

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 VI  
(Pages 657-703)

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

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

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

5 THE COURT: Have a seat. All right.

6 MS. KITTERMAN: Yes, Your Honor.

7 THE COURT: All right. Let's get set up.

8 Bring them in.

9 (The Jury entered the courtroom after which  
10 the following proceedings were held:)

11 THE COURT: Have a seat if you would. Thank  
12 you.

13 Miss Kitterman, you may proceed with your  
14 final argument.

15 MS. KITTERMAN: Thank you, Your Honor.

## DEFENDANT'S CLOSING ARGUMENT

17 MS. KITTERMAN: Good afternoon, ladies and  
18 gentlemen. I first want to take a second to thank  
19 you for your time. I know that this is a long  
20 process and you haven't chosen the subject matter  
21 to sit through for three days, but I would like you  
22 to know that both, I'm sure, plaintiff as well as  
23 defendant appreciates your time and your paying  
24 attention to this matter.

25 As I said when I first got up here to talk to

1 you, this matter is about the First Amendment of  
2 the United States. The First Amendment has given  
3 us the right to freedom of speech. There is a  
4 reason we have a right to freedom of speech. There  
5 is a reason that we have the right to publicly  
6 question or look into the qualifications of a  
7 candidate. There is a reason because if we're not  
8 doing it, who is going to do it?

9 We're a government by the people for the  
10 people. And if our people are not looking into our  
11 government and determining whether or not they're  
12 convicted of felon, whether or not their birth  
13 certificate is authenticated, if we're not able to  
14 do these things, that's why we have a First  
15 Amendment.

16 The First Amendment of the Constitution  
17 specifically says that Congress shall make no law  
18 respecting an establishment of religion or  
19 prohibiting the free exercise thereof abridging the  
20 freedom of speech or the freedom of the press or  
21 the right of the people to peacefully assemble and  
22 to petition the government for a redress of  
23 grievances. It's a First Amendment. It's the  
24 reason we have it.

25 Our forefathers established that

1 First Amendment to our Constitution. The document  
2 is the supreme law of our land and it's to ensure  
3 that every citizen has their voice to opinion and  
4 question authority.

5 The United States of America was founded on  
6 some very strong principles of individual rights.  
7 No stronger principle defines us than our society  
8 and our right of freedom of speech. Some of our  
9 brothers, our sisters, our fathers, our mothers,  
10 our children have fought long and hard to keep  
11 these freedoms that we have known to love our  
12 entire lives.

13 The matter before you is not just an issue of  
14 whether somebody asked a question that offended  
15 another person in the course of a political  
16 contest. The question before you is whether or not  
17 Andy had the right to question whether or not our  
18 commissioner was a convicted felon.

19 The plaintiff has the burden to prove, it's  
20 not Mr. Schaller's burden to prove that he didn't  
21 know. Plaintiff has to prove that Mr. Schaller  
22 knew that Mr. Santamaria was not a convicted felon  
23 when he published that information.

24 The plaintiff has provided you documents,  
25 testimony, evidence, even without regard to



1 Mr. Schaller's testimony. None of the evidence or  
2 the facts or the documents show that Mr. Schaller  
3 knew that that felony judgment did not relate to  
4 Mr. Santamaria.

5 So then we can turn to the serious doubt,  
6 whether or not Mr. Schaller had serious doubt. Not  
7 only did plaintiff not put on any evidence that  
8 proved that Mr. Schaller had serious doubts,  
9 Mr. Schaller himself testified that he thought that  
10 it could be true. And whether or not plaintiff's  
11 counsel thinks that his story is ridiculous, is  
12 irrelevant, that's Mr. Schaller's story. And the  
13 plaintiff did not give you any information that  
14 would rebut that.

15 And it's the plaintiff's burden to prove to  
16 you by clear and convincing evidence that he knew  
17 or he should have known that that felony record did  
18 not relate to Mr. Santamaria. And why should  
19 Mr. Schaller have known that the felony record  
20 didn't relate to Mr. Santamaria? Because  
21 Mr. Santamaria has said that he had an excellent  
22 reputation? Because he's well established in the  
23 community because he's a wealthy man? Because he's  
24 a politician? I believe we've all heard of wealthy  
25 politicians that have been convicted of felonies.

1           So it is possible, it is possible that  
2           somebody could have been convicted of a felony  
3           years and years ago that nobody's talked about,  
4           that Mr. Schaller never heard about it. He  
5           testified that in 2006 is the first time he's heard  
6           of Mr. Santamaria. So how he could have heard it  
7           back in 1991, when the felony record actually  
8           happened?

9           When candidates enter the political race, the  
10          State of Florida does not do a background check on  
11          your candidates. They don't ask for your Social  
12          Security number, your driver's license, your  
13          voter's registration card. You heard Mr. Schaller  
14          testify that he was told it was his duty to do the  
15          background search.

16          You can't even get FP&L or electric or cable  
17          without your Social Security card, but our  
18          candidates can run without providing it, our  
19          candidates can do this without a background search.  
20          So Mr. Schaller looked into the background of  
21          Mr. Santamaria. Is he guilty of looking into the  
22          background of a candidate? Absolutely. That's  
23          what he was supposed to do.

24          Unless a political opponent looks into the  
25          background or unless the media tells us about the

1 background or unless somebody brings out the  
2 background, we're never going to know. It's up to  
3 us to do the proper due diligence on the candidate.

4 Andy never desired to run for  
5 County Commissioner. It's not been his goal.  
6 That's not what he wanted to do when he grew up.  
7 He had to run or he decided he wanted to run  
8 because of his experience with the  
9 County Commission. It's been years and years he  
10 has been dealing personally with the  
11 County Commission and specifically with  
12 Mr. Santamaria because that's his commissioner.

13 He wasn't happy with the result. He's told  
14 you that he wasn't happy with the result. So he  
15 decided to run. But he also told you he didn't  
16 have a problem with Mr. Santamaria personally.  
17 This was not a personal attack. He wasn't trying  
18 to go after Mr. Santamaria's family. He wasn't  
19 trying to bring out the rumors that he heard on the  
20 campaign trail. He was trying to seek information  
21 about Mr. Santamaria, who is a public official. He  
22 had the right to do that.

23 Counsel has tried to tell you that  
24 Mr. Schaller conveniently remembered this long  
25 dinner conversation. That's not what Mr. Schaller

1 testified to. He testified that he had a happy  
2 hour, he met Mr. Santamaria for a happy hour and  
3 they were engaging in casual conversation. At that  
4 time, he testified that is when Mr. Santamaria told  
5 him his name was Jesus. This is not the first time  
6 in this case that Mr. Schaller has stated that.  
7 Mr. Schaller stated that in his deposition  
8 testimony, which was given prior to  
9 Mr. Santamaria's testimony.

10 This case is not -- or this trial was not the  
11 first time Mr. Schaller heard Mr. Santamaria's  
12 past. It's been going on this entire time. He's  
13 known it ever since he went to happy hour.

14 Opposing counsel also tried to tell you that  
15 isn't it ironic that Ms. McConnell came in here and  
16 testified that Andy would twist the facts and now  
17 when Andy gets up on the stand, he says he would  
18 have fired Ms. McConnell. He would have told you  
19 that if he had got the opportunity to go up on the  
20 stand first. But it's not the way the trial works.

21 The way the trial works is the plaintiff goes  
22 first because the plaintiff has the burden of  
23 proving to you that their case is a legitimate one,  
24 that Andy published this information with knowledge  
25 or serious doubts as to the truth of the matter.

1           In Florida, actual malice, which is what  
2           we're talking here for a public official, no matter  
3           how gross the untruth is, no matter however ill  
4           will, it still can be protected by the  
5           First Amendment. Ill will is different than actual  
6           malice under a defamation test. An intention to  
7           portray a public figure in a negative light, even  
8           when motivated by ill will or evil intent is not  
9           sufficient to show actual malice.

10           Mr. Schaller testified that he had no ill  
11           will toward Mr. Santamaria, that he had no motive  
12           to hurt Mr. Santamaria. Mr. Santamaria hasn't  
13           presented any evidence that Mr. Schaller had ill  
14           will or a motive or that he knew that the felony  
15           record was not Mr. Santamaria or that he had  
16           serious doubts.

17           This country has protected freedom of speech  
18           of public officials because it's the only way to  
19           ensure that the best people are elected to  
20           represent us in the government and that we put them  
21           through the strictest scrutiny to preserve our  
22           integrity as a community. Mr. Schaller did what  
23           the State of Florida would not do and he  
24           investigated his opponent. And he investigated his  
25           opponent not just on a felony record, but on

1 potential abuses of power that Mr. Santamaria was  
2 committing while in office.

3 I went through the request for inquiry with  
4 Mr. Santamaria. And you may recall that most of  
5 those inquiries, he agreed that they were -- they  
6 were false. He said that they were true, the  
7 information within the request for inquiry was  
8 true, but it was twisted truths.

9 The request for inquiry, when you have a  
10 chance to look at it back when you're in  
11 deliberating and you take a look through it, you  
12 will see that there are no statements, it's all  
13 questions. Did Mr. Santamaria violate a provision  
14 here, did he violate a provision there.

15 While a question could be actionable if it's  
16 implicating that somebody has committed a crime in  
17 this example, but the case law dealing with that,  
18 it's not when did you stop beating your wife. The  
19 question in the case law is, is when did you stop  
20 beating your wife. It's not did you beat your  
21 wife?

22 There's a big difference. If you're making a  
23 question that has an implication, it's when did you  
24 stop beating your wife? You're implying that  
25 you're beating your wife. When you say, do you

1 beat your wife? That's not an implication, it's a  
2 question, simple.

3 The request for inquiry, all of the  
4 documents -- most of the documents that went into  
5 that came from Mr. Santamaria's office through  
6 public records requests. All of those pages and  
7 all of that information that came from  
8 Mr. Santamaria's office is what's he's calling,  
9 Mr. Santamaria is calling distortion, lies,  
10 falsehoods. All of that information came from him,  
11 not Mr. Schaller.

12 Mr. Schaller didn't make it up. He didn't  
13 create e-mails that came from Mr. Santamaria's  
14 office. He didn't create the business card that  
15 Mr. Santamaria approved his assistant to use the  
16 County logo. Mr. Schaller didn't create any of  
17 that. And you heard Mr. Santamaria testify that  
18 it's common sense that he's allowed to use the  
19 logo, he doesn't need permission. He just  
20 basically did whatever he wanted. And that's what  
21 the request for inquiry was about.

22 With that business card, he also testified  
23 that he gave his assistant the title executive  
24 assistant. However, the County doesn't recognize  
25 executive assistants. The County labeled him as a

1 secretary. So, again, Mr. Santamaria just created  
2 his own position, did what he wanted, used his own  
3 common sense rather than what the County said.

4 And in Mr. Santamaria's testimony, you heard  
5 him, he's given sworn documents to this Court, he's  
6 admitted during this trial that they are factually  
7 incorrect. He was confused over the documents that  
8 bore his signature testifying to his birth name,  
9 his baptismal name, his legal name. His own  
10 testimony under oath about his name was factually  
11 incorrect, his name.

12 Mr. Santamaria is the one that's twisting the  
13 truth. Mr. Santamaria is the one that changes  
14 things to fit his own agenda. Mr. Santamaria also  
15 testified that the offense report contained in that  
16 request for inquiry, the Sheriff's deputy twisted  
17 the truth. The Sheriff's deputy. Mr. Schaller  
18 didn't know the deputy. Mr. Schaller didn't create  
19 the offense report. So now it's the Sheriff also  
20 twisting the truth.

21 Mr. Santamaria also testified that the sign,  
22 the political sign that he manufactured, that  
23 wasn't his fault either, that was the printer's  
24 fault. The printer followed his directions, but  
25 the printer should have known that that's not how



1 he should have done it. That was his fault, it  
2 wasn't Mr. Santamaria's fault. Once again, he's  
3 not taking responsibility for his own actions.

4 As a County Commissioner, Mr. Santamaria has  
5 testified that he used common sense instead of  
6 referring to established, voted upon County  
7 policies and procedures. Mr. Santamaria's version  
8 of common sense.

9 The County has been in existence for over a  
10 hundred years and it's figured out how to best  
11 serve the public, but Mr. Santamaria believes that  
12 he can use his trusted, elected position in the  
13 manner he deems best.

14 Perhaps the most egregious testimony from  
15 Mr. Santamaria was when he said, as his -- as an  
16 elected official, as a County Commissioner, when he  
17 is presiding over a quasi judicial hearing, he is  
18 supposed to be unbiased until he hears the  
19 evidence. He sat up here and testified that he  
20 made up his mind prior to that hearing. Not only  
21 did he make up his mind, he bussed in opponents.  
22 Imagine what that's like. An applicant walks into  
23 a County Commissioner and asks for work, asks for a  
24 variance, asks for something, and your  
25 County Commissioner has already decided against you

1 without evidence, without a vote, without anything.

2 Mr. Santamaria has also called himself a  
3 one-man governmental watchdog. He ran because he  
4 was sick of Corruption County. Yet after he was  
5 elected, all of the things that are contained in  
6 that request for inquiry, with the exception of the  
7 felony record, were things that he did while he was  
8 in office. He has left no stone unturned on who he  
9 would blame or accuse of doing things when they  
10 don't -- people don't agree with him.

11 You've heard that he has filed several  
12 lawsuits. He files lawsuits against people who  
13 don't agree with him, anybody who opposes him. He  
14 supports people in campaigns who opposed him -- who  
15 supported his opposers. And you will see all of  
16 that within the advertisements that we entered into  
17 evidence.

18 Mr. Santamaria also testified that  
19 Dennis Lipp, his assistant was using the County  
20 equipment for his second job as vice mayor of the  
21 Town of Loxahatchee Groves. He wasn't doing that  
22 with Mr. Santamaria's permission, he wasn't doing  
23 that in compliance with the County rules, but  
24 Mr. Santamaria claimed it was an accepted practice  
25 so common sense said it was okay. Again, these are

1 all things that have happened while he was in  
2 office.

3 And then if we turn to Exhibit 2 that's  
4 within the record, and you take a look at that  
5 felony record, and you heard Mr. Santamaria testify  
6 there is nothing on that felony record that  
7 identifies it wasn't him. Nothing. There's not a  
8 birth date, there's not an address, there's not a  
9 driver's license number, there's not a Social  
10 Security number, nothing. He, in fact, didn't even  
11 say that it wasn't him because the name was  
12 Jesus R. Santamaria. He said nothing. But yet  
13 Mr. Schaller should have known that it wasn't him.  
14 Why? Because he's an elected official? Because  
15 he's wealthy?

16 Mr. Santamaria has the burden to proof. He  
17 has to prove, again, by clear and convincing  
18 evidence that Mr. Schaller knew or had serious  
19 doubts as to that felony record. Clear and  
20 convincing evidence, we discussed, that evidence is  
21 precise, explicit, lacking in confusion and of such  
22 a weight that it produces a firm belief or a  
23 conviction without hesitation about the matter in  
24 issue. Plaintiff hasn't produced any evidence to  
25 support clear and convincing allegations.

1           Counsel just directed you to look at the Palm  
2 Beach County Commission on Ethics, the ruling that  
3 came from that agency. He stated for you to look  
4 at the section where Palm Beach County Commission  
5 on Ethics stated Santamaria is a convicted felon.  
6 Mr. Schaller didn't print that. There was the  
7 Commission on Ethics. And you can go further to  
8 review that entire document and it will say they  
9 didn't rule on anything, they didn't have the  
10 jurisdiction. It doesn't mean Mr. Santamaria is  
11 not guilty of all of the other things that are in  
12 that request for inquiry, it means that they did  
13 not have jurisdiction. That's it.

14           When Mr. Schaller testified that he gave the  
15 felony record to his campaign manager to look into  
16 the -- to find out whether or not this was  
17 Mr. Santamaria, counsel just stated that  
18 Mr. Schaller testified that he said to his campaign  
19 manager, go to the courthouse. That's not what  
20 Mr. Schaller testified. He testified he didn't  
21 know where to go. He testified he didn't know  
22 where to get the document.

23           And I know that my client is probably honored  
24 and privileged and humbled by plaintiff's  
25 allegations that he's such a smart, brilliant

1 researcher. But if he doesn't know where the  
2 courthouse is because this is not his business, he  
3 doesn't know where the courthouse is. Not only  
4 that, he had testified, Mr. Schaller testified that  
5 he did not even know if the case file would still  
6 exist on something from 1991. He didn't know. He  
7 didn't know if there would be a case file on it.  
8 If there was, he didn't know where to get it.

9 And, yes, he was told by Mr. Santamaria's  
10 daughter that it was not Mr. Santamaria. And he  
11 took her at her word. Whether or not she thinks  
12 that he was being sarcastic, he took her at her  
13 word. And his first opportunity, he corrected it.  
14 The request for inquiry was published on his  
15 website when he first published it.  
16 Michelle Santamaria, who does not control the  
17 website, she's not a webmaster, she's the only one  
18 that testified that she thinks it was posted on  
19 September 19th. There is no actual evidence of  
20 that.

21 But there is evidence that once Mr. Schaller  
22 retracted it on Mr. Farell's radio show, he  
23 published that on his website immediately because  
24 he wasn't trying to harm the commissioner. He  
25 wasn't trying to malign him. He wasn't trying to

1 hurt him. He had no ill will or motive. He was  
2 exercising his First Amendment right. He was  
3 looking into one of our public officials and their  
4 fitness for office and whether or not they were  
5 qualified to keep that office.

6 And when we go into whether or not he had  
7 serious doubts, counsel had stated time and time  
8 again, reckless disregard for searching for whether  
9 or not that document was true. Courts have  
10 actually held that a defendant in a defamation case  
11 does not have a duty to fully investigate an  
12 alleged defamatory statement before publication.  
13 He doesn't have the duty. He did what he could do  
14 and that's it.

15 Reckless conduct is not measured by whether a  
16 reasonably prudent man would have published or --  
17 or would have investigated before publishing.  
18 There must be sufficient evidence to permit the  
19 conclusion that the defendant, the defendant, in  
20 fact, entertained serious doubts as to the truth of  
21 the publication.

22 There is testimony that he didn't. He  
23 thought that it could be Mr. Santamaria who is  
24 asking a question, who is trying to find out. Mere  
25 proof -- case law says mere proof of failure to

1 investigate without more cannot establish reckless  
2 disregard for the truth. That's the law. It  
3 states Mr. Schaller had to act with a high degree  
4 of awareness that the felony judgment was probably  
5 false.

6 The reason that we have this First Amendment  
7 protection with regard to our public officials as  
8 the U.S. Supreme Court has told us, First Amendment  
9 right to engage in the discussion of public issues  
10 and vigorously and tirelessly to advocate his own  
11 election and the election of other candidates is  
12 protected.

13 In reviewing political statements, courts  
14 must read the entire publication in context, not  
15 simply the offending words. What are the offending  
16 words? Does Santamaria have a felony judgment.

17 First, I submit to you that that is not a  
18 statement, that is not an implication. It's a  
19 question. But I will go a step further and state  
20 that that question has to be reviewed in the  
21 entire -- with the entire document, the entire  
22 request for inquiry, which are all questions. And  
23 you will have the ability to look at that when you  
24 go back to deliberate.

25 Once again, I would like you to remember that

1 this is the plaintiff's burden to prove. This is  
2 the plaintiff's burden to prove with clear and  
3 convincing evidence that Mr. Schaller knew or had  
4 serious, serious doubts as to the truth. There is  
5 no evidence to prove that.

6 So when you go back and deliberate, I ask  
7 that you find the right way, that you find that you  
8 protect the First Amendment right and allow us to  
9 continue to research into the backgrounds of our  
10 public officials without fear of being drug into  
11 court to answer for it. Thank you for your time.

12 THE COURT: All right, counsel. All right,  
13 Mr. Mariani, I believe you have the last word in  
14 this matter.

15 MR. MARIANI: Thank you very much,  
16 Your Honor.

17 PLAINTIFF REBUTTAL CLOSING ARGUMENT

18 MR. MARIANI: Let's make sure nobody is on  
19 the wrong page. Plaintiff wanted and would be  
20 happy for Mr. Schaller to look into whatever he  
21 wants to look into. Looking into background,  
22 he's -- counsel told you he had a duty, that when  
23 he went to the office, he found out he had a duty  
24 to do his own due diligence. That's the phrase she  
25 used. Due diligence, think about that phrase in



1 this case. It's a very interesting phrase to use.

2 Do you think Mr. Schaller with his skills did  
3 due diligence in searching the background of  
4 Mr. Santamaria as it relates to Exhibit 2, or do  
5 you think he decided to stop short, that once he  
6 found that one document -- and we'll never know  
7 what else he had. Let's be pragmatic here. We  
8 cannot get inside of Mr. Schaller's head. And he  
9 may have had all sorts of documents. But the law  
10 would provide that if he stopped short, if he  
11 intentionally did not know or if he hid his sight,  
12 I don't want to see it, right, somebody turns their  
13 head, I don't want to see that, don't show me, I  
14 don't want to know, you can consider that. That is  
15 what happened in this case, Mr. Schaller somehow  
16 found that one document and then chose not to go  
17 any further. And he was not at all disappointed  
18 when his assistant didn't go any further. He  
19 testified to that. She didn't do anything, so he  
20 published it.

21 So how would you consider that due diligence?  
22 It seems to me that that decision to stop is really  
23 what this case is about. Is that acceptable in  
24 this society? Because he did cross the line. The  
25 law will tell you that labeling somebody a

1 convicted criminal, a convicted felon, that is  
2 crossing the line.

3 So he crossed the line. Now he says give me  
4 a free pass because I didn't know what I was doing.  
5 That's where this case is. He's saying, I didn't  
6 have doubt. You have to evaluate whether you think  
7 the evidence shows that in reality, with all of the  
8 obviousness that we think is in the record and with  
9 these other issues, meaning his thoroughness, his  
10 ability to find out things, counsel just testified  
11 about police reports. Yet this man doesn't know  
12 where the courthouse is. He can get anywhere else  
13 in the world he wants to go to get information, but  
14 somehow he doesn't know where the Palm Beach County  
15 Courthouse is. We find that incredible. We  
16 suggest that you find that incredible, too. It  
17 just doesn't pass muster.

18 He published September 13th. We make a point  
19 of the website because after September 13th,  
20 Mr. Santamaria's daughter on September 15th,  
21 confronted Mr. Schaller. On September 19th, as you  
22 saw on his website, that's when it showed a follow  
23 up and it showed articles about the September 13th  
24 publication. We view that as a republication on  
25 September 19th.

1           As I said earlier, this case is not about a  
2 retraction. This case is about what happened. And  
3 what happened is Mr. Schaller published the  
4 defamatory material on September 13th, and he  
5 published it again on his website on  
6 September 19th, after Michelle Santamaria on  
7 September 15th confronted him with all of that  
8 information, which he, quote, took at face value.

9           If he took it at face value, why didn't he  
10 take it out before he published it on September 19?  
11 The answer is because he wanted to try to win the  
12 election and he knew that Jess Santamaria was going  
13 to be very, very difficult to unseat, and his only  
14 chance was to throw a bomb and try to link  
15 Mr. Santamaria with other commissioners who had  
16 been either sent to jail or what have you.

17           So he puts this in a form like this and what  
18 does he do with it? He signed, standing across the  
19 street about 200 yards from here. Incidentally, he  
20 was facing this courthouse. Maybe you saw that in  
21 the video of his website. He was literally facing  
22 this building when he announced this, and he  
23 doesn't know where the building is. Consider that  
24 in terms of his believability.

25           But he distributed this not only on the

1 website, but also he sent it to the Federal Bureau  
2 of Investigation. He sent it to the Governor's  
3 Office. He sent it to the State Attorney's office.  
4 He sent it to the Florida Commission on Ethics. He  
5 sent it to the Palm Beach County Inspector General.  
6 He sent it to the Palm Beach County Commission on  
7 Ethics and the Florida Division of Elections.

8 He sent it everywhere he could to get as many  
9 different investigations as he could. And what  
10 have they done in this case? They've tried to  
11 retry Mr. Santamaria on all these other allegations  
12 in Exhibit 1 that we've never brought into this  
13 suit. The reason this booklet is in the record is  
14 because this is the vehicle through which  
15 Mr. Schaller defamed Mr. Santamaria. This is and  
16 all the evidence you heard, the totality of the  
17 circumstances. You need to consider -- and counsel  
18 says these are all questions.

19 You look at it and fairly look at this and  
20 decide is this really somebody trying to ask  
21 questions or is this someone saying, I've done an  
22 investigation and these are all the things that I  
23 have found out that I believe are wrong. And,  
24 again, we're not suing on 117 pages of this. The  
25 lawsuit is based on the fact that on Page 76 of

1 this, he chooses to label Mr. Santamaria a  
2 convicted felon. That's devious, that is crossing  
3 the line.

4 Free speech. We talked about free speech.  
5 We can talk about free speech forever. This case  
6 is not about free speech. This case is about  
7 crossing the line. Mr. Schaller does not have the  
8 privilege to defame anyone, whether it's a public  
9 official or it's someone else. When he defamed  
10 Mr. Santamaria, we have the burden to show you that  
11 Mr. Schaller defamed with either knowledge or with  
12 serious doubt.

13 And we talked about the definition of serious  
14 doubt. So it's not what you want to say serious  
15 doubt is, I say that very respectfully. And it's  
16 not what I want to say serious doubt is. But  
17 please think about all of the circumstances, all of  
18 the information, and think about Mr. Schaller and  
19 think about this dinner, happy hour dinner he said  
20 he was with him, whatever. Mr. Santamaria said  
21 that didn't happen.

22 Who is more likely lying? Nobody said they  
23 didn't remember, they both had a memory. Those  
24 memories are directly opposite each other. This is  
25 not about recall. You decide who was telling the

1 truth on that issue and on all of the other issues  
2 in the case.

3 If he looked into the background of  
4 Jess Santamaria, and if he had taken one more step,  
5 one step with respect to Exhibit 2, he would have  
6 known the truth conclusively. He chose to stop one  
7 step short of knowing the truth. Is that the type  
8 of person -- there's a difference between not doing  
9 enough investigation because you're a reporter and  
10 you run out of time --

11 THE CLERK: You have two minutes left.

12 MR. MARIANI: -- and someone intentionally  
13 stopping and not finding out the truth.

14 We submit to you that the record shows that's  
15 what happened here, that Mr. Schaller stopped. And  
16 he stopped because he had something to put in  
17 Exhibit 1 to give it a little more flavor. He  
18 wanted spice. So he went out and he searched and  
19 he found something that he realized he could  
20 connive, because he is very crafty in a way, to put  
21 it together and, you know, cause confusion with it.  
22 That we think is serious doubt under the legal  
23 standard.

24 I thank you for your time. I ask you to do  
25 what you believe is the right thing to do. And

1 you've heard no testimony, you've heard no request  
2 for a dollar figure in this case. You saw in the  
3 jury verdict -- or, excuse me, in the jury form, it  
4 says you have to decide. We think the evidence  
5 shows defamation. We think all of our obligations  
6 of proof have been met, and we believe you should  
7 find that the defendant is liable for defamation of  
8 Mr. Santamaria. You decide after that what amount  
9 is appropriate. We're not here to talk about that.  
10 We're here to leave you to what you think is the  
11 appropriate thing to do.

12 We thank you very much for your service and  
13 we ask you to do this for Palm Beach County. We  
14 need to start drawing these lines. We need to save  
15 our community from these unnecessary violations of  
16 people's rights, whether they are public officials  
17 or not. It is not fair game to shoot down good  
18 people just because they happen to be in office,  
19 especially this person who has served the community  
20 for decades. Thank you.

21 THE COURT: All right, Counsel.

22 Now, members of the jury, you've now heard  
23 all of the evidence in this case and my  
24 instructions of the law that you must apply in  
25 reaching your verdict and now the closing arguments

1 of the attorneys. And you're going to shortly  
2 retire to the jury room to decide this case, but  
3 before you do so, I'm going to give you a few more  
4 instructions.

5 Now, during your deliberations, you must  
6 communicate with each other about the case and only  
7 when all the jurors are present in the jury room.  
8 You will have in the jury room all of the evidence  
9 that was received into evidence. And in reaching  
10 your decision, do not do any research on your own  
11 or as a group. Do not use the dictionary, the  
12 Internet or any other reference materials. And  
13 I've admonished you about this during the course of  
14 the trial.

15 Do not investigate this case or conduct any  
16 experiments. Do not visit or view the scene or do  
17 anything whatsoever and especially do not go on the  
18 Internet. In fact, when you go back to deliberate,  
19 we're going to take all of your electronic devices.  
20 They'll be available for you when you come back.  
21 But while you're deliberating, you're not allowed  
22 to take those in with you.

23 Now, all of the jurors must see and hear the  
24 same evidence at the same time. So you're not to  
25 read or listen to any or watch any news accounts of



1 this or read any publications about this case.  
2 You're not to communicate with any persons outside  
3 of this jury about this case.

4 And until you've reached your verdict, you  
5 must not talk about this case in person or through  
6 a telephone or via electronic communications such  
7 as a blog, twitter, e-mail, text messages or any  
8 other means. And you're not to contact anybody to  
9 assist you in this matter. These communication  
10 rules apply until I discharge you at the end of the  
11 case, at the end of this case.

12 Now, if you become aware of any of these  
13 violations, it's very important that you make me  
14 aware of those through the bailiff so that I can  
15 take the necessary action.

16 Any notes that you have taken during the  
17 course of this trial, you may take with you back  
18 when you go in your deliberations. Your notes are  
19 simply an aid to your memory, and neither your  
20 notes nor those of any of the other jurors are  
21 binding or conclusive. Your notes are not a  
22 substitute for your own memory or that of another  
23 juror. Instead, use the verdict -- instead, your  
24 verdict must result from the collective memory and  
25 judgment of all jurors based on the evidence and

1 the testimony that was presented during this trial.

2 At the conclusion of this trial, as I told  
3 you before, the bailiff is going to collect your  
4 notes and your notes will be destroyed. No one  
5 will ever read your notes including myself.

6 Now, in reaching your verdict, do not let  
7 bias, sympathy, prejudice, or public opinion or any  
8 other symptom for or against any party influence  
9 your decision. Your verdict must be based on the  
10 evidence that has been received and the law in  
11 which I have instructed you.

12 Now, reaching a verdict is exclusively your  
13 job. I cannot participate in that decision in any  
14 way and you should not guess what I think your  
15 verdict should be from something that I have either  
16 said or have done. You should not think that I  
17 prefer one verdict over another and, therefore, in  
18 reaching your verdict, you should not consider  
19 anything that I have said or done except for my  
20 specific instructions to you.

21 Now, I want you to pay careful attention to  
22 all of the instructions that I gave you, for that  
23 is the law that you must follow. Now, you're going  
24 to have a copy of these instructions when you go  
25 back to the jury room to deliberate. All of the

1 instructions are important and you must consider  
2 them all together. There are no other laws that  
3 apply in this case. And even if you do not agree  
4 with the laws, you must use them in reaching your  
5 decision in this case.

6 Now, after you have decided what the facts  
7 are, you may find that some of these instructions  
8 do not apply. In that case, just follow the  
9 instructions that do apply and use them together  
10 with the facts to reach your verdict.

11 Now, when you go to the jury room, the first  
12 thing you should do is to choose a presiding juror  
13 to act as your foreperson during your  
14 deliberations. The foreperson should see to it  
15 that your discussions are orderly and that everyone  
16 has a fair chance to be heard. It's your duty to  
17 talk with one another in the jury room and to  
18 consider the views of all of the jurors. Each of  
19 you must decide the case for yourself, but only  
20 after you've considered the evidence with the other  
21 members of the jury.

22 I want you to feel free to change your mind  
23 if you are convinced that your position should be  
24 different. But you should all try to agree. Do  
25 not give up your honest beliefs just because others

1 think differently. I want you to keep an open mind  
2 so that you and your fellow jurors can easily share  
3 ideas about this case.

4 Now I'm going to give you a verdict form that  
5 has the questions that you're going to have to  
6 answer. I've already instructed you on the law  
7 that you have to use in answering these questions.  
8 You must follow those instructions and the form  
9 carefully. You must consider each question  
10 separately and you're going to answer them in the  
11 order that they appear. And after you've answered  
12 the question, the form tells you what to do next.

13 Now I want you to pull out your verdict form  
14 for me. And you will see here on the left-hand  
15 side of the verdict, that's what we refer to as the  
16 style of this case. It's Jess R. Santamaria,  
17 Plaintiff, versus Andrew F. Schaller, Defendant.

18 Verdict: We the Jury return the following  
19 verdict. Question 1: Was Andrew Schaller's  
20 statement concerning Jess Santamaria a false  
21 statement of fact that Jess Santamaria committed a  
22 crime by the greater weight of the evidence? And  
23 there is a place for yes and a place for no.

24 Now, if your answer to Question 1 is yes,  
25 then I want you to proceed to Question 2. If your

1 answer to Question 1 is no, then your verdict is  
2 for the defendant and you should proceed no further  
3 except to date and sign the verdict form and return  
4 it to the courtroom.

5 Question 2: At the time the statement was  
6 made, did Andrew Schaller act with actual malice,  
7 meaning that he knew the statement was false or had  
8 serious doubts as to its truth by clear and  
9 convincing evidence? There is a place for a yes  
10 and a place for a no.

11 Now, if your answer to Question 2 is yes,  
12 then you proceed to Question 3. If your answer to  
13 Question 2 is no, then your verdict is for the  
14 defendant and you proceed no further except to date  
15 and sign this verdict form and return it to the  
16 courtroom.

17 Question 3: If you find that Andrew Schaller  
18 made a false statement about Jess Santamaria that  
19 alleges that Jess Santamaria committed a crime, you  
20 shall award Jess Santamaria an amount of money you  
21 consider appropriate. The amount of damages  
22 awarded, there's a dollar sign and a line. So say  
23 we all. Today is the 4th day of April, 2012. And  
24 there's a place for your Foreperson to sign.

25 Now, your verdict must be unanimous; that is,

1 your verdict must be agreed to by each of you. And  
2 when you finish filling out this form, your  
3 Foreperson must write and date and sign it at the  
4 bottom and return it by knocking on the door. You  
5 will all come back out here. You'll give it to the  
6 bailiff, the bailiff will then give it to the  
7 clerk, where I will take a look at it and check it,  
8 make sure that there isn't any mistakes on it. And  
9 then I'll give it to the clerk and it will be  
10 published.

11 Now, if any of you do need to communicate  
12 with me for any reason, I want you to write me a  
13 note and give it to the bailiff. Now, in your  
14 note, I caution you, I don't want to know what your  
15 division is or whether you are split in your vote  
16 or the reason for your communication. I will then  
17 take the note, I will have the attorneys meet and  
18 we will go over it. And then I'll either give you  
19 a written response or I will have you all come out  
20 here and I will then give you an oral response.

21 Now, that concludes everything except for now  
22 you can retire to decide your verdict. But I'm  
23 going to ask you, Mr. Walker, I want you to take  
24 the only verdict form in. The rest of you leave  
25 your verdict form. And you're going to have to put

1 all of your cell phones and so forth up except for  
2 Miss Moore-Pirtle. I know that you have been very  
3 diligent throughout this, but you were the  
4 alternate in this particular case. And if for any  
5 reason any of these other jurors would have been  
6 unable to fulfill their duties, which happens quite  
7 frequently, there can be a family emergency,  
8 problems with automobiles, all kinds of things,  
9 then this would have all been for naught.

10 So the rest of you may now go back and retire  
11 and start your deliberations, except for you, I  
12 want you to stay here. I have a few more things I  
13 need to tell you; all right?

14 THE CLERK: The bailiff needs your cell  
15 phones, iPads, any electronics before you go inside  
16 of the jury room.

17 (The Jury retired to consider their verdict.)

18 THE COURT: Somehow this is always the most  
19 difficult thing to do because of the fact that I  
20 know people, good people like you have spent a few  
21 days and you've listened to all of the testimony  
22 and been very diligent and attentive. And we  
23 really, really do appreciate it. And on behalf of  
24 the 15th Judicial Circuit and on behalf of the Palm  
25 Beach Bar Association, we want to thank you for

1 your services.

2 The fact that you're not having the  
3 opportunity to go back and deliberate with these  
4 people doesn't diminish anything from those  
5 services and certainly doesn't diminish our  
6 appreciation. The Palm Beach Bar Association has a  
7 certificate of appearance -- I mean, a certificate  
8 of appreciation, which shows that you have  
9 fulfilled your duties as a juror. I personally  
10 want to thank you very much.

11 If for any reason you want to stay and  
12 listen, wait for the verdict, that's fine. If not,  
13 call my office tomorrow and we'll certainly let you  
14 know what that is if they are able to come to a  
15 conclusion tonight.

16 MS. MOORE-PIRTLE: Okay.

17 THE COURT: But you are now released from  
18 your duty of silence. If you want to discuss this  
19 with any of the parties, with anybody, you may do  
20 so. But nobody is going to force you to do that  
21 and nobody is going to initiate those  
22 conversations; all right?

23 MS. MOORE-PIRTLE: Okay.

24 THE COURT: With that, thank you so much and  
25 we appreciate all your efforts. And guess what,



1 they can't get you for at least another year.

2 Counsel, I need you up here to look at these  
3 documents and the exhibits that are going back. I  
4 want to read them on the record that is what's  
5 going back to the jury.

6 MS. MOORE-PIRTLE: Thank you.

7 (Alternate Juror excused.)

8 (Discussion held off the record.)

9 THE COURT: Do we have an agreement on the  
10 record as to what is going back?

11 MS. KITTERMAN: Yes, Your Honor.

12 THE COURT: Good luck to you and your  
13 clients. Very good job.

14 MR. MARIANI: Your Honor, in the unlikely  
15 event they have to come back tomorrow morning, how  
16 are we going to deal with that?

17 THE COURT: I'll take care of it one way or  
18 the other. My first responsibility is this.

19 MR. MARIANI: Thank you.

20 THE COURT: You're welcome. You want to take  
21 back your case law and everything.

22 MR. MARIANI: Sure.

23 (Court was in recess as the Jury  
24 deliberated.)

25 THE COURT: Take a seat, please. I

1 understand we have a verdict. Bring them in.

2 (The Jury entered the courtroom after which  
3 the following proceedings were held:)

4 BAILIFF: Take your seats.

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

7 All right. Does the jury have a verdict?

8 MR. LATOS: We do, Your Honor.

9 THE COURT: Would you hand that to the  
10 bailiff.

11 All right. I see that there is no errors or  
12 omissions on this. Would the clerk publish the  
13 verdict, please.

14 THE CLERK: "Verdict, Question Number 1, was  
15 Andrew Schaller's statement concerning  
16 Jess Santamaria a false statement of fact that  
17 Jess Santamaria committed a crime by the greater  
18 weight of the evidence? Yes.

19 "Question Number 2, at the time the statement  
20 was made, did Andrew Schaller act with actual  
21 malice, meaning that he knew the statement was  
22 false or had serious doubts as to its truth by  
23 clear and convincing evidence? No.

24 "So say we all this 4th day of April, 2012,"  
25 and the foreperson, that's Mr. Latos, Steven Latos.

1 THE COURT: Does either party wish to have  
2 the jury polled?

3 MR. MARIANI: I would, Your Honor. Thank  
4 you.

5 THE COURT: All right.

6 Ladies and Gentlemen, the clerk is going to  
7 ask each and every one of you if this is your  
8 verdict. I need a yes or a no.

9 THE CLERK: And I'm sorry if I mispronounce  
10 your names.

11 Humberto Gomez, is this your verdict?

12 MR. GOMEZ: Yes, sir.

13 THE CLERK: Steven Latos, is this your  
14 verdict?

15 MR. LATOS: Yes.

16 THE CLERK: Maricka Lazarevic, is this your  
17 verdict?

18 MS. LAZAREVIC: Yes.

19 THE CLERK: Miriam Riggle, is this your  
20 verdict?

21 MS. RIGGLE: Yes.

22 THE CLERK: Anne Brookins-Kelle, is this your  
23 verdict?

24 MS. KELLE: Yes.

25 THE CLERK: And Johnnie Walker is this your

1 verdict?

2 MR. WALKER: Yes.

3 THE COURT: All right. Ladies and gentlemen,  
4 I want to thank you on behalf of the 15th Judicial  
5 Circuit and on behalf of myself and all the people  
6 who participated in this trial.

7 You know, this whole process started way back  
8 in England when Englishman were fighting King John  
9 because he was taking their property away, he was  
10 throwing them in prison. And they said there were  
11 62 rights that every Englishman deserved. And  
12 right then and there was the first time that really  
13 in all of civilization, that juries became in  
14 control of their fate of what happens in the  
15 judicial system. And that was called the Magna  
16 Carta. And when we brought it over here across the  
17 pond, we expanded it into property rights. And  
18 that's that amendment. And it's kind of  
19 interesting that we dealt with the First Amendment  
20 today. So our Constitution is a living, viable  
21 organism, if you will, a document which we need and  
22 protect and always stand behind because it indeed  
23 is the backbone of our democracy.

24 I want to thank you. We appreciate very much  
25 your service, and I wish you nothing but the best

1 of luck in your future endeavors. Mr. Latos, thank  
2 you very much. Ms. Lazarevic, thank you so much.  
3 Thank you, also. Thank you, Ms. Kelle, thank you  
4 very much. And Mr. Walker, thank you, sir.

5 All right. Now, the nice thing about this is  
6 that you are now relieved from your duty of  
7 silence. If you wish to discuss this with anybody,  
8 you can do that, that's your prerogative. But one  
9 of the things that has always been private is what  
10 happened back there, that's up to you. If you  
11 don't want to talk about it, no one is going to  
12 force you to do so except by court order. That  
13 being said, you are discharged. Just leave your  
14 badges here. They can't get you for another year,  
15 but I do want to thank you very much for your  
16 service. And I hope that you appreciate just how  
17 hard we pull to bring you the best evidence so that  
18 you can make good decisions.

19 All right. That being the case, I want to  
20 let you go. Thank you again. Drive home safely.

21 (The Jury was excused and the following  
22 proceedings were held:)

23 THE COURT: Miss Kitterman, I will expect you  
24 to within 72 hours, do our administrative order to  
25 have a final judgment; all right?

1 MS. KITTERMAN: Yes, Your Honor.

2 THE COURT: Anything else that needs to be  
3 brought up to the Court before we adjourn?

4 MR. MARIANI: Not now, Your Honor. Thank  
5 you.

6 THE COURT: All right. We're in recess.  
7 Thank you.

8 (Trial concluded and court was adjourned at  
9 5:45 p.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH.

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

Dated this 14th day of July, 2012.

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PAMELA J. SULLIVAN, RPR, FPR, CLR