

SWORN STATEMENT

OF

DAVID DOUGLAS ARNOLD

IN RE: CAUSE NO. 86-452-K26

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
)	
VS.)	WILLIAMSON COUNTY, TEXAS
)	
)	
MICHAEL MORTON)	26TH JUDICIAL DISTRICT

Appearances:

John Raley
of the Law Firm of
Raley & Bowick
1800 Augusta Drive, Suite 300
Houston, Texas 77057

Reported by: Cheryl Sampley Mann

CSR No. 6550

Page 2

1 INDEX

2 PAGE

3 DAVID DOUGLAS ARNOLD

4 Examination by Mr. Raley..... 4

5

6 EXHIBITS

7 NO. DESCRIPTION PAGE

8

9 1 Excerpt from Crime in Texas,

10 pages 42 and 43..... 25

11 2 Excerpt from Crime in Texas,

12 pages 27 and 28..... 29

13 3 Excerpt from Crime in Texas,

14 pages 13 and 14..... 31

15 4 Supplementary Offense Report,

16 MM 004144 - MM 004151..... 40

17 5 Photograph of Mark Alan Norwood..... 53

18 6 Photograph of Mark Alan Norwood..... 53

19 7 Supplementary Offense Report

20 000374 - 000375..... 58

21 8 Supplemental Offense Report,

22 MM 000301..... 64

23 9 Supplemental Offense Report, no

24 Bates number..... 65

25 10 Handwritten letter, MM 004178..... 70

Page 3

1 EXHIBIT INDEX

2 (CONTINUED)

3

4 NO. DESCRIPTION PAGE

5

6 11 Handwritten letter, no Bates number... 70

7 12 Envelope marked "Registered Mail,"

8 with miscellaneous attachments..... 78

9 13 Color copy of envelope marked "Registered

10 Mail," with miscellaneous

11 attachments..... 78

12 14 Excerpt of a Pretrial transcript..... 84

13 15 Motion for New Trial..... 92

14 16 "VI. Appellant's Sixth Point of

15 Error"..... 97

16 17 Morton v. State,

17 761 S.W.2nd 876 (1988)..... 105

18 18 Handwritten notes, DAWP 001061,

19 003754..... 110

20 19 Texas Department of Criminal Justice,

21 Williamson County D.A. OFC

22 letter dated February 15, 2007..... 132

23

24

25

Page 4

1 The following is the SWORN STATEMENT by oral

2 examination of the witness, DAVID DOUGLAS ARNOLD, taken

3 on the 17th day of November, 2011, commencing at 1:45,

4 at Raley & Bowick, 1800 Augusta Drive, Suite 300,

5 Houston, Texas 77057.

6 DAVID DOUGLAS ARNOLD,

7 having been first duly sworn, testified as follows:

8 EXAMINATION

9 **BY MR. RALEY:**

10 Q. Would you state your full name for the record,

11 sir?

12 **A. David Douglas Arnold.**

13 Q. And, Judge Arnold, you are now a resident of

14 Williamson County, Texas; is that correct?

15 **A. Yes, that's correct.**

16 Q. Would you prefer me to call you "Judge" or

17 "Mister" during this proceeding?

18 **A. "Judge" is my title. That's fine.**

19 Q. Okay. Judge Arnold, you are currently employed

20 as the Judge of Williamson County Court at Law No. 3?

21 **A. Yes.**

22 Q. All right. Did you assist District Attorney

23 John Bradley in opposing testing of the bandana which

24 ultimately exonerated Michael Morton for the accused

25 crime of murder?

Page 5

1 **A. Yes, I did, from 2005 until 2009.**

2 Q. Okay. What was your position at the time?

3 **A. I was an assistant district attorney in**

4 **Williamson County.**

5 **The nature of my position was mostly**

6 **post-conviction work. I handled all the appeals,**

7 **whether they be direct appeals, writs of habeas corpus,**

8 **motions for DNA testing -- we didn't get a whole lot of**

9 **those, but I handled those --**

10 Q. Yes, sir.

11 **A. -- and other post-conviction matters. I**

12 **handled jury charges.**

13 **I did everything that basically contemplated or**

14 **dealt directly with post-conviction matters.**

15 Q. Are you here voluntarily to give your

16 Sworn Statement today?

17 **A. Yes. I was contacted by Nina Morrison with the**

18 **Innocence Project, last week. She told me that she**

19 **would like for me to come and meet -- or to meet with**

20 **you, Mr. Raley, to discuss what I knew about this case.**

21 **And given the opportunity, knowing what's**

22 **happened in this case, I feel it's my duty and**

23 **responsibility, not only as somebody who knows about**

24 **this case, having worked on it, but also as an elected**

25 **official in Williamson County, to tell you everything I**

1 **know about this case, with the idea that, at some point,**
 2 **I may assist in arriving at the truth or the reasons why**
 3 **Mr. Morton was kept in prison.**

4 Q. All right, sir, and we appreciate your helping
 5 us to seek that truth.

6 A. Sure.

7 Q. Tell me us a little bit about your educational
 8 background.

9 A. Yes.

10 **I grew up here, in Texas. And I went to the**
 11 **University of Texas at Austin. Obtained my Bachelor of**
 12 **Arts degree in History in 1990.**

13 **After getting my degree in history, I went to**
 14 **Vanderbilt University in Nashville, Tennessee; and I**
 15 **obtained my law degree there in May of 1993.**

16 **While at Vanderbilt, I served on the Honor**
 17 **Council. That is the body that was in charge of**
 18 **overseeing the academic integrity of that institution.**

19 Q. Did you serve as a law clerk with the United
 20 States Department of Justice for a time?

21 A. Yes.

22 **While I was at Vanderbilt Law School, I served**
 23 **as a clerk at the U.S. Department of Justice in**
 24 **Nashville.**

25 Q. All right, sir.

1 And have you, Judge Arnold, been, as part of
 2 your training, a briefing attorney with the Texas Court
 3 of Criminal Appeals?

4 A. Yes. That was my first job out of law school,
 5 once I got my law degree.

6 **I studied for the Bar when I was in that**
 7 **position. Took the Texas Bar in early 1994.**

8 **But from September of '93 through the summer of**
 9 **'94, I did work as a briefing attorney at the**
 10 **Texas Court of Criminal Appeals.**

11 Q. As part of your role as a briefing attorney for
 12 the Court of Criminal Appeals, were you involved in
 13 analyzing any allegations that the State had failed to
 14 disclose exculpatory evidence at the time of trial?

15 A. Yes.

16 **Let me explain kind of what I did at the Court**
 17 **of Criminal Appeals.**

18 **I was assigned to work for a judge. And the**
 19 **elected judges at the Court of Criminal Appeals are**
 20 **responsible for handling post-conviction matters that**
 21 **are submitted to their attention. It's the highest**
 22 **court, or the court of last resort for criminal cases in**
 23 **Texas.**

24 **Texas is unique. I think Oklahoma is the only**
 25 **other state that has this system where they have a high**

1 court -- the highest court in the state is devoted
 2 entirely to criminal cases. So they have a Court of
 3 Criminal Appeals.

4 **And what I did was, when a case was assigned to**
 5 **my judge, I would do the legal research on the issues**
 6 **related to that case, whether it be a writ or a direct**
 7 **appeal; and I would research those issues and draft an**
 8 **opinion that the judge and I would communicate about and**
 9 **do revisions on. And, ultimately, it would be the**
 10 **judge's opinion; but I did a lot of the leg work, in**
 11 **terms of the research and the -- the legal research and**
 12 **the writing that went into forming the basis of the**
 13 **opinion.**

14 **And I did handle, at least on one occasion, a**
 15 **writ of habeas corpus appealed to the Court of Criminal**
 16 **Appeals that dealt with a Brady issue.**

17 Q. And we'll talk about your subsequent work
 18 history.

19 But as an assistant district attorney, were you
 20 also involved in analyzing whether or not certain
 21 documents or information were Brady materials?

22 A. Yes, I was involved in that capacity.

23 **Part of what I did, as a post-conviction lawyer**
 24 **there is, from time to time, people would come to me and**
 25 **ask me, you know, "Is this Brady? Should I turn it**

1 **over?"**

2 **And without -- not making light at all of the**
 3 **proceedings, but it was kind of a joke. I would say,**
 4 **"Look, if you have any question that this is Brady, you**
 5 **need to turn it over."**

6 Q. Why do you say that, sir?

7 A. Because I was trial prosecutor. I was a trial
 8 prosecutor here, in Harris County, for four years, and
 9 in Williamson County for several years, before I took on
 10 mostly an appellate role.

11 **And where I arrived at is -- on the course of**
 12 **my career as a trial prosecutor, is I never wanted to be**
 13 **in a position to have to explain later that -- why**
 14 **something wasn't turned over.**

15 **I -- representing the State, I had no idea what**
 16 **defenses -- what the defense's theories were. And so my**
 17 **position as a trial prosecutor, and the advice I gave to**
 18 **younger trial prosecutors was, "Don't put yourself in a**
 19 **position later where you have to defend a decision not**
 20 **to turn over evidence. You should just disclose**
 21 **everything and let the defense attorney and the**
 22 **defendant determine what's relevant and what's not."**

23 **And, also, I think that -- you know, I have a**
 24 **different perspective on this now, as a judge. I'm no**
 25 **longer an advocate. And taking a little different view,**

1 a more objective view of a trial -- I mean, I think the
2 way the system is supposed to work is free discovery to
3 the defense, because, again, not just tactically, from a
4 prosecutor's perspective, but systematically, it's very
5 important for the defendant to have all the information
6 possible, so they can craft their defense and make their
7 defense.

8 Q. We're referring, of course, to Brady vs.
9 Maryland --

10 A. Yes.

11 Q. -- which is a United States Supreme Court case
12 of 1963.

13 A. Correct. I don't know the year, but that
14 sounds correct.

15 Q. What is your understanding of what Brady vs.
16 Maryland requires of a prosecutor regarding turning over
17 exonerating documents?

18 A. Well, you use the term "exonerating." I don't
19 mean to parse there; but it's really any exculpatory
20 evidence, anything that might point toward a conclusion
21 the defendant is not guilty of the offense. That's one
22 component of what Brady represents.

23 So, in other words, if it's evidence that
24 might, at some level -- and, again, as prosecutor, you
25 don't know what the defense's theories are. So, again,

1 my philosophy is turn over everything.

2 But if something in the file or something you
3 have access to, through -- either in your own file or
4 for law enforcement, the agency that worked the case, if
5 anything in that -- any of that information would point
6 toward a conclusion that the defendant is not guilty of
7 the offense, it's exculpatory. It needs to be turned
8 over. But that's not it.

9 Anything that would mitigate, even if the
10 person is guilty, and anything that might mitigate their
11 punishment -- in other words, that might lead a judge or
12 a jury to find that they should serve a lesser sentence
13 than they otherwise would, that is to be turned over.

14 A component of Brady evidence would be
15 impeachment evidence.

16 So sometimes, at trial, things become Brady
17 that weren't Brady before trial.

18 Let's say if a witness testifies and you have
19 information that would impeach that witness, then you
20 have a duty to turn that over.

21 And that is the nature of Brady evidence.

22 Now, there are other things that come into
23 play. In other words, if a claim is raised later, on
24 appeal or in post-conviction process, that -- in other
25 words, analyzing it, as a briefing attorney or as a

1 judge, there are other things that come into play as to
2 whether an actual violation occurred.

3 But from the prosecutor's mindset -- again, we
4 don't even want to go there. We want to turn everything
5 over so the defense has everything they need or could
6 possibly want.

7 Q. If I've heard you correctly, you've said that
8 Brady material can be exculpatory or mitigating or
9 impeachment.

10 A. Correct.

11 Q. All three of those things are required by Brady
12 vs. Maryland to be turned over --

13 A. No later than the time of trial.

14 Q. -- no later than the time of trial.

15 A. And it's an affirmative duty. It's not
16 something that the defendant has to request. The State
17 is under an affirmative duty to turn it over.

18 Q. So there doesn't need to be a motion to compel,
19 or request for production, or anything like that?

20 A. No. There, frequently, are such motions; but
21 they're not necessary.

22 Q. Is it your understanding that a prosecutor is
23 required by law to turn over Brady documents and Brady
24 material to a defendant?

25 A. They're required by statute, by common law --

1 that is, case decisions of Texas criminal courts and the
2 United States Supreme Court -- and by ethics rules, as
3 well.

4 Q. I understand the ethics rules.

5 But I'm referring to the law of the land, the
6 United States Supreme Court.

7 A. Yes. Absolutely.

8 Q. As well as statutes.

9 The law of our state and of our country
10 requires Brady documents and materials to be turned over
11 to the defense; is that correct?

12 A. Right.

13 That's part of the due-process right a
14 defendant has, a criminal defendant has, somebody who
15 has been charged with a crime.

16 Q. And, as you say, that's an affirmative duty the
17 prosecutor has. He or she must, in order to follow the
18 law, do that, in order to comply with Brady.

19 A. Correct.

20 Q. And it's not sufficient just to orally describe
21 a document in a way that would be spun the prosecutor's
22 way. The actual document, itself, must be produced and
23 disclosed.

24 A. I'm not an expert on the form of the
25 production.

1 **I think the safest thing in any situation would**
 2 **be to tender the document or read the document out loud,**
 3 **something that conveys the essence of the document or**
 4 **they're on notice as to what the contents are.**

5 Q. And it's your understanding that that is what
 6 the law requires?

7 **A. It requires production, but I'm not an expert**
 8 **on exactly --**

9 **I mean, again, I would never want to be in a**
 10 **position where I had to explain or defend the efforts I**
 11 **made, if that makes sense.**

12 Q. And so in order to comply with that law, you
 13 would, as a prosecutor, turn over the document, itself?

14 **A. Yes, either turn it over or publish the**
 15 **contents or something to ensure I've conveyed the**
 16 **essence of the contents of what that document is.**

17 **It may not be a document. I mean, it may be --**
 18 **it could take a variety of forms.**

19 Q. Assuming it is a document --

20 **A. Correct.**

21 Q. -- then you would actually turn the physical
 22 document over.

23 **A. Yes. I would either turn it over, or I would**
 24 **read it out loud to that person.**

25 Q. Verbatim?

1 **A. Correct.**

2 Q. Not summarized or paraphrased or spun?

3 **A. Well, again, if I were to do that, I would be**
 4 **in a position, later, where I were defending -- or**
 5 **somebody was defending on my behalf -- whether that**
 6 **constituted turning over.**

7 **And, again, to go back to the beginning of our**
 8 **discussion, as an advisor to trial prosecutors and as a**
 9 **former trial prosecutor myself, I never wanted to be in**
 10 **that position.**

11 Q. Right.

12 So in order to prevent that from happening and
 13 to comply with the law, in your opinion, the actual
 14 document should be turned over --

15 **A. That's the safest thing to do.**

16 Q. -- and/or be read verbatim.

17 **A. Yes. That's the safest thing to do.**

18 Q. And not doing that, and spinning it or
 19 paraphrasing it or summarizing in a way favorable to the
 20 prosecution, would not be in compliance with Brady.

21 **A. It very well could not.**

22 Q. In your opinion.

23 **A. Correct.**

24 Q. All right. Now, you worked as an assistant
 25 district attorney in Harris County from August of 1994

1 until April of 1998.

2 **A. Yes. I went to work there, from the Court of**
 3 **Criminal Appeals; and I was exclusively a trial**
 4 **prosecutor there. I prosecuted everything from traffic**
 5 **cases up to homicides.**

6 Q. And while you worked there, the Harris County
 7 District Attorney's office had an open-file policy.

8 **A. They did.**

9 **And I was trying to remember in my mind exactly**
 10 **-- what I remember is going over to misdemeanor court,**
 11 **as a brand-new prosecutor, and laying the files out on a**
 12 **table for the defense attorneys to look at them; and**
 13 **then, once they had looked at the file, they'd taken**
 14 **notes -- I don't believe they were allowed to copy**
 15 **Offense Reports; but they were allowed to take notes**
 16 **from the Offense Reports, take notes from the file.**

17 **Occasionally, there would be something in the**
 18 **file that we would -- that we -- or whoever the**
 19 **prosecutor was on the file, would -- if it was work**
 20 **product, we would cover that over and prevent access.**

21 **But, by an large, the files were open-access,**
 22 **with the exception of not allowing the attorneys to copy**
 23 **-- photocopy the reports. They were allowed full access**
 24 **to it, and then we would negotiate the case from that**
 25 **point on.**

1 **If a resolution wasn't achieved, we went to**
 2 **trial.**

3 **And the great thing about it for me, as a trial**
 4 **prosecutor, is I never had to worry about what had been**
 5 **conveyed.**

6 Q. And those -- so they could actually hold and
 7 read the physical documents --

8 **A. Yes. Yes.**

9 Q. All right. Might be useful, Judge, if you'd
 10 let me finish the question --

11 **A. Oh, I'm sorry.**

12 Q. -- before you --

13 **A. I'm a judge, and I tend to do that.**

14 Q. You did it again.

15 **A. I'm sorry.**

16 Q. Let me finish the question, and then answer.
 17 And I'll try not to interrupt you --

18 **A. Yes.**

19 Q. -- that way the court reporter can --

20 **A. Sorry about that.**

21 Q. Okay. Thank you.

22 And we don't have a videotape, so there's no
 23 rush. We can --

24 **A. Sure.**

25 Q. -- take our time.

1 **A. Sure.**
 2 Q. Stop. Let me finish.
 3 You'll need to slow down a little, Doug.
 4 **A. Okay.**
 5 Q. All right. In April of 1998, you were hired by
 6 then District Attorney Ken Anderson to serve as an
 7 assistant district attorney in Williamson County; is
 8 that correct?
 9 **A. That's correct.**
 10 Q. And you served as an assistant district
 11 attorney, under now Judge Anderson, from April 1998
 12 through December 2001.
 13 **A. Right, when he became a judge.**
 14 Q. Right.
 15 During that time, you served mostly as a trial
 16 prosecutor --
 17 **A. That's correct.**
 18 Q. -- handling felony cases.
 19 **A. That's correct.**
 20 Q. You also handled some appeals during that time.
 21 **A. I did some appeals. I was kind of the back-up**
 22 **appellate person. John Bradley was the first assistant**
 23 **and primary appellate attorney.**
 24 **I did some appellate work, post-conviction**
 25 **work, writs and appeals, under his supervision.**

1 Q. Then, in January of 2002, you begin serving as
 2 an assistant district attorney under John Bradley in
 3 Williamson County.
 4 **A. Right. He was appointed the D.A., succeeding**
 5 **Judge Anderson.**
 6 Q. And you served in that capacity through
 7 November 2010.
 8 **A. That's when I left the office and became a**
 9 **county court at law judge.**
 10 Q. Under Mr. Bradley, you served as both the trial
 11 and appellate prosecutor with an emphasis on
 12 post-conviction cases; is that correct?
 13 **A. Yes.**
 14 **It pretty much flipped. Whereas under**
 15 **Anderson, I was predominately a trial prosecutor doing**
 16 **some appeals; under Bradley, I was predominately an**
 17 **appellate prosecutor doing some trial.**
 18 Q. Do you believe, based on your education and
 19 your experience and your training, that you are
 20 thoroughly familiar with Brady evidence, as a concept?
 21 **A. Yes. I would not consider myself an expert;**
 22 **but I've dealt with those types of claims repeatedly,**
 23 **both as a briefing attorney and as an appellate**
 24 **prosecutor.**
 25 Q. And, as you've said, that evidence includes all

1 evidence that is either exculpatory on the issue of
 2 guilt --
 3 **A. Correct.**
 4 Q. -- or mitigating on the issue of punishment.
 5 **A. Correct.**
 6 Q. And, additionally, it includes such evidence
 7 that might be used to impeach on cross-examination.
 8 **A. Yes.**
 9 Q. Did the Williamson County District Attorney's
 10 office have an open-file policy, under either
 11 Mr. Anderson or Mr. Bradley, when you worked there?
 12 **A. No. They did not.**
 13 **And if I could kind of clarify what that --**
 14 Q. Yes, sir.
 15 **A. It was not an open-file policy, like we had in**
 16 **Harris County.**
 17 **My understanding of it was each individual**
 18 **prosecutor had the discretion to provide as much access**
 19 **as they were going to allow; but there was no uniform**
 20 **policy in place to say how much access they were going**
 21 **to provide.**
 22 **And, as far as I know, each individual**
 23 **prosecutor had their own standards or decisions about**
 24 **what to do.**
 25 Q. So the prosecutor got to be the gatekeeper as

1 to what to disclose.
 2 **A. Each line prosecutor made their own decisions.**
 3 **Correct.**
 4 Q. And it would just be hoped that they would
 5 comply with the United States Supreme Court opinion of
 6 Brady vs. Maryland, and the statutes supporting them.
 7 **A. Yes.**
 8 **And, honestly, it was an adjustment for me,**
 9 **coming from a jurisdiction where we had an open-file**
 10 **policy, never having had to think about what I had to**
 11 **disclose. It was a little bit of an adjustment process**
 12 **for me to decide, "What do I disclose, and what do I not**
 13 **disclose."**
 14 **Where I ended up, as I mentioned earlier, was**
 15 **just pretty much tell them everything and we'll let them**
 16 **sort it out.**
 17 **But that was not -- that was something I had to**
 18 **kind of develop over the first -- brief period of time I**
 19 **was there.**
 20 Q. And you were a post-conviction attorney with
 21 the Williamson County District Attorney's office --
 22 correct -- for some time?
 23 **A. I started doing post-conviction matters shortly**
 24 **after my arrival. Based on my experience in the Court**
 25 **of Criminal Appeals, they had me do some of those; but I**

1 **was not the predominant one until the beginning of 2002.**

2 Q. As a post-conviction attorney, did you handle
3 appeals to the courts of appeal, petitions for review,
4 writs of habeas corpus, motions for post-conviction DNA
5 testing?

6 **A. Yes.**

7 **I handled -- the bulk of my work was direct
8 appeals to the 3rd Court of Appeals in Austin.**

9 **That is to say, if somebody were convicted of a
10 felony and that person appealed their conviction and/or
11 their sentence, I would represent the State on direct
12 appeal.**

13 **I also would handle petitions for discretionary
14 review to the Texas Court of Criminal Appeals. If
15 somebody appealed their conviction, the conviction was
16 affirmed by the 3rd Court of Appeals, or by another
17 court of appeals, and they file what's called a
18 "Petition for Discretionary Review," which is a legal
19 pleading you file to get the Court of Criminal Appeals
20 to hear your case. I would handle the response of the
21 petition; and, if the petition were granted, I would
22 litigate the case, on behalf of the State, in the Court
23 of Criminal Appeals. I also --**

24 **I'm sorry.**

25 Q. No. Go ahead.

1 **A. I also handled what are called writs of habeas
2 corpus, post-conviction.**

3 **What that is -- is, under Article 1107 of the
4 Code of Criminal Procedure, a defendant has a right to
5 file what's called a writ -- it's a legal form or legal
6 pleading -- challenging their conviction. It's
7 independent of the direct appeal process.**

8 **The way the law is set up, the defendant is
9 supposed to wait until the direct appeal is exhausted,
10 is finished, before he or she files the writ.**

11 **Once the writ is filed, it could raise any
12 number of things. It could raise -- it's limited,
13 typically, to a constitutional challenge of some sort;
14 Brady would be one example. A denial of the right to
15 counsel.**

16 **There are various types of constitutional
17 issues that would be raised. A common one was
18 ineffective assistance of counsel. In other words, a
19 defendant is saying that his trial counsel did not
20 perform up to reasonable standards, and he was seeking a
21 new trial or relief based upon that assertion.**

22 Q. Back to the Brady issue, sir.

23 **A. Okay.**

24 Q. Judge Ken Anderson's book Crime in Texas, the
25 1997 publication, states, on page 42, "The defense will

1 also file a Brady motion. This motion received its name
2 from a United States Supreme Court case called Brady vs.
3 Maryland." And this is under the chapter "Pretrial
4 Motions."

5 First question: A Brady motion is not
6 required, is it, sir?

7 **A. No, it's not.**

8 Q. The prosecutor is under an affirmative duty to
9 disclose Brady documents and material and produce them
10 to the other side without a motion being filed.

11 **A. Correct.**

12 Q. Judge Anderson goes on to say, in reference to
13 Brady vs. Maryland, "The Supreme Court held that
14 prosecutors must turn over to the defense any evidence
15 which indicates that a defendant might not be guilty."

16 Do you agree with that statement?

17 **A. Well, I've never read Crime in Texas.**

18 **I would say that statement, as it's written, is
19 not complete.**

20 Q. Insofar as he indicates exculpatory
21 information, that much is correct.

22 **A. That's accurate.**

23 Q. But he does not, in the sentence I just read,
24 mention mitigating evidence or impeachment evidence;
25 correct?

1 **A. I did not hear that in the sentence you read,
2 no.**

3 Q. And we will make, actually, as Exhibit 1 to
4 your deposition -- and I'll make a photocopy at the
5 break -- the page I'm reading from in Crime in Texas, so
6 it will be very clear for the record.

7 All right, sir?

8 **A. Sure.**

9 Q. Judge Anderson and -- actually, in his
10 deposition, he requested to be called "Mr. Anderson." I
11 guess I've started doing "Judge." So I'll just keep
12 doing it.

13 **A. I don't care. Whatever.**

14 Q. Yeah.

15 All right. Going further, Judge Anderson, on
16 page 43 of his book, Crime in Texas, says, "Prosecutors
17 share evidence with defense lawyers or have open-file
18 policies for two reasons: First, the prosecutors hope
19 that when defense lawyers see the strength of the
20 State's case, they will urge their client to plead
21 guilty.

22 Second, such sharing prevents convicted
23 defendants from claiming, years later, that the
24 prosecutors withheld Brady material?"

25 Do you see, in the passage I just read, that

1 Judge Anderson indicates that a reason to disclose Brady
2 material is because of the rights of the accused to be
3 aware of the evidence in a matter?

4 **A. I didn't hear that.**

5 Q. Well, both of the reasons he lists are reasons
6 that side with the prosecutor's perspective on a matter.
7 The first reason is hoping that the defense lawyers will
8 urge their clients to plead guilty.

9 Did you hear that one?

10 **A. Yes.**

11 Q. And the second reason he listed was that it
12 would prevent defendants from claiming, years later,
13 that the prosecutors withheld Brady material.

14 You heard that one?

15 **A. Yes.**

16 Q. In the passage I read, he doesn't mention
17 anything about the rights of a defendant, does he, sir?

18 **A. No, I didn't hear it.**

19 **And just to add, an open-file policy is not a**
20 **complete antidote to -- or a complete solution to Brady.**
21 **There could be other things that are not in the file**
22 **that still need to be turned over.**

23 Q. Such as?

24 **A. Well, anything. I mean, anything. Anything**
25 **that's favorable to the defendant, or mitigates, or**

1 **anything that's not actually in the State's file that**
2 **could be in another file, someplace else, held by law**
3 **enforcement.**

4 Q. Let's discuss that.

5 Because in the Michael Morton matter --

6 **A. Right.**

7 Q. -- we have learned that there is a district
8 attorney's file that contains certain documents.

9 **A. Sure. Yes.**

10 Q. There is also a file that is kept in the
11 records department of the sheriff's office that is
12 larger and contains more documents.

13 **A. That's what I've heard.**

14 Q. And that would be consistent with your
15 understanding, during your time as a prosecutor in
16 Williamson County, that there would be documents in the
17 sheriff's file and also documents in the D.A.'s file.

18 **A. Well, the hope was always that every document**
19 **that was -- every report and every supplement would be**
20 **turned over; but in my experience, that did not always**
21 **happen.**

22 Q. All right. Does the district attorney have
23 access to the sheriff's file documents any time he or
24 she wants them?

25 **A. As far as I know, yes.**

1 Q. And if a prosecutor wanted to be thorough in
2 approaching a case, the prosecutor would want to be
3 aware of what investigative documents were out there and
4 what they said.

5 **A. Yes.**

6 **And, typically, as far as I know, what was done**
7 **is you just kept telling your officer, "Any time there's**
8 **a supplement, send it to me," and keep reminding them.**
9 **And even on the eve of trial, "Are there any new**
10 **supplements? Please tell me where they are. Please**
11 **produce them."**

12 Q. Because it's very important to make sure that
13 the accused is the correct person.

14 **A. Absolutely.**

15 **But, you know, even just despite Brady, you**
16 **want to know everything that's been uncovered out there,**
17 **because there could be evidence that actually favors the**
18 **State. I mean, you want to know everything. You want**
19 **to see all the reports and all the report supplements.**

20 **Yes, there's a Brady aspect. There's also just**
21 **you want to know what's in the file.**

22 Q. My pastor once said that you should never be
23 afraid of the truth.

24 **A. I agree with that.**

25 Q. Do you agree with that?

1 **A. Yes.**

2 Q. And you should never be afraid to seek the
3 truth.

4 **A. I agree with that. Yes.**

5 Q. Judge Anderson -- and I'll make this Exhibit
6 No. 2 -- on page 29 of Crime in Texas, said, "In
7 reality, I don't see much brilliance in the courtroom.
8 Trials are won and the truth is exposed because of
9 detailed painstaking preparation done before the first
10 witness is sworn in. Someone has to visit the crime
11 scene, interview the witness, retrace the steps of the
12 victim, or defendant, and examine the physical evidence.
13 Someone has to master the hundreds of details."

14 Do you agree with that?

15 **A. All right. Philosophy of trial and**
16 **prosecution -- I was, by no means, a great trial**
17 **litigator. I was decent at it. I enjoyed it. That's**
18 **clearly one view.**

19 **My opinion is there are different styles in**
20 **court. You're a litigator, yourself; you know that.**

21 **Some people are very good at preparation and**
22 **what they do out of court prior to trial.**

23 **Others do not prepare so much. They are just**
24 **natural -- they're great with spoken words. They create**
25 **great pictures for the jury. They are very adept**

1 **communicators, and they think very well on their feet.**

2 **So the most effective litigators are the ones,**
3 **in my opinion, who can do both those things very well.**

4 Q. Is this passage consistent with your
5 understanding of Judge Anderson, that he was someone who
6 was very interested in learning the details of a matter?

7 **A. He is a detail person. I never personally**
8 **tried a case with him. So I'm not familiar with his --**
9 **how he prepared a trial case. But knowing him**
10 **personally, he is a detail person.**

11 Q. And, in fact, for the record, this passage I
12 just read is in the middle of a section where he
13 describes his prosecution of the Michael Morton case.

14 **A. And, again, I've never read that.**

15 Q. I will attach, for the record, pages 26 -- I'm
16 sorry -- pages 27 and 28 of Crime in Texas, where he
17 describes how he went to the City Grill and had a meal
18 prepared, which was supposed to be the final meal of
19 Christine Morton.

20 Have you ever heard Judge Anderson talk about
21 his trial of the Morton case?

22 **A. No.**

23 **MR. RALEY: And Exhibit 1, for the record,**
24 **will be pages 42 and 43.**

25 Q. (BY MR. RALEY) Did you know Sheriff Jim

1 Boutwell?

2 **A. No. I never met Sheriff Boutwell.**

3 **MR. RALEY: And we will mark this as**
4 **Exhibit 3 on the first break.**

5 Q. (BY MR. RALEY) But on pages 13 and 14, Crime
6 in Texas, now Judge Anderson describes his relationship
7 with Jim Boutwell; and he says, "Perhaps no sheriff or
8 district attorney had a closer working relationship than
9 Jim and I had. We talked on the phone daily and, more
10 often than not, drank a cup of coffee together."

11 Would it be -- I mean, does that sound unusual
12 for Judge Anderson? Does that sound like something that
13 he would do when he was a prosecutor?

14 **A. I just -- you know, I met him for the first**
15 **time in 1998. I never knew Sheriff Boutwell. I wasn't**
16 **familiar at all with their relationship. It wouldn't**
17 **surprise me, but I just don't know anything about how**
18 **those two men interacted.**

19 Q. He goes on to say, "At the L & M Cafe on Austin
20 Avenue in Downtown Georgetown, Jim and I did some of our
21 best work. We painstakingly pieced together
22 circumstantial murder cases. We debated the next step
23 of an investigation."

24 And then he goes on to say, later in the
25 paragraph, "The downfall of more than one criminal doing

1 life in the State prison system began with an
2 investigation put together on a coffee-stained napkin at
3 the L & M Cafe."

4 Are you able to comment on that passage at all?

5 **A. No. I know nothing about any of that.**

6 Q. All right. Well, let's go on to some of the
7 specific evidence.

8 **A. Okay.**

9 Q. I'm going to go through certain documents with
10 you and ask you if you've seen them before.

11 **A. Sure.**

12 Q. Probably before we do it, let me ask you --

13 It's my understanding that you first got
14 involved in the Michael Morton matter in February 2005;
15 correct?

16 **A. That's correct.**

17 Q. And you were requested by John Bradley to
18 respond to a motion for post-conviction DNA testing,
19 while -- on behalf of Mr. Morton?

20 **A. Yes.**

21 **He brought me a file somewhere around February**
22 **of 2005. By "file," I mean he brought the State's file.**
23 **He brought the motion and instructed me to review the**
24 **transcript for the record of the trial, research the**
25 **law, and then, at some point in the future, meet with**

1 **him to discuss the contents of the record and the**
2 **relative merits of the motion.**

3 Q. And you understand that motion was filed by me,
4 John Raley, as pro bono counsel, with my co-counsel, the
5 Innocence Project?

6 **A. Yes.**

7 Q. And that Nina Morrison of the Innocence Project
8 and I worked together on this matter, as a team?

9 **A. Yes. Yes.**

10 Q. As part of your preparation to respond to the
11 motion for DNA testing, did you take time to review the
12 file in the underlying matter?

13 **A. I did not review the file. I reviewed the**
14 **record, or the transcript.**

15 Q. So you read the trial transcript?

16 **A. Yes, or the portions of it that contained the**
17 **evidence that was admitted against Mr. Morton.**

18 Q. Did you read the district attorney's file?

19 **A. I may have read -- I want to say I read --**

20 Q. At any time.

21 **A. I might have read the State's brief of the**
22 **appellate portion.**

23 **Understand that any file, once it's through an**
24 **appellate process, is going to be subdivided into**
25 **different components.**

1 **And I may have read portions of the**
 2 **post-conviction process; but I did not read the Offense**
 3 **Reports, the prosecutor's notes, or other matters that**
 4 **were related to the trial.**

5 **The way that I approached this was -- and it**
 6 **was based on my understanding of Chapter 64.**

7 **The analogy I would draw here is to a direct**
 8 **appeal dealing with legal sufficiency of the evidence.**
 9 **In a direct appeal dealing with legal sufficiency of the**
 10 **evidence, what I would do in that situation is review**
 11 **the trial transcript or record, glean the evidence that**
 12 **was admitted during the trial favoring or supporting the**
 13 **verdict of guilty, and then analyze the merits of the**
 14 **claim based on that information.**

15 **So, in other words, I wouldn't read portions of**
 16 **the trial or the record not related to the evidence,**
 17 **such as the voir dire, a motion to suppress hearing,**
 18 **stuff like that. I would not read the contents of the**
 19 **file. That might contain information that wasn't**
 20 **admitted at trial.**

21 **And I'm trying, in my mind, to not have my mind**
 22 **diluted or affected by evidence that did not come into**
 23 **the record.**

24 Q. Well, let me ask you this: You recall that a
 25 big part of the motion was a request for DNA testing on

1 a bloody bandana that was found not far from the murder
 2 scene?

3 **A. Yes. Absolutely.**

4 Q. And a lot of the fight between you and
 5 Mr. Bradley and my co-counsel and myself was regarding
 6 whether that bandana could be tested.

7 **A. Right.**

8 **Initially, there were multiple items in the**
 9 **motion; but, ultimately, in the end, well, that was the**
 10 **item, that was the winner item.**

11 Q. Right.

12 In considering how to oppose the testing of the
 13 bandana, did you review the matters in the district
 14 attorney's file or the sheriff's file?

15 **A. Well, and let me be clear.**

16 **My instructions were to review the record, look**
 17 **at the case law, look at the -- read the motion, and**
 18 **then discuss it, with no -- I was not -- I mean, I was**
 19 **merely gathering information; and we were going to**
 20 **discuss it.**

21 Q. So the ultimate decision was made by whom?

22 **A. By John Bradley.**

23 Q. All right. In preparing to discuss these
 24 matters with Mr. Bradley, at any time did you review
 25 either the district attorney's file or the sheriff's

1 file?

2 **A. No. Never saw the sheriff's file, ever.**

3 Q. All right. Let's talk about the district
 4 attorney's file.

5 **A. Okay.**

6 Q. Is it possible that you reviewed that, even
 7 when you were considering what to do about the bandana?

8 **A. No. I don't remember ever looking at that at**
 9 **that time. I'm almost certain I didn't.**

10 Q. Well, I'm not talking about just at that time.
 11 At any time --

12 **A. Yes.**

13 Q. Okay. So later, you did look at it?

14 **A. Yes.**

15 **This was -- what you're describing was 2005,**
 16 **where I was just kind of getting a preliminary**
 17 **understanding of the contents of the record and**
 18 **preparing to discuss the merits of the motion for**
 19 **testing with Mr. Bradley.**

20 **Later in 2009, either late 2008 or 2009, as I**
 21 **was preparing my brief -- we're going -- we're skipping**
 22 **over a lot here -- but I was preparing my brief before**
 23 **the 3rd Court of Appeals.**

24 **I went back into the file for the limited**
 25 **purpose of looking for information or Offense Report**

1 **entries related to the discovery or recovery of the**
 2 **bandana.**

3 Q. You recall that our first appeal was a mandamus
 4 to request an order from the Court of Appeals, that
 5 Judge Stubblefield sign an order disposing of all of the
 6 matters before the Court?

7 **A. I think that had to do with the argument or the**
 8 **request for testing of evidence related to the Mildred**
 9 **McKinney murder.**

10 Q. And fingerprints?

11 **A. Yes.**

12 **I do recall the mandamus. I don't remember**
 13 **that well, but I remember there being --**

14 Q. And the mandamus was successful?

15 **A. Yes.**

16 Q. And as a result of the mandamus,
 17 Judge Stubblefield was ordered to sign or enter an order
 18 disposing of all matters before the Court.

19 **A. Yes.**

20 Q. And when he did so, the denial of the bandana
 21 testing was appealed.

22 **A. As I recall, there were three matters on direct**
 23 **appeal: The Judge's denial of the bandana; the Mildred**
 24 **McKinney evidence; and the fingerprints from both**
 25 **scenes.**

1 Q. And the Court of Appeals held that the bandana
2 should be tested?

3 **A. Correct.**

4 **They affirmed Stubblefield's rulings on the**
5 **latter two items and reversed it on the bandana.**

6 Q. And the reason is because the statute does not
7 specifically provide for comparing murder scenes or
8 running fingerprints.

9 **A. That was our position all along; and that's**
10 **where the Court of Appeals came out on the latter two**
11 **items.**

12 Q. But the Court of Appeals ruled that the bloody
13 bandana found not far from the murder scene should be
14 tested?

15 **A. Yes, they did.**

16 Q. And when it was tested, it was determined that
17 it contained the blood of Christine Morton.

18 **A. And a third party.**

19 Q. And the DNA of a third party, who was not
20 Michael Morton.

21 **A. Correct.**

22 Q. And later that DNA of that person turned out to
23 be a man with a known felony record in three states,
24 including breaking and entering residences, and assault
25 with intent to kill.

1 **A. That's my understanding, based on what I've**
2 **read in the press and what you've told me.**

3 Q. All right. So it's your recall, from review of
4 the trial transcript, that the defense of Michael Morton
5 at trial was that an unknown third-party intruder
6 entered his house when he was at work and killed his
7 wife.

8 **A. I honestly cannot remember what the defense**
9 **was. There may have been multiple defenses.**

10 **That does sound familiar, that there was --**
11 **there was questioning -- either questioning of the State**
12 **witnesses, or there was -- I don't remember what the**
13 **defense was.**

14 Q. Let me ask it this way: You recall, in our
15 motion for DNA testing, that we made that argument --

16 **A. Yes.**

17 Q. -- and we also cited from the trial record
18 where such an argument was made?

19 **A. Yes.**

20 Q. So it's very clear that Michael Morton's
21 position all along was that he kissed his wife,
22 Christine, goodbye in the morning and went to work
23 around 5:30; and while he was out, a murderer came into
24 the house and bludgeoned his wife to death in her
25 bedroom.

1 **A. I think it's clear from the motion that his --**
2 **he was arguing that somebody else killed his wife; and I**
3 **believe I remember him -- it was an intruder.**

4 Q. And you recall that the motion cited the
5 references in the trial record where that position was
6 made?

7 **A. I don't remember that.**

8 Q. All right. Well, you'll, of course, allow that
9 record to speak for itself.

10 **A. Absolutely.**

11 Q. If so, then evidence regarding a third-party
12 intruder would be pretty significant to the defense, to
13 the prosecution, and to the Court; correct?

14 **A. If that was the defense at trial?**

15 Q. Yes.

16 **A. Absolutely.**

17 Q. Let me ask you -- let me show you a few items
18 and ask you if you've seen them before.

19 **A. Sure.**

20 **(Exhibit No. 4 was marked for**
21 **identification.)**

22 Q. (BY MR. RALEY) I'm going to mark this as
23 Exhibit No. 4 to your deposition, sir.

24 **A. All right.**

25 Q. And, interestingly, it was also Exhibit No. 4

1 to Don Wood's deposition.

2 So we're numerically consistent.

3 **A. Right.**

4 Q. I'm handing you Exhibit No. 4.

5 **A. All right.**

6 Q. Do you see that it is -- the top line, it says
7 that it is a transcript of a taped conversation between
8 Rita Kirkpatrick and Sergeant Don Wood?

9 **A. Yes.**

10 Q. All right. Let's go through it together.

11 **A. All right.**

12 Q. You may have read about this in the newspaper.
13 Do you recall seeing this?

14 **A. I definitely remember, from media reports, that**
15 **there was a conversation between Mr. Morton's son and --**
16 **a conversation between the child's grandmother and an**
17 **investigator.**

18 Q. In fairness, I'm talking about the newspapers
19 this summer and this fall.

20 **A. Yes.**

21 **I never reviewed any media reports from back in**
22 **'86 and '87.**

23 Q. All right. You see that, in the middle of the
24 page, Ms. Kirkpatrick is telling Sergeant Wood that she
25 wants to repeat a conversation that she had with Eric,

1 Christine and Michael's son.
 2 **A. Yes, I see that.**
 3 Q. And you can see the line that she says, "This
 4 was the first I was alone with Eric since my daughter
 5 was killed."
 6 **A. I see that.**
 7 Q. So this is a statement by the mother of the
 8 murdered woman.
 9 **A. That's what it appears to be. Yes.**
 10 Q. She says, "He came in my bedroom, closed the
 11 door and began to talk."
 12 Do you see that?
 13 **A. Yes.**
 14 Q. And the top of the next page, she quotes Eric
 15 as saying, "Mommie is sleeping with the flowers."
 16 Do you see that?
 17 **A. Where is that?**
 18 Q. This paragraph here.
 19 **A. Yes.**
 20 Q. She says, "Then he kicked the blanket and said,
 21 'Mommie, get up.'"
 22 Do you see that?
 23 **A. Yes.**
 24 Q. Eric then says, "Mommie's crying. She's --
 25 stop it. Go away."

1 **A. Yes, I do see that.**
 2 Q. And then the grandmother says, "Why is she
 3 crying?"
 4 Do you see that?
 5 **A. I see that.**
 6 Q. Eric says, "Because the monster is there."
 7 **A. I read that.**
 8 Q. Eric says, "He hit Mommie. He broke the bed."
 9 See that?
 10 **A. Yes.**
 11 Q. Then Eric says, "The monster put a blue
 12 suitcase on the bed. He's mad."
 13 Do you see that?
 14 **A. Yes.**
 15 Q. Do you recall, from your review of the murder
 16 scene, that Christine Morton was found with a blue
 17 suitcase piled on her corpse?
 18 **A. I believe. Yes. Yes, I do.**
 19 Q. Then Rita Kirkpatrick asked Eric, "Did the
 20 monster hurt Mommie?"
 21 Do you see that?
 22 **A. Yes.**
 23 Q. And he says, "Yes. Mommie go to hospital."
 24 Do you see that?
 25 **A. Yes.**

1 Q. When Eric was asked whether the monster was
 2 big, he said, "Yeah."
 3 Do you see that?
 4 **A. I see that.**
 5 Q. Michael Morton is not a big man, is he?
 6 **A. I don't know.**
 7 Q. Eric said that the monster had red gloves.
 8 Do you see that?
 9 **A. It says, "Did he have on gloves?" It says,
 10 "Yeah. Red."**
 11 Q. Now, could blood on the hands of a man look
 12 like red gloves?
 13 **A. I would think so.**
 14 Q. There's also a reference to a basket.
 15 Do you see that, at the bottom of the --
 16 **A. Yes, I saw that.**
 17 Q. That the monster had a basket.
 18 Do you recall, from the murder scene, that a
 19 wicker basket was also piled near Christine's corpse?
 20 **A. Yes.**
 21 Q. Would you agree with me that this is a lot of
 22 detail by this three-and-a-half-year-old little boy?
 23 **A. Yes.**
 24 **And, as I recall, they also recovered young
 25 Eric's fingerprints from -- I want to say the suitcase.**

1 **Is that right?**
 2 Q. Well, I'm going to focus on this document.
 3 **A. Yeah. Okay.**
 4 Q. When Eric was asked, "Did he have Daddy's gun
 5 or Mommie's purse," Eric responded, "Yeah."
 6 Do you see that?
 7 **A. Sort of a vague "yeah."**
 8 Q. Yeah.
 9 Do you recall from your investigation of the
 10 murder scene that -- strike that.
 11 Do you recall from your review of the file that
 12 it was determined at the murder scene that Christine
 13 Morton's purse and Michael Morton's pistol were stolen?
 14 **A. You mean my review of the record?**
 15 Q. Yes, your review of the record.
 16 **A. I don't remember the purse. I do remember the
 17 pistol being stolen.**
 18 Q. If the record says the purse also, you do not
 19 dispute --
 20 **A. No, not at all.**
 21 Q. There is a mention of the monster having wood;
 22 and he says, "What -- the boy is asked, "What kind of
 23 wood, Eric?" And he says, "Like Daddy's."
 24 Do you see that?
 25 **A. Yes.**

1 Q. Were you aware, from your review of the record,
2 that Michael Morton had built a hardwood deck in the
3 backyard not too long before the murder, and that Eric
4 would have seen wood used on that hardwood deck?

5 **A. I remember there being a deck. That's all I**
6 **remember.**

7 Q. Do you recall that there was no murder weapon
8 found?

9 **A. Yes, I do recall that.**

10 Q. Do you recall that wood chips were found in the
11 scalp of Christine Morton, suggesting that the blunt
12 instrument may have been something like a 2 x 4?

13 **A. I remember there being wood chips in her hair**
14 **or head.**

15 Q. And that would suggest that the murder
16 instrument was wood?

17 **A. That would be a very fair inference. Yes.**

18 Q. And the kind of wood that was -- could chip, on
19 impact with a human skull.

20 **A. Correct. Correct.**

21 Q. So it might have been the sort of wood that was
22 used to build a hardwood deck.

23 **A. I guess. I don't -- I mean --**

24 Q. Do you recall that there was a construction
25 area behind the house?

1 **A. Yes.**

2 Q. Do you recall that the bloody bandana was
3 actually found near that construction area?

4 **A. Yes.**

5 Q. So would you agree that, so far, Eric's
6 description of what he saw comports with the findings by
7 law enforcement officers at the murder scene?

8 **A. Yes.**

9 Q. Farther down the page, middle of page 3.
10 "Where was Daddy, Eric?"

11 Do you see that?

12 **A. Yes.**

13 Q. "Was Daddy there?"

14 Do you see that?

15 **A. Yes.**

16 Q. Eric's response was, "No. Mommie and Eric was
17 there."

18 **A. I see that.**

19 Q. Then, the very next line, Rita Kirkpatrick says
20 "So, Sergeant Wood, I'd get off the domestic thing now
21 and look for the monster, as I have no more suspicions
22 in my mind that Mike did it."

23 Do you see that?

24 **A. I do.**

25 Q. All right. Here we have a tape of the mother

1 of the murdered woman describing, verbatim, what an
2 eyewitness to a murder told her.

3 **A. It appears that it was recorded, from reading**
4 **this.**

5 Q. Rita Kirkpatrick also says, "But there must be
6 mad people out there."

7 Do you see that?

8 **A. Yes.**

9 Q. On page 4, Rita Kirkpatrick also describes
10 Eric's memory, that it was a "big monster with big
11 mustache."

12 Do you see that?

13 **A. Where is that on page 4?**

14 Q. Middle of the page.

15 **A. Oh, I see that, yes.**

16 Q. Have you seen the mugshots of Mark Alan
17 Norwood, following his arrests, that have been all over
18 the Internet?

19 **A. I think I've seen -- yes.**

20 Q. You've seen the current one.

21 Have you seen the one from the 1980s era?

22 **A. I think I have.**

23 Q. Would that be a --

24 **A. I cannot remember it in my mind. I do remember**
25 **seeing the recent mugshot and the older one, but I don't**

1 **remember, exactly, what he looked like.**

2 Q. I can pull it up, if you need to.

3 If fact, I'll do it right now.

4 **A. Okay.**

5 Q. Let me pull it up on the Internet.

6 Taking a while to load. Let me just get
7 somebody to pull it up and print it.

8 (Recess from 2:41 p.m. to 2:44 p.m.)

9 Q. (BY MR. RALEY) We're getting a photograph from
10 the Internet printed off, and I'll show it to you in a
11 second.

12 Do you agree with me that -- strike that.

13 Strike that. New question.

14 Judge Arnold, have you ever seen this document
15 before?

16 **A. Was this in the State's file or in the**
17 **Sheriff's file?**

18 Q. It was in both, sir.

19 **A. All right. If it was in the State's file, I**
20 **might have seen it when I went through the record for**
21 **the limited purpose of looking for entries related to**
22 **the discovery of the bandana in 2009.**

23 Q. If you had seen it, would you have presumed
24 that it had been turned over to the defense before the
25 time of trial?

1 A. Yes.

2 And since there was no Brady claim or anything
3 out there, I was not looking for any evidence of a Brady
4 claim.

5 But, yes, I would have assumed that anything in
6 there would have been turned over.

7 MR. RALEY: I'm going to object to the
8 nonresponsive portion of the answer, because it's a
9 straight question that we need to have answered.

10 THE WITNESS: Okay.

11 Q. (BY MR. RALEY) You say that you may have seen
12 this during your review of the district attorney's file,
13 but you can't recall --

14 A. I don't remember seeing it.

15 Q. If you had seen it, would you have presumed
16 that it had been disclosed to the defense at the time of
17 trial?

18 A. To answer that question honestly, I've got to
19 start off by saying I was not -- whether it had been
20 turned over or not turned over was not on my mind when I
21 was looking in the file.

22 Q. Okay.

23 A. But let's say that I was looking through the
24 file and I was thinking that something in the file had
25 not been -- there was an allegation that something in

1 the file had not been turned over, I would have assumed
2 that it had, not knowing anything different.

3 Q. Why do you say that you would have assumed that
4 it had been turned over?

5 A. I have no knowledge about the pretrial
6 procedures in this case.

7 Q. Is it very clear to you that this is Brady
8 material?

9 A. Based on the context, based on everything, yes,
10 this should have been turned over no later than the time
11 of trial.

12 Q. Because this is an eyewitness account of a
13 murderer being someone different than the accused;
14 correct?

15 A. Well, it's information that might tend to --
16 it's potentially exculpatory information.

17 Q. Yes, sir.

18 And, therefore, it's Brady, and should have
19 been turned over to the defense; correct?

20 A. The only reason I can think of for turning it
21 over would be for Brady.

22 Q. But the law required it to be turned over.

23 A. As a former appellate attorney and as a
24 briefing attorney, it's -- there are other -- as to
25 whether it's a Brady -- I mean, it's -- the only

1 potential reason for someone to turn this over would be
2 that it's exculpatory.

3 Q. Well, let's do it -- let's take a step at a
4 time.

5 A. All right.

6 Q. No doubt that a taped conversation of the
7 mother of the murdered woman describing, verbatim, her
8 grandson seeing the murderer and seeing that the
9 murderer was someone other than Daddy is Brady material;
10 correct?

11 A. There's no doubt that that should be turned
12 over.

13 Q. And it's Brady material, because it's
14 exculpatory.

15 A. Potentially, yes.

16 Q. It's potentially exculpatory?

17 A. Well --

18 Q. Well, no. No. No. Stop. This is really
19 important.

20 A. I know it's important.

21 Q. When you say "potentially, yes" you mean it's
22 potentially exculpatory.

23 A. Yes.

24 Q. Therefore, it's Brady; therefore, it must be
25 turned over.

1 A. To say it's Brady, there are other
2 considerations. I mean, there are -- did --

3 See, Brady claims are evaluated on a hindsight
4 basis; and to make it --

5 MR. RALEY: Let's go off the record.
6 (Recess from 2:48 p.m. to 2:52 p.m.)

7 MR. RALEY: I had to go off the record for
8 a second to grab this document that was being handed to
9 me. So we're back on now.

10 (Exhibits Nos. 5 and 6 were marked for
11 identification.)

12 Q. (BY MR. RALEY) All right, sir. Arnold Nos. 5
13 and 6 are photographs of Mark Alan Norwood that were
14 printed off the Austin American-Statesman.

15 The one on the right is the current mugshot --

16 A. I have seen this.

17 Q. -- the arrest of which happened recently.

18 The one on the left is from the 1980s era
19 arrest.

20 Do you see that one?

21 A. Yes.

22 Q. That would be the younger one, Exhibit 5.

23 A. Correct.

24 Q. Would you agree with me that a
25 three-and-a-half-year-old child could easily describe

1 the man in Exhibit No. 5 as a big man with a big
2 mustache?

3 **A. He clearly has a very significant mustache.**

4 Q. Thank you, sir.

5 **A. Sure.**

6 Q. So assume with me that you, as a trial judge,
7 are trying a murder case --

8 **A. Correct.**

9 Q. -- in your court, and Exhibit No. 4 is
10 submitted to you for in camera review as to whether it
11 must be disclosed under the Brady vs. Maryland, and it
12 is a case where the defense contends that he is innocent
13 of the murder and that an unknown third-party entered
14 his house and murdered his wife when he was away, and
15 this document was presented to you for a decision, a
16 ruling, whether it must be disclosed pursuant to Brady
17 vs. Maryland.

18 What would your ruling be?

19 **A. I'd say it needs to be turned over.**

20 Q. Thank you.

21 **A. You're welcome.**

22 Q. Let's go further in this document.

23 Do you see that -- do you see that the -- close
24 to the bottom of page 3, when Ms. Kirkpatrick finishes
25 describing what Eric told her, she says, "We're off the

1 tape; right?" And Officer Wood says, "Right."

2 Do you see that?

3 **A. Yes.**

4 Q. Very clearly, from this transcript, the tape is
5 continuing.

6 **A. Yes.**

7 Q. And so that was not correct, that they were off
8 the tape, was it, sir?

9 **A. Does not appear to be.**

10 Q. Is that appropriate police work?

11 **A. (No response)**

12 Q. I'll withdraw the question.

13 **A. All right.**

14 Q. Do you see that, on the bottom of page 4, that
15 Officer Wood tries to suggest to Ms. Kirkpatrick that
16 perhaps Michael Morton killed his wife wearing a
17 skin-diving suit and that maybe that's why his son
18 thought he was the monster and did not recognize him?

19 **A. Bottom of page 4?**

20 Q. Yes, sir.

21 Do you see that?

22 **A. Oh, okay.**

23 **He surmises that, perhaps -- he asked her if**
24 **the child had ever seen his father wearing a skin-diving**
25 **suit.**

1 Q. And he goes further to suggest that when he
2 talks about monsters, that might be what Eric meant.

3 **A. That's the clear import of reading this.**

4 Q. Do you agree that it would be rather absurd for
5 Michael Morton to put on a scuba-diving suit to go in to
6 kill his wife?

7 **A. Well, clearly, he did not kill his wife.**

8 Q. We know that.

9 **A. And it's hard for me to answer that,**
10 **hypothetically. If you -- I mean...**

11 Q. One of the things that you mention that was an
12 additional thing that might make something Brady
13 material is whether it might be impeachment evidence.

14 **A. Yes.**

15 Q. And one of the things that a defendant should
16 be entitled to inquire about at trial is whether or not
17 law enforcement was fair and unbiased in investigating a
18 matter.

19 **A. That's a very common tactic in all criminal**
20 **defense cases; Correct.**

21 Q. Well --

22 **A. That's a very common thing that's up for**
23 **debate.**

24 Q. You call it a "tactic," but it's also a fair
25 question, isn't it?

1 **A. It is a fair question.**

2 Q. If you were a criminal defendant, you would
3 want to know that law enforcement was fair and unbiased
4 in investigating a matter.

5 **A. Absolutely.**

6 Q. So do you agree that an additional basis that
7 might make this document Brady, in addition to the
8 eyewitness account of the murder being someone other
9 than Daddy, is this comment about the scuba suit and
10 suggesting that Michael put it on in order to kill his
11 wife, because that might be something that could be used
12 for impeachment?

13 **A. That's a hard one.**

14 **It's possible. I don't have a strong opinion,**
15 **either way, about that.**

16 Q. But you would have turned it over for that
17 basis.

18 **A. I would have turned over everything that I had.**

19 Q. Right.

20 All right. So if you saw this document, which
21 was in the district attorney's file -- which, by the
22 way, in order to confirm that -- well, I'll show you --
23 hold on. Strike that question.

24 I represent to you that this particular
25 document was in the sheriff's file and a condensed form

1 was in the district attorney's file.
 2 I'll show that to you in just a second.
 3 **A. Okay. All right.**
 4 Q. But if you'd seen this document in your review
 5 of the case, you would have presumed that it had been
 6 disclosed.
 7 **A. Yes. I would have no reason to believe it was**
 8 **not.**
 9 Q. All right. Because it should have been.
 10 **A. Yes.**
 11 Q. All right. Next document is No. 7.
 12 (Exhibit No. 7 was marked for
 13 identification.)
 14 Q. (BY MR. RALEY) I'm handing you Exhibit No. 7,
 15 and you might want to hold it side by side to Exhibit
 16 No. 4.
 17 As you can see, Exhibit No. 7 is the summarized
 18 version and the top three paragraphs of a portion of
 19 Exhibit 4.
 20 Do you see that?
 21 **A. Yes.**
 22 Q. And then there is a verbatim portion of the
 23 conversation between Eric and Rita, ending with the
 24 questions, "Where was Daddy, Eric? Was Daddy there?"
 25 Answer, "No. Mommie and Eric was there."

1 Do you see that?
 2 **A. Yes.**
 3 Q. Have you ever seen anything like this, where
 4 the investigating officer summarizes a longer report?
 5 **A. I don't recall ever seeing anything like that.**
 6 Q. So it's a little unusual to you?
 7 **A. It's not typical. I don't remember ever seeing**
 8 **anything like it.**
 9 Q. Okay. Can you confirm that they're the same
 10 date, 8-24-86?
 11 **A. Yes, they are.**
 12 Q. And if the murder was on August 13th, this is
 13 shortly after the murder.
 14 **A. Within two weeks.**
 15 Q. Please note at the bottom of Exhibit 7, that
 16 copies were sent to the sheriff, to the CID section, to
 17 Don Wood, who authored it, to someone named Bunte, to
 18 someone named Elliott, and to the D.A.
 19 Do you see that?
 20 **A. This is the shorter, Exhibit 7?**
 21 Q. This is shorter, Exhibit 7.
 22 **A. Yes.**
 23 Q. And you see a Bates number 374 and 375 at the
 24 bottom --
 25 **A. I see it --**

1 Q. -- of Exhibit 7?
 2 **A. Yes.**
 3 Q. I represent to you that those numbers confirm
 4 that it was in the district attorney's file in this
 5 case, because those are the Bates numbers --
 6 **A. Okay.**
 7 Q. -- from when that file was presented to us.
 8 **A. All right.**
 9 Q. And, of course, the D.A. is --
 10 **A. But "4" was not in the file; is that what**
 11 **you're saying?**
 12 Q. "4" was in the sheriff's file, not in the
 13 D.A.'s file.
 14 **A. All right.**
 15 Q. "7" was in both files.
 16 **A. All right.**
 17 Q. All right?
 18 Do you recall seeing "7"?
 19 **A. No.**
 20 Q. Would your answers regarding "7" be the same as
 21 your answers given previously regarding the longer
 22 version of the transcript, Exhibit 4?
 23 **A. Yes.**
 24 Q. But if you had seen it, you would have presumed
 25 it was turned over.

1 **A. Yes.**
 2 Q. Because it should have been.
 3 **A. Yes.**
 4 Q. For the reasons expressed previously.
 5 **A. Yes.**
 6 Q. In the summarized version, at the end
 7 Officer Wood states, "Ms. Kirkpatrick then said Eric
 8 also said the monster had a big mustache, and he also
 9 said the lights were on."
 10 Do you see that?
 11 **A. Yes.**
 12 Q. So if the lights are on, it's much easier to
 13 identify your father and/or see that the intruder is
 14 someone else.
 15 **A. Light always helps with identification.**
 16 Q. And do you recall that Michael Morton's
 17 mustache, at the time of the murder, was thin, not
 18 bushy?
 19 **A. I don't remember if he had a mustache or what**
 20 **it looked like.**
 21 Q. Do you agree that, based on your experience, a
 22 report of this kind is something that would be followed
 23 up on in some way?
 24 **A. I would certainly hope that any case that I**
 25 **prosecuted or any case in my court as a judge, that,**

1 **yes, there would be follow-up.**
 2 Q. And if it was followed up, reports should be
 3 written.
 4 **A. Yes. They should be documented and written.**
 5 Q. And if the reports were written, those reports
 6 should be in the file.
 7 **A. Which file?**
 8 Q. At least in the sheriff's file.
 9 **A. Yes.**
 10 Q. If not also in the file of the district
 11 attorney.
 12 **A. Yes.**
 13 **But I'll say it was not uncommon, in my**
 14 **experience in Houston and Georgetown and Williamson**
 15 **County, wherever, that all the supplements did not make**
 16 **it into the D.A. file.**
 17 **I mean, that's -- it's very regrettable. I**
 18 **wish that didn't happen, but that is not completely**
 19 **uncommon.**
 20 Q. Have you read any of Officer Wood's deposition?
 21 **A. No.**
 22 Q. I represent to you that he testified in his
 23 deposition that he and Sheriff Boutwell met almost every
 24 day to discuss the reports of that day, which may be
 25 several reports per day.

1 **A. Correct.**
 2 Q. That would not be unusual for a chief
 3 investigator, like Officer Wood in this case.
 4 **A. That would not be unusual, in a high-profile**
 5 **case, for a chief investigator to meet with the elected**
 6 **sheriff, no.**
 7 Q. And it was your understanding this was a
 8 high-profile case, at the time.
 9 **A. Clearly, any case of murder, yes.**
 10 Q. And I've just read to you the passages from
 11 Judge Anderson's book where he describes meeting
 12 frequently with Sheriff Boutwell to examine and analyze,
 13 in detail, the evidence in murder cases.
 14 **A. Yes, you've read that to me.**
 15 Q. He said, "We talked on the phone daily and,
 16 more often than not, drank a cup of coffee together
 17 daily."
 18 We just read that --
 19 **A. You just read that, yes.**
 20 Q. So if Sergeant Wood testified truthfully and
 21 Judge Anderson's book is truthful, then the information
 22 from the investigation regarding the Christine Morton
 23 murder was something that was known.
 24 **A. It should have been known.**
 25 Q. All right. Next document.

1 (Exhibit No. 8 was marked for
 2 identification.)
 3 Q. (BY MR. RALEY) I'm going to hand you Arnold
 4 Exhibit No. 8.
 5 Do you see the Bates number at the bottom of
 6 the page, 306?
 7 **A. Yes.**
 8 Q. I represent to you that this document also was
 9 in both the district attorney's file and in the
 10 sheriff's file.
 11 All right, sir?
 12 **A. Yes.**
 13 Q. And that this Bates number confirms that it was
 14 in the district attorney's file; all right?
 15 **A. All right.**
 16 Q. Do you see the date of this document is
 17 8-14-86, one day after the murder?
 18 **A. Yes, I do.**
 19 Q. In the bottom half of the first paragraph, the
 20 document states --
 21 And, by the way, this is an investigative
 22 document; correct?
 23 **A. It appears to be, yes.**
 24 Q. States, "Later that morning, a subject from
 25 13202 Adonis Drive was observed walking down the street,

1 and he stopped to advise his wife and a Joni St. Martin,
 2 from 13204 Adonis, had, on several occasions, observed a
 3 male park a green van on the street behind the
 4 Hazelhurst address. Then the subject would get out and
 5 walk into the wooded area off the road."
 6 Do you see that, sir?
 7 **A. I do.**
 8 Q. All right. Are you aware that the bandana
 9 containing Christine Morton's blood was found on the
 10 street behind the Hazelhurst address where Christine
 11 Morton and Michael Morton lived?
 12 **A. I remember there being a wooded area between**
 13 **the Morton home and the home under construction; and the**
 14 **bandana was found, I believe, laying in front of that**
 15 **home under construction, either adjacent to or next to**
 16 **the curb.**
 17 Q. Behind, on the street behind the Morton's
 18 street of Hazelhurst?
 19 **A. Correct.**
 20 Q. I may have actually have a --
 21 This might help a little bit. I only have one
 22 copy of this, but we'll make some others.
 23 (Exhibit No. 9 was marked for
 24 identification.)
 25 **MR. RALEY: For the record, "8" is the**

1 **Supplementary Offense Report, which describes the van.**
 2 **"9" is a drawing by an officer, also on**
 3 **8-13-86, describing where the bandana was found.**

4 Q. (BY MR. RALEY) Have you seen that document
 5 before?

6 I believe you attached it to one of your
 7 appellate briefs.

8 **A. Then I have seen it.**

9 Q. Does that refresh your memory as to where the
 10 bandana was found?

11 **A. Yes.**

12 **I didn't have, in my mind, a map of the**
 13 **neighborhood. Like I said before, that was my detailed**
 14 **description of where the bandana was found in proximity**
 15 **to the Morton home.**

16 **I will accept this as a representation of where**
 17 **the bandana was found and the overall scene of the**
 18 **neighborhood.**

19 Q. Okay. Would you agree with me, then, the
 20 sightings of a male driving a van on the street behind
 21 the Hazelhurst address and the man getting out to walk
 22 into the wooded area off the road would be significant
 23 in investigating a murder?

24 **A. Okay. I'm looking at the map.**
 25 **Where...**

1 Q. Hand me the map. I'll show you.

2 **A. Sorry. Okay.**

3 Q. You see "9114 Hazelhurst"?

4 **A. That's the Morton residence.**

5 Q. Where the Mortons lived.

6 **A. Right.**

7 Q. You see the street behind the residence? This
 8 is called "Amanda."

9 **A. Yes.**

10 Q. Do you see that the bandana is found here?

11 **A. Yes.**

12 Q. Where the "X" is.

13 **A. Yes.**

14 Q. This map doesn't describe it, but I'll
 15 represent to you that there was a construction area near
 16 that bandana.

17 **A. Right. I remember that construction area.**

18 Q. And then further behind, there was a wooded
 19 area.

20 Do you recall that?

21 **A. I seem to recall -- and I could be mistaken --**
 22 **a wooded area between the Morton residence and the home**
 23 **under construction.**

24 Q. You're correct. There was a wooded area
 25 between the two.

1 **A. All right. Yes.**

2 Q. All right. So, back to the original question.

3 Do you agree that sightings of an unknown green
 4 van, before the murder of Christine Morton, driving
 5 around -- behind the Morton house and going into that
 6 wooded area is something that is important and should be
 7 investigated in a murder investigation?

8 **A. I think a murder investigation should follow up**
 9 **on as many leads as possible, if not every lead; and**
 10 **this would be a lead.**

11 Q. And this is a lead that might suggest the
 12 identity of the intruder who killed Christine Morton.

13 **A. It might.**

14 Q. This might be a description of that murderer
 15 casing the neighborhood before a burglary.

16 **A. It sure could.**

17 Q. And, therefore, this document is sort of,
 18 potentially exculpatory evidence which should be turned
 19 over to the defense under Brady vs. Maryland.

20 **A. Sure. Sure, John.**

21 **And let me just say at this point, if I can**
 22 **interject -- I mean, this is why you turn over**
 23 **everything. This is why either an open-file policy or a**
 24 **policy whereby the defense gets access to every document**
 25 **in the file is the way to go, because -- that's why you**

1 **need an open-file policy or policy whereby you disclose**
 2 **everything.**

3 Q. If you were trying a murder case this week
 4 where the issue was whether an unknown third party
 5 entered the house of the murdered woman while the
 6 husband was at work, and this document was submitted to
 7 you for in camera review, where you were asked to rule
 8 whether it must be turned over under Brady vs. Maryland,
 9 what would your decision be?

10 **A. I think I would order that it would be turned**
 11 **over.**

12 Q. All right, sir.

13 Any doubt in your mind at all about it?

14 **A. Again, my policy as a judge is even more -- I**
 15 **mean, it was liberal as a prosecutor in terms of**
 16 **disclosing evidence; but I'm even more liberal as a**
 17 **judge, because as a judge my concern is to make sure the**
 18 **defendant gets a fair trial.**

19 **I mean, I don't have a stake in the game. So**
 20 **my whole policy determination as a judge is to make sure**
 21 **the defense gets every scrap of information that's**
 22 **possibly useful to them.**

23 Q. But my point is: If you were asked to rule on
 24 whether this document must be turned over as potentially
 25 exculpatory evidence under Brady vs. Maryland, do you

1 have any doubt in your mind that ruling would be it must
2 be turned over?

3 **A. I'm fairly certain it would be turned over.**

4 Q. All right. Fairly certain or certain?

5 **A. Well, again, and let me just say that the**
6 **prosecutors in my court currently -- they don't -- we**
7 **don't have these issues. They disclose things. They**
8 **have an a open-file policy.**

9 **But if it did come up, I would order it turned**
10 **over.**

11 Q. All right. I'm just asking you a hypothetical,
12 because you --

13 **A. Sure. Absolutely. I would turn it over.**

14 Q. You're driving our sweet court reporter crazy.

15 **A. Sorry.**

16 Q. You've got to let me finish the question.
17 Okay?

18 Thanks.

19 **A. And let me just go off the record.**

20 **MR. RALEY: Off the record.**

21 **(Recess from 3:17 p.m. to 3:18 p.m.)**

22 **(Exhibits Nos. 10 and 11 were marked for**
23 **identification.)**

24 Q. (BY MR. RALEY) Judge Arnold, I hand you
25 Exhibits 10 and 11, which were in the sheriff's file,

1 but, not as far as we can tell, in the district
2 attorney's file.

3 You can see there's no Bates number at the
4 bottom.

5 **A. Correct.**

6 Q. And the two exhibits are a black-and-white and
7 a color copy of the same handwritten note.

8 Do you see that?

9 But there is some additional information on the
10 black-and-white one.

11 **A. Yes.**

12 Q. I'll represent to you that Jill was an
13 assistant in the sheriff's office who took the phone
14 message; and Don is Don Wood, the chief investigating
15 officer.

16 All right, sir?

17 **A. All right.**

18 Q. Do you see that Jill records that a phone call
19 came in from Mr. Bill De La Verne in San Antonio on
20 August 15th, 1986?

21 **A. Yes.**

22 Q. Two days after the murder.

23 Oh, by the way, before we get into this
24 document -- I don't want to leave it.

25 Do you agree that these sightings of the

1 strange van in the neighborhood in Exhibit 8 --

2 Is it "8"?

3 **A. It says "8."**

4 Q. Yes.

5 Do you agree that these sightings of the
6 strange van in the neighborhood, as recorded in
7 Exhibit 8, are the sort of things that should be
8 followed up on in a murder investigation?

9 **A. Yes.**

10 Q. Did you know that Mark Alan Norwood drove an
11 old van?

12 **A. I had no idea who Mark Alan Norwood was, and I**
13 **had no idea he drove a van.**

14 Q. If this lead had been followed up on, it might
15 have, in fact, led to the identification of Mark Alan
16 Norwood, possibly.

17 **A. Potentially.**

18 Q. So this is the sort of thing that, not only
19 should be turned over to the defense, but it should be
20 followed up on by investigators.

21 **A. Yes.**

22 Q. And if it was followed up on, then reports
23 would be written.

24 **A. If it was followed up on, yes. Yes, you're**
25 **right.**

1 Q. And those reports should be in the file.

2 **A. Yes.**

3 Q. All right, sir, back to the Exhibits 10 and 11.

4 Jill records that Bill De La Verne of
5 San Antonio called; and she says that he "has uncovered
6 credit card at Jewel Box, and Larry Miller can I.D. the
7 woman. \$1,000 in fraud on her."

8 Do you see that, sir?

9 **A. I see that.**

10 Q. Then there are further instructions on how
11 follow-up could be made and a phone number; correct?

12 **A. Yes.**

13 Q. All right. This document was in the murder
14 investigation file of Christine Morton in the sheriff's
15 office, and it suggests that a credit card was used at
16 the Jewelry (sic) Box in San Antonio; correct?

17 **A. It says, yes, "Recovered credit card at Jewelry**
18 **(sic) Box in San Antonio." Yes.**

19 Q. And although it doesn't say that it was
20 Christine Morton's credit card, it would be implicitly
21 Christine Morton's card, since this document is part of
22 the Christine Morton murder investigation.

23 **A. That's a fair inference.**

24 Q. And if so, this might lead to the
25 identification of either the murderer of Christine

1 Morton on an accomplice of the murderer.
 2 **A. If her credit card was used in the days after**
 3 **her murder, I would hope that that had been followed up**
 4 **on by an investigator, if they got this lead. That's a**
 5 **major, major lead, more so than the van. I mean, this**
 6 **is a major lead.**
 7 Q. Well, I mean, the van could be --
 8 **A. I'm not saying it's not a lead.**
 9 **This is a -- I mean, this is really a major**
 10 **lead.**
 11 Q. The van could be a major lead --
 12 **A. It could.**
 13 **But I mean, the reason I say this is a major**
 14 **lead is because somebody is seen using something stolen**
 15 **from the Morton residence, if this is correct.**
 16 Q. And maybe there's a surveillance video and
 17 maybe there is somebody who can identify the woman
 18 precisely.
 19 **A. Right.**
 20 Q. This says the woman can be I.D.'d and has
 21 \$1,000 in fraud on her.
 22 **A. That's why I say it's even -- yeah.**
 23 Q. So this is clearly something that would have
 24 been followed up on.
 25 **A. I don't know if it was. I would hope it would**

1 **be.**
 2 Q. Well, anybody who wanted to do a halfway decent
 3 murder investigation would follow up on this lead.
 4 **A. I would absolutely hope so.**
 5 Q. You would agree with that; right?
 6 **A. Yes.**
 7 Q. And if it was followed up on, then reports
 8 would be written, and those reports would be in the
 9 file.
 10 **A. They should be.**
 11 Q. Well, they would be, if it was done correctly.
 12 **A. Correct.**
 13 Q. Do you agree that if you were trying a murder
 14 case where the issue before the Court was whether a
 15 third-party intruder came into the home of the murdered
 16 woman while the husband was away, and, in addition to
 17 murdering the woman, stole the woman's purse, that this
 18 document, if it was submitted to you for in camera
 19 review as to whether it should be turned over under
 20 Brady vs. Maryland, you have no doubt that your ruling
 21 would be it must be turned over?
 22 **A. Yes, John.**
 23 **But let me explain why else this is**
 24 **significant. This suggests that this is a capital**
 25 **murder and not a murder.**

1 **In other words, if somebody entered the home**
 2 **and stole something and in the course of stealing**
 3 **something, killed Mrs. Morton, this suggests the**
 4 **commission of a capital felony, which changes the whole**
 5 **dimension of the investigation.**
 6 Q. How so?
 7 **A. Well, a capital murder is a capital offense.**
 8 **It's the highest level felony in the State of Texas.**
 9 **It's either a death or a non-death capital, meaning that**
 10 **either the State has the choice to seek a death penalty**
 11 **against the perpetrator or not.**
 12 **And it changes the whole dynamic of the**
 13 **offense. It's not just a murder. It's a capital**
 14 **murder.**
 15 **Does that make sense?**
 16 Q. Yes, sir.
 17 **A. And so it's significant. And the way you're**
 18 **saying it, it's another lead; but it should change the**
 19 **whole complexion of the investigation.**
 20 Q. Yes, sir.
 21 **A. Not just the -- do you -- yeah.**
 22 Q. So back to the original question.
 23 If it was submitted to you for in camera review
 24 for you to rule on whether it must be turned over under
 25 Brady vs. Maryland, your ruling would be?

1 **A. I would not hesitate to say it should be turned**
 2 **over.**
 3 Q. All right, sir.
 4 Let me ask you this: Have you ever seen it
 5 before?
 6 **A. No.**
 7 Q. If you had seen it, would you have presumed
 8 that it was turned over?
 9 **A. Yes.**
 10 Q. Same question on the van.
 11 **A. Yes.**
 12 **The van was in the State's file?**
 13 Q. It was in the State's file.
 14 **A. Okay. So when I was going through the State's**
 15 **file looking for entries related to the bandana, I might**
 16 **have perused that, as I did the non-detailed description**
 17 **of the conversation.**
 18 **But as soon as I realized it didn't have**
 19 **anything to do with the bandana, probably wouldn't have**
 20 **paid it much attention.**
 21 **But if I had seen it, I would have presumed it**
 22 **would have been turned over.**
 23 Q. Do you recall whether they sought capital
 24 punishment for Michael Morton --
 25 **A. No, because that was a -- there was no -- there**

1 **would have been no capital theory, of which I'm aware,**
2 **that they could have relied upon to charge him with the**
3 **capital murder.**

4 Q. Do you recall that Judge Anderson told the
5 media that life imprisonment was too good for Michael
6 Morton?

7 **A. I don't remember that.**

8 Q. You haven't reviewed the media from that time?

9 **A. No. I never did.**

10 **Along with the file, I didn't go back and look**
11 **at that, because I wanted to confine my considerations**
12 **to the record.**

13 **(Exhibits Nos. 12 and 13 were marked for**
14 **identification.)**

15 Q. (BY MR. RALEY) Judge Arnold, I'm going to hand
16 you Exhibits 12 and 13, which are black-and-white and
17 color copies of the same document.

18 **A. All right.**

19 Q. And I think that the color is more legible, but
20 I want you to have both.

21 **MR. RALEY: And, ma'am, when they make the**
22 **copies, can we make color copies of these color copies?**

23 **Thank you.**

24 Q. (BY MR. RALEY) All right, sir, Exhibit 13, the
25 color copy.

1 **A. Okay.**

2 Q. On the front page is an envelope made out to
3 Sergeant Don Wood, Williamson County Sheriff's
4 Department. It is from a man named John B. Cross in
5 Aurora, Colorado.

6 Do you see that?

7 **A. Yes.**

8 Q. Okay. And it's sent by Registered Mail; right?

9 **A. Yes.**

10 Q. Turn to the next page.

11 You'll see a check from John or Shirley Cross
12 made payable to Mrs. Christine Morton for \$20.

13 Do you see that, sir?

14 **A. I do.**

15 Q. And there's a letter on that same page
16 that's --

17 And this is September 27th, 1986.

18 Do you see that, sir?

19 **A. Yes.**

20 Q. And it says, "Dear sir, per your phone request
21 of yesterday, please find attached our canceled check
22 No. 362, relating to Chris Morton. The check was mailed
23 immediately after it was written and was a gift for her
24 son Eric after his surgery. Chris acknowledged the gift
25 immediately, probably by late June. We no longer have

1 her acknowledgment note. We do not know why the check
2 was never cashed while she was alive. It is hoped this
3 will be of assistance."

4 Do you see that, sir?

5 **A. Yes.**

6 Q. And it's signed by Mr. Cross.

7 **A. I see that.**

8 Q. All right. Then there are several photocopies
9 of documents signed by Christine Morton, so you can see
10 her signature.

11 **A. Yes.**

12 Q. And then the next page, which is the fourth of
13 the series, you see the back side of the check?

14 **A. I do.**

15 Q. And it's signed by someone who signs "Chris
16 Morton"; but you can see, very clearly, that it's a
17 different signature.

18 **A. I'm not a handwriting expert, but the two**
19 **signatures do not appear to be the same.**

20 Q. Besides, we know from the letter that the check
21 was not cashed while Christine Morton was alive.

22 **A. That's what the letter says.**

23 Q. Now, if Christine Morton's purse was stolen at
24 the time of murder, as the police reports find, then the
25 murderer and/or his accomplice could have used her

1 credit card fraudulently and cashed one of the checks in
2 her purse fraudulently; correct?

3 **A. Yes.**

4 Q. And they could have actually deposited the
5 check and used the deposit to withdraw further funds
6 from her account, if they wanted to commit fraud.

7 **A. That's correct.**

8 Q. And so a competent investigator would want to
9 track down the bank where this occurred and see if there
10 were surveillance cameras and that sort of thing.

11 **A. Yes.**

12 Q. This is clearly the sort of thing that should
13 be followed up on in a murder investigation.

14 **A. And, again, I would analogize it to the credit**
15 **card, in that if her purse was missing and if the**
16 **contents were being used or cashed or passed or**
17 **whatever, it would change the complexion of a case from**
18 **a murder to a capital murder.**

19 **It shows illicit intent on the person.**

20 **Somebody stole her purse, used the contents; and now we**
21 **have murder in the course of burglary or robbery.**

22 Q. Well, it would also potentially change the
23 complexion of the case from Michael Morton being the
24 accused --

25 **A. That's the most important thing.**

1 Q. -- to a third party being accused.

2 **A. That's the most important thing.**

3 **Additionally, it would change the complexion of**
4 **the nature of the case.**

5 Q. Right.

6 So this is -- when the whole case is about
7 whether or not Michael Morton killed his wife or whether
8 an unknown third party came into the house when he was
9 at work, this sort of evidence of a check being cashed
10 after the death of Christine Morton and her credit card
11 being used after her death is plainly exculpatory
12 evidence.

13 **A. At the very least, it should have -- at the**
14 **very least, it's exculpatory. It really should have**
15 **changed the dynamic of the whole investigation.**

16 Q. Why do you say that?

17 **A. For the same reasons that I've said.**

18 **I mean, like it should have shifted attention,**
19 **at least part of the attention, away from Mr. Morton**
20 **onto another third party.**

21 **But it also -- it should have changed --**
22 **somebody should have really considered the fact that**
23 **this was a burglary, capital murder, and not a murder of**
24 **a husband -- of a wife by a husband.**

25 **Wherever they ended up, I don't know; but this**

1 **is evidence that the nature of the case was different**
2 **from how sheriff's authorities initially framed it.**

3 Q. Right. It is.

4 If you were presiding over a murder case in
5 your court and this document was submitted to you for
6 in camera review as to whether it should be disclosed
7 under Brady vs. Maryland, do you agree that your ruling
8 would be it must be disclosed?

9 **A. Yes.**

10 Q. All right. Now, the exhibits pertaining to the
11 credit card and the check were in the sheriff's file.

12 Would that sheriff's file have been available
13 to the prosecutor any time he wanted to see it?

14 **A. Yes.**

15 Q. And in investigating a murder case thoroughly,
16 do you agree that a prosecutor should be familiar with
17 the investigation and the reports of the investigators?

18 **A. Yes.**

19 Q. And, in fact, Mr. Anderson, in describing the
20 Morton case, claims that he had to master hundreds of
21 details.

22 Do you recall that passage?

23 **A. I've never read that book.**

24 **If that's what you -- I mean, I have no reason**
25 **to...**

1 Q. It's on page 29 of his book, which we're going
2 to attach as Exhibit 2.

3 He also says, on page 13 -- which will be
4 Exhibit 3 -- that he and Sheriff Boutwell met or talked
5 daily and together painstakingly pieced together
6 circumstantial murder cases.

7 When a prosecutor is painstakingly piecing
8 together circumstantial murder cases and mastering
9 hundreds of details, he or she would become familiar
10 with the reports of the chief investigator of the
11 murder.

12 **A. They should.**

13 Q. And that would be the natural and normal thing.

14 **A. Yes.**

15 Q. Indeed, that would be the routine of any
16 competent prosecutor.

17 **A. I would hope that any competent prosecutor**
18 **would do that.**

19 Q. You would do that.

20 **A. Yes.**

21 Q. All right.

22 (Exhibit No. 14 was marked for
23 identification.)

24 Q. (BY MR. RALEY) Did you, at any time, in
25 opposing the DNA testing for Michael Morton, either at

1 the district court level or on appeal, review the
2 pretrial transcript of the Morton murder case?

3 **A. My notes that I've looked at here, that you**
4 **provided me with, don't reflect that I ever read**
5 **pretrial hearings. I might have read them.**

6 **My typical procedure, as I mentioned earlier,**
7 **was only to read the portions of the record, in a legal**
8 **sufficiency review, that dealt with the admissible**
9 **evidence. In other words, I didn't read the voir dire.**
10 **I didn't read a hearing on a motion to suppress.**

11 **So, it's possible I read them. But I don't**
12 **remember reading them, and I very well might not have.**

13 Q. I'm going to hand you Exhibit 14 and ask you to
14 turn to page 29.

15 Now, you see in the middle of the page -- and
16 for the record, this is the pretrial transcript taken
17 February 6th, 1987 -- there is a reference to a Brady
18 motion, the third line, there.

19 **A. Yes. I see that.**

20 Q. The Court, that's Judge Lott, says, "All right,
21 Mr. Anderson, do you have anything that is favorable to
22 the accused?"

23 Do you see that, sir?

24 **A. Yes.**

25 Q. What does Judge Anderson respond?

1 **A. It says, "No, sir"; and he goes on.**
 2 Q. And he goes on.
 3 And it says further, on line 18, "You know, I
 4 have made Brady material available to the defense
 5 attorneys in the past. I haven't noticed the Court
 6 disagreeing with me, and I think I know what Brady
 7 material is."
 8 Do you see that, sir?
 9 **A. Yes.**
 10 Q. Do you have any doubt in your mind that
 11 Judge Anderson knew at that time what Brady material
 12 was?
 13 **A. I didn't know him back then; but I would think**
 14 **if he's the elected district attorney of Williamson**
 15 **County, he would or should know what Brady material is.**
 16 Q. Right.
 17 Go to the top of page 30, if you would, please.
 18 **A. All right.**
 19 Q. Here's the defense attorney, Mr. White, that
 20 says, "My understanding at the pretrial was that the
 21 State -- that is, the government, was going to provide
 22 to the Court the reports of Officer Wood and
 23 Sheriff Boutwell, the complete reports, and make a
 24 determination about the defendant's statements, whether
 25 they were Brady material or not, or whether the Brady

1 material existed."
 2 Do you see that, sir?
 3 **A. Yes.**
 4 Q. And then Mr. White asks, "Has the State
 5 provided those to the Court with those in camera
 6 reports?"
 7 Do you see that?
 8 **A. I do.**
 9 Q. The Court says -- this is Judge Lott -- "No, I
 10 have a notation that a copy of the report was to be
 11 furnished. This is Wood, I believe."
 12 And then the Court says further, on line 17,
 13 "To the Court for in camera inspection, and they will be
 14 sealed for any appellate record and also the field notes
 15 leading to it."
 16 Do you see that, sir?
 17 **A. Yes.**
 18 Q. And then Defense Counsel Anderson says, on
 19 line (sic) 20 and 21, "The field notes of Don Wood?"
 20 And the Court says, "That's the notation about
 21 Don Wood."
 22 Do you see that, sir?
 23 **A. Yes.**
 24 Q. Then, on page 32, at the top of the page,
 25 Mr. Anderson says, "Field notes. I had forgotten about

1 those, Judge; and I need to get with Sergeant Wood
 2 today, obviously, to get those."
 3 He also says, "I haven't seen them, myself, and
 4 have no idea what they say."
 5 Do you see that?
 6 **A. Yes.**
 7 Q. Does that sound like mastering hundreds of
 8 details and painstaking --
 9 Never mind. I withdraw that question.
 10 Do you see what the Court says immediately
 11 following Mr. Anderson's statement, on lines 6 and 7?
 12 He says, "All right. Get those to me so I can
 13 have an opportunity over the weekend to examine them."
 14 **A. Yes.**
 15 Q. And then, on line 12, the Court says, "But the
 16 motion, then, for production of evidence favorable to
 17 the accused, subject to my examining Don Wood's records,
 18 and if any is found there, that will be furnished. And
 19 if it also covers the sheriff, if those are examined and
 20 then found, then that will be furnished."
 21 Do you see that?
 22 **A. Yes. It reads very clear to me.**
 23 Q. What is clear to you, sir?
 24 **A. That the State is supposed to turn over all of**
 25 **the reports and notes of Don Wood and Sheriff Boutwell**

1 Q. Yes, sir.
 2 And, in the middle of line 13, do you see that
 3 the word "records" is plural? "All of Don Wood's
 4 records," plural.
 5 **A. Yes. It's all encompassing.**
 6 Q. So, all of those would be turned over to the
 7 Court, in camera, under seal, for the Court's in camera
 8 review.
 9 **A. And that's not unusual. That's not --**
 10 **I mean, in situations where there's a dispute,**
 11 **and let's say the State -- there could be reasons why**
 12 **the State is not only contesting whether something is**
 13 **Brady, but they don't want to disclose, for various and**
 14 **sundry reasons, what it is. And so they turn it over to**
 15 **the Judge, in camera; and the Judge makes a legal**
 16 **determination. If the Judge agrees with the defense**
 17 **that it is Brady, it's turned over.**
 18 **If the Judge says it's not Brady, then it's not**
 19 **turned over. But it's made a sealed exhibit in the**
 20 **file; and it goes up to the Court of Appeals so in case**
 21 **the defense wants to complain on appeal that it should**
 22 **have been turned over, the Court of Appeals has access**
 23 **to that.**
 24 Q. But in order for this process to work, the
 25 prosecutor has to follow the Court's order.

1 **A. Correct.**

2 Q. And turn over all of the reports to the Court
3 for the Court's review.

4 **A. Otherwise, the Court can't make a
5 determination.**

6 Q. And a prosecutor who does not follow the
7 Court's order and produce all of the reports for the
8 Court's review would be violating the law, because the
9 Court has ordered it.

10 **A. Well, that person would be hindering the whole
11 process and potentially risking a contempt of Court.**

12 **If I were a judge and somebody didn't follow my
13 order, they're risking a contempt finding.**

14 Q. And obstructing justice.

15 **A. That's the most important thing.**

16 Q. Is that correct?

17 **A. Yes.**

18 Q. All right. Now, are you aware, from your
19 review of this case, that certain documents were
20 provided to Judge Lott for review, that he reviewed them
21 and found them not to be Brady material and ruled that
22 they need not be produced.

23 Do you recall that, sir?

24 **A. I don't recall that from when I was handling
25 the case. I remember reading about that in the media**

1 **reports recently.**

2 Q. And the sealed documents were sent to the Court
3 of Appeals, who affirmed that decision and kept the
4 documents under seal.

5 Do you recall that, sir?

6 **A. Again, from media reports. I don't recall it
7 from my participation in the case.**

8 Q. At our request, Michael Morton's counsel's
9 request, Judge Stubblefield, in one of his final acts as
10 presiding judge on the case, requested the Court of
11 Appeals to allow those documents to be unsealed.

12 Do you recall that?

13 **A. I've read about that.**

14 Q. Judge Stubblefield personally unsealed those
15 documents in the presence of counsel.

16 Do you recall that?

17 **A. I remember hearing something about that in the
18 media.**

19 Q. And all that was in that sealed envelope, which
20 had been a virtual time capsule since 1987, was the
21 initial Offense Report on the day of the murder and
22 Michael Morton's consent for his home to be searched.

23 **A. That's clearly not complete.**

24 Q. Do you recall that, sir?

25 **A. I don't recall that, but I take you at your**

1 **word when you tell me.**

2 Q. I don't think there's any dispute about that by
3 anybody, in the documents that are on file.

4 If that's true, that's inconsistent with your
5 reading of the transcript, pretrial, that we just
6 discussed.

7 **A. Yes, because it's not -- it's not complete.**

8 **It doesn't have all Wood's reports,
9 supplements, notes. It doesn't have that. Yes.**

10 Q. All right. Let's talk about the motion for new
11 trial.

12 Did you review that when you were opposing --

13 **A. I don't think I did. It's possible. I don't
14 believe I did, though.**

15 **(Exhibit No. 15 was marked for
16 identification.)**

17 Q. (BY MR. RALEY) Let's look at this together.

18 **A. Okay.**

19 Q. On the first page, last full paragraph, it
20 says --

21 Let's go up higher. Second paragraph.

22 **A. Okay.**

23 Q. "There is a concern by the defense that the
24 Court did not" -- strike that.

25 There's a reference in the second full

1 paragraph to the "Offense Reports and the Supplemental
2 Offense Reports to Sergeant Don Wood, the chief
3 investigator on the case, who was not called by the
4 prosecution at trial."

5 Do you see that?

6 **A. I do.**

7 Q. And the motion for new trial says, "These
8 reports and Supplemental Offense Reports were the ones
9 which the Court indicated it had reviewed the weekend
10 before the commencement of trial on February 9th, 1987."

11 Do you see that, sir?

12 **A. I do.**

13 Q. Then the next paragraph reads as follows,
14 "During the conversation with the jury, after the trial
15 of this case was concluded on Tuesday, February 17th,
16 1987, Mr. Mike Davis, one of the prosecutors told the
17 jury that Sergeant Wood's reports were sizable. (He
18 held up his hand and indicated about one inch between
19 his fingers.) And that if the defense had gotten them,
20 we would have been able 'to raise even more doubt than
21 we did.'" "We" being the defense.

22 Do you see that, sir?

23 **A. I do.**

24 Q. The motion goes on to state "It is believed
25 that, from further remarks made in the jury room, that

1 the reports contain leads concerning other unusual
2 happenings or strange persons in the neighborhood,
3 which, if disclosed to the defense, would have been
4 relevant before the jury on the issue of whether or not
5 the defendant committed this crime."

6 Do you see that, sir?

7 **A. Yes.**

8 Q. It also says, "This type of information would
9 have led to further admissible evidence, tending to
10 indicate that the defendant did not commit this
11 offense."

12 **A. Yes.**

13 Q. And this motion requests that immediate steps
14 be taken to preserve this evidence, to prevent them from
15 being destroyed or removed, and requesting a date for a
16 hearing on a motion for new trial, to determine if
17 there's been a violation of the Code of Criminal
18 Procedure.

19 Do you see that, sir?

20 **A. Yes.**

21 Q. Okay. You've been a prosecutor, and now you're
22 a judge.

23 If a prosecutor saw a motion like this filed
24 from a defense, would the prosecutor have an affirmative
25 duty --

1 **MR. RALEY: Off the record one second.**
2 **(Recess from 3:52 p.m. to 4:09 p.m.)**

3 Q. (BY MR. RALEY) We were talking about this
4 motion for new trial, and we've read quotes from it.

5 If you saw a motion like this filed against
6 someone you were supervising as a senior prosecutor, and
7 someone under your supervision came to you and said,
8 "Mr. Arnold, this motion has just been filed against me
9 on one of the cases I just tried," what would you say to
10 that lawyer?

11 **A. First of all, I would want to figure out what**
12 **this is about. I mean, was there something that wasn't**
13 **turned over? Let's talk about this and figure out what**
14 **this allegation has to do with, because if there was**
15 **evidence that should have been turned over that wasn't,**
16 **we need to make sure that it gets in the record. If the**
17 **Judge ordered it in the record, it needs to be in the**
18 **record to comply with the Judge's order, and just**
19 **because it's our duty.**

20 Q. So the first thing is to find out what the
21 facts are; right?

22 And the second thing is, if something in the
23 record needs to be corrected, correct it.

24 **A. Absolutely.**

25 Q. And that would be the legal duty of a

1 prosecutor in a case.

2 **A. Yes.**

3 Q. All right. Now, would that duty be somewhat of
4 a continuing duty? If a prosecutor later found out that
5 there was an error which led to the conviction of an
6 innocent man, would that prosecutor have a continuing
7 duty to correct that error later?

8 **A. Yes, I think the prosecutor would. If they**
9 **knew that there was something that --**
10 **Yes.**

11 Q. All right, sir.

12 And if the prosecutor -- I'm just asking
13 hypothetically now -- concealed exonerating material and
14 knew that he had done so and an innocent man was
15 convicted, that prosecutor would have a continuing duty
16 under the law to come clean with that information.

17 **A. Yes.**

18 Q. And that duty would never expire because an
19 innocent man would be in prison.

20 **A. You don't run out the clock. You don't run out**
21 **the clock. You still need to produce the evidence, at**
22 **any given time, yes.**

23 Q. Thank you, sir.

24 All right. You agree that this motion for new
25 trial, as written, should give a prosecutor some notice

1 that there is an issue about Sergeant Wood's reports and
2 whether they were produced?

3 **A. Yes.**

4 Q. And a prosecutor being given that notice should
5 find out what the facts are; and if a correction needs
6 to be made, make that correction.

7 **A. Yes.**

8 Q. And that would be a legal duty.

9 **A. Yes.**

10 Q. And a continuing duty.

11 **A. Yes.**

12 Q. All right. Now we go to the appellate record.

13 (Exhibit No. 16 was marked for
14 identification.)

15 Q. (BY MR. RALEY) And I'm just going to show you
16 a part of the brief of the appellant, sir.

17 **A. Okay.**

18 Q. We can look through it together.

19 **A. Okay.**

20 Q. You can see the Bates numbers at the bottom,
21 677 through 682, from the district attorney's file.

22 **A. Right.**

23 Q. In the middle of the first full paragraph on
24 what is page 64 of the appellant's brief, it says,
25 "Appellant is skeptical that this second supplemental

1 transcript even contains all that the Trial Court
2 ordered for in camera inspection."

3 Do you see that, sir?

4 **A. Yes.**

5 Q. And the reference is regarding the reports of
6 chief investigator, Sergeant Don Wood.

7 Do you see that, sir?

8 **A. Yes.**

9 Q. All right. Thank you.

10 The next page, which is page 65, in the middle
11 of that first full paragraph, do you see the reference
12 to Brady vs. Maryland?

13 **A. Yes.**

14 Q. And the due process of law?

15 **A. Yes.**

16 Q. And it says that there is a legal issue.

17 "Whether or not there is a reasonable
18 possibility that all of Sergeant Wood's reports were
19 turned over to Judge Lott for his review, if the Court
20 determines that there is a possibility that all the
21 reports were not turned over as ordered, the appeal
22 should be abated."

23 Do you see that, sir?

24 **A. Yes.**

25 Q. Do you agree that this document, like the

1 motion for new trial, raises an issue as to whether all
2 of Sergeant Wood's reports were turned over to
3 Judge Lott for his review, as ordered?

4 **A. Yes.**

5 Q. And would that raise the same duty that you
6 described regarding the motion for new trial to
7 investigate whether or not the Court's order had been
8 complied with and make any necessary corrections?

9 **A. Well, it never should have gotten to this
10 point.**

11 Q. But if it did, those duties would arise;
12 correct?

13 **A. Well, they are already there. The duties are
14 there. The stuff was supposed to be turned over no
15 later than the time of trial.**

16 **Clearly, it was brought -- the intention, from
17 the motion for new trial, that this might be an issue.**

18 **If the Judge ordered that certain things be
19 made part of a record, that's a continuing duty for
20 those things to be made part of the record.**

21 Q. And then, on the bottom of page 65, you see the
22 sentence that begins with, "At the evidentiary pretrial
23 hearing held on November 25th-26th, 1986, chief
24 investigator, Sergeant Wood, did not bring his reports
25 with him."

1 **A. I see that.**

2 Q. It says, further, "Sergeant Wood testified he
3 did not have a detailed memory of the events of the
4 investigation but that those details would be in his
5 reports."

6 Do you see that?

7 **A. Yes.**

8 Q. Next it says, "He testified that he had both
9 rough field notes that were handwritten and a more
10 polished version of the reports. He testified that his
11 reports (sic) were thorough and complete."

12 Do you see that, sir?

13 **A. His "notes," yes.**

14 Q. His notes. My apologies.

15 Later in the paragraph, it says, "The
16 prosecutor offered to make Sergeant Wood's notes
17 available to the Court for an in camera inspection, and
18 the Court so ordered. The Court then further ordered
19 that these notes" -- I'm sorry. Let me start again.

20 It states further down in the paragraph, "The
21 prosecutor offered to make Sergeant Wood's notes
22 available to the Court for an in camera inspection, and
23 the Court so ordered. The Court then further ordered
24 that these notes be sealed for purposes of appeal."

25 Do you see that, sir?

1 **A. Yes.**

2 Q. Then, on page 67, the second paragraph from the
3 bottom, you see a reference to the motion for new trial.

4 And then further down the page, a description
5 of Brady, and that Brady is rooted in the fundamental
6 fairness doctrine of the due-process clause of the
7 14th Amendment; correct?

8 **A. Right.**

9 Q. Then, at the top of page 68, it says, "The
10 defense was surprised when the prosecution did not call
11 to the stand the chief investigator in this case,
12 Sergeant Don Wood. We have reason to believe,
13 especially in light of Mr. Davis's remark to the jury
14 after the trial to the effect 'That if we'd gotten our
15 hands on those reports,' (at which time he indicated
16 with his thumb and forefinger about an inch,) 'we could
17 have raised even more doubt than we did; that these
18 reports contain important material evidence which has
19 been suppressed.'"

20 Do you see that sir?

21 **A. Yes.**

22 Q. Very clearly, this brief filed on behalf of
23 Michael Morton appealing his murder conviction raises
24 the issue that Sergeant Wood's investigative reports and
25 notes were not only not disclosed to the defense under

1 Brady, but were not disclosed to the Court for in camera
2 review pursuant to Court order; correct?

3 **A. Correct.**

4 Q. And this document would raise the same duties
5 of a prosecutor, which have you have described earlier,
6 regarding the motion for new trial.

7 **A. Well, the duties have been there all along.**

8 Q. The duties have been there all along.

9 And they never go away, do they, sir?

10 **A. I mean, if it wasn't turned over at trial,**
11 **whoever didn't turn them over should have turned them**
12 **over at any time.**

13 Q. And these are duties that never ever go away;
14 correct?

15 **A. No. That person should turn them over**
16 **whenever.**

17 Q. Okay. And I phrased the question poorly.

18 Is it true that these duties to determine what
19 the true facts are and make any necessary corrections
20 are duties that never go away?

21 **A. Right.**

22 Q. And they're legal duties?

23 **A. Right, because they -- whoever didn't put the**
24 **notes in the record should have put them in there at any**
25 **time.**

1 Q. All right, sir.

2 Even 20, 25 years later, if an innocent man has
3 been imprisoned because of a violation of Brady and/or a
4 violation of Court order, the prosecutor still has a
5 duty to take necessary steps to correct the record.

6 **A. I'm not sure about -- I'm not sure.**

7 Q. Well, you said that is something -- the clock
8 never runs out.

9 I want to make sure you understand my question.

10 **A. Right.**

11 Q. That is a continuing duty for a prosecutor.

12 **A. Let's go off the record a second.**

13 **MR. RALEY: Off the record.**

14 **(Recess from 4:21 p.m. to 4:23 p.m.)**

15 Q. (BY MR. RALEY) I want to make it very clear
16 for the record, Judge Arnold, what I'm asking you about.

17 **A. Okay.**

18 Q. And I apologize if I've not been clear.

19 **A. Okay.**

20 Q. I'm talking about the duty of the -- of a man
21 who prosecutes a trial for murder --

22 **A. Okay.**

23 Q. -- if he failed to disclose exculpatory
24 documents under Brady, and/or failed to disclose
25 complete investigative reports to the Court for in

1 camera review of whether they're Brady and an innocent
2 man is convicted, that prosecutor, from the time of
3 trial, has a continuing duty to correct the record.

4 **A. Yes.**

5 Q. And that is a duty that doesn't go away.

6 **A. It's really a moral duty and a legal duty.**

7 Q. It's moral. It's ethical.

8 But it's also legal, isn't it, sir?

9 **A. Yes.**

10 Q. Just like if someone reading the file years
11 later, to oppose a DNA test, if you had --

12 And I realize that this was not what you were
13 searching for, because you were searching for material
14 about the bandana.

15 **A. Right.**

16 Q. And you were not investigating the file for
17 Brady violations; correct?

18 **A. Right.**

19 Q. But if you were investigating the file for
20 Brady violations, and discovered Brady violations --

21 **A. I'm going to bring it out.**

22 Q. You would have a duty to bring it out.

23 **A. Absolutely.**

24 **You know what, I would have a duty, if it**
25 **weren't -- even I weren't --**

1 **If I knew that the evidence had not been**
2 **disclosed and I figured that out, I would have a duty to**
3 **come forward and explain that.**

4 Q. And that's a duty that doesn't go away, either.

5 **A. I think that's just justice, for justice sake.**

6 Q. Yes, sir.

7 That's what we're supposed to be seeking.

8 **A. Absolutely.**

9 Q. And a prosecutor has a duty to justice;
10 correct?

11 **A. Yes.**

12 Q. All right. Now, there's another thing I wanted
13 to ask you about.

14 Well, before we get there -- try to take it in
15 order.

16 (Exhibit No. 17 was marked for
17 identification.)

18 Q. (BY MR. RALEY) I'm going to hand you,
19 Judge Arnold, Exhibit No. 17 to your deposition.

20 Okay. This is the opinion of the Court of
21 Appeals of Texas, Austin, in 1988, affirming Michael
22 Morton's conviction.

23 Do you see that, sir?

24 **A. I do.**

25 Q. All right. Now, if we look at the

1 next-to-the-last page of the document, bottom right-hand
2 corner, do you see the words "Brady material"?

3 **A. Yes.**

4 Q. The opinion states, "In his sixth point, Morton
5 claims the State withheld exculpatory material in
6 violation of his right to due process." And then it
7 cites Brady vs. Maryland.

8 Did you see that, sir?

9 **A. Yes.**

10 Q. The opinion states, "The material Morton
11 complains about is the field notes of the chief
12 investigator, Sergeant Wood. The Trial Court inspected,
13 sealed, and ruled that the notes contained no Brady
14 material. After examining the notes, we have determined
15 that the Trial Court was correct, they contained no
16 exculpatory material."

17 Do you see that, sir?

18 **A. I do.**

19 Q. The world now knows that all that was reviewed
20 by Judge Lott and by the Court of Appeals was the
21 initial investigation report the day of the murder and a
22 document, which is Michael Morton's consent for his home
23 to be searched, also the day of the murder.

24 You've read about that in the newspapers.

25 **A. I've not read that. I mean, I'll take your**

1 **representation, yeah.**

2 Q. I represent to you that that's correct and
3 those documents are on file at the courthouse and nobody
4 has ever disputed it.

5 **A. Right.**

6 Q. So since that is all that was submitted under
7 seal, there's no surprise that both Judge Lott and the
8 Court of Appeals ruled that they were not Brady
9 material; correct?

10 **A. Correct.**

11 Q. The order goes on to say, "Morton also
12 complains that there is a possibility Sergeant Wood did
13 not turn over all his notes. According to Morton, the
14 sheaf of notes appeared thicker at earlier hearing than
15 when finally produced for the Court.

16 "However, there is no evidence in the record to
17 support this contention; because we have nothing more to
18 conclude than a mere possibility raised by Morton, we
19 reject this complaint."

20 Do you see that, sir?

21 **A. Yes.**

22 Q. Appellate courts have to make decisions based
23 on the record, don't they, sir?

24 **A. Yes. They have -- just as I was going through
25 the file -- or not the file, but the record -- to**

1 **evaluate the claim in this case, an appellate court only
2 makes its decision on the record.**

3 Q. They're bound by the record.

4 **A. Yes.**

5 Q. But, clearly, these lines from the Court of
6 Appeals' opinion reference the same issue you've seen in
7 the motion for new trial and in the appellant brief,
8 that perhaps all of the documents of Sergeant Wood were
9 not submitted to the Court for in camera review.

10 **A. I believe what you're saying is the finding of
11 the Court of Appeals that there was no Brady material
12 was made in the darkness because they didn't have all
13 the material to review.**

14 Q. Right. Right.

15 And what they've noted in that last bit about,
16 "We don't have anything in the record to conclude that
17 documents were not turned over," means that they're
18 bound by that record.

19 **A. Right.**

20 Q. But a prosecutor reading this would have the
21 same duties you described, regarding a reading of the
22 motion for new trial and the appellant brief, to
23 investigate what the facts are about the document
24 production and make any necessary correction.

25 I'm talking, of course, about the prosecutor at

1 trial.

2 You want me to rephrase the question?

3 **A. No. I think -- I understand what you're
4 saying; that is that anybody -- the stuff should have
5 been turned over at trial. The stuff should have been
6 included in the record.**

7 **At this point, you're right. They still have a
8 continuing duty to turn it over, even if they haven't at
9 this point.**

10 Q. Got it.

11 **A. Yeah.**

12 Q. And that's a duty that continues forward. The
13 clock does not run out, as you said.

14 **A. Right.**

15 **When I said the clock does not run out, this is
16 not a, I mean --**

17 Q. I'm talking about for that man or woman, that
18 prosecutor.

19 **A. Right.**

20 **The person that had the duty to begin with, the
21 idea isn't that you just somehow get past the trial and
22 then the person is convicted and it all goes away.**

23 **I mean, you had a duty at the time of trial
24 that never expires. Otherwise, we have situations where
25 people are wrongfully convicted based on an incomplete**

1 **picture; and an incomplete picture can be completed at**
2 **any time by the person who has the information.**

3 Q. And that continuing duty is a legal duty by the
4 prosecutor at the time of trial.

5 **A. That's my opinion, that it's a legal duty.**

6 Q. All right. Let me ask you about -- well,
7 before we do that, I have some documents to put in that
8 we didn't have copies of earlier.

9 **A. All right.**

10 **(Exhibit Nos. 1 and 2 and 3 were marked**
11 **for identification.)**

12 **MR. RALEY: So I'm going to mark, as**
13 **Exhibit 1, the cover letter of Mr. Anderson's book**
14 **Crime in Texas, the 1997 edition, and pages 42 and 43.**

15 **All right. That will be Exhibit No. 1.**

16 **Exhibit No. 2 is pages 27 and 28 of**
17 **Mr. Anderson's book.**

18 **And Exhibit 3 is pages 13 and 14 of**
19 **Mr. Anderson's book.**

20 **(Exhibit No. 18 was marked for**
21 **identification.)**

22 Q. (BY MR. RALEY) I'm going to hand you
23 Exhibit 18, sir, to your deposition.

24 Is this your handwriting?

25 **A. Yes.**

1 Q. And are these notes you made when you were
2 reviewing and analyzing the Morton file?

3 **A. They appear -- definitely, they are -- some of**
4 **them are notes I made when I was reviewing the file.**
5 **They appear to be a summary of some sort. There are**
6 **some thoughts and impressions -- I'm not sure when I**
7 **made them, but they are in my handwriting.**

8 Q. Okay. I'm trying to read the writing in the
9 left margin.

10 We're in the middle of a description of the
11 bandana with the blood on it; right?

12 **A. Correct.**

13 Q. And you state that it was recovered from the
14 construction site behind the victim's house; correct?

15 **A. Uh-huh.**

16 Q. Okay. What is the first sentence you say?
17 It's looks like you have four bullet points there, maybe
18 more.

19 **A. "Only victim's blood. Murderer dropped it or**
20 **disposed of it."**

21 Q. Okay. Keep reading.

22 **A. "Unknown blood. Construction worker cut**
23 **himself and discarded the bandana."**

24 Q. Okay. Next.

25 **A. "Victim's and defendant's blood. Defendant is**

1 **the murderer."**

2 Q. Okay. Next.

3 **A. "The victim and an unknown. Defendant is not**
4 **the murderer."**

5 Q. All right. So one of the possibilities of
6 analysis is that the bandana contains the victim's
7 blood, Christine Morton's blood, and DNA from an unknown
8 person --

9 **A. Right.**

10 Q. -- then Michael Morton is not the murderer,
11 under this analysis.

12 **A. Yes, appears that way.**

13 Q. Okay. So that was at least one of the
14 possibilities you were considering.

15 **A. Right.**

16 **And I'm not sure when I wrote this. I know**
17 **that this may have just been when I initially went**
18 **through. You know, I'd like to say that I was -- I**
19 **mean, I can't --**

20 **I think I know where you're coming from, here.**
21 **I can't -- I can't say that I was -- I'd love to say**
22 **that I was with him all the way and that I thought that,**
23 **you know -- I can't say that, because I don't remember**
24 **that. I mean, I know that --**

25 **You know, I was told that our position on**

1 **the -- was to fight the bandana. I did it. I believed**
2 **the reasons were legally justifiable at that time. I no**
3 **longer believe they were; not only because, obviously,**
4 **this was the result and he was exonerated, but also**
5 **because I'm no longer an advocate. I mean, I'm a judge**
6 **now.**

7 **And so -- but I'd like to say, yeah, I was in**
8 **your corner the whole time; but just -- I can't say**
9 **that.**

10 Q. Well, I just want to try to figure this all
11 out.

12 You say you were told to fight the bandana.

13 Who told you that?

14 **A. John Bradley.**

15 Q. And did he tell you why?

16 **A. Here's what I recall.**

17 **I remember after I completed my review of the**
18 **record, I went and talked to John, explained my summary**
19 **of the record evidence, my understanding of the law.**

20 **In July 2005, he invited you and Ms. Morrison,**
21 **Nina Morrison, to come to his office to talk about how**
22 **to handle the motion.**

23 Q. And this is where he offered to allow the
24 testing of -- the hair in the bed to be tested.

25 **A. Right.**

1 **He made an offer of sorts, under the terms of**
 2 **which, as I recall, the parties would agree for one of**
 3 **the items, the hair that was in her hand, I believe, to**
 4 **be tested.**

5 Q. Yes, the hair that was in --

6 **A. Recovered from hand to be tested, analyzed; and**
 7 **pending the results of that testing and analysis, the**
 8 **remaining requests would be held in abeyance, put off**
 9 **until the results of that testing came back.**

10 Q. And I've shared with you that my memory of the
 11 conversation is different.

12 **A. I understand.**

13 Q. My memory of the conversation is he offered to
 14 have the hair in Christine's hand, and only that hair,
 15 tested, and nothing else ever tested.

16 And that was why we refused. And I shared that
 17 with you previously.

18 **A. Yes.**

19 **But my memory is that he was not asking to**
 20 **waive those requests, but to just put them off.**

21 Q. I have a pretty vivid memory that we were not
 22 given the opportunity of any other testing.

23 Regardless, it wasn't in writing.

24 **A. No. It was oral.**

25 Q. And I also remembered --

1 **don't know. But, yeah.**

2 Q. Well, I'm sure that I wouldn't have gone
 3 through these other possibilities --

4 **A. No. No. No. Right.**

5 Q. At any rate, as it turns out, the position
 6 taken in the original motion for DNA testing in February
 7 2005, and argued since then before Judge Stubblefield,
 8 before the Court of Appeals, that the bloody bandana may
 9 contain Christine's blood and the DNA of someone who is
 10 not Michael Morton is exactly what happened.

11 **A. That is exactly what happened.**

12 Q. And our further proposition that the DNA that
 13 is found may match a known offender through the data
 14 banks, is also exactly what happened.

15 **A. That's exactly what happened.**

16 Q. So when you say you were told to fight the
 17 bandana, was that discussion after this conference with
 18 Mr. Bradley where Nina Morrison and I came to meet with
 19 him?

20 **A. It was almost immediately after it. It wasn't**
 21 **a discussion.**

22 Q. Okay. What do you recall about that?

23 **A. As soon as you left, or very shortly**
 24 **thereafter, he either told me or strongly implied that**
 25 **we were going to fight all the items tested.**

1 Do you recall that I shared with Mr. Bradley
 2 that it would not be a big deal if it was Michael's hair
 3 on the body, even in Christine's hand, because he slept
 4 on that bed and his hair was probably all over the bed?

5 **A. I don't recall.**

6 **All I recall is you rejected the offer.**

7 Q. Of course, it would be a big deal if it was
 8 someone else's hair.

9 Do you agree about that?

10 **A. I just recall you rejecting the offer. That's**
 11 **all I recall.**

12 Q. And you recall that we wanted the bandana
 13 tested?

14 **A. You wanted all the items tested.**

15 Q. And you recall that in March of 2008, in the
 16 only hearing we had before Judge Stubblefield, I
 17 contended that that bandana could have the blood of
 18 Christine Morton and also the DNA of someone who is not
 19 Michael Morton?

20 Do you recall me making that argument?

21 **A. I don't remember that. I mean, I'll take you**
 22 **at your word, but I don't remember.**

23 Q. And I think the transcript is on file at the
 24 Court; if not, it will be.

25 **A. That might have been when I wrote the note. I**

1 Q. Fight all the items?

2 **A. Right.**

3 Q. Including the bandana?

4 **A. Well, everything.**

5 Q. And did he say why?

6 **A. I don't remember him saying why.**

7 Q. Was the implication that because we didn't
 8 swing a deal with him to test the hair only, that he
 9 wanted to fight on everything?

10 **A. That was the clear implication.**

11 Q. And so you worked under his supervision, and
 12 you started building a case to fight against the
 13 testing.

14 **A. Well, I drafted a response to the motion.**

15 Q. Right.

16 And after two trips to the Court of Appeals,
 17 first to get an order, and second to reverse the order,
 18 finally, the testing was allowed.

19 **A. Yes.**

20 Q. When you were fighting the testing of the
 21 bandana, did you have qualms about it?

22 **A. You know, honestly, I mean, this would have**
 23 **been so much easier for me, personally, if we had just**
 24 **agreed.**

25 **I thought that our positions were, at the time,**

1 **legally justifiable. I don't think that any longer.**
 2 **Part of that is because, obviously, the result that's**
 3 **come about; but also because I'm no longer an advocate.**
 4 **I don't have to take an advocate's position here. I can**
 5 **see it as a judge would see it, which is --**

6 **I mean, I don't -- at the time, I thought they**
 7 **were legally justifiable reasons. And I was told the**
 8 **position we were taking, and that's what I did.**

9 Q. Do you recall that I told Mr. Bradley in the
 10 meeting, and also Judge Stubblefield in the hearing,
 11 that I come from a law enforcement family, that my
 12 father is a retired prosecutor and that my brother is
 13 currently a prosecutor?

14 Do you recall that?

15 **A. That sounds familiar. I remember you telling**
 16 **me that the other day.**

17 Q. And do you recall that I said I simply can't
 18 understand why anyone would oppose a simple test that
 19 would be free to the State that could only reveal the
 20 truth?

21 **A. That sounds like something you would have said.**

22 Q. The Innocence Project agreed to pay for the
 23 cost of the testing of the bloody bandana.

24 **A. That's correct.**

25 Q. But instead of agreeing to that test, the State

1 chose to spend tremendous resources fighting against a
 2 test that can only reveal the truth.

3 **A. There was a response which contested testing of**
 4 **all the items; and then there was an appeal in which we**
 5 **defended the trial Court's ruling on the bandana, the**
 6 **fingerprint, and the McKinney.**

7 **So, yes, it was fought from 2005, late 2005,**
 8 **through the appellate process, which ended in 2010.**

9 Q. And the motion was actually filed in February
 10 2005; correct?

11 **A. Right.**

12 **But I didn't know which way we were going on it**
 13 **until July of 2005.**

14 Q. Well, you requested permission for a stay so
 15 that you could have time to review the file to prepare a
 16 response.

17 **A. Correct.**

18 Q. And so you didn't really respond to the motion
 19 for several months after it was filed.

20 **A. No, we didn't.**

21 Q. Okay. So you say you were told to fight the
 22 bandana testing, and now you no longer believe that the
 23 position was valid --

24 **A. Well, I don't think -- not that it was wasn't**
 25 **valid. I think they were legal positions.**

1 **I just think, in light of everything that's**
 2 **come out, we took the wrong position.**

3 Q. Because of the result?

4 **A. No, because -- understand, I am a judge now.**
 5 **I'm not an advocate. I'm no longer employed by somebody**
 6 **and doing what they tell me to do, and so I have the**
 7 **freedom now of evaluating this more objectively. But**
 8 **also, obviously, given the result.**

9 Q. Well, if you had the freedom then to do what
 10 you wanted to do and what you thought was the right
 11 thing to do, would you still oppose the bandana testing?

12 **A. You know, I'd love to say that I would have**
 13 **not. I don't know. I was not the policy maker.**

14 **I wish I could say -- I just -- I can't -- it**
 15 **would be so self-serving --**

16 Q. How about now, if you were a prosecutor today?

17 **A. Well, I think the clear import of this case is**
 18 **to unless the claim is just ridiculous, don't oppose the**
 19 **request for testing.**

20 Q. For example, is there any doubt whatsoever that
 21 if the murder had happened this summer, the bandana
 22 would be tested as part of law enforcement's efforts to
 23 try to find the murderer?

24 **A. I think there's no question it would be.**

25 Q. And since that's true, then it makes sense to

1 simply agree to a test of the bandana when it's
 2 requested, since it would have been tested today, with
 3 DNA available.

4 **A. I don't know if I follow that.**

5 Q. Let me be very clear.

6 The DNA testing was not available in 1987.

7 **A. Right.**

8 Q. So law enforcements couldn't test it to try to
 9 find the murderer.

10 **A. Right.**

11 Q. But today, they would.

12 **A. Right.**

13 Q. So it just makes sense, with these old cases
 14 where DNA was not available at the time of the murder,
 15 to go ahead and test the DNA evidence from the murder
 16 scene or near the murder scene, particularly in a
 17 circumstantial case like this one.

18 **A. Well, I guess if there's -- I guess if**
 19 **there's --**

20 **I think it's clear that the results of this**
 21 **case has impacted my thought processes about DNA**
 22 **testing.**

23 **And, understand that I was in a position where**
 24 **I was an advocate and I was taking -- I was carrying out**
 25 **the policy of my supervisor. So I -- what my personal**

1 **opinion was, I don't even -- I couldn't even say.**

2 Q. Are you aware of the Sworn Statement of
3 Dr. Bayardo that's been filed recently?

4 **A. You told me he had filed a statement. I'm not
5 sure.**

6 Q. Let me just ask you this: When you were
7 reading the trial transcript, did you see that
8 Dr. Bayardo testified that his original time of death
9 could have been as late as 6:00 in the morning?

10 **A. I don't remember that.**

11 Q. And if that's true, that would be perfectly
12 consistent with the murderer watching Michael leave at
13 5:30 in the morning and then coming in and killing
14 Christine.

15 **A. I don't remember the times of him arriving.**

16 Q. Do you recall that Dr. Bayardo testified at
17 trial that his opinion regarding the time of death was
18 not a scientific opinion?

19 **A. I don't remember that.**

20 Q. And do you recall --

21 Well, you're not saying it didn't happen --

22 **A. No, I just don't remember what the record said.**

23 Q. And if the record says it, you do not dispute
24 it?

25 **A. No.**

1 Q. And you don't recall that Dr. Bayardo said
2 that, at trial, there is no scientifically precise way
3 to determine the time of death from stomach contents
4 alone?

5 Do you recall that?

6 **A. I don't remember that.**

7 Q. Now, as a judge, if an expert in your court
8 said, "My opinion is not a scientific opinion and is not
9 scientifically precise," you, as the gatekeeper of
10 evidence, would have great hesitation about whether to
11 allow that evidence in front of the jury.

12 **A. Yes.**

13 Q. In fact, you would probably not allow that
14 evidence, because the expert admitted it was not
15 scientific.

16 **A. Right.**

17 Q. Correct?

18 **A. Right.**

19 **If it's not scientifically valid, then it's not
20 coming in.**

21 Q. Did you read where, on closing argument,
22 despite Dr. Bayardo's admissions which I've just shared
23 with you, Mr. Anderson argued multiple times medical
24 science proves Michael Morton is the killer because of
25 the stomach contents analysis?

1 **A. I don't remember him saying that; but if he
2 said that in argument, then that's what he said.**

3 Q. And if he did, that would be completely
4 inconsistent with the admissions that I just shared with
5 you.

6 **A. Right.**

7 **If somebody says, "It's not my scientific
8 opinion," then an argument that it was would not be
9 consistent.**

10 **MR. RALEY: Off the record.**

11 **(Recess from 4:51 p.m. to 4:59 p.m.)**

12 Q. (BY MR. RALEY) A couple of things we've talked
13 about, Judge Arnold, but I want to make sure I
14 understand them clearly, for the record.

15 **A. All right.**

16 Q. When you were reviewing the file as part of
17 your job as an assistant district attorney, is it
18 correct that you were not reviewing for any sort of
19 Brady issues?

20 **A. No.**

21 **And I want to make it clear that the nature of
22 appellate -- as an appellate attorney --**

23 Q. You said "no." I think you meant to say "yes."
24 Let me ask the question more clearly.

25 **A. I'm sorry.**

1 Q. Were you, when you were reviewing the file,
2 investigating it for Brady violations?

3 **A. No.**

4 Q. Describe what you're talking about.

5 **A. So, understand that as a prosecutor, as a trial
6 prosecutor, you're on offense. You're playing offense.
7 You're trying to -- you've alleged somebody has
8 committed a crime; and you are, within the parameters of
9 the law and due process and the Constitution, putting on
10 evidence to prove they're guilty of that crime. You're
11 trying to take away somebody's freedom, based on a crime
12 they've committed.**

13 Q. But you also have a higher duty --

14 **A. Oh, absolutely.**

15 Q. -- while you're advocating.

16 **A. Absolutely, but you're on offense.**

17 Q. Yeah.

18 But I want to know what you were doing when you
19 were reviewing the file in order to prepare your
20 response to the motion for DNA testing.

21 **A. I'm getting there.**

22 Q. Did that involve Brady or not?

23 **A. No.**

24 Q. Okay.

25 **A. I'm playing defense; and so, as an appellate**

1 prosecutor, whether it be a direct appeal or a writ or a
2 motion for DNA testing or what-have-you, I'm taking the
3 allegation and I'm reading the record to evaluate the
4 allegation, and depending upon the policy decision made
5 defending the conviction, based on that.

6 So, in other words, if I'm dealing with a
7 sufficiency of the evidence claim, I'm not concerned
8 with suppression issues, whether or not somebody's
9 4th Amendment rights were violated, Brady issues, any
10 issue -- voir dire error. I'm not concerned with
11 anything other than the claim before me.

12 So, in this case, the sole parameters or limits
13 of what I was dealing with was the request for DNA
14 testing.

15 Q. Okay. So that was your focus?

16 A. Right.

17 And that explains why I didn't -- when I went
18 to the file looking for the bandana or evidence related
19 to the bandana, I wasn't looking for any evidence of any
20 Brady violations and didn't notice the reports you
21 showed me earlier.

22 Q. And if you had stumbled along and found Brady
23 violations, even though you weren't looking for them,
24 you would have revealed them.

25 A. Right.

1 Q. That's part of that continuing duty we
2 discussed.

3 A. Sure.

4 Q. All right. Now, were you under the impression
5 that John Bradley had also read the trial transcript?

6 A. I was under the impression he either read it or
7 read portions of it, based on conversations we had
8 somewhere along the way.

9 Q. So that we're clear, was he the ultimate
10 decisionmaker on whether or not to oppose DNA testing?

11 A. Absolutely. Yes.

12 Q. Okay. And did you trust his judgments?

13 A. Yes.

14 He was not only my boss and the elected
15 official for whom I was working, but he has a
16 considerable amount of experience in trial and appellate
17 law.

18 I had never really handled a DNA petition
19 before, of this magnitude; and so I was largely trusting
20 his judgment as to the merits of the petition.

21 Q. All right. But you didn't have any ultimate
22 say in whether or not the DNA testing would be opposed.

23 A. It was his -- he made the call. After he made
24 the call after the conversation I relayed to you about
25 when you and Ms. Morrison came down, there were no

1 further discussion about the merits of the petition.

2 I knew, at that point and thereafter, we were
3 going to be fighting the petition as to every item in
4 the petition.

5 Q. All right. Now, you described to me off the
6 record that you actually had to search for the hair that
7 was on the bandana and found it.

8 Could you describe that.

9 A. Yes.

10 After the Court of Appeals issued their
11 decision and we -- John had decided -- Bradley had
12 decided not to seek a petition for discretionary review
13 and the Trial Court ordered the State to forward the
14 bandana to the lab for testing, the Trial Court also
15 ordered that we submit for testing a hair that had been
16 attached to the bandana when it was initially recovered.

17 Per my instruction, our DA investigator,
18 Carl Leihardt, sent the bandana for the lab for testing.
19 I also instructed him to locate the hair and send that
20 to the lab for testing, as well.

21 He went to the -- he told me later he went to
22 the Williamson County Sheriff's Office, the evidence
23 room; and with his combined efforts with those of
24 Jennifer Smith, the evidence technician, attempted to
25 find a hair in the evidence. They could not locate it.

1 That hair caused me a great deal of
2 consternation, trying to find it. I called the lab, the
3 DPS lab, to see if they had it, because they, at some
4 point, had large amounts of evidence connected to this
5 case. I went to Judge Anderson to ask him if he knew
6 anything about it. He said he didn't. I did everything
7 I could think of to do to find it.

8 Ultimately, I went to the sheriff's office,
9 myself; and, in the presence of Carl Leihardt and
10 Jennifer Smith, searched for the hair in evidence.

11 After a considerable amount of time, I did
12 manage to locate it. It was in a folder that was not
13 labeled. I knew it was the hair, because it had the lab
14 number on it that the guy at DPS had told me it would
15 have.

16 But it was in a folder that was labeled -- I
17 can't remember what it was labeled, but it didn't
18 indicate on the outside the folder that the hair
19 recovered in relation to the bandana would be found
20 within it.

21 But I did locate it in the folder, the wrong
22 folder. I gave it to Investigator Leihardt. He
23 submitted it to the crime lab.

24 My understanding is that hair ultimately turned
25 out to be the hair of Christine Morton.

1 Q. And it was confirmed by the lab number?

2 **A. I called -- it's in my notes. This is all**
3 **reflected in my notes.**

4 **All right. Juan Rojas at the DPS crime lab**
5 **told me he did not have it -- the crime lab did not have**
6 **it. He gave me the numbering on it. It was supposed to**
7 **be labeled "Q1, Submission 2, Exhibit 4."**

8 **And he said they more than likely returned it**
9 **to the sheriff's office in Williamson County.**

10 **So I went to the sheriff's office in Williamson**
11 **County, looked through multiple places where the**
12 **evidence was kept. All the evidence was in a box or**
13 **two. I looked through multiple folders, ultimately**
14 **located a hair inside a little folder with "Q1,**
15 **Submission 2, Exhibit 4" on it.**

16 Q. Okay. So we have a matching --

17 **A. That's how I knew it was her -- it was the hair**
18 **that was found in relation to the bandana.**

19 Q. Good.

20 So the bandana was, ultimately, by testing,
21 found to contain the blood of Christine Morton and one
22 hair of Christine Morton.

23 **A. That was the hair.**

24 Q. The testing results also confirmed the DNA,
25 intermingled with Christine's DNA, of a man who was not

1 Michael Morton, who was, instead, Mark Alan Norwood.

2 **A. That's my understanding.**

3 Q. All right, sir.

4 **A. I just want to make it clear, my efforts to**
5 **find the hair.**

6 Q. Thank you, sir. I appreciate that.

7 Okay. We have been through quite a bit
8 together regarding Sergeant Wood's reports, the
9 pretrial. What else?

10 **MR. RALEY: Off the record.**

11 **(Recess from 5:06 p.m. to 5:07 p.m.)**

12 Q. (BY MR. RALEY) We talked earlier about a duty
13 that a trial prosecutor has regarding concealed
14 evidence, whether in violation of Brady or possibly in
15 violation of Court order to disclose in camera; but that
16 trial prosecutor has a continuing duty to correct that
17 record when it leads to the conviction of an innocent
18 man.

19 **A. Yes, and I do agree with that.**

20 Q. Judge Arnold --

21 **A. Yes.**

22 Q. -- my understanding is you were reviewing the
23 Morton matter expressly and exclusively to determine
24 whether the motion for DNA evidence should be opposed;
25 and if so, how it should be opposed; correct?

1 **A. That was the exclusive length to which I was**
2 **reviewing the record; correct.**

3 Q. You were not, as I understand it, reviewing the
4 record regarding a possible Brady violation; correct?

5 **A. That's correct.**

6 Q. If you had seen a Brady violation, even though
7 you weren't looking for it, you would have called it to
8 everyone's attention, including Michael Morton's
9 counsel.

10 **A. Right.**

11 **If I saw something that I knew had not been**
12 **turned over at trial, then I would have called it -- I**
13 **would have brought it to John Bradley, is what I would**
14 **have done.**

15 Q. But you were not focusing on that as part of
16 your review?

17 **A. No. No.**

18 Q. All right.

19 (Recess from 5:09 p.m. to 5:11 p.m.)

20 (Exhibit No. 19 was marked for
21 identification.)

22 Q. (BY MR. RALEY) Exhibit No. 19, sir, is several
23 pages which pertain -- which contains within them
24 letters from Mr. Bradley to the parole board.

25 And there are actually two letters. One is

1 dated September 6th, 2006; and the one is dated
2 October 19th, 2009.

3 Do you see those, sir?

4 **A. I do.**

5 Q. My question to you is: Did you have any role
6 in the preparation of these letters?

7 **A. No.**

8 Q. This was something Mr. Bradley did, personally?

9 **A. Right.**

10 **The only time that I ever drafted parole**
11 **letters for him, that I recall, was when it was a case**
12 **that I had tried.**

13 Q. I see, on the second page of the exhibit that
14 it says, "Michael Morton." Somebody has circled
15 "Michael Morton" and written, "To J.B." Then below, it
16 says, "Doug has file."

17 **A. Uh-huh.**

18 Q. What is that a reference --

19 **A. That would have been at some point during the**
20 **process, when, since I had the post-conviction -- since**
21 **I was handling the DNA request, under John Bradley's**
22 **direction, they would have imputed the file to me; and**
23 **so it's constructively or actually in my possession.**

24 Q. All right. At the end of the letter of
25 September 6th, 2006, the document concludes with the

1 line -- the letter, "Michael Morton has never accepted
2 responsibility for murdering his wife."

3 Do you see that, sir?

4 **A. I do.**

5 Q. Of course, if he's innocent, he would not
6 accept the responsibility for murdering his wife.

7 **A. No, he would not.**

8 Q. In the letter dated October 19th, 2009, the
9 second paragraph reads, "Ask Michael Morton if he's
10 accepted responsibility for the murder of his wife by
11 mercilessly beating her to death. If he tells you that
12 he now acknowledges that he committed that crime, please
13 notify me and I will reconsider my opposition to
14 parole."

15 Do you see that, sir?

16 **A. I do.**

17 Q. Are you aware, from my words to the media, the
18 day Michael was released, that he was told if he showed
19 remorse for his crime, that he would likely be paroled?

20 Do you recall that, sir?

21 **A. I don't remember your words to the media on the
22 day he was released.**

23 Q. Well, I'm representing to you that Michael was
24 told that if he showed remorse, he would be paroled and
25 that he said, "All I have left is my actual innocence;

1 and if I have to stay in prison the rest of my life, I'm
2 not giving that up."

3 That shows strength of character, doesn't it?

4 **A. Yes. It's very admirable for him to say that,
5 to risk what he risked, which was continued
6 incarceration for a crime he did not commit.**

7 **It's a very principled stand; and the fact that
8 it's clear now he didn't commit the crime, makes it even
9 more so.**

10 Q. Thank you.

11 On the first page of this exhibit, there is a
12 note that Michael's parole has been denied on the date
13 mentioned; and someone has written the word "victory"
14 there.

15 **A. I see that.**

16 Q. That someone within the office of the
17 Williamson County District Attorney felt that it was a
18 victory that Michael had been denied parole.

19 Do you see that?

20 **A. I do.**

21 Q. Do you recognize that handwriting, "victory"?

22 **A. No. It's not my handwriting. I do not
23 recognize whose it might be.**

24 Q. All right, sir.

25 Okay. One other issue.

1 We've been through a lot of information today
2 about Sergeant Wood's reports and field notes; correct?

3 **A. Yes.**

4 Q. We've been through -- we've talked about Brady.
5 We've been through the rulings of the Court and the
6 transcript of the trial and the statements on the record
7 of counsel; correct?

8 **A. Yes.**

9 Q. We've seen the motion for new trial, the
10 appellant briefing, and the opinion of the Court of
11 Appeals; correct?

12 **A. Yes.**

13 Q. Do you agree that the issue of whether
14 Sergeant Wood's complete reports and field notes were
15 disclosed was very much an issue at the time of trial?

16 **A. Yes.**

17 Q. All right. Do you recall Judge Anderson saying
18 anything to you, personally, about his strategy of not
19 calling certain law enforcement personnel to the stand
20 in order to avoid disclosing their reports?

21 **A. Yes.**

22 **Very recently, I remembered a conversation or a
23 statement he made to me many, many years ago.**

24 Q. What was that statement?

25 **A. Well, let me --**

1 **Can I explain the context and how I --**

2 Q. Tell me the context.

3 **A. -- why I thought that was significant.**

4 **I found out about the results on the bandana in
5 July; and in the month or two after that, I could not
6 understand -- I mean, knowing that I had played a role
7 in this case, I was interested in it -- why Mr. Morton's
8 attorneys weren't filing a writ to get him released from
9 prison based on the results of the testing.**

10 **It became fairly clear to me by, I want to say
11 September, when, from media outlets, I learned that
12 there was -- there were allegations that certain items
13 in the file had not been turned over.**

14 **So then I thought I understood why the writ
15 hadn't been immediately filed. I figured -- or I
16 reasoned that there was a second potential ground for
17 relief in addition to the actual innocence and that
18 Mr. Morton's attorneys were waiting to develop that
19 second ground before they filed their writ. That was my
20 belief based on what I was hearing and reading.**

21 **It also came to my attention that the materials
22 not disclosed were materials that Don Wood, who was an
23 investigator in the case, had not turned over.**

24 **I wasn't aware, consciously, up until that
25 point in time, who the investigating officer was. It**

1 wasn't something I was thinking about.

2 **It became clear to me, based on those**
3 **revelations, or reading about that, a conversation or**
4 **statement Judge Anderson made to me many years ago that**
5 **became relevant.**

6 **And that statement was something to the effect**
7 **that in cases he had prosecuted in the past, he had**
8 **deliberately, as a tactical decision, not called the**
9 **investigating officer to testify.**

10 Q. And what was the tactical reason why he did not
11 do so?

12 A. My understanding -- now, what he told me was he
13 had not called the investigating officer to testify
14 because by not calling the investigation officer to
15 testify, he did not have to turn over their notes and
16 reports, pursuant to a case called Gaskin.

17 Q. The Gaskin case requires the documents of a
18 witness who is testifying on behalf of the prosecution
19 to be turned over prior to the testimony?

20 A. No.

21 **It's following -- following the direct**
22 **examination -- it's usually a police officer. When that**
23 **officer -- it could be any witness. But once that**
24 **witness testifies, the opposing side is entitled to see**
25 **their notes and reports so they can cross-examine them**

1 **about any inconsistencies between their testimony and**
2 **the contents of the notes or reports.**

3 Q. And it's your understanding that
4 Judge Anderson, on more than one occasion, has not
5 called a chief investigating officer to testify at trial
6 so as -- so that he could avoid turning over the reports
7 of that officer?

8 A. I hadn't thought about that conversation in ten
9 years, after he told it to me, maybe -- not long after I
10 came to work at the office, back in, I want to say, '98
11 or '99.

12 **Based on the context of what I just recited,**
13 **that -- the memory of that conversation came back into**
14 **my mind; and that was the impression I was left with,**
15 **was that it was tactical decision to avoid turning over**
16 **notes and reports from that officer.**

17 Q. And that was what you took away from the
18 conversation.

19 A. At the time he told it to me, I didn't -- I
20 don't know what I thought about it. It was just
21 something strange or odd.

22 **But it became relevant to me, in my mind; and**
23 **the reason I remembered it was based on the chain of**
24 **events I've just described.**

25 Q. Of course, Gaskin doesn't take away the

1 Brady --

2 A. No.

3 Q. And Gaskin doesn't take away the duty to comply
4 with Court order?

5 A. No, not at all.

6 Q. So if there's a Brady duty, the law requires
7 compliance.

8 A. **They're independent. They're independent**
9 **things. Yes.**

10 Q. And if there is a Court order, the law requires
11 compliance.

12 A. Correct.

13 Q. But I want to return to this comment by
14 Judge Anderson that, as a prosecutor, strategically, he
15 would not call a chief investigator so as to not have to
16 disclose the reports and notes of that investigator,
17 which was what you took away from the conversation;
18 correct?

19 A. **At the time he made it, I didn't take anything**
20 **away other than that's what he's saying. I was -- you**
21 **know, I'd been in the office not long at all and --**

22 Q. That's pretty much what he said.

23 A. Right. Right.

24 Q. Okay. Now --

25 A. **It had no context at the time.**

1 Q. The context came this summer when you learned
2 about the allegations regarding the Sergeant Wood notes;
3 correct?

4 A. **Right, that those had not been turned over.**

5 Q. I want to represent to you that Sergeant Wood,
6 in his deposition, described himself as the chief
7 investigator in the case.

8 A. Okay.

9 Q. That he fully expected to testify, personally.

10 A. Right.

11 Q. That he was told two hours before trial, by
12 Sheriff Boutwell, that he, Sergeant Wood, would not
13 testify; all right?

14 Assume with me that Sergeant Wood was surprised
15 about that, because he thought, as chief investigator,
16 he would testify.

17 Assuming all of that in Sergeant Wood's
18 testimony, does the decision not to call Sergeant Wood
19 at trial sound consistent with what Judge Anderson told
20 you his tactic was as a prosecutor?

21 A. Yes. Yes.

22 **And understand, when he made the comment to me,**
23 **there were no specific case names mentioned.**

24 **But, yes, it does sound consistent.**

25 Q. It sounds to you that that's what happened in

1 the Morton case, that he chose not to call Sergeant Wood
2 because that would be an additional reason he would have
3 to disclose Sergeant Wood's notes and reports?

4 **A. I think that's clearly a fair inference.**

5 Q. And if he did so, he would be required, for an
6 additional reason besides Brady and Court order, to turn
7 over the transcript of the Rita Kirkpatrick interview
8 and the cashing of the check after the death of
9 Christine Morton and the fraudulent use of her credit
10 card after her death and the strange sightings of a van
11 in the neighborhood during the days prior to her death,
12 all of which were in the investigative file of
13 Sergeant Wood; correct?

14 **A. Yes. Those are his reports and notes. Yes.**

15 **MR. RALEY: Let's go off the record for a**
16 **second.**

17 **(Recess from 5:25 p.m. to 5:40 p.m.)**

18 Q. (BY MR. RALEY) Judge Arnold, it's been a long
19 afternoon. I may have missed some things.

20 Can I just ask you an open-ended question?

21 Is there anything that I haven't asked you that
22 might be useful to our understanding of this matter?

23 **A. Other than the matters we just spoke about a**
24 **few minutes ago, no, nothing I can think of.**

25 Q. I'll go through those with you.

1 locate the hair; is that correct?

2 **A. Yes. That's the only other conversation I**
3 **remember we had about this case.**

4 Q. If Mr. Bradley says that he used Judge Anderson
5 as a sounding board about what happened in 1987, you
6 would have no way to --

7 **A. No.**

8 Q. -- disagree with that?

9 **A. No.**

10 Q. Is it your understanding that Mr. Bradley and
11 Mr. Anderson talked about cases from time to time?

12 **A. That was -- yes, I believe -- that's my**
13 **understanding.**

14 Q. Did you participate in any meetings this summer
15 with Mr. Bradley and/or Mr. Anderson or other potential
16 witnesses in this matter?

17 **A. The only contact I had with any of those**
18 **parties after the results of the bandana came back was**
19 **John Bradley came into my office, I want to say in**
20 **September of this year, after the Brady claims had been**
21 **raised to ask me if I knew anything about those and had**
22 **talked to any of the people, the prosecutors or**
23 **investigators who had tried the case about those claims;**
24 **and my answer on both accounts was no.**

25 **I knew nothing about those claims. I knew**

1 **A. Okay.**

2 Q. First, you were not in contact with
3 Judge Anderson in any significant way during your work
4 on opposing the DNA testing; correct?

5 **A. No.**

6 **And the reason I wasn't is because, as I said**
7 **earlier, I wanted to confine my considerations and what**
8 **happened at trial to the record. I didn't go through**
9 **the file at that time. I didn't look at old news**
10 **reports. I didn't talk to Judge Anderson, because I**
11 **wanted to confine my impressions to what actually came**
12 **out of trial.**

13 Q. My understanding is you informed him of the
14 results of the Court of Appeals' decision.

15 **A. No.**

16 **I was in his office shortly after oral**
17 **argument; and I mentioned to him, unsolicited, of what**
18 **the questioning had been about during oral argument. It**
19 **was a brief conversation. I think I said something to**
20 **the effect, "They only questioned me about the McKinney**
21 **evidence and the fingerprint evidence"; and I don't**
22 **remember anything besides that.**

23 Q. Do you remember anything he said to you?

24 **A. No.**

25 Q. You also talked to him when you were trying to

1 **nothing about anything that those individuals had done**
2 **at trial.**

3 Q. I understand from your testimony, but I want to
4 make sure it's very clear for the record, you were not
5 involved in investigating any Brady claims during your
6 work on the Morton case; correct?

7 **A. No. No, I was not.**

8 Q. Is that correct?

9 **A. That's correct.**

10 Q. Your role was limited to briefing an opposition
11 to the motion for DNA testing.

12 **A. Yes.**

13 Q. And also participating in opposing our appeal
14 of the denial of that testing by Judge Stubblefield;
15 correct?

16 **A. Yes.**

17 Q. You're not here under subpoena today; is that
18 correct?

19 **A. I'm here voluntarily. Nobody has subpoenaed me**
20 **to come here.**

21 Q. And you drove over, voluntarily, from
22 Williamson County to Houston, to give your Sworn
23 Statement?

24 **A. Yes.**

25 Q. Why did you feel that that was important, sir?

1 **A. I think it shows my independence in this. I'm**
2 **not, at any part, involved with the other parties who**
3 **are being deposed or questioned.**

4 **I thought it was, you know, in a way, the least**
5 **I could do, with all the efforts you have put in on**
6 **behalf of your client, to save you the trouble of coming**
7 **over there.**

8 **And I wanted to come to you. I wanted to help**
9 **you out and to answer your questions and to shed some**
10 **insight as to how this man continued to be incarcerated**
11 **for a crime he didn't commit.**

12 Q. Did you testify truthfully today?

13 **A. Yes.**

14 Q. Did you understand my questions?

15 **A. Yes.**

16 Q. And have I been courteous to you?

17 **A. Yes.**

18 **MR. RALEY: I appreciate, very much,**
19 **Judge Arnold, your cooperation with our investigation of**
20 **this matter; and I have no further questions.**

21 **Thank you, sir.**

22 **Off the record.**

23 **(Recess from 5:46 p.m. to 5:46 p.m.)**

24 Q. (BY MR. RALEY) I've shared with you, in
25 response to your question off the record, Judge Arnold,

1 Q. And it's critically important for prosecutors
2 to follow the law of the land and Court order in doing
3 their jobs; correct?

4 **A. Yes.**

5 Q. Because if they don't, what happened to
6 Michael Morton could happen to other people.

7 **A. It's a scary thought, but yes.**

8 **MR. RALEY: That's all. Thank you.**

9 **THE WITNESS: Thanks, John.**

1 that we've just been interested in learning from you
2 whatever facts and background you have. We are not
3 investigating or accusing you of anything.

4 We're trying to figure out what happened that
5 led to the conviction of an innocent man and why steps
6 were not taken by those involved in his conviction to
7 remedy the situation.

8 And you understand that, don't you, sir?

9 **A. I appreciate you're saying that, and I**
10 **appreciate what you're doing.**

11 Q. As a former prosecutor and as a judge, why do
12 you say that? Why do you say you appreciate what I'm
13 doing?

14 **A. Because I think it's clear that a man, an**
15 **innocent man, spent years in prison for a crime he**
16 **didn't commit; and I think that there are --**

17 **No system of justice is perfect. We have a**
18 **great system in our society, but it depends upon how**
19 **individuals in that system act for it to function**
20 **properly.**

21 **And I think that your efforts to get to the**
22 **bottom of why the system went awry is important. It's**
23 **important for people to know. It's important for your**
24 **client. It's important for the public to know how this**
25 **went so wrong.**

1 **THE STATE OF TEXAS:**
2 **COUNTY OF _____:**

3
4 I, DAVID DOUGLAS ARNOLD, hereby certify that I
5 have read the foregoing transcript of my testimony given
6 in the foregoing numbered and styled case, and that same
7 is true and correct to the best of my knowledge and
8 belief.

9 I further certify that any and all corrections
10 have been made on a separate page and initialed by me.

11 This ____ day of _____, 2011.

12
13
14
15 _____
16 DAVID DOUGLAS ARNOLD

17
18 SWORN TO AND SUBSCRIBED BEFORE ME this
19 ____ day of _____, 2011.

20
21
22 _____
23 NOTARY PUBLIC

1 **THE STATE OF TEXAS:**
2 **COUNTY OF TRAVIS:**

3
4 I, CHERYL SAMPLEY MANN, a Certified Shorthand
5 Reporter, hereby certify that I reported the SWORN
6 STATEMENT of DAVID DOUGLAS ARNOLD, and that the
7 foregoing 148 pages contain and constitute a true and
8 correct transcript of my shorthand notes taken on the
9 17th day of November, 2011.

10

11 To which I certify on this the 12th day of
12 December, 2011.

13

14

15

16 CHERYL SAMPLEY MANN, CSR, RPR
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A				
abated 98:22	adjustment 21:8,11	137:12 141:2	73:16,18	approaching 28:2
abeyance 114:8	admirable 135:4	alleged 125:7	anybody 75:2 92:3	appropriate 55:10
able 32:4 93:20	admissible 85:8	allow 20:19 40:8	109:4	April 16:1 18:5,11
absolutely 13:7	94:9	91:11 113:23	apologies 100:14	area 46:25 47:3
28:14 35:3 40:10	admissions 123:22	123:11,13	apologize 103:18	65:5,12 66:22
40:16 57:5 70:13	124:4	allowed 16:14,15	appeal 8:7 11:24	67:15,17,19,22,24
75:4 95:24 104:23	admitted 33:17	16:23 117:18	22:3,12 23:7,9	68:6
105:8 125:14,16	34:12,20 123:14	allowing 16:22	34:8,9 37:3,23	argued 116:7
127:11	Adonis 64:25 65:2	Amanda 67:8	85:1 89:21 98:21	123:23
absurd 56:4	advice 9:17	Amendment 101:7	100:24 119:4	arguing 40:2
academic 6:18	advise 65:1	126:9	126:1 145:13	argument 37:7
accept 66:16 134:6	advisor 15:8	American-States...	appealed 8:15	39:15,18 115:20
accepted 134:1,10	advocate 9:25	53:14	22:10,15 37:21	123:21 124:2,8
access 11:3 16:20	113:5 118:3 120:5	amount 127:16	appealing 101:23	143:17,18
16:23 20:18,20	121:24	129:11	appeals 5:6,7 7:3	Arnold 1:3 2:3 4:2
27:23 68:24 89:22	advocate's 118:4	amounts 129:4	7:10,12,17,19 8:3	4:6,12,13,19 7:1
accomplice 74:1	advocating 125:15	analogize 81:14	8:16 16:3 18:20	49:14 53:12 64:3
80:25	affirmative 12:15	analogy 34:7	18:21,25 19:16	70:24 78:15 95:8
account 51:12 57:8	12:17 13:16 24:8	analysis 112:6,11	21:25 22:3,8,8,14	103:16 105:19
81:6	94:24	114:7 123:25	22:16,17,19,23	124:13 131:20
accounts 144:24	affirmed 22:16	analyze 34:13	36:23 37:4 38:1	142:18 146:19,25
accurate 24:22	38:4 91:3	63:12	38:10,12 89:20,22	149:4,15 150:6
accused 4:24 26:2	affirming 105:21	analyzed 114:6	91:3,11 105:21	arrest 53:17,19
28:13 51:13 81:24	afraid 28:23 29:2	analyzing 7:13 8:20	106:20 107:8	arrests 48:17
82:1 85:22 88:17	afternoon 142:19	11:25 111:2	108:6,11 116:8	arrival 21:24
accusing 147:3	agency 11:4	Anderson 18:6,11	117:16 128:10	arrived 9:11
achieved 17:1	ago 136:23 138:4	19:5,15 20:11	136:11 143:14	arriving 6:2 122:15
acknowledged	142:24	24:12 25:9,10,15	appear 55:9 80:19	Article 23:3
79:24	agree 24:16 28:24	26:1 29:5 30:5,20	111:3,5	Arts 6:12
acknowledges	28:25 29:4,14	31:6,12 78:4	Appearances 1:13	asked 43:19 44:1
134:12	44:21 47:5 49:12	83:19 85:21,25	appeared 107:14	45:4,22 55:23
acknowledgment	53:24 56:4 57:6	86:11 87:18,25	appears 42:9 48:3	69:7,23 142:21
80:1	61:21 66:19 68:3	123:23 129:5	64:23 112:12	asking 70:11 96:12
act 147:19	71:25 72:5 75:5	136:17 138:4	appellant 97:16,25	103:16 114:19
acts 91:9	75:13 83:7,16	139:4 140:14	108:7,22 136:10	asks 87:4
actual 12:2 13:22	96:24 98:25 114:2	141:19 143:3,10	appellant's 3:14	aspect 28:20
15:13 134:25	115:9 121:1	144:4,11,15	97:24	assault 38:24
137:17	131:19 136:13	Anderson's 23:24	appellate 9:10	assertion 23:21
add 26:19	agreed 117:24	63:11,21 88:11	18:22,23,24 19:11	assigned 7:18 8:4
addition 57:7 75:16	118:22	110:13,17,19	19:17,23 33:22,24	assist 4:22 6:2
137:17	agreeing 118:25	and/or 15:16 22:10	51:23 66:7 87:14	assistance 23:18
additional 56:12	agrees 89:16	61:13 80:25 103:3	97:12 107:22	80:3
57:6 71:9 142:2,6	ahead 22:25 121:15	103:24 144:15	108:1 119:8	assistant 5:3 8:19
additionally 20:6	Alan 2:17,18 48:16	answer 17:16 50:8	124:22,22 125:25	15:24 18:7,10,22
82:3	53:13 72:10,12,15	50:18 56:9 58:25	127:16	19:2 71:13 124:17
address 65:4,10	131:1	144:24 146:9	appointed 19:4	Associates 150:17
66:21	alive 80:2,21	answered 50:9	appreciate 6:4	assume 54:6
adept 29:25	allegation 50:25	answers 60:20,21	131:6 146:18	141:14
adjacent 65:15	95:14 126:3,4	antidote 26:20	147:9,10,12	assumed 50:5 51:1
	allegations 7:13	Antonio 71:19 73:5	approached 34:5	51:3

<p>capital 75:24 76:4 76:7,7,9,13 77:23 78:1,3 81:18 82:23</p> <p>capsule 91:20</p> <p>card 73:6,15,17,20 73:21 74:2 81:1 81:15 82:10 83:11 142:10</p> <p>care 25:13</p> <p>career 9:12</p> <p>Carl 128:18 129:9</p> <p>carrying 121:24</p> <p>case 5:20,22,24 6:1 8:4,6 10:11 11:4 13:1 16:24 22:20 22:22 24:2 25:20 28:2 30:8,9,13,21 35:17 51:6 54:7 54:12 58:5 60:5 61:24,25 63:3,5,8 63:9 69:3 75:14 81:17,23 82:4,6 83:1,4,15,20 85:2 89:20 90:19,25 91:7,10 93:3,15 96:1 101:11 108:1 117:12 120:17 121:17,21 126:12 129:5 133:11 137:7,23 138:16 138:17 141:7,23 142:1 144:3,23 145:6 149:6</p> <p>cases 7:22 8:2 16:5 18:18 19:12 31:22 56:20 63:13 84:6 84:8 95:9 121:13 138:7 144:11</p> <p>cached 80:2,21 81:1,16 82:9</p> <p>cashing 142:8</p> <p>casing 68:15</p> <p>CAUSE 1:6</p> <p>caused 129:1</p> <p>certain 8:20 27:8 32:9 36:9 70:3,4,4 90:19 99:18 136:19 137:12</p> <p>certainly 61:24</p>	<p>Certified 150:4</p> <p>certify 149:4,9 150:5,11</p> <p>chain 139:23</p> <p>challenge 23:13</p> <p>challenging 23:6</p> <p>change 76:18 81:17 81:22 82:3</p> <p>changed 82:15,21</p> <p>changes 76:4,12</p> <p>chapter 24:3 34:6</p> <p>character 135:3</p> <p>charge 6:17 78:2</p> <p>charged 13:15</p> <p>charges 5:12</p> <p>check 79:11,21,22 80:1,13,20 81:5 82:9 83:11 142:8</p> <p>checks 81:1</p> <p>Cheryl 1:20 150:4 150:15</p> <p>chief 63:2,5 71:14 84:10 93:2 98:6 99:23 101:11 106:11 139:5 140:15 141:6,15</p> <p>child 53:25 55:24</p> <p>child's 41:16</p> <p>chip 46:18</p> <p>chips 46:10,13</p> <p>choice 76:10</p> <p>chose 119:1 142:1</p> <p>Chris 79:22,24 80:15</p> <p>Christine 30:19 38:17 39:22 42:1 43:16 45:12 46:11 63:22 65:9,10 68:4,12 73:14,20 73:21,22,25 79:12 80:9,21,23 82:10 112:7 115:18 122:14 129:25 130:21,22 142:9</p> <p>Christine's 44:19 114:14 115:3 116:9 130:25</p> <p>CID 59:16</p> <p>circled 133:14</p> <p>circumstantial</p>	<p>31:22 84:6,8 121:17</p> <p>cited 39:17 40:4</p> <p>cites 106:7</p> <p>City 30:17</p> <p>claim 11:23 34:14 50:2,4 108:1 120:18 126:7,11</p> <p>claiming 25:23 26:12</p> <p>claims 19:22 53:3 83:20 106:5 144:20,23,25 145:5</p> <p>clarify 20:13</p> <p>clause 101:6</p> <p>clean 96:16</p> <p>clear 25:6 35:15 39:20 40:1 51:7 56:3 88:22,23 103:15,18 117:10 120:17 121:5,20 124:21 127:9 131:4 135:8 137:10 138:2 145:4 147:14</p> <p>clearly 29:18 54:3 55:4 56:7 63:9 74:23 80:16 81:12 91:23 99:16 101:22 108:5 124:14,24 142:4</p> <p>clerk 6:19,23</p> <p>client 25:20 146:6 147:24</p> <p>clients 26:8</p> <p>clock 96:20,21 103:7 109:13,15</p> <p>close 54:23</p> <p>closed 42:10</p> <p>closer 31:8</p> <p>closing 123:21</p> <p>Code 23:4 94:17</p> <p>coffee 31:10 63:16</p> <p>coffee-stained 32:2</p> <p>color 3:9 71:7 78:17,19,22,22,25</p> <p>Colorado 79:5</p> <p>combined 128:23</p> <p>come 5:19 8:24</p>	<p>11:22 12:1 34:22 70:9 96:16 105:3 113:21 118:3,11 120:2 145:20 146:8</p> <p>coming 21:9 112:20 122:13 123:20 146:6</p> <p>commencement 93:10</p> <p>commencing 4:3</p> <p>comment 32:4 57:9 140:13 141:22</p> <p>commission 76:4</p> <p>commit 81:6 94:10 135:6,8 146:11 147:16</p> <p>committed 94:5 125:8,12 134:12</p> <p>common 12:25 23:17 56:19,22</p> <p>communicate 8:8</p> <p>communicators 30:1</p> <p>comparing 38:7</p> <p>compel 12:18</p> <p>competent 81:8 84:16,17</p> <p>complain 89:21</p> <p>complains 106:11 107:12</p> <p>complaint 107:19</p> <p>complete 24:19 26:20,20 86:23 91:23 92:7 100:11 103:25 136:14</p> <p>completed 110:1 113:17</p> <p>completely 62:18 124:3</p> <p>complexion 76:19 81:17,23 82:3</p> <p>compliance 15:20 140:7,11</p> <p>complied 99:8</p> <p>comply 13:18 14:12 15:13 21:5 95:18 140:3</p> <p>component 10:22 11:14</p>	<p>components 33:25</p> <p>comports 47:6</p> <p>concealed 96:13 131:13</p> <p>concept 19:20</p> <p>concern 69:17 92:23</p> <p>concerned 126:7 126:10</p> <p>concerning 94:1</p> <p>conclude 107:18 108:16</p> <p>concluded 93:15</p> <p>concludes 133:25</p> <p>conclusion 10:20 11:6</p> <p>condensed 57:25</p> <p>conference 116:17</p> <p>confine 78:11 143:7,11</p> <p>confirm 57:22 59:9 60:3</p> <p>confirmed 130:1 130:24</p> <p>confirms 64:13</p> <p>connected 129:4</p> <p>consciously 137:24</p> <p>consent 91:22 106:22</p> <p>consider 19:21</p> <p>considerable 127:16 129:11</p> <p>considerations 53:2 78:11 143:7</p> <p>considered 82:22 36:7 112:14</p> <p>considering 35:12 36:7 112:14</p> <p>consistent 27:14 30:4 41:2 122:12 124:9 141:19,24</p> <p>consternation 129:2</p> <p>constitute 150:7</p> <p>constituted 15:6</p> <p>Constitution 125:9</p> <p>constitutional 23:13,16</p> <p>construction 46:24 47:3 65:13,15 67:15,17,23</p>
---	--	---	---	--

111:14,22	25:22 96:15 104:2	102:19 149:9	123:7 128:10,13	curb 65:16
constructively	109:22,25	correctly 12:7	128:14 131:15	current 48:20
133:23	conviction 22:10	75:11	136:5,10 140:4,10	53:15
contact 143:2	22:15,15 23:6	cost 118:23	142:6 143:14	currently 4:19 70:6
144:17	96:5 101:23	Council 6:17	148:2	118:13
contacted 5:17	105:22 126:5	counsel 23:15,18	courteous 146:16	cut 111:22
contain 34:19 94:1	131:17 147:5,6	23:19 33:4 87:18	courthouse 107:3	
101:18 116:9	cooperation 146:19	91:15 132:9 136:7	courtroom 29:7	D
130:21 150:7	copies 59:16 78:17	counsel's 91:8	courts 13:1 22:3	d 74:20
contained 33:16	78:22,22,22 110:8	country 13:9	107:22	DA 128:17
38:17 106:13,15	copy 3:9 16:14,22	county 1:9 3:21	Court's 89:7,25	Daddy 47:10,13
containing 65:9	65:22 71:7 78:25	4:14,20 5:4,25 9:8	90:3,7,8 99:7	52:9 57:9 58:24
contains 27:8,12	87:10	9:9 15:25 16:6	119:5	58:24
98:1 112:6 132:23	corner 106:2 113:8	18:7 19:3,9 20:9	cover 16:20 110:13	Daddy's 45:4,23
contemplated 5:13	corpse 43:17 44:19	20:16 21:21 27:16	covers 88:19	daily 31:9 63:15,17
contempt 90:11,13	corpus 5:7 8:15	62:15 79:3 86:15	co-counsel 33:4	84:5
contended 115:17	22:4 23:2	128:22 130:9,11	35:5	darkness 108:12
contends 54:12	correct 4:14,15	135:17 145:22	craft 10:6	data 116:13
contention 107:17	10:13,14 12:10	149:2 150:2	crazy 70:14	date 59:10 64:16
contents 14:4,15,16	13:11,19 14:20	couple 124:12	create 29:24	94:15 135:12
33:1 34:18 36:17	15:1,23 18:8,9,17	course 9:11 10:8	credit 73:6,15,17	150:16
81:16,20 123:3,25	18:19 19:12 20:3	40:8 60:9 76:2	73:20 74:2 81:1	dated 3:22 133:1,1
139:2	20:5 21:3,22	81:21 108:25	81:14 82:10 83:11	134:8
contested 119:3	24:11,21,25 28:13	115:7 134:5	142:9	daughter 42:4
contesting 89:12	32:15,16 38:3,21	139:25	crime 2:9,11,13	David 1:3 2:3 4:2,6
context 51:9 137:1	40:13 46:20,20	court 1:8 4:20 7:2	4:25 13:15 23:24	4:12 149:4,15
137:2 139:12	51:14,19 52:10	7:10,12,16,19,22	24:17 25:5,16	150:6
140:25 141:1	53:23 54:8 55:7	7:22 8:1,1,2,15	29:6,10 30:16	Davis 93:16
continued 3:2	56:20 63:1 64:22	10:11 13:2,6 16:2	31:5 94:5 110:14	Davis's 101:13
135:5 146:10	65:19 67:24 71:5	16:10 17:19 19:9	125:8,10,11	DAWP 3:18
continues 109:12	73:11,16 74:15	21:5,24 22:8,14	129:23 130:4,5	day 4:3 62:24,24,25
continuing 55:5	75:12 81:2,7 90:1	22:16,17,19,22	134:12,19 135:6,8	64:17 91:21
96:4,6,15 97:10	90:16 95:23 96:7	24:2,13 29:20,22	146:11 147:15	106:21,23 118:16
99:19 103:11	99:12 101:7 102:2	36:23 37:4,6,18	criminal 3:20 7:3	134:18,22 149:11
104:3 109:8 110:3	102:3,14 103:5	38:1,10,12 40:13	7:10,12,17,19,22	149:19 150:9,11
127:1 131:16	104:3,17 105:10	54:9 61:25 70:6	8:2,3,15 13:1,14	days 71:22 74:2
conversation 41:7	106:15 107:2,9,10	70:14 75:14 83:5	16:3 21:25 22:14	142:11
41:15,16,25 52:6	111:12,14 118:24	85:1,20 86:5,22	22:19,23 23:4	De 71:19 73:4
58:23 77:17 93:14	119:10,17 123:17	87:5,9,12,13,20	31:25 56:19 57:2	deal 115:2,7 117:8
114:11,13 127:24	124:18 131:16,25	88:10,15 89:7,20	94:17	129:1
136:22 138:3	132:2,4,5 136:2,7	89:22 90:2,4,9,11	critically 148:1	dealing 34:8,9
139:8,13,18	136:11 140:12,18	91:2,10 92:24	Cross 79:4,11 80:6	126:6,13
140:17 143:19	141:3 142:13	93:9 98:1,19	cross-examination	dealt 5:14 8:16
144:2	143:4 144:1 145:6	100:17,18,18,22	20:7	19:22 85:8
conversations	145:8,9,15,18	100:23,23 102:1,2	cross-examine	Dear 79:20
127:7	148:3 149:7 150:8	103:4,25 105:20	138:25	death 39:24 76:9
conveyed 14:15	corrected 95:23	106:12,15,20	crying 42:24 43:3	76:10 82:10,11
17:5	correction 97:5,6	107:8,15 108:1,5	CSR 1:21 150:15	122:8,17 123:3
conveys 14:3	108:24	108:9,11 115:24	150:16	134:11 142:8,10
convicted 22:9	corrections 99:8	116:8 117:16	cup 31:10 63:16	142:11

debate 56:23	definitely 41:14 111:3	determine 9:22 94:16 102:18 123:3 131:23	127:2	27:16,17,23 28:3 32:9 80:9 90:19 91:2,4,11,15 92:3 103:24 107:3 108:8,17 110:7 138:17
debated 31:22	degree 6:12,13,15 7:5	determined 38:16 45:12 106:14	discussion 15:8 116:17,21 128:1	doing 15:18 19:15 19:17 21:23 25:11 25:12 31:25 120:6 125:18 147:10,13 148:2
December 18:12 150:12,16	deliberately 138:8	determines 98:20	disposed 111:20	domestic 47:20
decent 29:17 75:2	denial 23:14 37:20 37:23 145:14	develop 21:18 137:18	disposing 37:5,18	Don 41:1,8 59:17 71:14,14 79:3 87:19,21 88:17,25 89:3 93:2 98:6 101:12 137:22
decide 21:12	denied 135:12,18	devoted 8:1	dispute 45:19 89:10 92:2 122:23	door 42:11
decided 128:11,12	department 3:20 6:20,23 27:11 79:4	different 9:24,25 29:19 33:25 51:2 51:13 80:17 83:1 114:11	disputed 107:4	doubt 52:6,11 69:13 70:1 75:20 86:10 93:20 101:17 120:20
decision 9:19 35:21 54:15 69:9 91:3 108:2 126:4 128:11 138:8 139:15 141:18 143:14	deposited 147:18	dimension 76:5	district 1:8,11 4:22 5:3 8:19 15:25 16:7 18:6,7,10 19:2 20:9 21:21 27:7,22 31:8 33:18 35:13,25 36:3 50:12 57:21 58:1 60:4 62:10 64:9,14 71:1 85:1 86:14 97:21 124:17 135:17	DNA 5:8 22:4 32:18 33:11 34:25 38:19,22 39:15 84:25 104:11 112:7 115:18 116:6,9,12 121:3 121:6,14,15,21 125:20 126:2,13 127:10,18,22 130:24,25 131:24 133:21 143:4 145:11
decisionmaker 127:10	deposited 81:5	dire 34:17 85:9 126:10	dispute 45:19 89:10 92:2 122:23	Doug 18:3 133:16
decisions 13:1 20:23 21:2 107:22	deposition 146:3	direct 5:7 8:6 22:7 22:11 23:7,9 34:7 34:9 37:22 126:1 138:21	disputed 107:4	Douglas 1:3 2:3 4:2 4:6,12 149:4,15 150:6
deck 46:2,4,5,22	deposited 81:4	direction 133:22	disputed 107:4	downfall 31:25
defend 9:19 14:10	deposition 25:4,10 40:23 41:1 62:20 62:23 105:19 110:23 141:6	directly 5:14	disputed 107:4	Downtown 31:20
defendant 9:22 10:5,21 11:6 12:16,24 13:14,14 23:4,8,19 24:15 26:17,25 29:12 56:15 57:2 69:18 94:5,10 111:25 112:3	describe 13:20 53:25 67:14 125:4 128:8	disagree 144:8	disputed 107:4	DPS 129:3,14 130:4
defendants 25:23 26:12	described 99:6 102:5 108:21 128:5 139:24 141:6	disagreeing 86:6	disputed 107:4	Dr 122:3,8,16 123:1,22
defendant's 86:24 111:25	describes 30:13,17 31:6 48:9 63:11 66:1	discarded 111:23	disputed 107:4	draft 8:7
defended 119:5	describing 36:15 48:1 52:7 54:25 66:3 83:19	disclose 7:14 9:20 21:1,11,12,13 24:9 26:1 69:1 70:7 89:13 103:23 103:24 131:15 140:16 142:3	disputed 107:4	drafted 117:14 133:10
defending 15:4,5 126:5	description 2:7 3:4 47:6 66:14 68:14 77:16 101:4 111:10	disclosed 13:23 50:16 54:11,16 58:6 83:6,8 94:3 101:25 102:1 105:2 136:15 137:22	disputed 107:4	drank 31:10 63:16
defense 9:21 10:3,6 10:7 12:5 13:11 16:12 23:25 24:14 25:17,19 26:7 39:4,8,13 40:12 40:14 49:24 50:16 51:19 54:12 56:20 68:19,24 69:21 72:19 86:4,19 87:18 89:16,21 92:23 93:19,21 94:3,24 101:10,25 125:25	despite 28:15 123:22	disclosing 69:16 136:20	disputed 107:4	draw 34:7
defenses 9:16 39:9	destroyed 94:15	discovered 104:20	disputed 107:4	drawing 66:2
defense's 9:16 10:25	detail 30:7,10 44:22 63:13	discovery 10:2 37:1 49:22	disputed 107:4	Drive 1:17 4:4 64:25 150:18
	detailed 29:9 66:13 100:3	discretion 20:18	disputed 107:4	driving 66:20 68:4 70:14
	details 29:13 30:6 83:21 84:9 88:8 100:4	discretionary 22:13,18 128:12	disputed 107:4	dropped 111:19
	determination 69:20 86:24 89:16 90:5	discuss 5:20 27:4 33:1 35:18,20,23 36:18 62:24	disputed 107:4	drove 72:10,13 145:21
		discussed 92:6	disputed 107:4	due 98:14 106:6 125:9
			disputed 107:4	due-process 13:13 101:6
			disputed 107:4	dry 4:7

23:5 24:1 26:21 27:1,2,8,10,17,17 27:23 28:21 32:21 32:22,22 33:12,13 33:18,23 34:19 35:14,14,25 36:1 36:2,4,24 45:11 49:16,17,19 50:12 50:21,24,24 51:1 57:21,25 58:1 60:4,7,10,12,13 62:6,7,8,10,16 64:9,10,14 68:25 70:25 71:2 73:1 73:14 75:9 77:12 77:13,15 78:10 83:11,12 89:20 92:3 97:21 104:10 104:16,19 107:3 107:25,25 111:2,4 115:23 119:15 124:16 125:1,19 126:18 133:16,22 137:13 142:12 143:9 filed 23:11 24:10 33:3 94:23 95:5,8 101:22 119:9,19 122:3,4 137:15,19 files 16:11,21 23:10 60:15 filing 137:8 final 30:18 91:9 finally 107:15 117:18 find 11:12 79:21 80:24 95:20 97:5 120:23 121:9 128:25 129:2,7 131:5 finding 90:13 108:10 findings 47:6 fine 4:18 fingerprint 119:6 143:21 fingerprints 37:10 37:24 38:8 44:25 fingers 93:19 finish 17:10,16	18:2 70:16 finished 23:10 finishes 54:24 Firm 1:15 150:17 first 4:7 7:4 18:22 21:18 24:5 25:18 26:7 29:9 31:4,14 32:13 37:3 42:4 64:19 92:19 95:11 95:20 97:23 98:11 111:16 117:17 135:11 143:2 flipped 19:14 flowers 42:15 focus 45:2 126:15 focusing 132:15 folder 129:12,16,18 129:21,22 130:14 folders 130:13 follow 13:17 68:8 75:3 89:25 90:6 90:12 121:4 148:2 followed 61:22 62:2 72:8,14,20 72:22,24 74:3,24 75:7 81:13 following 4:1 48:17 88:11 138:21,21 follows 4:7 93:13 follow-up 62:1 73:11 forefinger 101:16 foregoing 149:5,6 150:7 forgotten 87:25 form 13:24 23:5 57:25 former 15:9 51:23 147:11 forming 8:12 forms 14:18 forward 105:3 109:12 128:13 fought 119:7 found 35:1 38:13 43:16 46:8,10 47:3 65:9,14 66:3 66:10,14,17 67:10 88:18,20 90:21 96:4 116:13	126:22 128:7 129:19 130:18,21 137:4 four 9:8 111:17 fourth 80:12 framed 83:2 fraud 73:7 74:21 81:6 fraudulent 142:9 fraudulently 81:1,2 free 10:2 118:19 freedom 120:7,9 125:11 frequently 12:20 63:12 front 65:14 79:2 123:11 full 4:10 16:23 92:19,25 97:23 98:11 fully 141:9 function 147:19 fundamental 101:5 funds 81:5 furnished 87:11 88:18,20 further 25:15 54:22 56:1 67:18 73:10 81:5 86:3 87:12 93:25 94:9 100:2,18,20,23 101:4 116:12 128:1 146:20 149:9 future 32:25	given 5:21 60:21 96:22 97:4 114:22 120:8 149:5 giving 135:2 glean 34:11 gloves 44:7,9,12 go 12:4 15:7 22:25 32:6,9 41:10 42:25 43:23 53:5 53:7 54:22 56:5 68:25 70:19 78:10 86:17 92:21 97:12 102:9,13,20 103:12 104:5 105:4 121:15 142:15,25 143:8 goes 24:12 31:19,24 56:1 86:1,2 89:20 93:24 107:11 109:22 going 16:10 20:19 20:20 25:15 32:9 33:24 35:19 36:21 40:22 45:2 50:7 64:3 68:5 77:14 78:15 84:1 85:13 86:21 97:15 104:21 105:18 107:24 110:12,22 116:25 119:12 128:3 good 29:21 78:5 130:19 goodbye 39:22 gotten 93:19 99:9 101:14 government 86:21 grab 53:8 grandmother 41:16 43:2 grandson 52:8 granted 22:21 great 17:3 29:16,24 29:25 123:10 129:1 147:18 green 65:3 68:3 grew 6:10 Grill 30:17 ground 137:16,19 guess 25:11 46:23	121:18,18 guilt 20:2 guilty 10:21 11:6 11:10 24:15 25:21 26:8 34:13 125:10 gun 45:4 guy 129:14
H				
habeas 5:7 8:15 22:4 23:1 hair 46:13 113:24 114:3,5,14,14 115:2,4,8 117:8 128:6,15,19,25 129:1,10,13,18,24 129:25 130:14,17 130:22,23 131:5 144:1 half 64:19 halfway 75:2 hand 64:3 67:1 70:24 78:15 85:13 93:18 105:18 110:22 114:3,6,14 115:3 handed 53:8 handing 41:4 58:14 handle 8:14 22:2 22:13,20 113:22 handled 5:6,9,12 18:20 22:7 23:1 127:18 handling 7:20 18:18 90:24 133:21 hands 44:11 101:15 handwriting 80:18 110:24 111:7 135:21,22 handwritten 2:25 3:6,18 71:7 100:9 happen 27:21 62:18 122:21 148:6 happened 5:22 53:17 116:10,11 116:14,15 120:21 141:25 143:8 144:5 147:4 148:5				

happening 15:12	61:24 74:3,25	implied 116:24	35:19 36:25 51:15	108:23
happenings 94:2	75:4 84:17	import 56:3 120:17	51:16 63:21 69:21	investigated 68:7
hard 56:9 57:13	hoped 21:4 80:2	important 10:5	71:9 94:8 96:16	investigating 56:17
hardwood 46:2,4	hoping 26:7	28:12 52:19,20	110:2 136:1	57:4 59:4 66:23
46:22	hospital 43:23	68:6 81:25 82:2	informed 143:13	71:14 83:15
Harris 9:8 15:25	hours 141:11	90:15 101:18	initial 91:21 106:21	104:16,19 125:2
16:6 20:16	house 39:6,24	145:25 147:22,23	initialed 149:10	137:25 138:9,13
Hazelhurst 65:4,10	46:25 54:14 68:5	147:23,24 148:1	initially 35:8 83:2	139:5 145:5 147:3
65:18 66:21 67:3	69:5 82:8 111:14	impression 127:4,6	112:17 128:16	investigation 31:23
head 46:14	Houston 1:18 4:5	139:14	innocence 5:18	32:2 45:9 63:22
hear 22:20 25:1	62:14 145:22	143:11	33:5,7 118:22	68:7,8 72:8 73:14
26:4,9,18	150:18	imprisoned 103:3	134:25 137:17	73:22 75:3 76:5
heard 12:7 26:14	human 46:19	imprisonment 78:5	innocent 54:12	76:19 81:13 82:15
27:13 30:20	hundreds 29:13	imputed 133:22	96:6,14,19 103:2	83:17 100:4
hearing 34:17	83:20 84:9 88:7	incarcerated	104:1 131:17	106:21 138:14
85:10 91:17 94:16	hurt 43:20	146:10	134:5 147:5,15	146:19
99:23 107:14	husband 69:6	incarceration	inquire 56:16	investigative 28:3
115:16 118:10	75:16 82:24,24	135:6	inside 130:14	64:21 101:24
137:20	hypothetical 70:11	inch 93:18 101:16	insight 146:10	103:25 142:12
hearings 85:5	hypothetically	included 109:6	Insofar 24:20	investigator 41:17
held 24:13 27:2	56:10 96:13	includes 19:25 20:6	inspected 106:12	63:3,5 74:4 81:8
38:1 93:18 99:23	I	including 38:24	inspection 87:13	84:10 93:3 98:6
114:8	idea 6:1 9:15 72:12	117:3 132:8	98:2 100:17,22	99:24 101:11
help 65:21 146:8	72:13 88:4 109:21	incomplete 109:25	institution 6:18	106:12 128:17
helping 6:4	identification	110:1	instructed 32:23	129:22 137:23
helps 61:15	40:21 53:11 58:13	inconsistencies	128:19	140:15,16 141:7
hesitate 77:1	61:15 64:2 65:24	139:1	instruction 128:17	141:15
hesitation 123:10	70:23 72:15 73:25	inconsistent 92:4	instructions 35:16	investigators 72:20
high 7:25	78:14 84:23 92:16	124:4	73:10	83:17 144:23
higher 92:21	97:14 105:17	independence	instrument 46:12	invited 113:20
125:13	110:11,21 132:21	146:1	46:16	involve 125:22
highest 7:21 8:1	identify 61:13	independent 23:7	integrity 6:18	involved 7:12 8:20
76:8	74:17	140:8,8	intent 38:25 81:19	8:22 32:14 145:5
high-profile 63:4,8	identity 68:12	INDEX 2:1 3:1	intention 99:16	146:2 147:6
hindering 90:10	illicit 81:19	indicate 94:10	interacted 31:18	issue 8:16 20:1,4
hindsight 53:3	immediate 94:13	129:18	interested 30:6	23:22 69:4 75:14
hired 18:5	immediately 79:23	indicated 93:9,18	137:7 147:1	94:4 97:1 98:16
history 6:12,13	79:25 88:10	101:15	interestingly 40:25	99:1,17 101:24
8:18	116:20 137:15	indicates 24:15,20	interject 68:22	108:6 126:10
hit 43:8	impact 46:19	26:1	intermingled	135:25 136:13,15
hold 17:6 57:23	impacted 121:21	individual 20:17,22	130:25	issued 128:10
58:15	impeach 11:19	individuals 145:1	Internet 48:18 49:5	issues 8:5,7 23:17
home 65:13,13,15	20:7	147:19	49:10	70:7 124:19 126:8
66:15 67:22 75:15	impeachment	ineffective 23:18	interrupt 17:17	126:9
76:1 91:22 106:22	11:15 12:9 24:24	inference 46:17	interview 29:11	item 35:10,10
homicides 16:5	56:13 57:12	73:23 142:4	142:7	128:3
honestly 21:8 39:8	implication 117:7	information 8:21	intruder 39:5 40:3	items 35:8 38:5,11
50:18 117:22	117:10	10:5 11:5,19	40:12 61:13 68:12	40:17 114:3
Honor 6:16	implicitly 73:20	24:21 34:14,19	75:15	115:14 116:25
hope 25:18 27:18			investigate 99:7	117:1 119:4

137:12	138:4 139:4	105:1 128:2 129:5	47:7 51:22 56:17	54:22 89:11 92:10
ID 73:6 74:20	140:14 141:19	129:13 130:17	57:3 90:8 96:16	92:17,21 95:13
<hr/>	142:18 143:3,10	132:11 144:21,25	98:14 113:19	103:12 142:15
J	144:4 145:14	144:25	118:11 120:22	level 10:24 76:8
January 19:1	146:19,25 147:11	know 6:1 8:25 9:23	121:8 125:9	85:1
Jennifer 128:24	judges 7:19	10:13,25 20:22	127:17 136:19	liberal 69:15,16
129:10	judge's 8:10 37:23	27:25 28:6,15,16	140:6,10 148:2	life 32:1 78:5 135:1
Jewel 73:6	95:18	28:18,21 29:20	lawyer 8:23 95:10	light 9:2 61:15
Jewelry 73:16,17	judgment 127:20	30:25 31:14,17	lawyers 25:17,19	101:13 120:1
Jill 71:12,18 73:4	judgments 127:12	32:5 44:6 52:20	26:7	lights 61:9,12
Jim 30:25 31:7,9	JUDICIAL 1:11	56:8 57:3 72:10	laying 16:11 65:14	limited 23:12 36:24
31:20	July 113:20 119:13	74:25 80:1,20	lead 11:11 68:9,10	49:21 145:10
job 7:4 124:17	137:5	82:25 86:3,6,13	68:11 72:14 73:24	limits 126:12
jobs 148:3	June 79:25	86:15 104:24	74:4,5,6,8,10,11	line 21:2 41:6 42:3
John 1:14 4:23	jurisdiction 21:9	112:16,18,20,23	74:14 75:3 76:18	47:19 85:18 86:3
18:22 19:2 32:17	jury 5:12 11:12	112:24,25 116:1	leading 87:15	87:12,19 88:15
33:4 35:22 68:20	29:25 93:14,17,25	117:22 119:12	leads 68:9 94:1	89:2 134:1
75:22 79:4,11	94:4 101:13	120:12,13 121:4	131:17	lines 88:11 108:5
113:14,18 127:5	123:11	125:18 139:20	learned 27:7	listed 26:11
128:11 132:13	justice 3:20 6:20,23	140:21 146:4	137:11 141:1	lists 26:5
133:21 144:19	90:14 105:5,5,9	147:23,24	learning 30:6 147:1	litigate 22:22
148:9	147:17	knowing 5:21 30:9	leave 71:24 122:12	litigator 29:17,20
joke 9:3	justifiable 113:2	51:2 137:6	led 72:15 94:9 96:5	litigators 30:2
Joni 65:1	118:1,7	knowledge 51:5	147:5	little 6:7 9:25 18:3
Juan 130:4	J.B 133:15	149:7	left 19:8 53:18	21:11 44:22 59:6
judge 4:13,16,18	<hr/>	known 38:23 63:23	111:9 116:23	65:21 130:14
4:19,20 7:1,18 8:5	K	63:24 116:13	134:25 139:14	lived 65:11 67:5
8:8 9:24 11:11	keep 25:11 28:8	knows 5:23 106:19	leg 8:10	load 49:6
12:1 17:9,13	111:21	<hr/>	legal 8:5,11 22:18	locate 128:19,25
18:11,13 19:5,9	Ken 18:6 23:24	L	23:5,5 34:8,9 85:7	129:12,21 144:1
23:24 24:12 25:9	kept 6:3 27:10 28:7	L 31:19 32:3	89:15 95:25 97:8	located 130:14
25:11,15 26:1	91:3 130:12	La 71:19 73:4	98:16 102:22	long 46:3 139:9
29:5 30:5,20 31:6	kicked 42:20	lab 128:14,18,20	104:6,8 110:3,5	140:21 142:18
31:12 37:5,17	kill 38:25 56:6,7	129:2,3,13,23	119:25	longer 9:25 59:4
49:14 54:6 61:25	57:10	130:1,4,5	legally 113:2 118:1	60:21 79:25 113:3
63:11,21 69:14,17	killed 39:6 40:2	labeled 129:13,16	118:7	113:5 118:1,3
69:17,20 70:24	42:5 55:16 68:12	129:17 130:7	legible 78:19	119:22 120:5
78:4,15 85:20,25	76:3 82:7	land 13:5 148:2	Leihardt 128:18	look 9:4 16:12
86:11 87:9 88:1	killer 123:24	large 16:21 129:4	129:9,22	35:16,17 36:13
89:15,15,16,18	killing 122:13	largely 127:19	length 132:1	44:11 47:21 78:10
90:12,20 91:9,10	kind 7:16 9:3 18:21	larger 27:12	lesser 11:12	92:17 97:18
91:14 94:22 95:17	20:13 21:18 36:16	Larry 73:6	letter 2:25 3:6,22	105:25 143:9
98:19 99:3,18	45:22 46:18 61:22	late 36:20 79:25	79:15 80:20,22	looked 16:13 49:1
103:16 105:19	Kirkpatrick 41:8	119:7 122:9	110:13 133:24	61:20 85:3 130:11
106:20 107:7	41:24 43:19 47:19	law 1:15 4:20 6:15	134:1,8	130:13
113:5 115:16	48:5,9 54:24	6:19,22 7:4,5 11:4	letters 132:24,25	looking 36:8,25
116:7 118:5,10	55:15 61:7 142:7	12:23,25 13:5,9	133:6,11	49:21 50:3,21,23
120:4 123:7	kissed 39:21	13:18 14:6,12	let's 11:18 27:4	66:24 77:15
124:13 129:5	knew 5:20 31:15	15:13 19:9 23:8	32:6 36:3 41:10	126:18,19,23
131:20 136:17	86:11 96:9,14	27:2 32:25 35:17	50:23 52:3,3 53:5	132:7

looks 111:17
lot 5:8 8:10 35:4
 36:22 44:21 136:1
Lott 85:20 87:9
 90:20 98:19 99:3
 106:20 107:7
loud 14:2,24
love 112:21 120:12

M

M 31:19 32:3
mad 43:12 48:6
magnitude 127:19
Mail 3:7,10 79:8
mailed 79:22
major 74:5,5,6,9,11
 74:13
maker 120:13
making 9:2 115:20
male 65:3 66:20
man 38:23 44:5,11
 54:1,1 66:21 79:4
 96:6,14,19 103:2
 103:20 104:2
 109:17 130:25
 131:18 146:10
 147:5,14,15
manage 129:12
mandamus 37:3,12
 37:14,16
Mann 1:20 150:4
 150:15
map 66:12,24 67:1
 67:14
March 115:15
margin 111:9
mark 2:17,18 31:3
 40:22 48:16 53:13
 72:10,12,15
 110:12 131:1
marked 3:7,9 40:20
 53:10 58:12 64:1
 65:23 70:22 78:13
 84:22 92:15 97:13
 105:16 110:10,20
 132:20
Martin 65:1
Maryland 10:9,16
 12:12 21:6 24:3
 24:13 54:11,17

68:19 69:8,25
 75:20 76:25 83:7
 98:12 106:7
master 29:13 83:20
mastering 84:8
 88:7
match 116:13
matching 130:16
material 12:8,24
 24:9 25:24 26:2
 26:13 51:8 52:9
 52:13 56:13 86:4
 86:7,11,15,25
 87:1 90:21 96:13
 101:18 104:13
 106:2,5,10,14,16
 107:9 108:11,13
materials 8:21
 13:10 137:21,22
matter 26:3,6 27:5
 30:6 32:14 33:8
 33:12 56:18 57:4
 131:23 142:22
 144:16 146:20
matters 5:11,14
 7:20 21:23 34:3
 35:13,24 37:6,18
 37:22 142:23
ma'am 78:21
McCallum 150:17
McKinney 37:9,24
 119:6 143:20
meal 30:17,18
mean 10:1,19 14:9
 14:17 26:24 28:18
 31:11 32:22 35:18
 45:14 46:23 51:25
 52:21 53:2 56:10
 62:17 68:22 69:15
 69:19 74:5,7,9,13
 82:18 83:24 89:10
 95:12 102:10
 106:25 109:16,23
 112:19,24 113:5
 115:21 117:22
 118:6 137:6
meaning 76:9
means 29:16
 108:17
meant 56:2 124:23

media 41:14,21
 78:5,8 90:25 91:6
 91:18 134:17,21
 137:11
medical 123:23
meet 5:19,19 32:25
 63:5 116:18
meeting 63:11
 118:10
meetings 144:14
Memorial 150:18
memory 48:10 66:9
 100:3 114:10,13
 114:19,21 139:13
men 31:18
mention 24:24
 26:16 45:21 56:11
mentioned 21:14
 85:6 135:13
 141:23 143:17
mercilessly 134:11
mere 107:18
merely 35:19
merits 33:2 34:13
 36:18 127:20
 128:1
message 71:14
met 31:2,14 62:23
 84:4
Michael 1:11 4:24
 27:5 30:13 32:14
 38:20 39:4,20
 44:5 45:13 46:2
 55:16 56:5 57:10
 61:16 65:11 77:24
 78:5 81:23 82:7
 84:25 91:8,22
 101:23 105:21
 106:22 112:10
 115:19 116:10
 122:12 123:24
 131:1 132:8
 133:14,15 134:1,9
 134:18,23 135:18
 148:6
Michael's 42:1
 115:2 135:12
middle 30:12 41:23
 47:9 48:14 85:15
 89:2 97:23 98:10

111:10
Mike 47:22 93:16
Mildred 37:8,23
Miller 73:6
mind 16:9 34:21,21
 47:22 48:24 50:20
 66:12 69:13 70:1
 86:10 88:9 139:14
 139:22
mindset 12:3
minutes 142:24
miscellaneous 3:8
 3:10
misdemeanor
 16:10
missed 142:19
missing 81:15
mistaken 67:21
Mister 4:17
mitigate 11:9,10
mitigates 26:25
mitigating 12:8
 20:4 24:24
MM 2:16,16,22,25
Mommie 42:15,21
 43:8,20,23 47:16
 58:25
Mommie's 42:24
 45:5
monster 43:6,11,20
 44:1,7,17 45:21
 47:21 48:10 55:18
 61:8
monsters 56:2
month 137:5
months 119:19
moral 104:6,7
morning 39:22
 64:24 122:9,13
Morrison 5:17 33:7
 113:20,21 116:18
 127:25
Morton 1:11 3:16
 4:24 6:3 27:5
 30:13,19,21 32:14
 32:19 33:17 38:17
 38:20 39:4 43:16
 44:5 46:2,11
 55:16 56:5 63:22
 65:11,11,13 66:15

67:4,22 68:4,5,12
 73:14,22 74:1,15
 76:3 77:24 78:6
 79:12,22 80:9,16
 80:21 81:23 82:7
 82:10,19 83:20
 84:25 85:2 101:23
 106:4,10 107:11
 107:13,18 111:2
 112:10 115:18,19
 116:10 123:24
 129:25 130:21,22
 131:1,23 133:14
 133:15 134:1,9
 142:1,9 145:6
 148:6
Mortons 67:5
Morton's 39:20
 41:15 45:13,13
 61:16 65:9,17
 73:20,21 80:23
 91:8,22 105:22
 106:22 112:7
 132:8 137:7,18
mother 42:7 47:25
 52:7
motion 3:13 12:18
 24:1,1,5,10 32:18
 32:23 33:2,3,11
 34:17,25 35:9,17
 36:18 39:15 40:1
 40:4 85:10,18
 88:16 92:10 93:7
 93:24 94:13,16,23
 95:4,5,8 96:24
 99:1,6,17 101:3
 102:6 108:7,22
 113:22 116:6
 117:14 119:9,18
 125:20 126:2
 131:24 136:9
 145:11
motions 5:8 12:20
 22:4 24:4
mugshot 48:25
 53:15
mugshots 48:16
multiple 35:8 39:9
 123:23 130:11,13
murder 4:25 31:22

35:1 37:9 38:7,13 43:15 44:18 45:10 45:12 46:3,7,15 47:7 48:2 54:7,13 57:8 59:12,13 61:17 63:9,13,23 64:17 66:23 68:4 68:7,8 69:3 71:22 72:8 73:13,22 74:3 75:3,13,25 75:25 76:7,13,14 78:3 80:24 81:13 81:18,18,21 82:23 82:23 83:4,15 84:6,8,11 85:2 91:21 101:23 103:21 106:21,23 120:21 121:14,15 121:16 134:10	18:3 26:22 49:2 50:9 69:1 88:1 90:22 95:16 96:21	notes 3:18 16:14,15 16:16 34:3 85:3 87:14,19,25 88:25 92:9 100:9,13,14 100:16,19,21,24 101:25 102:24 106:11,13,14 107:13,14 111:1,4 130:2,3 136:2,14 138:15,25 139:2 139:16 140:16 141:2 142:3,14 150:8	2:23 10:21 11:7 16:15,16 34:2 36:25 66:1 76:7 76:13 91:21 93:1 93:2,8 94:11 125:6,6,16	older 48:25 once 7:5 16:13 23:11 28:22 33:23 138:23 ones 30:2 93:8 open-access 16:21 open-ended 142:20 open-file 16:7 20:10,15 21:9 25:17 26:19 68:23 69:1 70:8 opinion 8:8,10,13 15:13,22 21:5 29:19 30:3 57:14 105:20 106:4,10 108:6 110:5 122:1 122:17,18 123:8,8 124:8 136:10
murdered 42:8 48:1 52:7 54:14 69:5 75:15	needs 11:7 54:19 95:17,23 97:5	notice 14:4 96:25 97:4 126:20	offer 114:1 115:6 115:10	opportunity 5:21 88:13 114:22
murderer 39:23 51:13 52:8,9 68:14 73:25 74:1 80:25 111:19 112:1,4,10 120:23 121:9 122:12	negotiate 16:24	noticed 86:5	offered 100:16,21 113:23 114:13	oppose 35:12 104:11 118:18 120:11,18 127:10
murdering 75:17 134:2,6	neighborhood 66:13,18 68:15 72:1,6 94:2 142:11	notified 134:13	office 16:7 19:8 20:10 21:21 27:11 71:13 73:15 113:21 128:22 129:8 130:9,10 135:16 139:10 140:21 143:16 144:19	opposed 127:22 131:24,25
mustache 48:11 54:2,3 61:8,17,19	Nell 150:17	November 4:3 19:7 99:23 150:9	officer 28:7 55:1,15 59:4 61:7 62:20 63:3 66:2 71:15 86:22 137:25 138:9,13,14,22,23 139:5,7,16	opposing 4:23 84:25 92:12 138:24 143:4 145:13
<hr/> N <hr/>	never 9:12 14:9 15:9 17:4 21:10 24:17 28:22 29:2 30:7,14 31:2,15 36:2 41:21 78:9 80:2 83:23 88:9 96:18 99:9 102:9 102:13,20 103:8 109:24 127:18 134:1	number 2:24 3:6 23:12 59:23 64:5 64:13 71:3 73:11 129:14 130:1	officials 47:7	opposition 134:13 145:10
name 4:10 24:1	new 3:13 23:21 28:9 49:13 92:10 93:7 94:16 95:4 96:24 99:1,6,17 101:3 102:6 108:7 108:22 136:9	numbered 149:6	official 5:25 127:15	oral 4:1 114:24 143:16,18
named 59:17,18 79:4	news 143:9	numbering 130:6	Oh 17:11 48:15 55:22 71:23 125:14	orally 13:20
names 141:23	newspaper 41:12	numbers 60:3,5 97:20	okay 4:19 5:2 17:21 18:4 23:23 32:8 36:5,13 45:3 49:4 50:10,22 55:22 58:3 59:9 60:6 66:19,24 67:2 70:17 77:14 79:1 79:8 92:18,22 94:21 97:17,19 102:17 103:17,19 103:22 105:20 111:8,16,21,24 112:2,13 116:22 119:21 125:24 126:15 127:12 130:16 131:7 135:25 140:24 141:8 143:1	order 13:17,18 14:12 15:12 37:4 37:5,17 57:10,22 69:10 70:9 89:24 89:25 90:7,13 95:18 99:7 102:2 103:4 105:15 107:11 117:17,17 125:19 131:15 136:20 140:4,10 142:6 148:2
napkin 32:2	newspapers 41:18 106:24	numerically 41:2	oklahoma 7:24	ordered 37:17 90:9 95:17 98:2,21 99:3,18 100:18,18 100:23,23 128:13 128:15
Nashville 6:14,24	next-to-the-last 106:1	object 50:7	old 72:11 121:13 143:9	
natural 29:24 84:13	Nina 5:17 33:7 113:21 116:18	objective 10:1		
nature 5:5 11:21 82:4 83:1 124:21	nonresponsive 50:8	objectively 120:7		
near 44:19 47:3 67:15 121:16	non-death 76:9	observed 64:25 65:2		
necessary 12:21 99:8 102:19 103:5 108:24	non-detailed 77:16	obstructing 90:14		
need 9:5 12:5,18	normal 84:13	obtained 6:11,15		
	Norwood 2:17,18 48:17 53:13 72:10 72:12,16 131:1	obviously 88:2 113:3 118:2 120:8		
	Nos 53:10,12 70:22 78:13 110:10	occasion 8:14 139:4		
	NOTARY 149:22	Occasionally 16:17		
	notation 87:10,20	occasions 65:2		
	note 59:15 71:7 80:1 115:25 135:12	occurred 12:2 81:9		
	noted 108:15	October 133:2 134:8		
		odd 139:21		
		OFC 3:21		
		offender 116:13		
		offense 2:15,19,21		

original 68:2 76:22
116:6 122:8
outlets 137:11
outside 129:18
overall 66:17
overseeing 6:18

P

page 2:2,7 3:4
23:25 25:5,16
29:6 41:24 42:14
47:9,9 48:9,13,14
54:24 55:14,19
64:6 79:2,10,15
80:12 84:1,3
85:14,15 86:17
87:24,24 92:19
97:24 98:10,10
99:21 101:2,4,9
106:1 133:13
135:11 149:10
pages 2:10,12,14
30:15,16,24 31:5
110:14,16,18
132:23 150:7
paid 77:20
painstaking 29:9
88:8
painstakingly
31:21 84:5,7
paragraph 31:25
42:18 64:19 92:19
92:21 93:1,13
97:23 98:11
100:15,20 101:2
134:9
paragraphs 58:18
parameters 125:8
126:12
paraphrased 15:2
paraphrasing
15:19
park 65:3
parole 132:24
133:10 134:14
135:12,18
paroled 134:19,24
parse 10:19
part 7:1,11 8:23
13:13 33:10 34:25

73:21 82:19 97:16
99:19,20 118:2
120:22 124:16
127:1 132:15
146:2
participate 144:14
participating
145:13
participation 91:7
particular 57:24
particularly 121:16
parties 114:2
144:18 146:2
party 38:18,19 69:4
82:1,8,20
passage 25:25
26:16 30:4,11
32:4 83:22
passages 63:10
passed 81:16
pastor 28:22
pay 118:22
payable 79:12
penalty 76:10
pending 114:7
people 8:24 29:21
48:6 109:25
144:22 147:23
148:6
perfect 147:17
perfectly 122:11
perform 23:20
period 21:18
permission 119:14
perpetrator 76:11
person 11:10 14:24
18:22 22:10 28:13
30:7,10 38:22
81:19 90:10
102:15 109:20,22
110:2 112:8
personal 121:25
personally 30:7,10
91:14 117:23
133:8 136:18
141:9
personnel 136:19
persons 94:2
perspective 9:24
10:4 26:6

pertain 132:23
pertaining 83:10
perused 77:16
petition 22:18,21
22:21 127:18,20
128:1,3,4,12
petitions 22:3,13
philosophy 11:1
29:15
phone 31:9 63:15
71:13,18 73:11
79:20
photocopies 80:8
photocopy 16:23
25:4
photograph 2:17
2:18 49:9
photographs 53:13
phrased 102:17
physical 14:21 17:7
29:12
picture 110:1,1
pictures 29:25
pieced 31:21 84:5
piecing 84:7
piled 43:17 44:19
pistol 45:13,17
place 20:20
places 130:11
plainly 82:11
play 11:23 12:1
played 137:6
playing 125:6,25
plead 25:20 26:8
pleading 22:19
23:6
please 28:10,10
59:15 79:21 86:17
134:12
plural 89:3,4
point 3:14 6:1
10:20 11:5 16:25
32:25 68:21 69:23
99:10 106:4 109:7
109:9 128:2 129:4
133:19 137:25
points 111:17
police 55:10 80:24
138:22
policies 25:18

policy 16:7 20:10
20:15,20 21:10
26:19 68:23,24
69:1,1,14,20 70:8
120:13 121:25
126:4
polished 100:10
poorly 102:17
portion 33:22 50:8
58:18,22
portions 33:16 34:1
34:15 85:7 127:7
position 5:2,5 7:7
9:13,17,19 14:10
15:4,10 38:9
39:21 40:5 112:25
116:5 118:4,8
119:23 120:2
121:23
positions 117:25
119:25
possession 133:23
possibilities 112:5
112:14 116:3
possibility 98:18,20
107:12,18
possible 10:6 36:6
57:14 68:9 85:11
92:13 132:4
possibly 12:6 69:22
72:16 131:14
post-conviction 5:6
5:11,14 7:20 8:23
11:24 18:24 19:12
21:20,23 22:2,4
23:2 32:18 34:2
133:20
potential 52:1
137:16 144:15
potentially 51:16
52:15,16,21,22
68:18 69:24 72:17
81:22 90:11
precise 123:2,9
precisely 74:18
predominant 22:1
predominately
19:15,16
prefer 4:16
preliminary 36:16

preparation 29:9
29:21 33:10 133:6
prepare 29:23
119:15 125:19
prepared 30:9,18
preparing 35:23
36:18,21,22
presence 91:15
129:9
presented 54:15
60:7
preserve 94:14
presiding 83:4
91:10
press 39:2
presumed 49:23
50:15 58:5 60:24
77:7,21
pretrial 3:12 24:3
51:5 85:2,5,16
86:20 92:5 99:22
131:9
pretty 19:14 21:15
40:12 114:21
140:22
prevent 15:12
16:20 26:12 94:14
prevents 25:22
previously 60:21
61:4 114:17
primary 18:23
principled 135:7
print 49:7
printed 49:10
53:14
prior 29:22 138:19
142:11
prison 6:3 32:1
96:19 135:1 137:9
147:15
pro 33:4
probably 32:12
77:19 79:25 115:4
123:13
procedure 23:4
85:6 94:18
procedures 51:6
proceeding 4:17
proceedings 9:3
process 11:24

21:11 23:7 33:24 34:2 89:24 90:11 98:14 106:6 119:8 125:9 133:20 processes 121:21 produce 24:9 28:11 90:7 96:21 produced 13:22 90:22 97:2 107:15 product 16:20 production 12:19 13:25 14:7 88:16 108:24 Project 5:18 33:5,7 118:22 properly 147:20 proposition 116:12 prosecuted 16:4 61:25 138:7 prosecutes 103:21 prosecution 15:20 29:16 30:13 40:13 93:4 101:10 138:18 prosecutor 9:7,8,12 9:17 10:16,24 12:22 13:17 14:13 15:9 16:4,11,19 17:4 18:16 19:11 19:15,17,24 20:18 20:23,25 21:2 24:8 27:15 28:1,2 31:13 69:15 83:13 83:16 84:7,16,17 89:25 90:6 94:21 94:23,24 95:6 96:1,4,6,8,12,15 96:25 97:4 100:16 100:21 102:5 103:4,11 104:2 105:9 108:20,25 109:18 110:4 118:12,13 120:16 125:5,6 126:1 131:13,16 140:14 141:20 147:11 prosecutors 9:18 15:8 24:14 25:16 25:18,24 26:13 70:6 93:16 144:22	148:1 prosecutor's 10:4 12:3 13:21 26:6 34:3 prove 125:10 proves 123:24 provide 20:18,21 38:7 86:21 provided 85:4 87:5 90:20 proximity 66:14 public 147:24 149:22 publication 23:25 publish 14:14 pull 49:2,5,7 punishment 11:11 20:4 77:24 purpose 36:25 49:21 purposes 100:24 purse 45:5,13,16 45:18 75:17 80:23 81:2,15,20 pursuant 54:16 102:2 138:16 put 9:18 32:2 43:11 56:5 57:10 102:23 102:24 110:7 114:8,20 146:5 putting 125:9 p.m 49:8,8 53:6,6 70:21,21 95:2,2 103:14,14 124:11 124:11 131:11,11 132:19,19 142:17 142:17 146:23,23	questioned 143:20 146:3 questioning 39:11 39:11 143:18 questions 58:24 146:9,14,20 quite 131:7 quotes 42:14 95:4 Q1 130:7,14	108:20,21 111:21 122:7 126:3 137:20 138:3 reads 88:22 93:13 134:9 reality 29:7 realize 104:12 realized 77:18 really 10:19 52:18 74:9 82:14,22 104:6 119:18 127:18 reason 26:1,7,11 38:6 51:20 52:1 58:7 74:13 83:24 101:12 138:10 139:23 142:2,6 143:6 reasonable 23:20 98:17 reasoned 137:16 reasons 6:2 25:18 26:5,5 61:4 82:17 89:11,14 113:2 118:7 recall 34:24 37:3 37:12,22 39:3,14 40:4 41:13 43:15 44:18,24 45:9,11 46:7,9,10,24 47:2 50:13 59:5 60:18 61:16 67:20,21 77:23 78:4 83:22 90:23,24 91:5,6 91:12,16,24,25 113:16 114:2 115:1,5,6,10,11 115:12,15,20 116:22 118:9,14 118:17 122:16,20 123:1,5 133:11 134:20 136:17 received 24:1 Recess 49:8 53:6 70:21 95:2 103:14 124:11 131:11 132:19 142:17 146:23 recited 139:12 recognize 55:18	135:21,23 reconsider 134:13 record 4:10 25:6 30:11,15,23 32:24 33:1,14 34:11,16 34:23 35:16 36:17 38:23 39:17 40:5 40:9 45:14,15,18 46:1 49:20 53:5,7 65:25 70:19,20 78:12 85:7,16 87:14 95:1,16,17 95:18,23 97:12 99:19,20 102:24 103:5,12,13,16 104:3 107:16,23 107:25 108:2,3,16 108:18 109:6 113:18,19 122:22 122:23 124:10,14 126:3 128:6 131:10,17 132:2,4 136:6 142:15 143:8 145:4 146:22,25 recorded 48:3 72:6 records 27:11 71:18 73:4 88:17 89:3,4 recovered 44:24 73:17 111:13 114:6 128:16 129:19 recovery 37:1 red 44:7,10,12 reference 24:12 44:14 85:17 92:25 98:5,11 101:3 108:6 133:18 references 40:5 referring 10:8 13:5 reflect 85:4 reflected 130:3 refresh 66:9 refused 114:16 regarding 10:16 35:5 40:11 60:20 60:21 63:22 98:5 99:6 102:6 108:21 122:17 131:8,13	
	Q				
	qualms 117:21 question 9:4 17:10 17:16 24:5 49:13 50:9,18 55:12 56:25 57:1,23 68:2 70:16 76:22 77:10 88:9 102:17 103:9 109:2 120:24 124:24 133:5 142:20 146:25	raise 23:11,12 93:20 99:5 102:4 raised 11:23 23:17 101:17 107:18 144:21 raises 99:1 101:23 Raley 1:14,16 2:4 4:4,9 5:20 30:23 30:25 31:3,5 33:4 40:22 49:9 50:7 50:11 53:5,7,12 58:14 64:3 65:25 66:4 70:20,24 78:15,21,24 84:24 92:17 95:1,3 97:15 103:13,15 105:18 110:12,22 124:10,12 131:10 131:12 132:22 142:15,18 146:18 146:24 148:8 rate 116:5 read 14:2,24 15:16 17:7 24:17,23 25:1,25 26:16 30:12,14 33:15,18 33:19,19,21 34:1 34:2,15,18 35:17 39:2 41:12 43:7 62:20 63:10,14,18 63:19 83:23 85:4 85:5,7,9,10,11 91:13 95:4 106:24 106:25 111:8 123:21 127:5,6,7 149:5 reading 25:5 48:3 56:3 85:12 90:25 92:5 104:10	R		

132:4 141:2
Regardless 114:23
Registered 3:7,9
 79:8
Registration
 150:17
regrettable 62:17
reject 107:19
rejected 115:6
rejecting 115:10
related 8:6 34:4,16
 37:1,8 49:21
 77:15 126:18
relating 79:22
relation 129:19
 130:18
relationship 31:6,8
 31:16
relative 33:2
relayed 127:24
released 134:18,22
 137:8
relevant 9:22 94:4
 138:5 139:22
relied 78:2
relief 23:21 137:17
remaining 114:8
remark 101:13
remarks 93:25
remedy 147:7
remember 16:9,10
 36:8 37:12,13
 39:8,12 40:3,7
 41:14 45:16,16
 46:5,6,13 48:24
 48:24 49:1 50:14
 59:7 61:19 65:12
 67:17 78:7 85:12
 90:25 91:17
 112:23 113:17
 115:21,22 117:6
 118:15 122:10,15
 122:19,22 123:6
 124:1 129:17
 134:21 143:22,23
 144:3
remembered
 114:25 136:22
 139:23
reminding 28:8

remorse 134:19,24
removed 94:15
repeat 41:25
repeatedly 19:22
rephrase 109:2
report 2:15,19,21
 2:23 27:19 28:19
 36:25 59:4 61:22
 66:1 87:10 91:21
 106:21
reported 1:20
 150:5
reporter 17:19
 70:14 150:5
reports 16:15,16,23
 28:19 34:3 41:14
 41:21 62:2,5,5,24
 62:25 72:22 73:1
 75:7,8 80:24
 83:17 84:10 86:22
 86:23 87:6 88:25
 90:2,7 91:1,6 92:8
 93:1,2,8,8,17 94:1
 97:1 98:5,18,21
 99:2,24 100:5,10
 100:11 101:15,18
 101:24 103:25
 126:20 131:8
 136:2,14,20
 138:16,25 139:2,6
 139:16 140:16
 142:3,14 143:10
represent 22:11
 57:24 60:3 62:22
 64:8 67:15 71:12
 107:2 141:5
representation
 66:16 107:1
representing 9:15
 134:23
represents 10:22
request 12:16,19
 34:25 37:4,8
 79:20 91:8,9
 120:19 126:13
 133:21
requested 25:10
 32:17 91:10
 119:14 121:2
requesting 94:15

requests 94:13
 114:8,20
required 12:11,23
 12:25 24:6 51:22
 142:5
requires 10:16
 13:10 14:6,7
 138:17 140:6,10
research 8:5,7,11
 8:11 32:24
residence 67:4,7,22
 74:15
residences 38:24
resident 4:13
resolution 17:1
resort 7:22
resources 119:1
respond 32:18
 33:10 85:25
 119:18
responded 45:5
response 22:20
 47:16 55:11
 117:14 119:3,16
 125:20 146:25
responsibility 5:23
 134:2,6,10
responsible 7:20
rest 135:1
result 37:16 113:4
 118:2 120:3,8
results 114:7,9
 121:20 130:24
 137:4,9 143:14
 144:18
retired 118:12
retrace 29:11
return 140:13
returned 130:8
reveal 118:19
 119:2
revealed 126:24
revelations 138:3
reverse 117:17
reversed 38:5
review 22:3,14,18
 32:23 33:11,13
 34:10 35:13,16,24
 39:3 43:15 45:11
 45:14,15 46:1

50:12 54:10 58:4
 69:7 75:19 76:23
 83:6 85:1,8 89:8
 90:3,8,19,20
 92:12 98:19 99:3
 102:2 104:1 108:9
 108:13 113:17
 119:15 128:12
 132:16
reviewed 33:13
 36:6 41:21 78:8
 90:20 93:9 106:19
reviewing 111:2,4
 124:16,18 125:1
 125:19 131:22
 132:2,3
revisions 8:9
ridiculous 120:18
right 4:22 6:4,25
 13:12,13 15:11,24
 17:9 18:5,13,14
 19:4 23:4,14 25:7
 25:15 27:6,22
 29:15 32:6 35:7
 35:11,23 36:3
 39:3 40:8,24 41:3
 41:5,10,11,23
 45:1 47:25 49:3
 49:19 52:5 53:12
 53:15 55:1,1,13
 57:19,20 58:3,9
 58:11 60:8,14,16
 60:17 63:25 64:11
 64:14,15 65:8
 67:6,17 68:1,2
 69:12 70:4,11
 71:16,17 72:25
 73:3,13 74:19
 75:5 77:3 78:18
 78:24 79:8 80:8
 82:5 83:3,10
 84:21 85:20 86:16
 86:18 88:12 90:18
 92:10 95:21 96:3
 96:11,24 97:12,22
 98:9 101:8 102:21
 102:23 103:1,10
 104:15,18 105:12
 105:25 106:6
 107:5 108:14,14

108:19 109:7,14
 109:19 110:6,9,15
 111:11 112:5,9,15
 113:25 116:4
 117:2,15 119:11
 120:10 121:7,10
 121:12 123:16,18
 124:6,15 126:16
 126:25 127:4,21
 128:5 130:4 131:3
 132:10,18 133:9
 133:24 135:24
 136:17 140:23,23
 141:4,10,13
rights 26:2,17
 126:9
right-hand 106:1
risk 135:5
risked 135:5
risking 90:11,13
Rita 41:8 43:19
 47:19 48:5,9
 58:23 142:7
road 65:5 66:22
robbery 81:21
Rojas 130:4
role 7:11 9:10
 133:5 137:6
 145:10
room 93:25 128:23
rooted 101:5
rough 100:9
routine 84:15
RPR 150:15
rule 69:7,23 76:24
ruled 38:12 90:21
 106:13 107:8
rules 13:2,4
ruling 54:16,18
 70:1 75:20 76:25
 83:7 119:5
rulings 38:4 136:5
run 96:20,20
 109:13,15
running 38:8
runs 103:8
rush 17:23

S

s 27:17 60:13

safest 14:1 15:15 15:17	scuba-diving 56:5	50:14 52:8,8 59:5	sharing 25:22	24:6 25:7 26:17
sake 105:5	seal 89:7 91:4	59:7 60:18	sheaf 107:14	40:23 49:18 51:17
Sampley 1:20	107:7	seek 6:5 29:2 76:10	shed 146:9	53:12 54:4 55:8
150:4,15	sealed 87:14 89:19	128:12	sheriff 30:25 31:2,7	55:20 64:11 65:6
San 71:19 73:5,16	91:2,19 100:24	seeking 23:20	31:15 59:16 62:23	69:12 71:16 73:3
73:18	106:13	105:7	63:6,12 84:4	73:8 76:16,20
save 146:6	search 128:6	seen 32:10 40:18	86:23 88:19,25	77:3 78:24 79:13
saw 36:2 44:16	searched 91:22	46:4 48:16,19,20	141:12	79:18,20 80:4
47:6 57:20 94:23	106:23 129:10	48:21 49:14,20,23	sheriff's 27:11,17	85:23 86:1,8 87:2
95:5 132:11	searching 104:13	50:11,15 53:16	27:23 35:14,25	87:16,22 88:23
saying 23:19 42:15	104:13	55:24 58:4 59:3	36:2 49:17 57:25	89:1 90:23 91:5
50:19 60:11 74:8	second 25:22 26:11	60:24 66:4,8	60:12 62:8 64:10	91:24 93:11,22
76:18 108:10	49:11 53:8 58:2	74:14 77:4,7,21	70:25 71:13 73:14	94:6,19 96:11,23
109:4 117:6	92:21,25 95:1,22	88:3 108:6 132:6	79:3 83:2,11,12	97:16 98:3,7,23
122:21 124:1	97:25 101:2	136:9	128:22 129:8	100:12,25 101:20
136:17 140:20	103:12 117:17	self-serving 120:15	130:9,10	102:9 103:1 104:8
147:9	133:13 134:9	send 28:8 128:19	shifted 82:18	105:6,23 106:8,17
says 25:16 31:7	137:16,19 142:16	senior 95:6	Shirley 79:11	107:20,23 110:23
41:6 42:3,10,20	section 30:12 59:16	sense 14:11 76:15	shorter 59:20,21	131:3,6 132:22
42:24 43:2,6,8,11	see 25:19,25 28:19	120:25 121:13	shorthand 150:4,8	133:3 134:3,15,20
43:23 44:9,9	29:7 41:6,23 42:2	sent 59:16 79:8	shortly 21:23 59:13	135:24 145:25
45:18,22,23 47:19	42:3,6,12,16,22	91:2 128:18	116:23 143:16	146:21 147:8
48:5 54:25 55:1	43:1,4,5,9,13,21	sentence 11:12	show 40:17 49:10	site 111:14
72:3 73:5,17	43:24 44:3,4,8,15	22:11 24:23 25:1	57:22 58:2 67:1	situation 14:1
74:20 79:20 80:22	45:6,24 47:11,14	99:22 111:16	97:15	34:10 147:7
84:3 85:20 86:1,3	47:18,23 48:7,12	separate 149:10	showed 126:21	situations 89:10
86:20 87:9,12,18	48:15 53:3,20	September 7:8	134:18,24	109:24
87:20,25 88:3,10	54:23,23 55:2,14	79:17 133:1,25	shows 81:19 135:3	sixth 3:14 106:4
88:12,15 89:18	55:21 58:17,20	137:11 144:20	146:1	sizable 93:17
92:20 93:7 94:8	59:1,19,23,25	Sergeant 41:8,24	sic 73:16,18 87:19	skeptical 97:25
97:24 98:16 100:2	61:10,13 64:5,16	47:20 63:20 79:3	100:11	skin-diving 55:17
100:8,15 101:9	65:6 67:3,7,10	88:1 93:2,17 97:1	side 24:10 26:6	55:24
122:23 124:7	71:3,8,18 73:8,9	98:6,18 99:2,24	58:15,15 80:13	skipping 36:21
133:14,16 144:4	79:6,11,13,18	100:2,16,21	138:24	skull 46:19
scalp 46:11	80:4,7,9,13,16	101:12,24 106:12	sightings 66:20	sleeping 42:15
scary 148:7	81:9 83:13 85:15	107:12 108:8	68:3 71:25 72:5	slept 115:3
scene 29:11 35:2	85:19,23 86:8	131:8 136:2,14	142:10	slow 18:3
38:13 43:16 44:18	87:2,7,16,22 88:5	141:2,5,12,14,17	sign 37:5,17	Smith 128:24
45:10,12 47:7	88:10,21 89:2	141:18 142:1,3,13	signature 80:10,17	129:10
66:17 121:16,16	93:5,11,22 94:6	series 80:13	signatures 80:19	society 147:18
scenes 37:25 38:7	94:19 97:20 98:3	serve 6:19 11:12	signed 80:6,9,15	sole 126:12
school 6:22 7:4	98:7,11,23 99:21	18:6	significant 40:12	solution 26:20
science 123:24	100:1,6,12,25	served 6:16,22	54:3 66:22 75:24	somebody 5:23
scientific 122:18	101:3,20 105:23	18:10,15 19:6,10	76:17 137:3 143:3	13:14 15:5 22:9
123:8,15 124:7	106:2,8,17 107:20	serving 19:1	signs 80:15	22:15 40:2 49:7
scientifically 123:2	118:5,5 122:7	set 23:8	simple 118:18	74:14,17 76:1
123:9,19	129:3 133:3,13	share 25:17	simply 118:17	81:20 82:22 90:12
scrap 69:21	134:3,15 135:15	shared 114:10,16	121:1	120:5 124:7 125:7
scuba 57:9	135:19 138:24	115:1 123:22	sir 4:11 5:10 6:4,25	133:14
	seeing 41:13 48:25	124:4 146:24	9:6 20:14 23:22	somebody's 125:11

126:8	149:1 150:1	118:10 145:14	supervising 95:6	32:1 147:17,18,19
someplace 27:2	statement 1:1 4:1	Stubblefield's 38:4	supervision 18:25	147:22
somewhat 96:3	5:16 24:16,18	studied 7:6	95:7 117:11	systematically 10:4
son 41:15 42:1	42:7 88:11 122:2	stuff 34:18 99:14	supervisor 121:25	S.W.2nd 3:17
55:17 79:24	122:4 136:23,24	109:4,5	supplement 27:19	
soon 77:18 116:23	138:4,6 145:23	stumbled 126:22	28:8	T
sorry 17:11,15,20	150:6	styled 149:6	supplemental 2:21	table 16:12
22:24 30:16 67:2	statements 86:24	styles 29:19	2:23 93:1,8 97:25	tactic 56:19,24
70:15 100:19	136:6	subdivided 33:24	Supplementary	141:20
124:25	states 6:20 10:11	subject 64:24 65:4	2:15,19 66:1	tactical 138:8,10
sort 21:16 23:13	13:2,6 21:5 23:25	88:17	supplements 28:10	139:15
45:7 46:21 68:17	24:2 38:23 61:7	Submission 130:7	28:19 62:15 92:9	tactically 10:3
72:7,18 81:10,12	64:20,24 100:20	130:15	support 107:17	take 14:18 16:15,16
82:9 111:5 124:18	106:4,10	submit 128:15	supporting 21:6	17:25 33:11 52:3
sorts 114:1	State's 25:20 27:1	submitted 7:21	34:12	91:25 103:5
sought 77:23	32:22 33:21 49:16	54:10 69:6 75:18	supposed 10:2 23:9	105:14 106:25
sound 31:11,12	49:19 77:12,13,14	76:23 83:5 107:6	30:18 88:24 99:14	115:21 118:4
39:10 88:7 141:19	statute 12:25 38:6	108:9 129:23	105:7 130:6	125:11 139:25
141:24	statutes 13:8 21:6	subpoena 145:17	suppress 34:17	140:3,19
sounding 144:5	stay 119:14 135:1	subpoenaed 145:19	85:10	taken 4:2 16:13
sounds 10:14	stealing 76:2	SUBSCRIBED	suppressed 101:19	85:16 94:14 116:6
118:15,21 141:25	step 31:22 52:3	149:18	suppression 126:8	147:6 150:8
speak 40:9	steps 29:11 94:13	subsequent 8:17	Supreme 10:11	talk 8:17 30:20
specific 32:7	103:5 147:5	succeeding 19:4	13:2,6 21:5 24:2	36:3 42:11 92:10
141:23	stole 75:17 76:2	successful 37:14	24:13	95:13 113:21
specifically 38:7	81:20	sufficiency 34:8,9	sure 6:6 17:24 18:1	143:10
spend 119:1	stolen 45:13,17	85:8 126:7	25:8 27:9 28:12	talked 31:9 63:15
spent 147:15	74:14 80:23	sufficient 13:20	32:11 40:19 54:5	84:4 113:18
spinning 15:18	stomach 123:3,25	suggest 46:15	68:16,20,20 69:17	124:12 131:12
spoke 142:23	stop 18:2 42:25	55:15 56:1 68:11	69:20 70:13 95:16	136:4 143:25
spoken 29:24	52:18	suggesting 46:11	103:6,6,9 111:6	144:11,22
spun 13:21 15:2	stopped 65:1	57:10	112:16 116:2	talking 36:10 41:18
St 65:1	straight 50:9	suggests 73:15	122:5 124:13	95:3 103:20
stake 69:19	strange 72:1,6 94:2	75:24 76:3	127:3 145:4	108:25 109:17
stand 101:11 135:7	139:21 142:10	suit 55:17,25 56:5	surgery 79:24	125:4
136:19	strategically	57:9	surmises 55:23	talks 56:2
standards 20:23	140:14	suitcase 43:12,17	surprise 31:17	tape 47:25 55:1,4,8
23:20	strategy 136:18	44:25	107:7	taped 41:7 52:6
start 50:19 100:19	street 64:25 65:3	Suite 1:17 4:4	surprised 101:10	team 33:8
started 21:23 25:11	65:10,17,18 66:20	150:18	141:14	technician 128:24
117:12	67:7	summarized 15:2	surveillance 74:16	tell 5:25 6:7 21:15
state 1:8 3:16 4:10	strength 25:19	58:17 61:6	81:10	28:10 71:1 92:1
7:13,25 8:1 9:15	135:3	summarizes 59:4	suspicious 47:21	113:15 120:6
12:16 13:9 22:11	strike 45:10 49:12	summarizing 15:19	sweet 70:14	137:2
22:22 28:18 32:1	49:13 57:23 92:24	summary 111:5	swing 117:8	telling 28:7 41:24
39:11 76:8,10	strong 57:14	113:18	sworn 1:1 4:1,7	118:15
86:21 87:4 88:24	strongly 116:24	summer 7:8 41:19	5:16 29:10 122:2	tells 134:11
89:11,12 93:24	Stubblefield 37:5	120:21 141:1	145:22 149:18	ten 139:8
106:5 111:13	37:17 91:9,14	144:14	150:5	tend 17:13 51:15
118:19,25 128:13	115:16 116:7	sundry 89:14	system 7:25 10:2	tender 14:2

tending 94:9	54:20 78:23 96:23	118:6 120:10	101:9	trust 127:12
Tennessee 6:14	98:9 131:6 135:10	121:21 137:3,14	track 81:9	trusting 127:19
term 10:18	146:21 148:8	139:8,20 141:15	traffic 16:4	truth 6:2,5 28:23
terms 8:11 69:15	Thanks 70:18	146:4 148:7	training 7:2 19:19	29:3,8 118:20
114:1	148:9	thoughts 111:6	transcript 3:12	119:2
test 104:11 117:8	theories 9:16 10:25	three 12:11 37:22	32:24 33:14,15	truthful 63:21
118:18,25 119:2	theory 78:1	38:23 58:18	34:11 39:4 41:7	truthfully 63:20
121:1,8,15	they'd 16:13	three-and-a-half...	55:4 60:22 85:2	146:12
tested 35:6 38:2,14	thicker 107:14	44:22 53:25	85:16 92:5 98:1	try 17:17 105:14
38:16 113:24	thin 61:17	thumb 101:16	115:23 122:7	113:10 120:23
114:4,6,15,15	thing 14:1 15:15,17	time 5:2 6:20 7:14	127:5 136:6 142:7	121:8
115:13,14 116:25	17:3 47:20 56:12	8:24,24 12:13,14	149:5 150:8	trying 16:9 34:21
120:22 121:2	56:22 72:18 81:10	17:25 18:15,20	TRAVIS 150:2	54:7 69:3 75:13
testified 4:7 62:22	81:12,25 82:2	21:18,22 27:15,23	tremendous 119:1	111:8 125:7,11
63:20 100:2,8,10	84:13 90:15 95:20	28:7 31:15 33:11	trial 3:13 7:14 9:7	129:2 143:25
122:8,16	95:22 105:12	33:20 35:24 36:9	9:7,12,17,18 10:1	147:4
testifies 11:18	120:11	36:10,11 49:25	11:16,17 12:13,14	Tuesday 93:15
138:24	things 11:16,22	50:16 51:10 52:4	15:8,9 16:3 17:2,3	turn 8:25 9:5,20
testify 138:9,13,15	12:1,11 23:12	61:17 63:8 78:8	18:15 19:10,15,17	11:1,20 12:4,17
139:5 141:9,13,16	26:21 30:3 56:11	80:24 83:13 84:24	23:19,21 28:9	12:23 14:13,14,21
146:12	56:15 70:7 72:7	86:11 91:20 96:22	29:15,16,22 30:9	14:23 24:14 52:1
testifying 138:18	99:18,20 124:12	99:15 101:15	30:21 32:24 33:15	68:22 70:13 79:10
testimony 138:19	140:9 142:19	102:12,25 104:2	34:4,11,12,16,20	85:14 88:24 89:14
139:1 141:18	think 7:24 9:23	109:23 110:2,4	39:4,5,17 40:5,14	90:2 102:11,15
145:3 149:5	10:1 14:1 21:10	113:2,8 117:25	49:25 50:17 51:11	107:13 109:8
testing 4:23 5:8	30:1 37:7 40:1	118:6 119:15	54:6 56:16 69:18	138:15 142:6
22:5 32:18 33:11	44:13 48:19,22	121:14 122:8,17	92:11 93:4,7,10	turned 9:14 11:7
34:25 35:12 36:19	51:20 68:8 69:10	123:3 129:11	93:14 94:16 95:4	11:13 12:12 13:10
37:8,21 39:15	78:19 86:6,13	133:10 136:15	96:25 98:1 99:1,6	15:14 26:22 27:20
84:25 113:24	92:2,13 96:8	137:25 139:19	99:15,17 101:3,14	38:22 49:24 50:6
114:7,9,22 116:6	105:5 109:3	140:19,25 143:9	102:6,10 103:21	50:20,20 51:1,4
117:13,18,20	112:20 115:23	144:11,11	104:3 106:12,15	51:10,19,22 52:11
118:23 119:3,22	118:1 119:24,25	times 122:15	108:7,22 109:1,5	52:25 54:19 57:16
120:11,19 121:6	120:1,17,24	123:23	109:21,23 110:4	57:18 60:25 68:18
121:22 125:20	121:20 124:23	title 4:18	119:5 122:7,17	69:8,10,24 70:2,3
126:2,14 127:10	129:7 142:4,24	today 5:16 88:2	123:2 125:5 127:5	70:9 72:19 75:19
127:22 128:14,15	143:19 146:1	120:16 121:2,11	127:16 128:13,14	75:21 76:24 77:1
128:18,20 130:20	147:14,16,21	136:1 145:17	131:13,16 132:12	77:8,22 89:6,17
130:24 137:9	thinking 50:24	146:12	136:6,9,15 139:5	89:19,22 95:13,15
143:4 145:11,14	138:1	told 5:18 39:2 48:2	141:11,19 143:8	98:19,21 99:2,14
Texas 1:8,9,18 2:9	third 38:18,19 69:4	54:25 78:4 93:16	143:12 145:2	102:10,11 108:17
2:11,13 3:20 4:5	82:1,8,20 85:18	112:25 113:12,13	Trials 29:8	109:5 129:24
4:14 6:10,11 7:2,7	third-party 39:5	116:16,24 118:7,9	tried 30:8 95:9	132:12 137:13,23
7:10,23,24 13:1	40:11 54:13 75:15	119:21 122:4	133:12 144:23	138:19 141:4
22:14 23:24 24:17	thorough 28:1	128:21 129:14	tries 55:15	turning 10:16 15:6
25:5,16 29:6	100:11	130:5 134:18,24	trips 117:16	51:20 139:6,15
30:16 31:6 76:8	thoroughly 19:20	138:12 139:9,19	trouble 146:6	turns 116:5
105:21 110:14	83:15	141:11,19	true 92:4 102:18,19	two 25:18 31:18
149:1 150:1,16,18	thought 55:18	top 41:6 42:14	120:25 122:11	38:5,10 59:14
Thank 17:21 54:4	112:22 117:25	58:18 86:17 87:24	149:7 150:7	67:25 71:6,22

80:18 117:16
130:13 132:25
137:5 141:11
type 94:8
types 19:22 23:16
typical 59:7 85:6
typically 23:13
28:6

U

Uh-huh 111:15
133:17
ultimate 35:21
127:9,21
ultimately 4:24 8:9
35:9 129:8,24
130:13,20
unbiased 56:17
57:3
uncommon 62:13
62:19
uncovered 28:16
73:5
underlying 33:12
understand 13:4
33:3,23 103:9
109:3 114:12
118:18 120:4
121:23 124:14
125:5 132:3 137:6
141:22 145:3
146:14 147:8
understanding
10:15 12:22 14:5
20:17 27:15 30:5
32:13 34:6 36:17
39:1 63:7 86:20
113:19 129:24
131:2,22 138:12
139:3 142:22
143:13 144:10,13
understood 137:14
uniform 20:19
unique 7:24
United 6:19 10:11
13:2,6 21:5 24:2
University 6:11,14
unknown 39:5
54:13 68:3 69:4
82:8 111:22 112:3

112:7
unsealed 91:11,14
unsolicited 143:17
unusual 31:11 59:6
63:2,4 89:9 94:1
urge 25:20 26:8
use 10:18 142:9
useful 17:9 69:22
142:22
usually 138:22
U.S 6:23

V

v 3:16
vague 45:7
valid 119:23,25
123:19
van 65:3 66:1,20
68:4 72:1,6,11,13
74:5,7,11 77:10
77:12 142:10
Vanderbilt 6:14,16
6:22
variety 14:18
various 23:16
89:13
verbatim 14:25
15:16 48:1 52:7
58:22
verdict 34:13
Verne 71:19 73:4
version 58:18
60:22 61:6 100:10
VI 3:14
victim 29:12 112:3
victim's 111:14,19
111:25 112:6
victory 135:13,18
135:21
video 74:16
videotape 17:22
view 9:25 10:1
29:18
violated 126:9
violating 90:8
violation 12:2
94:17 103:3,4
106:6 131:14,15
132:4,6
violations 104:17

104:20,20 125:2
126:20,23
virtual 91:20
visit 29:10
vivid 114:21
voir 34:17 85:9
126:10
voluntarily 5:15
145:19,21
vs 1:9 10:8,15
12:12 21:6 24:2
24:13 54:11,17
68:19 69:8,25
75:20 76:25 83:7
98:12 106:7

W

wait 23:9
waiting 137:18
waive 114:20
walk 65:5 66:21
walking 64:25
want 12:4,4,6 14:9
28:2,16,18,18,21
33:19 44:25 57:3
58:15 71:24 78:20
81:8 89:13 95:11
103:9,15 109:2
113:10 124:13,21
125:18 131:4
137:10 139:10
140:13 141:5
144:19 145:3
wanted 9:12 15:9
28:1 75:2 78:11
81:6 83:13 105:12
115:12,14 117:9
120:10 143:7,11
146:8,8
wants 27:24 41:25
89:21
wasn't 9:14 17:1
31:15 34:19 95:12
95:15 102:10
114:23 116:20
119:24 126:19
137:24 138:1
143:6
watching 122:12
way 10:2 13:21,22

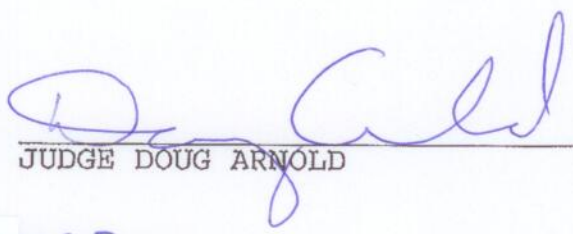
15:19 17:19 23:8
34:5 39:14 57:15
57:22 61:23 64:21
68:25 71:23 76:17
112:12,22 119:12
123:2 127:8 143:3
144:6 146:4
weapon 46:7
wearing 55:16,24
weather 69:8
week 5:18 69:3
weekend 88:13
93:9
weeks 59:14
welcome 54:21
went 6:10,13 8:12
16:2 17:1 30:17
36:24 39:22 49:20
112:17 113:18
126:17 128:21,21
129:5,8 130:10
147:22,25
weren't 11:17
104:25,25 126:23
132:7 137:8
we'll 8:17 21:15
65:22
we're 10:8 36:21,21
41:2 49:9 53:9
54:25 84:1 105:7
111:10 127:9
147:4
we've 95:4 124:12
136:1,4,4,5,9
147:1
whatsoever 120:20
what-have-you
126:2
White 86:19 87:4
wicker 44:19
wife 39:7,21,24
40:2 54:14 55:16
56:6,7 57:11 65:1
82:7,24 134:2,6
134:10
Williamson 1:9
3:21 4:14,20 5:4
5:25 9:9 18:7
19:3 20:9 21:21
27:16 62:14 79:3

86:14 128:22
130:9,10 135:17
145:22
winner 35:10
wish 62:18 120:14
withdraw 55:12
81:5 88:9
withheld 25:24
26:13 106:5
witness 4:2 11:18
11:19 29:10,11
50:10 138:18,23
138:24 148:9
witnesses 39:12
144:16
woman 42:8 48:1
52:7 69:5 73:7
74:17,20 75:16,17
109:17
woman's 75:17
won 29:8
wood 41:8,24 45:21
45:23 46:4,10,13
46:16,18,21 47:20
55:1,15 59:17
61:7 63:3,20
71:14 79:3 86:22
87:11,19,21 88:1
88:25 93:2 98:6
99:24 100:2
101:12 106:12
107:12 108:8
137:22 141:2,5,12
141:14,18 142:1
142:13
wooded 65:5,12
66:22 67:18,22,24
68:6
Wood's 41:1 62:20
88:17 89:3 92:8
93:17 97:1 98:18
99:2 100:16,21
101:24 131:8
136:2,14 141:17
142:3
word 89:3 92:1
115:22 135:13
words 10:23 11:11
11:23,25 23:18
29:24 34:15 76:1

85:9 106:2 126:6 134:17,21 work 5:6 7:9,18 8:10,17 10:2 16:2 16:19 18:24,25 22:7 31:21 39:6 39:22 55:10 69:6 82:9 89:24 139:10 143:3 145:6 worked 5:24 11:4 15:24 16:6 20:11 33:8 117:11 worker 111:22 working 31:8 127:15 world 106:19 worry 17:4 wouldn't 31:16 34:15 77:19 116:2 writ 8:6,15 23:5,10 23:11 126:1 137:8 137:14,19 writing 8:12 111:8 114:23 writs 5:7 18:25 22:4 23:1 written 24:18 62:3 62:4,5 72:23 75:8 79:23 96:25 133:15 135:13 wrong 120:2 129:21 147:25 wrongfully 109:25 wrote 112:16 115:25	147:15 yesterday 79:21 young 44:24 younger 9:18 53:22	17th 4:3 93:15 150:9 18 3:18 86:3 110:20 110:23 1800 1:17 4:4 19 3:20 132:20,22 19th 133:2 134:8 1963 10:12 1980s 48:21 53:18 1986 71:20 79:17 99:23 1987 85:17 91:20 93:10,16 121:6 144:5 1988 3:17 105:21 1990 6:12 1993 6:15 1994 7:7 15:25 1997 23:25 110:14 1998 16:1 18:5,11 31:15	26 30:15 26TH 1:11 27 2:12 30:16 110:16 27th 79:17 28 2:12 30:16 110:16 29 2:12 29:6 84:1 85:14	5:07 131:11 5:09 132:19 5:11 132:19 5:25 142:17 5:30 39:23 122:13 5:40 142:17 5:46 146:23,23 53 2:17,18 5300 150:18 58 2:20
X	0	2	3	6
x 46:12 67:12	000301 2:22 000374 2:20 000375 2:20 001061 3:18 003754 3:19 004144 2:16 004151 2:16 004178 2:25	2 2:11 29:6 46:12 84:2 110:10,16 130:7,15 2:41 49:8 2:44 49:8 2:48 53:6 2:52 53:6 20 87:19 103:2 2001 18:12 2002 19:1 22:1 2005 5:1 32:14,22 36:15 113:20 116:7 119:7,7,10 119:13 2006 133:1,25 2007 3:22 2008 36:20 115:15 2009 5:1 36:20,20 49:22 133:2 134:8 2010 19:7 119:8 2011 4:3 149:11,19 150:9,12 2013 150:16 21 87:19 243 150:17 25 2:10 103:2 25th-26th 99:23	3 2:13 4:20 31:4 47:9 54:24 84:4 110:10,18 3rd 22:8,16 36:23 3:17 70:21 3:18 70:21 3:52 95:2 30 86:17 300 1:17 4:4 306 64:6 31 2:14 150:16 32 87:24 362 79:22 374 59:23 375 59:23	6 2:18 53:10,13 88:11 6th 85:17 133:1,25 6:00 122:9 600 150:18 64 2:22 34:6 97:24 65 2:24 98:10 99:21 6550 1:21 150:16 67 101:2 677 97:21 68 101:9 682 97:21
Y	1	4	7	8
yeah 25:14 44:2,10 45:3,5,7,8 74:22 76:21 107:1 109:11 113:7 116:1 125:17 year 10:13 144:20 years 9:8,9 25:23 26:12 103:2 104:10 136:23 138:4 139:9	1 2:9 25:3 30:23 110:10,13,15 1:45 4:3 10 2:25 70:22,25 73:3 105 3:17 11 3:6 70:22,25 73:3 110 3:19 1107 23:3 12 3:7 78:13,16 88:15 12th 150:11 13 2:14 3:9 31:5 78:13,16,24 84:3 89:2 110:18 13th 59:12 132 3:22 13202 64:25 13204 65:2 14 2:14 3:12 31:5 84:22 85:13 110:18 14th 101:7 148 150:7 15 3:13,22 92:15 15th 71:20 16 3:14 97:13 17 3:16 87:12 105:16,19	4 2:4,15 40:20,23 40:25 41:4 46:12 48:9,13 54:9 55:14,19 58:16,19 60:10,12,22 130:7 130:15 4th 126:9 4:09 95:2 4:21 103:14 4:23 103:14 4:51 124:11 4:59 124:11 40 2:16 42 2:10 23:25 30:24 110:14 43 2:10 25:16 30:24 110:14	7 2:19 58:11,12,14 58:17 59:15,20,21 60:1,15,18,20 88:11 70 2:25 3:6 713 150:18 761 3:17 77007 150:18 77057 1:18 4:5 78 3:8,11	8 2:21 64:1,4 65:25 72:1,2,3,7 8-13-86 66:3 8-14-86 64:17 8-24-86 59:10 84 3:12 86 41:22 86-452-K26 1:6 861-0203 150:18 87 41:22 876 3:17
		5 2:17 53:10,12,22 54:1 5:06 131:11	9	

<p>9 2:23 65:23 66:2 9th 93:10 9114 67:3 92 3:13 93 7:8 94 7:9 97 3:15 98 139:10 99 139:11</p>				
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1 I, JUDGE DOUG ARNOLD, have read the foregoing SWORN
2 STATEMENT and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5 
6 _____
7 JUDGE DOUG ARNOLD

8 THE STATE OF Texas)
9 COUNTY OF Williamson)

10 Before me Cindi McIntyre on this day personally
11 appeared JUDGE DOUG ARNOLD, known to me (or proved to me
12 under the oath or through personal knowledge
13 (description of identity card or other document) to be
14 the person whose name is subscribed to the foregoing
15 instrument and acknowledged to me that they executed the
16 same for the purposes and consideration therein
17 expressed.

18 Given under my hand and seal of office this
19 14th day of December, 2011.

20
21
22 Cindi McIntyre
NOTARY PUBLIC IN AND FOR



23 THE STATE OF Texas
24