

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 V  
(Pages 472-656)

Wednesday, April 4, 2012  
10:00 a.m. - 5:45 p.m.  
(Morning Session)

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

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3 (Proceedings continued from Volume IV of the  
4 previous day.)

5 (The following proceedings were held out of  
6 the presence and hearing of the jury:)

7 THE COURT: All right. Have a seat.

8 (Discussion held off the record.)

9 THE COURT: All right. Ready to go? Can I  
10 see the final jury instructions and verdict form,  
11 please.

12 MR. MARIANI: Your Honor, unfortunately, we  
13 still have a dispute on some language on the jury  
14 instruction. And I think --

15 THE COURT: Well, let me see the two and then  
16 I'll take a look at this while we try to finish up  
17 this testimony at this point. Just give me what  
18 you got.

19 MR. MARIANI: And I think it's all housed,  
20 unfortunately --

21 THE COURT: Just give me what you've got.

22 MR. MARIANI: This is where the action is  
23 going to be (indicating).

24 THE COURT: This one here?

25 MS. KITTERMAN: Here is the edited version.

1 This was theirs, I don't know if you can see it.

2 This was based on plaintiffs, but I did the tracked  
3 up changes so you can see what I changed on theirs.

4 THE COURT: I'll take a look at this.

5 MR. MARIANI: Here is plaintiff's. And if  
6 ours are not acceptable, we would like to argue  
7 that point of law on that jury instruction.

8 THE COURT: That's fine. We'll have a charge  
9 conference at some time. We're just going to have  
10 to do this quickly is all.

11 MR. MARIANI: Yes, I understand. The good  
12 news is we're only going to have a few minutes with  
13 redirect on Mr. Santamaria.

14 MS. KITTERMAN: Your Honor, I printed out our  
15 verdict form, and for some reason it is not  
16 included with my stuff. So I can print it out.

17 THE COURT: We'll get going. Have your  
18 assistant take a look at that.

19 All right. Let's bring the jury in.

20 THE BAILIFF: Do you want Mr. Santamaria on  
21 the stand?

22 THE COURT: Yes, sir. Mr. Santamaria, you  
23 can come on back up here.

24 (The Jury entered the courtroom after which  
25 the following proceedings were held:)

1 THE COURT: Have a seat. Good morning,  
2 ladies and gentlemen of the jury.

3 Mr. Santamaria, I'm going to remind you that  
4 you're still under oath. Do you understand that,  
5 sir?

6 THE WITNESS: I understand.

7 THE COURT: Very good. All right. Go ahead.  
8 You're on redirect.

9 Thereupon,

10 JESS R. SANTAMARIA,  
11 having been previously duly sworn or affirmed, was  
12 examined and testified as follows:

13 REDIRECT EXAMINATION

14 (JESS R. SANTAMARIA)

15 BY MR. MARIANI:

16 Q. Good morning, Jess.

17 A. Good morning, everyone.

18 Q. Just a couple of questions of redirect after  
19 counsel's questions of you yesterday. I just want to  
20 make sure the record is clear. In 1970, what was your  
21 legal name?

22 A. In 1970, my legal name was Jesus Ross  
23 Santamaria.

24 Q. Is that the name on your driver's license,  
25 for example, and other legal documents?



1           A.     It was on my driver's license and on my  
2 University of Pennsylvania records.

3           Q.     Now, on March 26th, 1996, after the ceremony  
4 making you a citizen of the United States, what was your  
5 legal name?

6           A.     Upon my being sworn in as a United States  
7 citizen, my legal name was Jess Ross Santamaria.

8           Q.     After March 26th, 1990, was your name on all  
9 your legal papers, your license, et cetera, Jess Ross  
10 Santamaria?

11          A.     Yes.

12          Q.     Now, yesterday you were asked a lot of  
13 questions by counsel about Exhibit 1, Plaintiff's  
14 Exhibit 1, this document, sir, all of the allegations  
15 that Mr. Schaller made against you. Do you remember all  
16 those questions or do you remember being questioned on  
17 that topic?

18          A.     Yes, I do.

19          Q.     Okay. I want to ask you a summary question  
20 and I want a very short answer, or as short as you deem  
21 it appropriate.

22                   After all of this melee, this being  
23 disseminated to all of the agencies, to the FBI, to  
24 everybody else, is it accurate to say that the only  
25 issue that came out of this was the issue about your

1 pocket calendar, that the Inspector General said that  
2 you should keep for 12 months instead of throwing those  
3 out each month?

4 A. Yes.

5 Q. So all of the other attacks on you in here,  
6 none of it, none of it arose to any level of -- that any  
7 agency, anybody of authority told you to change anything  
8 else that you're doing, yourself or in your office or  
9 any of the activities as a County Commissioner; is that  
10 correct?

11 A. That's 100 percent correct. The only thing  
12 they pointed out is that I should keep my personal  
13 private calendar for 12 months instead of one month.  
14 And I -- when I realized that was something that the  
15 Inspector General felt I should do, I immediately from  
16 there on kept all of my pocket calendars for a 12-month  
17 period.

18 Q. And at the end of that 12-month period, you  
19 could discard them as you wish; correct?

20 A. Yes, I could then discard that personal  
21 pocket calendar.

22 MR. MARIANI: Thank you. No other questions,  
23 Jess -- Mr. Santamaria. Thank you very much.

24 THE WITNESS: Thank you.

25 THE COURT: Ladies and gentlemen -- excuse

1 me, sir.

2 Does anybody in the jury have a question?

3 All right. Very good. Give that to the bailiff if  
4 you would, please.

5 Have a seat. Mr. Santamaria, sit down,  
6 please.

7 May I see counsel up here.

8 (The following proceedings were held before  
9 the Court and out of the hearing of the jury:)

10 THE COURT: The question is the alleged  
11 defamation occurred in September of 2010, why bring  
12 this change -- why bring this charge forward now?

13 MR. MARIANI: That sounds similar to my  
14 question of the witness, why did you sue  
15 Mr. Schaller?

16 THE COURT: That's what I'm thinking.

17 MR. MARIANI: I'm not concerned about -- I  
18 think it's up to Your Honor to show the jury the  
19 deference if --

20 MS. KITTERMAN: I don't have a problem with  
21 the question.

22 THE COURT: All right. I'll ask it.

23 (The following proceedings were held before  
24 the Court and in the presence and hearing of the Jury:)

25 THE COURT: Sir, one of the members of the

1 jury has a question for you. I want you to answer  
2 it as concisely and as precisely as possible, all  
3 right?

4 The alleged defamation occurred in September  
5 of 2010. Why bring this charge forward now?

6 THE WITNESS: The charge was brought forward  
7 immediately following my election. I did not want  
8 this topic to be an issue during the election in  
9 favor of either party. I wanted the election to be  
10 totally on my credentials to serve as a  
11 County Commissioner.

12 I did not want this distortion of facts to  
13 become a discussion during my campaign. I wanted  
14 the public to weigh my credentials and the  
15 credentials of my opponent solely as to who was  
16 best fit to serve as a Palm Beach County  
17 Commissioner. I did not want the public to be  
18 distracted, distracted by this distortion of facts.  
19 So I kept it off until after I was elected by a  
20 landslide victory. Then I filed my lawsuit  
21 immediately after I was reelected a second time in  
22 November.

23 So this charge was September, and there's  
24 only a few months that I wanted to pass during the  
25 campaign. So immediately following my election,

1           then I filed. Now we can concentrate -- I don't  
2           know why it took so long for the courts to take  
3           this up. It was not my doing. I would have  
4           preferred that the courts would have handled it  
5           immediately following my submission of the lawsuit.  
6           It took the courts more than a year to take it up  
7           today.

8           THE COURT: Any follow-up by any counsel?

9           MR. MARIANI: No, Your Honor.

10          MS. KITTERMAN: Mr. Santamaria -- if I may?

11                               RECROSS EXAMINATION

12          BY MS. KITTERMAN:

13           Q.       Isn't it true that you talked about this  
14           request for inquiry during your campaign?

15           A.       I don't recall what was discussed during the  
16           campaign.

17           Q.       Okay. And you filed the lawsuit two months  
18           after you actually won the election?

19           A.       Shortly after I won the election, I then met  
20           with my attorney and then he prepared for filing of the  
21           suit.

22          MS. KITTERMAN: Okay. No further questions.

23          THE COURT: Mr. Mariani, anything else?

24          MR. MARIANI: No, Your Honor, thank you.

25          THE COURT: All right. Sir, you can step

1 down. Thank you very much.

2 (Witness stepped down.)

3 THE COURT: Do you have any other evidence,  
4 sir?

5 MR. MARIANI: We close, Your Honor.

6 PLAINTIFF RESTS

7 THE COURT: All right. Ladies and gentlemen,  
8 I need you to step back in the back room here.  
9 This is the termination of the plaintiff's case.  
10 He has put on all of his case in chief. There are  
11 various motions that have to be made at this time  
12 and I have to rule upon them in a few minutes. And  
13 we'll come out and the defense will have its  
14 portion of the case.

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

17 THE COURT: All right. Have a seat.

18 All right. Is there any motion by the  
19 defense?

20 MS. KITTERMAN: Yes, Your Honor.

21 THE COURT: All right.

22 MOTION FOR DIRECTED VERDICT

23 MS. KITTERMAN: Your Honor, at this time, the  
24 defendant would move for a directed verdict. As  
25 we've just heard all of the evidence put on by the

1 plaintiff, plaintiff has the burden of proving by  
2 clear and convincing evidence that Mr. Schaller  
3 acted with knowledge or he should have known that  
4 that felony record did not belong to  
5 Mr. Santamaria.

6 Based solely on the evidence that plaintiff  
7 has put on, he has not put on any evidence that  
8 showed that Mr. Schaller knew that that felony  
9 record was not in fact the commissioner. In fact,  
10 the commissioner testified that that felony record  
11 had absolutely no identifying information to say  
12 that it was not the commissioner.

13 Further, the only evidence that plaintiff has  
14 put on to show that Mr. Schaller should have known  
15 whether or not that felony judgment was related to  
16 Mr. Santamaria was that he's done a lot of research  
17 on an engineering project, he did a lot of public  
18 records requests to the County, but nothing  
19 involved his knowledge of the court system, his  
20 knowledge of where to find a felony case. It  
21 involved researching the Internet, researching the  
22 Palm Beach County clerk website -- Clerk of Court's  
23 website, wherein he found an official record that  
24 said there was a felony judgment for Jesus R.  
25 Santamaria. And that was it. That was all that

1 was available on the Internet.

2 No matter how well Mr. Schaller could search  
3 the Internet, that was the only document that  
4 related to the felony record of a Jesus R.  
5 Santamaria, which it's undisputed that Jesus R.  
6 Santamaria was a legal name of the plaintiff.

7 Now, it's well established that the  
8 First Amendment provides us the right for freedom  
9 of speech. And when you're dealing with a public  
10 official, that constitutional privilege is  
11 heightened. Matters of public concern include  
12 anything that might touch on an official's fitness  
13 for office and can include personal character  
14 attributes.

15 In order for a public official to recover  
16 damages for defamatory falsehood relating to his  
17 official conduct, as I stated, the plaintiff must  
18 prove that the statement was made with actual  
19 malice; that is, with knowledge that it was false  
20 or with reckless disregard of whether or not it was  
21 false. And that's according to a New York Times  
22 case versus Sullivan, 376 U.S. 254 that was in the  
23 Supreme Court of the United States, 1964.

24 Further, Florida courts have held that actual  
25 malice rule applies no matter how gross the untruth



1 is. The Florida Supreme Court held that in Nodar  
2 versus Galbreath, 462 So.2d 803, 1984.

3 Moreover, we have constantly referred to a  
4 case called Don King Productions, Inc., versus the  
5 Walt Disney Company, and that was a ruling that  
6 just came down by the Fourth DCA in 2010. And it  
7 stated that holding that intention to portray a  
8 public figure in a negative light, even when  
9 motivated by ill will or even intent is not  
10 sufficient to show actual malice unless the  
11 publisher intended to inflict harm through knowing  
12 or reckless disregard of the falsehood.

13 Further, the Don King case stated that the  
14 defendant does not have the duty to fully  
15 investigate the alleged defamatory statement before  
16 publication. And it states that reckless conduct  
17 is not measured by whether a reasonably prudent man  
18 would have published or would have investigated  
19 before publishing. The case stated that there must  
20 be sufficient evidence, clear and convincing  
21 evidence to permit the conclusion that the  
22 defendant in fact entertained serious doubts as to  
23 the truth of the publication.

24 I have not heard one piece of evidence that  
25 shows that Mr. Schaller entertained serious doubts

1 as to whether or not that felony conviction related  
2 to Mr. Santamaria.

3 Again, the Supreme Court of the United States  
4 held that mere proof of failure to investigate  
5 without more cannot establish reckless disregard  
6 for the truth, and one must act with a high degree  
7 of awareness of the probable falsity. And that was  
8 held in Gertz versus Robert Welch, Inc., 418 U.S.  
9 323 in 1974.

10 The Don King case held that the defendant had  
11 no obligation to verify its source unless plaintiff  
12 could not prove by clear and convincing evidence  
13 that the defendant acted with actual malice. If  
14 there is any material ambiguity that exists in the  
15 record from which defendant had acquired his  
16 information and defendant published a statement,  
17 the defendant is, at most, guilty of negligence.

18 However, there was no evidence that there was  
19 anything online, any of his research did not show  
20 that the felony record did not relate to Jesus R.  
21 Santamaria, which is the commissioner. And, again,  
22 the burden is on the plaintiff to show that by  
23 clear and convincing evidence, Mr. Schaller  
24 specifically intended to injure the plaintiff or at  
25 least he had a reason to know that that felony

1 judgment was not the plaintiff.

2 Our U.S. Supreme Court has held that we have  
3 a First Amendment right to engage in the discussion  
4 of public issues and vigorously and tirelessly to  
5 advocate our own election and the election of their  
6 candidates. Mr. Schaller's testimony was read into  
7 evidence wherein he said he was trying to do  
8 research on his candidate, he was told by division  
9 or the Supervisor of Elections that it was up to  
10 the candidate or the media to vet their opponent,  
11 to do the research. And that's what Mr. Schaller  
12 did. He did a bunch of research, mostly through a  
13 public records request.

14 THE COURT: How do we know that? I haven't  
15 heard any evidence to that effect, have we?

16 MS. KITTERMAN: Yes, Mr. Santamaria testified  
17 to the request for inquiry. Yes.

18 And as far as the felony record, which is  
19 actually at issue, nobody has stated that they know  
20 that Mr. Schaller knew it was false. Nobody has  
21 stated that there is any reason that Mr. Schaller  
22 should have known that was false. And the  
23 testimony that was read in by Mr. Schaller -- for  
24 Mr. Schaller had no indication that he knew or had  
25 doubts as to whether or not it was false.

1           And the courts have held that the  
2           First Amendment requires neither politeness or  
3           fairness during a political campaign. That was the  
4           Fourth District court ruling in 2001 of C.C. "Doc"  
5           Dockery versus Florida Democratic Party, where  
6           false statements are inevitable in free debate and  
7           must be protected. In reviewing political  
8           statements, courts must read the entire publication  
9           in context, not simply the offending word. That  
10          again is quoted from the C.C. "Doc" Dockery case.  
11          Publications that are in question are not to be  
12          dissected and judged word for word, phrase by  
13          phrase. The entire publication must be examined.

14                 The entire publication of the request for  
15                 inquiry was simply that request as to whether or  
16                 not Mr. Santamaria was violating any laws of public  
17                 office. There was no information in there that  
18                 Mr. Schaller put in any editorial comment. And  
19                 that is shown throughout the request for inquiry.

20                 Further, courts have acknowledged that during  
21                 a campaign, a candidate's false statement will be  
22                 quickly noticed and corrected by the opponent.  
23                 Mr. Santamaria stated that he did nothing to  
24                 correct Mr. Schaller's misstatement. But, in fact,  
25                 it was his daughter that came down to the

1 courthouse, who knew where to get the file, and  
2 told Mr. Schaller that it was in fact not her  
3 father. Based on her word, Mr. Schaller corrected  
4 the statement on the radio station that we heard in  
5 this court.

6 Even negligent misstatements during a  
7 political campaign must be protected in order to  
8 give free, protected speech the breathing space it  
9 requires. And that was a ruling from the  
10 11th Circuit, Weaver versus Bonner, 309 F. 3d 1312  
11 in 2002.

12 The Weaver report held that the ability of an  
13 opposing candidate to correct negligent  
14 misstatements with more speech more than offsets  
15 the danger of a misinformed electorate that might  
16 result from tolerating negligent misstatements.  
17 Mr. Santamaria has testified that he has  
18 advertising space consistently in the Town Crier  
19 newspaper. Not once did he print anything to  
20 correct this request for inquiry or the potential  
21 statement that he had a felony record.

22 The United States court and the Florida  
23 Supreme Court has consistently stated that public  
24 officials assume the risk of defamation injury by  
25 undertaking a voluntary elected position in our

1 government because a position invites public  
2 scrutiny. And that is stated in U.S. Supreme Court  
3 of Time versus Firestone, 424 U.S. 448 in 1976.

4 THE COURT: So are you saying that  
5 politicians are just free game for being shot at,  
6 to be maligned, to be literally defamed?

7 MS. KITTERMAN: Yes, Your Honor, I'm saying  
8 that the Supreme Court of the United States as well  
9 as the Florida Supreme Court have consistently held  
10 that public officials are free to be criticized, be  
11 defamed. The only way that they are to be  
12 protected from defamation is by proving that the  
13 person who is speaking or publishing the defamatory  
14 information did it knowing it was false or they  
15 should have known or they had reason to believe  
16 that it was false.

17 THE COURT: Well, let me ask you something:  
18 By publishing what is referred to as Exhibit  
19 Number 2 in this particular case, which I presume  
20 is the basis for this whole lawsuit, that doesn't  
21 establish who that individual is. And with taking  
22 no further action to verify that, does that create  
23 some issue of fact as to whether or not there was  
24 falsity and/or reckless disregard for that?

25 MS. KITTERMAN: No, Your Honor. We're basing

1 all of our evidence on what the plaintiff has put  
2 on. The plaintiff has not put on any evidence to  
3 show that Mr. Schaller acted with knowledge or that  
4 he should have known that that felony judgment was  
5 not related to him.

6 THE COURT: I need you to wind up if you  
7 will, please, because I've got to hear from the  
8 other side.

9 MS. KITTERMAN: Okay.

10 THE COURT: Thank you very much. I'm  
11 familiar with the cases and your area of request.  
12 Thank you.

13 MS. KITTERMAN: Thank you, Your Honor.

14 MR. BARKSY: Good morning, Your Honor.

15 You asked defense counsel essentially are  
16 they advocating for open season on politicians and  
17 she said yes. I would like to start with a quote  
18 from the Supreme Court, St. Amant versus Thompson,  
19 390 U.S. 727 at Page 733. "The defendant in a  
20 defamation action brought by a public official  
21 cannot, however, automatically ensure a favorable  
22 verdict by testifying that he published with the  
23 belief that the statements were true. The finder  
24 of fact must determine whether the publication was  
25 indeed in good faith.

1           "Professions of good faith will be unlikely  
2           to prove persuasive, for example, where a story is  
3           fabricated by the defendant, is the product of his  
4           imagination, or is based wholly on an unverified  
5           anonymous telephone call. Nor will they be likely  
6           to prevail when the publisher's allegations are so  
7           inherently probable that only a reckless man would  
8           have put them in circulation."

9           The United States Supreme Court is not  
10          declaring open season on politicians where anybody  
11          can go out and publish whatever they want against  
12          them simply because they're public politicians.

13          There is also reference to the Don King case,  
14          40 So.3d 40. I'd like to quote two portions from  
15          that as well.

16          "Recklessness may be found where," and this  
17          is a quote from the Supreme Court, "there are  
18          obvious reasons to doubt the veracity of the  
19          informant or the accuracy of his reports." And  
20          that case goes on to say, "A showing of ill will  
21          alone cannot establish actual malice. However, ill  
22          will or motive when combined with other evidence  
23          may amount to actual malice." And there is a  
24          citation to Harte-Hanks Communications, Inc.,  
25          versus Connaughton, 491 U.S. 657 at Page 68.



1           Your Honor, the plaintiff has put on ample  
2 evidence to sustain its burden in this case and  
3 we're actually going to call for a directed verdict  
4 at that time as well. As just spoken through the  
5 testimony of --

6           THE COURT: I think that would be  
7 inappropriate. I think you would have to wait  
8 until the close of their portion of the case.

9           MR. BARKSY: Then I will just address that  
10 what we have put on as evidence, that would sustain  
11 a jury verdict finding in favor of the plaintiff.  
12 The elements that we have to show are a statement  
13 which was false and there needs to be actual  
14 malice. And the definition of actual malice is  
15 whether or not the defendant knew the statement was  
16 false or acted with reckless disregard.

17           THE COURT: What is the statement that you  
18 think is actionable here?

19           MR. BARKSY: The statement here that is  
20 actionable is the felony record of  
21 Jesus Santamaria. It is exhibit -- Plaintiff's  
22 Exhibit 2 at this point. That entire page is an  
23 actionable statement, your Honor.

24           THE COURT: But the defendant did not accuse,  
25 he asked for a request for inquiry. He did not say

1           that he had committed the crime either.

2           MR. BARKSY: No.

3           THE COURT: He implied that this was an area  
4           that needed to be investigated. Now, is that  
5           actionable if I just imply that we need to look at  
6           this, when I haven't really directly accused the  
7           defendant or, in this particular case,  
8           Mr. Santamaria of being the actual perpetrator of  
9           that felony?

10          MR. BARKSY: It absolutely is actionable,  
11          Your Honor. The courts have looked at this in the  
12          same vein as kind of that that was considered in a  
13          defamatory question, so when did you stop beating  
14          your wife? There is a question mark on the end of  
15          that statement, Your Honor, but the actual  
16          statement, that question itself implies something.  
17          And here that is exactly what the defendant has  
18          done. He has tried to hide behind a question mark.

19          Remember, this is a document slipped inside  
20          of 118 pages of other allegations. Miss Kitterman  
21          has called them allegations, you heard Dick Farrel  
22          call them allegations on his radio show. You saw a  
23          TV interview of the defendant calling them  
24          allegations. He said, I wouldn't want to defend  
25          against this. I wouldn't want these allegations

1 brought against me.

2 When you consider the totality of the  
3 circumstances of that document, which is what the  
4 law is, Your Honor, it was clearly an allegation.  
5 It's simply an attempt to try and be too cute by  
6 putting a question mark there at the end and  
7 saying, oh, I was only asking a question in the  
8 middle of 118 pages of allegations.

9 Nobody took that as a question, Your Honor.  
10 That's never been the case until this lawsuit  
11 arose. That is the law on that topic, Your Honor.  
12 That's the relief you can consider, the totality of  
13 the circumstances, inferences. The Kaylin  
14 (phonetic) case, which has been cited in our brief  
15 before Your Honor, as well as the case Milkovich  
16 versus Lorain Journal, 497 U.S. 1; Florida Medical  
17 Center, Inc., versus New York Post. And these  
18 are -- this is directly from the Florida Standard  
19 Jury Instructions' statement, where a statement of  
20 opinion may be considered false statement of fact  
21 expressly stated in --

22 THE COURT: What is the opinion?

23 MR. BARKSY: The opinion, Your Honor, is that  
24 remember, it says felony record of  
25 Jesus Santamaria. It's asking -- and the statement

1 is that this is, is this his felony record  
2 contained within this 118 page --

3 THE COURT: Is that an opinion or is that a  
4 question?

5 MR. BARKSY: It's, we believe it's a  
6 statement, Your Honor. It is a statement, again,  
7 along the same lines of when did you stop beating  
8 your wife. You know, there is a question mark on  
9 the end of that, but it is a statement.

10 THE COURT: Well, I guess that would be is he  
11 really a wife beater. That would be more the  
12 question, wouldn't it?

13 MR. BARKSY: Same effect, Your Honor. It  
14 implies some knowledge of a fact there.

15 THE COURT: All right. Well, I'm going to  
16 deny the motion. I think the plaintiff at least  
17 puts forth some kind of a prima facie case at this  
18 particular stage. And it would be wrong for me to  
19 weigh that evidence at this particular stage and  
20 deprive the defendant an opportunity to put on its  
21 side of the case. So at this point I'm going to  
22 deny the motion.

23 MR. BARKSY: Thank you, Your Honor.

24 THE COURT: Let's bring in the jury, please.

25 (The Jury entered the courtroom after which

1 the following proceedings were held:)

2 THE COURT: All right. The defense may call  
3 its first witness, please.

4 MS. KITTERMAN: The defense calls Mr. Andy  
5 Schaller.

6 Thereupon,

7 ANDREW F. SCHALLER,  
8 having been first duly sworn or affirmed, was examined  
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. KITTERMAN:

12 Q. Good morning, Mr. Schaller.

13 A. Good morning.

14 Q. Would you please introduce yourself to the  
15 Judge and Ladies and Gentlemen of the Jury.

16 A. My name is Andrew Schaller. I go by Andy,  
17 Andy Schaller.

18 Q. Andy Schaller, do you know Mr. Santamaria?

19 A. I do.

20 Q. How do you know him?

21 A. I met him as my one-and-only County  
22 representative representing a piece of property that I  
23 owned, it was my home for many years, in unincorporated  
24 Palm Beach County.

25 Q. And why did you meet him with regard to your

1 property?

2 A. The County was preparing to do a road project  
3 back in 2008. There was a letter that was sent to me  
4 dated March 6th of 2008, where the County was explaining  
5 that they were going to pave the roads around my  
6 property. And they didn't say that they made a mistake,  
7 but I found out later they made a mistake as to why they  
8 were including my property, the front property.

9 My property is on a corner. They were going  
10 to include the front property, but not the side  
11 property. And they said that projects are normally done  
12 on a first-come, first-serve basis. But paraphrasing,  
13 if everybody acts now, they'll include us in the road  
14 paving program.

15 When I received that, I then started asking  
16 questions as to why would you pave the east-west road in  
17 front of my house, but not the north-south road that was  
18 the feeder road into about seven or eight other roads.

19 So for demonstration purposes, we had  
20 east-west roads like my finger (demonstrating) and you  
21 had north-south roads (demonstrating). They were not  
22 paving the feeder road, they were only paving the  
23 east-west roads. But they were paving it in a process  
24 that was the first time ever in the 100-year history of  
25 the County. Instead of stopping the paving at the

1 beginning of the intersection, meaning the Fargo  
2 right-of-way, they were going to pave into that road.

3 They weren't going to just pave into it, they  
4 were going to pave into it with a T Section that was  
5 80 feet long. So when you turned on the road, you could  
6 go 40 feet north, 40 feet south with pavement.

7 Now, when you consider the north-south road,  
8 there's only 12 lots on this road. By paving some of  
9 the road and not all the road, there was going to be  
10 nine pavement changes on a 12-lot road. There was going  
11 to be dirt, asphalt, dirt, asphalt, dirt, asphalt, dirt,  
12 asphalt for nine pavement changes.

13 I went to the County not because I wanted my  
14 road paved, but because I wanted to know what  
15 justification they had for the first time in this County  
16 doing something 100-year history -- which I didn't know  
17 at the time, I found out through my research -- that  
18 made no sense to anybody who lived on the road.

19 The roads are privately maintained or were at  
20 that time. Fargo Road is not a private road, it was not  
21 my road. It was deeded to the public in 1912. So if  
22 you think what this County and this community looked  
23 like in 1912 and all of the vast development we've had  
24 here, you understand that it was a piece of property in  
25 the middle of nowhere. But at the time, the public was

1 not the County. So there was some dispute as to who was  
2 responsible for maintaining the road. But I have owned  
3 that property now for 22 years and it was all of our  
4 neighbors.

5 When you pave a road and don't pave a road,  
6 you have a difference of grade where water can collect  
7 in a bowl-like situation. The way the County maintains  
8 the road is with a grader from one end to the other. We  
9 didn't have that luxury, it was not accepted into the  
10 County road paving program, Fargo was not. At the time,  
11 Rodeo, my house was not either.

12 So I went to the County Commission -- or I  
13 went to Commissioner Santamaria first in an e-mail. And  
14 I sent him an e-mail and I got a standard response from  
15 his office saying, sorry, but can't help you. And I  
16 wanted to emphasize that there would be drainage  
17 problems and maintenance problems because we as  
18 neighbors who drag a metal or wooden pallet or whatever  
19 behind our vehicles to maintain the flatness of the  
20 road, we're not going to be able to do that on County  
21 pavement. And it was going to cause a bowl-like  
22 situation for drainage that the water couldn't go  
23 anywhere.

24 Q. Mr. Schaller.

25 A. Yes, ma'am.



1 Q. How did you find out about the pavement that  
2 was going to go on Fargo Avenue, where it was going to  
3 go pavement, road, pavement, road? How did you find  
4 that out?

5 A. I went to the -- with the letter that was  
6 signed by the engineering services coordinator,  
7 Michael Marquis. I went to him, brought a copy of my  
8 letter because he signed it and said, may I see the  
9 plans for this? And he showed me the plans and plain as  
10 day, there was nine interruptions of pavement asphalt in  
11 the plans.

12 Q. Okay. So when you e-mailed Mr. Santamaria  
13 and you got a standard response that he couldn't help  
14 you, what happened next?

15 A. Through the Town Crier, I found out that  
16 Mr. Santamaria had a monthly forum, I believe he says  
17 it's the third Wednesday of the month. I appeared  
18 before him. And during an open discussion, I asked  
19 Mr. Santamaria if he was familiar with the e-mail that I  
20 had sent. And he said no.

21 Q. Do you recall when about that was?

22 A. Yes, ma'am. That would have been in -- the  
23 letter came out in March, I appeared in front of the  
24 board for the first time in June.

25 Q. March of what year?

1           A.     Of 2008. So I believe it was either in the  
2 May or the June, most likely the June meeting of 2008,  
3 County forum.

4           Q.     Okay. So go on.

5           A.     Mr. Santamaria recommended that I go down to  
6 the Board of County Commissioners because the way the  
7 commission works is there's seven representatives of  
8 this County, seven district commissioners. In order to  
9 get anything done, you had to speak with four -- pardon  
10 me, you had to have four votes to be able to approve  
11 anything to be done.

12                   Mr. Santamaria suggested that I go down to  
13 the County Commission and plead my case in front of the  
14 commission.

15          Q.     Did you do that?

16          A.     I did so, ma'am, in June. I think I stated  
17 it was July. I went to the County Commission in June.  
18 So to answer your previous question, I went to the forum  
19 in May. I went in June of 2008.

20          Q.     To the County Commission?

21          A.     Yes, ma'am.

22          Q.     Okay. What happened at that  
23 County Commission meeting?

24          A.     I pled my case. And Commissioner -- which I  
25 should say, you get three minutes for matters by the

1 public. You get it one time a month, ten times a year.  
2 I pled my three minutes, Commissioner Santamaria voiced  
3 no input whatsoever, didn't bring it up, didn't  
4 encourage me, didn't deny me, voiced no input.

5 When the meeting was over, I waited for  
6 Commissioner Santamaria outside the County chambers. I  
7 asked Commissioner Santamaria why he didn't say anything  
8 to me after recommending that I come down for the board,  
9 why he didn't say anything to the board.

10 Commissioner Santamaria at that time asked me  
11 where my property was located, and I told him it was on  
12 the corner of Rodeo Drive and Fargo right around just  
13 north of Lake Worth Road off of 411 in unincorporated  
14 Palm Beach County. It's considered Lake Worth Road.

15 At that time, Mr. Santamaria told me that  
16 that was not his area of concern. His area of concern  
17 was the forgotten area of the western communities;  
18 meaning, Belle Glade, South Bay, Pahokee, the western  
19 areas. I told him that it wasn't fair. I told him that  
20 his statement wasn't fair because I had no other place  
21 to turn. He was the only County representative, we  
22 don't have a mayor, we don't have a village council.  
23 I'm in the unincorporated part of Palm Beach County. I  
24 told him it wasn't fair that he was holding my area  
25 outside of what he considered his area of concern.

1           Mr. Santamaria was offended by that. He said  
2 something to the effect, in my 69, 70 years, however old  
3 he was at that time, he said to me, "Nobody has ever  
4 said Jess Santamaria was unfair. Tell you what I'll do.  
5 How much will the road cost?"

6           I said, sir, I don't know. Estimation, I'm  
7 taking it off the top of my head, I've never been  
8 involved in a road program paving project, it's the  
9 first time I'm coming down to the County for anything of  
10 this matter. He said -- I told him, I've got a  
11 guesstimate of about \$85,000 to 100,000.

12           He said, I'll tell you what I'll do. I'll  
13 take \$10,000 of my own personal funds and I will give it  
14 to you, Jess Santamaria personal funds, but I won't help  
15 you any further.

16           I was very shocked. I'm asking a public  
17 official for help in an official capacity and he's  
18 offering me \$10,000 towards a project to go away. That  
19 was the first time it put me on guard as to what my  
20 public representative was like if he can buy me -- think  
21 he can buy me to send me away. My response --

22           Q.     I'm sorry.

23           A.     My response was --

24           MR. MARIANI: Your Honor, could we have less  
25 narrative?

1 THE COURT: You can ask questions and you  
2 need to respond to the questions. Okay, sir?

3 BY MS. KITTERMAN:

4 Q. So what happened in response to him offering  
5 you \$10,000?

6 A. I told him I wanted to do this the right way  
7 and we needed to go through the proper channels because  
8 this was going to be a road that would be maintained in  
9 perpetuity by whoever paved it.

10 Q. And what did he say to you?

11 A. After a little further discussion about him  
12 offering the money, he said let's go talk to the  
13 engineering department.

14 Q. Okay. So then what happened?

15 A. I went through all the different ranks and  
16 file of the engineering department.

17 Q. When you say different ranks and file at the  
18 engineering department, what do you mean?

19 A. Originally, I had spoken with Mr. Marquis to  
20 find whatever information I could find on the existing  
21 projects that were supposed to go through that Rodeo was  
22 solicited into for the MSTU program.

23 Q. And Mr. Marquis was the one who sent you the  
24 original petition with regard to Rodeo Drive?

25 A. Correct.

1 Q. And then what happened?

2 A. The first meeting that I had officially with  
3 Mr. Santamaria was in Tanya McConnell's office.  
4 Tanya McConnell was the supervisor for Mr. Marquis. And  
5 when Mr. Marquis was providing the documents to  
6 Miss McConnell, he said it made no engineering sense  
7 whatsoever to not pave the road that was giving access  
8 to all of the other east-west roads. And Miss McConnell  
9 took it upon herself to not include the north-south  
10 road, Fargo, in the projects.

11 Q. How do you say that Miss McConnell took it  
12 upon herself not to include Fargo?

13 A. Mr. --

14 MR. MARIANI: Objection, Your Honor, calls  
15 for speculation.

16 THE COURT: Overruled.

17 Go ahead, sir.

18 THE WITNESS: Mr. Marquis provided me with a  
19 document with the handwriting of Miss McConnell  
20 saying not to include it at this time because it  
21 hadn't been included. And --

22 BY MS. KITTERMAN:

23 Q. Okay. Was Miss McConnell's statement or the  
24 reason that she didn't include it because it didn't  
25 follow the proper petition process of the MSTU program?

1 MR. MARIANI: Objection, Your Honor.

2 THE COURT: What is the objection?

3 MR. MARIANI: Relevance, and calling for  
4 information that's not in the record.

5 THE COURT: Overruled.

6 Go ahead.

7 THE WITNESS: Would you repeat the question,  
8 ma'am?

9 BY MS. KITTERMAN:

10 Q. Did Miss McConnell state that the reason that  
11 she was not including Fargo Avenue in the project was  
12 because they didn't properly petition them to be  
13 included in the MSTU program?

14 THE COURT: Is that a hearsay objection, sir?

15 MR. MARIANI: Yes, Your Honor.

16 THE COURT: All right. I'll sustain that.  
17 It's an out-of-court statement. You got an  
18 exception?

19 MS. KITTERMAN: She said it in court.

20 THE COURT: Well, that's not the point.

21 BY MS. KITTERMAN:

22 Q. What was your understanding of why Fargo was  
23 not included?

24 A. What Miss McConnell told me was that there  
25 wasn't money to do all of the roads. I objected because

1 the letter that was sent to me by Mr. Marquis said,  
2 we're doing all of the roads around you, the remaining  
3 roads around you. Since we are doing this, roads are  
4 normally done -- handled on a first come, first serve  
5 basis, but you have an opportunity, paraphrasing this  
6 part, to get into the road paving program.

7 I asked her if all of the roads around me,  
8 remaining roads around me were being done, why wasn't  
9 she doing what they called the thoroughfare to those  
10 roads?

11 Q. Okay. And what happened after that?

12 A. She said she would look into it further,  
13 which led me to conversations with George Webb, who is  
14 the County Engineer.

15 Q. Okay. Was Mr. Santamaria present during any  
16 of these meetings?

17 A. Yes, ma'am.

18 Q. Which meetings was he present at?

19 A. He was present during the initial meeting  
20 with Miss McConnell and he was present in the initial  
21 meeting with Mr. Webb, where he restated his offer for  
22 \$10,000 for me to handle the problem on my own.

23 Q. How long after you met with Miss McConnell  
24 did you meet with Mr. Santamaria and Mr. George Webb?

25 A. I don't have a recollection of time, but it



1 was a continuous flow of events. There were days, maybe  
2 a week. There was a continuous flow.

3 Q. And what happened at the meeting with you,  
4 Mr. Santamaria and George Webb?

5 A. There have been many meetings. I'm not sure  
6 in chronology of what you're saying. I can tell you  
7 about -- or I can tell you what I do remember on  
8 specific meetings, but the order in which they happened,  
9 I can't tell you.

10 Q. Okay. Tell me what you do remember.

11 A. On one such meeting, Commissioner Santamaria  
12 recommended that we change the municipal MSTU, change  
13 the MSTU ordinance. Presently, it was a 50/50  
14 ordinance, where the County paid 50 percent of the cost  
15 of doing the road and the residents paid 50 percent.  
16 The County's 50 percent came from a special tax that was  
17 designed to pay for the roads.

18 It was Mr. Santamaria's suggestion that we  
19 change it to 100 percent so that the people on Fargo  
20 could participate quickly into the program as long as  
21 all the paving equipment was out there.

22 Q. And when you say 100 percent, what do you  
23 mean by that?

24 A. That 100 percent of the cost would be borne  
25 by the property owners on Fargo.

1 Q. Okay. And what was your response to whether  
2 or not the Fargo residents should pay 100 percent of the  
3 cost?

4 A. I objected.

5 Q. Why did you object?

6 A. The County's policy for nearly 100 years is  
7 to assess what is called all users of the property.  
8 Based upon that, a user or all benefiting property would  
9 mean anybody that would use the road to drive down the  
10 road to go to their own house.

11 MR. MARIANI: Move to strike as to County  
12 policy, Your Honor.

13 THE COURT: Sustained.

14 MS. KITTERMAN: Okay.

15 BY MS. KITTERMAN:

16 Q. Do you know whether the County Commission  
17 ever decided or ruled on what a benefiting property for  
18 Fargo Avenue would be?

19 A. For four years, that's been the topic of the  
20 controversy, the County has never made that ruling.

21 Q. Okay. What happened after your meeting with  
22 Mr. Webb or several meetings with Mr. Webb and  
23 Mr. Santamaria?

24 MR. MARIANI: Objection, vague.

25 THE COURT: Overruled.

1 THE WITNESS: The issue continues today with  
2 Mr. Webb saying the County made a number of  
3 mistakes. Mr. Weisman, publicly, as well as other  
4 commissioners on TV during the broadcast, public  
5 broadcast of the County Commission meetings have  
6 admitted mistakes.

7 Mr. Weisman has come out a number of times  
8 now to actually view the road with myself and my  
9 neighbors. And pending right now in some upcoming  
10 Board of County Commissioners meeting, the road  
11 situation will continue.

12 And recently, as in the last few months, the  
13 board has opened up Fargo specifically to the 50/50  
14 policy that was in place before Commissioner  
15 Santamaria's ordinance change to handle the  
16 problems that were caused by the County of  
17 mishandling, to right the wrong that was done on  
18 Fargo. But we wait a determination.

19 BY MS. KITTERMAN:

20 Q. Did you ever ask Mr. Santamaria to come out  
21 and view your road to see what you were complaining  
22 about?

23 A. For four years, I have, as I ask today.  
24 You're the only representative -- he's the only  
25 representative of my neighborhood. Please, one time in

1 four years, come out and view the road that you used as  
2 the subject for changing an entire County ordinance.  
3 Not once, ever, has he come out to look at the road.

4 Q. Okay. Did Mr. Santamaria ever agree to help  
5 you with your road?

6 A. Yes, he did.

7 Q. Why?

8 A. He said in one of the meetings with  
9 George Webb that it was the right thing to do for the  
10 people involved. He also misstated something here,  
11 where he says you are required in the MSTU program to  
12 have a 50/50 -- I'm sorry, 50 plus one percentage of the  
13 vote of the people to vote in favor of it.

14 Mr. Santamaria told Mr. Webb in a meeting  
15 when it was brought to his attention --

16 MR. MARIANI: Objection, hearsay, Your Honor.

17 THE COURT: Sustained.

18 THE WITNESS: I would --

19 THE COURT: You can't tell us about what  
20 other people said, except for what Mr. Santamaria  
21 said.

22 THE WITNESS: I was --

23 MS. KITTERMAN: I believe that's what he was  
24 saying, what Mr. Santamaria was saying.

25 THE WITNESS: I was present. Yes, sir, I was

1 present. I was going to say the conversation, I  
2 was one of the three parties of.

3 THE COURT: As to Mr. Santamaria's  
4 statements, that is admissible as an exception  
5 under the hearsay rule. But as to any other  
6 parties, it is not, all right?

7 Let's move on. What is the question?

8 MS. KITTERMAN: There wasn't a question. He  
9 was answering my previous question.

10 THE WITNESS: Your Honor, I apologize.

11 THE COURT: Don't apologize. Just try to  
12 respond to your counsel's questions as concisely  
13 and as precisely as possible. You need to move on.

14 MR. MARIANI: Could we hear the question  
15 again, please?

16 BY MS. KITTERMAN:

17 Q. What did Mr. Santamaria discuss with you with  
18 regard to whether or not he was approving this process?

19 A. Mr. Santamaria said that based upon the fact  
20 that an MSTU program could be done by County verdict,  
21 for lack of a better term, County instruction, that he  
22 wanted Mr. Webb to make it happen. He said three  
23 things. He said number one, make it fair -- I'm sorry,  
24 number one, he said make it legal. Number two, he said  
25 make it fair. Number three, he said make it quick.

1 I said to the commissioner, you're going to  
2 receive a lot of heat for doing this. He said it's the  
3 right thing for the County, for the neighborhood, and  
4 I've taken a lot of heat in my time, I'm not concerned  
5 about it.

6 Q. At any time during your meeting with  
7 Mr. Santamaria, did you tell him that -- or did he  
8 indicate who would be charged for the Fargo Avenue  
9 project?

10 A. He did indicate it in his motion in the  
11 County Commission meeting to have Fargo included in the  
12 MSTU program when he said that they were going to -- he  
13 asked the County to approve the motion to assess 100 to  
14 200 benefiting properties, as was determined by the  
15 County Engineer in the same process. They never  
16 identified them. They said a range of 100 to  
17 200 people -- pardon me, properties would be affected by  
18 this. That was Commissioner Santamaria's motion.

19 Q. Okay. And you said that he made a motion.  
20 Do you know when that was?

21 A. 2009. If I'm not mistaken, June.

22 Q. So Mr. Santamaria ultimately in June of 2009,  
23 made a motion to help you get your Fargo Avenue -- not  
24 yours, but the Fargo Avenue street paved. What happened  
25 after that motion?

1           MR. MARIANI:  Objection, calls for a  
2           narrative.

3           THE COURT:  Overruled.

4           THE WITNESS:  What happened was a few  
5           neighbors came to protest that Fargo was going to  
6           be done.  A few 20, 30, perhaps more, over  
7           400 properties.

8           BY MR. MARIANI:

9           Q.       When you say a few neighbors, what are you  
10          talking about?

11          A.       The property is semi-divided by a north-south  
12          road called Blanchette.  Neighbors predominantly from  
13          the east side of Blanchette, one mile away from Fargo,  
14          came to the meeting to protest because the County had  
15          used their road as a staging area during a water pipe  
16          installation for County water and they tore up the road  
17          and were promised to be able to have that road fixed.

18                 When they saw me getting my road, in other  
19          words, the mistakes of the County being corrected, they  
20          rose up to say -- and this is a literal thing, we don't  
21          want him to have his road if we can't get ours.  And  
22          that's predominantly who filled the neighborhood --  
23          pardon me, that's predominantly who filled the County  
24          chambers.

25          Q.       As far as opposing the Fargo Avenue project?

1           A.       Correct. There were some that would be  
2 affected by the one to 200, but the majority were people  
3 from east of one mile away that had no effect.

4           Q.       When you say there were some that would be  
5 affected by the 100 or 200, what are you talking about?

6           A.       Anyone -- the County policy is to assess all  
7 users of benefiting properties. In the 100 to 200 that  
8 I mentioned that the County Engineer identified, they  
9 would all have to either, A, pay for the road to be  
10 constructed or, more importantly, when the County did  
11 the east-west roads, they stated that Fargo needed to be  
12 addressed because of the road -- improvements of the  
13 east-west roads that drain into Fargo for drainage, but  
14 yet there is no drainage on Fargo for it to be carried  
15 away anywhere. So they would either have to pay an  
16 additional fee for that, or when the estimate came in  
17 under budget, the County was going to hold back a  
18 certain portion to fix the drainage problems from the  
19 east-west roads.

20          Q.       Okay. Is there a drainage problem on  
21 Fargo Avenue?

22          A.       Yes. The way the County roads, the east-west  
23 roads are designed, they are sloped to drain into Fargo.  
24 Presently, Fargo was higher than where the road has to  
25 drain into. My road as it's being called Fargo is not



1 really my road. My address is on Rodeo Drive. So if  
2 we're going to use the term "my road," which I  
3 categorically deny is a public road, the road in front  
4 of my house sits under water to this day when it rains,  
5 after the County has done its paving and assessed all of  
6 us for a finished project. That's why I keep continuing  
7 to fight for them to fix the problem.

8 Q. Okay. So after the June 2009 meeting wherein  
9 Mr. Santamaria made this motion for the improvement of  
10 Fargo Avenue, you stated that 100 -- no, I'm sorry, some  
11 of the neighbors showed up to protest. When did they  
12 show up? Where did they show up?

13 A. They showed up -- I'm not -- there is two  
14 County meetings in a given month, roughly the first  
15 week, third week. It's my recollection that they showed  
16 up during the first meeting of July, where you have  
17 matters by the public and you have your three minutes to  
18 speak. Matters by the public predominantly is only in  
19 the first meeting. It was at that time, I do believe.

20 Q. Okay. Do you know what month that was?

21 A. July.

22 Q. And what happened as a result of those people  
23 showing up to oppose this motion that Mr. Santamaria  
24 made in June?

25 A. From what Commissioner Santamaria told me on

1 the way to that meeting, two people, Marlene Everett,  
2 which is the County attorney handling the engineering  
3 and Mr. Webb approached him in the elevator and told him  
4 to just sit back and listen, there was going to be some  
5 opposition, but to take no action.

6 Q. Were you at that meeting?

7 A. Yes.

8 Q. Did Mr. Santamaria make a motion or take any  
9 action at that meeting?

10 A. None.

11 Q. Was there ultimately a motion at that July  
12 meeting with regard to Fargo Avenue?

13 A. Commissioner Steve Abrams made the motion  
14 that there was obviously some question here in seeing  
15 how the MSTU road program was in question because they  
16 opened it for part of the neighborhood and not the  
17 other. He advised that it was tabled until a future  
18 point.

19 Q. Did Mr. Santamaria object to tabling the  
20 project until a future point?

21 A. He did not object. He voted in favor of  
22 tabling it indefinitely.

23 Q. What happened after that meeting on July 7th?  
24 Did you speak to Mr. Santamaria?

25 A. Yes, I did. I had a cell phone conversation

1 with him.

2 Q. And what did you say?

3 A. I asked him, Mr. Santamaria, what happened?  
4 I think I used the term, Jess. He likes to be referred  
5 to as Jess. I said, Jess, what happened? He said, did  
6 you see all the people that were in there? I said, I  
7 did, but do you understand that they weren't people  
8 from -- that were the affected area, they wanted their  
9 road? We had a certain conversation back and forth.

10 He told me at that time that Mr. Webb and  
11 Miss Everett talked to him in the elevator. I said, why  
12 didn't you say something? Why didn't you stand up? He  
13 said to me, I was not going to be a dead hero in front  
14 of 200 people. Shortly after, he hung up and we've  
15 never had a telephone conversation since.

16 Q. And what year was that?

17 A. 2009, July.

18 Q. After July 2009, did you have any other  
19 meetings in front of the Palm Beach County Commission?

20 A. With little to no exception, I appeared at  
21 every single meeting that I possibly could for matters  
22 by the public to say there is problems with the road the  
23 way that I said there would be and I have continuously  
24 presented video pictures showing the County my road is  
25 flooded, it's under water, and if you don't want to

1 address Fargo, you at least need to take responsibility  
2 for what has been admitted many, many times in the  
3 County, that they made mistakes.

4 Q. When Mr. Santamaria sat silent and voted in  
5 favor of putting the Fargo Avenue project on hold, did  
6 you at that time have any ill will toward Mr. Santamaria  
7 as a person?

8 A. I've never had ill will towards  
9 Mr. Santamaria nor the board. And in 2011, I went in  
10 front of the board to once again restate that it was an  
11 issue that was personal to me, but I never took the  
12 issue personally.

13 Commissioner Santamaria was important as the  
14 lead in the district because the district commissioners  
15 look to whoever is the district commissioner for advice,  
16 figuring that they know most about the road.

17 MR. MARIANI: Move to strike about what other  
18 commissioners think and look to.

19 THE COURT: Sustained.

20 MR. MARIANI: Could I have it stricken,  
21 please?

22 THE COURT: Do not consider that last  
23 comment.

24 BY MS. KITTERMAN:

25 Q. What happened after you went to the July 7th

1 meeting? You were stating that you've gone to almost  
2 every single meeting. Was there a point in time where  
3 you asked Mr. Santamaria to reimburse for your expenses  
4 that you spent all this time at these meetings?

5 A. Yes, there was.

6 Q. What happened?

7 A. After the phone call with Mr. Santamaria, he  
8 no longer responded to my e-mails. He didn't respond to  
9 any of the e-mails of one particular neighbor of mine  
10 that was standing up for the road as well, and I got  
11 frustrated.

12 In a letter that Mr. Santamaria had -- a  
13 memorandum that was entered in yesterday, Mr. Santamaria  
14 said that he had every intention of reimbursing me for  
15 my expenses. I had no desire for the reimbursement of  
16 my expenses. What I said in that County meeting was,  
17 Mr. Santamaria, please put your money where your spoken  
18 and written word are. Please make a check payable for  
19 \$4,000 to the County or any other road grading company  
20 that can fix this problem. That's what I asked for.

21 Q. Did the County ever do an audit of what was  
22 supposed to be done at Fargo Avenue?

23 A. The County did an internal audit at the  
24 request of Shelly Vana, who was the internal auditor at  
25 the time. The County spent 1262 hours --

1 MR. MARIANI: Objection, Your Honor, about  
2 what the County did.

3 THE COURT: If he knows.

4 THE WITNESS: It was a matter of record in  
5 the County. There was a special meeting that went  
6 45 minutes long for the purpose solely of  
7 discussing the internal audit. It's on the County  
8 website, it was public. I was there, I spoke.

9 They spent 1262 hours and came to the  
10 conclusion that a 12-lot dirt road was too complex  
11 and beyond the scope of the internal auditor's  
12 department. That's from Mr. Joe Bergeron who did  
13 the audit, the internal auditor.

14 BY MS. KITTERMAN:

15 Q. Who is Mr. Bergeron employed by?

16 A. He is one of the three employees of the  
17 County Commission. The County Commission only has three  
18 employees; one is the County Attorney, the second one is  
19 the County Administrator, and the third is the  
20 County Auditor. That's Joe Bergeron.

21 Q. Was there an independent audit done of the  
22 project?

23 A. It wasn't done of the project. It was done  
24 of the engineering department recently.

25 Q. Okay. That was after the internal audit was

1 done by the County Commission of Fargo Avenue?

2 A. Correct. But that audit was of the overall  
3 efficiency of the engineering department. It was not  
4 directly related to Fargo.

5 Q. You have a website, don't you?

6 A. I have more than one.

7 Q. Okay. Do you have a website that is "Up In  
8 Arms"?

9 A. I do. It's called upinarms.net.

10 Q. What is the website?

11 A. The website was a public forum for anybody  
12 and everybody in my neighborhood to be able to express  
13 their opinions about the road, good and bad. I posted  
14 everything I possibly could. I posted the negative  
15 comments about me. I posted the positive comments about  
16 me. I didn't editorialize, other than to possibly give  
17 the name of a document -- or a heading for a document  
18 that reflected the reason for the document.

19 Other than that, there are -- there was a  
20 forum on there where there was a free exchange, anybody  
21 could talk about any topic with a free forum exchange.  
22 I did not in any way, shape, or form sensor any of the  
23 information and posted anything and everything that I  
24 could about the road program for the better part of  
25 three years until I ran for County Commission, when I

1 stopped posting anything further.

2 Q. Okay. After the internal audit was done and  
3 you said that you were at the meeting where they were  
4 discussing that, I guess, the engineering department had  
5 spent over \$1,200 trying to figure out what went wrong.

6 A. 1200 hours.

7 Q. Yes. Did I say dollars?

8 A. Yes, ma'am.

9 Q. I apologize. 1200 hours, what went wrong  
10 with the Fargo Avenue project. At that time, did  
11 anybody accuse you of causing the engineering department  
12 to spend over \$1,200 -- I mean, hours. I apologize.

13 A. It wasn't at that time. It was a direct  
14 quote from Commissioner Santamaria, as my political  
15 opponent, when he put the page that was entered into  
16 evidence yesterday, when he said, to date, Andy Schaller  
17 has cost the taxpayers of Palm Beach County \$250,000 due  
18 to his obsession -- he also added engineering time is  
19 how he came to that -- due to his obsession to pave a  
20 road fronting property that he owns, thereby increasing  
21 his value, saying I was doing this not to correct  
22 drainage, but to increase the value of my property.

23 Q. Were you doing to it to increase the value of  
24 your property?

25 A. Absolutely not.



1 Q. Why were you doing it?

2 A. I did it because when I looked at the plans  
3 and I saw that they were going to impede water, traffic,  
4 and make a hardship for anybody on the road, and when I  
5 say they, the County by their engineering design were  
6 going to do something that was 100 percent completely  
7 inconsistent with the way the County has ever handled  
8 any road problem, I asked the County to treat us fairly,  
9 the way they have for all other projects in the County  
10 for the last 100 years.

11 I wanted fairness. And whatever fairness  
12 was, it didn't matter. If the road got paved, it got  
13 paved; if the road didn't get paved, it didn't get  
14 paved. However, you can't take a County road and put it  
15 into a private -- a County paved road, drainage water,  
16 runoff water, and put it into a private road as they're  
17 calling it -- it wasn't, it was a privately maintained  
18 Road -- and expect anybody that lives on that road to  
19 have their yard full of water the way it was testified  
20 many times in public, Palm Beach County Commission  
21 meetings.

22 Q. Okay. Did the County ever fix their plans  
23 with regard to paving into Fargo Avenue?

24 A. Yes and no.

25 Q. What happened?

1           A.       The way the County fixed it is the original  
2 T-sections that were supposed to impact Fargo Road were  
3 not supposed to be put in because I appealed to  
4 Miss McConnell that her plan was flawed by design. She  
5 sent a memo to me, an e-mail to me and a memorandum  
6 inside the County that said no paving whatsoever will be  
7 done on Fargo. The problem is that memo never got  
8 translated to the actual construction crew that was  
9 doing the work.

10          Q.       So what happened? Did the construction  
11 company actually pave into Fargo?

12               MR. MARIANI: Objection, no foundation about  
13 the construction company.

14               THE COURT: Overruled.

15               If you know.

16               THE WITNESS: I do know, sir. It became the  
17 subject of many e-mails back and forth. And, also,  
18 it became the subject in the County Commission,  
19 where it was a topic brought up and freely  
20 discussed in public.

21               There is three -- from what I have learned  
22 because of this, there are three phases in paving a  
23 road; the shell rock, a scratch coat of asphalt and  
24 then the finished driving surface. They did the  
25 first two. They elevated for the shell rock, they

1           then put the scratch coat. They then had to come  
2           back, cut out and remove anything that they had put  
3           into that road.

4       BY MS. KITTERMAN:

5           Q.       Did that have an effect on the Fargo Avenue?

6           A.       It is my opinion and now what I believe is  
7           the opinion of the County, based upon the fact that the  
8           County has said that's one of their mistakes and that's  
9           what they need to fix. So, yes, ma'am.

10          Q.       Has Fargo Avenue drainage improved since the  
11          County put in that two-part of the asphalt and then took  
12          it out?

13          A.       At this time, no. It has improved now  
14          because the County has adopted Fargo in what is  
15          considered the County maintenance, courtesy maintenance  
16          program. That's reserved usually for County roads or  
17          roads that will be addressed by the County for further  
18          improvement.

19                 In the last several months, the County has  
20          admitted their mistakes at the urging of Mr. Weisman,  
21          the County Administrator. Fargo had a motion made to  
22          maintain -- get courtesy maintenance. I think the  
23          County has already spent \$60,000 to fix their mistakes.  
24          It's adopted into the courtesy maintenance program,  
25          where it is regularly maintained and it is awaiting

1 paving determination of who is going to pay and prices  
2 the way it should have been done four years ago, in my  
3 opinion.

4 Q. Okay. And during all of this time, did you  
5 have any follow-up conversations or meetings with  
6 Mr. Santamaria?

7 A. I was the plague to him. He didn't want to  
8 talk to me.

9 Q. Okay. After he sent you a memo I think you  
10 said with a check, what did you do with that check for  
11 \$4,000?

12 A. I told you, I didn't want to cash it. I  
13 didn't want blood money. I didn't want payoff money. I  
14 felt that it was 30 pieces of silver and I wasn't Judas.  
15 I did not want to go away.

16 Q. So was it at that time --

17 MR. MARIANI: Objection, not responsive. She  
18 asked what did he do with it.

19 THE COURT: Sustained.

20 What did you do with it?

21 THE WITNESS: My mistake. I waited until the  
22 last couple of days before the check would go  
23 stale, it was no longer valid, and then I cashed  
24 it.

25

1 BY MS. KITTERMAN:

2 Q. And what did you cash it for?

3 A. I cashed it for the purpose of -- the purpose  
4 of running for County Commission. The entrance fee into  
5 the race as an independent was nearly \$4,000. I used  
6 Commissioner Santamaria's check to enter the political  
7 race to stand up for what I believe was the right thing  
8 to do, which was to represent the people.

9 Q. Okay. So when did you enter the race for  
10 County Commission?

11 A. According to the Supervisor of Elections, I  
12 entered the race on June 15th of 2010.

13 Q. And when you entered the race, had you ever  
14 had any experience before with dealing with an election  
15 or campaign?

16 A. No, ma'am. I filed my election papers and  
17 said, now what do I do?

18 Q. And what happened?

19 A. A lot of scrambling on my part. I had no  
20 idea what to do. I had no political friends, never been  
21 through the process. I didn't have any political party  
22 whatsoever. But I had a number of people who supported  
23 me as a person, watching me for three years at that  
24 point going in front of the County Commission. A little  
25 talk here, little talk there, I received the name of a

1 lady who might be able to be a campaign manager, who had  
2 handled other campaigns to be able to help me. And I  
3 called her.

4 Q. And how did you get the idea that you needed  
5 to do background searches on your candidates?

6 A. The day that I filed my paperwork with the  
7 Supervisor of Elections, which I downloaded from the  
8 Internet, I was turning in my papers and especially my  
9 paper that is the financial disclosure. You have to  
10 disclose all of your income and your assets.

11 I asked the clerk at the desk of the  
12 Supervisor of Elections, who verifies this information?  
13 She laughed. She said, your opponent will. I said,  
14 what does that mean? She said, these things come out in  
15 a campaign, something like that. So I pressed. I said,  
16 you mean to tell me there is no independent or no  
17 governmental body that verifies anything going on there?  
18 She said, that's correct.

19 My paperwork did not have a Social Security  
20 number, a driver's license. It didn't even ask me for  
21 my voter's registration card. I asked the lady, how do  
22 you find something out? She said, it's up to you, and  
23 took my paperwork and gave me a stamped, certified copy.

24 Q. Okay. So at this time, you were in the  
25 election and you were running against Mr. Santamaria?

1 A. Yes, ma'am.

2 Q. Did you enter the race because you had ill  
3 will towards Mr. Santamaria?

4 A. No, not at all. Mr. Santamaria showed me  
5 that my County government happening around me was not  
6 functioning in what I would consider an efficient way  
7 that would ever be tolerable in the private sector. If  
8 one of my employees -- or one of my customers came to me  
9 and asked me for help, they have other choices to turn  
10 to other avenues, other venues for that support. I had  
11 no other choice.

12 And after three years going to the County,  
13 realizing that if I was being turned away like this, it  
14 was my belief that others were not getting the proper  
15 representation that they should have as well. I ran  
16 because I knew I could do a better job.

17 Q. So was your displeasure not just with the  
18 actual County Commission seat that you were running for,  
19 but the entire process that you had been going through?

20 A. That's exactly correct. The entire process  
21 requires four votes of four County Commissioners to have  
22 anything approved. Mr. Santamaria was important as the  
23 lead, but he wasn't the key. I needed four votes,  
24 that's why I spoke with others. And I wanted to be one  
25 of the four votes that when somebody in my situation or

1 any situation needed help, would have a reasonable  
2 person listen and actually go out and take part in  
3 viewing whatever the situation was. I know I'm that  
4 guy.

5 Q. We've been talking a lot today and yesterday  
6 and Monday about a request for inquiry that you created.  
7 Why did you create that request for inquiry?

8 A. Very simply, I wanted the proper authorities  
9 to come to the proper conclusions. I had serious  
10 questions as to the way Commissioner Santamaria was  
11 running or handling his activities in the office, based  
12 upon him offering money the first time I ever met him  
13 for me to go away, caused me to look further.

14 Q. How did you get the information that was  
15 contained within the request for inquiry?

16 A. Most of it, almost all of it came from  
17 Commissioner's Santamaria's office himself. I did a  
18 public records request. The Sheriff's document that was  
19 referred to, the Sheriff gave that to me. The sign that  
20 Mr. Santamaria did not put the political advertising  
21 came on -- put the political advertising on came from a  
22 photo of standing right in front of his outside door to  
23 his Wellington Mall. The rest to the best of my  
24 recollection right now came 100 percent from the files  
25 of Commissioner Santamaria's e-mails.



1 Q. Did you publish that request for inquiry  
2 because you wanted to cause Mr. Santamaria harm?

3 A. Absolutely not. I have stated years before I  
4 ran, as well as I'll state now, I had no interest  
5 whatsoever in finding any dirt, condemning, maligning,  
6 anything malicious on the man that is Jess Santamaria.  
7 I had no desire to run against the man. I was running  
8 against the position. I was running against an office  
9 that was ineffective that I knew I could do a better  
10 job. In no way, shape, or form did I ever desire to  
11 cause him any harm. And I offered that to his daughter  
12 in a public meeting.

13 Q. What did you say to his daughter?

14 A. On September 13th, I published the request  
15 for inquiry. Two days later, September 15th, was  
16 Commissioner Santamaria's meeting. I arrived at the  
17 meeting about quarter after 8:00 because I had a  
18 political function prior.

19 MR. MARIANI: Objection. The question is,  
20 what did you say to the daughter.

21 THE COURT: Not responsive to the question.

22 Go ahead. Sustained.

23 BY MS. KITTERMAN:

24 Q. What did you say to his daughter at that  
25 meeting?

1           A.       I told Commissioner Santamaria's daughter  
2       that I had no knowledge as to where the courtroom was or  
3       to figure out where the court documents came from when  
4       she accused me of cherry picking, as she called it, one  
5       document out of 33.

6           Q.       What did she accuse you of cherry picking?

7           A.       She walked up to me and she said, you know  
8       that's not my father. You took one page out of 33 and  
9       that's what you presented, turned in, whatever her  
10      terminology was.

11          Q.       And when you say one page out of 33, what  
12      page are you talking about?

13          A.       She told me that there was a 33-page document  
14      that existed at the courthouse that she went down and  
15      pulled the records for, and the Jesus R. Santamaria that  
16      was in the felony judgment was not of her father, it was  
17      of a much younger man with a different physical  
18      description.

19          Q.       Did you go down to the courthouse and cherry  
20      pick one page out of that entire court file?

21          A.       Until the document was presented into  
22      evidence yesterday, I've never even seen that document.  
23      And when it was presented, it was presented in bulk  
24      form. I've never read one word of that report in any  
25      way, shape or form with the exception of the one page

1 that was a noncertified copy of that that appeared on  
2 the clerk of the court's website.

3 Q. That was going to be my question. Where did  
4 you, then, get the felony judgment that was included in  
5 your request for inquiry?

6 A. The one and only page that's been on display  
7 here, which is the subject of lawsuit, I had received  
8 from the clerk of the court. The one and only page is  
9 there on the clerk of the court's website.

10 Q. And how did you find that page on the clerk  
11 of the court's website?

12 A. It took a couple of very simple keystrokes.  
13 Go to clerk of the court's website, type in Santamaria,  
14 type in Jesus. And it is, I believe, the third entry on  
15 the page with the first two entries being another  
16 Jesus -- or being another Jesus Santamaria, but with a  
17 different name, Antonio. It was the one and only thing  
18 that just said Jesus R.

19 Q. Why did you search for Jesus R. Santamaria?

20 A. Because Mr. Santamaria told me during a prior  
21 meeting that that was his name.

22 Q. What prior meeting was that?

23 A. Mr. Santamaria asked me to meet him for  
24 happy hour one afternoon when we were on good terms back  
25 in probably 2008, beginning of 2009. He invited me to

1 happy hour, 5 o'clock at a restaurant that is located  
2 inside of his Royal Inn.

3 Q. And what did he tell you at that meeting?

4 A. We were on friendly terms, the way we were on  
5 a couple of other breakfast meetings, things of that  
6 nature. Mr. Santamaria had two glasses of wine and he  
7 was very free to talk about what he had accomplished in  
8 his life. He told me about leaving the Philippines, he  
9 told me about going to school for 17 years, I believe,  
10 never being in class with girls. He told me about his  
11 father. He told me about one of six members of the  
12 family, I believe he was.

13 He told a very impressive story. It's a rags  
14 to riches. It's an immigrant story coming from another  
15 country here, making it big. He told me about the  
16 Christian teachers at the school, why he went to  
17 Philadelphia. He told me his story.

18 Q. Did he tell you that his name was Jesus?

19 A. Yes.

20 Q. What did he say?

21 A. He talked about coming to the country. And  
22 one of the things that I always say is I admire and  
23 respect anybody who comes to this country, especially if  
24 it's not your first language. I can't imagine going to  
25 another country and knowing what it's like to try to

1 assimilate in, especially if you don't know the  
2 language. I gave him a great deal of respect.

3 I asked him about speech, I asked him about  
4 other things when he came here. And at that time, I  
5 believe he said something to the effect of the  
6 difference between his culture, what he had done and how  
7 he assimilated in. And that's when to the best of my  
8 recollection, at that particular meeting, that's when he  
9 told me. If for some reason it wasn't at that meeting,  
10 it was at a different one. He told me.

11 Q. You said to you, my name is Jesus?

12 A. He did.

13 Q. So when you start researching Mr. Santamaria  
14 on the Internet, did you search for a Jesus Santamaria?

15 A. On the Internet?

16 Q. Yes.

17 A. Yes, because I -- the Internet was where I  
18 got the clerk of the court's individual page, yes, I  
19 did.

20 Q. When you began your Internet search, did you  
21 begin with the name Jesus?

22 A. Absolutely not. I put in Jess -- I did not.

23 Q. What did you do?

24 A. I put in the name Jess Santamaria in Florida,  
25 and there was a number of entries that came up for a

1 70-some-odd, at the time, -three year old man living in  
2 Royal Palm Beach, Florida. I selected those.

3 Q. Did you do a search on one of the background  
4 websites that are available to the public?

5 A. I did it on more than one.

6 Q. What did you do on those websites?

7 A. Exactly what I said. I went to the  
8 background check websites, typed in Jesus -- I'm sorry.  
9 I typed in Jess, I typed in Santamaria. And there's  
10 usually a list of predetermined options called the pick  
11 list. I chose Florida.

12 Q. Why did you -- did you see then on that page  
13 the name Jesus?

14 A. Yes. Across the top, you'll have whatever  
15 your search criteria was. It will say whatever you  
16 typed in, Jesus Santamaria, Florida. One of the entries  
17 said, Jess Santamaria listed aliases. One of the top  
18 one, if not two aliases of Mr. Santamaria comes back as  
19 Jesus R. Santamaria.

20 Q. Did that stand out in your mind for some  
21 reason, the name Jesus Santamaria at that time?

22 A. Yes, because he told me it was his name. My  
23 name is Andy. However, you would find a search for  
24 Andrew. I don't know that Jess is not short for Jesus.  
25 He's told me that it's a nickname.

1 Q. When you did your search on the Palm Beach  
2 County clerk of the court's website, did you search also  
3 for Jess Santamaria?

4 A. I did.

5 Q. What did you find for Jess Santamaria?

6 A. On the clerk's website, you can find a whole  
7 litany of responses that come back. Every bit of  
8 mortgage, anything that had to do with any officially  
9 recorded deeds and documents, and a tremendous number of  
10 lawsuits.

11 Q. And when you did -- was there any felony  
12 record under Jess Santamaria?

13 A. No, ma'am.

14 Q. When you did your search for  
15 Jesus Santamaria, I believe that's when you said you  
16 found the felony record?

17 A. Yes, ma'am.

18 Q. When you clicked on that felony record, what  
19 did you see?

20 A. The one and only document that's been the  
21 subject of this lawsuit.

22 Q. Did you think that was related to  
23 Mr. Santamaria?

24 A. I didn't know.

25 Q. Why wouldn't you know?

1           A.       Nowhere in the document does it have a birth  
2           date, it has no Social Security number, it has no  
3           driver's license. There's no physical description. It  
4           doesn't say height, it doesn't say eye color, it doesn't  
5           say hair. There is nothing whatsoever on that document  
6           that would identify that it was or was not the  
7           commissioner that sits here today.

8           Q.       Prior to your road issue, had you ever heard  
9           of Mr. Santamaria in your County or in your community?

10          A.       I knew of him only in passing because of the  
11          2006 election brought some notoriety to our  
12          neighborhood, meaning District 6, because the current  
13          commissioner at that time was not running again, he was  
14          convicted and sent to jail for five years.

15          Q.       So prior to 2006, you had never heard of  
16          Mr. Santamaria?

17          A.       Never knew of him, never knew anything  
18          whatsoever about him.

19          Q.       Did you have any doubt in your mind whether  
20          or not the felony judgment related to Mr. Santamaria?

21          A.       I had no reason to doubt it or to believe it  
22          was him. I simply didn't know.

23          Q.       Why would you think that it would be him?

24          A.       I'm not a lawyer, I've never been arrested, I  
25          don't even have points on my license since 1985. When I



1 looked at it, I saw something for burglary. The reason  
2 I based it could be him is because of some of my  
3 experience in travel. When I was traveling for trade  
4 shows in the state of Chicago -- or in the state of  
5 Illinois in Chicago, whenever we would go stay to at a  
6 hotel for a convention, he were required to take the day  
7 prior as a way of blocking our room for the period of  
8 time that we wanted. Because in Chicago, there's a rule  
9 that if you pay the fee for the hotel, even if your  
10 reservation expires, you can stay as long as you pay the  
11 fee. In order to get anybody out, you have to evict  
12 them out of a hotel. There is an actual process.

13 So in order to ensure that we ever had our  
14 rooms, if I wanted to show up on Wednesday for the next  
15 three or four days, I had to take a Tuesday. I knew  
16 that there were rules as far as hotels, I knew the rules  
17 as far as of eviction, I knew that there was procedures  
18 to settle a dispute should somebody not pay their bill,  
19 something to that effect.

20 I found it very logical in my mind, not  
21 knowing what burglary or the legal system was, that  
22 perhaps Mr. Santamaria had removed, displaced or not  
23 properly held somebody's belongings from any one of the  
24 numerous properties he owns in the shopping centers,  
25 numerous properties he owns as residential or the

1 100-plus rooms he owned at a hotel.

2 It was very easy for me to believe that  
3 somehow he directed a manager, maybe not himself, but he  
4 was responsible for somebody removing or detaining  
5 anything that might belong to somebody else and be found  
6 that he did not follow the rules.

7 Q. On the felony record that you found on the  
8 clerk's website, did it indicate what the burglary was  
9 for?

10 A. No, ma'am -- well, pardon me. I believe in  
11 parentheses, it says conveyance, that I know now after  
12 staring at the document through this court proceeding.  
13 But to this day, I still don't know what that means.

14 Q. You don't know what a conveyance means?

15 A. I don't.

16 Q. Okay. So when you found this felony record  
17 for Mr. Santamaria, what did you do with it?

18 A. The campaign adviser that I mentioned before,  
19 I turned it over to her and asked her to look into it.

20 Q. Did she look into it?

21 A. I don't know.

22 Q. How long did she have it?

23 A. Several days.

24 Q. What happened? Did she give it back to you?

25 A. Yes, she did. And she said something to the

1 effect of --

2 MR. MARIANI: Objection, calls for hearsay.

3 THE COURT: Sustained.

4 BY MS. KITTERMAN:

5 Q. Did you ever find out whether or not that was  
6 not Mr. Santamaria?

7 A. I have to believe the testimony now of not  
8 only Mr. Santamaria, but also his daughter. But I  
9 believed her when she told me that two days after I  
10 produced it.

11 Q. Okay. Prior to when you published it, were  
12 you able to discover that that felony judgment did not  
13 relate to Mr. Santamaria?

14 A. Absolutely not. If there was any way, shape  
15 or form that I had the slightest inkling with any degree  
16 of certainty that it wasn't him, I wouldn't have  
17 published it. It just weakened me as a candidate. It  
18 weakened me to throw out an accusation that was  
19 unfounded, especially if I knew the truth.

20 Q. Have you ever been involved in a lawsuit  
21 prior to this incident?

22 A. Yes, but it was only a couple of weeks long.

23 Q. Had you ever been to this courthouse?

24 A. No. Can I explain the lawsuit?

25 Q. Sure.

1 MR. MARIANI: Objection. I would just ask  
2 for a question, please, on the lawsuit.

3 THE COURT: Please explain the lawsuit  
4 because that will be the next question.

5 BY MS. KITTERMAN:

6 Q. Please explain.

7 A. A new owner came into the commercial building  
8 that I had been in for 12 years. He basically sued  
9 everybody to raise the rent. He then backed off,  
10 apologized to everyone, gave us rent concession for our  
11 legal fees and then continued to give me free legal --  
12 I'm sorry, free rent so I would stay there and promote  
13 the goodwill of the building. I did nothing wrong and  
14 was compensated for the fact.

15 Q. And in that lawsuit, were you required --  
16 first of all, was it in Florida?

17 A. Yes, ma'am.

18 Q. Was it in Palm Beach County?

19 A. Yes, ma'am.

20 Q. Were you required to come to the courthouse?

21 A. No, it never got that far.

22 Q. When you found the felony record, I think it  
23 was from 1991, are you aware that the courts or any type  
24 of system would have the actual case file for something  
25 from 1991?

1           A.     With knowledge?  No.

2           Q.     Do you know where the courts keep their  
3 files?

4           A.     I've learned since this trial.

5           Q.     Before you published it on September 13th?

6           A.     No, ma'am, I had no idea which building it  
7 was kept in.

8           Q.     Okay.  When you met with Michelle Santamaria,  
9 I believe you said that was on September 15th?

10          A.     Yes, ma'am.

11          Q.     She said to you that this felony judgment did  
12 not relate to her father.  What was your response?

13          A.     I told her that I in no way, shape or form  
14 had any intention of ill will, malice, whatever words I  
15 used at that time towards her father.  I said what I  
16 would do is when the meeting was over, I would be more  
17 than happy to go up to the front where the meeting was  
18 being held, I told her that I would apologize to her  
19 father at that time, shake his hand, again, apologize  
20 for any inconvenience, anything that had happened.  But  
21 I would not approach him.

22                 It was his meeting.  And it was he -- it was  
23 Commissioner Santamaria who was acting as the meeting  
24 head.  But I would go stand next to him, she could tell  
25 him that, and I would wait for him to turn to me when

1 all of the people were gone and I would apologize. I  
2 had nothing against the man. I stood there, I was one  
3 of the last people to leave in the meeting. He never  
4 came to me.

5 Q. When she told you that the felony judgment  
6 did not relate to her father, did she show you any  
7 documents to prove that it was not her father?

8 A. None.

9 Q. Did she tell you where you could find the  
10 record?

11 A. She told me that I knew.

12 Q. Did you know?

13 A. No. And she then told me, you know, it's  
14 downtown, it's that big building, it's right near where  
15 you normally go for the commission meetings. I told her  
16 with all honesty, I had no idea.

17 Q. With regard to the request for inquiry, and  
18 when you were on your campaign trail, had you heard  
19 other rumors about Mr. Santamaria?

20 A. Many.

21 Q. Did you include them in your request for  
22 inquiry?

23 A. Absolutely not.

24 Q. Why not?

25 A. Any rumors about Mr. Santamaria as the

1 person, I was completely 100 percent totally against. I  
2 had nothing against the man himself, it was irrelevant.  
3 The only thing I was concerned with was his time in  
4 office. If it didn't directly relate to his performance  
5 or his fitness of office, I didn't have the slightest  
6 bit of desire to even know about it.

7 Q. What made you do the public records request  
8 to Mr. Santamaria's office?

9 A. That was the best way to get information from  
10 the source. I took it from the horse's mouth.

11 Q. Why were you trying to get information from  
12 the source?

13 A. I was a part of dealing with  
14 Commissioner Santamaria years before and continuing in  
15 this Fargo Road case. I knew he didn't handle it in the  
16 way that I feel somebody who considers themselves a  
17 County watchdog should be handling things. I wanted to  
18 look further.

19 Q. After Michelle Santamaria told you that the  
20 felony record did not relate to her father, did you ever  
21 retract the statement with regard to the felony record?

22 A. Yes, I did.

23 Q. When did you do that?

24 A. September 13th, the document was published.  
25 September 15th, Michelle Santamaria came to me. And I

1 stated at the first opportunity I had, which was the  
2 first public forum that I had on March -- excuse me, on  
3 September 20th was the Dick Farrel radio program here  
4 that we heard -- that we listened to in court here.

5 Q. Did you publish that retraction or your radio  
6 show program on your website?

7 A. Yes, I did. I recorded it live as it was  
8 happening. Moments, minutes, maybe a half an hour after  
9 that was presented live, I put it right up on the  
10 website where it remains today.

11 Q. So in September -- and on September 13th, did  
12 you publish a request for inquiry on your website?

13 A. I did.

14 Q. Have you ever singled out the felony judgment  
15 on your website so that it stands alone?

16 A. Never.

17 Q. After September 20th when you retracted the  
18 statement, did you ever take down the request for  
19 inquiry?

20 A. I did not.

21 Q. Why not?

22 A. For the same reason I didn't take down my  
23 website when this case was filed against me. It's  
24 historical evidence, it happened. Right or wrong, it  
25 stands there to be historical record.



1 Q. What do you mean, it was historical evidence?

2 A. I produced the request for inquiry, the  
3 retraction was historical evidence. The facts were the  
4 facts. I was interested in the facts. I wasn't  
5 interested in distorting anything.

6 Q. Did you distort or twist the facts that are  
7 contained in the request for inquiry?

8 A. There really aren't any facts, there is  
9 questions. I think that counsel, opposing counsel said  
10 that I quote something in the middle of a request for  
11 inquiry with a question mark. All ten exhibits have  
12 question marks, everything was a question. The only  
13 statement was the time and date, that type of thing that  
14 was in there. Everything was a question that had the  
15 act. And in many cases it was backed up by the statute  
16 or whatever supporting evidence I had towards my  
17 request.

18 Q. And you -- why were you asking these  
19 questions about Mr. Santamaria?

20 A. To gain further knowledge. I believed that  
21 there was improprieties and I wanted the proper  
22 authorities to come to the proper conclusions, the way I  
23 stated on Dick Farrel's radio program.

24 Q. And what in your mind was the proper  
25 authorities?

1           A.       Whoever had jurisdiction. The County was in  
2 flux at that time. The Ethics Commission at the time  
3 had a rule saying that if it wasn't for monetary gain,  
4 then it wasn't an ethics offense. So one commissioner  
5 could strike the other and if he didn't do it as a hired  
6 hit man, it wasn't an ethics offense that evolved. I  
7 had no idea who at the time was responsible for any  
8 investigative processes.

9           Q.       So who did you send the request for inquiry  
10 to?

11          A.       I gave it to the FBI because they were the  
12 ones who did the probe on the prior commissioner. I did  
13 it for the Commission on Ethics, both Palm Beach County  
14 and both state. I didn't know. I gave it to the  
15 Inspector General. Again, I didn't know.

16                   The Florida Division of Elections got it  
17 because of the campaign sign violation and  
18 Mr. Santamaria's previous campaign violation he had from  
19 the prior election. I felt that was a good place to go.  
20 And whoever else, I'm not sure at this point.

21          Q.       Why did you present it to the media?

22          A.       Because the Supervisor of Elections told me  
23 that it was up to me to find things out. In a County  
24 Commission meeting, I believe it was prior Commissioner  
25 Ken Adams who stood up in a public meeting and said, if

1 it wasn't for the media and for ex-wives, we wouldn't  
2 have the commissioners in jail.

3 I knew the media had investigative powers,  
4 and I knew the media would also be doing recommendations  
5 for who to vote for, for office. And in that  
6 questioning, when I went, they asked me different  
7 questions about background. If they could settle it,  
8 fantastic.

9 Q. Do you know whether the felony record had  
10 ever been published in any news outlet?

11 A. As a result of me putting it online?

12 Q. Yes.

13 A. Nothing that I could ever find.

14 Q. Okay. Do you know what Mr. Santamaria's  
15 reaction was to your request for inquiry?

16 A. I do based upon the newspaper articles and  
17 the TV.

18 Q. Was he angry, based on those news articles  
19 and TV?

20 A. He called me --

21 MR. MARIANI: Objection, leading, Your Honor.

22 THE COURT: I'll overrule that.

23 Go ahead.

24 THE WITNESS: He called me a scorned lover.  
25

1 BY MS. KITTERMAN:

2 Q. What did he say?

3 A. He said that I was a scorned lover, that he  
4 gave me so much of his time and he let me down. I  
5 believe he also said that I was hallucinating, that this  
6 was nothing but a figment of my imagination. At some  
7 time, he called me an idiot. He said I was insane and a  
8 number of disparaging comments relating to his emotions.

9 Q. Was this all after the request for inquiry  
10 was published?

11 A. 100 percent.

12 Q. Did you feel that you were going to or you  
13 potentially would be sued for anything that was included  
14 in that request for inquiry?

15 A. I believed there was a potential for me to be  
16 sued for the fact that I was opposing Jess Santamaria in  
17 any way.

18 Q. Why did you think that?

19 A. It's a common, well-known, forgone conclusion  
20 that when he doesn't get his way, he'll sue.

21 Q. Do you have an example?

22 A. I'm the 78th person in Palm Beach County,  
23 person or entity to be in a lawsuit with Mr. Santamaria.  
24 He also brought up the subject of suing his former  
25 opponent in the first election in 2006, where he said,

1 "You cross the line, I'm going to sue you."

2 Q. Since you have -- did you win the election?

3 A. No, not even close.

4 Q. After you lost the election, have you  
5 continued to work on your Fargo Avenue project?

6 A. Absolutely.

7 Q. Has something moved forward within the County  
8 to get your Fargo Avenue project completed?

9 A. The County made a special motion to include  
10 Fargo in an exception to the 100 percent rule to open it  
11 back up to the 50/50 MSTU prior ordinance to be able to  
12 correct the wrongs that the County has made over the  
13 last four years.

14 Q. Have you ever attempted to talk to  
15 Mr. Santamaria to set aside your differences?

16 A. Absolutely, I've done it on a number of  
17 occasions. During the last public forum that we had in  
18 Wellington, the election was on November 2nd of 2010, so  
19 the Thursday prior, I said to Commissioner Santamaria  
20 when we were on the dais -- Tami Donnally was running  
21 against Joe Abruzzo, they had a heated contest for state  
22 representative. Publicly, Tami Donnally said, I'd like  
23 to set aside differences with you, and they had a  
24 Kumbaya moment.

25 I turned to Commissioner Santamaria, who was

1 on my right and I said, Commissioner, what do you say we  
2 do the same thing? Let's bury the hatchet, whatever.  
3 He looked at me and said, "You, Schaller, can go jump in  
4 a lake."

5 Q. Have you ever --

6 A. There was one more time, ma'am.

7 Q. What was the other time?

8 A. During 2011, Commissioner Santamaria had to  
9 appear in Tallahassee on the Florida ethics charge based  
10 on the fire truck incident where he called the police on  
11 me. I was told ahead of time that I would not have an  
12 opportunity to speak. The complainant does not have an  
13 opportunity to speak because of budget cuts. And he  
14 told --

15 Q. I'm sorry. Was that -- that was based on  
16 something that was contained in your request for  
17 inquiry --

18 A. Yes, ma'am.

19 Q. -- the fire truck incident?

20 So you were told that you couldn't testify at  
21 that hearing. Did you go up to the hearing anyway?

22 A. I spent the six-hour drive up, the night  
23 there, the six-hour drive back.

24 Q. Why did you do that?

25 A. I felt that the office was very important,

1 the Office of County Commission. I had set something in  
2 motion that required a hearing of others. I wanted to  
3 know all about the process. And if I -- if what I had  
4 requested to be inquired into was going to be ruled on,  
5 I wanted to know that.

6 And more importantly, Commissioner Santamaria  
7 was coming out of that meeting, he was still in the  
8 doorway. I stopped, I turned to him, I shook his hand  
9 and I said, congratulations, and went my own way.

10 Q. Did he say anything to you at that time?

11 A. No words.

12 Q. Have you ever appeared in the -- in front of  
13 the Broward (sic) County Commissioners and told them you  
14 want to set aside all of your bad feelings or if you had  
15 any arguments?

16 A. Not Broward, ma'am, I did in front of Palm  
17 Beach County.

18 Q. Okay. I live in Broward, so I apologize if I  
19 keep confusing Broward and Palm Beach. In Palm Beach  
20 County?

21 A. Yes, ma'am. And there is a very public  
22 excerpt of that, of me speaking in front of the County  
23 and saying that I felt the whole thing, the whole  
24 project was a shame. And I posted that on my website  
25 that is available as well.

1 MS. KITTERMAN: Your Honor, may I show the  
2 website that he just spoke of?

3 THE COURT: Yes, ma'am.

4 BY MS. KITTERMAN:

5 Q. Do you recall the date of that meeting?

6 A. July 7th, 2011, as I recall.

7 MR. MARIANI: Your Honor, could we use the  
8 live version of the website. I'm confused because  
9 we don't have a copy of what counsel is using. Can  
10 we verify the authenticity of this, please?

11 MS. KITTERMAN: Yes.

12 MR. MARIANI: Why don't we use the Palm Beach  
13 County website?

14 THE COURT: Getting on the Palm Beach web is  
15 not so easy.

16 MR. MARIANI: Well, but we have no  
17 authentication or verification of this, what this  
18 is.

19 THE COURT: Is this an exhibit that was  
20 listed in the exhibit list?

21 MS. KITTERMAN: Yes, Your Honor.

22 THE COURT: And did you go over and take a  
23 look at it?

24 MR. BARSKY: We haven't seen this,  
25 Your Honor.



1 THE COURT: Well, that means because you  
2 didn't go over and look at it.

3 MR. BARSKY: Your Honor, I don't know which  
4 one this is, where it fits into that CD.

5 THE COURT: So you had the opportunity to  
6 look at it, you didn't. So --

7 MR. BARSKY: I don't know if this is what  
8 they sent us or not. I've never seen it before.

9 THE COURT: Is this what you sent?

10 MS. KITTERMAN: Yes, Your Honor.

11 THE COURT: Okay. Well, then you can go  
12 ahead and play what you want.

13 Folks, do you need to stand up for a second  
14 while we're doing this?

15 A JUROR: Yes.

16 MS. KITTERMAN: We'll take a five-minute  
17 break until we get this thing going here.

18 (The following proceedings were held out of  
19 the hearing and presence of the Jury:)

20 MR. MARIANI: Your Honor, when we come back,  
21 can we have a moment on this because we just found  
22 out what it is about and we would have an objection  
23 to the showing of it.

24 THE COURT: Well, let's see what it's about  
25 then.

1 MR. MARIANI: It's a tape from June of 2011,  
2 after the litigation has been filed. And I think  
3 it's on counsel's question, did you ever try to  
4 make up with Mr. Santamaria? We don't think that  
5 issue is relevant, certainly at that point in time  
6 after the litigation was started. The litigation  
7 was filed in January of '11.

8 THE COURT: What is this?

9 MS. KITTERMAN: It's actually not just  
10 Mr. Santamaria, it's the entire Palm Beach County  
11 Commission board.

12 THE COURT: And for what purpose?

13 MS. KITTERMAN: It just shows when  
14 Mr. Santamaria -- I mean Mr. Schaller was putting  
15 away the bad feelings with the commission. They  
16 keep saying that he has ill will, that he had  
17 motive. This is just showing that he didn't.

18 MR. MARIANI: Well, what he is doing there --

19 THE COURT: This is after this litigation.  
20 That is nothing more than a self-serving  
21 declaration at this particular point. The whole  
22 thing is at a time -- what is relevant is at the  
23 time that it was published, did he indeed have that  
24 ill will. What he does subsequent to that, I mean,  
25 I don't think is relevant or material.

1 MR. MARIANI: It's not relevant. Thank you,  
2 Your Honor.

3 MS. KITTERMAN: Okay.

4 THE COURT: The issue as I can see, and I'm  
5 going over these jury instructions. So I got a  
6 solution to all of that. All right?

7 MS. KITTERMAN: Real quick, Your Honor, my  
8 partner has to drive to my law firm in  
9 Deerfield Beach to go print it out. For some  
10 reason, the verdict form, our version for some  
11 reason, whatever we sent out was sent as a image  
12 form. I don't know --

13 THE COURT: Can you work off of his, that is  
14 off of the plaintiff's?

15 MR. MARIANI: Yes.

16 MS. KITTERMAN: We can. Are we going to be  
17 able to print it out? I dispute language in the  
18 plaintiff's, 100 percent.

19 THE COURT: We'll cross that bridge when we  
20 get to it. I wouldn't go all the way over there.  
21 Why don't you just have somebody e-mail. Can you  
22 have somebody e-mail it to you?

23 MS. KITTERMAN: Nobody is at my office.  
24 We're here.

25 THE COURT: Where she goes is her business,

1 but we're getting done with this trial. The bottom  
2 line is.

3 (A brief recess was taken.)

4 THE COURT: Okay. Let's get going again.  
5 All right. Bring them back in.

6 (The following proceedings were held in the  
7 presence and hearing of the Jury:)

8 BY MS. KITTERMAN:

9 Q. Mr. Schaller, prior to printing the felony  
10 record, did you have any ill will or motive of why you  
11 would want to hurt Mr. Santamaria?

12 A. None.

13 Q. Did you -- when you pulled it up, did you  
14 know that that felony record did not belong to  
15 Mr. Santamaria?

16 A. I did not know that.

17 Q. Did you have any serious doubts as to whether  
18 that felony record belonged to Mr. Santamaria?

19 A. I had no knowledge of his background,  
20 personally. No, I had -- there's no way I could have  
21 known it was him or not him.

22 Q. Okay. And it wasn't until you said this  
23 proceeding, that you actually finally saw the file for  
24 the felony record that stated that it was not  
25 Mr. Santamaria?

1           A.       As long as you use the term "saw" loosely, I  
2 saw it passed over. I've never read one word of that.

3           MS. KITTERMAN: Okay. I have no further  
4 questions.

5           THE COURT: Okay. I presume you have a  
6 little bit of cross-examination?

7           MR. MARIANI: I do.

8           THE COURT: I tell you what I'm going to do.  
9 I'm going to go ahead and release you for lunch and  
10 ask you to be back here at 1 o'clock and be back  
11 sharp. We're going to try to go -- I'm trying to  
12 get this to you as soon as we can today. So be  
13 back here at 1 o'clock and we'll go forward with  
14 the testimony and try to get the case to you this  
15 afternoon.

16           (The Jury left the courtroom after which the  
17 following proceedings were had.)

18           (Witness stepped down.)

19           THE COURT: All right. On these jury  
20 instructions, plaintiff doesn't have any problem  
21 with -- I mean the defendant doesn't have any  
22 problem with the plaintiff's jury instructions  
23 except for 405.7 and that first portion of that, am  
24 I correct?

25           MS. KITTERMAN: Yes. One second, Your Honor.

1 I handed you my marked-up changes, is that what  
2 you're looking at?

3 MR. MARIANI: Can you give me a copy of --

4 THE COURT: I didn't quite understand what --

5 MS. KITTERMAN: I can tell you if I can see  
6 the whole package. This is the only copy I have.  
7 So we can look at it.

8 My issue is, yes, Your Honor, with 405.7.

9 THE COURT: And it's the A part; correct?

10 MS. KITTERMAN: Well, the entire part. I put  
11 in there the actual standard jury instruction.  
12 They reworded it to just state that it's reckless  
13 disregard, and it's actually whether the defendant  
14 acted with malice. Here is the jury instruction.

15 THE COURT: So whether the defendant  
16 published or broadcast the statement concerning  
17 claimant and, if so -- well, there isn't any issue  
18 that it has been published.

19 MS. KITTERMAN: Right.

20 THE COURT: I don't even know why we have  
21 that part in there, whether Andrew Schaller made  
22 and published the statement concerning  
23 Jess Santamaria as Jess Santamaria claims. That's  
24 not an issue for them to determine. That's --  
25 there's no issue with regards to that.

1 MR. MARIANI: If it's conceded, we're happy  
2 with that.

3 MS. KITTERMAN: No, I mean, the issue is  
4 whether it's a statement.

5 THE COURT: I agree. But that's not -- made  
6 and published the statement. The statement that is  
7 this issue about whether or not he was a convicted  
8 felon. There's no issue about that. There was a  
9 statement that was made.

10 MS. KITTERMAN: Right.

11 THE COURT: Okay. So that's not necessary, I  
12 mean that's necessary on the verdict form.

13 MS. KITTERMAN: Number A.

14 THE COURT: All right. Everybody is in  
15 agreement with that.

16 All right. The next part is whether --

17 MS. KITTERMAN: Letter B.

18 THE COURT: Whether Andy Schaller's statement  
19 concerning Jess Santamaria was in some significant  
20 respect a false statement of fact and intended to  
21 expose Jess Santamaria to personal humiliation or  
22 mental anguish or a charge that Jess Santamaria  
23 committed a crime.

24 MS. KITTERMAN: Right.

25 THE COURT: And then you go on and say, a

1 statement of opinion may be considered a false  
2 statement of fact expressly stated, implied, or  
3 insinuating from an expression of opinion.

4 MS. KITTERMAN: I don't agree with their  
5 adding in "or insinuated." That's not part of the  
6 standard jury instructions.

7 THE COURT: All right. What is wrong with  
8 the standard jury instructions in this case?

9 MR. MARIANI: Well, Your Honor, we're dealing  
10 with a question. We're dealing with their use of  
11 the question mark and that's really not dealt with  
12 in the standard instruction, which is why we think  
13 it's important that the jury not be confused. The  
14 word statement I think normally means something  
15 other than a question.

16 This is the argument that the defense is  
17 making. The jury I believe needs to understand  
18 that the law, looking at the totality of the  
19 circumstances, doesn't preclude questions from  
20 potentially being defamatory if the circumstances  
21 show that the implication or that word, if you took  
22 that word, insinuation, right out of the case law.  
23 Because an implication or an insinuation in a  
24 question that presents a fact, that can be  
25 defamatory. And that's what this case is about.



1           And we have, you know, the highest standard  
2 of proof here. So to leave the word question out  
3 or the word implied or insinuate, we think  
4 improperly handicaps the plaintiff.

5           So the standard instruction does not address  
6 the circumstances of this case as it relates to the  
7 use of the question as the vehicle through which  
8 the defamatory information was disseminated.

9           MS. KITTERMAN: The standard jury  
10 instruction, Your Honor, does say stated or  
11 implied. I didn't have an issue with that.

12           THE COURT: Yeah, I've got whether  
13 Andrew Schaller's statement that Jess Santamaria  
14 had committed a crime was in some significant  
15 respect a false statement of fact intended to  
16 expose Jess Santamaria to injury.

17           MS. KITTERMAN: Wait, where are you reading?

18           THE COURT: In plaintiff's -- this is one I  
19 just wrote out.

20           MS. KITTERMAN: Oh, I'm sorry.

21           THE COURT: Just so that it would conform to  
22 both the standard instruction and to basically what  
23 the facts are in this particular case because you  
24 don't state what the statement is. The statement  
25 is that he was this convicted felon. Now, whether

1 or not --

2 MR. MARIANI: The jury has to come to that  
3 conclusion. We -- as the plaintiff, we are arguing  
4 that that is what is alleged, said, that Jess was a  
5 criminal. That's our argument. We understand we  
6 have the burden of proof to show that.

7 THE COURT: Okay. So why can't we just say  
8 whether the defendant's statement that the  
9 plaintiff was a convicted felon -- but he didn't  
10 make that. See, that's the problem with this case.

11 MR. MARIANI: I understand.

12 THE COURT: He implied it.

13 MR. MARIANI: Correct, that's why we need it.

14 THE COURT: It's the implied insinuation that  
15 in fact created this issue.

16 MS. KITTERMAN: May I, Your Honor?

17 THE COURT: Yeah.

18 MS. KITTERMAN: And that's what the jury  
19 instructions actually state is --

20 THE COURT: Where? Where do you see that?

21 MS. KITTERMAN: I'm sorry. In this one. It  
22 says, in some instances, a statement of opinion may  
23 be construed as a false statement of fact expressly  
24 stated or implied from an expression of opinions.  
25 So that's why I included whether it's stated or

1 implied. I didn't have an issue with that, but  
2 they added the word insinuation.

3 THE COURT: But the defendant has been very  
4 careful. So let's just go with implied. Implied  
5 and insinuation is the same thing so why do we need  
6 insinuation in there? Can't we just go with  
7 implied because that's basically what it is, it's  
8 an implication?

9 MR. MARIANI: We would like insinuated,  
10 Your Honor, but it's your call.

11 THE COURT: A statement or opinion may be  
12 considered.

13 MR. MARIANI: And here's ours.

14 THE COURT: All right. It's late in the day  
15 here. Where is the word insinuation?

16 MR. MARIANI: Right there (indicating).

17 THE COURT: A statement of opinion -- this is  
18 in the plaintiff's request for jury instruction  
19 405.7, "A statement of opinion may be considered a  
20 false statement of fact expressly stated or  
21 implied." And that's -- I'm going to go with what  
22 is in the -- I'm going to say, statement expressly  
23 stated or implied --

24 MR. MARIANI: Okay. Your Honor, can we --

25 THE COURT: -- from an expression of opinion.

1 MR. MARIANI: Well, see, the other issue we  
2 have, I think the word opinion should come out  
3 because --

4 THE COURT: I do too. I don't like that word  
5 in there.

6 MR. MARIANI: I think we should just say a  
7 statement, a statement may be considered a false  
8 statement of fact.

9 THE COURT: Expressly stated or implied from  
10 an expression of what?

11 MR. MARIANI: I was going to put a period  
12 after expression.

13 THE COURT: Implied from an expression?

14 MR. MARIANI: An expression of fact?

15 THE COURT: Well, let's put expression of  
16 fact.

17 MS. KITTERMAN: But then you're saying that  
18 he factually said that he was a convicted felon.

19 THE COURT: Well, he didn't give an opinion  
20 that he was either.

21 MS. KITTERMAN: Right. So I don't have a  
22 problem with putting a period after expression, but  
23 "of fact" --

24 THE COURT: We'll just do it from expression.  
25 We'll leave it at that.

1 MS. KITTERMAN: And then the next sentence  
2 that plaintiff has, Your Honor, a question like a  
3 statement with belief or opinion though not phrased  
4 in the form of a declaration of fact may imply the  
5 existence of a false and defamatory fact. And the  
6 case that plaintiff cited was the Keohane case.

7 THE COURT: Keohane versus Stewart?

8 MS. KITTERMAN: Yes, correct. And that case  
9 actually, Your Honor, goes on to say that the issue  
10 of falsity relates to defamatory statements by  
11 statement. Stewart asked -- Stewart specifically  
12 asked Jergins what kind of bribe Judge Keohane took  
13 and not if Judge Keohane accepted a bribe.

14 So the two different questions are like  
15 plaintiff's counsel was stating, it's not when did  
16 you stop beating your wife; the question was, did  
17 you beat your wife? And that's what is included in  
18 the request for inquiry, does Jess Santamaria have  
19 a felony record; not when did Mr. Santamaria become  
20 a felon.

21 THE COURT: There is a factual distinction in  
22 that case that should drive the instruction here.  
23 We're talking about a question. And the law is  
24 clear that the jury has to look at the question and  
25 see through the totality of the circumstances

1           whether the question implies the existence of a  
2           false or defamatory fact. Without that, the jury  
3           instruction in this case just isn't -- isn't  
4           applicable. And I'm concerned the jury will  
5           misinterpret this instruction --

6                   MR. MARIANI: Well, it's a Colorado case  
7           though, right?

8                   THE COURT: Yes.

9                   MR. MARIANI: No, but it cites to the  
10          Supreme Court case. We used it because the facts  
11          are there in the Supreme Court case.

12                  THE COURT: But you said the factual  
13          distinction is not important. Now you're saying it  
14          is important.

15                  MR. MARIANI: No, what I'm saying is it's an  
16          example of an interpretation of the Supreme Court  
17          case, which stands for the proposition that it  
18          doesn't have to be a declaratory statement for the  
19          jury to determine whether or not it's defamatory.  
20          The jury has to interpret what happened.

21                  We think this statement is very neutral.  
22          It's not slanted in any way. It's just that the  
23          word, question, needs to be compared to statement  
24          of belief or opinion because any of those three can  
25          be defamatory.

1 THE COURT: All right. Your whole issue here  
2 is that your client, that is the defendant, asked a  
3 question.

4 MS. KITTERMAN: Part of it.

5 THE COURT: And that's why -- that's how he  
6 framed it.

7 MS. KITTERMAN: Right.

8 THE COURT: As opposed to expressing an  
9 opinion per se.

10 MS. KITTERMAN: Right.

11 THE COURT: Now, isn't that what this is, if  
12 you ask the question, well, are you not a wife  
13 beater because there's somebody that's been  
14 convicted of this in your name?

15 MS. KITTERMAN: No, Your Honor.

16 THE COURT: And if you have reason to know  
17 that that is false and that is going to injure  
18 somebody, you think you have a right just by making  
19 it in the form of a question, somehow that immunizes  
20 you from any liability?

21 MS. KITTERMAN: No. And that's what the U.S.  
22 Supreme Court that they're citing after the  
23 Colorado Supreme Court, it's cited up here. And  
24 that's what the jury instructions are based on is  
25 you're adding in there, stated or implied. A

1 question is an implication. So adding in a phrase  
2 from a Colorado case that the facts are dissimilar  
3 is prejudicial, Your Honor.

4 MR. MARIANI: No, there is nothing  
5 prejudicial about it.

6 THE COURT: I think it just embellishes on it  
7 and explains that a little bit. I'm going to leave  
8 it in, in an abundance of caution. But I don't  
9 like all those cites in there going to the jury;  
10 all right?

11 MR. BARSKY: I can try and have that  
12 reprinted, Your Honor.

13 THE COURT: I want that taken out. And I  
14 want this, then, the issues you must decide are,  
15 and take out that whether he published the  
16 statement concerning Jess claims --

17 MR. BARSKY: I just want to --

18 THE COURT: There is no question that there  
19 was a publication.

20 MR. BARSKY: And I just want to be clear,  
21 Your Honor, to delete that second paragraph, 4.07?

22 THE COURT: Yes.

23 MR. BARSKY: Okay. I'm going to have  
24 somebody from our office reprint and bring it over.

25 THE COURT: The second sentence is out,



1 opinion is out. And it's going to be stated, a  
2 fact expressly stated or implied. "Or insinuated"  
3 is out.

4 MS. KITTERMAN: You want all of the case law  
5 out, Your Honor?

6 THE COURT: Yes. I want these things just to  
7 be read and I don't want the numbers on there. I  
8 just want to read it like -- I want them to have  
9 exactly what I'm going to read to them.

10 MR. BARKSY: Do you want to take out all  
11 headers as well?

12 THE COURT: That's right. And the rest of  
13 it, everybody is in agreement with; right?

14 MR. MARIANI: One question on the standard.  
15 The issue of publication, since it's not going to  
16 be in the jury instruction, we're free to indicate  
17 to the jury in closing that that is not an issue in  
18 this case?

19 THE COURT: Well, certainly he published it.  
20 There's no question about it. We've seen it.

21 MS. KITTERMAN: Your Honor --

22 THE COURT: He published it.

23 MR. BARKSY: One housekeeping issue, where  
24 this heading is on the verdict form, do you want me  
25 to deal with that as well, Your Honor?

1 MR. MARIANI: That shouldn't that be on a  
2 separate page.

3 MS. KITTERMAN: I'm not there yet.

4 THE COURT: Yeah, leave off the verdict form,  
5 and then these questions in here. And then I will  
6 read the verdict to them. So this, all this part  
7 about the verdict itself is out (indicating).

8 MR. BARKSY: Got you. Do you want me to just  
9 keep in that "your verdict must be unanimous"?

10 THE COURT: Yeah, all of that.

11 MR. BARKSY: Delete the header.

12 MS. KITTERMAN: Your Honor.

13 THE COURT: All right. What else bothered  
14 you?

15 MS. KITTERMAN: Their titles with reckless  
16 disregard. The standard jury instruction --

17 THE COURT: The titles are out.

18 MS. KITTERMAN: Well, the entire paragraph,  
19 Your Honor, is a misstatement of the standard jury  
20 instructions.

21 THE COURT: I will look at that.

22 MS. KITTERMAN: With regard to the issue of  
23 actual malice.

24 THE COURT: Is this 405.7C?

25 MS. KITTERMAN: Yes, Your Honor.

1 THE COURT: Okay. What don't you like about  
2 that?

3 MS. KITTERMAN: First of all, the standard  
4 jury instructions doesn't say, however, if the  
5 greater weight of the evidence supports  
6 Jess Santamaria's claim on this issue, then you  
7 must decide whether the evidence is clear and  
8 convincing that at the time Andrew Schaller made  
9 the statement. I just would like to follow the  
10 standard jury instructions, Your Honor. They're  
11 adding verbiage in there that is going to confuse  
12 the jury.

13 THE COURT: Well, that's so that it flows.  
14 If you look up at the top, what they did, if the  
15 greater weight of the evidence does not support  
16 Jess Santamaria's claim on these issues, then your  
17 verdict should be for Andrew Schaller. And all the  
18 he's doing is just flowing into the very next part,  
19 which starts in C, however, which is the last  
20 sentence of B. Look at it. See in the last  
21 sentence of B, how they do it?

22 MS. KITTERMAN: I have this.

23 THE COURT: The last sentence, the greater  
24 weight of the evidence supports the claim on these  
25 issues. Then --

1 MS. KITTERMAN: Right.

2 MR. MARIANI: Especially, Your Honor, because  
3 there's two levels of proof here.

4 THE COURT: Yeah, if they don't prove by the  
5 fair weight of the evidence that this was a  
6 defamatory statement.

7 MS. KITTERMAN: Right.

8 THE COURT: You win.

9 MS. KITTERMAN: Right.

10 THE COURT: But if they do, then they have  
11 got to go to the next step and they've got to now  
12 prove by clear and convincing evidence that, what  
13 is here in C. And if they don't prove by clear and  
14 convincing evidence, you win again.

15 MS. KITTERMAN: I understand. I just think  
16 it is confusing because it says one way and then  
17 the other. Maybe if it goes to -- if that  
18 "however" is added to the second sentence of B, if  
19 the greater weight of the evidence does not support  
20 Jess Santamaria's claim on these issues, then your  
21 verdict should be for Andy Schaller. However, if  
22 the greater weight of the evidence supports  
23 Jess Santamaria's claim on these issues, then you  
24 must decide whether the evidence was clear and  
25 convincing, and then you start a new paragraph

1 because I think it's just confusing.

2 THE COURT: Whether the evidence is clear and  
3 convincing that at the time Andrew Schaller made  
4 this statement, and then they're just citing  
5 exactly --

6 MS. KITTERMAN: No.

7 THE COURT: -- what's on the standard jury  
8 instruction.

9 MS. KITTERMAN: No, because they say that  
10 Andrew Schaller made the statement, he acted with  
11 reckless disregard. That's not the standard.

12 THE COURT: He acted with reckless disregard  
13 it says.

14 MR. MARIANI: No, excuse me, Your Honor, it  
15 is. Since the '60s --

16 THE COURT: Well, why is it not in the  
17 standard then?

18 MR. MARIANI: Since the 1960s, and this whole  
19 issue started with the Supreme Court's statement in  
20 New York Times versus Sullivan, that actual malice  
21 means intent or reckless disregard for whether the  
22 matter is true or not. That phrase has already  
23 been used by Your Honor, by counsel. The jury  
24 needs to hear the phrase, reckless disregard.

25 The phrase serious doubt is a subset of

1 reckless disregard, but it's not the only subset of  
2 reckless disregard. The jury instruction uses that  
3 phrase, but reckless disregard is the standard.  
4 Truth of its falsity or reckless disregard for  
5 whether it is true or not.

6 THE COURT: Then why didn't they put it in  
7 the standard jury instructions? If that's the  
8 standard, why didn't they?

9 Then why -- and why are we going -- I mean,  
10 they spend a lot of time on these jury instructions  
11 and these things have been approved by the  
12 Supreme Court. And, you know, one of the areas  
13 that you get reversed on very quickly is if you  
14 deviate from that unless there is a special reason  
15 for it.

16 You're saying that should be in the standard  
17 jury because that's the standard on all of these  
18 cases. And that's not what they -- and, if so,  
19 then you can argue that maybe. But at the same  
20 token, I'm going with the standard jury instruction  
21 because I don't like to do do-overs.

22 MR. MARIANI: We'll reserve on that,  
23 Your Honor. Thank you.

24 THE COURT: Okay. So put in that standard  
25 jury instruction.

1 MR. MARIANI: Well, to do that, we -- so  
2 acted with knowledge --

3 MS. KITTERMAN: I have the instruction.

4 THE COURT: Must decide the case by clear and  
5 convincing evidence, show that at the time the  
6 statement was made the defendant knew the statement  
7 was false or had serious doubts as to its truth.  
8 That is standard.

9 It is clear and convincing evidence -- if  
10 clear and convincing evidence does not show that  
11 the defendant knew that the statement was made that  
12 was false or that he had serious doubts as to its  
13 truth, your verdict should be for the defendant.

14 Use the standard jury instruction. You're  
15 safe. Everybody is happy that way. I can tell you  
16 the Fourth is.

17 MR. MARIANI: We'll reserve, Your Honor.

18 THE COURT: That's fine. You're telling me  
19 I'm not supposed to use the standard, that's fine,  
20 too.

21 MR. MARIANI: We're talking about the verdict  
22 form?

23 THE COURT: Well, yeah. Is that it?

24 MS. KITTERMAN: No, I'm not done with the  
25 verdict form because the verdict form goes through

1 the reckless disregard, which we just fixed in the  
2 jury instruction.

3 MR. BARKSY: It's Page 14.

4 THE COURT: Page 14?

5 MR. BARKSY: Yes, Your Honor. I think  
6 Your Honor asked to please delete question 1  
7 because that's not an issue anymore.

8 THE COURT: Yes, 1 is out.

9 MS. KITTERMAN: Of course I had this with me  
10 the entire time, but it was attached to --  
11 whatever.

12 The highlighted portion was the portion that  
13 I have an issue with.

14 MR. MARIANI: We'll reserve on that, too.

15 MS. KITTERMAN: See the actual language in  
16 the jury instruction, rather than reckless.

17 THE COURT: Well, is that your language, knew  
18 the statement was false or with reckless disregard,  
19 right? You got to put in --

20 MS. KITTERMAN: That's a final version if  
21 it's acceptable.

22 THE COURT: One is out on their proposed  
23 verdict form. One on their proposed verdict form.  
24 Is this the plaintiff's or the defendant's?

25 MS. KITTERMAN: That's the defendant's,



1 Your Honor. That's where I changed the language  
2 from reckless to.

3 THE COURT: All right. Question 2, why  
4 shouldn't that say, is Andrew Schaller's statements  
5 concerning Jess Santamaria --

6 MR. MARIANI: Can we just say false?

7 THE COURT: False statement of fact that  
8 Jess Santamaria committed a crime. Everybody in  
9 agreement with that?

10 MS. KITTERMAN: Yes. Yes, Your Honor.

11 MR. MARIANI: Can we just say false?

12 THE COURT: Well, was false a fact?

13 MR. MARIANI: No, just false, question mark.

14 THE COURT: Jess Santamaria, a false  
15 statement.

16 MR. MARIANI: No. Was Andrew Schaller's  
17 statement concerning Jess Santamaria false,  
18 question mark. Well, the statement is already in  
19 there, it's the subject of that sentence.

20 THE COURT: Is false a fact or just false?

21 MR. MARIANI: No, just false.

22 THE COURT: No, I don't put it in there.  
23 Jess Santamaria, a false statement of fact that  
24 Jess Santamaria committed a crime. That's what --  
25 by the fair weight of the evidence. If your

1 Question 2 is yes, then proceed to question --  
2 well, that will be one.

3 MR. BARSKY: Yes.

4 THE COURT: And if your Question 2 is yes,  
5 then proceed to Question 3. If your --

6 MS. KITTERMAN: Two.

7 THE COURT: If your answer to Question 2 is  
8 no, then proceed no further. Then your verdict --  
9 then you should put in, then your verdict is for  
10 the defendant. Then you should proceed no further  
11 except to date and sign this verdict form and  
12 return it to the courtroom.

13 Question 2, at the time the statement was  
14 made, did Andrew Schaller act with actual  
15 knowledge, meaning that he knew the statement was  
16 false or with -- or --

17 MS. KITTERMAN: Had serious.

18 THE COURT: -- or --

19 MS. KITTERMAN: Or had serious doubts.

20 THE COURT: There's a typo there.

21 Had serious doubts as to its truth by clear  
22 and convincing evidence.

23 All right. Let's do it this way: If your  
24 answer to Question 3 -- if your answer to  
25 Question 3 is yes, then proceed to Question -- if

1 your answer to Question -- no, if your answer to  
2 Question 2 is yes, then proceed to Question 3. If  
3 your answer to Question 2 is no, then your verdict  
4 is for the defendant. And your verdict is for the  
5 defendant, then proceed no further except to date  
6 and sign the verdict form and return it to the  
7 courtroom.

8 All right. If you find that Andrew Schaller  
9 made a false statement about Jess Santamaria.

10 All right. Anybody have a problem with  
11 Number 3, which is Number 4?

12 MS. KITTERMAN: I used their version.

13 THE COURT: Okay. I like agreements. Okay.  
14 All right.

15 MS. KITTERMAN: Just one quick issue with the  
16 defamation per se instruction.

17 THE COURT: That is 405. That's standard  
18 jury instruction 405.10.

19 MS. KITTERMAN: I just wanted to clear that  
20 up.

21 MR. MARIANI: What are you going to change?

22 MS. KITTERMAN: I just wanted to say that if  
23 you find that in cases of defamation per se, damage  
24 and loss are conclusively presumed if based on a  
25 showing that defendant acted with actual malice.

1 MR. MARIANI: No, no, no. That's already  
2 been dealt with. This is --

3 THE COURT: However if you find that  
4 defendant -- you award damages you in an amount you  
5 deem appropriate. You don't get to that unless you  
6 find malice.

7 MS. KITTERMAN: Okay.

8 THE COURT: It's a legal argument.

9 MR. BARKSY: Your Honor, you've marked up our  
10 copy of the verdict form. Can I -- thank you.

11 I couriered it, Your Honor. I'll have  
12 someone from our office reprint it and bring them  
13 down.

14 THE COURT: All right. Let's get those jury  
15 instructions. Now, I'm going to need ten copies  
16 plus whatever you folks need.

17 MR. BARKSY: Okay. I'll make sure we have  
18 plenty.

19 THE COURT: Ten copies of the verdict form,  
20 ten copies of the jury instructions.

21 (Discussion held off the record.)

22 MR. MARIANI: Your Honor, can we find out  
23 from counsel what else she intends to put on?

24 MS. KITTERMAN: No, that's it.

25 THE COURT: You're making my day.

1 Recess. You got a half an hour, sorry.

2 (A brief luncheon recess was taken.)

3 (The following proceedings were held in the  
4 presence and hearing of the Jury:)

5 THE COURT: Mr. Schaller, you want to come  
6 back up on the stand, please?

7 THE WITNESS: Yes, sir.

8 THE COURT: Have a seat, if you will, please.  
9 Ready for cross?

10 MR. MARIANI: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. MARIANI:

13 Q. Good afternoon, Mr. Schaller.

14 A. Afternoon, sir.

15 Q. Did Tanya McConnell ever tell you why she  
16 considers you a devious man?

17 A. Through this testimony in this courtroom. I  
18 believe I know further.

19 Q. In respect of the hearing, when you talk  
20 about the neighbors and the other people who were not  
21 right on the street, let's clear one thing up first  
22 right away. Fargo Avenue goes right by your house, does  
23 it not?

24 A. Yes, sir.

25 Q. It's on the side of your house?

1 A. Yes, sir.

2 Q. It's not on the front of your house?

3 A. Correct.

4 Q. And in respect of the -- your complaint about  
5 the County Commission that withdrew the approval, that  
6 issue was about people not getting notice, was it not?

7 A. No, sir.

8 Q. People who wanted to object didn't have a  
9 notice of the hearing and the commission decided that  
10 notices had to be sent?

11 A. No, sir.

12 Q. Isn't that part of the mistake that the  
13 County made that you were complaining about?

14 A. No, sir.

15 Q. I didn't really understand your answer, that  
16 earlier answer you gave about Mr. Santamaria's \$4,000  
17 check that he sent you because of the expenses that you  
18 incurred in that first go around. Did you say you did  
19 cash that check?

20 A. I did.

21 Q. Okay. Did you ever send a written -- you  
22 didn't send a list of your expenses, you just told him  
23 \$4,000 and he volunteered to pay you; isn't that  
24 correct?

25 A. I made a general statement; he made a general

1 response.

2 Q. And he sent the amount that you generally  
3 said?

4 A. Yes, sir.

5 Q. You said \$4,000, he felt sorry for you, he  
6 sent you a check for 4,000 and you cashed it?

7 MS. KITTERMAN: Objection.

8 THE WITNESS: I have no way of knowing if he  
9 felt sorry for me, sir.

10 MS. KITTERMAN: Cancel.

11 BY MR. MARIANI:

12 Q. Fair enough. But you cashed the check?

13 A. I did.

14 Q. But I thought you testified that he said he  
15 felt sorry for you?

16 A. No, sir.

17 Q. I think you testified this Fargo Avenue issue  
18 was, quote, inconsistent with any other road project in  
19 the County. Was that for all time?

20 A. Yes, sir.

21 Q. For all time in the County?

22 A. Yes, sir.

23 Q. And you gave some testimony about since 1912.  
24 Is that when Palm Beach County was founded?

25 A. No, sir.

1 Q. What was the significance of 1912?

2 A. That's when the road, I believe it's 1912.  
3 It's when the road was deeded to the public. There was  
4 no County at the time to accept public roads. So the  
5 entire 1262-hour internal audit was based upon what do  
6 we do with roads that are classified as in limbo, that  
7 they're public roads but the County has never taken  
8 maintenance responsibility for.

9 Q. I'm sorry. I'm not understanding. I'm  
10 asking about 1912.

11 A. Yes, sir.

12 Q. Why is 1912 the year?

13 A. Because the general area was what was called  
14 Smith Farms at the time, and there was a general  
15 platting of area of roads in and out of a particular  
16 area. Smith Farms was all the way from around Lake  
17 Worth Road, 441, the entire area prior to there being a  
18 Turnpike and it continued out west into the acreage,  
19 that type of area.

20 So at some point when somebody platted their  
21 land originally back in the early 1900s, this was a road  
22 that was designed for access into the neighborhood that  
23 we're talking about.

24 Q. Would you explain to the jury what "general  
25 platting" means?



1           A.       To my knowledge, I'm not a land surveyor, but  
2 I've learned along the way. If you take a piece of  
3 property, let's say it's multiple acres and you decide  
4 you're going to do something with that, you need a way  
5 to get to the interior portions. So they make a general  
6 road that says, here is the road to get to the interior  
7 portions that are then going to be divided into  
8 individual parcels of land.

9           Q.       Did you look at the plats?

10          A.       When, sir?

11          Q.       Did you look at the plats?

12          A.       The plats of what, sir?

13          Q.       Plats of anything. Have you ever looked at a  
14 plat of property?

15          A.       As long as we're considering the exact same  
16 thing a plat, I can say the answer is yes, based upon it  
17 was part of the engineer's presentation to the Board of  
18 County Commissioners.

19          Q.       It was. Okay. Have you ever looked at any  
20 other plats at any other time in your entire life?

21          A.       I believe when I got my tax bill, I used the  
22 County's website to be able to see an aerial view of my  
23 home in Wellington.

24          Q.       Okay. Have you seen any other plats?

25          A.       Not to my knowledge, sir.

1 Q. Not to your knowledge. Okay. Do you know  
2 where the plats are kept?

3 A. The plat office.

4 Q. Do you know where the plat office is?

5 A. No, sir.

6 Q. You don't, do you?

7 A. No, sir.

8 Q. But you know that your whole area was platted  
9 out there, don't you?

10 A. No, I know what George Webb told the board  
11 and I listened to it.

12 Q. I see. Now, you testified about doing public  
13 records requests. Explain to the Jury what a public  
14 records request is.

15 A. It's very, very simple. Whoever you want the  
16 records from, you call up and say, I'd like e-mails from  
17 a particular point in time from a particular office.  
18 Whether it gets filled or not is another story.

19 Q. So did you write any letters confirming your  
20 phone calls of public records requests?

21 A. I wrote no letters confirming phone calls of  
22 public records requests.

23 Q. Did you write any letters making public  
24 records requests?

25 A. I said e-mail.

1 Q. Well, let's say e-mail then. How many  
2 e-mails did you send making public records requests?

3 A. To whom, sir?

4 Q. No. How many letters did you send,  
5 regardless of to whom, for public records requests,  
6 let's say in the years 2008 through 2010?

7 A. You're asking me to speculate. Maybe three  
8 or four.

9 Q. I wanted to ask you about your answer  
10 about -- well, actually, let me back up.

11 There's been testimony about letters that  
12 were in the file about Fargo Avenue and information that  
13 you reviewed, that sort of thing?

14 A. I did not.

15 Q. When you visited with Mr. Webb and  
16 Miss McConnell, did you review matters in the file?

17 A. At the time, sir, there was no file to  
18 review.

19 Q. At the time, which time was that?

20 A. When I visited with Miss McConnell, it was  
21 very early in the stage.

22 Q. Your statements about Chicago and burglary,  
23 were you saying that if you were in the hotel room the  
24 day before -- not you, if someone was in the hotel room  
25 the day before you wanted to check in, that they could

1 just stay over into your reservation?

2 A. Yes, sir.

3 Q. Okay. So what legal issue was involved there  
4 that you used that as a basis for your interpretation of  
5 what burglary is?

6 A. I was told on more than one occasion that in  
7 order to get the guests staying at the hotel, you had to  
8 go through an eviction process that required court  
9 documents to legally evict somebody out of their room.

10 Q. So you see that as similar to burglary, is  
11 that what you were saying in your direct examination?

12 A. I said that I saw it similar, that there is  
13 certain procedures that need to be followed, whether  
14 it's by the innkeeper, whether it's by a shopping center  
15 owner, a residential landlord, commercial landlord, and  
16 that there was an opportunity for something not to have  
17 been done exactly according to the law, sir.

18 Q. Now, when you did your records -- excuse me.  
19 When you did your searches of, your computer searches  
20 that you've described, both yesterday when we read in  
21 some of your testimony and today when you were answering  
22 your attorney's questions, you testified that you came  
23 up with another Jess Santamaria, Jesus Santamaria,  
24 somewhere in Florida but the ages were way off so I  
25 discarded it. Do you remember that testimony?

1 A. I believe that's what I said.

2 Q. Now, that other Jesus Santamaria that you  
3 came up with actually was the Jesus Santamaria that was  
4 in that felony conviction, is he not?

5 A. I would have no way of knowing that, sir.

6 Q. No way of knowing.

7 When you were asked questions the other day  
8 about your campaign manager and then today, you chose  
9 after your campaign manager did not come up with any  
10 information about that felony judgment, you decided just  
11 to put it in your Exhibit 1, did you not, or what we  
12 have marked as Exhibit 1. You took no further action  
13 about that document; correct?

14 A. No, sir, I didn't.

15 Q. You testified today that, interestingly, I  
16 wrote it down, quote, the Supervisors of Elections have  
17 me recorded as beginning my campaign in July 2010.

18 Was that your testimony?

19 A. I don't believe so, sir. I believe I said  
20 June 15th. The qualifying period was that week of June.  
21 I qualified, I believe it was Wednesday. If we look  
22 back, I believe July 10th would be Wednesday.

23 Q. July 10th?

24 A. Pardon me. My mistake. July 15th of 2010 --  
25 pardon me, one more time. June 15th. My sister's

1 birthday is June 16th, it was the day before, sir.

2 Q. So the significance of that date is that's  
3 the beginning of your campaign?

4 A. That is the filing date. There's a two-part  
5 process to running for office. The first part is you  
6 can do an announcement, where you announce that you are  
7 going to run. But then during that qualifying week, you  
8 either have to come forward with petitions of roughly  
9 1 percent of the voting population to put you on the  
10 ballot, or you can pay an entrance fee. I qualified and  
11 announced the same day that I walked down with my  
12 paperwork.

13 Q. And you said you had no political friends.  
14 Do you remember testifying to that?

15 A. I definitely do, sir.

16 Q. You said you have no political friends?

17 A. I definitely remember testifying to that,  
18 sir.

19 Q. And so before you were accepted by the  
20 Supervisor of Elections, you had already put up a  
21 website, right, about your election?

22 A. No, sir.

23 Q. You had not put up a website in May of 2010?  
24 Maybe reconsider, please?

25 A. Well, let's make sure we understand. The

1 website was my name, Andy Schaller or Andrew Schaller,  
2 each one would have brought you to there. Did I  
3 establish Andy Schaller? Perhaps so.

4 Q. Excuse me. I'm asking about the campaign for  
5 Andrew Schaller. Didn't you have that website up and  
6 running in May of 2010?

7 A. I don't know. And the reason I say I don't  
8 know is I did put it up prior to announcing and running.  
9 I may have put it up so to speak, made it publicly  
10 available in the form of checking and making sure that  
11 it was going to be publicly available when I populated  
12 it with information regarding the campaign.

13 Q. But didn't you already have information on  
14 there from political supporters like Michelle Damone who  
15 is president of the Indian Trail Improvement District?

16 A. Sir, I didn't get that endorsement until  
17 after I decided to run.

18 Q. Yes, but it was before June of 2010, was it  
19 not?

20 A. Not to my knowledge.

21 Q. Not to your knowledge. Okay. Maybe we'll  
22 show that to you to refresh your recollection.

23 A. Okay.

24 Q. And also having no political friends, your  
25 cocounsel when you first were responding to the

1 complaint in this action was Peter Feaman of the  
2 Republican Party of Florida, was he not?

3 A. It was Peter Feaman, sir.

4 Q. Who is Peter Feaman?

5 A. No, I said it was Peter Feaman, sir.

6 Q. And he was your attorney when you first  
7 started -- excuse me. He was one of your attorneys when  
8 you first answered and then prosecuted your defense in  
9 this lawsuit; correct?

10 MS. KITTERMAN: Objection, Your Honor,  
11 relevance and attorney-client potential privilege.

12 MR. MARIANI: I'm not going to ask any --

13 THE COURT: Overruled. He hasn't asked any  
14 conversations between the two.

15 BY MR. MARIANI:

16 Q. And I'm not going to ask you about any of  
17 your conversations with your lawyers.

18 Mr. Feaman was one of your attorneys when you  
19 were defending this suit after it was brought; correct?

20 A. He was my third attorney.

21 Q. Your third attorney?

22 A. Yes, sir.

23 Q. And Peter is a committee person for the  
24 Republican Party of the State of Florida?

25 A. At the time I had no political affiliation.



1 I didn't know that, sir.

2 Q. You didn't know that Peter Feaman of  
3 Boca Raton, you don't know who he was?

4 A. Never met him, sir, prior to him asking to  
5 join my case.

6 Q. He approached you to join your case?

7 A. No, sir --

8 MS. KITTERMAN: Objection, Your Honor,  
9 attorney-client privilege.

10 THE COURT: Sustained.

11 BY MR. MARIANI:

12 Q. And then Mr. Feaman withdrew from this  
13 action?

14 MS. KITTERMAN: Objection, Your Honor,  
15 relevancy.

16 THE COURT: Sustained.

17 BY MR. MARIANI:

18 Q. Have you -- you testified, I believe, that  
19 you reviewed the Palm Beach County Commission website;  
20 is that correct?

21 A. Please define what it means to review. There  
22 is tons of pages, personnel policy manuals. Can you be  
23 more specific, sir?

24 Q. You said you searched -- or let me ask a  
25 question. You searched, did you not, the Palm Beach

1 County Commission website?

2 A. I want to answer you to the fullest. The  
3 answer would be --

4 Q. No, just answer yes or no. It's a yes or no  
5 question. I'm happy for you to --

6 A. Searched. Yes, sir, I've searched.

7 Q. Did you -- you did review  
8 Commissioner Santamaria's biography on that site, did  
9 you not?

10 A. I don't remember.

11 MR. MARIANI: No further questions.

12 THE COURT: Any redirect?

13 MS. KITTERMAN: Yes, Your Honor.

14 MR. MARIANI: Oh, excuse me, Your Honor, one  
15 other item. I'm sorry to interrupt counsel. But  
16 we wanted to -- it's already been authenticated,  
17 but reintroduce our Exhibit 5, the file that he  
18 testified about, that Mr. Schaller testified about  
19 during direct examination.

20 MS. KITTERMAN: Objection, Your Honor, we go  
21 back to the prejudicial. And he did not testify --

22 THE COURT: That's the same objection. But  
23 you can put it in for identification, if that's  
24 what you would like to do.

25 MR. MARIANI: It's already been identified,

1 but I just wanted to move it again. That's all.

2 THE COURT: Same ruling as before.

3 MR. MARIANI: Thank you.

4 REDIRECT EXAMINATION

5 BY MS. KITTERMAN:

6 Q. Mr. Schaller, you were just asked about  
7 Miss McConnell. You were asked why she would say that  
8 you have twisted her words or her testimony, and you  
9 said you had something further to say. What was that?

10 MR. MARIANI: Objection to form.

11 THE COURT: Overruled.

12 THE WITNESS: The engineering plan that was  
13 originally designed for the road was poor to say  
14 the least, not by my evaluation, but by the  
15 engineer and -- the engineering services planner,  
16 MSTU service coordinator, Mr. Marquis. He said it  
17 made no logical sense.

18 I said in front of the board that the second  
19 person that I would fire would be whoever had  
20 engineered -- if it was my own business, would be  
21 whatever engineer designed that road program. The  
22 first person I would fire would be whoever approved  
23 it.

24 It was the first time in Palm Beach County  
25 according to engineering that a road plan of this

1 design was ever created. And I said, how could  
2 this possibly go along? That's one reason that I  
3 know she took exception.

4 BY MS. KITTERMAN:

5 Q. Was she that first person you would fire or  
6 that second person?

7 MR. MARIANI: Objection, calls for  
8 speculation.

9 THE COURT: Sustained.

10 BY MS. KITTERMAN:

11 Q. I'm asking when you stated that you would  
12 have fired two different people with regard to the plan  
13 of the road, who were you referring to?

14 MR. MARIANI: Objection. Again, calls for  
15 speculation.

16 THE COURT: Of who he was referring to?

17 MS. KITTERMAN: Yes.

18 THE COURT: Overruled.

19 THE WITNESS: I was referring to the design  
20 company. Roads are sent out for bids, construction  
21 bids by --

22 THE COURT: Sir, the question is who. Not  
23 why, who.

24 THE WITNESS: Pardon me, sir.

25 Miss McConnell would have been the first.

1 BY MS. KITTERMAN:

2 Q. Did she know that you had stated that she  
3 would have been one of the people you would have fired?

4 A. I believe I said that in open board room --  
5 or, I'm sorry, Board of County Commissioner meeting.

6 Q. And you were just asked about the road and  
7 how you know from 1912, what does that relate to. Where  
8 did you get all the information with regard to the  
9 platting and the road in 1912?

10 A. George Webb, the County Engineer in his  
11 presentation and documentation being provided for the  
12 Board of County Commissioners.

13 Q. Did you get any of that information on your  
14 own?

15 A. It came completely from him.

16 Q. Okay. And you were just asked about the  
17 felony record, that you didn't do any further research  
18 after you tried to give it to your campaign manager and  
19 she didn't do the research and she gave it back to you.  
20 Did you know where to go to do that felony research --  
21 or the research on that felony judgment?

22 A. I had no further knowledge than when I handed  
23 it to her.

24 Q. When you included that felony judgment in  
25 your request for inquiry, were you attempting to accuse

1 Mr. Santamaria of a felony?

2 A. I accused him of nothing. As a matter of  
3 fact, when the ruling from the different organizations  
4 came out, I said I was happy to know that we didn't  
5 have -- and I used a poor vernacular, but I said, I'm  
6 happy to know that we don't have whatever crooks running  
7 our government. I was very happy to know it wasn't  
8 Mr. Santamaria.

9 Q. Did you put it in there to inquire as to  
10 whether that judgment related to Mr. Santamaria?

11 A. It was 100 percent in there to make sure that  
12 the man was fit for office and whether it related to  
13 him. I'm happy to know it did not.

14 MS. KITTERMAN: No further questions.

15 Your Honor.

16 THE COURT: Ladies and Gentlemen of the Jury,  
17 do you have any questions?

18 All right. You may step down, sir, and watch  
19 your step this time.

20 (Witness steps down.)

21 All right. Anything else from the defense?

22 MS. KITTERMAN: No, Your Honor, defense  
23 rests.

24 THE COURT: Defense rests.

25 DEFENDANT RESTS

1 THE COURT: Any rebuttal?

2 MR. MARIANI: Yes, Your Honor. We're going  
3 to try one more time on that file, to put it in.  
4 The witness keeps testifying about Mr. Webb and the  
5 information he got from the file and how he knows  
6 about this and knows about that. It's all in that  
7 file.

8 THE COURT: Folks, I'm going to -- I have to  
9 entertain some additional motions. I need you to  
10 step back for a few minutes there. So you might as  
11 well go ahead and start relaxing for a few minutes,  
12 get to know that place back there. But don't get  
13 too comfortable back there.

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

16 THE COURT: This is a huge composite; okay?  
17 It exists of about three expandos and so forth.  
18 What portions of that do you think that are  
19 relevant to any of the testimony that either  
20 impeaches or somehow embellishes or somehow leads  
21 to some probative fact in this case as it might aid  
22 this jury in its decision?

23 MR. BARSKY: Well, one of the first things in  
24 that file, Your Honor, are the petitions for the  
25 paving of this road. Mr. Schaller repeatedly

1 testified that people who showed up to object to  
2 the road were there because they lived a mile down  
3 the road and they didn't want staging equipment  
4 there. There are numerous petitions in there that  
5 say, no, I don't want to spend any more money.  
6 There's a letter from a lawyer in there saying,  
7 wait, do you need to charge these people, what's  
8 the deal. It's all in one of the first expandos  
9 right in there.

10 THE COURT: So what we've got here is a bunch  
11 of additional testimony, then, that proves what?

12 MR. BARKSY: Directly opposite of  
13 Mr. Schaller's direct testimony in his case in  
14 chief. Beyond that, Your Honor, it goes to show,  
15 are the plats in there? All these things he talked  
16 about that he said he saw, they're either in there  
17 or they're not.

18 THE COURT: So what does it go to prove, that  
19 he admitted it?

20 MR. BARKSY: No, whether or not that's  
21 actually where he got that information from,  
22 Your Honor. Whether or not his testimony of what  
23 happened at these meetings is actually correct.  
24 They're all recorded in there, it's a County  
25 record.



1 MS. KITTERMAN: Mr. Schaller actually just  
2 testified that he got that information with regard  
3 to the plat, that counsel had asked him about and  
4 could have pulled it out of the engineering record  
5 at that time and asked Mr. Schaller, but he  
6 testified that he got it from George Webb at a  
7 meeting.

8 MR. BARKSY: That information came up in  
9 County Commission meetings and is also in there.

10 MS. KITTERMAN: I just think it's  
11 prejudicial, Your Honor.

12 THE COURT: Whether it's prejudicial, that's  
13 not really what concerns the Court. What I'm  
14 concerned about is I've got a bunch of documents  
15 that may or may not relate to any of the issues in  
16 this particular case. You haven't tried to dissect  
17 this, the whole incident. And this incident is not  
18 what is on trial here. This incident is whether or  
19 not this man published a defamatory statement and  
20 he did that with a requisite --

21 MR. BARKSY: But, Your Honor --

22 THE COURT: -- intent.

23 Now, aside from all of that, instead of just  
24 cluttering up this file and putting a bunch of  
25 unnecessary material in there that this jury may or

1 may not wish to look at and in all probability will  
2 not look at, the fact of the matter is if you've  
3 got something specific in there that you want to  
4 pull out that you think is germane to any of the  
5 testimony, I'll be happy to visit that.

6 But to take a whole file on the Fargo project  
7 from A to Z and throw it into this record is not  
8 only cumulative, it's -- and most of it is probably  
9 irrelevant and immaterial and certainly doesn't  
10 lead to any probative value.

11 So aside from that is there something in  
12 there specific that you would like to identify and  
13 put in?

14 MR. BARKSY: Well, absolutely the petitions  
15 that we've discussed.

16 THE COURT: Pull them out. Dig them out.

17 MR. BARKSY: If I could have a moment, I'll  
18 go ahead and do that.

19 THE COURT: Let's do it.

20 MR. BARKSY: Here are the portions.

21 THE COURT: Show counsel, please.

22 MS. KITTERMAN: May I respond?

23 Your Honor, these documents contain, A,  
24 hearsay; B, if they're related to Mr. Schaller,  
25 they could have tried to enter it when he was on

1 the stand; C, they have newspaper articles in here  
2 that are irrelevant and hearsay. There is a letter  
3 with regard to an attorney writing to the County  
4 and this plat. And I just don't see how any of  
5 this is relevant as to whether or not Mr. Schaller  
6 knew that what he was publishing was false.

7 MR. BARKSY: Your Honor, it goes to the  
8 credibility of the witness's testimony. First of  
9 all, the hearsay exceptions, this is all exempt  
10 from hearsay. It's both a County record and it's  
11 from a County file and it's part of the business  
12 records exception. We established that with  
13 Ms. McConnell.

14 Now, plaintiff claims that these are  
15 irrelevant. Here are the actual petitions that  
16 Mr. Schaller is stating, oh, this is what all these  
17 residents thought. Here are the documents that  
18 show what the residents thought. Sure, he should  
19 be allowed to --

20 THE COURT: How many petitions are there?

21 MR. BARKSY: I've never actually counted.  
22 Hold on, Your Honor.

23 THE COURT: If I'm not mistaken, he said it  
24 was only 30 or 40 people that were there.

25 MR. BARKSY: You know, I never bothered to

1 count all of these, Your Honor.

2 THE COURT: You didn't count them all. So  
3 then why is it relevant or material to anything?

4 MR. BARKSY: Because these petitions directly  
5 contradict the defendant's testimony here,  
6 Your Honor. He said they all wanted to have --  
7 they were all worried about issues with respect to  
8 the staging in front of their homes.

9 MS. KITTERMAN: That's not what he testified  
10 to.

11 MR. BARKSY: That the people who showed up  
12 were from down the street.

13 THE COURT: What's that got to do with the  
14 publishing of a criminal record? Tell me what  
15 that's got to do. You know, that's what I'm  
16 bothered with. Somehow I understand that you  
17 wanted to create an issue that he has ill will  
18 because of this Fargo incident. That's fine.

19 Now you want to impeach him on a collateral  
20 matter that deals with the Fargo incident that has  
21 nothing to do with whether or not he published a  
22 defamatory thing.

23 MR. BARKSY: The witness's veracity in his  
24 testimony is absolutely at issue, Your Honor. He's  
25 testified -- the majority of his testimony over the

1 last couple of hours was on these documents and  
2 we've heard lots of testimony about what is  
3 actually in this file without the jury actually  
4 being able to see the file.

5 THE COURT: I didn't hear him identify any  
6 documents in the file.

7 MR. BARKSY: Well, he said this is what  
8 happened, that's what happened, that's what he told  
9 me. All these documents are recorded in this file.

10 THE COURT: What recordings do you have, sir?

11 MR. BARKSY: Well, we have a DVD of a  
12 committee meeting, but I don't know how we're going  
13 to be able to play that, Your Honor. But this is  
14 the written record of what actually occurred.

15 MS. KITTERMAN: He was actually testifying as  
16 to his knowledge of things, not actual documents.

17 THE COURT: Let me see what you've got. This  
18 case is not about Fargo.

19 MR. BARKSY: I understand, Your Honor.

20 THE COURT: Then why are we making it?

21 MR. BARKSY: I'm not trying to make it,  
22 your Honor, but the witness testified for however  
23 long.

24 THE COURT: I don't find that to be relevant  
25 or material to any issue of fact today. What else

1 do you have? These were alleged petitions by  
2 various people. Here is something, a letter to  
3 Sharon Bock. Who signed that?

4 MR. BARKSY: Andrew Schaller.

5 THE COURT: All right. Anything he authored,  
6 I'll allow in.

7 MS. KITTERMAN: Your Honor, am I confused in  
8 that they could have offered this in when they had  
9 him on the stand, that they rested, they let him  
10 go, and now we're bringing this after I rested my  
11 case?

12 THE COURT: No, they're bringing it up on  
13 redirect because he testified at what happened at  
14 the commission and so forth. So that's how they --  
15 that's what redirect is for.

16 MS. KITTERMAN: He didn't testify as to  
17 commission on cross.

18 THE COURT: Not cross, ma'am.

19 MS. KITTERMAN: Or on my redirect.

20 THE COURT: On direct, he testified about the  
21 whole process; all right?

22 So I'll allow anything that he authored.

23 MR. BARKSY: Then I would also ask for this  
24 one as well, Your Honor. He didn't offer it, but  
25 Mr. Schaller is testifying about how, why it was

1 that, you know, the reason why the commission  
2 reversed its vote wasn't because of a defect in  
3 publishing, there is a demand letter from an  
4 attorney dealing with these facts.

5 THE COURT: I'm going to let in demand  
6 letters from an attorney, that's even more  
7 ridiculous. That's not going in either. Everybody  
8 knows what an attorney says is not evidence or at  
9 least it shouldn't be.

10 THE CLERK: Let me have both, whatever is not  
11 going in and what is going in.

12 THE COURT: Unless it's authored against the  
13 party -- I haven't got an exhibit here --

14 THE CLERK: Five A.

15 MR. BARKSY: Five A?

16 MS. KITTERMAN: May I see this?

17 THE CLERK: It's two documents.

18 THE COURT: Those are the two that are  
19 authored by Mr. --

20 THE CLERK: Five A and B.

21 MS. KITTERMAN: Your Honor, I don't know this  
22 is a complete e-mail string.

23 THE COURT: If you've got something to  
24 complete it, I'll be happy to --

25 MR. BARKSY: That's the way it's kept in the

1 County's file, Your Honor.

2 THE COURT: If that's part of the exhibits,  
3 I'm allowing it in.

4 MR. BARKSY: That's fine.

5 THE COURT: It was listed on your pretrial?

6 MR. BARKSY: Yes, it was, Your Honor.

7 (Plaintiff's Exhibits 5A and 5B were marked  
8 and admitted into evidence.)

9 THE COURT: All right. Anything else?

10 MR. BARKSY: Nothing, Your Honor.

11 THE COURT: You're not going to have any  
12 testimony then?

13 MR. MARIANI: No, I do. I have 20, 30  
14 seconds of testimony.

15 THE COURT: Fine. Let's bring the jury back  
16 in now.

17 (The Jury entered the courtroom after which  
18 the following proceedings were held:)

19 THE COURT: Mr. Mariani, I understand that  
20 you have additional testimony that you wish to put  
21 on at this time?

22 MR. MARIANI: We do, Your Honor.

23 THE COURT: Go ahead, sir. And everybody can  
24 have a seat.

25 This is called redirect, ladies and



1 gentlemen. This is after the cross and the  
2 plaintiff, again, having the burden gets the  
3 opportunity to have redirect.

4 MR. MARIANI: We're going to call  
5 Jess Santamaria to the stand, please.

6 THE COURT: You're still under oath, sir.  
7 You understand that?

8 THE WITNESS: I understand.

9 Thereupon,

10 JESS R. SANTAMARIA,  
11 having been previously duly sworn or affirmed, was  
12 examined and testified as follows:

13 REDIRECT EXAMINATION

14 BY MR. MARIANI:

15 Q. Good afternoon, Jess.

16 A. Good afternoon.

17 Q. You sat here in the courtroom while  
18 Mr. Schaller was on the stand, were you not?

19 A. Yes, I was listening attentively.

20 Q. And you heard his thorough answer about a  
21 dinner that supposedly you had with him where he  
22 testified that you told him your entire life story,  
23 et cetera, et cetera. And I think he even mentioned  
24 that he remembered that you had two glasses of wine to  
25 drink that night at dinner. Is any of that true?



1           A.       We had conversation about the road, the  
2 paving of his road. That was always our conversation.  
3 He was completely focused on his road and I was  
4 completely trying to help him get his road paved.

5           Q.       Okay.

6           A.       So Fargo Road was always the main topic of  
7 conversation during our meetings with him.

8           Q.       So you don't recall the happy hour with the  
9 two glasses of wine?

10          A.       There was no such event.

11                   MS. KITTERMAN: No further questions.

12                   THE COURT: Do you have anything, folks? I  
13 didn't think so.

14                   Mr. Santamaria, you can step down. Thank you  
15 very much.

16                   (Witness stepped down.)

17                   THE COURT: All right. Do you have any other  
18 testimony?

19                   MR. MARIANI: No, Your Honor.

20                   THE COURT: All right. You rest?

21                   MR. MARIANI: Yes.

22                                   PLAINTIFF RESTS

23                   THE COURT: That concludes the evidence in  
24 this trial, ladies and gentlemen. I hate to make  
25 you do this, I need you to step in the back room

1 for about two minutes and we'll come back out and  
2 restart the proceedings. I would suggest that  
3 maybe this might be a good opportunity for you to  
4 use the restroom or whatever you need to do in  
5 order to get prepared because we're going to go  
6 into jury instructions and closing arguments. So  
7 I'll give you about a five or ten-minute break.

8 (The Jury left the courtroom after which the  
9 following proceedings were held:)

10 THE COURT: All right. Are there any  
11 additional arguments other than what was already  
12 argued in the motion for directed verdict prior to  
13 closing plaintiff's case?

14 RENEWED MOTION FOR DIRECTED VERDICT

15 MS. KITTERMAN: I renew my motion for  
16 directed verdict and basically submit to the Court  
17 that Mr. Schaller now has testified that he did not  
18 know that the felony record was related to  
19 Mr. Santamaria, nor did he have any probable cause  
20 to think that it wasn't Mr. Santamaria.

21 I believe plaintiff has completely failed to  
22 carry their burden of clear and convincing evidence  
23 that Mr. Schaller acted with actual knowledge; that  
24 being, that he knew that the felony judgment was  
25 not true or he had a reason, substantial reason to

1 believe that it was not true.

2 They have completely failed to prove their  
3 case by clear and convincing evidence according to  
4 the U.S. Supreme Court and the Florida Supreme  
5 Court.

6 THE COURT: Your response, sir?

7 MR. BARSKY: Response, Your Honor?

8 Documents published on the 13th,  
9 Michelle Santamaria got the information that it  
10 wasn't her father on the 14th. She told  
11 Mr. Schaller on the 15th that it wasn't her father.  
12 On the 19th, he republished the document on his  
13 website for a second time. And that is publication  
14 right there with knowledge that the facts were  
15 false.

16 THE COURT: All right. The motion is denied.  
17 Anything else from anyone else?

18 MR. MARIANI: Just a couple of housekeeping  
19 questions. How much time may we have for closing?

20 THE COURT: How much time do you want?

21 MR. MARIANI: I'd like 45 minutes, I would  
22 like to reserve ten.

23 THE COURT: Forty-five is fine.

24 MS. KITTERMANN: Forty-five minutes,  
25 Your Honor.

1 THE COURT: All right. And you -- how about  
2 warnings for the Clerk, warnings when your time is  
3 about up?

4 MS. KITTERMAN: Okay.

5 MR. MARIANI: Five for me.

6 MS. KITTERMAN: Five.

7 THE COURT: And I see we have jury  
8 instructions, please?

9 MS. KITTERMAN: Yes. May I see them?

10 THE COURT: Let's take a look at them real  
11 quick.

12 MS. KITTERMAN: Thank you.

13 MR. BARKSY: May I get one of those copies  
14 back?

15 MS. KITTERMAN: Your Honor, there's an  
16 additional paragraph here that was not provided to  
17 me earlier.

18 THE COURT: All right. You know, I put --  
19 and this is my fault. I put in there, by the fair  
20 weight of the evidence. Is everybody in agreement  
21 with that instead of the greater weight of the  
22 evidence?

23 MS. KITTERMAN: I would prefer greater weight  
24 of the evidence, Your Honor.

25 MR. BARKSY: I can make the change. I don't

1 know how to print it.

2 MR. MARIANI: We can change it and send it to  
3 him.

4 THE COURT: Fix it and send it to his e-mail.

5 MR. BARKSY: Just let me go grab my laptop.

6 MS. KITTERMAN: You might want to wait  
7 because they did not take out --

8 MR. BARKSY: We removed it from Page 11.

9 MS. KITTERMAN: Hold on. I'm marking it up.

10 THE COURT: What page are you on?

11 MR. BARKSY: That's what I'm --

12 THE COURT: Ms. Kitterman.

13 MS. KITTERMAN: Your Honor, I'm on Page 3,  
14 the last paragraph. Standard jury instruction  
15 should read: However, if the greater weight of the  
16 evidence supports Jess Santamaria's claim on these  
17 issues, then you must decide whether the evidence  
18 is clear and convincing at that time that  
19 Andrew Schaller made the statement, he knew the  
20 statement was false or had serious doubts as to its  
21 truth. That's Florida jury instruction.

22 And then it goes on, if clear and convincing  
23 evidence does not show that Andrew Schaller acted  
24 with reckless disregard. That is not part of the  
25 Florida jury instructions. So that should be taken

1 out. And then it should say, knew when the  
2 statement was made, the statement was false or that  
3 he had serious doubts as to its truth.

4 MR. BARKSY: That's one we must have missed  
5 the first time around because I went off of our  
6 mark-up. So where is that?

7 THE COURT: That's the last paragraph of  
8 Page 3, third line from the bottom.

9 Is that the only thing that you see?

10 MS. KITTERMAN: Well, yeah, Your Honor, it's  
11 on the fourth page as well.

12 THE COURT: Yes, it's at the second paragraph  
13 at the top.

14 MR. BARKSY: We just didn't go over them in  
15 the first go around. Are we deleting that?

16 THE COURT: Yeah, we're deleting it. Act  
17 with reckless disregard is out. It's not the  
18 standard jury instruction. Take it out.

19 MR. BARKSY: Which do you want me to make it,  
20 Your Honor?

21 THE COURT: Nothing. You put that  
22 Andrew Schaller knew when the statement was made  
23 that it was false or he had serious doubt. That's  
24 the standard jury instruction. Acted with reckless  
25 disregard is not the standard jury instruction.



1 MR. MARIANI: Okay. So this last two lines  
2 should be taken out.

3 MS. KITTEMAN: No. No, that's part of the  
4 standard jury instructions, John. I got it  
5 straight from the jury instructions which I have  
6 right here if you would like to review them. I  
7 tried handing you that when you were doing that  
8 earlier but you wouldn't take it.

9 MR. MARIANI: Give me a moment, Your Honor, I  
10 apologize.

11 Before we start the closings, can we announce  
12 and publish the Exhibits 5 and 5B?

13 THE COURT: What do you mean?

14 MR. MARIANI: Just let the jury know they're  
15 part of the exhibits.

16 THE COURT: It's in the record. All you have  
17 to do is just tell them because, obviously, you're  
18 going to talk about it in your closing.

19 MR. MARIANI: Yes.

20 THE COURT: That's fine. Just say it's in  
21 the record, 5A and 5B.

22 MR. MARIANI: That's fine, I'll do it that  
23 way.

24 THE COURT: Did you get it?

25 MR. BARKSY: We'll see if it came through.

1 THE COURT: Can you make complete copies  
2 there.

3 (Discussion held off the record.)

4 (The Jury entered the courtroom after which  
5 the following proceedings were held:)

6 JURY CHARGE

7 THE COURT: All right. Members of the Jury  
8 panel, you have on your chair which you've now  
9 taken, a copy of the jury instructions and a copy  
10 of the verdict form. Now, I'm going to read these  
11 jury instructions into the record and I want you to  
12 follow me as I give them.

13 Members of the Jury, you've now heard and  
14 received all of the evidence in this case. I am  
15 now going to tell you about the rules of law that  
16 you must use in reaching your verdict. When I  
17 finish telling you about these rules of law, the  
18 attorneys will then present their final arguments  
19 and you will then retire to decide your verdict.

20 The claims and the defenses in this case are  
21 as follows: Jess Santamaria claims that  
22 Andrew Schaller made and published a false  
23 statement about him which constitutes a defamation  
24 per se. Jess Santamaria claims that the statement  
25 was that he was a convicted felon when he was, in

1 fact, not. Andrew Schaller denies that claim and  
2 also claims that he was privileged to make the  
3 statement because Jess Santamaria was an elected  
4 official.

5 Now I will define some of the terms you will  
6 use in deciding this case:

7 Greater weight of the evidence means the more  
8 persuasive and convincing force and effect of the  
9 entire evidence in the case. Clear and convincing  
10 evidence differs from greater weight of the  
11 evidence in that it is more compelling and  
12 persuasive. Clear and convincing evidence is  
13 evidence that is precise, explicit, lacking in  
14 confusion and of such weight that it produces a  
15 firm belief or conviction without hesitation about  
16 the matter in issue.

17 The issues you must decide on the claim of  
18 Jess Santamaria against Andrew Schaller are whether  
19 Andrew Schaller's statements concerning  
20 Jess Santamaria was in some significant respect a  
21 false statement of fact and intended to expose  
22 Jess Santamaria to personal humiliation or mental  
23 anguish or charged that Jess Santamaria committed a  
24 crime.

25 A statement of opinion may be considered a

1 false statement of fact expressly stated or implied  
2 from an expression. A question like a statement of  
3 belief or opinion, though not phrased in the form  
4 of a declaration of fact, may imply the existence  
5 of a fact and defamatory fact.

6 A statement, or question, or opinion is in  
7 some significant respect false, if its substance or  
8 gist conveys a materially different meaning than  
9 the truth would have conveyed. In making this  
10 determination, you should consider the totality of  
11 the circumstances, including the context in which  
12 the statement is made and disregard any minor  
13 inconsistencies that do not affect the substance of  
14 the statement.

15 If the greater weight of the evidence does  
16 not support Jess Santamaria's claim on these  
17 issues, then your verdict should be for  
18 Andrew Schaller. However, if the greater weight of  
19 the evidence supports Jess Santamaria's claim on  
20 these issues, then you must decide whether the  
21 evidence is clear and convincing, that at the time  
22 Andrew Schaller made the statement, he knew the  
23 statement was false or had serious doubts as to its  
24 truth.

25 If clear and convincing evidence does not

1 show that Andrew Schaller knew when the statement  
2 was made, the statement that it was false, or that  
3 he had serious doubts as to its 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 In cases of defamation per se, damage and  
14 loss are conclusively presumed. If you find for  
15 Andrew Schaller, you will not consider the matter  
16 of damages. However, if you find that  
17 Andrew Schaller defamed Jess Santamaria, you shall  
18 award Jess Santamaria damages in an amount you deem  
19 appropriate.

20 In deciding this case, it is your duty as  
21 jurors to decide the issues and only those issues  
22 that I submit for your determination. You must  
23 come to an agreement about your verdict. The  
24 evidence in this case consists of sworn testimony  
25 of the witnesses, all of the exhibits received into

1 evidence and all facts that were admitted or agreed  
2 to by the parties.

3 In reaching your verdict, you must think  
4 about and weigh the testimony and any documents,  
5 photographs or other materials that have been  
6 received into evidence. You may also consider any  
7 facts that were admitted to or agreed to by the  
8 lawyers.

9 Your job is to determine what the facts are.  
10 You may use reason and common sense to reach  
11 conclusions. You may draw reasonable inferences  
12 from the evidence. But you should not guess about  
13 things that were not covered here and you must  
14 always apply the law as I've explained it to you.

15 Now I'm going to speak to you briefly about  
16 the witnesses. In evaluating the believability of  
17 any witness and the weight you will give the  
18 testimony of any witness, you may properly consider  
19 the demeanor of the witness while testifying, the  
20 frankness or the lack of frankness of the witness,  
21 the intelligence of the witness, any interest the  
22 witness may have in the outcome of the case, the  
23 means and the opportunity the witness had to know  
24 the facts about which the witness testified, the  
25 ability of the witness to remember the matters

1 about which the witness testified, and the  
2 reasonableness of the testimony of the witness  
3 considered in the light of all of the evidence in  
4 the case and in the light of your own experience  
5 and common sense.

6 That is the law that you must follow in  
7 deciding this case. The attorneys for the parties  
8 will present their final arguments. When they're  
9 through, I'm going to give you a few more  
10 additional instructions about your deliberations.

11 Now, in a moment here, I'm going to allow the  
12 attorneys to give what is referred to as a final  
13 argument. It's really the first time that they  
14 have an opportunity to argue the case to you. So  
15 you should give it close attention. But, again, I  
16 caution you, what the attorneys say is not evidence  
17 in the case. The evidence is what was presented  
18 through the witnesses and exhibits and what the  
19 parties stipulated to. And if they misstate what  
20 you believe the evidence is, you rely upon your own  
21 independent judgment of what that is, but you  
22 should give them close attention.

23 Now, they each have an equal amount of time.  
24 Because the plaintiff has the burden of proof, the  
25 plaintiff has elected to use up part of its time or

1 save part of its time for rebuttal after the  
2 defense has finished.

3 So that being the case, are the parties to  
4 ready to proceed?

5 MR. MARIANI: Yes, Your Honor.

6 PLAINTIFF'S CLOSING ARGUMENT

7 MR. MARIANI: I want to the start with the  
8 phrase "serious doubt." This is a very high  
9 standard for a plaintiff to achieve in a paper.  
10 And as I told you in the opening statements, most  
11 defendants in these kind of cases are newspapers.  
12 And the law has this issue of actual malice which  
13 identifies, we want to know if the defendant  
14 Mr. Schaller knew or should have known in the sense  
15 of he either knew, he had the intent to defame  
16 Mr. Santamaria or he had serious doubts about the  
17 information that he produced; okay?

18 So this phrase serious doubts, it really  
19 can't be subjective because -- well, let me back  
20 up. We have to figure out what Mr. Schaller was  
21 thinking. That's an incredibly hard thing to do,  
22 obviously. And the law understands that. And the  
23 Supreme Court has stated that the defendant in a  
24 defamation action brought by a public official,  
25 that's what we have here, Mr. Santamaria is a



1 public official, he's a County Commissioner for  
2 District 6, Mr. Schaller is a defendant.

3 So Mr. Schaller in a defamation action  
4 brought by a public official cannot automatically  
5 ensure a favorable verdict by testifying that he  
6 published with a belief that the statements were  
7 true or the finder of fact must determine whether  
8 the publication was indeed made in good faith.

9 Professions of good faith will be unlikely to  
10 prove persuasive where a story is fabricated by the  
11 defendant, a product of his imagination or somehow  
12 based wholly on unverified information. Nor will  
13 they be likely to prevail, when the publisher in  
14 this case, Mr. Schaller, his allegations are so  
15 inherently improbable that only a reckless man  
16 would have put them in circulation.

17 I believe that's what this case is about.  
18 You listened to Mr. Schaller testify. You listened  
19 to all of the other witnesses testify.  
20 Mr. Schaller put this information into his  
21 document, Exhibit 1. And why did he put it  
22 together? He put it together because he was  
23 running for office against Mr. Santamaria. And why  
24 was he running for office? You heard all of his  
25 testimony, but remember you also heard

1 Jess Santamaria's daughter, Michelle, when she  
2 confronted him with the inaccuracy, the blatant  
3 inaccuracy, and I'll get to that in a minute, but  
4 the blatant inaccuracy of Exhibit 2 which is what  
5 this case is about.

6 And Mr. Schaller said, you hopefully remember  
7 this, they told me to put it there. They, we never  
8 found out who they were. I asked a question about  
9 Mr. Schaller and one of his former lawyers in this  
10 case, Peter Feaman. We submit to you that there is  
11 enough evidence in this record that you can  
12 determine that this whole thing was a slander --  
13 excuse me, was an attack on Jess Santamaria because  
14 there were people in Palm Beach County who did not  
15 want Jess Santamaria to continue as a  
16 County Commissioner. And Mr. Schaller had support  
17 and they told him to put that in there, or he  
18 decided to put that in there. He was very, very  
19 sarcastic, I think was the word, with  
20 Miss Santamaria.

21 Now, here is a young woman who is defending  
22 her father. All of us who have daughters,  
23 hopefully they would do the same. Schaller treated  
24 this like it was a game playing fast and loose with  
25 Mr. Santamaria's reputation, okay? I don't know

1 where the courthouse is. I don't know if it's  
2 true.

3 Let me read again what the Supreme Court  
4 said. "If something is inherently improbable, that  
5 only a reckless man would have put them into  
6 circulation." We think this is a paradigm of this  
7 case. Mr. Schaller had an answer for everything.  
8 He is a very clever man. He remembered details of  
9 things from wherever. Whenever he needed a  
10 positive answer, he remembered a detail. Whenever  
11 it wasn't positive for him, he didn't remember the  
12 detail.

13 He made up a story about a dinner with  
14 Mr. Santamaria claiming that Mr. Santamaria told  
15 his whole history. Mr. Schaller heard that history  
16 in this trial when Mr. Santamaria got on the stand  
17 and very emotionally shared it with you. Other  
18 than preparing for this case, it's the first time  
19 I've heard it.

20 Mr. Schaller all but memorized it and gave it  
21 back to you word for word. Think about that. And  
22 think of the believability of a mind that can do  
23 that. He did not want to taint his mind, that's a  
24 phrase from his testimony. Did not want to taint  
25 his mind by doing, quote, more research when he got

1 this one-page document. What did he do? He  
2 stopped. Why did he stop? Because he got exactly  
3 what he wanted. He found the document that he  
4 could use in Exhibit 1 to attack Jess Santamaria.

5 So what did he do? This thorough man who can  
6 research the head of a pin in a haystack, he could  
7 go no further? He could go no further than find  
8 this one page? How antiseptic is that defense?

9 Where did you go? I went to the website.  
10 What did you do? This is what I found. This is  
11 all that I found. Yet he can do public document  
12 searches, he can create records in the County, he  
13 can find out any information. He's a -- you heard  
14 all of the testimony that we read in, his testimony  
15 about his proficiencies with computers and all the  
16 different search engines he's used. Yet when we  
17 asked him about Google, he didn't remember anything  
18 that he found on Google about Mr. Santamaria.

19 Very interesting. He somehow gets to this  
20 document and then he doesn't find out any more  
21 information about Mr. Santamaria. You have to  
22 decide whether that's believable. That's your job  
23 as members of the jury to decide whether that is  
24 believable.

25 Exhibit 1 is the vehicle that Mr. Schaller

1 used. Exhibit 2, which is Page 76, in Exhibit 1.  
2 This is the vehicle, Exhibit 1, that he shot the  
3 bullet with, Exhibit 7. Mr. Santamaria has not  
4 sued about any of the other elements in Exhibit 1.  
5 Nothing amounted to anything except -- and we'll  
6 get into it in a second -- this little pocket  
7 calendar that Mr. Santamaria has always used. The  
8 brand new, you saw how small it was. It's not  
9 leather bound, its nothing. It's a little document  
10 that he keeps in his pocket and he puts his  
11 appointments in it, his personal appointments. And  
12 because for one period of time the record shows  
13 that the County happened to pay for those, no  
14 evidence about what they cost, but you saw what one  
15 looks like, how much could that have been? And  
16 we're not trying to spend County money  
17 unnecessarily here, but Mr. Santamaria testified he  
18 donates his salary every year. And it was his  
19 intent to pay for those pocket calendars.

20 So the point is that Mr. Schaller found out  
21 that fact somehow by doing a document request, and  
22 he puts it in his Exhibit 1 and he calls that  
23 destruction of County files. That's what he labels  
24 that. And then there is an investigation, three to  
25 four investigations, that Mr. Schaller triggered.

1           We're not here complaining about those  
2 investigations. What we're saying is think about  
3 the mindset of someone who can -- who can set off  
4 that course of events, and then decide whether you  
5 believe that Exhibit 2 is the only document he  
6 could find about whether or not his opponent had a  
7 criminal record.

8           And then what does he do? Very carefully, he  
9 decides to put it in the form of a question. I  
10 would argue that he did that knowing that that  
11 would make Mr. Santamaria's case a little harder if  
12 it's a question because he can say, I didn't know  
13 the gun was loaded, I was just trying to figure out  
14 what was going on.

15           Now, he had access to the County website, he  
16 had access to do every search he wanted to do. And  
17 you can tell from his testimony how thoroughly  
18 proficient he can do those things. So you need to  
19 incorporate in your determination your common  
20 sense. And you need to evaluate the believability  
21 of Mr. Schaller versus the believability of  
22 Mr. Santamaria when it comes to -- I mean, their  
23 paths have crossed on this Fargo Avenue issue,  
24 which it's almost too bad all that had to be  
25 discussed. But the reality is that is the

1 foundation of Mr. Schaller's, his disappointment,  
2 whatever word you want to use. He still -- you can  
3 see it, he still is upset about his interpretation,  
4 no one else's interpretation, his interpretation  
5 how Mr. Santamaria purportedly interacted with him.

6 And all Mr. Santamaria did was he voted in  
7 favor of, of approval. Then when the other  
8 residents came and showed that they didn't want to  
9 pay under this program, that the commission had to  
10 go with what those people wanted to do. It got  
11 reheard. That happens in government. It's not a  
12 reason to attack Mr. Santamaria. It's not an  
13 appropriate reason. And as a candidate against  
14 him, we have to draw the line. You need to decide  
15 where that line has to be.

16 So, please, when you deliberate, when you  
17 think about all of this, that you keep in mind the  
18 statement that whether what he put out in sending  
19 out this document, that is to say Exhibit 2,  
20 whether this allegation that Jess Santamaria  
21 possibly was convicted of burglary in 1991 is so  
22 inherently improbable that only a reckless man  
23 would have put it in circulation. We believe that  
24 and that's what we're submitting to you.

25 So Exhibit 1, request for inquiry. Exhibit 2

1 is Page 76. Ironic, this First Amendment talk,  
2 '76, 1776, remember the page. This is the page  
3 that Jess Santamaria is suing about because it  
4 crossed the line. And to call someone a criminal  
5 or to imply, understand, as the Judge read, a  
6 question, just because there's a question mark  
7 doesn't mean it's not a statement as relates to  
8 what the law is.

9 In fact, I want to take a moment to read a  
10 little excerpt from a Chinese philosopher,  
11 Chuang Tzu. He talks about words, and these  
12 phrases are important phrases for you to maintain.  
13 And Chuang Tzu says when talking about words, the  
14 fish trap exists because of the fish. Once you've  
15 gotten the fish, you can forget the trap. The  
16 rabbit snare exists because of the rabbit. Once  
17 you've gotten the rabbit, you can forget the snare.  
18 Words exist because of meaning. Once you've gotten  
19 the meaning, you can forget the words.

20 And the reason I read that is the meaning of  
21 Exhibit 2 is clear. When the missile was sent, it  
22 was clear. Now, whatever it is, two years later,  
23 now it's being dissected in a whole different way.  
24 Understand where we were in this county when this  
25 election was taking place. Corruption County. We



1 submit Mr. Schaller knew he was throwing a lighted  
2 match in gasoline when he did this.

3 The press came out, walking out that door,  
4 you take five steps, you look out the window on the  
5 other side, the door to this courtroom, and you see  
6 the historical courthouse right across the street.  
7 That's where Mr. Schaller threw his bomb. It can't  
8 be more than 200 yards from where we're standing  
9 right now. Yet Mr. Schaller testified he doesn't  
10 know where the courthouse is. Think about that.

11 Also think about his website. Think about  
12 you saw the facts -- or you heard the facts and saw  
13 his website, but that September 13th was the day he  
14 issued Exhibit 1. That was what we would call in  
15 the law, the original publication. Then two days  
16 later, he was confronted by Mr. Santamaria's  
17 daughter, who showed him the facts. He claims that  
18 he retracted.

19 Well, he really didn't. He jumped over the  
20 fact that after she told him, that's when he  
21 published it on his website. And then it's not  
22 that he went on a radio show to retract, it's that  
23 he went on a radio show to present his candidacy.  
24 And the person on the radio show, as everybody else  
25 in Palm Beach County who looked at Exhibit 2,

1 Page 76, knew how ridiculous it was that this man  
2 was labeling Jess Santamaria as a convicted felon.  
3 A burglar to boot.

4 And then you heard what I believe to be --  
5 excuse me, what sounds like a made-up story, this  
6 idea of going to Chicago and the room and this and,  
7 therefore, he thought it was reasonable that  
8 Jess Santamaria could have been convicted of  
9 burglary. You have to decide what kind of  
10 imagination puts that kind of story together.

11 You saw us make an effort, the plaintiffs, to  
12 put in the file, the whole file from the County  
13 engineering's office about this Fargo Road project.  
14 It wasn't that we wanted to keep you here for  
15 20 days to read all those documents, but what I  
16 think the testimony has shown is the exhausting  
17 persistence and thoroughness of Mr. Schaller and  
18 the fact that if he wants to know something, he'll  
19 find it out, whatever that fact is. Whatever that  
20 fact is, if he wants to know it, he will find it  
21 out.

22 So please think to yourselves why did he stop  
23 short. Did he stop short willfully? The answer is  
24 yes, because he told us he didn't do any more work.  
25 He did say in the testimony that was read, you will

1 remember, that he asked his campaign -- he had  
2 called her a manager, but he asked his campaign  
3 person to go to the courthouse. She never did. He  
4 blew it off.

5 So why do you tell a person to go to the  
6 courthouse and then not follow up on it? He'll  
7 have an excuse for that. You will certainly hear  
8 an excuse for that, but use your common sense and  
9 look at the evidence and you decide yourselves is  
10 any of this believable or is it crafted, is it  
11 crafted by a very, very intelligent guy who  
12 calculated the issues and who crafted this because  
13 he's very clever. He is very clever and he  
14 believes he's cleverer than anybody else.

15 In that file, the Judge permitted into  
16 evidence Exhibit 5A, I'm going to ask you to write  
17 that down, and also 5B. These are just a sample  
18 from those files that we didn't get in the rest of  
19 it. I'm just bringing it up now, I don't want you  
20 to get into the detail -- or, excuse me, you do  
21 what you want with the detail, I apologize.

22 But interestingly enough, this Exhibit 5A is  
23 a letter from Mr. Schaller dated July 28th, '09,  
24 well before the election, well before the election  
25 to Sharon Bock, who just happens to be right in

1 this building. So he knew the address, knew how to  
2 get in touch with Sharon Bock, who is the  
3 comptroller when he needed to, but you heard all of  
4 this forced testimony -- by forced, I mean  
5 calculated testimony -- that I don't know where the  
6 clerk's office is, I'm not a lawyer, I couldn't get  
7 to the files. If that's -- that's just simply not  
8 believable, we submit.

9 Did Mr. Schaller call -- I think an  
10 allegation, did he accuse Jess Santamaria of being  
11 a convicted felon? That question to people who are  
12 maybe just listening for the first time and didn't  
13 hear all of the evidence that you've heard and see  
14 a question mark, that might catch somebody's  
15 attention, sort of in a puzzle way, you know, gee,  
16 what's wrong with that statement? Well, it's a  
17 statement, it's a question. The Judge already  
18 read, the law looks at that, it's you, you need to  
19 determine whether the question implies something.

20 But Exhibit 11 is the public report and final  
21 order of dismissal by the Palm Beach County  
22 Commission on Ethics. That's the one that counsel  
23 for defendants said didn't decide anything because  
24 it said it didn't have jurisdiction implying, I  
25 believe, that all of these -- all of these

1           allegations are still out in the world and nobody  
2           has decided them.

3           Well, you heard Mr. Santamaria testify that  
4           every agency that looked at him and evaluated in  
5           good faith, every one of Mr. Schaller's  
6           allegations, none of that came to make  
7           Mr. Santamaria change anything or have to do  
8           anything differently in his commission office or  
9           anywhere else, except for that issue about the  
10          pocketbook where they said, please hold on to them  
11          for 12 months.

12          Now, the reason I bring up Exhibit 11, I  
13          request specifically that you look at Page 2 of  
14          Exhibit 11, and you see that Count 7 on Page 2, it  
15          is Exhibit 2, meaning to say it refers to  
16          Exhibit 2. Exhibit 2, the one-page felony judgment  
17          is identified on Page 2 of the Palm Beach County  
18          Commission on Ethics' public report and final order  
19          of dismissal.

20          And it says Count 7, again, which is  
21          Exhibit 2, of the complaint, the complaint is  
22          Exhibit 1 in evidence here. So that this  
23          Exhibit 2, quote, alleges that respondent, that's  
24          Mr. Santamaria, has been convicted of a felony.

25          Let me read that again. Count 7, which is

1 Exhibit 2 of the complaint, which is Exhibit 1,  
2 alleges that respondent, Mr. Santamaria, has been  
3 convicted of a felony.

4 There was no question in the drafter of that  
5 sentence how to interpret this Exhibit 2. I would  
6 suggest to you that you shouldn't interpret it any  
7 other different way just because there's a question  
8 mark or just because he put it in the form of a  
9 question mark.

10 Remember, when you saw the clip of him  
11 standing out in front of the historical courthouse,  
12 which is again just on the other side of the street  
13 right out these doors, he said, I wouldn't want  
14 these accusations against me, I wouldn't want to be  
15 accused of all of these things.

16 Now he conveniently gets on the stand and  
17 testifies, I was just raising questions, this is  
18 free debate, this is not accusation. This is  
19 asking other people to help me. You need to decide  
20 how believable that is. And I think your common  
21 sense will tell you or your common sense, we argue,  
22 will tell you that that's just -- it's just too  
23 much. It's just too much. It's not believable.

24 Excuse me.

25 Back to publication. Mr. Schaller said he

1 retracted the first chance he had on that radio  
2 show. Well, please also look at Exhibit 13.  
3 Exhibit 13 is the order -- excuse me, the report, I  
4 should say, the executive summary of the Inspector  
5 General. And that report is based on a copy of  
6 Exhibit 1 that Mr. Schaller sent to the  
7 Inspector General on September 23rd. So that's  
8 even a later date than when Mr. Schaller said he  
9 retracted his statement.

10 He never retracted anything. He was  
11 interviewed on a radio show by a shock jock who  
12 was -- who wanted to make a story and he was asking  
13 Schaller about it. Schaller had no way at that  
14 point to try to do anything other than to protect  
15 himself and make sure he didn't look foolish by  
16 saying something stupid. He could put together  
17 Exhibit 1, which included Page 76 and sent it out,  
18 but when he was sitting in front of a microphone  
19 and somebody was asking him the questions almost to  
20 the extent of, are you kidding here? Do you have  
21 information about Jess Santamaria being a criminal?  
22 And he realized the answer was no, and he realized  
23 that Jess Santamaria wasn't a criminal.

24 So what is the best thing for somebody as  
25 crafty as he to do under those circumstances? He

1 does the smart thing. But to protect himself, not  
2 to protect Jess Santamaria or not even to apologize  
3 or retract. But he says, no, his daughter told me  
4 A, B, C.

5 Now, the law will tell you that his  
6 retraction doesn't matter in this case. This is  
7 defamation per se. Understand that if you believe  
8 that he put untruths into the flow either with  
9 intent with knowledge that it was false, or if he  
10 had serious doubts -- and, again, the law tells  
11 you, you listen to his testimony, but you evaluate  
12 it like you evaluate any other testimony. His  
13 testimony is no more or no less than any of the  
14 other pieces of evidence that you have the ability  
15 to review in this file.

16 And if you think that his interpretation;  
17 that is to say, his statements of his own mind, if  
18 you think that they're so inherently improbable  
19 with the information that was at his -- you know,  
20 available to him, if you think his interpretation  
21 of his intent is so improbable, you can find for  
22 the plaintiff.

23 Let's talk about some of the items of why  
24 there were obvious reasons to doubt the veracity  
25 that Jess Santamaria, who is sitting here in front



1 of you, was the same person that Jesus R.  
2 Santamaria, that unfortunately has passed away now  
3 and who lived in Miami and he was convicted of a  
4 burglary in Palm Beach County, why it should have  
5 been or why it really was -- should have been  
6 obvious.

7 Jess Santamaria had been in this county since  
8 the mid-'70s. He had been a very, very diligent,  
9 dutiful developer, real estate person, community  
10 involvement, very generous man, he and his family.  
11 A wonderful addition to Palm Beach County  
12 immigrating from the Philippines. We put in some  
13 evidence, we didn't want to overwhelm you, but we  
14 put in some of the newspaper articles. They're  
15 here, Exhibit 6 through 9. Why did we do that?

16 We do that because Mr. Schaller, this expert  
17 in searching for information, he had all of this at  
18 his disposal. And on the website, Mr. Santamaria's  
19 resume or curriculum vitae is there. And think  
20 about this. If you, any name, John Smith,  
21 Jane Doe, whatever it is, you run into a document  
22 like this convicted felony judgment, and you what?  
23 You think or you want to think, you want to  
24 believe, obviously he's running against  
25 Mr. Santamaria, he wants to believe he can find

1 something.

2 Mr. Schaller's lived in Palm Beach County for  
3 I'm not sure, but at least over 20 years. His  
4 attorney I think said 30. I think she misspoke. I  
5 think he's been in Palm Beach County somewhere  
6 between 22 and however many years. And then he  
7 testified very conveniently, never really heard of  
8 Jess Santamaria until 2006, yet he lived out in  
9 that district.

10 The fact that the offense was burglary in  
11 1991, wouldn't that be very odd of somebody in  
12 Jess's position? I mean, think about that,  
13 burglary, not a white color crime, not a know --  
14 you know, something financial, but a burglary.  
15 Shouldn't that send off a red flag in a person's  
16 mind of a County Commissioner, a gentleman who's  
17 been in Palm Beach County since his 30s? We have  
18 to use common sense here, especially with somebody  
19 as thorough with the instincts of Mr. Schaller to  
20 find out information, to find out information.

21 And Miss O'Connell (sic), from the County's  
22 office, a woman who testified on Monday, you might  
23 remember -- excuse me, on Tuesday. Engineering  
24 degree from the University of Miami. She's worked  
25 her way up in the County. All of a sudden when

1 Mr. Schaller finds out that she called him devious  
2 on the stand, what does he do the next day, very  
3 next day? He's got a reason for her to be fired.  
4 How convenient is that; right? He sees a problem,  
5 he fixes it and he remembers it in amazing detail.

6 What do you make of his sarcastic comment to  
7 Jess Santamaria's daughter, "I'll take it under  
8 advisement." I think common sense tells us that  
9 that's a person who understands that he did  
10 something that was a little too cute. At least in  
11 his mind too cute; in plaintiff's mind, defamatory,  
12 obviously, and he thought he could get away with  
13 it. You know, whose going to call me on it? Are  
14 you going to call me on it? Well, Mr. Santamaria's  
15 daughter did call him on it. What does a good  
16 daughter do? She went over to the courthouse, you  
17 heard the testimony, in a manner of minutes, she  
18 had the complete file.

19 The complete file wasn't as big as what we  
20 tried to get in here in respect of the Fargo Road  
21 project. The complete file was 33 pages, I think  
22 was the testimony. And it was captured in moments  
23 in the building across the street from where  
24 Mr. Schaller threw his bomb, being Exhibit 1 and  
25 Exhibit 2 against Jess Santamaria.

1           You can consider that and you should consider  
2           that. Is that the kind of person who really  
3           published something without serious doubts? We  
4           think just the opposite. And the way defense has  
5           tried to turn this around, it's almost as if  
6           Mr. Santamaria had to prove he was not a criminal,  
7           but we all know it's impossible to prove a  
8           negative. This happens to be one that can be  
9           proved and it was proved because you know or you  
10          should know, I think, that truth obviously is a  
11          defense to a defamation action. There is no  
12          suggestion anywhere that there is any truth to  
13          that.

14                 The argument is I didn't know. I didn't know  
15          either way. See, he was very careful, very careful  
16          not to say he had doubt. And he was very careful  
17          not to say he didn't have doubt. See how careful  
18          that testimony was? He said he was right on the  
19          thinnest line and he wasn't one way or the other.  
20          He tried to give you the perfect answer. You need  
21          to decide whether it's an honest answer.

22                 And you need to decide the credibility of the  
23          witness because he testified, there's a direct  
24          conflict here, he testified he had this long dinner  
25          where he happened to tell -- or, excuse me, where

1 Mr. Santamaria happened to tell him that his  
2 childhood name was Jesus.

3 Now, why is that so important? It really  
4 shouldn't be important from our perspective because  
5 the defendant testified otherwise in his testimony  
6 that we read in, Jesus Santamaria is a very common  
7 name. So he researched that name enough to know  
8 that it's a very common name. Think about that.

9 And he needed a hook. He didn't know --  
10 excuse me?

11 THE CLERK: You have five minutes left.

12 MR. MARIANI: Thank you.

13 He didn't know until this litigation that  
14 Mr. Santamaria's first name was Jesus. So he had  
15 to figure out a way to convince you, the jury, that  
16 he knew that before. And this is why he's able to  
17 ride that very thin line between no doubt and no  
18 conviction. He wants to be perfectly vanilla on  
19 this issue.

20 So I need to know -- in his mind, he's saying  
21 I need to know when I knew Jesus was Jess's  
22 childhood name. So he literally made up a story  
23 that he had dinner with Mr. Santamaria. Now, think  
24 about this, he even tried to tell you he remembered  
25 that Jess had two glasses of wine. Think about

1 that. Think about the detail of that answer, how  
2 perfect that answer was. And you decide whether  
3 it's believable.

4 When confronted with Mr. Santamaria's  
5 testimony or what Mr. Santamaria said, it never  
6 happened. Who do you want to believe -- whom do  
7 you want to believe on that issue? That should  
8 unravel defense's defense to this case. If you  
9 believe that Jess Santamaria and Mr. Schaller had  
10 dinner and that Mr. Schaller remembered the number  
11 of glasses of wine at a happy hour, I think he  
12 said.

13 And why -- why did he tell you about two  
14 glasses of wine? I guess because he thinks that  
15 when you saw Mr. Santamaria testify, you could sort  
16 of interpret Mr. Santamaria as a straight-laced guy  
17 who probably wouldn't be chatty about something  
18 like that because he's too private a person. So  
19 what did Mr. Schaller do? He says gee, I'm going  
20 to make it so that Jess had a couple of drinks.  
21 That will be -- I'll plant that, I'll plant that in  
22 my answer and that will help the jury decide  
23 whether I'm right or not.

24 Now, what did counsel do when she wanted to  
25 cross-examine Mr. Santamaria? She left breakfast

1 out -- or, excuse me, she left dinner out. She  
2 started asking about breakfast. Mr. Santamaria did  
3 have breakfast as he testified, he had breakfast  
4 with Mr. Schaller and they talked about Fargo Road.  
5 And why? Because that's what Mr. Schaller talked  
6 about. He talked about Fargo Road. You saw his  
7 thoroughness, his conviction. His cleverness about  
8 that.

9 So who do you believe about that dinner?  
10 Maybe start right there. Maybe start right there  
11 and decide do I believe Jess Santamaria, who did  
12 tell you his life history. It's not an easy thing  
13 for anybody to do, come in here and do that. This  
14 case demanded that.

15 Now, why did Jess Santamaria file suit? Is  
16 this about the thickness of his skin? Is this  
17 about, gee, the guy did You on a radio show, why  
18 are you pursuing this? Mr. Santamaria gave you an  
19 answer to that and then I think the jury asked  
20 another question about it, like the timing of it.  
21 And he explained that he didn't want it to  
22 interfere with the election.

23 THE CLERK: You've used up your 35 minutes  
24 altogether.

25 MR. MARIANI: Okay. Let me use a few more.

1 Remember his answer. His answer was the  
2 anguish that was caused by this. That was part of  
3 the answer. But the other part of the answer was  
4 because he was brought up that when good men do  
5 nothing, we have a problem in this country. And  
6 Mr. Santamaria realized that he had the obligation  
7 to bring this lawsuit because if he's going to be  
8 attacked and defamed, everybody's going to be  
9 defamed and we're never going to have any useful,  
10 productive, good representatives. He said I think  
11 we'll have among the bad because they're the only  
12 people who will want to run. The good people won't  
13 run. Think about that.

14 I'm going to sit down now and I have a few  
15 more minutes, then I will come back after you hear  
16 defense's comments. Thank you.

17 THE COURT: Ladies and Gentlemen, do you need  
18 a five-minute break?

19 A JUROR: I do.

20 THE COURT: We're in recess for five minutes.

21 (A brief recess was taken.)

22 (Proceedings continued in Volume IV of the  
23 same day.)

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