

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA,
PLAINTIFF,
-vs-
EDUARDO LUIS GALIANA,
DEFENDANT.

COPY

CASE NO.: F00-17128

EXCERPT OF TRIAL

Metropolitan Justice Building
1351 Northwest 12th Street
Miami, Florida 33125
March 22, 2002
Friday, 10:45 a.m.

Trial of the above-entitled case was resumed before the
Honorable PETER R. LOPEZ, Circuit Judge, and a jury, pursuant to
adjournment.

APPEARANCES:

KATHERINE FERNANDEZ-RUNDLE, STATE ATTORNEY, BY
COLLEEN KAY, Assistant State Attorney, AND,
LAURA ADAMS, Assistant State Attorney,
on behalf of the State.

MAY CAIN, Esq., AND,
MICHAEL CATALANO, Esq.,,
on behalf of the Defendant.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
(CONTINUATION OF)				
RICK SWOPE		4	82	96

E X H I B I T S

	<u>FOR IDENT.</u>	<u>IN EVIDENCE</u>
<u>State</u>		
Exhibit 3-C	77	
<u>Defendant</u>		

1 (Thereupon, the following proceedings were had:)

2 *****

3 THE COURT: Welcome back. Please be seated.

4 Get the jury, Fernando.

5 THE BAILIFF: All rise for the jury.

6 (Thereupon, the jury entered the courtroom at 10:45
7 a.m., after which the following proceedings were had.)

8 THE COURT: Please, be seated, ladies and gentlemen.

9 Let the record reflect the presence of our eight
10 jurors, the Defendant, his attorneys and Assistant State
11 Attorneys.

12 Welcome back, ladies and gentlemen.

13 We broke last night with the direct examination of
14 Mr. Swope.

15 Now, we're ready with the cross examination.

16 MR. CATALANO: Want to do the question about the
17 press?

18 THE COURT: As I'm being reminded, anybody seen
19 anything last night in the TV or read accounts in the
20 newspapers?

21 THE JURY: No.

22 THE COURT: Your notes are on their way.

23 Good. Okay.

24 Mrs. Adams, are you ready?

25 Cross examination, please.

1 CROSS EXAMINATION

2 BY MS. ADAMS:

3 Q Good morning.

4 A Good morning, ma'am.

5 Q Now, Mr. Swope, a couple of questions about your
6 background.

7 Graduated with a Bachelor of Arts in Criminal Justice?

8 A That's correct.

9 Q You do not have a four-year degree in Physics?

10 A That would be correct.

11 Q And you don't have one in Engineering.

12 A What kind of Engineering?

13 Q A four-year degree in Engineering at an accredited
14 university.

15 A No. Four years, no. Two years.

16 Q A two-year degree.

17 You received a Master in Technology, correct?

18 A That's correct.

19 Q And the degree itself was offered through the
20 Business School at the University of Miami in conjunction with
21 the Department of Engineering, correct?

22 A I believe that that's correct. Yes.

23 Q In terms of teaching experience, you've never taught
24 at a university level in the field of Physics, have you?

25 A Physics? No, ma'am.

1 Q And never taught in a university in the field of
2 Engineering?

3 A At a university? No.

4 Q You mentioned in your testimony yesterday that you
5 have attended the Society of American Engineers Seminar
6 regarding Traffic Accident Reconstruction.

7 You remember that?

8 A I testified that I attended classes put on by SAE,
9 that's correct.

10 SAE, that's correct.

11 Q Including the Congress of the Society of American
12 Engineers?

13 A I believe they have one every year.

14 Q And the one you made note of particularly, at least
15 in your CV, is a Congress in Detroit, Michigan in 1999.

16 MR. CATALANO: Objection. Referring to something not
17 in evidence they objected to.

18 MS. ADAMS: I will rephrase the question.

19 THE COURT: She can ask any questions she wishes.
20 Sustained to that.

21 Q (BY MS. ADAMS.) Did you go to the Society of
22 American Engineers Congress in 1999?

23 A Whatever shows on the CV, I attended two of those.

24 Q At that Congress you went through issues of Barrier
25 Speed Information, Seat Belt Survey, Acceleration and Speed of

1 Young Pedestrians, and you went through Crush Energy and
2 Structural Characterization.

3 A Some of the courses, they're generally one-hour
4 seminars. You get papers.

5 Those aren't actually classes but short seminars.
6 Classes are different. You do get that information, correct.

7 Q And the 1999 Congress is the first Congress you went
8 to, correct?

9 A I don't believe so.
10 I went to another one previously.

11 Q When?

12 A I have to look at the CV to tell you that.

13 Q If you need to refresh your recollection.

14 A Can I have a copy?

15 Q You don't have one with you?

16 A I gave it to Mr. Catalano yesterday.

17 Q I'm showing you what was marked as Defendant's
18 Exhibit A-1 for Identification.

19 See if that refreshes your memory.

20 A (Looking at Exhibit.) I went to the SAE Conference
21 in February 25, 1991, on Page Seven.

22 Q It's not the Society of Engineers Congress?

23 A Yes. It is the same thing, Conference.

24 I think it changed names. After, I believe, it became
25 Congress.

1 When I went it was called SAE Conference. I believe a
2 four- or five-day seminar. I have the dates on here.

3 Q As far as the attendance at the SAE Congress in 1999,
4 that's the first time you mentioned anything about dealing with
5 Crush Energy and Structural Characterization, correct?

6 A That would be specific to the course I took, yes.

7 Q You mentioned several seminars that you have attended
8 in your background yesterday, correct?

9 A Yes, ma'am.

10 Q And you also conducted several seminars, correct?

11 A That's correct.

12 Q Let's talk about some of those seminars.

13 Now, the seminar you have conducted include "Anatomy
14 of the Defense of a DUI Case"?

15 A The seminar I was in.

16 In other words, I didn't conduct it. I went to speak
17 for an hour. Whatever the title of the seminar, somebody else
18 hires or engages whoever, and I would speak at that seminar.

19 Q That was in April 15, 1994?

20 A Again, I have to look to see.

21 Q Again, I'm showing you Defendant's A-1 for
22 Identification.

23 A (Looking at Exhibit.) Do you know what page you are
24 on?

25 Q Page Nine.

1 A That's correct.

2 That would be correct.

3 Q Now, did you conduct that seminar?

4 A No.

5 Q Why is it you indicate in your CV seminar conducted
6 by you?

7 A The "Seminars Conducted," underneath that heading,
8 what I do, when I speak at that seminar, I consider either that
9 teaching, or lecturing, or whatever. That goes under "Seminars
10 Conducted."

11 It's not a seminar I actually wrote. I didn't do the
12 entire seminar. I would do a portion, one hour, three hours.

13 Q Did you conduct the seminar?

14 A I conducted a course of that seminar. The title is
15 not mine.

16 Q Also going on below seminars that were conducted,
17 "DUI Trial Tactics," correct?

18 A What page?

19 Q Page Ten.

20 A Yes.

21 Q You also indicate you conducted a seminar on "DUI
22 Trial Tactics." That was in 1995.

23 A That would be in April in Biloxi, Mississippi,
24 correct.

25 Q And "Trial Tactics in DUI Cases" in June of '95?

- 1 A That's correct, in Atlanta.
- 2 Q Also indicate under "Seminars Conducted": "Advanced
3 Trial Tactics Seminar, Defending the Drunk Driver."
- 4 A That's correct.
- 5 Q And those were a series of five separate, I guess,
6 locations you went to under that seminar "Defending the Drunk
7 Driver," all in 1995?
- 8 A That's correct.
- 9 Q Five seminars out of State?
- 10 A Yes. They were all out of State, correct.
- 11 Q Additionally, you also have conducted, at least the
12 way you phrased it, "Accident Reconstruction and Breathalyzer
13 Testing," Hillsborough Association of Criminal Defense Attorneys
14 in Tampa, Florida, in 1996, correct?
- 15 A That's correct.
- 16 Q In addition, the "Trial Tactics and Testimony"
17 seminar for the Public Defender's in Cannan Valley, West
18 Virginia in 1996, correct?
- 19 A That's correct.
- 20 Q Isn't it true you also conducted seminars in "Breath
21 Testing" for Hillsborough County Association of Criminal Defense
22 Lawyers in Tampa, Florida, in 1997?
- 23 A That's correct.
- 24 I did that two years in a row.
- 25 Q Going to 1998, you conducted a seminar in "Breath

1 Testing and the Intoxilyzer 5000" in Palm Beach County
2 Association of Criminal Defense Lawyers, correct?

3 A That's correct.

4 Q Additionally, conducted a seminar in 1998, "The Art
5 of Winning a DUI Case with Motion Practice."

6 A That's correct.

7 That's correct, in Miami Lakes.

8 Q Going to the year 2000, under "Seminars Conducted,"
9 "DUI: The Defense of a Difficult Case," correct?

10 That's in October.

11 A Yes. You are correct.

12 Q And also in 2000, you did, "Defense of Drinking
13 Drivers," Institute of Continuing Legal Education in Georgia in
14 December of 2000?

15 A Yes, ma'am. Correct.

16 Q Could you tell the jury what Lorman Education is?

17 A Lorman Education is out of Minnesota, and they
18 conduct seminars throughout the country, mostly for attorneys, I
19 believe.

20 And, again, I could be mistaken on this, attorneys
21 have to take some credit hours over a two- or three-year period
22 and attend some seminars.

23 Lorman, I do a couple of those seminars. I do two or
24 three, depending on the location. I do them all in-state, don't
25 go out of state anymore to do seminars.

1 Attorneys attend them. I speak for an hour and two
2 hours, and attorneys come and get their certification
3 so-to-speak.

4 The seminar I do is "Accident Reconstruction," or
5 "Breath Testing," or "DUI Cases."

6 Q Now, you indicated also yesterday that you have
7 authored several publications, correct?

8 A Yes.

9 Q Authored peer reviewed publications?

10 A Yes.

11 Q What are those?

12 A "Breath Testing" wasn't peer reviewed.

13 Q "Field Sobriety Test," published that in June of
14 1993?

15 A Yes.

16 MR. CATALANO: Objection. Beyond the scope, field
17 sobriety or whichever.

18 THE COURT: Overruled.

19 Q That was in the DWI Journal of Laboratory and
20 Science, correct?

21 A I think Law and Science.

22 Whatever it says on the CV it was at the time.

23 Q Who were the peers that reviewed that work?

24 A I'm not sure.

25 Q Can you tell us any other peer reviewed articles that

1 you authored?

2 A Only two peer reviewed I authored. "Breathalyzer
3 Slope Detector to Mouth Alcohol" and "Detector Breath Machine."

4 Q It wasn't on traffic reconstruction, was it?

5 A No.

6 Q And I believe the "Field Sobriety" whichever, has
7 nothing to do with traffic accident reconstruction?

8 A Not with traffic accidents.

9 Q You have no peer reviews in the field of traffic
10 reconstruction?

11 A I haven't written anything to be peer reviewed, I
12 guess, no.

13 Q You have authored several other publications that
14 simply weren't peer reviewed?

15 A That's correct.

16 Q And one of those features in a book of a person by
17 the name of Robert Reiff?

18 A That's correct.

19 Q You know Robert Reiff is a very prominent DUI defense
20 attorney?

21 A I know he is an attorney.

22 You have to ask him. I don't relate to anybody's
23 prominence, Defense or State Attorneys.

24 Q And his primary practice is in the field of DUI?

25 A I have no idea.

1 Q You have no idea?

2 A I have no idea what his primary practice is.

3 I don't know if he conducts civil cases as well as
4 criminal. I have no idea.

5 Q How many times have you consulted with Robert Reiff
6 in DUI cases?

7 A Consulted with him in defense cases six or seven
8 times over the past ten years probably.

9 Looked at several other cases. Looking at one civil
10 case. I believe that's what I have done with him that I recall.

11 Q Only remember six or seven times you have consulted
12 with him about any DUI cases?

13 A That I can think off the top of my head over the past
14 eleven or twelve years, yes.

15 Q Some of the other articles you have read and included
16 in the DWI Journal of Law and Science, you authored a two part
17 article, "It's Okay to Lie"?

18 A That's correct.

19 Q That was geared for defense attorneys, wasn't it?

20 A Toward any attorney found to falsify documents,
21 myself or other individuals.

22 Falsifying documents on the breath testing device to
23 convict people who shouldn't have; and wrote that out, wrote the
24 article for anyone to read.

25 Q You've never falsified an article?

1 A That's correct.

2 Q And never falsified documents for Robert Reiff?

3 A I have not.

4 Q Ever prepared reports for Mr. Reiff?

5 A I have.

6 MR. CATALANO: Judge, this is irrelevant

7 THE COURT: Side bar.

8 (Thereupon, counsel for the respective parties
9 approached the bench with the court reporter, and the
10 following proceedings were had outside of the hearing of
11 the jury.)

12 THE COURT: Yes, sir.

13 MR. CATALANO: You haven't ruled on the pretrial
14 motion. Met with the prosecutor about Reiff and McGee.
15 They told me I didn't need to subpoena Bobby. They weren't
16 going to do that and are doing exactly what they had said
17 they weren't.

18 I'm sorry. This is irrelevant, has nothing to do with
19 this case. Showing bad act. I showed you the case. They
20 can't do that.

21 At this time the appropriate thing is to move on and
22 not to allow them to discuss anything about Bobby Reiff and
23 documents in the past.

24 THE COURT: Mrs. Adams, I thought we discussed this
25 issue. Never got to the forefront of it. Never really

1 came back to it. We were discussing Earhardt, quoted you
2 the page on collateral impeachment. Never got back to the
3 issue.

4 MS. ADAMS: At this point I don't need to ask him,
5 will not go further.

6 THE COURT: I sustain his objection.

7 Leave Mr. Reiff out of this. Move on to another area.

8 (Thereupon, the side bar conference was concluded, and
9 the following proceedings were had within the hearing of
10 the jury:)

11 BY MS. ADAMS:

12 Q Of the publications that you have written, you have
13 only included two that have anything to do with accident
14 reconstruction, correct?

15 A That would be correct. Yes, ma'am.

16 Q And that's out of a total of eight publications that
17 you have had?

18 A That's correct. Yes, ma'am.

19 Q You have never been registered as a Professional
20 Engineer in the State of Florida, have you?

21 A I have not.

22 Q Never sat for exams?

23 A Never sat for exams or taken a test for Registered
24 Engineer, that's correct.

25 Q You indicated yesterday you were familiar with

1 Dr. Rudolph Limpert's levels of qualifying car traffic crash
2 reconstructionists, correct?

3 A Yes.

4 Q You believe you were a Level III traffic crash
5 reconstructionist?

6 A I have to look at his book.

7 I believe so.

8 Q That's what you testified to yesterday.

9 A That's correct.

10 Q Tell the jury what a Level III crash
11 reconstructionist is according to Dr. Limpert's treatise.

12 A There's three levels.

13 The first level is where police officers are.

14 On the second level, I believe it indicates people
15 active or that do some other type of organizational
16 investigation.

17 The third level is people with Engineering backgrounds
18 who work in the field.

19 And I believe he has some kind of estimate of time or
20 cases that you should have worked over a period of years, and
21 how long you should be in the field.

22 I believe there's two or three different publications
23 on different levels of qualification. What you should be, each
24 individual item, I'm not sure what it is off the top of my head.

25 Q What are the educational requirements for Dr. Limpert

1 to become a crash reconstructionist?

2 A A four-year degree and Engineering background.

3 Q Do you remember specifically what your four-year
4 degree is supposed to be in?

5 A No. I have to look to see exactly if I have the
6 correct terminology. Yes.

7 Q I'm showing Counsel.

8 Directing your attention to the Fifth Edition of
9 Dr. Limpert's book, Motor Vehicle Accident Reconstruction and
10 Cause Analysis.

11 What is the educational requirement according to
12 Dr. Limpert to become a Level III Traffic Accident
13 Reconstructionist?

14 A (Looking at document.) Level III came about-- let me
15 read it first here.

16 Sorry. Missed the question.

17 Q Have you had a chance to refresh your memory to
18 exactly what it is he designates a Level III Traffic Crash
19 Reconstructionist must have in terms of educational background?

20 A (Reading document.) I see where it says on this
21 particular chapter. But there should be another, more
22 information about this.

23 Q And where would that additional information be on
24 Dr. Limpert's book?

25 A Fifth Edition. I don't know when this came out.

1 Q Does he not have a chapter designating Traffic Crash
2 Reconstruction?

3 A He has different chapters designated. I don't recall
4 seeing this particular one. The one I received I obtained from
5 his class, when I took his class last year on braking.

6 The information to us, what he considered Level I; II
7 and III, I don't remember. You had to have a four-year
8 Engineering degree from a recognized college or university in
9 the applicable field.

10 Q Such as in Engineering.

11 A In the applicable field. Any kind of engineer.

12 Q You have a Bachelor of Arts in Criminal Justice?

13 A That's correct.

14 Q Not Engineering, not Physics?

15 A Not Physics. I told you four times, not a Physics
16 major.

17 Q Isn't it true that Dr. Limpert indicates a Level III
18 Traffic Accident Reconstructionist has to have a four-year
19 degree in Physics or Engineering?

20 A That particular chapter.

21 As I indicated to you previously, that was not the
22 indication I got in his paper attending his class.

23 Q In addition, isn't it true Dr. Limpert indicated in
24 order to be a Level III Traffic Crash Reconstructionist you must
25 have completed peer reviewed articles in traffic crash?

1 A That he recommends peer reviewed articles?

2 Q Is that not a recommendation in his book?

3 A In that book? No.

4 Q You testified yesterday you were familiar with the
5 treatise of Dr. Limpert, did you not?

6 A I'm familiar with six or seven different books and
7 outlines. I told you I attended his courses.

8 The information I got attending his courses and in
9 speaking with him personally, if I remember right, when we left
10 the class he rated what level we were at. He indicated I was
11 Level III.

12 Q According to him verbally you are, you are a Level
13 III.

14 According to the treatise disseminated across the
15 country you don't qualify for Level III, do you?

16 A On the form it indicated what level we were when we
17 graduated from his class.

18 Q You don't have that form with you?

19 A I don't have those certificates with me, didn't ask
20 for that.

21 Q In the treatise written and distributed throughout
22 the country you don't qualify for a Level II Traffic Crash
23 Reconstructionist.

24 A Again, I don't know if that's his current book or
25 not.

1 Q What editions do you know?

2 MR. CATALANO: Objection. He should be allowed to
3 finish every sentence and then she can ask.

4 THE COURT: Finish your answer.

5 A I'm not certain what textbook or what publication
6 came out since that. I have seven or eight different books from
7 him.

8 His outline I have taken, I don't know that's his
9 latest book.

10 Q You don't know what the recent, up-to-date treatise
11 in Traffic Crash Reconstruction by Dr. Limpert is?

12 A I got a form for \$87 for a supplement to that book,
13 and every year I have to pay a supplementary fee to get the
14 supplements. If a couple of errors in the supplement, to
15 correct the errors formally in the printing, that's what I get.

16 Q In terms of preparing your work in this case you
17 never authored a report delineating what your opinions are?

18 A I was not asked to write a report.

19 I did not write one.

20 Q One of the publications you have given is a training
21 manual on how to do traffic crash reconstruction, correct?

22 A That's correct.

23 Q And one of the things you taught about is how to
24 write a report as a traffic crash reconstructionist?

25 A That's correct.

1 Q You decided not to write a report to put forward what
2 your opinions were in this case?

3 A I didn't do that.

4 When I work for an attorney or insurance company,
5 whoever it may be, they are the ones that request if I have a
6 report or not.

7 If they want a report, I will write one. If they
8 don't request a report, or don't want one written, I won't do
9 that.

10 Q In this case you were directed not to write a report,
11 weren't you?

12 A Mr. Catalano asked me not to write a report.

13 At some point in the investigation I always ask if
14 they want a report. He indicated he did not want one.

15 I don't know what the basis for that would be. That's
16 up to the attorney.

17 Q Prior to giving a deposition and actually doing the
18 traffic crash reconstruction in this case, you were provided a
19 report by Dr. William Fogarty?

20 A Yes. I believe it was faxed to me.

21 Q And you were given copy of his calculations that led
22 to the opinion contained within that report?

23 A Yes.

24 Q Weren't you?

25 A Yes.

1 Q And do you remember during a deposition that you gave
2 in this case, actually a week ago this past Monday, March 11,
3 2002, you were asked by myself if you had any notes to explain
4 the calculations and opinions that you have in this particular
5 case, correct?

6 A Yes.

7 Q And you provided me with documents, right?

8 A I provided you with the documents you took. You took
9 the documents that you wanted.

10 Apparently, I gave you two different files and you
11 copied whatever you wanted. Whatever documents you got, you
12 got. I don't know exactly what pages you got.

13 Q You took certain steps to ensure the State Attorney
14 had complete copies of all your notes detailing the work in your
15 case?

16 A I don't know what you mean by that kind of question.

17 I gave you my file. My determination, you had the
18 ability to copy whatever you needed to copy.

19 You certainly know what you are looking for in a case.
20 I gave you two files and it was up to you to copy whatever
21 information you wanted. It wasn't for me to copy. Whatever
22 information I had was yours.

23 Q I'm specifically referring to a document that dealt
24 with your calculations of the acceleration rate of the
25 Oldsmobile involved in the collision at issue in this case,

1 correct?

2 A That's correct.

3 Q You didn't have it.

4 A No. I didn't have it.

5 At the time, I couldn't find it.

6 The other information I used, all indicated what the
7 acceleration factor was I used. I didn't have that particular
8 document with me. I couldn't find it.

9 Mr. Catalano left during the deposition to see if
10 somehow we could find it in his office, and we found it shortly
11 after the deposition.

12 Q Never got it to the State Attorney before yesterday,
13 did you?

14 A I advised Mr. Catalano. Again, I don't have contact
15 with the opposing party, contact with the attorney. What they
16 do with the document is up to them.

17 Q Isn't it true you turned that document over to me
18 yesterday, prior to your testimony before this jury?

19 A I advised Mr. Catalano.

20 Apparently, you did not have the document yet. I
21 turned that over.

22 Q Now, when you gave your deposition last Monday, you
23 didn't mention anything about relying on the videotape that we
24 saw yesterday, did you?

25 A That's right.

1 MR. CATALANO: Objection. Improper question.

2 THE COURT: Side bar.

3 (Thereupon, counsel for the respective parties
4 approached the bench with the court reporter, and the
5 following proceedings were had outside of the hearing of
6 the jury.)

7 THE COURT: What was wrong with the question?

8 MR. CATALANO: My objection is to he didn't give the
9 information. That's improper impeachment, especially for a
10 defense expert or witness in a case.

11 We have no burden to prove anything.

12 The reason it's improper impeachment, should be, did I
13 ask you to tell me something you didn't review?

14 MS. CAIN: The answer is different.

15 THE COURT: What was your question?

16 (Thereupon, the court reporter read the question
17 back.)

18 THE COURT: And your position is what, he was never
19 asked?

20 MR. CATALANO: Improper question to impeach somebody.

21 THE COURT: Didn't the videotape turn up a couple of
22 days ago?

23 MR. CATALANO: At the depo looked for it, found it,
24 and turned it over.

25 THE COURT: That's his response to the question?

1 MR. CATALANO: The question would be, isn't it a fact
2 you found the video after the deposition, as if hiding
3 something in the depo.

4 THE COURT: You can bring that out on redirect. I
5 have no problem with you asking the question.

6 I didn't rely on it, I didn't have it with me is a
7 proper answer to the question.

8 MR. CATALANO: I want to say one thing, she's trying
9 to blame the witness for the fact I didn't make a big deal
10 about going back when he gave me that one missing page to
11 fax over to the State.

12 The prosecutors and defense lawyers have been
13 E-mailing and faxing a zillion documents. We've been very,
14 very cooperative with each other constantly for how long
15 now? Give me a break. I can only do so much. I have
16 other clients.

17 For her to show the jury I'm hiding something is
18 ridiculous. I got to explain I'm the one.

19 Did you give me that document? They didn't ask until
20 they got to court. They didn't ask.

21 Again, how many times prepping for trial we were
22 sitting by each other saying, by the way, send me this.

23 THE COURT: You guys have been wonderful.

24 The fact it didn't turn up until yesterday is an issue
25 I dealt with yesterday.

1 MR. CATALANO: They made it a jury issue.

2 Isn't it a fact it was my mistake, I forgot to give it
3 to them?

4 THE COURT: They heard everything else about your life
5 anyway during this trial.

6 MR. CATALANO: Not trying to. Blame me for anything.

7 THE COURT: Certainly seems relevant.

8 It was in the file or wasn't, that may or may not be
9 relevant.

10 MR. CATALANO: Biggest type of nonsense I've heard.

11 THE COURT: I tend to agree. You will cover it in
12 redirect.

13 MR. CATALANO: They are not going to like what they
14 are going to get.

15 THE COURT: We will see, Counsel.

16 (Thereupon, the side bar conference was concluded, and
17 the following proceedings were had within the hearing of
18 the jury:)

19 BY MS. ADAMS:

20 Q The question was, you didn't mention anything about
21 relying on the videotape to form your opinion, the videotape we
22 saw yesterday?

23 A That's correct.

24 During the deposition?

25 Q You didn't have it at the time of the deposition?