court's Exhibit Number 1.

15 THE CLERK: He marked it as Plaintiff's 1.  
16 We'll make it Court's Exhibit 1.

17 THE COURT: You can mark it as Plaintiff's  
18 Exhibit 1 for identification.

19 MR. MARIANI: It's already marked,  
20 Your Honor.

21 THE COURT: Okay.

22 THE CLERK: It's marked for ID.

23 (Plaintiff's Exhibit 1 was marked for  
24 identification.)

25 THE COURT: This whole package, was this

1 disseminated to a third party?

2 MR. MARIANI: By Mr. Schaller, it was  
3 disseminated on September 13th. It is my  
4 understanding that is one of the copies that were  
5 disseminated.

6 THE COURT: With this verbatim speech here on  
7 this page?

8 MR. MARIANI: That's my understanding.

9 THE COURT: And how are you going to prove  
10 that up?

11 MR. MARIANI: Well, that's on his website,  
12 too. All of that is on his website.

13 THE COURT: Even this page? You said it's  
14 not on the website.

15 MS. KITTERMAN: It's not included in the  
16 Request For Inquiry, Your Honor.

17 MR. MARIANI: It's on the record, it's on the  
18 website.

19 MS. KITTERMAN: It is not included in the  
20 Request For Inquiry, Your Honor.

21 THE COURT: Is it on your website?

22 MS. KITTERMAN: No, not with the Request For  
23 Inquiry. It is not.

24 MR. BARKSY: Your Honor, just to be clear,  
25 defense counsel is drawing a very thin line here.

1 The page that you look at that you click a link for  
2 the Request For Inquiry contains that speech. So  
3 when she says it's not contained as part of the  
4 Request For Inquiry, she means the actual physical  
5 PDF file does not have those words as the first  
6 page.

7 Now, when you look at them when you go to  
8 click that link, those words are actually right  
9 there on that page. So you see them all together.

10 THE COURT: So it is absolutely on the  
11 website?

12 MR. BARKSY: It's absolutely on the website.

13 THE COURT: As long as you're going to prove  
14 that up, that's fine with me, you can use that as a  
15 demonstrative aid.

16 MS. KITTERMAN: I would just like to keep my  
17 objection for the record because it's not what  
18 Mr. Schaller produced and handed out on  
19 September the 13th, and I don't know where they got  
20 that copy. So it's not authenticated.

21 MR. BARKSY: Can we move on to the second  
22 one, Your Honor?

23 THE COURT: Yes.

24 MR. BARKSY: Do you have any objection to  
25 this one?

1 MS. KITTERMAN: I don't know. I want to  
2 look.

3 MR. BARKSY: This is just the single page.

4 MS. KITTERMAN: No, Your Honor.

5 MR. BARKSY: This is one page of what is now  
6 Court's 1?

7 MR. MARIANI: No, it's Plaintiff's Exhibit 2.

8 MR. BARKSY: All right. It's Plaintiff's  
9 Exhibit 2 now.

10 THE COURT: Any objection to this?

11 MS. KITTERMAN: No, Your Honor.

12 THE COURT: All right.

13 (Plaintiff's Exhibit 2 was marked for  
14 identification.)

15 THE COURT: I want to get this jury in here.

16 MR. BARKSY: I'll stop at this one.

17 THE COURT: Let's make it as Plaintiff's  
18 Exhibit Number 2 for identification until I get a  
19 jury sworn.

20 MR. BARKSY: And this one is just a court  
21 file, a certified copy from the court file from  
22 downstairs that I would like to have the Court  
23 marked in as well because we're going to use it  
24 today.

25 THE COURT: I want to get this jury sworn.

1 I'm not trying this case before I get a jury sworn  
2 in.

3 Okay. Bring them in.

4 (Whereupon, the Venire entered the  
5 Courtroom:)

6 THE COURT: All right. Have a seat if you  
7 will, please.

8 Now, Ladies and Gentlemen of the Jury, go  
9 ahead and sit down. On the other side, we've  
10 chosen our Jury and as your name is called out, I'm  
11 going to ask you to come up and starting with the  
12 second chair, immediately to my left, stay in the  
13 order in which you have been called.

14 All right. Is the clerk ready to call the  
15 jury?

16 THE CLERK: Yes, Your Honor. And I'm sorry  
17 if I mispronounce your names.

18 Humberto Gomez, Steven Latos,  
19 Maricka Lazarevic, Brenda Moore-Pirtle,  
20 Miriam Riggle, Anna Rookins-Kelle, and Johnnie  
21 Walker.

22 That's it.

23 THE COURT: All right.

24 (Whereupon the Jury panel was seated in the  
25 Jury box.)

1 THE COURT: Mr. Walker, please remain  
2 standing. The rest of you, raise your right hand  
3 and address the clerk.

4 (The Jurors were duly sworn by the Clerk.)

5 THE COURT: Go ahead and have a seat.

6 All right. To the other members of the  
7 venire panel, I want to thank you very much for  
8 your diligence and patience and honesty in response  
9 to our questions. It's kind of an arduous process,  
10 but it's a very important process. You are now  
11 excused and you may go back downstairs and,  
12 hopefully, they won't have any further need of your  
13 services. And if that's the case, you are free to  
14 go.

15 Again, we thank you on behalf of the  
16 15th Judicial Circuit and on behalf of myself for  
17 your service this morning, on behalf of all of us.  
18 Thank you and drive safe.

19 (Whereupon, the Venire Panel was excused.)

20 THE COURT: All right. Have a seat if you  
21 will, please.

22 You've now taken an oath to serve as jurors  
23 in this trial. But before we begin, I'm going to  
24 tell you a little bit about the rules of law that  
25 will be applicable in this case and I am going to

1 let you know what you can expect as this trial  
2 proceeds.

3 Now, it's my intentions to give you all if  
4 not -- most if not all of the jury instructions  
5 before we begin the trial. However, that might  
6 change depending upon what the evidence is and I  
7 can't determine that until the end of the case.

8 I can anticipate most of the law and give it  
9 to you at the beginning so that you can better  
10 understand what you're looking for while the  
11 evidence is presented in this case.

12 If I later decide that the law is different  
13 or changes, I will then advise you accordingly. In  
14 any event, at the end of this -- at the end of the  
15 case, you're going to be getting a complete set of  
16 jury instructions that you'll be able to take back  
17 with you when you go back to start your  
18 deliberations. But right now, you don't need to  
19 have that. And if you can just follow what I say  
20 and put into the record orally, that should  
21 suffice.

22 I shall now instruct you on the law that you  
23 must follow in reaching your verdict. It's your  
24 duty as jurors to decide the issues and only those  
25 issues that I submit for your determination by your

1 verdict. In reaching your verdict, you  
2 shouldn't -- you should consider and weigh the  
3 evidence, decide the disputed issues of fact, and  
4 apply the law in which I instruct you to the facts  
5 as you find them from the evidence. That's what I  
6 was talking about earlier that you are the fact  
7 finders, I determine the law.

8 The evidence in this case will consist of  
9 sworn testimony and witnesses, all exhibits that I  
10 allow to come into evidence, and all facts that are  
11 either admitted to or agreed to by the parties.

12 In determining the facts, you may make  
13 deductions and you can reach conclusions, which  
14 reason and common sense lead you to draw from the  
15 facts shown by the evidence in this case, but you  
16 should not speculate on any matters outside of the  
17 evidence.

18 Now, the claims and defenses in this case are  
19 as follows: Jess Santamaria claims that  
20 Andrew Schaller made and published a false  
21 statement about him which constitutes defamation  
22 per se. Jess Santamaria claims that the statement  
23 was that he was a convicted felon when he was in  
24 fact not.

25 Andrew Schaller denies that claim and also

1 claims that he was privileged to make the statement  
2 because Jess Santamaria was an elected official.

3 Now, I'm going to define some of the terms  
4 for you which will be used in determining this  
5 case. Greater weight of the evidence means the  
6 more persuasiveness and effect of the entire  
7 evidence in the case. But there is also another  
8 standard that you're going to have to weigh certain  
9 issues about. Clear and convincing evidence.  
10 Clear and convincing evidence differs from greater  
11 weight of the evidence in that it is more  
12 compelling and persuasive. Clear and convincing  
13 evidence is evidence that is precise, explicit,  
14 lacking in confusion and of such weight that it  
15 produces a firm belief or conviction without  
16 hesitation about the matter at issue.

17 The issues for your determination on the  
18 claim of Jess Santamaria against Andrew Schaller  
19 are whether Andrew Schaller made and published the  
20 statement concerning Jess Santamaria as  
21 Jess Santamaria claims and, if so, whether  
22 Andrew Schaller's statement concerning  
23 Jess Santamaria was in some significant respect a  
24 false statement of fact, intended to expose  
25 Jess Santamaria to personal humiliation or mental

1 anguish or charge that Santamaria committed a  
2 crime.

3 A statement of opinion may be considered a  
4 false statement of fact expressly stated or implied  
5 from an expression of opinion. A statement is in  
6 some significant respect false if it is a substance  
7 or just conveys a materially different meaning than  
8 the truth would have conveyed.

9 In making this determination, you should  
10 consider the totality of the circumstances,  
11 including the context in which the statement is  
12 made, and disregard any minor inconsistencies that  
13 do not affect the substance of the statement. If  
14 the greater weight of the evidence does not support  
15 Jess Santamaria's claim on these issues, then your  
16 verdict should be for Andrew Schaller.

17 Now, you must decide whether clear -- now,  
18 one issue is whether the defendant acted with  
19 actual malice, and that will be further explained  
20 to you as we go along, but you must decide whether  
21 clear and convincing evidence shows that at that  
22 time the statement was made, Andrew Schaller knew  
23 the statement was false or had serious doubts as to  
24 its truth.

25 If clear and convincing evidence does not

1 show that Andrew Schaller knew when the statement  
2 was made that was -- that it was false or that he  
3 had serious doubts as to the truth, your verdict  
4 should be for Andrew Schaller.

5 However, if clear and convincing evidence  
6 supports Jess Santamaria's claim that  
7 Andrew Schaller knew when the statement was made  
8 that it was false or that he had serious doubts as  
9 to its truth, and the greater weight of the  
10 evidence supports Jess Santamaria's claim on the  
11 other issues on which I have instructed you, then  
12 your verdict should be for Jess Santamaria.

13 What is definition -- defamation per se,  
14 damages. In cases of defamation per se, damage and  
15 loss are conclusively presumed if liability is  
16 based on showing that the defendant acted with the  
17 knowledge of the falsity or reckless disregard of  
18 the truth. If you find for Andrew Schaller, you  
19 will not consider the matter of damages. However,  
20 if you find that Andrew Schaller acted with actual  
21 malice, meaning that he knew or should have known  
22 that the defamatory publication was false, then in  
23 favor of Mr. Santamaria, you should award  
24 Jess Santamaria damages in an amount that you deem  
25 appropriate.

1           So how are you to weigh the evidence in  
2 deciding this case? It is your duty as jurors to  
3 decide the issues and only those issues that I  
4 submit to you for determination. You must come to  
5 an agreement about your verdict. The evidence in  
6 this case will consist of sworn testimony of  
7 witnesses, all exhibits received into evidence and  
8 all facts which are agreed to or admitted to by the  
9 parties.

10           In reaching your verdict, you must think  
11 about and weigh the testimony of any document,  
12 photograph, or other material that has been  
13 received into evidence. You may also consider any  
14 facts that were admitted or agreed to by the  
15 lawyers. Your job is to determine what the facts  
16 are. You may use reason and common sense to reach  
17 those conclusions. You may draw reasonable  
18 inferences from the evidence. But, again, you  
19 should not guess about things that were not covered  
20 here and you must always apply the law to this case  
21 as I've explained it to you.

22           Now I'll talk a little bit about  
23 believability of a witness and evaluating the  
24 believability of any witness and the weight you  
25 will give the testimony of any witness.

1           You may properly consider the demeanor of the  
2 witness while testifying, the frankness or the lack  
3 of frankness of the witness, the intelligence of  
4 the witness, any interest the witness may have in  
5 the outcome of the case, the means and the  
6 opportunity the witness has to know the facts about  
7 which the witness testified, and the ability of the  
8 witness to remember the matters about which the  
9 witness testified, and the reasonableness of the  
10 testimony of the witness considered in the light of  
11 all of the evidence in this case and in light of  
12 your own experience and common sense.

13           Now, I'll explain a little bit to you about  
14 how this trial is going to proceed. In a few  
15 moments, I'm going to allow the attorneys to give  
16 what is referred to as an opening statement. It's  
17 not an argument, they only get to argue at the end  
18 of the case, but they're going to give you an  
19 opening statement. And in that, they are going to  
20 tell you what they think the issue is and what they  
21 can expect the evidence to show. Then we'll go  
22 into what is referred to as an evidentiary phase of  
23 the case. And the plaintiff who has the burden of  
24 proof will go first, call its witnesses. And that  
25 will be called direct examination.

1           Then the defendant will then have an  
2 opportunity to cross-examine those witnesses and  
3 the plaintiff then will have an opportunity to come  
4 back on redirect, if there is something brought up  
5 on cross.

6           Evidence is the information that the law  
7 allows you to see or to hear in deciding this case.  
8 It includes the testimony of these witnesses, any  
9 documents and anything else that I instruct you  
10 that you are to consider.

11           Now, a witness as I told you earlier is a  
12 person who takes an oath to tell the truth. The  
13 answering of the attorneys' questions by the  
14 witness is called giving the testimony and the  
15 testimony means statements that are made when  
16 someone has been sworn to tell the truth. That's  
17 evidence.

18           It's important that you remember that the  
19 testimony comes from witnesses. The attorneys do  
20 not give testimony. And I will tell you this time  
21 and time again, what the attorneys say in this case  
22 is not evidence in the case. They are trained  
23 advocates, they are trained to bring the evidence  
24 to you in the light most favorable to their  
25 clients, but you should pay close attention to what

1 they say.

2 And there will be objections. And when they  
3 file them, they have to file objections.  
4 Otherwise, they may waive them for later on for  
5 appeals and for other matters. And when they make  
6 an objection, I will either sustain that objection  
7 or I will overrule the objection. If I sustain the  
8 objection, then the witness will not be allowed to  
9 testify and you are not to infer anything from the  
10 question itself. But if I overrule it, then the  
11 witness will be allowed to testify and that will be  
12 the evidence.

13 Now, when there is an objection, I will make  
14 that decision. But you must not assume from that  
15 decision that I have any opinion other than that  
16 the rules of evidence or the rules of conducting  
17 the trial were made in accordance with our Rules of  
18 Civil Procedure and our Rules of Evidence.

19 So if I say a question may not be answered,  
20 don't try to guess at what that witness was going  
21 to say. It didn't happen. But if I -- I'll  
22 usually make that objection very quickly, and each  
23 one of these attorneys has a checklist on the  
24 corner of their desk, and that's as to the  
25 objection. And they won't be allowed to give

1 speaking objections. They'll make an objection, a  
2 legal objection within a few words, and if they  
3 have to make more than that, then we'll have what  
4 is referred to as a side bar conference. And  
5 they'll come out here, and out of your hearing  
6 there will be further arguments.

7 If necessary, if I have to hear further and  
8 it's going to take a few minutes and so forth, I  
9 might send you into the back room so you don't need  
10 to be inconvenienced. But I want you to understand  
11 that your time is important to me and I will try to  
12 make an expeditious ruling, as quickly as I  
13 possibly can to make good use of that time. But I  
14 have a duty and responsibility to make sure these  
15 people are properly heard and that the record is  
16 properly preserved. So that is part of my  
17 responsibilities.

18 Now, during this trial, as you've already  
19 seen, we've already had a recess and there will be  
20 more recesses. And I'm going to have you -- we'll  
21 go to, oh, 5 o'clock today. Tomorrow, I'll ask you  
22 to be back here at 10:00. We will recess for the  
23 evening, be back here at 10:00 and then we'll start  
24 and go up to 12:00. And until approximately 1:30  
25 we'll have our lunch and then we'll come back here.

1 And about 3 o'clock in the afternoon, I'll give you  
2 a break and then we'll go to approximately 5:00.

3 Now, during a recess, you still have duties  
4 as jurors and you must follow these rules. So even  
5 while you're having coffee, lunch or dinner, or  
6 you're home with your family, you're going to have  
7 to follow these rules.

8 After all of the evidence has been presented,  
9 I will instruct you on the law that you must  
10 follow. That will be the final law that you will  
11 get. It is important that you remember these  
12 instructions so they can assist you in evaluating  
13 the final attorneys' presentations, which will then  
14 come later. That's when they give you their final  
15 or closing argument. That's when they have their  
16 first opportunity to argue the case to you.

17 After you've heard the closing arguments, I  
18 will then instruct you on some final procedures  
19 that you're to follow. And then you will hear  
20 those instructions, you will go back and then and  
21 only then will you start your deliberations.

22 When you have finished answering the  
23 questions on what is referred to as an  
24 interrogatory type of jury form, they're just  
25 questions, you are to follow those instructions

1 carefully, you will give the verdict -- knock on  
2 the door, give that verdict to the bailiff. The  
3 bailiff will then bring you folks back out here and  
4 then the clerk will publish that verdict in front  
5 of everybody.

6 So what are some of the rules that you're  
7 supposed to follow during the course of this trial.  
8 First off and foremost, keep an open mind. You  
9 must pay close attention to the testimony, and  
10 keep -- and other evidence as it comes into the  
11 trial. You must avoid forming any final opinion or  
12 telling anyone else your views on this case until  
13 you begin your deliberations.

14 Now, this rule requires you to keep an open  
15 mind until you have heard all of the evidence and  
16 is designed to prevent you from influencing your  
17 fellow jurors until they've heard all of the  
18 evidence in this case and have formed their own  
19 opinions. The time and the place for you to come  
20 into your final opinions and speak about them with  
21 your fellow jurors is during the deliberations in  
22 the jury room after all of the evidence is  
23 presented, after the closing arguments and after  
24 you've been instructed on the law.

25 It is important that you hear all of the

1 facts and that you hear the law and how to apply it  
2 before you start trying to decide this case. And  
3 you're only to consider the evidence in this case.  
4 It's the things that you hear and you see in this  
5 courtroom that matter.

6 Now, the law tells us that jurors can  
7 consider only the testimony and other evidence that  
8 other lawyers or the other jurors have heard with  
9 the lawyers and myself. That means that you must  
10 not do any investigation on your own. You can't  
11 obtain any information on your own from any source  
12 whatsoever. This includes reading newspapers. And  
13 in this case it might get written up. There's  
14 already been some information in the paper about  
15 it. You are not to read that and you are not hear  
16 anything on the news about it. It's important that  
17 you not be influenced by any outside sources except  
18 for what happens in this courtroom. This applies  
19 whether you're in this courthouse, you're home or  
20 anywhere else. It's very, very important. You  
21 must always protect the sanctity of your verdict.

22 Do not provide any information about this  
23 case to anyone including your friends or family  
24 members. Do not let anyone including your closest  
25 family members make comments to you about this case

1 or ask you questions about it. Jurors must not  
2 have any discussions of any sort with anybody about  
3 this case. So don't even -- again, don't even let  
4 your closest family members have any contact with  
5 you about it.

6 I want to stress again that just as you must  
7 not talk about the case face-to-face, you must not  
8 talk about this case by using any electronic  
9 devices. Now, this is a very important instruction  
10 to you as this is becoming a greater problem. We  
11 just had three weeks ago or four weeks ago over in  
12 Sarasota, a juror that was on Facebook during the  
13 trial and during that, and it was found out at two  
14 weeks of trial, a mistrial and that juror was put  
15 in jail. And that would make me very angry if I  
16 had to do that to one of my fellow jurors. But I  
17 assure you, I will do that as we must protect our  
18 job in this proceeding and we must be able to  
19 respect your decision in the end.

20 So do not discuss the case or ask for advice  
21 from anybody, including posting information on the  
22 Internet. Don't -- just don't go there, don't go  
23 there looking up these people and their backgrounds  
24 or anything. Only what you hear in this courtroom.

25 Now, when we are in recess, do not discuss

1 anything about this trial or this case with anyone.  
2 If the attorneys approach you, as I told you  
3 before, you are not to speak to them and you should  
4 not try to speak with them because if you do, you  
5 place them between a rock and a hard place. And  
6 they can be sanctioned and they can be held in  
7 contempt of court if they do. But at the same  
8 token, they want -- they don't want to curry favor  
9 with you, but they don't want you to be mad at  
10 them. So that's not a good place. We all have our  
11 jobs to do in this case.

12 Now, after this case is over with, I will  
13 release you from your duty of silence and you can  
14 sit down and talk with anybody you want to about  
15 how you felt about this case. That will be left  
16 totally up to you. Only you get to deliberate and  
17 answer the verdict questions at the end of this  
18 trial. I cannot intrude into those deliberations  
19 at all. I'm required to be completely neutral. So  
20 you should understand and you should not assume  
21 that I prefer one decision over another, and you  
22 should not try to guess what my opinion is about  
23 any part of this case. And it would be wrong  
24 for you to conclude that anything I say or that I  
25 do means I'm for one side or the other. Discussing

1 and deciding this case, the facts of this case is  
2 your job and your job alone and I cannot  
3 participate in that at all.

4 Now, each and every one of you have a note  
5 pad. And at this time, I would like you to write  
6 your name on the first page. Now, that's going to  
7 be your note pad until the end this case. You can  
8 take notes, but you are not required to take notes.  
9 However, I'm going to caution you, if you do take  
10 notes, don't get so involved in the note taking  
11 that you don't hear the testimony. And remember,  
12 your notes are there as a memory aid, they are not  
13 there as evidence in the case and you're not to be  
14 unduly influenced by any other juror's notes.  
15 They're just there to help you remember what the  
16 testimony was.

17 Now, one of the other things that you're  
18 allowed to do is participate in the questioning of  
19 live witnesses. But I can't allow you to ask an  
20 impermissible question any more than I can allow  
21 the attorneys to do the same. So I have a  
22 procedure, I've devised a form for you. You see  
23 the form in the back there?

24 Now, at the conclusion of when the plaintiff  
25 or the defendant is finished with the examination

1 of the witness, I will look to you and ask you if  
2 you have a question. If you do, I want you to  
3 write it down, write it legibly so I can read it.  
4 You must write it in complete sentences so it may  
5 be given. I have to read it verbatim, I can't  
6 interpret what you are saying. I can't try to  
7 figure out, you know, get the gist of what it is  
8 and use my own words. I must use your exact words.

9 Now, what will then happen is I will call the  
10 attorneys up here, we'll have a side bar  
11 conference, we'll go over the legality of your  
12 question and then I will make a decision, whether  
13 or not to read it. And if I do, I will read it to  
14 the witness and the witness will respond.

15 I do not want to know what juror wrote the  
16 question. So don't put your name or your number  
17 down there, who you are. And if your question is  
18 not asked, you're not to hold that against either  
19 one of the parties, that's my decision and my  
20 decision alone.

21 Now, that is the law and those are the rules  
22 that you have to abide by during the course of this  
23 trial. I'm now going to turn this over to the  
24 attorneys to give you what is referred to as an  
25 opening statement. It's like a little road map of

1 what they expect the evidence to show and what the  
2 issues are and you should pay close attention to  
3 them. But, again, what the attorneys say is not  
4 evidence in this case.

5 They may use demonstrative aids which will  
6 help them to either explain what they're saying or  
7 maybe a witness will use a demonstrative aid to  
8 explain what they're say. But a demonstrative aid  
9 is not evidence. It's when it comes in here to the  
10 court and a number is put on it, then it becomes  
11 evidence. But you should pay close attention.

12 All right. Are the parties ready to proceed?

13 MR. MARIANI: Yes.

14 MS. KITTERMAN: Your Honor, if I may ask to  
15 invoke the rule with regard to excluding witnesses.

16 THE COURT: The rule is invoked.

17 And what that basically means is the rule of  
18 sequestration, folks. And basically what it just  
19 means is that anybody that is a witness in the case  
20 cannot sit in here and listen to the testimony of  
21 another witness. So as a consequence, that's just  
22 a general rule that we can invoke. So that's what  
23 they're referring to.

24 The rule is invoked. Each one of the parties  
25 is responsible for their own witnesses. So if you

1 see one of your own witnesses in this courtroom,  
2 you've got to let us know.

3 MS. KITTERMAN: Thank you, Your Honor.

4 THE COURT: All right. So I invoke the rule.  
5 Are you ready to proceed, sir?

6 MR. MARIANI: Thank you, Your Honor.

7 OPENING STATEMENTS

8 Good afternoon again and thank you for  
9 serving. We live in a society that is filled with  
10 criticism. There is criticism everywhere. We have  
11 a college football player misses a field goal, he  
12 gets death threats because his team didn't win, the  
13 team didn't go to a bowl game, the college didn't  
14 make the \$12 million by going to the bowl and  
15 playing for the national championship. We have  
16 this type of criticism all around us.

17 And you know this is about -- in part, about  
18 an election. And the reality is that part of our  
19 society doesn't have manners anymore. You, as the  
20 Judge said, you're the mores of this community.  
21 It's your job over the next three days -- we should  
22 be done by Wednesday evening -- to listen to all of  
23 the evidence and you decide whether the activity  
24 that occurred in this case is within the mores that  
25 you want this community to have as relates to the

1 law that the Judge will instruct you on and how you  
2 apply that law.

3 So you also know this case is about limits.  
4 It's about drawing a line. Where do we draw the  
5 line with free speech? Is everything everybody  
6 says absolutely, you know, free in the sense that  
7 you can say it without consequences.

8 Free is an interesting word. We say free  
9 speech in this country because in other countries,  
10 people are not allowed to talk about responsible  
11 things. In our country, we use the phrase free  
12 speech to talk about responsible speech and to talk  
13 about proper investigation, proper colloquy, proper  
14 give and take. The evidence in this case is going  
15 to show, we think, someone who stepped over the  
16 line and violated the law as his Honor will tell  
17 you.

18 What this case is about is the path crossing  
19 of two men, Jess Santamaria, who is the  
20 County Commissioner for District 6, serving his  
21 second term, 74 years old. You will hear evidence  
22 of his dedication to his community, to a particular  
23 lifestyle that is meant to be honorable. His  
24 reputation is very, very important to him. And I  
25 think you will find him to be a man of

1 extraordinary reputation.

2 And the defendant Mr. Schaller, who came upon  
3 Mr. Santamaria because he, Mr. Schaller, wanted to  
4 get a road paved along the side of his house. You  
5 will hear testimony about Fargo Road. Not Fargo,  
6 North Dakota, but Fargo Road. And this is a road  
7 that runs right by Mr. Schaller's house. And it  
8 was a dirt road and he wanted to get this road  
9 paved. So he went to the engineering department of  
10 the County. And you will hear testimony from the  
11 engineering department about getting that road  
12 paved.

13 And he stayed on it. Mr. Schaller is a very  
14 intelligent man, you will find that out. He has  
15 special skills. And he stayed on the issue and  
16 stayed on the issue and stayed on the issue until  
17 he got Mr. Santamaria and then the  
18 County Commission interested in the issue.

19 And you will hear about a vote, that the  
20 County Commission voted in favor of paving that  
21 road under a particular program that I'm not going  
22 to mention right now because it's a little bit  
23 complicated. You will hear some of that testimony.

24 What happened next is that the  
25 County Commission found out that the other people

1 who have to pay for the road, meaning the other  
2 neighbors, didn't have notice about that. So they  
3 corrected that, and they had another meeting to  
4 call everybody else in to make sure that everybody  
5 was on the same page, everything was copasetic  
6 about paying for this road.

7 Well, it turned out there was great  
8 opposition by those other people. The approval of  
9 the road was withdrawn and Mr. Schaller lost his  
10 goal, the objective to get that road paved. He  
11 stayed on it. That's when he decided to run in  
12 opposition to Mr. Santamaria. He put together  
13 information, he went out and he researched and  
14 decided to run a campaign. Absolutely no problem  
15 with that. Everybody in America should become  
16 president. We believe in that 100 percent. And  
17 Mr. Schaller's right to go out and run a campaign  
18 is unquestioned. We're not here to suggest he  
19 should not have run for that office.

20 What we are here to show through the evidence  
21 is that what Mr. Schaller did was pulled together  
22 information and somewhere, somehow, he found a  
23 document that was a judgment. It was a criminal  
24 judgment, a judgment of conviction of battery,  
25 meaning someone -- I'm sorry, not battery, I

1 misspoke. I apologize. Burglary. Someone had  
2 burglarized and had been convicted by judgment.  
3 And he took that one-page judgment and he put it  
4 into materials that he put together about his  
5 campaign opponent, Commissioner Santamaria. And he  
6 distributed this information around the County;  
7 held a press conference in front of the courthouse  
8 across the -- our historical courthouse right  
9 across the street, invited all of the press, sent  
10 this to every agency.

11 It's -- some people think it's 118 pages  
12 long, some people think it's 119 pages long. But  
13 it's more than a hundred pages of information.  
14 This page, 76, remember that number if you would,  
15 this page is right in the heart of this document.  
16 And this page shows a conviction of a criminal  
17 judgment. And the headline on the page is, Felony  
18 Record of Jesus, that's spelled J-e-s-u-s, like  
19 Jesus, Jesus R. Santamaria. And then he lists the  
20 judgment and he says, does Santamaria have a felony  
21 record? Does his opponent have a felony record.

22 Plaintiff believes that the evidence will  
23 show that that document labels Mr. Santamaria a  
24 felon, which is absolutely untrue. It is  
25 absolutely untrue. It is not even close to being

1 true. Mr. Santamaria, you will hear evidence,  
2 never been charged with anything, never been  
3 convicted of a crime. Has a traffic ticket or two  
4 or three like we all do. Beyond that, a very  
5 special person. A very, very special person.

6 And Mr. Schaller sent this publication,  
7 that's a term of art, publication. That's why I  
8 asked if anybody had been in the newspaper  
9 business. We're not talking about publishing in  
10 the sense of putting it in a newspaper. We're  
11 talking about putting it in the stream, letting it  
12 go, either speaking it or compiling it and then  
13 distributing it. That's what we call publication  
14 in these types of cases.

15 So we're here about that document. You might  
16 hear a lot of other things from a lot of other  
17 people, but we're here for that one document, that  
18 Mr. Schaller labeled Mr. Santamaria a convicted  
19 felon. That is crossing the line. We're not here  
20 about any other name or any other brick-back that  
21 may have been thrown back and forth. We're not  
22 here about any of that.

23 This is our complaint. It's possibly the  
24 thinnest complaint in Palm Beach County. It's four  
25 pages long with an exhibit, and it's about this one

1 page. It's Page 76 that is inside this document  
2 that Mr. Schaller titled, "Request for Inquiry,  
3 Violations of Jess R. Santamaria and His County  
4 Staff, Palm Beach County Commissioner, District 6."

5 He distributed this on September 13th, 2010.  
6 The publication of that, you will find. I want you  
7 to focus, please, on the witnesses and look at  
8 their sincerity and look at their credibility as  
9 the Judge has described to you and listen to all of  
10 the evidence. Listen to the totality of the  
11 evidence. Look at what happened, look at the whole  
12 thing that happened. And you need to decide  
13 whose -- you know, whose story is more believable  
14 here. And we think that you'll find that the  
15 totality of the circumstances shows that  
16 Mr. Schaller acted with what the law calls actual  
17 malice. Actual is not a sophisticated word. I  
18 don't know why the court uses it, but it does, it  
19 comes out of a 1969 Supreme Court case involving  
20 the New York Times newspaper.

21 Malice is a word that many of us have heard  
22 in different ways or used in different ways. But  
23 what you will hear is that actual malice means in  
24 this context, the context we're here today, is that  
25 someone published either with knowledge that it was

1 false. And you can look at all of the evidence,  
2 you can look at circumstantial evidence. The Judge  
3 will tell you and it's clear that we can't get  
4 inside someone else's head. We can never really  
5 know -- maybe a neurosurgeon can, what somebody is  
6 thinking. But you need to listen to the outward  
7 manifestations of what people did, what people  
8 said. What people -- you know, the totality of  
9 those circumstances to decide, for example, in this  
10 case, whether Mr. Schaller acted with knowledge  
11 that this document was false or, and this is  
12 important, or reckless disregard for whether it was  
13 true or false. Did he not care enough that it be  
14 true. Did he intentionally stop short of finding  
15 the truth. Did he manipulate, did he play fast and  
16 loose with Mr. Santamaria's reputation because he  
17 was an opponent in a race. Did he cross the line.  
18 That's what you're here to decide.

19 We're here for justice. We're here for  
20 putting the evidence in front of you and for you to  
21 look at all of it and to decide whether  
22 Mr. Schaller crossed the line and whether he  
23 defamed Mr. Santamaria when he decided to publish  
24 this Page 76 in this bigger document where he was  
25 attacking Mr. Santamaria's record as a community

1 representative, the Commissioner for District 6.

2 We are submitting and we believe the evidence  
3 shows, that there is a certain amount of fair game.  
4 Everybody has to have a tough hide if they're in  
5 politics. We understand that. We're not here to  
6 suggest that Mr. Santamaria has thin skin or that  
7 you should decide that people are allowed to have  
8 thin skin. We're not making that argument. We're  
9 saying that regardless of how thick the skin is,  
10 the law says that calling somebody a criminal,  
11 labeling them a criminal when they're not a  
12 criminal is crossing that line. We think that that  
13 is very clear.

14 So in respect of the actual malice standard  
15 and the reason that standard applies is because  
16 Mr. Santamaria is a public official. It's fair  
17 game to create controversy -- not create  
18 controversy, but to investigate, to do whatever we  
19 think appropriate vis-a-vis public officials.

20 So you as the mores of this community, it's  
21 your obligation to tell this community: Is what  
22 Mr. Schaller did, is it acceptable in this  
23 community or did he cross the line.

24 When you listen to all of the facts, when you  
25 interpret and make up your minds about the



1 Mr. Schaller used a question mark on this Page 76.

2 "Does Santamaria have a felony record?" And I will  
3 submit that the evidence is also going to show that  
4 he's going to try to hide behind that question  
5 mark. We think he's not properly able to hide  
6 behind that question mark. And I will tell you  
7 why, because when you look at all of the evidence  
8 and if you think the evidence shows that the manner  
9 in which this was presented, if you think  
10 implies -- excuse me. If you think it implies that  
11 there is a judgment against Mr. Santamaria, then  
12 that's a statement that we submit is defamatory.

13 In other words, simply because most people  
14 think statements have periods at the end of the  
15 sentence doesn't necessarily mean that the  
16 implication of a statement, meaning of this  
17 document, is not defamation simply because there is  
18 a question mark. You need to decide if there was  
19 doubt, and if the question mark was used because  
20 Mr. Schaller had doubt, or whether he was being  
21 reckless.

22 You know, again, I use the phrase play fast  
23 and loose with Mr. Santamaria's reputation. Is  
24 using that question mark, is that just like gaming?  
25 Is that just making up, you know, a cute way so

1 that if in the event that somebody called him on  
2 it, he could in retrospect have an excuse and say,  
3 geez, I used a question mark, I didn't think it was  
4 that damning, I didn't think it was that  
5 defamatory.

6 So use your common sense in analyzing the  
7 evidence and determining what you think that  
8 question mark really means, whether you think it's  
9 significant. If there is an insinuation that  
10 induces a belief in a reader that Jess Santamaria  
11 was a convicted felon, because you believe when you  
12 hear all of the evidence that that's what this  
13 document was about and it was a very clever way to  
14 sort of put it in there and send that message that  
15 he was, then the totality of the circumstances  
16 should lead you to whatever your decision is.

17 We've tried to streamline this case because  
18 of a need to get this case done by Wednesday. And  
19 if you feel we're rushing witnesses, it's not  
20 because we're doing that intentionally. It's  
21 because we're trying to fit this case into that  
22 time and everybody has agreed to that and that's  
23 fine. But listen, listen to the witnesses.

24 We're going to put on Mrs. Santamaria, we're  
25 going to put on Mr. Santamaria's daughter,

1 Michelle, who spoke with Mr. Schaller after this  
2 publication. You will hear evidence of her telling  
3 him, what are you doing? You know my father's not  
4 a convicted felon. And you will hear testimony  
5 about that. Listen, listen to that and listen to  
6 Mr. Schaller's responses. And then as I mentioned  
7 earlier, we'll have witnesses from the engineering  
8 department and, of course, you'll hear from  
9 Mr. Santamaria.

10 Please listen to all of the evidence and  
11 please use your common sense and please  
12 collectively decide where we draw this line in this  
13 community. We think this is a very important case.  
14 And, again, we don't think it's simply an important  
15 case because Mr. Santamaria is the plaintiff.

16 Mr. Santamaria thinks it's an important case  
17 because it's important to do the right thing. He's  
18 a person who's lived his entire life and will  
19 continue to live his entire life, he's a very  
20 energetic man, but he lives his life to do the  
21 right thing. That is his guiding principle. And  
22 why would we allow someone to cross the line  
23 against anyone, against anyone. And that's part of  
24 what Mr. Santamaria is concerned about, is that are  
25 we really without any structure anymore. Is it

1 really that we don't even bring cases because the  
2 juries won't recognize defamation per se.

3 You know what, there used to be a time  
4 when -- there's a whole list of different things  
5 that were defamation, per se, back in the 1800s and  
6 the early 1900s, and one was if a woman was  
7 considered loose, that was defamation per se.  
8 Well, somehow over the years, that's considered  
9 acceptable now and women can't run into court and  
10 say, somebody called me loose and I have a  
11 defamation per se claim. And to a certain extent,  
12 that is where society is on that issue.

13 On this issue, the law has never moved. The  
14 law believes that someone's reputation is very,  
15 very important. And certainly the plaintiff  
16 submits that. So you need to decide in your  
17 decision making, has Mr. Schaller crossed that line  
18 by calling Mr. Santamaria a criminal, which is  
19 still libel per se or defamation per se on the  
20 books. That's the law. That's still the law. And  
21 you're going to be asked to follow the law and  
22 apply that law to the totality of the circumstances  
23 that you find and then decide whether or not  
24 Mr. Santamaria is entitled, you know, to a remedy.  
25 But please listen carefully.

1 I thank you for your time. And I'll talk to  
2 you again at the closing, which should be sometime  
3 on Wednesday. And I would ask and thank you for  
4 your undivided attention to all of the witnesses  
5 and everything the Judge says. And I'm confident  
6 that you will do the best you can to decide this  
7 issue and I thank you for that.

8 THE COURT: Counsel, if you are ready to  
9 proceed, you may do so.

10 MS. KITTERMAN: Good afternoon, Ladies and  
11 Gentlemen of the Jury. Thank you for your time in  
12 coming back today and sitting through this case.

13 The plaintiff wants to try and convolute this  
14 case with a lot of different things that just  
15 really aren't what we're here for today. What  
16 we're here for today is our First Amendment rights.  
17 They were given to us by our forefathers for a  
18 reason, our country is free to speak. They give us  
19 the freedom of speech.

20 And courts have consistently upheld  
21 throughout the years your freedom of speech. One  
22 of the most highly protected freedom of speech is  
23 when you're dealing with a public official or  
24 public figure.

25 Now, it's uncontested that plaintiff

1 Mr. Santamaria is a commissioner. So he is a  
2 public official. So any speak that goes against  
3 Mr. Santamaria does have to rise to that level of  
4 actual malice that you just heard plaintiff's  
5 counsel talking about. And I'll get back to that  
6 in a minute.

7 So what is important here? This is a story  
8 about Andy, Andy Schaller. He's been a citizen of  
9 this community for over 30 years. Mr. Schaller had  
10 an issue that he wanted to address with the  
11 County Commission so he went to his commissioner.  
12 He asked his commissioner for help, to help him do  
13 something that related to something that was in  
14 that commissioner's district. The commissioner  
15 ultimately let him down. And when he let him down,  
16 Andy decided he was going to run for that  
17 commission seat. He thought maybe he could do a  
18 better job in listening to the little person.

19 So he ran. He entered the race. Andy had  
20 never ran for public office before, he's not a  
21 politician. He's not somebody who has been  
22 involved in this process. He was a citizen that  
23 needed help and was ultimately let down.

24 So when he started his campaign, he wanted to  
25 investigate into the acts of a commissioner while

1 he's public office. Has the commissioner complied  
2 with all of the election -- not the election rules,  
3 but the rules of being in public office, being a  
4 commissioner.

5 So Mr. Schaller had done public records  
6 requests to the actual County. He also did online  
7 research on public websites. He searched the  
8 commissioner's name on Palm Beach County Clerk of  
9 Court website. And when he got all of this  
10 information, six days, he compiled, as the  
11 plaintiff's will tell you, a request for inquiry.  
12 Andy didn't know any other way to find out whether  
13 or not this information about the commissioner was  
14 true.

15 So he published 118 pages with ten different  
16 inquiries, as to whether Mr. Santamaria is fit for  
17 office, whether Mr. Santamaria has abused his power  
18 in office. And one of the things that Mr. Schaller  
19 found when he was doing his public research online  
20 was this one-page felony judgment. This one-page  
21 felony judgment has the commissioner's name on it.  
22 It's the commissioner's birth name,  
23 Jesus R. Santamaria.

24 So Andy didn't know whether or not one of our  
25 elected officials was a convicted felon. This

1 felony judgment, you will see, is from 1991. It's  
2 not something that just happened yesterday. So  
3 it's not something that would have been in the  
4 news. Andy said, if we have a commissioner that  
5 has a convicted felony record, maybe the public  
6 should know about it. I don't know. So he  
7 included it in his request for inquiry.

8 Two days later, the commissioner's daughter,  
9 Michelle Santamaria, came to Andy and said, I  
10 pulled the case from the courthouse. I went down  
11 there and I looked at it, and it did not relate to  
12 my father. Andy said, okay, good to know. There  
13 will probably be some dispute as to who said what.

14 The next opportunity Andy had, he was on a  
15 local radio station. And that DJ asked him, what  
16 is this about the felony record of Mr. Santamaria.  
17 Andy said, I have to be fair to the commissioner,  
18 I've now been told that does not relate to the  
19 commissioner, so I'm happy to hear that.

20 The DJ said, oh, well, did you look into the  
21 information, did you look at the Social Security  
22 number? No, I did not. I took his daughter's word  
23 for it. So it doesn't relate to him.

24 Andy did not know when he found that felony  
25 record that it did not relate to the commissioner.

1 There was no way for him to know because the felony  
2 record didn't have any personal identification on  
3 it other than Jesus R. Santamaria. That's it.

4 So what this case involves, when you're  
5 dealing a public official, like we said, the public  
6 official has to prove by clear and convincing  
7 evidence. Clear and convincing evidence is a lot  
8 bigger burden to prove than a typical civil case  
9 where a typical civil case is a preponderance of  
10 the evidence. Some parts of this case do involve  
11 that. But specifically when you're dealing with  
12 actual malice, whether or not Andy knew or should  
13 have know that that felony judgment did not belong  
14 to the plaintiff, you have to judge that  
15 information by clear and convincing evidence.

16 Clear and convincing evidence is evidence  
17 that is so precise, it's explicit, it's lacking in  
18 confusion. It's such great weight this it produces  
19 a firm belief or conviction without hesitation.  
20 They have to prove that the evidence will show that  
21 Andy did not know that that felony judgment related  
22 to the commissioner.

23 Listen to the witnesses, listen closely. See  
24 if any of the witnesses can identify that Andy  
25 didn't know that that felony conviction related to

1 the commissioner. Listen to the witnesses to see  
2 if they can tell you whether or not he should have  
3 known or he acted with reckless disregard as to  
4 whether that felony judgment related to the  
5 commissioner.

6 And I think it's important, also, to note  
7 that we have our own opinions of what reckless  
8 means. But reckless means within the context of  
9 defamation and what they have to prove. It's that  
10 he specifically decided not to go forward. He  
11 said, it doesn't matter whether or not this is true  
12 or not, I'm not going to investigate it. The  
13 evidence isn't going to show that.

14 Mr. Schaller, Andy, is here to testify. And  
15 he's here to tell you what he thought, what he  
16 looked into. What he found and why he published  
17 it. He is the person that can tell you that.  
18 Anything else, anything outside of it, why  
19 Mr. Schaller went to the commissioner, the road  
20 issue, it doesn't have any bearing on whether or  
21 not Andy knew that felony judgment belonged to the  
22 commissioner. That is the only thing for you to  
23 decide by clear and convincing evidence that that  
24 felony judgment, Andy thought it could be the  
25 commissioner.

1           So he was searching for information to see if  
2           it was. And it was included in 118 pages of a  
3           request for inquiry that dealt with ten different  
4           violations that potentially related to the  
5           commissioner. The statement was not a statement,  
6           it was a question, which he answered that it wasn't  
7           the commissioner as soon as he found it out. And  
8           that's all this case is about.

9           So I ask that you listen to the evidence and  
10          listen to Mr. Schaller and what he believed and  
11          what he knew and what was available -- what  
12          information was publicly available on the Internet  
13          when he did the search. And we believe that you  
14          will come to a conclusion that Andy did not act  
15          with actual malice when he was printing whether or  
16          not this felony record related to the commissioner.  
17          Thank you.

18          THE COURT: All right. Counsel, thank you  
19          very much.

20          Ladies and gentlemen, that concludes the  
21          opening statements at this time. I see that it's  
22          almost -- I normally would give you a break around  
23          3 o'clock and I know you've been here since a  
24          little after 1:00. So I'm going to go ahead and  
25          give you your afternoon break. Remember you're not

1 to discuss this amongst yourselves, stay away from  
2 the witnesses and the attorneys, and I'll see you  
3 back here at 3 o'clock. If you need to go  
4 downstairs and get a cup of coffee, that's fine.  
5 We're in recess until 3 o'clock.

6 (The Jury left the courtroom after which the  
7 following proceedings were had:)

8 THE COURT: Counsel, you got your witnesses  
9 ready to go?

10 MR. MARIANI: We have two. We'll maybe look  
11 for a third.

12 THE COURT: Okay. Good. I'll see you back  
13 at 3 o'clock then.

14 MS. KITTEMAN: Thank you.

15 (A brief recess was taken at 2:40 p.m.)

16 (Proceedings continued in Volume II of the  
17 same day.)

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