

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON
VOLUME 2

CAUSE NO. 86-452-K26
THE STATE OF TEXAS) IN THE DISTRICT COURT OF
)
 Plaintiff(s))
)
VS.) WILLIAMSON COUNTY, TEXAS
)
MICHAEL MORTON)
)
Defendant(s).) 26TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
KEN ANDERSON
NOVEMBER 11, 2011
Volume 2 of 2

ORAL AND VIDEOTAPED DEPOSITION of KEN
ANDERSON, produced as a witness at the instance of the
Defendant, and duly sworn, was taken in the above-styled
and numbered cause on the 11th of November, 2011, from
9:18 a.m. to 11:45 a.m., before Glenda Fuller, CSR in
and for the State of Texas, reported by machine
shorthand, at the offices of Dietz & Jarrard, 106 Fannin
Avenue East, Round Rock, Texas, pursuant to the Texas
Rules of Civil Procedure.

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Mr. Jason Lantz (via internet)
Ms. Rachel Peck (via internet)
Mr. Al Rodriguez, Videographer

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1 (Anderson Exhibits Nos. 23-28 marked for
2 identification.)
3 VIDEO TECHNICIAN: It's November 11th,
4 2011; the approximate time is 9:18. We are on the
5 record beginning tape number one.
6 (Witness sworn.)
7 KEN ANDERSON,
8 having been first duly sworn, testified as follows:
9 EXAMINATION
10 BY MR. SCHECK:
11 Q. Mr. Anderson, we have marked the transcript of
12 the deposition so far as Exhibit 23. Have you reviewed
13 that?
14 A. I have.
15 Q. Do you have any changes that you would like to
16 make?
17 A. I'm in the process of reviewing it. I have
18 read through it a couple of times. Are you talking
19 about my prior -- I mean the beginning of this
20 deposition two weeks ago?
21 Q. That is correct.
22 A. I have got a couple of pages of notes, but I
23 didn't bring them with me. The one thing that I
24 didn't -- doesn't come through necessarily is the
25 overall context. I mean my testimony is and truthfully

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1 is that I have no recollection of the events that
2 happened back in '86, '87 having to do with the trial,
3 the investigation, the appeal motion for a new trial;
4 and I said that numerous times throughout the
5 deposition. What I want to make clear is that you had
6 showed me a bunch of documents, and I had reviewed some
7 of the trial transcript. And I did the best I could
8 based upon that information to give the answers to
9 questions that you were asking. But the answer to any
10 of those questions is that I have no recollection --
11 specific recollection of things that happened, 25, 24,
12 23 years ago.
13 Q. Just two points that I wanted to ask you about
14 from the deposition. The first one is on page 67, line
15 22, but you may recall it.
16 A. Before we get there we also -- I mean the dates
17 were wrong that we were talking about for the day the --
18 I don't know if the hearing day was right, but the
19 day -- I think you kept talking about the 21st, as if it
20 was a Monday; and when I looked at a calendar, the 22nd
21 was the Monday of that week.
22 Q. Okay. What you are talking about now is August
23 when you came back from Colorado, correct?
24 A. Right. Monday, August 22nd, would have been
25 the day. So I came back that weekend, would have been

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1 **in my office probably Sunday night. And then you had**
2 **asked a bunch of questions about -- it looked to me like**
3 **you and I both were assuming that the 21st was actually**
4 **the Monday.**

5 Q. Then whatever it is I think we can mutually
6 agree that we will correct the record as to the date,
7 but the substance of it is -- the sequence is that there
8 was a Sunday that you came back in August and reviewed
9 the motion to recuse --

10 **A. It probably was a Saturday that I got back. I**
11 **don't know if I came to the office that evening or the**
12 **following Sunday, probably the following -- I mean that**
13 **Sunday.**

14 Q. And then there's a Monday when you had a
15 meeting with Mike Davis, correct?

16 **A. If it was that day, it likely was. But it was**
17 **Monday, and I believe that was August 22nd. Now I also**
18 **said in the deposition that I was busy in court that**
19 **week. I have looked back, and I didn't have a lot of**
20 **court that week. I just assumed that I had. I probably**
21 **was busy, but that was a jury week, and I had civil and**
22 **criminal cases set, and none of them went to trial. We**
23 **were busy that morning, Monday morning, but I was not**
24 **busy in court that whole week.**

25 Q. Any other corrections that you can think of?

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1 **A. The main thing was just to make sure that**
2 **everybody understood. And I think when you and I were**
3 **talking, we understood the context was that I have no**
4 **recall of what I did during the trial, trial strategy,**
5 **any of those type of questions. And I was doing the**
6 **best I could, I guess, to speculate or whatever based**
7 **upon my review of the trial transcript and whatever**
8 **documents you were asking me. A couple of times you**
9 **asked me to assume certain things about those documents,**
10 **which I did; and I was doing the best I could given**
11 **those facts.**

12 Q. Okay. We appreciate that. Now, at page 67 at
13 one point you were -- you said something -- well, I will
14 read it to you.

15 It really is page 68, where you said so I
16 asked -- "So in other words --"

17 And your answer was: "-- in terms of
18 figuring out everything, I mean, I was getting the
19 impression that you knew things, the Travis County DA or
20 the Austin Police knew things."

21 **A. I'm sorry, where are you?**

22 Q. Page 68, line 1.

23 **A. Okay. I'm sorry.**

24 Q. "The Williamson County DA was maybe the last
25 person to find out. Well, except possibly for me. And

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1 probably it was in the newspaper before I found out
2 about it, but whatever. But early on in September I
3 thought it was way past time. Like I said, White,
4 Allison, and I should have sat down a long time ago and
5 hashed this thing out."

6 **A. Yes.**

7 Q. What did you mean by that when you said,
8 "White, Allison, and I should have sat down a long time
9 ago and hashed this thing out." What did you mean?

10 **A. Well, this has been going on for 25 years, and**
11 **obviously something very wrong happened. And I don't**
12 **know how we could have gotten to this point where it**
13 **took 25 years to figure this out. And, you know, we**
14 **have an adversarial system, and I understand that. But**
15 **at some point, you know, lawyers just need to say, hey,**
16 **let's quit being lawyers for a second, and let's see if**
17 **we can't figure out. I mean, they were being pretty**
18 **darn persistent in pursuing these claims. And I don't**
19 **know that I have seen Bill Allison in 25 years. I may**
20 **have, but I see White occasionally. I don't even know**
21 **if it's annually, but I have certainly seen him. And at**
22 **some point I think it might have been just a really good**
23 **idea for the three of us to sit down and let's just talk**
24 **about it and see if there wasn't some way we could have**
25 **come to some resolution of this rather than having 25**

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1 **years of litigation.**

2 Q. Well -- but, let me call your -- the "this" is
3 the issue is whether or not the complete Wood report and
4 field notes were produced for Judge Lott?

5 **A. No, I'm talking about the overall issue of**
6 **guilt/innocence here.**

7 Q. Okay. The next question I had for you was: --
8 you had said in your deposition that there was something
9 in the transcript that you had seen -- the trial
10 transcript -- this is actually on page 203 or 204 --
11 that made you believe that your concentrated work in
12 this case in terms of interviewing witnesses and
13 mastering details occurred in the two weeks prior to the
14 trial. Do you recall that?

15 **A. Yes, sir.**

16 Q. Thank you. What was that in the transcript
17 that made you believe that you were doing the most
18 intensive work where you were interviewing witnesses and
19 reviewing documents and mastering the details of the
20 case in the two weeks prior to the trial?

21 **A. I looked at that when I reread it and, you**
22 **know, my standard practice would be to work the week**
23 **before a trial. There was something in the transcript,**
24 **and I really don't recall now and -- what it was that**
25 **made me think that I had started that process earlier.**

3 (Pages 316 to 319)

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1 Q. Okay.
2 **A. I mean it wouldn't be unusual given the number**
3 **of witnesses to have spent a full week getting ready,**
4 **but it could possibly have been started two weeks**
5 **before.**
6 Q. Now, I would like to -- we have marked as
7 Exhibit 24 a chronology of events to try to assist us as
8 we go through this. And we have also marked as Exhibit
9 25 the December 14th, 1998, decision of the Court of
10 Appeals. Okay. Do you have those documents before you?
11 **A. This is the original direct appeal, is Exhibit**
12 **25?**
13 Q. That's correct?
14 **A. All right.**
15 Q. Now, you recall the -- in our prior deposition
16 that we reviewed together Bill Allison's motion for a
17 new trial based on the statements that Mike Davis made
18 before the jury after the verdict, right?
19 **A. Mr. Scheck, you are a still image now on the**
20 **computer screen so that kind of distracted me, and you**
21 **are still a still image. Now we are back to me.**
22 Q. Well, why don't we just continue with you for a
23 minute, if that's okay.
24 **A. I would kind of like to look at you.**
25 **MR. SCHECK: Why don't we just stop the**

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1 **time then for a second and try to fix these difficulties**
2 **if that's okay. Are we back now?**
3 **THE WITNESS: Well, we may have swapped**
4 **places.**
5 **MR. DIETZ: Swap screens again if you can.**
6 **MR. SCHECK: It seems the only way to do**
7 **that --**
8 **THE WITNESS: I will do it here. Let me**
9 **swap the low tech solution here. There we go.**
10 **MR. DIETZ: There we go.**
11 **MR. SCHECK: Okay. You are covering up**
12 **the web cam it looks like.**
13 **MR. DIETZ: If you pull down that upper**
14 **right.**
15 **THE WITNESS: I will let you-all do this.**
16 **MR. SCHECK: Okay.**
17 **THE WITNESS: All right. Now you are live**
18 **again.**
19 Q. (BY MR. SCHECK) Now, Mr. Anderson, we reviewed
20 together the motion for a new trial that Mr. Allison
21 filed after hearing statements made by Mike Davis in
22 front of the jury after the verdict, right?
23 **A. Correct.**
24 Q. And you recall that Mr. Allison's motion was
25 that the complete Wood documents may not have been

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1 produced to Judge Lott for in camera inspection; that
2 is, the complete report and a complete set of his field
3 notes, because of statements Mike Davis made that those
4 documents were sizeable, about an inch thick. Do you
5 remember that?
6 **A. What am I being asked to remember? Because you**
7 **represented that Mr. Davis said he didn't have any**
8 **quarrel with that -- making that statement in the**
9 **deposition. And when I read the deposition, it was**
10 **quite different.**
11 Q. Okay. Why don't we just deal with it this way,
12 okay? You read Bill Allison's motion?
13 **A. Motion for a new trial back in 1987,**
14 **presumably.**
15 Q. Right. Right after the verdict, correct?
16 **A. I have no knowledge, but I had marked it, and I**
17 **can't imagine that I didn't see a motion for new trial**
18 **when it came into my office.**
19 Q. In other words, you must have -- in accordance
20 with routine you must have seen that motion for a new
21 trial, right?
22 **A. Correct.**
23 Q. And in that motion for a new trial he says that
24 Davis said that the Wood report -- the complete Wood
25 reports and field notes were sizeable, about an inch

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1 thick, right?
2 **A. I believe so.**
3 Q. And he was asking for a hearing to see if all
4 of those Wood reports had been produced to Judge Lott,
5 correct?
6 **A. I believe that's correct.**
7 **I have lost the screen again. Can you see**
8 **me?**
9 **MR. SCHECK: I can see you. I mean, if**
10 **it's okay, we will just proceed with you hearing me, if**
11 **not seeing me. Is that all right by you?**
12 **THE WITNESS: Well, I would rather see you**
13 **because it's a lot easier to hear your -- understand**
14 **your questions when I can actually see you. But right**
15 **now I'm looking at what looks like a screen saver.**
16 **MR. SCHECK: We see him.**
17 **MR. DIETZ: Can you see him? Just hold on**
18 **a second. That's what happened. It went from --**
19 **THE WITNESS: It minimized, I think is**
20 **what it is called.**
21 **MR. DIETZ: There you go. We are back**
22 **going.**
23 **THE WITNESS: All right.**
24 Q. (BY MR. SCHECK) All right. So now that you --
25 so you were aware of the allegation that Bill Allison

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1 was making that the complete set of field notes and Wood
2 report had not been disclosed to Judge Lott?

3 **A. Evidently I would have been aware of whatever**
4 **was in the motion for new trial. If that was in there,**
5 **evidently I was.**

6 Q. All right. Now, why -- withdrawn.

7 In reviewing the transcript and the
8 proceedings now, you are taking the position that you
9 were only obligated to turn over reports by Wood that
10 related to the statements that Michael Morton made on
11 August 13th and 14th?

12 **A. That and his field notes appears -- is my**
13 **understanding based upon reviewing the transcript today**
14 **of what I was required to turn over -- what I told Judge**
15 **Lott I would turn over.**

16 Q. I'm sorry. I didn't quite hear that. You are
17 saying both the -- a written -- a formal offense report
18 and field notes by Sergeant Wood relating just to the
19 statements of Michael Morton is what you were obligated
20 to turn over, that's how you read the transcript?

21 **A. Yes, sir.**

22 Q. Okay. And so if you had followed your
23 understanding of Judge Lott's order, then wouldn't it be
24 fair to say that you knew at the end of this trial when
25 Bill Allison made his motion that you had only turned

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1 over the report and field notes of Wood concerning
2 Michael Morton's statements?

3 **A. Well, I don't know what I would have known at**
4 **the end of the trial, but reviewing the transcript my**
5 **thoughts are that I was supposed to turn over the**
6 **offense report Wood wrote relating to the August 13**
7 **conversation -- or whatever day it was -- and the field**
8 **notes.**

9 Q. Right. And so all of Wood's reports concerning
10 other parts of the investigation, other witnesses he
11 interviewed, other investigations he did, you, looking
12 at this record, do not believe you are obligated to turn
13 over to Judge Lott for in camera inspection; is that
14 correct?

15 **A. I don't know what I would have thought back in**
16 **1986 or '87, but reviewing the transcript you came up**
17 **with a different conclusion than I did, but that appears**
18 **to me to be what Judge Lott wanted. And, of course,**
19 **Judge Lott looked at whatever I did turn over and didn't**
20 **say anything -- at least not on the record -- didn't say**
21 **anything other than he evidently was satisfied. And**
22 **then when you get to the Court of Appeals' opinion, you**
23 **look at it, and they refer to it as field notes.**

24 Q. Mr. Anderson -- Mr. Anderson --

25 **A. I'm sorry, I couldn't hear you.**

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1 Q. Let's just focus on this issue. You read the
2 record now --

3 **A. Correct.**

4 Q. -- that you were only obligated to turn over
5 Wood's report and field notes with respect to Michael
6 Morton's statement, that's correct?

7 **A. In the November hearing I think anybody who**
8 **reads that would think that. And then in the February**
9 **hearing --**

10 Q. Can you answer my question? Just try to be
11 responsive.

12 **A. I'm trying to, Mr. Scheck, but I can't hear**
13 **your words.**

14 Q. My question to you is: Is it not your
15 understanding of the record now that you have reviewed
16 it that you are only obligated to turn over to Judge
17 Lott the Wood report and field notes about Michael
18 Morton's statement; is that correct?

19 **A. Sitting here today by reviewing the transcript**
20 **that's my thoughts.**

21 Q. Now, based on that understanding the way you
22 read the record is that you are not obligated to turn
23 over to Judge Wood (sic) the complete report of Sergeant
24 Wood and field notes concerning all of his other
25 investigative activity, correct?

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1 **A. Correct. It appears we were talking about the**
2 **statements --**

3 Q. The answer to my question is yes?

4 **A. Okay. You are getting upset, and I'm not quite**
5 **sure what you expect out of me at this point.**

6 Q. What I am -- what I am trying -- what I expect
7 of you, Mr. Anderson, is to be responsive. I'm asking
8 you a simple question. I can have the court reporter
9 read it back to you if you want. Can you answer the
10 question I asked you, yes or no?

11 **A. The best I can tell you is what I just said,**
12 **which is reviewing the transcript today, trying to**
13 **figure out what Judge Lott wanted me to do, it begins**
14 **obviously with me making the offer to Judge Lott to**
15 **provide the offense report.**

16 Q. We are not going to review all of that. I'm
17 going to ask you this question, and let's see if you can
18 answer it yes or no. All right? Listen carefully
19 please.

20 Mr. Anderson, based on your review of the
21 record you do not believe that you were obligated to
22 produce for Judge Lott the offense -- complete report of
23 Sergeant Wood and his field notes concerning all of his
24 other investigative activity; the only thing you were
25 supposed to turn over had to do with Michael Morton's

5 (Pages 324 to 327)

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1 statement, right?
2 **A. Yeah, it would be his report and field notes.**
3 Q. His report and field notes concerning the
4 statement were the only thing you felt -- the only thing
5 in reading this record you believe you were obligated to
6 turn over; is that right, can you answer that yes or no?
7 **A. That would be correct based upon what I know --**
8 Q. Question -- next question. Based on your
9 understanding of the record, you did not believe you
10 were obligated to turn over Sergeant Wood's report and
11 field notes concerning all of his other investigative
12 activities in this case, yes or no?
13 **A. I don't see any place where we talked about**
14 **that.**
15 Q. I'm asking you now, based on your review of
16 this record.
17 **A. Yes, sir.**
18 Q. Isn't it your view that you were not obligated
19 to produce for Judge Lott for in camera inspection
20 Sergeant Wood's reports -- complete reports and field
21 notes about all of his other investigative activities?
22 **A. That's the best of my understanding from the**
23 **transcript, yes, sir.**
24 Q. So if that is your understanding today, would
25 it not be a fair assumption that that was your

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1 understanding at the time of this trial?
2 **A. I -- there's no way I can figure out what my**
3 **understanding was 25 years ago.**
4 Q. All right. Then let me just ask you -- well,
5 wait a second. You have reviewed the transcript,
6 correct?
7 **A. Correct.**
8 Q. And you are now telling us about your
9 interpretation about your interpretation about what you
10 were obligated to produce and not obligated to produce.
11 Okay? Is that right?
12 **A. I'm telling you what I read in the transcript.**
13 Q. Let us assume for these purposes that you acted
14 at the time of the trial, based on what you now believe
15 is your understanding of what you were obligated to do.
16 Do you have that in mind?
17 **A. All right.**
18 Q. And that would mean that at the time of the
19 trial all that you did was produce for Judge Lott the
20 report and field notes of Sergeant Wood concerning
21 Michael Morton's statement. Do you have that in mind?
22 **A. Okay. I will assume that, too.**
23 Q. All right. Now, if that is in fact what
24 happened, when Bill Allison made this motion after the
25 trial alleging that Sergeant Wood had an extensive

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1 report that covered a lot of investigative activities
2 that was about an inch thick and was alleging that that
3 had not been turned over to Judge Lott. All right? Do
4 you have that in mind? That's what happened, right?
5 **A. That's the third thing I have in mind.**
6 Q. -- happened? We know that happened, right?
7 **A. We know what happened?**
8 Q. We know he filed that motion, right?
9 **A. Yes.**
10 Q. Now, if in fact you have only turned over
11 Wood's report about Michael Morton's statement, why
12 didn't you then say to Judge Lott, oh, yes, Wood has a
13 report that contains many more things about his
14 investigative activities, both the report and field
15 notes?
16 **A. If I make all of those assumptions -- I don't**
17 **know what I did 25 years ago. I know how I handle --**
18 Q. I'm asking you now --
19 **A. I know how people handle motions for new trial,**
20 **which basically is the prosecutor would read it. But**
21 **it's between the judge and the defense attorney until**
22 **the judge orders a hearing.**
23 Q. Well, is it your position then based on the
24 answer that you just gave, you did not have any kind of
25 obligation to tell Judge Lott, oh, no, I only turned

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1 over Wood's reports about Michael Morton's statements.
2 I didn't turn over his complete report and field notes
3 about all of his other investigative activities?
4 **A. I don't know what I thought my obligations were**
5 **25 years ago.**
6 Q. I'm asking you now.
7 **A. Okay.**
8 Q. Okay. I'm asking you now, assuming that you
9 acted based on your current understanding of the record
10 and only turned over Wood's report about Michael
11 Morton's statements and field notes, and you didn't turn
12 over the rest of his report about other investigative
13 activities. Do you understand -- you understand that,
14 right?
15 **A. I do. I maybe need to go back and reread his**
16 **motion for new trial because -- was all of that in there**
17 **that you the are talking about?**
18 Q. Yeah, we will read it now. Let's take a break
19 for a second, and we will go get that. Okay?
20 **A. Okay.**
21 **VIDEO TECHNICIAN: It's 9:45. We are off**
22 **the record.**
23 **(Recess from 9:45 to 9:47)**
24 **VIDEO TECHNICIAN: It's 9:48. We are on**
25 **the record.**

6 (Pages 328 to 331)

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1 Q. (BY MR. SCHECK) Now, you have reviewed the
2 motion; have you not?
3 **A. Yes, sir, I just read it.**
4 Q. Okay. Now, does it refresh your recollection
5 that Bill Allison recited the conversation that he said
6 Mike Davis had before the jury?
7 **A. I don't know that it refreshes my memory, but**
8 **it certainly -- I can read what it says and it talks**
9 **about Mike Davis's --**
10 Q. It says -- it says that the "reports were
11 sizeable," and "he held up his hand and indicated one
12 inch between his fingers" --
13 **A. Right.**
14 Q. -- right?
15 **A. That's what this motion for new trial says.**
16 Q. And he said that if the defense got -- had
17 gotten them, they would have been able to raise even
18 more doubts than they did, right?
19 **A. That's what the motion for new trial says.**
20 Q. And he says, "that further remarks made in the
21 jury room that the reports contain leads concerning
22 other unusual happenings or strange persons in the
23 neighborhood," right?
24 **A. Right, I'm reading along with you.**
25 Q. You see that, right?

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1 **A. Yes, sir.**
2 Q. And it says, if disclosed to the defense, they
3 would have been relevant to the jury on the issue of
4 whether or not the Defendant committed the crime; it
5 says that, right?
6 **A. Yes, sir.**
7 Q. Okay. Now, he then goes on to say that if the
8 Court does not take immediate steps to preserve these
9 reports, they may be destroyed or removed, then they
10 would not be available for use in the appeal or
11 subsequent trial. Do you see that?
12 **A. Yes, sir.**
13 Q. Now, assuming that action at the time of the
14 trial, based on your current understanding, and only had
15 produced for Judge Lott Wood's report and field notes
16 concerning Michael Morton's statements, why wouldn't
17 you, when you saw this motion for a new trial, say to
18 Judge Lott that in fact you had not turned over the
19 complete set of documents by Sergeant Wood?
20 **A. Even making all of those assumptions there's no**
21 **way I can answer that, what I did 20-some years ago, 25**
22 **years ago, I guess.**
23 Q. Well, let me ask you this: Assuming that your
24 understanding at the time of the trial was, as you have
25 told us today and at the last deposition; do you not

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1 agree that you were obligated to tell Judge Lott that in
2 fact the complete report and field notes of Sergeant
3 Wood concerning his investigative activities had not
4 been turned over to him for in camera review?
5 **A. Based upon this motion for new trial?**
6 Q. Yes. Based on the allegations here, do you
7 believe that an attorney in -- who knew that the
8 complete reports had not been turned over would have an
9 obligation to tell Judge Lott right then and there, no,
10 I did not produce a full set of Sergeant Wood's reports,
11 I only produced his reports and field notes with respect
12 to the Morton statement?
13 **A. If you want to ask that hypothetically about**
14 **what an attorney has an obligation to do --**
15 Q. Yes.
16 **A. -- I might can answer that. But I have no idea**
17 **how I would have reacted to this motion for new trial.**
18 Q. I'm not asking you how you would have
19 reacted --
20 **A. But if I had known what I think I know or at**
21 **least what the transcript shows, I would have thought,**
22 **well, you know -- I probably would have thought that**
23 **there's a lot in this motion for a new trial that's just**
24 **not accurate.**
25 Q. Let me ask it to you again. If, in fact, you

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1 knew at the time of this trial that you had only
2 produced Sergeant Wood's offense report and field notes
3 with respect to the Morton statement and this motion for
4 a new trial is filed saying that the complete report of
5 Wood's field notes had not been produced for in camera
6 review. Did you not have an obligation to disclose to
7 the judge that the full set of reports had not been
8 turned over?
9 **A. And I tried to explain that. If my**
10 **understanding was what it is -- what I think it is from**
11 **the transcript, when I saw this, I would have thought**
12 **this was a gross misrepresentation of what Judge Lott**
13 **had ordered me to do.**
14 Q. Well, even if it is a gross misrepresentation
15 of what Judge Lott ordered you to do, didn't you have an
16 obligation to say, Judge, I was never asked by you to
17 turn over the complete set of Wood reports about his --
18 all of his other investigate activities, I only gave you
19 the Wood reports about the statements. Didn't you have
20 an obligation to make that clear?
21 **A. There's no mechanism to do that. You know, a**
22 **motion for new trial is filed, a prosecutor looks at it,**
23 **it goes to the judge for him. The judge knowing**
24 **whatever he knew at the time is either going to order a**
25 **hearing or not order a hearing.**

7 (Pages 332 to 335)

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1 Q. Wait a second.
2 **A. There's no input from the prosecutor in this --**
3 Q. Wait a second.
4 **A. And I'm sorry, I can't hear you.**
5 Q. My question -- you said there was no mechanism
6 to you to make this clear that the full report hadn't
7 been turned over; is that what you just said?
8 **A. I am saying that when a motion for a new**
9 **trial --**
10 Q. I --
11 **A. You are talking, and I can't hear you.**
12 Q. All right. Let me ask it to you very simply.
13 **THE WITNESS: Can the court reporter hear**
14 **you?**
15 **THE REPORTER: Not when he does that.**
16 **THE WITNESS: Okay. She's not getting**
17 **this either because we can't hear what you are saying.**
18 Q. (BY MR. SCHECK) Okay. Let me -- let's --
19 let's just speak more slowly and see if we can make it
20 happen.
21 After this motion for a new trial was
22 filed, you could have filed a response, correct?
23 **A. I don't know that I ever have filed a response**
24 **to a motion for a new trial. I may have, but it's not**
25 **something that would normally be something I would do.**

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1 Q. But whatever you would normally do or not, the
2 mechanism was available for you to file a response to
3 the motion for a new trial, correct?
4 **A. I don't know if there was a mechanism.**
5 **Obviously I could have filed a response.**
6 Q. Thank you. And if you had filed a response,
7 you could have said, Judge, you did not ask me to turn
8 over the complete Wood report and field notes about all
9 of his other investigative activities, you only asked me
10 to produce the documents concerning the Morton
11 statements. You could have said that in a response,
12 correct?
13 **A. I could have. Presumably he would have known**
14 **what he had ordered without me telling him what he had**
15 **ordered.**
16 Q. Well, Bill Allison obviously had a different
17 understanding of what he had ordered, correct?
18 **A. If he filed this in good faith, and I assume he**
19 **did, then he must have.**
20 Q. All right. And did you feel any obligation to
21 go on the record and correct Bill Allison's
22 misunderstanding and say, oh, no, Mr. Allison, you are
23 under a wrong impression. The complete set of reports,
24 field notes and offense reports of Sergeant Wood, were
25 never turned over?

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1 **A. Again, I have no idea what I thought 25 years**
2 **ago.**
3 Q. I'm not asking what you thought, I'm asking you
4 now. Do you not believe you had an obligation to clear
5 up Bill Allison's misunderstanding?
6 **A. In a hypothetical case does a prosecutor have**
7 **an obligation to clear up a misunderstanding when a**
8 **defense attorney files something that evidently is not**
9 **correct to a trial judge who would know what the correct**
10 **facts were, I can't say that.**
11 Q. Well, wait a second. When you say what was
12 incorrect about the motion is that he was incorrect in
13 saying that you were obligated to turn over the complete
14 Wood report and field notes, that's what was wrong with
15 it, correct?
16 **A. That is my understanding of one of the things**
17 **that's wrong with it, yes.**
18 Q. Okay. So why could you not -- withdrawn.
19 You could have filed a response that said
20 Allison is wrong about his claim that I was supposed to
21 turn all of this over. I didn't turn it all over. You
22 could have just said that, right?
23 **A. In theory I could have filed a response. Like**
24 **I said, I don't recall that I have ever filed a response**
25 **to a motion for a new trial. And Judge Lott would have**

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1 **had at least as good a knowledge of the facts as I did**
2 **at this point.**
3 Q. Well, Judge Lott would not have had knowledge
4 that there was in fact an inch worth of reports from
5 Sergeant Wood's field notes and offense report that
6 talked about suspicious people being in the neighborhood
7 at or around the time of the crime?
8 **A. I don't know what he would have had knowledge**
9 **of. But obviously he wouldn't -- a judge doesn't**
10 **usually have knowledge of everything in everybody's**
11 **file.**
12 Q. Right, but you had knowledge of the report from
13 Traylor that a witness had seen a man in a green van
14 driving behind the Morton residence and getting out and
15 walking in the wooded area?
16 **A. I don't know that I had knowledge of that.**
17 **I -- you had indicated that wasn't in the DA's file if I**
18 **remember correctly. It may very well have been in the**
19 **DA's file. So I presumably would have knowledge of it,**
20 **but I don't remember.**
21 Q. Okay. Well, all right. We reviewed last time
22 that Bill Allison had corresponded with the court as the
23 case was going up on appeal and expressed a concern in
24 the correspondence with the court that the full and
25 complete Wood report had not been disclosed to the judge

8 (Pages 336 to 339)

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1 in camera. We reviewed that last time, right?
2 **A. Okay. I don't have a clear recollection of**
3 **that, but I -- whatever the transcript shows obviously**
4 **we did.**
5 Q. Now, let's go to the appeal in this case and
6 the decision that is Exhibit 25. Okay?
7 **A. Okay.**
8 Q. Now, last time you recall in our deposition we
9 reviewed Bill Allison's brief and your brief.
10 **A. Correct.**
11 Q. Okay. And in Bill Allison's brief he was,
12 again, alleging based on motion for new trial and the
13 statements he said that Davis had made that the complete
14 report and field notes from Sergeant Wood had not been
15 disclosed to the judge for in camera review, correct?
16 **A. It was in his appeal brief, yes.**
17 Q. Okay. And in your appeal brief you never
18 explicitly -- withdrawn.
19 And in your appeal brief you never said to
20 the court, no, the complete report and field notes of
21 Sergeant Wood's investigative activities was not
22 produced for Judge Lott because I believed I was only
23 obligated to turn over Wood's report and field notes
24 with respect to the Morton statement. You never said
25 that, did you?

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1 **A. I would have to go back and look exactly what I**
2 **put in the brief, but a brief is limited to the record**
3 **so you just can't add, you know, your personal**
4 **recollections.**
5 Q. Are you actually saying that you felt that you
6 were limited by the rules, and you could not respond to
7 Bill Allison's brief and tell the court that the full
8 records of Sergeant Wood's report and his field notes
9 concerning his other investigative activities had not
10 been produced? You feel you could not have said that in
11 your response brief?
12 **A. I have no idea what I would have thought back**
13 **in 1988. But as a general rule on a brief you are**
14 **limited to the record.**
15 Q. Well, the record included the motion for a new
16 trial that Bill Allison filed based on what Mike Davis
17 told him; did it not?
18 **A. Presumably it was in the transcript portion of**
19 **the record, yes.**
20 Q. So if that's part of the record, would you not
21 have been permitted to tell the court, oh, no, the full
22 set of Wood's reports and field notes concerning his
23 investigative activities was not produced to Judge Lott.
24 I only produced Wood's offense report and field notes
25 with respect to the Morton statements? You would have

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1 been permitted to make that response clearly in your
2 brief, true?
3 **A. I have -- I don't think you can go outside the**
4 **record in your brief. As a matter of fact, I know you**
5 **can't go outside the record in your brief.**
6 Q. Well, but the motion for a new trial is in the
7 record?
8 **A. Well, I can't reconstruct what I was thinking**
9 **back in 1988 when I prepared an appellate brief.**
10 Q. Then the Court of Appeals decided this case,
11 correct?
12 **A. Yes, sir.**
13 Q. And in the part of its opinion that I'm calling
14 your attention to, page 11, the very end of the
15 decision, it says: Morton complains there is a
16 possibility that Sergeant Wood did not turn over -- turn
17 over all of his notes, right? Do you see that?
18 **A. Correct.**
19 Q. And then, at the end they say, however, there
20 is no evidence to support this contention. Because we
21 have nothing more to consider than a mere possibility
22 raised by Morton. We reject this complaint. Do you see
23 that?
24 **A. Okay.**
25 Q. So if in fact you had only turned over Wood's

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1 report and field notes concerning the Morton statements,
2 you knew that there was more than just a possibility
3 that all of Wood's notes and reports had not been
4 produced for Judge Lott, right?
5 **A. I have no idea what I knew back in 1988.**
6 Q. Well, again, let us just continue with your
7 current understanding of the record. If in fact you had
8 fully produced Sergeant Wood's report and field notes
9 concerning Morton's statements --
10 **A. Okay. We will make that assumption.**
11 Q. And had not turned over all of Sergeant Wood's
12 field notes and reports concerning his investigative
13 activity, assume that to be the case. Are you with me?
14 **A. I can assume that, but I really doubt --**
15 Q. When the court -- when the court wrote here
16 that its merely a possibility that all of Wood's notes
17 had not been turned over, you knew that it was more --
18 it was not just a mere possibility, it was, in fact, the
19 truth that all of Wood's field notes and the reports
20 about his investigative activities had not been turned
21 over to Judge Lott?
22 **A. Even making all of those assumptions there's no**
23 **way I can agree with that.**
24 Q. No way you can agree with -- assuming that you
25 knew at the time of this appeal that you had only

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1 produced Wood's report about the -- Morton's statements
2 and not all his other field notes and reports about his
3 investigative activity, assuming you knew that, you did
4 not feel you had any obligation to inform the court that
5 the full set of reports had not been produced?
6 **A. I -- I don't know how I am supposed to respond**
7 **to those sorts of questions. I mean, I have no idea**
8 **what I thought back in 1988. I'm assuming that I**
9 **thought I was in full compliance with Judge Lott's**
10 **request. Judge Lott evidently was satisfied. Now, I**
11 **was as shocked as anybody when those field notes weren't**
12 **in the unsealed report when it came out the other day.**
13 **But, you know, I don't know what I would have thought**
14 **over the last 25 years.**
15 **Now, in the opinion it says that they have**
16 **reviewed his field notes. So I don't know what they**
17 **were talking about if, in fact, the field notes weren't**
18 **there.**
19 Q. Now, you just said that you were as shocked as
20 anybody --
21 **A. I don't know if I was as shocked as anybody,**
22 **but I was surprised obviously when it was unsealed and**
23 **the field notes weren't in there.**
24 Q. Well, when the motion to recuse was filed in
25 August --

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1 **A. Yes, sir.**
2 Q. -- and Mike Davis came into your office that
3 Monday --
4 **A. Yes, sir.**
5 Q. -- you had this opinion on your desk; did you
6 not?
7 **A. That's my recollection, yes, sir.**
8 Q. You took out this opinion and you looked at it,
9 correct?
10 **A. I would have had a hard book copy, but, yes,**
11 **sir.**
12 Q. And when Kristen Jernigan came and spoke to you
13 right after the motion to recuse was filed in August,
14 you referred her to this opinion as well, correct?
15 **A. I don't have a clear recollection of that, but**
16 **I could well have.**
17 Q. All right. And you told everybody that you had
18 no recollection of what happened 25 years ago, correct?
19 **A. I can't imagine I could tell anybody anything**
20 **else.**
21 Q. Well, but from looking at this opinion did you
22 not convey the belief that you must have turned over the
23 complete set of reports from Sergeant Wood to Judge Lott
24 and eventually to the appeals court?
25 **A. Based upon reading this opinion that would be**

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1 **what I would have concluded.**
2 Q. And so did you express that belief to
3 Ms. Jernigan?
4 **A. I -- when? I mean, she probably had read the**
5 **opinion before I had read it.**
6 Q. Well, after the motion to recuse was filed --
7 **A. Yes, sir.**
8 Q. -- and you came back from your trip to
9 Colorado --
10 **A. Yes, sir.**
11 Q. -- Ms. Jernigan spoke to you about the
12 allegations that the full Wood report had not been
13 turned over?
14 **A. We would have had conversations, yes.**
15 Q. She was very interested in getting your
16 complete and clear recollection about whether the full
17 set of reports had been turned over, correct?
18 **A. You would have to ask her what she was very**
19 **interested in. If we talked about it, I would have told**
20 **her what I'm saying now, which is I don't have any**
21 **recollection of things that happened 25 years ago.**
22 **Probably at that time I was hoping by reading parts of**
23 **the statement of fact or something I could -- I could**
24 **refresh my memory, but that just doesn't happen when**
25 **it's 25 years old evidently.**

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1 Q. Was -- you had conversations with John Bradley
2 after the motion to recuse was filed, correct?
3 **A. I had a series of conversations after the**
4 **motion to recuse was filed. I guess it was filed when I**
5 **was still on vacation. So --**
6 Q. Yes, we have reviewed that. But you had two
7 conversations with John Bradley while you were either in
8 Colorado or coming back, correct?
9 **A. Correct, yes.**
10 Q. And in these conversations did he not convey to
11 you that he thought this was a very serious matter?
12 **A. I don't know that he used those words. He, at**
13 **some point, either in one of the conversations or maybe**
14 **both, indicated that there were Brady allegations, which**
15 **was the first time in recent memory evidently I had**
16 **thought or heard of Brady allegations in this case.**
17 Q. All right. And then when you got back and read
18 the -- read through the recusal motion, did not John
19 Bradley begin to have conversations with you saying to
20 the effect, Ken, this is very serious. You clearly have
21 to look through the record and tell us as clearly as you
22 can whether or not these documents from Sergeant Wood
23 were actually disclosed?
24 **A. I don't recall a specific conversation with**
25 **John to that effect, and I really don't recall any**

10 (Pages 344 to 347)

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1 **specific conversation with John at that point. Kristen**
2 **and I would have talked many times over the next weeks.**

3 Q. Now, are you saying -- you just told us that
4 you were shocked when the complete set of Wood reports
5 were not in the sealed envelope, correct?

6 A. **No, I was surprised that the field notes**
7 **weren't in there, that there wasn't some handwritten**
8 **notes in there.**

9 Q. Oh, so I maybe misunderstood what you were just
10 telling us. I thought -- withdrawn.

11 You know in the motion to recuse there was
12 handwritten field notes about the credit card being used
13 two days after Christine Morton's death?

14 A. **I can go back and look at it, but I'm sure that**
15 **was one of the allegations.**

16 Q. That there was documents produced about Don
17 Wood's interview with Rita Kirkpatrick, correct?

18 A. **We can go back and look at it, but I suspect**
19 **that was in there.**

20 Q. That there was the police report from Traylor
21 about seeing a green van pulling behind the Morton home,
22 and a man getting out and walking around the wooded area
23 several weeks before the crime?

24 A. **That was -- that was somewhere in there, yes.**

25 Q. Now, are you telling us that you were surprised

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1 or the Traylor document concerning the green van or the
2 Kirkpatrick transcript concerning the interview with Don
3 Wood where she describes Eric's statements about a
4 monster, right?

5 A. **Right, whenever I read the transcript, I would**
6 **have thought that the only thing that would be in there**
7 **would be the report and the field notes.**

8 Q. Did you ever tell John Bradley or Kristen
9 Jernigan prior to the time that the envelope was
10 unsealed by Judge Stubblefield that based on your
11 reading of the transcript you only expected to see an
12 offense report about Morton's statements and field notes
13 and not these other documents that had been attached to
14 the motion to recuse?

15 A. **I can't say whether I ever told him that or**
16 **not.**

17 Q. Well, if that was your understanding of the
18 record before the envelope was opened, why wouldn't you
19 tell them that?

20 A. **I don't know.**

21 Q. Didn't you feel when the motion to recuse was
22 filed and you got back to court that John Bradley very
23 much wanted you to give him your best understanding of
24 what would have been disclosed in camera to Judge Lott?

25 A. **That was the e-mail you showed me from Bradley**

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1 or shocked, to use the words you just said here today,
2 that those reports were not in the sealed envelope?

3 A. **Whenever it was unsealed, by that point I was**
4 **under the impression that what was going to be in there**
5 **was Wood's report and field notes. And I was told that**
6 **just his report, which was a four or five pages, plus**
7 **the consent form, but no field notes were in that when**
8 **it was opened earlier -- yeah, earlier this year.**

9 Q. But let's be specific. Were you shocked that
10 there were no reports or field notes about investigative
11 activities other than records of Michael Morton's
12 statements?

13 A. **I think by that time I was aware that -- or I**
14 **had read enough of the transcript to think that what**
15 **likely was going to be in there would have been the**
16 **report relating to the conversations with Morton and**
17 **field notes.**

18 Q. Right. But the only thing you expected then by
19 the time the sealed envelope was opened, based on your
20 understanding of the transcript, was that there would be
21 a report and field notes about Michael Morton's
22 statements, correct?

23 A. **Correct.**

24 Q. You did not expect to see in that sealed
25 envelope the Wood's reports concerning the credit card

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1 **to Kristen. Evidently that's what he said he wanted.**
2 **Now, how they followed up on that, I don't know.**

3 Q. Wait a second. I showed you that e-mail. I'm
4 now asking you --

5 A. **Yes, sir.**

6 Q. -- from the time that the motion to recuse was
7 filed and you had these conversations with John Bradley
8 in Colorado, by the time that you got back and started
9 looking through the motion to recuse through the date
10 that the envelope was opened, right, are you telling us
11 that John Bradley did not have conversations with you to
12 the effect of, Ken, you have got to take this seriously
13 and give me your best understanding of what happened
14 here in terms of these Brady allegations?

15 A. **Okay. I have a recollection of -- I believe**
16 **it's four conversation was Bradley; two of which were on**
17 **the phone and two of which occurred later. I may have**
18 **had additional conversations with Bradley, but most of**
19 **my contacts were with Kristen.**

20 Q. And the two conversations -- the four
21 conversations then are the two from --

22 A. **The two --**

23 Q. -- Colorado conversations?

24 A. **Correct.**

25 Q. And what are the other two?

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1 **A. When we had the meeting in his office where he**
2 **explained the -- the deposition.**
3 Q. That's on October 10th?
4 **A. It's on whatever that Monday was.**
5 Q. Right, that's one where Shawn Dick was there
6 representing Mike Davis -- I'm sorry, October 3rd in
7 John Bradley's office, right?
8 **A. I believe it was the 10th.**
9 Q. All right. So on the 10th, that's the one
10 where Shawn Dick was there for Mike Davis, correct?
11 **A. Yes, sir.**
12 Q. Okay. And Don Wood was there, correct?
13 **A. Yes, sir.**
14 Q. And this would be the meeting where John
15 Bradley laid out exactly what our agreement was,
16 correct?
17 **A. Yes, sir.**
18 Q. So that's the third conversation?
19 **A. Yes, sir.**
20 Q. What's the fourth conversation?
21 **A. When he came to my court and Davis was there**
22 **and we went back into my chambers.**
23 Q. And what did you say to him and what did he say
24 to you?
25 **A. During that conversation?**

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1 Q. Yeah.
2 **A. I don't recall the specifics. I think what he**
3 **was doing was telling us that the Court of Appeals --**
4 **the Court of Criminal Appeals had ruled it.**
5 Q. Did you not turn to Mr. Bradley at this point
6 and say, do you think I did something wrong?
7 **A. I don't recall ever saying that.**
8 Q. You are absolutely sure of that, huh?
9 **A. I can't recall the specifics of that**
10 **conversation, but I don't think that was said.**
11 Q. All right. And you were upset with Mr. Bradley
12 at that time?
13 **A. I don't know that I have ever been upset with**
14 **Mr. Bradley over this.**
15 Q. Did you -- all right. So we have reviewed the
16 four conversations. And let's be clear, you are saying
17 that sometime before the envelope was opened you had
18 reached the conclusion, based on your review of the
19 record, that you had probably just produced for Judge
20 Lott Sergeant Wood's record about Morton's statements
21 and field notes and none of the other documents that
22 Wood produced, field notes and reports, would be in that
23 sealed envelope; is that correct?
24 **A. That's to the best of my recollection, and**
25 **that's how I read the transcript today.**

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1 Q. Okay. So why didn't you tell Ms. Jernigan or
2 John Bradley that that's what you would expect to see in
3 the envelope?
4 **A. I don't know if I ever told them that or not.**
5 Q. Were they not -- either Jernigan or Bradley --
6 saying to you both before the envelope was opened and
7 after, Ken, we need for you to tell us to the best of
8 your recollection what you think happened here with
9 respect to the discovery process?
10 **A. They never -- to my knowledge they never**
11 **phrased any questions like that because I never**
12 **indicated that I had any knowledge going back 25 years**
13 **ago.**
14 Q. Weren't they pressing you that you had to look
15 at the record and tell them as best you could what you
16 think happened because you were going to have to be a
17 witness at a hearing on the due process Brady
18 allegation?
19 **A. They never pressed me about anything. I don't**
20 **recall having conversations with Bradley. Ms. Jernigan**
21 **would have been, you know, deferential. And I thought I**
22 **was going to be a witness. I thought this was going to**
23 **proceed like an 1107 proceeding. I can't recall that**
24 **Ms. Jernigan was prepping me to be a witness at any**
25 **time.**

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1 Q. Now, was she not asking you for your best
2 recollection so you can produce an affidavit?
3 **A. You had mentioned that before, and I have been**
4 **searching my mind trying to think if we ever had a**
5 **conversation about having an affidavit. We may have,**
6 **but it didn't go very far, and I have never indicated to**
7 **her that I had any recollections of what happened and so**
8 **there weren't going to be a lot of conversations. Most**
9 **of my contacts with Ms. Jernigan were either her**
10 **updating me sort of on what was going on or me asking to**
11 **see a document or the DA's file or something of that**
12 **nature.**
13 Q. Now so is it -- are you telling us that -- that
14 John Bradley never conveyed to you from the moment this
15 recusal motion was filed through the time that the deal
16 was made to have these depositions and you heard about
17 it on October 10th, he never conveyed to you frustration
18 that you were not giving him an explanation for why the
19 complete set of Wood reports had not been disclosed to
20 Judge Lott?
21 **A. I don't recall that he's ever expressed**
22 **frustration with me, and I don't know that we had a lot**
23 **of conversations. I -- as I said, I think most of them**
24 **were with Kristen.**
25 Q. Was there not during this period when the

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1 motion to recuse was filed and the litigation was then
2 moving forward prior to the time that we reached an
3 agreement and you were told about it on October 10th,
4 did you not have conversations with John Bradley where
5 you were saying to him there's -- that bandana --
6 there's a problem with the chain of custody. You should
7 be looking into that.

8 **A. We talked about this before. You know, I was**
9 **wondering about the validity of the DNA, I was wondering**
10 **about the bandana, the chain of custody of it --**

11 **Q. I'm asking you about did you have conversations**
12 **with John Bradley after the motion to recuse was filed**
13 **and prior to him telling you about a deal on October**
14 **10th, where you did say to him there may be problems**
15 **with the DNA, there may be problems with the bandana or**
16 **things to that affect?**

17 **A. I can't recall a conversation with Bradley. I**
18 **can recall that I talked about those things in a**
19 **conversation most likely with Kristen.**

20 **Q. Okay.**

21 **A. And maybe a series of conversations.**

22 **Q. Let's just -- let's just be clear. Are you**
23 **telling us you never said -- never had conversations**
24 **during this period with Bradley with -- you were coming**
25 **up with theories about how Christine Morton's blood**

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1 could have gotten on the bandana, but it was not part of
2 the crime?

3 **A. That sounds like something Kristen and I may**
4 **have discussed.**

5 **Q. Not John Bradley?**

6 **A. From the time I got back from Colorado until**
7 **the October 10th meeting or the meeting in my court,**
8 **whichever occurred first, I don't recall -- I'm not**
9 **saying that I didn't have conversations with Bradley,**
10 **it's inconceivable that I didn't. But I don't recall**
11 **them, and I don't recall that we had any -- the real**
12 **conversations occurred between me and Kristen.**

13 **Q. Let me see if I can refresh your recollection.**
14 **Are you sure that you had no conversations during this**
15 **period with John Bradley where he said things to you**
16 **like, Ken, you are in denial about this. You have got**
17 **to take this seriously and -- anything like that?**

18 **A. I don't recall anything even remotely like**
19 **that.**

20 **Q. Okay. Do you recall anything remotely like you**
21 **telling John Bradley you are -- running through a list**
22 **of items about what could be wrong with this DNA**
23 **evidence; that is, the testing on the bandana?**

24 **A. With John?**

25 **Q. With John.**

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1 **A. I don't recall having a list of items. I can**
2 **recall having conversations with Kristen before I**
3 **concluded that Morton likely was innocent, wondering**
4 **about the chain of custody, wondering about the validity**
5 **of the DNA. If John was part of one of those**
6 **conversations, I can't say one way or the other. But**
7 **there was none of this level of frustration you are**
8 **talking about.**

9 **Q. Okay. Let's -- and you have no recollection --**
10 **let's take a look at Exhibit 28 premarked. You have no**
11 **recollection of a press release John issued on October**
12 **30th where he encouraged you to provide an explanation**
13 **about what happened 25 years ago during this discovery**
14 **process?**

15 **A. That's Exhibit 28?**

16 **Q. Yeah.**

17 **A. Where are we talking about exactly? I don't**
18 **know that I have seen this press release before.**

19 **Q. The very end, page 2. Quote, "I encourage"**
20 **Mr. Brad -- "Mr. Anderson and Mr. Davis to provide**
21 **Mr. Morton with an explanation of what happened 25 years**
22 **ago during the discovery process for his trial, said**
23 **Bradley. The sheriff at the time of the original**
24 **investigation is dead. The judge at the time of the**
25 **trial is dead. The original lead investigator has**

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1 problems that interfere with his memory. That leaves
2 only Mr. Anderson, who was the District Attorney, and
3 Mr. Davis, who was an assistant district attorney, to
4 provide some explanation of the discovery process."

5 **A. I don't recall having a conversation where he**
6 **did that. It appears to me that's present tense so**
7 **maybe by way of this press release he was encouraging me**
8 **to do it, but I don't know.**

9 **Q. Let's go back to the court of appeals opinion**
10 **in December 14th, 1988. All right? I take it --**

11 **A. Okay. 1988.**

12 **Q. Yes. We are going back to Exhibit 25.**

13 **A. All right.**

14 **Q. Now, after that opinion was issued indicating**
15 **that there was a possibility that all of Wood's field**
16 **notes and reports were not produced to Judge Lott or the**
17 **appeals court, you did not do anything to inform the**
18 **appeals court or Bill Allison or anyone that a full set**
19 **of notes and reports from Sergeant Wood had never been**
20 **produced to Judge Lott. You did not do that, did you?**

21 **A. I don't have any recollection of doing that.**

22 **Q. All right. Isn't it true that you knowingly**
23 **refrained from disclosing this fact that the full set of**
24 **Wood's notes and reports had not been disclosed?**

25 **A. Since I have no recollection I can't respond to**

13 (Pages 356 to 359)

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1 **that.**
2 Q. Okay. Now, on September 27th, 1989 -- you can
3 look at the chronology if this helps -- a petition for
4 discretionary review was denied?
5 **A. Just a second. Let me get to the right page.**
6 **All right. That's what it says in here.**
7 Q. Is that generally in accord with your
8 recollection?
9 **A. I don't remember them filing a PDR. I presume**
10 **they did, and that would be about the right time length**
11 **between December '88 and September '89.**
12 Q. All right. Now -- then there was a motion
13 filed on March 22nd, 1990, for habeas relief, DNA
14 testing of the bedsheet. Do you remember that?
15 **A. I remember that there was litigation about the**
16 **bedsheet, but I don't remember that it was in 1990.**
17 Q. Well, you were still district attorney then;
18 were you not?
19 **A. Yes, sir.**
20 Q. And you assigned this case to John Bradley; did
21 you not?
22 **A. I don't recall that.**
23 Q. All right. And do you recall anything that you
24 might have said to John Bradley about the Morton case
25 when you assigned it to him?

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1 **A. In 1990?**
2 Q. Yes.
3 **A. No.**
4 Q. This would have been an unusual motion; would
5 it not?
6 **A. What, a writ?**
7 Q. Well, no, the motion for DNA testing in 1990.
8 There was not yet a post conviction DNA statute in
9 Texas, was there?
10 **A. I'm sorry, I misunderstood you. I thought that**
11 **was a writ that was filed, but -- but you're correct. I**
12 **don't remember exactly the month and year that DNA**
13 **became known or popularly used. But it was about this**
14 **time. I mean, I think by '87 we -- I don't know that**
15 **people actually used it, but it was -- somewhere in that**
16 **time period was when DNA started coming onto the scene.**
17 **So by 1990 there would have been no procedure for doing**
18 **this.**
19 Q. Right. So this would have been an unusual
20 motion, correct?
21 **A. I would think these were -- that was the time**
22 **these sorts of things started to come into play.**
23 Q. All right. Now, did you -- so you have no
24 recollection of what, if anything, you said to Bradley
25 about handling this case back then?

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1 **A. No.**
2 Q. But you assigned it to him, right?
3 **A. I don't know that I assigned it to anybody or**
4 **who handled it.**
5 Q. All right. Now, then after that motion you
6 became a judge, correct?
7 **A. 11 or so years later, yes.**
8 Q. Okay. And when were you appointed as a judge?
9 **A. Late December 2001.**
10 Q. Okay. Now, after you were appointed as a
11 judge, there was additional postconviction litigation in
12 the Morton case, correct?
13 **A. That's my understanding, yes.**
14 Q. And that John Bradley was then the district
15 attorney.
16 **A. He became district attorney the same day I**
17 **became a judge I presume.**
18 Q. Now, after you were appointed as a judge, John
19 Bradley would still consult with you about new
20 developments in the Morton case; would he not?
21 **A. I think we talked about this two weeks ago**
22 **that --**
23 Q. I know. We got a little cutoff, and I'm going
24 to ask you some very specific questions, and let's see
25 if you can answer them as I ask them. Okay?

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1 **A. That's what I have been trying to do all**
2 **morning.**
3 Q. Okay. So after you were appointed as a judge,
4 John Bradley would still consult with you about new
5 developments in the Morton case; would he not?
6 **A. He gave me some updates and probably not as**
7 **many as I would have liked, but probably plenty**
8 **considering my position.**
9 Q. And just as a general matter when motions were
10 filed or -- he would ask for your feedback?
11 **A. I would assume he did, yes.**
12 Q. He would use you as a sounding board about
13 deciding what to do?
14 **A. I don't think John has ever used me as a**
15 **sounding board about deciding what to do.**
16 Q. Well, he would ask you about the facts of the
17 case?
18 **A. He -- he could. I don't think I would have had**
19 **any recall five years ago any better than I do now.**
20 Q. Well, I'm asking, do you recall him asking you
21 about the facts of the case?
22 **A. I have no specific recollection of that**
23 **happening.**
24 Q. Well, you were the one that did the trial,
25 correct?

14 (Pages 360 to 363)

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1 **A. Correct.**
2 Q. You did the appeal, correct?
3 **A. Correct.**
4 Q. It would be fair to say you had the best
5 firsthand knowledge of the record facts?
6 **A. Yeah, after Boutwell died, I would have the**
7 **best firsthand knowledge.**
8 Q. And you never said to him, John Bradley, I'm a
9 judge now, I can't advise you about the Morton case?
10 **A. I have no specific recollection of that, but**
11 **I -- if he had asked me a question, I would have**
12 **answered.**
13 Q. You were more than willing to help?
14 **A. What limited help I would be -- have -- you**
15 **know, I wouldn't have had any better memory five years**
16 **ago than I do now.**
17 Q. You always expressed a high degree of
18 confidence to John Bradley that Michael Morton was
19 guilty?
20 **A. If he had asked me that, I'm sure I did.**
21 Q. Now, when you assigned the Morton case to John
22 Bradley and in the years after the trial would you not
23 regale prosecutors in your office about stories of the
24 Morton case and what a good thorough job you did when
25 trying it?

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1 **A. I don't have any specific recollection of that.**
2 **Do you mean when I was a prosecutor or when I was a**
3 **judge?**
4 Q. Did -- I'm sorry?
5 **A. When I was a prosecutor or when I was a judge?**
6 Q. When you were the prosecutor, right after the
7 case was tried in the appeal, right? Did you not have a
8 habit of regaling people in your office with stories
9 about the Morton case and what a good thorough job you
10 did?
11 **A. I don't recall that I had that habit. Nor do I**
12 **recall -- you know, lawyers tell war stories. I mean**
13 **I'm not saying I didn't ever talk about that or any**
14 **other case I tried, but I don't have any recollection of**
15 **it.**
16 Q. Weren't you telling war stories about the
17 Morton case and your careful attention to detail in
18 reconstructing the last meal?
19 **A. I don't have any recall of talking about that.**
20 Q. Well, you wrote about it in your book --
21 **A. Yes.**
22 Q. -- "Crime in Texas"?
23 **A. Right. So --**
24 Q. And weren't you regaling your staff over the
25 years with a war story about the Morton case and your

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1 painstaking attention to details in the same way that
2 you wrote about it in "Crime in Texas". Did you do
3 that?
4 **A. I can't say I did that.**
5 Q. All right.
6 **A. You know, I told you about "Crime in Texas"**
7 **before.**
8 Q. Okay. Now, when you would have these
9 conversations with John Bradley about the Morton case,
10 you knew he was relying on you to give him truthful
11 answers to the questions he was asking?
12 **A. I don't recall those conversations.**
13 Q. Well, would you not without -- are you telling
14 us that in -- you recall generally that you had
15 conversations with him about the Morton case after you
16 became a judge, correct?
17 **A. After I became a judge?**
18 Q. Yes.
19 **A. He updated me on what was going on.**
20 Q. Right. And when you had these conversations
21 with him, when he updated you on what was going on, and
22 he asked you questions about the case, you knew he was
23 relying on you to give him truthful answers to the
24 questions that he might ask you?
25 **A. All I could tell him was, you know, my general**

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1 **thoughts about the case, which was I was convinced that**
2 **the defendant was guilty.**
3 Q. Right. But when he asked you questions, was it
4 not clear to you that when you gave answers that he was
5 relying on you to give truthful answers to the best of
6 your ability?
7 **A. I don't recall those conversations, and from**
8 **what I have seen I can't imagine why he would be asking**
9 **me specific factual questions. And the only answer I**
10 **could give him is we would have to look at the statement**
11 **of facts.**
12 Q. Well, during all of these conversations during
13 the course of the Morton litigation while you were a
14 judge and he was the district attorney you never told
15 him that based on your understanding of the record that
16 you did not turn over a complete set of reports to Judge
17 Lott from Sergeant Wood, right?
18 **A. I don't recall that that was ever an issue. I**
19 **don't recall that ever being an issue in recent memory**
20 **until I heard about the recusal motion in August.**
21 Q. When the DNA motions were filed to do testing
22 of the hair, vaginal swabs, the victim's nightgown and
23 the bandana, did not John Bradley come to you and ask
24 you questions about the relevant importance of these
25 items in the case?

15 (Pages 364 to 367)

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1 **A. He may well have.**
2 Q. Didn't you have extensive conversations with
3 him during this period about the relevant portions of
4 the items, in particular the bandana?
5 **A. We likely had conversations about the bandana,**
6 **but I don't know how much I would have remembered about**
7 **the bandana.**
8 Q. Okay. Now, John Bradley -- and let's take a
9 look at these exhibits -- wrote letters protesting
10 Michael Morton's parole, you are aware of that?
11 **A. What are the exhibit numbers?**
12 Q. Let's take a look at Exhibit 26. Now, as you
13 are getting Exhibit 26, the practice of a district
14 attorney writing protest letters to the parole board to
15 try to prevent people from being released on parole,
16 that was a practice that you helped initiate, correct?
17 **A. Just a second. I have lost your picture again.**
18 **MR SCHECK: Let's go off the record if he**
19 **can't hear me.**
20 **THE WITNESS: I can hear you. Now I can**
21 **see you again.**
22 Q. (BY MR. SCHECK) Okay. The practice of writing
23 protest letters to the parole board, that's something
24 that you helped initiate, correct?
25 **A. I was very involved with writing protest**

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1 **letters. I don't know where I got the idea. I don't**
2 **know if I copied it from somebody else; but, yeah, the**
3 **Texas Criminal Justice System was a mess. It wasn't**
4 **functioning very well and we -- I worked hard on coming**
5 **up with a procedure where -- this was before '93 -- to**
6 **protest certain paroles.**
7 Q. Now -- and before you wrote a letter protesting
8 parole, was it your practice, when you were the district
9 attorney, to go back and talk to the trial prosecutor
10 who actually tried the case?
11 **A. The DA gets notice every time somebody comes up**
12 **for parole. I probably had, you know, some level of**
13 **personal knowledge about all the parole protests -- I**
14 **mean, about all the cases.**
15 Q. Okay. Let's turn to --
16 **A. People were coming up for parole relatively**
17 **quick.**
18 Q. Now --
19 **A. Now, which one are we turning to.**
20 Q. Were you aware that in September of 2006 or
21 sometime during this period that John Bradley was going
22 to write a letter to the parole board protesting Michael
23 Morton's efforts to get parole?
24 **A. I can't say that I was or I wasn't. I have**
25 **some recollection that I was aware he was up for parole**

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1 **though.**
2 Q. Do you have any recollection of John Bradley
3 going to you and having a conversation about the case in
4 an effort to familiarize himself with details that he
5 could put in a letter protesting parole?
6 **A. I can't say that he didn't do that. It could**
7 **well have been something he did.**
8 Q. And do you have any doubt that you were
9 communicating at or around the time that Exhibit 26 was
10 written, this parole letter protesting Michael Morton's
11 parole, that you conveyed a high degree of confidence to
12 John Bradley that Michael Morton must be guilty, and he
13 should write a strong letter?
14 **A. If he had asked me any time, I would have**
15 **expressed a high degree of confidence -- well, I don't**
16 **know about any time, but anyway I would have told him I**
17 **thought he was guilty. Now --**
18 Q. And you would have told him that you were --
19 I'm sorry?
20 **A. There was another part to that question.**
21 Q. Yes. Would you have also told him that you
22 thought that the crime was a particularly vicious one
23 and that he should write a strong letter protesting
24 Morton's efforts to get early release by way of parole?
25 **A. I'm trying to think what my thoughts would have**

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1 **been back in 2006. And I could be totally wrong, but I**
2 **believe I considered and decided not to file my own**
3 **protest letter. Now, you might have access to the**
4 **parole board file and like I said, I might just be wrong**
5 **about that.**
6 Q. Well, wasn't there in fact a conversation where
7 it was decided that it would not be appropriate for you,
8 as a sitting judge, to write the letter, but instead
9 John Bradley would write a strong letter?
10 **A. I'm not sure that I haven't written some**
11 **protest letters since I was a judge. So I don't know**
12 **about that.**
13 Q. Now during the time after the verdict and all
14 the way through 2006, when this parole protest letter
15 was written, did you stay in touch with the Kirkpatrick
16 family?
17 **A. The only communication I had with the**
18 **Kirkpatrick family after, you know -- I can't say back**
19 **in '88, '89, was Marilee communicated with me -- I want**
20 **to say it was with an annual Christmas card.**
21 Q. That's it?
22 **A. That's all I can remember. You know,**
23 **Marilee -- and she hasn't sent one recently, but she did**
24 **send me an annual Christmas card, and I don't remember**
25 **when they stopped. So that -- that way I kept up with**

16 (Pages 368 to 371)

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1 **her. I don't remember that we actually had a**
2 **conversation. We could have, but I don't remember one.**
3 Q. Now, turning your attention to Exhibit 27, and
4 this is the second parole letter Bradley wrote on
5 October 19th, 2009. Okay?
6 A. Yes.
7 Q. Have you got that one?
8 A. I see it.
9 Q. And now, you were informed, were you not, over
10 the years every time there was a new DNA result?
11 A. I -- I assume I was, yes.
12 Q. All right. And you can see in this letter that
13 reference is made to DNA testing that had determined
14 that the seamen stain on the bed actually came from
15 Mr. Morton. Do you see that paragraph?
16 A. Yes, sir.
17 Q. And you see here that Mr. Bradley says, "Ask
18 Michael Morton if he has accepted responsibility for the
19 murder of his wife by mercilessly beating her to death.
20 If he tells you that he now acknowledges he committed
21 that crime, please notify me and I will reconsider my
22 opposition to parole." Do you see that?
23 A. Yes, sir.
24 Q. Do you recall ever discussing any of that with
25 Mr. Bradley?

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1 A. At some point -- it doesn't really make sense,
2 but this is my memory. At some point he indicated that
3 he wanted the defendant to admit his guilt, and I think
4 he wanted -- I can't say that. I just think he wanted
5 him to enter some agreement, but I -- I may -- I don't
6 have a clear enough recollection of that.
7 MR. SCHECK: Okay. Could we have a time
8 out? Mark, this might be a good point to take a break
9 before we finish, and I would just like to know how much
10 time we have left.
11 MR. DIETZ: Okay. Let's go off, and then
12 we can figure that out.
13 VIDEO TECHNICIAN: 1:33 -- I'm sorry.
14 It's 10:53. We are off the record.
15 (Recess from 10:53 to 11:12.)
16 VIDEO TECHNICIAN: It's 11:13. We are on
17 the record.
18 Q. (BY MR. SCHECK) I would like to go back for a
19 second to the motion for new trial, Mr. Anderson. I
20 think you said that there were misstatements or things
21 that were wrong in it, and I think we reviewed one of
22 them which was your contention that the motion was wrong
23 insofar as it said that Judge Lott had ordered you to
24 turn over reports from -- and field notes from Sergeant
25 Wood more than those just those about Michael Morton's

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1 statements. You recall saying that, correct?
2 A. Yes, sir.
3 Q. All right. What else was wrong in this motion
4 for a new trial?
5 A. I think what I was referring to was what he
6 represented about Mr. Davis, and -- you know, I can only
7 base that being wrong on Davis's deposition.
8 Q. Well, did you ever ask Mike Davis about what
9 Allison said in this motion for a new trial?
10 A. I have no idea if I asked him that. When we
11 were talking about that two weeks ago in the deposition
12 you were talking about walking down the hall or, you
13 know, going into his office and asking him that. And my
14 recollection was that he had left my office sometime in
15 the first half of -- of 1987. In his deposition
16 evidently, if his memory is correct -- and I would think
17 he would know a whole lot better than I would -- he
18 evidently left that Friday. So that would have been
19 before the motion for new trial was filed.
20 Q. All right. But after the motion for new trial
21 was filed, even if Mr. Davis had left the office, there
22 was nothing to prevent you from calling him up and
23 saying, hey, Mike, what are you talking about?
24 A. I am sure I could have called him up and asked
25 him that, yes, sir.

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1 Q. But you didn't, did you?
2 A. I have no idea.
3 Q. Well, would you not agree that when this motion
4 for a new trial was filed, you had an obligation to see
5 if there were reports from Sergeant Wood, either field
6 notes or offense reports, that could be used by the
7 defense to raise even more doubt than they did?
8 A. 25 years ago I don't know what I would have
9 thought my obligation was.
10 Q. Well, as you sit here today, do you not agree
11 that the prosecutor, in this case you, had an obligation
12 to find out from Mike Davis or anyone else if in fact
13 there were a sizeable number of documents from Sergeant
14 Wood about his investigation that could have been used
15 to raise more doubt than the defense did at the trial?
16 A. I would have to do some legal research to see
17 what kind of obligation that is. You know, sitting here
18 25 years later as a judge I would view anything
19 differently.
20 Q. Well, are you telling us that you do not
21 believe, as you sit here today, that back in 1987 a
22 prosecutor, who is informed by his co-counsel, right,
23 that there is a sizeable number of documents that could
24 have been used by the defense to raise more doubt than
25 they did that were never disclosed, that you had an

17 (Pages 372 to 375)

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1 obligation to find out what those documents were
2 assuming that you didn't know about them?
3 **A. Well, Davis's deposition never says that he**
4 **said this. He says he doesn't recall and says if he did**
5 **recall, it would -- he might -- he doesn't say anything**
6 **like this.**

7 Q. Let me -- I'm not asking you about what Davis
8 remembers or doesn't remember or said or didn't say in
9 his deposition. Do you have that in mind?

10 **A. All right.**

11 Q. I'm asking you about the obligation of you, as
12 a prosecutor in 1987, upon receiving a motion like this,
13 one that Bill Allison filed, does this not create an
14 obligation for a prosecutor to go to Mike Davis or
15 Sergeant Wood or look at the file to find out if in fact
16 there were a number of reports that could have been used
17 by the defense to raise even more doubt than they did
18 that were not turned over?

19 **A. I'm going to try to answer that. You know, in**
20 **a perfect world that's what lawyers would do. Your**
21 **question is, is there an obligation. I would have to**
22 **look up some law and be directed in that area.**

23 Q. So you're -- you're -- even now, it's hard for
24 you to agree that a prosecutor who is told in a motion
25 for a new trial that there are a sizable number of

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1 documents that could have been used by the defense to
2 create doubt in the case, that prosecutor does not have
3 an obligation to see whether or not this allegation that
4 Bill Allison made in a motion for new trial is true?

5 **A. You go from the hypothetical, and then you tie**
6 **it back into here. You know, a prosecutor could easily**
7 **have read this --**

8 Q. Well, I --

9 **A. I can't hear you.**

10 Q. I take it -- you have told us that you have
11 absolutely no memory of anything that happened 25 years
12 ago; is that correct?

13 **A. Any specific memory. I obviously have general**
14 **memories of the trial and certain things. But in terms**
15 **of back and forth, what I gave, what I didn't give, why**
16 **I made a trial strategy decision, why I called a**
17 **witness, there's absolutely no way I could recall that.**

18 Q. You have no recollection. I take that as a
19 given. Now, I am asking you a different question.

20 **A. Well, I have some recollections of the trial.**

21 Q. I'm asking you a -- we are looking at this
22 motion for a new trial that was filed.

23 **A. All right.**

24 Q. And this was one that you acknowledged you must
25 have received and read at the time, correct?

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1 **A. It appears to be my handwriting on the top**
2 **so -- and regardless I would assume I saw it.**

3 Q. Right. So I am asking you about your
4 understanding of what the obligation of a prosecutor in
5 your position in 1987 would be after receiving this
6 motion. Do you have that in mind?

7 **A. Yes, sir.**

8 Q. And my question to you is: Upon receiving this
9 motion where there is an allegation that there were a
10 sizeable number of documents compiled by the chief
11 investigator, Sergeant Wood, that were not disclosed to
12 the defense that could have been used to raise doubt;
13 did you not have an obligation then to conduct some kind
14 of investigation to see if the allegations in this
15 motion for a new trial were true?

16 **A. If I gave this some credibility, I would think**
17 **that would be something that I should have done.**

18 Q. Well, Bill Allison you believed in 1987 a
19 credible man?

20 **A. I never doubted Bill's credibility, although I**
21 **clearly had some disagreements with him about the law**
22 **and the expansiveness of Brady and --**

23 Q. We are not talking about the law, and we are
24 not talking about interpretations of Brady. We are
25 talking about a factual statement that he made

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1 concerning what was said in the jury room about the
2 existence of an inch worth of documents from Sergeant
3 Wood that could have been used to create doubts. Now,
4 you have no doubt that Bill Allison is a credible
5 person?

6 **A. I don't have an ability to respond to that.**
7 **But I mean Bill and I knew each other -- I don't know**
8 **that I have seen him for 25 years -- you know, he was a**
9 **law professor when I was in law school. He and I tried**
10 **a case together.**

11 Q. Would you not agree that in 1987 you had an
12 obligation to conduct an investigation based on Bill
13 Allison's statements that Mike Davis had said that there
14 was an inch worth of documents from Sergeant Wood's
15 reports that could have been used to raise even more
16 doubts than the defense did?

17 **A. I can't imagine getting this motion for new**
18 **trial and thinking that Davis had actually said**
19 **something like that.**

20 Q. I didn't ask you that question. I asked you
21 whether or not getting this motion from somebody that
22 you acknowledge is credible, you had an obligation in
23 1987 to conduct some kind of investigation as to whether
24 or not the allegation here was true?

25 **A. If Davis had come to me and said this --**

18 (Pages 376 to 379)

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1 Q. I'm asking you -- you got this motion, you have
2 acknowledged you got this motion, the question I'm
3 asking you, see if you can answer it: Did you not have
4 an obligation to conduct an investigation as to whether
5 or not Allison's allegation here was true and that such
6 documents existed?

7 **A. In general, if a prosecutor got credible**
8 **information of something like that they should check it**
9 **out.**

10 Q. And Bill Allison was a credible person as far
11 as you knew in 1987?

12 **A. I hope he still is, but --**

13 Q. And so wouldn't it be fair to say that just
14 based on receipt of this motion you had an obligation to
15 conduct an investigation to see if it was true, yes or
16 no?

17 **A. I don't know the answer to that question.**

18 Q. As you sit here today you still don't know the
19 answer to that question?

20 **A. As I sit here today I would think it would**
21 **depend upon how the prosecutor perceived this. If he**
22 **thought it was -- if he thought there was some chance**
23 **that it was true, he should go talk to the prosecutor**
24 **who allegedly said that. If he didn't think there was**
25 **anything to it, I don't know that there's an obligation.**

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1 Q. Well, assuming now that in 1987 you read Judge
2 Lott's order to you, you interpreted it the same way
3 that you do today; that is to say that you were only
4 obligated to turn over to Judge Lott Sergeants Wood's
5 report and field notes about Morton's statements, right?
6 Assuming that would be true, then wasn't there a reason
7 for you to believe that you might not have seen all of
8 Wood's reports and there was a need to investigate this
9 allegation?

10 **A. You know, this happened in the last deposition**
11 **when you got accusatory like that. It's really hard for**
12 **me to track exactly what you are asking.**

13 Q. You don't -- you don't understand my question?

14 **A. You know, if a prosecutor thinks -- has some**
15 **reason to believe something is out of whack, then they**
16 **ought to go and do some level of investigation. I agree**
17 **with that part.**

18 Q. All right. Well, let's be more specific. You
19 are telling us, as you sit here today, that you believe
20 you were only obligated to turn over Wood's reports
21 about the Morton statement, yes?

22 **A. From reading the transcript, yes.**

23 Q. All right. Let's assume that was true, and
24 let's assume that you only turned over knowingly at that
25 time Wood's reports about Morton's statements. When you

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1 got this motion for a new trial where it is alleged that
2 there were more documents from Sergeant Wood, field
3 notes and offense report that could have been used to
4 raise doubt, knowing you had not turned over all of
5 Sergeant Wood's report couldn't this be sufficient
6 reason for you to conduct an investigation, yes or no?

7 **A. I don't know. It depends on how I perceived**
8 **it.**

9 Q. Now, one reason -- one reason, of course, that
10 you might not conduct an investigation of all of
11 these -- after receiving the motion to dismiss is that
12 you knew exactly what Mike Davis was talking about.

13 **A. Is that a question?**

14 Q. Yes.

15 **A. I don't know how I could respond to that.**

16 Q. Well, there would be no need to conduct an
17 investigation about whether or not there were
18 significant numbers of reports from Sergeant Wood that
19 could have been used by the defense to create even more
20 doubt if you knew that in fact those reports existed,
21 and you had never disclosed them to Judge Lott, and you
22 had never disclosed them to the defense, right?

23 **A. Well, that assumes a whole bunch of things. I**
24 **mean, there's no way based upon my reading of the**
25 **transcript that I would have thought that I was supposed**

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1 **to give Judge Lott anything other than that one report**
2 **and the field notes.**

3 Q. Okay. Let's go on. In this motion for a new
4 trial there was discussion about strange persons in the
5 neighborhood, right, which if disclosed to the defense
6 would have been relevant on the issue of guilt or
7 innocence? Do you see that?

8 **A. Yes, sir.**

9 Q. Now, I want to be very clear with you because I
10 think I might have been under a misimpression. But turn
11 to, I guess what was Exhibit 10 in the deposition last
12 time, and that is the report about the existence of a
13 green van and a man that got out of it and walked around
14 the wooded area behind the Morton home on several
15 occasions prior to the murder. Do you remember
16 reviewing that report?

17 **A. Yes, sir, and I remember reading the**
18 **transcript, and you had represented that it wasn't in**
19 **the DA's file, and it's not cc'd on the bottom, but my**
20 **recollection -- go ahead.**

21 Q. I did say that, and I want to be clear about
22 something so that we can review it and correct the
23 record if necessary. There is a Bates stamp here that
24 indicates that this document was in fact in the district
25 attorney's file. Okay? Do you have that in mind?

19 (Pages 380 to 383)

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1 A. Yes, sir.

2 Q. All right. So my assumption about that
3 question last time may well be wrong. So let us assume
4 now that this document about the green van and the man
5 in the wooded area behind the Morton home -- let us
6 assume that was in fact in your file at the time of
7 trial.

8 A. Okay. We will make that assumption.

9 Q. I'm sorry?

10 A. We will make that assumption.

11 Q. All right. Is this not Brady material that you
12 should have disclosed to the defense?

13 A. You know, I have already gone into why I can't
14 respond to a question about Brady. I think I have
15 already testified -- well, I'd have to go back and look
16 at the transcript. If -- I'd have to know what I knew
17 back in 1986.

18 Q. Let me just ask you this: I think in the last
19 deposition when we reviewed this document, you agreed
20 that the observations recorded here about what a
21 neighbor saw several weeks before the crime were
22 consistent with someone casing the Morton residence for
23 a burglary.

24 A. Okay. I had never heard that several weeks
25 before the crime. Is that in here?

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1 Q. Yes.

2 A. Where?

3 Q. We can go back over it again. But the -- if
4 you look, the -- Traylor reports that he stopped a
5 subject, that is, a person who was observed walking down
6 the street, and the subject advised that he and his wife
7 Joni St. Martin, from 13204 Adonis had on several
8 occasions observed a male park a green van on the street
9 behind the Hazelhurst address, that's the Morton
10 residence, and then the subject would get out and walk
11 into the wooded area off the road. Do you see that?

12 A. Well, you kind of misread it. I guess there's
13 he, his wife and Joni St. Martin.

14 Q. Right, we have been through this, but he --
15 Traylor is saying that he spoke to an individual that
16 said that he had on several occasions observed a male
17 park a green van on the street behind the Hazelhurst
18 residence, the Morton address, and then the subject
19 would get out and walk into the wooded area off the
20 road.

21 A. All right. But I didn't -- you said several
22 weeks before and I'd never --

23 Q. Let's -- let me amend that to not several weeks
24 but several occasions.

25 A. Okay.

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1 Q. So having seen that there was an individual who
2 reported on several occasions observing a male park a
3 green van on the street behind the Hazelhurst address
4 and then get out and walk into the wooded area behind
5 the Morton home, would you not agree that this report is
6 consistent with the defense theory of someone committing
7 a burglary?

8 A. I'm not -- I'm not trying to skirt your
9 question. You know, this report is either very
10 unimportant or very important, and it would -- you know,
11 it needed -- it cries out to be investigated.

12 Q. Right.

13 A. I can't believe there's not a supplemental
14 report in the sheriff's department file or my file or
15 both where somebody talked to Joni St. Martin. You
16 know, I just -- I'm trying to go back and figure out --

17 Q. Let's -- because we went through this the last
18 time, let us do it again.

19 Would you not agree that this report
20 concerning the observations of the green van being
21 behind the Morton residence prior to the murder on
22 several occasions and an individual walking around that
23 wooded area off the road, that this report, especially
24 if there was no followup done on this report, would be
25 information that should have been disclosed to the

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1 defense pursuant to the Brady obligation?

2 A. I don't know how -- you know, of all the
3 reports this is the one that bugs me the most. There
4 should have been -- I can't imagine there wasn't a
5 follow-up on this, and it should have been a written
6 report that followed. So I don't know if Boutwell, who
7 wasn't really good about writing reports, did it on his
8 own and didn't write a report or what, but --

9 Q. Let's put it -- let us make this assumption.
10 Let's assume it was in your file, and let's assume that
11 you had nothing in your possession that indicated there
12 was a follow-up.

13 A. Okay.

14 Q. Would this report, and frankly the lack of
15 follow-up, have to be the disclosed to the defense
16 pursuant to the Brady obligation?

17 A. Well, I don't know about all the Brady aspects,
18 but it's the sort of stuff that I routinely would give
19 to defense attorneys, but I would be -- and I'm
20 trying -- I can't remember 25 years ago, but I mean,
21 this is the sort of report that --

22 Q. We are not -- let's --

23 A. But this is the sort of report that is
24 troublesome to me right now. It hopefully was really
25 troublesome to me 25 years ago and just screams out for

20 (Pages 384 to 387)

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1 somebody to follow up on.

2 Q. Right. But just dealing with the evidence that
3 we have, let us assume that this was indeed in your
4 file, and let us further assume that there is no record
5 of any follow-up with respect to this report. Would you
6 not agree that when Judge Lott asked you, Mr. Anderson,
7 do you have any Brady material to disclose at the
8 pretrial hearing, you should have said, Judge, yes,
9 here's this report by Traylor. I have to disclose this
10 to the defense about the green van and the man walking
11 behind the Morton residence.

12 A. And I think I already testified to that at the
13 first deposition that this is the sort of stuff that you
14 would typically turn over.

15 Q. And when you disclosed this, would you disclose
16 the actual document in terms of your typical routine, or
17 would you just say to the defense attorneys sitting
18 across the table, I have a report here. Let me tell you
19 what the information is, but you wouldn't show them the
20 document?

21 A. You know, my general practice was not to
22 actually hand a physical document to somebody. You
23 know, I -- well, I am guessing I would have summarized
24 it.

25 Q. Okay. Now --

1 It's -- it's the most unprofessional statement I can
2 recall ever seeing in a police report.

3 Q. Now, you are -- I know you have described
4 yourself now as being just sick about all of this,
5 correct?

6 A. How could anybody not be, but yes, I'm sick
7 about it.

8 Q. Now, could part of your bad feelings about what
9 happened in this case arise from the fact that looking
10 at this record you now realize that you did not turn
11 over to Judge Lott or the defense a whole series of
12 reports from Sergeant Wood that were exculpatory and
13 might have led to Michael Morton's acquittal?

14 A. I can't imagine I did that. But I can't -- I
15 can't without recollection say that --

16 Q. I understand you are saying you don't have
17 specific recollection. But looking at the cold record,
18 Mr. Anderson, it's clear, isn't it, that you did not
19 turn over to the defense or to Judge Lott the complete
20 report and field notes of Sergeant Wood. That's clear,
21 isn't it?

22 A. From looking at the record?

23 Q. Yes.

24 A. It is not clear. I mean, I -- from my looking
25 at the record today I -- I don't think I was supposed to

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1 A. You know, Mr. Scheck, you make these statements
2 and these accusations, and you are acting like I have
3 done something wrong, and it just -- you know, I am
4 upset about an innocent man being convicted. I don't
5 know how to convey that in the form of a deposition, but
6 it is -- it is highly troublesome to me. It is -- I
7 don't have the language to express my feelings about
8 this. I think earlier I had said I was sick. I'm
9 sure -- well, and this particular report, there not
10 being a follow-up, upsets me a lot. I mean there's one
11 thing in this whole case file that upsets me a little
12 more than this, but --

13 Q. What's the other thing that upsets you a little
14 more?

15 A. When I was reviewing the documents, there's a
16 statement in one of the reports from Sergeant Wood, and
17 I don't know how to characterize it, but it says
18 something about but we know better.

19 Q. That was concerning the check that was cashed
20 nine days after Christine Morton's death, correct?

21 A. I think that was the report it was. I
22 wasn't -- that check, you know, may well have been for
23 deposit only put into her account. I -- that's -- you
24 may have more information than I do about that. But it
25 was that statement that just drove me absolutely crazy.

1 turn anything over other than the report relating to the
2 August 13th conversation and the field notes.

3 Q. I understand that that is your reading of the
4 record.

5 MR. DIETZ: Mr. Scheck, at this time I
6 think I'm going to have to interpose a time objection.
7 Madam court reporter, would you tell us the time.

8 MR. SCHECK: Okay. Are we waiting for a
9 time statement?

10 THE REPORTER: Yes, you are.

11 MR. DIETZ: Yes, we are waiting for a time
12 statement.

13 THE REPORTER: It's about three minutes
14 over.

15 MR. DIETZ: We are two hours and three
16 over. Okay. I'm going to interpose a time objection
17 and ask that the deposition be completed at this time.

18 MR. SCHECK: I appreciate it. I just want
19 to ask him one more question, clarify this one and see
20 if he can answer it.

21 THE REPORTER: Wait a minute. We are out
22 of video.

23 MR. SCHECK: I'm sorry?

24 MR. DIETZ: We are out of video.

25 MR. SCHECK: If that's okay with the

21 (Pages 388 to 391)

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1 **Judge.**
 2 **MR. DIETZ: Well, we are off under all**
 3 **circumstances at this time. We are out of video. Hold**
 4 **on a second.**
 5 **(Discussion off the record)**
 6 **MR. DIETZ: Are you ready to go? You have**
 7 **two minutes?**
 8 **VIDEO TECHNICIAN: About that.**
 9 **MR. DIETZ: Okay. All right. You can ask**
 10 **one question. You have got two minutes.**
 11 **Q. (BY MR. SCHECK) Yeah. My question to you,**
 12 **Mr. Anderson, looking at the cold record now, are you**
 13 **upset about the fact that you never investigated after**
 14 **the motion for a new trial and discovered the field**
 15 **notes and reports from Sergeant Wood with respect to the**
 16 **credit card, the check, the interview with Rita**
 17 **Kirkpatrick and the report about the green van and**
 18 **suspicious man behind the house?**
 19 **A. I don't know that those weren't investigated.**
 20 **I don't know if they were. I hope they were, and I hope**
 21 **I had knowledge back in '86. That would make all of**
 22 **this understandable.**
 23 **Q. But as you look at it today based on the cold**
 24 **record --**
 25 **MR. DIETZ: That's the second question,**

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1 **Mr. Scheck --**
 2 **MR. SCHECK: Understandable.**
 3 **Q. (BY MR. SCHECK) The last question: As you**
 4 **look at the cold record today, do you have --**
 5 **MR. DIETZ: We are done, we are done.**
 6 **He's lost -- he doesn't have any more tape.**
 7 **VIDEO TECHNICIAN: It's 11:46. We are off**
 8 **the record.**
 9 **MR. SCHECK: Okay. That's enough.**
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1 **CHANGES AND SIGNATURE**
 2 **WITNESS NAME: KEN ANDERSON**
 3 **DATE OF DEPOSITION: November 11, 2011**
 4 **PAGE LINE CHANGE REASON**
 5 _____
 6 _____
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1 **I, KEN ANDERSON, have read the foregoing**
 2 **deposition and hereby affix my signature that same is**
 3 **true and correct, except as noted above.**
 4
 5
 6
 7 _____
 8 KEN ANDERSON
 9 THE STATE OF _____)
 10 COUNTY OF _____)
 11
 12 Before me, _____, on this day
 13 personally appeared KEN ANDERSON, known to me or proved
 14 to me under oath or through _____ to be the
 15 person whose name is subscribed to the foregoing
 16 instrument and acknowledged to me that they executed the
 17 same for the purposes and consideration therein
 18 expressed.
 19 Given under my hand and seal of office this
 20 _____ day of _____, _____.
 21
 22 _____
 23 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____
 25 Job No. 97064

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<p style="text-align: right;">Page 396</p> <p>1 CAUSE NO. 86-452-K26 2 THE STATE OF TEXAS) IN THE DISTRICT COURT OF 3) 4 Plaintiff(s)) 5 VS.) WILLIAMSON COUNTY, TEXAS 6) 7 MICHAEL MORTON) 8) 9 Defendant(s).) 26TH JUDICIAL DISTRICT</p> <p>10 11 REPORTER'S CERTIFICATION 12 DEPOSITION OF KEN ANDERSON 13 November 11, 2011 14 Volume 2 of 2 15 I, Glenda Fuller, Certified Shorthand Reporter in 16 and for the State of Texas, hereby certify to the 17 following: 18 That the witness, KEN ANDERSON, was duly sworn by 19 the officer and that the transcript of the oral 20 deposition is a true record of the testimony given by 21 the witness; 22 That the deposition transcript was submitted on 23 November 14, 2011 to the witness or to the attorney for 24 the witness for examination, signature and return to me 25 by December 5, 2011; That the amount of time used by each party at the deposition is as follows: Mr. Barry Scheck - 02:06 That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of</p>	<p style="text-align: right;">Page 398</p> <p>1 to _____, Custodial Attorney; 2 That \$ _____ is the deposition officer's charges 3 to the Defendant for preparing the original deposition 4 transcript and any copies of exhibits; 5 That the deposition was delivered in accordance 6 with Rule 203.3, and that a copy of this certificate was 7 served on all parties shown herein on 8 _____ and filed with the Clerk. 9 Certified to by me this ____ day of _____, 10 _____ 11 12 13 _____ 14 Glenda Fuller, Texas CSR 1042 15 Expiration Date: 12-31-12 16 Firm Registration No. 87 17 1016 La Posada Drive, Suite 294 18 Austin, Texas 78752 19 (512) 465-9100 20 Job No. 97064 21 22 23 24 25</p>
<p style="text-align: right;">Page 397</p> <p>1 record: 2 Mr. Lindsey Roberts, Attorney for Plaintiff(s) 3 Mr. John W. Raley, Attorney for Defendant(s) 4 Mr. Barry Scheck, Attorney for Defendant(s) 5 I further certify that I am neither counsel for, 6 related to, nor employed by any of the parties or 7 attorneys in the action in which this proceeding was 8 taken, and further that I am not financially or 9 otherwise interested in the outcome of the action. 10 Further certification requirements pursuant to 11 Rule 203 of TRCP will be certified to after they have 12 occurred. 13 Certified to by me this 14th day of November, 2011. 14 15 16 _____ 17 Glenda Fuller, Texas CSR 1042 18 Expiration Date: 12-31-12 19 Firm Registration No. 87 20 1016 La Posada Drive, Suite 294 21 Austin, Texas 78752 22 (512) 465-9100 23 24 FURTHER CERTIFICATION UNDER RULE 203 TRCP 25 The original deposition was/was not returned to the deposition officer on _____; If returned, the attached Changes and Signature page contains any changes and the reasons therefor; If returned, the original deposition was delivered</p>	

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