

CAUSE NO. 86-452-K26

IN RE:

MICHAEL W. MORTON

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IN THE DISTRICT COURT

26<sup>TH</sup> JUDICIAL DISTRICT

WILLIAMSON COUNTY, TEXAS

PLEA TO JURISDICTION, MOTION TO QUASH AND FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Mike Davis, ("Movant" herein), by and through his attorney of record Shawn W. Dick, and files this Plea to the Jurisdiction, Motion to Quash and For Protective Order, and requests the Court quash the Defendant's Notice of Intention to take Oral Deposition and Subpoena Duces Tecum and issue a protective order in connection therewith, and would show the following:

1. On or about October 17, 2011, Movant was served with a Notice of Intention to Take Oral Deposition and Subpoena Duces Tecum (attached hereto and incorporated herein by reference as Exhibit "A", and referred to in this Motion as the "Subpoena"), by a private process server. The date set forth in the Notice of Intention to take Oral Deposition and Subpoena is October 25, 2011 at 2:00 p.m., at the Williamson County District Attorney's Office Grand Jury Room. Movant is not a party to this litigation.

STATEMENT OF FACTS

2. Barry Scheck and John Bradley have been engaged in open warfare for many years as a result of this case and Mr. Bradley's position on the Texas Forensic Science Commission. Movant is now an innocent bystander in the crossfire of their political and media battles.

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Lisa David  
District Clerk, Williamson Co., TX.

3. The service of the subpoena in this case is just another tit for tat in the battle between these lawyers. Movant has no recollection of having anything to do with any disclosures or failure to disclose *Brady* material in this case. The issues relating to *Brady* material were handled in hearings on November 25, 1986 and February 6, 1987. The transcripts of those proceedings indicate Movant was not present or did not participate. The false allegations made against Movant are slanderous. Indeed it appears that although The Innocence Project and its counsel in this case have done a wonderful and great job in freeing an innocent man, they are now engaged in a media war against Mr. Bradley and the Honorable Ken Anderson. To carry out this agenda, Counsel for Mr. Morton are attempting to conduct an unauthorized investigation and requesting depositions with no legal authority. At the time of Mr. Morton's trial, Movant was an employee of the then elected Williamson County District Attorney Ken Anderson. In February, 1987, Movant was hired by a local firm approximately two to three days prior to the trial of this case. Movant left the District Attorney's Office a day or two after the trial concluded.

4. Movant's recollection of the entire trial process is very limited after 25 years. However, Movant has discovered recently that Mr. Morton and his lawyers were well aware of the story his son may have told his grandmother about seeing the killer. See Exhibit "B" attached hereto and incorporated herein by reference. On February 26, 1987, approximately nine days after he was convicted, Mr. Morton told the Hill Country News he was aware of the bandana and the story about his son seeing the killer, but that he was told that evidence would be inadmissible at trial. Presumably his attorneys knew about this and gave him some legal information regarding the admissibility at trial. No attempt has been made, to Movant's knowledge, to depose Mr. Morton's original trial attorneys. Movant has no recollection, at this

time, of any reports, discussions or conversations regarding the child's story of seeing the killer. Movant vaguely recalls some discussions about the bandana.

5. Trial Counsel for Michael Morton may have been less than candid if they claim they had no knowledge of these two issues. Due to the fact Movant does not have full access to the complete record, Movant adopts herein by reference the factual statements in the State's Motion to Designate Issues and Set Hearing filed herein on September 26, 2011, and attached hereto and incorporated herein by reference as Exhibit "C". Movant has no recollection, at this time, of any issues relating to checks and credit cards. Movant served as second chair in this case and apparently did not participate in pre-trial matters to the best of his recollection, at this time.

#### **PROCEDURAL BACKGROUND**

6. According to the Register of Action attached hereto and incorporated herein by reference as Exhibit "D", this case has been through at least one direct appeal and three or four writ of habeas corpus proceedings. Movant is also aware Mr. Morton filed a Federal lawsuit against John Bradley in *Morton v. Bradley*, 01-08-CV-00597-SS; In the United States District Court, Western District of Texas, which was dismissed on June 19, 2009. The Court is well aware of the procedural history of this case. The Register of Actions, Exhibit "D" attached hereto and incorporated herein by reference, reflects this Court entered an order in this case on October 3, 2011, finding the evidence supports Mr. Morton's innocence and making findings of facts and conclusions of law. See Exhibit "E" attached hereto and incorporated herein by reference. This order and these findings were the result, apparently of a secret agreement between The Innocence Project and the State's Attorney. Movant was not a party to that agreement. Movant cannot be bound by this secret agreement to which he was not a party.

7. On October 12, 2011, the Texas Court of Criminal Appeals issued its opinion finding Michael W. Morton innocent and ordering this Honorable Court to set aside the Mr. Morton's conviction on his claim of actual innocence. See Exhibit "F" attached hereto and incorporated herein by reference. The record reflects that the State filed a Motion to Dismiss this case on October 12, 2011, rendering moot all other issues in this case. This Honorable Court cannot grant the Motion to Dismiss until the Court receives the Mandate from the Texas Court of Criminal Appeals. During this gap The Innocence Project has attempted to take depositions of Movant and others.

#### **APOLOGY TO MICHAEL W. MORTON**

8. Movant would like to personally explain to Mr. Morton Movant's deep sorrow and regret that Mr. Morton spent 25 years in prison for a crime he did not commit. Movant has fought and continues to fight everyday to protect people's freedom and prevent injustice. Our liberty and freedom are the two most fundamental rights we enjoy and loss of those rights by an innocent man deeply disturbs Movant. Movant's words can never give back to Mr. Morton his lost life, his lost wife, nor his son, and a simple apology is not sufficient but that is all Movant has to offer at this late date. Movant sincerely apologizes to Michael W. Morton for his loss of freedom, liberty, reputation, and family. Movant would gladly sit down with Mr. Morton and his counsel on an informal basis and tell him everything he remembers about the case.

#### **PLEA TO THE JURISDICTION**

9. This Court is without jurisdiction in this case pending the issuance of the mandate from the Texas Court of Criminal Appeals. The effect of appeal was that "all further proceedings in the trial court--except as provided otherwise by law or by these rules--will be suspended until the trial court receives the appellate-court mandate." Rule 25.2 Texas Rules of

Appellate Procedure. *HOUSTON CHRONICLE PUBLISHING CO. v. McMaster*, 598 S.W.2d 864, 868 (Tex. Crim. App. 1980); *Fowler v. State*, 803 S.W.2d 848, 849 (Tex. App. - Corpus Christi, 1991); *Drew v. State*, 765 S.W.2d 533, 535 (Tex. App.-Austin, 1989). Jurisdiction of court must be legally invoked, and, when not legally invoked, power of court to act is absent. *Ex parte Oliver Caldwell*, 383 S.W.2d 587, 589 (Tex Crim. App. 1964). Once the Criminal Court of Appeals has acquired jurisdiction it is only by judgment of that court that jurisdiction over the case is restored to district court, and by judgment, order and mandate of Criminal Court of Appeals the district court acquires jurisdiction of case only to see that judgment of Criminal Court of Appeals is carried out. *State v Hatten*, 508 S.W.2d 625, 628 (Tex. Crim. App., 1974).

10. If the Court is without jurisdiction to enter orders relating to Mr. Morton, it stands to reason subpoenas cannot be issued in this case either. If a party disobeyed the subpoena the Court would be powerless to enforce the subpoena. The Court would also be without power to determine issues that might arise regarding the propriety of the issuance of a subpoena served upon Movant, the service of the subpoena and the conduct of the interrogation by lawyers.

11. The parties cannot confer jurisdiction upon the Court where no jurisdiction exists. *In re: H.G., K.G., J.G., and T.G.*, 267 S.W.3d 120 (Tex. App.-San Antonio, 2008). A court must possess both subject matter jurisdiction over a case and personal jurisdiction over a party to issue a binding judgment. *See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701-03, 102 S.Ct. 2099, 2103-05, 72 L.Ed.2d 492 (1982). *CSR, Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex., 1996). It appears that the District Attorney and The Innocence Project have attempted to confer jurisdiction upon this Court to allow the taking of unwarranted depositions. Jurisdiction is a fundamental stricture on the power of the court and a party's

voluntary participation in trial cannot confer subject matter jurisdiction where it does not otherwise exist. *Abderholden v. Morizot*, 856 S.W. 2d 829, 832 (Tex. App-Austin, 1993).

### ALL ISSUES ARE MOOT

12. The Innocence Project has no legal authority to conduct a general investigation of any alleged *Brady* violations. Those issues have become moot with the ruling of the Texas Court of Criminal Appeals. *Winely v. State*, 556 S.W.2d 637 (Tex. Civ. App.-Austin, 1977). If a controversy ceases to exist “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome”, the case becomes moot. *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 71 L.Ed.2d 353 (1982); *O’Shea v. Littleton*, 414 U.S. 488, 495-96, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974) (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects.”) If a case becomes moot, the parties lose standing to maintain their claims. The Court loses jurisdiction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); *Murphy v. Hunt*, 455 U.S. at 481, 102 S.Ct. 1181.

13. The Innocence Project has not been appointed or elected to conduct such an investigation. Ms. Nina Morrison and Mr. Scheck, the attorneys pushing these depositions are not even licensed to practice law in the State of Texas and Movant finds no Motion to Appear Pro Hac Vice on file in this case for Barry Scheck or Nina Morrison. If this Court allows these attorneys to conduct depositions it will be condoning practicing law without a license in the State of Texas. Mr. Bradley and Mr. Scheck cannot confer jurisdiction upon this Court. Jurisdiction is

conferred by law not by secret agreements. *In re: H.G., K.G., J.G., and T.G.*, 267 S.W.3d 120, 124 (Tex. App. – San Antonio, 2008).

14. With the return of the Mandate from the Court of Criminal Appeals and the dismissal of this case by the District Attorney there will be no pending Writ of Habeas Corpus upon which to take depositions. A party must have standing not only at the inception of the suit, but at every stage thereafter, including appeal and remand. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex.2001). Once the underlying dispute in a lawsuit has become moot, the court no longer has jurisdiction. *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000).

15. The Court's authority to order depositions is limited by Art. 11.07 of the Texas Code of Criminal Procedure. This Court's order provides in part: "The trial court's findings and conclusions are limited to the allegations contained in Claim 1. The trial court, at this time, makes no findings on the other Claims, but reserves its authority to conduct a hearing and make findings on those claims but only should the Court of Criminal Appeals deny the findings and recommendations regarding Claim 1. If the Court of Criminal Appeals adopts these findings and grants relief, then Claims 2-7 shall remain unresolved."

16. The Texas Court of Criminal Appeals did not deny the findings and recommendations. See Exhibit "F". There is nothing left for The Innocence Project to investigate. It will be an enormous waste of time and effort if The Innocence Project is allowed to conduct these interrogations.

#### **ADVISORY OPINION**

17. Any opinion this Honorable Court might render based up these interrogations would be merely advisory. Michael Morton is certainly free to pursue these interrogations

through other venues. The courts have repeatedly held that the judicial power in the Constitution of Texas does not embrace the giving of advisory opinions. *Fireman's Ins. Co. of Newark, New Jersey v. Burch*, 442 S.W.2d 331 (Tex.1968); *United Services Life Insurance Co. v. Delaney*, 396 S.W.2d 855 (Tex.1965); *Winely v. State*, 556 S.W. 2d 637, 638 (Tex. Civ. App., 1977).

### **OBJECTION TO DEPOSITION**

18. Movant objects to the deposition on the basis of The Innocence Project's failure to comply with Art. 39.02 Texas Code of Criminal Procedure. An application has to be filed and a hearing conducted. That hearing cannot occur prior to the return of the mandate. Movant objects to the time and the place of the deposition. Movant is concerned that the deposition in the Williamson County Grand Jury Room will create a hostile environment with a media frenzy.

### **MOTION TO QUASH**

19. Discovery is a tool to make the trial process more focused and not a weapon of mass destruction to make it more expensive to litigate. A discovery tool is not a fishing pole to be used to troll for whatever might be caught. *KMART Corporation v. Sanderson*, 937 S.W. 2d 429, 434 (Tex. 1996). Discovery in criminal cases is strictly proscribed and requires a specific order of the Court before a party may go fishing for evidence. In all candor to the Court it seems *non sequitur* to Movant that discovery in civil cases, where money is usually the issue, is broader than in criminal cases, where life and liberty are the issues, but that is the law. The Innocence Project has failed to comply with the Texas Rules of Criminal Procedure in issuing the subpoena and in attempting to take Movant's deposition.



20. Movant requests that the Court quash the Subpoena directing Movant to produce and permit inspection and copying of documents and other tangible things. Movant believes Michael Morton's attorneys are using this subpoena to advance the Innocence Project's, alleged criminal investigation of Movant.

21. Movant has not been given a sufficient amount of time for compliance with the items requested in the Subpoena. Movant is not a party to this litigation and under Rule 196.2 TRCP Movant is entitled to 30 days notice prior to production of documents. The notice was received less than 30 days prior to the date of production.

22. The Request for Production contained in the Subpoena requests that Movant produce the following documents or other tangible things:

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.
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.

23. Movant objects to said Request as follows:

- a. The very request is overly broad, lacks definition, or is not reasonably limited in scope or time. This overly broad request is not permitted under the Texas

Rules of Civil Procedure. *In re: Dana Corporation*, 138 S.W.3d 298, 301 (Tex. 2004); *In re: CSX Corporation*, 124 S.W.3d 149, 151 (Tex., 2003); *In re: American Optical*, 988 S.W. 2d 711, 713 (Tex., 1998); *In re: Dillard Department Stores, Inc.* 909 S.W.2d 491, 492 (Tex., 1995); *Texaco v. Sanderson*, 898 S.W.2d 813, 814 Tex., 1995).

b. Movant has not been given a sufficient amount of time for compliance with this potentially voluminous request. Rule 196.2, Texas Rules of Civil Procedure. Movant is entitled to 30 days after he receives the request to respond. *Approximately \$14,980.00 v. State*, 261 S.W.3d 182 (Tex.App.-Houston [14 Dist.], 2008); *Payton v. Ashton*, 29 S.W.3d 896, 898 (Tex.App.-Amarillo, 2000). Movant did not receive the Notice until October 17, 2011.

c. This overbroad request potentially requires Movant to produce documents about which he may have mere knowledge and which are not subject to his care custody or possession. Such a request is not permitted under the Texas Rules of Civil Procedure. *In re: Kuntz* 124 S.W.2d 179, 184 (Tex. 2003).

d. The request calls for information that is privileged, and that has been or will be properly asserted under Texas Rules of Civil Procedure, Rule 193.3. The information requested is specifically protected by the attorney client privilege and the attorney work product privilege.

e. Any non-privileged information sought by the discovery request has already been provided during the Innocence Project's investigation of Movant and during the course of the *writ of habeas corpus* proceedings. Movant is not required to produce the documents. *In re: Patel* 218 S.W.3d 911, 919 (Tex. App.- Corpus Christi, 2007).

f. The discovery request is unreasonably frivolous, oppressive, or harassing. *Lunsmann v. Spector*, 761 S.W.2d 112 (Tex. App.- San Antonio, 1988) The Subpoena is unduly burdensome, vexatious, harassing and will cause Movant undue expense and burden. Movant objects based upon Rule 192.4 of the Texas Rules of Civil Procedure.

g. Movant objects to the subpoena on the basis of invasion of personal rights to privacy, his constitutional rights, and his property rights. *In re: Celadon Trucking Services, Inc.*, 281 S.W.3d 93 (Tex. App.- El Paso, 2008).

h. Movant objects as to the time and place of the production. The location creates a hostile environment. Further, the date and time are not reasonable due to the quantity of documents. Further, Movant has previously been noticed for jury duty beginning October 24, 2011. The Innocence Project failed to attempt to schedule the deposition in accordance with the **Texas Lawyers Creed**. *In re: Allstate County Mutual Insurance Co.* 227 S. W.3d 667, 669-70 (Tex. 2007)

i. Movant objects to production of documents relating to production of his personal documents. This information is neither relevant to the exoneration of Mr.

Morton or the alleged Brady violations nor calculated to lead to the discovery of evidence which is relevant or admissible at the trial of this case.

j. Movant objects to discovery of his records and documents and testimony on the basis of denial of due process of law, equal protection and his right to privacy as guaranteed by Art 1 § 3, 3a, 9, 17, and 19 of the Texas Constitution and Amendments V, XIV of the United States Constitution.

k. Movant objects to the videotaping of his deposition which can be easily manipulated by the media.

l. Movant objects that the request for documents and oral deposition violate his rights as guaranteed by Art 1 § 3, 3a, 9, 17, and 19 of the Texas Constitution and Amendments IV, V and XIV of the United States Constitution.

m. Movant objects on the basis of The Innocence Project's failure to comply with Arts. 11.07 and 39.02 of Texas Code of Criminal Procedure.

24. A trial court has broad discretion to protect a non-party with a protective order. *Crown Central Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995). Movant asks the Court to exercise its discretion and grant a protective order because it is necessary to protect Movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights.

25. The Court must make an *in camera* inspection of any of the documents prior to disclosure of the documents. Undoubtedly, these documents will be released to the media by The Innocence Project for fund raising and political purposes or through The Innocence Project's political operatives. The Court should provide for the proper handling and disclosure of the documents. The vast majority of any such documents will be personal as to Movant and have nothing to do with any issues relating to Mr. Morton.

26. In the interest of justice, Movant requests that a protective order be entered as follows:

a. Movant be compensated for undue hardship or other expenses incurred as a result of the discovery request, including but not limited to, the expenses of responding to the Subpoena in the form of fees for costs of production. Further, Movant is entitled to reasonable and necessary attorney's fees for being forced to file this motion.

b. Movant be granted additional time to comply with the requests, until at least November 17, 2011.

c. The production of documents be undertaken only by such method or upon such terms and conditions or at the time and place directed by the Court. That the Court conduct an *in camera* review to determine which documents are protected by the attorney client and work product privilege.

d. Movant be reimbursed for the expenses incurred in connection with the production of the items requested in the Subpoena.

e. The parties be ordered not to disclose any documents produced to any third party or to the Innocence Project's employees, political operatives, agents or representatives.

f. That the records be sealed, pending further orders of this Court in the matter.

g. The deposition of Movant not be videotaped.

#### **AUTOMATIC STAY**

27. The notice and subpoena are automatically stayed pursuant to Rule 199.4 of the Texas Rules of Civil Procedure. For the reasons identified herein, Movant objects to the time and place designated by Defendant for the deposition and production of documents. Movant objects to the date designated for the taking of the deposition and production of documents.

Movant objects to the place designated for the taking of the deposition and production of documents. Further, to said objection, Movant would show that this Motion to Quash is filed by the third business day after service of the subpoena, said notice be automatically stayed until the motion can be reviewed by this Honorable Court. Accordingly, if the Court believes it has jurisdiction to act on this notice for oral deposition and subpoena duces tecum, Movant requests that this matter be set for a hearing in accordance with the applicable procedure, this Honorable Court, and the Texas Rules of Civil Procedure.

### **MOTION FOR SANCTIONS**

28. Under Rule 13 of the Texas Rules of Civil Procedure, the court shall impose an appropriate sanction when a party or their counsel signs an instrument which is either groundless or brought in bad faith or groundless and brought for the purpose of harassment. These sanctions can be imposed upon the person who signed it, a represented party, or both.

29. The Innocence Project violated Rule 13 of the Texas Rules of Civil Procedure, by subpoenaing records The Innocence Project knew were protected by attorney client privilege, the rights guaranteed to Movant by the Texas Constitution and the United States Constitution, and by harassing Movant. Specifically, the Innocence Project violated Rule 13 of the Texas Rules of Civil Procedure by causing its counsel to sign the subpoena and notice of deposition. This document is groundless and brought for the purpose of bad faith and furthermore groundless and brought for the purpose of harassment because of the Innocence Project's agenda against John Bradley and the Honorable Ken Anderson, thereby affecting Movant.

30. Further, the subpoena for the records of Movant are an abuse of the discovery processes, therefore, the court should impose an appropriate sanction available under Rule 215. Recognizing the Court's broad authority under Rules 13 and 215.2(b) of the Texas

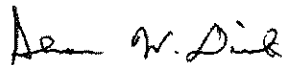
Rules of Civil Procedure, to make such orders as are just, Movant respectfully submits that an appropriate sanction in this case would be to strike the subpoena, order the Innocence Project not undertake further discovery from Movant and enter such orders in regard to the Innocence Project's failure to comply with the law as the Court deems just.

31. Due to the Innocence Project's acts described herein, Movant has incurred substantial expenses, including but not limited to attorney's fees. Under Rule 215.2(b)(8) of the Texas Rules of Civil Procedure, Movant is entitled to recover reasonable expenses, including reasonable attorney's fees, incurred in obtaining an order for sanctions. Reasonable attorney's fees for the services rendered and to be rendered in this regard is at least \$5,500.00 to be given to a charity of Michael Morton's choosing.

#### PRAYER

**WHEREFORE, PREMISES CONSIDERED,** Movant requests that the Court quash the above described Subpoena, that a protective order be entered herein as requested hereinabove, that the Court impose sanctions upon the Innocence Project as the Court deems just and right, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

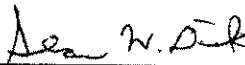


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Fax. (512) 930-2123  
Attorney for Movant

**CERTIFICATE OF CONFERENCE**

This is to certify that the undersigned attorney attempted in good faith to resolve the issues surrounding this discovery matter without court intervention, however those attempts failed. Movant faxed a letter to counsel on October 18, 2011. Mr. Scheck and Mr. Raley called the undersigned and implied that movant maybe the subject of a criminal investigation. The discovery dispute was not resolved, therefore, this matter is presented to the Court for determination.

  
\_\_\_\_\_  
Shawn W. Dick

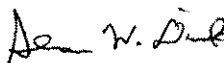
**CERTIFICATE OF SERVICE**

I certify that on October 19, 2011, a true and correct copy of the Motion to Quash and for a Protective Order was served via certified mail return receipt requested to:

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, Texas 78626

JOHN WESLEY RALEY  
State Bar. No. 16488400  
1800 Augusta Drive, Suite 300  
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BARRY SCHECK  
NINA MORRISON  
40 Worth St., Suite 701  
New York, New York 10013

  
\_\_\_\_\_  
Shawn W. Dick

# LAW OFFICES OF MIKE DAVIS

ATTORNEY & MEDIATOR

Board Certified CIVIL TRIAL LAW  
Texas Board of Legal Specialization

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Board Certified CRIMINAL LAW  
Texas Board of Legal Specialization

October 18, 2011

John Wesley Raley  
1800 Augusta Drive, Suite 300  
Houston, Texas 77057  
VIA FAX: 1-713-429-8045

Re: Cause No. 86-452-K26; *In Re: Michael W. Morton*; In the 26<sup>th</sup> Judicial District Court  
of Williamson County, Texas

Dear Mr. Raley:

First of all, I congratulate you on an outstanding job you did in freeing Michael Morton. I received the subpoena you issued, on October 17, 2011. I have a conflict with the date, time, and the location. I am scheduled for jury duty beginning October 24, 2011, although we both know I am not likely to be selected since I am a lawyer. I also object to doing this deposition in the grand jury room and on video. As we both know videos are very susceptible to manipulation for political purposes.

In reviewing the subpoena it would appear that it has several flaws including the fact that it was not issued in accordance with the Texas Code of Criminal Procedure, the trial court has no jurisdiction at this time, and the issues have become moot about which you want to inquire. I believe I have a right to have the subpoena quashed but I would like to make an offer so that we can get past this issue and you can get the information you want.

I will be happy to sit down and meet with you. I would like Mr. Morton to be there if possible, and I will answer any questions that you have about any role I played in the trial of Michael Morton. I would also like to tell Mr. Morton how sorry I am that he lost 25 years of his life in prison. I would like to do that in person so Mr. Morton can say whatever he would like to say to me as well. Hiding behind papers and lawyers is not my style.

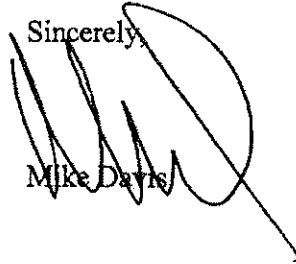
If you are agreeable to sitting down and visiting with me, and if possible having Mr. Morton there, I would certainly go wherever Mr. Morton is for his convenience since I am absolutely positive he has no desire to ever be back in Williamson County, please withdraw your subpoena and give me a call so we can set a time and place mutually agreeable for the interview. Since Mr. Bradley has turned this over to a special prosecutor and grand jury, I have taken the precaution of retaining counsel. If you are more comfortable talking by counsel, please feel free to contact him. My attorney is Shawn Dick and he may be reached at (512) 930-2120. If you cannot agree, I will file a motion to quash and avail myself of all my rights.



Please consider this an attempt to confer to resolve discovery issues as required by Rule 191.2, Texas Rules of Civil Procedure. As you know, I must file my Motion to Quash no later than Wednesday, October 19, 2011, if we do not reach an agreement.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "Mike Davis", written over the word "Sincerely,".

Mike Davis

MPD/gcf  
11mpd21613:E\10-11