

[Material that is irrelevant to Los Tocayos Carlos and contains sensitive personal information about one or more persons has been removed.]

Call from Jon Kelly [material removed] on 1/21/05 re: his two conversations with Steve Schiwetz [material removed]

Schiwetz was lead prosecutor at DeLuna's trial; has been in a successful private biz practice since late 1980s or early 1990s.

First conversation: I don't know when this was --- whether late December or early January. JK says that he tried to call me at some points but never left a message. Jon ran into SS at some breakfast meeting. Jon [material removed] asked SS if we had been to seem him about the DeLuna case, telling him we were look for the dead innocent guy (JK saying he had advised us to look in Dallas or Houston, not CC), and that we were focused on DeLuna. (We can assume JK told SS about the filming I didn't challenge JK on this or ask him about it.) JK says that SS at the time was nonchalant, and didn't seem defensive or troubled. But on the other hand, JK was surprised at how quickly SS was able to recall to mind the details of the case 21 years later. So it was unclear whether SS had previously been alerted to our investigation, or not. SS proceeded to tell JK that: (1) They got the right guy: "Don't worry, Jon. That guy was guilty. We got the right guy. Jimmy Lawrence had no case. He tried, but we had counters to everything Jimmy brought up." "Poor Jimmy Lawrence, he had not case." (2) CDL said he was with two women, said SS, but we went out and found those two women and they both denied being with CDL, testifying to that at trial. (3) CDL was arrested close to the scene. (4) The eyewitnesses were solid. (5) SS asked JK why he was involved and JK brought up Carlos Hernandez. He said SS immediately remembered that JK had represented a CH in the case against Bill May (the 1986 prosecution) and also the later (Dina Ybanez) assault, but SS that there were many Carlos Hernandez's in CC ("How many Carlos Hernandez are there in CC") and did not concede to JK that he knew that this was (possibly? likely?) the same CH as had come up in the case. (6) He said they check out CH at the time and "had verified that a CH had no part in the case". (7) JK obviously said something to SS about the quick and lousy police investigation and SS said, "oh no, it was a very good investigation" (thought he made no mention of any forensic evidence. (8) Jimmy Lawrence was the lead counsel on the case once he came on and Hector DePena fell into background; when JL came on to case, SS sat down with him and said, "I'll give you whatever you want." (9) Evidently in BOTH conversations, SS was at pains to say that Botary "didn't have that much to do with" the case. SS wanted it known that it was *his* case, not Botary's and that Botary second chaired only because the case was tried in a court that was Botary's primary responsibility. JK said that SS was kind of a lone wolf, so he wouldn't be surprised if this were true, but he also said that a lot of people are suspicious of Botary because in terms of how honest and forthright he was, so SS wanted to distance himself from Botary. JK also said that, whatever KB's role, assuming he was in the court at all, it was incumbent upon him to tell SS what he know of Carlos Hernandez. (KB did some witnesses at trial and may have done part of the argument. Check.)

JK tells me that SS's conversation gave him (JK) a little pause about JK's support for

us because of how confident SS was of the strength of the case, etc. But, he said that SS's defensiveness in the second conversation made him think there was some problem SS might be worried about and this heartened JK. He then said, twice, that he wanted me to know he was still with us, willing to support us, but he feels they will have some counters to what we said, including what came up in the second conversation. JK said he ultimately feels like it is more interesting or better that there are counters, evidently, because, then, it's more of a fight, and he's in his familiar role of representing one side, but not in the role of having the case hinge on him ---- or some such.

Second conversation: Earlier this week, JK ran into SS in the courthouse in Alice where SS is trying a case. He said the first thing out of SS's mouth, as if this was now a major issue with him, was that he had spoken to Paul Rivera and also Paul's brother (JK thought this was Ray, but it sounds like Ruben) who had taken part in the investigation. Clearly Paul is not on our side, and he told SS about the information from Sheriff's Sgt. Cox about the supposed confession by CDL on a trip to or from Huntsville prison for a hearing. (Cox's name did not come up in my conversation with JK; he understood that Paul had heard this confession, or something like that.) Evidently SS called Paul Rivera because JK had told SS in first conversation that we had been talking to Paul (he may have mentioned Eddie as well.) It sounds like SS either talked to both Paul Rivera and Ruben Rivera or just to Paul, who reported to SS his conversation with Ruben. No doubt, therefore, SS knows we've been out filming people. "Paul talked to his brother who was part of the investigation."

JK had general things to say about SS: He is very smart, JK thought smarter than himself. He is likely to be the most persuasive, well-spoken and intelligent opponent we will have in CC. JK said that SS speaks well and has a nice voice, but won't look good on TV (!!) because he isn't attractive: short, stout, heavy growth of beard. JK said that SS is gregarious and that we should just let him talk; "he'll come out with his counters right away."

SS said he would be more than glad to talk to us. He is a