

1 Q The same thing. This is again the --  
2 during the final arguments and summation of the case.

3 A This is closing arguments, comments from  
4 someone?

5 Q Uh huh. This would be your comments, I  
6 believe.

7 A At what lines?

8 Q Lines five and six, page 179?

9 A Lines five and six.

10 Q So, you told the judge there that Myers  
11 was pretty clear about the fact that he had built the  
12 wall; correct?

13 A That's what I said. I obviously misspoke.  
14 He didn't rebuild the wall.

15 Q No. That he built the wall.

16 A Oh, that he had built the wall initially.

17 Q Yeah.

18 A No. I think the Cooks -- I think the  
19 Cooks built the wall or the wall was there. Obviously  
20 I misspoke.

21 MS. LIPPINCOTT: I'm sorry. To which wall

1 are you referring?

2 MR. DOWELL: Well, this would be the  
3 concrete block wall.

4 THE WITNESS: I was referring to the 291  
5 square foot area that was in dispute here as set forth  
6 on the Deitz survey. And I talked about Mr. Myers'  
7 testimony.

8 Q Well, I'm just referring to lines five and  
9 six. You indicated to the court that Myers was pretty  
10 clear about the fact that he built the wall. That's  
11 what is said; right?

12 Do you now say that was a misstatement?

13 A It speaks for itself. I'd have to review  
14 Mr. Myers' deposition transcript to see whether or not  
15 he said that.

16 Because Mr. Myers I recall during the  
17 course of his deposition, he was a very nice man. He  
18 was up in years. And there was a point in time I  
19 believe that he was confused about certain things.

20 Ultimately that confusion was addressed  
21 and he I think backtracked and corrected himself on

1 certain issues. I can't remember what they were.

2 This has been years. I'm surprised I can remember as  
3 much as I do.

4 Q Do you recall that Mr. Myers actually said  
5 that the wall existed before he even owned the  
6 property? Is that your recollection of his testimony?

7 A No. I'd have to reread his testimony.

8 Q Let me show you Number 17, which is the  
9 Myers' transcript.

10 A Part of the Myers' transcript, right.

11 Q Part of the Myers' transcript.

12 MS. LIPPINCOTT: I'm sorry. What  
13 Deposition Exhibit Number is this?

14 MR. DOWELL: Number 12. I'm sorry. 12,  
15 yeah.

16 (Carney Deposition Exhibit 12 was marked  
17 for purposes of identification.)

18 Q Page 17, lines 14 to 25. I would ask you  
19 to review those lines to yourself.

20 A Okay. I've read it.

21 Q Over to page 18, lines one to three. And

1 then over to page 22, lines ten to 21.

2 A I'm sorry. 22 you said?

3 Q Page 22, ten to 21.

4 A Yes. I've read it.

5 Q Page 23, lines eight to ten.

6 A Yes.

7 Q And over to page 24, lines three to nine.

8 A Okay.

9 Q And then to page 54, lines 19 to 25, to  
10 page 55, lines one to nine.

11 A I'm sorry. 54?

12 Q 54, lines 19 to 25, over to 55, one  
13 through nine.

14 A Okay.

15 Q Does that refresh your recollection on  
16 what Mr. Myers testified to about who built the wall  
17 and when it was built?

18 A In part, yes.

19 Q And where did you get the idea that you  
20 mentioned in your final arguments that Mr. Myers was  
21 pretty clear about the fact that he built the wall?

1           A       Mr. Dowell, in the heat of a closing  
2 argument and the heat of a trial, which was very  
3 contentious at least from Linda's perspective, the  
4 lawyers were respectful to one another because we're  
5 all pros.

6                   I misspoke, obviously. Who erected the  
7 wall was of no -- frankly. It says what it says.  
8 Mr. Myers clearly said that he -- that the wall was  
9 there when he got the property.

10                   So, he said the wall fell over. It was  
11 rebuilt by Mrs. Collins' predecessor in title, the  
12 Cooks.

13                   If I misspoke during closing argument, I  
14 misspoke. It certainly had nothing to do with the  
15 outcome of the case.

16           Q       Do you feel, Mr. Carney, that the  
17 hostility of possession argument for the 20-year  
18 period could have been stronger if it could have shown  
19 that the concrete block wall was originally there  
20 before Mr. Myers owned the property?

21                   MS. LIPPINCOTT: Objection. Calls for

1 speculation. Lacks foundation.

2 You may answer.

3 A The answer is no. Because, first of all,  
4 the testimony was that the wall was there prior to  
5 Mr. Myers buying the property. That was the  
6 testimony. That was his testimony. It was in  
7 evidence.

8 Q But you don't agree with me that the trial  
9 judge was confused on that at the end of the case?

10 A I can't tell you what was going on in the  
11 trial judge's mind. I can't tell you whether she was  
12 confused or not.

13 I know her decision was erroneous. The  
14 Court of Special Appeals said it was erroneous and  
15 reversed it.

16 So, you can draw your own conclusions from  
17 that. But whether she was confused or not, I can't  
18 speculate. She had the right evidence before her.

19 Q She says here, and this is Exhibit 10, I  
20 don't know when the wall was built; correct? I don't  
21 know when the wall was built. I don't know if it was

1 built 20 years ago. I don't know if it had been there  
2 for 20 years. That's the problem with the adverse  
3 possession claim. I don't have any evidence how long  
4 the wall had been there.

5 A And she was wrong.

6 MS. LIPPINCOTT: Objection. The document  
7 speaks for itself, what you're referring to. The  
8 excerpt from the transcript speaks for itself.

9 MR. DOWELL: Well, I know. But I'm just  
10 trying to -- and this is all part of my question. She  
11 says I don't have any indication. I mean, I have a  
12 question mark. Maybe the late '80s.

13 It seems to me that that's as far as it  
14 ever got pinned down.

15 Q You don't agree with me that the trial  
16 judge was confused about how long the wall had been  
17 there based on that?

18 A I don't know what her confusion was, but  
19 it had nothing to do with the outcome of the case.  
20 Her ruling didn't have anything to do with how long  
21 the wall had been there or not been there.

1 Q Okay.

2 A Her ruling was wrong as a matter of law as  
3 expressed by the Court of Special Appeals. Had  
4 nothing to do with how long the wall had been there.  
5 It was not material.

6 MS. LIPPINCOTT: Is this a good time to  
7 take a break?

8 MR. DOWELL: Sure, if you want.

9 (Pause in the proceedings.)

10 Q To your knowledge, did there come a time  
11 after she bought the property when Linda Senez became  
12 aware that the concrete block wall was not, in fact,  
13 the actual property line?

14 A Sure.

15 MS. LIPPINCOTT: Objection. Asked and  
16 answered. Calls for speculation.

17 You may answer.

18 A She certainly learned about it in this  
19 litigation. When she first learned about it, I don't  
20 know.

21 Q Do you know how she first became aware of



1 that?

2 A No.

3 Q You've read the trial transcript, I  
4 assume?

5 A I have not.

6 Q You haven't read the trial transcript?

7 A I didn't handle the appeal.

8 Q To your recollection, did Mrs. Collins'  
9 testimony concern you in any way with regard to Linda  
10 Senez proving the hostility of possession element?

11 A Sure it did.

12 Q And what --

13 A I've already talked to you about that.

14 Q What specifically was it other than what  
15 we've already talked about about her conversation with  
16 Ms. Collins about putting the fence up? Is there  
17 anything else that specifically concerned you about  
18 that?

19 MS. LIPPINCOTT: Objection. Asked and  
20 answered.

21 You can answer.

1 (A discussion was held off the record.)

2 MS. LIPPINCOTT: Go ahead.

3 THE WITNESS: Without reading the trial  
4 transcript of Mrs. Collins' testimony, I can't answer  
5 that specifically.

6 Generally speaking, subject to me if I  
7 were to have read her trial transcript, no.  
8 Mrs. Collins' testimony was Mrs. Collins' testimony.  
9 She was cross examined adequately, and I felt as  
10 though I elicited whatever points I wanted to elicit  
11 from the woman.

12 Q Is there anything you felt should be  
13 challenged on cross examination with regard to  
14 Mrs. Collins' testimony that were not challenged?

15 A Again, that's a very broad brush  
16 statement, Mr. Dowell. You know, you can Monday  
17 morning quarterback any trial and say to yourself, you  
18 know, I wish I would have said a little bit more about  
19 this, I wish I would have gone a little bit more that  
20 way.

21 You can second guess yourself until the

1 cows come home. It's like, you know, trying to figure  
2 out whether you passed the bar exam.

3 So, I can't answer that question.

4 Q Uh huh.

5 (Carney Deposition Exhibit 14 was marked  
6 for purposes of identification.)

7 Q Let me show you Number 14.

8 MS. LIPPINCOTT: What is Exhibit 14? I'm  
9 sorry.

10 MR. DOWELL: That would be an e-mail that  
11 you sent to Ms. Senez on December 19th of '06;  
12 correct?

13 THE WITNESS: It would appear to be.

14 Q On the fourth line down in that e-mail,  
15 you stated my cross examination of the Collinses was  
16 devastating to their claims.

17 Can you explain what you meant by that?

18 A No. At the time I knew what I was saying  
19 by that. I have no idea what I was saying other than  
20 the fact that I felt that I was able to shake their  
21 testimony. I was able to elicit whatever points or

1 admissions I wanted to get from them on cross.

2 Q Okay.

3 (Carney Deposition Exhibit 15 was marked  
4 for purposes of identification.)

5 Q I'm going to show you Number 15. This is  
6 an excerpt of the deposition -- or trial testimony.

7 A This is not marked.

8 Q It's on the back.

9 A Oh, I'm sorry.

10 Q Of the trial testimony of Steven Collins.  
11 And specifically I'd like to refer you to page 103 and  
12 104.

13 On 103, the lines would be from 22 to 25.  
14 And 104, the lines would be one to eight.

15 A Okay.

16 Q He's talking about the wall there.

17 And would you agree with me --

18 A He's talking about the wall? I don't see  
19 any mention of the wall there.

20 Q Well, if you go back in the testimony, I  
21 would submit to you that it does pertain to why the

1 wall --

2 A He's talking about moving a trailer down  
3 between the property.

4 Q Yeah, I understand that.

5 A To the boat ramp.

6 Q Do you recall that during the course of  
7 the case Mr. Collins indicated to the court that the  
8 reason the wall was built where it was and how it was  
9 is to maneuver a boat down to the boat ramp?

10 A Do I recall Mr. Collins opining as to the  
11 reason that the wall being built was to accommodate a  
12 boat --

13 Q Uh huh.

14 A -- going down what, between the  
15 properties?

16 Q Yes. Essentially, the reason the wall was  
17 built the way it was was to accommodate the movement  
18 of a vehicle and a boat down to the boat ramp.

19 Do you recall that?

20 A I recall that there was some testimony  
21 about the movement of one or more vehicles down the

1 property to the water.

2 This is Mr. Thompson's direct testimony of  
3 his own client. I don't recall testimony to the  
4 effect that the reason that the wall was built was to  
5 accommodate vehicular traffic down to the water. I  
6 don't ever recall that.

7 Q Specifically where the wall was built.

8 A I don't ever recall that testimony.

9 Q You don't recall that?

10 A No. If he said it, he said it, but I  
11 don't recall it.

12 Q Uh huh.

13 A And, again, it would have been completely  
14 irrelevant and immaterial. Who cares?

15 (Carney Deposition Exhibit 16 was marked  
16 for purposes of identification.)

17 Q Showing you Number 16. Again, this comes  
18 from the transcript. This would be --

19 A Is it the trial transcript you're  
20 referring to?

21 Q Yes. This would be Mr. Thompson's

1 comments at page 170, line --

2 A Is this closing argument or --

3 Q Yes.

4 A Lines one to three.

5 Q Mr. Thompson indicates there that Cook  
6 built the wall. He built the wall as an accommodation  
7 to neighbors.

8 Do you see that?

9 A I see it.

10 Q Did you have any feeling at that time  
11 whether or not that statement was true and whether or  
12 not you should comment to the judge about the  
13 truthfulness of that statement?

14 A At the time and as I sit here right now,  
15 why Mr. Cook built the wall, whether it was an  
16 accommodation to neighbors or because he wanted to  
17 practice his mason skills was completely immaterial  
18 and irrelevant to the issues to be adjudicated by  
19 Judge Souder.

20 Q It didn't --

21 A It made no difference.

1 Q And that doesn't pertain at all to the  
2 hostility of possession argument in your case?

3 A The hostility element has to be between  
4 Linda Senez and the Collinses and/or her predecessor  
5 in title, Mr. Myers and the Cooks.

6 It had nothing to do with why the wall was  
7 built, no.

8 Q All right.

9 (Carney Deposition Exhibit 17 was marked  
10 for purposes of identification.)

11 Q Number 17. Again, the sticker is on the  
12 back. It comes from the trial transcript in closing  
13 argument, page 174, lines 16 to 18.

14 A Again, by Mr. Thompson?

15 Q Yes.

16 MS. LIPPINCOTT: I'm sorry. What page and  
17 line reference?

18 MR. DOWELL: Page 174, lines 16 to 18.

19 Q Mr. Thompson there is telling the court  
20 that Mr. Myers said he showed Ms. Senez the property  
21 line one foot in from the wall.



1 Do you see that?

2 A I see it.

3 Q Did you know at the time that was not  
4 true, that was not actually Mr. Myers' deposition  
5 transcript?

6 MS. LIPPINCOTT: Objection as to form.  
7 You may answer.

8 A Did I have every page of Mr. Myers'  
9 deposition memorized so that I could stand up and say,  
10 no, he didn't say that at page 32 and 33? No.

11 Q Did you think that was --

12 A And, again, it was -- even if he said  
13 that, that would have been just fine. Because he  
14 would have been there for 19-1/2 years pointing out to  
15 the new person coming into title that the property  
16 line is back to where the wall is. You know, it would  
17 have helped in this case, not hurt it.

18 Q Wouldn't that have been the situation  
19 where, if true, Mr. Myers telling Ms. Senez that there  
20 was a difference between the wall and the actual  
21 property line that that would have interrupted the

1 20-year period, isn't that -- wouldn't that be true?

2 A Absolutely not.

3 Q No?

4 A Absolutely not.

5 Q Why not?

6 A Because he used the property as his own  
7 openly and notoriously and actually for the whole time  
8 he owned the property, which I think was about 19-1/2  
9 or more years.

10 If he then points out to a person who's  
11 going to buy his property, oh, by the way, I've been  
12 using this property openly, notoriously and hostilely  
13 for the past 19-1/2 years because the property line is  
14 really here and not there, all that does is give Linda  
15 the knowledge that it's being used openly and  
16 notoriously. And she continued to use the property as  
17 predecessor in title.

18 Thus we have the concept of tacking.

19 Q Uh huh. Okay.

20 A It was helpful, not hurtful.

21 Q So, you don't think that hurt the case at

1 all?

2 A Not one little bit.

3 Q Okay.

4 A And furthermore -- never mind.

5 (Carney Deposition Exhibit 18 was marked  
6 for purposes of identification.)

7 Q Showing you 18. This is from Mr. Myers'  
8 transcript. Page 33, lines three to six.

9 A I'm sorry. What lines?

10 Q Page 33, lines three to six.

11 A Page -- I'm sorry. 33, three to six.

12 Okay.

13 Q Mr. Myers seems to have questioned in his  
14 mind as to whether he actually pointed that out to  
15 Ms. Senez.

16 Would you agree with that?

17 A I can't say what questions Mr. Myers had  
18 in his mind, what went through the gentleman's head.  
19 I don't even know who's asking this question. Is it  
20 me? It doesn't sound like me.

21 Q Yes, I believe it is you.

1                   Page 33 would have been you, yes.

2           A       And furthermore, there was an objection  
3 interposed, and the question was restated. This is  
4 out of context.

5                   I have no idea what was going through the  
6 man's head.

7           Q       Uh huh.

8           A       He was a very kind, nice, elderly  
9 gentleman who at times was confused.

10          Q       If we can talk about the surveys.

11                   What's the difference between a boundary  
12 survey and a location survey?

13          A       Costs, costs and costs. The location  
14 survey locates the improvements within the boundaries  
15 and it does not establish the boundaries.

16                   Thus it is very inexpensive. Normally the  
17 surveyor would go to a -- if it's in the city, it's  
18 going to go to a lot. It's going to the plat. You  
19 can see the lot and the block. You use that to  
20 establish the boundary lines.

21                   Then you're going to locate the

1 improvements within the boundary lines to see whether  
2 or not the improvements encroach on the boundary lines  
3 or violate a setback, for example.

4 A boundary survey involves the surveyor's  
5 actually going out with transits and shooting the  
6 corners, establishing the monuments, whether they be  
7 stakes or honest to God stone monuments. That's where  
8 the term comes from.

9 And they actually go out and do a  
10 full-blown honest to God corner to corner to corner  
11 meets and bounds survey.

12 It's very expensive. And that's what  
13 establishes the actual lot lines. It has nothing to  
14 do with improvements.

15 Q Would you agree with me that a boundary  
16 survey is much more reliable than a location survey to  
17 establish property lines?

18 A Oh, absolutely.

19 Q Of what significance was it in your view  
20 whether your client had seen a survey of her property  
21 when she bought it?

1           A        If she had seen a survey when she bought  
2   it?  If it imparted knowledge to her that part of her  
3   property was being used by her predecessor in title  
4   adversely to her next door neighbor, that would have  
5   assisted us in our case.

6                    The fact is she was using the property as  
7   Mr. Myers had used the property.  She was mowing and  
8   clipping and maintaining her property right up to the  
9   retaining wall and then right up to the fence after  
10  she built the fence.

11           Q        So, is your answer that it wouldn't have  
12  been of any significance had she seen a survey at the  
13  time she bought it?

14           A        It depends on what future events were to  
15  unfold.  Linda, I'm sure, when she bought the property  
16  could never have predicted that she was going to get  
17  into a war with the Collinses where she would be sued  
18  by them for intentional infliction fraud, nuisance,  
19  injunctive relief, trespass.

20                    I'm sure in her wildest dreams, she never  
21  thought that that was going to be the case.  So, who

1 knows what significance it would have had to her if  
2 she would have known about it at the time she bought  
3 the property.

4 Q Well, of what significance do you feel it  
5 would have been to the court whether she had seen a  
6 survey at the time she bought the property?

7 MS. LIPPINCOTT: Objection. Calls for  
8 speculation.

9 A I can't tell what the court -- what value  
10 or weight the court would give such testimony if the  
11 testimony was elicited. I can't answer that question.

12 Q What, if any, surveys, to your knowledge,  
13 had Linda Senez seen of her property before she bought  
14 it?

15 A I don't recall.

16 Q Do you know whether there were any  
17 witnesses who could have testified what surveys, if  
18 any, she had seen at the time she bought her property?

19 A It was my understanding that Ms. Senez  
20 dealt directly with Mr. Collins -- with Mr. Myers.  
21 And so, if she would have seen any surveys, it would

1 have been as a consequence of her discussions and/or  
2 negotiations with Mr. Myers.

3 That's it --

4 Q So --

5 A -- as far as I know.

6 Q -- by saying directly, you mean personally  
7 she dealt with Mr. Myers? Is that what your  
8 understanding was?

9 A This is based on my overall understanding.  
10 You have to understand I did not represent Linda when  
11 she bought the property. I didn't do the settlement.  
12 I was not involved in that aspect of this case at all.

13 And so, who she dealt with, whether it was  
14 directly or through an agent, I wasn't there. So, I  
15 don't know.

16 I believe that she had at least one  
17 discussion with Mr. Myers one on one. Now, maybe I'm  
18 wrong about that, but that was my general belief.

19 Q Well, getting back to my original  
20 question, which was were there any witnesses that you  
21 were aware of?



1           A       Witnesses to what?

2           Q       Who could have testified what surveys, if  
3 any, she saw when she bought the property. Were you  
4 aware of any such witnesses?

5           A       She talked about these realtors that -- in  
6 her e-mail that were involved in some fashion.  
7 Whether or not they could have opined as to whether  
8 there was a survey there or not, I don't know.

9           Q       Was that kind of just immaterial to you,  
10 whether they could have said that or not?

11          A       The realtors' testimony?

12          Q       Yes. These two women, Barkley and  
13 Bowerman.

14          A       I decided after considering whether or not  
15 to use these people and put them on the witness stand  
16 in the exercise of my judgment as her lawyer and the  
17 trial strategy that I employed that they were not  
18 needed, and I, therefore, didn't call them.

19          Q       But you never talked to them; did you?

20          A       I don't know whether I talked to them or  
21 not. I can't answer that.

1           Q       Did Ms. Senez ever tell you what they  
2 would say if they were brought in to testify?

3           A       I don't recall whether she did or she  
4 didn't. She probably did because Ms. Senez had a lot  
5 to say about most everybody's knowledge.

6           Q       Well, if she had told you, for example,  
7 that these people would have said that Mr. Myers did  
8 not give her or them a survey and that the only survey  
9 she saw was a location survey at the time of  
10 settlement, would you have thought those facts  
11 important enough to call those witnesses to testify?

12           MS. LIPPINCOTT: Objection. Calls for  
13 speculation.

14           You may answer.

15           A       I wouldn't change my strategy if all Linda  
16 saw was a location survey at the time that she bought  
17 the property versus a boundary survey, and I had no  
18 knowledge one way or the other as to what she saw or  
19 she didn't see when she bought the property.

20           A location survey if it's done by a good  
21 surveyor many times will locate an encroachment, and

1 if you have a fence that's on somebody else's property  
2 line or if you have a wall that's on somebody else's  
3 property line, many times it will show you that.

4 I don't know what Linda saw, what she  
5 didn't see.

6 Q Well, if she had told you, for example,  
7 that she had only seen a location survey at the time  
8 of settlement and if that could have been proven by  
9 the testimony of other witnesses, would that have had  
10 any significance to the case so that you could have  
11 brought it out?

12 A That wouldn't have any significance at  
13 all.

14 MS. LIPPINCOTT: Objection. Calls for  
15 speculation.

16 You may answer.

17 A From my trial strategy perspective, it  
18 would not have made a difference in my ability to  
19 prove the elements of adverse possession and to defeat  
20 the affirmative claims of the Collinses against  
21 Ms. Senez.

1 Q Was there any evidence that you were aware  
2 of that Ms. Senez saw a boundary survey for her  
3 property at the time she bought it or at settlement?

4 A There was discussion about a survey.  
5 Mr. Myers thought that he had made surveys available  
6 to prospective buyers, but he wasn't sure. He wasn't  
7 sure whether -- I think he said that he wasn't sure  
8 whether or not Ms. Senez had been given a copy of the  
9 survey that he had commissioned or that she had viewed  
10 it.

11 I just can't remember.

12 Q To your recollection, was there any  
13 evidence that Linda Senez knew before May 9 of '04  
14 that the property line between the properties was  
15 something other than the concrete block wall?

16 A What's May 9 of '04?

17 Q I'm just asking you the question.

18 A I can't answer. I have no idea. I don't  
19 know what she knew.

20 Q Do you recall whether there was any  
21 evidence that Mr. Myers showed or gave her a survey

1 before or after she bought the property?

2 A There was general discussion in his trial  
3 and his deposition transcript, at his deposition,  
4 there was general discussion about the survey that he  
5 had commissioned and what he had done with it after he  
6 had received it.

7 I can't recall without rereading  
8 Mr. Myers' transcript exactly what he said.

9 (Carney Deposition Exhibit 19 was marked  
10 for purposes of identification.)

11 Q Showing you Number 19, which, again, comes  
12 from the trial transcript. This is the testimony of  
13 Mrs. Collins at page 18, lines eight to 17.

14 A Eight is an answer?

15 Q Sorry. Nine. Lines nine through 17.

16 A This is Mr. Thompson's questioning of his  
17 client?

18 Q Yes. Mrs. Collins testified that  
19 Ms. Senez asked her can my fence follow the wall  
20 instead of the property line; correct?

21 A That's what the transcript says, yes.

1 Q Did you consider that testimony harmful to  
2 Linda Senez's claim for adverse possession?

3 A Sure. If believed, it would defeat the  
4 hostility claim. Little did I know that the judge had  
5 no understanding whatsoever what hostility meant in  
6 the context of adverse possession.

7 Q Do you recall asking Ann Collins any  
8 questions on cross examination concerning that  
9 testimony?

10 A I don't recall what I asked her on cross.

11 Q Would it surprise --

12 A I cross examined Ann Collins.

13 Q Would it surprise you to learn that a  
14 careful reading of the trial transcript indicates you  
15 didn't ask her any questions about that? Would that  
16 surprise you?

17 MS. LIPPINCOTT: Objection. Lacks  
18 foundation.

19 You may answer.

20 A Nothing surprises me. I have no idea what  
21 it says. I haven't read it. I know what Linda's

1 testimony was. I don't know what Linda told me.

2 Q If you considered that testimony  
3 potentially harmful, would there have been any reason  
4 that you would not have cross examined Ann Collins  
5 about it?

6 MS. LIPPINCOTT: Objection.

7 A I'm not going to second guess my trial  
8 strategy regarding cross examination in the heat of a  
9 trial four or five years ago.

10 Q What evidence, if any, did you offer to  
11 the court to prove that Ms. Senez could not have asked  
12 that question of Ann Collins because at the time she  
13 thought the concrete block wall was the property line?

14 A I offered Ms. Senez's testimony in its  
15 entirety.

16 Q And what other evidence did you offer?

17 A There was no other evidence to offer.

18 Q Was there any documentary evidence or  
19 other evidence that Ms. Senez provided to you that  
20 could have disproven that particular testimony of Ann  
21 Collins?

1           A       How in the world could a document disprove  
2 what somebody says took place in a conversation? The  
3 answer to your question is I don't recall ever seeing  
4 such a document.

5           Q       Or knowing of any other evidence?

6           A       According to the parties, there were no  
7 witnesses to this conversation. It was a one on one  
8 conversation between Mrs. Collins and Linda Senez.

9           Q       I'm not asking about witnesses to the  
10 conversation.

11                   I'm asking about other potential testimony  
12 that could have been offered to dispute that  
13 particular testimony that Ann Collins gave at page 18  
14 of the trial transcript?

15           A       Other potential testimony. At this point  
16 in time, other than Mrs. -- Ms. Senez's testimony at  
17 trial, you know, how could I possibly have any.

18                   The answer to your question is no.  
19 There's nobody. It was a one on one conversation.  
20 So, maybe Ms. Senez sent her a memo or maybe  
21 Ms. Collins sent her a memo, a self-serving memo



1 confirming a conversation after the fact.

2 I don't know that that happened. You have  
3 to understand Ms. Senez deluged this office with  
4 documents, pictures.

5 Q Were there any facts in evidence that you  
6 recalled which showed Linda Senez knew what the actual  
7 property line was when she bought the property?

8 A You've asked the answer to that question.  
9 I've answered that question multiple times.

10 No, I have no idea. I wasn't there. I  
11 wasn't a part of it.

12 Q Whose idea was it to depose Mr. Myers?

13 A Mine. She'll tell you that it was hers,  
14 but it was mine.

15 (Carney Deposition Exhibit 20 was marked  
16 for purposes of identification.)

17 Q Show you page Number 20. This would be an  
18 e-mail from Ms. Senez to you dated July 7, '06. The  
19 last paragraph, if you would read to yourself, and  
20 then I have a question.

21 It's correct to say that as of

1 January 13th, '06, you both agreed that the Myers'  
2 deposition was of key importance; correct?

3 A She says we agreed that Mr. Myers'  
4 deposition is of key importance. This is what she  
5 said. This document also talks about the failed  
6 settlement negotiations she said. You can't just take  
7 this out of context.

8 Q Do you agree that as of mid January of '06  
9 you believed that Myers' deposition should be taken?

10 A Mid January of '06. I got in the case --  
11 I got in the case on January 13th, 2006.

12 I don't know what I believed at that time.  
13 There came a point in time when I certainly realized  
14 that Mr. Myers' deposition testimony or testimony  
15 would be important to establish the elements of  
16 adverse possession.

17 Q At what point in time would that have  
18 been?

19 A I can't answer that question.

20 Q You're saying some time after mid January?

21 A Some time after I was engaged. I don't

1 know when. After I reviewed the pleadings, after I  
2 reviewed the history of the file.

3 But you have to understand when I got in  
4 this case, it was represented to me by prior counsel  
5 that this case was going to settle.

6 Q I understand.

7 A So, I was looking at the case from a  
8 settlement perspective initially.

9 Q Okay.

10 (Carney Deposition Exhibit 21 was marked  
11 for purposes of identification.)

12 Q I'll show you Number 21, which is your  
13 e-mail to Ms. Senez dated May 23, 06.

14 Point number three toward the end of that  
15 e-mail, I will note the videotape deposition of your  
16 previously -- previous -- it says own -- I guess you  
17 meant owner de bene esse; correct?

18 A That's what it says.

19 Q So, at least as of May 23rd, '06, you were  
20 going forward in deposing Mr. Myers; is that correct?

21 A Yes, I was going to go forward and depose

1 him.

2 Q And you said you would note the  
3 deposition.

4 And when was that deposition initially  
5 taken to your recollection?

6 A I don't know. I have no idea.

7 Q Would it have been in October of '06?  
8 Does that refresh your recollection?

9 A Oh, excuse me. It was on my birthday. It  
10 was noted before then, but it was taken on  
11 October 25th.

12 This document that you've given to me as  
13 well here talks about the failed settlement  
14 negotiations and the fact that we were waiting for a  
15 response from the Collinses forever, and I made a  
16 reference that my clothes were going to go out of  
17 style because we were waiting for so long for them to  
18 respond, and to move them off the dime, I said to  
19 Linda, okay, I'm now going to note his deposition.

20 I go on to say that ought to give the boys  
21 at the Mercantile Building, which is where defense

1 counsel is housed, something to chew on.

2 I mean, part of my trial strategy and the  
3 failed settlement were appearing to be failed  
4 settlement discussions.

5 Q Do you recall Ms. Senez asking you  
6 repeatedly from January of '06 through the time the  
7 deposition was actually scheduled that we needed to  
8 get this deposition? Do you recall her persistently  
9 asking you that?

10 A Linda at times would say, hey, how about  
11 Mr. Myers' deposition. What's going on. What's the  
12 status of it.

13 But it was in the context, you have to  
14 understand, Mr. Dowell, of these ongoing settlement  
15 negotiations.

16 I was not about to travel to South  
17 Carolina to take this man's deposition if the case was  
18 going to settle.

19 I was not going to allow settlement  
20 discussions to get me to the point where I couldn't  
21 take it because I was out of time, but the fact of the

1 matter is there were ongoing settlement discussions.

2 That's what this memorandum or this e-mail  
3 is all about.

4 Q Uh huh.

5 A We're waiting for responses forever from  
6 the Collinses. I noted his deposition in order to  
7 move the case off the dime in terms of the settlement  
8 negotiations.

9 (Carney Deposition Exhibit 22 was marked  
10 for purposes of identification.)

11 Q Document Number 22. It's a series of  
12 e-mails that passed between you and Mr. Bergen 29th of  
13 August, 30th of August of '06; correct?

14 A It's an e-mail from Rusty Bergen's office.  
15 One from Linda to Rusty, from Rusty to me.

16 Your question is?

17 Q My question is it appears that Mr. Bergen  
18 was getting into the act in late August, at least  
19 inquiring about what's going on with the Myers'  
20 deposition; correct?

21 A The document speaks for itself.

1 Q Would you agree with that  
2 characterization?

3 A I agree that Rusty Bergen asked me what  
4 was going on with the Myers' deposition.

5 Q And what was your reply on August 30th?

6 A I said nothing just yet. Do you intend to  
7 go. Then we talked about are you going dove hunting  
8 on opening day this Friday. I don't think it had  
9 anything to do with the case.

10 Q And then Mr. Bergen tells you in his  
11 response of 10:58 a.m. we really need to get this  
12 moving; correct?

13 A In his response, his last sentence was we  
14 really need to get this moving, and he says note the  
15 dove are safe for now from me, rather.

16 Q It's apparent that Mr. Bergen was prodding  
17 you to get the deposition going; correct?

18 MS. LIPPINCOTT: Objection.

19 A What happened was is that Mr. Bergen was  
20 getting his ears beaten down by Linda and stuff rolls  
21 downhill. And so, that's why he contacted me, because

1 Linda was all over him.

2 Q So, it's her fault that she was prodding  
3 him to get the deposition.

4 Is that what you're implying?

5 MS. LIPPINCOTT: Objection.

6 A I'm sure she was prodding him, and then  
7 he, in turn, contacted me. He was not privy to the  
8 settlement negotiations, the ongoing settlement  
9 negotiations, the long drawn out settlement  
10 negotiations.

11 Q When were the settlement negotiations  
12 terminated?

13 A I don't recall.

14 Q Did it become apparent to you at some time  
15 that the case was not going to be settled?

16 A I, frankly, harbored hopes that this case  
17 would settle all the way up until right before trial.  
18 Nip Jenkins and I fundamentally agreed on the  
19 parameters of a settlement here.

20 But they were not acceptable to either  
21 Linda or to Mr. or to Mrs. Collins. And we had to go



1 forward.

2 Q Did there come a time, do you recall, when  
3 Ms. Senez sent you an e-mail saying, you know, no more  
4 settlement negotiations, we're not going to -- this is  
5 not going to result in anything. We're just spinning  
6 wheels, spending time.

7 Do you recall such an e-mail?

8 MS. LIPPINCOTT: Objection. If you have a  
9 document, provide the witness with it.

10 A There's an e-mail that you just put in  
11 front of me that says -- it doesn't say that. What it  
12 says was no more negotiations.

13 Q And what's the date of that document, sir?

14 A July, I think. She says --

15 MS. LIPPINCOTT: I'm sorry. To what  
16 Exhibit are you referring?

17 THE WITNESS: This would be Number 20.  
18 Linda Senez's e-mail to me of July the 7th. She says  
19 I tracked you down in your office on 4/26/06 and we  
20 agreed no more negotiation.

21 Q And that's of July 7, '06?

1           A       Yes, that's the date of the e-mail.

2           Q       So, is your testimony you just gave that  
3 you thought it might settle up to the trial date, is  
4 that accurate, or does that refresh your recollection?

5           A       That possibility, Mr. Dowell, exists in  
6 all cases. This case in particular screamed out to be  
7 settled for lots of different reasons.

8           Q       What was the purpose of taking Mr. Myers'  
9 deposition?

10          A       I've answered that question at least three  
11 times.

12          Q       I don't think so, but I'm asking you  
13 again.

14          A       To establish the element of tacking so I  
15 could prove that the adverse use of the parcel at  
16 issue had been used actually openly, notoriously and  
17 hostilely for a continuous period of 20 years.

18                   I couldn't prove that through Linda  
19 because she only lived there for a couple years. I  
20 had to get her predecessor in title's period of  
21 ownership tacked on to her period of ownership in

1 order for me to be able to prove the 20-year period.

2 That's why I had to take his deposition.

3 Q And you had the option of either offering  
4 that deposition transcript or not offering it at  
5 trial; right?

6 A We've already been through this. Of  
7 course, I did.

8 Q And you offered it?

9 A In the exercise of my discretion as her  
10 counsel, I certainly did.

11 Q And --

12 A Without it, we would have lost hands down.

13 Q And the only testimony that really was of  
14 critical importance -- I want to ask if you agree with  
15 me on this -- was the fact that Mr. Myers maintained  
16 the property up to the wall.

17 Would you agree with that?

18 A No.

19 Q What else in that deposition --

20 A His trial testimony, his deposition  
21 testimony taken in its totality was important. It

1 talked about the wall. It talked about the history of  
2 the wall. It talked about how he maintained the  
3 property. It talked about when the property was sold  
4 to Linda. It covered a whole panoply of various  
5 issues.

6 Q I know.

7 But are you saying that each one of those  
8 things he testified to was critically important to her  
9 claim in adverse possession?

10 MS. LIPPINCOTT: Objection.

11 You may answer.

12 Q Is there one thing more important than  
13 another in your view?

14 A The most critical portion of his testimony  
15 dealt with his period of ownership. When did he go  
16 into title. When did he go out in title. Who did he  
17 sell the property to, which was obviously Linda.

18 Q Right.

19 A And then how long she owned it and did  
20 those two periods of time constitute the requisite  
21 20-year period.

1                   And then in addition to the mere  
2 ownership, I had to prove what he did with the  
3 property when he owned it. How he maintained it. Did  
4 he maintain the area in question. Did he use it as  
5 his own.

6           Q        Yes.

7           A        I needed to establish that, that he used  
8 it openly and notoriously and hostilely toward the  
9 Cooks.

10          Q        And those two issues, the longevity of  
11 ownership, what he did with the property, the fact  
12 that he maintained it up to the wall, would you agree  
13 with me that those would have been the two most  
14 important key elements of his testimony with respect  
15 to her claim for adverse possession?

16          A        They were certainly very important  
17 elements. Whether or not they were the most important  
18 elements, I'm not going to necessarily rank them. I  
19 had to prove them and I had to get them into evidence,  
20 and I did.

21          Q        Had you contacted Mr. Myers before the

1 deposition to talk to him about what his testimony was  
2 going to be?

3 A I called Mr. Myers. I did, indeed.

4 Q And how many times did you call him?

5 A I don't recall. At least once, maybe  
6 twice.

7 Q And would you have made any notes of those  
8 conversations?

9 A Not necessarily. I was simply trying to  
10 schedule the deposition, figure out where we're going  
11 to take it, make sure he was available.

12 I'm sure I generally discussed with him,  
13 Mr. Myers, you know, I introduced myself to him, told  
14 him who I was, told him just briefly about the  
15 litigation and it was important for me to nail down  
16 how long he owned the property, when he bought it,  
17 when he sold it, what he did with it when he owned it.

18 Now we need to take his deposition  
19 testimony to talk about that generally to try to make  
20 the gentleman feel at ease and let him know that he  
21 was not a target of any alleged wrongdoing, that he

1 hadn't done anything wrong. Nobody was accusing him  
2 of being a bad guy or doing bad things.

3 I was trying to just make sure that he  
4 understood this was going to be a friendly just the  
5 facts kind of a deposition and nobody was pointing  
6 fingers or saying that he did anything incorrect or  
7 unlawful.

8 Q Do you recall telling him and is it your  
9 habit to tell such witnesses for de bene esse  
10 depositions in advance exactly what questions you're  
11 going to ask?

12 A No, I never tell them exactly what  
13 questions I'm going to ask, never.

14 Q Had you talked to him before the  
15 deposition --

16 A I did talk to him.

17 Q Listen to my question.  
18 Had you talked to him before the  
19 deposition, you would have billed for that time;  
20 correct?

21 A Probably. In one shape or another. If I

1 talked to him just about confirming the date and time,  
2 possibly not.

3 Q So, I take from your testimony that  
4 Mr. Myers would have been apprised of the reason the  
5 deposition was being taken, that it was no reflection  
6 on him, you weren't after him, and you outlined the  
7 general nature of what you were going to go over with  
8 him in the deposition; correct?

9 A I'm sure I told him that a dispute had  
10 arisen between the person who bought his property and  
11 the neighbors that bought the property next door, who  
12 were the Cooks' successors in title, and that I needed  
13 his deposition testimony to be able to show how long  
14 he owned the property.

15 I mean just raw brush general statements.  
16 I wanted to make the man -- I wanted to put him at  
17 ease to make sure he didn't think that somebody was  
18 coming after him. I wanted him to be cooperative.

19 Q Do you recall him telling you what his  
20 answers were going to be to those types of questions?

21 A I think he confirmed for me that he owned



1 the property from point A to point B, which is like 19  
2 plus years. He confirmed for me I'm sure that there  
3 was a retaining wall there and that he used to mow the  
4 grass right up to the wall.

5 That's about it.

6 Q Going into the deposition, did you plan to  
7 ask him about whether he had done a survey on the  
8 property?

9 A I don't know what I planned to ask him  
10 going into the deposition.

11 Q Did you have your questions written out,  
12 do you recall?

13 A Sometimes I do, sometimes I don't. It  
14 depends on the nature of the deposition. I don't  
15 recall whether I did a deposition outline.

16 After doing this for 34 years, I can take  
17 a deposition in my sleep. I don't write out most of  
18 my questions in the past ten years or so.

19 Q Well, it turned out that you did ask him  
20 about whether he had done a survey.

21 You recall that; right?

1           A        I'm telling you without reading the  
2 transcript, I don't recall exact specific questions  
3 that I may have asked the man.

4           Q        Okay.

5           A        All I can say to you is if the entirety of  
6 the de bene esse transcript was entered into evidence  
7 and it speaks for itself.

8                    What I asked him is in black and white.

9           Q        I think I know the answer to this  
10 question, but I have to ask it anyway.

11                    Do you recall discussing with him before  
12 the deposition whether he had a survey done, what kind  
13 of survey it was, who did it, when it was done,  
14 whether he provided a copy to Linda Senez, any  
15 questions like that?

16           A        I don't recall.

17                    (Carney Deposition Exhibit 23 was marked  
18 for purposes of identification.)

19           Q        I'm showing you Number 23. Page 31 of the  
20 Myers' deposition transcript.

21                    You're clearly talking about the survey,

1 whether he did a survey and what the survey showed.

2                   And my question to you, and specifically  
3 I'm referring to lines 11 through 13 there.

4           A        Yes, I read it.

5           Q        My question to you is before the  
6 deposition, did you know that Mr. Myers was going to  
7 say that the surveyor he hired pointed out to him  
8 there was a problem with the boundary line between the  
9 two properties and there was a foot difference between  
10 the wall and the boundary line.

11                   Do you recall knowing that before that  
12 deposition?

13           A        I don't know what I knew before the  
14 deposition. I simply don't know. I may have known  
15 that before going in. I mean, I obviously asked him  
16 about it. I assume that's me doing the questioning.

17           Q        Do you believe that testimony helped or  
18 hurt your client's case or it didn't have any effect  
19 at all?

20           A        I think it helped my client's case.

21           Q        Explain to me how that could be.

1           A        Because it showed that he was using  
2 property that he knew, at least it had been pointed  
3 out to him at some point in time, albeit late in the  
4 game, that wasn't his, and he was using it opening and  
5 notoriously and adversely to the rights of the  
6 Collinses, who actually were the fee simple owners of  
7 that parcel.

8           Q        You said a while ago that you thought that  
9 the judge -- you detected during the trial that the  
10 judge had a misunderstanding of the law of adverse  
11 possession.

12                   And my question is with regard to that  
13 particular testimony that we've just gone over, would  
14 it not occur to you that a difference in the boundary  
15 line between the wall and the actual boundary line  
16 that Mr. Myers testified based on his survey would  
17 possibly influence the judge against your client, her  
18 not having a good understanding of adverse possession?

19                   MS. LIPPINCOTT:  Objection as to form.  
20 Calls for speculation.

21                   You may answer.

1           A       I can't begin to speculate what the judge  
2 would have done with the piece of evidence one way or  
3 the other, what went through her head.

4                   And I did not say that she didn't  
5 understand the law of adverse possession. I said she  
6 was not on top of her game as I would have liked her  
7 to have been regarding her understanding of adverse  
8 possession.

9                           (Carney Deposition Exhibit 24 was marked  
10 for purposes of identification.)

11           Q       I'm showing Number 24, which, again, is  
12 from the Myers' transcript, page 31, line seven  
13 through ten. If you can read that to yourself.

14           A       Same thing as I just read in the Exhibit  
15 Number 23.

16           Q       It's not the same thing.  
17                   My question --

18           A       It's not? Sure is.

19           Q       My question with respect to that --

20                   MS. LIPPINCOTT: Counsel, it's the same  
21 page, just to be clear.

1           A       Same page.

2           Q       I know it's the same page, but it's not  
3 the same thing we were talking about.

4                    My question --

5           MS. LIPPINCOTT: I'm sorry. Just to be  
6 clear, the document that you just marked as Deposition  
7 Exhibit Number 23 and the document you marked as  
8 Deposition Exhibit Number 24 are the identical  
9 document.

10           MR. DOWELL: Yes, that's correct. But I'm  
11 talking about different lines. I'm talking about in  
12 this document lines seven through ten.

13           Q       This was your question to Mr. Myers about  
14 the survey and the surveyor; correct?

15           A       It speaks for itself. I'm assuming that's  
16 me that's doing the questioning.

17           Q       Yeah, that's you that's doing the  
18 questioning.

19           A       I don't know that to be the case. There  
20 were other lawyers in the room. They were all there.

21           Q       I proffer to you that that's you. I've

1 read the deposition transcript many times.

2 And that question that you asked there on  
3 page 31, lines seven to ten, of Mr. Myers, can you  
4 tell me why you would have asked such a question, what  
5 was the purpose of that question?

6 A I'm trying to discover what the man knew  
7 and what he didn't know.

8 Q And you knew that this testimony was going  
9 to be entered into evidence as substantive evidence in  
10 the case; correct?

11 MS. LIPPINCOTT: Objection.

12 A I wasn't sure whether this was going to be  
13 entered into evidence or not until after the  
14 deposition was completed, until after I had read the  
15 deposition transcript and determined whether or not I  
16 needed to put it into evidence.

17 Q Well, my question is why would you have  
18 asked that question? Do you think that helped your  
19 client's case in any way?

20 A It was neutral. I don't know whether it  
21 would have helped her case or not. If he answered it

1 the way he answered it, it certainly was not hurtful.

2 It proved that he knew that he was using  
3 part of the Collinses' property as his own, albeit  
4 that knowledge would be from the time of the survey  
5 forward. But the fact of the matter is he knew it.

6 MR. DOWELL: Do you want to take a break?

7 (Pause in the proceedings.)

8 Q If you were not an actual employee of the  
9 law firm, can you explain to me how it would be that  
10 you and the law firm sued my client for your bills?

11 A How you and the law firm sued your client.

12 In terms of whether the law firm has got  
13 standing, is that what you're driving at?

14 Q Yes.

15 A The money is owed to me, but as I  
16 explained to you earlier, part of the money that I  
17 receive goes toward the payment of my overhead.

18 Also to the extent that I use firm  
19 personnel, the bill that a client gets and pays, the  
20 firm's personnel get paid for me.

21 So, for example, on the bills that I sent



1 to Linda, there was a significant amount of Jim Quinn  
2 time. Jim Quinn is a firm employee.

3 So, by not paying the bill, not only do I  
4 not get paid, but the firm employee doesn't get paid.  
5 But the firm employee gets a salary.

6 So, that's why the firm was in.

7 Q So, you don't pay Mr. Quinn directly from  
8 the money you get for your fee.

9 Is that what you're saying?

10 A Mr. Quinn gets a salary. Whether my  
11 clients pay my bills or not, he gets a salary.

12 Q He's paid by the law firm?

13 A Correct. He's a law firm employee, who I  
14 utilize -- utilized.

15 Q How much was he making an hour?

16 MS. LIPPINCOTT: Objection.

17 A It varied from case to case. It was no  
18 more than 140. And in those days in 2004, I think it  
19 was probably either a hundred or 120. May have been  
20 as little as 90. I don't remember because it moved.

21 Q So, in suing my client, you and the law

1 firm suing, you're saying that the law firm was  
2 equally entitled to all of the billings just as you  
3 were of all the money that came in from your billings,  
4 I take it that would be your position; correct?

5 MS. LIPPINCOTT: Objection.

6 A Should be equal --

7 Q Well, it's joint and several. It's kind  
8 of a thing.

9 In other words, you put on your evidence  
10 of the billings that are due, and the money that comes  
11 in from those billings, I take it, would be yours  
12 and/or the law firm's equally.

13 Is that a fair statement?

14 A No. If, for example, in any given case  
15 law firm employees were owed \$4,000, associates,  
16 paralegals, and I was owed, say, two, then -- and the  
17 bill went out for six and the bill was paid, the law  
18 firm's employees get the four and I get the two.

19 Q In other words, the money would come in  
20 would go to pay Mr. Quinn directly, I assume, through  
21 the law firm?

1           A       Correct.

2           Q       In other words, the law firm would pay  
3 Mr. Quinn, you would reimburse the law firm for  
4 Mr. Quinn's services; correct? Is that the way it  
5 would work?

6           A       Yes and no. I'm not reimbursing them for  
7 the salary that they're paying him. I am paying him  
8 for the time that he spent working on my clients.

9                    If he spent \$3,000 worth of time on a  
10 given case on a client of mine that I originated and I  
11 bill that client and the client pays the bill, then  
12 that \$3,000 will go to the law firm.

13                   Now, will the law firm be reimbursed for  
14 the salary? Yes. Good paralegals in good law firms  
15 is where our profit's at. So, you make money on your  
16 paralegals.

17           Q       Well, that's just what I asked you a  
18 minute ago.

19                   In other words, you pay the law firm and  
20 the law firm pays Mr. Quinn?

21           A       Yeah. But it's not dollar for dollar.

1 It's dollar for dollar in the sense of whatever time  
2 he puts in a particular case. If he's being paid  
3 \$50,000 a year by the law firm as a paralegal, I don't  
4 have to pay the law firm, say, \$50,000. I pay --

5 Q I understand that.

6 A -- only what time he bills on my clients.

7 Q So, if he bills \$3,000, \$3,000 that you  
8 get from the bill goes into the law firm and then the  
9 law firm has already paid him the \$3,000; correct?

10 A No. The law firm is paying him a salary.  
11 It has nothing to do with -- if a paralegal bills,  
12 let's assume a good paralegal will bill you \$150,000 a  
13 year.

14 Q I get it.

15 A And you may pay him 50. Then the law firm  
16 is going to make a hundred thousand dollars gross  
17 profit on that paralegal.

18 Q So, the law firm pays him an hourly rate?

19 A The law firm pays him a salary.

20 Q Yet he bills out on an hourly basis in  
21 your cases?

1           A       In all cases. All paralegals do, who are  
2 billable paralegals.

3           Q       I understand now.

4                   (Carney Deposition Exhibit 26 was marked  
5 for purposes of identification.)

6           Q       Showing you Number 26.

7                   Can you identify that?

8           A       It would appear to be an e-mail from Linda  
9 to me dated December 4th, 2006. Actually it's from  
10 Linda to me and Rusty Bergen.

11          Q       Top of page two of that document, she  
12 comments on Mr. Myers' testimony that prospective  
13 buyers were given or shown a survey, but that she  
14 never saw a survey and the house wasn't even on the  
15 market when she bought it.

16                   Do you see that?

17          A       I see it.

18          Q       When you reviewed that, do you recall  
19 whether you had any reaction one way or the other as  
20 to whether that was significant in the case or whether  
21 it wasn't significant?

1           A           The fact that the house was not on the  
2 market when Linda first saw it was of no consequence  
3 to me. When she saw it had nothing to do with the  
4 issues to be proven in the case.

5           Q           It wasn't on the market, is that what  
6 you're referring to?

7           A           Whether it was on the market or not on the  
8 market whenever she first saw it --

9           Q           When she bought it, not when she saw it.

10           MS. LIPPINCOTT: Objection. The document  
11 speaks for itself.

12           MR. DOWELL: Yeah, but he's read it wrong.

13           THE WITNESS: Are you talking about the  
14 first two lines of page two?

15           Q           Yeah. Right.

16           A           Mr. Myers stated prospective buyers were  
17 given or shown survey. She says I never saw a survey.  
18 House wasn't on the market when I bought it.

19           Q           Right.

20           A           When the house was on the market or when  
21 it -- when she bought the house, whether it was on the

1 market or not on the market was of absolutely no  
2 consequence to me as to the claims in this case.

3 Q What about the first thing?

4 A Him showing her. She says Mr. Myers  
5 stated that prospective buyers were given or shown a  
6 survey. She says she never got one.

7 Again, the only survey that I cared about  
8 that was going to be introduced into evidence that  
9 everybody agreed upon was the deed survey.

10 You have to understand, we did that for a  
11 reason, so that we wouldn't have the battle of the  
12 experts. We wouldn't have to pay -- they're paying  
13 their expert, me paying our expert, and battle it out  
14 as to which one is correct.

15 Q So, is it correct to say based on that  
16 that whatever survey Mr. Myers testified that he got  
17 and the fact that he showed it or gave it to  
18 prospective purchasers, those two facts would not have  
19 been any significance to you in this case.

20 Is that a fair statement?

21 A Given his testimony that the only reason

1 that he had a survey done was to confirm the southern  
2 boundary, it has nothing to do with the northern  
3 boundary. It was the southern boundary that he was  
4 concerned about.

5 Q Right. I get it.

6 Now, again, on page two of that under the  
7 heading of witnesses, do you see that?

8 A Yes.

9 Q And this I think you'll agree is Ms. Senez  
10 telling you that these are witnesses that are  
11 available to testify as to various things, and she  
12 makes little notes about what they're willing to  
13 testify to; correct?

14 MS. LIPPINCOTT: Objection. Document  
15 speaks for itself.

16 A She wrote this e-mail to me, and these are  
17 the names of people that she listed as -- under the  
18 category of witnesses.

19 Q Do you recall talking to any of these  
20 witnesses?

21 A Let me see. I never talked to Earl Ecker



1 because I had actually no reason in the world to talk  
2 to him about the drain holes, the wall falling down,  
3 who clogged them, who didn't clog them because who  
4 cares if the wall was on the Collines' property.

5 DEPRM, again, I was not involved in all  
6 those disputes regarding the bulkhead and the  
7 department of whatever that stands for. So, no, I  
8 didn't talk to them.

9 I don't know whether I talked to Chris  
10 Barkley or not. He was one of the realtors that she  
11 talked about.

12 You know, she's talking about no bridge  
13 and no survey. Again, it's so what? I don't need  
14 him. I don't need him to testify.

15 Same thing with Joan Bowerman. No bridge,  
16 no survey. Added nothing to our case.

17 How long the wall was there, Tony Lhotsky,  
18 we never had any dispute as to how long the wall was  
19 there.

20 Counsel and I agreed the wall was there  
21 all through Linda's ownership and all through Myers'

1 ownership. Even though it had fallen down, it was  
2 rebuilt.

3 Same thing for Mike Duke. Same thing with  
4 Steve Decker. Regrading was not an issue in the case.

5 And those last three people, Duke --  
6 Decker, rather, Hedge Construction and Bawlrner Lawn  
7 Care, all having to do with regrading. Regrading  
8 wasn't an issue in the case.

9 Q So, is it correct to say that you don't  
10 recall having talked to any of those witnesses?

11 A No.

12 Q That is correct?

13 A I said I don't recall talking to any of  
14 these witnesses. I may have called the two realtors  
15 involved. I don't recall whether I did or I didn't.

16 None of these people had anything material  
17 to add to our case to defend the six counts, I think  
18 it was six counts, against Linda and to prosecute her  
19 counterclaim.

20 Q Based on Mr. Myers' testimony, do you  
21 agree that the trial judge could have concluded from

1 that that Linda Senez saw a survey before she bought  
2 the property?

3 A I can't tell you what the trial judge  
4 could have concluded. The trial judge concluded  
5 whatever she concluded.

6 Q Were you aware that Mr. Myers had the  
7 property on the market and took it off, and after he  
8 took it off was the time Linda Senez bought it?

9 A No.

10 Q If Linda Senez had only seen a location  
11 survey when she bought the property, do you agree that  
12 that survey could have not reliably told her where the  
13 actual property line was?

14 A No, I don't agree on that at all. I've  
15 seen thousands -- excuse me -- I have seen thousands.  
16 I've seen hundreds and hundreds of location surveys  
17 that absolutely trace the proper boundary line.

18 They can't be used as a boundary survey,  
19 but they are right if you compare them to a boundary  
20 survey.

21 Q Don't location surveys have all the

1 disclaimer on them generally speaking that they can't  
2 be used to reliably determine boundary lines?

3 A Depending on the land survey and who  
4 stamps the drawing, I've seen it on many, many  
5 location surveys. I have not seen it on many too.  
6 So, it just depends on the surveyor.

7 Q Do you agree with that that they can't  
8 reliably be counted on to show the boundary lines?

9 A If a client asked me whether or not they  
10 could rely on a location survey to establish the  
11 boundary, I would say no to them, you have to pull the  
12 plat or get a boundary survey done.

13 Q Was there any evidence offered in Linda  
14 Senez's case, to your recollection, that she had only  
15 seen a location survey at the time she bought the  
16 property?

17 A I don't recall.

18 Q Do you recall whether there had been any  
19 boundary surveys done on the property other than the  
20 Mathis and the Deitz boundary surveys?

21 A Those are the two that stick out in my

1 mind. There may have been others, but those are the  
2 two I certainly recall.

3 Q My question is do you recall any?

4 A No, I don't recall one way or the other.

5 Q Did you follow up in any way after the  
6 Myers' deposition to obtain a copy of the survey that  
7 he claimed to have gotten?

8 A I don't recall. I had the Deitz survey in  
9 hand. I didn't need his survey. I may have asked him  
10 for it and he either said he had it or he didn't have  
11 it. I don't recall what I did.

12 Q Looking back on the Myers' deposition  
13 testimony, do you think based on your recollection  
14 that that testimony hurt your client's adverse  
15 possession claim in any way?

16 MS. LIPPINCOTT: Objection. Asked and  
17 answered.

18 A Multiple times. And, no, it did not. It  
19 was essential to my client's claim.

20 Q Did you make any effort to get Mr. Myers  
21 to come here to Towson for the trial?

1           A       I feel quite sure that in my one phone  
2 call or maybe two phone calls that I had with him, I  
3 advised him that the litigation was pending in the  
4 Circuit Court for Baltimore County.

5                   And he said something gratuitous like, you  
6 know, why wasn't it in South Carolina. I'm not coming  
7 up there, or words to that effect.

8           Q       He told he wasn't willing to come up here?

9           A       I'm pretty sure he did, and I couldn't  
10 have compelled him to come up here. So, I mean, it  
11 would be an exercise in futility.

12           Q       Do you agree that there was no evidence in  
13 the case that Mr. Myers ever gave Linda Senez a  
14 boundary survey?

15                   MS. LIPPINCOTT: Objection.

16           A       No, I don't agree with that at all. The  
17 testimony from Mr. Myers was that he may have given  
18 her a boundary survey, I believe.

19           Q       That's your recollection of it?

20           A       That's my recollection.

21           Q       Okay.

1           A       He couldn't recall.

2           Q       Showing you Number 29.

3                   (Carney Deposition Exhibit 29 was marked  
4 for purposes of identification.)

5           MR. DOWELL: We're skipping a few in here,  
6 counsel.

7           MS. LIPPINCOTT: I got it. Thank you.

8           Q       Can you tell me what this document is?

9           A       It appears to be a location survey  
10 prepared by Ruxton Design Corporation that's dated  
11 11/1/00, 11/1/2000. And it is a boundary survey of  
12 34 -- excuse me -- a location survey of 341 Worton  
13 Road.

14          Q       Would it be correct to say that Linda  
15 Senez told you that this was the location survey that  
16 she had been given at settlement on the property?

17          MS. LIPPINCOTT: Objection.

18          A       I can't tell you whether or not she told  
19 me. I don't have a recollection one way or the other.

20          Q       Well, have you ever seen that? Did you  
21 ever see that before the trial in December of '06?

1           A        I don't recall. I just don't know.

2           Q        Did you ever ask Linda Senez for a copy of  
3 the survey she received at settlement?

4           A        I may have. I don't recall.

5           Q        Assume for the purposes of this question  
6 that that, in fact, is the copy of the survey that she  
7 received at settlement.

8                    And I'd like you to tell me whether you  
9 see on the survey any reason for her to have believed  
10 that the actual property line between the two  
11 properties was any different than what she believed it  
12 to be, that is, that it was the concrete block wall?

13                   MS. LIPPINCOTT: Objection. Lacks  
14 foundation and calls for speculation.

15                    You may answer.

16           A        I can't begin to tell you what Linda would  
17 discern from looking at this document. I have no idea  
18 what her expertise is in reading location surveys.

19           Q        Did you consider arguing in your summation  
20 that Ms. Senez could not have known where the actual  
21 property line was in 2000 when she allegedly asked



1 Mrs. Collins if she could put her fence on the wall  
2 instead of the actual property line?

3 A I'm sorry. Would you repeat that  
4 question?

5 Q Yeah.

6 Did you consider arguing in your closing  
7 that Linda Senez could not have known where the actual  
8 property line was in 2000 when she allegedly asked  
9 Mrs. Collins that question can I put my fence on the  
10 wall instead of the actual property line?

11 A I never argue such a thing. It would  
12 torpedo the case.

13 Q How is that?

14 A Because she had -- I have got to prove for  
15 her that she was using the property openly and she was  
16 in actual possession of it openly, notoriously,  
17 adversely and for a period of 20 years.

18 I'm not about to say that she really  
19 didn't know whether the property was hers or not hers.  
20 I wasn't about to be wishy-washy.

21 I had to prove definitively by clear and

1 convincing evidence certain elements. And to be  
2 wishy-washy about what Linda knew or didn't know, I  
3 needed to be definitive.

4 Q If she could not have known based on the  
5 evidence where the actual property line was in 2000,  
6 do you see that there might have been an area to  
7 attack Mrs. Collins on cross examination after  
8 Mrs. Collins testified that Linda Senez asked her if  
9 she could put her fence on the wall instead of the  
10 property line?

11 MS. LIPPINCOTT: Objection.

12 A No.

13 Q No?

14 A No. I mean -- no.

15 Q Did it occur to you during the trial that  
16 if Mrs. Collins' testimony that Linda Senez asked her  
17 that question can my fence follow the wall instead of  
18 the property line, if that were believed by the trial  
19 judge, did it occur to you that it could turn the tide  
20 against your client on her adverse possession claim?

21 MS. LIPPINCOTT: Objection.

1           A       Did it occur to me? I don't know whether  
2 it occurred to me or not at the time. It probably  
3 did.

4           Q       It did?

5           A       I don't know whether it did or it didn't.  
6 I mean, we're in a battle of -- in the middle of a  
7 trial.

8           Q       Well, you said it probably did and then  
9 you said you didn't know whether it would or not.

10                   Which is it?

11           A       The conversations between Mrs. Collins and  
12 Linda was testified to as by both Mrs. Collins and by  
13 Linda. They were at odds. They were polar opposites.

14           Q       Well, it wasn't the same testimony; was  
15 it?

16           A       No.

17           Q       Okay.

18           A       Linda testified that she never asked  
19 Mrs. Collins for permission, that they had a  
20 discussion about where the fence would be placed, but  
21 in no way was she asking for Mrs. Collins' permission

1 to put the fence up.

2 Q Well, here's what I want to know.

3 A And so, it's for the trial judge to decide  
4 which version of the facts to believe.

5 Q I understand that.

6 Here's what I want to know. And you've  
7 given me slightly different responses on this.

8 Did it occur to you during the trial that  
9 if Mrs. Collins' testimony that Ms. Senez asked her  
10 can my fence follow the wall instead of the property  
11 line, if that testimony were believed by the trial  
12 judge, did it occur to you that that could turn the  
13 tide against your client on her adverse possession  
14 claim; yes or no?

15 MS. LIPPINCOTT: Objection.

16 A I'm not going to be compelled to answer  
17 any question yes or no. I'll give you an answer.

18 Q Well, give me an answer.

19 A The answer is is that, yes, if a trial  
20 judge believed that, it could defeat the element of  
21 hostility.

1 Q Okay.

2 A But the trial judge didn't have any idea  
3 what hostility was.

4 Q Then what did you do, given your knowledge  
5 that that could defeat your client's adverse  
6 possession claim, what did you do to try to convince  
7 the judge that that question could not have been asked  
8 because your client didn't know where the property  
9 line was at the time?

10 MS. LIPPINCOTT: Objection.

11 A I did not put on testimony about whether  
12 my client knew where the property line was. I put  
13 Linda on the witness stand to rebut that testimony.

14 Q I understand that.

15 A The testimony that came out of her  
16 mouth --

17 Q I understand that.

18 A -- is the evidence that was put before the  
19 court.

20 Q But what, if any, other evidence could you  
21 have introduced on that point to show and prove that

1 your client did not actually know where the property  
2 line was when she supposedly asked that question?

3 A I didn't want the court to know that Linda  
4 didn't know where the property line was.

5 Q You didn't want the court to know -- say  
6 that again? I'm sorry.

7 A If Linda didn't know where the property  
8 line was, and I don't have any indication that that's  
9 the case, but if she did not know where the property  
10 line was, I didn't necessarily want the court to know  
11 that.

12 Q Right.

13 A I want the court to know what she did, not  
14 what she thought, because what she thought is not  
15 material to the proof of the elements of adverse  
16 possession.

17 Q Here's my point.

18 A What she did is material.

19 Q Here's my point. I'll see if I can  
20 explain it better.

21 If there was evidence that could have been

1 introduced that could have proven that she did not  
2 know where the actual property line was when she  
3 supposedly asked that question to Mrs. Collins can my  
4 fence follow the wall instead of the property line.

5 My question is if there was evidence to  
6 show that she didn't know where the property line was,  
7 would that not prove to the court that she could not  
8 have asked that question?

9 A No. Absolutely not. The court could very  
10 easily believe from such a question --

11 Q Okay.

12 A -- that the woman was asking permission to  
13 put the fence on somebody else's property because  
14 she -- if you're saying that I have proof that she  
15 didn't know where the property line was, she could  
16 very easily have just as easily been asking her to put  
17 the fence on the Collins' property since she didn't  
18 know where the property line was.

19 Q Okay.

20 A Your argument makes no sense. It would  
21 defeat -- it would have helped to defeat her claim.

1           Q       Isn't it true you had a discussion with  
2 Linda Senez off the record before the Myers'  
3 deposition was concluded? Do you recall that?

4           A       I have no idea. I had dozens and dozens  
5 of conversations with Linda about multiple topics.

6           Q       So, you can't say whether she was  
7 concerned before that deposition concluded that  
8 Mr. Myers said he had a survey and he gave it to  
9 prospective purchasers as he was selling the property?

10          A       I'm sure --

11          Q       You can't recall?

12          A       -- Linda and I had discussions down there.  
13 I recall talking to Linda. I could not begin to tell  
14 you the sum or the substance of the conversations I  
15 had with her.

16          Q       I'd like to go back to this topic about  
17 the pretrial discovery.

18                   And it's clear that you didn't depose  
19 either of the Collinses; right?

20          A       Correct.

21          Q       And that was your decision?



1           A        Sure, it was.

2           Q        And why was it that you felt taking a  
3 deposition of the adverse parties would not be of some  
4 benefit?

5           A        Because I knew what the law was with  
6 respect to the tort claims that they had asserted. I  
7 knew what the law was regarding the nuisance.

8                    I felt there was no way in God's green  
9 earth that they could ever prevail, and they didn't.

10                   And it was a waste of her money to depose  
11 them when I know what they're going to say. And I had  
12 spoken to Nip Jenkins until I'm blue in the face and  
13 Rob Thompson until I'm blue in the face about these  
14 settlement negotiations.

15                   I knew what their positions were. I knew  
16 exactly what they were going to say because Nip  
17 Jenkins and Rob Thompson told me what they were going  
18 to say.

19                   Back and forth, back and forth, back and  
20 forth. It was really counterpoint.

21           Q        Did you know in advance of trial that Ann

1 Collins was going to say that she had this  
2 conversation with Linda Senez wherein Linda Senez  
3 asked her could my fence follow the wall instead of  
4 the property line? Did you know that?

5 A I can't say for sure. I think I did, but  
6 I can't say for sure as I'm sitting here years after  
7 the fact.

8 Q You think you might have known that before  
9 the trial?

10 A I don't know. I simply don't know because  
11 years ago -- I can't remember everything that happened  
12 years ago.

13 Q Would you agree with me that had you taken  
14 Ann Collins' pretrial deposition that you likely would  
15 have known that before the trial?

16 MS. LIPPINCOTT: Objection. Calls for  
17 speculation.

18 You may answer.

19 A People's deposition testimony vary from  
20 their trial testimony all the time.

21 Q Would you have asked, do you suppose,

1 during a deposition of Ann Collins whether she and  
2 Linda Senez had any conversations concerning the  
3 boundary line?

4 MS. LIPPINCOTT: Objection.

5 Q Do you suppose you would have asked such a  
6 question?

7 MS. LIPPINCOTT: Objection. Calls for  
8 speculation.

9 You may answer.

10 A I don't know what I have would have asked.  
11 I have no idea what I would have asked her.

12 Q So, you can't say one way or the other if  
13 it would have been likely you would have inquired  
14 about that or not?

15 MS. LIPPINCOTT: Objection. Calls for  
16 speculation. It's been asked and answered.

17 You may answer again.

18 A No.

19 Q With your billing, when you put down .10,  
20 does that mean it's one-tenth of an hour or six  
21 minutes, is that what that means?

1           A       .1 is one-tenth of an hour, that's  
2 correct.

3           Q       One-tenth of an hour? Six minutes; right?

4           A       Yes, six minutes.

5           Q       Okay.

6           A       That's the minimum billing.

7                   (Carney Deposition Exhibit 30 was marked  
8 for purposes of identification.)

9           Q       Showing you Number 30.

10                   Can you identify that?

11           A       It's a bill. Appears to be a copy of a  
12 bill that was sent to Ms. Senez dated March 3rd, 2006,  
13 which would have captured time spent on her matter in  
14 February of '06.

15           Q       You apparently attended a meeting on  
16 February 9th of '06 at her house; is that right?

17           A       It says attend meeting. I don't know  
18 where the meeting was. Prepare for meeting with  
19 opposing counsel and attend meeting. It doesn't say  
20 where the meeting was.

21           Q       Okay.

1           A        I don't know if it was at her house or  
2 not.

3           Q        Do you recall what the meeting was about?

4           A        No.

5           Q        Do you recall who was there?

6           A        No.

7           Q        Do you recall how long it lasted?

8           A        No. I know it took me two and a half  
9 hours to get there, attend the meeting and get back to  
10 my office. Where the meeting was held, I can't  
11 answer.

12                    It certainly wouldn't have been held in  
13 Nip Jenkins' office, which is right across the street.

14                    (Carney Deposition Exhibit 31 was marked  
15 for purposes of identification.)

16           Q        Showing you Number 31.

17                    And what is that?

18           A        It's another bill. This one dated May  
19 the 3rd, 2006 capturing time for April, 2006.

20           Q        Now, the billing of 4/26, the .5 billing,  
21 the first entry?

1           A       First entry, yes.

2           Q       It says you had a conference with your  
3 client concerning taking the deposition of the -- of  
4 Mr. Myers, I guess that is; right?

5           A       Among other things. I talked to her about  
6 other things that are listed here, update her  
7 neighbors' activity, taking pictures, et cetera --

8           Q       Do you have any --

9           A       -- attending the deposition of Mr. Myers  
10 in North Carolina. That's wrong. It was South  
11 Carolina.

12          Q       Do you have any recollection of that  
13 conference at all?

14          A       No.

15          Q       Would you have any notes or memos of that  
16 conversation you had with her?

17          A       I don't know. When I say conference, most  
18 of the time it means face-to-face. This could have  
19 been on the telephone.

20          Q       Billing of --

21                   (Carney Deposition Exhibit 32 was marked

1 for purposes of identification.)

2 Q Number 32 is another bill. Shows services  
3 in July of '06; correct?

4 A It does.

5 Q The first entry in that bill indicates you  
6 talked to Mr. Thompson about the postponement and  
7 deposition testimony; correct?

8 A That's what it says.

9 Q Do you recall what deposition testimony  
10 that would have been?

11 A Only one we would have had would have been  
12 Mr. Myers.

13 Q Mr. Myers was in October of '06.

14 A Okay.

15 Q So, what would --

16 A That doesn't mean we weren't talking about  
17 it in July.

18 Q So, in other words, you would have talked  
19 to Mr. Thompson about what -- about what, about  
20 Mr. Myers' deposition?

21 A Quite possibly. Maybe I was talking to

1 him about the possibility of taking certain  
2 depositions. Maybe he wanted to take a deposition or  
3 he was thinking about taking a deposition.

4 Q In any event, it wouldn't be your wanting  
5 to take depositions because you had already concluded  
6 you weren't going to take any; correct?

7 MS. LIPPINCOTT: Objection.

8 A I don't know what it was. I don't have  
9 any idea what depositions we were talking about.

10 Q You also had a conversation with your  
11 client on July 11th, '06 about her power point  
12 presentation.

13 Do you recall that?

14 A That's what it says. I don't recall the  
15 conversation. If that's what it says, I'm --

16 Q Do you recall having conversations with  
17 her about the power point presentation?

18 A Linda had created a power point  
19 presentation which she had on a memory stick which she  
20 gave to us and she wanted us to use during the course  
21 of the trial.



1                   I gave that memory stick to my paralegal,  
2 who's extremely computer savvy, and we pulled up what  
3 was on it.

4                   We made the decision strategically to not  
5 use it.

6           Q        Any of it?

7           A        I don't know whether we used parts of it  
8 or not, to be honest with you. I can't tell you. The  
9 majority of it had to do with pictures and the  
10 pictures had marginal notes on them. They had  
11 comments on them, most of which would either have been  
12 prejudicial or inadmissible.

13                   It was Linda's thoughts and point of view  
14 regarding what the picture showed and why it was  
15 there.

16                   And initially I assigned Jim to just clean  
17 them all up, get all that stuff off of there, because  
18 initially I can't even begin to put them in evidence  
19 with her comments on them.

20                   And then there were so many of them, I  
21 probably said this is absurd. You're going to spend

1 the rest of your natural life doing this. Stop.

2 I reviewed them, saw the pictures. We had  
3 all the exhibits that we truly needed. We may have  
4 taken some of them out of there, cleaned them up and  
5 used them at trial. I just don't remember. We had a  
6 bunch of exhibits at trial.

7 Q So, the photos and the power point  
8 presentation, you didn't think would be of any  
9 strategic importance to the case.

10 Is that a fair statement?

11 MS. LIPPINCOTT: Objection. Misstates his  
12 testimony.

13 You may answer.

14 A I didn't say that. I put into evidence  
15 what I believed would be of assistance to the court in  
16 understanding the nature of the dispute, the location  
17 of the properties and where the lot line was.

18 And so the court could see in black and  
19 white what the survey was attempting to depict.  
20 Absent that is just piling it on.

21 Q Okay. Number 32 also talks about there's