

1 IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN
AND FOR MANATEE COUNTY, FLORIDA

2 MARY LOU SMITH, an individual,
3 and SHARON DENSON, an individual,

4 Plaintiffs,

Case No.: 2008 CA 11315

5 vs.

6 TRAILER ESTATES PARK AND RECREATION
7 DISTRICT, an independent special
taxing district,

8 Defendants.

FILED IN OPEN COURT
THIS 11 DAY OF OCT. 2010
R.B. SHORE, CLERK
DC

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11 TRANSCRIPT OF PROCEEDINGS - VOLUME X

12 Before the Honorable Janette Dunnigan, Judge of
13 said Court, Twelfth Judicial Circuit of Florida,
14 at a hearing held at the Manatee County Judicial
15 Center, Room 6-E, 1051 Manatee Avenue West,
Bradenton, Florida, in the above-styled cause
on October 8, 2010 at 1:00 p.m. to 1:45 p.m.

16
17 APPEARANCES: KEVIN HENNESSY and
18 JENNIFER COWAN
Attorneys at Law
19 LEWIS LONGMAN & WALKER, PA
20 1001 3rd Avenue West, Ste. 670
Bradenton, FL 34205
21 Representing the Plaintiffs

22
23 PROFESSIONAL REPORTERS, INC.

24 330 South Orange Avenue 126 East Olympia Avenue
P.O. Box 1776 Suite 402
Sarasota, FL 34230-1776 Punta Gorda, FL 33950
25 (941) 951-6266 (941) 637-7747

ORIGINAL

1 APPEARANCES:

KURT LEE
ZACHARY ROSS
SCOTT RUDACILLE
Attorneys at Law
KIRK PINKERTON
50 Central Avenue
Suite 700
Sarasota, FL 34236

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7 (Volume X contains portions of the deposition of
Martha Brauer read aloud.)

8 (No exhibits were admitted in this volume.)
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1 THE COURT: Okay. Mr. Hennessy, call your
2 next witness.

3 MR. HENNESSY: Your Honor, at this time we
4 would read in the deposition transcript of the
5 District representative, Martha Brauer.

6 THE COURT: Okay.

7 MS. DORMAN: For the court reporter, I'm Lori
8 Dorman. I'm playing the part of Martha Brauer.

9 Your Honor, there are a few form objections
10 in here. And I'm not sure that counsel have
11 determined what they are going to do.

12 THE COURT: If you are the witness, let
13 counsel raise this issue.

14 MS. COWAN: There are several form objections
15 in here and they are from different counsel at the
16 time the individual Plaintiffs (sic) were still in
17 the matter.

18 Do you want me to simply read Mr. Shults'
19 objection to the form or do you want us to have
20 different individuals -- like, do you want Mr. Lee
21 to make that objection?

22 THE COURT: If I need to rule on the motion,
23 then just read the question and you can read the
24 objection as to form or whatever the objection is,
25 I'll rule on it and then decide whether or not she

1 can answer.

2 MS. COWAN: Okay.

3 THE COURT: You may proceed. If you will
4 identify the date of the deposition and whose part
5 you will be reading and whose part Miss Dorman will
6 be reading.

7 MS. COWAN: Okay.

8 THE COURT: Thank you.

9 MS. COWAN: This first section, the first few
10 sections I'm going to read from is from Volume I of
11 Martha Brauer's deposition dated May 20th, 2009.

12 I will be reading the questions that Kevin
13 Hennessy, counsel for the Plaintiffs, asked of
14 Martha Brauer as District representative.

15 THE COURT: Okay.

16 MS. COWAN:

17 (By Mr. Hennessy:)

18 Q. "Give me other examples of conversations
19 you've had with trustees on what you refer to as
20 administrative matters.

21 A. Conversations with John Vander Molen. When I
22 got ready to go a meeting one day and happened to turn
23 on the computer and saw that our -- we were locked out
24 of our website and there was an announcement on it, I
25 called John, said I might be late for the meeting, I

1 want to at least do a little research on this; and he
2 said, you know, we can do it after the meeting, come to
3 the meeting.

4 I would call John when there was a public
5 records review scheduled and -- with -- generally -- I
6 think the only ones we've had this year have been with
7 your -- your clients, and we would want to -- I don't
8 want to use the word "cover" the office, but T.J. feels
9 more comfortable when there's a Trustee there when a
10 public records review is going on because we're involved
11 in litigation. And so I would call John and we would
12 negotiate when (misread) he had a doctor's appointment
13 or whatever we might have so the office was covered.

14 Q. Okay. So either you or he are present when
15 public records requests are made by my clients?

16 A. At the beginning.

17 Q. At the beginning.

18 A. And Bob Durrin was also listed as one.

19 Q. Okay.

20 A. Because he was Second Vice.

21 Q. He's -- okay. So John Vander Molen is First
22 Vice Chair.

23 A. Uh-huh.

24 Q. I'm sorry?

25 A. Yes. Excuse me.

1 Q. Bob Durrin was Second Vice Chair?

2 A. Yes.

3 Q. Okay."

4 MS. COWAN: Who was (misread) the
5 Second --

6 Q. "Who is the Second Vice Chair now?"

7 A. I believe it's Gail Opper. She was elected
8 when I was not here.

9 Q. Okay. Okay. So you said that at first the
10 policy was that -- or the practice was that you or the
11 First or Second Vice Chair would be present when there
12 was a (misread) public records request (misread) by my
13 clients?

14 A. I wouldn't say that -- did you say
15 "practice"?

16 Q. Yeah. I mean, you can use whatever term you
17 want for it.

18 A. Okay. I believe T.J. was concerned that
19 there would be no trustee in the office.

20 Q. Uh-huh.

21 A. And she is the District (misread) manager,
22 but we are the managers of the District, if you want to
23 say it that way.

24 A. Uh-huh.

25 Q. So it became a practice, I guess is what I

1 would say, it -- I don't know that they had a particular
2 practice; I just responded to T.J.'s concern?

3 Q. Well, again, you said at that time it could
4 be Bob Durrin, he was also signed up for it.

5 A. Well --"

6 MR. LEE: Objection. Relevance, Judge, about
7 how the trustee is staying in the office.

8 THE COURT: Overruled.

9 MS. COWAN: (Reading)

10 (By Mr. Hennessy:)

11 Q. "What did you mean by that?

12 A. Well --"

13 MS. COWAN: Mr. Shults objected to form.

14 THE COURT: Overruled.

15 A. "At times when John and I -- I'm Chairman.

16 The first choice would be if I could be there. Second

17 choice would be if John could -- could be there. I'm

18 not an early morning person, so I would call John, ask

19 him if he would cover, because sometimes we didn't know

20 exactly when they were coming. Sometimes both John and

21 I were not able, (misread) so because Bob was Third,

22 then I would call him and he would come in.

23 Q. Okay. So you all had discussed it among

24 yourselves that to -- in response to T.J.'s concerns

25 that one of you would always be present when there was a

1 public records request by my clients?

2 A. No."

3 MS. COWAN: Mr. Shults objected to form.

4 Mr. Carroll: Form.

5 THE COURT: But she answered already.

6 MS. COWAN: Uh-huh..

7 THE COURT: Then it's overruled.

8 A. "The answer to that is no."

9 (By Mr. Hennessy:)

10 Q. "Okay. Then how is it that it came about
11 that the three of you developed this practice of
12 covering the public records requests?

13 A. The three of us did not develop the practice.

14 Q. Okay.

15 A. I made a decision based on T.J.'s concern and
16 I acted on that decision, calling first John; if John
17 was unavailable, calling Bob.

18 Q. Okay.

19 A. And then I would make -- if I knew at the end
20 of the day that they were going to come in the next day,
21 then I would call and make sure that we had an
22 individual, whether it was John or Bob or myself, to be
23 available.

24 Q. And those were the only individuals that you
25 contacted about performing this responsibility?

1 A. Hmm (misread), I have to think for a second.
2 Yes.

3 Q. Okay. And you say that you no longer follow
4 this practice; is that correct?"

5 MS. COWAN: Mr. Shults objected to form.

6 THE COURT: Overruled.

7 A. "At the last request for review, I had
8 assisted T.J. the week before in preparing the documents
9 that were on the most recent req -- (misread) recent
10 request for review. A meeting was scheduled for Monday
11 at the same time that (misread) -- that they were
12 coming. T.J. was satisfied with the fact that we would
13 be available in the next room if a concern arose.

14 Q. Okay. So but for the fact that there was a
15 Board meeting next door, you or one of -- either the
16 First Vice Chair or Second Vice Chair would have been
17 present?

18 A. Been available."

19 MR. LEE: Could we please start with the
20 question? You have it starting at 18. Why don't
21 we start at 15 with the question?

22 MS. COWAN: Okay.

23 (Reading.)

24 (By Mr. Hennessy:)

25 Q. "What other meetings have you had with other

1 Trustees (misread) which you refer to as administrative
2 matters?

3 A. I met with Gail Opper.

4 Q. When did you meet with Gail Opper?

5 A. Both in April and May.

6 Q. Where did you meet?

7 A. In the office.

8 Q. How is it that you came to have meetings with
9 Gail Opper in April and May at the District offices?

10 A. She tugged on my shirt; said I need to see
11 you before I leave town to schedule some volunteers to
12 assist in the secretarial duties.

13 Q. When did this occur? Or I'm sorry, never
14 mind.

15 So what was -- what was said?

16 A. Gail informed me when she was leaving; said
17 that she had two women that had signed volunteer forms
18 to assist in the taking of the Minutes and the
19 publication of the Minutes for the meetings while she
20 would be gone for the summer. She wanted to know what
21 the procedure or practice was. So it took a few minutes
22 (misread) in order to come to a -- a final decision on
23 this."

24 MR. LEE: I'm sorry. I think the witness
25 misspoke. Line 11, if you begin again at "so".

1 It's not "minutes"; it's "meetings".

2 MS. COWAN: Thank you. Sorry.

3 A. "So it took a few meetings in order to come
4 to a -- a final decision on this as I wanted to research
5 what had been done in the past when individuals were
6 gone. So the discussion was mainly involving what had
7 been done in the past, how we were going to make it work
8 now, what the volunteers were willing to do, so she had
9 to go and meet with them and then come back and report
10 to me; I had to meet with T.J. and find out what had
11 (misread) been done in the past; I also met with T.J.
12 and Jane to find out how we could make this work.

13 Q. So were ultimately I guess assistant
14 secretaries identified?

15 A. Yes, the -- in the end, we identified two
16 volunteers who would assist by attending the meetings,
17 taking the Minutes and typing the Minutes and providing
18 the first draft -- or the draft to the office.

19 Q. And who are these two individuals?

20 A. Connie Zack and Lenora Neal.

21 Q. Did you have meetings with these individuals?

22 A. No, I did not.

23 Q. Okay. Did Gail Opper have meetings with
24 these individuals?

25 A. I believe she did.

1 Q. And to your knowledge were these meetings to
2 discuss the services these assistants would provide?

3 A. Yes.

4 Q. Have either of these assistants performed
5 these functions yet?

6 A. Yes.

7 Q. They've attended recent Board meetings?

8 A. Yes.

9 Q. Taken Minutes?

10 A. Yes.

11 Q. Did these individuals -- Were they ever
12 nominated to the Board to be these assistants -- and
13 their nominations approved?

14 A. No."

15 MS. COWAN: Starts --

16 (By Mr. Hennessy:)

17 Q. "With whom?

18 A. Pam Cole.

19 Q. What was the subject of that conversation?

20 A. Calling a special meeting.

21 Q. What type of special meeting?

22 A. Special workshop.

23 Q. To consider what?

24 A. Discuss the TV contract.

25 Q. When did this conversation occur?

1 A. This morning.

2 Q. Where did this conversation occur?

3 A. Over the phone.

4 Q. Who laced the call.

5 A. T.J.

6 Q. At your request?

7 A. Yes.

8 Q. And where did you reach Ms. Cole?

9 A. At her employment.

10 Q. Okay. Was T.J. -- and by "T.J." you mean
11 T.J. Miller?

12 A. Yes.

13 Q. Was she a party to the phone conversation?

14 A. She begun the phone call with Pam, handed the
15 phone (misread) -- handed me the phone call at her desk.
16 So she wasn't on the line, but --

17 Q. Uh-huh.

18 A. -- she was there.

19 Q. What was discussed?

20 A. I indicated to Pam that I felt I needed to
21 call a special meeting for the TV contract due to the
22 deadline. She concurred. I asked her since it was
23 under her purview which date she would prefer and what
24 time she would prefer. So she gave me the date and the
25 time that she would prefer; and I said, thank you, I'll

1 get the posting and necessary things in place.

2 Q. That was the entirety of the conversation?

3 A. Yes.

4 Q. Did Ms. Cole indicate any concern about
5 receiving this call from you?

6 A. No.

7 Q. Have you taken any action then to schedule
8 this special meeting?

9 A. Yes, I have.

10 Q. Has it been scheduled.

11 A. Yes.

12 Q. And actually at times you've called it a
13 meeting, at times you called it a workshop. Which is
14 it?

15 A. It's a workshop.

16 Q. Okay. And when is it scheduled for?

17 A. Thursday, May 28th. I believe we decided one
18 p.m.

19 Q. Are there any other communications with
20 Trustees that you believe were of an administrative
21 nature that we haven't discussed?

22 A. Yes.

23 Q. Okay. What?

24 A. Many.

25 Q. Many. Okay.

1 So would you say that frequently, a daily or
2 a weekly basis you have communications with Trustees --"

3 MS. COWAN: Mr. Shults objected to form.

4 MR. LEE: Compound.

5 THE COURT: Sustained.

6 MR. LEE: Picks back up, I believe, Miss
7 Cowan, 77, line 7.

8 (By Mr. Hennessy:)

9 Q. "Okay. Would you say that you have had
10 conversations outside of a public meeting concerning
11 District matters with each of the Trustees, or every one
12 of the Trustees?"

13 MS. COWAN: Mr. Carroll objected to form.
14 Mr. Shults objection to form.

15 MR. LEE: Compound.

16 THE COURT: I'm going to overrule that.

17 A. "No.

18 (By Mr. Hennessy:)

19 Q. Which Trustees do you believe not had
20 conversations with concerning District matters outside
21 of a public meeting?"

22 MR. LEE: Mr. Shults.

23 MS. COWAN: Mr. Shults objected to form.

24 THE COURT: I'm glad somebody did.

25 MS. COWAN: Mr. Carroll joined.

1 THE COURT: I'll sustain that objection. I
2 think Miss Cowan had trouble even just reading
3 that.

4 (By Mr. Hennessy:)

5 Q. "During Board meetings, does the Board take
6 breaks?

7 A. Yes.

8 Q. Okay. And during those breaks, have you
9 witnessed or participated in discussions with other
10 Trustees?

11 A. Yes.

12 Q. Have those discussions included matters that
13 have been discussed or are yet to be discussed before
14 the Board?

15 A. No.

16 Q. Do you recall adjourning a meeting of the
17 Board and -- for the purposes (misread) -- for the
18 purpose of scheduling a meeting and working out that
19 schedule with another Trustee and then returning to the
20 Board -- Boardroom to announce what had been decided?

21 A. I believe that -- your definition of
22 "adjourning"?

23 Q. Uh-huh.

24 A. That would --

25 Q. Well, recess --

1 A. I didn't --

2 Q. Recessing is what I --

3 A. All right.

4 Q. If I used the word "adjourn".

5 A. Okay. Now could you restate the question?

6 Q. Okay. Have there been instances where you
7 have recessed meetings, left with a Board member to work
8 on scheduling (misread) -- on a scheduling issue, and
9 returned to announce the decisions made with regard to
10 scheduling?"

11 MS. COWAN: Mr. Shults objection to form.

12 THE COURT: Overruled.

13 A. "I don't like your word 'decisions'. I -- I
14 found a room.

15 Q. Uh-huh.

16 A. I returned, and I -- with that room
17 identified.

18 Q. Okay. And during a Board meeting --

19 A. (Nods head up and down.)

20 Q. -- there was an adjournment.

21 A. Recess.

22 Q. A recess. Thank you.

23 A. Yes.

24 Q. You left, went into another room with another
25 Trustee?

1 A. Yes.

2 Q. And discussed available dates for scheduling
3 the meeting you were working on?

4 A. No.

5 Q. No? What occurred?

6 A. I discussed available rooms.

7 Q. Okay. Available rooms at the District
8 offices?

9 A. Yes. Available rooms in the District.

10 Q. Okay. So the District keeps a schedule of
11 what rooms are being used?

12 A. Yes.

13 Q. Who was the other trustee that you looked at
14 the calendar with?

15 A. The trustee that's in charge of that -- of
16 that schedule.

17 Q. And who is that?

18 A. Gail Opper.

19 Q. So you left -- you want (misread) -- went --
20 which room did you go into?

21 A. The room where the chart is.

22 Q. Does that room have a name?

23 A. That would be her office.

24 Q. Okay. Was there anybody else in the room but

25 --

1 A. No.

2 Q. -- you and Miss Oppen?

3 A. No.

4 Q. Okay. How long were you in the room?

5 A. Long enough to review the chart.

6 Q. Okay. Five, ten minutes?

7 A. Oh, I believe less than that.

8 Q. Okay. And then the two of you returned and
9 the meeting -- public meeting resumed?

10 A. Yes.

11 Q. And it was announced where and when the
12 meeting would be?

13 A. Yes.

14 Q. And what was the (misread) meeting that was
15 trying to be scheduled?

16 A. I was continuing the public hearing, the
17 March 2nd public hearing.

18 Q. Concerning?

19 A. The budget.

20 Q. So it was a need for a continuation of the
21 budget hearing?

22 A. Yes.

23 Q. You mentioned something about Board bullets
24 discussed at the Board meeting, you adopted some --
25 first of all, what is a board bullet?

1 A. A 'Board bullet' is a short, one line
2 description under each agenda item that I write
3 following a Board meeting.

4 Q. Okay.

5 A. It's then published on the website and
6 published on Channel 95 and now published in The
7 Tribune.

8 Q. Okay. And so is there some policy that was
9 just adopted concerning publishing those Board bullets?

10 A. A policy was not adopted.

11 Q. Was there discussion at the Board about
12 publishing Board bullets?

13 A. Yes.

14 Q. Did you add any members to the ARC
15 committee?"

16 MS. DORMAN: I'm sorry, counsel. What page
17 are you on?

18 MS. COWAN: 125, line 10.

19 MS. DORMAN: I'm sorry. That one didn't get
20 marked.

21 Could you ask the question again, please?

22 MS. COWAN: Certainly.

23 (By Mr. Hennessy:)

24 Q. "Did you add any members to the ARC
25 committee?"

1 A. Actually I took one away.

2 Q. Okay. Who is that you took off the
3 committee?

4 A. Fred Hoch.

5 Q. Why did you take Fred Hoch away from the
6 committee?

7 A. He had been on the committee previously. The
8 year began, I became Chairman; I asked Fred if he wanted
9 to continue serving on the committee and allow John to
10 be the liaison, and he said yes. And then subsequent to
11 the March 17th injunction hearing and the stipulation, I
12 called him that night and told him that he would no
13 longer be on the ARC committee because that was part of
14 the stipulation.

15 Q. Okay, that there not be two Board members on
16 one committee?

17 A. Right. And they are actually not on the
18 committee; John's assigned as the liaison, he's not a
19 committee member, but depending on your interpretation
20 of that.

21 Q. Okay.

22 A. That was advised.

23 Q. So did you remove him or did he resign,
24 Mr. Hoch?

25 A. I called him and asked him, I said based on

1 the stipulation -- he wasn't at the hearing.

2 Q. Uh-huh.

3 A. I said based on the stipulation, I need to
4 ask you to resign from the committee; and he said, I'm
5 resigned.

6 Q. Okay.

7 A. And that's Fred.

8 Q. Did he ever put a resignation in writing?

9 A. No.

10 Q. Did that matter ever come before the Board?

11 A. In terms of a decision or an announcement?

12 Q. Let's say either.

13 A. Yes.

14 Q. Okay. What occurred --

15 A. I --

16 Q. -- before the Board?

17 A. I announced at the following meeting that
18 Fred had resigned from the committee.

19 Q. Okay. Is it fair to say then that but for
20 the Injunction hearing, Mr. Hoch would still be a member
21 of the committee absent some personal decision that he
22 might make?"

23 MS. COWAN: Mr. Carroll, form.

24 MR. LEE: Calls for speculation.

25 THE COURT: Sustained.

1 MR. LEE: And then I guess the next one is
2 line 19.

3 MS. COWAN: Thank you.

4 (By Mr. Hennessy:)

5 Q. Well, let me ask you -- let me put it to you
6 differently.

7 A. Okay.

8 Q. You contacted Mr. Hoch about resigning; he
9 didn't contact you about resigning?

10 A. Right.

11 Q. And if it were not for the Injunction hearing
12 and the ruling of the Court, you would not have
13 contacted Mr. Hoch requesting his resignation?

14 A. I can't say that for sure.

15 Q. Okay. But it is your testimony that because
16 of the Injunction hearing and the ruling at that
17 Injunction hearing, you contacted Mr. Hoch?

18 A. Yes.

19 Q. Okay. Who is on the Audit Selection
20 Committee?

21 A. Joe Trinkle, Sue Reickhoff, Ruth Langton,
22 Niles Kenyon, and myself.

23 Q. Are you the only Board member that is
24 currently sitting on that committee?

25 A. Yes.

1 Q. Has the composition of that committee changed
2 during the course of this year?

3 A. Yes.

4 Q. How has it changed?

5 A. The policy originally called for two Trustees
6 and three property owners. We have since revised that
7 and changed it to one Trustee and four property owners.

8 Q. When was that policy changed?

9 A. As soon as it was brought to my attention
10 that it needed to be changed.

11 Q. Okay.

12 A. I can't -- March, early March. It was
13 brought to my attention in February.

14 Q. Was the change to the policy made before or
15 after the hearing on the Injunction?

16 A. Before.

17 Oh. Well, I can't say when it got voted on,
18 but the decision to start the process of changing the
19 policy. Policies require us to go to workshop before we
20 go to meeting, which makes it not -- and agendas have to
21 be out the previous week before, so there's a time issue
22 under when something gets started to when it actually
23 occurs.

24 Q. Was the change initiated before or after the
25 filing of this lawsuit?

1 A. Oh, it -- after the filing of the lawsuit, in
2 February.

3 Q. Who brought it to your attention that the
4 policy had two Trustees to be on the Audit Committee?

5 A. Who brought -- I wrote the policy with the
6 Policy Committee. The Board approved it in the fall. I
7 reviewed it in the spring and appointed the committees.
8 By happenstance our attorney heard about it, that we
9 were both going to the same meeting, and he called me
10 and said --

11 MR. COWAN: Mr. Shults says, "Hold on. If it
12 was out -- all right. If the communication was
13 made out (misread) of a public hearing -- and the
14 deponent says, Uh-huh. Mr. Shults says, "Was this
15 communication outside of a public hearing?"

16 A. "Yes."

17 MS. COWAN: Mr. Shults: Was this
18 communication though embodied in a letter which is
19 part of the public record?

20 A. "No."

21 MS. COWAN: (By Mr. Shults:) Okay. Is there
22 a memorandum recording this communication that is a
23 part of the public records?

24 A. "There's a notation in the Minutes that per
25 -- per our attorney's advice, we have removed --"

1 MS. COWAN: Mr. Shults: Okay.

2 A. "-- the Trustee from the --".

3 MS. COWAN: Mr. Shults: You can go ahead and
4 answer his question now.

5 A. "-- per his advice.

6 (By Mr. Hennessy:)

7 Q. "Who's 'he'?"

8 A. Scott Rudacille.

9 Q. Okay. What was Mr. Rudacille's advice?

10 A. That we not have two Trustees serving on the
11 same committee in the sense that it could appear to be a
12 de facto Board meeting.

13 Q. And therefore a violation of the Sunshine?

14 A. Therefore could potentially be a violation of
15 the Sunshine Law if a Board matter were brought up.

16 Q. Okay. To your knowledge, did the Auditor
17 Selection Committee meet and the two Trustees attend
18 that meeting prior to you making the change in
19 membership?

20 A. The meeting occurred -- the first meeting
21 occurred, which was the organizational meeting?

22 Q. Uh-huh.

23 A. And the Sunshine -- little Sunshine workshop.
24 And I believe it was within the next day or so that the
25 communication with the attorney occurred and then was

1 announced at the next meeting.

2 Q. Okay. Who were the two Board members?

3 A. Myself and John Vander Molen.

4 Q. So Mr. Vander Molen resigned from the
5 committee?

6 A. Yes.

7 Q. Did he submit a resignation in writing?

8 A. No.

9 Q. How did he resign?

10 A. I called him by phone to explain to him what
11 I talked to the attorney about, the potential for a
12 Sunshine violation and he immediately said, I resign;
13 and I said, no, John, how about I resign; and he said,
14 no, I have enough to do; and I said, okay, you're off.

15 Q. Okay. To your knowledge, do any of the
16 District's (misread) -- District clubs fulfill any
17 functions that the District otherwise would do or has
18 contracted to do?

19 A. The Video slash Computer Club on Channel 95
20 manages the -- I would say manages the Channel 95. They
21 pick up the materials on Tuesday to go onto Channel 95.

22 Q. Pick up the materials from who?

23 A. Clubs, organizations, in the District office
24 -- can bring items into a folder in the office and they
25 pick that folder up.

1 Q. Okay. Is this process for putting material
2 on Channel 95 between the District and the Video Club
3 memorialized in any type of agreement?

4 A. I don't believe so.

5 Q. And do you believe there's any policy with
6 regard (misread) -- with regard to how content gets on
7 Channel 95 and what content gets on Channel 95?

8 A. That's in the Video Club's hands.

9 Q. So the District does not control what content
10 gets on Channel 95?

11 A. We do not.

12 Q. And the District does not control how the
13 content gets on Channel 95?

14 A. No, except that we serve as a -- a vehicle
15 for -- a place to collect the information before it gets
16 picked up."

17 MR. LEE: 144, 20, Miss Cowan?

18 (By Mr. Hennessy:)

19 Q. "Okay. Does the Video/Computer Club have a
20 dedicated room within a District building?

21 A. Yes.

22 Q. Where is that?

23 A. The Activities Center.

24 Q. And what do they use the room for?

25 A. Storage of their equipment.

1 Q. And is that room locked?

2 A. Yes.

3 Q. And who has the key?

4 A. Members of the Video Club that are assigned;
5 Mark, our custodial foreman, and now myself.

6 Q. Who controls who get the keys to that room?

7 A. The Video Club, I believe, although I
8 intercepted -- interceded on the District's behalf.

9 Q. Okay. Is there a lease between the District
10 and the Video Club for that -- use of that room?

11 A. No.

12 Q. Does anyone else have -- any other resident
13 have access to that room?

14 A. I -- you'd have to ask the Video Club on who
15 they've approved for that.

16 Q. Does the Video Club videotape the District's
17 (misread) Board meeting?

18 A. At the present time, yes.

19 Q. Is there a move that they not videotape the
20 District Board meetings?

21 MS. DORMAN: I've been in-- Sorry.

22 A. I've been informed that the -- two of the
23 members -- the two members that do the videotaping
24 aren't going -- perhaps aren't going to be here at the
25 same time.

1 Q. Who are they?

2 A. Lonnie Stanley and Bill Mumford.

3 Q. Does the Video Club maintain copies of the
4 meetings that they -- that -- of the Board meetings that
5 they videotape?

6 A. Not consistently, although I believe they're
7 more consistent now.

8 Q. And what is your knowledge based on?

9 A. Discussions with them.

10 Q. Who?

11 A. Lonnie Stanley.

12 Q. Have you asked that they maintain copies of
13 these (misread) meetings that they videotaped (misread)?

14 A. No.

15 Q. When you have received requests -- when the
16 District has received requests for production of copies
17 of Board meetings, have you or someone else at the
18 District inquired of the Video Club as to whether or not
19 they maintain copies of those Board meetings?

20 A. Yes.

21 Q. Has the video Club Produced such copies to
22 you in response to such requests?

23 A. Those which they can.

24 Q. Okay. At any rate, did you personally, as a
25 member of the Policy and Procedure Committee, speak to

1 any trustees concerning whether or not the Board should
2 be receiving copies of the Video Computer Club
3 videotapes of Board meetings?

4 A. Any trustee that would be at the meeting, I
5 would have spoken to.

6 Q. Okay.

7 A. At the Policy and Procedure Committee
8 meeting.

9 Q. Were there trustees attending the Policy and
10 Procedure Committee meetings?

11 A. Yes.

12 Q. Okay. And when was this?

13 A. It would have been spring of 2007 and then
14 into fall of 2007 that we worked on public records
15 policy, so it would have been sometime during that time
16 period.

17 Q. And which Board members attended the Policy
18 and Procedure Committee meetings?

19 A. Janet Jones.

20 Q. She is the only one?

21 A. No. There was one meeting which we asked
22 John Vander Molen to come to.

23 Q. And he was a trustee at that time?

24 A. Yes, he would have been.

25 Q. And was Ms. Jones in attendance that same

1 meeting that --

2 A. Yes, she was.

3 Q. You need to let me finish.

4 A. Oh, sorry.

5 Q. The meeting that you're describing, were both
6 Janet Jones and John Vander Molen in attendance at the
7 committee meeting?

8 A. Yes.

9 Q. And what was the purpose of that meeting?

10 A. The purpose of that meeting was to get the
11 details. John Vander Molen had been a member of the
12 Video Club. And it was to get dates about the
13 historical perspective and how things are -- how they
14 obtained their video, how they make the videotapes, how
15 they get things copies. It was an information-gathering
16 session.

17 Q. So Mr. Vander Molen answered your questions
18 concerning the Video Computer Club past practices?

19 A. Oh, I can't answer that now. I mean, I don't
20 --

21 Q. Okay. Well, what --

22 A. I mean, I can't say what -- what transpired
23 in '07 in terms of him answering my questions.

24 Q. Okay. Well, did Mr. Vander Molen attend the
25 meeting and answer questions of the committee?

1 A. Yes, he did.

2 Q. And did Ms. Jones participate in that
3 discussion?

4 A. I believe she was in attendance. I would
5 have to look at the minutes of that (misread) meeting.

6 Q. Okay. Either in your personal capacity or in
7 the capacity of -- of your being a member of the Policy
8 and Procedure Committee?

9 A. The committee determined it wasn't in the
10 best interest of the District because we couldn't
11 control the video. When you say did I recommend it to
12 the Board, we never brought that to a Board meeting.

13 Q. Did you bring it to a trustee?

14 A. No, I did not.

15 Q. Did the committee bring it to a trustee?

16 A. Janet would have heard it, I mean, she was a
17 part of that committee, but not to another trustee, no.

18 Q. Did you bring it, that determination, to the
19 Video Computer Club?

20 A. I did speak to Bill Mumford.

21 Q. Okay. Who is Bill Mumford?

22 A. He is the cameraman.

23 Q. Is he currently the cameraman for the Video
24 Computer Club? Or was he in 2007?

25 A. Well, he -- he's not here right now, so he's

1 not currently the cameraman right now.

2 Q. Uh-huh.

3 A. But he is generally the cameraman.

4 Q. Okay. And he was in 2007?

5 A. Yes.

6 Q. And so you told Mr. Mumford that he didn't
7 need to provide the District with copies of the
8 recordings of the Board meetings?

9 A. I told him that determination of the
10 committee was that there was not a process that we could
11 -- that would be workable where we could copy those
12 discs and provide the public record, and, therefore, our
13 determination was that we -- we didn't really want the
14 videotapes.

15 Q. Well, Ms. Brauer, did you tell him not to
16 give the Board -- or not to give the District copies of
17 the Board meetings that they were making or not?"

18 MS. COWAN: Objection to form, Mr. Shults.

19 MR. LEE: Compound.

20 THE COURT: Did you say "jump down"?

21 MR. LEE: I said compound.

22 THE COURT: Oh! I thought you were jumping
23 down a few lines and I'm waiting to hear the next.

24 MR. LEE: I'm just holding my finger.

25 THE COURT: I'm sorry. Compound.

1 Umm, overruled.

2 A. "Did I tell him . . . I think I just told him
3 what the determination was. I mean --

4 (By Mr. Hennessy:)

5 A. Okay. I had no power. I'm just a secretary
6 of a committee.

7 Q. Well, what was your expectation with regard
8 to whether or not the District would continue to receive
9 copies of the meetings from the Video Computer Club
10 after your conversation with Mr. Mumford?

11 A. If the Video Club gave it to us, we would be
12 copying it. It's their -- it's their tapes, it's their
13 video practice. It was not something that I had control
14 over. I just informed him of the difficult that we felt
15 as -- the committee determined there would be a
16 difficulty in copying those.

17 Q. Okay. Well, was it your expectation that the
18 Video Computer Club, after your conversation with
19 Mr. Mumford, would no longer be providing the District
20 with copies of the meetings?

21 Mr. Carroll: Form."

22 THE COURT: Overruled.

23 A. "I had no expectation.

24 (By Mr. Hennessy:)

25 Q. All righy.

1 Mr. Shults: What was the answer?

2 A. I had no expectation.

3 (By Mr. Hennessy:)

4 Q. Well, subsequent to your conversation with
5 Mr. Mumford, did the Video Computer Club stop providing
6 the District with copies of the meetings that they were
7 videotaping?

8 A. I -- I have not been involved in the Board
9 office until 2009. I'm not aware what they did after my
10 conversation with them.

11 Q. Okay, well, you're here as the District
12 representative.

13 A. Yes.

14 Q. And my understanding is that (misread) you're
15 knowledgeable about these things. Have you -- Are you
16 familiar with the District's (misread) records?

17 A. Yes, I am.

18 Mr. Shults: Objection to form.

19 Q. Are you --"

20 THE COURT: Sustained.

21 MS. COWAN: She already answered, Your Honor?

22 THE COURT: Well, then it's already in the
23 record then.

24 (By Mr. Hennessy:)

25 Q. "Are you familiar with whether or not the

1 District has copies of videotaped Board meetings?

2 A. Yes.

3 Q. Have you looked to see if you have copies of
4 videotaped Board meetings since the time you've had
5 conversations with Mr. Mumford?

6 A. Yes.

7 Q. Okay. And does the District have copies of
8 Board meetings since you've had your (misread)
9 conversation with Mr. Mumford --

10 A. Yes.

11 Q. -- in 2007?

12 A. Yes, they do have some.

13 Q. Some? (Misread).

14 Do you know how the District came to have
15 copies of some Board meetings, videotapes or DVD's since
16 your conversation with Mr. Mumford in 2007?

17 A. No, I do not.

18 Q. And (misread) when you say some, how many do
19 you believe you -- I'm sorry -- how many do you believe
20 you have between that conversation in 2007 and the
21 stipulation in May or June of this year?

22 A. The District up until two weeks ago probably
23 had five to ten copies from 2008, probably had some
24 copies from 2009, probably less than -- five meetings or
25 less. 2007, the box is a little fuller in 2007. So up

1 until about two, three weeks ago, there -- it was just a
2 smattering of 2008 and 2009.

3 Q. Okay. Between the time that the Website
4 Committee expired and the new policy was adopted in late
5 spring of 2009, who was operating the District website?

6 A. A variety of individuals.

7 Q. Do you know the names of those individuals?

8 A. Ed Ogle, Bruce Smith, Barbara McNeil, Kay
9 Hislop, John White, Shirley Klotz, Lonnie Stanley and
10 myself."

11 MS. COWAN: Excuse me. Just a minute.

12 Okay. You are currently involved in operating.

13 MR. LEE: I think that was just an extra
14 line.

15 MS. COWAN: I do, too.

16 (By Mr. Hennessy:)

17 Q. "Were there ever pleadings with you and the
18 variety of individuals you've named that were working on
19 the website, you know, during the first part of 2009?

20 A. Yes.

21 Q. Were those meetings public meetings?

22 A. Yes. One was. I only attended one.

23 Q. Okay. And there were minutes from that
24 meeting?

25 A. I don't know if minutes were taken or not. I

1 wrote notes. I wouldn't call that minutes.

2 Q. Were your notes filed with the District?

3 A. No, they were not.

4 Q. Okay. Were you assigned to take the minutes
5 of that (misread) meeting?

6 A. No, I was not.

7 Q. Was the meeting advertised?

8 A. Yes.

9 Q. How?

10 A. It was on the Tribune calendar.

11 Q. And when did the meeting occur? The one --
12 the one meeting that you attended.

13 A. Early in January.

14 Q. And what was the purpose of that meeting?

15 A. I had asked the individuals to meet with me
16 and to learn about their different tasks related to the
17 website so that I could develop an informational manual
18 regarding the website. There is nothing formal written
19 about the website.

20 And they did not want to meet with me
21 individually, so they asked me to come to their meeting
22 that they had previously scheduled before the (misread)
23 committee expired."

24 MR. LEE: That's okay. That's a little
25 extra.

1 (By Mr. Hennessy:)

2 Q. "Okay. Are you aware of meetings that you
3 had with some of these individuals concerning the
4 website other than this one meeting in January that you
5 discussed?

6 A. Yes.

7 Q. Okay. When did those meetings occur?

8 A. There was one meeting a couple of days prior
9 to that where I asked one of the members to explain to
10 me how the -- how the -- how the uploading -- how the
11 software worked. To prepare the informational manual, I
12 felt that I needed to, you know, to gain as much
13 knowledge as I could so that I could write an
14 informational manual regarding our website. And
15 (misread) so I met with Shirley Klotz.

16 Q. Where did this meeting take place?

17 A. In (misread) her home.

18 Q. Was anyone else in attendance?

19 A. No.

20 Q. Did you have any other meeting with members
21 of the Website Committee? I'm sorry, let me step back.
22 The meeting with Shirley Klotz in her home, do you know
23 when that occurred?

24 A. A couple of days prior to the (misread)
25 early January meeting with the members of the --

1 Q. Okay --

2 A. -- past committee.

3 Q. Okay. And what (misread) -- what other
4 meetings did you have with the members of the Website
5 Committee?

6 A. I did not have any other meetings with the
7 members of the past committee.

8 Q. Okay. Did you have any other meetings like
9 you had with Shirley Klotz?

10 A. Yes.

11 Q. Okay. Describe them for me.

12 A. After the website disappeared and had to be
13 rebuilt, I met with Shirley Klotz to rebuild it.

14 Q. So you had subsequent meetings (misread) -- a
15 subsequent meeting with Shirley Klotz (misread) -- a
16 second meeting with Shirley Klotz once the website, as
17 you say, disappeared?

18 A. Yes.

19 Q. Where did this meeting -- when did this
20 meeting happen?

21 A. We're not talking about one meeting. We had
22 to rebuild the website.

23 Q. So you had a number of meetings with Miss
24 Klotz?

25 A. A number.

1 Q. Was there anyone else in these meetings
2 besides Miss Klotz?

3 A. Yes.

4 Q. Who?

5 A. Lonnie Stanley.

6 Q. Anyone else?

7 A. Not to my recollection.

8 Q. And when --

9 A. Oh.

10 Q. Yes, go ahead.

11 A. Ed Ogle.

12 Q. In these meetings that you had with Shirley
13 Klotz, Lonnie Stanley, and Ed Ogle, when did they occur?

14 A. Throughout the spring.

15 Q. Okay. Were any of these meetings public
16 meetings?

17 A. No, they were not.

18 Q. So you didn't advertise them or take minutes?

19 A. No."

20 (Inaudible discussion between Mr. Lee and
21 Ms. Cowan.)

22 Q. "Were they held in public places?

23 A. They were in -- in -- on public -- on
24 District property, yes.

25 Q. Were any of the meetings also held in your or

1 the other individuals' homes?

2 A. No, I believe they were all on District
3 property.

4 Q. Okay. Did you reestablish a District
5 website?

6 A. Did I reestablish? (misread) -- I rebuilt a
7 website.

8 Q. Well, let's put it this way: Does the
9 District have a website that's operating today?

10 A. Yes.

11 Q. When did that go back online?

12 A. Initially, I believe mid March, mid to late
13 March, the first page was up. I would say the -- I
14 can't say when the full website was, but the first page
15 went up I believe in mid March.

16 Q. Okay. And how long was the website up and
17 operational before the website policy that's Exhibit 7
18 was modified?

19 A. Maybe a month and a half."

20 MR. LEE: If we go back a line, Miss Cowan?

21 On 229 you are going to start at 25. Let's start
22 with the question at 24.

23 (By Mr. Hennessy:)

24 Q. "Okay, what do you mean by you proposed a
25 vote?

1 A. Well, I received a request from a resident --
2 from a club. In that the website was still being
3 developed, it was not -- I mean, we had to rebuild it.
4 So I was in the process of rebuilding. I wrote a memo
5 to various trustee -- to the trustees, and -- based on
6 this request from a club, I believe it was from a club.

7 And I -- after writing the memo, sending it
8 out, I reflected a little bit more on it and determined
9 that -- that in" we were in a (misread) --

10 MS. DORMAN: Sorry. That in --

11 A. -- "that in that we were in a transitional
12 period, that the website hadn't been built yet and that
13 we really didn't have an active policy or -- that we
14 didn't a policy that was congruent with our -- with what
15 was going on, I didn't do any with that particular memo
16 then.

17 Q. Did the memo go out to the trustees?

18 A. Yes, it did.

19 Q. Did it request a vote?

20 A. Yes, it did.

21 Q. Do you know if the District -- any of the
22 District trustees did respond to that request for a
23 vote?

24 A. Yes."

25 MR. LEE: Can we go back?

1 Do you want my additions now, Judge Dunnigan,
2 because they skipped over one question and answer
3 right here. Can I put it in now?

4 THE COURT: I think it would probably be
5 easier if we would put it in sequence, to do it
6 that way.

7 MR. LEE: Can we just, Miss Cowan, where Miss
8 Dorman finished line 17, can we do 18 and 19? "Did
9 you receive".

10 (By Mr. Hennessy:)

11 Q. "Did you receive responses to that request?

12 A. I did not."

13 MS. COWAN: Should I finish it up?

14 MR. LEE: Just keep going.

15 (By Mr. Hennessy:)

16 Q. "Do you know if the District -- any of the
17 District trustees did respond to that request for a
18 vote?

19 A. Yes."

20 MR. LEE: (Inaudible.)

21 (By Mr. Hennessy:)

22 Q. "Okay. Have you ever personally placed
23 anything on Channel 95 on behalf of the District?

24 A. Yes.

25 Q. Is there a form that you have to fill out?

1 A. Yes.

2 Q. Do you know who developed that form?

3 A. I do (misread) -- No, I do not.

4 Q. Are those forms that get submitted to the
5 District office?

6 A. Yes.

7 Q. Does the District keep copies of those
8 submissions?

9 A. We do now.

10 Q. When did you start keeping copies of those
11 submissions?

12 A. Within the last couple months.

13 Q. And why are you now doing -- keeping copies?

14 A. Well, it's a drop-off point for the Video
15 Club, but in the fact that it's in the office, is it
16 technically a public record. I mean, it -- it's a
17 drop-off point for the Video Club. It's a central
18 location where they can get the forms that people have
19 submitted.

20 The question arose, T.J. and I were talking
21 about, you know, this folder that gets filled and
22 emptied every week, and I said to her, 'Are you keeping
23 copies of those?' and she said, 'No'. And I said, 'Well
24 maybe we need to be doing that.'

25 I haven't legally asked for an opinion

1 regarding that."

2 THE COURT REPORTER: Your Honor -- just a
3 moment, Miss Cowan -- can we just take one break to
4 switch court reporter?

5 (Quick break was taken to switch court
6 reporters.)

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TRIAL CERTIFICATE

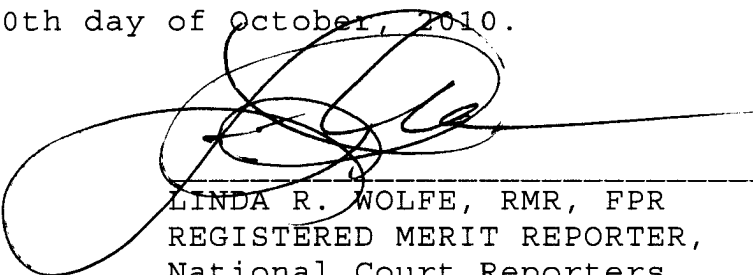
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