

CAUSE NO. cc-09-01703-d

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| IN RE: | § IN THE COUNTY COURT |
| | § |
| JOHN WILEY PRICE, | § AT LAW NO. 4 |
| | § |
| Petitioner. | § DALLAS COUNTY, TEXAS |

CONTINUATION OF THE
ORAL DEPOSITION OF
JUDGE JIM FOSTER
SEPTEMBER 28, 2009
VOLUME 2 OF 2

CONTINUATION OF THE ORAL DEPOSITION OF JUDGE
JIM FOSTER, produced as a witness at the instance of
the Petitioner, and duly sworn, was taken in the
above-styled and -numbered cause on the 28th of
September, 2009, from 5:09 p.m. to 6:33 p.m., before
DAVID R. ROY, RPR, CSR in and for the State of Texas,
reported by machine shorthand, at the George L. Allen,
Sr., Courts Building, 600 Commerce Street, Fifth Floor,
County Court at Law No. 4, Dallas, Texas 75202,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

HONORABLE KEN TAPSCOTT - Judge, County Court at Law
Number 4, Dallas County, Texas

COMMISSIONER JOHN WILEY PRICE - Petitioner

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| 4 | | Dallas Observer Article - Democratic County | |
| 5 | | Judge Jim Foster May be the Latest Target in | |
| 6 | | the Inland Port Battle, By Jim Schutze, | |
| 7 | | Published February 19, 2009 | |
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1 P R O C E E D I N G S

2 (Commencing at 5:09 p.m.)

3 MR. BARR: I would like to just put
4 something on the record before we begin, if it's all
5 right with the Court.

6 We're here pursuant to the Judge's order,
7 and by responding to this deposition and continuing it,
8 we in no way waive our rights under Chapter 25 of the
9 Government Code of -- or Government Code of rights to
10 our separation as dictated by the Constitution of the
11 State of Texas and the United States Constitution of
12 separation of powers and the privilege and immunities
13 clause provided under the Texas Constitution and the
14 Constitution of the United States.

15 MR. JOHNSON: This is Mark Johnson on
16 behalf of Commissioner John Wiley Price.

17 MR. WEIL: Chris Weil, I'm here with
18 Mr. Barr.

19 MR. BARR: John Barr.

20 MR. JOHNSON: And I actually just wanted
21 to make -- get one thing clear to asserting the
22 objections. Which of you gentleman will be taking the
23 lead in the deposition?

24 MR. WEIL: I think John will be.

25 MR. JOHNSON: Okay.

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1 JUDGE JIM FOSTER,
2 having been first duly sworn, testified as follows:

3 EXAMINATION CONTINUED

4 BY MR. JOHNSON:

5 Q. Mr. Foster, we're here to continue your
6 deposition. We'll have the -- if it's agreeable with
7 you, we'll have the same agreements that we did before:
8 Namely that if there's anything that I -- a question
9 that I ask if you don't understand it, if you could ask
10 me to rephrase it or just let me know that you don't
11 understand so that we can make the record clear; do you
12 agree to do that?

13 A. That is correct.

14 Q. Okay. I am going -- I'll tell you, we're
15 going to have to make this brief, and I will do my best
16 to not repeat questions that were asked during the
17 first deposition. If I do ask those, I apologize.
18 It's -- I'm doing it to -- to frame a question that's
19 coming up, but I'll do my best not to repeat.

20 When we last spoke, you had mentioned
21 that you oversaw a clean air task force; is that
22 correct?

23 A. Correct.

24 Q. Okay. And I believe you testified that --
25 that you had not revealed while that investigation was

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1 going on, the persons who were -- who were involved in
2 that investigation; is that correct?

3 A. I believe we did discuss that.

4 Q. Okay. Is it -- it's your practice not to
5 mention the names of people who are being investigated;
6 is that correct?

7 A. I'm curious about one thing: You said you
8 weren't going to be asking the same questions we've
9 already discussed, and you've already asked that
10 question.

11 MR. JOHNSON: I'm just leading up to some
12 questions, Your Honor, that I was not permitted to ask
13 in the last deposition. So I'll move on.

14 Q. (By Mr. Johnson) You were contacted by the
15 FBI; is that correct, regarding Commissioner Price?

16 MR. BARR: Objection.

17 Judge, the communication with the FBI
18 should be privileged. It's a performance privilege and
19 should not be invaded.

20 THE COURT: Overruled.

21 Q. (By Mr. Johnson) Sir, were you contacted by
22 the FBI?

23 A. That is correct.

24 Q. How did the FBI contact you regarding
25 Commissioner Price?

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1 MR. BARR: Objection, Judge. It's the
2 informer's privilege.

3 THE COURT: Overruled.

4 MR. BARR: Your Honor, without begging
5 the question, I would also like to interject an
6 objection that under 25.04, it -- if he's in the course
7 and scope in his discussions with the -- with the
8 government as the county judge, this Court has no
9 jurisdiction to -- to go into that.

10 THE COURT: Okay. Your objection's
11 noted. Your objection's overruled.

12 MR. BARR: But if you -- would it be
13 permitted by the Court that if I make an objection and
14 say "Objection 1," that it's privileges and immunities
15 and the lack -- and our feeling that this Court lacks
16 the authority to go in and jurisdiction to go in, and
17 instead of repeating that, could I just have an
18 agreement with the Court that I could say "Objection 1"
19 so I don't delay this process?

20 THE COURT: That's fine, so long as
21 Objection 1, again, means privileges and immunities
22 only?

23 MR. BARR: Privileges and immunities
24 only.

25 Objection 2 will be that the Court lacks

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1 subject matter jurisdiction to inquire.

2 THE COURT: All right.

3 MR. BARR: All right, sir. Thank you.

4 Q. (By Mr. Johnson) You were contacted by the
5 FBI regarding Commissioner Price; is that correct?

6 MR. BARR: Objection 1.

7 A. Correct.

8 THE COURT: Overruled.

9 Q. (By Mr. Johnson) When did the FBI contact
10 you, sir?

11 MR. BARR: Objection 1.

12 THE COURT: Overruled.

13 A. Approximately August of last year.

14 Q. (By Mr. Johnson) Okay. And what did they ask
15 you about?

16 MR. BARR: Objection 1.

17 THE COURT: Overruled.

18 A. In terms of what they asked me about, that
19 would be a wide range of topics.

20 Q. (By Mr. Johnson) Well, what did they ask you
21 about with respect to Commissioner Price?

22 MR. BARR: Objection 1.

23 My further objection to the Court is,
24 Judge, to allow a witness to be deposed about what
25 privately occurred between the FBI and the witness

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1 would be in no way germane to why you issued a Rule 202
2 in this case, nor would it be germane to the petition
3 for the 202. You're expanding the scope of the 202 by
4 allowing questioning into conversations.

5 THE COURT: He has not asked yet what was
6 specifically -- what he specifically told the FBI. I
7 think the question was specifically what the FBI asked
8 him about, the topics I believe. I don't --

9 MR. BARR: I think that that's --

10 THE COURT: Your objection's overruled.
11 When I feel like I need to sustain one,
12 I'll do it. But overruled for now.

13 MR. BARR: And I hope the Court
14 respects --

15 THE COURT: That's fine.

16 MR. BARR: -- respects the fact that I've
17 got to make the objection. I'm not trying to be
18 obstructionist to you.

19 THE COURT: That's fine.

20 Okay. Judge Foster, if you would answer
21 the question, please.

22 Do you need it read back to you?

23 THE WITNESS: Would you read the question
24 back, please?

25 THE REPORTER: Question: "Well, what did

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1 they ask you about with respect to Commissioner Price?"

2 A. There were many meetings over a long period of
3 time and that was on a wide range of topics. And
4 without the notes, I don't recall everything that they
5 asked me about.

6 Q. (By Mr. Johnson) Do you have these notes?

7 A. No, they're -- I have no notes. But --

8 MR. BARR: Objection. Nonresponsive.

9 THE COURT: Overruled.

10 A. Some concerns they have and --

11 MR. BARR: You -- you had -- objection.

12 This is nonresponsive.

13 You've answered his question.

14 THE COURT: Correct.

15 Q. (By Mr. Johnson) Well, sir, do you have -- do
16 you remember anything that -- because it sounds like
17 some things were coming to your mind that you did talk
18 with the FBI about regarding Commissioner Price?

19 MR. BARR: Objection. Privilege.

20 Object -- I think that's 1 if I'm right. That's our
21 key here.

22 THE COURT: Overruled.

23 Judge Foster, if you recall. I believe
24 all Mr. Johnson is looking for are the topics that were
25 discussed. I don't think -- he's not asking for

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1 specifics. He wants to know the topics that were
2 discussed regarding Commissioner Price with the FBI.
3 That's what he's asking for, I believe, at this point,
4 if you know or if you remember.

5 Thank you, sir.

6 A. There is very little that I remember of those
7 topics. Some of them have to do with their -- where
8 names were mentioned and female associates. I just
9 don't recall. This is -- this has been a year ago --
10 over a year ago.

11 Q. (By Mr. Johnson) You haven't spoken with the
12 FBI about Commissioner Price since then?

13 MR. BARR: Objection 1.

14 THE COURT: Overruled.

15 A. I spoke to the FBI, as I said, on many
16 occasions.

17 Q. (By Mr. Johnson) Well, let me ask you: When
18 was the last time you spoke with the FBI regarding
19 Commissioner Price?

20 MR. BARR: Objection 1.

21 THE COURT: Overruled.

22 A. Ten minutes ago.

23 Q. (By Mr. Johnson) Ten minutes ago?

24 A. (No audible response.)

25 Q. Okay. Do you recall what you spoke with them

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1 about ten minutes ago?

2 MR. BARR: The question is, "Do you
3 recall"?

4 A. I recall.

5 Q. (By Mr. Johnson) What was it?

6 MR. BARR: Objection.

7 Now we're getting into --

8 THE COURT: Sustained.

9 MR. JOHNSON: Okay.

10 THE COURT: Thank you, Counselor.

11 Q. (By Mr. Johnson) Back in August of last year,
12 were you aware that Commissioner Price was being
13 investigated by the FBI?

14 A. Not until they called me.

15 Q. And when was that -- oh, when -- that was back
16 in August of last year?

17 A. Correct.

18 Q. Okay. Now, you had testified previously that
19 it is your practice not to disclose the names of people
20 who are under investigation; is that correct?

21 A. Okay. This is the fourth time you've asked me
22 that question.

23 MR. BARR: Objection. Repetitious.
24 Duplicitous of the record at this point.

25 THE COURT: Sustained.

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1 MR. JOHNSON: Okay.

2 Q. (By Mr. Johnson) Sir, since you -- when you
3 were approached by the FBI, did they contact you or did
4 you contact them?

5 MR. BARR: Objection. That's
6 duplicitous. We've already went into that.

7 THE COURT: Overruled.

8 A. They contacted me.

9 Q. (By Mr. Johnson) Okay. In August -- oh,
10 let's say in October, did you speak with any reporters
11 regarding the Inland Port project?

12 A. I believe that if you'll read the deposition
13 from our previous deposition, all of that is noted in
14 the deposition.

15 MR. BARR: My objection is it -- it's
16 a -- you didn't hear it, Judge. But there's more than
17 several pages of -- I've highlighted only the pink
18 about the --

19 MR. WEIL: 16, 17.

20 MR. BARR: -- the reporter.

21 THE COURT: Well --

22 MR. BARR: I mean, it has been inquired
23 previously.

24 THE COURT: Okay. I didn't hear an
25 objection.

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1 MR. BARR: My -- it's repetitious and
2 repetitive of what's already in the record.

3 THE COURT: Specifically what was the
4 question again, David?

5 THE REPORTER: Question: "Okay. In
6 August -- oh, let's say in October, did you speak with
7 any reporters regarding the Inland Port project?"

8 THE COURT: You know, I read the first
9 part of the deposition today, and I don't remember the
10 actual time frame of this -- of the discussion. I
11 believe that he's talking about the conversation
12 with -- is his name Shoot-zie [phonetic]?

13 MR. JOHNSON: Schutze.

14 MR. WEIL: Schutze.

15 THE COURT: -- Schutze. I'm not sure
16 that the time frame was discussed specifically in the
17 deposition, so I'm going to overrule the --

18 MR. BARR: What was --

19 MR. WEIL: Pages 25 through 30.

20 MR. BARR: -- what was specifically
21 inquired of, Judge, is there's two press people's
22 names. He was asked, Did he talk to any member of the
23 press other than Schutze? And the answer was Kevin
24 Krause. And that was -- that was framed in reference
25 to going backward from the beginning of time.

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1 THE COURT: All right. I see that he had
2 a discussion, evidently, with Mr. Allen in August.

3 I'm overruling the objection. I want him
4 to answer that question, please.

5 MR. BARR: Yes, sir.

6 THE WITNESS: Okay. Would you repeat the
7 question?

8 Q. (By Mr. Johnson) In October did you speak to
9 any reporters about the Inland Port project?

10 A. Okay.

11 Q. October of last year.

12 A. You're refer -- talking about the time that I
13 talked to a reporter from the Observer; am I correct?

14 Q. I mean, any -- did -- did any -- did you speak
15 with my reporter --

16 A. Okay. Other than --

17 Q. -- in August of 2008 regarding the Inland Port
18 project?

19 A. In August of 2008?

20 Q. Or -- I'm sorry. October of 2008.

21 A. Okay. Once again, so that I understand the
22 time frame, you're talking about the time period that
23 the article came out in the Observer?

24 Q. No, sir. I'm talking about October of 2008.

25 A. Okay. Well, I don't recall the specific --

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1 Q. Okay.

2 A. -- time period.

3 Q. Do you --

4 A. I talked to Jim Schutze --

5 MR. BARR: Objection. Nonresponsive.

6 You've answered his question.

7 THE COURT: Sustained.

8 Q. (By Mr. Johnson) Let me ask you -- rephrase
9 it a different way.

10 Do you recall the period when the -- the
11 issue of a comprehensive development plan was before
12 the commissioner's court regarding the Inland Port
13 project?

14 A. Yes.

15 Q. During that period before it was put to vote,
16 did you speak with any reporters regarding the Inland
17 Port project?

18 A. Not that I recall.

19 Q. Okay. Do you recall the first time that you
20 spoke with a reporter regarding the Inland Port
21 project?

22 A. It would be whenever the article came out.

23 Q. February of 2009?

24 A. If that's when the article came out.

25 Q. Okay. Did you ever go to the reporters -- did

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1 you ever approach a reporter and -- while the Inland
2 Port project was -- the comprehensive master plan was
3 still a matter that was before the commissioner's
4 court -- well, let me take that back.

5 Let's talk about when in February the
6 first time that you were approached by a reporter, Jim
7 Schutze. Did Jim Schutze contact you or did you
8 contact him?

9 A. He contacted me.

10 Q. When he contacted you, what did he tell you he
11 wanted to talk about?

12 A. I don't recall specifically. It's been too
13 long ago.

14 Q. Okay. Do you recall -- just to try to help
15 refresh your memory. Do you recall whether he spoke
16 with you about an article that had come out, and I'll
17 give you a copy of it, and I believe this is already in
18 the record. It's entitled Dallas County Judge Jim
19 Foster Won't Have Democratic Party Help in 2010
20 Re-election Bid. And I'll show you that article.

21 MR. WEIL: That's on the record, but
22 that's not...

23 MR. JOHNSON: I'll give you a copy.

24 THE COURT: Is this already an exhibit?

25 MR. JOHNSON: Yeah.

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1 MR. WEIL: I don't believe this one is,
2 but my memory isn't that good.

3 MR. JOHNSON: Oh, well, then -- then
4 let's make -- well, it's just to refresh his memory.

5 MR. WEIL: No, I appreciate that.

6 Q. (By Mr. Johnson) Have you seen that -- that
7 article, sir?

8 A. Give me a second to look at the article.

9 Q. Okay.

10 A. I don't recall ever talking to that reporter
11 about this article.

12 Q. Okay. Do you recall in February, early
13 February of 2009, that Commissioner Price stated that
14 he would not support you in a re-election bid?

15 A. Not only did he make that statement, there was
16 a lot of other facts surrounding that issue, too.

17 MR. BARR: Objection. Nonresponsive.

18 THE COURT: Sustained.

19 Q. (By Mr. Johnson) Okay. And, sir, do you
20 recall in February of 2009 that Commissioner Price
21 stated that he would not support you in a re-election
22 bid?

23 A. Okay. And are you -- you were talking about
24 in Court or what --

25 Q. Anywhere.

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1 A. -- what are you talking about?

2 Q. Anywhere?

3 A. I don't recall.

4 Q. Okay. Now, after you found out about
5 Commissioner Price's decision not to support -- to
6 support you in a re-election bid, was it -- was it --
7 let me rephrase that.

8 When you found out that Commissioner
9 Price wouldn't support you in a re-election bid, was it
10 before that time or after that time that you first
11 spoke with Jim Schutze?

12 A. I could not tell you. It's been too long ago.

13 Q. Well, when you did speak with Jim Schutze, did
14 he mention to you the fact that Judge -- that
15 Commissioner Price was not going to support you in a
16 re-election bid; did y'all talk about that?

17 A. Not that I recall.

18 Q. What did he want to talk to you about?

19 MR. BARR: Objection.

20 Q. (By Mr. Johnson) What did he ask to talk to
21 you about?

22 MR. BARR: Objection. Form.

23 THE COURT: Overruled.

24 A. The inland port.

25 Q. (By Mr. Johnson) Okay. And what in

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1 particular about the inland port?

2 A. I'll be honest with you, this has been a long
3 time ago, and I don't remember the questions that he
4 asked me because I didn't take any notes, and I just
5 don't recall.

6 Q. That's fair enough.

7 So as we sit here today, you don't know
8 whether he was asking you about the Inland Port project
9 in general or about Commissioner Price's involvement
10 with Richard Allen, do you?

11 A. There was a brief conversation. Most of his
12 research he had already done and it did not come from
13 me.

14 Q. Well --

15 MR. JOHNSON: And I'll object to the
16 nonresponsiveness.

17 THE COURT: Sustained.

18 MR. JOHNSON: Can you read back the
19 question, please, sir?

20 MR. BARR: Just -- I would like to
21 instruct my client -- not about the pending question --
22 just listen to his question and just try to be
23 responsive to the question asked. Don't try to
24 anticipate the meaning of the response.

25 THE REPORTER: Question: "That's fair

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1 enough.

2 So as we sit here today, you don't know
3 whether he was asking you about the Inland Port project
4 in general or about Commissioner Price's involvement
5 with Richard Allen, do you?"

6 A. That's an -- the answer to that is no, I
7 don't.

8 Q. (By Mr. Johnson) Do you recall anything that
9 you said to Jim Schutze, anything about your
10 conversations at all?

11 A. I recall somewhat.

12 Q. Okay. Do you recall --

13 MR. JOHNSON: Well, let's go ahead and --
14 I know that this is part of the record but --

15 MR. BARR: "This" meaning -- is this an
16 exhibit?

17 MR. JOHNSON: Yeah. It is an article
18 called -- it's out of Dallas Observer, February 19th,
19 2009 Democratic County Judge Jim Foster May Be The
20 Latest Target in the Inland Port Battle.

21 Q. (By Mr. Johnson) Now, you've seen that, sir,
22 haven't you?

23 MR. BARR: I guess my concern is, is this
24 an exhibit that was --

25 MR. JOHNSON: It's already --

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1 MR. BARR: -- earlier in, because I don't
2 remember it?

3 MR. WEIL: It is not.

4 MR. JOHNSON: Okay. Well, let's make it
5 an exhibit. I thought that was one that was already --
6 already --

7 MR. WEIL: Well, you said that, but I
8 don't believe it was an exhibit to his --

9 MR. JOHNSON: Okay. Well, let's go ahead
10 and mark it as Exhibit A.

11 MR. WEIL: Mark, I also believe that this
12 other one was not an exhibit.

13 MR. JOHNSON: Okay. Let's --

14 MR. WEIL: If that's important.

15 MR. JOHNSON: I don't think we're going
16 to need that. That was just for a --

17 MR. WEIL: Okay.

18 MR. JOHNSON: -- frame of reference.

19 THE REPORTER: Let me go ahead and mark
20 that, sir.

21 MR. JOHNSON: Okay.

22 (Exhibit Number A marked.)

23 MR. BARR: Do you want to give the
24 witness the marked copy to look at?

25 MR. JOHNSON: Sure.

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1 Q. (By Mr. Johnson) Now, Judge Foster, you've
2 reviewed that. You're familiar with that, that
3 article, aren't you?

4 A. I did see the article.

5 Q. Okay. Do you recall talking to Jim Schutze
6 about the subject of a shakedown?

7 A. Okay. I'm a little bit confused, because we
8 had another article that we talked about in the
9 previous deposition, and you asked those questions at
10 that same time. And Mr. Schutze never contacted me
11 about this article whatsoever. I didn't have anything
12 to do with this.

13 Q. Let me see it. Make sure I've got the right
14 one, then.

15 MR. WEIL: I think you're using these two
16 articles with the one that was discussed in which
17 Schutze -- I think his picture's on it.

18 MR. JOHNSON: Well, I'm -- no, I --

19 Q. (By Mr. Johnson) Let me -- I believe this is
20 the same article because -- then let me ask you a
21 couple of questions about it if you're -- if there's
22 some confusion.

23 I'm going to read to you the last full
24 paragraph of Page 1. It says "Foster took a tough
25 stance against West and Price in defense of the 'inland

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1 port,' a shipping and warehousing development in
2 southern Dallas County. He told me last week that West
3 and Price are involved in what he called a, quote,
4 'shakedown,' close quote, of the main developer, the
5 Allen Group. Foster says that's why West and Price are
6 out to get him."

7 Now, do you recall discussing that topic
8 with Jim Schutze?

9 A. Okay. If we may go back in the original
10 deposition and you had an item in that deposition that
11 was marked and we discussed this previously. Is
12 this -- is this the same one or is this a different
13 topic or --

14 Q. I sure believe that this is the same one, but,
15 sir, let's just work off of what's in front of you.

16 A. Well, if it's the same one, I can't
17 understand -- when I started reading this, I thought
18 it -- that it was a totally different article. But if
19 it's the same one, I thought that we had already been
20 over these same issues and you asked those same
21 questions at that time.

22 MR. BARR: Do you know if it's the same
23 article that you presented?

24 MR. JOHNSON: I believe it is.

25 MR. WEIL: And just so the record's

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1 clear, I don't, but perhaps we should get that before.

2 I believe that it's been attached to the materials --

3 MR. JOHNSON: It is.

4 MR. WEIL: -- furnished to the Court?

5 MR. JOHNSON: It is. It's attached to
6 the --

7 MR. WEIL: So we have access to that.

8 Why don't we shut it down and see if we can just get
9 the record.

10 MR. JOHNSON: Well --

11 MR. WEIL: And if you would ask your
12 client not to be so demonstrative. It's a distraction
13 for both of us.

14 COMMISSIONER PRICE: Don't pay any
15 attention. I'm trying to talk with my lawyer.

16 Q. (By Mr. Johnson) Let's just go with what's in
17 front of you, sir.

18 Do you recall discussing those topics --
19 and if I'm -- if I repeat a couple of things from the
20 previous deposition, I apologize. Do you recall
21 discussing with Jim Schutze this issue of a shakedown?

22 A. I recall that, and I think -- well, I recall
23 previously that you asked that question on numerous
24 occasions.

25 MR. BARR: I -- that is accurate.

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1 Q. (By Mr. Johnson) Okay. Sir, do you --

2 MR. BARR: And I object to duplicitous.

3 Q. (By Mr. Johnson) -- recall --

4 THE COURT: Overruled. Overruled.

5 Go ahead.

6 Q. (By Mr. Johnson) Do you recall -- and just so
7 I'm clear, and I'm -- well, I'm not even going to ask
8 it.

9 At the last deposition you testified that
10 you did not personally accuse Commissioner Price of
11 committing a shakedown to Jim Schutze, correct?

12 A. That's what I said.

13 Q. Let me ask you about this statement prior from
14 this article, and I'll read it to you: "Foster says
15 that's why West and Price are out to get him."

16 Did you make that statement?

17 MR. BARR: Where are you reading from?

18 MR. JOHNSON: From the paragraph that we
19 were -- that I just read into the record. It's the
20 last full paragraph of Page 1, the second --

21 MR. BARR: It's the last sentence?

22 MR. JOHNSON: The last sentence, yes.

23 MR. BARR: Okay.

24 Q. (By Mr. Johnson) Did you make that statement
25 to Jim Schutze?

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1 A. Well, not in that context. I believe that
2 it -- maybe that was his interpretation of something
3 that I said but not in that context.

4 Q. Well, tell me the context that you did state
5 it in, please.

6 A. I said something to the effect that they're
7 both very unhappy about my stance on the inland port.

8 Q. Okay. Well --

9 MR. BARR: Counsel. Can I -- can I --
10 since Senator West is not here and part of this, would
11 it be okay if we leave his name out of the record?

12 MR. JOHNSON: That's fine.

13 MR. BARR: He --

14 MR. JOHNSON: That -- that doesn't matter
15 to me.

16 Q. (By Mr. Johnson) Well, sir -- and maybe this
17 is just something that Jim Schutze took upon himself --
18 but during your conversation, did you tie the fact that
19 Commissioner Price is upset with you with the fact that
20 some people may have believed that he committed a
21 shakedown; did you make that connection during your
22 conversation?

23 MR. BARR: Objection --

24 MR. WEIL: Get your --

25 MR. BARR: -- objection. Form.

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1 THE COURT: Overruled.

2 A. Okay. Would you go back and rephrase that --

3 Q. (By Mr. Johnson) Sure I will.

4 A. -- please?

5 Q. You testified that what you told Jim Schutze
6 was that there are some people who might say that
7 Commissioner Price committed a shakedown; is that
8 correct?

9 A. Correct.

10 MR. BARR: Objection. Repetitious, Your
11 Honor.

12 THE COURT: Overruled.

13 MR. JOHNSON: I'm just -- he asked me to
14 rephrase it, so I'm trying to lay the --

15 THE COURT: No need to explain it. Let's
16 move on.

17 MR. JOHNSON: Okay.

18 Q. (By Mr. Johnson) And you said that -- at
19 least it says here, that, "Foster says that's why West
20 and Price are out to get him." And I believe you just
21 testified that you said something to the effect that
22 they were unhappy -- that Commissioner Price was
23 unhappy with you about the Inland Port project,
24 correct?

25 MR. BARR: Objection. Form.

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1 THE COURT: Overruled.

2 A. Correct.

3 Q. (By Mr. Johnson) Did you state anything
4 that -- to Jim Schutze that the reason that
5 Commissioner Price was upset with you had anything to
6 do with an alleged shakedown?

7 A. That's not the way that I interpret this, and
8 I can't testify as to how he arrived at that
9 conclusion.

10 Q. Well, I'm asking you, sir, what you said.

11 MR. BARR: Objection. Not -- form and
12 nonresponsive -- I mean, form and -- and arguing with
13 the witness.

14 THE COURT: Overruled.

15 A. As I stated earlier, I told him I believe that
16 they're both very unhappy with me.

17 Q. (By Mr. Johnson) Okay. During your
18 conversation with Jim Schutze, how did the issue of an
19 alleged shakedown come up?

20 A. I believe, if I recall, he's the one that
21 brought it up.

22 Q. What did he say?

23 A. Something to the effect that a lot of people
24 are saying there's a shakedown.

25 Q. What did you say in response to that?

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1 A. That I believe there's a lot of people that
2 will say he's involved in a shakedown.

3 Q. Do you agree with that?

4 MR. BARR: Objection, Judge. That's
5 not -- what -- what my client thinks or feels, should
6 not -- that should not have to come into this. It's
7 what he did and said.

8 THE COURT: Yeah, sustained.

9 Q. (By Mr. Johnson) Do you have any facts that
10 suggest that Commissioner Price has committed a
11 shakedown on the main developer of the Inland Port
12 project, the Allen Group?

13 MR. BARR: Objection. That's -- how does
14 that go to slander or libel investigation?

15 MR. JOHNSON: It goes directly to the --

16 THE COURT: Whoa, whoa, whoa. He's
17 asking me a question.

18 MR. JOHNSON: Well, I beg your pardon.

19 THE COURT: It's directly -- it's very
20 relevant, because if he's out there saying that
21 someone's involved in a shakedown when he has no
22 evidence at all to suggest that it's -- that an
23 individual is involved in a shakedown, that's certainly
24 relevant. That goes directly to slander and libel.
25 You can -- just like calling anybody anything else.

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1 MR. WEIL: (Indicating.)

2 THE COURT: What?

3 MR. WEIL: That's not the question he was
4 asked.

5 Could we have it read back?

6 THE COURT: Yeah.

7 David, read me the question.

8 THE REPORTER: Question: "Do you have
9 any facts that suggest that Commissioner Price has
10 committed a shakedown on the main developer of the
11 Inland Port project, the Allen Group?"

12 MR. WEIL: It has nothing to do with what
13 he said. It was asking whether he had any evidence.
14 That's another different question than, Did you say
15 without knowledge.

16 THE COURT: Okay. All right. Overruled.

17 Q. (By Mr. Johnson) Please answer the question.

18 THE COURT: Do you need it read back to
19 you, Judge Foster?

20 THE WITNESS: I do.

21 THE COURT: All right.

22 THE REPORTER: Question: "Do you have
23 any facts that suggest that Commissioner Price has
24 committed a shakedown on the main developer of the
25 Inland Port project, the Allen Group?"

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1 A. I almost need to discuss with the attorney,
2 because I'll be honest with you, that there are certain
3 parts of this that was discussed in the presence of the
4 attorney with a member of the Allen Group pertaining to
5 this subject, and I believe that's our
6 attorney/client --

7 MR. BARR: Let me ask the Court --

8 A. -- privilege.

9 MR. BARR: -- a question.

10 THE COURT: Sure.

11 MR. BARR: If his knowledge has come from
12 conversations with the government or conversations with
13 fact witnesses in his role as a county judge, does the
14 Court intend to force him to respond and list those?
15 In other words, is a legislator or -- he's got two
16 rolls, legislator and judicial. If he's inquiring into
17 something, are you going to allow him to inquire into
18 what's in his mind that he's gained through his public
19 job?

20 THE COURT: The question was, does he
21 have any facts and if his facts are --

22 MR. BARR: Well, he has facts.

23 THE COURT: Okay. Well, I think then the
24 answer to the question would be "yes."

25 MR. BARR: Okay.

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1 THE COURT: Not --

2 MR. BARR: Well, we're trying not to get
3 you angry in trying to respond and try to do this
4 carefully, is what I'm trying to do.

5 THE COURT: Right.

6 MR. BARR: Okay.

7 So you can respond to that question as to
8 do you have -- as to whether or not do you have any
9 facts.

10 A. I just -- I believe a simple yes will answer
11 that question.

12 MR. JOHNSON: Okay.

13 THE COURT: Okay.

14 Q. (By Mr. Johnson) And what are those facts?

15 MR. BARR: Now, it's at this point that I
16 object that you're invading the province of his
17 government role and 25.04 or 24.05 -- I can't remember,
18 Judge, of the local Government Code prohibits you from
19 reviewing the activities of the county judge as the --
20 the constitutional county judge's role is prohibited
21 from inquiry by the statutory county judge, and I would
22 ask you to respect that issue there.

23 And the second thing is there's an
24 informant privilege, and it's provided to under
25 Article 2 and made applicable to the State under

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1 Article -- under Amendment 14 that talks about a
2 redress of grievances to the government. Any
3 conversations he would have with the executive branch
4 of the government would be -- would be privileged,
5 informant's privilege.

6 THE COURT: Here's how we're going to
7 play this out: This is a discovery -- the deposition
8 here for purposes of the 202 discovery.

9 MR. WEIL: (Indicating.)

10 THE COURT: Now, you looked up, Mr. Weil,
11 like, Oh, no, it's not that big. I realize it's
12 confined, and I say "discovery" for purposes of the
13 202. We're going to play it out and have him respond
14 to the question.

15 Now, it seems to me that it would be --
16 we're here on an alleged libelist statement. So if he
17 has no facts, and he says he does, then he needs to lay
18 out his facts. And if the facts are that he received
19 reports from constituents that Commissioner Price was
20 involved in a shakedown, then he just needs to say
21 that. Okay? That's what he needs to say, but --

22 MR. BARR: But can I -- can I argue with
23 you --

24 THE COURT: Sure.

25 MR. BARR: -- will you allow me just

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1 to --

2 THE COURT: Sure.

3 MR. BARR: The scope of the 202 is
4 what -- is what restricts the inquiry. There's two
5 ways, to preserve testimony or investigate a potential
6 claim.

7 THE COURT: Okay.

8 MR. BARR: They've said that they're not
9 investigating a potential claim.

10 That's what you've said in your
11 complaint.

12 MR. JOHNSON: That's correct.

13 MR. BARR: So it's in the nature of
14 preservation.

15 These two rules merged -- and I don't
16 want to argue about the rules. But I do want to tell
17 you that I think -- I think -- I think I can bring you
18 a lot of law, if you'll allow it, is that what a person
19 talks to a government investigator, be it a sheriff or
20 a policeman in Dallas or the FBI, that is privileged
21 and can't be inquired into until after there's been a
22 return of an indictment.

23 THE COURT: Okay.

24 MR. BARR: I mean, it's -- it's
25 absolutely the law.

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1 THE COURT: Here's my problem -- here's
2 the problem, fellas, is that we judicial officers, we
3 have -- I believe -- and we're not going to argue about
4 this again -- that there is only a qualified immunity.
5 I don't have the ability as a judge when I put on the
6 robe to go up on my bench and say anything I want about
7 anybody if I don't have the evidence to support
8 something. I can be sued for slander and libel myself
9 if I get up there and slander someone. So the task
10 here tonight is to finish this deposition and figure
11 out what evidence, if any, Judge Foster had to back up
12 these statements that were allegedly made, which
13 obviously, he disagrees with already because he said
14 that Schutze got it wrong.

15 MR. BARR: It should be resolved right
16 now based on the testimony that was there for the
17 purposes of the 202. The testimony that's in the
18 record right now is, I didn't make that statement. I
19 said you could find people that would -- that would say
20 that Mr. Price is involved -- Commissioner Price is
21 involved in a shakedown.

22 Now, what we're going into now -- and I
23 don't want to argue with you, because I'll just make
24 the record -- but what I want to tell you is a
25 privilege revealed is a privilege lost. And these

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1 matters are of significant public -- just otherwise
2 anybody charged with potentially fearing anything can
3 go down and file a 202 and unearth what somebody in the
4 government has said, even a citizen has said, and
5 that's not the purpose of the 202, Judge.

6 MR. JOHNSON: And that is subject to
7 review by a sitting judge. I do not have the privilege
8 to file a Rule 202 and ask any question I want. We've
9 already gone down the issue of privilege, and I'm
10 entitled, at least as I understand it from the -- from
11 the orders that have been issued, to find out does he
12 have any support for the statements that were made?

13 MR. WEIL: You -- if I may be permitted?
14 You've overlooked the fact that the
15 statements you claim have been made by the witness have
16 yet to be admitted to as his statements. And the
17 second thing is take privilege lost when privilege is
18 disclosed at another time and place we could take issue
19 with the Court about its statement that the difference
20 between judicial privilege and -- and legislative
21 privilege, for example, is one means you can't be sued.
22 The other means you can't be held libel for your
23 statements. Both apply here, and we can argue about
24 that another day. But the -- to protect that privilege
25 in the meantime requires more. And once he's forced to

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1 reveal the privilege, then it's lost.

2 And the -- the truth is your question,
3 without my being critical about your questions just as
4 you might be about my responses, is this is it. This
5 is -- this, Judge, is the guy who gets to make those
6 decisions, and I know that he's being conscientious and
7 I know we have a disagreement.

8 MR. JOHNSON: Okay.

9 MR. WEIL: But I just want to make it
10 clear that we understand each other. And the
11 understanding is this man has said he knows there are
12 others. He hasn't said I've said it. He hasn't
13 said -- hasn't said I have knowledge or I don't have
14 knowledge. He's just said that -- I understand there
15 are other people.

16 He has the duty, not merely the right, to
17 investigate anything before somebody inquires of him
18 what he's doing. And he does not have to tell them
19 what he was doing. That's a different analog to that
20 which you raised, which is your qualified privilege.
21 Clearly we all understand the qualified privilege
22 applies when you are off the bench out of your robe.
23 On the bench it's with malice or not; otherwise, you're
24 privileged up there.

25 THE COURT: Okay. We need to move

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1 beyond --

2 MR. WEIL: I'm sorry.

3 THE COURT: -- just because we need to
4 start asking the questions again. So -- and this has
5 gone on for at least five minutes.

6 So I need you to ask the question again,
7 and I'm going to make a ruling again on the question
8 that you asked and then we're going to move on. Okay?

9 MR. JOHNSON: Okay.

10 THE COURT: Now, I want to get this
11 deposition done, and if you want to move for some type
12 of protective order after the fact when it comes to
13 releasing the deposition, that -- that's fine. We'll
14 take that up at a different day and a different
15 hearing. But I want to get the deposition done
16 tonight.

17 MR. WEIL: Is everybody in this room
18 under a confidentiality agreement until you rule?

19 THE COURT: Yes. I don't want anybody to
20 reveal anything regarding Judge Foster's -- and, in
21 fact, that's an order and if somebody violates that
22 order, then I can hold you in contempt. No one is to
23 speak about what Judge Foster says here this evening
24 regarding the alleged facts that back up the statement,
25 if he made such a statement, that Commissioner Price

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1 was involved in a shakedown.

2 Everybody understand?

3 MR. WEIL: Yes, Your Honor.

4 MR. JOHNSON: I understand.

5 THE COURT: All right. Now, let's go
6 back and ask questions.

7 Mr. Johnson, Judge Foster, if you would,
8 please.

9 Q. (By Mr. Johnson) What facts do you have --

10 MR. JOHNSON: I'm sorry. Can you read it
11 back, please?

12 THE REPORTER: Sure. Let me just scan
13 back and find it.

14 MR. JOHNSON: I tell you what: I'll save
15 you the time. I'll just ask it a different way. And I
16 realize I -- I may be repeating it and I apologize.

17 Q. (By Mr. Johnson) But --

18 MR. BARR: The question you asked was --

19 Q. (By Mr. Johnson) -- what facts do you have
20 that would support a statement that Commissioner Price
21 committed a shakedown with respect to the Allen Group,
22 sir?

23 MR. BARR: Objection. Form.

24 What facts do you have that would support
25 the statement that he didn't make? Do you want to

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1 inquire what -- to the facts of what other people have
2 told him?

3 THE COURT: Can you rephrase your
4 question, Mr. Johnson, and try again?

5 MR. JOHNSON: Yes, sir.

6 Q. (By Mr. Johnson) Do you have any -- well, are
7 you aware of any facts that suggest that Commissioner
8 Price committed a shakedown with respect to the Allen
9 Group?

10 MR. BARR: Objection. Form.

11 THE COURT: Overruled.

12 MR. BARR: Objection 1 and 2.

13 THE COURT: Overruled.

14 MR. BARR: Okay.

15 You've got to answer him.

16 THE WITNESS: Okay.

17 A. The developer of the port made several
18 statements to me regarding what he believes is a
19 shakedown in this inland port.

20 Q. (By Mr. Johnson) Okay. What did he say to
21 you that suggested that it was a shakedown, that there
22 was a shakedown by Commissioner Price?

23 A. It's been probably a year ago and I don't
24 recall the specifics. But it had something to do with
25 him being required to hire consultants and things along

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1 that line.

2 Q. Do you have any personal knowledge whether
3 Commissioner Price, in fact, required Mr. Allen to hire
4 consultants?

5 A. Not other than what I've been told.

6 Q. And that was what you were told by Mr. Allen
7 himself?

8 A. He specifically told me that.

9 Q. Okay. Did anyone else say anything to you
10 that Mr. Price committed this shakedown of Mr. Allen?

11 MR. BARR: Objection 2.

12 THE COURT: Overruled.

13 A. I believe that they did, and I would have to
14 think back to the specific day and time.

15 Q. (By Mr. Johnson) Well, can you tell me who it
16 was that said it?

17 A. I believe that one of the city council members
18 also mentioned that.

19 Q. Was that Mr. Blaydes?

20 A. Correct.

21 MR. BARR: Objection 2.

22 THE COURT: Overruled.

23 MR. BARR: We're talking about
24 government people -- legislative government
25 communications.

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1 MR. JOHNSON: Well, it's already been
2 ruled on.

3 THE COURT: Overruled.
4 Mark?

5 MR. JOHNSON: I'm sorry, sir.

6 Q. (By Mr. Johnson) What did Mr. Blaydes say to
7 you?

8 MR. BARR: Objection 2.

9 THE COURT: Overruled.

10 A. It's -- as I've said earlier, it's been at
11 least a year ago, and I don't recall exactly what he
12 told me.

13 Q. (By Mr. Johnson) Do you recall generally what
14 he told you?

15 MR. BARR: Objection 2.

16 THE COURT: Overruled.

17 A. He used the word "shakedown" on more than one
18 occasion.

19 Q. (By Mr. Johnson) Talking about the Allen
20 Group?

21 A. Talking about the commissioner's involvement
22 in the inland port.

23 Q. Why were Mr. -- if you know -- why were
24 Mr. Allen and Mr. Blaydes talking to you about an
25 alleged shakedown?

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1 A. I cannot answer that question.

2 Q. You don't know why they came to you?

3 A. (No audible response.)

4 Q. Okay. Let's look at the -- in the second --
5 or I'm sorry, the third page of Exhibit A.

6 MR. WEIL: Mark, to be sure, Exhibit A
7 is -- it is the one that says "Democratic County Judge
8 may be the Latest Target"?

9 MR. JOHNSON: That is correct.

10 Q. (By Mr. Johnson) Okay. The second full
11 paragraph from the bottom, and I'll read it to you: "I
12 asked him to tell me more directly why he thinks West
13 and Price want control of the inland port. Quote,
14 'It's all about a shakedown,' he said again, 'and Price
15 is involved in multiple shakedowns.'"

16 Did you make those quoted comments?

17 A. Okay. I'm going to go back to the previous
18 deposition. And I think you've asked that question
19 about three times already.

20 MR. BARR: My objection, Judge, is
21 this -- this shakedown language is the subject of
22 several pages of the prior deposition, so it's
23 duplicitous.

24 THE COURT: David, read the question back
25 to me again, please, specifically.

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1 THE REPORTER: Question: "Okay. The
2 second full paragraph from the bottom, and I'll read it
3 to you: "I asked him to tell me more directly why he
4 thinks West and Price want control of the inland port.
5 Quote, 'It's all about a shakedown,' he said again,
6 'and Price is involved in multiple shakedowns.'"

7 THE COURT: Overruled.

8 A. My answer is the same as it was the first time
9 you asked the question, and that answer is that I said
10 to him, There are other people -- or there are
11 people -- however, I phrased it -- that will say he's
12 involved in a shakedown.

13 Q. (By Mr. Johnson) What do the multiple
14 shakedowns refer to in this paragraph, if you know?

15 A. And as we've stated earlier in the previous
16 deposition, that I believe that some of those -- his
17 opinion on that answer, I believe, came from talking to
18 other people involved in this, such as Bill Blaydes and
19 other people. I'm not sure how he arrived at that
20 conclusion.

21 Q. With the exception of what you've been told by
22 Bill Blaydes and Mr. Allen, do you have any personal
23 knowledge of Mr. Price being involved in multiple
24 shakedowns?

25 MR. BARR: I'm going to object to that.

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1 Any knowledge that he has by virtue of
2 his official capacity should not be displayed in a 202,
3 Judge. It should not. The reason he's -- these
4 legislative immunities, he's being talked to for the
5 purposes of -- of voting or putting a matter before the
6 Court, and talked to in that role requires
7 confidentiality. You can't ask a legislator what was
8 said to him in order for him to make his decision, just
9 like we can't ask Commissioner Price what his
10 motivation was for making a tender to the Court or
11 putting something on the agenda. You can't go into
12 that because if you do so, you just hamstrung --
13 it's -- well, first of all, it's a privilege. Second
14 of all, the Government Code prohibits going into any
15 inquiry behind that. And I just don't think it's
16 appropriate.

17 THE COURT: Overruled.

18 MR. WEIL: I just want to add that it's
19 also because he acts in the role as the County's first
20 judicial officer and the jurisprudence defines that as
21 judicial privilege, meaning not to be sued.

22 THE COURT: Okay. Now, Mr. Weil,
23 Mr. Barr is handling this deposition.

24 MR. WEIL: I'm very --

25 MR. BARR: I'll adopt the entire --

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1 verbatim everything he just said.

2 THE COURT: Overruled.

3 David, please, the question back?

4 THE REPORTER: Yes, sir, just a moment.

5 Question: "With the exception of what
6 you've been told by Bill Blaydes and Mr. Allen, do you
7 have any personal knowledge of Mr. Price being involved
8 in multiple shakedowns?"

9 THE WITNESS: And I guess my question to
10 the judge is --

11 THE COURT: No, no.

12 MR. JOHNSON: He's not testified --

13 THE COURT: Just respond to the question,
14 Judge Foster.

15 A. I believe the knowledge that -- a lot -- a lot
16 of times it's hard for me to -- to discuss my -- our --
17 to make a distinction between my personal knowledge and
18 what may be the subject of some of these investigations
19 by the FBI, and it's -- so I'll be honest with you,
20 it's difficult for me to make that distinction.

21 THE COURT: Why don't you give him a
22 definition of personal knowledge, Mr. Johnson?

23 MR. JOHNSON: Okay.

24 THE COURT: So that Judge Foster can
25 answer that question.

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1 MR. JOHNSON: Fair enough.

2 THE COURT: Go ahead. Thank you.

3 Q. (By Mr. Johnson) Did you personally observe
4 any action by Commissioner Price that could constitute
5 extortion at any time during your tenure on the
6 commissioner's court?

7 A. I did not personally observe any action.

8 Q. Okay.

9 Now, your attorneys brought up a good
10 point about confidentiality. Did you consider the
11 statements made to you by Bill Blaydes and by Richard
12 Allen regarding the alleged shakedown to be
13 confidential?

14 A. Okay. As I've said earlier, I said there are
15 some that may say -- I did not mention anyone's name --
16 I said there are some that would say that he's involved
17 in a shakedown because it had already been printed in
18 some on-line blog that I wrote and it was common
19 knowledge.

20 MR. JOHNSON: Okay. I'll object to the
21 nonresponsiveness.

22 THE COURT: Sustained.

23 MR. JOHNSON: And can you read back the
24 question to him, please?

25 THE REPORTER: Question: "Okay."

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1 Now, your attorneys brought up a good
2 point about confidentiality. Did you consider the
3 statements made to you by Bill Blaydes and by Richard
4 Allen regarding the alleged shakedown to be
5 confidential?"

6 A. Bill Blaydes, I -- I do not believe that he
7 was talking to me in confidence in any way, shape, or
8 form. I think he was just, you know, having a general
9 discussion.

10 Q. (By Mr. Johnson) And Mr. Allen?

11 A. And Mr. Allen, I believe that he had some
12 legitimate concerns, and I don't believe that I
13 revealed to anyone what Mr. Allen said.

14 Q. Did you consider those conversations with
15 Mr. Allen to be confidential?

16 A. I did at the time.

17 Q. Then, sir, why did you reveal those
18 conversations to Jim Schutze?

19 MR. BARR: Objection. It
20 mischaracterizes.

21 There's no testimony in this case that
22 he's revealed anything.

23 MR. JOHNSON: Okay. We'll step back a
24 second.

25 THE COURT: Okay.

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1 Q. (By Mr. Johnson) Did you tell Mr. Schutze
2 that one of the persons that believed or would testify
3 or whatever that -- that Commissioner Price had
4 committed a shakedown --

5 MR. JOHNSON: Let me back -- that's
6 terrible -- that's a horrible question.

7 MR. BARR: What?

8 MR. JOHNSON: I'm withdrawing it.

9 MR. WEIL: He's withdrawing his question.

10 Q. (By Mr. Johnson) Did you -- you know, you
11 stated that -- that there were people who would say
12 that Commissioner Price committed a shakedown. Did
13 you say --

14 MR. BARR: Objection. Form.

15 He did not say that. He said, If you
16 look, you can find people. He thinks if you look
17 you'll find people that will say it. If you'll put it
18 in the context --

19 MR. JOHNSON: Okay.

20 MR. BARR: It's important. Please.

21 MR. JOHNSON: Okay. That if you'll look
22 you'll find people.

23 Q. (By Mr. Johnson) Did you identify --

24 A. No, I did not.

25 Q. -- Richard Allen as one of the persons --

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1 A. I did not.

2 Q. You did not?

3 A. I did not.

4 Q. Did you identify Bill Blaydes?

5 A. I did not.

6 Q. So when you talked with Jim Schutze and you
7 said that there are people who would believe that
8 Commissioner Price may have committed a shakedown -- or
9 something to that effect, I realize those aren't the
10 exact words -- you didn't identify --

11 A. No, sir.

12 Q. -- who those persons were?

13 A. No, sir.

14 Q. And he didn't ask?

15 A. No, sir. My -- well, no.

16 Q. Did you explain to Jim Schutze how you knew
17 that there were people who if asked --

18 A. He didn't ask and I didn't explain.

19 Q. Okay.

20 MR. JOHNSON: Excuse me one second, sir.

21 (Brief pause in proceedings.)

22 Q. (By Mr. Johnson) Okay. Jim Schutze has
23 mischaracterized your interview with him, didn't he,
24 sir?

25 MR. BARR: Objection.

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1 You want the witness to compare the
2 characterization of his interview in recalling to call
3 on what's in the subjectivity of the third party?

4 MR. JOHNSON: Your Honor, he's already
5 said that he --

6 THE COURT: Yeah, overruled.

7 Q. (By Mr. Johnson) Jim Schutze mischaracterized
8 you, didn't he?

9 MR. BARR: You know, I object to that, to
10 the form of the question.

11 I would like to instruct the witness not
12 to answer without you getting terribly perturbed.

13 THE COURT: I'm not going to get
14 perturbed, but I'm overruling the objection.

15 If Judge Foster can answer that question
16 based on his reading of the articles and whether or not
17 he's being misquoted or mischaracterized, then he
18 can -- he's certainly an intelligent man. He can
19 answer that question.

20 Go ahead, Judge Foster.

21 A. My opinion is that he had talked to numerous
22 people, and he had already written his story and when
23 he talked to me, that he just used me to finalize what
24 he was already working on.

25 Q. (By Mr. Johnson) Have you talked to Jim

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1 Schutze and told him that you did not accuse
2 Commissioner Price of committing a shakedown?

3 A. I'm not -- well, the only time I've talked to
4 him is if he calls me, and he has not called me about
5 anything pertaining to this.

6 MR. JOHNSON: Okay. I guess I'll object
7 to the nonresponsiveness of the answer.

8 MR. BARR: He --

9 THE COURT: No, no, no. Don't -- he said
10 he hadn't --

11 MR. JOHNSON: He said he only talks to
12 him if he calls him --

13 THE COURT: And he hadn't -- and also
14 he -- I believe Judge Foster said that he -- Schutze
15 has not called him in response to this, and I --

16 MR. JOHNSON: That's fair.

17 THE COURT: Well, "this" being -- "this,"
18 Judge Foster, meaning what is transpiring here in this
19 room?

20 THE WITNESS: Correct.

21 THE COURT: Okay. Thank you, sir.

22 Q. (By Mr. Johnson) Now, sir, if Jim Schutze
23 mischaracterized -- misquoted you, because they're in
24 quotation marks in the article that's Exhibit A, why
25 didn't you call him and ask for a retraction?

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1 MR. BARR: If -- I object to that.

2 How is that relevant to a 202? How is
3 that -- how is that in the least bit relevant what my
4 client does in response to published statement or not?

5 THE COURT: Well, if they're
6 investigating either a libelist statement then I think,
7 you know, if somebody was misquoted and potentially
8 exposed to a libelist -- being sued for libel, then
9 perhaps, they would call and say, You know what?
10 You've mischaracterized or misquoted me completely, and
11 I want you to retract that. So the objection is
12 overruled.

13 Go ahead.

14 THE WITNESS: Would you repeat the
15 question, please?

16 MR. JOHNSON: Sure -- well, actually,
17 Mr. Roy, would you...

18 THE REPORTER: Sure.

19 Question: "Now, sir, if Jim Schutze
20 mischaracterized -- or misquoted you, because they're
21 in quotation marks in the article that's Exhibit A, why
22 didn't you call him and ask for a retraction?"

23 A. I have been misquoted many times by the
24 Observer, and I gave up a long time ago on calling them
25 when I was misquoted.

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1 Q. (By Mr. Johnson) Sir, if you've been
2 misquoted by the Observer so many times, why did you
3 talk to them about Commissioner Price?

4 MR. BARR: I object to the form of the
5 question --

6 THE COURT: Overruled.

7 MR. BARR: -- to the form of the inquiry,
8 Judge.

9 What difference does it make why --

10 THE COURT: Overruled.

11 MR. BARR: -- he would talk to --

12 THE COURT: Overruled.

13 Judge Foster?

14 A. If he -- if they call me again tomorrow, I'll
15 still talk to them. But I would not call them -- I
16 have to -- my job requires that I talk to the media.

17 Q. (By Mr. Johnson) Your job requires you to
18 talk to the media?

19 A. That's correct.

20 Q. Okay. Can you describe -- can you tell me
21 where it is in your job description that it requires
22 you to talk to the media?

23 A. I believe that it is part of the public
24 relations, that I have to keep the lines of
25 communication open.

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1 Q. Okay. Are you required to talk to the media
2 about alleged misconduct by a member of the
3 commissioner's court?

4 A. I get calls on a regular basis about
5 misconduct by government officials.

6 Q. Okay. And you respond to those?

7 A. Typically.

8 Q. Have you previously referred --

9 THE REPORTER: I'm sorry.

10 Sir, what was your response?

11 THE WITNESS: Typically.

12 THE REPORTER: Thank you. I'm sorry.

13 Q. (By Mr. Johnson) Have you ever accused
14 another commissioner's court of -- I'm sorry. Let me
15 rephrase that.

16 Have you ever had conversations with a --
17 with a reporter, other than in this instance, where a
18 county commissioner was -- where there were
19 allegations, whether by you or by someone else, of
20 criminal misconduct?

21 A. Not by commissioners, no.

22 Q. Then by whom?

23 A. By other elected officials.

24 Q. Sir, when Jim Schutze contacted you -- let me
25 step back a second.

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1 Okay. In the article that's Exhibit A,
2 the statement that, quote, "Foster said that's why
3 West" -- or I'm sorry -- "Commissioner Price and
4 someone else are out to -- to get him."

5 MR. WEIL: Where are you reading that
6 from?

7 MR. JOHNSON: It's from the first page,
8 second to last full paragraph.

9 Q. (By Mr. Johnson) Now, you stated that you
10 didn't make that statement --

11 MR. WEIL: Oh, I'm sorry.

12 Q. (By Mr. Johnson) -- and that you -- that what
13 you said was that Commissioner Price and the other
14 person were mad at you?

15 A. "Unhappy" is the word I used.

16 Q. Unhappy. Why were they unhappy with you?

17 MR. BARR: Objection. Form.

18 Why somebody --

19 THE COURT: Right, right, right, right.
20 Sustained.

21 THE WITNESS: I cannot answer that
22 question.

23 THE COURT: Sustained.

24 MR. JOHNSON: Okay.

25 THE COURT: Thank you.

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1 Q. (By Mr. Johnson) Okay. Why did you think
2 they were unhappy with you?

3 MR. WEIL: Well, where does it say --

4 MR. BARR: Objection. Speculation.

5 THE COURT: Yes, sustained.

6 THE WITNESS: How are we doing on time,
7 because shortly I'm going to --

8 THE COURT: Seventeen minutes, Judge
9 Foster.

10 MR. JOHNSON: Seventeen minutes.

11 THE COURT: Thank you.

12 MR. JOHNSON: Your Honor, I'm trying to
13 get into the issue of -- the quote is that they were
14 out to get him.

15 THE COURT: Uh-huh. I think you've
16 already covered that a little bit. But I'm not going
17 to give you legal advice. You need to go ahead and ask
18 your question.

19 MR. BARR: I'm going to take -- I want
20 you to come to my next family deal. You look just like
21 my cousin, David Barr.

22 THE COURT: Okay.

23 MR. BARR: Exactly.

24 THE COURT: All right.

25 MR. BARR: I just figured it out.

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1 Doesn't he?

2 THE COURT: Let's not waste time here.
3 We've got questions. Let's go.

4 MR. JOHNSON: Okay.

5 Q. (By Mr. Johnson) Sir, you're familiar with
6 the definition of shakedown; is that correct?

7 A. I believe I -- I believe that we went through
8 this on the previous deposition, but go ahead with your
9 questions.

10 Q. You're aware that the word "shakedown," one of
11 the definitions is extortion, correct?

12 A. In terms of my opinion what shakedown means,
13 that means attempting to get someone to do something
14 that they wouldn't normally do for some favor in
15 return.

16 Q. Based on the information that's available to
17 you, do you believe Commissioner Price committed a
18 shakedown of any sort --

19 MR. BARR: Objection.

20 Q. (By Mr. Johnson) -- with respect to the
21 Inland Port project?

22 MR. BARR: Objection. Form.

23 What his personal opinion is is not
24 relevant to this action. His personal opinion cannot
25 be relevant. They're entitled to inquire facts, but

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1 not to his opinion.

2 MR. JOHNSON: And if I may, Your Honor,
3 you're -- we're making a lot of assumptions based on
4 his testimony that he didn't say that Commissioner
5 Price committed a shakedown. If --

6 THE COURT: Okay. I'm overruling the
7 objection, and Judge Foster can use his definition of
8 shakedown as to -- to answer that question.

9 David, would you read the question back
10 to Judge Foster, please?

11 THE REPORTER: Question: "Based on the
12 information that's available to you, do you believe
13 Commissioner Price committed a shakedown of any
14 sort" --

15 "MR. BARR: Objection."

16 Question: -- "with respect to the Inland
17 Port project?"

18 MR. BARR: My objection, Judge, is to
19 what he personally believes can come from a lot of
20 sources. I don't want him testifying to his personal
21 opinion here in a 202.

22 THE COURT: Okay. All right. Your
23 objection is noted and overruled.

24 Judge Foster, the answer to that
25 question, please?

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1 THE WITNESS: Okay. I was listening to
2 his question, and --

3 THE COURT: Do you need --

4 THE WITNESS: (Indicating.)

5 THE COURT: Okay. David, read it back
6 for Judge Foster again, please.

7 THE REPORTER: Question: "Based on the
8 information that's available to you, do you believe
9 Commissioner Price committed a shakedown of any
10 sort with respect to the Inland Port project?"

11 A. Based on the information that's available to
12 me and based on my opinion of the definition, I would
13 say yes.

14 Q. (By Mr. Johnson) Did you tell Jim Schutze
15 that that was your opinion?

16 A. Okay --

17 MR. BARR: Ob --

18 A. -- you've asked me that question --

19 THE COURT: Sustained -- well, you said
20 objection, correct?

21 MR. BARR: I was about ready to say it.

22 THE COURT: Oh, you said "objection" I
23 thought. Although Judge Foster was about ready to
24 state it for you.

25 MR. BARR: Judge Foster was doing my job.

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1 THE COURT: Okay. Thank you.

2 Please go ahead.

3 Q. (By Mr. Johnson) Okay. Sir, is it your
4 opinion that Commissioner Price is out to get you?

5 MR. BARR: You know, I object to that,
6 and --

7 THE COURT: Yeah. I don't see the
8 relevance.

9 MR. BARR: -- I don't think it's
10 relevant.

11 THE COURT: Sustained.

12 Q. (By Mr. Johnson) Sir, in the article that's
13 been marked as Exhibit A, it says that Commissioner
14 Price --

15 MR. BARR: Can you reference the
16 location?

17 MR. JOHNSON: Oh, sure. It's on Page 3,
18 and it is one, two, three, four, five, six -- seven
19 full paragraphs from the top. It starts "'When I first
20 voted...'"

21 MR. BARR: Page 3?

22 MR. JOHNSON: Yes.

23 MR. BARR: "'When I first voted...'"

24 MR. WEIL: That's not -- perhaps that
25 I've got it wrong. This is Exhibit A?

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1 MR. JOHNSON: Exhibit A.

2 MR. WEIL: I thought Exhibit A only had
3 two pages. Sorry.

4 MR. JOHNSON: That's all right.

5 MR. WEIL: My mistake.

6 And begins?

7 MR. JOHNSON: "'When I first voted...'"

8 MR. WEIL: I see it.

9 MR. JOHNSON: Okay.

10 MR. WEIL: Thank you.

11 Q. (By Mr. Johnson) And I'll read it -- I'll
12 read this article -- well, let me read it to you and
13 I'll ask you a couple of questions: Quote, "'When I
14 first voted against this inland port plan,' close
15 quote, Foster said, quote, 'Price got furious.
16 Furious. He almost hit me. I had to adjourn the court
17 because he was so angry.'" Close quote.

18 Is that a direct quote from you?

19 A. That is a direct quote from me, and that is a
20 fact.

21 Q. Okay. Commissioner Price took a swing at
22 you --

23 MR. BARR: Objection.

24 Q. (By Mr. Johnson) -- is that -- is that what
25 you're saying?

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1 MR. BARR: Mischaracterizes the
2 testimony.

3 MR. JOHNSON: I'm asking.

4 THE COURT: Sustained.

5 Q. (By Mr. Johnson) Did Commissioner Price take
6 a swing at you?

7 MR. BARR: You wouldn't be talking to him
8 if he did. You know, he wouldn't be here.

9 THE COURT: Come on, come on, come on.
10 Response to the question? Did Commissioner Price take
11 a swing at you?

12 THE WITNESS: Okay. I mis -- I
13 misunderstand. I thought he said he objects and you
14 said -- you sustained?

15 THE COURT: No, no, no. He followed up
16 with a new -- he followed up with a question.

17 The response, sir?

18 THE WITNESS: Okay.

19 A. He was very angry and he drew back and was
20 about ready to hit me, and I backed away from him.

21 Q. (By Mr. Johnson) Was he sitting next to you?

22 A. No. We got up and he got up and we went to
23 the stairwell. As long as one person saw it, and that
24 was one of the commissioners, other than myself and
25 himself.

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1 Q. You state that you had to adjourn the court --

2 A. Right.

3 Q. -- is that correct?

4 A. Right.

5 Q. If Commissioner Price was threatening to hit
6 you, what -- why did you resume court?

7 A. (No audible response.)

8 Q. Let me rephrase it.

9 Why didn't you call the police?

10 A. Until he hits me, there's no crime committed.

11 Q. Didn't he threatened to hit you?

12 A. I just answered that question, and the answer
13 is yes.

14 Q. Did you previously agree to vote with
15 Commissioner Price with respect to an inland -- inland
16 port master developing plan?

17 MR. WEIL: I'll object on the basis of
18 legislative privilege.

19 MR. JOHNSON: And I'll object to you --

20 THE COURT: I'm sorry -- Counsel.

21 MR. BARR: Judge, I object on the
22 legislative -- you know, what he previously discussed.

23 THE COURT: David, read the question back
24 to me again, please.

25 THE REPORTER: Question: "Did you

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1 previously agree to vote with Commissioner Price with
2 respect to an inland -- inland port master developing
3 plan?"

4 THE COURT: Okay. Sustained.

5 I don't see the relevance of that either.
6 Let's go.

7 MR. JOHNSON: I tell you what, we have
8 eight minutes left, can I speak with my client?

9 THE COURT: Sure.

10 David, stop the clock, please.

11 (Break taken from 6:25 p.m. to 6:30 p.m.)

12 THE COURT: Okay.

13 MR. JOHNSON: Back on the record.

14 Q. (By Mr. Johnson) Judge, just a couple more
15 questions.

16 You're not contending -- well, let me ask
17 you: Are you contending that Commissioner Price by not
18 supporting you for your re-election bid is retaliating
19 against you for anything to do with the -- with the
20 master -- with the master plan?

21 MR. BARR: I'm going to object to the
22 form. And under the who-cares category, you know,
23 whether -- whether Commissioner Price is supporting
24 him.

25 THE COURT: Yes, sustained.

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1 MR. JOHNSON: Well, Your Honor, that's
2 the whole subject of that article.

3 MR. BARR: Which article?

4 MR. WEIL: So?

5 MR. JOHNSON: Article A.

6 THE COURT: Right.

7 Remember, we're dealing with an allegedly
8 libelist statement made by Judge Foster about a
9 shakedown, so...

10 MR. JOHNSON: And that he's out to get
11 him.

12 THE COURT: Yeah. But I've ruled --

13 MR. JOHNSON: Okay.

14 THE COURT: -- so let's move on.

15 MR. JOHNSON: Let's move on.

16 Q. (By Mr. Johnson) Sir, the statement that's
17 quoted being from you but you stated was -- was
18 actually from other people about multiple shakedowns,
19 do you know what -- from the people that you spoke
20 with, what the multiple shakedowns are? And I'll read
21 it to you. I know that's a little --

22 MR. WEIL: That was confusing.

23 MR. JOHNSON: That was confused.

24 MR. WEIL: What's the exhibit number?

25 MR. JOHNSON: It's from Exhibit A and

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1 it's on Page 3.

2 Q. (By Mr. Johnson) And it states -- and I'll
3 read the -- "I asked him to tell me more direct why he
4 thinks West and Price" --

5 A. What -- where are you?

6 MR. BARR: Right here (indicating).

7 Q. (By Mr. Johnson) The second full paragraph
8 from the bottom.

9 "I asked him to tell me more directly why
10 he thinks Price...and others...want control of the
11 inland port. Quote, 'It's all about a shakedown,'
12 close quote, he said again, quote, 'And Price is
13 involved in multiple shakedowns.'" Close quote.

14 Now, I understand that you've testified
15 that -- that you didn't make that statement, and what
16 you said was that there are people who might believe
17 that Commissioner Price has committed multiple
18 shakedowns; is that fair?

19 A. That would be fair.

20 Q. Okay. What are the multiple shakedowns that
21 are referred to in this article, if you know?

22 A. I'm afraid you'll have to ask Mr. Schutze how
23 he interpreted that, because I don't know.

24 Q. Okay. You didn't tell him that anyone had
25 told you that there were multiple shakedowns?

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A. No.

MR. JOHNSON: Okay. Pass the witness.

MR. BARR: Thank you.

MR. WEIL: We'll reserve our questions --

MR. JOHNSON: I thought you might.

MR. WEIL: -- to another day.

THE COURT: Okay. It's over with. It's
done. Thank you.

(Proceedings concluded at 6:33 p.m.)

-oo0oo-

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| 1 | CHANGES AND SIGNATURE | | | |
| 2 | WITNESS: JUDGE JIM FOSTER TAKEN: SEPTEMBER 28, 2009 | | | |
| 3 | PAGE | LINE | CHANGE | REASON |
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I, JUDGE JIM FOSTER, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

JUDGE JIM FOSTER

THE STATE OF TEXAS)
COUNTY OF _____)

Before me, _____, on this day personally appeared JUDGE JIM FOSTER, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2009.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

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CAUSE NO. cc-09-01703-d

IN RE: § IN THE COUNTY COURT
§
JOHN WILEY PRICE, § AT LAW NO. 4
§
Petitioner. § DALLAS COUNTY, TEXAS

REPORTER'S CERTIFICATION
CONTINUATION OF THE
ORAL DEPOSITION OF
JUDGE JIM FOSTER
SEPTEMBER 28, 2009

I, DAVID R. ROY, RPR, Certified Shorthand
Reporter in and for the State of Texas, hereby certify
to the following:

That the witness, JUDGE JIM FOSTER, was duly
sworn by the officer and that the transcript of the
oral deposition is a true record of the testimony given
by the witness;

That the deposition transcript was submitted
on _____, 2009, to the witness or to the
attorney for the witness for examination, signature and
return to DAVID ROY & ASSOCIATES by _____,
2009;

That the amount of time used by each party at
the deposition is as follows:

Mr. Johnson ----- 1 hour, 19 minutes

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Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this ____ day of _____, 2009.

DAVID R. ROY, RPR, Texas CSR 6030
CSR EXPIRATION DATE: 12-31-10
DAVID ROY & ASSOCIATES
Firm Registration No.: 345
2929 Carlisle, Suite 150
Dallas, Texas 75204
(214) 954-0352
(214) 954-0364 * FAX

JUDGE JIM FOSTER - September 28, 2009
VOLUME 2 - CONFIDENTIAL

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was / was not returned
 3 to the deposition officer on _____, 2009;

4 If returned, the attached Changes and
 5 Signature page contains any changes and the reasons
 6 therefor;

7 If returned, the original deposition was
 8 delivered to Mr. Mark D. Johnson, Custodial Attorney;

9 That \$_____ is the deposition officer's
 10 charges to the Petitioner for preparing the original
 11 deposition transcript and any copies of exhibits;

12 That the deposition was delivered in
 13 accordance with Rule 203.3, and that a copy of this
 14 certificate was served on all parties shown herein on
 15 and filed with the Clerk.

16
 17 Certified to by me this ____ day of
 18 _____, 2009.

19
 20
 21
 22 _____
 23 DAVID R. ROY, RPR, Texas CSR 6030
 24 CSR EXPIRATION DATE: 12-31-10
 25 DAVID ROY & ASSOCIATES
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 Dallas, Texas 75204
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CRC for DAVID ROY & ASSOCIATES
214.954.0352