

# ORAL DEPOSITION OF MICHAEL PATRICK DAVIS

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<p style="text-align: center;">NO. 86-452-K26  <b>THE STATE OF TEXAS,</b>      <b>IN THE DISTRICT COURT OF</b>  Plaintiff,  <b>VS.                                WILLIAMSON COUNTY, TEXAS</b>  <b>MICHAEL MORTON,</b>  Defendant                      26TH JUDICIAL DISTRICT</p> <p style="text-align: center;"><b>ORAL DEPOSITION OF</b>  <b>MICHAEL PATRICK DAVIS</b>  <b>OCTOBER 29, 2011</b></p> <p>ORAL DEPOSITION OF MICHAEL PATRICK DAVIS, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on October 29, 2011, from 9:04 A.M. to 11:20 A.M. before Sherri Santman Fisher, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Mike Davis, 1717 North IH-35, Suite 300, Round Rock, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated in the record or attached hereto.</p>	<p style="text-align: center;">INDEX</p> <table style="width: 100%;"> <tr> <th style="width: 80%;">Page</th> <th style="width: 20%;"></th> </tr> <tr> <td>1</td> <td>Appearances</td> </tr> <tr> <td>2</td> <td>Examination by Mr. Goldstein</td> </tr> <tr> <td>3</td> <td>9:05 a.m. - 10:17 a.m.</td> </tr> <tr> <td>4</td> <td>10:27 a.m. - 11:08 a.m.</td> </tr> <tr> <td>5</td> <td>11:17 a.m. - 11:20 a.m.</td> </tr> <tr> <td>6</td> <td>Changes and Signature</td> </tr> <tr> <td>7</td> <td>Reporter's Certification</td> </tr> <tr> <td>8</td> <td>Reporter's Further Certification</td> </tr> </table> <p style="text-align: center;">EXHIBIT INDEX</p> <table style="width: 100%;"> <tr> <th style="width: 10%;">Number</th> <th style="width: 60%;">Description</th> <th style="width: 30%;">Page Marked</th> </tr> <tr> <td>1</td> <td>Excerpt From "Crime in Texas"</td> <td>11</td> </tr> <tr> <td>2</td> <td>Motion for Production of Evidence Favorable to the Accused</td> <td>23</td> </tr> <tr> <td>3</td> <td>Motion for Discovery and Inspection</td> <td>28</td> </tr> <tr> <td>4</td> <td>Motion for Production of Statements and Reports</td> <td>29</td> </tr> <tr> <td>5</td> <td>Judge's Criminal Docket, District Court, Williamson County, Texas</td> <td>34</td> </tr> <tr> <td>6</td> <td>Excerpt From Transcript</td> <td>36</td> </tr> <tr> <td>7</td> <td>Motion for New Trial</td> <td>36</td> </tr> <tr> <td>8</td> <td>Supplementary Offense Report</td> <td>46</td> </tr> <tr> <td>9</td> <td>Supplementary Offense Report</td> <td>50</td> </tr> <tr> <td>10</td> <td>Supplementary Offense Report</td> <td>54</td> </tr> <tr> <td>11</td> <td>Handwritten Note</td> <td>58</td> </tr> </table>	Page		1	Appearances	2	Examination by Mr. Goldstein	3	9:05 a.m. - 10:17 a.m.	4	10:27 a.m. - 11:08 a.m.	5	11:17 a.m. - 11:20 a.m.	6	Changes and Signature	7	Reporter's Certification	8	Reporter's Further Certification	Number	Description	Page Marked	1	Excerpt From "Crime in Texas"	11	2	Motion for Production of Evidence Favorable to the Accused	23	3	Motion for Discovery and Inspection	28	4	Motion for Production of Statements and Reports	29	5	Judge's Criminal Docket, District Court, Williamson County, Texas	34	6	Excerpt From Transcript	36	7	Motion for New Trial	36	8	Supplementary Offense Report	46	9	Supplementary Offense Report	50	10	Supplementary Offense Report	54	11	Handwritten Note	58
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<p style="text-align: center;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>FOR THE PLAINTIFF:</p> <p>Lindsey Roberts  First Assistant District Attorney  405 Martin Luther King Street, No. 1  Georgetown, Texas 78626</p> <p>FOR THE DEFENDANT:</p> <p>Gerald H. Goldstein  Goldstein, Goldstein &amp; Hilley  310 South St. Mary's Street, Suite 2900  San Antonio, Texas 78205  John W. Raley  Raley &amp; Bowick  1800 Augusta Drive, Suite 300  Houston, Texas 77057  (Via Internet)  Barry Scheck  Innocence Project  40 Worth Street, Suite 701  New York, New York 10013  (Via Internet)</p> <p>FOR THE WITNESS:</p> <p>Shawn W. Dick  The Dick Law Firm  215 West University Avenue  Georgetown, Texas 78626</p> <p>Also Present:  Rachel Pecker  Laura Popps</p>	<p style="text-align: center;">Page 4</p> <p style="text-align: center;">EXHIBIT INDEX (Continued)</p> <table style="width: 100%;"> <tr> <th style="width: 10%;">Number</th> <th style="width: 60%;">Description</th> <th style="width: 30%;">Page Marked</th> </tr> <tr> <td>12</td> <td>Letter Dated 9/27/86 to Don Wood From John B. Cross</td> <td>63</td> </tr> <tr> <td>13</td> <td>Amended Notice of Oral Deposition of Mike Davis and Subpoena Duces Tecum</td> <td>69</td> </tr> <tr> <td>14</td> <td>Mike Davis Production Michael Morton Case</td> <td>71</td> </tr> </table> <div style="text-align: right; margin-top: 20px;"> <p><b>FILED</b>  at 8 o'clock <i>AM</i>  <b>NOV - 8 2011</b>  <i>Lisa David</i>  District Clerk, Williamson Co., TX.</p> </div>	Number	Description	Page Marked	12	Letter Dated 9/27/86 to Don Wood From John B. Cross	63	13	Amended Notice of Oral Deposition of Mike Davis and Subpoena Duces Tecum	69	14	Mike Davis Production Michael Morton Case	71																																										
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1 (Witness sworn)  
2 MR. GOLDSTEIN: If we could have  
3 announcement of parties. My name is Gerry Goldstein.  
4 I am with the firm of Goldstein, Goldstein & Hilley.  
5 And we are here on behalf of the movant and we have  
6 scheduled this deposition. With me from the Innocence  
7 Project --

8 MS. PECKER: Rachel Pecker. I'm a law  
9 student at Cardozo Law School. I'm with the Innocence  
10 Project.

11 MR. DICK: And I'm Shawn Dick and I'm  
12 with my own firm, The Dick Law Firm, and I represent  
13 Mr. Davis.

14 MR. ROBERTS: Lindsey Roberts with the  
15 Williamson County DA's office.

16 MS. POPPS: Laura Popps with the State  
17 Bar.

18 MICHAEL PATRICK DAVIS,  
19 having been first duly sworn, testified as follows:

## EXAMINATION

20 BY MR. GOLDSTEIN:

21 Q. If we may, would you please state your name  
22 for the record, please, Mr. Davis?

23 A. My name is Michael Patrick Davis.

24 Q. And where do you currently reside?

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1 A. I live in Round Rock, Texas.

2 Q. And what's your current occupation?

3 A. I'm an attorney.

4 Q. And could you -- you're licensed here in the  
5 State of Texas?

6 A. Yes, sir.

7 Q. And do you have any certifications?

8 A. I am board certified in civil trial law and  
9 I'm board certified in criminal law.

10 Q. I want to be the first to congratulate you.

11 That's quite a feat to be certified in two different  
12 disciplines such as that.

13 And when were you certified in criminal  
14 law?

15 A. I would have to look on that plaque back  
16 there, but I want to say about '94, maybe '95,  
17 somewhere around there. But whatever that plaque says  
18 would be correct.

19 Q. And what -- could you describe your education?

20 A. I graduated from the University of Texas at El  
21 Paso in 1973 and from Texas Tech School of Law in 1976.

22 Q. And would you describe your -- you're in  
23 private practice today?

24 A. Yes, sir.

25 Q. And describe your prior employment history, if

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1 you would.

2 A. I assume my legal employment history, not  
3 going back to the Marines and all that. So the --

4 Q. I'm happy to hear about the Marines as well,  
5 Mr. Davis.

6 A. I started in the County Attorney's office.

7 Q. In Williamson County?

8 A. No. In Travis -- not Travis. In El Paso  
9 County --

10 Q. All right.

11 A. -- in 1977, before I was licensed. Okay? I  
12 stayed there about six years, became the first  
13 assistant in the County Attorney's office in El Paso.  
14 I became --

15 Q. I presume that was after you were licensed.

16 A. That was after I was licensed --

17 Q. Good.

18 A. -- a year or two. I also then became a -- the  
19 sheriff of El Paso County from 1982 to 1985. I did  
20 about three or four months of private practice after I  
21 returned to practice by popular demand. And I then  
22 came here to Williamson County in 1985 and was in the  
23 District Attorney's office until February of '87.

24 I then went with the firm down the hall  
25 of Wells, Walsh & Akins. I was there about two years

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1 and then we started a firm called Walsh, Akins &  
2 Davis. That went about 12 years. And there was about  
3 two months of a firm called -- what did they call  
4 that? Akins, Nowlin & Davis. And then I've been in  
5 private practice since then.

6 Q. And calling your attention, Mr. Davis, back to  
7 the period in 1986 to 1987, do you recall the  
8 investigation into the murder of Christine Morton?

9 A. I recall there was a murder and an  
10 investigation that was done.

11 Q. And you had arrived at the DA's office and  
12 began your employment there in 1985?

13 A. Yes, sir. I think it was April 15th, if I  
14 recall correctly. It was tax day.

15 Q. That's always a memorable day --

16 A. I remember that.

17 Q. -- for almost all of us.

18 And, Mr. Davis, you left the DA's office  
19 in what year?

20 A. In February of '87. It was a day or two after  
21 this trial ended.

22 Q. And so when the jury came back with their  
23 verdict, you left the District Attorney's office there  
24 in Williamson County shortly thereafter, within a day  
25 or two.

2 (Pages 5 to 8)

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<p>1 A. Within a day or two is my recollection. 2 Q. And you had begun your employment there within 3 a year before this murder occurred. 4 A. I began it in April of -- 5 Q. '85. 6 A. -- '85. I'm not sure exactly when this murder 7 occurred. 8 Q. Assuming for the purposes of the deposition 9 that it occurred on August 13th of '86, it would have 10 been -- 11 A. A little over a year. 12 Q. -- a little bit over a year. So this 13 investigation -- and it was ultimately prosecuted -- 14 Michael Morton, the husband, was tried and convicted on 15 February 17th of '87. You left the office shortly 16 thereafter. 17 A. Yes, sir. 18 Q. This was -- covered, for the most part, much 19 of your tenure there at the Williamson County District 20 Attorney's office. Is that a fair statement? 21 A. It covered several months of it; but I mean, 22 most of it -- figuring the time from August to 23 February, that would be about six months; and I was 24 there about 18 months. 25 Q. You were getting situated.</p>	<p>1 stranger had broken into the house while he was at work 2 after 5:00 a.m.? Is that a fair statement? 3 A. That -- that was one of the primary things. 4 The other thing that was -- to me, was Mr. Morton's 5 reaction when the sheriff answered the phone at his 6 house and came to his house. But certainly I felt, 7 based upon what I heard at the trial, that the medical 8 examiner had established a time of death. 9 Q. I'm going to have marked as exhibits excerpts 10 from a book entitled "Crime in Texas," if I may. 11 (Exhibit No. 1 marked) 12 Q. (BY MR. GOLDSTEIN) And this has been marked as 13 Deposition Exhibit Davis 1. And I tender Davis 1 to 14 you, Mr. Davis. And as you can see, I have tabbed and 15 highlighted certain portions of Davis 1. And are you 16 familiar with the fact that Ken Anderson wrote a book 17 entitled "Crime in Texas, Your Complete Guide to the 18 Criminal Justice System"? Were you aware of the fact 19 that he wrote such a book? 20 A. I was aware he wrote a book. I thought it was 21 something like "One Tough Texas Prosecutor" or 22 something like that. I didn't know the name of the 23 book. I didn't -- I didn't invest in the book. 24 Q. Well, I would ask you and call your attention 25 to the passages I've highlighted and tabbed and we'll</p>
Page 10	Page 12
<p>1 A. Yes, sir. Yes, sir. 2 Q. And the elected District Attorney there in 3 Williamson County was Ken Anderson? 4 A. At the time of this trial. 5 Q. And you worked for Mr. Anderson? 6 A. Yes, sir. 7 Q. And you worked directly under Mr. Anderson? 8 He was your boss? 9 A. Yes, sir. 10 Q. And you were working for him, directly under 11 him, during the trial of Michael Morton; is that 12 correct? 13 A. Yes, sir. 14 Q. And Mr. Anderson, is it fair to say, prided 15 himself in his attention to detail? 16 A. I would say that, yes, sir. 17 Q. He was kind of a hands-on kind of guy, wasn't 18 he? 19 A. A control guy, yes, sir. 20 Q. And is it a fair statement that you were 21 convinced by the time of the trial of Michael Morton 22 that Michael Morton was guilty primarily because of the 23 medical examiner's determination that the time of death 24 was approximately 1:00 a.m. and that this would 25 discount Michael Morton's theory of defense that some</p>	<p>1 take a moment while you take a look at those passages, 2 if you would. 3 And, Mr. Davis, if at any time you need 4 to take a break for any reason, please feel free to let 5 us know and we're happy to do that with you. 6 A. Yes, sir. 7 Q. Calling your attention to Davis Exhibit 1, the 8 book which is subtitled "Your Complete Guide to the 9 Criminal Justice System," I'd like to ask you some 10 questions based upon your experience working with Ken 11 Anderson both before and during the Michael Morton 12 trial. 13 If you notice in Chapter 1, the first 14 page there, he makes the statement, I believe in the 15 third paragraph, that "no sheriff and district attorney 16 had a closer working relationship than Jim and I had." 17 Was that a -- would that be a fair 18 statement based upon your knowledge of his relationship 19 with Sheriff Boutwell? 20 A. I know he had a close relationship with 21 Sheriff Boutwell. 22 Q. Did they have coffee together? 23 A. Yes, sir. 24 Q. Would you quarrel with the fact that Ken 25 Anderson states in his book that he spoke with Sheriff</p>

3 (Pages 9 to 12)

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1 Boutwell every day?

2 **A. I can't quarrel with that. I just -- I don't**  
3 **know that. But I can't quarrel with that, sir.**

4 Q. Would you quarrel with the statement made by  
5 Sheriff Boutwell that he and -- I'm sorry, by the --  
6 the statement by Ken Anderson in his book, the  
7 "Complete Guide to the Criminal Justice System," that  
8 he and Sheriff Boutwell met at the L&M Cafe on Austin  
9 Avenue in downtown Georgetown and that they would  
10 painstakingly piece together circumstantial murder  
11 cases? Would you quarrel with that?

12 **A. I have no way to quarrel with that. That was**  
13 **the only cafe in town at the time as I recall.**

14 Q. And did you ever see them there together?

15 **A. Yes, sir, I'm sure I did. I mean, I can't**  
16 **recall a specific instance, but that's where everybody**  
17 **went and had coffee and it was like a smoke-filled,**  
18 **horrible place.**

19 Q. Well, in that smoke-filled, horrible place, he  
20 describes the fact that he and the sheriff would  
21 painstakingly put together circumstantial murder  
22 cases. And calling your attention to Chapter 2, if you  
23 notice in the third paragraph there, he again talks  
24 about the fact that cases are won or lost by detailed,  
25 painstaking preparation done before the witness is

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1 sworn.

2 Was that your impression of Ken Anderson,  
3 that he was -- that he engaged in painstaking  
4 preparation?

5 **A. Yes, sir.**

6 Q. He was a detail kind of guy.

7 **A. He was a detail guy.**

8 Q. A hands-on kind of guy.

9 **A. Yes, sir.**

10 Q. He talks about "Someone has to master hundreds  
11 of details." Was that him?

12 **A. Yes, sir.**

13 Q. And he talks about that such preparation led  
14 him to produce crates at the City Grill. Does that  
15 ring a bell? Do you recall that --

16 **A. If you're talking about the meal that they --**  
17 **they went and got --**

18 Q. If you keep reading from that paragraph,  
19 you'll see that that's exactly what he is describing  
20 there, that is, the last meal that Christine Morton had  
21 before she was killed.

22 **A. I will tell you, Mr. Goldstein, the only thing**  
23 **I remember about that is that an investigator named**  
24 **Linda Riggins went and got the meal. I did not know**  
25 **that Ken Anderson went and got the meal.**

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1 Q. Well, in the book he takes credit for it.

2 **A. I don't think you see my name in there either.**

3 Q. No, I don't see your name in here. He doesn't  
4 mention the fact -- by the way, he was -- he was pretty  
5 much in control of what was going on.

6 **A. Oh, absolutely.**

7 Q. In terms of deciding what evidence to put on  
8 and what evidence not to put on, whose decision was  
9 that?

10 **A. That was Ken Anderson's.**

11 Q. In deciding what evidence was favorable to the  
12 prosecution, was that your job or Ken Anderson's?

13 **A. It wasn't my job. It would be his.**

14 Q. In deciding -- in deciding if there was  
15 favorable evidence to the defendant that was going to  
16 be produced to the defendant, did he make that decision  
17 or did you?

18 **A. He would have made that because he did the**  
19 **discovery except for some scientific stuff apparently**  
20 **that we went to DPS to do.**

21 Q. So in terms of making decisions as to what was  
22 Brady material, that is, favorable to the defense, that  
23 was his decision. Ken Anderson's decision.

24 **A. Yes, sir.**

25 Q. Is that correct?

Page 16

1 **A. Yes, sir.**

2 Q. And in terms of preparing and putting together  
3 the file that was produced for the judge in camera,  
4 that was Ken Anderson. You didn't have any part in  
5 that, did you?

6 **A. I don't believe I was even there based upon**  
7 **reading the transcript, that I was even present at**  
8 **those hearings.**

9 Q. And if you look at page 27 -- and not only not  
10 at the hearings. Did you -- did he assign you to go  
11 find all the Brady material and put it in the envelope  
12 to give to the judge?

13 **A. Not that I have any recollection of. And I**  
14 **think I would recall that, but I don't recall that.**

15 Q. I would hope you would if he had asked you to  
16 look for favorable evidence.

17 **A. Yes, sir.**

18 Q. All right. We're going to get to that. And  
19 the point is this was -- this was Ken Anderson's baby,  
20 the trial of Michael Morton, and you were helping him.

21 **A. Any murder case was Ken Anderson's baby.**

22 Q. All right. Looking at page 27, he states on  
23 page 27 that -- again, he says that trying cases wasn't  
24 brilliance. This is in the --

25 **A. I'm sorry.**

4 (Pages 13 to 16)

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<p>1 Q. -- fourth page down -- fourth paragraph down. 2 He says it's simple preparation and attention to 3 detail. 4 A. We're on page -- 5 Q. Page 27 at the top. You can see it up at the 6 top. And if you look about four paragraphs down, what 7 he says is it ain't brilliance; it's simple preparation 8 and attention to detail. 9 A. Is there more than one 27? 10 Q. No. It's right there. And I'll show you 11 where it is. Right here. 12 A. Oh, okay. I'm sorry. 13 Q. "It wasn't brilliance; it was simple 14 attention" -- "it was simple preparation and attention 15 to detail." 16 Do you recall -- is that the kind of guy 17 that Ken Anderson was? 18 A. I believe -- 19 Q. This is the fourth -- 20 A. Judge Anderson thought he was brilliant, but I 21 mean -- and I was stupid. But that's a whole different 22 story. But, yeah, he would -- I mean, he was a detail 23 guy. 24 Q. And this is the fourth time he said that in 25 his own book. You wouldn't disagree with that.</p>	<p>1 process requires any favorable evidence to be turned 2 over to the defense. Is that a fair statement? 3 Favorable or impeaching evidence, I think, are the 4 exact words. 5 A. I believe that is correct, sir. 6 Q. And it's not only evidence that's possessed 7 physically by the prosecutor, but any agent or 8 investigator of the prosecutor; is that correct? 9 A. I know that it is the prosecutor's duty to 10 seek that out. 11 Q. And he has the obligation to produce it, 12 whether it's admissible or not, if it's favorable or 13 impeaching. 14 A. I would believe so. 15 Q. He also describes on page 48 open-file 16 policies, does he not? 17 A. Yes, sir. 18 Q. And he suggests that under such open-file 19 policies that the disclosure of everything in the file 20 prevents later claims that someone was deprived of 21 their Brady rights, their due process rights to learn 22 favorable evidence, does he not? 23 A. Yes, sir. 24 Q. And at the time in 1986 and 1987 that Michael 25 Morton was being investigated and prosecuted and</p>
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<p>1 A. I don't disagree that he was a detail guy. 2 Q. And he also in that last paragraph says that 3 "The rules," that is, the rules in criminal cases, 4 "provide truthful and accurate information in court. 5 They protect basic liberties at the core of American 6 government. Law enforcement officials and prosecutors 7 must master these rules." 8 Is that the kind of -- I mean, did he 9 pride himself in knowing what the rules were? 10 A. Yes, sir. 11 Q. Calling attention to page 48, Ken Anderson 12 describes Brady motions, does he not? 13 A. Yes, sir. 14 Q. And he says that in Brady versus Maryland, 15 "The Supreme Court held that prosecutors must turn 16 over to the defense any evidence which indicates that a 17 defendant might not be guilty." 18 Is that correct? 19 A. That's what he says. 20 Q. And you're board certified in criminal 21 practice and we've known each other for some time, have 22 we not -- 23 A. Yes, sir. Yes, sir. 24 Q. -- Mr. Davis? As you know and based on your 25 training and experience, Brady provides that due</p>	<p>1 convicted of the crime of murdering his wife, did Ken 2 Anderson have such an open-file policy in the 3 Williamson County District Attorney's office? 4 A. No, sir, that was not the policy. 5 Q. You've had an opportunity to read the 6 transcript of the colloquy between the prosecutor and 7 Judge Lott, have you not? 8 A. Yes, sir. 9 Q. And it didn't seem like -- not only did he not 10 have an open-file policy. He was fighting, scrapping 11 for every little tidbit that the defense was being 12 allowed to obtain; is that correct? 13 A. Yes, sir. In reading it, I was -- I was 14 surprised at the things that were being fought over, 15 quite honestly. 16 Q. Including, for example, the defendant's own 17 statements. 18 A. I was shocked at that. 19 Q. Let me ask you, when you go back to, for 20 example, some of these discussions about detail, those 21 are on the same pages where he's talking about the 22 details that he -- that he prided himself in and the 23 same pages where he's describing the Michael Morton 24 prosecution and investigation, are they not? 25 A. Not having the whole book, Mr. Goldstein, I'll</p>

5 (Pages 17 to 20)

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# ORAL DEPOSITION OF MICHAEL PATRICK DAVIS

<p style="text-align: right;">Page 21</p> <p>1 take your word for it. I don't --</p> <p>2 Q. Well, let me --</p> <p>3 A. Yeah, if you'd point something out to me.</p> <p>4 Q. Sure. For example, in --</p> <p>5 A. I see on that page with Chapter 2 --</p> <p>6 Q. He starts off with the restaurant and the City</p> <p>7 Grill.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Then he talks about painstaking preparation.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And then he talks about going to the City</p> <p>12 Grill and the stomach contents of Christine Morton, the</p> <p>13 victim in this case; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. So he's describing all this painstaking detail</p> <p>16 in his book and he's relating that to, in fact, the</p> <p>17 case that you worked on with him, the Michael Morton</p> <p>18 case.</p> <p>19 A. In this book, he is, sir.</p> <p>20 Q. By the way, on page -- if you go back to page</p> <p>21 13 in the upper right-hand corner, you'll see where he</p> <p>22 says that in his complete guide to the criminal justice</p> <p>23 system that "We all have a stake in having the right</p> <p>24 people in these jobs."</p> <p>25 Is that correct?</p>	<p style="text-align: right;">Page 23</p> <p>1 third time I've done that today.</p> <p>2 MR. RALEY: It's okay.</p> <p>3 MR. GOLDSTEIN: You're a nice person to</p> <p>4 put up with that.</p> <p>5 MS. PECKER: You're taking after Barry.</p> <p>6 He likes calling me Rebecca.</p> <p>7 MR. GOLDSTEIN: Thank you for that kind</p> <p>8 line. If we can have the motion -- defendant's motion</p> <p>9 for production of evidence favorable to the accused</p> <p>10 marked for the purposes of this deposition.</p> <p>11 (Exhibit No. 2 marked)</p> <p>12 Q. (BY MR. GOLDSTEIN) Calling your attention to</p> <p>13 the motion, this is a motion filed by Bill Allison and</p> <p>14 Bill White, is it not? White and Allison, William</p> <p>15 Allison?</p> <p>16 A. Yes, sir. Yes, sir.</p> <p>17 Q. And this is filed on behalf of Michael Morton?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And in it they're asking for any favorable</p> <p>20 evidence which might tend to mitigate? Is that a fair</p> <p>21 statement?</p> <p>22 A. Yes, sir.</p> <p>23 Q. They say anything which is inconsistent with</p> <p>24 guilt?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 22</p> <p>1 A. That's what he says.</p> <p>2 Q. So as not to violate the public trust. Is</p> <p>3 that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And I presume he means people that will follow</p> <p>6 the rules. Is that correct?</p> <p>7 A. Yes, sir -- or I can't tell you what he means</p> <p>8 by that, but --</p> <p>9 Q. Well, he does talk about the rules.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And his pride in knowing what the rules are.</p> <p>12 A. Yes, sir.</p> <p>13 Q. I'd like to show you next the -- a copy of the</p> <p>14 motion for production of evidence favorable to the</p> <p>15 accused, which we normally refer to as a Brady motion.</p> <p>16 A. Yes, sir.</p> <p>17 MR. GOLDSTEIN: I'm testing Rebecca.</p> <p>18 MS. PECKER: Rachel.</p> <p>19 MR. GOLDSTEIN: Rachel is being tested</p> <p>20 even more than Rebecca.</p> <p>21 THE WITNESS: Never let them get you</p> <p>22 down.</p> <p>23 MR. GOLDSTEIN: I've got a wonderful</p> <p>24 employee who tries to make me smart every day named</p> <p>25 Rebecca. And I apologize, Rachel. That's only the</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And looking at page two, Paragraph B --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- they're asking for any written or recorded</p> <p>4 statement of any person which contains information</p> <p>5 favorable to the defendant?</p> <p>6 A. They are.</p> <p>7 Q. And if there was a transcript of someone</p> <p>8 stating that Michael Morton was not at the house at the</p> <p>9 time of the murder, would you consider that to be</p> <p>10 information favorable to the defendant?</p> <p>11 A. I would.</p> <p>12 Q. And it says the substance of any oral</p> <p>13 statement of any person which contains information</p> <p>14 favorable to the defendant. Would you consider a</p> <p>15 statement by someone that their grandchild, a third</p> <p>16 party, had told them that Michael Morton was not</p> <p>17 present at the time of the murder -- would you consider</p> <p>18 that to be favorable information?</p> <p>19 A. I would.</p> <p>20 Q. And where it asks for the names and addresses</p> <p>21 of all persons who have or may have information</p> <p>22 favorable to the defendant, would you consider that the</p> <p>23 names and addresses of those individuals should have</p> <p>24 been provided?</p> <p>25 A. Yes, sir.</p>

6 (Pages 21 to 24)

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1 Q. At Paragraph 1 on page two, it asks for any  
2 unexplained facts or details with regard to the case.  
3 Do you see that?

4 A. I see that, sir.

5 Q. If there was a credit card -- if there was  
6 information in the file that a credit card was  
7 cashed -- was utilized by the decedent two days after  
8 their death, would you consider that to be an  
9 unexplained fact, something that would be worthy of  
10 investigation? Would you --

11 A. I would consider it worthy of investigation,  
12 certainly.

13 Q. Would you as well consider it worthy of  
14 investigation if the file contained information that a  
15 check was cashed some nine days after the victim had  
16 been killed?

17 A. Yes, sir.

18 Q. And would you say that that was an item or  
19 document or paper?

20 A. A check certainly would be.

21 Q. And a note detailing a credit -- the use of a  
22 credit card identifying people that say "I can tell you  
23 the identity of the woman that used it," that might be  
24 an item, a statement, a paper as well, would it not?

25 A. I'm sorry, Mr. Goldstein. I didn't understand

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1 your question.

2 Q. If there was a note to an investigator in the  
3 case, the lead investigator, from someone passing on  
4 information that there is a check and the people who  
5 sent the check say that this wasn't the decedent's  
6 signature and another note passing on that a credit  
7 card was used, both after the death of the decedent,  
8 and the person that says that the credit card was used  
9 at their establishment says "I think I could identify  
10 the person who came in here and attempted to use that  
11 credit card," those would be items, statements, reports  
12 favorable to the defendant, would they not?

13 A. I believe those items would be favorable to  
14 the -- or I believe they should be disclosed, I guess.

15 Q. Sure. All right. Statements of all persons  
16 who have been interviewed by any agent of the State in  
17 connection with the subject matter of the cause, that  
18 would include an interview with a witness who says that  
19 someone told them that, in fact, Michael Morton was not  
20 present at the time of the murder? I'm looking now at  
21 Paragraph A -- II-A on page three, at the bottom of  
22 page three, that Paragraph A.

23 A. And what is the question? I've read that. I  
24 don't think that's what Brady says; but I mean, I've  
25 read that.

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1 Q. Right.

2 A. Okay.

3 Q. I'm just saying if you had a statement that --  
4 for example, take a look at page four at Paragraph C.

5 A. Okay.

6 Q. "The stenographic recording or transcription  
7 of any oral statement made by any person to an agent of  
8 the State in connection with the subject matter of this  
9 cause". Well, that wouldn't necessarily be Brady. If  
10 you had a stenographic or tape recording of a  
11 conversation with someone who said, "Look, the  
12 decedent's son tells me that the subject of your  
13 investigation wasn't at home at the time of the  
14 murder," that would qualify, would it not?

15 A. If you had a recording of a -- if I'm  
16 understanding your question, if you had a recording of  
17 the statement, that would -- that was exculpatory of  
18 Mr. Morton, that certainly would be something that  
19 should be disclosed.

20 Q. And that would include a recorded statement,  
21 for example, of a grandmother who says "My son who was  
22 present says that his father was not home."

23 A. If you had that recording, I think you would  
24 need to turn that over, sir.

25 Q. All right. The motion for discovery and

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1 inspection. I'm going to tender at this time a  
2 motion -- a motion for discovery and inspection in the  
3 Michael Morton case to be marked as an exhibit.

4 (Exhibit No. 3 marked)

5 Q. (BY MR. GOLDSTEIN) I show you what's been  
6 marked as Davis 3 --

7 A. Yes, sir.

8 Q. -- and call your attention to page two,  
9 Paragraph 4. And it says "Any portion of any statement  
10 referred to in paragraph three, above," which is any  
11 and all statements, whether written or oral, taken from  
12 any person, "which are favorable to the Defendant or  
13 are exculpatory of his participation in the alleged  
14 crime," including, but not limited to, the place the  
15 defendant -- that place the defendant in another  
16 location besides his home on August 13th.

17 A. I see that.

18 Q. That makes specific reference. If they had a  
19 statement, for example, from a grandmother saying that  
20 the son says daddy was not home when the killing  
21 occurred on August 13th, that would fall within that  
22 specific request, would it not?

23 A. It would.

24 Q. The motion for production of statements and  
25 reports, I would ask that that be marked for purposes

7 (Pages 25 to 28)

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1 of this deposition.

2 (Exhibit No. 4 marked)

3 Q. (BY MR. GOLDSTEIN) I may have misspoke,  
4 Mr. Davis. When I said "son," it was Ms. Rita  
5 Kirkpatrick's grandson, the son of the victim. But I  
6 believe you understood that, did you not?

7 A. That -- I understand the basic premise you all  
8 are going on here.

9 Q. All right. On the motion for production of  
10 statements -- and it cites Rule 614(a) of the Texas  
11 Rules of Criminal Evidence. These were rules that were  
12 in play back in 1986 and '87, were they not?

13 A. They were brand-new in '86 and '87 according  
14 to the transcript. I didn't realize that.

15 Q. Well, having served on the committee that  
16 unfortunately wrote those rules and I take no great  
17 pride in it, they are no longer in existence. You can  
18 take solace in that. This rule has been incorporated  
19 into the combined --

20 A. 611.

21 Q. -- Rules of Evidence in Rule 611, which, by  
22 the way, Mr. Davis picked the rule before I could  
23 advise him of it.

24 A. I apologize.

25 Q. No. By the way, I'm proud of your knowledge

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1 going to get it. And of course, who's the jury mad  
2 at? The defense lawyer.

3 Q. Sure.

4 A. And so I file these in advance. But it's my  
5 understanding here in Williamson County you've got to  
6 ask for it after they testify.

7 Q. In terms of clever tricks, do you have any  
8 personal knowledge or recollection of why Mr. Anderson,  
9 Ken Anderson, would decide not to call the chief lead  
10 investigator, Don Wood, and tell him two hours before  
11 trial that he was not going to be a witness?

12 A. I don't know that that happened.

13 Q. If it happened, do you have any knowledge --  
14 if Don Wood testified to such at his deposition, do you  
15 have any knowledge as to why Mr. Anderson would list  
16 Don Wood as a witness and advise him two hours before  
17 trial that he was not going to be called as a witness?

18 A. No, sir, I have no knowledge why he did that.

19 Q. If he did that, that would, in effect,  
20 preclude the production of his statements under then  
21 Rule 614(a). Is that a fair statement? If you don't  
22 call the witness, they don't bring you the statements.  
23 Is that a fair statement of the law?

24 A. Mr. Goldstein, in reading the transcript, I  
25 thought Mr. Wood testified. But that may have been at

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1 of that. It's important that we know these rules.  
2 Someone once told me that if you know three of these,  
3 you'll know two more than anyone else in the courtroom  
4 other than the bailiff.

5 If we can, the purpose of Rule 614 at the  
6 time, now Rule 611, is that once a witness has  
7 testified on direct, it requires the production of  
8 statements of that witness, does it not?

9 A. If the defense asks for it, is the way they  
10 interpret it. I think it requires them to produce it,  
11 but --

12 Q. I happen to agree with you. But the good news  
13 is Mr. Allison --

14 A. Asked, yes, sir.

15 Q. -- asked for it in Davis Exhibit No. 4, did he  
16 not?

17 A. He asked for that. But as I understand --  
18 well, can I explain the way that they work it here  
19 now?

20 Q. Sure.

21 A. You can file these motions. And I file these  
22 motions all the time because they used to have a  
23 prosecutor here whose favorite trick was -- I'd ask to  
24 see the motion. He didn't have the report in the  
25 courtroom, so they'd waste 15 minutes of the jury time

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1 the pretrial. Was that it?

2 Q. Exactly. And as a matter of fact, at the  
3 pretrial, if you remember from the transcript, he  
4 didn't bring the reports with him and there was some  
5 dispute about that.

6 A. Yeah. Yeah.

7 Q. And at the time that was a bone of  
8 contention. And that's how we got to the colloquy that  
9 you said you were surprised about, that they were  
10 fighting so much over every tidbit, including not even  
11 giving them the right to see their client's own  
12 statements.

13 A. Now, that's a shocker for me.

14 Q. It was a shocker to all of us, I think,  
15 Mr. Davis.

16 And in fact, after having read that  
17 transcript, it's your clear understanding that the  
18 judge -- Judge Lott's pretrial order said "Bring me all  
19 of Don Wood's reports and his field notes and Brady  
20 material and submit it to me and I'm going to review it  
21 in camera." Was that your understanding?

22 A. It's very confusing what was said there. But  
23 that's what I would take from it is "You're supposed to  
24 turn this over to me for review to be sealed."

25 Q. And --

8 (Pages 29 to 32)

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1 A. Again, I want to -- I have no recollection of  
2 being there and no record reflects that I was there.  
3 If somebody else tells me something different, I can't  
4 dispute it. But I don't recall being at those  
5 pretrials, Judge -- not judge. Mr. Goldstein.  
6 Q. The record does not reflect that you were  
7 present, at least from -- the parties that are listed  
8 on the transcript do not reflect that you were  
9 present. But you have had an opportunity to review  
10 that transcript of that colloquy with the judge and  
11 your understanding is that clearly he was asking them  
12 to produce the Brady material. Is that a fair  
13 statement?  
14 A. In the November case that's real clear. Then  
15 there's something in January or February, whenever that  
16 next one was, where it looks like he's talking about  
17 two pages. Or Mr. Anderson -- the judge asked him "Was  
18 it a lengthy report?" And I believe Mr. Anderson said  
19 "It's just a couple of pages."  
20 Q. Well, let me show you --  
21 A. And I'm not -- I'm just saying it was  
22 confusing to me. It was clear after the first one, but  
23 it was confusing after the second one.  
24 Q. The clear indication from the first one was  
25 that he was supposed to produce all of Wood's reports

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1 and all of the Brady material. Is that your  
2 understanding?  
3 A. That would be my understanding.  
4 Q. And what he tells the judge is there's only  
5 two or three pages; is that right?  
6 A. At the second hearing I think he tells him  
7 that.  
8 MR. GOLDSTEIN: If I may have this  
9 marked.  
10 (Exhibit No. 5 marked)  
11 Q. (BY MR. GOLDSTEIN) We have marked for  
12 identification purposes Davis 5, which appears to be  
13 the Court's criminal docket sheet. And I call your  
14 attention to page three of Davis 5 and ask you, the  
15 highlighted portion there, the judge states what? If  
16 you can state it into the record.  
17 A. Okay. The date is the February 6th, '87  
18 hearing. "Court to conduct in camera inspection of  
19 report of Officer Don Woods in connection with  
20 defendant's Brady motion."  
21 Q. And your understanding was that, as it was  
22 clear from the transcript, that in November the judge  
23 said "Give me all of Don Wood's reports and Brady  
24 material"; and when February came around and the  
25 dispute arose, Mr. Anderson tells him there's only two

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1 or three pages.  
2 A. That's what the record reflects.  
3 Q. All right. And at the time that Mr. Wood  
4 testified previously at the pretrial hearing that he  
5 does testify at and the dispute arises as to his  
6 failure to produce the reports, assume that Bill White  
7 had served Don Wood with a subpoena to produce all --  
8 and bring with him any and all reports and records  
9 relating to this case and he did not have them.  
10 That -- do you recall that dispute in the transcript?  
11 A. I recall there was a -- that they had  
12 subpoenaed -- in the transcript, they had subpoenaed  
13 all these witnesses and asked for their reports. I  
14 don't recall it specifically as to Mr. Wood's, but that  
15 may well have been the case. I just don't recall  
16 specifically what -- the big battle -- my recollection  
17 of reading the transcript right now, Mr. Goldstein, is  
18 the big battle was they wanted Ms. Gee's notes and  
19 reports that she had written. I don't recall them  
20 asking about that in the -- when Don Woods testified.  
21 But they may have and I may have just -- because  
22 I've -- I've read a lot of transcript here all of a  
23 sudden and have certainly not studied it as much as you  
24 all have.  
25 MR. GOLDSTEIN: If we may have a moment.

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1 THE WITNESS: Sure.  
2 MR. GOLDSTEIN: If I may have page 73 of  
3 that pretrial hearing marked for identification  
4 purposes.  
5 (Exhibit No. 6 marked)  
6 Q. (BY MR. GOLDSTEIN) I show you now what's been  
7 marked as Davis Exhibit 6 for identification purposes  
8 and ask if you can see on the highlighted portion that  
9 Don Wood, the investigator, said, "Well, I could recall  
10 that if I had my reports." And they asked him, "Do you  
11 have your reports with you?" And he says, "No, I do  
12 not."  
13 A. That is correct. That's what he said.  
14 Q. And you don't recall the subpoena requesting  
15 that he bring the records and reports with him.  
16 A. I do not recall it. I recall reading about it  
17 in the transcript recently.  
18 Q. And let me have marked for identification  
19 purposes the motion for new trial. And it was filed  
20 March 17th, 1987, which would appear to be after you  
21 had left the office. Is that a fair statement?  
22 A. That's a fair statement.  
23 (Exhibit No. 7 marked)  
24 Q. (BY MR. GOLDSTEIN) I've shown you what's been  
25 marked, I believe, as Davis Exhibit 7, which is a

9 (Pages 33 to 36)

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Page 37	<p>1 motion for new trial filed in the Morton case after you</p> <p>2 had departed the office. Is that correct?</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. May I ask you to review the highlighted</p> <p>5 portions? It's a one-and-a-half-page motion. Have you</p> <p>6 seen it before?</p> <p>7 <b>A. After this all arose, I've seen it. I did not</b></p> <p>8 <b>see it -- excuse me. I didn't see it at the time and</b></p> <p>9 <b>don't recall seeing it until I looked at it recently.</b></p> <p>10 Q. If you -- I'd like you to refresh your</p> <p>11 recollection. Just take a look at it real quick.</p> <p>12 <b>A. Yes, sir.</b></p> <p>13 Q. Calling your attention to the motion, the</p> <p>14 first complaint in the motion for new trial is that</p> <p>15 Sergeant Don Wood's reports were not produced. Is that</p> <p>16 correct?</p> <p>17 <b>A. That's what it says.</b></p> <p>18 Q. It says that the Court erred by not requiring</p> <p>19 the State to produce the offense reports and the</p> <p>20 supplemental offense reports by Sergeant Wood, the</p> <p>21 chief investigator in this case who was not called by</p> <p>22 the prosecution at trial; is that correct?</p> <p>23 <b>A. That's what it says, sir.</b></p> <p>24 Q. The second complaint -- and before we get into</p> <p>25 the details of it, let me just read it because it</p>	Page 39	<p>1 that if the Court does not take immediate steps to</p> <p>2 preserve these reports, they may be destroyed or</p> <p>3 removed. Is that a fair statement?</p> <p>4 <b>A. That's a fair statement.</b></p> <p>5 Q. You weren't in the office at the time.</p> <p>6 <b>A. I wasn't in the office.</b></p> <p>7 Q. Your state of mind at the conclusion of the</p> <p>8 trial, you all had successfully concluded a trial and</p> <p>9 convicted an individual, Mike Morton, of the killing of</p> <p>10 his wife. Is that a fair statement?</p> <p>11 <b>A. Absolutely.</b></p> <p>12 Q. And you felt at that point that you were</p> <p>13 correct in doing so.</p> <p>14 <b>A. Yes, sir. If I didn't feel I was correct, I</b></p> <p>15 <b>wouldn't participate.</b></p> <p>16 Q. And you had every reason to believe that based</p> <p>17 on what the medical examiner had said about the time of</p> <p>18 death based on the stomach contents.</p> <p>19 <b>A. Upon -- on all the circumstances, yes, sir.</b></p> <p>20 Q. And, you know --</p> <p>21 <b>A. That's the big -- that was a big issue.</b></p> <p>22 Q. That was the primary one. You said also that</p> <p>23 you were concerned with Mr. Morton's response when the</p> <p>24 sheriff contacted him. But the primary concern at</p> <p>25 least -- let me ask you. Was your primary concern the</p>
Page 38	<p>1 quotes you as saying something; and before I ask you</p> <p>2 about it, I'd like to ask you a couple of other</p> <p>3 questions. But he says on -- at the conclusion of the</p> <p>4 trial -- this is the second -- the last paragraph, but</p> <p>5 the second complaint.</p> <p>6 <b>A. Yes, sir.</b></p> <p>7 Q. At the conclusion of the trial on Tuesday,</p> <p>8 February 17th, 1987, Mr. Mike Davis -- that would be</p> <p>9 you; is that correct?</p> <p>10 <b>A. That would be me.</b></p> <p>11 Q. "One of the prosecutors told the jury that</p> <p>12 Sergeant Wood's reports were sizeable (he held up his</p> <p>13 hand and indicated about one inch between his fingers)</p> <p>14 and that if the defense had gotten them, we would have</p> <p>15 been able 'to raise even more doubt than we did'."</p> <p>16 That's what he alleges in his motion for</p> <p>17 new trial; is that correct?</p> <p>18 <b>A. That's what he alleges.</b></p> <p>19 Q. And he also says that the reports -- he</p> <p>20 believed there was some statement that the reports</p> <p>21 contain leads concerning unusual happenings or strange</p> <p>22 persons in the neighborhood at or about the time of the</p> <p>23 offense; is that correct?</p> <p>24 <b>A. That's what he says.</b></p> <p>25 Q. And his conclusion on the following page is</p>	Page 40	<p>1 medical examiner said the time of death was 1:00 a.m.,</p> <p>2 Mr. Morton would have been at the house for another</p> <p>3 five hours, four hours, before he left for work?</p> <p>4 <b>A. I would say that that -- placing him there at</b></p> <p>5 <b>that time was crucial to the --</b></p> <p>6 Q. It undercut his defense that someone else did</p> <p>7 it --</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. -- if he was at home.</p> <p>10 <b>A. I would agree with that.</b></p> <p>11 Q. Because he claimed, "Hey, look, she must have</p> <p>12 been killed -- she was fine when I left." And if she</p> <p>13 was fine when he left at 5:00 a.m., she couldn't have</p> <p>14 been killed at 1:00 a.m.</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. Secondly, you also, I think, believed that</p> <p>17 your boss, Ken Anderson, had produced whatever in the</p> <p>18 file -- all the Wood reports, for example. You assumed</p> <p>19 that, did you not?</p> <p>20 <b>A. Yes, sir.</b></p> <p>21 Q. And you assumed that he produced, for the</p> <p>22 judge to review in camera, anything that was potential</p> <p>23 Brady material.</p> <p>24 <b>A. I can't tell you as I sit here today,</b></p> <p>25 <b>Mr. Goldstein, that I even knew that that was a</b></p>

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1 requirement or anything because I really don't remember  
2 that. I would assume, if he was ordered to do so, he  
3 did so.

4 Q. Well, and your understanding of what the judge  
5 told him was "Bring me the Wood reports and I want to  
6 review them in camera."

7 A. My understanding of reading the transcript  
8 from the November hearings, that's what he told him.

9 Q. And you assumed that he had done what the  
10 judge told him to do.

11 A. Because Judge Lott wasn't one to trifle with  
12 that.

13 Q. And you assumed Mr. Anderson followed those  
14 instructions.

15 A. Yes, sir.

16 Q. And whether you believed or not there was  
17 anything in that file that demonstrated Michael Morton  
18 was innocent, on the other hand, the quotation from  
19 Bill Allison, does that, in essence, cover the  
20 substance of what you -- you do remember talking to the  
21 jury even if you don't remember the precise words you  
22 used, do you not, after the trial?

23 A. I always generally go talk to a jury and I  
24 have no reason to doubt that I did in this case.

25 Q. And do you have any reason to doubt that you

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1 Q. All right. And you had assumed that  
2 Mr. Anderson had turned over whatever those files were,  
3 did you not?

4 A. If he was required to do so, I would assume he  
5 did so.

6 Q. Well, you read the order --

7 A. In reading the transcript, I assume he did so.

8 Q. And after that motion was filed, did you  
9 remain in Williamson County? In other words, after you  
10 left the office and that motion was filed, were you  
11 still there in Williamson County? Not in the DA's  
12 office, but --

13 A. Okay. Yes, sir. I've always practiced in  
14 Williamson County since 1985.

15 Q. All right. And did -- after that motion was  
16 filed that stated what you stated to the jury, did Ken  
17 Anderson ever ask you about that motion or that  
18 quotation?

19 A. Not that I recall.

20 Q. Did he ever discuss that conversation with  
21 you?

22 A. Not that I recall.

23 Q. Did he ever assure you that "Not to worry. I  
24 produced everything in the Woods file"?

25 A. I didn't even know this was an issue. And

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1 talked to them about the Wood file and the potential  
2 that it had contained information that would have been  
3 helpful to the defense had they seen it? You're not  
4 quarreling with Mr. Allison's recollection.

5 A. I'm not quarreling that something was said  
6 because I just don't have any recollection of it. I'm  
7 not quarreling something was said. I certainly don't  
8 think it was said exactly like that. And --

9 Q. All right. But the substance you're not --  
10 you're not disagreeing that it at least adequately --  
11 the substance reflects the sentiment that you were  
12 expressing, that there was a thick file.

13 A. I can't say I expressed that or not because I  
14 just don't have a recollection of that. In other  
15 words, there's nothing --

16 Q. You can't dispute it.

17 A. I can't dispute it, sir.

18 Q. And let me ask you something. Do you remember  
19 the file? Do you remember it being a fairly thick  
20 file? Wood's file?

21 A. I do not remember the file, but I would think  
22 any major murder investigation was going to be more  
23 than an inch thick.

24 Q. More than two and a half pages.

25 A. Yeah, absolutely.

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1 Mr. Anderson and I are not friends, so I don't -- he  
2 never talked to me about it until recently.

3 Q. And in your recent conversation, what did he  
4 tell you?

5 A. I would have to -- when this came out about  
6 the DNA testing and they were starting to have those  
7 hearings, I was shocked to hear about this kid  
8 transcript or story or whatever it was that the kid had  
9 seen this because I did not recall that. And I still  
10 don't -- I know there was something about the kid, but  
11 I don't recall what it was.

12 And so I went to Judge Anderson's office  
13 and asked him, "Were you aware of that?" And Judge  
14 Anderson showed me a copy of the Morton opinion. He  
15 had his book there, reading it. And he says, "We  
16 turned it over." And I can't quote him exactly, but  
17 the essence was that was the sealed file that was  
18 turned over.

19 Q. And that was in relation to the statement --  
20 the transcript of the statement by Eric Morton, the  
21 three-and-a-half-year-old son.

22 A. That --

23 Q. That's what --

24 A. Yes, sir.

25 Q. That's what you were concerned about. That's

11 (Pages 41 to 44)

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1 what you were asking him about.  
2 **A. Yeah, because that would just be horrible if**  
3 **that didn't happen.**  
4 Q. And he told you that was turned over.  
5 **A. I don't know that he used the transcript -- or**  
6 **said transcript or the statement. He said --**  
7 Q. But that's what you were talking about.  
8 **A. That's what I was talking about. And what I**  
9 **got from that is the things had been turned over to the**  
10 **Court and the Court of Appeals had reviewed them.**  
11 Q. And you had -- in your mind, you had no doubt  
12 that you were talking to him about --  
13 **A. That's what I was talking about.**  
14 Q. -- the child's statement.  
15 **A. Yes, sir. Because at that time I didn't have**  
16 **any idea about any checks or credit cards.**  
17 Q. But you were concerned about the child's  
18 statement.  
19 **A. Absolutely.**  
20 Q. That was what you went there to talk to him  
21 about.  
22 **A. Yes, sir.**  
23 Q. You made that clear to him.  
24 **A. I believe I did.**  
25 Q. And I find you to be pretty clear in your

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1 answers to me.  
2 **A. Yes, sir.**  
3 Q. Were you equally as clear to Ken Anderson  
4 about you were concerned about this kid's statement?  
5 **A. I was asking him if he knew about it.**  
6 Q. And he said, "We turned it all over."  
7 **A. He implied or he stated that that was what**  
8 **was -- that those things had been turned over and**  
9 **that's where we were.**  
10 Q. Well, did you get the impression he implied it  
11 or he told you those things were turned over?  
12 **A. He showed me the opinion. The first thing he**  
13 **said was, "Did you try this case with me?" So he**  
14 **didn't even remember at that time. The second thing**  
15 **was, "Well, I'll just blame it all on you." But he**  
16 **laughed when he said that, so I hope that wasn't**  
17 **correct.**  
18 Q. Do you have any confidence that he won't?  
19 **A. I don't know. I -- no, I don't know.**  
20 Q. Let me -- let me ask you -- and if I may, I'm  
21 going to ask the results of investigation supplementary  
22 offense report be marked for identification.  
23 (Exhibit No. 8 marked)  
24 Q. (BY MR. GOLDSTEIN) I show you what's been  
25 marked as Davis Exhibit No. 8, which is entitled

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1 "Supplementary Offense Report" dated August 14th.  
2 1986. That would have been the day after -- assuming  
3 that Christine Morton was killed on August 13th of  
4 1986, this would have been the following day this  
5 report was filed; is that correct?  
6 **A. Yes, sir.**  
7 Q. And in the report -- this is a report from a  
8 police officer; is that correct?  
9 **A. It's a sheriff's deputy. And I don't know if**  
10 **that's Randy Traylor or his dad.**  
11 Q. It's No. 35, whichever one that is.  
12 **A. Whichever one that was.**  
13 Q. All right. And so one of the Traylor's, either  
14 Randy or his father, filed a report. Did you consider  
15 them to be honest and decent folks?  
16 **A. Oh, absolutely.**  
17 Q. Do you think Ken Anderson relied upon them in  
18 prosecuting other individuals? Did Ken Anderson's  
19 office rely upon them in prosecuting individuals in  
20 Williamson County?  
21 **A. I don't -- I don't know --**  
22 Q. Would you have relied upon them?  
23 **A. I would have relied upon them. They were --**  
24 **yeah, I can say I would have.**  
25 Q. All right. And calling your attention to the

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1 highlighted portion of this one-paragraph report, he  
2 reports that a subject from 13202 Adonis Drive advised  
3 this officer, the reporting officer, Officer Traylor,  
4 that this individual's wife and a Joni St. Martin, and  
5 lists her address as 13204 Adonis, had on several  
6 occasions observed a male park a green van on the  
7 street behind the Hazelhurst address.  
8 What address do you think he's speaking  
9 of there?  
10 **A. I don't know. I assume -- well, I don't want**  
11 **to assume. Is that the Morton address?**  
12 Q. Yes.  
13 **A. Okay. I don't remember that.**  
14 Q. And he says "Then the subject would get out  
15 and walk into the wooded area off the road," does he  
16 not?  
17 **A. That's what he says.**  
18 Q. And this would have been a report one day  
19 after the murder occurred of neighbors observing an  
20 individual, a stranger in a green van, who would park  
21 behind the victim's address and walk into a wooded area  
22 behind the house. Is that a fair statement?  
23 **A. It's a report of a -- dated the day after that**  
24 **and the person -- they're reporting a person going into**  
25 **that area, yes, sir.**

12 (Pages 45 to 48)

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<p>1 Q. And parking behind the Morton residence, the 2 Hazelnut residence. Is that correct? 3 A. Yes, sir. 4 Q. And that this individual would get out of his 5 van and then walk into a wooded area behind the house. 6 A. That's what it says, yes, sir, absolutely. 7 Q. Let me ask you if you recall, either at the 8 time or thereafter, a bloody bandana being found in an 9 area between the house and the woody area behind the 10 Hazelnut address where the victim resided. 11 A. Mr. Goldstein, I have a recollection of a 12 bandana being an issue at some point. And I don't -- I 13 can't tell you today when I became aware of that. But 14 I think there was an issue about it in the trial, but 15 I'm just not positive about those things. 16 Q. Do you know whether or not a bandana that was 17 found in approximately the area where the stranger was 18 observed parking behind the Hazelnut address and 19 walking towards the wooded area -- do you recall 20 whether the bandana found in that precise location was 21 ever tested for the victim's blood? 22 A. I don't know that or don't recall that. 23 Q. Do you know whether it was ever tested for 24 anyone's blood type? 25 A. I don't know or -- I mean, I don't recall</p>	<p>1 Rita Kirkpatrick, the grandmother, the mother of the 2 victim, talking about a conversation with her son, is 3 it not? 4 MS. PECKER: Grandson. 5 MR. GOLDSTEIN: Grandson. Excuse me. 6 THE WITNESS: That's what it purports to 7 be, yes, sir. 8 Q. (BY MR. GOLDSTEIN) And the grandmother asks 9 her grandson "Where was Daddy, Eric?" Is that correct 10 on the transcript? 11 A. That's what it says. 12 Q. Page three. And there's a parenthetical 13 phrase after that. It says "And this is where 14 Grandmother almost died," close parentheses. 15 A. That's what it says. 16 Q. I presume that would have been the preparer's 17 comment. 18 A. I don't know. 19 Q. Well, it's unlikely the grandmother would have 20 been talking about herself as the grandmother. 21 A. Yeah. 22 Q. It's a tape recording. He's transcribing it. 23 He says where -- that the grandmother says, about her 24 grandson, "Where was Daddy, Eric?" And she's talking 25 about at the time of the murder. And he then adds a</p>
Page 50	Page 52
<p>1 that. 2 MR. GOLDSTEIN: Let me ask that the -- an 3 eight-page supplementary offense report from 8-24-1986 4 be marked for identification purposes. 5 (Exhibit No. 9 marked) 6 Q. (BY MR. GOLDSTEIN) I show you what's been 7 marked as Davis Exhibit No. 9 and ask you to take a 8 look at what is -- purports to be a supplementary 9 offense report. And it says -- it's dated the day 10 after -- on August 24th, 1986, some 11 -- 10 days after 11 the alleged killing. And it describes that this is a 12 transcript of a taped conversation between Rita 13 Kirkpatrick and Sergeant Don Wood on 8-24-86. Is that 14 correct? 15 A. That's what it says, sir. 16 Q. Sergeant Don Wood was the lead investigator in 17 this murder prosecution of Michael Morton, was he not? 18 A. That's what my understanding is, yes, sir. 19 Q. And Rita Kirkpatrick was the mother of the 20 victim. 21 A. She was. 22 Q. And calling your attention to page three, 23 towards the bottom of the first complete paragraphs, 24 the statement is -- the question is asked "Where was 25 Daddy, Eric?" By the way, this is Ms. Kirkpatrick.</p>	<p>1 parenthetical phrase "And this is where Grandmother 2 almost died"; is that correct? 3 A. That's what it says, yes, sir. 4 Q. And then the grandmother asks Eric, the 5 grandson, the son of the victim, who was present at the 6 time of the murder, "Was Daddy there?" Is that 7 correct? 8 A. That's what it says. 9 Q. And the three-and-a-half-year-old says "No. 10 Mommie and Eric was there." 11 A. That's what it says. 12 Q. And then it reflects that -- again, although 13 not in parentheses, it reflects what the grandmother 14 then tells Sergeant Wood not about what her grandson 15 says; is that correct? 16 A. I'm sorry. I didn't understand that. 17 Q. Well, she says "So. Sergeant Wood, I would 18 get off the ... domestic thing now." 19 A. That's what it says. 20 Q. "And look for the monster". Is that correct? 21 A. Yes, sir. Yes, sir. 22 Q. Because the child is saying it was a monster, 23 Daddy wasn't home. Is that correct? 24 A. I assume he said that in there. 25 Q. And the grandmother says "I have no more</p>

13 (Pages 49 to 52)

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1 suspicions in my mind that Mike did it."

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

3 Q. In your estimation, that statement by the  
4 grandmother, there's no question in your mind that that  
5 would qualify to be produced when the judge asked for  
6 Brady material.

7 **A. It should have been produced.**

8 Q. In fact, it wouldn't even require a request,  
9 would it?

10 **A. I don't believe so. I think a prosecutor has  
11 an affirmative duty to produce exculpatory material.**

12 Q. And in this case, in fact, he had asked for  
13 all the Wood reports. This is a report transcribing a  
14 tape recording taken by Sergeant Wood. This would --  
15 in your mind, this would have clearly fallen within  
16 that judge's order.

17 **A. I believe it would.**

18 Q. And with respect to Brady material, would the  
19 fact that a stranger was seen, before the murder,  
20 parking behind the victim's residence and walking  
21 toward the wooded area where a bloody bandana was  
22 found -- wouldn't you consider that to be something  
23 that should be turned over to the defense?

24 **A. I believe it should.**

25 Q. And a green van that doesn't match any

1 **A. Yes, sir.**

2 Q. And in it, in the second paragraph, it  
3 reflects that Rita Kirkpatrick, the mother of the  
4 victim, tells Officer Wood, Sergeant Wood, the lead  
5 investigator in this case, that that morning, August  
6 24th, was the first time she had been alone with Eric  
7 since her daughter had been killed.

8 **A. That's what she says.**

9 Q. And she says that Eric came into her bedroom,  
10 closed the door behind him, and began to talk to her.

11 **A. That's what she says.**

12 Q. She then says in the transcript, which is a  
13 reduced transcript, that he says the monster was  
14 there.

15 **A. The blue -- the monster threw the blue  
16 suitcase? Is that what you're talking about? Okay.**

17 Q. Both times.

18 **A. Okay. Yes, sir.**

19 Q. And the blue suitcase -- there was a suitcase  
20 that was on top of the victim, was there not?

21 **A. There was.**

22 Q. So that would reflect at least that the child  
23 was accurately recounting at least some of the facts.

24 **A. Some of the facts, yes, sir.**

25 Q. And on the next page, when asked "Where was

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1 vehicles owned by the defendant, that -- that that  
2 individual was driving, that should have been turned  
3 over to the defense?

4 **A. In conjunction with the whole incident. If  
5 there was just a green van there, I don't know that  
6 that would. But in conjunction with Davis 8, that  
7 whole statement, I believe that should have been.**

8 Q. You couple the fact that this is a report of a  
9 stranger behind the house walking toward a wooded area,  
10 there's a bloody bandana found behind the house, and  
11 the three-and-a-half-year-old son says Daddy wasn't at  
12 home -- wouldn't that combine to tell you and say,  
13 "Hey, look, we've got some problems here. We better  
14 turn it over"?

15 **A. I would think the prosecutor should turn that  
16 over, sir.**

17 Q. Now, let me show you what's been marked as  
18 another supplemental report, a shorter report of that  
19 same transcribed tape-recorded conversation.

20 (Exhibit No. 10 marked)

21 Q. (BY MR. GOLDSTEIN) I show you what's been  
22 marked as Davis Exhibit 10, which purports to be a  
23 second supplementary offense report prepared on August  
24 24th, 1986, which recounts some of that same  
25 transcript, does it not?

1 Daddy, Eric? Was Daddy there," the response is what?

2 **A. "No, Mommy and Eric were there" -- "was  
3 there."**

4 Q. Now, this doesn't have any of the  
5 parenthetical phrases about "I almost died" when  
6 Grandmother said that her grandson, who was present at  
7 the time of the killing, indicated that her son was not  
8 there, does it?

9 **A. I don't see any, sir.**

10 Q. And it doesn't reflect that the grandmother  
11 said "I no longer have any suspicions about my  
12 son-in-law. You need to start looking for the  
13 monster." That's left out as well, is it not?

14 **A. I do not see that in Davis Exhibit 10, sir.**

15 Q. Do you know why Sergeant Wood would prepare  
16 two reports the same day relating to the tape-recorded  
17 conversation?

18 **A. I have no clue.**

19 Q. Did he have a practice or a habit of sending  
20 redacted or shortened versions of reports to  
21 Mr. Anderson or to Sheriff Boutwell?

22 **A. I don't know that.**

23 Q. You didn't get these redacted reports.

24 **A. I don't recall ever seeing these, sir.**

25 Q. Let me ask you, on Defendant -- on Davis

14 (Pages 53 to 56)

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1 Exhibit No. 9 -- it's No. 10. Excuse me. On the  
2 bottom of the Sergeant Wood offense report dated August  
3 24th, 1986, it has the typewritten statement "Sergeant  
4 Wood No. 8". Is that his number, badge number?

5 **A. I really don't know that.**

6 Q. Would that be typical of the way they would  
7 describe themselves?

8 **A. That's the way they would describe themselves.**

9 Q. And who does it show that copies of this  
10 redacted transcript went to?

11 **A. It shows "Sheriff, CID, Wood, Bunte, Elliott,  
12 DA".**

13 Q. And by DA, you assume that's the District  
14 Attorney's office?

15 **A. Yes, sir.**

16 Q. Would you be surprised if this particular item  
17 was -- that is, this redacted report or a transcript of  
18 Eric Morton, the son of the victim, speaking to his  
19 grandmother, Rita Kirkpatrick, was located in the  
20 District Attorney's file?

21 **A. Not since I've seen the District Attorney's  
22 file. I know it's in there.**

23 Q. All right. Let me -- let me call your  
24 attention next to --

25 **A. Do you need a copy made?**

1 materials, that would have been Ken Anderson, not you?  
2 Is that a fair statement?

3 **A. I would believe that would be correct. I have  
4 no independent recollection of that; but if he was the  
5 one handling it, he would have put it together.**

6 Q. He was the one handling this case, was he not?

7 **A. He was the one handling this case and I wasn't  
8 his secretary.**

9 Q. And my -- it's a fair statement that in your  
10 experience with him, the person that would have made  
11 those decisions would have been who?

12 **A. Ken Anderson.**

13 Q. And as far as you recall, he made the  
14 decisions such as what evidence to produce, what  
15 evidence to produce to the judge himself, without  
16 consulting with you.

17 **A. I have no recollection of that whole issue.**

18 Q. Do you ever remember him asking you anything  
19 about what he should produce to Judge Lott?

20 **A. Oh, no.**

21 Q. And you're laughing. That's not the kind of  
22 thing that Ken Anderson would have done, is it?

23 **A. No, sir.**

24 Q. He prepared that file as far as you can  
25 remember, did he not?

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1 Q. Could we?

2 **A. Absolutely.**

3 MR. GOLDSTEIN: You're a good man.  
4 Can we take a five-minute break and that  
5 way I can go to the bathroom?

6 (Recess from 10:17 a.m. to 10:27 a.m.)  
7 (Exhibit No. 11 marked)

8 Q. (BY MR. GOLDSTEIN) If I may proceed, I have  
9 had marked as Davis Exhibit 11 what appears to be a  
10 note from a Jill to a Don and another copy of that with  
11 some handwriting on it and I'm going to ask you several  
12 questions about that.

13 But before I do, let me clear up two  
14 things that I think our able court reporter has noticed  
15 about my lack of attention to detail.

16 First, with respect to the Morton  
17 address, it is Hazelhurst, not Hazelnut. And you're  
18 understanding when I used the word "Hazelnut" as the  
19 address that I was speaking about the Hazelhurst  
20 address of the Morton family. Is that a fair  
21 statement?

22 **A. Yes, sir. That's what we were talking about.**

23 Q. And is it also a fair statement to say that in  
24 terms of who would have put the package together of  
25 materials to be provided to Judge Lott, the Brady

1 **A. He would be in charge of his file, yes, sir.**

2 Q. And with respect to Defendant -- sorry, Davis  
3 Exhibit -- and you're not.

4 **A. Let's be careful.**

5 Q. That was not a Freudian slip. That's because  
6 I've never represented anything other than defendants  
7 and you've got an able lawyer dealing with you and I'm  
8 here and we're here on behalf of a former defendant,  
9 Michael Morton.

10 But the Davis Exhibit No. 11 appears to  
11 be a note from a Jill to a Don dated August 15th,  
12 1986. And this would have been a couple of days after  
13 the murder, would it not?

14 **A. Yes, sir.**

15 Q. And would your -- do you remember a woman  
16 named Jill?

17 **A. There was a Jill at the Sheriff's Department  
18 at a later time that was the sheriff's secretary as I  
19 recall.**

20 Q. And assuming this was a secretary, somebody is  
21 sending a note which was in the sheriff's file, in Don  
22 Wood's file, to a Don. Would you assume that was Don  
23 Wood?

24 **A. Well, my lawyer tells me if I assume, I'll be  
25 in trouble.**

15 (Pages 57 to 60)

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<p>1 Q. All right.</p> <p>2 A. <b>But I suspect that it is to Don Wood.</b></p> <p>3 Q. All right. And it says "Bill De La Verne" and</p> <p>4 it says "San A-n-t," period; is that correct?</p> <p>5 A. <b>Yes, sir.</b></p> <p>6 Q. You assume that's San Antonio?</p> <p>7 A. <b>We can assume that.</b></p> <p>8 Q. "Has recovered credit card at Jewel Box". Is</p> <p>9 that correct?</p> <p>10 A. <b>Yes, sir.</b></p> <p>11 Q. "And Larry Miller can ID the woman."</p> <p>12 A. <b>Yes, sir.</b></p> <p>13 Q. And it says "\$1,000 in fraud on her." Is that</p> <p>14 correct?</p> <p>15 A. <b>Yes, sir.</b></p> <p>16 Q. And he says "He'll come to Austin and do it</p> <p>17 all if you like or mail it to you. Just let me</p> <p>18 know" -- "Just let him know," correct?</p> <p>19 A. <b>That's correct.</b></p> <p>20 Q. And it has a telephone number to call.</p> <p>21 A. <b>That's correct.</b></p> <p>22 Q. And on the second page of Davis Exhibit No. 11</p> <p>23 is a statement "Green Acres Mobile Home Park" and it</p> <p>24 has directions on how to get there; is that correct?</p> <p>25 A. <b>It looks like that would be.</b></p>	<p>1 the court reporter correct my misnomer of Hazelnut to</p> <p>2 Hazelhurst?</p> <p>3 THE WITNESS: I've got no problem with</p> <p>4 that.</p> <p>5 MR. DICK: That's no problem.</p> <p>6 MR. GOLDSTEIN: Thank you. That's just</p> <p>7 to keep people from laughing at me.</p> <p>8 (Discussion off the record)</p> <p>9 (Exhibit No. 12 marked)</p> <p>10 Q. (BY MR. GOLDSTEIN) I show you what's been</p> <p>11 marked as Davis Exhibit 12 and ask you to review those</p> <p>12 documents. It's a cumulative exhibit, if you could</p> <p>13 take the time to look, of approximately 10 pages.</p> <p>14 Let's start, if you would, Mr. Davis,</p> <p>15 with the last page of Davis Exhibit 12.</p> <p>16 A. <b>Yes, sir.</b></p> <p>17 Q. That appears to be a typewritten memo of some</p> <p>18 sort to an individual by the name of Don; is that</p> <p>19 correct?</p> <p>20 A. <b>It appears to be.</b></p> <p>21 Q. And would, again, it be an appropriate</p> <p>22 assumption that that is Don Wood, the lead investigator</p> <p>23 in the Morton murder case?</p> <p>24 A. <b>Since there's a Bates stamp down here with MM,</b></p> <p>25 <b>which I assume is Michael Morton, I would assume it was</b></p>
Page 62	Page 64
<p>1 Q. Do you recognize that handwriting?</p> <p>2 A. <b>No, sir.</b></p> <p>3 Q. Would you recognize Don Wood's handwriting?</p> <p>4 A. <b>No, sir.</b></p> <p>5 Q. And with respect to this note, were you aware</p> <p>6 that a credit card was, in fact, used at the Jewel Box,</p> <p>7 the credit card belonging to the deceased, two days</p> <p>8 after she was killed?</p> <p>9 A. <b>I have no recollection of being aware of that</b></p> <p>10 <b>at the time. I am now, having looked at the files.</b></p> <p>11 <b>But I --</b></p> <p>12 Q. And you've learned that since that time; is</p> <p>13 that correct?</p> <p>14 A. <b>Just recently.</b></p> <p>15 Q. Having looked through the files.</p> <p>16 A. <b>Yes, sir.</b></p> <p>17 Q. All right.</p> <p>18 A. <b>Well, I can't say that because I don't recall</b></p> <p>19 <b>seeing this actually in the file that I saw. It may</b></p> <p>20 <b>have been, but I do not recall it. I've read it in the</b></p> <p>21 <b>paper.</b></p> <p>22 MR. GOLDSTEIN: Let me have marked for</p> <p>23 identification purposes Davis Exhibit 12. It may take</p> <p>24 a second to do this.</p> <p>25 If able counsel can agree, may we have</p>	<p>1 <b>to Mr. Wood.</b></p> <p>2 Q. And it says, does it not, "Don, right after</p> <p>3 lunch, I took this call from a Brian Kelly who is a</p> <p>4 police officer from Phoenix, Arizona"?</p> <p>5 A. <b>Yes, sir, it says that.</b></p> <p>6 Q. And it says "This is in reference to the</p> <p>7 Morton case."</p> <p>8 A. <b>Yes, sir.</b></p> <p>9 Q. Lists his telephone number.</p> <p>10 A. <b>Yes, sir.</b></p> <p>11 Q. And then it says that "Kelly," that is, Brian</p> <p>12 Kelly, "is a relative of Chris Morton"; is that</p> <p>13 correct?</p> <p>14 A. <b>That's correct.</b></p> <p>15 Q. By marriage.</p> <p>16 A. <b>Yes, sir.</b></p> <p>17 Q. And that his father-in-law is a Mr. John</p> <p>18 B. Cross from Aurora, Colorado.</p> <p>19 A. <b>That's correct.</b></p> <p>20 Q. It reflects, does it not, that Mr. Cross and</p> <p>21 his wife had sent Christine Morton a check which was</p> <p>22 made out to her but it was for the benefit of the --</p> <p>23 her son, Eric? Is that correct?</p> <p>24 A. <b>Yes, sir.</b></p> <p>25 Q. And there is a name endorsed, at least</p>

16 (Pages 61 to 64)

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<p>1 according to this memo, on the back of the check that</p> <p>2 it says it does not appear to be that of Christine</p> <p>3 Morton; is that correct?</p> <p>4 <b>A. That is correct.</b></p> <p>5 Q. And it says "It might be interesting to know</p> <p>6 that they seem to think that Chris" -- that's Chris</p> <p>7 Morton, I presume -- "purse was stolen"; is that</p> <p>8 correct?</p> <p>9 <b>A. That's what it says.</b></p> <p>10 Q. They then say "Of course, we know better."</p> <p>11 <b>A. Yeah.</b></p> <p>12 Q. Whether they think they know better or not,</p> <p>13 the idea that there was a credit card utilized two days</p> <p>14 after Christine's murder and a check cashed, both in</p> <p>15 San Antonio, nine days after the victim was murdered</p> <p>16 with a signature purporting to be hers, this is</p> <p>17 potentially Brady material, is it not?</p> <p>18 <b>A. It is. And somebody should have certainly</b></p> <p>19 <b>followed up on that.</b></p> <p>20 Q. And do you know whether anyone ever did any</p> <p>21 handwriting analysis on the handwriting on that -- on</p> <p>22 the reverse of that check?</p> <p>23 <b>A. Until recently, I was never aware, that I</b></p> <p>24 <b>recall, of any check; and I don't know if anybody has</b></p> <p>25 <b>done handwriting, sir.</b></p>	<p>1 is it not?</p> <p>2 <b>A. There appears -- yes, sir, it looks like it's</b></p> <p>3 <b>the reverse side of a check.</b></p> <p>4 Q. And it looks like someone is trying to deposit</p> <p>5 the check; is that correct?</p> <p>6 <b>A. Yes, sir, "For Deposit Only".</b></p> <p>7 Q. Do you recognize that handwriting on the</p> <p>8 check?</p> <p>9 <b>A. No, sir, I sure don't.</b></p> <p>10 Q. Calling your attention to several pages down,</p> <p>11 there are some notes relating to Brian Kelly in</p> <p>12 Phoenix, Arizona, with the initials PD?</p> <p>13 <b>A. I see that on MM004823.</b></p> <p>14 Q. You've got it. And PD would be police</p> <p>15 department in common parlance?</p> <p>16 <b>A. Sure.</b></p> <p>17 Q. And it shows "Chris Morton relative" and it</p> <p>18 says "father"; is that correct?</p> <p>19 <b>A. It says --</b></p> <p>20 <b>Q. "A father"?</b></p> <p>21 <b>A. "Chris Morton relative a father".</b></p> <p>22 Q. And it shows the name John B. Cross in Aurora,</p> <p>23 Colorado, and has a 303, which may be his area code; is</p> <p>24 that correct?</p> <p>25 <b>A. It has -- that's what it says.</b></p>
Page 66	Page 68
<p>1 Q. And the first page of Defendant's Exhibit 12</p> <p>2 is -- it says "check" on it. And it's something</p> <p>3 addressed -- it's addressed to Sergeant Don Wood, is it</p> <p>4 not?</p> <p>5 <b>A. It is.</b></p> <p>6 Q. And if one looks inside, the following page,</p> <p>7 there's a copy of a check, is there not?</p> <p>8 <b>A. There's a copy of a check in there, yes, sir.</b></p> <p>9 Q. And there's a note from a John Cross to</p> <p>10 Sergeant Don Wood, is there not?</p> <p>11 <b>A. John B. Cross signed it. And it says -- yes,</b></p> <p>12 <b>sir, it does say "Attention: Sergeant Don Wood".</b></p> <p>13 Q. And it talks about the fact that it appears</p> <p>14 Sergeant Wood had requested Mr. Cross to send a copy of</p> <p>15 the check which is attached to this note from September</p> <p>16 27th, 1986; is that correct?</p> <p>17 <b>A. It says "Per your request yesterday," they're</b></p> <p>18 <b>sending the check.</b></p> <p>19 Q. And then the following page is a series of</p> <p>20 checks -- or at least a check that at least match -- it</p> <p>21 has Michael or Chris Morton, the accounts of theirs; is</p> <p>22 that correct?</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 Q. And there's another copy of that check on the</p> <p>25 following page which is the reverse side of the check,</p>	<p>1 Q. And looking at the following page, MM004845,</p> <p>2 do you recognize any of that handwriting?</p> <p>3 <b>A. No, sir.</b></p> <p>4 Q. It speaks for itself. But it does show the</p> <p>5 Brian Kelly telephone numbers, both at work and at</p> <p>6 home, a John B. Cross, with some handwriting relating a</p> <p>7 Shirley E. Cross; is that correct? And, it appears,</p> <p>8 some routing information with regard to the check.</p> <p>9 <b>A. Okay. I'm sorry. I was having a hard time.</b></p> <p>10 <b>This is hard for me to read.</b></p> <p>11 Q. It is hard to read.</p> <p>12 <b>A. In the writing that's on the -- at an angle on</b></p> <p>13 <b>the page, it says "or Shirley E. Cross" and then a</b></p> <p>14 <b>number 362.</b></p> <p>15 Q. And then it looks like some routing,</p> <p>16 "IntraWest Bank of Southwest Plaza, Littleton,</p> <p>17 Colorado," and then it has a number which may be a bank</p> <p>18 number and then it says "Republic Bank Austin"; is that</p> <p>19 correct?</p> <p>20 <b>A. That's what it says.</b></p> <p>21 Q. The following -- the next page shows a --</p> <p>22 that's MM004841 on Davis Exhibit 12. It shows, at the</p> <p>23 bottom of that page, "Green Acres Liquor Store on</p> <p>24 Burnett Road"; is that correct?</p> <p>25 <b>A. That's what it says.</b></p>

17 (Pages 65 to 68)

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<p>1 Q. As a resident of Central Texas, Burnet Road is 2 a road located in Austin, Texas, is it not? 3 A. It is. 4 Q. Let me ask you, when we noticed the 5 deposition, we also attached a subpoena duces tecum. 6 MR. GOLDSTEIN: Let me have that marked 7 for purposes of this deposition. 8 (Exhibit No. 13 marked) 9 Q. (BY MR. GOLDSTEIN) I show you what I presume 10 has been marked Davis Exhibit 13 for purposes -- 11 A. It has. 12 Q. And you've had an opportunity to review with 13 your counsel the subpoena duces tecum, have you not, 14 Mr. Davis? 15 A. If this is the same one I originally was 16 served with, I've reviewed it. I didn't -- I didn't 17 realize -- he may have sent it to me. I didn't realize 18 that there was a new one for this. I thought we were 19 doing this by agreement. So I have -- 20 Q. Well, we are. 21 A. -- documents. Because this is so broad, let 22 me tell you what I have. I have the pleadings and all 23 the stuff that's just gone around. I have a copy of 24 the writ. I have -- the District Attorney's office 25 gave us a copy of the transcript on a disk and that's</p>	<p>1 No. 14? 2 A. Absolutely. 3 Q. Thank you. 4 (Exhibit No. 14 marked) 5 (Discussion off the record) 6 MR. GOLDSTEIN: Back on the record, if we 7 may. 8 Q. (BY MR. GOLDSTEIN) Have you had any 9 conversations with John Bradley with regard to these 10 matters, the District Attorney in Williamson County? 11 A. On the day that Mr. Morton was declared 12 innocent, I believe I saw Mr. Bradley in the hall and I 13 said, you know, "Thanks for a hard job" or a good job 14 or something like that. 15 Then there was one other conversation on 16 the day that the Texas Court of Criminal Appeals 17 rendered the decision that he was innocent. I was in 18 the 277th, which is Judge Anderson's court, and we were 19 finishing up a plea or something. And Mr. Bradley came 20 in and insisted Judge Anderson and I go to the back. 21 And there was -- he told us that the Court had ruled 22 and he had signed the motion himself to dismiss the 23 case. 24 Q. Did he tell you it was over? Was that the 25 impression you got?</p>
Page 70	Page 72
<p>1 on there. I have newspaper articles. And I believe -- 2 I have nothing from the time period. It would all be 3 the new stuff. 4 Q. Let me check, but if we are able to make 5 copies of that, just -- 6 A. I've got it copied for you. I've got it on a 7 disk. I've got it any way you want it. 8 Q. Could we just -- it would be simpler on a 9 disk. Trusting that that is what it is, may we have 10 that marked as Davis Exhibit No. 14 and made a part of 11 the record? 12 Were there any e-mails between yourself 13 and either Ken Anderson? 14 A. No, sir. 15 Q. Were there any e-mails between yourself and 16 Mr. John Bradley with respect to this case? 17 A. I don't believe there are. Was there? Okay. 18 Okay. They tried to set up a meeting and they may be 19 on there. 20 Q. Could you -- it should be on this? 21 A. Yes, sir. 22 Q. If it's not, could we add that to it? 23 A. Anything I have is on there. 24 Q. All right. If perhaps it was overlooked, may 25 we have an agreement that we will add to Davis Exhibit</p>	<p>1 A. I had the impression it was over. I can't say 2 John Bradley said it was over. I certainly had the 3 impression it was over. 4 Q. Where did John Bradley and Ken Anderson go, 5 Judge Anderson, after that? 6 A. Well, what happened at that time is Judge 7 Anderson, I believe, said he wanted to talk to us 8 separately. And I went into the outer room. I don't 9 know if you've been in Judge Anderson's room, but where 10 Wanda sits out there in the outer room. And Judge 11 Anderson and Mr. Bradley had a discussion which was 12 pretty loud. I could hear raised voices, but I 13 couldn't tell what they were saying. 14 Q. Did it sound like an argument? 15 A. I don't know if it was -- they were loud. 16 Q. Let me -- let me call your attention to a Kim 17 Gardner. Do you know Ms. Gardner? 18 A. I haven't thought about Kim Gardner in 25 19 years. 20 Q. Well, I'm going to bring it back. 21 A. Okay. Ms. Gardner was in the District 22 Attorney's office. Originally she was little Bobby 23 Phillips' second chair. 24 Q. Let's not drag Bobby into this. No. Sorry. 25 A. If there's anybody --</p>

18 (Pages 69 to 72)

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1 MR. GOLDSTEIN: Off the record.  
2 (Discussion off the record)  
3 THE WITNESS: Then she became my  
4 secretary at some point in time.  
5 Did you get a note?  
6 Q. (BY MR. GOLDSTEIN) I did. Somebody saw your  
7 Marines and it was an attaboy to you for --  
8 A. Thank you.  
9 Q. It was a semper fi --  
10 A. Semper fi.  
11 Q. -- from someone who respects what you've  
12 done.  
13 Do you recall having any discussions with  
14 any other individuals, Doug Arnold, Kristen Jernigan,  
15 any conversations with any of the District Attorney's  
16 investigators or other representatives about the Brady  
17 disclosure issues?  
18 A. After -- recently? Is that --  
19 Q. Well, do you recall any discussions at any  
20 time? Let's start there. If you recall.  
21 A. I had a discussion with Kristen. I was,  
22 again, in the 277th and -- or standing outside the hall  
23 of the 277th. She walked by and asked me if I could  
24 review some stuff, which I never did. And that was  
25 about the extent of it.

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1 Who were the other people?  
2 Q. Doug Arnold.  
3 A. Doug Arnold. Yes, sir. In 2008 or 2009  
4 Ms. Duty fired her civil first assistant for the second  
5 time and she asked me to monitor some cases for her  
6 until she could get a new civil assistant on. I had  
7 done work for the County for years handling their civil  
8 stuff until Ms. Duty came. One of the cases was  
9 Michael Morton and -- I can't remember the lady's  
10 name. There was a lady whose mother was killed, I  
11 recall, were suing John Bradley and the sheriff. Doug  
12 Arnold was representing Mr. Bradley and I was  
13 representing the sheriff, I believe. And -- well,  
14 actually I didn't ever even enter an appearance in the  
15 case, but --  
16 Q. Does this relate to the McKinney matter?  
17 A. Yes, sir. Yes, sir. Okay. Thank you.  
18 Q. Thank Rebecca. No. Sorry. That's off the  
19 record.  
20 A. And so I asked -- well, the guy that got  
21 fired, and, unfortunately, died shortly thereafter, had  
22 told me nothing needed to be done on the case, it was  
23 in Judge Sparks' court, they had argued it, and they  
24 were waiting for a ruling on either a 12(b)(6) or a  
25 summary judgment. I monitored the case. I asked Doug

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1 Arnold who he was representing. And he was  
2 representing John. And that was about the extent of  
3 it.  
4 Q. Do you remember Judge Sparks making some  
5 comment about "Why don't they just let them take the  
6 DNA?"  
7 A. I've known Judge Sparks since he was a mere  
8 mortal in El Paso, so that would not surprise me.  
9 Q. All right. Go ahead.  
10 A. Then after I received so much recent press, I  
11 was in Judge Arnold's court and just made a comment why  
12 wasn't he enjoying any of this press as well and he  
13 said he didn't know what I was talking about,  
14 jokingly. And that's the conversations I recall with  
15 Judge Arnold.  
16 Q. Anyone else out of the District Attorney's  
17 office, either Assistant District Attorneys,  
18 investigators?  
19 A. I don't recall anybody else from the District  
20 Attorney's office now.  
21 Q. Let me take you back to Kim Gardner. She was  
22 a law school graduate, had been practicing for just a  
23 few years. She was working in the Williamson County  
24 DA's office. She worked for you on occasion, did she  
25 not?

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1 A. We had a chief felony prosecutor and a second  
2 chair in each court, and she --  
3 Q. She worked under you?  
4 A. At some point in time she worked under me.  
5 Q. Let me advise you that she says that she has a  
6 distinct, very distinct, recollection of sitting in  
7 your office, Ken Anderson coming in, and that you all  
8 were talking about Eric, the son's -- the fact that he  
9 said -- told his grandmother that he saw the killing  
10 and that Ken Anderson was talking about how it's not  
11 admissible, that it was hearsay, he was just a  
12 three-and-a-half-year-old, that it was incompetent, and  
13 something about a scuba suit.  
14 Do you have any independent recollection  
15 of that?  
16 A. I have no recollection to say that did or  
17 didn't happen at all.  
18 Q. And you're not disputing Ms. Gardner's  
19 statement that she recalls it.  
20 A. I'm not disputing Ms. Gardner's statement that  
21 she would recall that.  
22 Q. Let me -- let me go back and cover one thing.  
23 And this will be my last lengthy question, but I'm  
24 going to do it in parts. I've heard you say it, but  
25 I've been advised it would help if I made this clear.

19 (Pages 73 to 76)

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1 And I take advice. The only answer I have is "Yes.  
2 dear". I find that that works in just about --  
3 **A. Absolutely.**  
4 Q. -- every instance. And I think it's a good  
5 idea to summarize.  
6 A statement by a  
7 three-and-a-half-year-old son transmitted through his  
8 grandmother, the mother of the deceased, that his daddy  
9 was not at home, that, in your estimation, would  
10 constitute Brady material.  
11 **A. I believe it would.**  
12 Q. And should have been produced.  
13 **A. Should have been produced.**  
14 Q. When the judge asked for it.  
15 **A. Yes, sir.**  
16 Q. A credit card used two days after the  
17 decedent -- the victim had been murdered, in a town  
18 over a hundred miles away, that's something that should  
19 have been produced at least to the judge in camera.  
20 **A. If that was part of the investigation, it**  
21 **should have been produced.**  
22 Q. Well, it was in the file of the investigator.  
23 It was a credit card in the name of Christine Morton.  
24 It was signed by someone two days after she's been  
25 killed. That should be in the investigator's file.

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1 shouldn't it?  
2 **A. It should be. And somebody should --**  
3 Q. And it was.  
4 **A. -- have followed up. I just -- if you're**  
5 **sitting here asking me today, I don't know about that.**  
6 Q. But it would have been -- if you had seen  
7 that, you would have recognized that was Brady  
8 material.  
9 **A. Absolutely.**  
10 Q. And a check that was cashed nine days after  
11 the death in some location a hundred miles away in a  
12 distant city, you would have recognized that, if you  
13 had seen it, as Brady material, would you not?  
14 **A. It certainly should have been disclosed.**  
15 Q. And the report of a police officer the day  
16 after the killing, August 14th, 1986, that two  
17 neighbors, not just one, two neighbors, had seen a  
18 stranger in a green van pull up behind the Morton  
19 residence and leave -- get out of his vehicle and walk  
20 from the residence into a wooded area behind the  
21 residence before the killing, that would have clearly  
22 been something that you think you would have turned  
23 over when the judge asked for Brady material, would it  
24 not?  
25 **A. I would.**

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1 Q. And --  
2 **A. I want to be clear. It's my understanding**  
3 **from that first pretrial that he was supposed to turn**  
4 **over everything, not just Brady, but the entire report.**  
5 Q. Right.  
6 **A. If I'm wrong in that, I just didn't --**  
7 Q. No, I think you're correct. But even if --  
8 even if the judge did order him to do that, this would  
9 comply with that; is that correct? It should have been  
10 included.  
11 **A. It should have been.**  
12 Q. And even if -- in any event, it's Brady  
13 material.  
14 **A. I believe it's Brady material.**  
15 Q. And you're board certified and have been for a  
16 number of years.  
17 **A. Yes, sir.**  
18 Q. Lastly, when you were -- and by the way, a  
19 bloody bandana is something, particularly when it's in  
20 the path of the -- the significance of the person, the  
21 stranger, walking away from the house, being observed  
22 by two neighbors shortly before the murder, takes on  
23 particular significance when a bloody bandana is found  
24 on that path. Is that a fair statement?  
25 **A. I would think so.**

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1 Q. And let me ask you. Let's go back to the  
2 conversation you had when you heard about the  
3 transcript of young Eric describing the murder and  
4 saying his daddy was not there.  
5 Whatever your recollection of the  
6 conversation earlier, when you saw that and went to  
7 Judge Anderson and, in essence, confronted him with  
8 that statement, asking him "Was this produced," he  
9 showed you the Morton opinion and said he produced  
10 everything. Is that a fair statement?  
11 **A. I don't know that the term "everything," but**  
12 **it was --**  
13 Q. Did he say he produced it?  
14 **A. -- "We produced things" or "We produced it."**  
15 **That was the impression -- I had the impression that**  
16 **everything had been given to the judge from that**  
17 **conversation at that time.**  
18 Q. And you made it clear that you were worried  
19 about the transcript of the little boy's grandmother  
20 saying that he said Daddy was not home. That troubled  
21 you, did it not?  
22 **A. It troubles me greatly.**  
23 Q. It troubles you today, does it not?  
24 **A. It troubles me today.**  
25 Q. And when you went to see Judge Anderson, that

20 (Pages 77 to 80)

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1 was on your mind. You made it clear to him that that  
2 was what you were concerned about.

3 A. That's what we talked about.

4 MR. GOLDSTEIN: Can we go off the record  
5 for a moment?

6 THE WITNESS: Sure.

7 (Recess from 11:08 a.m. to 11:17 a.m.)

8 MR. GOLDSTEIN: We're back on the  
9 record.

10 Q. (BY MR. GOLDSTEIN) Mr. Davis, finally, you had  
11 indicated, I believe, that with respect to the McKinney  
12 litigation that there was -- there was some DNA  
13 litigation that you were associated with. Could you  
14 describe your association with the DNA litigation  
15 relating to Michael Morton?

16 A. The only thing that I was involved with was --  
17 it was 2008 or 2009. I'm thinking 2009 more than  
18 2008. That Jana Duty had fired Stephen Ackley, who was  
19 the attorney on the case for the County. And Stephen  
20 had told me that it had been -- it was probably a  
21 12(b)(6) motion, but it might have been a summary  
22 judgment -- had been submitted and argued and they were  
23 just waiting for Judge Sparks to rule. I didn't file  
24 an appearance in the case, I don't believe, and I  
25 wasn't monitoring it when it was finally ruled upon.

1 what their argument was as to why they were opposing an  
2 Open Records Act request with regard to these matters?

3 A. No, sir. I don't even know that today.

4 Q. Were you aware of the fact that they said that  
5 the -- to provide and respond to the Open Records Act  
6 request would interfere with the ongoing DNA  
7 litigation?

8 A. No, sir.

9 Q. Can you imagine how it would?

10 A. No, sir. Well, there's an ongoing litigation  
11 exception under the Open Records Act and generally  
12 that's one of the things governmental entities find  
13 out. I have no -- I have no specific recollection of  
14 that, though.

15 Q. I think we can all agree these days that in a  
16 case such as this, the DNA request is a simple matter  
17 that ought to be in everybody's interest.

18 A. I would think so.

19 MR. GOLDSTEIN: I want to thank you,  
20 Mr. Davis, for your time and effort. And you  
21 particularly, Shawn. We appreciate your courtesies.

22 THE WITNESS: Thank you so much.

23 MR. GOLDSTEIN: Nothing further. We're  
24 off.

25 (Discussion off the record)

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1 Q. Do you recall any conversation with Judge  
2 Arnold about this matter?

3 A. Just what he was ruling on or what his role  
4 was. And he was representing Mr. Bradley as I  
5 understood it.

6 Q. And what did he describe his role as?

7 A. Representing Mr. Bradley.

8 Q. Did he say anything about what their positions  
9 were with regard to the litigation?

10 A. I don't believe so. There was -- I had maybe  
11 nine, 10 cases that were pending for the County where I  
12 didn't need to really step in. There were two or three  
13 that I stepped in. But there were --

14 Q. Was this one of them?

15 A. This was one of the ones I didn't even step  
16 into.

17 Q. Let me ask you, were you aware of the fact  
18 that there was an Open Records Act -- an open records  
19 request for the Morton file from both the Sheriff's  
20 Department and the District Attorney's office?

21 A. Not until recently.

22 Q. Did you have any discussions with Judge Arnold  
23 about this matter?

24 A. No, sir.

25 Q. Were you aware of what their defense was or

1 MR. GOLDSTEIN: I want the record to  
2 reflect that we have no objection and would agree to  
3 the court reporter service providing -- who I want to  
4 compliment, has been able in this matter, to provide a  
5 copy to the State Bar of Texas who have been sitting in  
6 on these proceedings.

7 MR. DICK: And Shawn Dick for Mr. Davis.  
8 We have no objection at all to the State Bar having a  
9 transcript of this.

10 MR. ROBERTS: Lindsey Roberts for the  
11 State. No objection.

12 (Proceedings concluded at 11:21 a.m.)  
13  
14  
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20  
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24  
25

21 (Pages 81 to 84)

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# ORAL DEPOSITION OF MICHAEL PATRICK DAVIS

Page 85	Page 87
<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: DATE OF DEPOSITION:</p> <p>3 MICHAEL PATRICK DAVIS OCTOBER 29, 2011</p> <p>4</p> <p>5 PAGE LINE CHANGE REASON</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 NO. 86-452-K26</p> <p>2 THE STATE OF TEXAS. IN THE DISTRICT COURT OF</p> <p>3 Plaintiff</p> <p>4 VS. WILLIAMSON COUNTY, TEXAS</p> <p>5 MICHAEL MORTON.</p> <p>6 Defendant 26TH JUDICIAL DISTRICT</p> <p>7 REPORTER'S CERTIFICATION</p> <p>8 DEPOSITION OF MICHAEL PATRICK DAVIS</p> <p>9 OCTOBER 29, 2011</p> <p>10 I. SHERRI SANTMAN FISHER, Certified Shorthand</p> <p>11 Reporter in and for the State of Texas, hereby certify</p> <p>12 to the following:</p> <p>13 That the witness, MICHAEL PATRICK DAVIS, was</p> <p>14 duly sworn by the officer and that the transcript of</p> <p>15 the oral deposition is a true record of the testimony</p> <p>16 given by the witness:</p> <p>17 That the deposition transcript was submitted</p> <p>18 on _____ to the witness or to the</p> <p>19 attorney for the witness for examination, signature,</p> <p>20 and return to me by _____:</p> <p>21 That the amount of time used by each party at</p> <p>22 the deposition is as follows:</p> <p>23 Gerald H. Goldstein - 1 hour, 56 minutes</p> <p>24 That pursuant to information given to the</p> <p>25 deposition officer at the time said testimony was</p> <p>taken, the following includes counsel for all parties</p>
<p style="text-align: center;">Page 86</p> <p>1 I, MICHAEL PATRICK DAVIS, have read the</p> <p>2 foregoing deposition and hereby affix my signature that</p> <p>3 same is true and correct, except as noted herein.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 MICHAEL PATRICK DAVIS</p> <p>8</p> <p>9 #96746</p> <p>10 THE STATE OF TEXAS )</p> <p>11 COUNTY OF TRAVIS )</p> <p>12</p> <p>13 Before me, _____, on this day</p> <p>14 personally appeared MICHAEL PATRICK DAVIS, known to me</p> <p>15 to be the person whose name is subscribed to the</p> <p>16 foregoing instrument and acknowledged to me that they</p> <p>17 executed the same for the purposes and consideration</p> <p>18 therein expressed.</p> <p>19</p> <p>20 Given under my hand and seal of office this</p> <p>21 _____ day of _____, A.D., 2011.</p> <p>22</p> <p>23</p> <p>24 Notary Public in and for</p> <p>25 the State of Texas</p>	<p style="text-align: center;">Page 88</p> <p>1 of record:</p> <p>2 Lindsey Roberts, Attorney for Plaintiff</p> <p>3 (512/943-1234)</p> <p>4 John W. Raley, Attorney for Defendant</p> <p>5 (713/429-8050)</p> <p>6 Barry Scheck, Attorney for Defendant</p> <p>7 (212/364-5357)</p> <p>8 Gerald H. Goldstein, Attorney for Defendant</p> <p>9 (210/226-1463)</p> <p>10</p> <p>11 I further certify that I am neither counsel</p> <p>12 for, related to, nor employed by any of the parties or</p> <p>13 attorneys in the action in which this proceeding was</p> <p>14 taken, and further that I am not financially or</p> <p>15 otherwise interested in the outcome of the action.</p> <p>16 Further certification requirements pursuant to</p> <p>17 Rule 203 of TRCP will be certified to after they have</p> <p>18 occurred.</p> <p>19 Certified to by me this 30th day of October,</p> <p>20 2011.</p> <p>21</p> <p>22</p> <p>23 SHERRI SANTMAN FISHER, Texas CSR 2336</p> <p>24 Expiration Date: 12-31-11</p> <p>25 Sunbelt Reporting &amp; Litigation Services</p> <p>Firm Registration No. 87</p> <p>1016 La Posada Drive, Suite 294</p> <p>Austin, Texas 78752</p> <p>(512) 465-9100</p> <p>FURTHER CERTIFICATION UNDER RULE 203 TRCP</p> <p>The original deposition/errata sheet</p>

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# ORAL DEPOSITION OF MICHAEL PATRICK DAVIS

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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

SHERRI SANTMAN FISHER, Texas CSR 2336

22

Expiration Date: 12-31-11

23

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K E N   A N D E R S O N

# CRIME IN TEXAS

*Your Complete Guide to the Criminal Justice System*

REVISED EDITION



UNIVERSITY OF TEXAS PRESS, *Austin*

CRIME IN TEXAS  
REVISED EDITION

Davis ①

S. FISHER

10-29-11

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requested.

TO NELL MYER  
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whose courage a

TO THE CHILE  
yours and mine  
who deserve the

## THE SYSTEM: POLICE, PROSECUTORS, JUDGES

Jim Boutwell was a lawman's lawman. During his 44-year career in law enforcement, Jim saw an incredible array of criminals and victims—the best and the worst of human nature. Jim was a Texas Ranger. He piloted an airplane around the University of Texas tower to distract and draw fire from mass murderer Charles Whitman. He talked vicious criminals into giving complete confessions of their crimes. He comforted small children after their mothers were killed.

For the final 15 years of his career, Jim was the sheriff of Williamson County. His tall, thin figure was known throughout the area; it seemed he knew everyone.

Governors and senators confided in Jim; they asked his advice. If citizens walked into Jim's office with a problem, he took the time to listen. He epitomized the old-time Texas sheriff—tough, soft-spoken, part public figure, part psychologist, part social worker—a lawman from the tip of his Stetson to the soles of his cowboy boots.

Perhaps no sheriff and district attorney had a closer working relationship than Jim and I had. We talked on the phone daily and, more often than not, drank a cup of coffee together. We had a common purpose. We believed we really could make Williamson County a safer, better place for our neighbors to live in.

At the L&M Cafe on Austin Avenue in downtown Georgetown, Jim and I did some of our best work. We painstakingly pieced together circumstantial murder cases. We debated the next step of an investiga-

### THE SYSTEM:

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tion. We planned undercover operations against burglars and drug dealers. Early in the movement for victims' rights, we put together a unit to help victims of crime and to serve as a model for other counties. The downfall of more than one criminal doing life in the state prison system began with an investigation put together on a coffee-stained napkin at the L&M Cafe.

The Crestview Baptist Church was packed on the day of Jim's funeral in November 1993. At 66, Jim had lost his battle with cancer. From my front row seat with the other pallbearers, I stared at the casket and, on the table next to it, four items: Jim's Smith and Wesson, his leather holster, his Stetson, and his badge. I had lost a good friend. Texas had lost a good law officer.

As a district attorney, I had the pleasure of working with many first-rate police officers, some truly dedicated prosecutors, and some great judges. Indeed, my views of all such officials are strongly influenced by the memory of Jim Boutwell. I admire and respect all the Jim Boutwells of this world.

But I am also aware of the other kind. The headlines have told their stories—the West Texas sheriff sent to prison for drug dealing; the Fort Bend County district attorney removed from office for revealing confidential grand jury testimony about a political enemy; the Galveston County judge caught on camera sleeping during a trial. When I think about Jim Boutwell and the many other fine law enforcement officers I've known and worked with, cases like these are hard to understand. But my own case files show the convictions and prison sentences for a half-dozen or so officers gone bad—for bribery, drugs, child molesting.

As you read this chapter, the grim statistics about police officer fatalities may sadden you. It may outrage you to read about the technical grounds on which some criminals get new trials. But amid the statistics and the emotions, we need to understand something. We all have a stake in having the right people in these jobs. We need more Jim Boutwells and fewer who are willing to violate the public trust.

I'll leave the platitudes to the civics teachers, but to get the right people into these jobs, we need to educate ourselves by asking, "What do these jobs require of those who do them?"

**LAW ENFORCEMENT OFFICERS** For citizens, the most visible people in the system are law enforcement officers. Texas has roughly 80,000 of them. Some are local officers who get their paychecks from the city or county. Others get their paychecks from the state. They enforce laws and investigate crimes.

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## CRIMINAL PROCEDURE

One of downtown Austin's trendy restaurants is the City Grill on Sabine Street. The morning I visited, it wasn't yet open for lunch. Rather than sitting in the dining room, I stood over a stack of produce crates. I wasn't there to eat. I was looking through invoices to answer a question. What vegetables had been on the menu the night of August 12? Had those vegetables then turned up in a murder victim's stomach? So much for the glamour of being a trial lawyer.

As a kid growing up, I got my ideas about trials and lawyers from movies, TV, and books. Gregory Peck in *To Kill a Mockingbird*. Spencer Tracy in *Inherit the Wind*. In the popular media, the "good-guy" lawyer is always handsome or beautiful, always a star in the courtroom, always able to break down any lying witness with a brilliant cross-examination. And always able to expose the truth.

In reality, I don't see much brilliance in the courtroom. Trials are won and the truth is exposed because of detailed, painstaking preparation done before the first witness is sworn in. Someone has to visit the crime scene, interview the witnesses, retrace the steps of the victim or defendant, and examine the physical evidence. Someone has to master the hundreds of details.

Such preparation led me to the produce crates at the City Grill. A neighbor discovered a young mother murdered in her bed. Her husband was off at work. His story, that she was alive when he left for work at 5:30 A.M., didn't fit with the evidence. Ultimately, he was indicted for her murder.

## CRIMINAL PRO

The defendant before at the City Grill home, he was her to death. A autopsy; the medical night but no late by the wife's suggestion. I could see olives, and tomato

Two weeks he had served the matched her story changed nightly to the kitchen. So the manager. We eatable side dish and tomatoes.

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This chapter investigations and technical or dull—certainly get enough of on

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Moreover, even rules to make sense criminal cases.

The defendant and his wife had celebrated his birthday the night before at the City Grill. My theory of the crime was that after returning home, he wanted to have sex. When she said no, he savagely beat her to death. A critical part of the proof was the results of the autopsy; the medical examiner fixed her time of death at around midnight but no later than 4 A.M. This time of death was fixed in part by the wife's stomach contents. The food there was only partially digested. I could see and easily identify pieces of mushrooms, squash, olives, and tomatoes.

Two weeks before trial, I visited the City Grill. The waitress who had served the couple found their dinner ticket. The wife's order matched her stomach contents, except for the vegetable side dish. It changed nightly depending on the produce available and delivered to the kitchen. So there I was, going through produce invoices with the manager. We found the correct date and, sure enough, the vegetable side dish that night had included mushrooms, squash, olives, and tomatoes.

We also knew that the defense team—three very capable lawyers—would call their own expert witness to cast doubt on the medical examiner's conclusion. I didn't want the jury to lose the significance of this evidence because of a clash between experts and a bunch of medical jargon. So I asked the City Grill manager to re-create the victim's last meal and bring it to court.

On the issue of time of death, the defense lawyers did their job. Two experts testified, throwing around—as expected—a lot of confusing, highly technical jargon about medical studies.

On rebuttal, I called the City Grill manager and produced a still-warm plate duplicating the exact meal the victim had eaten. The impact on the jury was clear; the meal looked much like the stomach contents the medical examiner had described. It was a very effective demonstration. It wasn't brilliance; it was simple preparation and attention to detail. The defendant was convicted and is currently serving a life sentence for killing his wife.

This chapter tells you about criminal procedure, the rules for investigations and trials. At times, these rules may seem overly technical or dull—certainly not the stuff of the courtroom drama we can't get enough of on TV.

But the rules provide truthful and accurate information in court. They protect basic liberties at the core of American government. Law enforcement officials and prosecutors must master these rules in order to make our homes and neighborhoods safer.

Moreover, every Texas citizen can use an understanding of these rules to make sense of the headlines and understand what happens in criminal cases.

City Grill on Saturday. Rather than produce crates, I answered a question about August 12? and the victim's stomach?

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*Sanity* refers to the defendants' state of mind at the time they committed the crimes. *Insanity* means severe mental diseases or defects that cause defendants not to know that their criminal actions were wrong at the time they did them. Legal insanity is a defense in Texas.

Most of the time, psychiatric reports indicate that a defendant is competent and sane. A small percentage of the time, a report indicates otherwise. If a defendant is not competent, the report must also give an opinion: can the defendant regain competence to stand trial? Usually, drug therapy at a state hospital can restore competency. A court proceeding will commit the defendant to a state hospital. Within a few months, the defendant is generally restored to competency and returned to stand trial.

The insanity defense is discussed at greater length in Chapter 3. It is very rarely successful in Texas.

**PRETRIAL MOTIONS** Before the trial begins, the defense lawyer will file pretrial motions. The number and kind of motions are limited primarily by the defense lawyer's imagination. It is not unusual for the defense to file more than fifty pages of such motions.

**Motions to Discover Evidence** Normally, the defense lawyer will file a motion seeking to see all of the state's evidence. The state is required to show their physical evidence and certain other items to the defense. As a practical matter, most prosecutors will reach an agreement with the defense lawyer as to what items will be shown or shared. Many prosecutors have what they call an "open-file" policy; the defense can review all reports and witness statements prior to the trial.

The defense will also file a Brady motion. This motion received its name from a United States Supreme Court case called *Brady v Maryland*. The Supreme Court held that prosecutors must turn over to the defense any evidence which indicates that a defendant might not be guilty.

Prosecutors share evidence with defense lawyers or have open-file policies for two reasons. First, the prosecutors hope that when defense lawyers see the strength of the state's case, they will urge their clients to plead guilty. Second, such disclosure prevents convicted defendants from claiming years later that the prosecutors withheld Brady material.

The defense does not have to disclose its evidence to the state. Both the state and defense, if requested, must disclose a list of any expert witnesses that they wish to call at trial. This information must be provided 20 days before trial begins.



CAUSE NO. 86-452-X

THE STATE OF TEXAS                    §            IN THE 26TH JUDICIAL  
V.    §            DISTRICT COURT FOR  
MICHAEL MORTON                        §            WILLIAMSON COUNTY, TEXAS

MOTION FOR PRODUCTION OF EVIDENCE  
FAVORABLE TO THE ACCUSED

TO THE HONORABLE WILLIAM LOTT:

COMES NOW the Defendant in the above styled and numbered cause, and pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, respectfully moves the Court to instruct the attorney representing the State of Texas in this case to make available for Defendant's inspection and copying or photographing, any evidence or information within the possession, custody or control of the State of Texas, or any of its agencies, the existence of which is known, or by the exercise of due diligence may become known, to the State's attorney, and which is favorable to the Defendant on the issue of guilt or innocence or which may tend to mitigate or lessen punishment in the event the jury would return a verdict of guilt. Brady v. Maryland, 373 U.S. 83, 10 L.Ed. 215, 83 S.Ct. 1194 (1963).

I.

Defendant's request for Brady material includes any evidence which is inconsistent with the guilt of the accused, or which evidence is inconsistent with lawful arrest, search and/or seizure, including but not limited to:

A. Prior inconsistent statements of witnesses; either in the form of written statements, or statements made to officers or by officers or witnesses or contained in any

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- police records, such as police offense reports; and any other statements, either recorded or other type memoranda, but which are inconsistent with guilt of the accused.
- B. Any written or recorded statement of any person which contains information favorable to the Defendant.
- C. The substance of or any oral statement of any person which contains information favorable to the Defendant.
- D. The names and addresses of all persons who have, or may have, information favorable to the Defendant.
- E. The name of anyone interviewed by the state and the substance of their statement if that statement commented favorably on the relationship between the accused and the deceased.
- F. The name of anyone interviewed by the state and the substance of that statement if that statement commented favorably on the plans for the future of the accused and the deceased.
- G. The names and addresses of all persons interviewed by the State in connection with this investigation but who the State does not intend to call as witnesses in this case.
- H. Any information which may tend to adversely affect the credibility of any person called as a witness by the State (Giglio v. U.S., 405 U.S. 150 (1972); Crutcher v. State, 481 S.W.2d 113 [Tex. Crim. App. 1972] including the arrest and/or conviction record of each State witness, and including any offers of immunity or lenience, whether made directly or indirectly, to any State's witness in exchange for testimony.
- I. Conflicts, or unexplained facts, details or other material referred to in police records or in any other documents or memoranda.
- J. Any other item of evidence, whether admissible or not, inconsistent with guilt of Defendant.
- K. Any item, document, paper, written statement, including written statements of witnesses and including work product of State attorneys and their investigators, their notes and reports, all books, accounts, letters, photographs, objects or tangible or intangible things, whether privileged or not privileged, which are inconsistent with guilt of the accused, or which establish or tend to support an illegal arrest, and/or illegal search and seizure.

L. Any and all books, records, and/or memoranda and/or oral statements, including laboratory experiments and tests, evidencing the Defendant's innocence, and that Defendant did not commit the crime alleged.

Pursuant to the Due Process Clause of the United States Constitution, the accused is entitled to have delivered to him any statement and any item, whether tangible or intangible evidence, which may be in the possession or control of the State or its agents, which evidence is either inconsistent with the guilt of the accused, or tends to show an illegal arrest, search or seizure.

## II.

All evidence in the possession and control of the State or others known to the State or discoverable by the State through reasonable diligence which may be favorable to the Defendant and material to the issue of guilt or punishment, or could reasonably weaken or affect any evidence proposed to be introduced against Defendant, or is relevant to the subject matter of the information, or in any manner may aid Defendant in the ascertainment of the truth, regardless of whether the prosecutor in good faith believes the evidence to be false; the disclosure and production to be made without regard to whether the evidence to be disclosed and produced is deemed admissible at the trial herein; said disclosure and production to include, but may be limited to, the following evidence.

A. The statements of all persons who have been interviewed by an agent of the State in connection with the subject matter of this cause and whom the State does not presently intend to call at trial.

B. The memoranda or summaries of any oral statement made to any agent of the State by any person in connection with the subject matter of this cause whether or not

(1) The statement, if in writing, has been signed or approved by the witness; and

(2) The statement relates to the proposed subject matter of the direct testimony of the witnesses at the trial.

C. The stenographic recording or transcription of any oral statement made by any person to an agent of the State in connection with the subject matter of this cause whether or not

(1) The stenographic recording or transcription is a substantially verbatim recital of the statement; and

(2) The statement was recorded contemporaneously with its making; and

(3) The statement relates to the proposed subject matter of the direct testimony of the witnesses at trial.

D. Any memoranda, documents, or statement used by the State during its investigation of this cause:

(1) Any scientific tests performed to determine the chemical composition of a substance, including not merely the results of those tests but the detailed laboratory findings, memoranda prepared by the laboratory chemists, standards of those chemists and any records of the tests which those chemists performed upon the substance.

(2) Any and all examinations for fingerprints or other prints made by the State at the scene of the alleged offense or on any items seized in connection with this cause, and photographic copies of all fingerprints or other prints taken from Defendant, the deceased or from any other person known to have frequented their home. The evidence sought to be inspected is to include, but is not limited to copies of the fingerprints or other prints themselves, photographs or notes showing precisely where the prints were discovered, and the complete records of the tests of any fingerprint expert, showing not merely the results of his findings, but the point-by-point comparisons of any fingerprint or other print to another.


## III.

As good cause for this Motion, Defendant states that he must have the information sought in order to prepare for trial, to summon witnesses, to prepare motions to suppress, to avoid surprises and to discover exculpatory evidence. He would further show that the tangible items sought and the information requested, if existent, are in the possession of agents of the State and cannot be examined or obtained prior to trial except by court order. The materiality of the items and the information sought will be further shown at the hearing on this motion. This motion is made in good faith and is not for the purposes of delay.

WHEREFORE, PREMISES CONSIDERED, Defendant by and through his attorney in the above cause moves this Court to order the prosecutor to divulge to Defendant by his attorney to inspect and to copy or photograph all of the above listed documentation, papers, photographs and objects which constitute or contain evidence material to any matter involved in this cause, and which are in the possession, custody or control of the State. Defendant further moves this Court to make an in camera inspection of all evidence sought to be discovered herein, but which is withheld by the State; and to make an inquiry of the State to determine the extent of compliance with the discovery ordered. Defendant further moves that all evidence not ordered subject to discovery be included in the appellate record for review by an appellate court. Defendant further moves that any

order for discovery entered herein be made a continuing one, so that the State will be obligated to make known to Defendant the existence of any discoverable matter that comes into the knowledge, possession or control of the State at any time prior to the conclusion of the trial of this cause.

Respectfully submitted,

  
 WILLIAM P. ALLISON  
 WHITE AND ALLISON, P.C.  
 1306 Nueces  
 Austin, Texas 78701  
 (512) 472-0144  
 State Bar No. 01093000

FILED

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William P. Allison  
 District Clerk, Williamson County

CERTIFICATE OF SERVICE

By affixing my signature to the previous page, I, William P. Allison, hereby certify that a true and correct copy of the foregoing Motion for Production of Evidence Favorable to the Accused has been hand-delivered to the Mr. Ken Anderson at the Office of the District Attorney for Williamson County, Georgetown, Texas, on this the 18th day of November, 1986.

ORDER

On this \_\_\_\_ day of \_\_\_\_\_, 1986, came on to be heard the Motion of Defendant for Discovery of Evidence Favorable to Defendant and inconsistent with guilt, and the Court having considered the Motion and arguments of counsel, orders that the Motion be granted as to the items in paragraphs numbered \_\_\_\_\_, and the State is therefore ordered to

produce such items for inspection and copying by Defendant, and to disclose to Defendant the evidence herein specified. For items listed in paragraphs \_\_\_\_\_

\_\_\_\_\_, the motion is denied, to which action the Defendant excepts.

IT IS FURTHER ORDERED that the duty of disclosure herein ordered by a continuing one, and the prosecutor disclose to Defendant any evidence required under this order whenever that evidence becomes available to him, until the termination of the trial of this cause, all as sought in this Motion.

\_\_\_\_\_  
WILLIAM S. LOTT,  
JUDGE PRESIDING

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

MOTION FOR DISCOVERY AND INSPECTION

TO THE HONORABLE WILLIAM LOTT:

Pursuant to the authority of Article 39.14, of the Texas Code of Criminal Procedure (1965), Article I, Section 10 of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America, the Defendant, by and through his undersigned Counsel respectfully moves this Honorable Court to Order the Prosecuting Attorney to permit the Defendant to inspect and copy, photograph and conduct chemical or analytical tests on the following tangible objects related to this case which are in possession of the State of Texas or any agency thereof and provide notice as hereinafter requested:

1. Any statement made by Defendant to the police or the Sheriff of Williamson County, Texas, or to any of his employees or agents, to the Prosecuting Attorney or any of his employees or agents, to any law enforcement official, State agency, or to any private citizen within the knowledge of the police, the Sheriff or the Prosecuting Attorney or any of his employees, any law enforcement official or State agency, whether the Defendant was under arrest or not, or whether the statement is written or oral,

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which might in any manner be material to the guilt or innocence of this Defendant.

2. The names and addresses of all persons interrogated by representatives of the Prosecuting Attorney's office or other representatives of the State of Texas, in connection with the case.

3. Any and all statements, whether written or oral, taken from any such persons, or forms or documents of whatever nature signed by any of these persons.

4. Any portion of any statements referred to in paragraph three, above, which are favorable to the Defendant or are exculpatory of his participation in this alleged crime. These should include, but not be limited to statements which place the Defendant at another location besides his home on August 13, 1986, before the body of the deceased was first discovered. They should also include opinions by any witness to the effect that they do not believe or think that the Defendant killed his wife. They should also include any and all statements which comment on the relationship between the Defendant and the deceased in a favorable manner.

4. The names, addresses and criminal arrest and/or conviction records, if any, of all witnesses who will testify for the State of Texas in this cause, whether they be agents of the State of Texas or otherwise.

5. Any written or oral statements, or transcriptions of statements, given by said witnesses.

6. Any photographs, drawings or charts made by the police, the Prosecuting Attorney's Office, or anyone else which were made with reference to this case.

7. The criminal arrest and/or conviction record, if any, of this Defendant and any co-defendant.

8. The results of any scientific test made by a state agency or a contract agency at the request of law enforcement or the Prosecuting Attorney's office, the result of which would in any manner be material to the guilt or innocence of this Defendant. The Defendant would further show that he has no means of ascertaining the existence of this type of evidence or the possibility of expert opinion testimony without the disclosures herein sought.

9. Any papers, objects or real evidence that are in the possession of the police or the Prosecuting Attorney's Office or their employees or state agencies which may in any way be material to the guilt or innocence of this Defendant.

10. Any and all fingerprint, palm print, hand print or smeared print impressions, regardless of whether or not law enforcement officials feel they are useful in this case, obtained by whatever means or process from the scene of the offense in question, whether such prints were of the Defendant or were prints from some other person or persons known or unknown.

11. Any and all photographs which may have been made of the Defendant while in the custody and control of law enforcement

officials, the Prosecuting Attorney, their employees or agents or an agency of the State of Texas.

12. Any and all photographs which have been shown to witnesses with regard to the offense in question, whether they be photographs of the Defendant or other persons who may or may not have been suspected of the offense in question. (The Defendant makes this request whether or not the photographs in question are now in the possession of the Prosecuting Attorney's Office or in the possession of other persons and requests that the Prosecuting Attorney's Office be Ordered to produce such photographs if they are now in possession of others than the Prosecuting Attorney's Office.) Specifically, the Defendant requests that any photographs which were used in identifying the Defendant be produced for the defense attorney's inspection.

13. Any and all documents, instruments, forms or statements of any kind in the handwriting or purported to be in the handwriting of the Defendant or signed or purported to have been signed by Defendant.

14. Any property in possession of agents of the State of Texas or seized by agents of the State of Texas belonging to or alleged to by the State to belong to Defendant.

15. The names, rank and badge numbers of all law enforcement officers or their agents and all employees of the Prosecuting Attorney's Office who participated in any way in the investigation of this cause, whether at the scene, the police station, county jail or elsewhere.

16. Copies of all the official police department or county or state law enforcement agency records in this case.

17. Any and all physical evidence, of whatever nature, contained in the files of the police, Prosecuting Attorney or any of his employees, any state or county law enforcement official or state agency.

18. Any and all photographs of the premises searched including the name and address of the individual who took said photographs and the date said photographs were taken.

19. Pursuant to Texas Rule of Criminal Evidence 404(b) Defendant also requests that the Prosecuting Attorney give Defendant reasonable notice prior to trial of intent to introduce in the State's case in chief evidence of other crimes, wrongs, or acts for purposes other than showing that the Defendant acted in conformity therewith on a particular occasion where such evidence is other than that arising in the same transaction. This evidence should include, but not necessarily be limited to any and all evidence which the state intends to introduce pursuant to Section 19.06 of the Texas Penal Code.

20. Notice of any intent on the part of the state to use any prior convictions with respect to any witness pursuant to Texas Rule of Criminal Evidence 609 (f).

21. A list and a complete and detailed description of any and all physical evidence which was taken from the scene of the alleged crime, but which has not been preserved by the state for whatever reason.

As the basis for this Motion the Defendant states that the objects requested are vital and material to the issue of the Defendant's innocence for the following reasons:

1. That the items requested are material to the issue of Defendant's innocence and in order for Defendant's Attorney to render effective counsel as is guaranteed to the Defendant by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America and by Sections 10, 19 and 29 of Article I of the Constitution of the State of Texas and are needed in order that the Defendant may be informed of the nature and cause of the accusation against him to ascertain the relevancy and accuracy thereof and to ascertain whether or not testimony concerning any expert with regard to such evidence is accurate and to allow the Defense Attorney the opportunity to obtain an expert of his own to examine the documents, photographs, reports, tests, fingerprints, handwriting and other evidence, and have effective assistance of counsel in order not to be deprived of his life or liberty without due process of law.

2. That the statement, confession or admission of the Defendant is needed in order for Defense Counsel to properly advise the defense and to prepare for trial.

3. That the photographs of the premises searched including the name and address of the individual who took said photographs and the date said photographs were taken is needed in order for the Defendant and Defense Counsel to properly determine the physical characteristics of premises searched.

4. That it is fundamental to the Anglo-American concept of criminal justice that no defendant should be convicted of a criminal offense simply because the State is better able to investigate the material facts surrounding the commission of the offense with which the Defendant is charged. Any concept of evidence "belonging" to the prosecution or the defense is clearly outmoded and should be declared by this Honorable Court to be so. Any such concept as the "work product" exclusionary rule in discovery in civil litigation is by its very nature foreign to an enlightened concept of criminal justice, and should not be applied in this or any criminal case.

The Defendant would further show this Court that the items sought are not of the work product of the Prosecuting Attorney nor are they privileged and that such items sought are in possession of the State of Texas, are subject to the control of the State of Texas and cannot be examined prior to trial except by Court Order. The materiality of the items requested will be further shown at the hearing on this Motion. This Motion is made in good faith and not for the purpose of delay.

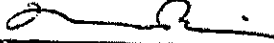
WHEREFORE, the Defendant respectfully prays that this Honorable Court Order:

1. That Prosecuting Attorney permit the Defendant to inspect, copy, photograph or test the above set out tangible objects prior to the trial in this cause which are in the possession or subject to the control of the State of Texas or an agency thereof pursuant to Articles 39.14, 28.01, 1.03, 1.04, and

1.05 of the Texas Code of Criminal Procedure, Article I, Sections 10 and 19 of the Constitution of the State of Texas and pursuant to the Defendant's right to due process of the law, the effective assistance of Counsel as guaranteed to him by the Fourteenth and Sixth Amendments to the Constitution of the United States respectively;

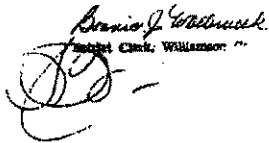
2. That a timely hearing on said Motion be had;
3. That an "in camera" inspection be had of all evidence sought to be discovered but withheld by the prosecution;
4. That an inquiry be made of the prosecutors and agents of the State of Texas to determine the extent of the State's compliance with any discovery that is Ordered by this Court;
5. That any and all evidence requested but not Ordered subject to any discovery by this Court be included in the Appellate record of this cause for review by the Appellate Courts;
6. That the Prosecuting Attorney be required to give notice as requested in paragraph numbered 20 above; and
7. For any and all further relief to which this Court may deem the Defendant entitled.

Respectfully submitted,

  
 WILLIAM P. ALLISON  
 WHITE AND ALLISON, P.C.  
 1306 Nueces  
 Austin, Texas 78701  
 (512) 472-0144  
 State Bar Card No. 01093000

  
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 Dennis J. Williams  
 Deputy Clerk, Williamson

CERTIFICATE OF SERVICE

By affixing my signature above, I hereby certify that a copy of the foregoing Motion for Discovery and Inspection has been delivered to the attorney for the State in this cause by hand on this the 18<sup>th</sup> day of November, 1986.

ORDER

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, came on to be heard Defendant's Motion for Discovery and Inspection and said Motion is hereby (GRANTED) (DENIED).

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JUDGE PRESIDING



STATE OF TEXAS	§	IN THE 26th JUDICIAL
V.	§	DISTRICT COURT FOR
MICHAEL MORTON	§	WILLIAMSON COUNTY, TEXAS

MOTION FOR PRODUCTION OF STATEMENTS AND REPORTS

Rule 614 (a) of the Texas Rules of Criminal Evidence provide provides for the production of witness statements, other than a statement by the Defendant, after the witness has testified, if the opposing party so moves. Unlike the normal case, no offense reports or witness statements, with the exception of three brief lab reports, have been provided to the defense in advance of trial. This means that this trial will be used for discovery as the trial proceeds -- anathema to any concept of fundamental fairness under modern concepts of due process as provided in both the United States and Texas Constitutions.

Rule 614 (d) provides for a recess on the part of the moving party to allow for "reasonable examination of such statement and for preparation for its use at trial." It is reasonable to expect that given the number of law enforcement officials listed on the state's witness list, the Court and the jury are going to spend hours in recess during the trial in order to allow for defense preparation which, in other court systems, is accomplished more expediently.

The federal courts almost uniformly require that the government turn over Jenck's Act material (officer's reports and witness statements) the day before the government expects to call that witness. The court then expects the defense to


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be prepared to cross examine the witness at the time the witness is tendered for cross. This also prevents the opportunity for grand stand performances, sometimes engaged in by trial lawyers before the jury, in requesting the reports, tendering the reports and playing those games which are totally irrelevant to the jury's task.

Therefore, the defense requests that this Court, at the end of each day, order the prosecutor to give to the defense all witness statements and offense reports for witnesses he expects to call the next day.

Respectfully submitted

  
WILLIAM P. ALLISON  
WHITE AND ALLISON, P.C.  
1306 Nueces  
Austin, Texas 78701  
(512) 472-0144  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

By signing the foregoing motion, I, William P. Allison, hereby certify that a true and correct copy of the same was delivered to the Williamson County District Attorney at his office on the \_\_\_\_ day of \_\_\_\_\_, 1987.

ORDER

On this \_\_\_\_ day of February, 1987, came to be heard the Defendant on his Motion for Production of Statements and Reports, and the Court being of the opinion that the same is in order, the District Attorney is hereby ordered to furnish the defense with all reports and statements of witnesses which it expects to call to the stand the following day.

JUDGE PRESIDING

DEPOSITION  
EXHIBIT

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DATE	OFFENSE	MURDER
10-5-86	Bond for \$25,000.00 set by Quinlan of the Peace approved; docket call set for October 30, 1986, at 1:30 p.m.	
10-28-86	Flag. Order approved and signed.	
10-28-86	Case set for a pre-trial hearing on November 25, 1986 at 1:30 p.m. and for a jury trial on November 26, 1986 at 9:30 a.m. Attorney notified by letter of setting; Defendant will arrive and be ready for trial.	
10-30-86	At docket call State announced ready for trial setting made on 10-28-86 announced in open Court.	
11-17-86	Defendant's Motion for Continuance granted, as provided in signed Order on file; jury trial set for January 19, 1987 at 9:30 a.m.; attorney notified by letter of setting.	
11-26-86	Case week for a "Status" hearing on November 19, 1986 at 1:30 p.m., and for a jury trial on Thursday, 1987 at 9:30 a.m. Attorney notified by letter of setting.	
11-25-86	State appeared by Dist. Atty. J. appeared in person and by atty.; semihard heard and read and on 11-26-86 on 11-26-86 motion to suppress; matter taken under advisement; atty. to submit briefs by Dec. 12, 1986.	

**REVOCAION OF PROBATION**  
 Date \_\_\_\_\_  
 Both sides announce ready for trial. Defendant waives reading of the Motion to Revoke and pleads guilty to the offense charged in the indictment. Defendant and his attorney waive trial by jury; defendant enters a plea of Not Guilty to the charge contained in the indictment, viz: \_\_\_\_\_  
 Evidence is heard and concluded and defendant is found \_\_\_\_\_ of said charge.  
 Defendant is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections) (Williamson County Jail) for a period of \_\_\_\_\_ years. Defendant is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections) (Williamson County Jail). Sentence effective \_\_\_\_\_.

**PLEA OF NOT GUILTY JURY WAIVED**  
 Date \_\_\_\_\_  
 Both sides announce ready for trial and the State and defendant and his attorney waive trial by jury; defendant enters a plea of Not Guilty to the charge contained in the indictment, viz: \_\_\_\_\_  
 Evidence is heard and concluded and defendant is found \_\_\_\_\_ of said charge.

**PUNISHMENT AND PROBATION SENTENCE**  
 Defendant having previously been found guilty of the offense charged in the indictment as set out in the finding of guilt, punishment is hereby fixed at confinement in the (Texas Department of Corrections), (Williamson County Jail).  
 Defendant waives time and is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections), (Williamson County Jail).  
 Sentence effective \_\_\_\_\_.  
 Notice of Appeal \_\_\_\_\_  
 (Plea Bargaining Agreement: Followed) \_\_\_\_\_  
 Right of Appeal Waived \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_

**PUNISHMENT AND PROBATION SENTENCE**  
 Defendant having previously been found guilty of the offense charged in the indictment as set out in the finding of guilt, punishment is hereby fixed at confinement in the (Texas Department of Corrections), (Williamson County Jail).  
 Defendant waives time and is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections), (Williamson County Jail).  
 Sentence effective \_\_\_\_\_.  
 Notice of Appeal \_\_\_\_\_  
 (Plea Bargaining Agreement: Followed) \_\_\_\_\_  
 Right of Appeal Waived \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_

**PLEA OF GUILTY**  
 DATE \_\_\_\_\_  
 Both sides announce ready for trial, and the State and defendant and his attorney waive trial by jury, defendant enters a plea of guilty to the charge contained in the indictment, viz: \_\_\_\_\_  
 and after being duly warned by the Court as to the consequences and effect of said plea, and defendant having persisted in said plea, said plea of guilty is received by the Court; evidence is heard and concluded and defendant is found guilty of said charge.  
 Offense Committed on \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_  
 PUNISHMENT & SENTENCE \_\_\_\_\_  
 DATE \_\_\_\_\_  
 Defendant having previously been found guilty of the offense charged in the indictment as set out in the finding of guilt, punishment is hereby fixed at confinement in the (Texas Department of Corrections), (Williamson County Jail).  
 Defendant waives time and is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections), (Williamson County Jail).  
 Sentence effective \_\_\_\_\_.  
 Notice of Appeal \_\_\_\_\_  
 (Plea Bargaining Agreement: Followed) \_\_\_\_\_  
 Right of Appeal Waived \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_

**PUNISHMENT AND PROBATION SENTENCE**  
 Defendant having previously been found guilty of the offense charged in the indictment as set out in the finding of guilt, punishment is hereby fixed at confinement in the (Texas Department of Corrections), (Williamson County Jail).  
 Defendant waives time and is sentenced to serve an indeterminate term of not less than \_\_\_\_\_ years nor more than \_\_\_\_\_ years in the (Texas Department of Corrections), (Williamson County Jail).  
 Sentence effective \_\_\_\_\_.  
 Notice of Appeal \_\_\_\_\_  
 (Plea Bargaining Agreement: Followed) \_\_\_\_\_  
 Right of Appeal Waived \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_

Defendant to pay fine, costs, and restitution in \_\_\_\_\_ days, and \$ \_\_\_\_\_  
 per month probation suspension fee.  
 (Plea Bargaining Agreement: Followed) \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 PRESIDING JUDGE \_\_\_\_\_

2-6-87 At appeared by Dist Atty.; Df. appeared person and his father Dr. Fred Williams.  
Df's Motion for Continuance denied; Df's Motion for Production of Medical and Psychiatric  
Records; Df's Motion to Dismiss Denied; Df's Motion to Suppress Green T-shirt  
(DA indicated that we heard); Court to check on camera capabilities; Df's report of  
Officer Don Shook in connection with Df's Brady motion; Df's Motion for Summary Judgment;  
the judge on Df's Motion for Discovery and discovery as shown by the record; Court  
announced ruling on Df's motion to suppress; Df's original and copies "Not Guilty";  
State appeared by Dist Atty.; Df. appeared in person and by others; both sides announced  
read Df's Suppression Motion in turn; granted; Df's Motion to Suppress all physical  
evidence; Df. jury impeached, retracted and answer.

2-9-87 2nd Day of Trial: Jury instructed testimony sworn and placed under the Rule; Dist Atty.  
read Affidavit to Jury; Df. plead "Not Guilty" before jury; Dist Atty. made opening  
statement; State admitted evidence.

2-10-87 3rd Day of Trial: State continued presenting evidence

2-12-87 4th Day of Trial: Df's oral motion in Limine granted; State continued presenting evidence  
and State rested; Df's Atty. moved Opening Statement; Df presented Evidence.

2-13-87 5th Day of Trial: Df continued presenting evidence.

2-16-87 6th Day of Trial: Df continued presenting evidence until Df rested

2-17-87 7th Day of Trial: State presented rebuttal evidence; both sides closed; Charge  
prepared and copies furnished to Atty.; no objections were made to Charge; Charge  
read to Jury; Atty. presented arguments to Jury; Jury returned Verdict at  
approx. 11:45 P.M.; Jury returned Verdict at approx. 11:40 P.M. Verdict by  
majority; Jury deliberated; Verdict accepted; Judge ordered Verdict; At District Judge  
Charge; At District Judge entered Verdict; At District Judge entered Verdict; At District Judge  
entered Verdict; At District Judge entered Verdict; At District Judge entered Verdict;  
on Summons received and copies furnished to Atty.; no objection was made to  
Charge; Charge in Criminal went back to Jury; Atty. proposed punishment; Jury started  
deliberating at approx. 4:29 P.M. and returned Verdict at approx. 5:05 P.M. Jurors  
were escorted to jail in T.O.C. and by a fleet of cars. Verdict accepted and entered  
Verdict; Jury returned; Court announced verdict in verdict; Jury finding No Guilty; Verdict of Not Guilty

1 I couldn't say for sure, but the best of my remembrance  
2 she said she had went over, she had found the child  
3 outside. And she didn't know where Chris was and she had  
4 went looking for her and she went in the house, I believe  
5 she said a couple of times, and found her, I believe, on  
6 the second time, and she immediately called the Sheriff's  
7 Department.

8 Q. Sergeant Wood, can you remember anything else about  
9 what she told you on the 13th?

10 A. Not without looking at the report. I don't remember right  
11 offhand.

12 Q. You don't have your report with you?

13 A. No, sir, I don't.

14 Q. Did you take notes as you were doing this investigation  
15 in the house?

16 A. Yes, sir.

17 Q. All right. What you might call rough field notes?

18 A. Yes, sir.

19 Q. Have you retained those rough field notes?

20 A. Yes, sir.

21 Q. And from those field notes you made, I guess, a more  
22 polished report?

23 A. Yes, sir.

24 Q. And in that report I assume you tried to be thorough and  
25 complete?

NO. 86-452-K

THE STATE OF TEXAS

VS.

MICHAEL MORTON

§  
§  
§  
§

IN THE 26TH DISTRICT

COURT FOR

WILLIAMSON COUNTY, TEXAS

FILED

MAR 17 1987

MOTION FOR NEW TRIAL

*James J. Wellmuth*  
District Clerk, Williamson Co.

COMES NOW the Defendant in the above entitled and numbered cause, MICHAEL MORTON, by and through his attorneys of record, William P. Allison and William A. White, pursuant to Article 40.03 of the Texas Code of Criminal Procedure and moves this Court to grant a new trial.

The Court committed material error calculated to injure the rights of the Defendant by not requiring the State to produce the offense reports and the supplemental offense reports of Sgt. Don Wood, the Chief Investigator on this case who was not called by the prosecution at trial. These reports and supplemental offense reports were the ones which the Court indicated it had reviewed the weekend before the commencement of trial on February 9, 1987.

During the conversation with the jury after the trial of this case was concluded on Tuesday, February 17, 1987, Mr. Mike Davis, one of the prosecutors told the jury that Sgt. Wood's reports were sizeable (he held up his hand and indicated about one inch between his fingers) and that if the defense had gotten them, we would have been able "to raise even more doubt than we did." It is believed that from further remarks made in the jury room that the reports contain leads concerning other unusual happenings or strange persons in the neighborhood which, if

DEPOSITION  
EXHIBIT

*Davis* (7)  
S. FISHER 10 21-8




disclosed to the defense, would have been relevant before the jury on the issue of whether or not the Defendant committed this crime. This type of information would have led to further admissible evidence tending to indicate that the Defendant did not commit this offense. Tex. Code Crim. Proc. Art. 40.03 (2).

It is further feared that if the Court does not take immediate steps to preserve these reports, they may be destroyed or removed so that they would not be available for use in the appeal or in a subsequent trial. Tex. Code Crim. Proc. Art 40.03 (5).

WHEREFORE, the Defendant respectfully requests that this Court set a date certain for a hearing on this Motion for New Trial to determine if there has been a violation of the aforementioned articles of the Texas Code of Criminal Procedure.

Respectfully Submitted,

  
William P. Allison  
WHITE & ALLISON, P. C.  
1306 Nueces  
Austin, Texas 78701  
(512) 472-0144  
State Bar No. 01093000  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

By signing my name to the foregoing Motion for New Trial, I, William P. Allison, hereby certify that a true and correct copy of the same was hand-delivered to the Williamson County District Attorney's office on this 17<sup>th</sup> day of March 1987.

ORDER

On this \_\_\_\_ day of \_\_\_\_\_, 1987, came to be heard the Defendant on his Motion for New Trial, and the Court being of the opinion that the same is in order, a hearing shall be set on the \_\_\_\_ day of \_\_\_\_\_, 1987, at \_\_\_\_ o'clock in the \_\_\_\_\_, for the taking of evidence and the presentation of argument on the motion.

---

WILLIAM LOTT  
JUDGE, 25TH DISTRICT COURT  
WILLIAMSON COUNTY, TEXAS

**SUPPLEMENTARY OFFENSE REPORT**

Williamson County Sheriff's Dept.

Offense HomicideCase No. 86-08-126

Victim:

Complainant Chris Morton Location 9114 HazelhurstAddress 9114 Hazelhurst Date 8-14-86**RESULTS OF INVESTIGATION**

This reporting Officer observed a person standing on the corner of Broadmeade and Hazelhurst at approximately 6:00 a.m. on the 14th. The subject was identified as Allan Robinson of 9307 Tottenham Court who was waiting for the Austin Metro Bus. He explained that he waited for the bus at the intersection at that time every morning. Mr. Robinson advised that he probably couldn't be of any help but his phone numbers were recorded as: home 258-5503, work 463-2435. Later that morning a subject from 13202 Adonis Drive was observed walking down the street and he stopped to advise that his wife and a Joni St. Martin from 13204 Adonis had on several occasions observed a male park a green van on the street behind the Hazelhurst address, then the subject would get out and walk into the wooded area off the road. It was also learned that several addresses on Hazelhurst receive the Austin American Statesman which is delivered between 4:30 and 6:30 a.m.

The subject from 13202 Adonis advised that from the way his wife talks, that he believes Joni St. Martin knows where the subject in the green van lives.

#35 Traylor

Copies: Sheriff, CID, Wood, Traylor

**DEPOSITION  
EXHIBIT**Dew's (Y)  
S. FISHER 10-24-86

000306

MM 000301

Tape: Rita Kirkpatrick  
**SUPPLEMENTARY OFFENSE REPORT**  
Williamson County Sheriff's Dept. Offense Homicide Case No. 86-08-126  
Complainant Victim: Chris Morton Location 9114 Hazelhurst  
Address 9114 Hazelhurst Date 8-24-86 page 1

**RESULTS OF INVESTIGATION**

This is a transcript of a taped conversation between Rita Kirkpatrick and Sgt. Don Wood on 8-24-86.

D - Don Wood, Sgt. R - Rita Kirkpatrick (Chris Morton's mother) O - Operator  
... (Means tape is inaudible)

O - May I help you?

D - Yes, this is Sgt. Don Wood with the Williamson County Sheriff's Office and I need to charge this call to the Sheriff's Department at 863-2114, area code 512.

O - 114?

D - Right.

O - Thank you, sir.

D - Uh, huh. Thank you.

R - Hello?

D - Hello. Mrs. Kirkpatrick?

R - Yes.

D - This is Sgt. Wood.

R - Yeah, I've wanted to - to, ah, repeat a conversation - let me get ..., okay?

D - Okay.

R - Do you want to tape this or not? This was the first time I was alone with Eric since my daughter was killed.

D - Okay.

R - And, ah, he came in my bedroom, closed the door and began to talk, okay?


D - Okay. You don't mind if I tape, then.

R - Please do and I'll tell you that yesterday was ... child psychology was the first time ... real anger in missing his mother. One week to the day from the funeral.

D - Okay.

R - It was a bad day of biting and ... and kicking and saying, I want Mommie, which he has not been doing.

D - Umm.

  
Davis (9)  
S. FISHER 1028-11

MM 004144

Cont'd.

R - Okay. Marilee told me to come write this down and I think it was probably a very important thing to do. I'm - with a three year old - you keep remembering.

D - Right.

R - Alright, so this is it. Approximately 11:00 a.m., August 24th, Eric and I were alone at my house in Pearland which was the first time he and I had been alone since his mother's death. I was putting on make-up in the bathroom. Eric layed his ... blanket on the floor of my bedroom. He said, Mommie is sleeping in the flowers. His dad had told him that last week at the cemetary. Then he kicked the blanket and said, Mommie, get up. Ah, I've got grandmother and Eric - okay, G for grandmother. Uh, G: Don't kick Mommie, Eric.

Eric: Mommie's crying. She's ... stop it. Go away.

Grandmother: Why is she crying?

Eric: Cause, the monster's there.

Grandmother: What's he doing?

Eric: He hit Mommie. He broke the bed.

Grandmother: Is Mommie still crying?

No, Mommie stopped.

Then what happened? (My heart was in my throat, my stomach was in my toes, but I knew I had to do it. Okay.)

Eric: The monster throw a blue suitcase on the bed. He's mad.

Did he put anything else on the bed?

No.

Grandmother: Did the monster hurt Mommie?

Yes. Mommie go to hospital.

Grandmother: Then what did the monster do?

Eric: He said Mommie's in the garage.

Was he big?

Yeah.

Did he have on gloves?

Yeah, red.

What did he carry in his red gloves?

Basket.

What was in the basket?

MM 004146

Cont'd.

Wood.

Did he ... have Daddy's gun or Mommie's purse?

(Sort of a vague, "Yeah.")

But he did have wood?

Yeah.

What kind of wood, Eric?

Like Daddy's ...

Did he have the <sup>tool</sup> for the fireplace? Did he have anything from the fireplace?

(Sort of a vague, "No.")

Did the monster leave then?

Yes.

How did he leave?

The door.

Which door, Eric?

Front door.

Eric, was it the front door or the patio door? Did he go out on the deck or out in the front?

The front.

Where was Daddy, Eric? (And this is where Grandmother almost died.)

Was Daddy there?

No. Mommie and Eric was there.

So. Sgt. Wood, I'd get off the ... domestic thing now and look for the monster and I have no more suspicions in my mind that Mike did it. I have had.

D - Uh, huh.

R - But there must be mad people out there. Uh, I guess I've been closer to the child - Merilee has been close. We're off the tape, right?

D - Right.

R - Okay. Merilee's been ... putting what is this ... now. But Frank hasn't seen as, I mean, Eric hasn't seen as much of his other grandparents and I guess my daughter and I were ... close that she always talked about me to him and, you know, I saw them at least once a month. And this is in his entire life and it was the weirdest thing - it was like this child wanted to tell this story and he had to wait until his grandmother was halfway sane - no longer crying, no longer, you know -

MM 004146

Cont'd.

D - Right.

R - And I put on make-up for the first time.

D - Um huh.

R - And we were just in there putting on the make-up, but he did get up and close that bedroom door. Now, he's been paranoid about anybody closing a door.

D - Um huh.

R - We figured, you know, what? But I know now he witnessed the - and he's going to need help.

D - Very definitely.

R - He did dump this off. But I'm going to ask those members of the family not to pump him because I doubt if he'd ever again say this ...

D - I doubt - 'bout the only one that's going to be able to work with him on this looks like is going to be you and if they don't even mention it would be great cause they'll confuse him if they do.

R - Right. ... but you don't ... testimony of a child's ...

D - Yes, ma'am, we can. Sure can.

R - ... big monster with a big moustache that does this type thing?

D - No, ma'am, I don't. Do the - I - is he still there?

R - No, no, no. Merilee took him out of the room. Uh, what I'm thinking though very strongly is that he either did not know the murderer or it was somebody he failed to recognize.

D - Okay. There's one other thing I want to insert here.

R - Okay.

D - And this bothers me.

R - Okay.

D - Okay? Has he ever seen Mike in his skin diving suit?

R - I don't know. I would think they - I'll find out for you.

D - When he talks about monsters, you know, if a person was just in there -

R - Oh, I thought of that. See, since I thought he could even of been someone else they knew, you know, that he wouldn't have recognized.

D - Um huh.

R - He also - oh, I left one out and that was, it was dark but the lights were on.

D - It was dark but the lights were on?

MM 004147

Cont'd.

R - Dark ... I said, "Was it dark?"

Yeah, it's dark.

Were the lights on?

Yeah.

D - We need to find out about that skin diving suit real, real bad because that, ah, you know, that was - that is something that a child would describe as a monster.

R - Right, that's true. That's true.

D - And I do know that Mike was very meticulous with his skin diving suit.

R - Um huh.

D - And I do know that he hung it all up in just, ah, you know, very, very neat and very particular about it and it wasn't that way. It was thrown in a bag in the corner of the garage.

R - And it was in the garage?

D - Yes, ma'am.

R - Okay.

D - It was in a bag. It wasn't hung up like it always is.

R - Okay.

D - In fact, somebody that was at his house says I cannot understand why - said this is just not right because Mike does not do his equipment like that - said he's just like he's in love with it - said he is so meticulous and so careful with it. There is just no way that he would throw that stuff in a corner in a bag like that.

R - Now, I didn't have much to do with skin diving, so, I really, you know, don't know whether he ever saw him in that or not.

D - Um huh.

R - But I certainly will find out for you if - if Eric ever saw him in it.

D - Okay.

R - ... looks like ... or something -

D - Huh?

R - I just don't see how his father could have ... you know, ...

D - Uh huh.

R - That's why I, ah, thought of ...

D - Okay.

MM 004148

Cont'd.



R - I know the majority - I mean, like yawl told me, the majority of these things are right under the roof and, or someone close and someone somebody knows, you know.

D - Um huh.

R - But, ah, this isn't, you know, something I wanted to repeat to him ...

D - Yes, very definitely. Well, if he'd of said, a bad man or something like that -

R - ...

D - You know and when he says monster, you know, that's something that you would think something out of the ordinary, you know, not a - not kind of like a human being.

R - Uh huh. Yeah. This is so, again, I guess where we need the child psychologist to tell us the three year olds relate everything bad to monsters, you know.

D - Right.

R - Alot of things could be related to monsters.

D - Right. Is -

R - Cause humans don't do this. Monsters do ...

D - Right.

R - You know, and that must be possible, I don't know.

D - Very definitely.

R - But he just layed down on his little blanket and just wanted to talk and I tell you, I didn't really want to but I thought I better do it ...

D - I am so glad you did because -

R - ... had to do it ... we had to find out.

D - We got to know. We've got to know.

R - Alright, Sgt., well, listen, I'll let you go and ah, ah, I will find out.

D - Okay.

R - But that is, ah, ... unless I understood that hobby was pretty well over.

D - Well, now, he went skin diving the day before.

R - Oh, he had been.

D - Well, when he came back supposedly, ... in a bag.

R - What kind of a bag?

D - Uh, I don't know. I didn't see the bag. One of the officers was talking to me. I wasn't in the garage.

MM 004149

Cont'd.

- R - Yeah. Maybe like a gym bag like he just come back and hadn't hung it up yet or -
- D - Well, they said that whenever - the information that I got from people close to him - that when he came back from skin diving, that stuff was meticulously cleaned and picked up.
- R - Uh huh.
- D - And according to him, when he come back, he layed down and went to sleep.
- R - Uh huh.
- D - I just, you know, I just don't know. I just don't know.
- R - ...
- D - Uh huh.
- R - Merilee I think will.
- D - That's what I was thinking if you could talk to her about it. She would know more about it and know what kind of a suit he wore cause I never seen this suit. Uh, we need to find out if it was a full suit, you know, the full skin gear and everything which I imagine it was with the top that goes over your head and most of those skin diving - divers have red gloves or a lot of them do.
- R - Uh huh.
- D - And that red gloves really interests me.
- R - I thought it was blood. See, I mean - I kind of discounted it and thought he ... as far as ... his hands would have been red unless, you know ... they stopped to wash, I don't know, but, you know, that's what I ... was blood -
- D - Uh huh.
- R - You know. Well, I'll tell you, what we're going to do is, ah, we're going away to try to get ... and get up and get out for a little bit with him and ah, now Mike is supposed to pick her up ... and pick him up, ah, he's suppose to stay overnight and pick him up and take him to his folks in East, Texas.
- D - Uh huh.
- R - For a few days. I believe that's the plan ...
- D - Uh, huh.
- R - So, I don't - don't know what time he plans to be here ...
- D - Uh huh.
- R - ... but I told Merilee ... before he got here.
- D - Uh huh.
- R - So, ah, we'll be on back within two or three hours, anyway.
- D - Okay.

R - And during that time, I'll have a chance to ask her.

D - Okay and real good. And would you call back and the S.O. can get ahold of me. I don't know where I'll be, but if you would call back and ask them to call me, then I'll return your call and we'll kind of go from there. Ah, are yawl going to be down here next week?

R - I - I don't know.

D - Okay. Alright, let me ask you to do this. Would you please set down and write a statement with the date and the time that you talked to Eric and put your full conversation in there and sign it and date it in time and keep that for me so when we get in contact - if I have to I'll run up there where yawl live because we definitely need to get this thing solved and get whoever this is off the street.

R - I agree absolutely. Alright. Thank you, Sgt.

D - Okay, Rita, we'll see you a little later then.

R - Bye bye.

D - Okay. Bye bye.

End of tape

**SUPPLEMENTARY OFFENSE REPORT**

Williamson County Sheriff's Dept.

Offense Homicide

Case No. 86-08-126

Complainant Victim: Chris Morton

Location 9114 Hazelhurst

Address 9114 Hazelhurst

Date 8-24-86

page 1

**RESULTS OF INVESTIGATION**

On 8-24-86, this Officer called Rita Kirkpatrick by phone to talk to her in reference to the above case. Upon talking to Mrs. Kirkpatrick, she stated that she had been talking to three year old Eric Morton and he told her the following.

She stated that this morning, 8-24-86, was the first time she had been alone with Eric since her daughter, Chris Morton, had been killed. She said that Eric came into her bedroom, closed the door and began to talk. She said that yesterday, 8-23-86, was the first time that Eric had showed any real anger in missing his mother and this was exactly one week to the day of Chris' funeral. She said it was a bad day of biting and kicking and saying, "I want Mommy" which he has not been doing.

She then went on to say that at approximately 11:00 a.m., 8-24-86, Eric and she was alone at her house in Pearland which was the first time they had been alone since his mother's death. She said she was putting on make-up in the bathroom and Eric layed his blanket on her bedroom floor and said, "Mommy is sleeping in the flowers." Mrs. Kirkpatrick said that Eric's father had told him that last week at the cemetery. She said he then kicked the blanket and said, "Mommy, get up." and she said, "Don't kick Mommy, Eric."

Eric: Mommy's crying. She's ... stop it. Go away.

Rita: Why is she crying?

Eric: Cause, the monster's there.

Rita: What's he doing?

Eric: He hit Mommy. He broke the bed.

Rita: Is Mommy still crying?

Eric: No, Mommy stopped. The monster threw a blue suitcase on the bed. He's mad!

Rita: Did he put anything else on the bed?

Eric: No.

Rita: Did the monster hurt Mommy?

Eric: Yes. Mommy go to the hospital.

Rita: Then what did the monster do?

Eric: He said Mommy's in the garage.

Rita: Was he big?

Eric: Yeah.

Rita: Did he have on gloves?

Eric: Yeah, red.

Rita: What did he carry in his red gloves?

Eric: Basket.

Rita: What was in the basket?

Eric: Wood.

Rita: Did he have Daddy's gun or Mommy's purse?

Eric: (Sort of a vague "Yeah")

Rita: But he did have wood?

Eric: Yeah.

Rita: What kind of wood, Eric?

Eric: Like Daddy's.

Rita: Did he have the tool for the fireplace? Did he have anything for the fireplace?

Eric: (Sort of a vague "No.")

Rita: Did the monster leave then?

Eric: Yes.

DEPOSITION  
EXHIBIT

Davis (10)  
S. FISHER 10-24-86

MM 000369

000374

Cont'd.

**SUPPLEMENTARY OFFENSE REPORT**

Williamson County Sheriff's Dept.

Offense Homicide

Case No. 86-08126

Complainant Victim: Chris Morton Location 9114 Hazelhurst

Address 9114 Hazelhurst Date 8-24-86 page 2

**RESULTS OF INVESTIGATION**

Rita: How did he leave?

Eric: The door.

Rita: Which door, Eric?

Eric: Front door.

Rita: Eric, was it the front door or the patio door? Did he go out on the deck or out in the front?

Eric: The front.

Rita: Where was Daddy, Eric? Was Daddy there?

Eric: No, Mommy and Eric was there.

Mrs. Kirkpatrick then said that Eric also said the monster had a big moustache and he also said the lights were on. I then asked Mrs. Kirkpatrick if she would write down her conversation with Eric and mail it to me and she stated she would.

Sgt. Don Wood #8

Copies: Sheriff, CID, Wood, Bunte, Elliott, D.A.

000375

MM 000370

8-15-86

11:30 am

Don

Bill De la Vonne / Son Nat.

has no covered credit card at  
Jewel Box & Larry Miller  
can ID the woman.  
\$15000.00 in fraud on her.

We'll come to Austin & do it  
all if you like or mail it  
to you. Just let him know.

512/681-1690.

Bill

DEPOSITION  
EXHIBIT

Date (11)  
S. FISHER W. 256-11

8-10 00

11:50 am

Don -

Bill De La Verne / San Ant.

has recovered credit card at  
Jewel Box & Larry Miller  
can ID the woman.  
\$1000.00 in fraud on her.

He'll come to Austin & do it  
all if you like or mail it  
to you. Just let him know.

512/681-1690.

Bill

Charlie  
Meghine

Green across mobile home  
park walking CO Rd into  
take 147 left turn  
Green across

check

South Dan Wood  
Williamson County Sheriff's Dept.  
212 Main St  
Georgetown, Texas 78626

A 237 690 995

DEPOSITION  
EXHIBIT

Davis (12)  
S. FISHER 10-29-11



*Handwritten signature*

JOHN B. ORSHINEY, JR.  
12931 E. MAHINA DR., NO. 609, 368-1840  
AURORA, COLO. 80014

8606

MICHAEL W. OR CHRIS K. MORTON  
 07-29-65 0114 HAZELHURST DRIVE, 321-6186  
 AUGUST 1965

PAID BY *Chris Morton* \$ *7.25*

SECURITY ACCOUNT

0114 HAZELHURST DRIVE, 321-6186

8616

MICHAEL W. OR CHRIS K. MORTON  
 07-23-65 0114 HAZELHURST DRIVE, 321-6186  
 AUGUST 1965

PAID BY *Chris Morton* \$ *7.33*

SECURITY ACCOUNT

0114 HAZELHURST DRIVE, 321-6186

MICHAEL W. OR CHRIS K. MORTON  
 0114 HAZELHURST DRIVE, 321-6186  
 AUGUST 1965

DATE *7-29-65*

PAID BY *Chris Morton* \$ *7.25*

SECURITY ACCOUNT

0114 HAZELHURST DRIVE, 321-6186

DATE	AMOUNT	TOTAL
7-29-65	7.25	7.25
NET DEPOSIT		3.50

0114 HAZELHURST DRIVE, 321-6186

Wm. Lloyd Garrison  
For Legation

謝安

Attention: Gen. Des. 11222

61

*[Faint handwritten notes, possibly bleed-through from the reverse side.]*

The chief cause now before me is the  
petition of Mrs. J. M. Smith for  
a divorce from her husband, J. M. Smith.  
The petition is filed in the name of  
the State of New York, and is  
a divorce from the bonds of matrimony.

We do not know who the  
newest lady is. She is  
It is a new one.

18  
19  
20  
21  
22

Wm. M.  
In Deposit

9/22/82

Attention: Sgt. Dan Woods

Dear Sir:

For your phone request of yesterday please find attached our cancelled check #362 related to Chris Morton.

The check was mailed immediately after it was written and was a gift for her son Eric who is in surgery. Chrisy advised we signed the gift immediately by rote line. We no longer have an acknowledgment note.

We do not know why the check was never cashed while she was alive.

It is hoped this will be of assistance

*[Signature]*  
Wm. M. Woods

John B. George

Postmaster, George B. George, Jr., Rm.

Attn: Mr. George

**R** REGISTERED MAIL

R 237 690 995



Registered Mail

check



Sgt. Dan Wood  
Williamson County Sheriff's Dept.  
312 Main St.  
Georgetown, Texas 78626

Emp  
Ch.

652-163, 652-163 (2) (b) (1)

Attention: Sgt. Don Wood

9/27/86

Dear Sir:

Per your phone request of yesterday please find attached our cancelled check #362 relating to Chris Marton.

The check was mailed immediately after it was written and was a gift for her son Erik after his surgery. Chrissy acknowledged the gift immediately, probably by late June. We no longer have her acknowledgment note.

We do not know why the check was never cashed while she was alive.

It is hoped this will be of assistance.

*John B. Cross*  
John B. Cross

08-22-86	JOHN B. DE SHIRLEY E. CROSS	362
13081 E. MARINA DR. RD. 100	100 100 100 100	
AURORA, COLO. 80014	08-22-86 0081 02 240	009300272
PAY TO THE ORDER OF <i>Mr. Chris Marton</i>	\$ <i>20.00</i>	
<i>John B. Cross</i>	011700489	DOLLARS
<b>IntraWest</b> IntraWest Bank of Colorado, F.S.B. & S.S. Lakewood, Colorado 80123		
MEMO	<i>Shirley E. Cross</i>	
⑆10700349⑆	⑆1300000⑆	⑆0000002000⑆

MM 004540

Brian <sup>PD</sup>  
Kelley. Phoenix Ariz.  
~~602-2~~  
(602) 256-3190 W.  
" 878-3672 H.

---

Chris Morton reblature  
to father -

---

John B. Cross  
Annona Co.

---

303-

Brian Kelly Phoenix Ariz

602-256-3190 WK.

602-878-3672 Hon

John B. Cross

Aurora Colo.

303-

June 12

Aug 22, 86

Chris said she needed it.

or Shirley E Cross

# 362

Extra West Bank of Southwest Plaza  
Littleton Colo.

# 360059

Republic Bank Austin

258-2525

Joy Robertson

MM 004845



Lynn Hunt  
Republic Bank

John B. Cross

AURORA, COLO  
303-368-8240

3<sup>rd</sup> - 4<sup>th</sup>

Three acres liquor store on  
Burnett Rd.

MM 004841

Don, right after lunch, I took this call from a Brian Kelly who is a police officer from Phoenix, Arizona, and this is reference to the Morton case. His work telephone number is 602/256-3190 and his home number is 602/878-3672. Officer Kelly is a relative of Chris Morton by marriage and he related this story to me - that his father-in-law, a Mr. John B. Cross from Aurora, Colorado, had sent a check to Chris for a birthday present for Eric. It was a long period of time before the check cleared back through the old man's account and thought maybe it might be pertinent as the name on the back appears to be not that of Christine. Now John B. Cross is in the phone book in Aurora, Colorado, a suburb out of Denver, and the area code is 303, then you'll have to ask for information, cause I don't have that number. It might be interesting to know that they seem to think that Chris' purse was stolen, course, we know better than that, but it might be interesting to know the dates on that check when it was written and when it was cashed. You might request that Mr. Cross send that check down here to you. What do you think of them apples? If I'm not here, you can listen to this. Give Mr. Cross a call.

MM 004842

Case No. 86-452-K26

THE STATE OF TEXAS

v.

MICHAEL MORTON

§  
§  
§  
§  
§  
§

IN THE 26th JUDICIAL

DISTRICT COURT OF

WILLIAMSON COUNTY, TEXAS

**AMENDED NOTICE OF ORAL DEPOSITION OF MIKE DAVIS**  
**AND SUBPOENA DUCES TECUM**

TO: Mike Davis, Former Assistant District Attorney of Williamson County, Texas, at the Law Offices of Mike Davis, 1717 N. IH 35, Suite 300, Round Rock, Texas 78664.

Please take notice that Michael Morton by and through his attorneys of record, will take the oral deposition of Mike Davis, former Assistant District Attorney of Williamson County, Texas, in the above-entitled cause, on Saturday, October 29, 2011, beginning at 9:00 p.m. in the law offices of Mike Davis located at 1717 N. IH 35, Suite 300, Round Rock, TX 78664.

Said deposition will be taken upon oral examination before a court reporter.

Michael Morton requests that Mike Davis produce at the deposition, the documents and tangible things described in Exhibit "A" attached.

Respectfully submitted,

**RALEY & BOWICK, LLP**

By: 

**JOHN WESLEY RALEY**

State Bar No. 16488400

1800 Augusta Drive, Suite 300

Houston, Texas 77057

Telephone: (713) 429-8050

Facsimile: (713) 429-8045

JRaley@raleymbowick.com

**INNOCENCE PROJECT, INC.**

Nina Morrison  
Barry Scheck  
40 Worth St., Suite 701  
New York, NY 10013  
Telephone: (212) 364-5340  
Facsimile: (212) 364-5357

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amended Notice of Oral Deposition of Mike Davis and Subpoena Duces Tecum was served on counsel as indicated below on October 27, 2011:

**VIA FACSIMILE AND EMAIL:**

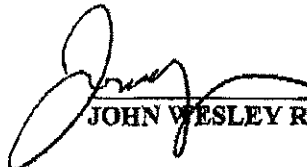
John Bradley, District Attorney  
Kristin Jernigan, Assistant District Attorney  
Williamson County Justice Center  
District Attorney's Office  
405 M.L.K. Street, Suite 265  
Georgetown, TX 78626  
Facsimile: (512) 943-1255  
[kjernigan@wilco.org](mailto:kjernigan@wilco.org)

**VIA FACSIMILE AND EMAIL:**

Shawn W. Dick  
The Dick Law Firm  
215 W. University Avenue  
Georgetown, TX 78626  
Facsimile: 512-930-2123  
[Shaun@thedickfirm.com](mailto:Shaun@thedickfirm.com)

**VIA FACSIMILE AND EMAIL:**

R. Mark Dietz  
Dietz & Jarrard, P.C.  
106 Fannin Avenue East  
Round Rock, TX 78664-5219  
Fax: (512) 244-3766  
[rmdietz@lawdietz.com](mailto:rmdietz@lawdietz.com)

  
\_\_\_\_\_  
JOHN WESLEY RALEY

**EXHIBIT "A"**

As used in this Duces Tecum, the term "you" or "your" refers to Mike Davis:

1. All documents in your possession or control regarding, related to, or in any way involving Michael Morton, including but not limited to letters, notes, facsimiles and e-mails.<sup>1</sup>
2. Copies of all recorded statements (including text messages) or phone conversations in your possession or control regarding, related to, or in any way involving Michael Morton, including but not limited to voice-mail messages.
3. All notes, diaries, journals, calendars, messages, cards, charts, memoranda, copies of phone messages, or emails kept by you and in your possession or control regarding, related to, or in any way involving Michael Morton (Cause No. 86-452-K26, *The State of Texas v. Michael Morton*).
4. All documents, not privileged under the Texas Rules of Civil Procedure, that show the date, location and content of each conversation or communication between you and any person, in your possession or control regarding, related to, or in any way involving Michael Morton.

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<sup>1</sup> As used in this Duces Tecum, the words "document" or "documents" are defined to include, but are by no means limited to, any and all manner of written, typed, printed, reproduced, filmed or recorded material, and all photographs, pictures, plans, drawings or other representation of any kind of anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter of each document, and the terms include, but without limitation,

- a. Papers, books, e-mails, journals, ledgers, statements, memoranda, reports, invoices, worksheets, work papers, notes, transcription of notes, letters, correspondence, abstracts, diagrams, plans, blueprints, specifications, pictures, drawings, films, photographs, graphic representations, diaries, calendars, desk calendars, lists, logs, publications, advertisements, instructions, minutes, orders, messages, resumes, summaries, agreements, contracts, telegrams, telexes, cables, recordings, audio tapes, transcriptions of tapes or recordings, text messages or any other writings or tangible thing in which any forms of communications are recorded or reproduced, as well as all notations on the foregoing;
- b. original and all other copies not absolutely identical; and
- c. all drafts and notes (whether typed or handwritten or otherwise) made or prepared in connection with each such document, whether used or not.

# EXHIBIT 14

MIKE DAVIS  
PRODUCTION

MICHAEL MORTON  
CASE - CD

# RALEY & BOWICK

JOHN W. RALEY  
RALEY & BOWICK LLP  
1800 Augusta Drive, Suite 300  
Houston, Texas 77057  
(713) 429-8050  
fax (713) 429-8045  
direct (713) 429-8055  
jraley@raleymbowick.com

November 7, 2011

**VIA FEDERAL EXPRESS**

Ms. Lisa David  
District Clerk  
Williamson County  
405 MLK Drive  
Georgetown, TX 78626

Re: No. 86-452-K26; *The State of Texas vs. Michael Morton*; In the 26th Judicial  
District Court of Williamson County, Texas


Dear Ms. David,

Enclosed are the following documents for filing in the above-referenced matter:

1. Transcript (condensed version with exhibits) of the deposition of Michael Patrick Davis.

By copy of this letter, all counsel of record is being notified.

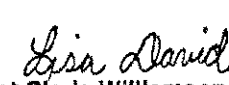
Very truly yours,

  
John Wesley Raley

JWR/amo  
Encls.

cc: John Bradley, District Attorney (w/o enclosures)  
Kristen Jernigan (w/o enclosures)  
Williamson County Justice Center

Brenda Wilburn, Clerk of the 26th Judicial District Court

**FILED**  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M  
NOV - 8 2011  
  
District Clerk, Williamson Co., TX.