

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.

_____ /

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE
DAVID E. FRENCH

VOLUME II
(Pages 156-236)

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

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

Reported By:

Pamela J. Sullivan, RPR, FPR, CLR
Notary Public, State of Florida
Signature Court Reporting, Inc.
105 South Narcissus Avenue, Suite 400
West Palm Beach, Florida 33401
561.659.2120

- - -

1 APPEARANCES:

2
3 On behalf of the Plaintiff:4 JOHN F. MARIANI, ESQUIRE
5 DANIEL J. BARSKY, ESQUIRE
6 SHUTTS & BOWEN, LLP
7 525 Okeechobee Boulevard
8 Suite 1100
9 West Palm Beach, Florida 33401
10 561.835.8500
11 jmariani@shutts.com
12 dbarsky@shutts.com13
14 On behalf of the Defendant:15 CHRISTINA M. KITTERMAN, ESQUIRE
16 CINDY OLEA-DIAZ, ESQUIRE
17 CMK LAW, P.A.
18 530 S. Federal Highway, Suite 201
19 Deerfield Beach, Florida 33441
20 954.426.9290
21 ckitterman@cmk-law.com
22
23
24
25

MASTER INDEX OF PROCEEDINGS

- - -

| | PAGE |
|---|------|
| VOIR DIRE | |
| Examination by the Court | 17 |
| Examination by Mr. Mariani | 41 |
| Examination by Ms. Kitterman | 70 |
| JURORS SWORN | 114 |
| DEFENDANT'S MOTION FOR DIRECTED VERDICT | 485 |
| DEFENDANT'S RENEWED MOTION FOR DIRECTED VERDICT | 619 |
| PLAINTIFF'S CLOSING ARGUMENT | 662 |
| DEFENDANT'S CLOSING ARGUMENT | 680 |
| PLAINTIFF'S WITNESSES | |
| VICTORIA SANTAMARIA | |
| Direct Examination by Mr. Barsky | 161 |
| Cross Examination by Ms. Kitterman | 169 |
| MICHELLE VICTORIA SANTAMARIA | |
| Direct Examination by Mr. Barsky | 171 |
| Cross Examination by Ms. Kitterman | 199 |
| TANYA McCONNELL | |
| Direct Examination by Mr. Barsky | 283 |
| Cross Examination by Ms. Kitterman | 300 |
| JESS R. SANTAMARIA | |
| Direct Examination by Mr. Mariani | 324 |
| Cross Examination by Ms. Kitterman | 373 |
| Redirect Examination by Mr. Mariani | 479 |
| Recross Examination by Ms. Kitterman | 484 |

1 DEFENDANT'S WITNESSES

2 ANDREW F. SCHALLER

3 Direct Examination by Ms. Kitterman 500

4 Cross Examination by Mr. Mariani 588

5 Redirect Examination by Ms. Kitterman 484

6 REBUTTAL WITNESS

7 JESS R. SANTAMARIA

8 Direct Examination by Mr. Mariani 616

9 Cross Examination by Ms. Kitterman 616

10 INDEX OF PLAINTIFF'S EXHIBITS

| 11 | NUMBER | DESCRIPTION | MARKED | RECEIVED |
|----|--------|---|--------|----------|
| 12 | 1 | Request For Inquiry | 109 | 174 |
| 13 | 2 | Felony Record | 112 | 174 |
| 14 | 3 | Certified Copy File Documents | | 178 |
| 15 | 4 | Follow up Request For Inquiry | 184 | 186 |
| 16 | 5 | Road Project File | 287 | |
| 17 | 5A | Fargo Letter from Road Project File | 615 | 615 |
| 18 | 5B | Email from Schaller to Weisman | 615 | 615 |
| 19 | 6 | Good News Article 3/9/95 | | 352 |
| 20 | 7 | Spotlight -Palms West Recognition | | 352 |
| 21 | 8 | Royal Palm Beach Town Crier Honor | | 352 |
| 22 | 9 | Santamaria Wins Prestigious County Honor | | 352 |
| 23 | 10 | Certificate of Naturalization | 357 | 357 |
| 24 | 11 | PB County Commission on Ethics Report Dismissal | | 354 |
| 25 | 13 | Inspector General Report of Investigation | | 354 |

P R O C E E D I N G S

- - -

(Proceedings continued from Volume I of the same day.)

THE COURT: Have a seat. Thank you.

Go ahead and bring the jury in, please.

(Jury entered.)

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

Go ahead and call your first witness.

MR. BARSKY: Your Honor, we'll call Victoria Santamaria.

- - -

Thereupon,

VICTORIA SANTAMARIA,

Having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. BARSKY:

Q. Good afternoon, ma'am. Would you please tell us your name.

A. Victoria Santamaria.

Q. And your last name is Santamaria. Are you married to Jess?

1 A. Yes.

2 Q. I'd like you to tell us a little bit about
3 yourself, where were you born?

4 A. I was born in the Philippines.

5 Q. Is that where you also went to school?

6 A. Yes.

7 Q. How many years of school did you attend?

8 A. Sixteen years.

9 Q. Could you tell us what those 16 years were,
10 please?

11 A. Elementary, high school and college.

12 Q. Where did you go to college?

13 A. Assumption College.

14 Q. In the --

15 A. In the Philippines.

16 Q. Did you get a degree from Assumption College?

17 A. Yes, bachelor of arts.

18 Q. Was there a specialty?

19 A. I think foreign service.

20 Q. Would you tell us a little bit about meeting
21 Jess in the Philippines.

22 A. A friend of his had asked my sister to go
23 out. And in the Philippines, it's customary to have a
24 chaperone. And my sister didn't want to bring a
25 chaperone so I asked a friend of hers, and she was the

1 date of Jess. And when they came to pick them up, they
2 weren't ready and so I entertained them.

3 Q. And did you start dating Jess right at that
4 point?

5 A. No, several months later.

6 Q. What happened several months later?

7 A. Another friend took my sister out. And my
8 sister asked me to double date with Jess. And I didn't
9 want to because he was too old.

10 Q. Despite the fact that he was too old,
11 ultimately, did you wind up going out with Jess?

12 A. Yes.

13 Q. And how long did the two of you date?

14 A. Five years.

15 Q. Did you get married at the end of those five
16 years?

17 A. Yes.

18 Q. Where did you get married?

19 A. In the Philippines.

20 Q. How long after you got married did you and
21 Jess stay in the Philippines?

22 A. We left three days after because he had to go
23 get his MBA at Wharton.

24 Q. And is Wharton at the University of
25 Pennsylvania?

1 A. University -- the Wharton Business School at
2 the University of Pennsylvania.

3 Q. So you moved with Jess to America. While
4 Jess was in school at Wharton, what were you doing?

5 A. I worked for Pan Am.

6 Q. What were you doing for Pan Am?

7 A. I did reservations work.

8 Q. How long total did you work for Pan Am?

9 A. Nine years.

10 Q. Was all of that time in America?

11 A. No. Seven years in America.

12 Q. Was that income from Pan Am supporting you
13 and Jess while Jess was going to school?

14 A. Yes.

15 Q. Did you have any children while you lived in
16 Philadelphia?

17 A. Yes, we had three.

18 Q. What are their names?

19 A. Christopher, Vincent and Michelle.

20 Q. What about grandchildren, do you have any
21 grandchildren?

22 A. We have three, Ell, Sophia and Max.

23 Q. Once Jess graduated from Wharton, how long
24 did the family live in Philadelphia?

25 A. Seven years. Then we moved here to Royal

1 Palm Beach.

2 Q. Why ultimately did the family move to Royal
3 Palm Beach?

4 A. In the beginning, he was commuting. He would
5 spend a weekend a month and then it became two weekends
6 a month and then eventually he would spend a week here.
7 And that's when we all decided that we should all move
8 down here.

9 Q. Was Jess commuting down here to Florida for
10 work?

11 A. Yes.

12 Q. What was he doing?

13 A. He was involved in real estate. He was
14 selling real estate.

15 Q. And this was taking place you said before you
16 moved down here. So this is sometime in the '70s?

17 A. Yes.

18 Q. Where was Jess living when he was traveling
19 back and forth between South Florida and Philadelphia?

20 A. Here in Royal Palm -- I mean, in Florida? He
21 lived at the Royal Inn, the hotel.

22 Q. All right. Do you and Jess own that hotel
23 with some other people now?

24 A. Yes.

25 Q. Once the whole family finally made it down to

1 Florida, what did Jess do for a living?

2 A. He was involved in the shopping centers,
3 selling real estate.

4 Q. What about you, what did you do during the
5 day?

6 A. I worked for our company, I was the
7 bookkeeper. And at the hotel, I did the front desk work
8 or night audit. And if one of the housekeepers was out,
9 I did cleaning.

10 Q. What do you do for work today?

11 A. I am still a bookkeeper and like an office
12 manager. I oversee if they need things in the office, I
13 go out and buy them.

14 Q. Do you have any professional licenses or
15 certifications?

16 A. I'm a licensed real estate broker.

17 Q. Do you ever use that license?

18 A. I'm sorry?

19 Q. Do you ever use that license?

20 A. It's still active.

21 Q. Since your family moved to Royal Palm Beach
22 in the '70s, have you been active in the community here
23 in Florida?

24 A. Jess has been active and I just support him
25 with whatever activity he's with.

1 Q. Could you describe some of those activities
2 for us?

3 A. Let's see. He was involved with the Royal
4 Palm Beach Lion's Club, Citizens For Open Government,
5 Crestwood Performing Arts League, My Brother's/Sister's
6 Keeper Charitable Trust, My Brother's/Sister's Keeper
7 Scholarship Foundation, Palms West Hospital,
8 Wellington Regional Hospital, Royal Palm Beach
9 Elementary Advisory Board, Crestwood Middle School
10 Advisory Board, Royal Palm Beach High School Advisory
11 Board, Caribbean American for Community Involvement.
12 That's all I can remember.

13 Q. Okay. And has Jess been involved in these
14 type of activities since moving down here in the '70s?

15 A. Yes.

16 Q. You mentioned a couple of charities there,
17 Brother's/Sister's Keeper. Could you tell us what that
18 is?

19 A. My Brother's/Sister's Keeper Scholarship
20 Foundation, he founded to help those kids that are not
21 academically gifted or maybe not as bright but they are
22 good citizens. So he wanted to recognize that and give
23 them opportunity to get the scholarship.

24 My Brother's/Sister's Charitable Trust, he
25 founded that right after Hurricane Katrina to help those

1 disadvantaged when they had hardships.

2 Q. Are you involved in those organizations as
3 well?

4 A. I do the books for those.

5 Q. Did you support Jess's decision to run for
6 County Commissioner?

7 A. No.

8 Q. Why not?

9 A. I didn't like politics.

10 Q. Did you tell Jess that?

11 A. Yes.

12 Q. What was his response to that?

13 A. He wanted -- he felt it was his duty ever
14 since Palm Beach County had the name Corruption County.
15 He felt that he had to show that there are honest people
16 in government.

17 Q. Do you know if Jess calls himself a public
18 servant?

19 A. Yes. He doesn't want to be called a
20 politician.

21 Q. Why not?

22 A. He always refers to himself to be a public
23 servant, to do the will of the public.

24 Q. And do you know why that is?

25 A. I guess politicians have a bad name.

1 Q. Are you aware of the request for inquiry and
2 the statements that the defendant made about Jess during
3 the political campaign at one point in time?

4 A. Yes.

5 Q. Have you observed how those statements have
6 affected Jess?

7 A. He was upset. He was mad because the things
8 that we have -- that we've told our kids, that there are
9 just three things he wants to give to them; a good
10 education, a good example and a good name.

11 Q. And so was it the case that the last one, the
12 good name, had been affected now?

13 A. With that accusation, yes.

14 Q. Did you observe anything else about Jess that
15 showed how those statements affected him?

16 A. I know he didn't want to show it to me, but I
17 could -- at night, I could see that he wasn't sleeping
18 well at times. And he would be quiet and upset, so...

19 MR. BARSKY: That's all I have.

20 THE COURT: Cross?

21 CROSS EXAMINATION

22 BY MS. KITTERMAN:

23 Q. Miss Santamaria, isn't it true that when you
24 first met your husband, his name was Jesus Santamaria?

25 A. I was introduced to him as Jess Santamaria.

1 Q. Isn't it true his birth name is
2 Jesus Santamaria?

3 A. His birth name, yes.

4 Q. Have you known Mr. Santamaria to be called
5 Jesus Vincente Santamaria?

6 A. Later on, yes, but I only knew him as Jess.

7 Q. Okay. And I believe you stated that Jesus R.
8 Santamaria, he's also been known as that; is that true?

9 A. Yes, that's his mother -- R is his mother's
10 maiden name.

11 Q. Okay. R stands for Ross?

12 A. Yes.

13 Q. You just stated that you observed Jess being
14 upset, mad, that he couldn't sleep. How do you know
15 that that is what he was upset about?

16 A. I just know it would be it. I sleep beside
17 him.

18 Q. Could he be upset about something happening
19 in the County Commission?

20 A. He would talk about the County Commission if
21 there was something that would upset him.

22 Q. Okay. But he never unequivocally said, I am
23 not sleeping because Mr. Schaller printed this request
24 for inquiry, did he?

25 A. He did not say that.

1 Q. Okay.

2 MS. KITTERMAN: That's all the questions I
3 have for you, Ms. Santamaria. Thank you very much
4 for your time.

5 THE COURT: Redirect?

6 MR. BARSKY: None, Your Honor.

7 THE COURT: Ladies and gentlemen, do you have
8 any questions of this witness?

9 All right. There being no questions, madam,
10 you're excused. Watch yourself as you step down.

11 (Witness excused.)

12 THE COURT: Next witness, please.

13 MR. BARSKY: We'll call Michelle Santamaria.

14 - - -

15 Thereupon,

16 MICHELLE VICTORIA SANTAMARIA,

17 Having been first duly sworn or affirmed, was examined
18 and testified as follows:

19 THE WITNESS: Yes, I do.

20 DIRECT EXAMINATION

21 BY MR. BARSKY:

22 Q. Good afternoon. Could you please tell us
23 your full name.

24 A. Hi, good afternoon. My name is Michelle
25 Victoria Santamaria.

1 Q. Michelle, could you tell us what you do for a
2 living?

3 A. Yes, I am an attorney by trade, formerly
4 criminal prosecutor, and currently I'm a teacher. I
5 work with law enforcement witnesses, teaching them about
6 the court system, specifically testifying. Part-time I
7 also help out at my parents' hotel, doing front desk
8 receptionist work.

9 Q. You mentioned your parents' hotel, and your
10 last name is Santamaria. Are you related to Jess?

11 A. Yes, he's my dad.

12 Q. And I called him Jess and we've called him
13 Jess in this courtroom. Have you ever known your dad by
14 any other name?

15 A. No.

16 Q. Did your dad give you a copy of a document
17 titled request for inquiry?

18 A. Yes. He gave that to me on Monday
19 September 13th of 2010, when I was over at his house
20 that night.

21 Q. Do you know why he gave you that document?

22 MS. KITTERMAN: Objection, calls for
23 speculation.

24 THE COURT: Overruled.

25 If you know.

1 THE WITNESS: Yes, I do know why. He gave it
2 to me because he was upset about it. He was being
3 accused of many things in this document, most
4 specifically what stood out to me as a prosecutor,
5 was that he was a felon, committing a burglary back
6 in 1991.

7 MR. BARSKY: Your Honor, if I may approach
8 the witness?

9 THE COURT: Yes, sir.

10 BY MR. BARSKY:

11 Q. Ma'am, I'm showing you two documents, they've
12 been marked as Plaintiff's Exhibits 1 and 2. Have you
13 seen these documents before?

14 A. Yes, I have seen both of these documents
15 before.

16 Q. Can you tell us what they are?

17 A. The first document that has a sticker saying
18 Plaintiff's Exhibit 1 is the actual document that I
19 looked at that night, on that Monday night at my dad's
20 house was the first one. And the second piece of paper
21 is a page from within the document that I looked at that
22 night.

23 Q. Your Honor, if I could move these in?

24 MR. BARSKY: Your Honor, I would like to move
25 these into evidence at this point.

1 THE COURT: Okay. Any objection?

2 MS. KITTERMAN: Yes, Your Honor. My
3 objection stays the same with regard to Plaintiff's
4 Exhibit 1 not being an accurate copy of what
5 Mr. Schaller produced.

6 THE COURT: Okay. That's overruled, it's
7 identified as a document received by third party.
8 All right. Go ahead. It's in evidence over
9 objection.

10 THE CLERK: As what? One and two,
11 Your Honor?

12 (Plaintiff's Exhibit Nos. 1 & 2 were admitted
13 into evidence.)

14 THE COURT: That will be Composite Exhibit 1
15 for identification and in evidence, and 2 is the
16 single page.

17 MR. BARSKY: If I may, Your Honor, I'd like
18 to publish a part of Exhibit 2 to the Jury, on the
19 TV link.

20 THE COURT: That's fine.

21 BY MR. BARSKY:

22 Q. Miss Santamaria, is this image here on the TV
23 a portion of what is now Exhibit 2?

24 A. Yes, it is.

25 Q. Could you read for us that top portion of

1 Exhibit 2?

2 A. Yes. The top portion says, "In the Circuit
3 Court, 15th Judicial Circuit In And For Palm Beach
4 County Florida, Case Number 91-1790CFA02, Division X,
5 May 17th, 1991, 8:55 a.m. State of the Florida Versus
6 Jesus R. Santamaria, Defendant. Judgment: The above
7 defendant being personally before this court represented
8 by Charles Burton, attorney, having entered a plea of
9 guilty for the following crimes: Count one, burglary of
10 a conveyance, Offense Statute Numbers 810.02 Subsection
11 1, Third Degree Felony."

12 Q. Could you read for us what the headline of
13 that document is?

14 A. "Felony record for Jesus R. Santamaria."

15 Q. Do you know that your dad was not the person
16 in Exhibit 2?

17 A. Yes, I know that this is not my father.

18 Q. How are you so sure?

19 A. In 1991 I was a freshman in high school. My
20 father was around all of the time. There was no concern
21 of mine whether he would be coming home any single night
22 or be arrested for committing burglary or any type of
23 felony.

24 Q. Do you ever recall seeing any newspaper
25 articles about your father being arrested in 1991 for

1 burglary on a conveyance?

2 A. No, there were no newspaper articles in '91
3 or any year. My father has never been arrested, never
4 committed any crimes, no felonies, especially not a
5 third degree felony where he could go to prison for
6 three years -- five years, third degree felony.

7 Q. Okay. So you saw this Exhibit we're looking
8 at, Exhibit 2, on Monday, September 13th of 2010. After
9 you saw that Exhibit, what did you do with it?

10 A. I saw this on Monday night at my mom and
11 dad's house. The very next morning, I came here, to the
12 Palm Beach County Courthouse. And based on what it
13 says, the very first line, in the Circuit Court, 15th
14 Judicial Circuit In And For Palm Beach County. So
15 that's why I went right here. And I went up to the
16 clerk's office, went up to the window.

17 And I took the information, case number and
18 Jesus R. Santamaria, and I asked the clerk if I could
19 get some more information about the case. Within 30
20 seconds she typed up on her computer, and said, Jesus R.
21 Santamaria, date of birth, she told me 1956. And then
22 she said that he lived in Miami, Florida. She gave me a
23 Miami address.

24 MS. KITTERMAN: Objection, Your Honor.

25 THE COURT: Wait a minute, Counsel.

1 MS. KITTERMAN: Hearsay.

2 THE COURT: Sustained.

3 MR. BARSKY: It's not being offered for the
4 truth of the matter asserted, just that is what
5 occurred at this point, Your Honor.

6 THE COURT: The objection is sustained,
7 hearsay. It's an out of court statement, unless
8 you got an exception to it.

9 BY MR. BARSKY:

10 Q. What did you next do with the clerk?

11 A. Next they made me a copy, and that took a
12 couple of minutes. And I left with a copy of the file.

13 MR. BARSKY: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. BARSKY:

17 Q. Ma'am, if you could take a minute to look at
18 that document that we've marked as Plaintiff's Exhibit 3
19 for identification.

20 A. (Witness complies.)

21 Q. Have you seen that document before?

22 A. Yes, I have. This is the file that the clerk
23 gave me.

24 Q. And it has some stamps on there that say
25 certified copy. But other than those stamps, is it the

1 same or in substantially similar condition as the time
2 you received it on that day, September 14th, 2010?

3 A. Yes, it is.

4 MR. BARSKY: Your Honor, I would also like to
5 move Plaintiff's Composite Exhibit 3 into evidence.

6 THE COURT: Any objection?

7 MS. KITTERMAN: No objection, Your Honor.

8 THE COURT: All right. In evidence without
9 objection.

10 THE CLERK: Plaintiff's 3.

11 (Plaintiff's Exhibit No. 3 was admitted into
12 evidence.)

13 MR. BARSKY: I would ask the witness to
14 publish a portion on this document to the jury and
15 I would also like to display it on the TV screen.

16 THE COURT: Go ahead.

17 BY MR. BARSKY:

18 Q. Miss Santamaria, I'm showing you a portion of
19 Plaintiff's Exhibit 3, this is the arrest record. If
20 you could please read for us the description of the
21 defendant and please skip the redacted portions, the
22 driver's license and the social security.

23 A. It says, "Defendant, Name, Santamaria, Jesus
24 R. White male, date of birth May 5th -- oh, sorry --
25 May 8th, 1956. Height, 5-foot 11-inches. Weight 230

1 pounds. Eye color, brown. Hair color, black.
2 Complexion, dark. Build, stocky; that he has a tattoo
3 on his left thigh, his marital status in 1991 is single,
4 religion, none. Permanent address, 6307 Northeast
5 Second Avenue, Lot F630, Miami, Florida, 33138, phone
6 number area code 305-759-4155. The address source is
7 listed as driver's license. Business address,
8 self-employed. Occupation, construction. Place of
9 birth, Havana, Cuba. Citizenship USA."

10 Q. Does the description of the defendant on that
11 arrest record match your father?

12 A. No, not at all.

13 Q. What does not match?

14 A. My father was born in 1937, not 1957. The
15 burglar has a dark complexion, my father is
16 light-skinned. The burglar is also stocky build. My
17 father has never been stocky. My father does not have a
18 tattoo on his left thigh or any part of his body. My
19 father has been married for 40-some years, especially in
20 1991, my dad has always been married, since I've been
21 alive.

22 Let's see. And my father has never lived in
23 Miami, and has never had a Miami phone number. My
24 father was born in the Philippines, and that's on the
25 other side of the planet from Cuba.

1 Q. So is the person in plaintiff's Exhibit 3
2 your father?

3 A. Absolutely not.

4 Q. Now, you mentioned that you had an
5 interaction with the clerk downstairs from where we are
6 right now. How long did that entire process take from
7 when you asked for the file to when you got it?

8 A. From when I asked for the file and she
9 brought it out? Not very long. Minutes. Immediately
10 she was giving me information about it from the screen,
11 within 30 seconds. And then to actually walk back there
12 and get it, couple minutes, maybe few minutes.

13 Q. You mentioned earlier that you were an
14 attorney. Did anybody in the clerk's office ask you to
15 show your bar card?

16 A. No.

17 Q. Did anybody ask you if you were an attorney?

18 A. No. They didn't ask for any identification.
19 I didn't have to provide any identification, nothing. I
20 just gave them the name Jesus R. Santamaria and the case
21 number.

22 Q. Was the person in the clerk's office somebody
23 that had seen you here in the courthouse before?

24 A. Not that -- she didn't say that she
25 recognized me, she didn't act like she recognized me.

1 Q. Did you recognize her?

2 A. No.

3 Q. What day was that again?

4 A. This was Tuesday morning, the very next day.
5 Monday night at my mom and dad's house is
6 when I saw the spiral bound document for the first time.
7 And I immediately woke up in the morning, went to the
8 courthouse and got the file.

9 Q. Okay. So that was Tuesday, and you saw the
10 document Monday and you've testified now that this
11 document Exhibit 3 shows that your father was not the
12 person in that felony record.

13 I'd like to talk a little bit more about your
14 dad. Have you ever heard of something called a
15 community forum?

16 A. Yes, I have.

17 Q. What is a community forum?

18 A. A community forum is basically a community
19 gathering that my father puts on every single month over
20 at the original Wellington mall, not the Wellington
21 Green Mall but the small mall in Wellington. And he
22 invites speakers from the community to talk to community
23 members, inform them about what is going on, discuss
24 issues. And community members can also speak freely.
25 And it's an open discussion.

1 He also brings in speakers on different
2 topics; for instance, ethics in business, ethics in
3 government. Some of the speakers have been, let's see,
4 the Inspector General, Sheryl Steckler, as well as
5 Alan Johnson, who is the Director of the Ethics
6 Commission here in Palm Beach County.

7 Q. How long has your father been hosting these
8 forums?

9 A. He's been doing it for, for many years.

10 Q. So after you went to the clerk's office on
11 that Tuesday, did you attend a community forum?

12 A. Yes. The very next day from Tuesday morning,
13 when I got the file from the clerk, the very next day,
14 Wednesday. It's always scheduled on a Wednesday, it's
15 the same Wednesday every month. It was already
16 scheduled and I went to it that night, Wednesday,
17 September 15th, 2010.

18 Q. Was the defendant at that community forum?

19 A. Yes. He went there also.

20 Q. Did you talk to the defendant?

21 A. Yes, I went over to him. And I told him
22 straight out, "My father is not a felon."

23 And his response to me was, in a sarcastic
24 manner, "I don't know that he's not."

25 And at that point I got upset and I said,

1 "You picked out one document from an entire court file
2 and that's what you published, claiming that he is a
3 felon." And I said, "You can get the whole file. The
4 whole file is at the courthouse, but you just picked one
5 page, one page without all of the identifying
6 information?"

7 And his response to me was, "Well, where is
8 the courthouse at?"

9 So at that point he also indicated to me that
10 he was very proud. His exact words to me that he was
11 very proud, he worked very hard on -- and he quoted the
12 exact number. I don't know, it's over a hundred pages.
13 But he said it's over a hundred pages and he had said,
14 I'm proud, and I worked very hard on this hundred and
15 some page document. And he also said that he was told
16 to put this in the document.

17 His exact words were, I was told to put it in
18 there or they told me to put in there. It was one of
19 those two exactly is what he said. And I told him that
20 he needed to fix this. And his response to me telling
21 him you need to fix alleging my father is a felon was
22 "I'll take that under advisement," once again in a very
23 sarcastic way.

24 Q. So on Monday September 13th, you saw that
25 request for inquiry. Tuesday you came down here to the

1 clerk's office, got the file that we see on the TV
2 screen right there. Wednesday you told the defendant
3 that he was wrong and that that wasn't your father.

4 So let's talk about what happened after that
5 Wednesday then. Have you ever been to defendant's
6 website, <http://www.andrewschaller.com>?

7 A. Yes, I've been to that website.

8 Q. Why did you go his website?

9 A. I went out on this website to find out more
10 information about just everything in general. I wanted
11 to see what was on there, quite frankly, what is he
12 putting on there.

13 MR. BARSKY: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes, sir.

16 (Plaintiff's Exhibit No. 4 was marked for
17 identification.)

18 BY MR. BARSKY:

19 Q. Ma'am, I've handed you what we've marked for
20 identification as Plaintiff's Exhibit 4. If you take a
21 minute to look at it, please.

22 A. Yes.

23 Q. Have you ever seen this document before?

24 A. Yes, it's from the Internet, from the website
25 that he has up. It's a page from it.

1 Q. This is one of the pages that you've seen on
2 Defendants website www.andrewschaller.com?

3 A. Yes, that's correct.

4 Q. Does it appear to be in the same or
5 substantially similar condition as to when you first saw
6 it?

7 A. Yes, it does.

8 MR. BARSKY: And, Your Honor, at this point
9 we'd like to move Plaintiff's Exhibit 4 for
10 identification into evidence.

11 THE COURT: Any objection?

12 MR. MARIANI: Yes, Your Honor this document
13 doesn't appear to be an accurate representation.

14 THE COURT: Three words --

15 MS. KITTERMAN: What?

16 THE COURT: Three words or less otherwise...

17 This way (motioning for both counsel to come
18 forward).

19 (The following proceedings were had before
20 the Court and out of the hearing of the Jury.)

21 THE COURT: It's her objection, let her
22 speak.

23 MS. KITTERMAN: Your Honor, this page that is
24 printed out --

25 THE COURT: Let me see what you got.

1 MS. KITTERMAN: There is missing pictures,
2 there's missing text, it's not an accurate
3 representation of the website. There are some
4 things missing.

5 THE COURT: Anything inaccurate about what
6 he's offering?

7 MS. KITTERMAN: No. It's not the full
8 representation of what it is.

9 THE COURT: That's what cross-examination is
10 and so forth, you can bring that out. But it's
11 accurate as far as this goes.

12 MR. BARSKY: If I may, Your Honor, we
13 actually have the actual website on the computer
14 and we can show the full thing. This is the way it
15 prints out.

16 THE COURT: I'll overrule to the extent that
17 you can bring out the full thing if that's what you
18 want.

19 (The following proceedings were held in the
20 hearing and presence of the Jury:)

21 (Plaintiff's Exhibit No. 4 was admitted into
22 evidence.)

23 THE COURT: All right. The objection is
24 overruled. Go ahead and continue.

25 MR. BARSKY: Your Honor, I would like to

1 actually publish the website to the Jury. I have
2 the digital copy on the computer.

3 THE COURT: All right, sir.

4 BY MR. BARSKY:

5 Q. Miss Santamaria, the paper copy you have has
6 been printed, so it has lost some information. Does
7 this here on the TV look like the web page that you
8 visited?

9 A. Yes, it does.

10 Q. Could you read for us what it says, please?

11 A. It says, "Follow-up Request For Inquiry
12 September 19th, 2010." And then there is an image of
13 the request for inquiry request, first exhibit, second,
14 and third. It says, "Click image to view full PDF.
15 Read the article in the Sun Sentinel," and there's a
16 click for the link, "and in the Palm Beach Post," and
17 there is a click for that link. "You can listen to the
18 sound bytes from the radio station WJNO," and also a
19 link that you can click on there. Below that is a video
20 clip from Channel 12 News.

21 Q. You said at the top that this page was posted
22 on September 19th, of 2010?

23 A. Yes, that's what it says, September 19th,
24 2010, after the forum, and after I had already gone to
25 the courthouse.

1 Q. And that was going to be my next question.

2 Was that before or after you had told the
3 defendant that the information in the Request For
4 Inquiry as pertained to your father being a felon was
5 inaccurate?

6 A. Right. I told him on Wednesday, which was
7 September 15th. And then the 19th, four days later is
8 when this was posted on his website.

9 Q. Your Honor, as the witness mentioned, there
10 is also a video on this web page. I'd like to play that
11 video for the jury, it's 40 seconds long.

12 THE COURT: Do you have any objection?

13 MS. KITTERMAN: Sorry, Your Honor?

14 THE COURT: He's playing the website. Do you
15 have any objection to that?

16 MS. KITTERMAN: What are you playing?

17 MR. BARSKY: The video that's located -- let
18 me scroll down.

19 MS. KITTERMAN: I can't really see it.

20 MR. BARSKY: The video that is posted right
21 there, it says Channel 12 Inquiry.

22 MS. KITTERMAN: Object as to hearsay, Your
23 Honor.

24 THE COURT: Out of court statement. What is
25 the exception?

1 MR. BARSKY: The exception is it's a
2 statement against interest of the defendant. He
3 interviewed on here and he made this statement.

4 THE COURT: So this is his statement?

5 MR. BARSKY: Correct, Your Honor. This is a
6 news report that features an interview with the
7 defendant.

8 THE COURT: All right. I'll overrule it as
9 an admission against interests. Go ahead.

10 (Audio recording played on court television.
11 Inaudible.)

12 MS. KITTERMAN: Your Honor?

13 MR. MARIANI: Your Honor, can we get an
14 identification as to what date that news channel
15 interview was taken?

16 THE COURT: This is September 19th.

17 MR. MARIANI: No, it's not, Your Honor.
18 That's why I would like to.

19 THE COURT: All right, Ladies and Gentlemen
20 of the Jury, I'm going to need you step into the
21 Jury room. I'm going to be having to have a little
22 more discussion about this issue.

23 (The following proceedings were had before
24 the Court and out of the hearing of the Jury.)

25 (Discussion held off the record.)

1 THE COURT: All right. When is this news
2 cast?

3 MR. BARSKY: It appears to be the date that
4 the request for inquiry was released, Your Honor.
5 Because the interview with Mr. Schaller was on the
6 steps of the old courthouse and he's talking
7 about -- he's talking about distributing the
8 request for inquiry.

9 THE COURT: So this is on the 13th?

10 MR. BARSKY: Yes, Your Honor.

11 THE COURT: Let me hear it, please.

12 (The following proceedings are a recording
13 played on court television:)

14 "A new candidate for Palm Beach County
15 Commission is accusing his incumbent opponent of
16 ethics lapses. At a news conference in downtown
17 West Palm Beach Andrew Schaller released a 100-plus
18 page booklet he says shows ethical violations on
19 the part of the democratic commissioner
20 Jess Santamaria and his staff. Among the
21 accusations, that Santamaria and County staff did
22 campaign work on County time. (Inaudible) says
23 he's turned over his documents to law enforcement.

24 "I really wouldn't want this to be charged
25 against me. I wouldn't let it happen in the first

1 place, but I really wouldn't want to have to defend
2 this.

3 "By phone, Commissioner Santamaria said he is
4 careful, his staff did not perform campaign work.
5 Santamaria accused Schaller of quote, 'Having a
6 vivid imagination.'"

7 THE COURT: So what does that have anything
8 do with the publication of this other issue?

9 MR. BARSKY: The issue, Your Honor, is that
10 the defendant is continuing to maintain that he was
11 not making any accusations or allegations, he was
12 simply asking questions. And here he is saying, I
13 wouldn't want this charged against me, I wouldn't
14 want to be accused of this.

15 THE COURT: But if it didn't have anything to
16 do with the alleged felony record?

17 MR. BARSKY: It has to do with the actual
18 request for inquiry. This is Exhibit 1, right
19 here, Your Honor. That's the document that he's
20 waving around. That's what they're talking about
21 in this interview, is this publication of Exhibit
22 1, which Exhibit 2 is a part of.

23 THE COURT: Okay.

24 MR. MARIANI: Your Honor, basically I'm
25 afraid the jury is going to take what the Reporter

1 is saying as truth. If he wants to play a portion
2 of what Mr. Schaller actually said on that
3 recording, and accurately state when that video was
4 taken, that would be a different story, but to play
5 for the Jury the entire Reporter's comments, I
6 think it's inappropriate and hearsay.

7 MR. BARSKY: Your Honor, they've listed this
8 on their -- they've listed the entire website on
9 their exhibit witness list. They've listed
10 Mr. Schaller's You Tube account on the exhibit
11 list, which you can find this exact same video on
12 there as well. There is nothing prejudicial about
13 what the reporter says, she's simply reporting the
14 facts stating that he released this document. It's
15 clear what day the interview was done and where
16 he's standing.

17 THE COURT: Has this been listed as an
18 exhibit?

19 MR. BARSKY: We both listed the entire
20 contents of the website.

21 THE COURT: And was there an objection by
22 either party to the Exhibit?

23 MS. KITTERMAN: Yes, Your Honor, it's
24 hearsay.

25 THE COURT: No, was there an objection filed

1 in accordance with the pretrial order?

2 MS. KITTERMAN: Yes, Your Honor.

3 THE COURT: Let me see that. Because I
4 didn't see any objections. Pretrial, pretrial
5 statements right here.

6 MS. KITTERMAN: We filed them separately,
7 Your Honor, both parties.

8 THE COURT: May I see that, please?

9 MS. KITTERMAN: Yes.

10 THE COURT: Does the plaintiff have one, too?

11 MR. BARSKY: Yes, Your Honor.

12 THE COURT: Which number is this that you've
13 objected to, madame? Miss Kitterman?

14 MS. KITTERMAN: Yes, Your Honor, I'm just
15 waiting for the Plaintiff's Exhibit list.

16 MR. BARSKY: Your Honor, it's our Exhibit 2,
17 all contents posted on www.andrewschaller.com.

18 THE COURT: What number is that?

19 MS. KITTERMAN: Two.

20 MR. BARSKY: Two. And Defendants list isn't
21 numbered so I'll have to find it.

22 THE COURT: They've objected to your
23 Exhibit 2.

24 MR. BARSKY: They have, Your Honor.

25 And on their Exhibit list, it is Page 4, Line

1 3, and this video is also on Line 5 as well of
2 their Exhibit list.

3 THE COURT: Would you agree that this is an
4 out of court statement made about a third party?
5 It's definitely hearsay. So, do you have an
6 exception that?

7 MR. BARSKY: Well, at least to Mr. Schaller's
8 portions, Your Honor, it is a statement against his
9 interest.

10 THE COURT: Well, maybe to him, but that's
11 not what you're telling them.

12 MR. BARSKY: Well, at the very least then,
13 we'd agree to only play that portion for the Jury.
14 But the rest is a news cast. There is no need to
15 show why this would be false, Your Honor. And the
16 defendant has published it himself, multiple times.

17 THE COURT: I'm still looking for it, I don't
18 see where it's an exception to hearsay.

19 MR. BARSKY: My position is it's against
20 interest. The defendant stated in deposition
21 testimony that he took the first available
22 opportunity to retract the statement regarding the
23 felony record. Here he is a few days later,
24 posting this interview, showing, you know, posting
25 the document again, posting the interview with them

1 on TV.

2 The defendant put this up there himself,
3 Your Honor.

4 THE COURT: Let me hear that, his portion of
5 the statement again, please.

6 (The following proceedings are a recording
7 played on court television:)

8 "I really wouldn't want this to be charged
9 against me. I wouldn't let it happen in the first
10 place, but I really wouldn't want to have to defend
11 this."

12 MS. KITTERMAN: Your Honor, the issue with
13 also Mr. Schaller's statements is you don't know
14 what he's asked, so the Jury can apply it anywhere.

15 THE COURT: Can I ask you something?

16 MS. KITTERMAN: Yes.

17 THE COURT: Was that on his website?

18 MS. KITTERMAN: This was on his website.

19 THE COURT: And anybody can punch on that and
20 that is the content that is part of that?

21 MS. KITTERMAN: This is on his website.

22 THE COURT: Now, why isn't that admissible as
23 an admission against interest?

24 MS. KITTERMAN: First of all, as I said, the
25 reporter --

1 THE COURT: It may be hearsay, but it's still
2 his document, prepared for him -- prepared by him,
3 and he incorporates this.

4 MS. KITTERMAN: What document?

5 THE COURT: Well, the text.

6 MS. KITTERMAN: Of the video?

7 THE COURT: Of the video.

8 MS. KITTERMAN: The video has a reporter
9 talking and summing up her --

10 THE COURT: Which is incorporated on his
11 material.

12 MS. KITTERMAN: But it's still hearsay. It's
13 still an out of court statement offered for the
14 truth.

15 THE COURT: I don't have a problem with that,
16 it's an out of court statement. No question. But
17 it belongs to the defendant. And they're saying
18 it's an admission against interest, that he's
19 basically publishing third party information and
20 saying that this document somehow implicates this
21 gentleman. So as a consequence it's an admission
22 against interest. It's his document prepared by
23 him.

24 MS. KITTERMAN: Your Honor, it's --

25 THE COURT: And that's an exception to the

1 hearsay rule.

2 MS. KITTERMAN: It's not a document, it
3 wasn't prepared by him. And if you're going to
4 allow it, then I would like the record to reflect
5 my objection.

6 But also, there is no evidence as to when
7 this video was published on the website by
8 Mr. Schaller. Plaintiff's counsel just said that
9 it was posted after the request for inquiry. There
10 is no evidence as to when it was posted.

11 THE COURT: Well, I guess that's what
12 cross-examination is all about, and what your
13 portion of the case is if necessary.

14 But I think she's established that this was
15 on there on the 19th. Am I correct?

16 Miss Santamaria, is that what you testified?

17 THE WITNESS: Yes, it says September 19th,
18 2010, right on the blog.

19 THE COURT: I find it to be an exception to
20 the hearsay rule, I'll allow it in.

21 MS. KITTERMAN: The whole video, Your Honor,
22 or just that portion?

23 THE COURT: I'm sorry?

24 MS. KITTERMAN: The whole video or just the
25 portion.

1 THE COURT: No, it is the whole content of
2 that that is relevant and material to the issues
3 here. That is, as far as I'm concerned, it is the
4 content. So they're going to play the whole thing.

5 MS. KITTERMAN: Okay.

6 THE COURT: All right.

7 Bring the Jury back in.

8 (The following proceedings were held in the
9 presence and hearing of the Jury.)

10 THE COURT: All right. Go ahead and proceed.

11 MR. BARSKY: Thank you, Your Honor.

12 BY MR. BARSKY:

13 Q. Before the question was there was that video
14 here on the website; correct?

15 A. Yes, this video is posted on
16 andrewschaller.com.

17 THE COURT: On January 19th --

18 THE WITNESS: On September 19th, 2010.

19 (The following is a recording played on court
20 television:)

21 "A new candidate for Palm Beach County
22 Commission is accusing his incumbent opponent of
23 ethics lapses. At a news conference in downtown
24 West Palm Beach, Andrew Schaller released a
25 100-plus page booklet he says shows ethical

1 violations on the part of the democratic
2 commissioner Jess Santamaria and his staff. Among
3 the accusations that Santamaria and County staff
4 did campaign work on County time.

5 (Inaudible)...says he's turned over his documents
6 to law enforcement.

7 "I really wouldn't want this to be charged
8 against me. I wouldn't let it happen in the first
9 place, but I really wouldn't want to have to defend
10 this.

11 "By phone, Commissioner Santamaria said he is
12 careful, his staff did not perform campaign work.
13 Santamaria accused Schaller of quote, 'Having a
14 vivid imagination.'"

15 MR. BARSKY: Thank you, ma'am, I have no
16 further questions.

17 THE COURT: Cross?

18 CROSS EXAMINATION

19 BY MS. KITTERMAN:

20 Q. Good afternoon.

21 A. Hi, good afternoon.

22 Q. How are you?

23 A. I'm all right. Thanks.

24 Q. Good.

25 The first time you saw this you said that you

1 got it from your father; correct?

2 MR. BARSKY: Objection.

3 MS. KITTERMAN: The request for inquiry.

4 THE WITNESS: Okay. Yes, the first time I
5 saw this was at my mom and dad's house the evening
6 of Monday September 13th, from my dad.

7 BY MS. KITTERMAN:

8 Q. You didn't get that directly from
9 Mr. Schaller, did you?

10 A. No.

11 Q. And Plaintiff's Exhibit 2 that you had been
12 given, the felony record that is the page that had been
13 taken out of the request for inquiry.

14 A. (Holding up page, indicating.)

15 Q. Yes. Across that page, it says "This is not
16 a certified copy." Is that correct?

17 A. That's what it says.

18 Q. You don't know whether Mr. Schaller got this
19 particular felony judgment off of the Internet or the
20 court file; do you know?

21 A. I don't know.

22 Q. Okay. When you went to search for the court
23 file for the felony record, did you first look online to
24 see if this entire court file was online?

25 A. No, I did not.

1 Q. Do you today know whether this entire court
2 file is on line?

3 A. No, I don't know.

4 Q. Okay. Within the entire court file is the
5 actual judgment. If you could flip to that page, I
6 don't think they're numbered. I don't think they are.
7 The actual judgment.

8 A. Okay. The same one from the Exhibit 7,
9 inside the booklet?

10 Q. No.

11 A. Is that what you're referring to?

12 Q. No. This is the actual judgment that is in
13 the case file that is marked as Plaintiff's Composite
14 Exhibit 3.

15 A. Okay. One second.

16 Yes, it's the same page that is this page
17 with the spiral bound copy.

18 Q. Can you flip through it in the actual case
19 file?

20 A. Yes. Do you know what page it is on?

21 Q. No, they're not numbered.

22 A. Yes, I have it here.

23 Q. Okay. Great. Thank you.

24 And you said that you actually went to the
25 courthouse and pulled this case file from the

1 courthouse; correct?

2 A. Yes.

3 Q. Okay. The actual judgment that you're
4 looking at that was within the court file, does that
5 judgment have across it, "This is not a certified copy"?

6 A. No, it doesn't.

7 Q. And the judgment that was listed in request
8 for inquiry states "This is not a certified copy;"
9 correct?

10 A. That's correct, they're identical documents
11 but for that.

12 Q. Okay. When you met Mr. Schaller or you spoke
13 to Mr. Schaller at your father's community forum, you
14 stated that you had went up and told him this isn't
15 related to my father; correct?

16 A. No, I specifically said, "You know my father
17 is not a felon." That's exactly what I said.

18 Q. And he didn't respond, Yes, I know that your
19 father is not a convicted felon, he did?

20 A. He responded sarcastically, "I don't know
21 that he's not."

22 Q. Did he respond that he knew he was?

23 A. No.

24 Q. Okay. Mr. Schaller, at that time, didn't
25 tell you that he had actually gone to the court file and

1 pulled the entire case file to look to see whether or
2 not this actually related to your dad, Jess Santamaria,
3 he did?

4 A. No.

5 Q. Okay. Did you tell him where to go find the
6 case file?

7 A. Yes. At the courthouse.

8 Q. Okay. So when you told him that he could go
9 to the courthouse, he didn't say, oh, yeah, I know where
10 to get it, I just didn't go. He did say that?

11 A. No. His exact words were, "where is the
12 courthouse?"

13 Q. Okay.

14 A. In a sarcastic tone like that.

15 Q. In a sarcastic tone. So does that mean that
16 Mr. Schaller told you, I went to the courthouse and I
17 pulled the file?

18 A. No, he didn't say that.

19 Q. Okay. When you went to pull the file from
20 the clerk's office, you stated that she brought the file
21 to you, is that what you said?

22 A. Yes.

23 Q. Okay. Was it an actual file or was this
24 something, was the entire court file on microfiche?

25 A. It's on microfiche.

1 Q. Okay. So she didn't bring you the actual
2 file?

3 A. Yes, she did. She brought the actual
4 microfiche out. And so I saw the microfiche and I saw
5 her put it in the machine and print out the copies.

6 Q. Out in front of the clerk's office, that's
7 what you saw?

8 A. Yes.

9 Q. Okay. The video that you just said that you
10 saw, do you know what date that it was put on this
11 website?

12 A. It says on there that it was posted on
13 September 19th, 2010.

14 Q. It says that on where?

15 A. Right here under follow-up request for
16 inquiry, September 19th, 2010.

17 Q. Okay. That doesn't say that it's relating to
18 the video, does it?

19 A. It's that post for that blog.

20 Q. Does it say that it's relating to that video?

21 A. It says specifically -- no. It says
22 September 19, 2010, is the date of this.

23 Q. So you don't know whether that video was
24 actually published before September 19th, when you went
25 to look it, do you?

1 A. On the website --

2 Q. Yes. On the --

3 A. -- or just in general on Channel 12 News?

4 Q. On the website.

5 A. No, I don't know that it was before September
6 19th. It says September 19th.

7 Q. But it doesn't say September 19th this video
8 was published?

9 A. It does not say the words this video was
10 published on September 19th, no.

11 Q. And you're an attorney; right?

12 A. Yes, I am.

13 Q. And so you knew exactly where to go to find
14 this case file on Jesus R. Santamaria; is that correct?

15 A. Not because I was an attorney, but because it
16 says it first line on the exact document from
17 Mr. Schaller's spiral binding, top line: "In the
18 Circuit Court, 15th Judicial Circuit, In And For Palm
19 Beach County." So that's where I went.

20 Q. And as an attorney, you've been able to see
21 documents like this before; correct?

22 A. Oh, yes.

23 Q. All right. When you were speaking to
24 Mr. Schaller at that County forum, didn't he say to you
25 I have nothing, I have no issue against your father

1 personally?

2 A. No, I don't remember him saying that there.
3 I do remember him saying that at the County Commission
4 building when I had first met him. That's the only two
5 conversations I've had with him. At the
6 County Commission building I remember him saying that,
7 but at the community forum I don't remember him saying
8 that.

9 Q. Do you recall him saying that he would like
10 to go up and shake your father's hand and put all
11 matters aside?

12 A. Absolutely not. In fact, he said the exact
13 contrary to that. When I said, "You need fix this," his
14 response was, "I'll take that under advisement," nothing
15 like I'll shake his hand.

16 Q. Okay. So he's never said that to you?

17 A. He's never said what to me? Sorry.

18 Q. That he would like to shake your dad's hand.

19 A. I don't remember him saying he wants to shake
20 my father's hand, no.

21 Q. Do you have any specific knowledge that
22 Mr. Schaller knew that this felony record did not relate
23 to your father?

24 A. No, he didn't tell me that.

25 Q. Okay. Did he tell you that he thought maybe

1 it didn't relate to your father?

2 A. No.

3 Q. Okay. Do you know whether after you told
4 Mr. Santamaria -- Mr. Schaller that the felony record
5 did not belong to your father, do you know whether he
6 then retracted the statement?

7 A. No. He reported it to the FBI. I don't have
8 any knowledge that he sent information to the FBI.

9 He reported it to the FBI, the State
10 Attorney's office, the County Commission Ethics
11 Department, the State Department on Ethics, Channel 12
12 News, the Palm Beach Post, Sun Sentinel.

13 I don't have any information that he told any
14 of those sources that, I made a mistake, I was wrong. I
15 have heard that on a radio program, that he mentioned
16 it. But none of the ways in which he publicly -- oh,
17 and on the Internet, he hasn't put forth this.

18 It's still on there to this day, this
19 inquiry. And it doesn't say on the inquiry, hey, I made
20 a mistake, I was wrong, he was not a felon, by the way.

21 Q. I don't think you answered my question. But
22 you did actually refer to it. The radio station, you
23 were saying that it's not on his website?

24 A. I didn't say that.
25

1 Q. The actual --

2 A. The radio?

3 Q. You said he's never retracted it, it's not
4 even on his website. Is that what you said?

5 A. No, I don't think we're understanding each
6 other.

7 Q. Okay. Did you say that -- when you were on
8 his website, did you see a link to a radio station where
9 he retracted the statement?

10 A. Yes. In that format, that's correct.

11 Q. Okay.

12 MS. KITTERMAN: Your Honor, I would like to
13 pull up the website and play the radio.

14 THE COURT: Very good.

15 MS. KITTERMAN: I apologize, Your Honor,
16 we're having an issue with the computer now, it's
17 not going online.

18 THE COURT: Okay. I can't help you.

19 MS. KITTERMAN: I know.

20 THE COURT: It's way above my job grade.

21 MS. KITTERMAN: We're trying to get a
22 hotspot.

23 THE COURT: Yeah, I understand that there is
24 just so many hotspots available and sometimes it
25 gets filled up in the courthouse.

1 Ladies and Gentlemen of the Jury, while
2 they're trying to pull it up, let me give you a
3 little bit more information on your judicial
4 system. This state ranks 50 in the amount of
5 judges per 10,000 people. We're dead last.

6 We run a budget for the entire judicial
7 system. Now, keep in mind, we're not an agency,
8 but we are a co-equal branch of government, and our
9 budget runs about \$450,000,000 a year to run the
10 entire system. Now, that may sound like a lot,
11 except that that's .7 of one percent of the total
12 budget for all State agencies and different
13 departments. So very little goes to your
14 judiciary.

15 We take in about 1.2 billion dollars in fees
16 every year. The employees of your State and
17 including the clerk's office, which is a part, they
18 haven't had a raise in six years. They've been cut
19 by 3 percent. The amount of total filings we had
20 in 2006 in this County alone was 387,952 cases in
21 just one year, and in 2010 -- I haven't gotten the
22 figures for 2011 -- 474,000 cases, that's an
23 increase of over 86,000 cases.

24 So it gives you an idea of what is going on
25 in your government. But I think the most important

1 thing for you to get out of it, this is a co-equal
2 branch of government and we have the same
3 responsibilities as the executive and the
4 legislature. And we work as a checking and balance
5 against each other.

6 And as a consequence, you as Jurors work in a
7 checking and balance against maybe arbitrating
8 capricious judges and various administrative
9 people. And that's why the Jury system is so
10 important and your services are very much needed.
11 It's a part of our system of democracy.

12 I only tell you this because we take all of
13 that stuff for granted. And unless you're involved
14 in it, remember your legislature, believe it or
15 not, less than 25 percent of the legislature even
16 are attorneys. Most of them are just lay people,
17 doctors, other professionals, things of that nature
18 and have no training in the law.

19 So it's a little conflict, especially when we
20 get in regards to budgeting. And since they
21 control our budget, although we're a co-equal
22 branch government, they don't always properly fund
23 it. And that's why the conflict comes into it
24 sometimes.

25 And the one thing we always try to protect is

1 the independence of the judiciary. And we have all
2 great constitutions all around the Caribbean and
3 all sorts of countries around the world. And they
4 have all these rights. But what makes us different
5 is we have an independent judiciary.

6 The first thing that they do in Venezuela or
7 Cuba, the first thing they do is to dismantle the
8 judicial system and make the judges totally
9 subservient to whoever is in that power. Although
10 they have all these guaranteed constitutional
11 rights for their people. And that's why they
12 haven't prospered as much as we have.

13 These are just a few tidbits that you can
14 take back with you on just how important this whole
15 process is for us.

16 How we doing, folks?

17 Lots of people ask me how many judges we
18 have. Thirty-five Circuit Court judges, and we
19 have 20 County Court judges. Circuit Court of
20 course is your highest at the trial level. And
21 we're State constitutional law officers, so it's a
22 little bit different in the County court. But
23 there's different jurisdictional limits like this
24 in the County Court. They only handle
25 misdemeanors, not normally felonies, things of this

1 nature.

2 I love technology.

3 MS. KITTERMAN: All right. Here we are.

4 Apologize for the technical difficulties.

5 (The following is a recording of a radio
6 broadcast played on court television:)

7 "MR. SCHALLER: Thank you very much for
8 having me on your show.

9 MR FARREL: Oh it's my pleasure and I'm very
10 grateful you took the time out to talk to me.

11 Let me ask you, what is your complaint
12 exactly about Commissioner Santamaria?

13 MR. SCHALLER: Well, there's about ten
14 complaints -- pardon me -- there is about ten
15 complaints in total. One complaint is abuse of
16 office. I showed up at a public meeting advertised
17 at his Wellington Mall, and he called the Sheriff
18 upon my arrival and demanded that I be trespassed
19 and removed from the property, merely for being a
20 competitor.

21 If you go to my website which is
22 andrewschaller.com, you will find the request for
23 inquiry that you were mentioning. And in there you
24 can read the actual deputy report where Santamaria
25 started throwing around the name, I know Sheriff

1 Rick Bradshaw. The officer asked if he was using
2 his title. He raised his voice at the officer,
3 told him that the officer was not important enough
4 for him to speak to him.

5 MR FARREL: Wow.

6 MR. SCHALLER: And it's in the deputy's own
7 words, if you look at the 2-page document.

8 MR FARREL: Well, I'm looking at it. I'm
9 looking at the document right now. I have it right
10 in front of me.

11 And, folks, you can see it, too. Andy
12 Schaller has it on his website. Andyschaller.com,
13 s-h-a-l-l-e-r.com (sic). If you go to the main
14 page it will show you how to find the request for
15 inquiry.

16 In Exhibit 1, you say that the County staff,
17 Johnnie Easton sent an e-mail to the Glades Area
18 Funding document, to the Santamaria campaign
19 advisor Francine Nelson of Patriot Games. Am I to
20 understand from this inquiry that you're suggesting
21 that County employees were working for Santamaria
22 on his campaign, rather than County work, but yet
23 on County time, is that what you're suggesting?

24 MR. SCHALLER: That's what I'm suggesting.

25 MR. FARREL: Now, Santamaria has gotten in

1 front of the microphone to say, This is patently
2 false and not true.

3 MR. SCHALLER: Well, that's pretty amazing
4 that seeing how the press release that -- or press
5 conference, press briefing that we had last Monday
6 at 9:30 in the morning had the news cameras down
7 outside of the governmental building, outside of
8 the 1916 courthouse. The cameras left the
9 sidewalk, walked up the stairs and caught
10 Mr. Santamaria completely off guard. He never even
11 had a chance, other than perhaps one of the news
12 reporters presenting him with my request for
13 inquiry.

14 And for him to say that things are flat out
15 wrong, I have a list of about a hundred and some
16 odd pages of all the e-mails that he provided to me
17 through a public records request. So for him to
18 say that everything is false is obviously,
19 completely, patently, blatantly false itself.
20 Because everything that I've backed up has come
21 through a public records request.

22 MR. FARREL: All right. That's good to know
23 because you are putting yourself in jeopardy of
24 being sued if you're wrong.

25 MR. SCHALLER: You never bring a knife to a

1 gun fight. If I wasn't prepared with my
2 documentation, I would not have filed it with the
3 FBI, with the State Attorney General, with the
4 Florida Ethics Commission, the Palm Beach County
5 Ethics, as well as the Palm Beach County Inspector
6 General.

7 MR. FARREL: Right. And just
8 remember, Santamaria has a history of moneying
9 lawyers, you know, showering them with cash to do
10 his bidding for him.

11 MR. SCHALLER: Well, I will not be backed
12 into a corner by a well-known bully trying to use
13 his money, political influence, emotional
14 influence, to suppress the rights of somebody who
15 is going to stand up and be counted.

16 MR. FARREL: Now, getting back to the actual
17 accusations, if you're correct, that Florida --
18 that County employees have been used for
19 campaigning for this, this person, have you had a
20 chance to bring this to one of our brand-new
21 corruption czar that we have appointed here in this
22 community?

23 MR. SCHALLER: Well, I did have a chance to
24 speak with her very briefly at Commissioner
25 Santamaria's monthly forum. Which is amazing, we

1 have a Inspector General speaking on the topic of
2 corruption, and she was speaking at a function in
3 which the man who is hosting the function is the
4 obvious target of what I have brought to her
5 attention. And her office has called and asked to
6 set up an appointment with me for Thursday.

7 But this is a defining moment for all of Palm
8 Beach County. My request for inquiry will be the
9 true test of both the Palm Beach County Ethics
10 Commission and the Inspector General, because we
11 the public will get to see if these offices have
12 any real teeth or if they're merely feel-good,
13 do-nothing offices set up to provide a feel-good
14 environment.

15 MR. FARREL: Something really strikes me,
16 which wasn't on the news, you know, you got a
17 little news play on this last week, but something
18 they left out was Exhibit Number 7, the question
19 is, "Does Jess Santamaria have a felony record."
20 Are you suggesting that he's been serving office
21 and we do not yet know that he has a felony record?

22 MR. SCHALLER: I need to be fair to the
23 commissioner on that one. I found through the
24 Clerk of the Court's website, I found a one-page
25 document of a burglary arrest for a Jesus, which

1 Jess Santamaria's real name is Jesus, Jesus R.
2 Santamaria.

3 MR. FARREL: Oh.

4 MR. SCHALLER: On Wednesday at the forum that
5 I mentioned just earlier, the daughter, Michelle,
6 came to me and said that this was somebody with the
7 same name and not actually Commissioner Santamaria,
8 which I am more than happy and thrilled to find
9 out.

10 MR. FARREL: Okay. So in other words, you've
11 checked on Social Security numbers to determine
12 that they were different people?

13 MR. SCHALLER: According to his daughter, she
14 went through the whole case record. I guess it's
15 about a 30-page document that accompanied this that
16 was not on the clerk's website. And she did the
17 research and found out that it was somebody that
18 was a much younger man.

19 MR. FARREL: Now, tell me about Dennis Lipp.
20 Dennis Lipp is on the staff of
21 Commissioner Santamaria. Has he been working on
22 the campaign, although he's paid by the County?

23 MR. SCHALLER: Well, he has been in a small
24 way. But the more important part about Dennis, if
25 you read in the request for inquiry, you will see

1 that Dennis is an elected official of Loxahatchee
2 Groves, he is the vice mayor.

3 MR. FARREL: Right.

4 MR. SCHALLER: He is also the aide to
5 Commissioner Santamaria. Dennis has been using the
6 office of Commissioner Santamaria's County
7 computers, County time, to conduct some of the
8 Loxahatchee Groves business. And that is against
9 the statutes to have any other business happening
10 at the same time you're on the County payroll.

11 But there is 30 some odd e-mails back and
12 forth where Dennis Lipp has done things like the
13 agenda for Loxahatchee Groves, he's corresponded
14 back and forth with matters that are relevant only
15 to Loxahatchee Groves.

16 As well, he has taken it upon himself to go
17 out to a private printer in Royal Palm Beach,
18 create his own business cards, and give himself a
19 title of executive assistant, a title that does not
20 exist within the County Commission offices itself.

21 MR. FARREL: Well, that's -- that's fraud.
22 Because if it doesn't exist and he's advertising
23 that it does, then he's lying to the public.

24 MR. SCHALLER: If you go on the
25 commissioner's website, it says, "Dennis Lipp,

1 Secretary." But if you look at the documents I've
2 provided, which again came to me through a public
3 records request, you will see that he went to the
4 local printer and created a title of executive
5 assistant.

6 MR. FARREL: All this -- what do you expect
7 all of this to add up to, Mr. Schaller?

8 MR. SCHALLER: What I hope it adds up to is
9 pulling the cloak back, pulling the curtain back
10 and you get to see the Wizard of Oz behind the
11 scenes. Commissioner Santamaria is not what he
12 represents. He is not a champion of the people.
13 He is somebody that has historically proved by his
14 own vote that he protects his own interests.

15 If there is anything that competes with his
16 Financial interests, another hotel, another piece
17 of property, another commercial venture, the
18 medical arts district, the 96,000 jobs when the
19 entire community came forward and said we want to
20 have this... You'll find that he's been a
21 protectionist of his own interests and he's a
22 historical revisionist of fact.

23 MR. FARREL: Now, what's really interesting
24 is you're in this campaign against him. You've
25 made all of these accusations through your request

1 for inquiry. They are essentially just requests --
2 they're not really accusations, they're just really
3 a request for inquiry.

4 MR. SCHALLER: Well, what they really are,
5 Dick, is I have facts in front of me that have
6 transpired. What I'm asking for is clarification.
7 When I present 30 some odd e-mails that Dennis Lipp
8 is doing municipal business on County time, I want
9 to know why. Why is that allowed, why is it
10 ethical and why is it moral and why is it our
11 responsibility to pay for somebody else to do a job
12 while they're sitting in a commissioner's office
13 supposedly conducting work for this other job.

14 MR. FARREL: Well, that's -- I mean, where do
15 you see this going? Can this eventually lead to
16 charges against the commissioner?

17 MR. SCHALLER: Well, I definitely hope that
18 there is some legal charges at least looked into
19 for the abuse of office.

20 When a well-intentioned person shows up at a
21 public forum, publicly advertised, on the County
22 website, with County employees, and he the -- we'll
23 call it a bully, we'll call it just the overt
24 repression of somebody standing up running for
25 office, when you have a certain private party

1 saying I'm above the law and I have can have my
2 competitor removed just because of the fact that
3 he's a competitor, that's in my opinion, that's
4 abuse of power. And I would like the proper
5 authorities to come to the proper conclusion.

6 MR. FARREL: Now, you're an independent
7 candidate. Does the republican nominee, has he
8 weighed in on any of this yet?

9 MR. SCHALLER: Not on this particular topic.
10 But the republican nominee -- or I should -- he
11 didn't have to go through the primaries. But the
12 republican candidate himself, he is exactly what
13 you were describing earlier in your show. He is
14 the republican who has been -- fooled me as the
15 democratic plant so that Santamaria will stay in
16 office.

17 He is the gentleman that is the least
18 qualified of the three of us. And upon the
19 conclusion of the last election four years ago, he
20 said he also, along with Santamaria, said that he
21 probably wasn't going to run again. But he was
22 looking forward to working with the commissioner on
23 solving the community issues.

24 Well, what he really did was he took off down
25 to Barry University. And Commissioner Santamaria,

1 at the time Candidate Santamaria, publicly
2 embarrassed him bay saying that he did not have the
3 education. But the republican candidate went and
4 got his BA and then a masters in public
5 administration, which to my knowledge he doesn't
6 have one single day paid on the job. But he went
7 back and furthered his own education.

8 And in the last three years, two and a half
9 years that I've been sitting in every County
10 Commission meeting, going to every board meeting
11 and attending everything I possibly could, getting
12 an education on the facts and the issues in this
13 County, while I was sitting for hours and hours in
14 County chambers, the Republican candidate was
15 sitting on 95 going to get his education that I got
16 years ago.

17 MR. FARREL: All right. Now, as an
18 independent candidate, have you been allowed to
19 participate in forums with the republican and
20 democratic nominee?

21 MR. SCHALLER: Yes, I have been allowed to
22 participate in everything, although Commissioner
23 Santamaria choose not to show up the last forum
24 that was out in the Glades the last time. But I
25 anticipate his participation tomorrow night in the

1 Glades at the Elks lodge.

2 MR. FARREL: Well, all right. Well, in the
3 remaining minutes I'll ask you, how can people find
4 out more from you?

5 MR. SCHALLER: I'm easily found anywhere and
6 everywhere now. It is the campaign season. But I
7 hand out all my documentation. I've handed out my
8 cell phone number. The easiest way to get a hold
9 of me and to find out what I'm all about is to go
10 to `www.andrew, A-n-d-r-e-w, schaller,`
11 `S-c-h-a-l-l-e-r, andrewschaller.com,`
12 `andyschaller.com, .org, .everything.` Anyway you
13 put in that combination and you will find me.

14 MR. FARREL: All right. Before you go, if
15 this -- you got 42 days to the election. Can any
16 of this lead to disqualifying the commissioner from
17 running?

18 MR. SCHALLER: Well, if he has the personal
19 moral compass that he says he does, he'll
20 gracefully back out.

21 MR. FARREL: Is it a possibility?

22 MR. SCHALLER: Knowing the commissioner and
23 knowing how he's operated through the 2 1/2 years
24 I've known, it's not a possibility. It will take a
25 public mandate either at the voting booth or a

1 public outcry to put him in his rightful place,
2 which is to let him be the personal private
3 philanthropist that he likes to be, and remove him
4 from public office. Because is he not the true
5 public servant he professes to be.

6 MR. FARREL: All right, Andy Schaller. I
7 thank you very much for informing us. And I, well,
8 I wish you luck in trying to unearth the truth. I
9 mean, we all want the truth, don't we?

10 MR. SCHALLER: We do, Dick. Thank you very
11 much. And the support that I've gotten from, like
12 you said, the independents of course, but the
13 republicans and democrats has been overwhelming.
14 It is very humbling. I respectfully thank everyone
15 for their continued support and desperately ask,
16 please make a difference in this County. Please,
17 don't choose the lesser of the two evils.
18 Democrats and republicans are still evil when you
19 choose the lesser of the two evils. The
20 independent voice is what I bring to the table.
21 And I desperately need votes for the independent
22 candidate that can do the best job for the
23 commission.

24 MR. FARREL: And that would be County
25 Commission 6 listed in Wellington, Loxahatchee,

1 Royal Palm Beach and the Glades, that would be you
2 he's talking to.

3 Thanks a lot, Andy. Look forward to chatting
4 with you at least one more time before the
5 election. Okay?

6 MR. SCHALLER: Thank you, Dick. I look
7 forward to it as well.

8 MR. FARREL: Bye-bye."

9 BY MS. KITTERMAN:

10 Q. Miss Santamaria, now you've had an
11 opportunity to hear the radio show. Was that the radio
12 show that you were talking about that you heard that
13 Andrew Schaller retracted his statement that -- or
14 question that Mr. Santamaria had a felony record?

15 A. Yes. On that AM, not FM radio station. Yes.

16 Q. And that was his website that it was posted
17 on?

18 A. On Mr. Schaller's website. Yes.

19 MS. KITTERMAN: I have no further questions.

20 THE COURT: Redirect?

21 MR. BARSKY: None, Your Honor.

22 THE COURT: Ladies and Gentlemen of the Jury,
23 do you have any questions of this young lady?

24 All right. There is one question. Fold it
25 in half, I need counsel up at the bench.

1 (The following proceedings were had before
2 the Court and out of the hearing of the Jury:)

3 THE COURT: And the question: "What was the
4 date of the retraction posted on Schaller's
5 website, ie the date of the radio broadcast?"

6 Any objection to the question?

7 MS. KITTERMAN: No objection.

8 MR. BARSKY: No objection.

9 THE COURT: I'll give it. If she knows, she
10 knows; if she doesn't, that's it.

11 (The following proceedings were had before
12 the Court and in the presence and hearing of the Jury:)

13 THE COURT: Some of the members of the Jury
14 have a question for you. If you know the answer
15 please try to respond as precisely and as concisely
16 as possible.

17 What was the date of the retraction posted on
18 Schaller's website, date of the radio broadcast?

19 THE WITNESS: If you could pull it up on the
20 screen, I could tell you what is posted.

21 THE COURT: Can we pull that up?

22 THE WITNESS: It reads September 20th, 2010.

23 THE COURT: Any follow-up?

24 MS. KITTERMAN: No, Your Honor.

25 MR. BARSKY: No, Your Honor.

1 THE COURT: Thank you very much, you're
2 excused. Thank you.

3 (Witness excused.)

4 THE COURT: All right. Do we have any more
5 witnesses today?

6 MR. MARIANI: We don't today, Your Honor.

7 THE COURT: Ladies and gentlemen, what we're
8 going to do, we're going to go into recess. I'm
9 going to ask you to be back here at 10 o'clock in
10 the morning. Each of you have a card to get a hold
11 of me. The problem is my judicial assistant is not
12 around. How are we going to do this. If there is
13 a problem, I think we probably need to get --

14 THE CLERK: I can find out.

15 THE COURT: Yeah. One of my suite mates,
16 we're going to use her judicial assistance since
17 mine is on vacation this week. And if there is a
18 problem, say traffic or something happens and you
19 can't be here, you need to contact us immediately.
20 But you know what you're supposed to do and what
21 you're not to do. And remember, this is a case
22 that more likely than not because of the people
23 involved, it's going to be on TV, radio or in the
24 newspaper. Do not, and I reemphasize, do not
25 listen to, read, do anything that might jeopardize

1 this verdict. All right?

2 That being the case, you'll need -- the
3 deputy will tell you where to assemble tomorrow.
4 You'll probably need to be here around 9:30. And
5 what happens from 8:45 to 9:30 every morning, I
6 have what is referred to as a uniform motion
7 calendar.

8 What do we have? I have special sets in the
9 morning, don't I?

10 THE CLERK: Yes.

11 THE COURT: Okay. And what that is,
12 attorneys come in here and they get five minutes a
13 side to argue whatever they need me to handle at
14 that particular time. So it's kind of like a
15 free-for-all, I don't know who is going to show up
16 or what is going to happen. But as soon as the
17 9:30 is over, I go into special set hearings. And
18 these take anywhere from six weeks to three months
19 depending on how backed up we are. Considering
20 that I carry about 1700 cases at any given time and
21 I get a thousand cases every year, it gives you an
22 idea of we're pretty busy here.

23 So from that point until 10 o'clock, I'm
24 doing a special set and then I start my jury
25 trials. And that's why I can't get to you until

1 that time, but I will try to be as punctual as I
2 can and I hope that you can do the same for us.
3 All right? Have a good evening and drive home
4 safely.

5 THE CLERK: You want to write this extension
6 down. It's 355-4866.

7 THE COURT: That's going to be Judge Brown's
8 judicial assistant who is filling in for mine while
9 she's out.

10 (The Jury was excused for the evening
11 recess.)

12 THE COURT: All right. Have a seat if you
13 will, please. What do you got tomorrow?

14 MR. MARIANI: We'll finish tomorrow. We have
15 some depositions. We have two or three live
16 witnesses.

17 THE COURT: Who are you calling?

18 MR. MARIANI: Okay. We're going to read in
19 some of the defendant's deposition on our case in
20 chief.

21 THE COURT: Have you given the designations
22 yet?

23 MR. MARIANI: Yes. Not necessarily in this
24 order: Mr. Santamaria, one person from the county
25 engineering office and a depo --

1 THE COURT: Who is that, I don't like
2 surprises.

3 MR. BARSKY: Tanya McConnell, Your Honor,
4 deputy county engineer.

5 MR. MARIANI: She'll be live and Mr. Webb
6 might be -- George Webb by deposition, who is out
7 of town. He'll appear by deposition transcript.

8 THE COURT: I'm sorry. I'm having a hard
9 time hearing you.

10 MR. MARIANI: A second person from the county
11 engineering's office, Mr. Webb, who is unavailable,
12 who is out of town. Counsel for defendant took his
13 deposition the 28th of March.

14 THE COURT: So you're going to read portions
15 of that depo?

16 MR. BARSKY: Yes.

17 THE COURT: And any designations there,
18 especially any objections, anything I need to look
19 at?

20 MS. KITTERMAN: Your Honor, my objection as
21 far as George Webb is concerned, when I took his
22 deposition, I was not aware that he was not going
23 to be available for trial. I found out as he was
24 walking out of the deposition room, he said to
25 plaintiff's counsel, did you tell them that I'm not

1 going to be here at trial.

2 I would have questioned him a little
3 differently had I known he was going to not be
4 available for trial and plaintiff didn't offer that
5 information to me.

6 THE COURT: When was his depo taken?

7 MS. KITTERMAN: The 28th of March.

8 THE COURT: Oh, just recently?

9 MS. KITTERMAN: Yes.

10 THE COURT: Just last week?

11 MS. KITTERMAN: Yes.

12 THE COURT: Okay. Well, a depo is a depo.
13 If he's not available, you've got to read. So what
14 else you got?

15 MR. MARIANI: That should be about it,
16 Your Honor.

17 THE COURT: All right. Keep it flowing.

18 It sounds like to me, you've got to be
19 prepared to put on some testimony tomorrow. Who do
20 you have?

21 MS. KITTERMAN: We have Mr. Schaller, the
22 client. We also have called the Inspector General,
23 as well as Dick Farrel, the radio show host.

24 THE COURT: Okay. Can we just here if --

25 MS. KITTERMAN: Yes.

1 THE COURT: So why are we discussing calling
2 him?

3 MS. KITTERMAN: Well, I'll discuss that with
4 my client.

5 THE COURT: I'm not going to have cumulative
6 testimony, are we?

7 MS. KITTERMAN: No, I agree, Your Honor.

8 THE COURT: So that being the case, do you
9 think we could finish this up tomorrow?

10 MR. MARIANI: Certainly by Wednesday morning.
11 We would like a little longer in closing argument.

12 THE COURT: We want the testimony to flow,
13 we're going to use up all of the time and I'd like
14 to get it to them Wednesday morning so they can
15 start the deliberations; okay?

16 MS. KITTERMAN: Your Honor, if I may?

17 THE COURT: Yes, ma'am.

18 MS. KITTERMAN: When I raised my motion in
19 limine Thursday, I believe, before Your Honor, one
20 of the issues was this Fargo Avenue issue that
21 Mr. Schaller was in front of the
22 County Commissioner on. Ms. McConnell, she has no
23 knowledge with regard to the actual felony
24 judgment, all she's going to testify to as to the
25 engineering department -- what the engineering

1 department did with Mr. Schaller and the actual
2 Fargo Avenue project and how long it took and how
3 many hours they spent. And I don't believe that is
4 relevant to whether or not Mr. Schaller knew or
5 should have known that the felony judgment did not
6 relate to Mr. Santamaria.

7 MR. MARIANI: We believe it is relevant,
8 Your Honor, because it goes to motive, that the
9 reason Mr. Schaller put all of this information and
10 the reason that he manipulated it was because as
11 counsel said in her opening, Mr. Santamaria
12 disappointed him. He was disappointed.

13 We think it's evidence of motive and it shows
14 why he did what he did. It doesn't have to do --
15 excuse me, she doesn't know anything about -- that
16 witness doesn't know anything about the felony
17 judgment, but it goes to Schaller's motive. And
18 the Jury is allowed to consider that for purposes
19 of determining whether or not there was actual
20 malice.

21 THE COURT: All right. I remember this
22 argument. And I looked over this case with Don
23 King Productions versus Walt Disney. It's got a
24 lot of good law in it, especially in an area like
25 this in dealing with a public figure. But it says,

1 "Thus a showing of ill will alone cannot establish
2 actual malice. However, ill will or motive when
3 combined with other evidence may amount to actual
4 malice."

5 And I think that's where you are going --

6 MR. MARIANI: Precisely.

7 THE COURT: -- is to show that there was
8 malice or ill will and that was part and parcel or
9 somehow in combination, through circumstantial
10 evidence or whatever the case may be, that there
11 may be actual malice. And it looks like to me that
12 I've got to let that come in as if that's what
13 they're showing.

14 So I'm going to deny or overrule, I guess
15 it's a motion limine.

16 MS. KITTERMAN: May I respond?

17 MR. MARIANI: You already denied it and I
18 guess now it's being reconsidered.

19 MS. KITTERMAN: Just a quick response.
20 Mr. Schaller hasn't had any communications with
21 Ms. McConnell since 2009, which is well before the
22 publication of the request for inquiry. And ill
23 will or motive, anything that's dealing with
24 Ms. McConnell in 2009 is not related to 2010.

25 THE COURT: Well, whether or not he harbors

1 ill will towards them because of a prior act, that
2 may be evidence of the malice is what this case is
3 saying. And I think something that happened a year
4 or so, it was close in proximity that that probably
5 would have some probative value. That's what --
6 you know, you can point that out on
7 cross-examination. But my ruling stands, it stays
8 the same.

9 MS. KITTERMAN: Thank you, Your Honor.

10 THE COURT: All right. Anything else?

11 MS. KITTERMAN: I think not.

12 MR. MARIANI: No, Your Honor.

13 THE COURT: All right. Have a good evening,
14 folks.

15 MR. MARIANI: Thank you, Your Honor.

16 (The evening recess was taken at 4:46 p.m.)

17 (Proceedings continued in Volume II on the
18 following day.)

19 - - -
20
21
22
23
24
25

- - -

C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, PAMELA J. SULLIVAN, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 16th day of July, 2012.

PAMELA J. SULLIVAN, RPR, FPR, CLR