

1 Q. You don't recall your prior testimony here today?

2 A. No. I remember testifying about it. When you  
3 give me the date of the meeting --

4 Q. July 27th, 2006, the Executive Committee meeting  
5 to discuss the case of the fence at 6626 New Jersey.

6 A. I remember reading minutes of an Executive  
7 Committee meeting where it is 6626 New Jersey, I remember  
8 that. When you give me the date of the minutes, I can't say  
9 that I remember that. Are you asking me -- when you frame  
10 your question -- if I saw the minutes, I could tell you for  
11 sure it's July 27th. Is that the date you just gave me?

12 Q. Look at Plaintiffs' Exhibit 53, ma'am.

13 A. Yes, it's July 27th.

14 Q. Do you recall testifying earlier about these  
15 minutes?

16 A. Yes.

17 Q. Now, you haven't reviewed any Board of Trustees  
18 meeting minutes where -- which acknowledge that there was a  
19 Sunshine violation by the Executive Board in having this  
20 discussion on July 27th, 2006?

21 A. You're asking me -- Let me just make sure I  
22 understand the question. You're asking me if there's a  
23 notation in our Board of Trustee minutes that a Sunshine  
24 violation occurred?

25 Q. Yes, ma'am.

1           A.    There is no notation, as far as I can recollect at  
2 this time period, in our Board of Trustees meetings stating  
3 that we committed a Sunshine violation.

4           Q.    And in fact, you haven't attended any Board  
5 meetings where the District has acknowledged committing a  
6 Sunshine violation by meetings of its Executive Committee?

7           A.    I have not attended any meeting where that would  
8 have been stated.

9           Q.    And that goes to any of these --

10          A.    As far as I can recollect.

11          Q.    Okay. And that goes to any of the Executive  
12 Committee meetings that you were aware, there's been no  
13 acknowledgment by the Board of Trustees that those  
14 constitute a Sunshine violation?

15          A.    Not that I recollect.

16          Q.    These Executive Board meeting minutes also reflect  
17 that there was a discussion of the Mary Lou Smith case?

18          A.    Yes.

19          Q.    And I believe you directed our attention to  
20 Plaintiffs' Exhibit 54 in your testimony, minutes from  
21 August 7th, 2006?

22          A.    Yes, I did.

23          Q.    And you brought our attention to that because it  
24 mentioned the lawsuit with the 6626 New Jersey property?

25          A.    Yes.

1 Q. And in that case, again, a motion was made and  
2 seconded and passed without any discussion; correct?

3 A. As noted in the minutes, yes.

4 Q. And there's no reference to any discussion of the  
5 Executive Committee meeting, is there?

6 A. No, there is not.

7 Q. And there's no evidence of what was discussed at  
8 the Executive Committee meeting appearing in this -- having  
9 appeared and being discussed by the Board of Trustees?

10 A. Not in these minutes.

11 Q. And in fact, there's absolutely no mention about a  
12 discussion by the Executive Committee meeting concerning the  
13 Mary Lou Smith case?

14 A. Not in these minutes.

15 THE COURT: We're going to take a 15-minute recess  
16 at this time.

17 (Recess, after which the following proceedings  
18 were had:)

19 BY MR. HENNESSY:

20 Q. Ms. Brauer, you directed us concerning the New  
21 Jersey fence issue to minutes of December 5th, 2005; do you  
22 recall that?

23 A. I directed you -- I directed you to lots of  
24 minutes. Could you tell me what exhibit it is?

25 Q. I'm sorry?

1 A. Could you tell me what exhibit number?

2 Q. Exhibit 35, Your Honor -- Ms. Brauer. Plaintiffs'  
3 Exhibit 35. And on the second page of those minutes, you  
4 directed us to reports from the standing committee; do you  
5 recall that?

6 A. Uh-huh.

7 Q. The standing committee that was reporting was ARC,  
8 was it not?

9 A. Yes.

10 Q. And ARC was reporting to the Board on issues they  
11 were having with properties; correct?

12 A. I don't believe they were --

13 Q. John Vander Molen of the ARC committee reported  
14 he's been getting several calls regarding two properties?

15 A. Yes, I see that. Yes.

16 Q. Okay. And among those he mentions that the  
17 property on the corner of New Jersey and Florida Boulevard,  
18 the fence is too close to the road and will be moved by the  
19 contractor?

20 A. Yep.

21 Q. Is that the New Jersey fence that you're referring  
22 to?

23 A. Yes, I believe so.

24 Q. So this is a matter that began with ARC?

25 A. Yes. When you -- any building that's done in the

1 park starts with ARC.

2 Q. Okay. And then there was a matter that ARC  
3 brought before the Board?

4 A. No, it was not ARC that brought it before the  
5 Board.

6 Q. Is this not Board meetings of December 5th, 2005?

7 A. ARC is reporting on their planning department and  
8 what's going on. I believe it was brought before the Board  
9 by the public relations trustee, which handles our deed  
10 restrictions violations.

11 Q. December 5th, 2005 minutes reflect -- are the  
12 minutes you directed us to previously in your testimony as  
13 dealing with New Jersey Avenue --

14 A. Yes.

15 Q. -- or the New Jersey property; correct?

16 A. Yes.

17 Q. And this is a report from ARC?

18 A. Yes, it's a report. Yes.

19 Q. Yes. And subsequent to that time there was a  
20 meeting of the Executive Committee to consider the New  
21 Jersey fence issue; correct?

22 A. Subsequent to that time.

23 Q. Yes, ma'am.

24 A. Give me the date on the Executive Committee  
25 meeting, July -- is that the July 27th, '06?

1 Q. Yes, ma'am.

2 A. Okay. So yes, that'd be subsequent to that time.  
3 Yes.

4 Q. And that would've been a meeting of three  
5 trustees?

6 A. I don't know who attended those meetings. I only  
7 know that the Executive Committee is made up of three  
8 trustees, yes.

9 Q. Okay. You discussed an Auditor Selection  
10 Committee?

11 A. Yes, I did.

12 Q. And you're aware that you were a member of that  
13 Auditor Selection Committee; correct?

14 A. Yes. Yes, I was.

15 Q. And so was Mr. Vander Molen?

16 A. Yes, he was.

17 Q. And you both attended a meeting of the Auditor  
18 Selection Committee?

19 A. Yes.

20 Q. And that meeting was -- and at that time you were  
21 both trustees?

22 A. Yes, that's correct.

23 Q. And in fact, you had a policy that said two  
24 trustees should be on the Auditor Selection Committee?

25 A. Yes, we did.

1 Q. In fact, you were the drafter of that policy?

2 A. The committee, yes. The Policy and Procedure  
3 Committee.

4 Q. The committee that you were on?

5 A. Yes.

6 Q. And that policy was passed while you were on the  
7 Board of Trustees?

8 A. No, I believe the original policy was passed  
9 before I was on the Board of Trustees.

10 Q. Okay. That policy was passed while Mr. Vander  
11 Molen was on the Board of Trustees?

12 A. Yes.

13 Q. Ms. Brauer, the meeting of the Auditor Selection  
14 Committee. At that time -- Let me get that in front of you.  
15 Plaintiffs' 169.

16 The Auditor Selection Committee meeting that you  
17 attended, at that time Mr. Vander Molen made a presentation  
18 on the prior auditor, CPA Associates; correct?

19 A. Yes.

20 Q. And CPA Associates was the auditor that was  
21 ultimately selected to do the new audit; correct?

22 A. Yes, that's correct.

23 Q. Now, after that first meeting, you and Mr. Vander  
24 Molen had a conversation; correct?

25 A. Yes.

1 Q. About the makeup and composition of the committee?

2 A. I called him based on what Scott recommended, that  
3 one of us needed to resign.

4 Q. Okay. Your conversation with Mr. Vander Molen  
5 about who would resign was outside of a public meeting;  
6 correct?

7 A. Yes.

8 Q. Okay. And a decision was made at that time that  
9 it would be Mr. Vander Molen, not you, that would step off  
10 of the committee?

11 A. Yes.

12 Q. And again, that decision was made outside of a  
13 public meeting?

14 A. Yes.

15 Q. At a Board -- at a subsequent Board of Trustees  
16 meeting, there was no announcement that there had been a  
17 Sunshine violation in the initial meeting of the Auditor  
18 Selection Committee by having you and Mr. Vander Molen in  
19 attendance as members of that committee; correct?

20 A. There was an announcement of a potential  
21 possibility of a problem when you have two trustees on a  
22 committee. That was mentioned at the March 9th meeting, I  
23 believe.

24 Q. At that time it was mentioned that the decision to  
25 -- that Mr. Vander Molen would step off the committee going

1 forward?

2 A. Mr. Vander Molen, yes. The decision was that Mr.  
3 Vander Molen would get off the committee.

4 Q. And that was a decision that was made in your  
5 conversation with Mr. Vander Molen outside of the Sunshine?

6 A. That's correct. That committee is not voted in by  
7 the Board.

8 Q. Okay. And the -- there was no motion made to  
9 begin the auditor selection review process from the -- to  
10 restart the review process, was there?

11 A. The first meeting was an organizational meeting,  
12 and there was an historical presentation given by John  
13 Vander Molen. The actual process of -- that first meeting,  
14 if you read the minutes --

15 Q. All right. My question to you --

16 A. -- it was to gather information about where we  
17 were going to go.

18 Q. Ms. Brauer, my question to you was, there was  
19 never a motion made or -- Let me do it this way.

20 The committee wasn't disbanded and a new committee  
21 formed, was it?

22 A. No.

23 Q. Okay. The committee process wasn't begun anew  
24 with a new committee?

25 A. No, and I didn't feel that it needed to.

1 Q. Now, you had questions concerning the process by  
2 which the Board of Trustees previously allowed clubs to use  
3 the District tax ID number to get the sales tax exemption;  
4 do you recall that?

5 A. Yes.

6 Q. You weren't privy to conversations between Pam  
7 Cole and Joe Salerno regarding that same issue, were you?

8 A. No, I was not.

9 Q. And you were not privy to conversations between  
10 Joe Salerno and Janet Jones regarding that issue, were you?

11 A. No, I was not.

12 Q. Now, you indicate that that was a change in --  
13 that you took it upon yourself to change the past policy  
14 concerning the use of -- by clubs of the exemption?

15 A. There was no policy in the policy books or in the  
16 minutes, it was just the -- an administrative function of  
17 the office; they passed out the card to clubs. I realized  
18 that it was incorrect and stopped it as best I could until  
19 that person slipped through.

20 Q. Are you aware that there was an existing policy to  
21 allow clubs to use that tax exemption?

22 MR. LEE: Asked and answered.

23 MR. HENNESSY: Actually, I don't think it was  
24 ever answered, Your Honor.

25 THE COURT: Didn't she testify there was no

1 policy in the books, it was an administrative  
2 function?

3 BY MR. HENNESSY:

4 Q. So you established a policy that the Board -- that  
5 the clubs would no longer be allowed to use the tax  
6 exemption?

7 A. No, I did not.

8 Q. Do you recall this matter coming up before the  
9 Board of Trustees at a workshop?

10 A. About my memo, they didn't like my memo.

11 Q. And in fact, the Board believed that your memo  
12 stating that the tax ID number would no longer be used was a  
13 change in policy?

14 A. No, they didn't like the fact that they weren't  
15 made aware of it before I sent the memo. They don't like to  
16 be told from the public things regarding the administration  
17 of the District.

18 Q. Well, they took a vote to pass a -- and passed a  
19 motion, didn't they, stating that matters that change past  
20 practices must come before the Board?

21 A. I can't recollect that vote. I was not at that  
22 meeting.

23 Q. You're aware that there was a meeting that  
24 occurred on November 2nd, 2009 of the Board of Trustees?

25 MR. LEE: Exhibit number?

1           A.    I need to see it.  I was not in Florida at the  
2 time.

3 BY MR. HENNESSY:

4           Q.    Let me show you Board of Trustees meetings from  
5 November 2nd, 2009.  If you want to look at that and see if  
6 it refreshes your recollection.

7           MR. LEE:  Objection, Your Honor.  Beyond the scope  
8 of the pleadings.  Also, after the date of the  
9 Third Amended Complaint.

10          MR. HENNESSY:  It goes to the testimony that's  
11 already occurred regarding this matter as to  
12 whether or not it was a policy change or not.

13          THE COURT:  I'll allow it.

14          MR. LEE:  Can I get a copy of that, Mr.  
15 Hennessy?

16          MR. HENNESSY:  Excuse me, ma'am.

17          Plaintiffs' 190.

18          MR. LEE:  Thank you.

19 BY MR. HENNESSY:

20          Q.    Direct your attention under New Business, the last  
21 paragraph.  So on that date a motion occurred that all  
22 communications that would change the Board -- the way the  
23 Board conducts the daily operation should be brought to the  
24 Board for discussion and/or action, Joe seconded the motion,  
25 the motion passed six to one, with John voting against?

1           A.    I'm reading the paragraph prior just for  
2 clarification before I read your paragraph.

3           Q.    Yes, ma'am.

4           A.    So I'm still on that paragraph.

5                    Okay.  So what'd you like me to look at, the  
6 bottom paragraph?

7           Q.    Yes, ma'am.

8           A.    Though --

9           Q.    Yes.

10          A.    "Though Gale would not immediately withdraw her  
11 motion, she did agree to see if a new one could be written  
12 that would meet the needs of all sides.  With that, Joe  
13 withdrew the second on the motion and Gale withdrew the  
14 motion.

15                    "Pam wrote the following motion that Gale then  
16 presented:  All communication that would change the way the  
17 Board conducts the daily operation should be brought to the  
18 Board for discussion and/or action.  Joe seconded the  
19 motion.  The motion passed six to one, with John voting  
20 against."

21          Q.    So it's the policy of the Board now that any  
22 action that might change the day-to-day operations of the  
23 District must be brought to the Board for a vote or action?

24          A.    No, it says discussion or action.  So there are  
25 some matters that wouldn't be acted on and there are some

1 matters that would be.

2 Q. Mr. Lee asked you questions concerning an  
3 interview of Mark Barnebey for the selection as the  
4 District's attorney, do you recall that?

5 A. Yes.

6 Q. And you indicated in your records you couldn't  
7 find any evidence of a meeting of the Board of Trustees with  
8 Mr. Barnebey on October 24th, 2006?

9 A. I could not find any reference of minutes of  
10 meetings.

11 Q. You're not here testifying that a meeting didn't  
12 occur on that date, are you?

13 A. No, I am not.

14 Q. You're just stating that there wasn't any minutes?

15 A. That's correct.

16 Q. So if there was a meeting of the Board of Trustees  
17 and there wasn't any minutes taken and maintained by the  
18 District, that would be a Sunshine violation?

19 A. Am I to make --

20 MR. LEE: Objection. Calls for a conclusion.

21 THE COURT: Sustained.

22 BY MR. HENNESSY:

23 Q. If there was a meeting, you would expect to find  
24 minutes, wouldn't you?

25 A. If there was a meeting of the Board of Trustees,

1 yes, I would expect to find minutes.

2 Q. And it's your understanding that the Board is  
3 obligated to maintain those meeting minutes?

4 A. Yes.

5 Q. Plaintiffs' 301. In your review of the District  
6 records -- I have that in front of me. In your review of  
7 the District records, do you recall seeing a letter to Janet  
8 Jones, First Vice Chair, from Norman Vaughan-Birch,  
9 scheduling a meeting with the trustees and Mark Barnebey on  
10 October 24th, 2006 at 9:30 a.m.?

11 A. I do not recall that letter.

12 Q. Let me show you Plaintiffs' Exhibit 301. In 2006,  
13 Janet Jones was the First Vice Chair of the District?

14 A. In 2006. I'd have to look at your blue and yellow  
15 chart to be sure about that.

16 Q. Okay.

17 A. Yes, she -- yes, I believe she was.

18 Q. Okay.

19 A. She was one of the vice chairs.

20 Q. You had a chance to look at Plaintiffs' Exhibit  
21 301?

22 A. Yes. Yes.

23 Q. Does it, in fact, reflect that there was a meeting  
24 scheduled with Attorney Mark Barnebey on October 24th,  
25 2006 --

1 MR. LEE: Objection. Not in evidence.

2 BY MR. HENNESSY:

3 Q. -- with the District trustees?

4 MR. HENNESSY: I'm sorry?

5 MR. LEE: My objection was the letter's not in  
6 evidence.

7 THE COURT: Overruled.

8 A. Did you have a question for me?

9 BY MR. HENNESSY:

10 Q. Yes, ma'am.

11 A. Okay.

12 Q. The letter reflects that there would be a meeting  
13 on October 24th, 2006 with the trustees and Mark Barnebey;  
14 correct?

15 A. Yes.

16 Q. Okay. You're familiar from looking at the  
17 District records that they are often stamped in received?

18 A. Yes.

19 Q. This letter, Exhibit 301, indicates it was stamped  
20 and received?

21 A. Yes.

22 Q. And the copies were provided to each trustee?

23 A. Yes, on 10/23/06.

24 Q. So that would be prior to the meeting of October  
25 24th, 2006?

1 A. Yes.

2 Q. You discussed meetings of the Deed Restriction  
3 Committee?

4 A. Yes.

5 Q. You reviewed the minutes of those Deed Restriction  
6 Committee?

7 A. I did.

8 Q. And in those minutes you saw that there were  
9 multiple trustees in attendance at the meetings of those  
10 committee meetings?

11 A. When you say "multiple trustees," there was two --  
12 there was a trustee there on -- Are you speaking  
13 specifically about December of 2007? There's two meetings  
14 in December of 2007 that I reviewed.

15 Q. Yes, ma'am.

16 A. Okay. I believe there were two trustees  
17 present --

18 Q. Yes, ma'am.

19 A. -- at each of those meetings.

20 Q. Do you recall the names of those trustees?

21 A. I believe it was Joe Salerno and John Vander  
22 Molen.

23 Q. Okay. And the minutes reflect the deed  
24 restrictions were discussed at those meetings?

25 A. Yes.

1 Q. An acknowledgment of violations -- And  
2 subsequently those deed restrictions have come up for  
3 discussion by the Board of Trustees?

4 A. Yes, they have.

5 Q. At those discussions, was there any indication --  
6 there was no indication that the matter had already been  
7 discussed by trustees at the Deed Restriction Committee  
8 meetings, meetings of that committee?

9 A. No.

10 Q. There was never any direction from the Board of  
11 Trustees for the committee to restart its actions and to  
12 meet without the two trustees?

13 A. No.

14 Q. There was never an acknowledgment at the Board of  
15 Trustees that there had been a Sunshine violation by the  
16 attendance of multiple trustees at those Deed Restriction  
17 Committee meetings, were there?

18 A. There's no statement in the minutes that the Board  
19 or committees have made Sunshine violations.

20 Q. Would you look at Plaintiffs' 79?

21 A. It's a different book.

22 Q. All right. Do you recall in response to Mr. Lee's  
23 questions discussing Plaintiffs' 79?

24 A. Yes.

25 Q. Involved the discussion of the budget in 2007?

1 A. Yes.

2 Q. Were you aware that -- and I believe that you  
3 indicated that these were the District's official records of  
4 this meeting?

5 A. Yes. These aren't signed. I don't know if ours  
6 are signed in the office.

7 Q. Thank you for anticipating my question. You  
8 haven't brought with you here today any signed minutes,  
9 though, have you?

10 Now, with regard to Exhibit 79, the vote on the  
11 budget, did you do research to determine if this was the  
12 first time that the budget had been discussed in 2007?

13 A. Well, I know that it wasn't the first time that  
14 the budget was discussed.

15 Q. Okay. There was a prior meeting of the -- on the  
16 budget, wasn't there?

17 A. There's multiple meetings every year on the  
18 budget.

19 Q. Okay. And therefore there would've been a break  
20 between the prior meeting and this meeting of March 28th,  
21 2007?

22 A. I would need to look at the minutes to recollect  
23 all of the discussions on the budget.

24 Q. Well, Ms. Brauer, if this was the second meeting  
25 by the Board of Trustees on the budget in 2007, then there

1 would've been a break between the first meeting and the  
2 second meeting, would there not?

3 A. I believe he said a break before the vote.

4 Q. Ms. Brauer, you need to ask -- answer my question.

5 A. Well, your question has some inaccurate facts in  
6 it. Because this record right here indicates two meetings  
7 right here, March 28th and March 29th. These are two  
8 meetings on this one page.

9 Q. So that indicates there's a break between two  
10 meetings right on this -- right on these minutes?

11 A. There's two minutes on one page, yes.

12 Q. Okay. So based on the minutes that you've  
13 testified to, 79, there was a break -- there was an  
14 overnight break?

15 A. The meeting was continued from the day before,  
16 yes.

17 Q. Okay. And is it your understanding that -- and  
18 you weren't present in the office that morning when the  
19 meeting resumed?

20 A. No, I was not a trustee at the time.

21 Q. Thank you. The minutes in 79 also reflect that  
22 Bruce Smith and Tom Featheringill spoke at length after the  
23 vote; is that not correct?

24 A. Just a minute. Can you point me to where you're  
25 --

1 Q. Second -- top of the second page.

2 A. That's what it says at the top, Bruce Smith and  
3 Tom Featheringill spoke at length after the vote. And after  
4 they voiced their opinions, Margo Cushman made a motion to  
5 pass an amended budget assessment.

6 Q. So the minutes don't reflect the entire statements  
7 made by Mr. Featheringill or Mr. Smith concerning the vote?

8 A. No.

9 Q. So to the extent that it -- You discussed in  
10 answer to Mr. Lee's questions a website committee; do you  
11 recall?

12 A. Yes.

13 Q. And you stated that that Website Committee expired  
14 on the 31st of 2008?

15 A. Yes.

16 Q. But you, in fact, attended a Website Committee  
17 meeting in January of 2009?

18 A. The past committee I attended a meeting. I asked  
19 to meet with them individually, and they said they didn't  
20 want to meet with me individually. And they had a social --  
21 they said it would be a social hour. They had set their  
22 agenda for the spring not knowing that they wouldn't be  
23 renamed, so I went to their social gathering.

24 Q. Ma'am, you went to a meeting of the Website  
25 Committee in January of 2009?

1           A.    Of the past expired Website Committee, yes. I  
2 went to talk with them about how we could clean up the  
3 District records and they could continue to do the things  
4 that they wanted to do on the website.

5           Q.    And the members of those committees you continued  
6 to meet with in -- several of the members of that committee  
7 you continued to meet with in January and February of 2009  
8 concerning the website and website management?

9           A.    When the website expired in January of 2009, it  
10 needed to be rebuilt. I solicited assistance from one  
11 member who had been -- two members who had been on the  
12 previous Website Committee.

13          Q.    And you met with them regarding the same matters  
14 that they had previously been working on while they were a  
15 formal committee of the District?

16          A.    I met with them to rebuild the website.

17          Q.    And building the website was what the committee  
18 had been doing in 2008; correct?

19          A.    2007, 2008, they had been investigating the  
20 potential for having a website for the District and then  
21 they made the website, yes.

22          Q.    There was a meeting between you and individuals  
23 that were working on the website in January of 2009?

24               MR. LEE: Asked and answered, Judge.

25               THE COURT: Are you attempting to impeach her?

1           Because that question has been asked and it has  
2           been answered.

3 BY MR. HENNESSY:

4           Q.    Do you recall your deposition being taken in this  
5           case in --

6           A.    May and August.

7           Q.    -- May of 2009?

8           A.    Yes.

9           Q.    And in that deposition you were asked the  
10          question -- Page 220, Line 1 -- "Were there ever meetings  
11          with you and the variety of individuals you've named that  
12          were --"

13          MR. LEE:  Objection, Counsel.  That's not from the  
14          May 2009 deposition.

15          MR. HENNESSY:  Correct, sir.

16          MR. LEE:  Thank you.

17 BY MR. HENNESSY:

18          Q.    You were deposed -- your deposition was continued  
19          and finished on August 28th, 2009; correct?

20          A.    Yes.

21          Q.    And at that deposition you were asked the  
22          question -- Page 220 -- "Were there ever meetings with you  
23          and the variety of individuals you've named that were  
24          working on the website, you know, during that first part of  
25          2009?"

1 Answer, "Yes."

2 Were those meetings -- was that meeting a public  
3 meeting?

4 A. When you said "variety of individuals," what  
5 individuals are you talking about? Could you go back a  
6 little?

7 Q. You said you attended a meeting in January of  
8 2009.

9 A. Could I explain? In 2000- --

10 Q. Who was in attendance at that meeting?

11 A. In 2009, the expired Website Committee had already  
12 posted their meetings late 2008 for 2009. So they had a  
13 meeting scheduled on a Thursday in the back of the Tribune.  
14 Their committee -- their committee was expired. I wanted to  
15 meet with them individually and learn how you upload and  
16 write an informational manual for the Board. Because no one  
17 on the Board and no one in the District knew how -- anything  
18 how to do with that website but that Website Committee.

19 They said to me that they would refuse to meet  
20 with me alone. They said they had already scheduled a  
21 meeting and it was -- they were going to use it like as a  
22 social hour or whatever, and would I come and meet with  
23 them. And I said I would come and meet with them and talk  
24 with them as a group, because they refused to meet with me  
25 individually.

1 Q. And at that time you discussed the operation of  
2 the website?

3 A. I gathered information about how they ran the  
4 website. I also told them my purpose was not to disallow  
5 them from running the website, but was to clean up -- the  
6 records were not matched one to one between how the website  
7 presented them and how they were in the office. And I was  
8 also looking to streamline to see if there was a way to  
9 upload that didn't require scanning in, but instead was a --  
10 like, more efficient from the District into the website.

11 Q. You didn't post any notice for that meeting, did  
12 you?

13 A. No, I did not.

14 Q. And you didn't take any minutes from that meeting?

15 A. It was not a committee meeting. They were not a  
16 committee.

17 Q. And to your knowledge, no minutes from those  
18 meetings -- from that meeting was filed with the District?

19 A. They wrote a letter to the District that states  
20 what was discussed.

21 Q. Do you recall discussing meetings of the Future  
22 Planning Committee that occurred on December 3rd, 2008?

23 A. Yes, I do.

24 Q. And at that meeting Trustee Bruce Smith was  
25 present?

1 A. Yes.

2 Q. And at that meeting Trustee Elect Bob Durrin was  
3 present?

4 A. Yes.

5 Q. And at that meeting Trustee Mary Lou McNulty was  
6 present?

7 A. I don't believe Mary Lou was there. I need to  
8 look at the minutes.

9 Q. Okay. Let's go ahead and look at Exhibit 341,  
10 Defendant's Exhibit 341.

11 Do you need some more water, ma'am?

12 The minutes indicate the individuals who were  
13 present; correct?

14 A. Yes.

15 Q. It indicates Bruce Smith was present?

16 A. Yes.

17 Q. And it indicates that Bob Durrin was present?

18 A. Yes.

19 Q. It indicates Fred Hoch was present?

20 A. Yes.

21 Q. Mr. Hoch was also a trustee elect?

22 A. Yes.

23 Q. And I stand corrected, Mary Lou McNulty was  
24 actually absent from that meeting. Correct?

25 A. Yes.

1 Q. The trustees did participate in this meeting,  
2 though, did they not, the trustees and trustee elects?

3 A. Yes.

4 Q. In fact, it indicates that Bruce Smith distributed  
5 the agenda to be held at the Board of Trustees workshop to  
6 be held on Monday?

7 A. Uh-huh.

8 Q. It indicates the copy of the Board of Trustee  
9 questionnaire was discussed by the Future Planning  
10 Committee?

11 A. Yes.

12 Q. And he was soliciting input from the Future  
13 Planning Committee as he thought it might help the Board?

14 A. I don't believe that's what it says here, but.  
15 Where are you reading from?

16 Q. "Bruce thought that the Future Planning Committee  
17 would wish to have some input as it might help with the  
18 survey being created by the Future Planning Committee."  
19 Last paragraph on page -- on Exhibit -- Defendant's Exhibit  
20 341.

21 A. Yeah, but your statement said something about  
22 helping the Board. It was helping their Board, Future  
23 Planning Committee.

24 Q. Let me move on to a different question.

25 A. Okay.

1 Q. On the next page it indicates that Bob Durrin, the  
2 trustee elect, explained the purpose of the Board of  
3 Trustees' questionnaire.

4 A. Yes.

5 Q. And he informed the Future Planning Committee that  
6 as he -- that as a trustee elect, he was receiving all the  
7 business pertaining to the Board of Trustees?

8 A. Yes, he was elected the night before.

9 Q. So the District had moved quick in getting him  
10 that information?

11 A. It was put in everyone's mailbox.

12 Q. Now, there's no indication in the minutes of the  
13 Board of Trustees meeting that you read to us subsequent to  
14 this Future Planning Committee meeting that the -- that  
15 there had been a Sunshine violation at this Future Planning  
16 Committee meeting?

17 MR. LEE: Objection, Your Honor. Best evidence  
18 rule. I agree the minutes only say what they say.

19 THE COURT: I believe that she's answered two  
20 or three -- on two or three occasions that there  
21 are no references to any Sunshine violations or  
22 admissions in the minutes. I don't think we need  
23 to ask it again.

24 MR. HENNESSY: All right, Your Honor.

25 BY MR. HENNESSY:

1 Q. There was discussion regarding pictures that you  
2 wished to have placed on the -- or that you wished to have  
3 the trustees decide on whether to place on the District's  
4 website; do you recall that testimony?

5 A. I recall the testimony. But you didn't say it --

6 Q. Let me ask you -- Let me ask you differently.

7 A. Okay.

8 Q. You sent out a memo to the Board of Trustees  
9 asking for their vote concerning whether or not pictures  
10 should be put on the website?

11 A. Right, a request from a club.

12 Q. Okay. And you asked for a vote, written vote from  
13 the trustees?

14 A. Yes, I did.

15 Q. And this was a request that was made outside of a  
16 public meeting?

17 A. Yes.

18 Q. And trustees, in fact, did vote on these ballots?

19 A. Yes.

20 Q. And those ballots were turned in to the District?

21 A. To T.J., yes.

22 Q. And you've reviewed those?

23 A. No, I have not, except when you brought them  
24 forward at testimony today, or this past week.

25 Q. Now, with regard to public records requests, you

1 indicated that you were aware of the request for the June  
2 19th, 2006 video by my clients?

3 A. Yes, I'm -- I wasn't aware of it then. I'm aware  
4 of it now, yes.

5 Q. You were aware of it when you took office in 2009?

6 A. At some time during that time, yes.

7 Q. Okay. Since you've taken office in 2009, that's  
8 when you looked for the video?

9 A. Yes.

10 Q. You weren't on the Board in 2006 --

11 A. No, I was not.

12 Q. -- when the request was made?

13 A. No, I was not.

14 Q. You don't know what the District records contained  
15 in 2006 when the request was made?

16 A. No, I do not.

17 Q. You don't know what was in the possession of the  
18 Video Computer Club in 2006 when a request was made?

19 A. No, I do not.

20 Q. That would hold true for the requests for the 2006  
21 March budget hearing made by my client as well?

22 MR. LEE: Objection, Your Honor. Beyond the scope  
23 of direct.

24 THE COURT: Overruled.

25 A. Can you repeat the question?

1 BY MR. HENNESSY:

2 Q. You're aware that my clients made a request for a  
3 March 2006 budget hearing --

4 A. Yes, I am.

5 Q. -- looking for the videotape of that meeting?

6 A. Yes.

7 Q. And you weren't -- you don't know whether or not  
8 that videotape existed in 2006 when the request was made?

9 A. I do not.

10 Q. Now, you indicated as well you were aware of my  
11 client's request for records in the District's possession  
12 that had been identified by District log that's number 73  
13 and 76?

14 A. Yes, I'm aware of that request.

15 Q. And you're aware that the District has not  
16 produced the item identified in the log as number 76?

17 A. Yes.

18 Q. You would agree that since the District log  
19 identifies a document as number 76, that a document number  
20 76 existed at the time the log was created?

21 A. That would be speculation on my part, but. That  
22 would be an assumption.

23 Q. Because you didn't create the log?

24 A. I did not create the log.

25 Q. You were able to find a document that you believe

1 was responsive to request number 73 or identified as log  
2 number 73?

3 A. When you say "you were able to find," the District  
4 was.

5 Q. The District was able.

6 A. Yes. Yes.

7 Q. To your knowledge, though, that document that was  
8 produced did not have a specific number on it that said it  
9 was log number 73?

10 A. I do not know that to my recollection. I haven't  
11 dealt with that one for a while.

12 Q. Now, you indicated in your testimony that in  
13 response to a public records request from Mr. Meierjorgen,  
14 the District provided him with an incomplete copy of the  
15 documents that he requested?

16 A. That's my understanding from the records  
17 custodian.

18 Q. And the information that was not provided to him  
19 was the, was the medical information upon which the issuance  
20 of the emotional support pet application was issued?

21 A. Yes.

22 Q. And you're aware that the District has taken the  
23 position that that information was confidential and should  
24 not be produced to members of the -- produced upon request  
25 for public records from residents in the Park?

1           A.    I don't believe what you've just said to be  
2 accurate.

3           THE COURT:   Mr. Hennessy --

4           MR. HENNESSY:   Yes, ma'am.

5           THE COURT:   -- I need to break at this time.  I  
6 have an event I have to attend over the lunch hour.  
7 So rather than me watching you --

8           MR. HENNESSY:   Look through my questions.

9           THE COURT:   -- go through your notes, I will  
10 take a lunch break.  And please be back at 1:30.

11          MR. HENNESSY:   Yes, Your Honor.

12                         (Recess, after which the following proceedings  
13 were had:)

14          THE COURT:   You may proceed.

15          MR. HENNESSY:   Thank you, Your Honor.

16 BY MR. HENNESSY:

17          Q.    Ms. Brauer, you had indicated that in a May 18th,  
18 2009 Board meeting, the Board of Trustees authorized you  
19 with the District attorney to negotiate a contract with the  
20 proposed -- or the auditor that was recommended by the  
21 Auditor Selection Committee?

22          A.    Yes, that's correct.

23          Q.    And did you do those negotiations?

24          A.    To the degree that I'm included, yes.

25          Q.    Okay.  Well, you were -- you and the attorneys

1 were present and negotiated with the auditors?

2 A. No, not a meeting. Not a meeting. It didn't  
3 authorize a meeting.

4 Q. Those negotiations occurred outside of the public  
5 Board meeting?

6 A. Yes.

7 Q. You discussed a December 12th, 2008 public records  
8 request from my office; recall that?

9 A. Yes.

10 Q. And in that public records request, it requested  
11 all e-mails sent between District Board of Trustee members  
12 relating to the District from January 1st, 2006 to the  
13 present?

14 A. Yes.

15 Q. Okay. And there was a delay of over 30 days in  
16 responding to that public records request; correct?

17 A. We started responding and providing materials. I  
18 don't know exactly when the material started coming to you.  
19 We had -- one of the requests on it was for their  
20 participating in blogs and chat rooms, et cetera. So T.J.  
21 had to call all the -- go back and make a list of all the  
22 trustees and call all of them and then notify you as to  
23 whether they had participated. I believe that was number  
24 one on the request.

25 Q. The District didn't respond until over -- in

1 producing any documents until after 30 days. And you'd  
2 indicated that that was due to an error?

3 MR. LEE: Object to -- objection. Argumentative.

4 THE COURT: Overruled.

5 A. I don't know that I -- did I state that it was  
6 30 days before the original response came? I just stated  
7 that the two memos were confusing. And when it was  
8 discovered that we were able to produce, we then -- when we  
9 realized the difference, we then pursued more e-mails and  
10 provided you with more documents.

11 BY MR. HENNESSY:

12 Q. Well, there was a -- there was the public records  
13 request and then there was a request for production that  
14 went to Kirk Pinkerton.

15 A. Yes.

16 Q. Okay. And originally there was a delay because  
17 Ms. Miller thought that the attorneys were responding to  
18 everything under the public records request.

19 MR. LEE: Objection. Assumes facts not in  
20 evidence.

21 THE COURT: Well, she can -- if she can answer  
22 that, she may.

23 A. When I started January 5th -- I don't know the  
24 exact date of when I became chairman -- they had been  
25 working on that public records request. And then another

1 one came in January 8th and another one came in January  
2 12th, and all of those we continued to work on them as we  
3 could as -- I mean, we had one secretary and one part-time  
4 secretary.

5 BY MR. HENNESSY:

6 Q. Ma'am, you discovered that there was an error as  
7 well because you didn't realize that the, that the request  
8 asked as well for e-mails between trustee elects --

9 A. The request did not ask for that.

10 Q. -- in the public records request?

11 A. The public records request --

12 Q. I'm sorry.

13 A. -- did not ask for trustee elects. The first  
14 request for production asked for trustee elects.

15 Q. Okay. And so your testimony was that initially  
16 187 pages were produced and three months later, when the  
17 recognition that there was a need for trustee elect e-mails,  
18 that about 800 pages were provided and supplemented?

19 MR. LEE: Objection. Misstates prior testimony.

20 THE COURT: Overruled.

21 A. There was a large -- I can see the packet right  
22 now. The top part was the e-mails between trustees,  
23 trustees elects, et cetera, some additional ones that had  
24 come in. And then the bottom stack, about that tall, which  
25 would be quite a lot, were the e-mails from all of -- T.J.'s

1 e-mails. (Indicating.)

2 MR. LEE: Let the record reflect the witness is  
3 indicating a stack about four to five-inches tall.

4 THE COURT: Noted.

5 MR. LEE: Thank you, Your Honor.

6 BY MR. HENNESSY:

7 Q. So your testimony is that the e-mails related to  
8 the trustee elects was substantially larger than the e-mails  
9 related to trustees?

10 A. No. No, we were continuing -- again, they came in  
11 on 12/12. Then another one came in January 8th, another one  
12 came in January 12th. I mean, this was ongoing. So we  
13 continued to -- when you're asking people for e-mails -- we  
14 don't have a server, so that -- we store Trailer Estates  
15 e-mails on. So we were asking people who are no longer  
16 trustees to come in from 2006, 2007, to bring in their  
17 e-mails.

18 So in terms of timeliness, I mean, we can call  
19 them and write them letters, but we can't hold a gun to  
20 their heads to get them in tomorrow or the next day. So we  
21 were somewhat at their mercy as they brought things in.

22 Q. So it's your testimony that these records were not  
23 in the District offices?

24 A. Not all the records were in the District office,  
25 no. Not e-mails.

1 Q. And finally, you indicated with regard to the  
2 Executive Committee meetings that occurred in 2006 that you  
3 weren't present at any of those Executive Committee  
4 meetings?

5 A. That's correct.

6 Q. You don't know what was discussed at those  
7 meetings?

8 A. Only what's noted in the memorandums.

9 Q. Okay. And what you know of those Executive  
10 Committee meetings don't come from attending Board of  
11 Trustees meetings, they come from your review of those  
12 records?

13 A. Much of what I know from the review of the  
14 records, yes.

15 Q. And your review of the records was pursuant to a  
16 project that Ms. Jones, or Janet Jones, asked you to do?

17 A. That was one of the times that I reviewed the  
18 records. I've reviewed the records twice since then.

19 Q. And that review for Janet Jones occurred in 2007?

20 A. All of 2007.

21 Q. Okay. And their second project occurred in 2008?

22 A. No, my second project occurred in 2009 as a part  
23 of this litigation.

24 Q. And so it's from your first project that you  
25 learned about the existence of the Executive Committee?

1           A.    The emphasis on that part of what I was looking  
2 for came from the 2009. I mean, I do know that I saw them  
3 in there in 2007, but that wasn't the focus of my project in  
4 2007.

5           Q.    Okay. So you didn't learn about the Executive  
6 Committee or really knowingly understand what the Executive  
7 Committee was until your 2009 search?

8           A.    No, I know what the Executive Committee is because  
9 you read about it in the bylaws. It states that an  
10 Executive Committee is the chairman, the first vice and  
11 second vice. Those are called Executive Committee members.  
12 The Executive Committee meeting minutes -- the Executive  
13 Committee -- the reference to the Executive Committee on  
14 occasion is listed in the Board minutes, and I would've seen  
15 that during my review back in 2007. However, that -- my  
16 focus was looking for policies, not looking for who did  
17 what. It was looking for policies. So then my review in  
18 2009 and 2010 were focused more on looking specifically for  
19 those references.

20          Q.    Okay. Well, when was your investigation into the  
21 bylaws in your 2007 review or your 2009?

22          A.    Oh, I looked at the bylaws in 2007.

23          Q.    Okay. Okay. So in 2007, you learned about the  
24 existence of the -- or at least the entitlement that the  
25 District had to having an Executive Committee?

1           A.    Yes, I read the bylaws in 2007 along with the  
2 charter and the deed restrictions and the --

3           Q.    But you didn't know -- you didn't know it to be an  
4 operating entity when you did your investigation in 2007?

5           A.    When I read everything in 2007, it was strictly to  
6 sort through it to make the table of contents for the policy  
7 and procedure manual. I did not know at those -- what you  
8 call the memorandums from those -- I did not know about the  
9 existence of those because that wasn't the records that I  
10 reviewed then. I strictly looked at minutes, Board meeting  
11 minutes and Board workshop minutes.

12           Q.    What I'm asking is that you didn't know, then,  
13 until -- really know until 2009 that the Executive Committee  
14 was -- Committee had actually been operating?

15           A.    That was the first time I read -- except for the  
16 references in the -- when I did my first review that was in  
17 the minutes, I didn't see it as an operating committee  
18 myself.

19           Q.    Well, if that's how your knowledge was gained, Ms.  
20 Brauer, then I would ask how, how is it that you made a  
21 recommendation to Chairman McNulty in 2006 that they utilize  
22 the Executive Committee for determining whether or not the  
23 District attorney should be contacted for a legal opinion?

24           A.    That --

25           MR. LEE: Beyond the scope of direct.

1 THE COURT: Sustained.

2 MR. HENNESSY: Your Honor, I'm not introducing  
3 it on the issue of the -- that particular cause of  
4 action in my Complaint, but to -- with regard to  
5 the credibility of the witness.

6 THE COURT: I ruled.

7 MR. HENNESSY: Thank you, Your Honor.

8 No further questions, Your Honor.

9 MR. LEE: Just a couple quick ones, Judge.

10 REDIRECT EXAMINATION

11 BY MR. LEE:

12 Q. Ms. Brauer, with regard to the Bay Drive lease,  
13 there were conversations among the Board of Trustees before  
14 May 24th, 2006; correct?

15 A. Okay.

16 Q. I'm sorry.

17 A. Let me just, let me just get my dates again. Was  
18 May 24 when they decided to not go into the lease?

19 Q. Well, unfortunately I only get to ask questions,  
20 Ms. Brauer.

21 A. Oh, okay.

22 Q. So I'll help orient you to the timing.

23 A. Okay.

24 Q. May 24th, 2006 is the date of the Executive  
25 Committee memo.

1 MR. HENNESSY: Objection. Leading, Your Honor.

2 THE COURT: Sustained.

3 BY MR. LEE:

4 Q. Let's just -- we'll skip that one.

5 A. Can I look at the exhibits?

6 Q. We've covered it.

7 A. Okay.

8 Q. Did Mr. Neal attend Board of Trustees meetings  
9 after he was appointed to fill the vacancy?

10 A. Did Mr. Neal, yes.

11 Q. Uh-huh.

12 A. I've seen it in the minutes, yes.

13 Q. Did Mr. Featheringill attend meetings of the Board  
14 of Trustees after he was appointed to the Board of Trustees?

15 A. Yes.

16 Q. Were there any objections to either Mr. Neal or  
17 Mr. Featheringill's serving on the Board of Trustees during  
18 their terms?

19 A. No, there was not.

20 Q. Prior to 2007 was there any policy to interview  
21 Board members or prospective Board of Trustees members prior  
22 to their selection?

23 A. No, there was not.

24 Q. Pursuant to the bylaws, may the Board of Trustees  
25 select any resident it wants to fill a vacancy on the Board

1 of Trustees?

2 A. Okay. Go back again. I need to hear the question  
3 again.

4 Q. Pursuant to the bylaws --

5 MR. HENNESSY: Objection, Your Honor. Beyond the  
6 scope of cross.

7 MR. LEE: The selection --

8 THE COURT: Overruled.

9 BY MR. LEE:

10 Q. Pursuant to the bylaws, may the Board of Trustees  
11 select any resident of Trailer Estates it wants to fill a  
12 vacancy on the Board of Trustees?

13 A. It's according to the charter, not the bylaws.

14 Q. Thank you. Did the Auditor Selection Committee  
15 consider firms other than CPA Associates to be Trailer  
16 Estates' auditor?

17 A. Yes, they did. They solicited bids, actually, or  
18 proposals, requests for proposals.

19 Q. Okay. Is it possible that some of the documents  
20 in the 800-page production you've been talking about were in  
21 response to subsequent records requests from Lewis, Longman  
22 & Walker? And by "subsequent," I mean, after December 12th,  
23 2008.

24 A. Yes.

25 MR. HENNESSY: Objection, Your Honor. Objection.

1           It's both speculative and leading. "Is it  
2           possible" is the way he phrased his question.

3           THE COURT: Sustained.

4 BY MR. LEE:

5           Q. Did you receive a records request from Lewis,  
6 Longman & Walker after December 12th, 2008?

7           A. Yes, we did.

8           Q. Did you receive a request from Lewis, Longman &  
9 Walker on January 8th, 2009?

10          A. Yes.

11          Q. Did you receive a request from Lewis, Longman &  
12 Walker on January 12th, 2009?

13          A. Yes.

14          MR. LEE: No further questions, judge.

15          THE COURT: Anything else?

16          MR. HENNESSY: No, Your Honor.

17          MR. LEE: Mr. Barnebey.

18 THEREUPON,

19                               MARK P. BARNEBEY, ESQUIRE

20 was adduced as the witness herein, and being first duly  
21 sworn to tell the truth, the whole truth, and nothing but  
22 the truth, testified as follows:

23           MR. LEE: Plaintiffs' 586 and 60, Counsel.

24           MR. HENNESSY: I'm sorry, what were the exhibit  
25 numbers?

1 MR. LEE: 586 and 60.

2 MR. HENNESSY: Are these defendant's?

3 MR. LEE: They're yours.

4 MR. HENNESSY: Plaintiffs.

5 MR. LEE: Yep.

6 DIRECT EXAMINATION

7 BY MR. LEE:

8 Q. Mr. Barnebey, would you please introduce yourself  
9 to the Court by stating your full name?

10 A. I'm Mark P. Barnebey.

11 Q. And what do you do for a living, Mr. Barnebey?

12 A. I'm an attorney.

13 Q. How long have you been an attorney?

14 A. 27 years.

15 Q. Do you hold any certifications or special  
16 recognitions from the Florida Bar?

17 A. I'm Board certified in city, county and local  
18 government law.

19 Q. Have you ever held any positions on any committees  
20 or special, I guess, ad hoc groups among the Florida Bar?

21 A. I'm past chair of the city, county and local  
22 government law section. I've also been chair of the 12C, I  
23 think it's called C, grievance committee.

24 Q. Okay. You heard Ms. Brauer talk about the April  
25 16, 2007 Board of Trustees meeting?

1 A. I did.

2 Q. Were you present for this meeting?

3 A. I believe I was.

4 Q. Did you hear any allegation that Margo Cushman and  
5 Joe Bigley conferred outside of the March 28th or 29th, 2007  
6 meeting about the budget?

7 A. No, I don't recall that.

8 Q. Did you hear anybody make any allegations that  
9 either Ms. Cushman or Mr. Bigley violated the Sunshine Law  
10 at the March 28th or March 29th, 2007 budget meeting?

11 A. No, I don't recall any of that either.

12 Q. Would you please take a look at Plaintiffs' 586?  
13 That was the close one. And if you'd just move your water.

14 Mr. Barnebey, do you recognize Plaintiffs' Exhibit  
15 586?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is a memorandum to Janet Jones, chair of the --  
19 at that time of the Trailer Estates Board of Trustees  
20 relating to public record policy issues.

21 Q. Okay. Were you responding to a question from Ms.  
22 Jones?

23 A. Yes, Mr. Rudacille and I responded to that  
24 question.

25 MR. LEE: Your Honor, I'd move -- I'll ask one

1 more.

2 BY MR. LEE:

3 Q. Is Exhibit 586 a true and correct copy of your  
4 memorandum to Ms. Jones?

5 A. It appears so.

6 MR. LEE: Your Honor, I'd move Plaintiffs' 586  
7 into evidence.

8 THE COURT: It is received, 586.

9 BY MR. LEE:

10 Q. Mr. Barnebey, is Trailer Estates required to  
11 videotape its Board of Trustees meetings?

12 A. No.

13 Q. May an individual videotape a Trailer Estates  
14 Board of Trustees meeting?

15 A. Yes.

16 Q. May a club videotape a Trailer Estates Board of  
17 Trustees meeting?

18 A. Yes, anyone can videotape those meetings.

19 Q. Are the videos by individual or clubs of Board of  
20 Trustees meetings public records?

21 A. No, unless they are presented to the District. At  
22 that point they would become public records.

23 Q. Okay. Now, with respect to 37ppp -- and I will --  
24 Let me direct your attention to Plaintiffs' 60. Mr.  
25 Barnebey, do you remember the October 30, 2006 workshop when

1 you were interviewed by the Board of Trustees of Trailer  
2 Estates?

3 A. Yes.

4 Q. Had you been interviewed by anyone from Trailer  
5 Estates before that meeting?

6 A. Yes, a small group of people.

7 Q. Okay. Do you recall who was present for that  
8 initial meeting?

9 A. No, the only -- at that point I didn't know who  
10 anybody was. But I do recall Mary Lou McNulty was at that  
11 meeting.

12 Q. Were a lot of people present at this initial  
13 meeting?

14 A. At the initial meeting, no, there were only a few  
15 people present. I only remember two or three.

16 Q. On October 30th, 2006, was that when you were  
17 introduced to a larger group?

18 A. Yes, Mr. Rudacille and I attended a workshop --  
19 well, a meeting of the Board, and that was with the full  
20 Board.

21 Q. Okay. Was that -- do you recall where that  
22 meeting occurred at Trailer Estates?

23 A. Small hall, where they have all of their District  
24 Board meetings.

25 Q. Let me do one more with you, Mr. Barnebey.

1           Mr. Barnebey, let me show you Plaintiffs' 373. Do  
2 you recognize that document?

3           A.    Yes.

4           Q.    Is that a letter that came from your office?

5           A.    Yes.

6           Q.    And what's the subject matter of that document,  
7 Plaintiffs' 373?

8           A.    That is a letter in regard to a public records  
9 request by Ms. Cowan or actually -- in regard to a public  
10 records request from Lewis, Longman & Walker, dated January  
11 8th, 2009 and January 12th, 2009.

12          Q.    Okay. Is that a true and correct copy of your  
13 January 16th, 2009 letter?

14          A.    It appears to be, yes.

15               MR. LEE: Judge, we move Plaintiffs' 373 into  
16 evidence.

17               MR. HENNESSY: It's already in.

18               THE COURT: It's already in evidence.

19               MR. LEE: Oh, good.

20 BY MR. LEE:

21          Q.    Mr. Barnebey, would you please just quickly, if  
22 you could, read to the Court the first paragraph of that  
23 letter.

24          A.    "The District is in receipt of your public records  
25 request dated January 8, 2009 and January 12th, 2009. While

1 we are diligently pursuing the fulfillment of these  
2 requests, they are substantial in breadth and require  
3 examination of years worth of documents. As you know, the  
4 District has only one-full time office employee. That  
5 employee is also responsible for dealing with members of the  
6 public who visit the office for services. In fact, the  
7 District office has been forced to close for extended  
8 periods of time this week so the office manager could work  
9 exclusively on fulfilling these requests."

10 MR. LEE: No further questions, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HENNESSY:

13 Q. Mr. Barnebey, do you still have Exhibit 373 in  
14 front of you?

15 A. I do.

16 Q. Would you look at the second page of the document?

17 A. Okay.

18 Q. Would you read to the Court that first paragraph?

19 A. First paragraph of the second page?

20 Q. Yes, sir.

21 A. Sure. The office manager is in the process of  
22 changing the logging protocol for public records of the  
23 District. This is being done in response to suggestions  
24 offered at the public records seminar attended by the office  
25 manager --

1 Q. Could you slow down just a little bit?

2 A. Okay. -- and one of the Board members earlier  
3 this year. However, in response to your letter of January  
4 12th, 2009, you're welcome to inspect any logs as they have  
5 been prepared. While you certainly have the right to  
6 inspect all documents listed on those logs, it may make  
7 sense to review -- well, first to determine which records  
8 you'd like to inspect. This may also save on some costs, as  
9 we have well exceeded the threshold for a special service  
10 charge on those -- on these requests.

11 Q. Now, Mr. Barnebey, so that you've directed Ms.  
12 Cowan to look through the District logs and identify  
13 documents that she wants out of those logs?

14 A. That was my suggestion, yes.

15 Q. Now, you've never personally gone and -- you  
16 didn't personally go and attend that document inspection,  
17 did you?

18 A. No, I did not.

19 Q. So you don't know if Ms. Cowan -- you don't know  
20 if Ms. Cowan went and followed your advice and identified  
21 documents under the log?

22 A. I know -- well, I know she's been out there a  
23 number of times. I don't know specifically on this request.

24 Q. Were you aware at the time you made this  
25 suggestion that the public records custodian had not -- you

1 were aware that she was changing over her system of record  
2 keeping?

3 A. I was aware that they were in the process of  
4 changing their record keeping system, yes.

5 Q. And you were aware that the records were no longer  
6 going to be kept according to those numeric logs?

7 A. I was not aware of how they were changing it.

8 Q. And were you aware that in changing from those  
9 numeric logs that there would be no cross-reference on  
10 documents for how they were kept previously pursuant to a  
11 numeric log?

12 A. I don't have any knowledge about that one way or  
13 the other.

14 Q. So at the time you were suggesting to Ms. Cowan  
15 that she follow the numeric log and request documents  
16 pursuant to that log, you were not aware that that was going  
17 to result in wasted time on her part?

18 A. No.

19 Q. Okay.

20 A. I was trying to save her money.

21 Q. The Exhibit 586 --

22 A. 586.

23 MR. LEE: That's your memorandum.

24 BY MR. HENNESSY:

25 Q. Your memorandum.

1 A. My memorandum, okay.

2 Q. Plaintiffs' 586, your memorandum on public records  
3 policy.

4 A. Yes.

5 Q. And you indicated that the -- today that you  
6 believe that the videotape -- videotapes are a public record  
7 when they're received by the District?

8 A. That's correct.

9 Q. Have you also expressed the opinion in a public  
10 meeting that given that the video -- sorry. Let me step  
11 back.

12 You're aware of how the District -- how the  
13 District meetings are videotaped?

14 A. They're videotaped by the Video Club most of the  
15 time.

16 Q. There's a camera there in the meeting room?

17 A. Yes.

18 Q. And the camera is connected to a system that  
19 broadcasts the meetings on the local access television?

20 A. I believe that's correct.

21 Q. Okay. And that those lines that are utilized are  
22 lines that have been purchased by the District?

23 A. I don't know how the lines can be played.

24 Q. You, in fact, have provided the District with  
25 advice in a public meeting that once the broadcast goes out

1 over the system, it becomes a public record?

2 A. It's possible. I don't recall that.

3 Q. Do you recall attending a Board meeting of the  
4 District Board of Trustees on May 12th, 2008 to provide a  
5 Sunshine workshop?

6 A. I've given several Sunshine workshops. I don't  
7 recall the dates.

8 Q. Okay. Do you recall providing one in 2008?

9 A. I believe I did.

10 Q. To the extent that that Board meeting is -- has  
11 been videotaped, would the videotape from that Board meeting  
12 assist in refreshing your recollection as to what opinions  
13 you've provided?

14 A. It might.

15 Q. I'd like to go ahead and show you a clip from the  
16 May 12th, 2008 Board of Trustees meeting.

17 MR. HENNESSY: Exhibit number?

18 MS. COWAN: 986.

19 MR. HENNESSY: 986, Plaintiffs' 986.

20 (At this time, the videotape was played.)

21 MR. SMITH: "On the video, that is or is not a  
22 public record?"

23 MR. BARNEBEY: "Well, is it given to the  
24 District, the District (inaudible.)"

25 MR. SMITH: "Well, the comments I heard is that

1 the District equipment, as far as the transfer  
2 lines, are used to make the recording.

3 MR. BARNEBEY: "I don't know that I understand  
4 what that means."

5 MR. SMITH: "I'm getting the signal from here  
6 to the building a block away --"

7 MR. BARNEBEY: "Uh-huh."

8 MR. SMITH: "-- there -- that, that is property  
9 of the District."

10 MR. BARNEBEY: "Okay. So that they're  
11 transmitted through District lines --"

12 MR. SMITH: "Uh-huh."

13 MR. BARNEBEY: "-- but it's owned by somebody  
14 else?"

15 MR. SMITH: "The equipment on the end --"

16 MS. McNULTY: "They've --"

17 MR. SMITH: "-- is owned by the club."

18 MR. BARNEBEY: "Okay."

19 MS. McNULTY: "The Video Club owns --"

20 MR. SMITH: "But, but the --"

21 MS. McNULTY: "-- the equipment."

22 MR. SMITH: "Part of the equipment, in other  
23 words, is, is used to develop that."

24 MR. BARNEBEY: "All right. Are the, are the --  
25 are the tapes put out on the District's --"

1 MS. McNULTY: "Television."

2 MR. SMITH: "Website, yes."

3 MR. BARNEBEY: "Okay. I think --"

4 MR. VANDER MOLEN: "No, the (inaudible) -- say  
5 that one again. The tape is not put out on the  
6 District website --"

7 MR. BARNEBEY: "But the --"

8 MR. VANDER MOLEN: "-- the minutes are."

9 MR. SMITH: "No, the --"

10 MS. McNULTY: "No, on our --"

11 MR. SMITH: "The District website puts out a  
12 video."

13 MR. VANDER MOLEN: "Oh, you mean --"

14 MR. SMITH: "In District -- I'm sorry.  
15 District --"

16 MR. VANDER MOLEN: "No."

17 MR. SMITH: "Channel 95 is what I'm trying to  
18 say."

19 MR. BARNEBEY: "Okay."

20 MR. SMITH: "Yeah."

21 MR. BARNEBEY: "And Channel 95 is the internal  
22 District --"

23 MS. McNULTY: "Yes."

24 MR. SMITH: "Yes."

25 MR. BARNEBEY: "District -- will probably --"

1           that's probably a little bit of a close call. But  
2           my guess is once it goes out on your system, it  
3           probably becomes a public record."

4                       (End of video clip.)

5 BY MR. HENNESSY:

6           Q.    Mr. Barnebey, do you recall attending that -- Let  
7           me ask you this. That is a picture of you delivering that  
8           advice?

9           A.    That's a picture of me giving me -- giving an  
10          opinion, yes.

11          Q.    Yes. Do you recall today giving that advice to  
12          the Board?

13          A.    Well, I see what I said.

14          Q.    Okay.

15          A.    I don't recall it specifically.

16          Q.    And the questioning that was asked of you, when --  
17          but you did deliver the advice that once it goes out on your  
18          system, it's a public record?

19          A.    I said that. I'm assume -- I was assuming at the  
20          time that there would be some sort of documentation that was  
21          with that, though.

22          Q.    Now, Mr. Barnebey, at that time nobody mentioned  
23          to you that the District had purchased the video camera that  
24          was used by the Video Computer Club, had they?

25          A.    I don't recall.

1 Q. Okay. And at that time nobody had told you that  
2 the computer system that broadcast the meetings over the  
3 District channel had also been purchased by the District?

4 A. I don't recall.

5 Q. Nevertheless, your opinion was at that time that  
6 once it was broadcast, it was a public record?

7 A. Well, there'd have to be a document of some sort  
8 in order for it to be a public record. Assuming there was a  
9 document and we had possession of it, yes, it would be a  
10 public record.

11 Q. You mean document -- by "document," you mean a  
12 recording?

13 A. Yes.

14 MR. HENNESSY: That's all the questions I have.

15 REDIRECT EXAMINATION

16 BY MR. LEE:

17 Q. Mr. Barnebey, did you hear someone in that video  
18 say that the camera equipment had not been purchased by the  
19 District?

20 A. I heard -- yes, I did hear that as well.

21 Q. And if the broadcast simply goes out into the  
22 ether, did I understand you correctly that's not a public  
23 record?

24 A. I don't think there's any public record to be a  
25 public record.

1 Q. It would have to be if the tape was delivered to  
2 the District offices?

3 A. Yes, or some other way the District got a copy of  
4 it.

5 MR. LEE: Okay. Nothing further.

6 THE COURT: Anything else, Mr. Hennessy?

7 RE-CROSS-EXAMINATION

8 BY MR. HENNESSY:

9 Q. Mr. Barnebey, documents don't have to be in the  
10 hands of the government to be a public record, do they?

11 A. Not necessarily, no.

12 MR. HENNESSY: Thank you.

13 MR. LEE: Scott Rudacille, Your Honor.

14 THE COURT: Thank you, Mr. Barnebey.

15 THEREUPON,

16 SCOTT RUDACILLE, ESQUIRE

17 was adduced as the witness herein, and being first duly  
18 sworn to tell the truth, the whole truth, and nothing but  
19 the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LEE:

22 Q. Mr. Rudacille, would you please introduce yourself  
23 to the Court by stating your full name?

24 A. Scott Rudacille.

25 Q. What do you do for a living, sir?

1 A. I'm an attorney.

2 Q. How long have you been an attorney?

3 A. Six years.

4 Q. Do you hold any recognitions or certifications  
5 from the Florida Bar?

6 A. I'm board certified in city, county and local  
7 government law.

8 Q. You've been here all week for the trial?

9 A. Yes.

10 Q. Do you recall hearing Ms. Brauer testify earlier  
11 today about a February 25, 2009 Auditor Selection Committee  
12 meeting?

13 A. Yes.

14 Q. And did you speak with Ms. Brauer about her and  
15 Mr. Vander Molen and -- Mr. Vander Molen attending this  
16 meeting?

17 A. Yes.

18 Q. What did you say to Ms. Brauer?

19 A. Well, I told her that while it would not be a per  
20 se violation for the two of them to be present at that  
21 meeting given the situation with the District and being  
22 conservative, they ought not to both attend.

23 Q. Do you recall in the trial talking about a March  
24 12th, 2009 request from Lewis, Longman & Walker for  
25 documents from other counsels and attorneys representing the

1 individual defendants?

2 A. Yes.

3 Q. Did you respond to that March 12th, 2009 request?

4 A. Yes, I did.

5 Q. Do you recall when?

6 A. I sent an e-mail to Jennifer Cowan on March 25th,  
7 2009.

8 Q. What'd you say in that e-mail?

9 A. I told her that all of the documents that had been  
10 requested in their March 12th request, which were a number  
11 of different categories of documents, were available at our  
12 office for them to inspect, that the only documents that may  
13 not be in there would be the documents from the, from the  
14 attorneys for the individuals. But then I noted that the  
15 District office had not received any and I had not received  
16 any, but I needed to check with Tom Shults to make sure that  
17 the Sarasota office of Kirk Pinkerton hadn't received any.

18 MR. LEE: Nothing further, Your Honor.

19 THE COURT: Do you have questions, Mr.

20 Hennessy?

21 MR. HENNESSY: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. HENNESSY:

24 Q. Mr. Rudacille, you've testified here today  
25 concerning the Auditor Selection Committee that existed at