

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">NO. 86-452-K26 THE STATE OF TEXAS, IN THE DISTRICT COURT OF Plaintiff, VS. WILLIAMSON COUNTY, TEXAS MICHAEL MORTON, Defendant 26TH JUDICIAL DISTRICT</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON OCTOBER 31, 2011</p> <p style="text-align: center;">ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on October 31, 2011, from 9:49 A.M. to 6:07 P.M. before Sherri Santman Fisher, CSR in and for the State of Texas, reported by machine shorthand, at the Williamson County Courthouse, Grand Jury Conference Room, 405 Martin Luther King Street, Georgetown, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated in the record or attached hereto.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td style="width: 85%;"></td> <td style="width: 10%; text-align: right;">Page</td> </tr> <tr> <td>1</td> <td>Appearances</td> <td style="text-align: right;">2</td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td>Examination by Mr. Scheck</td> <td style="text-align: right;">5</td> </tr> <tr> <td>4</td> <td>9:49 a.m. - 11:40 a.m.</td> <td></td> </tr> <tr> <td></td> <td>11:51 a.m. - 1:07 p.m.</td> <td></td> </tr> <tr> <td>5</td> <td>2:20 p.m. - 3:08 p.m.</td> <td></td> </tr> <tr> <td></td> <td>3:17 p.m. - 4:09 p.m.</td> <td></td> </tr> <tr> <td>6</td> <td>4:12 p.m. - 5:20 p.m.</td> <td></td> </tr> <tr> <td></td> <td>5:29 p.m. - 6:05 p.m.</td> <td></td> </tr> <tr> <td>7</td> <td>Changes and Signature</td> <td style="text-align: right;">306</td> </tr> <tr> <td>8</td> <td>Reporter's Certification</td> <td style="text-align: right;">308</td> </tr> <tr> <td>9</td> <td>Reporter's Further Certification</td> <td style="text-align: right;">309</td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td style="text-align: center;">EXHIBIT INDEX</td> <td></td> </tr> <tr> <td>12</td> <td style="text-align: center;">Number Description Page Marked</td> <td></td> </tr> <tr> <td>13</td> <td>1 Duces Tecum</td> <td style="text-align: right;">5</td> </tr> <tr> <td>14</td> <td>2 Documents Produced by the Witness</td> <td style="text-align: right;">5</td> </tr> <tr> <td>15</td> <td>(As provided to the court reporter at the conclusion of the deposition)</td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td>2-A Complaint</td> <td style="text-align: right;">12</td> </tr> <tr> <td>18</td> <td>3 Handwritten Notes</td> <td style="text-align: right;">5</td> </tr> <tr> <td>19</td> <td>4 Motion to Recuse Williamson County District Attorney and for Appointment of Independent Prosecutor</td> <td style="text-align: right;">28</td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td>5 E-Mail Dated August 19, 2011</td> <td style="text-align: right;">36</td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td>6 Supplementary Offense Report</td> <td style="text-align: right;">48</td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td>7 Supplementary Offense Report</td> <td style="text-align: right;">49</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>8 Hearing on Recusal</td> <td style="text-align: right;">106</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>			Page	1	Appearances	2	2			3	Examination by Mr. Scheck	5	4	9:49 a.m. - 11:40 a.m.			11:51 a.m. - 1:07 p.m.		5	2:20 p.m. - 3:08 p.m.			3:17 p.m. - 4:09 p.m.		6	4:12 p.m. - 5:20 p.m.			5:29 p.m. - 6:05 p.m.		7	Changes and Signature	306	8	Reporter's Certification	308	9	Reporter's Further Certification	309	10			11	EXHIBIT INDEX		12	Number Description Page Marked		13	1 Duces Tecum	5	14	2 Documents Produced by the Witness	5	15	(As provided to the court reporter at the conclusion of the deposition)		16			17	2-A Complaint	12	18	3 Handwritten Notes	5	19	4 Motion to Recuse Williamson County District Attorney and for Appointment of Independent Prosecutor	28	20			21	5 E-Mail Dated August 19, 2011	36	22			23	6 Supplementary Offense Report	48	24			25	7 Supplementary Offense Report	49					8 Hearing on Recusal	106									
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Lindsey Roberts First Assistant District Attorney 405 Martin Luther King Street, No. 1 Georgetown, Texas 78626</p> <p>5</p> <p>6 Kristen Jernigan Assistant District Attorney 405 Martin Luther King Street, No. 1 Georgetown, Texas 78626</p> <p>7</p> <p>8 FOR THE DEFENDANT:</p> <p>9 John W. Raley Raley & Bowick 1800 Augusta Drive, Suite 300 Houston, Texas 77057</p> <p>10</p> <p>11 Barry Scheck Innocence Project 40 Worth Street, Suite 701 New York, New York 10013</p> <p>12</p> <p>13 FOR THE WITNESS:</p> <p>14 R. Mark Dietz Dietz & Jarrard 106 Fannin Avenue East Round Rock, Texas 78664</p> <p>15</p> <p>16 Also Present: 17 Michael Morton 18 Rachel Pecker 19 Al Rodriguez, Videographer</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">EXHIBIT INDEX (Continued)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td style="width: 85%;"></td> <td style="width: 10%; text-align: right;">Page Marked</td> </tr> <tr> <td>1</td> <td>9 Handwritten Note Dated 8-15-86 to Don From Jill</td> <td style="text-align: right;">130</td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> </tr> <tr> <td>4</td> <td>10 Supplementary Offense Report</td> <td style="text-align: right;">139</td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td>11 Supplementary Offense Report</td> <td style="text-align: right;">139</td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td>12 Letter Dated 9/27/86 to Don Wood From John B. Cross</td> <td style="text-align: right;">139</td> </tr> <tr> <td>9</td> <td></td> <td></td> </tr> <tr> <td>10</td> <td>13 Motion for Production of Evidence Favorable to the Accused</td> <td style="text-align: right;">139</td> </tr> <tr> <td>11</td> <td></td> <td></td> </tr> <tr> <td>12</td> <td>14 Motion for Discovery and Inspection</td> <td style="text-align: right;">139</td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td>15 Motion for Production of Statements and Reports</td> <td style="text-align: right;">139</td> </tr> <tr> <td>15</td> <td></td> <td></td> </tr> <tr> <td>16</td> <td>16 Motion for New Trial</td> <td style="text-align: right;">139</td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td>17 Appellant's Brief</td> <td style="text-align: right;">139</td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td>18 Appellee's Brief</td> <td style="text-align: right;">139</td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td>19 Handwritten Notes</td> <td style="text-align: right;">245</td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td>20 Judge's Criminal Docket, District Court, Williamson County, Texas</td> <td style="text-align: right;">245</td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> <tr> <td></td> <td>21 Sworn Statement of Roberto J. Bayardo</td> <td style="text-align: right;">281</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>22 Subpoena</td> <td style="text-align: right;">296</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>			Page Marked	1	9 Handwritten Note Dated 8-15-86 to Don From Jill	130	2			3			4	10 Supplementary Offense Report	139	5			6	11 Supplementary Offense Report	139	7			8	12 Letter Dated 9/27/86 to Don Wood From John B. Cross	139	9			10	13 Motion for Production of Evidence Favorable to the Accused	139	11			12	14 Motion for Discovery and Inspection	139	13			14	15 Motion for Production of Statements and Reports	139	15			16	16 Motion for New Trial	139	17			18	17 Appellant's Brief	139	19			20	18 Appellee's Brief	139	21			22	19 Handwritten Notes	245	23			24	20 Judge's Criminal Docket, District Court, Williamson County, Texas	245	25				21 Sworn Statement of Roberto J. Bayardo	281					22 Subpoena	296															
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1 (Exhibit Nos. 1, 2, and 3 marked)
2 VIDEOGRAPHER: It's October 31st, 2011.
3 The approximate time is 9:50 a.m., beginning Tape
4 No. 1. We are on the record.
5 KEN ANDERSON,
6 having been first duly sworn, testified as follows:
7 EXAMINATION
8 BY MR. SCHECK:
9 Q. Good morning, Judge Anderson.
10 A. **It's a little thing; but if you want to drop**
11 **the "judge," I told Mr. Dietz I don't want him**
12 **referring to me as judge in the pleadings and --**
13 Q. Well, that's -- that's --
14 MR. SCHECK: Can you hear Mr. Anderson?
15 Q. (BY MR. SCHECK) So you tell me. For purposes
16 of this deposition, I was planning on calling you judge
17 and according you every respect that you want. But if
18 you would prefer me to call you Mr. Anderson during the
19 course of this, I will do that.
20 A. **I hope we both respect each other; but I think**
21 **given what this is about, it had nothing to do with me**
22 **being a judge and I'm not here in my capacity as a**
23 **judge, so --**
24 Q. So your preference is that we call you
25 Mr. Anderson?

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1 A. **Yes, sir.**
2 Q. Then that's exactly how we'll do it.
3 Now, Mr. Anderson, I think we have marked
4 for purposes of --
5 MR. SCHECK: I should probably put on the
6 record who else is in this room because I think at the
7 moment this is still a protected proceeding. That's
8 our understanding?
9 MR. DIETZ: That's my understanding.
10 MR. SCHECK: Yes. And that -- so we have
11 Mr. Raley; Rachel Pecker, who is a law student who has
12 been working on this matter.
13 Q. (BY MR. SCHECK) Mr. Morton you recognize.
14 A. **I don't really recognize him, but yes.**
15 Q. Okay. And then --
16 MR. ROBERTS: Lindsey Roberts.
17 MR. SCHECK: Lindsey Roberts from the
18 District Attorney's office. And I think --
19 MR. ROBERTS: Kristen Jernigan. She'll
20 be back.
21 MR. SCHECK: Kristen Jernigan will be
22 back in a minute.
23 Q. (BY MR. SCHECK) So -- and of course, your
24 counsel, Mr. Dietz. Is that correct?
25 A. **Correct.**

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1 Q. Okay. So we've marked first the -- as Exhibit
2 1, a request that was made under the subpoena duces
3 tecum, right? And for -- to you, for all documents in
4 your possession or control regarding or related to in
5 any way involving Michael Morton, including, but not
6 limited to, letters, notes, facsimiles, and e-mails.
7 And then there's a footnote describing that.
8 No. 2, copies of all recorded statements,
9 including text messages, or phone conversations in your
10 possession or control regarding, related to, or in any
11 way involving Michael Morton, including, but not
12 limited to, voice mail messages.
13 3, all notes, diaries, journals,
14 calendars, messages, cards, charts, memoranda, copies
15 of phone messages, or e-mails kept by you and in your
16 possession or control regarding or related to or in any
17 way involving Michael Morton, Cause No. 86-452-K26, The
18 State of Texas versus Michael Morton.
19 And then 4, all documents not privileged
20 under the Texas Rules of Civil Procedure that show the
21 date, location, content of each conversation or
22 communication between you and any person in your
23 possession or control regarding, related to, or in any
24 way involving Michael Morton. Right?
25 A. **Correct.**

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1 Q. And you have kindly come today with counsel
2 and there's a stack in front of you right now which
3 consists of a production you have made pursuant to this
4 subpoena duces tecum. Do I have that correct,
5 everybody? Mr. Anderson?
6 A. **Yes, sir.**
7 Q. Okay. And so we have -- for the time being,
8 and we can make proper copies of it, we have put on top
9 of this as Deposition Exhibit 2, right, the
10 production. Maybe if you could just describe what it
11 is, that will help; and then we'll put it aside for the
12 moment, refer to it as necessary; and then we can, if
13 need be, make a -- you know, copies of this so that we
14 have it.
15 MR. SCHECK: Does that seem fair,
16 gentlemen?
17 MR. DIETZ: It seems fair. And when you
18 say "describe what it is," you're referring to the
19 documents that Mr. Anderson produced.
20 MR. SCHECK: Yeah, the documents that you
21 guys produced, yeah, because I actually pulled it out.
22 But initially this was all in this green folder if that
23 helps. Okay?
24 THE WITNESS: All right. There's two
25 sets of e-mails, one off my personal account, one off

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1 my county account. There is -- I left everything with
2 the District Attorney's office related to the case; and
3 when I was reading that subpoena duces tecum, I just
4 sort of chalked that up as it's all in the DA's
5 office. And then a day or two later I remembered, wait
6 a second, you probably have the notes you have for
7 final argument, voir dire, and opening statement. And
8 so I, in fact, keep all those in a file. And I have
9 the voir dire, opening argument, another argument, and
10 another argument. So it looks like the three arguments
11 and the voir dire.
12 Q. (BY MR. SCHECK) So those were just notes
13 you -- from the time of the trial about the voir dire
14 and the closing argument, you kept for yourself.
15 A. Right. I keep all those -- and I don't know
16 that I have every one. But on every trial I used to
17 stick them in a folder so that when I was trying
18 another case, I could go back and refer to it.
19 Q. Uh-huh.
20 A. So we have the e-mails, that. Again, I was
21 reading through the duces tecum and I wasn't quite sure
22 exactly what some of that stuff meant, but when I got
23 to -- somewhere in there you have something about
24 writings.
25 Q. Yes.

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1 A. And so I -- it snapped on me we might be
2 talking about publications, too. So I checked the only
3 two books that would have anything about this case,
4 "The Crime Victim's Handbook" and "Crime in Texas",
5 and in "Crime in Texas" I found something on Chapter
6 2. The first two pages was kind of an introduction
7 that I was making a point about how exciting being a
8 trial lawyer is and how glamorous it is.
9 Q. We're going to discuss that, the glamorous
10 world of trial lawyering, and we're familiar with that
11 chapter. Thank you. Because we were actually
12 wondering whether you had kept any diaries or journals
13 or notes in preparation for that chapter. But I take
14 it you've produced everything that you have then.
15 A. That would be correct.
16 Q. Okay. So this was in the green folder,
17 right? And this -- and this is also what was
18 responsive in terms of e-mails concerning this matter
19 that relate to it; is that right?
20 A. That's correct.
21 Q. Okay. I'm going to do that for the sake of
22 this. Okay. This is a -- this is -- what's that
23 document?
24 A. The first document is the agreement. This is
25 a probable cause affidavit that I assume came from the

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1 DA's office. Yeah. I think that's where it came
2 from.
3 MR. DIETZ: Let me do this for the
4 benefit of the record, just so it's clear.
5 MR. SCHECK: Yeah.
6 MR. DIETZ: The documents that remain in
7 this stack, including the first one that you have in
8 your hand, are all documents that I obtained from the
9 District Attorney's office; and they are documents that
10 are public record, the probable cause affidavit, the
11 appellant and appellee's briefs, and a series of
12 correspondence between trial counsel, Mr. Allison, and
13 the Court and some portions of the statement of facts.
14 Separate and apart from that we have a transcript of
15 the proceedings as they were copied from a disk that I
16 obtained.
17 Q. (BY MR. SCHECK) Okay. So for the sake of
18 clarity here, why don't we -- we have marked this all
19 Exhibit 2, right? Why don't we mark this page, which
20 is the probable cause affidavit you've described from
21 Don Wood, which has a Bates Stamp No. 1 that was sworn
22 and subscribed on the 25th of September, 1986 -- right?
23 A. That's what it says.
24 Q. Okay. Why don't we make that 2-A just for
25 purposes of this record so we all know what we're

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1 talking about. And everything else here, as you say, I
2 think we've all seen, are letters and transcripts in
3 the case. The only document that I'm not sure I hadn't
4 seen was this one. So I'll just mark that 2-A and then
5 I think we're ready to -- okay.
6 (Exhibit No. 2-A marked)
7 Q. (BY MR. SCHECK) Now, before the deposition
8 started, I showed you, Mr. Anderson, and counsel, a set
9 of documents that we've marked Deposition Exhibit 3.
10 And it consists of one, two, three, four, five, six,
11 seven, eight pages, and they each have MM Bates stamp
12 numbers. Okay? And another Bates stamp number that's
13 in big black lettering. 3366 is the first one on the
14 top of the exhibit.
15 And I represent to you that these are
16 productions of -- that we got from the District
17 Attorney's office with respect to work product in the
18 trial file, that is, the file that they have from your
19 trial, the Michael Morton case. You follow me?
20 A. Uh-huh.
21 Q. All right. And the handwriting on, let's say,
22 just the first page here, which has got the MM10156
23 Bates stamp and also the 3366 Bates stamp, that's your
24 handwriting? The top page.
25 A. On the top page?

3 (Pages 9 to 12)

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1 Q. Yes, that top page.
2 A. That appears to be my handwriting.
3 Q. Okay. And here, as part of this exhibit as
4 well, on a page that's 3341 and MM10131, is that your
5 handwriting? Just the -- I think the top page alone is
6 your handwriting. Is that right?
7 A. Yeah. There's handwriting on the other pages
8 that isn't mine.
9 Q. Right. But I'm just talking about those two
10 pages that I specifically referred to appear to be your
11 handwriting, correct?
12 A. It does.
13 Q. Okay. And what we've tried to do for
14 convenience, because we were puzzled about this, is --
15 let me just point out, for example, on the document
16 that you have right here that is MM10131 or 3341, that
17 in your handwriting at the very bottom here it's
18 something -- it says something like "Check with Cavitt
19 on page 82 - who examined watch". Do you see that? Is
20 that what it says at the bottom?
21 A. It appears to say that, yes.
22 Q. All right. And then in -- if you can give me
23 that other document right there.
24 A. Sorry.
25 Q. On MM10156 or 3366, it has here at the top,

1 something "with hair and blood - results page 110" and
2 then "page 152," parentheses, "followed up," question
3 mark. You see that?
4 A. I do.
5 Q. All right. Now, what we've done with exhibits
6 is we've attached to them other documents from the
7 offense reports, right, that seem to relate to the
8 subject matter of your handwritten notes here. And
9 what we were wondering about is -- if you look at your
10 handwritten notes from the trial file, you seem to be
11 referring to like a page 152 or other pages. And so it
12 occurred to us that you might have been working, at the
13 time of the trial, with a set of offense reports and
14 field notes that were numbered, that were given page
15 numbers, and so those references in your own
16 handwriting to page numbers were referring to a set of
17 documents that were offense reports and/or field
18 notes. Do you see what I mean?
19 A. You had explained that when you handed these
20 to me --
21 Q. Right.
22 A. -- before the deposition.
23 Q. And so I'm just wondering if you could help us
24 with those references to page numbers and what they
25 might mean and if we are correct that somewhere there

1 was a set of offense reports and/or rough notes that
2 had -- that were -- had page numbers on them.
3 A. I have no knowledge whatsoever what those page
4 numbers could be at this time. I haven't seen these
5 probably in twenty -- the better part of 25 years.
6 Q. I completely appreciate that. So let's just
7 talk about routine then, Mr. Anderson. At or around
8 the time of this trial, would it have been your
9 practice, when you received various offense reports
10 from the sheriff, that you would, on your own, just,
11 you know, either Bates stamp or handwrite a page number
12 to keep them all straight?
13 A. It's hard to know what my practice was 25
14 years ago. I don't know that I ever heard the word
15 "Bates stamp" until 10 years ago.
16 Q. Right. So in the old days, when you and I
17 were practicing, because I think we're probably the
18 same age, that one would actually handwrite perhaps --
19 before the year of Bates stamps, one would hand letter
20 this is one, two, three, four, five when you got a
21 batch of offense reports and/or rough notes from the
22 sheriff.
23 A. It's possible. I kind of doubt it. I used to
24 organize around a legal pad and go from there.
25 Q. So you can't share with us anything about --

1 A. Those numbers --
2 Q. -- what those numbers mean.
3 A. -- mean nothing.
4 Q. Okay. So perhaps you can tell us something
5 about your professional history with John Bradley.
6 Specifically, when did you first meet Mr. Bradley?
7 MR. DIETZ: Mr. Scheck?
8 MR. SCHECK: Yes.
9 MR. DIETZ: At this time, I'm not
10 certain, but I think I'm going to have to interpose an
11 objection. And the reason I am is that as I understand
12 the Court's order, which has been termed an order, is
13 this is a limited purpose deposition to determine facts
14 and circumstances as they relate to the pretrial,
15 trial, and post trial and appellate briefing. That's
16 found in the -- I believe the second page of your
17 agreement.
18 And so to the extent that we're seeking
19 information that takes place outside of that time
20 period, I would have to object and instruct the witness
21 not to answer based upon the Court's order.
22 MR. SCHECK: Let me see if we can work
23 out something of a predicate here.
24 MR. DIETZ: That's fine.
25 MR. SCHECK: And that is that I do read

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1 the court order the same way you do. That is to say,
2 that the subject matter of this deposition has to do
3 with the Brady allegations that are embraced in Claims
4 2 through 7 of our writ.
5 But in terms of that, the line of
6 questioning that I'm about to pursue has to do with
7 what explanations Judge Anderson gave to the District
8 Attorney's office with respect to the recusal motion
9 and various allegations and when he gave them. And as
10 part of that inquiry, what's relevant is the close
11 relationship between Mr. Bradley and Mr. Anderson, so I
12 just wanted to establish that for purposes of the
13 record so that we can understand the context of all
14 that.
15 MR. DIETZ: Again, if it takes place
16 outside of that time frame, '88 through perhaps early
17 '91, it's outside of the purpose of this deposition.
18 MR. SCHECK: Why don't we --
19 MR. DIETZ: And, you know, I recognize
20 from time to time during the day we may have
21 disagreements about what the Court's intent is.
22 MR. SCHECK: Sure.
23 MR. DIETZ: And so perhaps we can save
24 these up so that we can have one discussion with Judge
25 Harle.

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1 MR. SCHECK: Sure. Okay. So maybe I
2 should just tell you what questions I was seeking to
3 ask and you tell me if you're going to continue to
4 object. And what I was going to first ask Mr. Anderson
5 is about the nature of his relationship with
6 Mr. Bradley, are they close friends, are they social
7 friends, are they close professional colleagues, have
8 they not authored -- been coauthors of books together,
9 three books with respect to Texas sentencing
10 guidelines, one in particular the cover predicate
11 questions manual, which I believe it's in its seventh
12 edition, the last one being -- covering 2010 to 2012,
13 that they both have worked on something that I think is
14 called a cheat sheet for lawyers, crime
15 classifications.
16 I was then going to ask Mr. Anderson
17 about what role, if any, he played in Mr. Bradley
18 becoming his successor. And in particular, I wanted
19 to -- and I think this would be directly relevant --
20 know what relationship Mr. Anderson had with respect to
21 the direct appeal of this case which he did and then
22 when Mr. Bradley took over, what, if anything, went on
23 with respect to the DNA litigation and some of the
24 matters leading up to disclosure.
25 Are you objecting to those lines of

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1 questions?
2 MR. DIETZ: I'm objecting -- I'm going to
3 instruct him not to answer based upon the Court's order
4 except for the last question. I think that that's
5 relevant to the inquiry that's set forth in the Court's
6 order and I have no objection to him answering any of
7 the questions as it relates to the direct appeal.
8 Q. (BY MR. SCHECK) Okay. So you handled the
9 direct appeal in this case, did you not?
10 A. I did.
11 Q. All right. And then there came a time when
12 you became a judge; is that right?
13 A. In two thousand and -- 2001.
14 Q. 2001. And you were appointed?
15 A. I was appointed.
16 Q. By Governor Perry?
17 A. Correct.
18 Q. And then after Governor Perry appointed you,
19 did you make any recommendations as to who should take
20 your place?
21 MR. DIETZ: Again, you're trodding on the
22 matters which I've already --
23 MR. SCHECK: I'll ask just as a factual
24 matter then.
25 Q. (BY MR. SCHECK) And Mr. Bradley succeeded you

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1 as District Attorney.
2 A. Correct.
3 Q. All right. Now, during this period of time
4 was it ever brought to your attention that there was
5 post-conviction DNA litigation going on in the Morton
6 matter?
7 A. In what period of time?
8 Q. After you became a judge.
9 A. I was generally aware of it.
10 Q. All right. Tell us how you were aware of it.
11 A. The only way I would have been aware of it is
12 if Mr. Bradley or somebody in his office told me.
13 Q. So was it a matter of -- so when -- just in
14 terms of trying to understand the relationships here
15 between yourself and Mr. Bradley and other members of
16 his office, with respect to the post-conviction Morton
17 litigation, when the DNA litigation and other matters
18 were filed, members of -- Mr. Bradley himself or other
19 members that were assigned to handle the case would
20 consult with you about factual matters with respect to
21 the Morton case.
22 A. I don't remember a lot of that. I think it
23 was more like if something happened, they would let me
24 know and I was pretty much out of the loop.
25 Q. Well, were you aware that post-conviction DNA

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1 applications were being made to test evidence in the
2 Morton case?
3 **A. Generally, yes.**
4 Q. And to the best of your recollection, tell me
5 everything you remember about who told you of that and
6 who you communicated with in the District Attorney's
7 office.
8 **A. Are we talking about from the time I became a**
9 **judge?**
10 Q. That's correct.
11 **A. I can't remember talking to anybody except**
12 **Doug Arnold and John Bradley.**
13 Q. Now, Doug Arnold --
14 **A. Well, except recently.**
15 Q. Except recently. So let's just focus now on
16 the initial period when you became a judge. Mr. Arnold
17 was working in the District Attorney's office, correct?
18 **A. Yes.**
19 Q. He's now a judge.
20 **A. Correct.**
21 Q. And Mr. Arnold was assigned to deal with, for
22 a period of time, the post-conviction DNA litigation in
23 this matter.
24 **A. He was the appellate lawyer and I assume that**
25 **was part of that.**

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1 Q. So from time to time as the DNA litigation
2 went on -- and you recall this was in front of Judge
3 Stubblefield?
4 **A. It would have been in the 26th, so I suppose**
5 **it would have been in front of Judge Stubblefield.**
6 Q. So from time to time either Mr. Arnold or
7 Mr. Bradley would ask you questions, factual questions
8 about the case, so they could formulate a response
9 concerning the DNA?
10 **A. I don't recall getting asked a lot of factual**
11 **questions. I mean, I wouldn't have had much of an**
12 **answer. I might have -- if they had asked a question**
13 **about how things were done back then or something like**
14 **that, I may or may not have had an answer. I actually**
15 **remember them updating me and not updating me as much**
16 **as I probably wanted, but I was trying to stay out of**
17 **their business.**
18 Q. When you say not updating you as much as you
19 wanted, what do you mean by that?
20 **A. Occasionally I would see something in the**
21 **newspaper that I wasn't aware of.**
22 Q. Anything come to mind in particular?
23 **A. It's hard to keep everything straight. The**
24 **last Court of Appeals opinion, I was not aware that**
25 **appeal was going on.**

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1 Q. So when you say "the last Court of Appeals,"
2 you mean the Court of Appeals opinion that granted
3 testing on the bandana.
4 **A. Yes.**
5 Q. So you did not know that that was being argued
6 on appeal or that the decision had been made that the
7 bandana could be tested?
8 **A. The second part, I don't know. The first part**
9 **is I remember reading the opinion and being surprised.**
10 Q. Now, I realize that you don't, as you sit here
11 today, have a specific recollection of each of the
12 details of the DNA litigation that took place over six
13 years, correct?
14 **A. I didn't have any recollection of all these**
15 **writs being filed. Evidently there were writs filed**
16 **back as early as the 1990's.**
17 Q. Okay. So let me help you with --
18 MR. DIETZ: Mr. Scheck, let me stop you
19 right there. I've allowed you some latitude to at
20 least ask those initial questions, remembering that we
21 are here on Matters 2 through 7 rather than the DNA
22 matter, which is Claim 1, and specifically the Court's
23 order allows discovery on Claims 2 through 7, not Claim
24 1.
25 So again, we've moved way past the time

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1 period relating to the pretrial, trial, post-judgment,
2 and direct appeal phases of Mr. Morton's case. So I'm
3 going to ask that you move into something associated
4 with that before I have to start directing him not to
5 answer because it's outside of the Court's order.
6 MR. SCHECK: Sure. Sure. And let me
7 just establish this.
8 Q. (BY MR. SCHECK) So there was also a motion
9 that I think is directly on point here. There was an
10 Open Record Act motion that was filed seeking documents
11 from the Williamson County file with respect to this
12 case. Were you ever made aware of that?
13 **A. I have been doing a lot the last month,**
14 **including I've tried two jury trials, I've had I don't**
15 **know how many criminal dockets; and so I'm trying to**
16 **squeeze in being prepared for this deposition.**
17 Q. I understand.
18 **A. So I focused on the disclosure, nondisclosure**
19 **for that time period. Like I said, somewhere I saw**
20 **something, and I think it was in one of the pleadings,**
21 **about the number of writs and sort of the history and**
22 **testing and stuff. And I just haven't had time to go**
23 **back and --**
24 Q. No, I understand. So just tell me if you
25 remember or not because really all that I'm trying to

6 (Pages 21 to 24)

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1 get at here for purposes of getting into the Claims 2
2 through 7 allegations is how you regarded your role
3 with respect to providing information to the District
4 Attorney's office about a case you tried even though
5 you were a sitting judge. Do you understand what I'm
6 asking?

7 **A. If they asked a question, I would have**
8 **answered it the best I could.**

9 Q. Right. So in other words, you treated
10 yourself as just essentially a fact witness with
11 respect to any of these post-conviction applications,
12 that the District Attorney's office was free to go to
13 you and ask you a question if they needed help and you
14 would provide them answers to the best of your
15 ability.

16 **A. I would provide them answers to the best of my**
17 **ability. When I became a judge, I stopped being a**
18 **prosecutor. I tried immediately to switch the gear in**
19 **my brain and not be an advocate anymore.**

20 Q. Right.

21 **A. It is very difficult when your successor or**
22 **your predecessor is a judge in the same building that**
23 **you are. So I have stayed out of Mr. Bradley's**
24 **business for the last 10 years as much as humanly**
25 **possible.**

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1 Q. I fully appreciate it and that's just the
2 reason I'm on this line of questions. And finally, in
3 that regard, did you believe it an appropriate role for
4 you or did you, in fact, ever express an opinion to
5 Mr. Bradley or anyone in his office with respect to the
6 Michael Morton litigation about what legal positions
7 they should take or not take?

8 **A. I can't imagine that I would have done that.**

9 Q. Okay. So just so we understand, for purposes
10 of moving forward, in handling what is admittedly a
11 delicate situation -- correct?

12 **A. Correct.**

13 Q. That you're a sitting judge. There's
14 litigation arising out of -- from a case that you
15 tried. Yes?

16 **A. Yes.**

17 Q. Okay. And so for purposes of this deposition
18 and the matters herein, your posture was if anybody
19 comes to you and asks you a factual question, you'll
20 give them an answer to the best of your ability, but
21 you were not going to provide advice, legal advice, or
22 take a position about what Mr. Bradley or anyone in his
23 office should or should not do with respect to the
24 Michael Morton litigation. Fair enough?

25 **A. Counsel, I'm sick about this whole thing. You**

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1 **know, it's your worst nightmare to have somebody who's**
2 **innocent get convicted. White and Allison and I should**
3 **have sat down 15 years ago and figured out what the**
4 **heck was going on. I don't know how we got this far.**
5 **But something different should have happened.**

6 Q. Mr. Anderson, we all agree and we're going to
7 be going through that in detail now. But if you could
8 just answer my question because I'm trying to
9 understand your posture in this.

10 So it's true, is it not, that you
11 understood your role in this Morton litigation as just
12 being somebody that answers questions factually for
13 Mr. Bradley's office and his other assistants about
14 what went on but you were not going to offer legal
15 advice or tell them what position they should or should
16 not take in the litigation? Fair enough?

17 **A. Yeah. I mean, I can't say that they never**
18 **asked me about a case or that I never -- you know,**
19 **whatever they asked, I would have answered.**

20 Q. So if they asked you "What's your legal
21 opinion about what we should do or not do," you might
22 have given them an answer? Is that a fair statement?

23 **A. I doubt they would ask my legal opinion.**

24 Q. Okay. Well, but I'm not asking about -- I'm
25 only asking about what happened or didn't happen. You

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1 don't recall ever suggesting to them "This is what you
2 should do" or "This is the position you should take."

3 **A. No. I tried to stay out of it as much as I**
4 **could and I was pretty much out of the loop.**

5 MR. SCHECK: Okay. Now, let's mark the
6 motion to recuse as the next exhibit in order.

7 (Exhibit No. 4 marked)

8 (Discussion off the record)

9 Q. (BY MR. SCHECK) Now, you recall that on I
10 guess it's August 17th that a motion was filed to
11 recuse Mr. Bradley as continuing as the District
12 Attorney in the Michael Morton matter and it was in the
13 course of this recusal motion that documents were
14 produced from an earlier Open Records Act request that
15 we had made, right, outlining claims that exculpatory
16 evidence had been suppressed at the original trial.

17 **A. What's the question?**

18 Q. So my question is: Do you recall this recusal
19 motion being filed?

20 **A. I know there was a recusal motion filed.**

21 Q. Do you remember reading about it in the
22 newspapers?

23 **A. No. I haven't read much about the case in the**
24 **newspapers.**

25 Q. You've tried not to read the newspapers about

7 (Pages 25 to 28)

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1 it?

2 **A. That would be correct.**

3 Q. Okay. So you're aware that there was a

4 recusal motion filed. Do you recall anybody calling or

5 speaking to you about this?

6 **A. Bradley called me on my cell phone sometime**

7 **when I was in Colorado on vacation. And I can't**

8 **remember exactly what he told me, but he told me some**

9 **development in the case. And it was the first time I**

10 **had ever heard of there being an allegation of some**

11 **sort of misconduct in the case.**

12 Q. Well, you did the direct appeal.

13 **A. It was the first time in recent memory.**

14 Q. Okay. But you're -- we're going to go over it

15 a little later, but you're painfully -- well,

16 withdrawn.

17 You are aware, are you not, that Bill

18 Allison made allegations right after the jury verdict,

19 in the form of a motion, that there was exculpatory

20 evidence he believed that should have been in Sergeant

21 Wood's reports that had been produced to Judge Lott in

22 camera that had not been disclosed? You're aware of

23 that.

24 **A. I am now.**

25 Q. All right.

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1 **A. And I was presumably back then.**

2 Q. Right. Back then. And you're aware that he

3 was alleging right after the trial, based on statements

4 made in his presence by Mr. Davis in his motion, that

5 there were -- there was exculpatory evidence in the

6 report and field notes of Sergeant Wood and that the

7 in-camera production to Judge Lott was too small to

8 have contained all the documents that must have been

9 produced in a long investigation.

10 **A. I'm not quite sure I'm aware of all of that.**

11 Q. Okay. Well, we'll go back over that

12 specifically. But you just said that when John Bradley

13 called you in Colorado, that was the first time that

14 you had ever learned that there were allegations of

15 misconduct or suppressed exculpatory evidence in the

16 Morton matter, right?

17 **A. In recent memory.**

18 Q. In recent memory.

19 **A. Obviously I knew back in the late '80's.**

20 Q. Okay. And --

21 **A. But I had forgotten that.**

22 Q. You had forgotten.

23 **A. And I didn't remember it again until these**

24 **allegations were made. And then I went back and I read**

25 **my brief and the opinion.**

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1 Q. Okay. We'll get to that. So let's just take

2 it step by step. So you were on vacation in Colorado

3 when you were called by Mr. Bradley and he told you

4 that a recusal motion had been filed by Mr. Morton's

5 counsel and that contained within that recusal motion

6 were allegations of suppressed exculpatory evidence

7 from the time of the trial, right?

8 MR. DIETZ: I'm going to have to object.

9 The answer that would be given would be misleading

10 based upon the predicate. I understand Mr. Anderson to

11 have testified that Mr. Bradley told him that a

12 pleading had been filed. I don't think he was aware of

13 what the pleading was. At least that was my

14 understanding.

15 Q. (BY MR. SCHECK) Let's take it step by step.

16 You got a call from Mr. Bradley while you were on

17 vacation in Colorado. To the best of your

18 recollection, what did he say to you and what did you

19 say to him?

20 **A. I have no recollection in that detail. There**

21 **was some development in the case he called me about.**

22 **Whether it was this being filed or the results of the**

23 **DNA test, I don't know.**

24 Q. Okay. So when he called you in Colorado --

25 let's move back for a second then and see if we can

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1 clarify this. When was the first time that you heard

2 that there were DNA test results from the bandana that

3 might be exculpatory of Michael Morton?

4 **A. The dates are a blur. At some -- I knew**

5 **something before, in July.**

6 MR. DIETZ: Mr. Scheck, again, I'm going

7 to have to interpose an objection. We have -- I've

8 allowed you latitude. We're supposed to be here on the

9 matters that are relating to the pretrial, trial,

10 post-judgment, and direct appeal phases. We've touched

11 on it briefly by virtue of the attachments to this

12 motion, but that's -- everything else seems to be

13 what's happened lately. And that's not the purpose of

14 this deposition.

15 MR. SCHECK: Let's see -- before -- I

16 don't want to have to be interrupting all the time,

17 Mr. Dietz, and calling the Court. And I'm sure you

18 don't either.

19 MR. DIETZ: I don't either. And that's

20 why I say if we can --

21 MR. SCHECK: And I appreciate it.

22 Q. (BY MR. SCHECK) The only -- and I'm not trying

23 to trap you in any way, Mr. Anderson. If it would

24 help, I can fill you in on the chronology, right, of

25 what happened with the DNA, because that's hardly a

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1 secret, and see if that refreshes your recollection
2 because what's at issue here is we're focusing in on
3 the first time that you learned about the recusal
4 motion and the allegations of suppressed exculpatory
5 evidence in recent times, correct?
6 **A. Correct.**
7 Q. And so you recall getting a call from
8 Mr. Bradley while you were on vacation in Colorado.
9 Maybe this will help. When were you on vacation in
10 Colorado?
11 **A. Mid August.**
12 Q. Mid August. Okay. So -- and you might be
13 able to refresh your recollection from looking at date
14 books as to exactly when that was?
15 **A. I'm sure I could.**
16 Q. Yeah. Okay. Maybe this helps.
17 MR. SCHECK: And, Mr. Dietz, tell me if
18 you object to this.
19 Q. (BY MR. SCHECK) I can just tell you something
20 about the DNA test results. On August 9th, 2011, we
21 were contacted -- defense counsel was contacted by the
22 Department of Public Safety and was informed that there
23 was a CODIS hit to unknown male DNA on the bandana and
24 also informed that an offender's sample was taken in
25 California and would be released to both parties as

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1 soon as the California lab confirmed the hit through
2 their own data. Okay? So -- and the prosecutors were
3 similarly notified at that time.
4 Does that help -- does that refresh your
5 recollection that you might have heard something about
6 the DNA hit on the bandana?
7 **A. What happened on the chronology right before
8 that? Was there some information that there had been
9 DNA extracted off this bandana?**
10 Q. Yes.
11 **A. Was that in July?**
12 Q. That was -- that was in June, yeah.
13 **A. Okay. Assuming the District Attorney's office
14 knew that, they probably told me about that sometime
15 this summer. From the time I left to go to Colorado
16 until Bradley called me -- and I could pick a date. I
17 think it was a Thursday. Maybe it was a Wednesday.
18 But it was right before I was coming home. That was
19 the next time I heard anything about the case.**
20 Q. And so when you heard about the DNA hit on the
21 bandana, do you remember anything about the -- and you
22 had a conversation with Mr. Bradley directly about
23 that. Is that what you're saying?
24 **A. Yes.**
25 Q. Okay. And so that might have been -- when

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1 you're telling us about a call in Colorado, that might
2 have been the substance of it and it wasn't about the
3 recusal motion?
4 **A. He called me about some development in the
5 case. He called me twice in Colorado, once -- if I
6 could -- if I had my calendar, I could figure out when
7 I was in Colorado. But it was towards the end of my
8 stay there. And then the next time he called me was
9 with some further development and that was as I was
10 beginning to drive home.**
11 Q. And you don't recall the substance of those
12 conversations?
13 **A. It was whatever the current progress of what
14 he knew about was.**
15 Q. And when you heard that there was a DNA result
16 on the bandana that indicated there was blood on it
17 from Christine Morton and her hair and there was a male
18 DNA profile that was not Michael Morton and matched to
19 the CODIS database, what was your reaction?
20 MR. DIETZ: And again, I'm going to have
21 to instruct him not to answer. Any answer he'd give is
22 misleading. There's no basis for any of those
23 subjective determinations by Mr. Anderson. If there
24 are -- questions that relate to specific knowledge he
25 has than open-ended questions are better.

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1 MR. SCHECK: Let's see if this helps.
2 And if you'll allow your client -- let me try to place
3 this in time a little bit better for you. Let's mark
4 this as Exhibit -- what's next in order? 5?
5 (Exhibit No. 5 marked)
6 Q. (BY MR. SCHECK) Now, Exhibit 5 is a document
7 we received from the District Attorney's office. It
8 has Bates stamps below. And as you can see, it's from
9 Kristen Jernigan and it indicates from John Bradley and
10 the -- it appears to be a copy of an e-mail, right? Do
11 you see that?
12 **A. It does.**
13 Q. And that's -- John Bradley,
14 martybradley@mac.com, that is Mr. Bradley's private
15 account, so to speak. There's a John Bradley --
16 **A. It's one of his e-mails.**
17 Q. One of his e-mails. But it's not the official
18 public e-mail, right? In other words --
19 **A. I assume he has a jbradley@wilco.**
20 Q. Right. But anything that's on a
21 jbradley@wilco, that can be accessed by the public
22 through an Open Record Act request; but if it comes
23 from a private e-mail like this, it is not
24 automatically accessed by the public from an Open
25 Record Act request, right?

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1 **A. I have no knowledge of that. I would assume**
2 **anything you put in an e-mail can become public.**
3 Q. Well, it seems in this day and age anything
4 you put in an e-mail becomes public no matter what you
5 do, right? Fair enough?
6 **A. That would be my understanding.**
7 Q. So let's review this e-mail together and see
8 if this helps refresh your recollection about these
9 conversations.
10 MR. SCHECK: And maybe then, Mr. Dietz,
11 you'll allow him to answer fully these questions.
12 Okay? See if this places you.
13 Q. (BY MR. SCHECK) This is on Friday, August
14 19th. And if you look at it, that is two days after
15 the motion to recuse was filed. And that of -- you
16 didn't remember -- you didn't read the newspaper, but
17 you knew that this was big news when this motion to
18 recuse was filed. You remember that.
19 **A. I was in Colorado.**
20 Q. You're sure.
21 **A. On -- in mid August, when John called me, I am**
22 **sure.**
23 Q. Right. But --
24 **A. The second time he called me --**
25 Q. Here's the problem. You've indicated to us

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1 that you're not sure, when you got these two calls,
2 whether he was telling you about DNA results or he was
3 telling you about this motion to recuse which concerned
4 the allegations against you.
5 **A. Or he could have been telling me about both.**
6 Q. Or he could have -- so we don't know. And
7 maybe at a break or something you can -- your calendar
8 is accessible and you can clear this up?
9 **A. I could come up with the days I was in**
10 **Colorado.**
11 Q. Okay. Maybe -- and that might help refresh
12 your recollection as to what happened here?
13 **A. To the substance of the phone calls?**
14 Q. Or -- yeah, or what you -- which of these
15 matters were being discussed and when. Right? That we
16 could clear up, don't you think?
17 **A. Possibly.**
18 Q. Okay. Let's just review this e-mail then.
19 It's from John Bradley to Kristen Jernigan. The
20 subject is "Discovery". And it says "Please contact
21 Ken and make sure he gets a copy of the motion and
22 reads it. He needs to understand that he will likely
23 be the object of a claim that he committed a Brady
24 violation at trial by not disclosing certain matters
25 involving the interview of a grandmother. He needs to

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1 become familiar with the file and refresh his memory so
2 he can state with clarity whether he provided discovery
3 of those matters and the circumstances surrounding
4 discovery. JB."
5 Do you see that?
6 **A. I do.**
7 Q. All right. Now, did you get a call, do you
8 recall, from Ms. Jernigan or Mr. Bradley or anyone in
9 the District Attorney's office about becoming familiar
10 with the file and refreshing your memory so you could
11 state with clarity whether you provided discovery of
12 matters, including the grandmother conversation that
13 they allege here and the circumstances surrounding
14 discovery?
15 **A. Well, I've never seen this e-mail before; but**
16 **when I got back, I had a copy. I don't remember if I**
17 **printed it out myself or if it was provided. But there**
18 **was a copy and I would have looked at it.**
19 Q. So we're now holding what's Exhibit 4, the
20 motion to recuse; is that right?
21 **A. Yeah. I thought it was longer than this, but**
22 **okay.**
23 Q. Okay. So you're saying that you got some
24 calls from Mr. Bradley, but then --
25 **A. Two.**

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1 Q. But then you -- do you remember any from
2 Ms. Jernigan to the effect of "Please look at these,
3 look at this motion, look at the file, refresh your
4 recollection so you can tell us with clarity whether
5 you provided the discovery about the matters discussed
6 in that recusal motion"?
7 **A. When I got back to the office, on whatever day**
8 **it was --**
9 Q. Right.
10 **A. Presumably it was Monday -- what day is this**
11 **dated? The 19th?**
12 Q. August 19th is a Friday.
13 **A. 20, 21st -- Monday, the 22nd. Either there**
14 **was a copy waiting for me or I had my court**
15 **administrator print it out.**
16 Q. And did you read it?
17 **A. I'm sure I looked at it.**
18 Q. You didn't read it with any care?
19 **A. I'm sure I was interested in the -- I still**
20 **remember it being longer than this. It was only 29**
21 **pages?**
22 Q. This is the initial recusal motion.
23 **A. Was there a second one?**
24 Q. There is more motions coming. I was going to
25 take them through -- take you through them one by one.

10 (Pages 37 to 40)

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ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

1 A. There was a longer recusal motion?
2 Q. There was -- I mean, maybe the exhibits made
3 it look longer.
4 MR. SCHECK: But do you want to
5 double-check your copies, Mr. Dietz, to see if you --
6 this is -- this is a recusal motion.
7 MR. DIETZ: Could it be because it was
8 double-sided? That's double-sided printed?
9 MR. SCHECK: Yes. This is -- thank you
10 very much.
11 Q. (BY MR. SCHECK) This is double-sided. So it's
12 29 pages; but since this is a double-sided printout,
13 maybe this looks thinner. Fair enough?
14 A. Fair enough.
15 Q. Okay. So when you got this recusal motion,
16 this was a matter of concern to you, wasn't it?
17 A. I'm sure it was.
18 Q. And it was a -- and in your conversations with
19 Mr. Bradley about this, those conversations you had on
20 your way back from Colorado, there was a certain
21 urgency in his tone, too, I would imagine. No?
22 A. He wasn't -- I don't -- I can't describe it as
23 urgent. I don't know how to --
24 Q. How would you describe it?
25 A. I don't know. Because he was giving me the

1 information. I really wasn't wanting to hear
2 information when I was on vacation.
3 Q. So it would have been unusual, but you knew it
4 was a serious matter that he would even call you when
5 you were on vacation. Fair enough?
6 A. I don't know if he knew I was on vacation. He
7 called my cell phone.
8 Q. Okay.
9 A. The second time he would have known I was on
10 vacation because the first time I said, "Why are you
11 calling me?"
12 Q. But from -- even though you can't recall the
13 substance of those conversations and whether they were
14 about the DNA test results or about the recusal motion
15 itself, would it be fair to say that you gathered it
16 was a matter of some serious concern to Mr. Bradley?
17 A. At that point? I don't know how I would
18 characterize it.
19 Q. Well, you --
20 A. He called me. It was something he wanted me
21 to know about.
22 Q. Were you aware that Mr. Bradley's office had
23 opposed DNA testing in this matter for six years?
24 A. Generally, yes.
25 Q. And you were aware that these results on the

1 bandana were certainly exculpatory of Mr. Morton.
2 A. At some point, yes.
3 Q. Well, as soon as you heard that there was a
4 CODIS hit to somebody else and it was Christine
5 Morton's blood on the bandana, you knew right away that
6 there was a potential that Mr. Morton was going to be
7 exonerated, didn't you?
8 A. A potential, yes.
9 Q. And that was upsetting to you.
10 A. It was surprising to me.
11 Q. Now -- because you believed he was guilty.
12 A. That would be correct.
13 Q. Now, so as soon as you got back on the 21st
14 and you went through this recusal motion, didn't you
15 take it very seriously?
16 A. There was a series of developments; and, yes,
17 I was taking it seriously to the point where I was
18 trying to light up my brain cells trying to remember.
19 Q. And this e-mail that we've marked as
20 Exhibit -- what number is that? 5?
21 A. 5. I'm sorry.
22 Q. 5. From Mr. Bradley to Ms. Jernigan, it says
23 here "Please contact Ken and make sure he gets a copy
24 of the motion and reads it. He needs to understand
25 that he will likely be the object of a claim that he

1 committed a Brady violation at trial by not disclosing
2 certain matters."
3 You see that.
4 A. Okay.
5 Q. You took that seriously, didn't you?
6 A. Okay.
7 Q. That's a yes?
8 A. Yes.
9 Q. Okay. And he's instructing here that
10 whether -- do you remember Ms. Jernigan speaking to you
11 on the 21st when you got back?
12 A. She probably talked to me several times a week
13 from the time I got back until the time she stopped
14 talking to me.
15 Q. And when was the time she stopped talking to
16 you?
17 A. Sometime in October.
18 Q. And do you remember what the occasion was that
19 led her to stop talking to you?
20 A. Probably the deposition subpoena.
21 Q. Okay. So from the time that -- on the 21st
22 when the -- you received a copy of the recusal motion
23 and read it, to the time that you received the
24 deposition subpoena, you were talking to Ms. Jernigan,
25 I think you just told us, several times a week.

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1 **A. It may have stopped on October 4th.**
2 Q. And why do you pick that date?
3 **A. October 3rd I picked a jury. I was trying to**
4 **figure out why neither side had asked me to be ready to**
5 **come testify because I believe you all had a hearing**
6 **that day. And I was -- I didn't know if you all were**
7 **going to just, you know, come down and tell me to show**
8 **up in front of Judge Harle and start testifying or**
9 **not. I would have thought that unusual and I was**
10 **obviously in the middle of trial, so --**
11 Q. Right.
12 **A. And then I got a message from her -- a**
13 **telephone message at my office on probably October 4th**
14 **saying that this agreement had been reached. I don't**
15 **know if the message said that or if I returned her**
16 **call. But anyway, evidently this agreement that we're**
17 **here today on had been reached.**
18 Q. And that's when you stopped talking to her.
19 **A. The communication went way down pretty**
20 **quickly.**
21 Q. And why was that?
22 **A. I have no idea.**
23 Q. So in other words, the District --
24 Ms. Jernigan and the District Attorney's office stopped
25 calling you.

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1 **A. It went way down. I don't know if it totally**
2 **stopped.**
3 Q. We'll go through that.
4 Now, so when you got back on the 21st and
5 you read through the recusal motion, what, if anything,
6 did you do -- and I'm quoting here from this e-mail
7 from Mr. Bradley -- to become familiar with the file
8 and refresh your memory so you can state with clarity
9 whether you provided the discovery that Mr. Morton's
10 lawyers were alleged -- alleging had not been
11 disclosed? What did you do?
12 **A. I reviewed portions of the transcript and**
13 **probably some offense reports.**
14 Q. And how long did it take you before you were
15 able to -- withdrawn.
16 And after doing that, were you able to
17 make a statement with clarity to the District Attorney
18 as to whether you had provided the discovery of the
19 matters that the defense was alleging had not been
20 disclosed and the circumstances surrounding discovery?
21 MR. DIETZ: I'm sorry, Mr. Scheck. I may
22 not have been -- it sounded like there were two
23 questions there, and that's why I -- that's why I want
24 to make sure.
25 Q. (BY MR. SCHECK) All right. When did you --

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1 let's start it this way. After reviewing, you said,
2 the portions of the transcript and -- what else?
3 **A. Probably some offense reports.**
4 Q. And some of the offense reports. After doing
5 that, did you then contact the District Attorney's
6 office and say, "Here's the position I take with
7 respect to discovery. Here's what I turned over or
8 didn't turn over"?
9 **A. At some point I would have told somebody in**
10 **the District Attorney's office that I had absolutely no**
11 **recollection from 25 years ago of what I did or didn't**
12 **do in discovery.**
13 Q. So when did you reach that conclusion? About
14 a day or two later? Or how long? This is the Monday,
15 the 21st.
16 **A. I reached that opinion the first time I**
17 **started thinking about it and I have tried to refresh**
18 **my memory ever since.**
19 Q. Okay. Now, let's -- let's review some of the
20 documents that -- for the sake of referring to these
21 things by subject matter, would it be fair to say that
22 in this recusal motion, right, there were allegations
23 first about the transcript of an interview between
24 Sergeant Wood and Ms. Kirkpatrick, Christine Morton's
25 mother and the grandmother of Eric? Do you recall

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1 reading that in the recusal motion, that transcript?
2 **A. There was an allegation about Eric saying that**
3 **the monster had killed his mom.**
4 Q. All right. Now -- and that transcript was
5 attached here to Exhibit 4 and you read it, right?
6 **A. What are you looking at?**
7 Q. I'm sorry?
8 **A. Are you looking at the recusal motion?**
9 Q. Yeah. I'm just trying to find it for you.
10 Here's -- it's Exhibit C on the recusal motion, just so
11 you see, and I'll mark as a separate copy as Exhibit
12 next in order so you can just have it in front of you.
13 Okay?
14 MR. SCHECK: Let's just mark this.
15 (Exhibit No. 6 marked)
16 Q. (BY MR. SCHECK) Are you with me?
17 **A. I am.**
18 Q. Okay. So you, on August 21st, read the
19 recusal motion and you saw the supplemental offense
20 report that we've now marked as Exhibit 6 and was
21 Exhibit C to the recusal motion that purports to be a
22 taped -- a transcript of a taped conversation between
23 Rita Kirkpatrick and Sergeant Don Wood on August 24th,
24 1986. You see that.
25 **A. I see it. I don't think I actually went**

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1 through the exhibits any time in August. There was a
2 lot of newspaper articles and stuff as I remember, and
3 it was -- I thought it was a hundred pages or 90
4 pages. So maybe that includes the exhibits. That's
5 why I thought it was thicker than what you showed me.
6 So if it was single-sided and if we printed it off of
7 our printers here, then it would have been single-sided
8 even if you filed it double-sided probably.

9 Q. So are you saying that you didn't look at the
10 specific transcript of the Kirkpatrick conversation?

11 A. No. I made a decision that I needed to go
12 back to the trial transcript and see if I could figure
13 out what was going on and find out what was in the DA's
14 file. And I don't know if this was in the DA's file or
15 not. I thought there was a shorter version that was in
16 the DA's file.

17 Q. That's correct. And now that you've gone back
18 and looked at all the documents, you understand that
19 there was a shorter version in the DA's file that
20 literally is CC'd.

21 MR. SCHECK: So why don't we mark this
22 as -- why don't we mark this as Defendant's next in
23 order.

24 (Exhibit No. 7 marked)

25 Q. (BY MR. SCHECK) And No. 7 is a shorter version

1 of the transcript of the conversation between Sergeant
2 Wood and Rita Kirkpatrick and -- is that correct?

3 A. That seems to be the shorter version, yes.

4 Q. Okay. Now, but when you read the recusal
5 motion, did you -- you must have gotten at least as far
6 as page 11 where there is a reference to the monster
7 Eric Morton saw kill his mother.

8 MR. DIETZ: Do you want to show it to
9 him?

10 MR. SCHECK: Sure.

11 THE WITNESS: At some point early on I
12 became aware that the allegation was that I hadn't
13 disclosed information about what Eric had seen.

14 Q. (BY MR. SCHECK) And in terms of the press
15 coverage certainly, a lot of attention was focused on
16 this particular transcript where the
17 three-and-a-half-year-old is talking to his grandmother
18 about what he saw, right?

19 A. I haven't read a lot of the press coverage.

20 Q. Well, but I'm just directing your attention
21 to -- you started to say before that the recusal
22 motion, Exhibit 4, was long and --

23 A. Yeah. And it seems like it involved a lot of
24 other things. There was allegations about Bradley.

25 And that's where I stopped reading. Then I looked at

1 the exhibits and there were press articles. So I had
2 already decided I needed to go pull the transcript and
3 try to read whatever portions might help me recapture
4 some memory on this and asked Kristen for what was
5 actually in the DA's file.

6 And I assumed there was a DA's file like
7 I had left it in 19 -- whenever I got done with the
8 direct appeal. Evidently the DA's file has continued
9 to grow as each successive writ has been filed, so
10 there's not the nice relatively concise file that I
11 thought would exist.

12 Q. Right. And so that was one of the first
13 things you did after you read the recusal motion is you
14 asked Ms. Jernigan to provide to you what, if anything,
15 existed in the District Attorney's file with respect to
16 the transcript of the interview?

17 A. Something like that. And also I wanted to
18 see -- read certain things in the transcript to see if
19 that could get me back thinking --

20 Q. Do you remember what things you wanted to read
21 in the transcript?

22 A. Anything I could find that related to
23 discovery.

24 Q. So you got the transcript of the trial?

25 A. I only recently got the entire transcript.

1 Q. But I'm trying to focus your attention now on
2 the 21st when the recusal motion --

3 A. No, no, no. This wasn't happening necessarily
4 on the 21st.

5 Q. Let's just go back to the 21st. You come back
6 from Colorado. You get the recusal motion. You look
7 at it, right? You begin conversations with
8 Ms. Jernigan.

9 A. I may well have looked at it the evening of
10 the 20th.

11 Q. The evening of the 20th. You mean --

12 A. Because I probably came up to my office and
13 checked.

14 Q. Because it was a matter of concern, wasn't it?

15 A. I wanted to see what it was.

16 Q. I mean, this is not a small matter. A motion
17 was being filed to recuse Mr. Bradley and was making
18 specific allegations about you suppressing exculpatory
19 evidence. That was a matter of serious concern, wasn't
20 it?

21 A. It became a matter of serious concern.

22 Q. And I'm just trying to focus your attention.
23 Certainly by the 20th and the 21st, right, you knew
24 that there were exculpatory DNA results, right?

25 A. I was getting the information, yes.

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1 Q. And you knew that there was a lengthy motion
2 moving to recuse Mr. Bradley and making allegations
3 that you had committed acts of misconduct at the time
4 of this trial by suppressing exculpatory evidence,
5 right?

6 **A. There was a single Brady allegation, if I
7 remember correctly.**

8 Q. Well, actually there was more than one matter
9 alleged. One had to do with the transcript. A second
10 one had to do with information about a credit card of
11 the deceased being used after she was dead. And --

12 **A. That was in the recusal motion?**

13 Q. Yes.

14 **A. Okay.**

15 Q. And there was also an allegation with respect
16 to the sighting of a green van in the neighborhood
17 behind the Hazelhurst house, the wooded area where the
18 bandana was recovered, and a man observed walking in
19 that area at or around the time of the incident.

20 Those three items of alleged suppressed
21 exculpatory evidence were included in this recusal
22 motion. Do you not recall that?

23 **A. I'm now aware of that, that it's the
24 allegation. I don't remember when I became aware of
25 it.**

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1 Q. So you're saying that -- let me just ask
2 then. So when you were provided with this recusal
3 motion, I mean, did you -- I know you say it was long,
4 but did you read through it in its entirety?

5 **A. I'm pretty sure I did not read through it in
6 its entirety. I read through to find the portions that
7 probably affected me. And I decided, after initially
8 looking at that, I needed to get things out of the DA's
9 file and read the transcript.**

10 Q. So would it be fair to say that when you read
11 through the recusal motion and the exhibits, your focus
12 was on those allegations against you in terms of
13 suppressing exculpatory evidence? You were not
14 focusing on allegations against Mr. Bradley and his --
15 the allegations that he was biased against Mr. Morton's
16 defense attorneys. Fair enough?

17 **A. That would be fair.**

18 Q. Okay. And then you then -- starting on the
19 21st, focusing on the allegations against you about
20 suppressed exculpatory evidence, you then began looking
21 at the transcript and offense reports trying to make
22 the best effort you could to give a clear statement to
23 the prosecutors with respect to what discovery you did
24 and did not provide and the circumstances surrounding
25 it.

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1 **A. I hadn't seen that e-mail and I was trying to
2 figure out what I could remember.**

3 Q. Right. But I guess the point of this e-mail
4 was to assist you in trying to refresh your
5 recollection that either Ms. Jernigan or Ms. Bradley --
6 were you talking to Mr. Bradley personally after seeing
7 this recusal motion on the 21st of August?

8 **A. I'm sure I did at some point.**

9 Q. So you were -- communications were --

10 **A. But all of your questions are assuming that on
11 the 21st I did a whole bunch of stuff.**

12 Q. No.

13 **A. I got back. I had a busy court docket that
14 week.**

15 Q. Right.

16 **A. You know, I was fitting it in.**

17 Q. I understand. I'm just trying to refresh your
18 recollection about what you knew and when you knew it
19 and who you were talking to as best we can. Fair
20 enough?

21 **A. Fair enough.**

22 Q. And so as I understand it, you got two calls
23 in Colorado from Mr. Bradley on your way back. True?

24 **A. One when I was there, one on the way back.**

25 Q. All right. You then came to the office on the

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1 20th and you read this recusal motion. Or you obtained
2 it. Yes?

3 **A. Yeah, it was likely on Sunday night.**

4 Q. All right. And then starting on the 21st, you
5 began not only talking with Mr. Bradley but you began
6 having conversations with Ms. Jernigan.

7 **A. Yes.**

8 Q. She was your point of contact.

9 **A. She was the one who knew what was going on.**

10 Q. Right. And you were saying that up through
11 October 4th you were having several conversations with
12 her during the week about updates in the Morton
13 matter.

14 **A. Yes. And then I imagine she was preparing a
15 response to the motion to recuse.**

16 Q. Right. So I've just shown you this e-mail, in
17 fairness to you, that we received from the District
18 Attorneys on Friday, August 19th, and you see that it
19 is a direction to Ms. Jernigan to contact you and to
20 see if you could familiarize yourself with the record
21 so you could refresh your memory and state with clarity
22 what happened during the discovery because there were
23 specific Brady allegations being made against you.
24 Fair enough?

25 **A. I never saw that memo.**

14 (Pages 53 to 56)

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1 Q. I understand you didn't see it.
2 A. I was trying to figure out what I could
3 remember.
4 Q. Here's my point to you. Very simple. And I
5 just show you this e-mail to see if it helps you. But
6 were you not getting requests from -- let's just start
7 with Ms. Jernigan, right -- for you to look at the
8 records and state with clarity everything you could
9 remember about the discovery?
10 A. You keep repeating that. I don't remember it
11 that way. I remember I was the one who was trying to
12 figure out what I could recapture from my memory.
13 Q. Okay. And all I'm asking you now is: Were
14 you receiving, during your calls starting on August
15 21st with Ms. Jernigan, statement -- a clear statement
16 from her that she and Mr. Bradley wanted you to refresh
17 your recollection by becoming familiar with the file so
18 you could state with clarity whether you provided the
19 discovery about the matters that were alleged in the
20 recusal motion as to having been suppressed? Did you
21 not get that clear message from Ms. Jernigan and
22 Mr. Bradley starting on August 21st?
23 A. That's what I think I've been trying to say,
24 is I don't recall that being the focus. I was trying
25 to, for my own purposes, do this. Kristen may well

1 have been asking me questions to get her response
2 filed. And I'm not sure I've seen a response. And I'm
3 just assuming she filed a response.
4 Q. Right. But you knew that -- and let's try it
5 this way. But you knew that Ms. Jernigan was tasked
6 with having to respond to this recusal motion and she
7 needed to find out from you --
8 A. What I knew.
9 Q. -- what you knew, right?
10 A. Right.
11 Q. Fair enough?
12 A. Fair enough.
13 Q. And you felt an obligation to report
14 accurately to her, as much as you could after
15 refreshing your recollection from looking at the
16 records and looking at all the relevant documents, what
17 happened.
18 A. I was trying to determine that, yes.
19 Q. Okay. Now, are you aware that by August
20 23rd -- and that would be -- the 21st is a Monday.
21 Okay?
22 A. Okay.
23 Q. By the 23rd, Wednesday, there was actually a
24 hearing in front of Judge Stubblefield with respect to
25 the motion to recuse?

1 A. I'm sure I was. I was in court that day.
2 Q. And --
3 A. I was in my court that day.
4 Q. Right. And you understood that the
5 conversations that you were having with Ms. Jernigan --
6 let's just start with her -- between the 21st when you
7 were back and having looked through the motion to
8 recuse, to the 23rd, those conversations were in
9 preparation for something that she would have to say in
10 court, representations she would have to make in court
11 about the discovery.
12 A. I would assume so.
13 Q. And when you saw the allegations in the
14 recusal motion about the transcript of the interview
15 between Ms. Kirkpatrick and Eric and the conversation
16 between Ms. Kirkpatrick and Sergeant Wood, did you
17 remember having seen such a transcript before?
18 A. No.
19 Q. So were you very surprised to see that
20 transcript that was attached to the recusal motion?
21 A. I don't know that I ever looked at that. I
22 was -- I just had no recollection of the discovery
23 process, the disclosures, all those things. It was 25
24 years ago.
25 Q. We'll go over this in a little bit more

1 length. But just as a general impression, when you
2 read the transcript of the conversation between
3 Sergeant Wood and Ms. Kirkpatrick with respect to what
4 Eric said, did it strike you that this was Brady
5 material that you should have at least disclosed to
6 Judge Lott for purposes of in-camera review?
7 A. Brady is a mixed question of law and fact.
8 You know, I had my own working standard for Brady,
9 which was considerably higher than what the Supreme
10 Court requires. I have no recollection of what I told
11 White and Allison and what I didn't.
12 Q. But let's just step back. When you first read
13 the transcript, right, that was in the -- attached to
14 the recusal motion and read the allegation that the
15 defense was saying that this transcript of the
16 conversation between Wood and Kirkpatrick about what
17 Eric saw and said was Brady material and should have
18 been disclosed at least to Judge Lott for in-camera
19 review, when you saw it, right, did you say to yourself
20 on August 21st or whenever you first started looking at
21 it in those early days of this process, "My God, this
22 is obviously Brady material. It should have been
23 disclosed"?
24 A. All right. You keep talking about, you know,
25 did I take it serious. I started taking it much more

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1 serious when I found out about the John Doe
2 information.
3 Q. You're talking here about when you found out
4 that there was a DNA hit to somebody, correct?
5 A. No. When I found out that there was more to
6 it than just a DNA hit.
7 Q. Oh, in other words, that there was a -- when
8 you say -- let's -- let's -- well, this is -- let's
9 call -- let's just refer to the individual as John
10 Doe. Did you find out the individual's name, without
11 saying it out loud?
12 A. Yes.
13 Q. Okay. And that rang no bells for you, I take
14 it, the individual's name?
15 A. No.
16 Q. Okay. So there was initially -- right? What
17 prompted the recusal motion was that there was not only
18 DNA that excluded Mr. Morton and DNA testing that
19 showed it was Christine's blood on the bandana -- and
20 you indicated before, although your counsel was
21 objecting to some questions --
22 MR. SCHECK: Now maybe we could reopen
23 it, Mr. Dietz?
24 MR. DIETZ: I don't know what the
25 question is.

1 think it was going anywhere when you say that the
2 DNA --
3 A. I was thinking of the evidence that convicted
4 the defendant and I was sure that nothing in this DNA
5 was going to ultimately exonerate him.
6 Q. So you -- it was still in your mind -- even
7 when you were told that it was Christine Morton's blood
8 on the bandana, right, and that there was DNA from the
9 skin cells of the wearer of the bandana that did not
10 match Michael Morton and that that DNA profile of the
11 skin cells of the male wearer of the bandana had hit a
12 convicted offender, even when you knew all of that, you
13 still believed that that was not going to be sufficient
14 evidence to vacate Michael Morton's conviction just
15 based on the DNA, right? That's what you just said?
16 A. In part because of the way you said it, but
17 also in part because I didn't know what type of
18 technique had been used to extract the DNA. In other
19 words, I didn't know if this was some sort of touch DNA
20 and we were out in inadmissible land or it was
21 something more traditional. I had a feeling it wasn't
22 something real traditional because DPS didn't do it.
23 Q. So did you ask anybody -- this was part of
24 your discussions with Mr. Bradley or others in the
25 office?

1 Q. (BY MR. SCHECK) My question is: You indicated
2 before that you had some awareness that there had been
3 DNA test results that showed that -- before any recusal
4 motion had been filed, that you were kept in the loop
5 and you knew there were DNA test results on the bandana
6 that showed it was Christine's blood and it wasn't
7 Michael Morton's DNA on the handkerchief.
8 A. I think I've already said that, yes.
9 Q. Okay. And that was sometime earlier than
10 August 17th when the recusal motion was filed. You had
11 that awareness.
12 A. Yeah, I had some awareness before I --
13 sometime during the summer. Whether it was June or
14 July, I don't remember.
15 Q. Right. And now, at the time the recusal
16 motion is filed, it is also disclosed that there's been
17 a DNA hit, right, to somebody in the CODIS system.
18 A. I think I learned that when I was in Colorado.
19 Q. Okay. You learned that in Colorado. Is that
20 when you started taking it more seriously?
21 A. No. Because up to that point I didn't think
22 this was going anywhere and the Brady allegations
23 didn't concern me because I never felt like I've had a
24 problem with Brady.
25 Q. What do you -- what do you mean you didn't

1 A. Probably with Ms. Jernigan.
2 Q. So you obviously are pretty familiar with DNA
3 testing.
4 A. Not as familiar as you are and not as familiar
5 as I was when I was a prosecutor. Because when you're
6 a judge, you listen to the evidence in a different way
7 than when you're actually preparing it for trial. So
8 for the last 10 years I have not kept up with DNA. I
9 am vaguely aware that we get more exotic forms as we go
10 and there's something called touch DNA which is, as far
11 as I know, not admissible in most jurisdictions.
12 Q. But I'm still focusing on your answer. You
13 said you -- even after hearing that there were DNA test
14 results that hit somebody in CODIS from the male,
15 right, whose DNA was found on the bandana, you still,
16 quote, "didn't think this was going anywhere," unquote,
17 as far as the DNA was concerned and Mr. Morton being
18 exonerated. That's what you just said, right?
19 A. Yeah, that was my general impression.
20 Q. And that state of mind was something that you
21 still had on August 21st when you were reading the
22 recusal motion.
23 A. I was processing information when I was
24 reading the recusal motion, but --
25 Q. But -- so you still -- so in your words, you

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1 still weren't taking the DNA part -- you still weren't
2 taking the DNA part of this seriously or the whole
3 thing seriously?
4 A. "Serious" isn't the right word. But you had
5 expressed some words like urgency and --
6 Q. Yes.
7 A. And I was trying to say, you know, there was a
8 different level than it became whenever I became aware
9 of subsequent things with John Doe.
10 Q. Okay. So --
11 A. And I don't know if I'm even aware of all the
12 things with John Doe.
13 Q. All right. So you -- I don't want to -- you
14 know, we were using the words "taking it seriously" or
15 "matter of serious concern". Those were the terms we
16 were using. And just to be fair with you, as far as
17 the recusal motion was concerned and the DNA testing
18 results, you did not regard this as a serious matter of
19 concern until you found out that John Doe had been
20 linked --
21 A. When did we know that John Doe was linked to
22 additional things?
23 Q. We can say it out loud. We knew that John Doe
24 was linked to the Baker case in Travis County and that
25 was first revealed --

1 MR. RALEY: August 23rd. That's when you
2 revealed it in court.
3 MR. SCHECK: No. It's later than that.
4 It was in September.
5 Q. (BY MR. SCHECK) Well, it was in September. I
6 think Judge Harle revealed that to counsel from both
7 sides on --
8 A. It had to have been in September.
9 Q. -- on September twenty -- September 16th.
10 A. Okay.
11 Q. I want to be precise with you. On September
12 16th there was a telephonic hearing regarding the Debra
13 Baker case with the Travis County District Attorney and
14 Judge Harle which he took in camera and then on
15 September 26th Judge Harle revealed that to both the
16 prosecutors and defense. Okay? Does that help you?
17 That's September 26th.
18 A. Judge Harle knew before you all did?
19 Q. Yes. Just to help you, he got a call.
20 There's a transcript -- I take it you've never seen
21 it -- of a conversation between Ms. Lehmberg and Judge
22 Harle where she provided to him what she thought was
23 potentially exculpatory information concerning the DNA
24 hit in the Travis County case, that it matched the same
25 individual whose DNA was found on the handkerchief.

1 And he then turned over on September 26th, to both
2 prosecutors and defense, the fact that the two DNA
3 profiles from the Baker case and from the Morton case
4 came from the same individual. All right?
5 A. Okay.
6 Q. So I take it what you're telling us then, it
7 wasn't until September 26th that you began to take
8 seriously --
9 A. No. I was taking it seriously.
10 Q. All right.
11 A. But when you're talking about urgent --
12 Q. Urgent. It didn't become an urgent matter to
13 you.
14 A. I didn't -- it became "Good grief, he's
15 innocent" at some point in -- later on, which probably
16 happened in late September.
17 Q. So --
18 A. Because at the beginning part of September, I
19 knew what my thoughts on it were. And I don't know if
20 Mister -- what Mr. Bradley's thoughts were at that
21 point.
22 Q. Well, what were your thoughts?
23 A. My thoughts were that it was long past time to
24 get the Texas Rangers or the Attorney General or
25 somebody in to figure out what the heck was going on --

1 Q. So in other words --
2 A. -- in terms of figuring out everything. I
3 mean, I was getting the impression that you knew
4 things, the Travis County DA or the Austin police knew
5 things. The Williamson County DA was maybe the last
6 person to find out. Well, except possibly for me. And
7 probably it was in the newspaper before I found out
8 about it, but whatever. But early on in September I
9 thought it was way past time. Like I said, White,
10 Allison, and I should have sat down a long time ago and
11 hashed this thing out.
12 Q. We'll get to that. But if I understand you
13 correctly, you're saying in early September, after the
14 motion to recuse had been filed and after Judge
15 Stubblefield recused himself, you felt that a special
16 prosecutor should have been appointed?
17 A. No. I thought the AG's office or the Texas
18 Rangers or somebody who could do a thorough
19 investigation could get it -- should get everything and
20 get on top of this.
21 Q. Well, in order to do that, that would mean
22 that -- were you suggesting to Mr. Bradley that he
23 should request that the Attorney General take over the
24 investigation of this matter in early September?
25 A. I don't think I suggested it that way.

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1 Q. Well, is that what you were thinking?
2 **A. Not necessarily the Attorney General. Just**
3 **somebody.**
4 Q. Well, I think your words before were the
5 Attorney General.
6 **A. I think I said the Texas Rangers or the**
7 **Attorney General or somebody.**
8 Q. Okay. Well, as things stood in September --
9 withdrawn.
10 You knew that after we filed the motion
11 to recuse on August 17th and you read it on August 21st
12 that Mr. Bradley was taking the position that he was
13 not going to recuse himself and he was not going to ask
14 the Attorney General to come in and take over the case
15 or ask --
16 **A. Okay. I didn't mean to tie that into the**
17 **recusal motion. I was just putting out terms and**
18 **groups who might could do a comprehensive investigation**
19 **to get to the bottom of this.**
20 Q. Okay. Let me ask you --
21 MR. SCHECK: Do you want to break?
22 MR. DIETZ: We've been an hour and a
23 half. Let's take a break, 10 minutes or so, if you
24 would.
25 MR. SCHECK: Let me just focus your

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1 attention on one question and see if this helps you.
2 MR. DIETZ: That's fine.
3 Q. (BY MR. SCHECK) So August 21st you read the
4 motion, correct? Or go through it, the recusal
5 motion.
6 **A. Probably on the 20th.**
7 Q. Right. On the 20th, the 21st. And August
8 23rd, that Wednesday, there's a hearing in front of
9 Judge Stubblefield. You have that in mind. Okay?
10 That time frame.
11 **A. Okay.**
12 Q. And you remember there was a hearing in front
13 of Judge Stubblefield.
14 **A. And I probably was in court solid that week.**
15 Q. Right. But I'm just keeping that time frame
16 in mind. Did you during that period get contacted by
17 your co-counsel on the case, Michael Davis?
18 **A. I didn't know who tried the case with me. On**
19 **probably the 21st Mike Davis was in my outer office, as**
20 **he frequently is, and he -- that was when I found out**
21 **he was the other prosecutor in the case.**
22 Q. And do you recall the conversation being
23 something to the effect of he informed you -- you had
24 first said, "I thought it was Phillips who tried this
25 case," and then he said, "No, no, I'm the one who tried

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1 it with you, Mr. Anderson"?
2 **A. That was the gist of the conversation.**
3 Q. And during -- didn't -- he was disturbed, was
4 he not? Mr. Anderson -- Mr. Davis.
5 **A. I think that's a fair characterization, but**
6 **Mike is --**
7 Q. An excitable guy?
8 **A. He's an excitable guy, but he's also -- you**
9 **know, his health isn't great. So he kind of looks**
10 **disturbed a lot of the time.**
11 Q. Okay. But he appeared -- he was -- would
12 agitated be a fair way to describe his demeanor when he
13 met with you that day?
14 **A. I can't remember if he was agitated or shaken,**
15 **but he clearly was not himself.**
16 Q. And he was upset about this transcript in
17 particular of a conversation between Rita Kirkpatrick
18 and Sergeant Wood with respect to what -- that Eric had
19 seen a monster who -- and specifically said it was not
20 his father. It wasn't Daddy. He was disturbed about
21 that, was he not?
22 **A. I don't remember the conversation that well,**
23 **but he may well have been.**
24 Q. Well, we deposed him; and I think we might as
25 well, before we take our break, read what -- his

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1 version of the conversation and then ask you if this
2 accords with your recollection.
3 Now, this is at --
4 MR. RALEY: And over to the next page.
5 Q. (BY MR. SCHECK) Okay. Just to give -- it's
6 starting at page 43 of his deposition.
7 MR. SCHECK: Do you have that?
8 MR. DIETZ: No.
9 MR. SCHECK: Maybe I'll just read
10 along --
11 MR. DIETZ: That's fine.
12 MS. PECKER: I can give you a copy.
13 MR. SCHECK: Why don't you give him a
14 copy.
15 Q. (BY MR. SCHECK) Starting at line 23.
16 **A. Can I be looking at the copy while you're**
17 **reading it?**
18 Q. Sure. Sure.
19 MR. RALEY: Just hang on one second.
20 We'll get it.
21 Q. (BY MR. SCHECK) Maybe I'll start at line 15.
22 Why don't you get a copy. And I want you to hear
23 everything he said and then you can respond.
24 **A. Okay. What page are we on?**
25 Q. So go to page 43 and let's start around line

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1 15. And just to give you a sense of -- he was being
2 asked about his reactions after the recusal motion was
3 filed and what he did. Okay? I'm starting at line
4 15. Question, "All right. And did -- after that
5 motion was filed that stated what you had stated to the
6 jury, did Ken Anderson ever ask you about that motion
7 or that quotation?"

8 Answer, "Not that I recall."
9 That's referring to the post-conviction
10 motion.

11 A. Okay.

12 Q. Do you remember that?

13 Okay. Question, "Did he ever discuss
14 that conversation with you?"

15 Answer, "Not that I recall."

16 Question, "Did he ever assure you that
17 'Not to worry. I produced everything in the Woods
18 file?'"

19 Answer, "I didn't even know this was an
20 issue. And Mr. Anderson and I are not friends, so I
21 don't -- he never talked to me about that until
22 recently."

23 Question, "And in your recent
24 conversation, what did he tell you?"

25 Answer, "I would have to -- when this

1 came out about the DNA testing and they were starting
2 to have those hearings, I was shocked to hear about
3 this kid transcript or story or whatever it was that
4 the kid had seen this because I didn't recall that.
5 And I still don't -- I know there was something about
6 the kid, but I don't recall what it was."

7 "And so I went to Judge Anderson's
8 office and I asked him, 'Were you aware of that?' And
9 Judge Anderson showed me a copy of the Morton opinion.

10 He had his book there, reading it. And he says, 'We
11 turned it over.' And I can't quote him exactly, but
12 the essence was that that was the sealed file that was
13 turned over."

14 Question, "And that was in relation to
15 the statement -- the transcript of the statement by
16 Eric Morton, the three-and-a-half-year-old son."

17 Answer, "That --"

18 Question, "That's what --"

19 Answer, "Yes, sir."

20 And then just to go on, question, "That's
21 what you were concerned about. That's what you were
22 asking him about."

23 Answer, "Yeah, because that would just be
24 horrible if that didn't happen."

25 Do you see that?

1 A. Yes.

2 Q. Okay. Now, you have told us that you recall
3 Mr. Anderson coming into your office and discussing
4 this and that --

5 A. Mr. Davis.

6 Q. Mr. Davis. I'm sorry. And I represent to you
7 that he also says at another point in this deposition
8 that at first you did not remember that he was the one
9 that tried the case with you, he thought it was an
10 individual named Phillips. And then he goes on to make
11 the statements in the deposition that I just read to
12 you.

13 Now, does his sworn testimony about that
14 conversation accord with your recollection?

15 A. He seems like he's got about as good a recall
16 of that conversation as I do, which isn't very good.
17 You know, I literally had totally forgot the issues in
18 this case. I have recollection of the trial
19 happening. I have some general impressions of things
20 that happened. But until I went back and read the
21 transcript, it didn't really refresh my memory. I just
22 looked at the transcript and it showed this.

23 Q. But you were aware, after reading the recusal
24 motion, that there had been an order for you to produce
25 for Judge Lott the reports of Sergeant Wood and then

1 rough field notes of Sergeant Wood for in-camera
2 inspection with respect to the defendant's Brady
3 motion.

4 A. I don't think that's a fair representation of
5 the transcript.

6 Q. All right. Well, we'll go through the
7 transcript. You're much more familiar with it now,
8 correct?

9 A. I am very familiar with it after spending this
10 weekend on it.

11 Q. Okay. But as of the 21st, you were at least
12 aware that there was an allegation that you did not
13 produce for Judge Lott the complete report of Sergeant
14 Wood and his rough notes with respect to this
15 investigation.

16 A. I don't think I got that. If that's in the
17 recusal motion, I was just focusing in on did I tell
18 the defense about what Eric saw.

19 Q. Let's --

20 A. And the concept of transcript versus the
21 information, I only recently realized that was two
22 separate allegations you all were making.

23 Q. So as you sit here today, you have a
24 recollection that you verbally told the defense
25 counsel --

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1 **A. No, sir.**
2 Q. -- about the transcript or you read it to them
3 or you showed it to them?
4 **A. Absolutely not.**
5 Q. You did not do that.
6 **A. I have no recollection of it.**
7 Q. Do you think you did that?
8 **A. There's no way on God's green earth either I**
9 **didn't tell them about it or we all were talking about**
10 **it.**
11 Q. Are you denying that in terms of your state of
12 mind and your best recollections as of August 21st that
13 when you saw the recusal motion and you were confronted
14 by Mr. Davis in your office that you told him, "Yes, we
15 produced that transcript for Judge Lott"?
16 **A. There is no way I would make that affirmative**
17 **statement.**
18 Q. So what he said there is not accurate.
19 **A. I -- I'm not reading this the same way you**
20 **are.**
21 Q. Okay.
22 **A. There is a sentence where he appears to say**
23 **that.**
24 Q. Well, if you want -- how do you read it?
25 Let's just go on and read the next -- I left off at

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1 page 45, line three, right? Okay. Let's go on
2 further. Question, "And he told you that was turned
3 over."
4 Answer, "I don't know what he" -- "that
5 he used the transcript -- or said transcript or the
6 statement. He said --"
7 Question, "But that's what you were
8 talking about."
9 Answer, "That's what I was talking
10 about. And what I got from that is the things had been
11 turned over to the Court and the Court of Appeals had
12 reviewed them."
13 Question, "And you had -- in your mind,
14 you had no doubt that you were talking to him about --"
15 Answer, "That's what I was talking
16 about."
17 Question, "-- the child's statement."
18 Answer, "Yes, sir. Because at that time
19 I didn't have any idea about checks or credit cards."
20 Question, "But you were concerned about
21 the child's statement."
22 Answer, "Absolutely."
23 Question, "And that's what you went to
24 talk to him about."
25 "Yes, sir."

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1 Okay? Now, on the 21st of August when
2 you spoke with Mr. Davis, did you tell him, in
3 substance, "Yes, I produced the transcript of this
4 conversation between Kirkpatrick and Wood to Judge Lott
5 for in-camera inspection"?
6 **A. I haven't ever told anybody that. I would**
7 **have to get the opinion out to see what it was.**
8 **Evidently it had been raised on the appeal. It had**
9 **been sealed. And the Court of Appeals examined it.**
10 **And I -- I'd have to go back and look at the Court of**
11 **Appeals opinion. I think they said there was no Brady**
12 **information in it.**
13 Q. Right. Well, the Court of Appeals ruled --
14 the Trial Court and the Court of Appeals ruled that
15 they looked at a sealed envelope and they said -- that
16 purportedly had Sergeant Wood's report and field notes
17 in it because you've seen the parts of the transcript
18 where you say, "Oh, I forgot his field notes. I'll go
19 get his notes," right? You've seen that.
20 **A. There's multiple places in the transcript.**
21 Q. So the point is that Judge Lott reviewed
22 whatever was produced to him in camera as being
23 Sergeant Wood's reports and notes, field notes, and
24 found no Brady material, correct?
25 **A. That's what he says in the transcript.**

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1 Q. And then --
2 **A. Wait a second. Back up. How did you ask that**
3 **question?**
4 Q. I'm sorry?
5 **A. You said he reviewed his reports and field**
6 **notes.**
7 Q. A report -- his complete report, the word
8 "complete report". Well, we'll go back over the
9 transcript together. But I'm just going to ask you
10 straight up. Okay? Did you tell Mike Davis that to
11 the best of your recollection that this transcript or a
12 transcript of the conversation between Sergeant Wood
13 and Rita Kirkpatrick had been produced to the Court for
14 in-camera inspection? Did you tell him that?
15 **A. That may have come out of the opinion.**
16 Q. Well, the opinion doesn't discuss the
17 transcript of the conversation at all. The opinion
18 just says that there's no exculpatory evidence in the
19 sealed envelope, right?
20 **A. I'd have to go back and look at the opinion,**
21 **but yes.**
22 Q. Okay. So the question was being asked of you
23 on August 21st when this transcript was discovered in
24 the sheriff's files of an interview between Wood and
25 Kirkpatrick about what Eric Morton saw, right, and the

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1 allegation was being made, you understood it, that you
2 had not produced that to Judge Wood as part of Sergeant
3 Wood's report or notes. You understood that was the
4 allegation.
5 A. Generally.
6 Q. And you told Davis, did you not, that yes, you
7 had produced that to Judge Wood? Didn't you tell him
8 that?
9 A. There was no way I told him that.
10 Q. Or what did you say to the best of your
11 recollection?
12 A. I don't recall that part of the conversation.
13 The only thing I could --
14 Q. Judge Lott. I'm sorry. Could you --
15 A. The only thing I could have or would have said
16 is --
17 Q. Yes.
18 A. -- I have no recollection. There is no way on
19 God's green earth, if that was in my file, I wouldn't
20 have told them that Eric said that the monster killed
21 his mother unless -- and I may not have gone into this
22 with Davis -- unless we had been having conversations
23 about that between the lawyers.
24 Q. Okay. So your state of mind as of October
25 21st, right, your best recollection of what happened,

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1 is that --
2 A. Now, I had another conversation with Mike at
3 some other time and so I'm trying to think --
4 Q. After this one?
5 A. Yeah, I had at least two -- well, that other
6 conversation -- this probably was the most substantive
7 conversation, but it was really short.
8 Q. Tell us about the other conversation so we
9 don't get confused.
10 A. It was -- Bradley had come into my courtroom.
11 Davis was there. And Bradley wanted to tell us
12 something, probably that the opinion had been issued.
13 I didn't want to talk about that at the bench, so I
14 said, "Let's go back to my office."
15 Q. Okay. We'll get to that one later. But right
16 now I'm just focusing on the 21st. You're telling us
17 that you did not tell Davis -- withdrawn.
18 In that conversation with Davis did you
19 acknowledge that this transcript was plainly Brady
20 material?
21 A. The information would have been something I
22 typically would have disclosed.
23 Q. So the information in the transcript of the
24 interview between Wood and Rita Kirkpatrick you were
25 communicating to Davis was information, in your mind,

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1 that you must have disclosed because it would have
2 fallen into the area of something that you would have
3 considered then and now Brady.
4 A. Something then and now I would turn over. But
5 I don't recall. And I don't recall actually exactly
6 what Mike and I talked about that day.
7 MR. SCHECK: Okay. All right. Why don't
8 we take a break and then we'll move on.
9 VIDEOGRAPHER: It's 11:41. We're off the
10 record.
11 (Recess from 11:40 a.m. to 11:51 a.m.)
12 VIDEOGRAPHER: It's 11:53, beginning Tape
13 No. 2. We are on the record.
14 Q. (BY MR. SCHECK) And I'm just now referring to
15 the recusal motion at page 15 and if you got that far
16 on September 20th or 21st. I'll just read this out
17 loud to you and see if this helps. Under -- after
18 recounting what's in the transcript of the conversation
19 between Sergeant Wood and Ms. Kirkpatrick, the recusal
20 motion then goes on to say on Point D -- and this
21 relates to you, I would say -- "Prosecutors
22 Deliberately Withheld Eric's Eyewitness Account from
23 Defense Counsel by Keeping Sergeant Wood from
24 Testifying and Falsely Asserting that His Reports
25 Contained No Brady Material".

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1 Do you see that?
2 A. Okay.
3 Q. You remember that?
4 A. That would be hard to say, but --
5 Q. Well, let's put it this way. As you were
6 looking at the August 21st document, as you said, for
7 things that related to you, it's fair to say that by
8 page 15, when you get to Paragraph D, that's a pretty
9 direct --
10 A. I don't want to be critical, but that thing
11 contains a lot of purple prose and I wasn't concerned
12 that I had violated Brady.
13 Q. Okay.
14 A. So I wasn't -- you know, it wasn't causing me
15 any great concern. Whatever I gleaned from it, I knew
16 after I read it or went through it that I needed to
17 look at the transcript, the statement of facts, and
18 whatever reports were in the DA's file to see if I
19 could remember stuff.
20 Q. So I realize that, in your own mind, you felt
21 secure that you had not violated Brady, right? That's
22 what you're telling us.
23 A. That's correct.
24 Q. Okay. But I'm just reading you what it says
25 here. And it says "Undersigned counsel has carefully

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1 reviewed all of trial counsel's remaining file (which
2 was provided to us in or around 2002) and the Sergeant
3 Wood report above is nowhere in that file. Undersigned
4 has also been informed by Bill Allison and Bill White,
5 Defendant's trial attorneys, that neither of them
6 possesses any additional files in this case - nor do
7 they remember (and they submit that they surely would
8 have remembered) seeing the foregoing transcripts in
9 their file had it been provided to them during
10 discovery."

11 Now, that's referring to this transcript
12 of Sergeant Wood talking to Ms. Kirkpatrick.

13 **A. Okay. There's two things. First of all, if**
14 **we're -- if one of your questions had the word "Brady"**
15 **in it, you know, Brady involves admissible evidence and**
16 **that's different than just pure what a layman would**
17 **call exculpatory evidence. And Eric's testimony was**
18 **not going to be admissible.**

19 **And then you keep talking about this**
20 **transcript. And I'm having -- you know, if I gave that**
21 **information to them, I would not have given them the**
22 **transcript. I would have given them an oral report or**
23 **summary that Eric said a monster killed his mother.**

24 Q. So your understanding of Brady as of 1986, at
25 the time you tried this case, is that you did not have

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1 to disclose information that you had in your possession
2 as a prosecutor unless you believed that that
3 information would be admissible evidence. That's what
4 you thought Brady meant?

5 **A. I told you my working definition and the legal**
6 **definition of Brady were two different things.**

7 Q. Okay. Let's start with your legal
8 definition. You -- it was your state of mind in 1986,
9 and it remains yours today, that the only kind of
10 favorable information you have to disclose with respect
11 to Brady is information that you believe is admissible
12 evidence.

13 **A. I have no idea what I thought the law was in**
14 **'86. Bagley --**

15 Q. That's what you think today.

16 **A. Bagley or Agurs or one of those cases that was**
17 **probably decided before '86 says something to that**
18 **effect.**

19 Q. All right. That's -- but that's what you
20 think even today.

21 **A. There -- we have, what, 50 years worth of**
22 **cases interpreting what Brady means; and you and I**
23 **could disagree with that all day. But I'm trying to**
24 **avoid using the term "Brady" without a proper --**

25 Q. Right.

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1 **A. I mean, we could write a 20-page treatise and**
2 **you and I could look at the same piece of hypothetical**
3 **information and come to two different conclusions using**
4 **what we've just researched in that 20 pages.**

5 Q. Let's -- let's just -- I know that -- I've
6 noticed that you do not want to use the term "Brady" in
7 answer to the previous question, so let's -- and you're
8 making a distinction. Okay? And I take it the
9 distinction is between what you think you were legally
10 obligated to turn over as so-called Brady material or
11 exculpatory evidence versus your own policies on what
12 you would ordinarily disclose to the defense.

13 **A. That's correct.**

14 Q. Is that the distinction you're making?

15 **A. Yeah.**

16 Q. Okay. And as I understood your answer just
17 now with respect to the transcript of Kirkpatrick
18 talking to Sergeant Wood, it was -- it's your belief
19 even today, I take it, that that was not -- that
20 transcript was not something that you were legally
21 obligated to disclose to the defense or even to Judge
22 Lott in camera for review as potential Brady material
23 because you believed that that transcript and the
24 testimony of Eric would not be admissible.

25 **A. That's about three different questions.**

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1 Q. All right. Let's take them one at a time.
2 Did you believe that you did -- as you sit here
3 today -- right?

4 **A. As I sit here today, I do not know if the**
5 **transcript was in my possession in 1986.**

6 Q. Well, you know that there are two transcripts,
7 correct?

8 **A. All I'm aware of that was in the District**
9 **Attorney's file was the --**

10 Q. Shortened transcript.

11 **A. -- two-page report.**

12 Q. Right. There's no question in your mind that
13 that was in your possession in 1986.

14 **A. No, I have no memory of that being in my**
15 **possession in 1986.**

16 Q. Well, you know that the shortened transcript
17 was CC'd to you; is that right?

18 **A. If it says that on the bottom, yes. And I**
19 **asked what was in the DA's file and that was provided**
20 **to me as being in the DA's file.**

21 Q. I just wanted -- before we move on, I just
22 want to get some clarification from you. Is it your
23 position as you sit here today that that transcript did
24 not have to be disclosed as Brady material to the
25 defense because in your judgment -- I'm talking about

22 (Pages 85 to 88)

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1 the law now -- because in your judgment it was not
2 admissible evidence?
3 **A. If the law is that inadmissible evidence**
4 **doesn't have to be turned over, that would be correct.**
5 Q. Now let me ask you. Do you think that's the
6 law?
7 **A. I'm not sure at this point. And I'm really**
8 **not sure what it was back in 1986. That would take a**
9 **little bit of legal research.**
10 Q. Well --
11 **A. But that's not the standard I used.**
12 Q. Have you reviewed Bill Allison's motion for
13 Brady material that was filed in this case?
14 **A. I looked at it last night.**
15 Q. And when you looked at it last night, you're
16 aware that in that Brady motion they asked for evidence
17 that is inconsistent with the prosecution's theory of
18 the case, favorable evidence, whether admissible or
19 inadmissible. You saw that in the motion, didn't you?
20 **A. I didn't notice that particularly. I noticed**
21 **he had an extremely expansive view of what Brady was.**
22 Q. All right. But as far as you're concerned,
23 even as you sit here today, you're unsure about whether
24 or not favorable evidence to the accused must be
25 disclosed by the prosecutor even if that information is

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1 not necessarily admissible evidence.
2 **A. I think that's one of the factors you look at.**
3 Q. Well, in your book, "Crime in Texas," at page
4 42, when it comes to the motions to disclose evidence,
5 you write "The defense will also file a Brady motion.
6 This motion received its name from a United States
7 Supreme Court called Brady versus Maryland. The
8 Supreme Court held that prosecutors must turn over to
9 the defense any evidence which indicates the defendant
10 might not be guilty."
11 **A. Correct.**
12 Q. Now --
13 **A. I'm writing for laypeople. I wouldn't try to**
14 **explain Brady and its progeny in less than 20 pages to**
15 **anybody who's a lawyer.**
16 Q. Let's just get your state of mind now. As of
17 August 21st when you looked at the recusal motion --
18 right?
19 **A. Okay.**
20 Q. That included the transcript of the interview
21 between Wood and Kirkpatrick -- yes?
22 **A. I don't remember that, but okay.**
23 Q. Well, you know it's in this exhibit.
24 **A. Well, yeah. You showed it to me.**
25 Q. Yeah. And as early as page 15, there's very

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1 pointed allegations that you did not turn over this
2 transcript and you did not have Sergeant Wood testify
3 because you were concerned that his report and notes,
4 including this transcript, would have to be disclosed
5 to the defense. That was being alleged. You knew
6 that, right?
7 **A. If I read that, I knew it.**
8 Q. Okay. Now, you're saying that when Mike Davis
9 came and spoke with you on the 21st, you did not assure
10 him that the transcript of the conversation between
11 Kirkpatrick and Wood had been disclosed to Judge Lott
12 or the -- for in-camera review.
13 **A. There would be no way I could have said that**
14 **in that fashion.**
15 Q. Okay. What fashion --
16 **A. And you keep using "transcript". I'm fairly**
17 **certain that I wouldn't give the transcript, which I**
18 **didn't probably have, when I'm making a Brady**
19 **disclosure or any kind of disclosure.**
20 Q. Okay. Did Ms. Jernigan, between August 21st
21 and August 23rd, ask you questions about whether or not
22 you disclosed to the defense or to Judge Lott for
23 in-camera review the tran -- any transcript, whether
24 it's the short one or the long one, of the conversation
25 between Kirkpatrick and Wood about what Eric saw?

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1 **A. I don't know. But where are you coming up**
2 **with transcript and disclosing that to Judge Lott?**
3 Q. You were aware --
4 **A. Because there's no --**
5 Q. You were aware from the recusal motion that
6 the allegation was --
7 **A. No, I'm not aware from the recusal motion. I**
8 **don't recall what I knew about the recusal motion. I**
9 **clearly did not read the whole thing. I did not look**
10 **at the attachments.**
11 Q. All right. So it's now your position that you
12 did not carefully review the recusal motion --
13 **A. That's always been my position.**
14 Q. -- and that you did not -- did you -- all
15 right. Did you understand from either your cursory --
16 would it be fair to say you made a cursory review of
17 the recusal motion?
18 **A. And probably read portions of it.**
19 Q. Right. But from your limited review -- would
20 that be a fair term?
21 **A. Okay.**
22 Q. Is that fair with you, limited review?
23 **A. Okay.**
24 Q. So from your limited review of the recusal
25 motion and your conversations with Ms. Jernigan between

23 (Pages 89 to 92)

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1 August 21st and August 23rd when there was going to be
2 a hearing in front of Judge Stubblefield -- and you
3 knew she would have to say something about these
4 issues, correct?

5 **A. I don't have any recall of a specific**
6 **conversation with Kristen between the 21st and the**
7 **23rd.**

8 Q. Right. My -- but I know you don't -- you're
9 saying now you don't recall any specific conversations
10 with her. But do you have any doubt that you had
11 conversations with either her or Mr. Bradley after your
12 review of the recusal motion and before the hearing
13 with Judge Stubblefield?

14 **A. I certainly presume I did.**

15 Q. Okay. Because you understood that she was
16 going to have to be the one that was going to stand up
17 in court and say something to Judge Stubblefield about
18 whether or not the defense allegations were true that
19 this transcript, either the short or the long form, of
20 the interview between Kirkpatrick and Wood had not been
21 disclosed to Judge Lott for in-camera review. You were
22 aware of that issue, weren't you?

23 **A. I was aware they were having a hearing.**

24 Q. But weren't you aware -- when you were having
25 conversations with Ms. Jernigan about this recusal

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1 motion, weren't you aware that one of the issues was
2 whether or not you had submitted to Judge Lott for
3 in-camera review a report from Sergeant Wood and field
4 notes that would include this transcript, either the
5 short form or the long form?

6 **A. I've read the statement of facts for the**
7 **pretrial hearings and there is no discussion in there**
8 **about transcripts. It's about Don Wood's report and**
9 **field notes.**

10 Q. You've now read that. And are you telling us
11 that as far as you're concerned, the only thing that
12 you produced or you felt obligated to produce to Judge
13 Lott -- now having looked back over the transcripts and
14 all the briefs and everything else in preparation for
15 this deposition, your understanding is the only thing
16 that you were obligated to produce for Judge Lott was a
17 report from Sergeant Wood that concerned the statements
18 that Michael Morton made on August 13th and 14th? Is
19 that your --

20 **A. Based on my review of the transcript, that's**
21 **what I would assume I was supposed to prepare -- do.**

22 Q. That's your -- after reviewing them now,
23 correct?

24 **A. Yes.**

25 Q. All right. Now, but on August 21st, okay,

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1 when --

2 **A. I'm having trouble understanding and recalling**
3 **what I knew on August 21st. I mean, I was told to come**
4 **to this deposition to talk about disclosure and**
5 **nondisclosure back in '86 through the end of the direct**
6 **appeal.**

7 Q. Yes. That's right, sir. Now, let's see if --
8 I'm trying to be careful with you. You would expect
9 that, would you not?

10 **A. I'm sure you're being careful.**

11 Q. About what you knew and when you knew it.
12 Fair enough?

13 **A. I'm having trouble understanding -- I'm having**
14 **trouble recalling of the conversations when -- what**
15 **happened on the 20th -- 21st, 22nd, and I don't know**
16 **what time the hearing was on the 23rd. I could go**
17 **check my court calendar; but having just come back from**
18 **a vacation, I suspect the twenty -- those three days**
19 **were extremely busy in my court.**

20 Q. I understand that. And that's why I'm trying
21 to go through with you, as best we can, right, what you
22 remember of the issues and what you said to whom. Fair
23 enough?

24 **A. That's fair enough. But I'm --**

25 Q. And so as I understand what you've told us,

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1 you received these two telephone calls in Colorado from
2 Mr. Bradley.

3 **A. I have a distinction recollection of that.**

4 Q. Okay.

5 **A. I have a distinct recollection of the**
6 **conversation with Mike Davis the day I got back to my**
7 **office, or at least having a conversation.**

8 Q. All right. So tell me what your recollection
9 is as differentiated from what he testified to.

10 **A. I don't recall the details that he goes into.**
11 **I recall the initial part of the conversation where he**
12 **said that he -- you know, "What's going on?" And**
13 **somehow or another I said, "What's it to you,"**
14 **basically or, you know -- because I thought Phillips**
15 **had tried the case with me.**

16 Q. Right.

17 **A. And then he said, "No, I tried it with you."**
18 **And I said, "Oh, okay."**

19 **And whatever conversation we had after**
20 **that would have necessarily been based on what I had.**
21 **And I may well have opened the direct appeal to**
22 **Morton's case on my desk at that time. I have a hard**
23 **book library. And it looked to me in his transcript --**
24 **in his deposition like that might have been what he was**
25 **referring to. But I'd have to look at the appeal and**

24 (Pages 93 to 96)

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1 see exactly if that matches up.

2 Q. To the best of your recollection, did you say
3 anything to him, in substance, "Yes, I disclosed this
4 transcript or the substance of it to the defense. Yes,
5 I produced it"? Did you say anything like that?

6 A. **The transcript?**

7 Q. Yes. Did you say anything like that? What
8 did you say as best you can recall --

9 A. **I don't recall --**

10 Q. -- on that issue?

11 A. **I don't recall that I said anything on that
12 issue. If I said anything, it would have been "I can't
13 remember a darn thing about that. If there was
14 information about Eric seeing the monster" --**

15 Q. Yes.

16 A. -- **"in our possession, there is no way on
17 God's green earth I wouldn't have told the defense
18 about it unless we had already been talking about it."**

19 Q. Now, why do you say that? Because -- why do
20 you say that if you had any knowledge that Eric had
21 said that he had seen the monster and the monster was
22 not Daddy -- right? That's what's exculpatory here.
23 Fair enough?

24 A. **I think the whole thing is --**

25 Q. You think the whole thing is exculpatory,

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1 right?

2 A. **In general, yes.**

3 Q. All right. And exculpatory meaning tends to
4 show that the defendant didn't commit the crime.

5 A. **Well, clearly Eric wasn't going to be a
6 witness. There was a motion in limine I filed. We
7 talked about that at the trial.**

8 Q. I'm just asking whether this transcript --
9 you're saying that this information that Eric was
10 saying that he had seen a monster that hurt Mommy and
11 it was not Daddy -- right? That that information is
12 something that's contained in the transcript and you're
13 telling us now that you plainly recognize that's
14 exculpatory. Fair enough?

15 A. **I plainly recognize that it's something I
16 would have turned over.**

17 Q. All right. So you're saying that that
18 information is something that you would have turned
19 over to the defense had you known about it at the time
20 of trial.

21 A. **Yeah. If that's in my file, there's no way in
22 God's green earth I don't hand -- not hand it -- don't
23 tell them.**

24 Q. Right. So you -- so whatever you were saying
25 to Mister -- so could you have said to Mr. Davis, "Yes,

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1 that's exculpatory. I must have produced it"? Could
2 you have said words to that effect?

3 A. **The only thing I could have said was "I don't
4 remember. If I had that information, surely I would
5 have turned it over."**

6 Q. Now, between the 21st when you read this,
7 right, and the 23rd when there was this hearing, you've
8 told us that you must have been talking with
9 Ms. Jernigan, correct?

10 A. **I can't imagine I wasn't.**

11 Q. Right. Because you knew that she was very
12 eager to find out --

13 A. **I don't know what was said at that hearing.
14 We've been talking about that for, what, 20 minutes
15 now.**

16 Q. I'm not interested right now in what was said
17 at that hearing. What I'm interested in, if you can do
18 it, is your best recollection of what you told
19 Ms. Jernigan or anyone else, including Mr. Bradley,
20 from the District Attorney's office from the moment you
21 did your limited review of the recusal motion to the
22 time they had to stand up in court and make
23 representations --

24 A. **Okay.**

25 Q. I want to know what, to the best of your

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1 recollection, you told them about whether or not you
2 had produced for Judge Lott in camera or turned over to
3 the defense directly the transcript of the interview
4 with Eric or even the substance of the interview with
5 Eric. What did you tell them?

6 A. **I cannot focus on a two-and-a-half-day period
7 out of this nine-month -- nine-week stretch we've gone
8 through and tell you what I told somebody on that
9 particular day.**

10 Q. Well, could you have given them -- would it
11 be -- thinking back, did you provide them assurances,
12 "Oh, yes, I produced" -- withdrawn.

13 Let's start it this way. You knew from
14 recusal motion filing up through the September 23rd
15 hearing that there was an issue about what had been
16 produced in camera to Judge Lott. You knew that.

17 A. **Yeah, at some point I became aware of that.**

18 Q. And you knew that it was the position of the
19 defense that you were supposed to have turned over for
20 in-camera review in connection with the Brady motion
21 the complete report of Sergeant Wood and his field
22 notes in connection with Brady.

23 A. **I have no idea what I knew about the defense.
24 I know now --**

25 Q. You knew that was the allegation.

25 (Pages 97 to 100)

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1 **A. I wasn't particularly concerned about the**
2 **exact wording of the allegation. I know now, from**
3 **reading the transcript, what Judge Lott wanted from me**

4 Q. I'm not asking about that. We're going to
5 review the Lott -- the transcripts together and what
6 was said or not said. But I'm asking you now about
7 your state of mind and what you told the prosecutors,
8 right, to the best that you can recall it between
9 August 21st and August 23rd about -- and that's what
10 I'm inquiring about. Are you following me?

11 **A. Yes.**

12 Q. Okay. And what I'm asking you is: During
13 that period of time were you aware that an issue had
14 arisen about whether or not you had provided the
15 complete report of Sergeant Wood and field notes,
16 including either the short version or the long version
17 of the Kirkpatrick testimony -- transcript -- whether
18 you had provided that for in-camera review to Judge
19 Lott in connection with the Brady motion? You knew
20 that was an issue, didn't you?

21 **A. That was four questions.**

22 Q. All right. Did you know it was an issue about
23 whether or not you had produced for in-camera review to
24 Judge Lott the transcript of the Wood -- of the
25 Wood-Kirkpatrick conversation?

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1 **A. I don't believe I had focused in the detail**
2 **you're talking about. I was focused on -- I was**
3 **focused on getting back to work; but to the extent I**
4 **was focused on this, I was thinking in terms of did I**
5 **disclose something about Eric saying about the monster.**

6 Q. Are you telling us that Kristen Jernigan or
7 John Bradley or someone from the District Attorney's
8 office did not say to you, "Hey, Ken, what did you
9 produce to Judge Lott in camera with respect to the
10 Wood reports?" Did they ask you anything about what
11 you produced in camera?

12 **A. I don't remember having that conversation**
13 **during that two-and-a-half-day period.**

14 Q. They didn't ask you that.

15 **A. I have no idea.**

16 Q. All right. Could you have assured them during
17 that two-and-a-half-day period that, yes, you produced
18 Wood's complete report and this transcript of the
19 interview between Kirkpatrick and Wood should be there?

20 **A. Transcript? Again, you know --**

21 Q. There's two transcripts, a short one and a
22 long one, right?

23 **A. There's a -- well, I'd call it an offense**
24 **report. But I mean, there's a supplemental report that**
25 **was two pages that evidently was in the DA's file.**

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1 Q. Okay. Did you assure Ms. Jernigan or anyone
2 in Mr. Bradley's office that either of those reports of
3 the conversation between Kirkpatrick and Wood should be
4 in the in-camera production to Judge Lott?

5 **A. During that two-and-a-half-day period?**

6 Q. Yeah.

7 **A. I don't know. My mind is incapable of going**
8 **back and pulling out one two-and-a-half-day period out**
9 **of a nine-week transaction.**

10 Q. Did you at any point during -- before the
11 sealed envelope was opened, recall assuring anyone from
12 the District Attorney's office that when that envelope
13 was opened up that the -- some version, either the
14 short version or the long version, of the
15 Kirkpatrick-Wood conversation would be in there?

16 **A. In the sealed envelope?**

17 Q. Yeah. As part of the production to Judge Lott
18 in connection with the Brady motion of the Wood
19 documents.

20 **A. First of all, it wasn't in connection with the**
21 **Brady motion and we'll go talk about the transcripts in**
22 **a minute.**

23 Q. We'll talk about that. You've reviewed these
24 files. You know that there's a notation in there by
25 Judge Lott that he was reviewing the Wood report with

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1 respect to the Brady motion. You've seen that, right?

2 **A. I saw the transcript where Allison, without**
3 **White evidently being present, and me are taking up a**
4 **motion to suppress and evidently voluntariness was also**
5 **an issue, where Bill is doing a really, really good job**
6 **trying to ferret out everything that was said. I'm**
7 **objecting. I offered to make the report available.**
8 **Judge Lott said, "That's fine. Objection sustained."**
9 **Bill Allison comes back --**

10 Q. Judge -- Mr. Anderson, I don't mean to
11 interrupt you, but I think your answer is not
12 responsive. I'm asking a very specific question. Have
13 you seen a notation in the log book by Judge Lott
14 indicating that there was -- that he had ordered an
15 in-camera inspection of the Wood report in connection
16 with the Brady motion?

17 **A. In the log book?**

18 Q. Yes, his log -- docket sheet. Did you ever
19 see that?

20 **A. I noticed there was one. I couldn't really**
21 **decipher his handwriting.**

22 Q. Okay. But there was a notation with words
23 that I've just described to you, right?

24 **A. In his docket sheet?**

25 Q. Yes.

26 (Pages 101 to 104)

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1 **A. You mean the --**
2 Q. Yes.
3 **A. -- handwritten stuff --**
4 Q. Yes.
5 **A. -- where he writes these long --**
6 Q. Yes.
7 **A. Okay.**
8 Q. You remembered seeing that, didn't you?
9 **A. I remember seeing it. I didn't try to**
10 **decipher his -- I had a Xerox copy which wasn't great**
11 **and I didn't try to decipher his handwriting.**
12 Q. That's the question I asked you. That's the
13 question I asked you.
14 Let's get back to the events between
15 August 21st and August 23rd. So as you sit here today,
16 are you telling us that you never made any kind of
17 representation to Ms. Jernigan or the District
18 Attorney's office that there would be, in the sealed
19 envelope that purported to have Wood's report, some
20 version of the transcript of the Kirkpatrick-Wood
21 conversation, whether it was the shorter version or the
22 longer version? Did you say anything like that to
23 Ms. Jernigan?
24 **A. I can't imagine that I said that at any time.**
25 Q. And -- okay. Let me just -- let's take --

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1 let's go to the -- let's mark the hearing of August
2 23rd.
3 MS. PECKER: You have both of them.
4 MR. SCHECK: I'm talking about the Judge
5 Stubblefield hearing.
6 MS. PECKER: I gave you both last night.
7 MR. SCHECK: Where is the other one? I
8 have one. Why don't we mark this as Exhibit -- what's
9 next in order? 8. Let's mark that as 8.
10 (Exhibit No. 8 marked)
11 MR. RALEY: You know, Barry, if you want
12 to mark one, I can pull it up on my --
13 MS. PECKER: I can pull it up also.
14 Q. (BY MR. SCHECK) What I'm just going to do here
15 is just read to you and see if this -- now, at page 13
16 of the hearing --
17 **A. Okay.**
18 Q. -- Mr. Raley is making a presentation. And he
19 says, starting at line 15, quote, "Were these documents
20 really produced in camera to the judge at the time?
21 There is evidence in a Court of Appeals decision that
22 what was submitted in camera was much thinner than what
23 was earlier seen as the Wood file. This sealed in
24 camera document is now going before the Third Court of
25 Appeals. The Court is going to have to unseal that and

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1 see whether the Wood report and these other things are
2 in there. We will need an unbiased District Attorney
3 to investigate this anew, fresh eyes to see what was
4 known and why. Did anybody run down this credit
5 card?"
6 Were they going to -- "We're going to
7 need an evidentiary hearing about this. Mr. Bradley
8 will likely be a witness. Judge Anderson may be a
9 witness. How can Mr. Bradley and his office
10 investigate this matter in an unbiased fashion when
11 they are -- there is evidence to be inquired about that
12 they are complicit in the scheme to conceal exonerating
13 evidence in violation of Brady vs. Maryland."
14 Okay? Did you hear that?
15 **A. Yes.**
16 Q. Do you want to read that?
17 **A. Is it what's highlighted?**
18 Q. Yeah.
19 **A. And who's speaking?**
20 Q. This is Mr. Raley at the beginning of the
21 hearing.
22 **A. All right. There's some discussion in the**
23 **Court of Appeals opinion that I recall about the**
24 **thickness. And the Court is going to have to unseal**
25 **it, which ultimately was done, I think.**

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1 Q. I'm calling this to your attention just for
2 the point that, A, this was said in open court, and, B,
3 to see if it refreshes your recollection that it was
4 clear that there was going to be a possible issue here
5 about what was produced to Judge Lott for in-camera
6 review with respect to the Woods reports, whether or
7 not the transcript of the Kirkpatrick interview and the
8 credit card was produced there. All right? Do you see
9 that? Do you see that's what Mr. Raley is talking
10 about?
11 **A. Fresh eyes to run down the credit card -- or**
12 **did anybody run down the credit card, rather.**
13 Q. Okay.
14 **A. All right.**
15 Q. Now, does this refresh your recollection that
16 between the 21st and the 23rd that an issue had arisen
17 as to whether or not the transcript of the
18 Wood-Kirkpatrick interview and the notation about a
19 credit card being used after Christine Morton was dead,
20 that those issues -- there was going to be a hearing
21 about -- the defense wanted a hearing about whether
22 those things had been produced for in-camera review and
23 that you might have to testify?
24 **A. I didn't know what Mr. Raley said. I just now**
25 **have been seeing this. So this is the first knowledge**

27 (Pages 105 to 108)

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1 **I have.**

2 Q. I'm only -- I'm only showing it --

3 **A. I don't know what happened at that hearing.**

4 Q. I understand that. I understand that. I'm
5 only asking this to see whether or not you had been
6 told or had it occurred to you from any source, right,
7 between August 21st when you did your limited review of
8 the recusal motion until the hearing of the 23rd, that
9 there was going to be an unsealing of this envelope and
10 there might be an evidentiary hearing where you had to
11 testify?

12 **A. Breaking down to the last part of that, I have
13 always assumed I was going to be testifying at one of
14 these hearings.**

15 Q. Okay. All right. Now, let me --

16 **A. I didn't assume that there would be a six-hour
17 deposition.**

18 Q. Now I want to call your attention to
19 Ms. Jernigan. Ms. Jernigan starts talking to the Court
20 at page 15 of the transcript. And then by page 20 --
21 well, let's start with this. She, at page 18, raises
22 the issue of the chain of custody of the bandana, that
23 there is a problem, that they want to have to -- they
24 want to investigate the chain of custody of the bandana
25 to see if the DNA tests are reliable. All right?

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1 **A. Okay.**

2 Q. Is that an issue that you discussed with her
3 between the 21st and the 23rd?

4 **A. I am sure at that point I was concerned about
5 the reliability of the DNA testing. I don't know that
6 chain of custody had focused on -- I hadn't really
7 focused on that because I'm not sure that I really knew
8 that -- or at least remembered -- well, I don't know if
9 I remember them now, the chain of custody details on
10 the bandana, who found it, all that.**

11 Q. All right. So it's fair to say that this is
12 the kind of conversation you were having with
13 Ms. Jernigan and other members of the District
14 Attorney's office, your doubts about potentially the
15 reliability of the DNA test results?

16 **A. Yeah, I told you about that earlier. I was
17 trying to think -- I was trying to figure out what kind
18 of technique this was, if it was a touch DNA that's not
19 generally admissible or if it was something else.**

20 Q. So that's some of the concerns that you were
21 raising early on, right?

22 **A. Right.**

23 Q. Okay. And because as you're -- I think you've
24 told us here today that until the results came in from
25 the Baker case in Austin, you still did not -- you

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1 didn't believe that the DNA test results that had been
2 obtained from the bandana, to use your expression, was,
3 quote, "going anywhere," unquote.

4 **A. That's correct. I -- you know, at some point
5 before I got enough information out of the details of
6 the APD or the Travis County DA's investigation, you
7 know, I thought it was -- it was now time to take a
8 different tack.**

9 Q. And the -- then on page 20 -- well, actually
10 on page 18, Ms. Jernigan says, "You know, I'll remind
11 the Court that Mr. Bradley wasn't even the District
12 Attorney when this case was prosecuted. He didn't even
13 work for the District Attorneys. You know, when this
14 case was prosecuted, I was in high school. So, I mean,
15 we're --" meaning Ms. Jernigan and I guess her
16 colleagues, "were not involved in the original case."

17 **A. That would be correct.**

18 Q. Right. So wouldn't it be fair to say that
19 during this period of time, certainly from the 21st to
20 the 23rd and thereafter -- you were the one that tried
21 the original case, right?

22 **A. Evidently me and Mike.**

23 Q. Right. And you were the best source of
24 information for the District Attorney's office about
25 the particulars of the discovery about what was

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1 produced and the circumstances of its production.

2 **A. I can't imagine anybody else being a source.**

3 Q. Right. And that e-mail that we discussed
4 before where Mr. Bradley tells Mr. Jernigan "Make sure
5 Ken gets a copy of the motion and reads it. He needs
6 to understand that it will likely be the claim that he
7 committed a Brady violation at trial by not disclosing
8 certain matters involving the interview of a
9 grandmother. He needs to become familiar with the file
10 and refresh his memory so he can state with clarity
11 whether he provided discovery of those matters and
12 circumstances surrounding the discovery," you recall me
13 showing you that.

14 **A. Yes.**

15 Q. And wouldn't it be a fair statement that
16 Ms. Jernigan was doing her best between August 21st and
17 August 23rd to get you up to speed as fast as you could
18 on exactly what the facts and circumstances were
19 surrounding the production of discovery materials,
20 particularly the interview with the grandmother?

21 **A. I don't know what her part of the conversation
22 was. You know, I'm having trouble telling you that I
23 recall a specific conversation with Kristen during that
24 time period or with John during that time period.**

25 Q. Okay. I understand. You can't recall the

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1 specific conversation.
2 **A. I can't imagine I didn't have a conversation**
3 **with one of them --**
4 Q. Right.
5 **A. -- or both of them and maybe more than one**
6 **conversation. But I don't recall --**
7 Q. Right. And it would be fair enough that in
8 your conversations with them between the 21st and the
9 23rd, you would have given them your best recollection
10 about what happened in terms of production of materials
11 to Judge Lott and this transcript of the
12 Kirkpatrick-Wood conversation. You would have given
13 them your best recollection as you had it then. Fair
14 enough?
15 **A. If they had asked, I would have told them what**
16 **I remember, which would have been I have no**
17 **recollection.**
18 Q. So you would have told them between the 21st
19 and the 23rd you had no recollection, you have
20 absolutely no idea about this transcript and whether it
21 was produced to Judge Lott or whether it was
22 disclosed. That's what you were telling them.
23 **A. If they asked about the transcript. Like I**
24 **said, I hadn't really focused on the transcript. I was**
25 **initially concerned about trying to figure out if there**

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1 **was something in the record or some way I could figure**
2 **out with -- either by reading and it coming back to my**
3 **mind, that I had given either Bill White or Bill**
4 **Allison the information that Eric said that he saw the**
5 **monster.**
6 Q. Wait a second. Are you telling us that they
7 did not specifically say to you "Did you produce for
8 Judge Lott either the short or the long form
9 transcript?" They never asked you that?
10 **A. I don't know if they asked me that.**
11 Q. You think that they didn't ask you that
12 between the 21st and the 23rd?
13 **A. I would have to have recall of a conversation**
14 **during a two-and-a-half-day period. And I just don't.**
15 Q. Do you think it makes any sense that they
16 wouldn't have asked you that question since you were
17 the best --
18 MR. DIETZ: That calls for speculation.
19 MR. SCHECK: Withdrawn. I'll withdraw
20 that.
21 Q. (BY MR. SCHECK) Okay. Let me just read to you
22 what Ms. Jernigan said at the August 23rd hearing.
23 Okay?
24 **A. Okay.**
25 Q. And we're starting at line nine on page 20.

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1 Or maybe I'll start -- let's start on page -- line
2 three. "As Your Honor's aware, the district attorney's
3 office has a duty to protect confidential information,
4 especially when there's pending litigation. That
5 routine practice was followed in this case. There was
6 no effort to prevent the disclosure of any material
7 evidence."
8 "And to that end, the transcript that
9 Mr. Raley has described is a conversation between
10 Detective Wood and the -- Christine Morton's mother.
11 The transcript appears in the case file. As Mr. Raley
12 alluded to, during a pretrial hearing in 1987, the
13 issue of Detective Wood's notes and supplemental report
14 was broached. Those reports were gathered. They were
15 shown to Judge Lott, then the presiding Judge of this
16 court. He ruled on whether or not there was Brady
17 material contained within those documents. He sealed
18 them and sent them to the Court of Appeals for their
19 review. That review -- also the ruling was that there
20 was no Brady material in those documents. So -- and
21 there's nothing to suggest that this transcript wasn't
22 in the Court of Appeal's file."
23 "So the issue -- and this is all easily
24 cleared up, Judge. This is another reason why I think
25 we've gotten far afield from the Chapter 64 proceeding,

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1 and that is, when the defendant filed for a writ and
2 alleges a Brady violation, we will simply go to the
3 Court of Appeals, open up the file, and see if the
4 notes are there."
5 You have that in mind. Do you want to
6 review what I just read to you yourself?
7 **A. Yeah. I -- yes.**
8 Q. Starting at page 20.
9 MS. PECKER: We can substitute a clean
10 copy at the break.
11 MR. SCHECK: Do you have a clean copy?
12 We'll substitute a clean copy.
13 MR. RALEY: While he's reading, we've got
14 a 1:30 phone conference with the Court on the issue of
15 whether the rest of the DA's file needs to be disclosed
16 and there's a call-in number for that, the file from
17 August 19th to the present, because there was some
18 dispute about that. And we might at that time ask
19 about the scope of the deposition if counsel wants to.
20 THE WITNESS: All right.
21 Q. (BY MR. SCHECK) Okay. Now having reviewed
22 that, did you -- do you remember having any discussion
23 with Ms. Jernigan where you indicated to her that
24 Sergeant Wood's reports had been gathered and that the
25 documents, including the transcript of the

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1 Wood-Kirkpatrick conversation, had been provided for
2 in-camera inspection to Judge Lott?
3 A. I'm trying to make the connection between what
4 you just asked and what I just read.
5 Q. All right. Do you want to go back and look at
6 it again and we'll review it with some care?
7 A. Well, just show me where she says that.
8 Q. Yeah, sure. I'll repeat it to you again. She
9 says, quote, "And to that end, the transcript that
10 Mr. Raley has described" -- I've started reading at
11 line nine -- "is a conversation between Detective" --
12 she calls him Ron Wood. Maybe she thinks he's a member
13 of the Rolling Stones or something. Withdrawn --
14 "Detective Don Wood and the -- Christine Morton's
15 mother. The transcript appears to be in the case
16 file."
17 All right? Let's stop right there.
18 There was a short version that you're calling an
19 offense report of the Wood-Kirkpatrick conversation in
20 the case file. Fair enough?
21 A. Yeah, a supplemental report.
22 Q. Supplemental report that's CC'd to the DA,
23 right?
24 A. And that's how it gets in the DA's file.
25 Q. Is there any doubt in your mind that that was

1 in your file at the time of this trial?
2 A. I can't -- I can't imagine it wouldn't have
3 been in my file at the time of the trial.
4 Q. Okay. As Mister -- so "As Mr. Raley alluded
5 to, during the pretrial hearing in 1987, the issue of
6 Detective Wood's notes and supplemental reports was
7 broached. Those reports were gathered. They were
8 shown to Judge Lott, then the presiding Judge of this
9 court. He ruled on whether or not there was Brady
10 material contained within those documents. He sealed
11 them and sent them to the Court of Appeals for review.
12 That review -- also the ruling was that there was no
13 Brady material in those documents. So -- and there's
14 nothing to suggest that this transcript wasn't in the
15 Court of Appeal's file."
16 You see? That's what she said, right?
17 A. Okay.
18 Q. So it's clear from this statement that Kristen
19 Jernigan was under the impression on August 23rd that
20 the in-camera review ordered by Judge Lott for Wood
21 documents, his report and field notes, would include
22 this transcript because it was being reviewed in
23 connection with a Brady motion and that when that
24 sealed envelope was opened up --
25 A. That's what it appears that she represented.

1 I don't know how I'm -- how that ties back to me.
2 Q. Well, I'll tell you how it ties back to you.
3 I think you've indicated that you were the most
4 knowledgeable person with respect to the --
5 A. I was the lead --
6 Q. -- discovery process here, right?
7 A. I was the lead counsel and I had zero
8 recollection.
9 Q. But are you saying to us that Ms. Jernigan's
10 representations about the fact that this -- one version
11 of this transcript, the short version or the more
12 expanded version, should be in the in-camera production
13 to Judge Lott -- that she did not get any information
14 or any assurances from you that it had been produced
15 and it would be in that sealed envelope?
16 A. I couldn't possibly have been the source for
17 that.
18 Q. Right. You couldn't have -- and you couldn't
19 possibly have said --
20 A. Did we spend 20 minutes just trying to get me
21 to say that?
22 Q. Yeah, I'm just trying to figure out what
23 happened here. And you couldn't possibly have said
24 what Mr. Davis said -- testified you said to him in his
25 deposition the other day about having produced the

1 transcript or the interview between Wood and
2 Kirkpatrick to the defense.
3 A. The only thing I could have told him is what I
4 told you, which is I don't have any recollection. I
5 can't imagine if that was in my file I wouldn't have
6 told them about it unless we were already talking about
7 it and I doubt I gave him that full explanation.
8 Q. So the only thing that you could have told
9 Davis or Jernigan from the time you read the recusal
10 motion to the August 23rd hearing is what?
11 A. The same thing I could tell them now.
12 Q. "I have no recollection but I must have turned
13 something over or I must have made it available."
14 A. It would have been known -- either, you know,
15 we were talking about it or I would have had to have
16 told them.
17 Q. Why don't we turn now to the actual substance
18 of these things. Now, just in passing here, have you
19 kept up to date with the various different things that
20 are going on in this litigation after the -- what --
21 when did you first find out that there was nothing in
22 the sealed envelope?
23 A. When somebody told me it had been opened. It
24 wasn't nothing. There was a -- the --
25 Q. You've reviewed what was in the sealed

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1 envelope, right?
 2 **A. I don't know that I've reviewed what was in**
 3 **the sealed envelope. It was my understanding that the**
 4 **field notes were not but that Don Wood's four- or**
 5 **five-page report and the consent were.**
 6 Q. Right. But you knew none of his -- his
 7 complete report on the investigation was not in that
 8 envelope.
 9 **A. That's my understanding.**
 10 Q. And his field notes with respect to the
 11 investigation were not in that envelope, right?
 12 **A. That's my understanding.**
 13 Q. And if Don Woods had been called as a witness
 14 at the trial, he would have had to have disclosed to
 15 the defense -- you would have had to have disclosed to
 16 the defense his complete report and his field notes.
 17 **A. We would have given the offense report. And**
 18 **I've never heard of giving field notes before, but**
 19 **evidently we would have.**
 20 Q. Right. So you knew at the time of the
 21 trial --
 22 **A. I've never used the expression "field notes"**
 23 **before.**
 24 Q. Okay. But you saw that in the transcript,
 25 right?

1 Q. But I'm just talking about the rules. You
 2 knew that if you called Wood, all that would have to be
 3 turned over, right?
 4 **A. All what?**
 5 Q. His complete offense report and field notes
 6 would have to be disclosed to the defense.
 7 **A. His offense report would have to be disclosed**
 8 **to the defense -- to the defense.**
 9 Q. Well, is there any doubt in your mind that if
 10 Wood had been called as a witness that the -- both the
 11 short and the long version of the Kirkpatrick
 12 transcript of what was said between him -- between
 13 Sheriff -- Sergeant Wood and Ms. Kirkpatrick would also
 14 have to be disclosed? Any doubt about that in your
 15 mind?
 16 **A. Yes. I don't know if we gave supplemental**
 17 **reports under Gaskin in '86 -- or '87, I guess this**
 18 **was.**
 19 Q. Okay. Let's -- all right. Now, let's talk
 20 about your -- we're talking about now the trial. I
 21 want you to get your mind-set around that. And you had
 22 a close relationship with Sheriff Boutwell.
 23 **A. We had a really great professional working**
 24 **relationship, as I tried to cultivate with all of the**
 25 **police chiefs. Sheriff Boutwell happened to be a**

1 **A. Evidently Sheriff Boutwell testified using his**
 2 **handwritten notes; and since he had done that, both**
 3 **his -- whatever report he had -- I can't believe the**
 4 **sheriff actually wrote a report. But anyway, whatever**
 5 **report he had and his handwritten notes was what he was**
 6 **testifying off of.**
 7 Q. Right.
 8 **A. So he -- I'm not sure if the record indicates**
 9 **that he gave them to them or if I had already given**
 10 **them to them or what.**
 11 Q. Well --
 12 **A. I'd have to go back and look at the record.**
 13 Q. You understood the rules were that if you
 14 called him as a witness, you'd have to turn all that
 15 over at the time of the trial.
 16 **A. Turn over the offense report.**
 17 Q. Yeah. And his field notes if requested
 18 because that's what he indicated he had reviewed.
 19 **A. It was the one and only time I've ever heard**
 20 **of the handwritten notes. And I believe the reason**
 21 **those were turned over is because Sheriff Boutwell was**
 22 **actually testifying off of them.**
 23 Q. But --
 24 **A. I mean, it's a cold transcript, but that's my**
 25 **impression.**

1 **couple of blocks away, so I was able to -- you know, we**
 2 **saw each other not every day, but close to every day.**
 3 Q. Right. And you wrote about this in your book,
 4 "Crime in Texas".
 5 **A. I did.**
 6 Q. And there's a chapter entitled "The System:
 7 Police, Prosecutors, and Judges".
 8 **A. There is.**
 9 Q. And you talked about how you and Sheriff
 10 Boutwell would get together at the L&M Cafe on Austin
 11 Avenue in downtown Georgetown.
 12 **A. It's such a hard thing to think that we**
 13 **actually ate the food there.**
 14 Q. But that's true, right?
 15 **A. Yeah.**
 16 Q. And that that's where you did some of your
 17 best work, right?
 18 **A. I've recently read that, yes.**
 19 Q. So I'm -- and you would painstakingly piece
 20 together circumstantial murder cases, right? That's
 21 what you'd do.
 22 **A. That's what I wrote.**
 23 Q. That's what you wrote, right?
 24 **A. Yes.**
 25 Q. Is what you wrote true?

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1 **A. The word "circumstantial," I was trying to**
2 **think how many circumstantial murder cases I've**
3 **prosecuted and --**
4 Q. Well, this one is certainly one of them, isn't
5 it?
6 **A. And that number is a small number.**
7 Q. Right.
8 **A. But I'm sure Sheriff Boutwell and I talked**
9 **about this case.**
10 Q. But this one is a circumstantial murder case,
11 is it not?
12 **A. Yes, sir.**
13 Q. And you write in your book that "We
14 painstakingly pieced together circumstantial murder
15 cases," right?
16 **A. And that would be not exactly correct. We**
17 **painstakingly put together cases.**
18 Q. Okay. But you wrote "murder cases" here.
19 **A. And I wrote "circumstantial". And the**
20 **circumstantial part, I was trying to go back through my**
21 **mind and think about what other circumstantial murder**
22 **case Sheriff Boutwell would be involved with and I was**
23 **unable to come up with something. So I misspoke there.**
24 Q. Well, you certainly -- when you wrote this
25 book --

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1 **A. Miswrote.**
2 Q. -- you certainly had the Morton case in mind
3 when you wrote --
4 **A. I'm sure I did.**
5 Q. Right? Because you later wrote about the
6 Morton case in this book, correct?
7 **A. Yes, sir.**
8 Q. And so this would be one of the
9 circumstantial -- perhaps the only circumstantial
10 murder case that the two of you would painstakingly
11 piece together. Fair enough?
12 **A. I was writing for laypeople. He and I**
13 **certainly were talking about this case. I think --**
14 Q. Here's what I'm interested in. Okay? You
15 wrote this book. What I'm interested in is your
16 process and routine with Sheriff Boutwell, particularly
17 with respect to this case. Would it be fair to say
18 that the way you worked with Sheriff Boutwell on the
19 Morton case is the two of you would painstakingly piece
20 together the evidence in this case?
21 **A. From my memory today, I would say that is not**
22 **correct except for the last two weeks, whenever he was**
23 **available, he and I would be talking about this case.**
24 Q. So let's just be clear now. Because I guess
25 you're saying you -- you wrote in your book, "Crime in

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1 Texas," right, quote, "At the L&M Cafe on Austin Avenue
2 in downtown Georgetown, Jim and I did some of our best
3 work. We painstakingly pieced together circumstantial
4 murder cases. We debated the next step of an
5 investigation. We planned undercover operations
6 against burglars and drug dealers. Early in the
7 movement for victims' rights, we put together a unit to
8 help victims of crime to serve as a model for the
9 counties. The downfall of more than one criminal doing
10 life in the State prison began with an investigation
11 put together on a coffee-stained napkin at the L&M
12 Cafe."
13 Right? You wrote that.
14 **A. I did.**
15 Q. Okay. And I guess now you're regretting that
16 you wrote this in the book --
17 **A. No, I'm not regretting it.**
18 Q. You're not regretting it? But you're telling
19 us that as far as the Morton case is concerned -- which
20 is the one circumstantial murder case that you can
21 recall you did with Boutwell, right?
22 **A. Yes.**
23 Q. That you're backing off the statement that you
24 painstakingly pieced together the circumstantial murder
25 case. "We debated the next step of the

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1 investigation." That's how you proceeded.
2 **A. Jim and I may have talked about**
3 **investigations, but we had a pretty firm rule. He**
4 **handled investigations. I handled prosecutions. If we**
5 **wanted each other's advice or thoughts about something,**
6 **we might ask. But he was in charge of investigations**
7 **and there wasn't anybody going to get in Jim Boutwell's**
8 **way on his investigations. And I made a firm rule,**
9 **even with Sheriff Boutwell and the other police chiefs,**
10 **I was handling the prosecutions.**
11 Q. Well, so the phrase in the book "We debated
12 the next step of an investigation," you're saying that
13 wasn't true.
14 **A. I'm saying that wasn't -- I don't have any**
15 **recall about that. I know that particular thing -- one**
16 **of the things we were working on was undercover**
17 **operations; and if I was financing it, we -- he might**
18 **come to me and ask me a question about how to proceed.**
19 **And I'm thinking about one undercover investigation in**
20 **particular which was in the middle of failing.**
21 Q. Judge Anderson, is it fair to say that you are
22 now saying that you left the investigations up to
23 Boutwell and you wouldn't interfere with them because
24 you are reluctant to say that you were apprised of the
25 day-by-day developments in the Morton case? Right?

32 (Pages 125 to 128)

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1 **A. No, I'm not saying that at all. I'm saying**
2 **Boutwell handled the investigations. He would**
3 **undoubtedly keep me up to date.**
4 Q. All right. So do you not agree that in the
5 course of the Morton case and circumstantial murder
6 cases, of which you only recall one, that the two of
7 you would painstakingly piece together the evidence?
8 True?
9 **A. That was some literary license.**
10 Q. Is that a fair phrase of the level of care and
11 review that you and Boutwell would go through with
12 respect to the case?
13 **A. He would keep me up to date on investigations.**
14 Q. Okay. Now, in keeping you up to date on
15 investigations, you're aware that there's a note in
16 this file -- let's --
17 MR. RALEY: Which one?
18 MR. SCHECK: Let's pull out the credit
19 card.
20 MR. RALEY: The credit card?
21 MR. SCHECK: Yeah.
22 MR. DIETZ: Barry, just so you know,
23 we've got -- in four minutes we're going to have to
24 break because he's got to do a thing.
25 MS. PECKER: We have a 1:15 call.

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1 MR. SCHECK: Right. I'll do the -- I'll
2 do this in four minutes. Let's mark this as Exhibit
3 9.
4 (Exhibit No. 9 marked)
5 Q. (BY MR. SCHECK) I show you Exhibit 9. You've
6 seen this document before, have you not?
7 **A. Very recently.**
8 Q. All right. And this is a --
9 **A. Is that a color copy? Is that what that is?**
10 Q. Yeah, it's a color copy now. This is a field
11 note to Don from a -- at 8-15-86 at 11:30 a.m. Do you
12 see that?
13 **A. Yeah.**
14 Q. All right. And that would be two days after
15 the Morton murder, correct?
16 **A. If -- yeah, I think so.**
17 Q. All right. And you were aware that the purse
18 of Christine Morton and a .44-caliber pistol were
19 reported to have been stolen, correct?
20 **A. I'm sure I was at the time.**
21 Q. All right. And it was your theory of this
22 case that Michael Morton had beaten his wife to death
23 but staged the scene to look like a burglary, right?
24 **A. Ultimately that became what I argued.**
25 Q. All right. But as of -- and was that a theory

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1 that you and Boutwell were pursuing as early as August
2 13th, the day of the murder?
3 **A. I don't know when I first found out about the**
4 **murder.**
5 Q. Okay. Do you think you -- this note indicates
6 that a Bill De La Verne from San Antonio -- you see
7 that, right?
8 **A. Uh-huh.**
9 Q. "Has recovered credit card at the Jewel Box
10 and Larry Miller can ID the woman. \$1,000 in fraud on
11 her. He'll come to Austin and do it all if you like or
12 mail it to you. Just let me know." And then there's a
13 telephone number and it's signed "Jill". You see
14 that.
15 **A. Yes.**
16 Q. And Jill was a secretary who worked at the
17 sheriff's office, right?
18 **A. I assume it's Jill Bowman.**
19 Q. Okay. So wouldn't you expect that given your
20 relationship with Sheriff Boutwell that either he or
21 Sergeant Woods would have at some point informed you
22 that a credit card from Christine Morton had been used
23 in San Antonio two days after her death?
24 **A. It didn't depend on our relationship. I would**
25 **assume -- I would -- I couldn't imagine that they**

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1 **wouldn't let me know. But it also depends upon how**
2 **involved I was in the case on the 15th.**
3 Q. Well, sometime after the 15th, in your
4 painstaking review of evidence in a circumstantial case
5 with Sheriff Boutwell, wouldn't you expect that you
6 would have been informed and been interested in the
7 fact that the deceased's credit card had been used in
8 San Antonio by a woman two days after her death?
9 MR. DIETZ: Objection. I think that any
10 response would be misleading to that question. I don't
11 think there's a credit card -- whose credit card is
12 identified in that.
13 MR. RALEY: You can answer.
14 Q. (BY MR. SCHECK) Do you want me to -- can you
15 answer my question?
16 **A. What was your question?**
17 Q. All right.
18 MR. RALEY: And, Counsel, you're not to
19 instruct in your objections.
20 MR. DIETZ: No. I could have -- I could
21 have just told him not to answer based upon
22 misleading -- that the answer would be --
23 MR. SCHECK: I understand that you're
24 trying to --
25 Q. (BY MR. SCHECK) The way you have decided, I

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1 take it, Mr. Anderson, to explain away this credit card
2 note as possible exculpatory evidence is that you're
3 going to say that the term "credit card" here does not
4 refer to the credit card of Christine Morton. That's
5 the position you're going to take?

6 **A. I haven't decided anything and I'm not trying
7 to explain anything away.**

8 Q. Okay.

9 **A. I'm trying to tell you what I know.**

10 Q. Let me then -- then let me review it to you
11 this way. If it had come to your attention, right,
12 that there was a report that Christine Morton's credit
13 card had been used two days after her death at a place
14 called the Jewel Box in San Antonio -- right?

15 **A. Right.**

16 Q. Would that be important information that you
17 and Sheriff Boutwell would have discussed together
18 given your painstaking examination of details in
19 circumstantial murder cases?

20 **A. All right. You're all hung up on that quote
21 from the book, so I don't know how to keep responding
22 to that. You write in a book with a little bit of
23 liberty.**

24 Q. All right. You don't like the term
25 "painstaking detail" to describe the way that you and

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1 Sheriff Boutwell would review evidence in a
2 circumstantial murder case, right? You don't like that
3 term.

4 **A. I have no recollection that we did that in
5 this case --**

6 Q. Let's put it this way.

7 **A. -- with the possible exception of the last two
8 weeks before trial.**

9 Q. Okay.

10 **A. And there were things in the transcript that
11 make me think that Sheriff Boutwell was working with me
12 during those last two weeks getting the case ready for
13 trial.**

14 Q. Let me put it to you this way. Wouldn't you
15 expect that if it had come to your attention that there
16 was a report that Christine Morton's credit card had
17 been used two days after her death in San Antonio by
18 some woman, that would be important information, right?

19 **A. That would clearly be important information.**

20 Q. That would be consistent with the defense
21 theory that Michael Morton had left for work and
22 somebody had entered the home, beaten his wife to
23 death, and committed a burglary, stealing her purse,
24 right?

25 **A. It wouldn't matter whether it was consistent**

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1 **or inconsistent. It would be something that would be
2 important to find out.**

3 Q. But let me just ask you -- answer my question,
4 if you can. Would not the use of Christine Morton's
5 credit card by some woman two days after her death in
6 San Antonio be consistent with the defense theory that
7 an intruder had entered the home, killed Christine
8 Morton, and stolen her purse, would it not?

9 **A. Obviously.**

10 Q. So the use of this credit card would be
11 important potential exculpatory evidence for the
12 defense to pursue, right?

13 **A. It would have been important for everybody.**

14 Q. I understand. But I'm asking now about the
15 defense and exculpatory evidence. Can you say out loud
16 that if, in fact, there was a report that Christine
17 Morton's credit card had been used two days after her
18 death by a woman in San Antonio --

19 **A. Okay.**

20 Q. -- that that was exculpatory information that
21 should have been turned over to the defense?

22 **A. It wouldn't have gotten to that point. If
23 somebody had used --**

24 Q. Just answer my question. Would that not have
25 been exculpatory information that should have been

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1 turned over to the defense as soon as you, as a
2 prosecutor, knew about it?

3 **A. It couldn't have happened because either they
4 follow this up, in which case there wouldn't have been
5 any charges filed, assuming --**

6 Q. Can you answer my question? Do you not agree
7 that a report that Christine Morton's credit card had
8 been used in San Antonio two days after her death was
9 information that should have been disclosed to the
10 defense in this case as Brady material?

11 **A. If I was aware that Christine Morton's credit
12 card was used two days after her death, it would have
13 been something that would have had to have been checked
14 out; and if, in fact, it was confirmed, that would have
15 led the investigation in a whole nother direction.**

16 Q. My question to you -- and this is -- and
17 answer it one more time. The information contained in
18 Exhibit --

19 **A. 9.**

20 Q. -- 9 -- and let's assume for the sake of this
21 question that the credit card in issue in the
22 handwritten note is Christine Morton's credit card. Do
23 you have that assumption in mind?

24 **A. I can make that assumption.**

25 Q. I'm asking you to make that assumption.

34 (Pages 133 to 136)

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1 Assuming that the credit card referred to
2 in Exhibit 9 is Christine Morton's credit card, do you
3 not agree that the information contained in this field
4 note directed to Sergeant Wood that Christine Morton's
5 credit card had been used two days after her death was
6 information that should have been disclosed to the
7 defense for their investigation as exculpatory
8 information?
9 **A. I'm trying to answer that question.**
10 Q. Can you answer that yes or no?
11 **A. It's difficult.**
12 Q. Why can't you answer that question yes or no?
13 **A. Because two days after the murder, before any**
14 **charges had been filed, there wouldn't have been a**
15 **defense to disclose it to.**
16 Q. Mr. Morton had been Mirandized and had been
17 interrogated the day of the murder, right?
18 **A. If that's what the transcript shows, yes.**
19 Q. You knew that. You knew that he was
20 immediately a suspect, wasn't he?
21 **A. I'm not sure what I knew on the 15th.**
22 Q. At some point in time after Mr. Morton was
23 charged --
24 **A. If I was in trial this week, I may not even**
25 **have --**

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1 Q. At some point in time after Mr. Morton was
2 charged, if you had become aware or if you were aware,
3 all right, of this document, Exhibit 9, and assuming
4 that the credit card referred to here is Christine
5 Morton's credit card, is there any doubt that that
6 would have to be disclosed as Brady material to the
7 defense?
8 **A. Two months after -- afterwards, if I was aware**
9 **of this information and it had not been run to ground**
10 **and determined to be totally without merit, there's no**
11 **way I wouldn't have turned it over.**
12 Q. Well, is there anything that you've seen in
13 this file that indicates that this report of a credit
14 card, Christine Morton's credit card, being used in San
15 Antonio two days after the crime was run down and found
16 to be irrelevant and not connected to this case at
17 all? Is there anything in the file that indicates
18 that?
19 **A. Now, this wasn't in the DA's file; is that**
20 **correct?**
21 Q. This was in the -- Sergeant Wood's field
22 notes. Have you seen any document anywhere
23 indicating --
24 **A. Sergeant Wood's field notes? This is in the**
25 **sheriff's --**

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1 Q. Have you seen any document anywhere that
2 indicates that a follow-up investigation was done
3 indicating that Christine Morton's credit card was not
4 used in San Antonio or that this information has no
5 basis to it that's in Exhibit 9?
6 **A. I have not seen any follow-up report.**
7 Q. All right.
8 MR. DIETZ: Can we break now?
9 MR. SCHECK: We'll take a break now.
10 VIDEOGRAPHER: It's 1:08. We're off the
11 record.
12 (Recess from 1:07 p.m. to 2:20 p.m.)
13 (Exhibit Nos. 10, 11, 12, 13, 14, 15, 16,
14 17, and 18 marked)
15 VIDEOGRAPHER: It's 2:22. We are on the
16 record.
17 Q. (BY MR. SCHECK) Mr. Anderson, the Morton case
18 got a lot of publicity.
19 **A. I'm sure it did.**
20 Q. There was a gag order in this case.
21 **A. I saw that in the transcript.**
22 Q. And you were DA for how long before this case
23 arose?
24 **A. A little over a year.**
25 Q. So this was an important case to you, a year

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1 in as District Attorney, getting a lot of publicity,
2 correct?
3 **A. It wasn't any more important than all the**
4 **other high profile cases. We had a rash of them.**
5 Q. Right. Well, other than the nurse -- the
6 Jones case, right, the nurse, was that before or after
7 this one? It was before this one, right?
8 **A. I didn't actually try that. It was probably**
9 **before because I think I was still an Assistant**
10 **District Attorney.**
11 Q. Okay. In terms of your tenure as a District
12 Attorney, was the Morton case, at the time it arose,
13 the highest profile case that you had prosecuted?
14 **A. I'd have to go back and look and see what I**
15 **prosecuted. It was not the highest profile case I**
16 **prosecuted.**
17 Q. But it was certainly a very important one that
18 necessitated a gag order, correct?
19 **A. Yeah. I mean, it had TV cameras.**
20 Q. Okay. And you didn't want to lose this one,
21 did you?
22 **A. I wanted to do what I want to do in every**
23 **case, which is get it right.**
24 Q. Right. Just get it right. Just do justice,
25 right? That's what you wanted. Is that right?

35 (Pages 137 to 140)

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1 **A. Yes, Mr. Scheck.**
2 Q. Okay. Now, so you wrote about the Morton case
3 in your book "Crime on Texas," right?
4 **A. I used it to introduce a chapter.**
5 Q. Right. And let's take a look at that chapter,
6 Chapter 2. Take a look at it there. Okay. And in
7 Chapter 2 you describe that as a kid growing up, you
8 got your ideas about trials and lawyers from movies,
9 TV, and books, Gregory Peck, To Kill a Mockingbird,
10 Spencer Tracy in Inherit the Wind. "In the popular
11 media, the good-guy lawyer is always handsome or
12 beautiful, always stars in the court" -- "always a star
13 in the courtroom, always able to break down any lying
14 witnesses with brilliant cross examination, and always
15 able to expose the truth," right?
16 **A. That's correct.**
17 Q. Okay.
18 **A. That's what was written, what I wrote, and**
19 **what was true.**
20 Q. And what's true. And then you said --
21 **A. That's probably how you got your inspiration.**
22 Q. And -- certainly true. To Kill a Mockingbird,
23 Inherit the Wind, yes.
24 **A. Inherit the Wind was a million-dollar movie.**
25 Q. There you go. Spencer Tracy, right?

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1 **A. Right. It showed 14 times in one week.**
2 Q. But your point here is that that's all the
3 movies. You wanted to tell the reader about what's
4 reality in trials, correct?
5 **A. I was trying to make the point that --**
6 Q. Is that right?
7 **A. -- it's not brilliance. It's hard work.**
8 Q. It's hard work. So your next paragraph is --
9 you say, quote, "In reality, I don't see much
10 brilliance in the courtroom. Trials are won and the
11 truth is exposed because of detailed, painstaking
12 preparation done before the first witness is sworn in.
13 Someone has to visit the crime scene, interview the
14 witnesses, retrace the steps of the victim or
15 defendant, and examine the physical evidence. Someone
16 has to master the hundreds of details."
17 That's what you wrote, right?
18 **A. That's what every lawyer does before you even**
19 **announce ready in a case.**
20 Q. Right. So from your point of view, it was
21 important for you in the Michael Morton case to master
22 the details, the hundreds of details of the case,
23 right?
24 **A. I spent probably the last two weeks**
25 **interviewing witnesses and trying to put the case**

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1 **together.**
2 Q. And that would include visiting with Sheriff
3 Boutwell?
4 **A. I'm sure I was visiting with Sheriff Boutwell.**
5 Q. That would include going through the sheriff's
6 file?
7 **A. I don't know that I went through the sheriff's**
8 **file.**
9 Q. Is there any reason that you wouldn't go
10 through the sheriff's file?
11 **A. I would assume everything in the sheriff's**
12 **file was also in my file because --**
13 Q. Well, you knew that before you put a witness
14 on the stand at trial, a police witness, you would have
15 to turn over their reports to the defense, right?
16 **A. Right. When you put a witness on, after they**
17 **testify you give the report to the defense attorney.**
18 Q. And at a pretrial hearing, before you put the
19 witness on, you would want to review their reports and
20 notes because there's a possibility that those might be
21 turned over to the defense, right?
22 **A. Not usually at a pretrial.**
23 Q. Well, but if you put them on at a pretrial,
24 wouldn't you want to review their -- review their
25 reports and field notes, as Woods called it, before

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1 they testified?
2 **A. I have never had a case in 35 years where I**
3 **ever heard the word "field notes".**
4 Q. Well, you sure had one here, didn't you? You
5 used the word "field notes" on the record. You
6 reviewed that record.
7 **A. Except, evidently, this case.**
8 Q. Okay. Well, in any event, you would want to
9 review the reports and notes of your police witnesses
10 that they were using to refresh their recollections
11 before you put them on the witness stand, would you
12 not?
13 **A. You keep saying "notes". You have an offense**
14 **report. That's what the prosecutor gets. And you use**
15 **the offense report.**
16 Q. Well, why don't we -- I'd like to read you --
17 we've deposed Sergeant Woods. Okay? And -- okay. So
18 Sergeant Woods -- I'm now reading at page 168, line 12,
19 of his deposition.
20 **A. Are we going to get the deposition?**
21 Q. I'm sorry?
22 **A. Are we going to get the Wood deposition?**
23 Q. Yes, of course.
24 **A. Can we get it now?**
25 Q. Yeah. Let me first read this to you and see

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1 if it refreshes your recollection. We'll take a break
2 in time and you can review this to your heart's
3 content. Okay? But let's just get some grounding.
4 Question, page 168, line 12, "Anyway,
5 reports on these investigations of these items, these
6 four items" -- and I -- the four items are the
7 Kirkpatrick transcript, the credit card note, the note
8 about the offense report concerning the spotting of a
9 green van and a man walking behind the wooded area.
10 You've refreshed your recollection of that one, haven't
11 you?
12 MR. DIETZ: Page? I'm sorry.
13 MR. SCHECK: Page 168.
14 MR. DIETZ: 168. All right. Go ahead
15 and listen to his question again. I'm sorry I
16 interrupted.
17 Q. (BY MR. SCHECK) "These are the kind of
18 documents that in routine practice would have been put
19 in the sheriff's file."
20 Answer, "Right. They would have went in
21 the file."
22 Question, "And things that rose to this
23 level of importance, you can see that they're also
24 copied directly to the sheriff."
25 Answer, "Right."

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1 "And was District Attorney Anderson --
2 was he the sort of prosecutor that wanted to have
3 complete reports available to him?"
4 Answer, "He wanted a copy of everything.
5 I know that. But --"
6 Question, "Thank you, sir."
7 Sometime -- answer, "Sometimes he'd come
8 and ask for them. Sometimes he wouldn't."
9 Question, "Well, sometimes he might get
10 them from other sources."
11 Answer, "Right."
12 Question, "But your memory is he wanted a
13 copy of everything."
14 Answer, "Yeah."
15 Now, in terms of your dealing with
16 Sergeant Wood in this case and generally, were you the
17 kind of prosecutor that wanted to go through their
18 files and get everything you could see?
19 **A. Generally a case has an offense report. So
20 when you have a more complicated case, it's going to
21 have more than one offense report and things like
22 autopsy reports. You try to make sure that you have a
23 complete file.**
24 Q. Well, this was the only circumstantial murder
25 case you can recall doing with Sergeant Boutwell. I

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1 think you told us that this morning.
2 **A. With the sheriff, yeah, the sheriff's office.
3 There were -- we did one with Round Rock Police
4 Department. I can't remember where we did the third
5 one. And those are the only three circumstantial cases
6 I can remember.**
7 Q. Just to hammer home the point, just if there's
8 any doubt, on page 92 of Wood's deposition, he's asked,
9 question -- question, "And you wanted to make sure that
10 the information you found was in the file, was in the
11 sheriff's file --"
12 Answer, "Right. Right."
13 Question, "-- available to the District
14 Attorney."
15 Answer, "Yeah. All of my reports were
16 available to the District Attorney."
17 Question, "Any time he wanted them, he
18 could have them."
19 Answer, "As far as I was concerned, he
20 could."
21 All right? Now, does that sound accurate
22 to you?
23 **A. I can't imagine why you deposed Sergeant
24 Wood. He's, what, seventy-some years old? He's had a
25 stroke.**

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1 Q. Look, Mr. Anderson --
2 **A. I would like to look -- I would like to look
3 at what -- before I get questioned from it, I'd like to
4 look at the deposition.**
5 Q. Then let me just ask it to you this way. As
6 you prepared for the Morton trial, right, as you
7 describe in your book, "Crime in Texas," were you not
8 trying to become the master of hundreds of details with
9 respect to the case?
10 **A. I had a list of roughly 75 potential witnesses
11 in the case. I had roughly two weeks to get ready for
12 trial. Just trying to keep up with who those people
13 were, who I was going to call, coordinate the time,
14 deal with the physical evidence, deal with the
15 scientific evidence, that's a huge, huge undertaking.**
16 Q. So my question to you was: Were you not, just
17 as you wrote about in the book, trying to master the
18 hundreds of details in the Morton case as best you
19 could? Yes or no? Can you answer that yes or no?
20 **A. Yes, I was prepared for trial.**
21 Q. And that being prepared for trial, as you
22 wrote about in this book, required painstaking
23 preparation done before the first witness is sworn in,
24 visiting the crime scene, interviewing the witnesses,
25 retracing the victim or defendant, examining the

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1 physical evidence. Someone has to master the hundreds
2 of details. That's what you wrote in this book, right?

3 **A. That's what every prosecutor does in every**
4 **case.**

5 Q. And then you went on in the next paragraph to
6 say "Such preparation led me to produce the crates at
7 the City Grill." And then you go on to talk about how
8 you went back in the Morton case and was able to find
9 the food that Christine Morton ate with her husband the
10 night before her murder, right?

11 **A. Yeah, that's one of the few actual**
12 **recollections I have, was going to the City Grill,**
13 **looking through their produce sheets. And I don't know**
14 **why I remember that, but maybe because when I wrote**
15 **that was -- the book came out in '97, I believe, so I**
16 **probably wrote it in '95, so it was closer in time to**
17 **the trial.**

18 Q. And you were writing about it in this book, in
19 a sense bragging about how you were the kind of lawyer
20 that would master hundreds of details and that led you
21 to go back and actually get the contents of the food.
22 That's what you wrote about here, right?

23 **A. That was the gist of it. I was trying to**
24 **write a layman's guide so people could understand how**
25 **our system works.**

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1 Q. Okay.

2 **A. And to do that, you engage in some prose and I**
3 **have a chapter introduction in each of the relatively**
4 **dry chapters.**

5 Q. So you're now telling us that to the best of
6 your recollection, you were preparing as best you could
7 the last two weeks of the trial -- two weeks before the
8 trial, trying to master the details in this case,
9 right? That's your recollection now.

10 **A. I don't have a lot of recollection. Typically**
11 **I would take a week off before trial to prepare a big**
12 **case. There's something in the transcript that makes**
13 **me think I had two weeks.**

14 Q. Now, let's review some of the disputed items
15 here that you know we, Mr. Morton's lawyers, are saying
16 are exculpatory evidence.

17 **A. Okay.**

18 Q. And the first one would be the deposition --
19 what we've marked Exhibit 6 and Exhibit 7. And this is
20 the interview between Don Wood and Rita Kirkpatrick,
21 Michael's mother-in-law, the mother of the deceased,
22 Christine Morton. Okay?

23 **A. Correct.**

24 Q. And you've reviewed this, these two
25 transcripts, with some care, have you not?

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1 **A. I reviewed the short one and then I saw that**
2 **there was a longer one and I was trying to make sense**
3 **of why there were two.**

4 Q. Okay. But -- why don't you -- there's a copy
5 of -- do you have another copy of it here? Why don't
6 you review with me -- it's attached as an exhibit --
7 I'm showing you now what's Exhibit C to the recusal
8 motion. Okay? And this is a copy of the transcript.
9 So why don't we review it together. That might be the
10 easiest thing. Okay?

11 **A. Okay.**

12 Q. And this is what was in the recusal motion,
13 but you're telling us that you're not sure after you
14 got it on August 21st that you read this with any care
15 or detail, right?

16 **A. Right. I told you I looked at the recusal**
17 **motion and then I started to do some work, including**
18 **pulling the opinion of the appeal.**

19 Q. Okay. So you can see that this is a call -- a
20 transcript made, it says at the top, of a taped
21 conversation between Rita Kirkpatrick and Sergeant Wood
22 on August 21st, 1986. Do you see that?

23 **A. Yes, sir.**

24 Q. All right. And --

25 **A. August when? Oh, 24th, yes.**

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1 Q. Right. Okay. And Ms. Kirkpatrick -- he says,
2 in the middle of the page, "Hello. Mrs. Kirkpatrick?"
3 Answer, "Yes."

4 "This is Sergeant Wood."

5 Answer, "Yeah, I've wanted to repeat a
6 conversation - let me get ..., okay?"

7 Mr. Wood says, "Okay."

8 Then he says -- then she says, "Do you
9 want to tape this or not? This was the first time I
10 was alone with Eric since my daughter was killed."

11 You see that.

12 **A. Yes.**

13 Q. All right. And then Don Wood says, "Okay,"
14 okay to the taping.

15 And she says, "Ah, he came in my bedroom,
16 closed the door and began to talk, okay?"

17 And Wood says, "Okay. You don't mind if
18 I tape, then."

19 And she says, "Please do. I'll tell you
20 that yesterday was ... child psychology was the first
21 time ... real anger in missing his mother." One day --
22 "One week to the day from the funeral."

23 And then Don Wood says, "Okay."

24 She says, "It was a bad day of biting and
25 kicking and saying, I want Mommie, which he has not

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1 been doing."
2 And Woods goes, "Umm."
3 All right? Okay.
4 And then she says, "Okay. Marilee told
5 me to come write this down and I think it was probably
6 a very important thing to do. I'm here - with a
7 three-year-old - you keep remembering."
8 And Wood says, "Right."
9 Now, who's Marilee? Do you remember?
10 **A. Marilee would be Chris' sister.**
11 Q. Uh-huh. And then she says, "Alright, so this
12 is it. Approximately 11:00 a.m., August 24th, Eric and
13 I were alone at my house in Pearland which was the
14 first time he and I had been alone since his mother's
15 death." He was -- "I was putting on make-up in the
16 bathroom. Eric layed on his blanket on the floor of my
17 bedroom. He said, Mommie is sleeping in the flowers.
18 His dad had told him that last week" -- "His dad had
19 told him that last week at the cemetary. Then he
20 kicked the blanket and said, Mommie, get up. Ah, I've
21 got grandmother and Eric - okay, G for grandmother."
22 And then I guess he's interrupting.
23 "I've got grandmother and Eric - okay, G for
24 grandmother. Uh, G: Don't kick Mommie, Eric."
25 Okay? You see that?

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1 **A. I kind of got -- I was following and then I**
2 **lost when you started saying G for grandmother. Where**
3 **is that?**
4 Q. Well, now there's a -- what follows in this
5 transcript is what is attributed to Eric and what's
6 attributed to the grandmother, right?
7 **A. It seems that way.**
8 Q. Okay. And then it says, "Eric," quote,
9 "Mommie is crying. She's ... stop it. Go away."
10 "Grandmother: Why is she crying?"
11 "Eric: Cause, the monster's there."
12 "Grandmother: What's he doing?"
13 "Eric: He hit Mommie. He broke the
14 bed."
15 Now, let's stop for a second. Christine
16 Morton was found murdered in her bed, right?
17 **A. That's correct.**
18 Q. And a blue suitcase was thrown on top of that
19 bed, right?
20 **A. From reading the transcript, I gather there**
21 **was a -- multiple things that --**
22 Q. Multiple things, right?
23 **A. There was -- yeah.**
24 Q. Okay. The grandmother, "Is Mommie still
25 crying?"

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1 Answer, "No, Mommie stopped."
2 "Then what happened?"
3 And then in parentheses, presumably this
4 is what the grandmother is saying, "My heart was in my
5 throat, my stomach was in my toes, but I knew I had to
6 do it. Okay."
7 Do you see that?
8 **A. Uh-huh.**
9 Q. All right. And, you know, up until this
10 point, Eric had been found in -- that morning, running
11 around unsupervised by a neighbor, correct?
12 **A. Correct.**
13 Q. And that's what led the neighbor to go in the
14 house, a woman named Elizabeth Gee; is that right?
15 **A. I'll --**
16 Q. But your general recollection -- if you don't
17 remember the name, your general recollection is that --
18 **A. No, I remember the name. I just don't**
19 **remember --**
20 Q. Right. Who it was?
21 **A. No. I remember -- I don't remember exactly**
22 **what -- where she found Eric and that she went into the**
23 **house, but I don't disagree.**
24 Q. You do agree that there was some question in
25 the early stages of this investigation as to what Eric

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1 saw, correct?
2 **A. Okay. That's a different question. There was**
3 **some question about what Eric saw.**
4 Q. Right. I mean, as to whether or not Eric
5 should be questioned about what he saw or if anybody
6 did it, anybody had questioned him.
7 **A. All I know about what Eric said, saw, or**
8 **anything else was whatever was in my file. And then I**
9 **may have learned other things because at some point**
10 **during the trial or pretrial, I made a motion in limine**
11 **about his competence, that we approached the bench, and**
12 **either White or Allison made a joke at that point about**
13 **they had been spending the last two days prepping him**
14 **and then laughed and indicated they weren't going to be**
15 **calling him.**
16 Q. Right. But you're saying all that you would
17 have known about what Eric said he saw would have been
18 what was in your file. Is that what you just said?
19 **A. I don't know what I knew then.**
20 Q. Okay.
21 **A. I have no recollection about it. I know there**
22 **was a two-page version of this --**
23 Q. Right.
24 **A. What is it, seven or nine pages?**
25 Q. Right.

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1 A. In the DA's file. And this was --
2 Q. And that's Exhibit 7 that we reviewed before.
3 A. Okay.
4 Q. Okay? Now, let's just continue reading here.
5 All right? Then Eric says, "The monster throw a blue
6 suitcase on the bed. He's mad."
7 Do you see that?
8 A. I do.
9 Q. All right. That accords with the facts, that
10 a blue suitcase was thrown on the bed, correct?
11 A. Okay.
12 Q. "Did he put anything else on the bed?"
13 "No."
14 A. I didn't recall it was a blue suitcase.
15 Q. I'm sorry?
16 A. I don't recall that it was a blue suitcase,
17 but --
18 Q. Well, if you don't remember, you don't
19 remember.
20 A. I don't.
21 Q. "Did he put anything else on the bed?"
22 "No."
23 "Grandmother: Did the monster hurt
24 Mommie?"
25 Answer, "Yes. Mommie go to hospital."

1 "How did he leave?"
2 "The door."
3 "Which door, Eric?"
4 "The front door."
5 Was it the front door or the patio
6 door -- "Eric, was it the front door or the patio
7 door? Did he go out on the deck or in the front?"
8 "The front."
9 "Where was Daddy, Eric?" And in
10 parentheses says -- it says "This is where Grandmother
11 almost died."
12 "Was Daddy there?"
13 Answer, "No. Mommie and Eric was
14 there."
15 You see that?
16 A. I do.
17 Q. All right. Now, does that not indicate that
18 in this tape recording Eric is saying that his father
19 wasn't there?
20 A. That would be my reading of it.
21 Q. That this monster, this man, was not his
22 father.
23 Now, why don't you turn to Exhibit 7, the
24 short form version of this. And as you've noticed, it
25 is not a complete transcript, right?

1 "Grandmother: Then what did the monster
2 do?"
3 "Eric: He said Mommie's in the
4 garage."
5 Question, "Was he big?"
6 Answer, "Yeah."
7 "Did he have on gloves?"
8 "Yeah, red."
9 "What did he carry in his red gloves?"
10 "Basket."
11 "What was in the basket?"
12 "Wood."
13 "Did he ... have Daddy's gun or Mommie's
14 purse?"
15 Then it says in parentheses "Sort of
16 vague, 'Yeah'."
17 "But did he have wood?"
18 "Yeah."
19 "What kind of wood, Eric?"
20 "Like Daddy's ..."
21 "Did he have the tool for the
22 fireplace? Did he have anything from the fireplace?"
23 "Sort of a vague, 'No'."
24 "Did the monster leave then?"
25 "Yes."

1 A. Where's 7?
2 Q. That's -- I'm going to give that to you now.
3 A. Okay.
4 Q. All right? It is not a complete -- the
5 offense report is not a complete transcript, correct?
6 A. I haven't matched them up, but it's obviously
7 shorter.
8 Q. Okay. Now, let me turn your attention to the
9 back of this exhibit. All right?
10 A. Okay.
11 Q. And let me take a look at that. And at the
12 end of this, it says -- the description of the monster
13 is in the first part. And then it says here, "Rita:
14 Eric, was it the front door or the patio door? Did he
15 go out on the deck or out in the front?"
16 "Eric: The front."
17 "Rita: Where was Daddy, Eric? Was
18 Daddy there?"
19 And Eric says, "No, Mommy and Eric was
20 there."
21 Okay. You see that?
22 A. I do.
23 Q. So -- and this is a document that was CC'd to
24 you, right?
25 A. It was in my file.

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1 Q. So there's no question that this document was
2 in your file, correct?

3 **A. I don't have independent recollection; but,**
4 **yes, it was.**

5 Q. And this document -- if you can hand it to me
6 for just a second. This offense report indicates
7 that -- it's plainly something that looks like a
8 precise transcript of what the grandmother said and
9 what Eric said, right? Right?

10 **A. That's what it appears to be.**

11 Q. And so looking at that, you, as a
12 prosecutor -- and I realize you don't remember now.
13 But wouldn't it be fair to say in the routine course of
14 things, you would take a look at this and think maybe
15 there's a tape, maybe there's some extensive
16 handwritten notes about exactly what was said between
17 Eric and the grandmother and Sergeant Wood because it's
18 laid out in question-and-answer form with that kind of
19 precision?

20 **A. I don't know what I would conclude from this.**

21 Q. So you don't know what you would conclude.
22 But let -- let me just ask you this. Let's zero in on
23 it. That last statement, right, where Eric is saying
24 Daddy wasn't there, right, Daddy wasn't the monster,
25 now, that's exculpatory evidence, isn't it?

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1 **A. Well, this whole thing is something that you**
2 **would typically tell a defense attorney about.**

3 Q. Right. This is something that there's no
4 question that the defense attorney should know about,
5 right? No question.

6 **A. Under my standard, that's correct.**

7 Q. We won't debate about the law.
8 But now, let's go on and look at this
9 more expanded transcript. Okay?

10 **A. Okay.**

11 Q. So the next thing that -- Ms. Kirkpatrick
12 says, "So. Sergeant Wood, I'd get off the ... domestic
13 thing now and look for the monster. I have no more
14 suspicions in my mind that Mike did it. I have had."

15 Do you see that?

16 **A. What page?**

17 Q. Page three.

18 **A. Okay.**

19 Q. You see that? Right after -- right after she
20 asked "Was Daddy there," he says "No, Mommie and Eric
21 was there." And then she says, "So. Sergeant Wood" --

22 **A. Okay. I see it.**

23 Q. -- "I'd get off" -- now, that's a pretty clear
24 statement that Christine's mother, after hearing what
25 Eric had to say, right, is telling the police "I know

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1 you think my son-in-law did it, but you should be going
2 off and looking for somebody else, like Michael Morton
3 has been saying he wasn't there, somebody else
4 committed this crime. I would get off this domestic
5 thing and go look for the monster." You see that.

6 **A. That's how I'd read it.**

7 Q. All right. Now, then as we go on in this
8 transcript, you see where there comes a point where --
9 and it's -- turn to the next page, page four. Right?

10 And Sergeant Wood then says, "Okay? Has he," meaning
11 Eric, "ever seen Mike in his skin diving suit?"

12 And she says, "I don't know. I would
13 think -- I'll find out for you."

14 You see that?

15 **A. What line? Oh, these aren't lined. Okay.**
16 **We're on page four.**

17 Q. Page four.

18 **A. Okay. Skin diving suit. Found it.**

19 Q. All right. You see that?

20 **A. Uh-huh.**

21 Q. All right. And then -- now, then going to the
22 next page, page five, at the top of it, Sergeant Wood
23 says, "We need to find out about that skin diving suit
24 real, real bad because that, ah, you know, that is
25 something that a child would describe as a monster,"

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1 right?

2 **A. That's what it says.**

3 Q. So from reading this transcript, does it not
4 appear that Sergeant Woods was suggesting to Rita
5 Kirkpatrick that maybe Eric didn't recognize his father
6 because his father had actually committed the murder in
7 his skin diving suit and he didn't recognize him and
8 thought he was a monster?

9 **A. I never knew what Sergeant Wood was thinking,**
10 **but that's a reasonable --**

11 Q. That's a reasonable interpretation of this
12 transcript, right?

13 **A. Yes, sir.**

14 Q. And one of the things you know about Brady
15 material is that one of the things that a prosecutor
16 has to disclose is information that shows the bias of
17 the police investigators or sometimes the term is used,
18 as in the case Kyles v. Whitley, information that
19 impeaches the integrity of the police investigation.

20 **A. I'd have to look at those cases and see**
21 **exactly what they say.**

22 Q. Well, as you --

23 **A. It's not something on the top of my head.**

24 Q. Well, as you sit here today and think about
25 it, don't you agree that information that would impeach

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1 the fairness of the way the police were investigating a
2 case, showing their bias, is something that a
3 prosecutor is obligated to disclose?

4 **A. I've never thought of it. I've never heard of**
5 **it. Whatever cases you're talking about, I'm not**
6 **familiar with.**

7 Q. Let me ask you a question. You've never heard
8 of Kyles v. Whitley?

9 **A. Even -- there are cases I could pull out of**
10 **the air that you might not even be able to tell me what**
11 **they are.**

12 Q. Well, you wouldn't agree that Kyles v. Whitley
13 is one of the leading cases that the United States
14 Supreme Court decided in the whole area of Brady
15 disclosures?

16 **A. What year was it decided?**

17 Q. Well, I can't remember off the top of my head,
18 but let me see if I can -- I can go get you the year at
19 a break. But maybe this helps refresh your
20 recollection. This was a case that arose out of the
21 trial of a man named Curtis Kyles in New Orleans and
22 the issue before the Supreme Court is whether certain
23 information should have been disclosed to the defense
24 for purposes of showing that the investigators were
25 biased. Does that ring any bells for you?

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1 **A. It does not.**

2 Q. All right. Does it ring any bells that it's
3 in Kyles v. Whitley that Justice Souter wrote the
4 standard for what is the basis for vacating a
5 conviction based on suppressed Brady material?

6 **A. I'm not familiar with the case.**

7 Q. Okay.

8 **A. If Souter wrote it, it obviously was after**
9 **this trial.**

10 Q. I understand. Okay. But wouldn't you agree
11 as a common sense matter that just from reading the
12 transcript, here we have Sergeant Wood beginning to
13 suggest to the grandmother, "Oh, maybe this really
14 isn't such a -- maybe Eric is wrong. Maybe he didn't
15 recognize his father because he was wearing a wet
16 suit," right? That's what -- that's the fair
17 inference, we just agreed a second ago.

18 **A. That's correct.**

19 Q. All right. And wouldn't you agree that that
20 shows some bias on the part of Sergeant Wood in terms
21 of trying to persuade the grandmother that maybe she
22 shouldn't be relying so heavily on what Eric says, that
23 the father was not the person that he saw hurt Mommy?

24 **A. I don't know if bias would be the word I'd**
25 **use. I --**

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1 Q. What word would you use?

2 **A. You know, I'm not going to take that sentence**
3 **out of context and just say something. I mean, I**
4 **imagine Sergeant Wood was doing the best he could.**

5 Q. All right. Then you see that he's talking
6 about finding the skin diving suit. So the implication
7 here would be that if, in fact, Eric didn't recognize
8 his father because his father was wearing a skin diving
9 suit at the time that this monster hurt Mommy, right,
10 that if you could find the skin diving suit, you might
11 be able to discover blood on it or some other trace
12 evidence that could connect it to the crime, right?

13 **A. I'm assuming that's what he was thinking**
14 **about.**

15 Q. And that's what he's talking about, about "We
16 really have to find that skin diving suit real bad,"
17 right?

18 **A. Apparently.**

19 Q. Now, if it turned out that efforts were made
20 to find the skin diving suit and it did not in any way
21 show that it could have been something that Michael
22 Morton was wearing while committing the crime, that
23 would tend to be information that shows that the police
24 theory here was wrong and that would be information
25 that was -- it was like a lead not panning out, right?

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1 That would be a lead not panning out.

2 **A. I've tried to familiarize myself with the**
3 **case, but I have no idea what the skin diving suit had**
4 **to do with anything. I don't believe that was anything**
5 **that I saw in the transcript of the trial, the**
6 **statement of facts of the trial.**

7 Q. Right. Well, if it's not in the statement of
8 facts of the trial, maybe that means that efforts were
9 made to locate the skin diving suit and that would --
10 it would not explain away Eric's statement that he saw
11 a monster hurting Mommy and that person wasn't his
12 father.

13 **A. I don't know what it would mean. I'm looking**
14 **at this. I don't know that I've ever seen it before**
15 **the last couple of weeks. It's talking about a skin**
16 **diving suit. And I don't know what that would have to**
17 **do with the case.**

18 Q. Now, do you have any recollection during the
19 course of trying the Morton case of discussing with
20 Mr. Davis or anyone else what you would do if Eric were
21 actually called to the witness stand?

22 **A. It's something conceivably we could have**
23 **talked about. Eric is not -- Eric was not going to be**
24 **called to the -- well, he could have been called. He**
25 **wasn't going to be testifying.**

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1 Q. Well, there was -- under the law, a
 2 three-and-a-half-year-old could testify, correct?
 3 A. **In 1987 I don't know that anywhere in the**
 4 **State of Texas a under-four-year-old and maybe even an**
 5 **under-five-year-old would be allowed to testify. But I**
 6 **know the last Court in the State of Texas that would**
 7 **allow a three-and-a-half-year-old to testify. And that**
 8 **would be the Court we were trying it in.**
 9 Q. I'm sorry. And you said they did allow a
 10 three-year-old to testify?
 11 A. **No, they did not.**
 12 Q. They did not.
 13 A. **I don't think it would be allowed anywhere in**
 14 **the state, but the last judge that would have let it in**
 15 **would have been Judge Lott. He was very old-fashioned**
 16 **about things like that.**
 17 Q. Well, did you think about -- did it ever --
 18 were you planning in any way for the possibility that
 19 Eric might get on the witness stand and say that he saw
 20 the -- he saw somebody attacking Christine Morton and
 21 it wasn't his father?
 22 A. **I can't say that. Obviously I filed a motion**
 23 **in limine to test his competence if the defense was**
 24 **planning on calling him.**
 25 Q. So there was -- so just from having reviewed

1 A. **7.**
 2 Q. All right. Did you think the defense had --
 3 as you sit here today, can you tell us you disclosed to
 4 any of the lawyers, either by reading it to them or
 5 giving them a copy of Exhibit 7, a transcript of an
 6 interview with Sergeant Wood and Rita Kirkpatrick where
 7 it describes how Eric told Christine's mother soon
 8 after the funeral that a monster had killed Christine
 9 and Daddy wasn't there?
 10 A. **I can't recall any specifics of any piece of**
 11 **discovery, any conversations. The only thing I can**
 12 **recall is, because it's mentioned in the transcript --**
 13 **well, whatever is mentioned in the transcript. And**
 14 **I've said that from the beginning. I have no specific**
 15 **recollection of turning any evidence over to them. The**
 16 **only way I know that I had turned evidence like**
 17 **duplicates of negatives is because the transcript says**
 18 **it.**
 19 Q. Now, let me ask you this.
 20 A. **But if this was in my file --**
 21 Q. Yes. Now we're talking about Exhibit 7.
 22 A. **7.**
 23 Q. There's no question Exhibit 7 was in your
 24 file, right?
 25 A. **The DA's office says it was in the file.**

1 the transcript and realizing that you filed a motion in
 2 limine, as you sit here today, you realize that you
 3 must have had some knowledge that there was a
 4 possibility that the defense might call Eric to testify
 5 that he saw the crime and it wasn't his father. You
 6 were anticipating something like that.
 7 A. **And from the defense attorneys' reaction, it**
 8 **seemed to me like we both would have known this was an**
 9 **issue.**
 10 Q. Well, let me ask you a question. Do you think
 11 the defense attorneys had any idea that there was a
 12 statement by Eric soon after the funeral to his
 13 mother-in-law in the kind of detail that we see here in
 14 Deposition 6, the longer version? Do you think the
 15 defense had any idea of that?
 16 A. **After I read the newspaper article, I became**
 17 **convinced that everybody knew about it.**
 18 Q. That's what you think, huh? But at the time
 19 of trial -- you read a newspaper article subsequent to
 20 the Morton trial, right?
 21 A. **I think it was a week after.**
 22 Q. Right. But prior to the trial did you think
 23 that the defense had -- let's just deal with Exhibit --
 24 what's the short version? What exhibit number is
 25 that? ??

1 Q. Assuming it was in your file --
 2 A. **I will assume it was in my file.**
 3 Q. All right. Let me ask you this. Assuming
 4 that was in your file and further assuming that you
 5 believed that Eric might well have said something
 6 similar to this to the defense lawyers, right, do you
 7 believe that you still had an obligation to turn over a
 8 transcript of the statement of Rita Kirkpatrick,
 9 Christine's mother, and Eric?
 10 A. **That's a -- there's no way I could answer**
 11 **that.**
 12 Q. I'm just trying to understand your under --
 13 your view of Brady and what you must have done as a
 14 matter of routine. Assuming that's in your file -- and
 15 that's a fair assumption, right? We're talking about
 16 Exhibit 7, correct?
 17 A. **Yeah. If we're going to assume everything and**
 18 **just think did you handle this the way you handle every**
 19 **other case, I sit down with the defense attorney. I**
 20 **open my file. I go through it report by report with**
 21 **them.**
 22 Q. Okay. So your routine, you believe, at the
 23 time is that you -- your ordinary routine is that you
 24 would sit down with the defense attorney and you would
 25 open your file and you'd go through it with him report

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1 by report. Is that what you just said?
 2 **A. Not like you're doing, like showing it to**
 3 **them. I would sit down and go through it report by**
 4 **report with them.**
 5 Q. You would sit down and you would be on one
 6 side of the table and the defense attorney would be on
 7 the other, correct?
 8 **A. Yeah. We'd do it at my desk.**
 9 Q. You'd do it at your desk.
 10 **A. I can't say that I did it in this case.**
 11 Q. I understand you're not saying you did it in
 12 this case. But if you were to follow your routine of
 13 how you would do discovery, you would sit on one end,
 14 the defense would sit on the other, and you would have
 15 pulled out -- you would have come across Exhibit 7,
 16 this transcript, and you would have said to the defense
 17 lawyers, "I have here an interview between Rita
 18 Kirkpatrick, Christine's mother, and Eric soon after
 19 the funeral in which Eric says that he saw a monster
 20 hurt Mommy and when asked where was Daddy, he was
 21 saying Daddy wasn't there; it was just Eric, Mommy, and
 22 the monster." You would have said --
 23 **A. I don't know how much detail I would have gone**
 24 **into, but it's something I would have told them about,**
 25 **yes.**

1 Q. I mean, you would have said something of
 2 substance so that the defense would have known that
 3 Rita Kirkpatrick had told this to Sergeant Wood; is
 4 that right?
 5 **A. I can't -- you know, what --**
 6 Q. Let me put it to you this way. If all of a
 7 sudden the defense had tried to put Eric on the
 8 stand --
 9 **A. Right.**
 10 Q. -- to talk about his observations, one of the
 11 potential problems there would be that a suggestion
 12 would be made -- and a question would be raised by the
 13 prosecution, "How do we know that Michael Morton and/or
 14 his lawyers did not prime Eric to say that he saw
 15 somebody hurt Christine and Daddy wasn't there?" That
 16 would be one of the first concerns right away, right?
 17 **A. There wouldn't have been any concern at that**
 18 **time about a three-and-a-half-year-old testifying.**
 19 **Judge Lott was not going to allow a**
 20 **three-and-a-half-year-old to testify. I don't think**
 21 **any judge in the state would have. We just started**
 22 **doing child molesting cases in eighty -- late '84,**
 23 **'85. Nobody had any experience with children as**
 24 **witnesses back then. And the basic rule, if I remember**
 25 **correctly, was if they weren't five they weren't likely**

1 **to be testifying.**
 2 Q. The possibility of admitting
 3 Ms. Kirkpatrick -- but just take my point, that if an
 4 issue arose, you're telling us, "Oh, Judge Lott never
 5 would have admitted it." But if the defense said, "We
 6 want to offer Eric to testify because he has told us
 7 that he saw this incident and it wasn't his father who
 8 killed Mommy," right, that one of the reliability
 9 concerns would be did the defense prime him to say
 10 that. That would be a reliability concern. Fair
 11 enough?
 12 **A. We're speculating on guesses.**
 13 Q. No, we're not speculating on guesses. See if
 14 you can answer my question. My point to you simply,
 15 sir, doesn't this transcript where Eric is
 16 spontaneously saying this to his maternal grandmother,
 17 Christine's mother -- right? Doesn't that have greater
 18 reliability than if the defense had tried to put him on
 19 where accusations could be made the defense put the kid
 20 up to it? Isn't there a difference?
 21 **A. Okay.**
 22 Q. Are you're saying "okay" like you take my
 23 point, what I'm saying is true, that there is a
 24 difference?
 25 **A. Well, if we're going to deal with this case --**

1 Q. I'm asking --
 2 **A. This case is -- a three-and-a-half-year-old**
 3 **was not going to be testifying anywhere in the State of**
 4 **Texas in 1987.**
 5 Q. Do you think that the defense, if they had
 6 Exhibit 7, just that transcript which you admit was in
 7 your file, could have tried to introduce it into
 8 evidence as an excited utterance?
 9 **A. No.**
 10 Q. Okay. So it never occurred to you at all. So
 11 even today, if you were retrying this case, right, and
 12 you were sitting on one side of the desk and the
 13 defense lawyers were on another, you still would not
 14 turn over a copy of Exhibit 7, the short version of the
 15 Kirkpatrick-Wood interview. You wouldn't do that.
 16 **A. I've been a judge for 10 years. I don't think**
 17 **like a prosecutor. I have no idea what I'd do today.**
 18 Q. All right. What about Rita Kirkpatrick
 19 testifying? Do you think that the defense should have
 20 been entitled to see that transcript so they could try
 21 to call her?
 22 **A. Are we out of tape?**
 23 Q. Okay. Just answer yes or no and we'll --
 24 **A. What was the question? I was watching him.**
 25 **He was making these hand signals.**

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1 Q. Do you think the defense should have been
2 allowed -- should have been given Exhibit 7 at least,
3 the one that you say should have been in your file was
4 in your file -- they should have been given that so
5 they would have had the option of trying to call Rita
6 Kirkpatrick?
7 **A. I can't think of anybody in '86 who would have**
8 **thought that --**
9 MR. SCHECK: Okay. Let's take a break
10 and get a new tape.
11 VIDEOGRAPHER: It's 3:09. We're off the
12 record.
13 (Recess from 3:08 p.m. to 3:17 p.m.)
14 VIDEOGRAPHER: It's 3:19, beginning Tape
15 No. 3. We are on the record.
16 Q. (BY MR. SCHECK) Mr. Anderson, I've handed you
17 what's been marked as Exhibit -- I believe it's 10,
18 right? Which is a --
19 **A. Yes.**
20 Q. -- supplemental offense report dated 8-14-86.
21 You see that?
22 **A. I do.**
23 Q. All right. And you've seen this report
24 before. You studied that in preparation for this
25 deposition?

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1 **A. I did.**
2 Q. All right. And you understand that this is a
3 document which the defense has alleged is exculpatory
4 evidence that should have been disclosed to them at the
5 time of trial?
6 **A. I do.**
7 Q. Okay. And I call your attention to the middle
8 of this where -- this is obviously a report of Traylor,
9 right?
10 **A. Yes.**
11 Q. Mr. Traylor? And he was an investigator
12 connected with this case?
13 **A. He was a deputy of some sort.**
14 Q. All right. And he says here that he
15 encountered a subject, right, who advised that he and
16 his wife and a Joni St. Martin from 13204 Adonis had on
17 several occasions observed a male park a green van on
18 the street behind the Hazelhurst address. Do you see
19 that?
20 **A. Yes.**
21 Q. And the Hazelhurst address that we're talking
22 about is the home of Christine and Michael Morton where
23 the murder occurred, correct?
24 **A. Presumably.**
25 Q. And "then the subject would get out and walk

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1 into the wooded area off the road."
2 Do you see that?
3 **A. Uh-huh.**
4 Q. All right. And it goes on to say "The subject
5 from 13202 Adonis advised that from the way his wife
6 talks, he believes that Joni St. Martin knows where the
7 subject in the green van lives."
8 Do you see that?
9 **A. Yes.**
10 Q. All right. So this is a report the day after
11 the murder, on August 14th, 1986, of an investigator
12 who is -- you've heard the term "canvassing" a
13 neighborhood? You've heard that, right?
14 **A. I have.**
15 Q. And that's typically done in a homicide case
16 of this fashion where investigators would go out into
17 the area and ask neighbors and witnesses what they
18 might have seen, right?
19 **A. I've seen that on TV, so I'm guessing that's**
20 **what police officers do.**
21 Q. That's not much of a guess. You know that's
22 what they do, don't you?
23 **A. I'm surprised that they were doing that, but**
24 **that's good.**
25 Q. Yes, it's good.

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1 And part of what would be normal
2 investigative routine in a homicide is that one would
3 go out the next morning at or around the time of the
4 incident to see if people, as part of their ordinary
5 routines, were in certain areas around the crime scene
6 to see if they had remembered observing anything the
7 day before that might be of significance, right?
8 **A. That would be good police work.**
9 Q. And that's exactly the kind of police work
10 that appears to have been done by Mr. Traylor in this
11 case, correct?
12 **A. Correct.**
13 Q. And he identified an individual who said he
14 saw a green van that was -- that a male parked a green
15 van on the street behind the Hazelhurst address and
16 then would get out and walk into the wooded area off
17 the road. You see that.
18 **A. I do.**
19 Q. Can we hold up what's Exhibit 11? Exhibit 11
20 that your lawyer is holding up right now --
21 MR. SCHECK: Can we see that in the
22 tape?
23 VIDEOGRAPHER: He'd have to put it right
24 next to the judge.
25 MR. SCHECK: Could you put that right

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1 next to the judge, Mr. Dietz?
2 Q. (BY MR. SCHECK) Maybe you could hold that,
3 Judge, if you might.
4 Exhibit 11 is a blown-up copy of a
5 diagram that was drawn on the day of the murder, 8-13,
6 of the area around 9114 Hazelhurst where the murder
7 took place, correct?
8 A. **It appears to be.**
9 Q. And that dotted line would appear to be sort
10 of an area of what might be the crime scene, correct?
11 A. **I don't know what that is.**
12 Q. Well --
13 A. **This whole two-block --**
14 Q. Yes.
15 A. **Or I don't know if that's two blocks. But I**
16 **don't know what that is.**
17 Q. Well, you do recall that there was a wooded
18 area behind the house that's indicated at 9114
19 Hazelhurst. Do you see that?
20 A. **I see 9114 Hazelhurst.**
21 Q. Okay. And if you look at that diagram to
22 orient you, right, you see the X indicates where the
23 bandana was found, correct?
24 A. **I'm just -- I have no recollection of this.**
25 Q. I understand.

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1 A. **So I'm just interpreting what I'm seeing here.**
2 Q. Right. That's right.
3 A. **Yes, that's what the X indicates it is.**
4 Q. And you knew, did you not, that it was the
5 position of Mr. Morton from the very beginning that
6 somebody had broken into the home after he had left for
7 work around 5:30 in the morning and assaulted and
8 killed his wife? You knew that.
9 A. **Yes.**
10 Q. And that her purse was missing and a
11 .44-caliber gun -- .45-caliber gun, right?
12 A. **I know that from reading the transcript and**
13 **some other things recently, but I don't have any**
14 **recollection of that.**
15 Q. You understood that was the defense theory,
16 correct?
17 A. **I'm sure I did at the time.**
18 Q. And you understand that the defense theory
19 equally was that this bandana that was found at the X
20 point was an item that was associated with the
21 assailant.
22 A. **Whose theory was that?**
23 Q. The defense.
24 A. **I'd have to see something in the transcript**
25 **to --**

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1 Q. Let me put it to you this way. Was it not
2 part of the investigation on -- in the early days,
3 August 13th and August 14th of 1986, that pursuing what
4 Michael Morton said, that it was a burglar that came in
5 through the back door and then -- either came in and
6 left through the wooded area, right, pursuant to that
7 line of investigation, the bandana was picked up and
8 recovered?
9 A. **I'm just going to have to take your word for**
10 **it because I didn't get into the transcript enough**
11 **to --**
12 Q. Looking at Exhibit 10, which is the report of
13 the green van on the street behind the Hazelhurst
14 address --
15 A. **Okay.**
16 Q. Right? And a male there, okay, being seen
17 there, is that not -- is that report not consistent
18 with the defense theory that there was somebody in the
19 early morning hours who had been perhaps casing this
20 location in a green van and walking in the area behind
21 the house where the perpetrator may have come through
22 the back window and then assaulted and burglarized the
23 Morton residence -- assaulted Christine Morton and
24 burglarized the Morton residence?
25 A. **All right. There's -- it begins by talking**

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1 **about a subject, Allan Robinson, at 6:00 a.m.**
2 Q. That's a different individual.
3 A. **And he says he doesn't know anything about**
4 **this.**
5 Q. It's a different individual.
6 A. **And then without a time frame it says "Later**
7 **that morning a subject from 13202" --**
8 Q. Right. But I'm directing your attention to
9 something different, not the Allan Robinson. There was
10 a subject -- there was an individual who said that his
11 wife and a Joni St. Martin from 13204 Adonis had on
12 several occasions -- that's prior occasions, right?
13 A. **Presumably.**
14 Q. Yes. Observed a male park a green van on the
15 street behind the Hazelhurst address and then the
16 subject would get out and walk into the wooded area off
17 the road. You see that, do you not?
18 A. **Yes.**
19 Q. And so that's an individual that was talking
20 about somebody that was driving a green van and going
21 behind the Morton residence in the wooded area as
22 though he might be casing the place for a burglary,
23 right?
24 A. **That's reading a lot into that.**
25 Q. You think that's reading a lot into that?

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1 **A. Yeah.**
 2 Q. All right. Well, did you know anything about
 3 this document at the time of the trial to the best of
 4 your recollection?
 5 **A. To the best of my recollection, I don't have**
 6 **any recollection.**
 7 Q. All right.
 8 **A. I -- was this in the DA's file?**
 9 Q. I believe this was in the --
 10 MR. RALEY: It was in the master
 11 sheriff's file, which Judge Anderson had complete
 12 access to 24 hours a day.
 13 Q. (BY MR. SCHECK) Well, this was in the
 14 sheriff's file.
 15 **A. All right.**
 16 Q. If you had seen this -- I know you have no
 17 recollection; but if you had seen this at the time of
 18 trial, knowing what the defense theory was, would you
 19 have disclosed this to the defense?
 20 **A. I can't imagine that I would not.**
 21 Q. When you say you can't imagine you would not,
 22 you're saying if you had seen it, you would have
 23 disclosed it, is what you're saying. Am I
 24 misinterpreting you?
 25 **A. No. That's what I said. You know, the only**

1 **reason I wouldn't is if somebody interviewed Joni**
 2 **St. Martin. And there's no report I've seen of that**
 3 **interview.**
 4 Q. Right. So we're agreeing then that if you had
 5 seen this and if this had come to your attention, you
 6 agree that this would be exculpatory evidence, a lead
 7 that should have been turned over to the defense,
 8 right?
 9 **A. That's the sort of stuff you routinely give to**
 10 **the defense, yes.**
 11 Q. Okay. Let's turn to what's been marked as
 12 Exhibit 12. That's the documents -- do you have that
 13 marked? This is the check. Why don't we take a color
 14 version? They're here? I'm sorry. I tell you what.
 15 I'll -- we'll substitute in later. I gave him a color
 16 copy. Okay?
 17 That's Exhibit 12. You've reviewed these
 18 documents before, have you not?
 19 **A. I have --**
 20 Q. Recently?
 21 **A. No. I've seen the front side of the check in**
 22 **a very bad copy, although this isn't any better than**
 23 **the one I saw.**
 24 Q. All right.
 25 **A. Hold it. Now, wait a second. I was looking**

1 **at different checks here.**
 2 Q. Okay. Why don't we just start with what is --
 3 **A. There's three checks in here.**
 4 Q. Let's turn to the part of this which says
 5 "9-27-86, Attention: Sergeant Don Wood". Do you see
 6 that?
 7 **A. I do.**
 8 Q. You've reviewed this, haven't you, before?
 9 **A. I had a very bad copy.**
 10 Q. All right. Why don't we review this
 11 together. All right? It says "Dear Sir: Per your
 12 phone request of yesterday, please find attached our
 13 canceled Check No. 362 relating to Chris Morton. The
 14 check was mailed immediately after it was written and
 15 was a gift for her son Eric after his surgery. Chrissy
 16 acknowledged the gift immediately, probably by late
 17 June. We no longer have her acknowledgment note. We
 18 do not know why the check was never cashed while she
 19 was alive. I hope this will be of assistance."
 20 You see that, right?
 21 **A. I read along with you.**
 22 Q. Okay. Now, so this is a -- now, if you look
 23 at the color copy -- right?
 24 **A. I'm going to have to -- I saw a bad copy of**
 25 **this note. I'm not sure I've actually seen this check**

1 **before.**
 2 Q. Okay. Well, let me represent to you that at
 3 first we only had the front of the check and then
 4 recently we -- what was also produced to us through the
 5 District Attorney's office was the back of the check.
 6 Okay? And I call your attention to the color copy here
 7 on the page where -- you see where it says in red
 8 "Processed, August 22nd"?
 9 **A. Uh-huh. I do.**
 10 Q. Okay. And if you look very carefully at the
 11 top, you'll see where it says something "San Antonio"
 12 at the top?
 13 **A. In red?**
 14 Q. No. Just above the red. You see "San
 15 Antonio" and sort of typed?
 16 **A. Okay.**
 17 Q. Now, have you had a discussion with
 18 Mr. Bradley or anyone from his office about this check?
 19 **A. I had a discussion with Kristen about it.**
 20 Q. Tell us everything about that discussion.
 21 **A. She indicated it was for deposit only. And I**
 22 **don't remember if she said it went into the Mortons'**
 23 **account or not. I think that's what she said.**
 24 Q. When were you told this?
 25 **A. It would have been back when I still had some**

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1 **level of communication with them, so before October --**
2 Q. Before October 4th?
3 **A. Yeah.**
4 Q. All right. So basically what was happening --
5 and we'll get in -- we'll go into greater detail if the
6 judge permits us, Mr. Dietz, about what conversations
7 you had with the prosecutors and when. But the issue
8 of a check being cashed nine days after Christine
9 Morton was murdered was brought to your attention,
10 correct?
11 **A. Yeah, there was an allegation about it.**
12 Q. Yes. In our writ, in Claims 2 through 7 --
13 **A. Correct.**
14 Q. -- you actually saw a copy of this note to
15 Sergeant Wood's attention, right, from John Cross,
16 pointing out that this check had been cashed nine days
17 after she was dead, right?
18 **A. I saw the allegation and I looked at**
19 **whatever -- I guess that's what I actually saw was**
20 **whatever you had attached to your writ.**
21 Q. Right. And so it's your -- if you had -- you
22 have no recollection of this, I take it, from the time
23 of --
24 **A. From 25 years ago?**
25 Q. Yes.

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1 **A. That's correct, I have no recollection.**
2 Q. Would you not agree that this note to Sergeant
3 Wood from Mr. Cross, right, about a check that was
4 cashed by someone purporting to be Christine Morton
5 nine days after her death was important exculpatory
6 evidence to be turned over to the defense?
7 **A. Well, first of all, it's an important piece of**
8 **evidence that should have been run to ground and some**
9 **determination made of what this was.**
10 Q. Right. But on the face of it -- answer my
11 question. On the face of it, right, this note and
12 this -- that somebody cashed a check made out to
13 Christine Morton nine days after she was dead and
14 endorsed it, right, that's exculpatory evidence to be
15 turned over to the defense in this case, right?
16 **A. I don't want to disagree with you because I --**
17 **you know, on one sense, yes. But the first thing is it**
18 **should have been investigated.**
19 Q. It should have been investigated and people
20 should have followed up on it, right?
21 **A. Correct.**
22 Q. But even if -- let's try it this way. Right?
23 It should have been investigated; and if it wasn't
24 investigated, that's also exculpatory evidence to be
25 turned over to the defense, right?

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1 **A. If I knew about that and it hadn't been**
2 **investigated, it would have been investigated very**
3 **quickly.**
4 Q. All right. But let's talk about exculpatory
5 evidence a little bit. Right? Because we seem to have
6 some problems with your understanding and my
7 understanding of it. Fair enough?
8 **A. Well, I don't --**
9 Q. Let me just ask you this question.
10 **A. Exculpatory evidence doesn't begin until we**
11 **get into discovery.**
12 Q. Let me just ask you this question. Let me
13 just ask you this question. Is it not exculpatory
14 evidence that the defense ought to have access to that
15 leads which are consistent with innocence are not
16 pursued by law enforcement? Isn't that something the
17 defense is entitled to know?
18 **A. Yes.**
19 Q. And so if you had discovered prior to this
20 trial, right, that a credit card had been used by
21 someone two days after Christine Morton's death, her
22 credit card, in San Antonio, by some woman, and that
23 had not been adequately investigated, the failure to
24 adequately investigate that is exculpatory evidence
25 that should be turned over to the defense, right?

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1 **A. In a very hypothetical sense, yes. What would**
2 **really happen is it would be investigated.**
3 Q. Well, that's what you're saying. You're
4 saying it must have been investigated. You're sure it
5 was investigated. Right?
6 **A. No, I'm not saying I'm sure it was**
7 **investigated.**
8 Q. Okay. Let me ask you this.
9 **A. I'm saying if I was aware of it --**
10 Q. Give me a clear answer. Give me a clear
11 answer to this question, if you can. You're the
12 prosecutor in a case, this case. If you had learned
13 that there was a report that Christine Morton's credit
14 card had been used by a woman in San Antonio two days
15 after she was dead and that had not been adequately
16 investigated, followed through, the fact that that had
17 happened and it had not been adequately investigated is
18 something that's exculpatory evidence and the defense
19 should have known about, right, if that happened?
20 **A. Except what would happen is it would get**
21 **investigated right then.**
22 Q. Well, that's what you think. There's no
23 evidence, is there, that the credit card was -- there
24 was a follow-up or any investigation of the credit
25 card, is there? You've seen no other documents about

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1 that.
2 **A. I have not.**
3 Q. And if it turned out that there was no
4 follow-up investigation of the use of the credit card
5 two days after her death, that would be exculpatory
6 evidence the defense would be entitled to know about,
7 right?
8 **A. It would be accompanied with my dismissal.**
9 Q. Okay. Number two, the check nine days
10 afterwards, okay, if it turned out that this report --
11 well, there's no question this report was given to
12 Sergeant Wood, right? About the check being cashed
13 nine days after death?
14 **A. Was given to Sergeant Wood?**
15 Q. Yes.
16 **A. How would I know that?**
17 Q. In other words, you have no doubt that this
18 document, Exhibit -- what exhibit number is that?
19 Exhibit 12. Okay? Exhibit 12 --
20 **A. Okay. That's the letter from the Crosses?**
21 Q. Yes, the letter and the copy of the check.
22 There's no question that Exhibit 12 was in the
23 sheriff's file, right?
24 **A. I wouldn't think so.**
25 Q. Okay. So if, in fact, Exhibit 12 is in the

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1 sheriff's file and there is no follow-up as to running
2 this lead to ground, right, the fact that it's in --
3 this is in the file, somebody was cashing a check in a
4 bank in San Antonio nine days after her death -- right?
5 **A. Correct.**
6 Q. And it wasn't adequately followed up. That
7 would be exculpatory evidence that should have been
8 disclosed to the defense. Fair enough?
9 **A. In a hypothetical world, yes.**
10 Q. Okay. Now let's move on to -- now -- all
11 right. So you have in mind --
12 **A. Your client is getting very upset.**
13 MR. MORTON: I'm fine. I'm cool.
14 THE WITNESS: He's not. So do we need to
15 take a break or something?
16 MR. SCHECK: Let the record reflect that
17 Mr. Anderson is indicating that he's looking at
18 Mr. Morton, who is in the room, and he says that
19 Mr. Morton is upset.
20 MR. RALEY: He's not. He's fine.
21 MR. SCHECK: We're going to proceed.
22 MR. DIETZ: Let the record reflect
23 Mr. Morton has stepped out away from the line of sight
24 of Mr. Anderson.
25 MR. RALEY: He doesn't want to distract.

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1 He's fine.
2 Q. (BY MR. SCHECK) Okay. I have premarked a
3 number of exhibits for identification here. Exhibit
4 13 -- and I think you're familiar with them. Exhibit
5 13 is Bill Allison's motion for production of favorable
6 evidence. Exhibit 14 is the motion for discovery and
7 inspection. Exhibit 15 is the motion for production of
8 statements and reports. All right? You've reviewed
9 those prior to coming here?
10 **A. I looked through the transcript last night; so
11 if those were all pretrial motions, I looked at them,
12 yes.**
13 Q. Okay. And let's talk about the motion for
14 production of favorable evidence. Okay?
15 **A. Okay.**
16 Q. Now, I guess, having reviewed that, would it
17 be fair to say that based on what we've just reviewed
18 that the Kirkpatrick-Wood transcript that was in your
19 file, the short version at least, was evidence that
20 should have been disclosed in some form to the defense
21 after they filed the motion for production of Brady
22 material in November of 1986?
23 **A. I'm sorry. I lost your question along the
24 way.**
25 Q. You have it in mind that Mr. Allison and

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1 Mr. White filed a series of motions, correct?
2 **A. Correct.**
3 Q. One of them was this Brady motion that I've
4 handed you for production of favorable evidence.
5 **A. Correct.**
6 Q. And they're very, very specific in that,
7 right?
8 **A. Yes.**
9 Q. Another one, which is Exhibit 15, was the
10 motion for production of statements and reports. This
11 was a motion that they were making that if you called a
12 witness to the stand, right, the ordinary rule in
13 Texas, I think they called it the Gaskin rule, was that
14 the defense was not entitled to see, let's say, the
15 reports or -- of a police witness until after the
16 witness had testified and finished direct examination.
17 **A. Correct.**
18 Q. All right. So they were making a motion here
19 for the production of statements and reports to see if
20 they could get those the day before to save time and to
21 get some advance notice of what those reports would
22 look like before the trial, correct?
23 **A. Yes, sir.**
24 Q. All right. And you opposed that motion,
25 correct?

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1 A. Yes, sir.
 2 Q. You didn't want to give them any reports ahead
 3 of time, correct?
 4 A. I think I was actually thinking about it; but
 5 again, I can't tell exactly whether we did that or not.
 6 Q. But certainly in the course of preparing for
 7 trial, when you were considering calling police
 8 witnesses, right, it would be your general practice to
 9 review their offense reports and any other documents
 10 they were using to prepare to testify so that after
 11 they finished the direct, they would be disclosed to
 12 the defense, right?
 13 A. Sure. I'd have a file of any offense reports
 14 ready to go.
 15 Q. Right. So you would literally collect and
 16 gather all those reports. You would have it with you.
 17 And if you were going to call the officer, you would be
 18 prepared to give it after that officer testified,
 19 correct?
 20 A. Right. I would have a separate --
 21 Q. And Sergeant Woods was a witness that you were
 22 considering calling in this case.
 23 A. He was on the witness list.
 24 Q. Okay. So he would be one of those
 25 individuals -- he was the lead investigator in this

1 A. I'd have to go back and look exactly how many
 2 people were in the sheriff's office at that time. I
 3 think you're making some assumptions about there being
 4 more people than there actually were.
 5 Q. But let's just assume for the sake of our
 6 purposes here that even if it worked that way, where
 7 Boutwell was making the decisions but Woods was
 8 designated to be the lead investigator and various
 9 reports were going through Woods, right, as the chief
 10 investigator, when you put Woods on the stand, you
 11 would still have to turn over all of his reports and
 12 all of the notes he gathered to review before he
 13 testified, right?
 14 A. His report and anything else he had reviewed,
 15 but not -- well, okay.
 16 Q. Okay. Now, let's -- let's go -- you've
 17 reviewed with some care the transcripts of the pretrial
 18 hearings on November 25th and then later the --
 19 November 25th, 26th, and then February 6th. These are
 20 the key proceedings where the motions for favorable
 21 evidence, the motions for production of statements were
 22 ruled on by Judge Lott, correct?
 23 A. Those were the pretrial hearings, yes.
 24 Q. You've reviewed that with some care, so I'm
 25 going to ask you to follow along with me in reviewing

1 case, wasn't he?
 2 A. He said he was. Sheriff Boutwell said he was.
 3 Q. But Sergeant Woods undoubtedly was the person
 4 that a lot of other officers were reporting to when
 5 they were routing their reports to him, right?
 6 A. I didn't see enough reports to know whether
 7 that was true or not.
 8 Q. Well, but you had enough knowledge of this
 9 case --
 10 A. At the time I did.
 11 Q. Yes.
 12 A. Now, in looking through what I read yesterday,
 13 which was not the entire statement of facts -- it was
 14 far from it -- it looked to me like Sheriff Boutwell
 15 had allowed Mr. Wood to be called the chief
 16 investigator and let him write some reports --
 17 Q. Okay.
 18 A. -- while Sheriff Boutwell was calling --
 19 calling and making all the decisions.
 20 Q. Well, but in terms -- well, even if that were
 21 the case, that Woods was designated to be the lead
 22 investigator in the case and various investigating
 23 officers were reporting back to him and then he in turn
 24 would report to Boutwell -- that was your
 25 understanding?

1 some of these matters. And you've been reviewing this
 2 with a lot of care, haven't you?
 3 A. I was trying to figure out what was exactly
 4 Judge Lott's ruling.
 5 Q. Okay. So why don't I call your attention to
 6 November -- the proceedings of November 25th.
 7 MR. DIETZ: Which volume is it in?
 8 MR. SCHECK: I think this would be -- I
 9 get so confused with your volumes -- Volume 2, November
 10 25th, page 60.
 11 Q. (BY MR. SCHECK) Okay?
 12 A. Okay.
 13 Q. And this -- on mine it has -- at the top of
 14 the page it says "Mr. Anderson". Okay?
 15 A. Correct.
 16 Q. All right. And if you recall, you're quoted
 17 here as saying at line one, "Mr. Anderson: Judge,
 18 again we're so far beyond the scope of this Motion to
 19 Suppress, I don't even remember what we're talking
 20 about."
 21 You see that, right?
 22 A. I do.
 23 Q. And this was when -- this was a motion to
 24 suppress where Mr. Allison was asking questions. You
 25 see that. You remember that.

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1 Well, let's just move on here.

2 **A. Yes.**

3 **Q.** And then Mr. Allison says, "Well, Judge, we
4 have -- of course, we have some other motions before
5 the Court. And I think I need to put on the record
6 right now that it's pretty obvious this is a major
7 case, a major criminal prosecution. And we have
8 received so far from the Prosecution a hundred and
9 eight photographs taken from the Sheriff's
10 Department."

11 "We have received no other discovery in
12 this case at all. I think it is an important fact now
13 since the Luther Adams case that needs to be put on the
14 stand both for purposes for motions for discovery and
15 for Brady motions, and for motions to quash."

16 All right? You see that?

17 **A. I do.**

18 **Q.** Okay.

19 **A. Then I point out they had the autopsy report
20 before I did.**

21 **Q.** Right. And then you say, "Judge, with all due
22 respect, they had a copy of the autopsy report before I
23 did. Their investigators have been interviewing
24 witnesses before I was even aware there was anything
25 more than I had seen in the newspaper. And to say

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1 there hasn't been any discovery is not accurate."

2 Do you see that?

3 **A. Yes.**

4 **Q.** Okay. And then Mr. Allison says, "Discovery,
5 when we use it in a criminal courtroom, has a
6 particular meaning, Judge. It doesn't mean what I go
7 out and discover on the street. It means what I
8 discover through the Prosecutor's office. When we talk
9 about discovery, and when I file a Motion for
10 Discovery, I don't file a motion to discover what I've
11 already found out by hiring an investigator. I
12 obviously file a motion to discover what he has in his
13 files or in his records."

14 "I don't mean to be silly about this,
15 but, I mean, let's not confuse what discovery is."

16 You see that?

17 **A. Yes, sir.**

18 **Q.** All right. So Mr. Allison is making it clear,
19 and you're not disputing it, that he's got 108
20 photographs and maybe the autopsy report, but he does
21 not have any of the offense reports or any of the
22 investigative reports from the officers as of November
23 25th. That's clear as a bell, isn't it?

24 **A. I don't think he was going to get any offense
25 reports until witnesses testified.**

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1 **Q.** Right. And you were sitting there with all
2 the offense reports and all the reports from Wood and
3 Boutwell that you had asked to produce -- them to
4 produce in case they were called as witnesses, right?

5 **A. No. You don't give Gaskin at pretrial.**

6 **Q.** I understand you don't give it at pretrial,
7 but do you think by November 25th you had gone out and
8 tried to familiarize yourself with the offense reports
9 and the sheriff's file with respect to this
10 investigation?

11 **A. I would have had a file and it would have had
12 what it had.**

13 **Q.** Well, would you not -- in your effort to
14 master the hundreds of details that you have written in
15 your books are necessary for a trial lawyer to prepare
16 a case, even though you say you were only doing it in
17 the last two weeks, would you not have at least in
18 those last two weeks tried to go through the sheriff's
19 files and the offense report to familiarize yourself
20 with this case?

21 **A. In the last two weeks I was getting --
22 interviewing witnesses, figuring out how I was going to
23 put the case on, looking up case law, doing gazillions
24 of things you do for a trial of this length. I'm sure
25 I was putting in 60-hour weeks and probably didn't do**

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1 **anything else for at least the week before and it looks
2 from the transcript like maybe two weeks before.**

3 **Q.** And some of the things that you would be doing
4 in this all-out preparation prior to the trial was
5 looking over what the sheriff had in his file, right?
6 That would be your normal routine?

7 **A. My normal routine would be to sit down with
8 somebody and say, "Do I have all your reports?"**

9 **Q.** And one of the people that you would have
10 certainly sat down and talked to to see if you had all
11 the reports was Sergeant Wood, who had at least been
12 designated to be the lead investigator in the case,
13 right?

14 **A. I have no recall, but I cannot imagine me
15 sitting down with Sergeant Wood and asking him that
16 question.**

17 **Q.** You mean you -- you're telling me that you do
18 not believe that as a matter of routine prior to the
19 trial of this case that you would have sat down with
20 Sergeant Wood and tried to review his reports and his
21 investigation of this matter?

22 **A. No. I would have done that with the sheriff.**

23 **Q.** I'm sorry?

24 **A. I would have done that with the sheriff.**

25 **Q.** So you would have done that with the sheriff

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1 and you never would have done it with Woods -- with
2 Wood.

3 **A. It's hard to remember exactly what I would**
4 **have done in '86 with a particular police officer.**

5 Q. Right. But all that we really know about your
6 routine is what you wrote about in your book, that what
7 you would do is go to the L&M Cafe and sit there with
8 Sheriff Boutwell in a circumstantial murder case and
9 painstakingly go through every detail. Fair enough?
10 That's what you wrote.

11 **A. And I've already explained that --**

12 Q. That that was hyperbole for the book. Is that
13 your position?

14 **A. It was hyperbole based on fact.**

15 Q. Okay.

16 **A. Sheriff Boutwell and I had a good working**
17 **relationship. We frequently went to the L&M and had**
18 **coffee.**

19 Q. Well, do you think that in the course of your
20 discussions with Sheriff Boutwell about the Morton case
21 just as a matter of routine that he would have brought
22 to your attention, "Hey, their theory is that it was a
23 burglary. Our theory is that he beat his wife to death
24 and staged it to look like a burglary"? That kind of
25 thing would have come up in discussion, right?

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1 **A. I'm sure two weeks before trial I would have**
2 **been well aware of that.**

3 Q. Okay. And certainly he would have wanted --
4 you would have expected him to call to your attention
5 the fact that there were reports of a credit card of
6 Christine Morton being used in San Antonio and a check
7 cashed in her name nine days after her death, right?

8 **A. Yeah, I can't imagine that he didn't --**
9 **wouldn't tell me about those, but I don't see any**
10 **reports.**

11 Q. So you don't see any reports, but your -- what
12 you figure must have happened is that he told you about
13 those items and explained to you that they never went
14 anywhere. Those -- those things don't mean anything.

15 **A. I -- I can't quite say that, but --**

16 Q. Okay. And what about the report of a gray
17 van -- a green van being seen parked behind -- in the
18 wooded area behind the house where the murder took
19 place and a man being seen in that area walking
20 around? Is that the kind of thing that you would have
21 expected Sheriff Boutwell to have brought to your
22 attention as you were discussing and preparing for this
23 case?

24 **A. I would expect every report they had to be in**
25 **my file. Evidently they weren't.**

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1 Q. And would you also have expected in your
2 conversations with Sheriff Boutwell that there would
3 have been a discussion of the conversation between Rita
4 Kirkpatrick and Eric Morton -- I'm sorry, the
5 conversation between Sergeant Wood and Rita Kirkpatrick
6 about what Eric saw and the fact that he said his
7 father wasn't there when his mother was attacked?

8 **A. That report was in my file, at least the**
9 **two-page version.**

10 Q. Now let's turn to page 63. All right? And
11 then the Court indicates, okay, "If you'll call your
12 next witness."

13 And Bill Allison says, "Don Wood."

14 And you asked, "Is he being called in
15 connection with which motion?"

16 And Mr. Allison said, "Motion to
17 Suppress."

18 "Judge, there may be some questions
19 asked under the Brady motion, maybe some questions
20 asked of him under the Motion to Quash."

21 You see that.

22 **A. I do.**

23 Q. All right. So now turn to page 65. Okay?
24 And at line 21 Mr. Allison asks Sergeant Wood, "All
25 right. What time did you arrive at the scene?"

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1 And his answer is, "I'd have to look at
2 the report, sir. I don't remember."

3 Question, "Do you have your report with
4 you?"

5 "No, sir, I don't."

6 Do you see that?

7 **A. I do.**

8 Q. So he can't even remember, without looking at
9 his report, what time he arrived at the scene; is that
10 right?

11 **A. Evidently.**

12 Q. And so if I understand the way things were
13 working, you actually were sitting there with his
14 reports and could have -- but you were not obligated
15 legally during the pretrial hearings to turn those over
16 to the defense, right?

17 **A. That's correct.**

18 Q. So he was testifying and you were sitting
19 there with his reports, is that right, in all
20 likelihood?

21 **A. I would assume I had my file with me.**

22 Q. Okay. And your file should have included his
23 reports.

24 **A. It should have included all the reports I had.**

25 Q. Now why don't you turn to page 73, line

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1 eight. And he's asked, "Sergeant Wood, can you
2 remember anything else about what she told you on the
3 13th?"
4 Answer, "Not without looking at the
5 report. I don't remember it offhand."
6 Question, "You don't have that report
7 with you?"
8 "No, sir, I don't."
9 Question, "Did you take any note -- did
10 you take notes as you were doing this investigation in
11 the house?"
12 Answer, "Yes, sir."
13 "All right. What might you -- what you
14 might call rough field notes?"
15 Answer, "Yes, sir."
16 "Have you retained those rough field
17 notes?"
18 "Yes, sir."
19 "And from those field notes you made, I
20 guess, a more polished report?"
21 Answer, "Yes, sir."
22 "And in that report I assume you tried
23 to be thorough and complete."
24 And then he answers, "Yes, sir, I did."
25 You see that.

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1 **A. I do.**
2 Q. And so you're on notice here as you're sitting
3 there at the hearing that Sergeant Don Wood not only
4 completes his investigative reports, but he has field
5 notes and he includes those field notes in the file,
6 correct?
7 **A. I notice that he said he did.**
8 Q. And so you would expect if you went to look at
9 the sheriff's file for Don Wood's offense reports, you
10 would find his offense reports and you would also find
11 his rough notes.
12 **A. I would expect -- I'm not sure what I'd**
13 **expect. But anyway --**
14 Q. That's what he's saying here.
15 **A. That's clearly what he's saying.**
16 Q. Okay. Now, why don't we turn to page 82.
17 **A. Okay.**
18 Q. All right. A dispute arises about what
19 statements the defendant made on August 13th and August
20 14th, correct?
21 **A. Correct.**
22 Q. And at page 82, after Mr. Allison makes an
23 argument about trying to get access to the statements
24 that Mr. Morton might have made, you say "That's an
25 interesting way" -- I'm starting to read at line

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1 seven. "That's an interesting way of saying he wants
2 to go on a fishing expedition and know what oral
3 statement his client made to Sergeant Wood, and he's
4 not entitled to it prior to the trial. He'll hear
5 about it at the trial. His client can relate to him
6 what his version of what he told these officers at the
7 time, and he's just not entitled to it as a matter of
8 discovery. What he told him is not relevant to the
9 voluntariness of the confession or the statement."
10 You see that.
11 **A. I do.**
12 Q. All right. And then on page 83, right, the
13 next page, at line four, you volunteer -- you say,
14 "Well, if that's their concern, Judge, I'd be happy to
15 provide a copy of Sergeant Wood's report to the Court
16 for any in camera inspection. The Court can determine
17 itself if it contains anything relevant to the
18 voluntariness of the confession. I have read the
19 report, and it doesn't. I'd be happy to give the Court
20 a copy of it."
21 Right? Do you see that?
22 **A. Yes, sir.**
23 Q. Okay. And then Mr. Allison then says, "Judge,
24 at this point I'm going to ask that the Court allow me
25 to make a bill in front of the court reporter in order

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1 that I can preserve it for an appellate record in this
2 case."
3 And the Court says, "I think the
4 appellate record will be preserved. I will ask the
5 District Attorney to furnish me a copy of this report
6 and I will make an in camera inspection of it and it
7 will be sealed at this time to be included in the
8 record for an appeal."
9 Right? And then Mr. Allison says, "Will
10 the Court allow us to review the report for purposes of
11 making any argument or briefing on the contents,
12 including that in our arguments on the preliminary
13 matter before the Court today?"
14 And he says, "No, sir."
15 Okay?
16 **A. Yes.**
17 Q. All right. Now, this has to do with a copy of
18 the Woods -- of the Wood report, as you understood it,
19 with respect to what he recorded, if anything, about
20 Michael Morton's statements on August 13th and August
21 14th, right?
22 **A. Yes, sir, that's what we were talking about.**
23 **This whole thing was about the statements.**
24 Q. At that point that's what you were talking
25 about. All right? Is that right?

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1 A. Yes, sir.
2 Q. Okay. All right. Then if we go to page 90 in
3 this proceeding -- okay? And then there's another
4 discussion about what's in these reports. And the
5 question was, "Mr. Anderson: What was the question
6 that I objected to?"
7 I'm reading at line seven.
8 "It was what Elizabeth had told him?"
9 What Elizabeth Gee had told Wood, right?
10 Mr. Allison said, "It was concerning
11 whether he asked her about the relationship between
12 Mr. and Mrs. Morton. And he indicated, I believe, that
13 he did, and then there was an objection."
14 And then you say, "No, the reports,"
15 plural, "don't indicate that she had that conversation
16 with Sergeant Wood that day," right?
17 A. Okay.
18 Q. And then the Court said, "Well, is that what
19 the last -- look back and see if that's what the last
20 question was."
21 Mr. Anderson said, "That was, Judge."
22 And the Court says, "It will not be
23 covered by the report?"
24 And then you say, "No, the report
25 Sergeant Wood wrote concerning the 13th doesn't go into

1 anything Elizabeth Gee said. I don't even believe it
2 mentions her name," right?
3 A. That's what I said.
4 Q. So in other words, you had the reports there.
5 You were looking at the reports right there at the
6 hearing. You had them right there and you were looking
7 at it. And you could say what it said about Wood's
8 interactions with Elizabeth Gee and Wood's interactions
9 with Michael Morton, right?
10 A. Either that or I had read them before I went
11 down there.
12 Q. Okay. Then let's turn to page 91. Bill
13 Allison asks, line 22, "Sergeant Wood, is it fair to
14 say that you don't have a very good memory of what went
15 on on the 13th as you sit here today and that you just
16 don't have much of a memory of it?"
17 Answer, "No, sir. It was quite an
18 extensive investigation and I talked to lots of people
19 and I just, you know, I don't remember everything I
20 said to everybody."
21 Question, "So my question is: You don't
22 have a memory today -- a good memory today of what went
23 on on the 13th, is that a correct statement?"
24 Answer, "No, sir, I really don't without
25 checking my reports."

1 Do you see that? Do you see that?
2 A. Uh-huh.
3 Q. That's plural, right? Reports?
4 A. Okay.
5 Q. And isn't it clear that Sergeant Wood is
6 indicating that it was quite an investigation,
7 extensive investigation, and that he talked to lots of
8 people? Right?
9 A. That's what he says.
10 Q. So you're on notice, too, as you're sitting
11 there, that Sergeant Wood had a lot to do with this
12 case, right?
13 A. At that time I would have had a lot of
14 information about a lot of things.
15 Q. All right. But it's clear enough, isn't it,
16 that Sergeant Wood is making it clear that he had a lot
17 to do with this case, he spoke to a lot of people, it
18 was a very extensive investigation, right?
19 A. That's what he says.
20 Q. You're sitting there listening to him also,
21 right?
22 A. I was.
23 Q. And it was a matter of real concern and
24 strategy to you because you were already beginning to
25 sit there and think, "Well, if I call Sergeant Wood to

1 the witness stand as my witness, under the Gaskin rule
2 after he finishes his direct case, I'm going to have to
3 turn over all the reports of all the people that he
4 interviewed and all of his rough field notes that he
5 used to refresh his recollection prior to his
6 testimony." You knew that as you were sitting there,
7 didn't you?
8 A. I would have had to turn over the five-page
9 report or four-page report. I don't know about the
10 supplements. And I just don't know about the field
11 notes, no.
12 Q. I'm talking -- I'm asking you a different
13 question. All right?
14 A. Okay.
15 Q. One thing is about turning over to Judge Lott
16 any reports of Sergeant Wood about the statements that
17 Michael Morton made on August 13th and August 14th.
18 And you've already said, "I have those right here,
19 Judge. I can turn those over to you. I will turn them
20 over in camera."
21 You saw that, right?
22 A. Right. I offered to --
23 Q. You offered to do that and then you went on to
24 say, "I know that he didn't talk to Elizabeth Gee. I'm
25 sitting here looking at the report."

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1 You said that. You just reviewed that,
2 right?
3 A. You added "I'm sitting here looking at the
4 report." I don't know.
5 Q. Well, you said, "I can tell you it's" -- maybe
6 it's not at your desk. Maybe, as you suggested before,
7 you just had a really great memory. But -- of Wood's
8 report. But you had sufficient recollection of it that
9 you could say to the judge, "No, he didn't talk to
10 Gee. I looked at his report. It's not in there,"
11 right? That's what you said on the record.
12 A. That's what I said on the record.
13 Q. All right. Now, you're also listening and you
14 hear from Wood that he's spoken to a lot of people and
15 it was an extensive investigation and he's got a lot of
16 reports. You saw that, too, right?
17 A. I read that along with you.
18 Q. And he has field notes, right? He said that.
19 A. Yes.
20 Q. And you're telling us now that you've never
21 heard of any police officer who not only completed his
22 offense reports but also stored in the Sheriff's
23 Department file his rough field notes.
24 A. What I testified to was I can't recall a case
25 where we talked about field notes.

1 Q. Okay. Now, my point to you is, sir, that as
2 you're sitting there during this pretrial hearing on
3 November 25th, you're already considering whether or
4 not you're going to call Sergeant Wood as a witness,
5 right?
6 A. I have no way of knowing that 25 years later.
7 Q. You're telling me that as you're sitting there
8 November 25th prior to the trial, you weren't already
9 thinking, "Who am I going to call as my investigators
10 in the case? Am I going to call Wood? Am I going to
11 call Boutwell? Am I going to call both of them?"
12 A. I was probably trying to figure out if we were
13 going to be able to get our evidence in, because this
14 was a motion to suppress.
15 Q. All right. But my point to you very simply,
16 wouldn't -- as a matter of ordinary routine at this
17 stage, by the time you're doing this hearing, you would
18 already be thinking about gathering the reports
19 together of your police witnesses and the fact that you
20 would have to turn over, according to the Gaskin rule,
21 after they finished their direct case, their reports
22 and, in Sergeant Wood's case, the rough field notes
23 that he says that he made?
24 A. I may well have. I may well not have. It
25 depends.

1 Q. Okay. Now --
2 A. Once --
3 Q. -- in this case you also knew these defense
4 lawyers, Allison and White, right?
5 A. Yes.
6 Q. You had wrote in your book that you regarded
7 them as very capable lawyers, right?
8 A. Allison and White?
9 Q. Yes.
10 A. Yeah.
11 Q. Allison had been your law school professor at
12 the University of Texas.
13 A. He was a supervisor in the criminal defense
14 clinic. I can't remember if he was my supervisor or
15 not. I know we tried a case together.
16 Q. All right. And you make at some point, you
17 must have seen in these pretrial proceedings, some
18 reference to the fact, "Oh, you better watch out.
19 White might -- Allison might file one of these
20 sandbagging motions to quash the indictment."
21 You made some reference to that?
22 A. Yes, sir.
23 Q. Now, so from your point of view, you knew, did
24 you not, that the more offense reports and the more
25 reports from this investigation that you turned over to

1 these capable defense lawyers, they could use those --
2 they would make very good use of them at trial?
3 A. I respected their abilities, yes.
4 Q. Now, then at the very end, on page 96, again,
5 at line four, there's a question, "This report that's
6 going to be given to Judge Lott in camera," he's asked,
7 "is it a detailed report?"
8 And Wood says, "Yes, sir, I believe it
9 is."
10 Question, "And I assume we're talking
11 about" -- and then, "Mr. Allison: Maybe, Judge Lott, I
12 need a clarification." Excuse me. "Are we talking
13 about the report itself and the field notes so that you
14 have everything?"
15 And the Court says, "Are the field notes
16 available?"
17 And the witness says, "Yes."
18 And the Court says, "Yes, that would be
19 fine."
20 Do you see that?
21 A. Yes.
22 Q. All right. So the judge is making it clear
23 that as far as at least the submission in camera with
24 respect to the voluntariness of the statements, both
25 the field notes should be turned over as well as the

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1 actual reports; is that right?
2 **A. That was my understanding.**
3 Q. Okay. Now why don't we turn to February 6th,
4 which is the pretrial. Okay? And I want to --
5 **A. I've got to turn some pages here.**
6 MR. DIETZ: That's in Volume 2?
7 MR. SCHECK: It's Volume 2, yes.
8 Q. (BY MR. SCHECK) And I call your attention --
9 it starts with -- if you go to page 28.
10 MR. RALEY: How much time, ma'am, have we
11 used?
12 MR. SCHECK: Let's go off the record.
13 VIDEOGRAPHER: It's 4:10. We are off the
14 record.
15 (Recess from 4:09 p.m. to 4:12 p.m.)
16 VIDEOGRAPHER: It's 4:14. We are on the
17 record.
18 Q. (BY MR. SCHECK) Okay. Are you with me?
19 **A. I am.**
20 Q. All right. Now, let's turn to the top of page
21 28.
22 **A. Okay.**
23 Q. And this is a -- in this proceeding on
24 February 6th, we're now going through the different
25 motions that the defense has made, correct?

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1 **A. Yes. We now have Mr. White, and Mr. Allison I**
2 **don't believe was present.**
3 Q. Okay. Now, Mr. White says here on the top of
4 page 28, "Mr. White: We also have a motion for
5 production of evidence favorable to the accused,"
6 right?
7 **A. Correct.**
8 Q. "And that particular motion, I would like to
9 call the Court's attention that the State's counsel has
10 indicated that he doesn't wish to provide the defense
11 with statements of the defendant in this lawsuit and he
12 doesn't think we have a right to them."
13 **A. There's no "and," but okay.**
14 Q. I'm sorry?
15 **A. That's no "and". That kind of changes the**
16 **meaning. But that's okay.**
17 Q. Okay. Well, let me read it precisely.
18 "Doesn't wish to provide the defense with the
19 statements of the defendant in this lawsuit, that he
20 doesn't think we have a right to them."
21 **A. Correct.**
22 Q. All right. Then he goes on to say -- to cite
23 a case called Quinones versus the State and he gives
24 that to the judge, right?
25 **A. Yes.**

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1 Q. All right. And it goes on to argue that "We
2 should have an opportunity under Brady if our witness'
3 statements, that is, the defendant's statements, are
4 exculpatory in nature, then they are Brady material and
5 we want them to be given to us prior to the time of
6 this trial. So the main thing we have asked for in
7 both the motion for discovery and part of this Brady
8 material is that we get the statements, that is, the
9 longhand written statements, tape recordings, oral
10 statements, offense report notes by Don Wood and
11 Sheriff Boutwell of any statements that this defendant
12 made. We want them prior to the trial under Brady."
13 **A. Correct.**
14 Q. And the Court says, "That's in."
15 And then Mr. White says, "And any other
16 Brady material the State might have."
17 You see, right?
18 **A. Yeah. And then the Court finishes his**
19 **sentence.**
20 Q. And so right now it's very clear --
21 **A. Or his question, rather.**
22 Q. -- is it not, from this discussion, that the
23 defense knows that their client made statements, right,
24 on August 13th and August 14th, right?
25 **A. Yes, we had already had this huge hearing to**

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1 **suppress them.**
2 Q. We had this huge hearing. And you took the
3 position at the hearing that you don't have to turn
4 over any recorded statements that Wood had of what
5 Michael Morton said because, as far as you're
6 concerned, if the defendant told it to his lawyers,
7 then you don't have to turn over what the police
8 recorded, right? That was your position.
9 **A. Also under Texas law at that time, we didn't**
10 **have to give them those oral statements. And that's**
11 **the Quinones case that Mr. White is referring to.**
12 Q. So there's a debate about whether or not the
13 defendant's recorded statements constitute Brady
14 material, right? That was part of this debate,
15 correct?
16 **A. Not --**
17 Q. Right here.
18 **A. Okay. I'm sorry.**
19 Q. Right here. Right here on page 28. Right
20 here on page 28.
21 **A. And I'll get there in a second. Originally we**
22 **hadn't talked about that. We had talked about it in**
23 **connection with the motion to suppress and the**
24 **voluntariness.**
25 Q. Right. What I'm pointing out to you --

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1 **A. And then Mr. White does, in fact, say, "We**
2 **want this stuff under Brady."**

3 Q. Right. So the point is that they made -- at
4 the pretrial hearing they made an application for
5 Wood's records of Michael Morton's statements to be
6 produced and they said we have a right to that under
7 Brady and a right that you should consider this for
8 in-camera inspection with respect to the voluntariness
9 statement, right? That's what happened before. We
10 just reviewed that whole transcript.

11 **A. That's what Mr. White's arguing, to get**
12 **everything under Brady.**

13 Q. Then here on page 28, when they're taking up
14 the motion for production of evidence favorable to the
15 accused, he's making the argument that, "Yes, we
16 want -- we believe that Michael Morton's statements,
17 prior statements, constitute -- we have a right to
18 those under Brady." And then he very -- he goes on to
19 say -- because you're considering the Brady motion
20 right here at the page of top -- top of page 29. And
21 he says, "And any other Brady material the State might
22 have."

23 You see that.

24 **A. He says that, yes.**

25 Q. So it's very clear he's not just asking for

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1 the statements of Michael Morton. He's asking for --
2 as the context of this Brady motion, for any Brady
3 material that you might have, right?

4 **A. Correct.**

5 Q. And you had a motion from them that was a very
6 detailed motion, right, about everything that might be
7 inconsistent with the prosecution's theory, whether
8 admissible or inadmissible evidence, they were asking
9 you to turn over pursuant to their Brady motion. You
10 were on notice of that, right?

11 **A. I saw their motion and it was a very good**
12 **motion from the defense standpoint. They had a very**
13 **incredibly broad interpretation of Brady.**

14 Q. Okay. All right. And then the Court says,
15 "That's in your Brady motion?"

16 And Mr. White says, "Well, we're going to
17 argue that. We're going to argue the oral statements
18 under our motion for discovery of the defendant."

19 The Court says, "All right,
20 Mr. Anderson." And he says this very directly here on
21 page 29. "All right, Mr. Anderson. Do you have
22 anything that is favorable to the accused," right?

23 **A. Correct.**

24 Q. And your answer is, "No, sir."

25 **A. Correct.**

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1 Q. So at that point you know that this is a Brady
2 motion that they're filing.

3 **A. Correct.**

4 Q. And they're asking you not just for Michael
5 Morton's prior statements. They're asking for any --
6 any Brady material that you might know about that
7 should be disclosed, correct?

8 **A. Correct. And I went on to explain that**
9 **Mr. Allison, or maybe Mr. White, had a really broad**
10 **reading of Brady. I think Mr. Allison had a very broad**
11 **reading of Brady.**

12 Q. Well, you go on then to argue -- let's just be
13 clear. Right? "Mr. Allison mentioned it to me that he
14 considered if the defendant makes any statement that
15 doesn't admit to the commission of the crime, he thinks
16 that's Brady material. I don't think that's Brady
17 material. And as a practical matter, I think the
18 defendant knows of any statements he made anyway, so
19 they already have possession of them," right?

20 **A. Right.**

21 Q. So first you say, "No, we have no Brady
22 material"; and then they go on to say that
23 Mr. Allison's idea that any recorded statement of his
24 client where he doesn't admit to the crime is Brady,
25 that's going too far, correct?

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1 **A. Correct.**

2 Q. All right. But before that, when you're asked
3 do you have anything favorable to the accused, just
4 after Mr. White says, "Any other Brady material the
5 State might have," you understood at that time, did you
6 not, right, that they were asking you not just for the
7 Michael Morton statements, they were asking you do you
8 have any Brady material, any Brady material consistent
9 with the motion or anything that you, Ken Anderson,
10 District Attorney of Williamson County, looking at this
11 file on February 6, thought you had to turn over and
12 you said no, right?

13 **A. That's what I said.**

14 Q. And then you go on to say in this next
15 paragraph, "You know, I have made Brady material
16 available to defense attorneys in the past and I
17 haven't noticed the Court disagreeing with me and I
18 think I know what Brady material is."

19 You see that.

20 **A. Uh-huh.**

21 Q. So you're assuring Judge Lott that you
22 understand your Brady obligations. We're not just
23 talking about Michael Morton's statements. We're
24 talking about any Brady material. You've reviewed this
25 file and you see no Brady material. That's the meaning

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1 of all this, isn't it?

2 **A. With my further caveat that I don't agree with**
3 **their broad interpretation of Brady.**

4 Q. Right. But I think we've already established
5 that -- well, maybe we haven't established. Would you
6 not agree that the short transcript that was in your
7 file of the discussion between Don Wood and Rita
8 Kirkpatrick -- that should have been disclosed in some
9 fashion or form?

10 **A. Yeah, I think I disagreed on whether we can**
11 **come to a conclusion that it's Brady material. I said**
12 **it's the sort of stuff I typically would give.**

13 Q. Well, I misunderstand you. Let's be very,
14 very clear. Right? Are you telling me -- are you
15 telling the Court that might see this videotape
16 deposition that the interview that Wood conducted with
17 Kirkpatrick where she says that Eric told her that he
18 saw the monster who hurt Mommy and when he was asked
19 "Was Daddy there," he says, "No, Daddy wasn't
20 there" -- right? Are you saying that that recorded
21 question and answer was not Brady material?

22 **A. As I -- you know, we got into this at the**
23 **beginning.**

24 Q. I just -- see if you can answer that
25 question.

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1 **A. Okay. The answer is any Brady determination**
2 **is a mixed question of law and facts. It requires a**
3 **professional judgment to be made. It requires you to**
4 **know exactly what facts there are and how they're**
5 **perceived by the prosecutor at the time in question.**

6 Q. Well, you were the prosecutor at this trial.

7 **A. Yes, sir.**

8 Q. Do you have any question in your mind that
9 when you said to Judge Wood, "No, I have no Brady
10 material," that you had this Kirkpatrick-Wood interview
11 in your file?

12 **A. Evidently I had the two-page version, yes.**

13 Q. So let's start with the two-page version. Do
14 you consider the two-page version -- let's get the
15 exact exhibit number. Where is that?

16 MS. PECKER: Exhibit 7.

17 MR. SCHECK: I think it's 7.

18 Q. (BY MR. SCHECK) All right. Exhibit 7, was
19 that Brady material that should have been disclosed on
20 February 6th when you were asked, "Do you have any
21 Brady material," and you said no?

22 **A. I'm not agreeing that it's Brady material.**

23 Q. All right.

24 **A. That's a legal conclusion.**

25 Q. I'm asking you to the -- your understanding --

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1 **A. Is it something I would have given to the**
2 **defense attorney? The answer is yes.**

3 Q. So you're -- you're saying you can't determine
4 whether it's Brady because, what, you don't think it's
5 exculpatory? Tell me all the reasons -- tell me all
6 the reasons that you think that Exhibit 7 is not Brady
7 material that has to be turned over to the defense.

8 **A. I'd have to make a number of assumptions and**
9 **determinations and then I'd have to come to a legal**
10 **opinion.**

11 Q. Well, let's talk about what those assumptions
12 are. I think you mentioned before -- let me see if I
13 can help you here. You mentioned before that you think
14 that maybe you don't -- maybe it's not Brady material
15 because you think that the inadmissible of a -- the
16 testimony of a three-and-a-half-year-old would be
17 inadmissible.

18 **A. That would be one factor.**

19 Q. Right. So you're telling us that you say you
20 don't have to give them Exhibit 7, this transcript that
21 was in your file, because you think that if the --
22 ultimately Eric's testimony may not be admissible,
23 therefore that doesn't have to be disclosed under
24 Brady. Is that your position?

25 **A. And again, I don't -- I can't imagine giving**

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1 **this transcript. Brady would require that I disclose**
2 **the information.**

3 Q. Okay. Why don't we say then you're agreeing
4 that Brady would require that you disclose the
5 information. Is that what -- that's your position now,
6 right?

7 **A. I'm saying what I've said the entire**
8 **deposition.**

9 Q. Let me -- that's your position. Brady would
10 require that you disclose the information that's in
11 Exhibit 7.

12 **A. Brady would require it if they already knew**
13 **about it.**

14 Q. But wait a second. You don't -- you didn't --
15 as you sit here today, you have no recollection of
16 this -- of Exhibit 7 at all, right?

17 **A. That's correct.**

18 Q. You have no recollection -- you have no
19 recollection when the motion to recuse was filed that
20 there was any transcript of an interview between
21 Kirkpatrick and Wood with respect to Eric saying that
22 he saw the monster and it wasn't his father.

23 **A. Back in August?**

24 Q. What?

25 **A. Back in August I didn't have --**

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1 Q. Yes, in August.
 2 A. -- any recollection of any of this.
 3 Q. That's what I'm asking. So you're saying no,
 4 you had no recollection at all in August.
 5 A. Right. And I still don't have any
 6 recollection. But I'll certainly acknowledge this
 7 is --
 8 Q. So all you can tell us is that as far as
 9 you're concerned, Brady would require that you disclose
 10 the substance of Exhibit 7 to the defense; is that
 11 correct?
 12 A. I would, under my working definition of
 13 exculpatory evidence, provide this -- the substance of
 14 this sort of information routinely.
 15 Q. Tell us -- since you have no specific
 16 recollection, tell us what your routine would have been
 17 in terms of what you would have disclosed. What would
 18 you have done -- what would you have said to the
 19 defense lawyers about Exhibit 7?
 20 A. There's no way I can determine that. I
 21 mean --
 22 Q. Well, let me see if I can help you. Would you
 23 have said, "Gentlemen, I have a transcript of an
 24 interview between the maternal grandmother, Rita
 25 Kirkpatrick, and Eric that was done soon after the

1 would have said something along those lines.
 2 Q. Okay. Now let me ask you another question.
 3 If you're sitting -- if, in fact, you believed that the
 4 defense must have known what Eric was saying because,
 5 after all, Michael Morton had access to his son after
 6 the murder, right, would you say -- would it be
 7 inadequate to say, "Well, gee, they know" --
 8 A. No, I wouldn't --
 9 Q. -- "what Eric is saying, therefore they don't
 10 have to know that he made a statement to his
 11 grandmother," right?
 12 A. No.
 13 Q. That wouldn't be enough, would it?
 14 A. If I have this, I'm not going to trust that he
 15 would have also told that.
 16 Q. Okay.
 17 A. If they're not talking to me about it.
 18 Because I'm sure I'm talking to them about Eric because
 19 I'm trying to figure out if they're going to call him.
 20 Q. Right. Well, if you're trying to figure out
 21 whether they're going to call Eric, don't you think
 22 that part of their determination as to whether or not
 23 they're going to call Eric is that the maternal
 24 grandmother, who initially was suspicious of her
 25 son-in-law, was convinced by Eric's statement that "You

1 funeral where Eric says to Ms. Kirkpatrick that he saw
 2 the person that committed this crime and it was not his
 3 father?"
 4 A. That would certainly be a possible way of
 5 doing it.
 6 Q. What I'm trying to get at, sir, do you not
 7 feel that you had a responsibility under Brady to at
 8 least communicate that there was actually a transcript
 9 of that recording -- of that conversation between
 10 Kirkpatrick and Wood about what Eric said?
 11 A. I can't recall from 26 -- 25 years ago --
 12 Q. We're not asking about that. We're asking
 13 about routine. We know you don't remember anything.
 14 You've said to us that you regard it as Brady and that
 15 you would have to disclose the substance. And we're
 16 now describing -- we're now reviewing what that might
 17 mean. Okay?
 18 A. Okay.
 19 Q. And what I'm trying to get at, sir, is: Would
 20 part of a fair description of the substance of Exhibit
 21 7 be that this is a conversation that Kirkpatrick had
 22 with Eric that she told Wood about where Eric says he
 23 saw the person who committed the crime and it was not
 24 his father?
 25 A. If we hadn't talked about this beforehand, I

1 should stop looking at my son-in-law and go out and
 2 find the monster?"
 3 Wouldn't that have been important to the
 4 defense in deciding whether or not to call Eric or to
 5 call Rita Kirkpatrick? Isn't that exactly the kind of
 6 Brady information they were entitled to get?
 7 A. It's the stuff I routinely would have given
 8 them.
 9 Q. Okay. Let's talk about -- let's go back now
 10 to our examination of the transcript.
 11 A. Okay.
 12 Q. And we're back at -- I think we just finished
 13 your discussion on page 29 where you say, "You know, I
 14 have made Brady material available to defense attorneys
 15 in the past and I haven't noticed the Court disagreeing
 16 with me. I think I know what Brady material is."
 17 You see that, right?
 18 A. Correct.
 19 Q. Now, it's your position today that had you
 20 known about the report of a check being cashed nine
 21 days after Christine Morton's death and if there was no
 22 adequate follow-up on that, that is Brady material that
 23 you would have disclosed, right?
 24 A. That is material I would have disclosed.
 25 Q. If, in fact, there was information provided to

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1 Don Woods that her credit -- Christine Morton's credit
2 card had been used by a woman in San Antonio at the
3 Jewel Box two days after her death and that follow --
4 no follow-up had been done to adequately run down this
5 lead, that is something that you would have disclosed
6 to the defense, right?

7 **A. Correct. I mean, there --**

8 Q. Okay. And to the best of your knowledge,
9 there's nothing in any file that demonstrates -- and
10 I'm looking here at Exhibit 9 -- that there was
11 follow-up that indicated that this credit card was
12 either not Christine Morton's or there was some
13 innocent explanation of it, right?

14 **A. That's correct.**

15 Q. All right. We've discussed Exhibit 10, which
16 is the observations of an individual of seeing a green
17 van on the street behind the Hazelhurst address and a
18 subject walking in the wooded area behind the
19 Hazelhurst house in the days before the murder. You
20 have no recollection of this Exhibit 10, right?

21 **A. Was it in my file?**

22 Q. It was in the sheriff's file. It was not in
23 your -- we did not get a production of this in the
24 prosecutor's trial file.

25 **A. Well, I wouldn't have had any recollection no**

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1 **matter which file it was in, but no.**

2 Q. But you've agreed that we've discussed this,
3 that this was -- this report on 8-14 by Traylor about a
4 green van in the neighborhood and an individual walking
5 on several occasions behind the wooded area behind the
6 Morton house, that would have been the kind of
7 exculpatory evidence that, if you had known about it,
8 you would have disclosed.

9 **A. Green van testimony, sure.**

10 Q. Okay. All right. And the same goes for
11 the -- I think we've covered everything, the credit
12 card, the cashed check, the green van, and the
13 statement, right?

14 **A. The statement -- yes.**

15 Q. Okay. Now let's turn to page 30. Okay?

16 **A. Okay.**

17 Q. And Mr. White says, "If I might reply."

18 This is after you say there's no Brady
19 material.

20 "My understanding at the pretrial was
21 that the State, that is, the Government, was going to
22 provide the reports of" -- "the reports of Officer Wood
23 and Sheriff Boutwell, the complete reports."

24 Do you see the term "complete reports"?

25 **A. I do.**

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1 Q. "To make a determination about the defendant's
2 statements whether -- whether they're -- they were
3 Brady material or not or whether Brady material
4 existed."

5 You see that.

6 **A. I do.**

7 Q. And so referring to two things, whether the
8 defendant's statements are Brady material or whether or
9 not there's other Brady material that exists in the
10 reports of Boutwell and Wood.

11 **A. Well, this is White going back and saying, I
12 guess, to Judge Lott, what his understanding from
13 Allison was of the November hearing. And that is
14 clearly not what the status of this was when we left
15 the November hearing.**

16 Q. So whatever the understandings were at the
17 time of the November hearing -- and your understanding
18 was that you were only producing a Wood report about
19 Michael Morton's statements on August 13th and August
20 14th, right?

21 **A. Right, because I wanted to get my objection
22 sustained and that's what we were talking about was
23 those statements.**

24 Q. But now we're on a different day. We're on
25 February 6th.

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1 **A. And Mr. White --**

2 Q. We're talking about the -- starting on page
3 28, we're talking about whether or not there's
4 exculpatory evidence. We're talking about the
5 defendant's motion for the production of evidence
6 favorable to the accused, right?

7 **A. On those pages, yes.**

8 Q. Okay. And we've now reviewed it, that this is
9 clear that they're not just talking about Michael
10 Morton's statements. They're talking about, as on page
11 29, any other Brady material the State might have,
12 right?

13 **A. Correct.**

14 Q. And that you say -- and then the judge says,
15 "All right, Mr. Anderson. Do you have anything
16 favorable to the accused," and you say, "No, sir,"
17 right?

18 **A. With the caveat that me and Mr. Allison
19 disagree on what Brady is.**

20 Q. Right. And you disagree on what -- you
21 disagree what Brady means with respect to a defendant's
22 statement, right? But then you go on to say you know
23 what Brady material is. You tell the judge --

24 **A. Correct.**

25 Q. -- "You know, I've done this kind of review

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1 before and I have no Brady material," right?
2 **A. Correct.**
3 Q. And then on page 30, White is clear that he's
4 not just talking about whether the defendant's
5 statements are Brady material. He's talking about
6 whether Brady material existed. And he's saying that
7 in the context of the Government is supposed to be
8 turning over the reports of Wood -- reports of Wood and
9 Sheriff Boutwell, the complete reports, right? Not
10 just to see whether there's Brady material with respect
11 to the defendant's statements, but also whether Brady
12 material existed. Do you see that that's what he's
13 saying?
14 **A. And that was a misstatement. Not necessarily**
15 **intentional, but that was not what had been decided at**
16 **the pretrial.**
17 Q. Well, whether that is a misstatement of what
18 happened at the pretrial and what your limited
19 obligation was at the pretrial, it's clear on this
20 transcript, isn't it, that White is at least saying, "I
21 want the complete reports of Wood and Boutwell and
22 whether there's not just Morton's statement but Brady
23 material," right? And then goes on to say "Has the
24 State provided those to the Court," those in-camera
25 reports, right? You see that.

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1 **A. Yeah, except --**
2 Q. And then the Court says --
3 **A. -- he clearly was misrepresenting what had**
4 **prior -- what the judge's prior --**
5 Q. Right. So whatever the judge's prior ruling
6 was or your understanding of what you were supposed to
7 produce, it's now clear that this is White's
8 understanding, that you're supposed to produce the
9 complete reports not just about the defendant's
10 statements, about whether other Brady material
11 existed. That's what White's saying, right?
12 **A. Yeah.**
13 Q. Okay. And then he says, "Has the State
14 provided those to the Court for in camera reports?"
15 And then the judge says, "No. I have a
16 notation that a copy of the report was furnished. This
17 is Wood, I believe."
18 And White says, "There should be one for
19 Boutwell, too, I believe."
20 And the Court says, "Well, to the" --
21 he's looking at -- he says, "to the Court for in camera
22 inspection and they will be sealed for appellate record
23 and also field notes leading to it."
24 And then you say, "The field notes of Don
25 Wood?"

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1 And the Court says, "There's a notation
2 about Don Wood. I don't have a notation about
3 Boutwell."
4 And then White says, "I'm going to check
5 my pretrial hearing transcript to see if he's mistaken
6 about Boutwell," right?
7 **A. Correct.**
8 Q. Okay. And then the Court says, "I haven't
9 checked to see on that either. These are just my notes
10 I made. And that was not submitted to the Court."
11 Okay? And then -- all right. Let's read
12 it all so that we're -- then on line six of page 31,
13 Mr. White says, "I think if we could get it submitted
14 to the Court between now and then, we could get a copy
15 and you could make an interpretation as to whether the
16 material concerning the defendant's statement are Brady
17 are to be given to us now or not. As I said before,
18 this is the type of case that every issue is to be
19 hotly contested. The actus reus is denied. It's going
20 to be purely circumstantial. It's going to be real --
21 the points are going to be in tight and close. As a
22 result of that, I think it's going to make a
23 significant difference in the appellate record. And as
24 I said, we don't want to try it again."
25 And then the Court says, "Is that the

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1 lengthy one?"
2 And you say, "Actually it's not. It's
3 two pages long is my memory -- if my memory is" --
4 The Court says, "How many?"
5 "About two pages long, if I'm not
6 mistaken."
7 And then the Court says, "What about his
8 field notes?"
9 And you say, "Field notes. I had
10 forgotten about those, Judge. I need to get with
11 Mr. Wood today obviously to get those. I haven't seen
12 them myself. I have no idea what they say," right?
13 **A. Yes.**
14 Q. And then the Court says, "All right. Get
15 those to me so I can have an opportunity over the
16 weekend to examine them and check the record on the
17 motion to suppress to see if this also covers the
18 sheriff."
19 And you say, "Okay," right?
20 **A. Correct.**
21 Q. And then the Court says, "But the motion then
22 for the production of evidence favorable to the
23 accused, subject to my examining Don Wood's records --
24 and if any is found there, that will be furnished. And
25 it also covers the sheriff. If those are to be

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1 examined and any found, then they will be furnished."
2 Okay?
3 **A. Okay.**
4 Q. All right. So now let me show you what --
5 MR. SCHECK: Let's mark -- what's the
6 exhibit next in order?
7 (Exhibit Nos. 19 and 20 marked)
8 Q. (BY MR. SCHECK) Now, I'm showing you what's
9 been marked 19 that I represent to you are notes that
10 we just recovered from Judge Lott's own reports. And I
11 think it's a document --
12 **A. Judge Lott's?**
13 Q. Judge Lott. These are notes that were just
14 recovered from the attic today of Judge Lott, his own
15 handwritten notes.
16 MR. RALEY: Hold on. They are from Judge
17 Lott, right?
18 MS. PECKER: Yeah.
19 Q. (BY MR. SCHECK) That's my understanding. You
20 may recognize his handwriting better than I. That's
21 Exhibit 19. They were just produced.
22 And here's Exhibit 20, which is the
23 judge's criminal docket, right, that you and I actually
24 had discussed before as to whether you had noticed this
25 entry on page two of Exhibit 20 that I've highlighted

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1 in yellow. Okay?
2 So if you follow me here, you see on
3 February 6th in the docket, the judge's or whoever
4 handwriting this is -- if it's the judge or if it's a
5 clerk, I don't know. But there's a summary of what was
6 decided at the February 6th hearing. Do you see that?
7 **A. I do.**
8 Q. And then there's a note here "Court to conduct
9 in camera inspection of report of Officer Don Woods in
10 connection with his Brady motion."
11 Do you see that?
12 **A. Yes.**
13 Q. Okay. So that plainly refers to the colloquy
14 that we've just reviewed on February 6th, does it not?
15 **A. Yeah. It was that day.**
16 Q. All right. And --
17 **A. Yeah, February 6th.**
18 Q. February 6th. Now I show you what's
19 Exhibit -- what number is this? We have that as --
20 **A. 19.**
21 Q. -- 19. And I call your attention to the
22 bottom of the page. All right? Well, at the very top,
23 as you can see, it's 2-6-87, right? So this would be
24 notes of 2-6-87 and the docket is the Michael Morton
25 docket. And at the bottom of the page it has a

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1 notation -- starting on the left-hand column, it says
2 "Weekend" and then there's a line to "Brady motion,"
3 right?
4 **A. Uh-huh.**
5 Q. And it says "Rule Monday." And then in the
6 left-hand column it says "Don Wood's records," plural,
7 "and sheriff's records for in camera equals" -- equal
8 sign, "and then determine if defendant's statements
9 should be turned" -- I can't -- "turned" -- I can't --
10 MR. RALEY: "Turned over to defendant".
11 MR. SCHECK: "Turned over" --
12 MR. RALEY: "To defendant".
13 MR. SCHECK: Oh, yes, "turned over to
14 defendant," I think.
15 Q. (BY MR. SCHECK) I think that's what it says.
16 And then on the next page it says "as
17 Brady matter". And then in parentheses is "favorable
18 to defendant or inconsistent statements". Okay?
19 **A. Okay.**
20 Q. So that's what the records say, right?
21 **A. That's what Judge Lott's -- if these are Judge**
22 **Lott's.**
23 Q. Okay. Now, you have no independent
24 recollection about what you turned over, when you
25 turned it over, at all, do you?

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1 **A. Absolutely not.**
2 Q. And so you're doing your best to reconstruct
3 all of this, correct?
4 **A. I am.**
5 Q. All right. And we've been reviewing this.
6 Now, I want to call your attention to page 31. Right?
7 And at the very end here, the Court says, at line 19,
8 "Is that the lengthy one," right? He's talking about
9 the in-camera submissions here. And the Court says,
10 "Is that the lengthy one?"
11 And you say, "Actually it's not. It's
12 two pages long as my memory is" --
13 "The Court: How many?"
14 Anderson, "About two pages long, if I'm
15 not mistaken."
16 "And what about his field notes?"
17 "Field notes I had forgotten about. I
18 need to go get with Sergeant Wood today."
19 So what do you think -- this arose --
20 you've read your brief on appeal, correct?
21 **A. I have.**
22 Q. And you issue a footnote about this particular
23 statement by Judge Lott about the lengthy one, right?
24 **A. Yeah, I'd have to look at my appellate brief.**
25 Q. We'll go back to that. Let's see if that

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1 doesn't refresh your recollection. Let's just note
2 that. Okay?
3 So I take it now that it's your position
4 that in reconstructing this, what must have happened is
5 that you just turned over Sergeant Wood's report about
6 the events of August 13th for in-camera submission to
7 Judge Lott and you did not turn over what could be --
8 what -- his complete report or Sheriff Boutwell's
9 report, right, and field notes?
10 **A. My reading of this entire transcript is that I**
11 **was supposed to turn over Don Wood's report about the**
12 **defendant's oral statements of August 13th.**
13 Q. That's your reading of it now, correct?
14 **A. That's correct.**
15 Q. All right. But you certainly see where one
16 could read this as, regardless of what happened at the
17 pretrial, now Judge Lott is ordering in connection with
18 the defendant's Brady motion that he wants to see
19 the -- and the defense is asking for the complete
20 report of Don Wood's and field notes for purposes of
21 making a Brady determination. You see that.
22 **A. I see where he's segued into a Brady**
23 **determination.**
24 Q. Let's -- that's one reading one could make of
25 the record.

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1 **A. That's the reading I make.**
2 Q. No, no. What I'm suggesting to you is that
3 the reading you're making is that all that was ever
4 required of you was to turn over Wood's report about
5 Michael Morton's statements on August 13th. That's
6 your position, right?
7 **A. It looks like I was also supposed to provide**
8 **the field notes.**
9 Q. And the field notes, correct?
10 **A. That's my reading.**
11 Q. But you do not -- you are saying here on
12 February 6th that you don't know of any Brady material
13 and you did not -- you don't regard this as meaning
14 that you should be turning over a complete report by
15 Sergeant Woods and his field notes of his work on the
16 investigation. That's not how you read this
17 transcript, right?
18 **A. No.**
19 Q. Okay. Let's stop it there.
20 Now let's turn to the next big event.
21 And that is, after the trial -- right? After the trial
22 Bill Allison filed a motion for a new trial. I
23 think -- I think we have marked this as Exhibit 16.
24 Here it is. You see that?
25 **A. Okay.**

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1 Q. You've read that before, haven't you?
2 **A. I would presume so. It's my handwriting up on**
3 **the upper right-hand corner.**
4 Q. Where is that? I'm sorry.
5 **A. Where it says "file".**
6 Q. Could I see what you're talking about?
7 **A. Are we looking at different motions?**
8 Q. No. We're looking at that. Your -- your copy
9 has -- that's your handwriting on the upper right-hand
10 corner, right?
11 **A. It certainly appears to be.**
12 Q. Okay. Now, I must say that -- okay. And in
13 this motion -- now, do you remember any of these
14 events? Do you remember hearing that Mike Davis had
15 made some kind of statement in front of Bill Allison
16 after the jury returned its verdict?
17 **A. No.**
18 Q. You have no recollection of that at all.
19 **A. No. When I was reading that, I guess it's in**
20 **the opinion and briefing, I was thinking "I wonder if I**
21 **knew that he said something like that" or "I wonder if**
22 **he did say something like that." Because I know one**
23 **thing. If he did say something like that and I heard**
24 **it, there wouldn't have been a quiet conversation up in**
25 **my office.**

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1 Q. Well, how about this? You did get this motion
2 that Bill Allison filed after the trial for a new
3 trial, right?
4 **A. Obviously I got it.**
5 Q. Okay. And in this motion for new trial, okay,
6 he is saying that "The Court committed material error
7 calculated to injure the rights of the Defendant by not
8 requiring the State to produce the offense reports and
9 supplemental reports" -- "offense reports of Don Wood,
10 the Chief Investigator in this case who was not called
11 by the prosecution at trial. These reports and
12 supplemental reports were the ones which the Court
13 indicated it had reviewed the weekend before the
14 commencement of the trial on February 9th, 1987."
15 You see that, right?
16 **A. I see that.**
17 Q. Okay. And he then says "During the
18 conversation with the jury after the trial of this case
19 was concluded on Tuesday, February 17th, 1987, Mr. Mike
20 Davis, one of the prosecutors told the jury that
21 Sergeant Wood's reports were sizeable (he held up his
22 hand and indicated about one inch between his fingers)
23 and that if the defense had gotten them, we would have
24 been able 'to raise even more doubt than we did.' It
25 is believed that from further remarks made in the jury

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1 room that the reports contain leads concerning other
2 unusual happenings or strange persons in the
3 neighborhood which, if disclosed to the defense, would
4 have been relevant before the jury on the issue of
5 whether or not the Defendant committed this crime.
6 This type of information would have led to further
7 admissible evidence tending to indicate the Defendant
8 did not commit this offense."

9 Do you see that?

10 A. I do.

11 Q. All right. And then it says "It is further
12 feared that if the Court does not take immediate steps
13 to preserve these reports, they may be destroyed or
14 removed so they would not be available for use in the
15 appeal or a subsequent trial."

16 You see that.

17 A. I do.

18 Q. Okay. Now, are you telling us that after this
19 trial -- now, Mike Davis was leaving the office right
20 after this trial. Do you remember that?

21 A. I didn't remember when he left. I knew it was
22 sometime --

23 Q. Soon thereafter?

24 A. -- after I had been there roughly two years,
25 so it would have been sometime in the first half of

1 Q. Yeah.

2 A. Okay.

3 Q. Okay. And I'll let the deposition speak for
4 itself, but I think that that is a fair summary of what
5 he said. He doesn't quarrel with it.

6 And then it goes on to say "It is
7 believed from further remarks made in the jury room
8 that the report contains leads concerning unusual
9 happenings or strange persons in the neighborhood
10 which, if disclosed to the defense, would have been
11 relevant before the jury on the issue of whether or not
12 the Defendant committed the crime."

13 You see that, right?

14 A. I see it in the motion.

15 Q. Well, don't you think that the report that we
16 have reviewed about the green van and an individual
17 walking behind the wooded area to the rear of the
18 Morton home is embraced by that statement, "strange
19 persons in the neighborhood," that might lead to
20 exculpatory evidence? In other words, that's
21 Exhibit --

22 A. Where was -- was I not in the jury room when
23 all this was going on? This is evidently after the
24 trial?

25 Q. This is after the trial. And nobody connected

1 '87.

2 Q. Wouldn't you agree that this is -- I'm sorry.
3 I didn't mean to interrupt you.

4 Wouldn't you agree that this is a pretty
5 unusual motion?

6 A. It's a motion for new trial. I don't know
7 that I would characterize it as unusual. I'm sure,
8 when I read it, if I hadn't been aware of this thing
9 with Mike saying that, I asked him about it.

10 Q. Well, what I mean about unusual, it's unusual
11 that a prosecutor would say in the jury room, "Boy, I'm
12 really glad that Sergeant Wood's reports, which were
13 sizeable, about an inch thick, had not been disclosed
14 because if the defense got them, they would have been
15 able to raise even more doubt than they did."

16 A. Yeah, it would be --

17 Q. That's a pretty remarkable statement, isn't
18 it?

19 A. I agree. It would be a remarkable statement
20 if he made it.

21 Q. Well, I hope you realize he's been deposed in
22 this case and he doesn't quarrel that this is -- he
23 doesn't quarrel that this is -- he accepts this as the
24 statement that he made.

25 A. Really?

1 with this litigation has represented that you were
2 there. What's represented in this motion is that this
3 is a conversation that happened in front of the jurors
4 where Bill Allison was present and Mike Davis. Right?
5 That's what it says, doesn't it?

6 A. I haven't read it that closely; but okay, I'll
7 take your word for it.

8 Q. Well, are you telling us that at the time that
9 this motion was filed, you didn't read it?

10 A. I don't remember. I would assume I read it.

11 Q. Okay. Wouldn't you say that after reading
12 this, the appropriate thing for you to have done was to
13 have called Mike Davis and said, "Mike, what are you
14 talking about? What sizeable file about an inch thick
15 of Sergeant Wood's did you see which the defense would
16 have been able to use to raise even more doubt than
17 they did?" Wouldn't that have been the question that
18 was appropriate to ask?

19 A. I would think so.

20 Q. You never did that, did you?

21 A. I have no idea.

22 Q. Well, Mr. Davis doesn't recall doing it, that
23 you came and asked him that.

24 A. I have no recall from 25 years ago.

25 Q. Well, I understand you don't have any recall,

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1 so let's just talk about what an ethical prosecutor
2 would have done, right, upon receiving a motion like
3 this. Isn't the first thing that you would have done
4 is said, "Mike, what are you talking about? What Woods
5 reports did you see that the defense could have used to
6 raise doubt?" Wouldn't you have asked him that?

7 **A. I would have asked him about making these**
8 **statements in front of -- or I would have asked him**
9 **about making the statements, period.**

10 Q. Well, let's put aside you would have said,
11 "Mr. Davis, you probably never should have said
12 anything in front of the jury," right? But it's plain
13 that you would have asked him, would you not -- an
14 ethical prosecutor certainly would have asked him,
15 "What are you talking about? What did you see in
16 Wood's report about an inch thick that the defense
17 could have used to raise doubt or that would have
18 contained leads concerning other unusual happenings or
19 a strange person in the neighborhood that would have
20 been relevant to the defense?" Wouldn't you have asked
21 that question?

22 **A. I would have talked to him about it, yes.**

23 Q. Would you not have gone back and looked to see
24 if there was such reports from Sergeant Wood that could
25 have been used to raise doubt, that could have

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1 contained exculpatory evidence, that could have done --
2 could have involved unusual happenings or strange
3 persons in the neighborhood?

4 **A. I don't know. At that time I should have been**
5 **very familiar with -- well, I don't know how far after**
6 **the trial this was. I would have been very familiar**
7 **with the evidence and the reports.**

8 Q. Right. And so to the best of your knowledge,
9 you didn't ask him, right?

10 **A. No. To the best of my knowledge, I don't**
11 **recall one way or the other.**

12 Q. And now, you're aware that Bill Allison asked
13 for a hearing on this, on the file.

14 **A. I was from looking through the things.**

15 Q. What's a motion to abate, by the way?

16 **A. It is usually something you file with an**
17 **Appellate Court to stop the proceeding. Well, it's a**
18 **motion to stop a proceeding.**

19 Q. So -- now, by the way, just to be clear about
20 this, you're aware that Sergeant Wood has testified
21 that he wasn't told that he wasn't going to testify
22 until two hours before the trial.

23 **A. I am not aware of that.**

24 Q. All right. Why don't you assume that to be
25 true for the moment.

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1 **A. Okay.**

2 Q. Let's put it this way. Let's not even assume
3 that. Wouldn't it be a fair statement that prior to
4 the beginning of the trial in this case, before
5 deciding whether or not to call Sergeant Woods, you
6 would have reviewed his complete report and rough field
7 notes about what you heard him say in open court was
8 the extensive investigation that he conducted?

9 **A. I would have reviewed the reports that I have,**
10 **which I would have assumed were all the reports.**

11 Q. Wait a second. You were -- we reviewed the
12 transcript where you heard him say on the witness stand
13 that he had conducted an extensive investigation and
14 talked to lots of people and had field reports, right?
15 Field notes as well as offense reports, right?

16 **A. We reviewed that.**

17 Q. You heard him say that during the pretrial
18 hearing, right?

19 **A. Yes, sir.**

20 Q. And you're the one who wrote a book where you
21 reference the Morton case and you talked about someone
22 has to master the hundreds of details that's necessary
23 to try a case and that person is the prosecutor, right?

24 **A. That's right.**

25 Q. And don't you think that you, being somebody

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1 that endeavored your best to be careful -- I think your
2 words were painstakingly investigate and review
3 hundreds of details in a case. Once you heard Woods
4 testify that he had conducted an extensive
5 investigation and had lots of notes, talked to lots of
6 people, wasn't it incumbent upon you to go back and
7 find -- look at exactly what he had done?

8 **A. I don't know. I was working 60 hours a week**
9 **at this time. I had a small office and we had a case**
10 **to try, and I'm sure right before that we had a case to**
11 **try and right after that we had a case to try.**

12 Q. Wouldn't it be a fair statement that as a
13 strategic matter, you were very concerned about how
14 many police reports these two very capable lawyers were
15 going to get during the course of the trial?

16 **A. I don't have a good feel right as we sit here**
17 **for how many reports were in the District Attorney's**
18 **file.**

19 Q. Well, we can go back and look at the District
20 Attorney's file. But you certainly had access to the
21 sheriff's file, did you not?

22 **A. Don Wood said I had access to it. That would**
23 **probably be an inaccurate statement.**

24 Q. You're saying that --

25 **A. I could have asked the sheriff to see their**

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1 **whole file and I'm sure he would have showed it to me.**

2 Q. Well, as a matter of routine, based on even
3 what you wrote about in the book -- I realize you're
4 calling it hyperbole now. But at this point in time
5 wouldn't it have been part of your ordinary routine to
6 try to find out as much as you could about the details
7 of the Morton investigation --

8 **A. Of course I would have --**

9 Q. -- once you heard Sergeant Wood said that he
10 had done extensive investigation and had interviewed
11 lots of people?

12 **A. If you stop that sentence before you get to
13 Sergeant Wood, the answer is of course I would.**

14 Q. So you would have wanted to find everything
15 you could about the Morton investigation from
16 Boutwell. Is that what you're now going to tell us?

17 **A. I would have wanted to find everything I could
18 about any investigation, but not because Sergeant Wood
19 testified to whatever Sergeant Wood testified to.**

20 Q. I'm just only pointing out that Sergeant --
21 when Sergeant Wood testified to that -- that way, that
22 gave you notice that he was extensively involved in
23 this investigation and talked to lots of people, right?

24 **A. That gave me notice that Sergeant Wood said
25 that.**

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1 Q. Well, do you think he was lying when he got up
2 and said that at the pretrial hearing?

3 **A. Sergeant Wood is Sergeant Wood.**

4 Q. Well, you keep on saying that. Are you trying
5 to suggest here that there's -- that you thought
6 Sergeant Wood was not a truthful person or an
7 incompetent person? Is that what you're saying? At
8 the time of this trial?

9 **A. And I'm having trouble remembering what my
10 thoughts were about Sergeant Wood at the very time of
11 this trial.**

12 Q. Okay. Then let's go back to this. You -- as
13 a strategic matter, would it not be fair to say that
14 you had considerable concerns as to how many police
15 reports and how extensive your disclosure was going to
16 be to Allison and Wood about this investigation?

17 **A. No. I probably had some concerns about how to
18 call as few witnesses as possible because I always had
19 that concern. I figured out what I -- the fewest
20 number of people to get the evidence I wanted in front
21 of the jury.**

22 Q. Well, you reviewed with us where Bill Allison
23 said at the pretrial hearing, "All we have are 108
24 photographs and the medical examiner -- the autopsy
25 report. And we don't have any police reports in this

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1 case. We don't have any discovery." You heard him say
2 that, right?

3 **A. Right.**

4 Q. And so wasn't it part of your strategy that if
5 you could avoid it, you were going to turn over as few
6 police reports as you could to these capable lawyers in
7 the trial of this case?

8 **A. Okay. That's two things. They talk about
9 the -- but we had unprecedented discovery in this
10 case. It may -- Allison may be correct that it wasn't
11 by November 26th, but I can't -- from what I've gleaned
12 from the statement of facts, there was more discovery
13 than I -- than I -- there were a lot of exhibits and
14 there was a lot of scientific testing and this was
15 before scientific testing was, you know, as routine as
16 it is now.**

17 Q. But that's scientific testing. I'm talking
18 about disclosure of the police reports. Let's just see
19 if we can reach some closure on this.

20 **A. Okay.**

21 Q. All right? And that is, are you saying that
22 you were not concerned at the time of this trial to
23 limit, as much as you possibly could, the number of
24 police reports about the course of this investigation
25 to the defense as possible?

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1 **A. Well, I have no real memory of 25 years ago
2 what my strategy was. But as a practical matter, I
3 always called the fewest witnesses I needed.**

4 Q. Okay. Now, let's go back to this motion from
5 Mike Davis. You're saying that you don't remember
6 this, but you must agree at some point you read it.

7 **A. Yeah. I wrote "file" on top of it.**

8 Q. And I think you've agreed that the proper
9 thing to have done would be to inquire of Mr. Davis,
10 "Tell me exactly what reports you're referring to of
11 Sergeant Wood's that could raise even more doubt and
12 what reports you're referring to that could contain
13 leads leading to other unusual happenings or strange
14 persons in the neighborhood." You agree, don't you?

15 **A. I agree I would have asked Mike if he said
16 that and what he was thinking about.**

17 Q. And a little further, you would have also
18 wanted to inquire as to whether or not what he said was
19 accurate, that there were reports -- a sizeable set of
20 reports from Sergeant Woods that could have been used
21 by the defense to raise doubts and that concerned
22 unusual happenings or strange persons in the
23 neighborhood, true?

24 **A. I'm -- I don't know.**

25 Q. Well, I'm asking. We're only asking about

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1 routine. I mean, wouldn't that have been the proper
2 thing to do? Not just ask did he say it, but also to
3 further inquire if there were such reports, right?

4 **A. At that time I think I would have been**
5 **familiar with the reports.**

6 Q. So at that point you would have known that
7 Sergeant Wood had filed an extensive set of reports and
8 that you had not disclosed that to Judge Lott for
9 in-camera review and you had not disclosed it to the
10 defense. You would have known that at the time -- at
11 the end of the trial, right?

12 **A. Of course not.**

13 Q. Well, let's review what's been marked 17 and
14 18. These are the briefs on appeal. Let me see if I
15 can find my copies.

16 Okay. You're aware that Bill Allison's
17 motion for a new trial was denied by Judge Lott, no
18 hearing was granted, and Judge Lott just sent the
19 sealed envelope with the Woods report to the Court of
20 Appeals for them to conduct their in-camera review.
21 You know that.

22 **A. I saw some stuff about that. I couldn't**
23 **really follow it, but that sounds right.**

24 Q. Okay. Now, Bill Allison then in Point 6 of
25 his brief -- right?

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1 **A. Uh-huh. What page?**

2 Q. Page 64.

3 **A. 64?**

4 Q. Yeah. That's Point 6 of his brief. And that
5 concerns a point of error. The judge failed -- the
6 judge erred in failing to produce for the defense the
7 exculpatory portions of the reports of Chief
8 Investigator Sergeant Wood or failed to exercise due
9 diligence to see that all the reports were turned over
10 to him for inspection. You see that.

11 **A. Okay.**

12 Q. All right. And he says "In August of this
13 year, the trial court filed a second supplemental
14 transcript with this Court. That transcript is sealed
15 and purports to be the offense reports of Chief
16 Investigator Don Wood."

17 You see that, right?

18 **A. Uh-huh.**

19 Q. Now, we now know that that -- I'll mark that
20 as an exhibit in a second. But you've seen it, haven't
21 you? And that is the sealed envelope and the few pages
22 from Don Wood's offense report concerning his
23 activities on August 13th, correct?

24 **A. Yeah. It's a four-page or five-page report**
25 **and a --**

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1 Q. Right. We'll put that in --

2 **A. -- consent to search.**

3 Q. Right. But that's what we're talking about.

4 There was a sealed envelope that Allison didn't know
5 what was in it that was -- that Judge Lott had sealed
6 and was up in the Court of Appeals, right?

7 **A. Correct.**

8 Q. You knew what was in it, didn't you?

9 **A. I knew what was in it? Somebody knew what was**
10 **in it. And Judge Lott looked at it.**

11 Q. Well, wait a second. If you don't -- weren't
12 you the ones that produced the reports of Wood and then
13 went out and got the field notes and made a production
14 to Judge Lott in camera? Aren't you the one that did
15 that?

16 **A. I don't recall who did it.**

17 Q. Well, was there anyone else that would have
18 done that?

19 **A. You're talking about a presentation to Judge**
20 **Lott. Somebody would have given him a sealed envelope**
21 **that probably had some markings on it.**

22 Q. No, no, no. I'm not talking about that. I'm
23 talking about there was a production made to Judge
24 Lott, right, after February 6th that he was going to
25 look at over the weekend, right?

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1 **A. Somehow or another he got an envelope on**
2 **Friday which, according to what he says, he opened and**
3 **looked at over the weekend.**

4 Q. Right. And we have just reviewed at length
5 not just the transcript, but we've looked at his docket
6 entry and we've looked at his notes, right?

7 **A. Right.**

8 Q. And I think what you've said is that your
9 interpretation was that all that you were obligated to
10 disclose was Sergeant Wood's report and field notes, if
11 any, of the August -- of the August 13th and 14th
12 statements that Michael Morton made, right?

13 **A. That's what I read.**

14 Q. So if you didn't make the production of
15 reports to Judge Lott, as a matter of routine, who
16 would?

17 **A. Well, I can't do everything in the office. I**
18 **may well have. But somebody took an envelope, put at**
19 **least the report in and possibly the field notes -- and**
20 **usually the judge seals it, but I don't know how -- who**
21 **would seal it -- and got it to Judge Lott.**

22 Q. If I understand it, you're telling us now that
23 you basically have no specific independent recollection
24 of any of this, right?

25 **A. That's correct.**

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1 Q. Okay. And so what you've done after the
2 motion to recuse was filed is that you have then gone,
3 looked at the transcript, look at all the motions, and
4 look at the records that we've produced and tried to
5 reconstruct what you think must have happened based on
6 your legal obligations and knowledge of your own
7 routine; is that right?

8 **A. That is very correct. And most of that work
9 was done in the last week.**

10 Q. Okay. And as part of that -- I'm sorry. And
11 as part of that, what I think you told us here today is
12 that the way you interpret the directions that you were
13 given by the Court and the colloquy on February 26th --
14 I'm sorry, February 6th, is that you thought the only
15 thing that you would have turned over to Judge Lott was
16 just a very, very thin production of a few pages that
17 was Don Wood's formal report on what Michael Morton
18 said on either August 13th or 14th, right?

19 **A. Correct. That's evidently what Judge Lott
20 thought he was getting.**

21 Q. Well, Judge Lott is not here and we have --
22 the record speaks for itself. But all I'm trying to
23 establish is that your reconstruction of this is that
24 you thought that -- you think now that that's all that
25 was required to be produced. Is that right? Do I hear

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1 you right?

2 **A. What Judge Lott said was critically important.**

3 Q. No, I'm asking you now just about is that
4 true, that the only thing you thought you had to
5 produce was just a recorded report from Sergeant Wood
6 of what Michael Morton said on August 13th that was
7 relevant to the voluntariness of the statement? That's
8 all you thought you had to turn over.

9 **A. Both me and Judge Lott evidently thought
10 that.**

11 MR. SCHECK: Motion to strike what Judge
12 Lott thought.

13 Q. (BY MR. SCHECK) I'm asking about you. And as
14 you have looked back over this, it's your current
15 position, I take it, that you believe after reading
16 this record that the only thing that you were required
17 to turn over was just Wood's report about the August
18 13th statement. Is that right? Yes or no?

19 **A. Yes.**

20 Q. Now, you get this motion from Bill Allison
21 saying that Mike Davis has said that there's a thick
22 one-inch report from which the defense could raise
23 doubts about unusual happenings and unusual persons in
24 the neighborhood, right? That's the next thing that
25 happens.

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1 **A. Okay.**

2 Q. Isn't that right? We've just reviewed that.

3 **A. We just reviewed that.**

4 Q. Okay. Now, what I'm asking you -- and now
5 we're looking at Bill Allison's appellate brief, Point
6 6. Okay? That's where we're up to. Yes?

7 **A. Yes.**

8 Q. All right. Now, what I'm saying to you is
9 that you knew that there was not a complete set of
10 offense reports from Don Wood in that sealed envelope.
11 You knew that, didn't you? It wasn't a mystery to you
12 as to what was in that sealed envelope.

13 **A. I would assume at that time that I thought
14 what was in the envelope was, in fact, the -- what
15 Judge Lott had ordered.**

16 Q. Right. Well, what Judge Lott had ordered,
17 what you interpreted Judge Lott as ordering. You knew
18 you --

19 **A. Okay. But you're making accusations. And
20 Judge Lott clearly agreed with me.**

21 Q. I'm asking you a different question. And
22 please --

23 MR. SCHECK: Motion to strike what Judge
24 Lott believed or didn't believe.

25 Q. (BY MR. SCHECK) The record speaks for itself.

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1 He's not here to discuss this matter.

2 **A. No. Sheriff Boutwell is not here and Judge
3 Lott is not here.**

4 Q. Yeah. Okay. So I'm just reviewing this with
5 you. And I'm saying here that when Mike Davis said in
6 front of Bill Allison that there was a sizeable
7 one-inch report from Sergeant Woods that contained
8 information that the defense could have used to raise
9 doubts and that had -- and there were reports in it of
10 unusual happenings and suspicious people in the
11 neighborhood that the defense could have used, right?
12 You have that in mind. Okay?

13 When that allegation was made, you knew
14 that there wasn't one inch of reports -- one inch of
15 papers that had been produced to Judge Lott. You knew
16 that.

17 **A. I should have known what was in the envelope,
18 yes.**

19 Q. And you knew that there was nothing in that
20 envelope that had to do with anything that the defense
21 could have used to raise doubts concerning unusual
22 happenings or suspicious people in the neighborhood.
23 You knew that.

24 **A. That's a logical deduction.**

25 Q. Okay. And here's Bill Allison saying that --

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1 in this brief, that "Originally, Appellant was
2 skeptical of the trial court's ruling concerning the
3 contents of Sergeant Wood's report. Now, the Appellant
4 is skeptical that this second supplemental transcript
5 even contains all that the trial court ordered produced
6 for in camera inspection. And, if it does not,
7 Appellant is curious as to whether the trial court
8 looked specifically at the contents of the second
9 supplemental transcript, or was material deleted in the
10 at least four and one-half months during which it was
11 supposed to be under seal, but apparently was not. If
12 the material was not turned over to the trial court as
13 ordered, or it was tampered with in between the order
14 sealing it and the time it was actually sealed, a
15 possible violation of Brady versus Maryland has
16 occurred and this Court should abate this appeal
17 pending a full hearing in the trial court on this
18 matter."

19 You see that, right?

20 **A. I do.**

21 Q. And do you recall that Bill Allison filed a
22 motion to abate?

23 **A. I don't recall that, but I'm sure.**

24 Q. But the thrust of this statement in a motion
25 to abate is to say, "Look, why don't we all go back and

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1 look and see what's in that envelope and see if there
2 really is an inch of reports from Sergeant Wood about
3 unusual happenings or strange people in the
4 neighborhood that the defense could have used to raise
5 doubts?"

6 **A. Okay.**

7 Q. What was in the envelope is the thrust of what
8 he's asking, right?

9 MR. DIETZ: Madam Court Reporter, where
10 are we on time?

11 MR. SCHECK: They have to change the tape
12 in three minutes anyhow.

13 MR. DIETZ: I do have a question.

14 MR. SCHECK: Sure.

15 MR. DIETZ: Where are we on time?

16 MR. RALEY: Can we get an answer to the
17 last question? Was it answered?

18 MR. SCHECK: We'll have it read back and
19 then he'll answer it.

20 MR. DIETZ: That's fine. He can answer
21 that question.

22 THE REPORTER: Question: "What was in
23 the envelope is the thrust of what he's asking,
24 right?"

25 THE WITNESS: What was in the envelope is

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1 the thrust of what Bill Allison --

2 Q. (BY MR. SCHECK) The purpose of his request for
3 a motion to abate was to find out what's in that
4 envelope, right? Is it really an inch worth of
5 documents that could have been used by the defense?
6 What's in the envelope? He wants to know what's in the
7 envelope. That's what he's suggesting should be the
8 basis of a hearing and a motion to abate before
9 anything further is done on appeal with respect to this
10 issue.

11 **A. Okay.**

12 Q. Didn't you understand that to be what he was
13 asking?

14 **A. If he filed a motion to abate, I'm sure that's
15 what he was asking for.**

16 MR. RALEY: Let's change the tape. He's
17 about to run out.

18 VIDEOGRAPHER: It's 5:22. We're off the
19 record.

20 (Recess from 5:20 p.m. to 5:29 p.m.)

21 VIDEOGRAPHER: It's 5:30, beginning Tape
22 No. 4. We are on the record.

23 MR. DIETZ: And before we start, I
24 understand there's five minutes remaining on the record
25 on the six-hour clock. I have acceded to Mr. Scheck's

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1 request for an additional 30 minutes, or thereabouts,
2 to complete the deposition. And I've indicated that I
3 will agree to that, although in exceedance of that I
4 will terminate the deposition.

5 MR. SCHECK: Thank you very much,
6 Mr. Dietz.

7 Q. (BY MR. SCHECK) Turn your attention to page 65
8 of Mr. Allison's appellate brief. And he goes on --

9 **A. What number is that, Mr. Scheck?**

10 Q. I think that it was Exhibit -- part of Exhibit
11 18.

12 **A. Okay.**

13 Q. That's the brief. We're going to go through
14 his and then yours.

15 We're at page 65. And he writes at page
16 65 where we left off, "This is a very difficult legal
17 issue upon which to write. We are now asking this
18 Court" -- "this Court to review two issues under the
19 due process clause" -- "due process of law concept that
20 comes under the aegis of Brady versus Maryland. The
21 first is whether or not there is a reasonable
22 possibility that all of Sergeant Wood's reports were
23 turned over to Judge Lott for his review. If the Court
24 determines there is a possibility that all the reports
25 were not turned over as ordered, the appeal should be

69 (Pages 273 to 276)

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1 abated pursuant to the motion and the trial court
2 should be ordered to hold a full hearing on the
3 matter. Second, if this Court determines that all
4 materials ordered for the in camera inspection were
5 turned over for the trial court's inspection, the next
6 issue that must be addressed is whether or not they
7 contain exculpatory evidence the Appellant could have
8 used at trial."

9 You see that.

10 **A. I do.**

11 Q. All right. And so the first issue he's
12 raising is whether or not all of Sergeant Wood's
13 reports were turned over to Judge Lott for his review,
14 right?

15 **A. That's -- yes.**

16 Q. And the clear -- and you understood it when
17 you read this brief and as you read it now that what
18 he's saying there is that Mike Davis has said that
19 there was an inch worth at least of papers, right, that
20 had information which the defense could have used to
21 raise more doubt that involved unusual happenings and
22 unusual sightings of people in the neighborhood, right?

23 **A. Correct.**

24 Q. And so he's explicitly saying where is that --
25 there's a possibility that information that Davis is

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1 talking about and seems to have some knowledge of was
2 never disclosed to Judge Lott. You see that.

3 **A. Okay.**

4 Q. You see that, right?

5 **A. Yes.**

6 Q. And you understand that's his concern, right?

7 **A. It speaks for itself. I mean --**

8 Q. Right. And just prior to that, as we've
9 discussed, he's saying "And we should have a motion to
10 abate just to determine what was or was not in that
11 sealed envelope," right?

12 **A. Okay.**

13 Q. Now, why didn't you just agree to the motion
14 to abate and see whether or not there was any police
15 reports from Sergeant Woods that Mike Davis had seen
16 which could have raised doubts or recorded unusual
17 happenings or suspicious people in the neighborhood?
18 Why didn't you do that?

19 **A. Because my job was to file a response, which I
20 did.**

21 Q. But I thought your job was to do justice and
22 to find out whether there really was exculpatory
23 evidence that was being withheld from the defense.
24 Isn't that part of your job, too?

25 **A. At some point you get a brief and you respond**

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1 **to the brief.**

2 Q. But you were the District Attorney of
3 Williamson County. You weren't just some appellate
4 lawyer, right? Not to be any offense to appellate
5 lawyers.

6 **A. I was the appellate lawyer for the Williamson
7 County District Attorney's office.**

8 Q. You were the fellow that tried this case.

9 **A. And wrote the appeals.**

10 Q. And put a man in jail for the rest of his
11 life, a life sentence, right?

12 **A. The jury did that; but, yes, I was the
13 prosecutor.**

14 Q. You even gave a public statement that that
15 wasn't sufficient punishment as far as you were
16 concerned.

17 **A. I was shocked when I read that.**

18 Q. But you did say it, didn't you?

19 **A. I'm sure I did.**

20 Q. Right. And in fact, at the time of this
21 trial, you were pretty engaged in it, weren't you? You
22 really wanted to win.

23 **A. Once I make a decision that the evidence shows
24 somebody is guilty and we announce ready, that's my
25 job.**

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1 Q. And you really -- and in fairness to you,
2 Mr. Anderson, you believed, since the stomach contents
3 indicated, according to the evidence you tried to put
4 on, that the time of death was around 1:30 a.m., that
5 Michael Morton was the only person who could have
6 committed the crime, right?

7 **A. I can't remember the exact time, but it was
8 well before he went to work.**

9 Q. So you believed that he had to be the person
10 that committed this crime because of the time of death;
11 and all the defense was raising about the possibility
12 of a burglary and a third party entering the home after
13 Morton left for work, as far as you were concerned,
14 that was just red herrings that the defense was
15 raising, right? That was your mind-set.

16 **A. No, I don't think that's fair.**

17 Q. All right.

18 **A. I had the time of death.**

19 Q. Yes.

20 **A. Clearly an important factor. I had all the
21 rest of the circumstantial evidence.**

22 Q. Okay.

23 **A. They kind of supported each other.**

24 Q. To put it simply, you were convinced of
25 Mr. Morton's guilt.

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1 A. I wouldn't have announced ready if I wasn't.
2 Q. And you believed that any suggestion that
3 somebody had broken into the home and committed a
4 burglary and in the course of that killed Christine
5 Morton you believed had no factual basis, right?
6 A. I eventually got to that point, yes.
7 Q. Now, you know, here's a copy -- we'll probably
8 mark this Defendant next in order. Here's a copy of a
9 sworn statement that we took from Robert Bayardo, the
10 medical examiner who testified in this case on the 3rd
11 of October, 2011. Okay? You know who he is, don't
12 you?
13 A. Are you going to mark it?
14 MR. SCHECK: Yeah.
15 (Exhibit No. 21 marked)
16 Q. (BY MR. SCHECK) You remember Dr. Bayardo.
17 A. I do.
18 Q. You called him to testify as to the time of
19 death, right?
20 A. He testified to the time of death, yes.
21 Q. Have you reviewed your closing argument in
22 this case and his testimony in the course of preparing
23 for this deposition?
24 A. I have not.
25 Q. Have you reviewed your closing argument and

1 proved as the killer of his wife,' unquote. Do you see
2 that, sir?"
3 Answer, "Yes, I see it."
4 Question, "You never testified that
5 Michael was scientifically proved as the killer of his
6 wife, did you, sir?"
7 Answer, "I did not."
8 Question, "In fact, you affirmatively
9 told the jury that making such an estimate as to the
10 time of death was not scientific."
11 Answer, "Correct."
12 Do you see that?
13 A. Okay.
14 Q. All right. Now, as you sit here today, do you
15 think that you were so carried away in adversarial zeal
16 at the time of this trial that you might have misstated
17 Bayardo's testimony in telling the jury that he offered
18 his time of death as a scientific opinion when he had
19 specifically said that his estimate was not scientific?
20 A. Well, I wouldn't have any way of knowing what
21 he was going to say 25 years later. I know what he
22 said at the trial. I know I made a final argument.
23 That's what lawyers do.
24 Q. I understand. And all I'm pointing out to
25 you, sir, if it turns out that you -- if it turns out

1 his testimony in this case any time recently?
2 A. No.
3 Q. Now let me show you what he has testified to
4 after looking at his testimony and your closing
5 argument. All right? And I'm starting here on line 18
6 of page six. Question, "So would you agree that you
7 were trying to tell the jury when you were on the
8 witness stand that estimating time of death based
9 solely on analysis of stomach contents was not
10 scientific and was not precise?"
11 Answer, "That's what I kept repeating
12 over and over again."
13 A. Is this my direct or --
14 Q. No. This is Bayardo's sworn statement to us
15 recently. Okay?
16 A. Oh, I see.
17 Q. All right. And then question, "All right,
18 sir. Now, I want to show you some passages from the
19 rebuttal of the closing argument by the State in this
20 case" -- that's you, right? Your closing argument.
21 A. I'm sure.
22 Q. "Starting with the bottom of page 1144 and on
23 to the top of the next page. The State -- the
24 prosecutor said, quote, "That makes the time of death
25 3:15 and that makes Michael Morton scientifically

1 that you misstated -- in your closing argument you
2 overstated the -- Bayardo's testimony by telling the
3 jury that it was a scientific estimate on his part when
4 he was saying it's really not a scientific opinion as
5 far as he was concerned, if that happened, that's the
6 kind of thing that can happen when lawyers are engaged
7 in the adversarial process and they believe in their
8 cause and they get carried away, right?
9 A. That's what happens when we have an
10 adversarial proceeding and lawyers make a final
11 argument. There were three defense attorneys sitting
12 at the other table. If they thought it wasn't a
13 reasonable deduction from the evidence, all they had to
14 do was stand up and object. They didn't. If they had,
15 there would have been a ruling from the Court. And if
16 they didn't like that ruling, it would have been
17 reviewed upon appeal.
18 Q. But I'm only asking -- okay. I'm really just
19 trying to get to your state of mind.
20 A. Well, there's no direct here. Okay? So, you
21 know, it's all cross examination. It's been cross
22 examination for over six hours.
23 Q. You're being deposed.
24 A. I understand. But we want to make sure this
25 is a deposition.

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1 Q. If your lawyer wants to ask you questions on
2 redirect, he's free to do so.
3 **A. And that's the same thing that you're just**
4 **saying that I'm doing, you know, being adversarial.**
5 Q. Well, you know, I'll put it to you directly,
6 sir. Do you think you were being adversarial in trying
7 to keep from the defense and from production to Judge
8 Lott of the full set of police reports of Wood's that
9 you reviewed at the time of this trial? Is that
10 something you could have done by being adversarial?
11 **A. I don't think that's what happened.**
12 Q. All right. Let me ask you another question.
13 We just reviewed here Bill Allison's motion; and I
14 asked you, right, why didn't you go back -- why didn't
15 you agree to a motion to abate? Why didn't you go back
16 and try to find out if there was an inch of police
17 reports which could have raised doubts and had
18 descriptions of unusual happenings and suspicious
19 people in the neighborhood? Do you remember my asking
20 you that question?
21 **A. Yes.**
22 Q. And you said, "Well, I was just replying. I
23 was just filing a brief in reply," right? That was
24 your statement?
25 **A. That's correct. I filed a reply brief.**

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1 Q. Right. And you are telling us that you felt
2 no particular obligation to actually go back and see if
3 there were reports that -- as Davis described in front
4 of the jury and in front of the defense counsel.
5 **A. I'm not even sure how I could answer that.**
6 Q. Try.
7 **A. I don't know what happened 25 years ago.**
8 Q. Okay. Well, I submit to you, sir, isn't it
9 possible that -- well, let's put it -- withdrawn.
10 Okay. You then go on to say -- he goes
11 on to say "Appellant filed" -- and I'm here on page
12 65 -- "a 'Motion for Production of Evidence Favorable
13 to the Accused.' It specifically asked for impeachment
14 evidence, inconsistent statements, statements of
15 witnesses interviewed by the State which tended to show
16 the innocence of appellant. Making a specific request
17 is one of the requirements."
18 Right?
19 **A. Yes.**
20 Q. That's fair enough. And he did that, didn't
21 he, in his motion for Brady, production of favorable
22 evidence, right?
23 **A. He had specific requests that were not within**
24 **keeping of what Courts have held as Brady.**
25 Q. Well, whatever your interpretation of Brady at

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1 the time, you stood up and said in front of Judge
2 Lott -- when we were reviewing this transcript
3 together, when it was clear as day that they were
4 asking not just for Michael Morton's statements but for
5 all Brady material, you said clear as day "There's no
6 Brady material here," right? We reviewed that
7 together, didn't we?
8 **A. We reviewed that together.**
9 Q. And that's what you said, right?
10 **A. With the other caveats, yes.**
11 Q. And if you had known, I think we've reviewed,
12 certainly about the credit card and about -- the report
13 of the suspicious person in the neighborhood certainly
14 qualifies as something that it sounds like Mike Davis
15 was talking about in front of the jury, right? That
16 gray -- green van, suspicious person report from
17 Traylor that we've reviewed, right?
18 **A. We'd have to go back 25 years ago and ask Mike**
19 **Davis, but that's --**
20 Q. But I think you've told us here today that if
21 you had knowledge of that report, you would have turned
22 that over as Brady material, right? We've discussed
23 that today and you've agreed.
24 **A. Whatever I said earlier, yes.**
25 Q. Okay. And the same goes for the credit card

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1 and the cashed check, true?
2 **A. Whatever I said earlier.**
3 Q. Okay. Now, and I presume then that given your
4 statements about the nature of those items as Brady
5 material, that if you had known about them when you
6 were -- when this motion to abate was filed and when
7 this appeal was filed, you would have said, "Wait a
8 second, Mr. Allison. You're right. It turns out that
9 you were under the mistaken impression that all of
10 Sergeant Wood's reports were turned over. In fact,
11 here's some reports along the lines of what Mike Davis
12 mentioned in front of the jury and we've got to
13 disclose them. They're potentially exculpatory. Let's
14 see what the Courts decide."
15 **A. No, I filed a reply brief saying -- calling**
16 **him on his misstatements and pointing out what the**
17 **judge had actually ordered, which is what Judge Lott,**
18 **in fact, was satisfied with and what the appellate**
19 **court was satisfied with.**
20 Q. I appreciate you filed a brief outlining the
21 same position that you've taken here today, that you
22 felt that you were not obligated to turn over anything
23 other than the statements that Sergeant Wood recorded
24 of Michael Morton on August 13th and 14th when he made
25 statements to the police, right?

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1 **A. Correct. And a trial judge and three**
2 **appellate judges agreed.**

3 Q. No, that was how you read it. But I'm saying
4 right here, right, when it comes to Bill Allison's
5 motion to abate and his assertion that there might be
6 police reports that were never turned over to Judge
7 Lott, right, from Sergeant Wood, consistent with what
8 Mike Davis had talked about, right, you opposed that
9 motion. True?

10 **A. I filed a reply brief. I don't think I**
11 **specifically filed a response to his motion to abate.**

12 Q. You never went back and looked to see if there
13 were exculpatory reports in Sergeant Wood's file. You
14 never did that, did you?

15 **A. That, I don't know.**

16 Q. Well, if you had found the reports that we
17 have been discussing today about the credit card, about
18 the cashed check, about the suspicious person in the
19 neighborhood, you've agreed all those were exculpatory
20 and should have been turned over, right?

21 **A. Yeah. If those hadn't been run to ground and**
22 **determined to be nothing and I found out there were**
23 **some reports of this nature after the trial, I would**
24 **have been pretty darn upset if nobody had showed them**
25 **to me.**

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1 Q. And here you were on notice that the defense
2 lawyer was saying that Sergeant Wood had conducted an
3 extensive investigation and there must be more reports
4 and the assistant prosecutor on the case has said that
5 there are reports from Sergeant Wood that he saw that
6 the defense could have used to raise doubts. You
7 understand that that's what was going on in this
8 appeal, right?

9 **A. Right. But what we don't know is what Mike**
10 **Davis told me or what I knew back 25 years ago.**

11 Q. Right. And all I'm saying to you right now is
12 that it's your position, I take it, that if you had
13 seen the items that I put before you 25 years ago,
14 right, the -- about the credit card, about the cashed
15 check, about the suspicious person in the neighborhood
16 driving the green van who was seen behind the home, and
17 frankly about the Kirkpatrick interview with Don Woods,
18 those were all matters that you would have disclosed.

19 **A. Yeah, unless I knew something additional,**
20 **which is stuff we've gone into when those questions**
21 **were asked before.**

22 Q. And you know -- and you did not, to the best
23 of your recollection, bother to go back and look at
24 anything in this file and Sergeant Wood's reports when
25 Bill Allison filed this appeal.

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1 **A. I would have no knowledge of that 25 years**
2 **later.**

3 Q. Okay. Well, as a matter of routine --
4 withdrawn.

5 Let's go on, just to be clear about how
6 much notice you had. Bill Allison says at page 65 "At
7 the evidentiary pretrial hearing held on November 25th
8 and 26th, 1986, Chief Investigator Sergeant Wood did
9 not bring his reports to court with him. Sergeant Wood
10 testified that he did not have a detailed memory of the
11 events of the investigation, but that those details
12 would have been in the reports. He testified he had
13 both rough field notes that were handwritten and more
14 polished versions of those reports. He testified that
15 his notes were thorough and complete."

16 Do you see that?

17 **A. I'm sorry. I'm not tracking very well. I'm**
18 **sure it's --**

19 Q. Page sixty -- page 66.

20 **A. Okay. I've got the wrong page. That's why I**
21 **couldn't find it. Okay.**

22 Q. All right. I've just -- in other words, he
23 recounts that same set of testimony that we reviewed
24 where Woods talks about being unable to remember
25 anything without looking at his notes --

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1 **A. Right. We already went over that.**

2 Q. -- and the same page -- the same pages where
3 he said that he had conducted an extensive
4 investigation and talked to lots of people and had lots
5 of reports and notes, right?

6 **A. Correct.**

7 Q. So Bill Allison is saying, "Look, look at this
8 testimony that you and I have just reviewed. This guy
9 conducted a lengthy investigation and there's a --
10 there should be a lot in his notes."

11 You see that, right?

12 **A. I'm reading his brief, yes.**

13 Q. Okay. And then Bill Allison goes on -- turn
14 to page 67.

15 **A. Okay.**

16 Q. All right. He then says "It would seem that
17 these reports would have been sealed at the time
18 pursuant to the order of the Court, however, they were
19 not."

20 There's a second supplemental transcript
21 on June 30th, 1987, some four and a half months after
22 the end of this trial, exclamation point.

23 "In addition, the second supplemental
24 transcript appears to contain only a few pieces of
25 paper, folded over. This seems highly unlikely that

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1 both the field notes and the finished notes of the
2 Sheriff and Chief Investigator for a six week murder
3 investigation, would amount to so few pages. In
4 addition, Judge Lott asked an interesting, unprompted
5 question at the second pretrial hearing concerning one
6 of the reports. He asked, 'Is that the lengthy one?'
7 Although the prosecutor responded that it was not
8 lengthy, the judge had apparently thought that one of
9 the reports was long before the prosecutor's response
10 was given."

11 You see that.

12 **A. I do.**

13 Q. All right. Now, you address that in your
14 reply brief, do you not?

15 **A. I do.**

16 Q. And --

17 **A. Well, I'm assuming I do. What page are we
18 on?**

19 Q. Yes. Go to the last one.

20 **A. The last page?**

21 Q. Yes, the last page. Or the second to last
22 page.

23 **A. Okay. Ground 6.**

24 Q. And appellant's brief -- you put in your
25 asterisk, okay, "Appellant's Brief makes an implication

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1 which must be addressed. At page 67, appellant implies
2 that the trial court knew of a lengthy report prior to
3 the prosecution telling him about it."

4 "Before the court asked that question,
5 there was a discussion about the state furnishing
6 Gaskin offense reports to the defense the evening
7 before a witness testified in order to reduce delays
8 between direct and cross-examining of the state's
9 witnesses. The court wanted to know how many witnesses
10 the state had with lengthy reports. The state
11 responded that there were two such reports but pointed
12 out that only one had a lengthy report (more than one
13 page) which would have to be turned over under the
14 rules. Presumably this is what motivated the court's
15 question 'Is this the lengthy one?'"

16 You see that, right?

17 **A. Okay.**

18 Q. All right. So when we're talking about the
19 Gaskin rule, we're talking about the requirement of
20 turning over all the reports of a police witness that
21 might testify after the prosecution's -- after his
22 direct testimony, correct?

23 **A. Yes.**

24 Q. And at this point in time at the trial, you
25 had two -- you would have gathered together reports to

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1 comply with Gaskin for Boutwell, correct, because he
2 was going to be a witness?

3 **A. Any police officers who I was thinking about
4 calling, I would have had their reports.**

5 Q. Boutwell's would have been one report; and
6 Wood's, who you were anticipating calling, would have
7 been another, correct?

8 **A. I don't know that I was anticipating calling
9 him.**

10 Q. He was on your witness list.

11 **A. And I haven't seen a witness list. Somewhere
12 in the record there's a reference to it having 75
13 names, which I called 18, I believe.**

14 Q. If Boutwell's testimony at this deposition is
15 truthful that he only found out two hours before he
16 testified that he wasn't going to -- Wood. I'm sorry.
17 Withdrawn.

18 If Wood's testimony at his deposition is
19 to be credited, he remembers that he found out very
20 late in the game, he thinks two hours beforehand, that
21 he wasn't going to be a witness, right?

22 **A. You told me that. I haven't seen his
23 deposition.**

24 Q. Why don't we just talk about what the normal
25 routine would have been. The normal routine would have

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1 been that if he was going to be a witness and you
2 decided at the last minute not to call him as a
3 witness, right, you still would have gathered together
4 all of his reports.

5 **A. I would have taken out of my file the reports
6 I had.**

7 Q. Well, more than out of your file. When a
8 witness is going to be coming to testify, he would have
9 more than just all of his reports. Let's get the
10 subpoena. Let's get the subpoena.

11 Are you aware that Bill Allison filed a
12 subpoena of Sergeant Wood and served him with a
13 subpoena to produce all of his reports and records and
14 tape recordings prior to the trial?

15 **A. No.**

16 Q. I'm going to show you that document.

17 **A. Okay.**

18 Q. But while I'm getting that -- here it is.

19 MR. SCHECK: Let's mark this as Exhibit
20 next in order.

21 (Exhibit No. 22 marked)

22 Q. (BY MR. SCHECK) Take a look at that. Now, you
23 see that this is a subpoena that was served on
24 Boutwell, right? On February 6th, 1987, right? I
25 mean, sorry, served on Wood.

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1 **A. I can't tell who it's served on. It looks**
2 **like it's for three of them.**
3 Q. Well, for three of them, but including Don
4 Wood, right? This is not the complete subpoena.
5 There's another one.
6 **A. This is an application for a subpoena**
7 **probably. No. It says "Subpoena".**
8 Q. You know what it is? Turn it around to the
9 other side. Okay. I'm sorry. I can't -- my
10 apologies. I can't stand it when people do
11 double-sided copying. Right? It drives me crazy.
12 Look at the other side of Anderson 22 and
13 you'll see that there's also here the same thing, a
14 subpoena for Sergeant Wood. Do you see that?
15 **A. Okay.**
16 Q. All right. So there's one for Boutwell and
17 Wood and a third person. And there's one very
18 specifically to Wood. You see that, right?
19 **A. Correct.**
20 MR. RALEY: We'll need to ask the court
21 reporter to make copies of both sides when they do the
22 exhibits.
23 MR. SCHECK: Do both sides.
24 Q. (BY MR. SCHECK) And it says that "To bring to
25 court with him or her any and all offense reports, and

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1 investigative reports, and evidence including all rough
2 notes, handwritten notes, tape recordings prepared in
3 connection with the investigation into the homicide of
4 Christine Morton and the prosecution of Michael
5 Morton. Additionally, bring all notes, typed or
6 handwritten, of statements made by Michael Morton,
7 including any tape recordings of Michael Morton's
8 statements. Further, bring any notes or reports of any
9 statements made by any witness interviewed in
10 connection with the Christine Morton homicide. Also,
11 any and all notes of conversations with Holly
12 Gerskey."
13 You see that.
14 **A. I do.**
15 Q. And having received such a subpoena, Sergeant
16 Woods would have brought all those documents to court
17 with him, right? That's what he should have done.
18 Yes?
19 **A. I would suppose so.**
20 Q. And knowing what we know about this file, that
21 would have been a lengthy set of documents, would it
22 not?
23 **A. It would have been whatever is described here.**
24 Q. All right. Well, I can represent to you that
25 based on what we have from the sheriff's file, we

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1 can -- we'll proffer to you and your counsel a set of
2 papers that would constitute -- would be responsive to
3 that subpoena that would be certainly sizeable, at
4 least something like the one inch that Mike Davis
5 described in his statement in front of the jury.
6 Okay? Keep that in mind. All right?
7 **A. Okay.**
8 Q. Now, in terms of ordinary routine, if Sergeant
9 Wood showed up with his reports and documents
10 responsive to that subpoena, would you not have
11 reviewed those before deciding whether to put him on
12 the witness stand?
13 **A. I mean, I have no recollection of this**
14 **subpoena. I have no recollection of any of these**
15 **things.**
16 Q. I understand that. And what we're trying to
17 do is just discuss right now, as best you can, what the
18 ordinary routine would have been. And my question to
19 you very simply in terms of the ordinary routine, if
20 Woods -- upon receiving a subpoena and Woods brings his
21 reports -- we're not talking about what's in your
22 file. We're talking about what he brings. Wouldn't in
23 the ordinary course of your business you review all of
24 Wood's reports and notes that he might have brought
25 responsive to that subpoena? That's what you would

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1 have done, right?
2 **A. Not necessarily. And I have no recollection**
3 **obviously, but I don't believe that Judge Lott would**
4 **have ordered him to give over this information. I**
5 **mean, this is not a typical subpoena -- I mean, we**
6 **don't have subpoena duces tecums in criminal cases like**
7 **you would in a civil case.**
8 Q. Well, you knew --
9 **A. I mean, you can issue one, but it's --**
10 Q. Mr. Anderson, you knew that the defense had
11 been literally jumping up and down during the course of
12 the pretrial hearings that they did not have any
13 reports of this investigation. They only had
14 photographs and scientific reports. You reviewed that
15 with us, didn't you?
16 **A. Back in November. And then in the next two**
17 **months they got a sizeable amount of discovery.**
18 Q. You're telling me that -- withdrawn.
19 If, in fact, Wood came -- Wood is
20 subpoenaed, unusual as it might have been, and came
21 with documents responsive to this subpoena, if he came
22 with his offense reports in this case and his field
23 notes, right, is there any way in the world that you
24 would not have looked at them, if he showed up in court
25 with them, before deciding whether to put him on the

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1 stand?
 2 **A. There's no way I can answer that. I mean, I'm**
 3 **not getting to say my side. I'm just answering cross**
 4 **examination questions. So I cannot say that.**
 5 Q. As you're sitting here today, you're actually
 6 telling us that if a police officer shows up in court,
 7 who is described as the chief investigator in the case,
 8 with his file, his offense reports and field notes,
 9 right, you would not review them in the course of
 10 deciding whether or not to call him as a witness.
 11 **A. I imagine I had 20 or so witnesses sitting in**
 12 **a room at some point.**
 13 MR. RALEY: Nonresponsive.
 14 Q. (BY MR. SCHECK) But this wasn't just any old
 15 witness, was it?
 16 **A. This was a sergeant with the Sheriff's**
 17 **Department.**
 18 Q. This was the sergeant who was described as the
 19 chief investigator in the case, right?
 20 **A. And there's absolutely nothing in the record**
 21 **to show that he was anything other than somebody who**
 22 **wrote reports for Sheriff Boutwell.**
 23 Q. Well, there's nothing in the record except the
 24 sworn testimony that he gave under oath that you heard
 25 where he said that he talked to lots of people and

1 conducted an extensive investigation and he had lots of
 2 notes and reports. We reviewed that together, did we
 3 not?
 4 **A. And Sheriff Boutwell also testified that he,**
 5 **in fact, was the chief investigator.**
 6 Q. But you heard Woods on the stand in November.
 7 **A. I'm sure I did.**
 8 Q. We reviewed that. And so if he came to court
 9 with these extensive notes, if you really were
 10 interested in painstakingly investigating the case and
 11 trying to master hundreds of details or as much as you
 12 could, would it not have been incumbent upon you to
 13 review his reports and notes? Yes or no?
 14 **A. I was working nonstop on the case. I had been**
 15 **for two weeks. I have no idea who was doing what with**
 16 **any particular witness. And there's only so much a**
 17 **human being can do at any given time.**
 18 Q. I'm going to put it -- this will be the end.
 19 I'm going to put it to you directly and ask you whether
 20 or not this is true. Isn't it a fact, Mr. Anderson,
 21 that you did not put Sergeant Woods on the stand
 22 because after reviewing his extensive notes and
 23 reports, you did not want to disclose those to the
 24 defense because you thought they could use them to
 25 raise doubts in the case? Isn't that what happened?

1 **A. No, that is not -- I have no actual**
 2 **recollection. There were probably -- obviously I**
 3 **didn't need Sergeant Wood to testify, because he didn't**
 4 **testify.**
 5 Q. I'm not asking whether you needed him to
 6 testify. I'm asking --
 7 **A. I only call witnesses I need.**
 8 Q. All right. And you certainly didn't need
 9 Sergeant Wood to testify because then you would have
 10 had to disclose all of his reports and notes which
 11 contained, as we see, Brady material. Isn't that what
 12 happened?
 13 **A. No, sir.**
 14 MR. SCHECK: I think that we can stop
 15 right now.
 16 MR. DIETZ: Thank you, Mr. Scheck.
 17 VIDEOGRAPHER: It's 6:06. We're off the
 18 record.
 19 (Discussion off the record)
 20 MR. SCHECK: Mr. Dietz and I are now
 21 going to discuss what we previously had talked about
 22 with the judge on a conference call, that there is a
 23 line of questioning and a series of productions that
 24 are being made with respect to Mr. Anderson's
 25 conversations with the District Attorney's office. I

1 think we got up to August 23rd. And there's a whole
 2 line of questions that we'd like to ask him about
 3 that.
 4 An objection has been interposed and we
 5 agreed that we're going to take that up with the judge
 6 later to see if we can continue the deposition along
 7 those lines, probably not today, but -- because we're
 8 quitting.
 9 MR. DIETZ: Here's my thoughts. And this
 10 is not argumentative. But my perception is that many
 11 of the issues -- we spent the first hour and a half
 12 basically working off of that time frame from late
 13 August, mid to late August, until mid to late
 14 September, regarding communications that Mr. Anderson
 15 had with various individuals separate and apart from
 16 the District Attorney's office.
 17 And as the -- I'm relying upon the
 18 Court's order and the discovery agreement associated
 19 with the Court's order as to the limited purpose of
 20 this deposition. And if -- what the Court determines
 21 regarding a continuation of this deposition, I'm
 22 willing to have a discussion with the Court on that. I
 23 would like to have a copy of the transcript and the
 24 Court to have a copy of that transcript before such
 25 time as that consideration is made.

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

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1 MR. SCHECK: And if we can expedite the
 2 transcript, I think that would assist us in going
 3 through that line of examination. And the only thing
 4 that I would -- I don't know if I would even quarrel
 5 with it, but I think the record is going to reflect
 6 that we really didn't get past August 23rd.
 7 MR. DIETZ: It's whatever the record
 8 reflects. I mean, we'll --
 9 MR. SCHECK: Believe me, we didn't get
 10 past August 23rd.
 11 MR. DIETZ: The record will show what it
 12 shows. I agree with that.
 13 (Proceedings recessed at 6:07 p.m.)
 14
 15
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 24
 25

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1 CHANGES AND SIGNATURE
 2 WITNESS NAME: DATE OF DEPOSITION:
 3 KEN ANDERSON OCTOBER 31, 2011
 4
 5 PAGE LINE CHANGE REASON
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

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1 I, KEN ANDERSON, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted herein.
 4
 5
 6 _____
 7 KEN ANDERSON
 8 #96675
 9
 10 THE STATE OF TEXAS)
 11 COUNTY OF TRAVIS)
 12
 13 Before me, _____, on this day
 14 personally appeared KEN ANDERSON, known to me to be the
 15 person whose name is subscribed to the foregoing
 16 instrument and acknowledged to me that they executed
 17 the same for the purposes and consideration therein
 18 expressed.
 19
 20 Given under my hand and seal of office this
 21 _____ day of _____, A.D., 2011.
 22
 23 _____
 24 Notary Public in and for
 25 the State of Texas

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1 NO. 86-452-K26
 2 THE STATE OF TEXAS, IN THE DISTRICT COURT OF
 3 Plaintiff
 4 VS. WILLIAMSON COUNTY, TEXAS
 5 MICHAEL MORTON,
 6 Defendant 26TH JUDICIAL DISTRICT
 7 REPORTER'S CERTIFICATION
 8 DEPOSITION OF KEN ANDERSON
 9 OCTOBER 31, 2011
 10 I, SHERRI SANTMAN FISHER, Certified Shorthand
 11 Reporter in and for the State of Texas, hereby certify
 12 to the following:
 13 That the witness, KEN ANDERSON, was duly sworn
 14 by the officer and that the transcript of the oral
 15 deposition is a true record of the testimony given by
 16 the witness;
 17 That the deposition transcript was submitted
 18 on _____ to the witness or to the
 19 attorney for the witness for examination, signature,
 20 and return to me by _____;
 21 That the amount of time used by each party at
 22 the deposition is as follows:
 23 Barry Scheck - 6 hours, 31 minutes
 24 That pursuant to information given to the
 25 deposition officer at the time said testimony was
 taken, the following includes counsel for all parties

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

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1 of record:
2 Lindsey Roberts, Kristen Jernigan, Attorney
for Plaintiff (512/943-1234)
3 John W. Raley, Attorney for Defendant
(713/429-8050)
4 Barry Scheck, Attorney for Defendant
(212/364-5357)
5

6 I further certify that I am neither counsel
7 for, related to, nor employed by any of the parties or
8 attorneys in the action in which this proceeding was
9 taken, and further that I am not financially or
10 otherwise interested in the outcome of the action.

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

14 Certified to by me this 3rd day of November,
15 2011.
16
17
18

SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 12-31-11
Sunbelt Reporting & Litigation Services
Firm Registration No. 87
1016 La Posada Drive, Suite 294
Austin, Texas 78752
(512) 465-9100

22
23
24 FURTHER CERTIFICATION UNDER RULE 203 TRCP
25 The original deposition/errata sheet

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1 was/was not returned to the deposition officer on
2 _____;

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

6 If returned, the original deposition was
7 delivered to _____, Custodial
8 Attorney;

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

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

17 Certified to by me this ____ day of _____,
18 _____.
19
20
21

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